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

2 THE COURT: You may be seated.

3 Before we get started, are there any matters we need
4 to take up outside the presence of the jury?

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

6 MR. ANTCLIFF: Not that I'm aware of, Your Honor.

7 MS. STILLINGER: Not at this time, Judge.

8 THE COURT: Okay. Then you can go ahead and bring the
9 jury in.

10 And where is the witness that was on the stand
11 yesterday?

12 Oh, there you are. Okay.

13 (Open court, parties and jury present.)

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

15 Subject to the Court's ruling, you may proceed.

16 MR. ANTCLIFF: Thank you, Your Honor.

17 CHRISTOPHER SANCHEZ, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

18 CROSS-EXAMINATION

19 BY MR. ANTCLIFF:

20 Q. Good morning again, Agent Sanchez.

21 A. Good morning, sir.

22 Q. Yesterday, when we recessed, I was asking you questions
23 about discharges of firearms in the Fabens sector. Do you
24 recall that?

25 A. Yes, sir.

1 Q. I think the specific question I had asked was: During the
2 course of your investigation, did you learn information that
3 there had been other discharges of firearms in the Fabens
4 sector by Border Patrol agents which were not reported to
5 supervisory personnel?

6 A. I learned it once, sir.

7 Q. Very well. Yesterday, Ms. Stillinger asked you about a
8 memo written by, I think, supervisory Border Patrol Agent
9 Karhoff. Do you recall that?

10 A. Yes, sir.

11 Q. Did you bring that memo with you today?

12 A. No, sir, I didn't.

13 Q. You heard Border Patrol Agent Rene Sanchez's testimony
14 about the relationships that he had, or his family had, with
15 the Aldrete-Davila family, did you not?

16 A. Yes, sir.

17 Q. At the time that you received Rene Sanchez's memorandum and
18 Agent Karhoff's memorandum, were you aware of those family
19 relationships?

20 A. No, sir.

21 Q. Would those family relationships he discussed have had any
22 bearing on your investigation, had you known about them at that
23 time?

24 A. No, sir.

25 Q. Okay. Do you think that those relationships were not

1 important or not relevant to your investigation?

2 MS. KANOF: Objection, Your Honor, relevance.

3 THE COURT: I'll overrule.

4 BY MR. ANTCLIFF:

5 Q. Do you think that they were irrelevant or not important to
6 your investigation?

7 A. They were -- I mean, I took them into consideration once I
8 was aware of them.

9 Q. How long after you received the Rene Sanchez memorandum did
10 you take them into consideration?

11 A. When I spoke to him on, I believe March 10th, when he
12 called me.

13 Q. And he identified all of those family relationships to you
14 that he had discussed in his testimony yesterday?

15 A. Yes, sir.

16 Q. Okay. Would you agree with me that Mr. Aldrete-Davila was
17 worried about prosecution by Mexican authorities when you went
18 over to meet with him?

19 A. That's what he told me, sir.

20 Q. Did you discuss with any Mexican authorities the question
21 of his obtaining immunity from prosecution from them?

22 A. No, sir.

23 Q. Do you know whether or not Mr. Aldrete-Davila discussed
24 with Mexican authorities any issue regarding his immunity from
25 prosecution with them?

1 A. I don't know, sir.

2 Q. With respect to radio traffic, as I understood your
3 testimony -- and I'm not real clear about it -- there are two
4 types of radio traffic. One is local, and one is -- one goes
5 through the repeater. Is that right?

6 A. That's correct, sir.

7 Q. And local is -- local radio traffic is car-to-car, correct?

8 A. Yes, sir.

9 Q. And the repeater, how does that work?

10 A. I think, to my understanding of Fabens, I think -- I think
11 it's called rim rock, is where they go off the repeater. And
12 basically, it's just -- you know, if you're having -- trying to
13 reach another Border -- it just gives you a little bit longer
14 distance, to my understanding. And those are recorded. The
15 car-to-car is not recorded.

16 Q. Okay. So it's a tower that captures radio traffic and
17 sends it on elsewhere?

18 A. Yes, sir.

19 Q. Is it line-of-sight oriented? In other words, if you're --
20 if there is an obstruction in your way, would that interfere
21 with the ability of the repeater to pick it up?

22 A. I don't know, sir.

23 Q. Okay. As I understood your testimony, you received the
24 memorandum that Rene Sanchez wrote, and then you began
25 investigating radio traffic in the Ysleta sector, correct?

1 A. Yes, sir.

2 Q. It turns out that the Ysleta sector is not what you need,
3 and so you begin looking at radio traffic in the Fabens sector,
4 correct?

5 A. Yes, sir.

6 Q. There is no mention of any kind of a shooting in the radio
7 traffic that you reviewed from February 17th -- no mention of a
8 shooting in that radio traffic, is there?

9 A. No, sir.

10 Q. Okay.

11 MR. ANTCLIFF: Could I have a moment, Your Honor?

12 THE COURT: Sure.

13 BY MR. ANTCLIFF:

14 Q. Agent Sanchez, can you tell me how -- given that there's no
15 indication in the radio traffic that you read on February 17th
16 of any shooting, how did you identify that radio traffic at
17 the -- I think it's 1:11 in the afternoon -- as being the --
18 the incident that you're interested in?

19 A. I knew that it occurred, again, February 17th, 2005. And,
20 based on the interviews and the information from Rene Sanchez
21 and Osvaldo Aldrete-Davila, I knew the time period it had
22 occurred.

23 Q. Okay. And so the information provided by Rene Sanchez and
24 Osvaldo Aldrete-Davila limited you from 1:00 to what?

25 A. I just knew it was in the afternoon, so I just requested

1 one to five, initially.

2 Q. Okay. And when -- what did you focus on when you listened
3 to the radio traffic, what time period, then?

4 A. I just started listening from 1:00. And then the first
5 thing I really heard was the Agent Comp- -- well, I didn't know
6 it was him at the time -- just call out a van leaving the 76
7 area at a high rate of speed.

8 Q. Did he mention a minivan in the radio traffic?

9 A. No, sir. I think it was a blue van leaving the 76 area.

10 Q. Okay. And, given that you had already -- when you listened
11 to the radio traffic -- talked to Mr. Aldrete-Davila. Is that
12 right?

13 A. I don't recall if I spoke to him yet, because it was -- I
14 was just trying to remember the dates. I believe March 10th,
15 again, I spoke to Rene Sanchez. March 11th I believe it was
16 Aldrete-Davila. And also March 11th is when I obtained the
17 radio traffic.

18 Q. Okay. Would you agree with me that Mr. Rene Sanchez's memo
19 doesn't mention a blue van?

20 A. No, sir, I don't recall.

21 Q. You don't recall or it does not?

22 A. I don't -- I don't -- I don't believe he mentioned the blue
23 van.

24 Q. Very well. And -- but you don't know, from that point, the
25 order in which things happened on March 11th. You could have

1 reviewed the radio traffic first, you could have talked to
2 Mr. Davila first. Is that right?

3 A. That's correct. I don't recall which one I did first.

4 Q. Very well. As I understand your job, it is to
5 investigate -- among other things -- it is to investigate
6 employee misconduct for employees of the Department of Homeland
7 Security. Is that right?

8 A. Yes, sir.

9 Q. And, in that capacity, you were interested in talking to
10 Mr. Aldrete-Davila about what had happened to him in
11 investigating this offense, correct?

12 A. Yes, sir.

13 Q. You needed to know what he had to say in order to further
14 your investigation, correct?

15 A. Yes, sir.

16 Q. At the time that you spoke to him, you had very limited
17 information, right?

18 A. Yes, sir.

19 Q. Okay. At that time, his information, is it fair to say,
20 was fairly critical to furthering your investigation. In other
21 words, if you hadn't been able to speak to him, you were coming
22 close to the end. Is that right?

23 A. I would have still inves- -- continued the investigation.

24 Q. But, absent his information, it would have limited your
25 ability to continue this investigation. Is that right?

1 A. No, sir. I would have continued to investigate the
2 other -- with the -- speak to the other agents.

3 Q. What other agents?

4 A. The other Border Patrol agents that were involved that day.

5 Q. So the day that -- you're talking about all of the agents
6 that were out there at the scene on February 17th?

7 A. Yes, sir.

8 Q. Okay. Some of those agents cooperated in this
9 investigation. Would you agree with that?

10 A. Yes, sir.

11 Q. Based on proffer letters that were issued to them, correct?

12 A. Yes, sir.

13 Q. Those proffer letters basically informed those agents that
14 they won't be prosecuted for the testimony they give related to
15 this case. Is that right?

16 A. To my understanding, yes, sir.

17 Q. Okay. When you went to visit with Mr. Aldrete-Davila, what
18 was the date that you went over there?

19 A. It was March 16th, sir.

20 Q. And, on that day, you took an immunity letter with you,
21 correct?

22 A. Yes, sir.

23 Q. From the United States Attorney's office, correct?

24 A. Yes, sir.

25 Q. Was it in Spanish?

1 A. It was in English, sir.

2 Q. Okay. Were you the only one who went over on that day?

3 A. No, sir. Myself and two other agents went over.

4 Q. No prosecutor went with you?

5 A. No, sir.

6 Q. It was your job, among other things that day, to translate,
7 I guess for lack of a better term, the immunity letter to
8 Mr. Aldrete-Davila. Is that right?

9 A. We had a Mexico national at the American embassy -- or
10 American consulate there in Ciudad Juarez that translated it
11 for him.

12 Q. Very well. Do you speak Spanish?

13 A. Yes, I do, sir.

14 Q. Did you understand what the interpreter, or translator, was
15 telling Mr. Aldrete-Davila?

16 A. Yes, sir.

17 Q. Was the sum and substance of what he said fairly accurate
18 in his translation of the immunity letter?

19 A. Yes, sir.

20 Q. Okay. It is true that Mr. Aldrete-Davila required that
21 before he would speak to you about this case. Is that right?

22 A. Yes, sir.

23 Q. Okay.

24 MR. ANTCLIFF: Judge, I'm going to move for admission
25 of -- again -- I think it's DR-211, it's listed as, which is

1 the letter of limited use immunity to Mr. Osvaldo
2 Aldrete-Davila.

3 THE COURT: Response?

4 MS. KANOF: Again, Your Honor, I object, on the same
5 basis I did when other counsel cross-examined. This isn't his
6 document.

7 THE COURT: All right. Could the attorneys approach
8 for just a second?

9 (Bench conference:)

10 THE COURT: Tell me what the purpose of the document's
11 admission is.

12 MR. ANTCLIFF: It's my understanding it's not his
13 letter. And I understand that it's hearsay. But it's not --
14 I'm not offering it right now for the truth of the matter
15 asserted. I'm offering it as the document that Aldrete-Davila
16 relied upon in going forward with this interview with Agent
17 Sanchez.

18 MS. KANOF: Your Honor, he's already testified to it.
19 The actual document is not admissible. It doesn't impeach.
20 It's not inconsistent to what the agent testified to.

21 In addition, it has his receipt. It's the -- the
22 substantive -- the actual immunity agreement is never
23 admissible, just like a 302 is not admissible, or a recorded
24 interview is never admissible. You can use it to impeach. He
25 can't use this to impeach this agent, because it's not this

1 agent who received the immunity. It's not this agent who
2 drafted the document.

3 If he wants to try again when Osvaldo is on the stand,
4 the objection will be different, and the Court's ruling may be
5 different. But with regard to this, this is not evidence of
6 anything. It is bolstering the defense's position in an
7 impermissible way.

8 And, I mean, I provided the Court with a lot of cases
9 on a Rule 608. And I don't know what it goes to prove with
10 this -- with regard to this witness. He didn't draft it. He
11 doesn't know whether it's true. He related it. He's testified
12 he related it. He's testified to the contents. He's not
13 testified inconsistently to the document. It's just not
14 admissible.

15 MR. ANTCLIFF: Okay. There was a whole lot -- I'm
16 sorry. Are you done? I don't mean to interrupt.

17 MS. KANOF: Yeah, I'm done.

18 MR. ANTCLIFF: Okay. There was whole -- first and
19 foremost, I'm not trying to impeach him with it. He testified
20 as to what it did -- what he did, and that the translation by
21 the interpreter was fairly -- was accurate, I guess. We can
22 redact anything on here that the Government doesn't want
23 written in. I mean --

24 THE COURT: I understand. I'm not worried about that.

25 MR. ANTCLIFF: I think that it certainly is

1 admissible, Judge, to show -- he's testifying that this
2 document is what the -- Aldrete-Davila relied upon in making
3 his decision to go forward and provide information to the
4 Government. It is admissible for that basis. I've admitted
5 them before. It's also --

6 THE COURT: Well, the question is, Mr. Antcliff, is
7 not whether or not it's admissible. My concern is, how is it
8 relevant at this point? How is it admissible at this point?

9 And your position is, my understanding, is that it's
10 admissible to show what Aldrete-Davila relied upon for the
11 purposes of giving a statement.

12 MR. ANTCLIFF: That's effectively true. Yes.

13 MS. KANOF: And the Government's position is, this
14 witness can't say what he relied on. Maybe Aldrete-Davila
15 relied on this, and maybe he didn't. Maybe he relied on some
16 other factor. He -- he cannot tell this jury what was in
17 Aldrete-Davila's mind and why he did it. He can only
18 testify that he read it to him.

19 MR. ANTCLIFF: On direct testimony yesterday, Judge,
20 he testified that Mr. Aldrete-Davila did not want to cooperate
21 with the Government, and they had to offer him some type of
22 immunity from a different prosecutor, before Ms. Kanof got into
23 this case. And it was in writing. I think I'm certainly
24 allowed to offer it at this time, to show that this is the
25 document he relied on that he wouldn't be prosecuted for any

1 offenses, based on his own testimony.

2 THE COURT: Anything else?

3 MR. GONZALEZ: There's no rule under which this
4 document can come in, absolutely not.

5 MR. PETERS: If they are saying this type of document
6 can't come in, they have to say why it doesn't come in. It's
7 obviously relevant. Well, we made an argument why it's
8 relevant.

9 THE COURT: Okay. Can I ask you guys each to do me a
10 favor, because Mr.- -- poor Mr. Perez is trying to get this on
11 the record. When you go to speak, let him know who is speaking
12 next. Okay? Don't -- just say, "Mr. Peters," then say
13 whatever it is.

14 MS. KANOF: I disagree with Mr. Peters, that we have
15 to show a law that excludes it. It is -- and the law that
16 excludes it -- there's lots of case law about using evidence
17 that -- like I said before, like -- first of all, they have
18 presented no law saying it's relevant. Lots of evidence is
19 relevant and not admissible.

20 MR. PETERS: But there's a reason it is relevant --

21 MS. KANOF: The issue is relevant, and it has been
22 testified to. Then going next to corroborating it, you only
23 use it to corroborate it if there's been an impeachment. He
24 has not been impeached.

25 Most importantly, Judge, he cannot -- the fact that he

1 said this is what I provided him, this is what he needed, does
2 not mean that was what was in Osvaldo's head and that was what
3 he based his decision on.

4 When Osvaldo takes the stand they can ask him that,
5 even though I don't think it's -- the tangible document is not
6 admissible, because they get to ask him whether or not he was
7 immunized. They get to ask him.

8 And if he doesn't lie, like this agent did not lie
9 about it, the actual document is not admissible. And some of
10 the case law I provided the Court in my 608 motion specifically
11 addresses immunity, and specifically addresses --

12 THE COURT: I saw the case law.

13 MR. ANTCLIFF: I've got to say, I think that's
14 ludicrous. It's certainly admissible. And this is
15 Mr. Antcliff, on behalf of Mr. Compean.

16 The tangible document is certainly admissible, and I
17 don't need to offer it to impeach any testimony. You don't
18 have to offer a document just -- that's not the only way a
19 document comes in, is through impeaching somebody. Plenty of
20 documents are offered into evidence for a variety of reasons.
21 Given his testimony on direct yesterday, this document is
22 relevant, number one, and certainly admissible, based on his
23 own testimony yesterday.

24 MS. STILLINGER: Your Honor, if I could just say my
25 two cents worth.

1 Mary Stillinger, for Mr. Ramos.

2 I actually did research this issue this morning. I
3 got on WestLaw very early this morning. And I'm not saying
4 that it was an exhaustive research, because it was early in the
5 morning. But I couldn't find any cases that say that it
6 wouldn't be admissible. But it's certainly not hearsay,
7 because we're not offering it for the truth of the matter
8 asserted, Your Honor.

9 MS. RAMIREZ: Maria Ramirez, on behalf of Mr. Compean.

10 I also did exhaustive research on this. Most of the
11 case law on immunity agreements are defendants trying to --
12 when the Government is trying to prosecute, and they have an
13 immunity agreement, and the Government is trying to offer the
14 immunity agreement.

15 There's no case law out there, really, that I could
16 find that says that immunity agreements are not admissible when
17 the party is -- the actual witness is sitting on the stand, or
18 that we can't cross-examine any of the other witnesses about
19 what the underlying offense is that the witness was given
20 immunity for.

21 MS. KANOF: May I please respond? What case is she
22 citing?

23 THE COURT: Okay. I've heard enough. Go back. I'll
24 rule on the record.

25 (End of bench conference; open court.)

1 THE COURT: The Court will not -- will sustain the
2 objection. It will not be admissible at this time.

3 You may proceed.

4 MR. ANTCLIFF: Thank you, Your Honor.

5 BY MR. ANTCLIFF:

6 Q. Agent Sanchez, you went out to the scene and were able to
7 view the tracks of the blue van down the road that it traveled
8 before it hit the ditch. Is that right?

9 A. The gray van, yes, sir.

10 Q. Gray van. I'm sorry.

11 Did the tracks that you saw deviate in any way? It's
12 traveling down a straight road and it runs into the ditch. Was
13 there any indication that that van had turned?

14 A. I would have to see the photos.

15 Q. Very well.

16 MR. ANTCLIFF: May I approach?

17 THE COURT: Yes, you may.

18 MR. ANTCLIFF: I'm showing Agent Sanchez what's been
19 marked as Compean 1 and Compean 2.

20 BY MR. ANTCLIFF:

21 Q. And I would ask you to take a look at those photographs.

22 Do those look like --

23 MS. KANOF: Excuse me, Your Honor. Could I see the
24 photographs that he's questioning from?

25 MR. ANTCLIFF: I apologize.

1 MS. KANOF: It's just what the Government gave you in
2 discovery?

3 THE COURT: Sure.

4 MS. KANOF: I have no problem with them.

5 BY MR. ANTCLIFF:

6 Q. Taking a look at these exhibits, Compean 1 and 2, can you
7 see tracks that the van made on its way to the ditch?

8 A. Yes, sir.

9 Q. And do they appear to deviate in any way?

10 A. As far as what do you mean, sir?

11 Q. A turn.

12 A. No, just a little bit of an angle. It's not as straight
13 from where this terrace was, but it's not a -- what kind of
14 turn are you talking about?

15 Q. Was there any kind of an indication that that van was
16 turning onto either -- a different road?

17 A. As far as the tracks of the back tires, it looks straight,
18 as far as going into the drainage ditch.

19 Q. So it appears that it was coming straight down the road and
20 ran into the drainage ditch?

21 A. That's the way it appears in the photo, sir.

22 Q. Very well. Did you do -- strike that.

23 MR. ANTCLIFF: Judge, I would offer Compean 1 and 2.

24 MS. KANOF: No objection.

25 THE COURT: All right. It will be admitted.

1 BY MR. ANTCLIFF:

2 Q. Did you perform any investigation which -- as to the speed
3 that van might have been traveling down that dirt road before
4 it hit the ditch?

5 A. Yes, sir.

6 Q. And tell me what you did.

7 A. I drove up and down -- again, my Government vehicle is a
8 Mercury Sable, so it's lighter than the van would be. And I
9 drove up and down Jess Harris and -- again, looking at the
10 dust. And several of the agents had stated that it was a lot
11 of dirt that day.

12 I think anything under 40 miles per hour -- again,
13 this is in the Mercury Sable. The dust was kicked up, but I
14 could see through my rearview mirror. Anything over 40 miles
15 per hour the dust was -- I couldn't see anything out of my
16 rearview mirror. So I assumed that they were definitely going
17 over 40 miles an hour, based on the other witness' statements.

18 Q. Okay. The van -- obviously, the van that's in the ditch in
19 the pictures right there, that Mr. Aldrete-Davila was driving,
20 was substantially heavier than that Mercury Sable. Agreed?

21 A. Yes, sir.

22 MR. ANTCLIFF: May I have a moment, Your Honor?

23 THE COURT: Sure.

24 MR. ANTCLIFF: I'll pass the witness, Judge.

25 THE COURT: All right.

1 REDIRECT EXAMINATION

2 BY MS. KANOF:

3 Q. Agent Sanchez, did -- you went to find the van, correct?

4 After -- when you were investigating, you went looking for the

5 van?

6 A. Yes, ma'am.

7 Q. And you found it?

8 A. Yes, ma'am.

9 Q. Did you drive it?

10 A. No, ma'am.

11 Q. Do you know whether the steering was working properly?

12 A. No, ma'am.

13 Q. Do you know how old that van was?

14 A. I think we pulled up, as far as the model, but I don't

15 recall the year.

16 Q. But it looked -- didn't look like it was very new?

17 A. No.

18 Q. Okay. Do you know how familiar the driver, Osvaldo

19 Aldrete-Davila, was with the van?

20 A. To my knowledge, it was his first time in the van.

21 Q. Do you know whether or not he had difficulty steering the

22 van?

23 A. I don't recall.

24 Q. Do you know -- let's see. You testified that the test you

25 did with your Mercury Sable indicated that they had to be going

1 more than 40 miles an hour, correct?

2 A. Yes, ma'am.

3 Q. But you've also interviewed every agent that saw the
4 high-speed case, correct?

5 A. Yes, ma'am.

6 Q. And those agents, did they give you an indication of how
7 fast they thought the van and Mr. Ramos following the van were
8 going?

9 A. 65 miles an hour or over.

10 Q. Okay. And do you know how that van responds at 65 miles an
11 hour or over?

12 A. No, ma'am.

13 Q. It was a dirt road. Is that correct?

14 A. Yes, ma'am.

15 Q. Potholes?

16 A. Yes, ma'am.

17 Q. Rocks?

18 A. Yes, ma'am.

19 Q. Do you know how safe it was for that van to attempt to make
20 a sharp right turn when it was on its way directly towards the
21 ditch?

22 A. Not very safe.

23 Q. It could have turned over?

24 A. It could have easily turned over.

25 Q. Now, Agent Sanchez, you eventually arrested both

1 Mr. Compean and Mr. Ramos, correct?

2 A. Yes, ma'am.

3 Q. Are they here in the courtroom?

4 A. Yes, ma'am.

5 Q. First, could you identify Mr. Ramos, by indicating where
6 he's sitting and what he's wearing?

7 A. He's sitting by Mr. Peters. He's in a dark suit, brown
8 shirt, and a brown and white tie.

9 MS. KANOF: Your Honor, may the record reflect the
10 witness has identified the Defendant Ramos?

11 THE COURT: It will so reflect.

12 BY MS. KANOF:

13 Q. And is the Defendant Compean in the courtroom?

14 A. Yes, ma'am.

15 Q. Would you identify him by pointing where he's sitting and
16 what he's wearing?

17 A. He's sitting next to Ms. Ramirez. He's in a light brown
18 jacket, dark pants blue shirt, yellow tie.

19 MS. KANOF: May the record reflect the witness has
20 identified the defendant?

21 THE COURT: Yes, it will so reflect.

22 BY MS. KANOF:

23 Q. Let me ask you, this location -- is Fabens, Texas, in the
24 Western District of Texas?

25 A. Yes, ma'am.

1 Q. And is the entire area from -- including from Fabens
2 stoplight, including Jess Harris Road, all the way to the
3 Rio Grande River -- to the middle of the Rio Grande River, in
4 the Western District of Texas?

5 A. Yes, ma'am.

6 Q. Now, with regard to the tapes, there's two kinds of radio
7 transmissions, correct?

8 A. Yes, ma'am.

9 Q. There's the one where they -- it bounces off the repeater
10 and goes back down, correct?

11 A. Yes, ma'am.

12 Q. That's recorded?

13 A. Yes, ma'am.

14 Q. Then there's another kind, where the agents can talk
15 amongst each other within the sector from car to car.

16 A. Yes, ma'am.

17 Q. That is not recorded, correct?

18 A. Yes, ma'am.

19 Q. So you listened to what was recorded, correct?

20 A. That's all I had, yes, ma'am.

21 Q. Okay. You couldn't -- you don't know -- other than talking
22 to the agents, you don't know what communication was occurring
23 from car to car.

24 A. That's correct.

25 Q. You have talked to every agent that was on duty at the time

1 of this incident, correct?

2 A. That's correct.

3 Q. Has any agent indicated to you, on car to car or on
4 satellite --

5 MS. STILLINGER: Your Honor, I'm going to object.
6 This calls for hearsay.

7 MS. KANOF: It's -- they opened the door. They asked
8 the question about it.

9 MS. STILLINGER: We asked how -- we asked how the
10 radio transmissions were recorded. We didn't ask what the
11 agents told him about that.

12 MS. KANOF: They -- Mr. Antcliff asked whether or not
13 he heard anything about shooting. There was no mention in any
14 radio traffic about shooting.

15 THE COURT: Okay. Let me look at your specific
16 question, Ms. Kanof.

17 MS. KANOF: It would have been, oh, about ten minutes
18 ago.

19 THE COURT: No, I know what he asked. I'm looking at
20 your -- the wording of your question.

21 MS. KANOF: Oh, my question.

22 THE COURT: Okay. And your question has to do with
23 the conversations from car to car?

24 MS. KANOF: My question has to do with whether there
25 was -- he knows of any car-to-car transmission where a shooting

1 was reported.

2 THE COURT: He can answer the question. I will
3 overrule the objection.

4 BY MS. KANOF:

5 Q. Okay. Based on -- on your investigation, was there any
6 nonrecorded transmission that ever called out a shooting?

7 A. No, ma'am.

8 Q. Okay. Now, Agent Sanchez, you took that -- that tape
9 starting at about 1:00, correct?

10 A. Yes, ma'am.

11 Q. Okay. And does -- the initiation of what happened on that
12 day, is it within that piece of tape that you listened to?

13 A. Yes, ma'am.

14 Q. In addition to that, did you play that tape for all of the
15 agents that were involved in this case, for them to hear and
16 verify what the transmission was through the repeater?

17 A. All except one.

18 Q. Okay. Who was the agent that was --

19 A. Robert Arnold.

20 Q. Okay. He was sick that day?

21 A. Yes, ma'am.

22 Q. And did they identify that as what occurred that day with
23 reference to what the jury is hearing today?

24 MS. STILLINGER: Your Honor, I'm going to object.

25 That is calling for hearsay, as to what the agents told him and

1 verifying the radio transmissions.

2 MS. KANOF: Okay. Let -- I can rephrase it, Judge.

3 THE COURT: All right. I will sustain. You may
4 rephrase.

5 BY MS. KANOF:

6 Q. You have prepared -- okay. Did the agents listen to the
7 transmission?

8 A. Yes, ma'am.

9 Q. Did they pick out their voices?

10 A. Yes, ma'am.

11 Q. Did they recognize voices?

12 A. Yes, ma'am.

13 MS. STILLINGER: Your Honor, I'm going to object.
14 She's calling for hearsay. She's doing it a different way, but
15 she's asking him to say what the agents told him. It's
16 hearsay. The agents will testify, and they can testify about
17 that.

18 THE COURT: All right.

19 MS. KANOF: It's not offered for the truth of the
20 matter asserted in this particular instance, Your Honor; just
21 that his -- what he did investigatively.

22 THE COURT: All right.

23 MR. ANTCLIFF: I think it is offered for the truth of
24 the matter asserted, Judge. And --

25 THE COURT: And we are talking about -- which agents

1 are identifying these voices?

2 MS. KANOF: All of the agents that were -- that
3 participated on February 17, 2005, of which this case is about.

4 THE COURT: Including Agent Ramos and Compean or --

5 MS. KANOF: No, with the exclusion of the defendants,
6 Your Honor.

7 THE COURT: I'll sustain the objection.

8 MS. KANOF: Okay.

9 BY MS. KANOF:

10 Q. Without saying what the agents told you, did you have the
11 agents listen to the transcript -- I mean, listen to the
12 recording and review the transcript contemporaneously with the
13 recording?

14 A. Yes, ma'am.

15 Q. And your purpose for doing that?

16 A. To make sure my transcript was correct.

17 Q. Okay.

18 A. There were some corrections made.

19 Q. All right. And did you make those corrections?

20 A. Yes, ma'am.

21 Q. And does it change anything about your investigation, those
22 corrections?

23 A. No, ma'am.

24 Q. The first -- you've already testified that the first call
25 out, Agent Compean -- you, by the way, interviewed Agent

- 1 Compean twice, correct?
- 2 A. I interviewed him once.
- 3 Q. Okay. And then he did a written --
- 4 A. Yes, ma'am.
- 5 Q. -- statement. So there's two statements?
- 6 A. Yes, ma'am.
- 7 Q. All right. And, based on that, did you determine that it
- 8 was him that called out at 1:11, Blue van coming from 76 area?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Now the immunity agreement. Did you tell
- 11 Mr. Aldrete-Davila that the immunity agreement was no good if
- 12 he didn't tell the truth?
- 13 A. Say that again, ma'am.
- 14 Q. Did you -- was it part of the immunity agreement that you
- 15 explained, or that you heard translated to him, that he had to
- 16 tell the truth?
- 17 A. Yes, ma'am.
- 18 Q. Okay. Based on -- and then you investigated this case,
- 19 correct?
- 20 A. Correct.
- 21 Q. As an agent, if you find that someone has been offered
- 22 immunity, and then you find evidence, concrete evidence, that
- 23 shows they're lying, do you bring that to the attention of an
- 24 authority?
- 25 A. Yes, ma'am.

1 Q. Who do you bring that to the attention of?

2 A. U.S. Attorney's office.

3 Q. In cross-examination yesterday, I think it was

4 Mr. Antcliff -- let me just check. It might have been

5 Ms. Stillinger.

6 Yes. Ms. Stillinger asked you the following question:

7 Aldrete-Davila would not tell you what clinic he went to.

8 Is it that he wouldn't tell you or that he didn't know

9 the name?

10 A. He didn't know.

11 Q. Okay. Do you have investigative authority in Mexico?

12 A. No, ma'am.

13 Q. So, even if he wanted to take you to the clinic, and even

14 if he remembered where the clinic was, you would have no

15 authority to go there.

16 A. Yes, ma'am.

17 Q. With regard to the reporting of discharge of a weapon,

18 Mr. Antcliff asked you if, during the course of your

19 investigation, you learned that another discharge had occurred

20 that was not reported.

21 And your answer was, Yes, one, correct?

22 A. Yes, ma'am.

23 Q. Was that discharge at a human being?

24 A. No, ma'am.

25 Q. What was that discharge?

1 A. A snake.

2 Q. Okay. There's snakes out there?

3 A. I believe so.

4 Q. Okay. You were asked regarding Rene Sanchez's relationship
5 with his mother-in-law and his mother-in-law's comadre and all
6 of that. You knew about it by March 10th. Is that correct?

7 A. After I spoke to Rene Sanchez, yes, ma'am.

8 Q. Okay. And the -- if I understand your testimony from
9 before, the majority of your investigation was after
10 March 10th.

11 A. Yes, ma'am.

12 Q. Okay. You -- that didn't make you stop investigating?

13 A. No, ma'am.

14 Q. Okay. Did it make you more cautious?

15 A. Yes, ma'am.

16 MS. KANOF: Pass the witness.

17 THE COURT: All right. Ladies and gentlemen, we're
18 just going to take a real short, about five-minute recess, and
19 then we will resume.

20 And if the attorneys could approach the bench just a
21 second.

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

23 (Bench conference:)

24 MS. STILLINGER: It addresses the bench --

25 THE COURT: Who is speaking?

1 MS. STILLINGER: Mary Stillinger, for Mr. Ramos,
2 Your Honor.

3 By bringing out the fact, and perhaps in an attempt to
4 bolster the credibility of Mr. Aldrete-Davila, they brought out
5 the fact that the immunity was conditioned upon
6 Mr. Aldrete-Davila being truthful with them.

7 I think that that allows us to get into anything we
8 want to get into, where they know he was untruthful. For
9 instance, let's just start with -- not about the October load,
10 let's start with this load.

11 He lied to them when he said -- okay, wait. That lie
12 came before he got the immunity agreement. I take that back.
13 I take that back.

14 But he told them the story about he's a little mule,
15 and he needed money for his mother's doctor bills, and he
16 needed money to renew his commercial driver's license. He
17 doesn't know who hired him. He doesn't know where the stash
18 house is.

19 In light of the fact that he did it again in October,
20 and he personally took the load to the stash house, I think
21 they have to know that that's a lie.

22 THE COURT: Okay. But I guess my question to you
23 would be, Ms. Stillinger, at what point -- I don't disagree
24 that perhaps he was less than honest about his October
25 involvement. I guess my question has to do with, at what point

1 does that become relevant to the -- to the facts of this case,
2 if we are talking about the facts as they correspond to this
3 case, and his testimony regarding this case, and this incident
4 did not happen until October?

5 In other words, all the investigation they've done to
6 investigate this case leads up to him coming into the country,
7 and then in October committing this second involvement. Okay?
8 But there's no lying, if that's what we're characterizing it
9 as, until the October incident.

10 So how does that affect the immunity that's been
11 granted to him by this guy and become relevant, just because he
12 says, You have to be totally honest about this incident, and
13 you have to tell us all about this incident, and then sometime
14 after he's done all of that, sometime in October, he commits a
15 second offense?

16 Now, I'm not -- again, we've talked in my office about
17 it may become admissible when Aldrete takes the witness stand.
18 But for the purposes of investigating this incident and being
19 totally truthful about this incident, how does that October
20 incident become relevant?

21 MS. STILLINGER: Two ways. It goes to the scope of
22 his immunity. One is, he was dishonest back then when he said,
23 I'm just a poor little mule. Some guy named Chavo, but I have
24 no idea who he is, hired me. I don't know where the stash
25 house is. Someone was going to meet me and tell me all those

1 things. Those were lies he told back in March.

2 MS. KANOF: How are they lies? How do you know
3 they're --

4 MS. STILLINGER: He found that out in October, when he
5 finds out the guy doesn't have --

6 MS. KANOF: How do you know that, at the time in
7 February, it was not his first load? What evidence do you have
8 that he was not a mule?

9 THE COURT: Let me -- let me take it this -- and
10 again, I don't know what this guy is going to testify to. But
11 let's say that he says, I lost a load, and they told me if I
12 didn't do this a second time they're going to kill my family,
13 and I did this a second time, because they were going to kill
14 my family?

15 That doesn't -- and again, I'm not telling you that's
16 what he is going to say. But I don't have any information that
17 this guy did it for any particular reason. And until he's up
18 on the witness stand, I don't know.

19 MS. KANOF: Your Honor, we already have corroboration
20 on the record that he was a commercial truck driver, because
21 Rene Sanchez saw him in Reynosa, Mexico, in November 2004, and
22 he was a commercial truck driver.

23 MR. PETERS: That doesn't mean he's not a dope
24 smuggler.

25 THE COURT: Exactly. Well, but that's not my concern.

1 MR. PETERS: Your Honor, even if he wants to say -- I
2 understand what you're saying about what -- I'm just going to
3 say this. He can come in and say, Well, I lost the first load,
4 and they come and hand him the second one. We don't have to
5 believe him. We're entitled to cross-examine him.

6 THE COURT: Him, yes. But this guy -- she's asking --

7 MS. STILLINGER: It goes to the scope of his immunity,
8 which I guess this would be the proper time to ask the
9 Government.

10 The Government represented to us last week that they
11 haven't given him immunity for the October load, but they don't
12 think they have sufficient evidence to think he committed a
13 criminal offense in October, which I think is ridiculous, based
14 on the evidence. And I think we ought to be able to
15 investigate.

16 THE COURT: It's not relevant to this offense. It has
17 no relevance. And so at this time, I don't think the door is
18 opened, and I will not allow it. Okay?

19 MR. GONZALEZ: Your Honor, I believe there is another
20 issue.

21 THE COURT: Okay. So, Mr. Antcliff, get up to --
22 here, so I can hear you.

23 MR. ANTCLIFF: Chris Antcliff, on behalf of
24 Mr. Compean.

25 I think the Government has opened the door to the dope

1 that was in -- the marijuana that was in this van this time,
2 this load, through this agent, through Ms. Kanof's redirect,
3 regarding how the van behaved and whether or not the steering
4 was affected, and all of the issues that she brought up. I
5 don't remember all the questions that are in my notes, up here,
6 but all of the questions that she raised with this agent about
7 the performance of the van on that day and what he did and did
8 not do.

9 And certainly 750 pounds, or whatever it was,
10 700 pounds of marijuana, would affect how that van performed on
11 a dirt road rolling down at 65 miles an hour.

12 MS. KANOF: And, Your Honor, they opened the door.

13 THE COURT: Do we have any engineers here?

14 MS. KANOF: Your Honor, they opened the door with
15 regard to that, not the Government. And they opened the door
16 by having the agent look at their pictures and talk about the
17 back wheels and talk about the front wheels.

18 The Government didn't open the door. The Government
19 is certainly entitled to defend against that issue. And the
20 Government, by -- I mean, they're the ones that opened the
21 door. And they can't open the door to something that is
22 subject to a motion in limine for them not to open the door.

23 MR. ANTCLIFF: Judge, I didn't open the door. I'm not
24 sure what she's referring to. I asked whether or not that van
25 was rolling straight away, and if there was any indication that

1 it turned. That's it. I didn't get into the weight of it,
2 other than a van is certainly heavier than a Mercury Sable, as
3 he testified.

4 She opened the door when she went into the performance
5 of the van on that dirt road.

6 MS. KANOF: I didn't ask about the weight.

7 THE COURT: All right. Anything else before I rule on
8 that issue?

9 MS. KANOF: Ms. Ramirez is talking about the callout
10 of the area 76. That's not opening the door to what's in the
11 van. They've already said in opening statement that they
12 suspected there was marijuana. 76 is the area where both
13 illegal alien loads and marijuana comes in.

14 THE COURT: And you can ask. I don't have any
15 problems about asking about what 76 means. But I do have a
16 problem -- because the jury doesn't know what 76 means. But I
17 don't believe that opened the door to this question.

18 The only issue is whether or not they opened the door
19 by talking about the van. All right. Anything else?

20 We're going to take a short recess. Let me find out
21 what's happening, and I will rule when we go back on the
22 record.

23 (Recess; open court, parties present, jury not
24 present.)

25 THE COURT: You may be seated.

1 A. No, ma'am. Like I said, I'm not familiar with the
2 technical part of the radio traffic.

3 Q. Okay. So you wouldn't have any way of knowing if the
4 agents designate it, or if somebody else is listening and
5 decides to designate it as something that should be recorded?

6 A. I don't know, ma'am.

7 Q. Okay. You just told Ms. Kanof that one aspect of the
8 immunity agreement that Mr. Aldrete-Davila had was that if he
9 lied to you, or I guess any other agents or prosecutors, that
10 the deal was off. Is that right?

11 A. We would inform the United States Attorney's office that we
12 found out that he had lied to us.

13 Q. Okay. Well, I thought you said that -- maybe I'm wrong in
14 my notes. But I thought you said, if you found out that he
15 lied, the deal was off, meaning the immunity agreement was off.

16 A. I don't recall if I said that.

17 Q. Okay. Okay. You would just tell them, Hey, he lied to us,
18 right?

19 A. He lied to us, and they would decide whether the deal would
20 be off or not.

21 Q. Oh, okay. So they might still give him immunity, even if
22 it turned out he lied to you?

23 A. That would be up to the U.S. Attorney's office.

24 Q. Oh, okay. Because, in fact, his immunity agreement, the
25 one that we've been talking about, Defendant Ramos's Exhibit

1 Number 2, that doesn't say that the deal is off if he lies,
2 does it?

3 A. I'm not looking at it, but I don't believe so.

4 Q. Okay. And when we talk about the deal being off, just so
5 I'm sure that the jury understands what I'm talking about, I'm
6 talking about that the immunity would be canceled, and that he
7 could be prosecuted for any offenses he may have committed if
8 he lied.

9 A. Again, that would be a decision the U.S. Attorney's office
10 would have to make.

11 Q. Right. Are you familiar with the immunity agreements or
12 the proffer letters that the agents that you interviewed got?

13 A. Yes, ma'am.

14 Q. Okay. And we call those things a proffer letter. But,
15 basically, it's a type of immunity, also, correct?

16 A. Somewhat, yes, ma'am.

17 Q. Okay. Meaning that -- the basic outline of the letters
18 say, Whatever you tell us we won't use against you, with
19 certain restrictions, right?

20 A. Yes, ma'am.

21 Q. Okay. And, in those letters, one of the restrictions is,
22 If you lie to us, the deal is off, right?

23 A. I would have to look at it, but I believe you're correct,
24 ma'am.

25 Q. Okay. Would you like to look at it so you can be sure?

1 A. Yes, ma'am.

2 MS. STILLINGER: May I approach the witness,
3 Your Honor?

4 THE COURT: Sure.

5 BY MS. STILLINGER:

6 Q. Let me show you.

7 MS. STILLINGER: I'll mark it as Defendant Ramos
8 Exhibit Number 6, just for identification purposes.

9 BY MS. STILLINGER:

10 Q. Looking at paragraph 5 on page 2, specifically, if you
11 could just review to yourself -- or review the whole thing, if
12 you would like, of course.

13 Is that correct, that there is a limitation in these
14 proffer agreements, that if the agent were to lie to you, that
15 the immunity -- the deal is canceled. Is that correct?

16 A. Yes, ma'am.

17 Q. Okay. And there is no such restriction in Mr. Davila's
18 immunity agreement, correct?

19 A. I don't recall.

20 Q. I'm sorry?

21 A. I don't believe it is in there.

22 Q. Okay.

23 MS. STILLINGER: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes, you may.

1 BY MS. STILLINGER:

2 Q. Let me show you what I've marked previously as DR Number 2,
3 so you can review that and be sure.

4 There is an agreement that he will testify truthfully,
5 correct?

6 A. Yes, ma'am.

7 Q. Okay. And there's an agreement that if he testified
8 falsely, he could be prosecuted for perjury, correct?

9 A. Yes, ma'am.

10 Q. Okay. But there's not the limitation that the deal is
11 canceled if he lies, right?

12 A. No, ma'am.

13 Q. Like there is in the other agreements, correct?

14 A. Yes, ma'am.

15 Q. Okay. And let me ask you a couple more things about --
16 about benefits that you may have obtained for
17 Mr. Aldrete-Davila.

18 He -- when you first came into contact with him, did
19 he have a visa to enter the United States?

20 A. No, ma'am.

21 Q. Okay. And did you arrange for him to get some sort of
22 paper to cross into the United States?

23 A. An I-94, basically, a border crossing card.

24 Q. Okay. And that was for the purpose of public interest, I
25 guess?

1 A. Public interest, yes, ma'am.

2 Q. Okay. I know that originally you got him an I-94. It was
3 a temporary one-month permit, basically?

4 MS. KANOF: Your Honor, that's outside the scope of
5 direct and cross and redirect and recross.

6 THE COURT: Response?

7 MS. STILLINGER: Just on recross, right now. But she
8 brought up the immunity agreement again, Your Honor, and I
9 think that goes into benefits Mr. Aldrete has gotten.

10 THE COURT: I'll overrule the objection.

11 BY MS. STILLINGER:

12 Q. I think the question I had asked you was, originally, you
13 just got him a one-month permit. Is that correct?

14 A. I don't recall. It was a short period of time.

15 Q. Okay. And when that expired, did you get him -- or help
16 get him any other immigration permits?

17 A. Because he needed continued medical treatment at William
18 Beaumont, I got him a letter -- or a -- I got him a border
19 crossing card.

20 Q. Okay. I guess -- was it a regular border crossing card or
21 was it a temporary parole?

22 A. It was a parole. It was a temporary parole. I think he
23 had it under a humanitarian benefit.

24 Q. Okay. But he was allowed to cross in at will. He didn't
25 have to specifically say, I have an appointment today to go to

1 William Beaumont, did he?

2 A. He basically -- again, he would cross, and I would tell him
3 that I would meet him at the hospital. And he would have his
4 appointment and then he would return to Mexico.

5 Q. Okay. How did he get to the hospital, by the way?

6 A. He -- I think Mr. Rene Sanchez's mother-in-law brought him
7 once or twice. And then he had a friend that would bring him
8 other times. And then, other times, I would meet him at the
9 port of entry and bring him in.

10 Q. Okay. But, as far as the restrictions on the actual
11 immigration permit, he could have come in to go shopping at
12 Sunland Park Mall, or whatever he wanted to do, couldn't he?

13 A. Yes, ma'am.

14 Q. Okay. And he's had that permission since March 16. Is
15 that right?

16 A. No. That ex- -- one expired -- I believe one expired in
17 October/November, it expired. And he didn't have another one
18 until we just recently got him one to come back in here for the
19 trial.

20 Q. Oh, okay. So he had one from March through October or
21 November, correct?

22 A. No. It was one in March for, like, 30 days.

23 Q. Okay.

24 A. And then it -- and then it was -- I don't think it was till
25 June, or sometime in that period, I got him a 90-day I-94.

1 Q. Okay.

2 A. And then that expired. I think I might have gotten him
3 another one for a short time period. But again, just to bring
4 him in for the trial that was scheduled in October.

5 Q. Right.

6 A. But that was continued till -- you know, to this week. I
7 didn't get him another one until, again, we had to bring him
8 back for trial.

9 Q. Okay. And when you met -- okay. And -- but every time he
10 gets a permit it allows him to come at will during the time
11 period restrictions on that permit, correct?

12 A. Yes, ma'am.

13 Q. Okay. And when you came over March 16th, that first time
14 you came over, I take it you had already arranged for the
15 doctors at Beaumont to see Mr. Aldrete.

16 A. Yes, ma'am.

17 Q. Okay. It's typically -- William Beaumont treats military
18 members and dependents, correct?

19 A. To my knowledge, yes, ma'am.

20 Q. Well, I guess trauma victims, also?

21 A. Yes, ma'am.

22 Q. And, of course, this was not a trauma situation, though,
23 right?

24 A. No, ma'am.

25 Q. Okay. And -- but you were able to make special

1 arrangements for Mr. Aldrete to be treated at William Beaumont?

2 A. Yes, ma'am.

3 Q. Okay. And I take it he did not pay for that medical
4 treatment, correct?

5 A. My department is paying for that.

6 Q. Okay. The Government is paying for it, correct?

7 A. My department, Homeland Security, OIG.

8 Q. Which is the --

9 A. Government of the United States.

10 Q. -- United States, right? Okay.

11 And that brings me to a question I had about the
12 clinic. Ms. Kanof just asked you -- Mr. Aldrete said -- I
13 think you had said he didn't tell you the clinic, and then you
14 clarified for her that he didn't know what clinic he went to,
15 correct?

16 A. That's correct.

17 Q. Okay. What about, when you spoke to him on March 11th and
18 he said, I have an appointment to go have this bullet taken out
19 of my leg.

20 I'm assuming he must have known what clinic he had the
21 appointment with at time, didn't he?

22 A. I don't believe he had an appointment. I think he was just
23 telling me that.

24 Q. Okay. Did you ask him at that time what clinic he was
25 going to?

1 A. I asked him about the clinic that had fixed him up after he
2 was shot, and he couldn't recall that clinic.

3 Q. Okay. Did he just go to the clinic once in Mexico,
4 according to him?

5 A. To my knowledge, at least once; possibly twice, to get the
6 catheter, or a new bag for the catheter.

7 Q. Okay. And did you ask him who took him to the clinic the
8 first time he went?

9 MS. KANOF: Objection, Your Honor. This is, first of
10 all, hearsay, and way outside the scope of direct.

11 THE COURT: Where are we going?

12 MS. STILLINGER: Well, Your Honor, on redirect she
13 specifically asked him about the clinic, and how he was not
14 able to get that information.

15 THE COURT: I think -- okay.

16 MS. KANOF: Your Honor, that was based on -- that was
17 just responsive to their questions about --

18 THE COURT: And I guess my question is: What has that
19 got to do with who transported him to the clinic?

20 MS. STILLINGER: Well, because that would have been --
21 if Mr. Aldrete-Davila says, I don't remember, maybe he could
22 have asked his friend that took him to the clinic. That would
23 be a normal part of an investigation, Your Honor.

24 THE COURT: All right. I'll overrule the objection.

25

- 1 BY MS. STILLINGER:
- 2 Q. Did you ask him who took him to the clinic that day?
- 3 A. Yes, ma'am.
- 4 Q. Okay. And what did he tell you about that?
- 5 A. It was a friend.
- 6 Q. Okay. And did you ask him to check with his friend about
- 7 where the clinic was?
- 8 A. No, ma'am.
- 9 Q. Okay. Did you get the friend's name?
- 10 A. He didn't give it to me.
- 11 Q. Okay. Did you ask him, though?
- 12 A. Yes, ma'am.
- 13 Q. And he didn't want to tell you the name?
- 14 A. He didn't want to tell me the name.
- 15 Q. Okay. And just to clarify, we're talking about -- before,
- 16 there was some confusion. Either he didn't want to tell you
- 17 the name of the clinic, and Ms. Kanof clarified, no, it's not
- 18 that he didn't want to, it's just that he couldn't remember.
- 19 But now, we're being clear here. He didn't want to
- 20 tell you the name of the person that took him to the clinic.
- 21 Is that right?
- 22 A. He didn't want to get his friend involved.
- 23 Q. Okay. Was one of the aspects of his immunity agreement
- 24 that he answer all your questions?
- 25 A. Cooperation about the shooting.

1 Q. Okay. Well, was one of the specific provisions that he
2 must neither attempt to protect any person or identity -- I'm
3 sorry, entity -- person or entity?

4 A. I believe that's what it says in the document.

5 Q. Okay. And you didn't think, by not wanting to get his
6 friend involved, he was trying to protect that friend?

7 A. Again, we didn't have a way to get to the friend, because
8 he's in Mexico.

9 Q. I understand that. But I'm making -- I'm asking you: He
10 signed an agreement saying that he agrees he will not try to
11 protect any person. And you're telling me he didn't want to
12 give you the name, because he didn't want to get that person
13 involved. Didn't you view that as a violation of this
14 agreement?

15 A. I guess it could be considered a violation of the
16 agreement.

17 Q. Okay. But, as far as you know, the Government is standing
18 true to this agreement. They're holding up their end of it,
19 even if he hasn't?

20 A. Yes, ma'am.

21 Q. Okay. Let me ask you a couple of things about Agent Rene
22 Sanchez's relationship to Osvaldo Aldrete-Davila. You said
23 that he told you -- that Rene Sanchez told you about that when
24 you spoke to him on March 10th, correct?

25 A. Yes, ma'am.

- 1 Q. Okay. Did he tell you that they grew up in the same small
2 town?
- 3 A. They grew up in San Isidro together.
- 4 Q. Okay. They --
- 5 A. That's how he told me.
- 6 Q. He told you that on March 10th?
- 7 A. March the -- I think it was on March 10th.
- 8 Q. Okay. Did he tell that he had been the chamberlain in
9 Aldrete-Davila's sister's quinceanera?
- 10 A. I didn't ask him about that.
- 11 Q. Okay. Did he tell you that he had socialized with
12 Mr. Aldrete-Davila recently, within the previous year?
- 13 A. I didn't ask him about that.
- 14 Q. Okay. He -- but -- and I take it he did not tell you that.
- 15 A. No.
- 16 Q. Okay. And you said -- you told Ms. Kanof right now that
17 made you more cautious. What additional steps did you take to
18 be careful that Rene Sanchez wasn't utilizing you or this
19 investigation to help Aldrete-Davila, his family friend?
- 20 A. Again, there was several -- you know, the investigation was
21 a long investigation. We just confirm, interviewing other
22 agents, the documents from the Border Patrol. So there was
23 other means to substantiate the allegations.
- 24 Q. Okay. And were you concerned about Rene Sanchez using the
25 computer to check this all out, to check out whether something

1 had happened to Aldrete-Davila?

2 A. I believe he stated his supervisor had told him to -- once
3 he brought it up to the supervisor, the supervisor told him,
4 You need to look into it, and so he did.

5 Q. Okay. That's what Rene Sanchez told you, correct?

6 A. I believe so.

7 Q. Okay. Because -- because -- I know you weren't here in
8 court yesterday. And you saw that the memo he wrote to the
9 supervisor was after that occurred, right? After he did the
10 computer check, correct?

11 A. I believe so, yes, ma'am.

12 Q. Okay. Did you check to see whether Rene Sanchez used the
13 computer to check anything else for Mr. Aldrete-Davila?

14 A. No, ma'am.

15 Q. Okay. And so other steps -- I guess -- I guess I want to
16 ask you what you meant when you told Ms. Kanof you were
17 cautious about this, because you knew of the family
18 relationship.

19 In what way did you do something differently because
20 you knew about the family relationship?

21 A. I just took it into perspective, as far as this person had
22 a personal relationship at one time with Osvaldo
23 Aldrete-Davila. So I would just -- again, just kept it in
24 perspective, as far as what he told me. So I didn't just take
25 it -- or I basically just kept it in perspective, just keep in

1 mind that this guy did have a relationship with this victim.

2 Q. Uh-huh. And I guess, if Rene Sanchez's mother-in-law is
3 actually taking Aldrete-Davila to the hospital, there's
4 obviously an ongoing relationship, correct -- or with the
5 family?

6 A. Well, it -- well, again, his mother-in-law grew up with --
7 Rene Sanchez's mother-in-law grew up with Aldrete-Davila's
8 mother. And it's my understanding they're basically not
9 related, but they treat each other like sisters, very close.

10 Q. Right. Very close, and so that would make Osvaldo
11 Aldrete-Davila like her nephew, right, if they're like sisters?
12 Then he's, like --

13 MS. KANOF: I'm going to object, Your Honor,
14 speculation, unless he's talked to the mother-in-law and the
15 mother about their relationship with each other.

16 THE COURT: I'll overrule. He indicated they were
17 like sisters.

18 BY MS. STILLINGER:

19 Q. They were like sisters, so that makes Aldrete like a nephew
20 to Rene Sanchez's mother-in-law, correct?

21 A. I don't know how she saw Aldrete-Davila.

22 Q. Okay. But, for whatever reason, she's the one going over
23 to Mexico to get him and take to him to the hospital here,
24 correct?

25 A. I believe she went once, possibly twice.

1 Q. Okay. Now, when did you find out that Aldrete-Davila had
2 filed a claim for \$5 million against the Border Patrol?

3 A. It was May or June of last year.

4 Q. Okay. And how did you find out?

5 A. The -- I believe his name was Chris Smith, with the Customs
6 and Border Protection general counsel, called me.

7 Q. Okay. Okay. Excuse me.

8 You mentioned to Ms. Kanof a few minutes ago that you
9 don't have any investigative powers in Mexico, correct?

10 A. No, ma'am.

11 Q. Do you have the ability to ask Mexican authorities to
12 assist you in investigations?

13 A. I believe so. We can go through the -- the American
14 consulate, or -- I believe, also, Border Patrol has a
15 liaison -- other agencies have liaisons there in Mexico.

16 Q. Okay. So there would be ways for you to gather information
17 in Mexico, correct?

18 A. Yes, ma'am.

19 Q. Okay. And if you thought there was criminal activity afoot
20 in Mexico, would it be an obligation of yours to notify Mexican
21 authorities?

22 A. Again, if I recall -- again, it was just the American
23 consulate, in another trip on another investigation, I asked
24 the Department of Diplomatic Security Service, the Mexican
25 national that basically investigated for them, if he could look

1 into Mr. Aldrete-Davila there in Mexico.

2 Q. Okay. So you did ask -- I'm sorry, I didn't get exactly
3 who -- but you did ask somebody to investigate Aldrete-Davila
4 in Mexico, correct?

5 A. Basically, yes, ma'am.

6 Q. Okay. But what I had actually -- I mean, that's
7 interesting, but the question I had asked right then was:
8 Would you have some kind of obligation, if you know there is
9 criminal activity afoot, criminal activity going on in Mexico,
10 would you have an obligation --

11 MS. KANOF: Objection, relevance, Your Honor.

12 THE COURT: All right. Finish your question, and I'll
13 rule.

14 BY MS. STILLINGER:

15 Q. -- would you have an obligation to notify Mexican
16 authorities?

17 THE COURT: I'll overrule. He can answer the
18 question.

19 A. Yes, ma'am.

20 BY MS. STILLINGER:

21 Q. Okay. And what about if you became aware that there was
22 some friends of Mr. Aldrete-Davila that were considering
23 retaliating against Border Patrol? Didn't you become aware of
24 that?

25 A. Yes, ma'am.

1 Q. Okay. And retaliating, by shooting at Border Patrol
2 agents, correct?

3 A. Yes, ma'am.

4 Q. Okay. Did you notify Mexico authorities about that?

5 A. We notified the Border Patrol.

6 Q. You notified Border Patrol about that?

7 A. Yes, ma'am.

8 Q. Did you make any attempt to find out who these people were
9 that were talking about shooting Border Patrol agents?

10 A. I asked Aldrete-Davila.

11 Q. Okay. And he didn't want to tell you?

12 A. He didn't want to tell me.

13 MS. STILLINGER: I'll pass the witness.

14 THE COURT: All right.

15 Mr. Antcliff?

16 MR. ANTCLIFF: I don't have any questions at this
17 time.

18 THE COURT: All right.

19 MS. KANOF: Neither do I, Your Honor.

20 THE COURT: You may step down. Thank you.
21 You may call your next witness.

22 MR. GONZALEZ: The Government calls Osvaldo
23 Aldrete-Davila, Your Honor.

24 THE COURT: He has not been sworn in. Is that
25 correct?

1 MR. GONZALEZ: That's correct, your Honor.

2 MS. STILLINGER: Your Honor, could we approach the
3 bench real quick --

4 THE COURT: Sure.

5 MS. STILLINGER: -- before we start?

6 (Bench conference:)

7 MS. STILLINGER: I'm sorry. I probably should have
8 brought this up when we had our last bench conference.

9 Mary Stillinger for Mr. Ramos, Your Honor.

10 I just wanted to make inquiry, because we need an
11 interpreter. And I don't want to be a jerk, but I know there's
12 some weird policy going on where we don't use Court
13 interpreters anymore.

14 THE COURT: We -- no, no, no. You can't -- the
15 Government can't use Court interpreters. They're supplied by
16 the Court for the use of the defendant in a case, because
17 they're paid for by the Court. The Government has to pay for
18 their own.

19 And since you did not -- that's why I asked you at the
20 status conference. Since you did not request an interpreter,
21 then I require -- because the Court doesn't pay to prosecute a
22 case, then I require that they get their own, and so they got
23 their own.

24 MS. STILLINGER: Is this a pretty recent change?

25 THE COURT: No. It's always been the policy.

1 MS. STILLINGER: If we had asked for a Court
2 interpreter, would the Court interpreter interpret for the
3 witness?

4 THE COURT: They would interpret for the entire trial.
5 Because once you ask, then -- then I'm authorized to pay for a
6 Court interpreter. Because, in order to defend the defendant,
7 for justice purposes, we have to have an interpreter.

8 MS. STILLINGER: Even if our clients don't -- I mean,
9 even if they don't need the interpreter?

10 THE COURT: If you don't -- that's why I asked you. I
11 specifically asked you guys --

12 MS. STILLINGER: Yes, you did.

13 THE COURT: -- do you need an interpreter? And the
14 reason is because -- yes. And the reason I asked you is
15 because, if the defense needs an interpreter, the Court will
16 supply it. If the Government needs an interpreter, they have
17 to supply their own.

18 MS. STILLINGER: I see.

19 THE COURT: Okay.

20 MS. STILLINGER: I don't mean to be a jerk, but could
21 we just inquire about her qualifications?

22 MS. KANOF: Oh, I think that's ridiculous. We have to
23 pick from a certified list. She's not on trial.

24 THE COURT: My understanding is she has to be
25 certified. Okay? Well -- and there's no problem. No. No.

1 And I will -- I will be putting on the record that the witness
2 is being assisted by a certified Court interpreter. If you
3 find out at some point she's not, you can question it. But I
4 will be putting that on the record.

5 MR. GONZALEZ: We wish she had requested it.

6 MS. KANOF: Do you want to request now?

7 MS. STILLINGER: Your Honor, could I ask John Godinez
8 to sit at defense table with us.

9 MS. KANOF: I would object.

10 THE COURT: What's that for?

11 MS. STILLINGER: Because he's bilingual, and
12 Mr. Peters and I are not.

13 MS. KANOF: Before she had Mr. Godinez, she talked to
14 clients in Spanish. She's fine, Your Honor.

15 MS. STILLINGER: I do, but I'm not on the level of an
16 interpreter.

17 THE COURT: No. He's not counsel. I can't --

18 MR. PETERS: What if -- what if -- what if we want to
19 challenge the translation?

20 THE COURT: I don't disagree. But you're going to
21 need to get an interpreter. I'm not trying to be a jerk here.
22 We have a certified interpreter.

23 MR. PETERS: Because it happens all the time.

24 THE COURT: I understand it happens all the time. All
25 I'm saying is, you need to get an interpreter. I'm not -- I'm

1 not going to start letting -- if you start having other people
2 at counsel table, then I have to let them have other people at
3 counsel table. I can't do that.

4 MR. GONZALEZ: We had great difficulty even finding
5 this interpreter.

6 MS. STILLINGER: She's Court certified, and that's
7 fine. I understood that -- what I had gathered, this was a
8 noncertified interpreter. So...

9 THE COURT: If they are, then they need to let me
10 know.

11 MS. KANOF: It's our understanding that she is.

12 MS. RAMIREZ: Judge, I just wanted to know, does
13 Mr. Aldrete-Davila know that --

14 THE COURT: Here is the concern I have, and that is
15 that I said he's not testifying without counsel, his criminal
16 counsel, present. And is his criminal counsel present?

17 MS. KANOF: Mr. Boyaki is his criminal counsel. He's
18 here in the courtroom.

19 THE COURT: Okay. Then let's take a short break, and
20 let me talk to counsel in chambers before we take this witness
21 up.

22 MS. KANOF: Do you want Mr. Boyaki, too?

23 THE COURT: Yes.

24 (End of bench conference; open court.)

25 THE COURT: Okay. At this time we are going to take a

1 real short recess before we start with this witness, and so if
2 everybody will hold tight, give us about ten minutes.

3 And we will stand in recess for about ten minutes.

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

5 THE COURT: You may be seated. And we are going in
6 chambers for just a few minutes, and we will be right back, if
7 the attorneys will come in chambers.

8 (Recess; open court, parties present, jury panel not
9 present.)

10 THE COURT: You may be seated.

11 Before we bring the jury in, is everybody ready to
12 proceed?

13 MS. STILLINGER: Yes, Your Honor.

14 MR. GONZALEZ: Yes, Your Honor.

15 THE COURT: We are outside the presence of the jury,
16 and Mr. Aldrete is up on the witness stand ready to testify.
17 He has not been sworn in. And before he is -- before we bring
18 the jury in and swear him in, Mr. Aldrete-Davila, you are being
19 assisted by an interpreter -- an -- a certified interpreter.
20 You understand that?

21 (Witness speaking through the interpreter.)

22 THE WITNESS: Yes.

23 THE COURT: And I'm sorry. I apologize for running
24 over you.

25 And, Mr. Aldrete-Davila, you have here present in the

1 courtroom Mr. Walter Boyaki, your attorney. Is that correct?

2 THE WITNESS: Yes.

3 THE COURT: I do want to let you know,
4 Mr. Aldrete-Davila, that as we begin testimony, that if at any
5 point you feel you would like to consult with your attorney, if
6 you would like his assistance, I want you not to hesitate, and
7 let the Court know that. All right? You have certain
8 Constitutional rights. I want to make sure that you understand
9 those rights, and that if you have any need to consult with
10 your attorney, you let the Court know that at the time.

11 Do you understand that?

12 THE INTERPRETER: He understands it correctly.

13 THE COURT: All right. Are we ready to proceed?

14 MR. GONZALEZ: Yes, Your Honor, just a couple of
15 things.

16 I just want to make sure that the defense counsel
17 knows not to make any mention of the fact that Mr. Boyaki is in
18 the courtroom this morning.

19 THE COURT: And that's why I've done it outside the
20 presence of the jury.

21 MR. GONZALEZ: As long as they know that.

22 THE COURT: All right.

23 MS. RAMIREZ: Yes, Judge.

24 THE COURT: All right.

25 MR. GONZALEZ: And then -- all right. That's all, in

1 reference to it.

2 And we have the Government's Exhibit list for the
3 Court.

4 THE COURT: All right.

5 MR. GONZALEZ: And, Your Honor, as I'm moving
6 evidence -- I mean, moving exhibits into evidence, may I just
7 publish them to the jury instead of posting them on that
8 screen, since I didn't think it was effective yesterday?

9 THE COURT: It's up to you. My experience has been --
10 we've used them in the past in the courtroom and the screen has
11 worked fine. We normally -- the screen is usually positioned
12 over there, as I recall, and so it gets a little bit further
13 away from the windows and the light. But I'm happy to do it
14 however you like. I think it's -- if that's the way you prefer
15 to do it, that's fine.

16 MR. GONZALEZ: Yes. Thank you.

17 THE COURT: All right. And are we ready to bring in
18 the jury?

19 MS. RAMIREZ: Judge, I'm sorry, before the jury comes
20 in, can we approach?

21 THE COURT: Sure. Come on up. Do you want Mr. Boyaki
22 up, too?

23 MS. RAMIREZ: No. No, Judge.

24 (Bench conference:)

25 MS. RAMIREZ: Just -- just you need to tell him -- the

1 only concern that I have about the interpreter is that she's
2 not interpreting what he's saying. She's interpreting, Yes, he
3 understands, instead of saying, I understand.

4 MR. ANTCLIFF: She said, He understands.

5 THE COURT: I will make sure I instruct her before we
6 get started. If we have a problem, then you need to object.

7 MS. RAMIREZ: Thank you, Judge. Well, I don't want to
8 object.

9 THE COURT: No, you need to object if she does not.
10 It's simultaneous translation.

11 MS. RAMIREZ: And she's not doing it simultaneously.
12 Usually, the Court interpreters do it simultaneously. We're
13 going to be here for a couple of days on him if she doesn't do
14 it contemporaneously.

15 THE COURT: I understand.

16 MS. RAMIREZ: Thank you.

17 (Open court, parties and jury panel present.)

18 THE COURT: This witness has not been sworn.

19 (Witness sworn through the official Court
20 interpreter.)

21 THE COURT: You may be seated.

22 Before you get started, Mr. Gonzalez, let me explain a
23 couple of things to Mr. Aldrete-Davila.

24 Mr. Aldrete-Davila, you are being assisted by an
25 official -- by an official certified interpreter. Do you

1 understand that?

2 THE INTERPRETER: Your Honor, I'm not a certified
3 interpreter.

4 THE COURT: You're not a certified interpreter?

5 THE INTERPRETER: No.

6 MS. STILLINGER: Your Honor --

7 THE COURT: Can you approach?

8 (Bench conference:)

9 THE COURT: That's why I always do this.

10 MS. RAMIREZ: We object, and we ask the Court to get a
11 certified -- or the Government to get a certified interpreter
12 to translate.

13 This is Maria Ramirez, on behalf of Mr. Compean.

14 MR. GONZALEZ: Jose Luis Gonzalez, Your Honor.

15 I understand that. The Government thought she was
16 certified. Otherwise, we would not have asked that she be
17 here.

18 THE COURT: That's okay. Here is my problem. I think
19 the rules require a certified interpreter -- whether it's a
20 mistake or whatever, until we have one, we're going to have to
21 take -- okay. Let's take another break. Let's get this clear.

22 MR. PETERS: What if we request an interpreter? Can,
23 then, the Court bring somebody who's already in the building?

24 THE COURT: I'm not supposed to do that. My
25 understanding is they're supposed to pay for it. Let's clear

1 this up outside the presence of the jury.

2 (End of bench conference; open court.)

3 THE COURT: All right. Let's take a short recess
4 again. Ladies and gentlemen of the jury, we will call you
5 right back in.

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

7 THE COURT: You may be seated.

8 We are outside the presence of the jury again. And
9 the problem has arisen that we have an interpreter, but not a
10 certified Court interpreter, and that is required. And so I
11 don't know at this point what the Government wishes to do. I
12 don't have a problem, if you want to call another witness,
13 until you have an interpreter, or -- I mean, where you're at.

14 MS. KANOF: Can I talk to Mr. Gonzalez for just a
15 second?

16 THE COURT: Sure.

17 (Attorneys consult.)

18 MS. KANOF: What we would like to do, Your Honor, is,
19 we -- we understand that we can use the Court contracted
20 interpreters if they're available.

21 THE COURT: Uh-huh.

22 MS. KANOF: So the first thing we would like to do,
23 before having to call a witness out of order, is see if one of
24 them is available.

25 THE COURT: Okay.

1 MS. KANOF: Basically, we asked -- I think we ask them
2 first, and then if they say they're not available, then we go
3 to a list that was provided to us that we understood was
4 certified.

5 THE COURT: Okay.

6 MS. KANOF: And so I think we would look to do that.
7 If one is available to come do that interpretation, if we could
8 use that person.

9 THE COURT: All right. Let's take a short break, and
10 get back to me as soon as you know. First, let me know whether
11 one of the Court interpreters is available. And then once
12 you've let me know that, we can decide how long we need to
13 break for.

14 So we will stand in -- on break for about five
15 minutes.

16 (Recess; open court, parties present, jury not
17 present.)

18 THE COURT: You may be seated.

19 Okay, Kenny. You can bring in the jury.

20 (Open court, parties and jury present.)

21 (Interpretation being provided by Rafaela Graffos.)

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

23 All right. Let's try this again.

24 Mr. Aldrete-Davila, you are being assisted this
25 morning by an official Court interpreter.

1 THE WITNESS: Okay.

2 THE COURT: As we go through the testimony, it's
3 important that you understand that the questions will be asked
4 in English. The official Court interpreter will translate to
5 Spanish. You need to answer the question in Spanish, and she
6 will translate back into English.

7 Do you understand that?

8 THE WITNESS: Yes, of course.

9 THE COURT: Therefore, I'm going to ask you that, as
10 you answer the question, try to answer in as short a phrase as
11 you can, to allow her to translate that. And then you may
12 continue your answer. All right?

13 THE WITNESS: Okay.

14 THE COURT: All right. Are we ready to proceed?

15 MR. GONZALEZ: Yes, Your Honor. First of all, we
16 would like to offer a chair to the interpreter, as we believe
17 that this may be lengthy.

18 THE INTERPRETER: Excuse me?

19 MR. GONZALEZ: Would you like a chair to sit down?
20 This may take a long time.

21 THE INTERPRETER: No, no, I'm fine.

22 MR. GONZALEZ: All right. Thank you.

23

24

25

1 OSVALDO ALDRETE-DAVILA, GOVERNMENT'S WITNESS, SWORN
2 TESTIFIED THROUGH THE INTERPRETER RAFAELA GRAFFOS
3 DIRECT EXAMINATION

4 BY MR. GONZALEZ:

5 Q. Would you state your full name for the record?

6 A. Osvaldo Aldrete-Davila.

7 Q. Mr. Aldrete-Davila, let me direct your attention to
8 February 17th, 2005. At approximately 1:00 in the afternoon --
9 1:15, specifically -- were you in the Fabens, Texas, area?

10 A. Yes.

11 Q. And were you operating a vehicle on that date at that time?

12 A. Yes.

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

14 THE COURT: You may.

15 BY MR. GONZALEZ:

16 Q. Mr. Aldrete-Davila, I'm showing you what's been marked for
17 identification purposes as Government's Exhibits 9 and 15. And
18 do you recognize the vehicle shown in both Exhibits 9 and 15?

19 A. Yes.

20 Q. And is this the vehicle you were operating on or about
21 February 17, 2005?

22 A. Yes, that's it.

23 MR. GONZALEZ: Your Honor, at this time the Government
24 would offer into evidence Government's Exhibit 9 and 15 and
25 show them to defense.

1 MS. RAMIREZ: No objection, Your Honor.

2 MS. STILLINGER: No objection.

3 THE COURT: All right. They will be admitted.

4 MS. STILLINGER: Those may be the pictures that we
5 already --

6 MR. GONZALEZ: They're similar.

7 BY MR. GONZALEZ:

8 Q. Now, Mr. Aldrete-Davila, let me direct your attention once
9 again to about 1:15. And where were you, exactly, right around
10 that time?

11 A. At the lights there at the intersection of Alameda, there
12 in Fabens.

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

14 THE COURT: Yes, you may.

15 BY MR. GONZALEZ:

16 Q. Mr. Aldrete-Davila, I'm showing you what's been marked for
17 identification purposes as Government's Exhibits 41, 42, and
18 43. Would you please look at these?

19 Have you looked at them, sir?

20 A. Yes.

21 Q. And I heard you say yes. Do you speak English, sir?

22 A. A little bit. I understand it just a little bit.

23 Q. Thank you.

24 What's shown in Government's Exhibits 41, 42, and 43,
25 are they the same area in Fabens, Texas, just different

1 viewpoints?

2 A. Uh-huh, yes.

3 Q. And specifically, you testified about a traffic light. Is
4 that correct?

5 A. Yes.

6 Q. And do you see that traffic light in Government's Exhibit
7 41?

8 A. Yes.

9 Q. As well as in Government's Exhibit 42?

10 A. Yes.

11 Q. And Government's Exhibit 43?

12 A. Yes.

13 Q. And, though these photographs were not taken on February
14 17, 2005, is that the way the area looked at the time when you
15 saw it, back on February 17, 2005?

16 A. Yes.

17 Q. Thank you.

18 MR. GONZALEZ: Your Honor, at this time we would offer
19 Government's Exhibits 41, 42, and 43 into evidence, and show it
20 to defense counsel for any -- for inspection and objection, if
21 any.

22 MS. STILLINGER: No objection.

23 MS. RAMIREZ: Judge, I don't have any objection for
24 purposes of what they depict.

25 THE COURT: All right. 41, 42, and 43 will be

1 admitted.

2 BY MR. GONZALEZ:

3 Q. So, Mr. Aldrete-Davila, you say you saw the lights,

4 correct?

5 THE INTERPRETER: The interpreter requires repetition.

6 BY MR. GONZALEZ:

7 Q. Mr. Aldrete-Davila, you testified that you saw the lights,

8 correct?

9 A. Yes.

10 Q. When you saw the lights, did you notice anyone behind you?

11 A. No.

12 Q. And, at the light, did you make a turn?

13 A. Yes.

14 Q. And which direction did you turn, sir?

15 A. To the left.

16 Q. And how far did you go -- oh, I'm sorry.

17 You turned at the light, correct?

18 A. Yes.

19 Q. And, if you know, what street is at the light?

20 A. What do you mean, what street? The name, or what?

21 Q. Yes, sir, the name of the street.

22 A. Well, it's Alameda.

23 Q. Okay. And do you know whether Alameda also is known as

24 Main Street and Texas Highway 20?

25 A. No.

- 1 Q. You know it as Alameda Street?
- 2 A. Yes.
- 3 Q. And when you turn -- you said you turned left on Alameda?
- 4 A. Yes.
- 5 Q. And, when you turned left, did you notice anyone behind you
- 6 at that point?
- 7 A. Yes. When I turned left, there was patrol car.
- 8 Q. Patrol car. Where did you see the patrol car?
- 9 A. When I was making the stop at the traffic light, before
- 10 turning on to Alameda.
- 11 Q. Was the vehicle behind you, to the left, or to the right?
- 12 Where, sir?
- 13 A. Well, the vehicle was on Alameda. It turned right, and
- 14 then it made a U-turn while I was stopped.
- 15 Q. Okay. And it made a U-turn and went on what street, sir?
- 16 A. Right behind me.
- 17 Q. And when you saw this vehicle behind you, sir, what did you
- 18 do?
- 19 A. That's when I turned left on Alameda.
- 20 Q. So the vehicle -- you seeing the vehicle making a U-turn
- 21 caused you to make a left on Alameda. Is that what you just
- 22 said?
- 23 A. Yes.
- 24 Q. And what did the vehicle do once it made a U-turn?
- 25 A. That's when it followed me.

1 Q. Sir, if you remember, what type of vehicle was this?

2 A. All I remember, it was an immigration patrol car. And I'm
3 not too sure if it was a Suburban or something like that.

4 Q. Okay. And does this vehicle start following you?

5 A. Yes.

6 Q. And what do you do in response to that, sir?

7 A. I drove the vehicle that I had towards the Mexican side
8 again.

9 Q. Mr. Aldrete-Davila, we'll be talking about that. But I
10 want to take this step by step, sir, if you don't mind. Okay?

11 A. Okay.

12 Q. You made a left-hand turn. Do you make another left-hand
13 turn?

14 THE INTERPRETER: The interpreter would like to
15 instruct the witness to answer yes or no.

16 MR. GONZALEZ: Yes, please.

17 A. Okay.

18 BY MR. GONZALEZ:

19 Q. Do you make a second left-hand turn, sir?

20 A. Yes.

21 Q. How far had you traveled when you made the second left-hand
22 turn?

23 A. When I made the second one, about a block.

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

25 THE COURT: You may.

1 BY MR. GONZALEZ:

2 Q. Mr. Aldrete-Davila, I'm showing you what's been marked for
3 identification purposes as Government's Exhibit Number 40. And
4 I believe -- and you correct me if I'm wrong -- that it depicts
5 the travel that you took on February 17, 2005, at approximately
6 1:15 in the afternoon.

7 A. Yes.

8 Q. And is that an accurate depiction of the route that you
9 took on February 17, 2005?

10 A. Yes.

11 MR. GONZALEZ: At this time we would offer
12 Government's Exhibit 40 into evidence and tender it to defense
13 for any inspection and objection.

14 MS. STILLINGER: I have no objection to Government's
15 Exhibit 40, Your Honor.

16 MS. RAMIREZ: No objection.

17 THE COURT: It will be admitted.

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

19 THE COURT: You may.

20 BY MR. GONZALEZ:

21 Q. Okay. Mr. Davila, let me direct -- Mr. Davila, let me get
22 myself oriented. And, at the light, you said you make a left,
23 right?

24 A. Yes.

25 Q. And, at that point in time, there was a vehicle behind you.

- 1 Is that correct?
- 2 A. Yes.
- 3 Q. And that's a Border Patrol vehicle, correct?
- 4 A. Yes.
- 5 Q. And then at the intersection of Alameda, also known as
6 Main, also known as Highway 20, you made a left on First
7 Street. Is that correct?
- 8 A. Yes.
- 9 Q. And was the vehicle still behind you, sir, the Border
10 Patrol vehicle?
- 11 A. Yes.
- 12 Q. And how far did you travel on First Street before you
13 turned again?
- 14 A. Well, another block. A block. The length of a block.
- 15 Q. And then that got you back to Fabens Road. Is that
16 correct?
- 17 A. Yes.
- 18 Q. And when you get to -- back to Fabens Road, I think it's
19 the intersection of River and at Fabens Road, you made a
20 right-hand turn. Is that correct?
- 21 A. Yes.
- 22 Q. And, at that point in time, what was your intent, in terms
23 of what you're going to do with your vehicle?
- 24 A. Get to the edge of the river towards Mexico, so I could
25 cross into Mexico.

1 Q. Now, when you're at the intersection of -- I think it's
2 River Street and Fabens -- you've testified there's one officer
3 behind you, correct?

4 A. True.

5 Q. At that point in time, did you notice whether a second
6 agent was also starting to be in -- I'm sorry -- was beginning
7 to pursue you, as well?

8 A. Yes.

9 Q. And is that where that occurred, or was it elsewhere?

10 A. No, it was there.

11 Q. Okay. So now you have two agents behind you. Is that
12 correct?

13 A. Yes.

14 Q. Do you remember the vehicle that the second agent was in?

15 A. No.

16 Q. What was your attention focused on, sir?

17 A. Getting to the river.

18 Q. And that's when you turned on Fabens and started heading
19 south. Is that correct?

20 A. Yes, true.

21 Q. And, as you're heading south on Fabens, do you notice at
22 any point in time whether either of the vehicles that are
23 pursuing you activate their emergency lights?

24 A. One of them.

25 Q. And you're talking about the overhead lights, correct, sir?

1 A. One of them. One of them had the lights in front, and the
2 other one that had emergency lights.

3 Q. Okay. And did these two vehicles stay with you the entire
4 time as you were racing back towards Mexico?

5 A. Yes.

6 Q. And, Mr. Aldrete-Davila, were you racing back towards
7 Mexico?

8 A. Yes.

9 Q. And did you happen to notice any of the traffic control
10 signals, or traffic control devices on Fabens Road, as you were
11 heading back towards Mexico?

12 A. On the way back to Mexico there are no traffic lights, but
13 I could see some of the signs, traffic signs, on the road back.

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

15 THE COURT: You may.

16 BY MR. GONZALEZ:

17 Q. Mr. Aldrete-Davila, I'm showing you what's been marked for
18 identification purposes as Government's Exhibit Number 50. Do
19 you recognize what's shown on that exhibit?

20 A. Yes.

21 Q. And what is it, sir?

22 A. It's the speed limit, and a sign depicting that there's a
23 curve.

24 Q. And do you remember whether you even noticed this sign on
25 February 17, 2005?

1 A. In some.

2 Q. And do you have any specific recollection of that sign
3 shown in Government's Exhibit Number 50?

4 A. Well, especially, no, but I did see it.

5 Q. Okay. Let me direct your attention to Government's Exhibit
6 Number 51. Do you recognize what's shown in that exhibit?

7 A. Yes.

8 Q. And that has a posted speed limit of 15 miles per hour, as
9 does Government's Exhibit 50. Is that correct?

10 A. True.

11 Q. Did you observe that speed limit when you were on Fabens
12 Road?

13 A. No.

14 Q. Did the officers observe that speed limit when they were
15 behind you?

16 MS. RAMIREZ: I'm going to object to speculation,
17 Judge.

18 THE COURT: I'll sustain. Restate the question.

19 MR. GONZALEZ: Yes, Your Honor.

20 BY MR. GONZALEZ:

21 Q. Did the -- do you know if -- did anyone slow down, as a
22 result of these speed limits, the officers that were behind
23 you?

24 A. No. They were still chasing me the same way.

25 Q. Is it fair to say that they were going as fast as you were

1 going?

2 A. Yes. Well, they were at the same.

3 Q. You've testified about two vehicles. Let's talk about the
4 first vehicle that was behind you. How close is it to you, if
5 you know?

6 A. About ten meters.

7 Q. And you said there was -- I'm sorry.

8 A. Or maybe a little bit more.

9 Q. And you said there was a second vehicle, correct?

10 A. Yes.

11 Q. And how far away was the second vehicle from the first
12 vehicle?

13 A. They were together, practically.

14 Q. Okay. And I'm now -- let me direct your attention to
15 Government's Exhibit Number 45. Do you recognize what's shown
16 in that picture?

17 A. Yes.

18 Q. And do you recognize that picture as being some of the
19 traffic signs that are on Fabens Road heading towards Mexico?

20 A. Yes.

21 Q. The same thing for Government's Exhibit 46, which is
22 actually just a better close-up of Government's Exhibit 45.

23 A. Yes.

24 Q. Okay. Now, let me direct your attention to Government's
25 Exhibit 47. And, in there, there's a sign that states, Stop

1 for school bus loading and unloading. And do you recognize
2 that sign?

3 A. Yes, I have seen it.

4 Q. And were you watching out for any school buses loading or
5 unloading children that afternoon, sir?

6 A. There was no school bus.

7 Q. But you were still speeding back to Mexico, correct?

8 A. Yes.

9 Q. And the officers were in pursuit of you the entire time,
10 correct?

11 MS. STILLINGER: I'm going to object to the continual
12 leading of the witness, Your Honor.

13 THE COURT: All right. I'll sustain. Don't lead the
14 witness.

15 MR. GONZALEZ: Yes, Your Honor.

16 BY MR. GONZALEZ:

17 Q. Now, let me direct your attention to Government's Exhibit
18 Number 48. And is that another posted speed sign on Fabens
19 Road back to Mexico?

20 MS. RAMIREZ: Your Honor, I'll stipulate to the -- the
21 introduction of Exhibit 48, if it will speed things up.

22 THE COURT: All right. Well --

23 MS. STILLINGER: Yes, I think these are photographs of
24 the road to -- from Fabens to the border. I think we can
25 stipulate to those, Your Honor.

1 THE COURT: All right. Well, let's go over all of
2 them, just to make sure which ones are --

3 MR. GONZALEZ: Your Honor, if I may, I'm not done yet.

4 THE COURT: All right.

5 MR. GONZALEZ: And if I -- I haven't offered anything
6 yet, but I will.

7 THE COURT: All right. Well, so which ones -- which
8 ones do you want to offer?

9 MR. GONZALEZ: I wanted to offer all of them, but
10 Government's 50, 51, 45, 46, 47, 48, 49. And if we can speed
11 the defense along, we would be happy with that, too, Judge.

12 THE COURT: Okay. But I just -- all right. So you're
13 offering 45, 46, 47, 48, 49, 50 and 51?

14 MR. GONZALEZ: Yes, Your Honor.

15 THE COURT: Any objections?

16 MS. RAMIREZ: No objection, Your Honor.

17 MS. STILLINGER: No objection, Your Honor.

18 THE COURT: All right. Then they will all be
19 admitted, and you may proceed.

20 BY MR. GONZALEZ:

21 Q. Now, you testified earlier you did see one of the vehicles
22 that's chasing you turn on its overhead lights, correct?

23 A. Yes.

24 Q. And did those lights remain on, sir, do you know?

25 A. Just a moment.

1 Q. And were the overhead -- and then what lights, if any, were
2 left on -- turned on on either vehicle, sir?

3 A. Just the front lights.

4 Q. And, sir, do you know how fast you traveled down Fabens
5 Road on February 17, 2005?

6 A. About 60, 65 miles.

7 Q. Did you check your speedometer, sir?

8 A. I don't believe the speedometer was working, the one in the
9 van.

10 Q. But that's how fast you thought were going, sir?

11 A. Yes. Yes.

12 Q. And you weren't obeying any of the posted speed limits or
13 other traffic control signs. Is that correct, sir?

14 A. No.

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

16 THE COURT: You may.

17 BY MR. GONZALEZ:

18 Q. I'm showing you Government's Exhibit 44 -- I'm sorry -- 46.
19 And, in it, does it show that there is, in fact, vehicles, as
20 well as a bunch of pallets, indicating that people are at this
21 location?

22 A. Yes.

23 Q. And, in fact, on Fabens Road, there's a part of it that the
24 speed limit is only ten miles per hour. Is that correct?

25 A. Yes.

1 Q. Thank you. And, sir, how long did it take you, if you
2 recall, to get from Fabens back to where your vehicle ended up?

3 A. I don't know. Perhaps five minutes.

4 Q. Mr. Aldrete-Davila, I'm showing you what's been marked for
5 identification purposes as Government's Exhibit Number 1. Do
6 you recognize what it shows?

7 A. Yes.

8 Q. And can you orient yourself on this exhibit and tell us,
9 you know, how you were traveling and where you were traveling?
10 That's just yes or no.

11 A. Yes.

12 Q. And, similarly, I'm showing you what's been marked for
13 identification purposes as Government's Exhibit 84, which
14 contains an aerial photograph of the Fabens, Texas, area and
15 farmland in that area.

16 Do you recognize that?

17 A. Yes.

18 MR. GONZALEZ: Your Honor, at this time we would offer
19 into evidence Government's Exhibit Numbers 1 and 84.

20 MS. STILLINGER: No objection, Your Honor.

21 MS. RAMIREZ: No objection.

22 THE COURT: 1 and 84 will be admitted.

23 MR. GONZALEZ: Okay. Thank you.

24 BY MR. GONZALEZ:

25 Q. Mr. Davila, can you see Government's Exhibit 1 from your

1 seat?

2 A. Yes.

3 Q. Now, would you tell the Court and the jury where Fabens
4 Road is located on that map?

5 A. Yes.

6 MR. GONZALEZ: Your Honor, may the witness approach
7 the map?

8 THE COURT: Yes, he may.

9 BY MR. GONZALEZ:

10 Q. Tell us where Fabens -- show the jury where Fabens is.

11 A. This is Fabens (indicating). This the street (indicating).

12 Q. Which street, sir?

13 A. Fabens Street.

14 Q. And is that the street that you took on February 17th,
15 2005?

16 A. Yes, sir.

17 Q. When you were heading back to Mexico, correct?

18 A. Yes.

19 Q. Okay. Keep showing the jury the path of travel that you
20 took.

21 A. I came on Fabens Street, and I got those two curves. And I
22 continued on Fabens Street until I got to the river.

23 Q. Okay. These two curves, are those the two curves that are
24 shown on those Government's exhibits that showed an S curve?

25 A. Yes.

- 1 Q. And where Fabens Road hits the S curve, does it become a
2 different road, if you know?
- 3 A. No, I don't know.
- 4 Q. You take the S curve, right?
- 5 A. Yes.
- 6 Q. And then you're heading towards Mexico, correct?
- 7 A. Yes.
- 8 Q. And, at the bottom here, does it indicate that Fabens Road,
9 or Fabens Island Road, is now referred to as Jess Harris Road?
- 10 A. Here, yes.
- 11 Q. Okay. And, at the end of Jess Harris Road, what do we
12 find?
- 13 A. A drainage.
- 14 Q. And that's where your van ended up on February 17th,
15 correct?
- 16 A. Yes.
- 17 Q. And, Mr. Aldrete-Davila, I'm showing you Government's
18 Exhibit 84. And does this show Jess -- it has two parts. The
19 inset shows Jess Harris Road as it meets the irrigation ditch.
20 Is that correct?
- 21 A. Yes.
- 22 Q. There's a star on this photograph. Do you know if it
23 represents anything -- does it mean anything to you?
- 24 A. No.
- 25 Q. When you're on -- I think it's Fabens Island Road, after

1 you make the S curve, is there a point where you no longer have
2 paved road but, rather, a dirt road?

3 A. In the curves, no. The highway continues there.

4 Q. But after that, sir?

5 A. Yes. The pavement, the road, goes on. The pavement stops,
6 and then you have a dirt road --

7 Q. And, sir --

8 A. -- gravel road.

9 Q. And, as you're hitting the dirt road, are these officers
10 still behind you?

11 A. Yes.

12 Q. What is your intent?

13 A. Get to the river and cross to Mexico walking.

14 Q. Mr. Aldrete-Davila, were you going to -- where were you
15 going to stop? What was your plan, if you had one?

16 A. There was no plan. I was just going to stop at the end of
17 the drainage and cross.

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

19 THE COURT: You may.

20 BY MR. GONZALEZ:

21 Q. Mr. Aldrete-Davila, I'm showing you Government's Exhibit
22 Number 9 and 15. That shows where your van is. Is that
23 correct?

24 A. Yes.

25 Q. The photographs seem to indicate that the van went --

1 almost went into the ditch. Is that correct?

2 A. Yes.

3 Q. Was it your intent to go into the ditch?

4 A. No.

5 Q. How did that happen?

6 A. Well, because it's gravel, dirt, it didn't stop in time.

7 Q. What were you trying to do?

8 A. Stop the van at the end of the ditch and get down and start
9 to cross.

10 Q. But the van kept going, correct?

11 A. When I got down?

12 Q. No, I'm sorry. The van did not stop as quickly as you
13 wanted it to stop. Is that correct?

14 A. Oh, yes, of course. No.

15 Q. Because it was a dirt road, correct?

16 A. Yes.

17 Q. Now, but as you're approaching the ditch, sir, do you
18 notice anything -- anything across the ditch?

19 A. Yes. On the other end, there was a patrol.

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

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. First of all, let me direct your attention to Government's
24 Exhibit 26 and Government's Exhibits 51A and 51B.

25 In reference to 51A, do you recognize what's shown in

1 that photograph?

2 A. Yes.

3 Q. And what is that, sir?

4 A. The marks of the tire there, where it ended up.

5 Q. Obviously, this photograph was taken after the van was
6 moved, correct?

7 A. Yes.

8 Q. And let me direct your attention to Government's Exhibit
9 26. Is that a better overview of the area where your van
10 ended, as well as what was on the other side of the drainage
11 ditch?

12 A. Yes.

13 Q. And Government Exhibit Number 28, does that also, for
14 everyone's benefit, have the names of the streets shown in this
15 photograph, as well as where the levee road is and the
16 Rio Grande?

17 A. Yes.

18 Q. And Government's Exhibit 29 is similar to 28, just, you
19 know, laying out all the different names of at all the
20 different landmarks. Is that correct?

21 A. Yes.

22 MR. GONZALEZ: Your Honor, at this time we would offer
23 Government's Exhibits 26, 28, 29 and 51A into evidence, and
24 tender them to the defense counsel for any objections.

25 MS. STILLINGER: Your Honor, I do -- I do have an

1 objection as to the foundation for these, Your Honor, because
2 I -- I heard Mr. Aldrete-Davila agree with Mr. Gonzalez about
3 what they were, but I didn't hear him say that he recognized
4 them, that he could identify them.

5 MS. RAMIREZ: And, Judge, on behalf of Mr. Compean, I
6 do have an objection to 51A, for the purposes of foundation. I
7 don't know when this photograph was taken, and I don't believe
8 that Mr. Aldrete-Davila can authenticate, or can actually state
9 when the photograph was taken.

10 MS. STILLINGER: Or where --

11 MS. RAMIREZ: Or where.

12 MS. STILLINGER: -- for that matter.

13 MS. RAMIREZ: And also, as to 51B --

14 MR. GONZALEZ: I haven't offered that.

15 MS. RAMIREZ: Okay. And as to 28 and 29, I join in
16 Ms. Stillinger's objection.

17 THE COURT: We have 26, 28 and 29. How about 26?

18 MS. RAMIREZ: I have the same objection, that the
19 appropriate foundation has not been laid for the admission of
20 26 into evidence by this witness.

21 THE COURT: All right. Hold on just a second.

22 MS. STILLINGER: Your Honor, I'm sorry. As I'm
23 standing here looking at these, I -- I'm withdrawing. I'm
24 familiar with these exhibits, and they certainly could get them
25 in through another witness. I'm going to withdraw my objection

1 to 28, 29, and 26, but maintain my objection to 51A.

2 THE COURT: And your position, Ms. Ramirez?

3 MS. RAMIREZ: My position is -- remains the same,
4 Your Honor.

5 THE COURT: And, just so I'm clear, when you say,
6 Ms. Ramirez, that it remains the same, the same as
7 Ms. Stillinger's, or the same as previously, that you're
8 objecting?

9 MS. RAMIREZ: No, Judge. I objected because there has
10 been no accurate foundation, or appropriate foundation has not
11 been laid on 26.

12 THE COURT: Okay. So you're maintaining your
13 objection?

14 MS. RAMIREZ: Yes, Your Honor.

15 THE COURT: All right. Then the Court will sustain
16 the objection at this time.

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

18 THE COURT: Yes, you may.

19 BY MR. GONZALEZ:

20 Q. Mr. Osvaldo Aldrete, let me direct your attention to
21 Government's Exhibit 51A, first of all.

22 What does it show, sir?

23 A. It's the same as the other one, where the tire marks of the
24 van are and the drainage ditch.

25 Q. And that's where you were on February 17th, 2005, correct?

1 MS. RAMIREZ: I'll object to leading, Your Honor.

2 THE COURT: I'll sustain.

3 MR. GONZALEZ: I'll rephrase.

4 BY MR. GONZALEZ:

5 Q. Were you at that location on February 17, 2005?

6 MS. RAMIREZ: Objection, leading, Judge.

7 THE COURT: He can answer the question. I'll
8 overrule.

9 A. Yes. The van got up to that point, yes.

10 BY MR. GONZALEZ:

11 Q. And that's an accurate depiction of what the scene looked
12 like when you were there absent the van. Is that correct?

13 A. Yes.

14 MR. GONZALEZ: At this time we would offer
15 Government's 51A into evidence.

16 THE COURT: Any objection?

17 MS. STILLINGER: No, Your Honor.

18 MS. RAMIREZ: No, Your Honor.

19 THE COURT: It will be admitted.

20 BY MR. GONZALEZ:

21 Q. Let me direct your attention to Government's Exhibit Number
22 26. Is that an overview that encompasses more of the area
23 shown in Government's 51A?

24 A. Yes.

25 Q. It's a true and accurate depiction, correct?

1 A. Yes.

2 MR. GONZALEZ: At this time we would move Government's
3 Exhibit 26 into evidence, Your Honor.

4 THE COURT: Any objection?

5 MS. STILLINGER: I have no objection.

6 MS. RAMIREZ: No objection, Your Honor.

7 THE COURT: It will be admitted.

8 BY MR. GONZALEZ:

9 Q. Let me direct your attention to Government's Exhibit 28.
10 It's essentially the same as Government's Exhibit 26, except
11 for the names of roads on there. Is that correct?

12 A. Yes.

13 Q. And do you know -- and do you see Jess Harris Road on that
14 Government's Exhibit 28?

15 A. Yes.

16 Q. And do you see the drainage ditch?

17 A. Yes.

18 Q. And, after the drainage ditch, is there a levee road?

19 A. Yes.

20 Q. And, after the levee road, is there an area between the
21 United States and the Rio Grande called the vega?

22 A. Well, there's a space. I don't know what they call it.

23 Q. You're correct. Vega is nowhere on this exhibit, anyway.

24 But you do see the Rio Grande River. Is that correct?

25 A. Yes.

1 Q. And after the Rio Grande is what, sir, what country?

2 A. Well, Mexico.

3 Q. And before the Rio Grande, on this map, what country is
4 depicted -- what country exists?

5 A. United States.

6 MR. GONZALEZ: Your Honor, at this time we would offer
7 Government's Exhibit 28 into evidence.

8 MS. STILLINGER: No objection, Your Honor.

9 THE COURT: 28, right? Is that correct?

10 MR. GONZALEZ: Yes.

11 MS. RAMIREZ: Okay. And 28 is the aerial photograph
12 of -- view from north to the south?

13 THE COURT: Correct.

14 MS. RAMIREZ: Okay. And I don't have any objection,
15 for the purposes of what they depict, Judge.

16 THE COURT: All right. So 28 will be admitted.

17 MR. GONZALEZ: Your Honor, I don't know if they still
18 have objections to Government's Exhibit 29.

19 MS. RAMIREZ: For purposes of what it depicts, I don't
20 have an objection for that, Judge. But I'm -- not that he
21 states that's the way the area looked on February 17, 2005.

22 THE COURT: Okay. Well, do you want to clarify
23 whether it's the way it looked on that day or not? It will be
24 admitted subject to that clarification.

25 MR. GONZALEZ: Okay.

1 BY MR. GONZALEZ:

2 Q. Now, Mr. Aldrete-Davila, on February 17, 2005, you were at
3 the drainage ditch, correct?

4 A. Yes.

5 Q. And, now, let me show you Government's Exhibits 9 and 15,
6 which are photographs of what the scene looked like on February
7 17, 2005.

8 And do Government's Exhibits --

9 A. Yes.

10 Q. And do Government's Exhibits 9 and 15 show that it was a
11 gray day?

12 A. Yes, one could say that.

13 Q. Overcast?

14 A. A little.

15 Q. And the other exhibits, namely, 26, 28, 29, and 51A, show a
16 clearer day. Is that correct?

17 A. Yes.

18 Q. So they were taken at different times. Is that correct?

19 A. Yes.

20 Q. Now, you were testifying previously that, as you were
21 driving on Jess Harris Road arriving to the ditch, you observed
22 something. What was that, sir?

23 A. A patrol car.

24 Q. Okay.

25 MR. GONZALEZ: May I have a moment, Your Honor?

1 THE COURT: Yes.

2 Do you need us to turn out some lights?

3 MR. GONZALEZ: Not yet, Your Honor.

4 Now, you can turn them off.

5 BY MR. GONZALEZ:

6 Q. Mr. Osvaldo Aldrete-Davila, let me direct your attention to
7 Government's Exhibit 28 that's shown on the screen.

8 THE COURT: And what number is that again? I'm sorry.

9 MR. GONZALEZ: 28, Your Honor.

10 THE COURT: All right.

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

12 THE COURT: You may.

13 BY MR. GONZALEZ:

14 Q. You testified you saw a vehicle across the drainage ditch.

15 Is that correct?

16 A. Yes.

17 Q. And this is the drainage ditch (indicating), correct?

18 A. Yes.

19 Q. And over that is what's labeled as the levee road?

20 A. Yes.

21 Q. And this is the United States, this area (indicating)?

22 A. Yes.

23 Q. And that's the Rio Grande, where my laser is pointed at
24 this point in time (indicating)?

25 A. Yes.

1 Q. And north of that is Mexico. Is that correct?

2 MS. KANOF: North?

3 BY MR. GONZALEZ:

4 Q. North on the picture. South of the --

5 A. Yes.

6 Q. Okay. Now, you testified that you saw a vehicle. And,
7 obviously, this photograph was not taken on February 17, 2005.
8 But is this the approximate area where you saw a vehicle
9 (indicating)?

10 A. Yes.

11 Q. Mr. Aldrete-Davila, let me direct your attention to
12 Government's Exhibit Number 9 on the screen.

13 A. Yes.

14 Q. In fact, which of the vehicles shown in this photograph is
15 the one that you saw on February 17, 2005? The one nearest
16 you, or the one behind it?

17 A. The one that's behind.

18 Q. And that's what you saw as you were driving down Jess
19 Harris Road. Is that correct?

20 A. Yes.

21 MR. GONZALEZ: We can go ahead and turn on the lights.

22 THE COURT: Sure.

23 MR. GONZALEZ: Thank you.

24 BY MR. GONZALEZ:

25 Q. Mr. Aldrete-Davila, at this point in time you say there's

1 two vehicles that you know of behind you. Is that correct?

2 A. Yes.

3 Q. And, now, there's a third vehicle, third Border Patrol
4 vehicle. Is that true?

5 A. Yes, the one that's in front.

6 Q. What are you thinking at the point?

7 A. Well, to cross to Mexico.

8 Q. And do you get out of the van?

9 A. Yes.

10 Q. Do you get -- what do you do next?

11 A. I crossed the water in the ditch.

12 Q. And were you able to get out immediately?

13 A. Yes.

14 MS. RAMIREZ: Object to leading.

15 THE COURT: All right. Don't lead your witness.

16 MR. GONZALEZ: Okay.

17 BY MR. GONZALEZ:

18 Q. You say you crossed the drainage ditch.

19 A. Yes.

20 Q. And as you're on the south bank, do you look up?

21 MS. RAMIREZ: I'm going to object to leading, Judge.

22 THE COURT: I'll sustain.

23 BY MR. GONZALEZ:

24 Q. Did you look up, sir, when you were on the south bank?

25 MS. RAMIREZ: I'm going to object. It's still

1 leading, Judge.

2 THE COURT: I'll sustain.

3 BY MR. GONZALEZ:

4 Q. What did you do, sir, when you were on the south bank?

5 A. I ran up from the edge of the drainage ditch.

6 Q. And as you're running up, do you notice anything?

7 A. Yes.

8 Q. What do you see, sir?

9 A. I turned back, and I saw some people on the north side of
10 the water.

11 Q. Do you remember how many people you saw behind you?

12 A. Two or three people.

13 Q. Do you remember anything distinctive about how they looked
14 or what they were wearing or anything like that, sir?

15 A. Uniforms. One person had glasses. And all three had their
16 arms drawn.

17 Q. Did you say all three had their arms drawn, or what did you
18 say?

19 A. Yes.

20 Q. There were -- okay. How many people were there, two or
21 three, first of all?

22 A. At least two.

23 Q. And how many had their weapons drawn?

24 MS. STILLINGER: Asked and answered.

25 A. Two.

1 THE COURT: I'll overrule. Okay.

2 THE INTERPRETER: The interpreter needs to make a
3 correction.

4 THE COURT: All right. Well, hold on. I will
5 overrule the objection.

6 And go ahead and make your correction.

7 THE INTERPRETER: The original answer to the question
8 of what were they wearing, I -- was uniforms, some had glasses.
9 And the witness answered, and all had their arms drawn. There
10 was no mention of three.

11 MR. GONZALEZ: Thank you.

12 MS. RAMIREZ: Judge?

13 THE COURT: Yes.

14 MS. RAMIREZ: Can we approach the bench?

15 THE COURT: Yes.

16 (Bench conference:)

17 MS. RAMIREZ: He didn't say "arms drawn". He said
18 "weapons". "Arma" is weapons, not arms.

19 I'm going to object to the interpretation, because the
20 interpreter said, "All had their arms drawn." The
21 interpretation is "weapons drawn".

22 THE COURT: How do you know that? What's the
23 difference between weapons and arms in certified translation?
24 I'm asking, because arms and weapons in English --

25 MS. RAMIREZ: Arms is hands.

1 THE COURT: No, arms in English is also weapons. Does
2 anybody disagree?

3 MR. GONZALEZ: No.

4 MR. PETERS: I take it when you say "drawn," I mean,
5 they had their arms drawn.

6 THE COURT: Does -- why don't you clarify? I'm going
7 to overrule your objection. Arms is weapons.

8 (End of bench conference; open court.)

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

10 MR. GONZALEZ: Thank you, Your Honor.

11 BY MR. GONZALEZ:

12 Q. The agents that you saw, what were they holding in their
13 hands, if anything, sir?

14 A. Arms.

15 Q. Okay. And do you mean like a pistol or a handgun, when you
16 say "arms"?

17 A. Pistol.

18 Q. And if you know, Mr. Osvaldo Aldrete-Davila, the pistol
19 that you're testifying about, were they similar to Government's
20 39A?

21 THE INTERPRETER: The interpreter requests a
22 repetition.

23 BY MR. GONZALEZ:

24 Q. Do you know, Mr. Aldrete-Davila, the firearms that you
25 testified about, were they like Government's Exhibit 39A?

1 A. Well, yes. I can't -- I don't know them from afar, but
2 they were guns.

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

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. Was it one of these, Government's Exhibit 13?

7 A. One of those is the one that I had in front of me.

8 Q. Well, we're talking about the ones that are behind you.

9 A. Okay, no. The ones behind me had guns.

10 Q. And did you testify that they -- what were they doing with
11 their guns?

12 A. They were aiming at me.

13 Q. And when you saw this, what did you do, sir?

14 A. So when they were aiming at me, and I was running upwards,
15 I put my hands up.

16 Q. Okay. And, as you're running upwards, did you previously
17 testify that there was another agent up there on the levee?

18 A. Yes, the one that was in front.

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

20 THE COURT: You may.

21 BY MR. GONZALEZ:

22 Q. Mr. Aldrete-Davila, I'm going to show you what's been
23 marked for identification purposes as Government's Exhibit 51B.
24 And could you tell us -- well, first of all, do you recognize
25 what's shown in that photograph?

1 A. Yes.

2 Q. That's also an area of the Sierra Delta, is that correct,
3 the ditch?

4 A. Yes.

5 Q. And this is the area where you were testifying about where
6 you saw the other Border Patrol agents?

7 A. Yes.

8 Q. Now, did you testify that there was an agent on the levee?

9 A. Yes. The patrol car was there, and the agent was a little
10 bit below.

11 Q. Below from where, sir?

12 A. From the road. The patrol car was on -- on the road, and
13 he was a little bit below that.

14 Q. And did the agent remain in the same location?

15 MS. RAMIREZ: Judge, may I approach, so I can tell
16 where he's pointing?

17 MR. GONZALEZ: Let me go ahead and show them.

18 THE COURT: All right. That's fine.

19 MS. RAMIREZ: Thank you.

20 BY MR. GONZALEZ:

21 Q. There is a Number 1 on this photograph, Government's
22 Exhibit 51B. Is that the location where you first saw the
23 agent who had been on the levee road?

24 A. Yes.

25 Q. Okay. And -- but the agent did not remain at that

1 location, correct?

2 MS. RAMIREZ: I'm going to object as to leading,
3 Judge.

4 THE COURT: I'll sustain.

5 BY MR. GONZALEZ:

6 Q. Did the agent remain at that location, sir?

7 A. Yes.

8 Q. He stayed where Number 1 is?

9 MS. RAMIREZ: Objection, asked and answered.

10 THE COURT: I'll overrule. He can answer.

11 A. Yes. When I crossed, he stayed there. When I ran this
12 way, he came over this way (indicating).

13 BY MR. GONZALEZ:

14 Q. So you ran to the left. Is that correct?

15 A. Yes.

16 Q. And you said he also ran?

17 A. Yes.

18 Q. And did he -- where did he end up on the Government's
19 Exhibit 51B?

20 A. Here, in Number 2.

21 MR. GONZALEZ: Your Honor, at this time we would offer
22 Government's Exhibit 51B, and tender it to the defense for any
23 objection.

24 MS. RAMIREZ: I don't have any objection for the
25 purposes of what it depicts, Judge, because the photograph was

1 not taken on February 17, 2005.

2 MR. GONZALEZ: That's correct.

3 MS. RAMIREZ: So I don't have any objection for
4 introduction for the purposes of what it depicts.

5 THE COURT: All right. Any -- Ms. Stillinger?

6 MS. STILLINGER: No objection.

7 THE COURT: All right. It will be admitted.

8 All right. Hold on a second. Let Kenny turn down the
9 lights a little. I think it makes it clearer.

10 Thank you.

11 BY MR. GONZALEZ:

12 Q. Mr. Aldrete-Davila, position Number 1, who was there?

13 A. The agent.

14 Q. And why don't you go ahead and point, if you can, to where
15 you were when he was at position Number 1, if you can.

16 A. I crossed there (indicating), and I stayed there
17 (indicating).

18 Q. And then did you move? And why did you move, sir?

19 A. Yes, I moved towards there (indicating).

20 Because he was there (indicating), and I wanted to see
21 if I could go through there (indicating). And he came through
22 the top.

23 Q. And as you're -- you say you approached area Number 2. Is
24 that correct?

25 A. Yes.

1 Q. And who do you see there?

2 A. The agent.

3 Q. And what's the agent doing?

4 MS. RAMIREZ: Object as to leading, Judge.

5 THE COURT: The question was, What was the agent
6 doing? I'll overrule the objection.

7 A. He's aiming at me with a rifle.

8 BY MR. GONZALEZ:

9 Q. I'm showing you Government's Exhibit Number 13. Does this
10 look like the rifle the agent was holding, pointing at you?

11 A. Yes, it looks like it.

12 Q. Sir, if you know, is this a rifle or a shotgun?

13 A. No.

14 MR. GONZALEZ: Your Honor, at this time we would offer
15 Government's Exhibit Number 13 into evidence.

16 MS. RAMIREZ: I'm going to object, Judge. He hasn't
17 identified it as to any weapon. There's no foundation for this
18 exhibit to be admitted through this witness.

19 THE COURT: Ms. Stillinger?

20 MS. STILLINGER: It doesn't pertain to my client,
21 Your Honor.

22 THE COURT: All right.

23 MS. STILLINGER: That's why I have no objection.

24 THE COURT: All right. I'll sustain the objection.

25

- 1 BY MR. GONZALEZ:
- 2 Q. Mr. Aldrete-Davila, you testified that the agent had what
- 3 in his hand?
- 4 A. A rifle.
- 5 Q. Okay. And what was he doing with the rifle?
- 6 A. He was aiming at me.
- 7 Q. Okay. And did he continue pointing his rifle at you the
- 8 entire time?
- 9 A. Yes. While I had my hands up, yes.
- 10 Q. Why did you have your hands up?
- 11 A. Well, because I thought they were going to apprehend me.
- 12 Q. As you're approaching the agent that's on the levee, is
- 13 anything said by you to him or him to you?
- 14 A. I said, Take it easy man. Don't hit me.
- 15 And he said, Stop, you shit Mexican.
- 16 Q. And how many times did you tell him to take it easy?
- 17 A. Twice.
- 18 Q. And how many times did he tell you (speaking Spanish)?
- 19 A. Two. It could be two or more.
- 20 Q. Did you stop?
- 21 A. Yes. I was stopped with my hands up.
- 22 Q. Both hands?
- 23 A. Yes.
- 24 Q. What was in your hands, sir?
- 25 A. Nothing.

1 Q. Did you show him your palms?

2 A. Yes. I had my hands up.

3 Q. What was your intention at that point in time?

4 A. Give up and be arrested.

5 Q. Sir, did you -- are you right-handed or left-handed?

6 A. Right-handed.

7 Q. You have your hands up in the air. What does the agent do?

8 A. He gets closer to me. He turns the rifle over. He tries
9 to hit me with the butt of the rifle.

10 Q. And does he manage to hit you, sir?

11 A. No, I stopped him.

12 Q. Stopped him how?

13 A. I just got in this position (indicating).

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

15 THE COURT: You may.

16 BY MR. GONZALEZ:

17 Q. Say I'm the agent, okay? I'm pointing at you, and I'm
18 standing over you. Is that correct?

19 A. Yes.

20 Q. Okay. And where is -- is the agent still standing on the
21 levee road?

22 MS. RAMIREZ: I'm going to object as to leading,
23 Your Honor.

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

25

1 BY MR. GONZALEZ:

2 Q. Okay. Where is the agent as you're approaching him?

3 A. Well, up -- up there, like that (indicating).

4 Q. He's not on the side of the ditch; is he with you?

5 MS. RAMIREZ: I'm going to object as to leading,
6 Judge.

7 THE COURT: I'll sustain.

8 BY MR. GONZALEZ:

9 Q. Is he on the side of the ditch?

10 A. Yes, at the edge.

11 Q. At the edge of the ditch?

12 A. Yes.

13 Q. And he's pointing at you. Is that correct?

14 MS. RAMIREZ: I'll object as to leading, Judge.

15 THE COURT: I'll sustain. Don't --

16 MR. GONZALEZ: Yes, Your Honor.

17 BY MR. GONZALEZ:

18 Q. Do you raise your hands?

19 MS. RAMIREZ: I'm going to object to Mr. Gonzalez
20 depicting that he's pointing the rifle when -- for the record,
21 since the record doesn't reflect that, Judge, since you
22 sustained my objection about him leading the witness.

23 THE COURT: Well, I'll overrule that.

24 Go ahead.

25

1 BY MR. GONZALEZ:

2 Q. He's pointing at you, and I'm holding this map to show
3 that.

4 You're coming up. Is that correct?

5 MS. RAMIREZ: Leading, Your Honor. Leading the
6 witness.

7 BY MR. GONZALEZ:

8 Q. Show me how you approach --

9 MS. RAMIREZ: Your Honor, may I get a ruling on my
10 objection? I'm sorry, but he keeps leading the witness.

11 THE COURT: All right. I will sustain the objection.
12 Please don't lead the witness.

13 MS. RAMIREZ: Thank you, Judge.

14 MR. GONZALEZ: Yes.

15 Your Honor, may I have the witness step down?

16 THE COURT: Sure.

17 BY MR. GONZALEZ:

18 Q. Would you step down here, Mr. Aldrete-Davila?

19 Mr.- -- you're -- what are you doing -- what are you
20 doing as he's pointing at you?

21 MS. RAMIREZ: Your Honor, I'm going to object at this
22 point. He's testifying about facts not in evidence yet,
23 because they haven't testified about -- they're demonstrating
24 something that has not been testified to.

25 THE COURT: I'll overrule the objection.

1 BY MR. GONZALEZ:

2 Q. What does the agent do next?

3 A. He turns the rifle around, and he tries to hit me with the
4 butt of the rifle.

5 Q. Okay. And as he's trying to hit you with the butt, what do
6 you do?

7 A. I block it, and I run through the right side.

8 Q. Does he take a full swing?

9 A. The rifle, yes.

10 Q. Does the butt of the rifle, the shotgun, does it strike
11 you?

12 MS. RAMIREZ: Object as to leading, Your Honor.

13 THE COURT: I'll overrule.

14 A. No.

15 BY MR. GONZALEZ:

16 Q. No contact is made?

17 A. No.

18 Q. He misses. What do you do?

19 A. I ran.

20 Q. Do you touch him at all, as the butt of the gun is flying
21 past your face?

22 A. Never.

23 Q. No contact at all?

24 A. None.

25 Q. You get around him. Is that what you do?

1 A. Yes. I got around him on the right side.

2 Q. And what do you do next, sir?

3 A. I ran to the river.

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

5 THE COURT: You may.

6 BY MR. GONZALEZ:

7 Q. Let me show you what's been marked for identification
8 purposes as Government's Exhibit 54. And is the area that you
9 testified, where you had the altercation with the officer, is
10 that Number 1 on this photograph?

11 A. Yes.

12 MR. GONZALEZ: For the record, I'm showing
13 Government's Exhibit Number 54 to defense counsel, so they know
14 what I'm asking about.

15 MS. RAMIREZ: Can I have just a moment, Judge?

16 (Counsel conferring.)

17 BY MR. GONZALEZ:

18 Q. Point 1 is where you and the agent met at the ditch,
19 correct?

20 A. Yes.

21 Q. And did you cross the levee road, sir?

22 MR. RAMIREZ: Objection as to leading, Judge.

23 THE COURT: I'll sustain.

24 BY MR. GONZALEZ:

25 Q. After you were running, sir -- while you were running,

1 where did you cross?

2 A. I crossed through the levee.

3 Q. Is that shown as point Number 2 on this exhibit?

4 A. Yes.

5 Q. And do you recognize point 3 on Government's Exhibit 54?

6 A. Yes.

7 Q. And what happened at point 3?

8 A. That's where I fell.

9 Q. Now, Mr. Aldrete-Davila, as you're running back, do you
10 ever slow down?

11 MS. RAMIREZ: And I'll object as to leading, Judge.

12 THE COURT: I'll overrule. He can answer.

13 A. No.

14 BY MR. GONZALEZ:

15 Q. Okay. Let me just ask one other question. When the agent
16 was pointing his -- I'll take you back to -- in time, to where
17 the agent is pointing his gun at you. Okay?

18 A. Yes.

19 Q. Prior to that, did the agent attempt to use any other type
20 of defensive tactic, like pepper spray?

21 MS. RAMIREZ: I'm going to object as to leading,
22 Judge.

23 THE COURT: I'll overrule.

24 A. No.

25

1 BY MR. GONZALEZ:

2 Q. What about a baton, or anything like that, sir?

3 A. No.

4 Q. Okay. You're running back, correct?

5 A. Yes.

6 Q. And, as you're running back, do you notice anything around
7 your feet?

8 A. Yes, the bullets that were picking up dust.

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

10 THE COURT: All right.

11 BY MR. GONZALEZ:

12 Q. Let me show you once again Government's Exhibit 54. In
13 what area of Government's Exhibit 54 did you see the puffs of
14 dirt at your feet?

15 A. From 4 to 3, more or less.

16 Q. And what you're testifying about is halfway between the
17 levee road and the Rio Grande on the vega, halfway -- the
18 halfway point to the Rio Grande. That's where you saw the
19 puffs?

20 A. Yes. In the place where it was halfway to the river,
21 that's where I could see it. That's where the puffs were.

22 MR. GONZALEZ: Your Honor, at this time we tender
23 Government's 54 to defense counsel for any objections.

24 MS. RAMIREZ: May I just have a moment?

25 THE COURT: Okay.

1 MS. STILLINGER: Your Honor, we would object to the
2 writing on the picture. We have no objection to the picture
3 with the numbered dots on it.

4 MS. RAMIREZ: I have the same objection, Judge. I
5 don't have any objection to what the photograph depicts, but I
6 have an objection to what was written on the picture.

7 THE COURT: All right.

8 MS. RAMIREZ: If they just want to redact that.

9 THE COURT: What's the Government's position?

10 MR. GONZALEZ: Your Honor, we're going to redact that
11 portion.

12 THE COURT: Here, let me give you a --

13 MR. GONZALEZ: And, for the time being, can I just
14 fold it over so I can publish it?

15 THE COURT: Sure. Then 54 will be admitted with the
16 redaction of whatever writing is at the bottom.

17 BY MR. GONZALEZ:

18 Q. And, Mr. Osvaldo Aldrete-Davila, this is where you and the
19 agent meet. Is that correct?

20 A. Yes.

21 Q. Now, this is the path that you take, correct?

22 A. Yes.

23 Q. And this is where you fall. Is that what you testified to
24 earlier?

25 A. Yes.

1 Q. And from this point to that point, that's where you see the
2 puffs of smoke, point Number 4 and point Number 3? That's 4
3 right there, and 3 (indicating).

4 A. Yes.

5 Q. Thank you.

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

7 THE COURT: You may.

8 BY MR. GONZALEZ:

9 Q. Let me show you Government's Exhibit 56A, or marked as
10 Government's Exhibit 56A for identification. Do you recognize
11 what's shown in this photograph, sir?

12 A. Yes.

13 Q. What does it show, sir?

14 A. The edge of the river, where I fell.

15 Q. And, when you're running towards this location, what are
16 you thinking at that point in time?

17 A. Well, I'm just covering my head. And I'm thinking that,
18 even though they're shooting bullets at me, I don't think
19 they're going to shoot to kill.

20 Q. Mr. Aldrete-Davila, show the jury how were you were
21 running. Where were your hands?

22 A. Here in my head. I was a little -- I was a little bit
23 leaning down, with my hands this way (indicating), and I was
24 looking towards the sand.

25 Q. And, at what point, did you put your hands over your head

1 as you're running back to Mexico?

2 A. When I began to see the bullets in the sand. When I
3 started seeing the bullets hit the sand, that's when I covered
4 up my head.

5 Q. So, from point 4 to point 3, you have your hands on your
6 head. Is that what you are you saying?

7 MS. RAMIREZ: I'm going to object as to leading,
8 Judge.

9 THE COURT: I'll overrule.

10 A. Yes.

11 BY MR. GONZALEZ:

12 Q. And, as you're approaching point 4, namely the Rio Grande
13 River, were you looking for a place to enter the river?

14 MS. RAMIREZ: Objection as to leading, Judge.

15 THE COURT: I'll sustain.

16 BY MR. GONZALEZ:

17 Q. As you're approaching point 4, what are you thinking of
18 doing, sir?

19 A. Well, cross to Mexico.

20 Q. Were you were looking for an entryway?

21 MS. RAMIREZ: Object to leading, Judge.

22 THE COURT: I'll sustain.

23 BY MR. GONZALEZ:

24 Q. What were you looking for, sir?

25 A. To cross to Mexico, go to Mexico.

1 Q. But you weren't -- you say you fell down. Why did you fall
2 down?

3 MS. RAMIREZ: I'm going to object, Your Honor. I
4 don't believe that he testified that he fell down.

5 THE COURT: I'll overrule.

6 BY MR. GONZALEZ:

7 Q. I'm sorry, go ahead.

8 A. Because I got a -- they shot at me, and I had a bullet in
9 my buttock.

10 MR. GONZALEZ: May I have a moment, Your Honor?

11 THE COURT: All right.

12 MR. GONZALEZ: Your Honor, at this time we would offer
13 Government's Exhibit Number 33 into evidence.

14 THE COURT: 33?

15 MR. GONZALEZ: Yes, Your Honor.

16 THE COURT: All right.

17 MR. GONZALEZ: And, along with 33, 34, 35, 36, 37, 38,
18 39A and 39B.

19 MS. STILLINGER: We have no objection, Your Honor.

20 THE COURT: All right.

21 MS. RAMIREZ: I'm sorry, Judge. 33, 34 --

22 THE COURT: 35, 36, 37, 38, 39A and B.

23 MS. RAMIREZ: I don't have any objection.

24 MR. GONZALEZ: Did I say 36, Your Honor?

25 THE COURT: You said 33, 34, 35, 36, 37, 38, 39A and

1 B.

2 MR. GONZALEZ: Your Honor, at this point in time --

3 THE COURT: And no objections. Is that what I heard
4 from both?

5 MS. STILLINGER: Yes, Your Honor.

6 MS. RAMIREZ: Yes, ma'am.

7 THE COURT: All right. Then 33, 34, 35, 36, 37, 38,
8 39A and B will be admitted.

9 MR. GONZALEZ: And, your Honor, Government's Exhibit
10 Number 33 is a stipulation of facts, bullet and firearm.

11 May I read that into the record to the jury?

12 THE COURT: You may.

13 MR. GONZALEZ: The United States of America versus
14 Ignacio Ramos and Jose Alonso Compean. Stipulation of facts,
15 bullet and firearm.

16 Comes now the United States of America, by and through
17 its United States Attorney for the Western District of Texas,
18 the undersigned Assistant United States Attorney, and Ignacio
19 Ramos, defendant in the above and entitled and numbered cause,
20 by and through his attorneys, Stephen Peters and Mary
21 Stillinger, and files this stipulation of facts, bullet and
22 firearm. And all parties represent to the Court the following
23 facts are stipulated and are not in issue.

24 The parties agree and stipulate that the Governments
25 would enter into evidence through the testimonies of the

1 following witnesses, Colonel Winston Warne, medical doctor;
2 Special Agent Christopher Sanchez, Department of Homeland
3 Security, Office of the Inspector General, DHS-OIG; Special
4 Agent Brian Carter, DHS-OIG; Ms. Elizabeth Munoz, crime lab
5 evidence technician, Texas Department of Public Safety, DPS;
6 Joseph James Correa, forensic scientist, the third, firearms
7 and tool marks examiner, the following evidence marked for
8 identification purposes as Government's Exhibits 34 through
9 Government's Exhibits 39.

10 The parties stipulate that the Government would call
11 Mr. Correa and would qualify him as an expert witness in the
12 field of firearms and tool marks identification.

13 The parties stipulate that a proper chain of custody
14 was maintained, Government's Exhibits 34 and 35.

15 As to the bullet fragment, Government's Exhibit 36,
16 and that the evidence would establish through the testimony of
17 Mr. Correa that Government's Exhibit 36 is, in fact, a .40
18 caliber bullet.

19 The parties stipulate a proper chain of custody was
20 maintained, Government's Exhibits 37 and 38, as to the Beretta
21 .40 caliber firearm, Government's Exhibit 39.

22 The parties also stipulate that Mr. Correa's testimony
23 would establish that the .40 caliber bullet was expelled from
24 the Beretta .40 caliber firearm, Government's Exhibit 39.

25 The parties also stipulate that Government's Exhibit

1 39 was functional and operational as designed. Also, the
2 parties stipulate that the Beretta .40 caliber firearm,
3 Government's Exhibit 39, was issued to Ignacio Ramos by the
4 United States Border Patrol for his use.

5 Lastly, all parties agree and stipulate that the .40
6 caliber bullet was surgically removed from the upper right
7 thigh area of Osvaldo Aldrete-Davila on or about March 16,
8 2006.

9 And that's incorrect. It's 2005, Your Honor.

10 THE COURT: All right. Any objection to that
11 correction?

12 MS. RAMIREZ: No, Judge.

13 MS. STILLINGER: No, Your Honor.

14 THE COURT: All right.

15 MR. GONZALEZ: And, with that correction, I would
16 continue.

17 The defendant and the Government stipulate to the
18 admissibility of the Government's Exhibits 34 through 39 at
19 trial in the instant cause of action, and further agree to the
20 admissibility of this stipulation, Government's Exhibit 33,
21 into evidence at trial into the instant cause of action.

22 Signed and agreed to this the 21st day of
23 February 2006, Johnny Sutton, United States Attorney, by Jose
24 Luis Gonzalez, Assistant United States Attorney; Stephen
25 Peters, attorney for Defendant Ignacio Ramos, and Mary

1 Stillinger, attorney for Defendant Ignacio Ramos, and Ignacio
2 Ramos, Defendant.

3 May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. Mr. Aldrete-Davila, you testified that Government's Exhibit
7 56A is where you fell. Is that correct?

8 A. Yes.

9 Q. And Government's Exhibit 56B shows the area where you fell,
10 taken from the levee road. Is that correct?

11 A. Yes.

12 MS. RAMIREZ: I'm going to object as to leading,
13 Judge.

14 THE COURT: I'll sustain. Don't lead.

15 MR. GONZALEZ: There's a person in this photograph.
16 And I will tell the parties that that is Christopher Sanchez --
17 And I'll -- let me show these photographs to the
18 parties.

19 THE COURT: Sure, go ahead.

20 MR. GONZALEZ: Your Honor, at this time we would move
21 into evidence Government's Exhibits 56A and B.

22 MS. STILLINGER: Those, we have no objection to,
23 Your Honor.

24 MS. RAMIREZ: And I don't have any objection for
25 purposes of what they depict.

1 THE COURT: All right. 56A and B will be admitted.

2 BY MR. GONZALEZ:

3 Q. Mr. Aldrete-Davila, you get shot. Where do you get shot?

4 A. In my left buttock.

5 Q. When you were shot, what happened to you?

6 A. I fell to the ground.

7 Q. And when you fell -- and what did you think had happened to
8 you?

9 A. I thought that they had used another type of bullet, that
10 wasn't the one that it was, a rubber bullet, of sorts. I had
11 once seen on television that they had done that.

12 Q. And, initially, what did you feel?

13 A. I felt a burning sensation, that -- it was a burning
14 sensation. So I touched it with my hand, and I saw the blood.

15 Q. What do you think at that point in time?

16 A. When I saw the blood, well, I -- I really didn't think
17 about anything. I just waited for them to come and arrest me.
18 But it wasn't like that.

19 Q. You were on the ground, correct?

20 MS. RAMIREZ: I'm going to object, Your Honor, as
21 leading the witness.

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

23 BY MR. GONZALEZ:

24 Q. Did you look back, sir?

25 MS. RAMIREZ: Objection as to leading, Judge.

1 THE COURT: I'll overrule. He can answer that.

2 BY MR. GONZALEZ:

3 Q. Did you look back?

4 A. Yes.

5 Q. From the ground, correct?

6 A. Yes.

7 Q. And what did you see behind you, if anything?

8 A. The two agents that were in pursuit of me gave a half a
9 turn and left.

10 Q. And what do you think at that time?

11 A. I wanted to shout obscenities at them.

12 Q. Were you surprised that they didn't come any further?

13 MS. RAMIREZ: I'm going to object as to leading,
14 Judge.

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

16 BY MR. GONZALEZ:

17 Q. You saw them turn around, correct?

18 A. Yes.

19 Q. When they turned around, where were their weapons? Do you
20 remember?

21 MS. RAMIREZ: Objection as to leading, Judge.

22 THE COURT: I'll overrule.

23 A. Down.

24 BY MR. GONZALEZ:

25 Q. What do you mean, down?

1 A. Well, they weren't pointed at me anymore. They had already
2 turned around.

3 Q. Did you see when they lowered their weapons?

4 A. No. I saw when they gave a half a turn.

5 Q. Did that surprise you?

6 A. Yes.

7 Q. Why?

8 A. Well, because I thought that -- I was down on the ground,
9 and they were going to come for me.

10 Q. In your mind, did they have enough time to come for you?

11 MS. RAMIREZ: I'm going to object as to leading,
12 Judge.

13 THE COURT: I'll overrule the objection.

14 A. Oh, yes, a lot.

15 BY MR. GONZALEZ:

16 Q. How close were they to you before they turned around, sir?

17 A. In reference to the exhibit right now, about halfway.

18 Q. Are you talking about Government's Exhibit 54?

19 A. Yes.

20 Q. You tell us where it is on that exhibit when you saw them
21 turn around.

22 A. Right here (indicating).

23 Q. And you were waiting for them to handcuff you?

24 A. Before they turned around, yes.

25 Q. And so when they didn't come for you, what did you do?

1 A. Well, I turned to look. And then, when I saw that they
2 weren't coming, I got up, got ready to jump into Mexico.

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

4 THE COURT: Yes, you may.

5 MR. GONZALEZ: Your Honor, can we talk?

6 THE COURT: Yes. May you approach the bench?

7 MR. GONZALEZ: Yes. I'm sorry.

8 (Bench conference:)

9 MR. GONZALEZ: Our agent thinks that maybe he needs to
10 go empty his bag. I'm not sure.

11 THE COURT: I guess my question is, how much longer do
12 you anticipate?

13 MR. GONZALEZ: It shouldn't be very much, around 15,
14 20 minutes.

15 THE COURT: I'm trying to decide if we should just
16 break for lunch, because I'd hate to make a big deal, and then
17 make him --

18 MR. GONZALEZ: I don't mind breaking for lunch now.

19 THE COURT: Then you can resume?

20 MR. GONZALEZ: Sure.

21 THE COURT: Okay.

22 (End of bench conference; open court.)

23 THE COURT: At this time, ladies and gentlemen of the
24 jury, we are going to go ahead and take a break for lunch. It
25 is about -- well, I can't see the clock, but I think it's about

1 12:40. And I would like to go ahead and take an hour break.
2 So I'm going to ask you to be back in the jury room at about
3 1:40.

4 Remember, as I have told you previously, that you
5 remain under all the instructions of this Court. Make sure
6 that your jury badges are somewhere where people can see that
7 you are a juror; can't discuss this case with each other, can't
8 discuss this case with anyone.

9 Everyone clear about that?

10 JURORS: Yes.

11 THE COURT: All right. We'll see you back at about
12 1:40.

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

14 THE COURT: All right. You may be seated.

15 Anything before we take a recess?

16 MS. STILLINGER: No, Your Honor.

17 MS. RAMIREZ: No.

18 MR. GONZALEZ: No.

19 THE COURT: We'll see everybody back here at 1:40.

20 Thank you.

21 Court stands in recess.

22 (Recess; open court, parties present, jury not
23 present.)

24 THE COURT: You may be seated.

25 MR. GONZALEZ: Judge, may we approach the bench?

1 THE COURT: Sure.

2 (Bench conference:)

3 MR. GONZALEZ: Jose Luis Gonzalez for the Government,
4 Your Honor.

5 I think that pretty soon I'll be ending my direct
6 examination. My concern is the motion in limine on this
7 immunity that he received from the Government. I anticipate
8 that the Government -- we're wondering how far they're going to
9 be allowed to go into those areas.

10 THE COURT: I don't know until I hear the answers.

11 MR. GONZALEZ: Well, I'm not asking him anything.

12 THE COURT: No, no. But they have the right to
13 cross --

14 MR. GONZALEZ: Sure.

15 THE COURT: And they have the right to cross about the
16 immunity.

17 MR. GONZALEZ: My understanding is they can't ask him
18 about that he had drugs on him. He doesn't have to answer
19 that. Was he here legally, that's my understanding. It's my
20 understanding that the Court's ruling is that's to the extent
21 he could be cross-examined.

22 THE COURT: Okay. But we have the issue of him
23 getting hospital treatment. We have the issue of the crossing
24 card. And once -- and then my concern is -- I mean, I don't
25 want to direct -- I'm not going to sit here and tell people how

1 to try their case. I will just have to address that when it
2 comes. But I will tell you there are a number of issues --
3 particularly the second motion that you're addressing. If it
4 comes to the point where you want to ask about the second
5 motion, you need to approach the bench, you know, because that
6 has been my ruling.

7 I don't know whether it's going to be admissible or
8 not until I hear where we're going. Again, my ruling is that
9 it may become admissible. I mean, I don't know how -- again,
10 you're supposed to approach the bench before we do anything.

11 MS. STILLINGER: I think that the witness has already
12 brought it out.

13 THE COURT: Well, I mean, if -- he hasn't gotten into
14 it. He certainly said, I was trying to get back across. I
15 don't know why he would be doing that.

16 MS. RAMIREZ: I also wanted to point out, I'm
17 wondering if we can ask him about prior to that. Because, in
18 one of the statements he makes to Agent Sanchez, he says he's a
19 truck driver, and that he transports to and from El Paso --
20 from Juarez to El Paso.

21 THE COURT: What's that got to do with it?

22 MS. RAMIREZ: If he's not coming in -- if he's --

23 MR. GONZALEZ: That's incorrect.

24 MS. KANOF: He was here legally. He used to have a
25 visa, a laser visa. He let it expire.

1 MR. GONZALEZ: From my interviews with him, he's never
2 transported.

3 THE COURT: But even so, I'm not sure what that has to
4 do with this trial. I mean, unless you can show me relevance,
5 I -- I -- I don't know what reports you have. You guys have
6 those advantages. But if it comes to the point where that
7 becomes relevant, you need to approach, because this is like
8 total news to me.

9 MS. KANOF: Judge, I'll just approach on any motions.

10 MS. RAMIREZ: And I just wanted to ask something else.
11 The Government is telling me that --

12 Ms. Ramirez on behalf of Mr. Compean.

13 They're telling me -- the Government is telling me
14 that I can't bring this witness back. So, subject to recall, I
15 can't say --

16 MS. KANOF: No, we didn't tell you that. That's not
17 what I told you at all.

18 MS. RAMIREZ: When the Government finishes --

19 MS. KANOF: That's not what I told you at all. You
20 represented to the Court that I said you couldn't call him
21 back, and that's not what I said. What I said, when we're
22 finished with the witness -- she has him under subpoena.

23 THE COURT: Okay. I heard.

24 MS. KANOF: And when the Government finishes with him,
25 the agents are no longer authorized to keep him in a hotel or

1 babysit him. The permiso that he has, he does not have in his
2 possession. The agents have it. What is provided for by the
3 permiso is that he be in their custody.

4 So I asked Ms. Ramirez, if she was going to want him
5 to stay, she was going to have to pay for him.

6 THE COURT: How about him being authorized? How about
7 him being authorized to stay is, I guess, the concern.

8 MS. KANOF: You know, I guess they would have to get a
9 new parole document.

10 THE COURT: Okay.

11 MR. GONZALEZ: My understanding is the parole --

12 Jose Luis --

13 -- that the parole document was issued to the agents.

14 THE COURT: I guess my concern is here for trial. And
15 trial is trial, and it's until the end. Now, paying for him is
16 a different issue. Once you're done with him, whether or not
17 they have to continue to pay for him is another issue. Having
18 him available for trial, trial is trial. And so I don't know
19 what you need. If you need something from me, that's fine.
20 But he will be available for trial, if he's under subpoena.

21 MR. GONZALEZ: What we're trying to articulate to her,
22 as far as his payment, as far as his -- his hotel stay and all
23 that, we're not responsible for those things, Your Honor.

24 THE COURT: I understand.

25 MS. KANOF: If she has him under subpoena, she's going

1 to reimburse the hotel, the cost of the agents babysitting him,
2 because the agents are holding the permiso. And --

3 MS. RAMIREZ: But, if I say subject to recall, what
4 does it matter whether I subpoenaed him or not? I think that's
5 incorrect.

6 THE COURT: Okay. Again, I'm not here to decide his
7 hotel bill. Okay? If you guys have a problem with the hotel
8 bill, I'll take that up.

9 All I'm saying to you is, I will keep him here
10 legally. Since he's here, I can do that, and I will make sure
11 that's done.

12 The hotel bill, if you guys want to file something,
13 I'll take it up. But this is not -- I didn't bring him here.
14 I'm not paying for it, and you guys have -- I can understand
15 he's no longer their witness. They may have some reason they
16 can't pay for him. I will look at it. But the issue is, if
17 you want him here, he will be kept here. After that --

18 MS. KANOF: Because I will be concerned, if he were
19 allowed to go home, he might not come back.

20 THE COURT: I understand.

21 MS. KANOF: I just wanted to make the Court aware of
22 it, so that provisions can be made.

23 THE COURT: I just said I will keep him here. The
24 issue -- through the end of the trial. The issue is not -- but
25 my understanding is there's a second issue about his expenses.

1 And again, that's an issue -- you need to file the appropriate
2 paperwork, and I will address it at that point.

3 MS. RAMIREZ: Thank you.

4 (End of bench conference; open court.)

5 THE COURT: Okay. Are we ready?

6 MR. GONZALEZ: Yes, Your Honor.

7 THE COURT: All right. Can we bring in the jury?

8 MR. GONZALEZ: Please.

9 (Open court, parties and jury present.)

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

11 And you may proceed, Mr. Gonzalez.

12 MR. GONZALEZ: Thank you, Your Honor.

13 BY MR. GONZALEZ:

14 Q. Mr. Aldrete-Davila, let me clarify something with you.

15 When you were at the ditch and agent -- an agent was moving to
16 strike you, did you see what happened to the agent once you got
17 past him?

18 A. No.

19 Q. Okay. And as -- on that day, February 17, 2005, were you
20 wearing a watch that day?

21 A. No.

22 Q. Were you wearing any jewelry on that date?

23 A. No, none.

24 Q. Anything shiny at all in your hands?

25 A. No.

1 Q. I think, where we left off before lunch, you had been shot.
2 You've looked back. You told us what you were thinking. What
3 do you do next?

4 A. I got up and I crossed the river.

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

6 THE COURT: Yes, you may.

7 BY MR. GONZALEZ:

8 Q. Mr. Aldrete-Davila, I'm showing you Government's Exhibit
9 57. Do you recognize what's contained in that photograph?

10 A. That's the entrance to the river.

11 Q. And that's where you entered on March 17, 2005?

12 MS. RAMIREZ: I'm going to object to leading, Judge.

13 THE COURT: I'll sustain.

14 BY MR. GONZALEZ:

15 Q. Okay. How do you recognize that entry, sir?

16 A. Because there's a lot of weeds, and the road is over here
17 (indicating).

18 Q. Is that the road that you took on March 17th?

19 A. March or February? Yes.

20 Q. February.

21 A. Yes.

22 Q. Now, let me direct your attention to Government's Exhibit
23 58. What does that show, sir?

24 A. That's the view of where I fell, looking at it from the
25 Mexican side, towards the United States.

1 Q. And, obviously, these pictures were not taken on February
2 17th. Is that correct?

3 A. No.

4 Q. Now, let me show you Government's Exhibit 60. Do you
5 recognize it, sir?

6 A. Yes.

7 Q. What does it show?

8 A. Well, the river and the Mexican levee.

9 Q. And is that the river that you crossed on February 17th?

10 A. That's it.

11 Q. The area shown in the photograph marked Government's
12 Exhibit 60?

13 A. Yes.

14 Q. And is Government's Exhibit 61, I guess, a close-up view of
15 Government's Exhibit 60?

16 A. Yes.

17 MR. GONZALEZ: Your Honor, at this time we would move
18 into evidence Government's Exhibits 57, 58, 60, and 61.

19 MS. RAMIREZ: No objection, Your Honor.

20 MS. STILLINGER: No objection, Your Honor.

21 THE COURT: 57, 58, 60, and 61 will be admitted.

22 BY MR. GONZALEZ:

23 Q. Now, Mr. Aldrete-Davila, I think, previously, you testified
24 that when you were shot you felt a stinging sensation. Is that
25 correct?

1 MS. RAMIREZ: I'm going to object, Your Honor. I
2 think he said burning. He's misstating the facts.

3 MR. GONZALEZ: I think she is correct, Your Honor.

4 THE COURT: I'm just trying to remember the exact
5 words. I'll sustain.

6 BY MR. GONZALEZ:

7 Q. Did you state previously that you felt a burning sensation?

8 A. Yes.

9 Q. And, after you got up, tell the jury what kind of pain you
10 felt.

11 A. My buttock hurt a lot. When I walked, my buttock hurt a
12 lot.

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

14 THE COURT: You may.

15 BY MR. GONZALEZ:

16 Q. First of all, let me direct your attention to Government's
17 Exhibit 62. And what does that show, sir?

18 A. That's a picture of my buttock, after I had the surgery on
19 the bullet.

20 Q. And that shows where the bullet entered your left buttock.
21 Is that correct?

22 A. Yes.

23 Q. And let me direct your attention to Government's Exhibit
24 63. Does that show where the bullet landed, or it ended, on
25 your right thigh?

1 A. Yes.

2 Q. And Government's Exhibit 64, does that show the -- well,
3 tell us, what does it show?

4 A. Well, it shows where the pipe goes out below my navel.
5 That's how I urinate.

6 Q. And Exhibit 65 is a similar photograph as Exhibit 64,
7 correct?

8 A. Yes, just a close-up.

9 Q. And Government's Exhibit 66 shows that it's actually you in
10 this photo- -- in all these other photographs, correct?

11 A. Yes.

12 Q. And Government's 67, what does it show?

13 A. It shows the thigh, where they had surgery to take out the
14 bullet.

15 Q. And Government's Exhibit 68, what does that show, sir?

16 A. It shows where they extracted the bullet and the surgery
17 and everything that it cost me. It shows the urine bag and
18 everything, all the other things.

19 Q. And, on Government's Exhibit 68, I'm looking at your right
20 upper thigh area. There's a scar there. Is that where the
21 bullet was removed?

22 A. Yes. That's where they operated me and took out the
23 bullet.

24 Q. Thank you.

25 MR. GONZALEZ: Your Honor, at this time the Government

1 would offer into evidence Government's Exhibits 62, 63, 64, 65,
2 66, 67, and 68.

3 MS. STILLINGER: No objection, Your Honor.

4 MS. RAMIREZ: No objection, Judge.

5 THE COURT: They'll be admitted. 62, 63, 64, 65, 66,
6 67, and 68 will all be admitted.

7 BY MR. GONZALEZ:

8 Q. Mr. Aldrete-Davila, you see that -- I guess it's, like, a
9 red tube coming out from your pubic area. What is that, sir?

10 A. It's a catheter that was implanted so that I could urinate.

11 Q. What happened to your urethra?

12 A. It got torn for about an inch.

13 Q. And, as a result of that, you needed this device?

14 A. Yes, I need it.

15 Q. And Government's Exhibit 68 shows you with a bag. Is that
16 correct?

17 A. Yes.

18 Q. What's that for, sir?

19 A. It's to store the urine. It serves as a bladder.

20 Q. Okay. Sir, it's fair to say that you could not urinate on
21 your own. Is that correct?

22 A. No.

23 Q. And that's a result of the shot that you suffered on March
24 17, 2005. Is that correct?

25 MS. KANOF: March?

1 BY MR. GONZALEZ:

2 Q. I'm sorry, February 17, 2005.

3 A. Yes.

4 MR. GONZALEZ: May I have a moment, Your Honor?

5 THE COURT: Yes.

6 MR. GONZALEZ: Your Honor, at this time I will pass
7 the witness.

8 THE COURT: All right. Cross-examination,
9 Ms. Stillinger?

10 CROSS-EXAMINATION

11 BY MS. STILLINGER:

12 Q. Mr. Aldrete, my name is Mary Stillinger. I represent
13 Ignacio Ramos. I would like to ask you first, you're
14 testifying here under a grant of immunity. Is that correct?

15 A. Yes.

16 Q. Okay. What is your understanding of that immunity
17 agreement?

18 A. My understanding is that there are going to be no charges
19 made against me.

20 Q. Okay. No charges made against you for any crime you may
21 have ever committed in your life?

22 A. No. There's going to be no charges for the offenses that I
23 may have committed on the 17th of February.

24 Q. Okay. And how was that immunity agreement conveyed to you?
25 Did you have that in writing or was it told to you orally?

1 A. It was verbal and written.

2 Q. Okay. The written agreement, was that in English?

3 A. Yes.

4 Q. Okay. But did somebody translate that for you?

5 A. Yes.

6 Q. Okay. And --

7 MS. STILLINGER: May I approach the witness,

8 Your Honor?

9 THE COURT: You may.

10 BY MS. STILLINGER:

11 Q. I'm going to show you what I've marked as Defendant Ramos's

12 Exhibit 2. I don't know if you would recognize that or not.

13 But could you tell me if you recognize that document?

14 A. Yes.

15 Q. Is that the written immunity agreement that was presented

16 to you at the United States consulate in Juarez?

17 A. Pardon? Could I have a repetition?

18 Q. Yes. Was that the document that was presented to you at

19 the American consulate in Juarez?

20 A. Yes.

21 Q. Okay. And, Mr. Aldrete, that document actually does not

22 contain a promise not to prosecute you, does it?

23 A. No. In a certain way.

24 Q. Okay. Could you explain what your understanding of that

25 is?

1 A. It's my understanding that there are going to be no
2 challenges made against me on that day, or about what happened
3 on that day, as long as there's an understanding that I tell
4 the truth about what happened.

5 Q. Okay. And another condition is that you -- well, one of
6 the conditions is that you not withhold any information or try
7 to protect anybody, correct?

8 A. Correct.

9 Q. Okay. I would like you to review that document.

10 MS. STILLINGER: And I'm sorry, Your Honor, I hadn't
11 thought about how to do this, because, obviously, it needs to
12 be translated for him. But I would like him to review that
13 document so he could -- I could ask him the question again,
14 whether or not it contains that provision that no charges will
15 be brought against him.

16 THE COURT: I'm not sure I understand what you're
17 asking the Court to do. Is there a specific portion that
18 you're concerned about? He's indicated he's familiar with the
19 document, so --

20 MS. STILLINGER: Right.

21 THE COURT: -- I'm not sure if he needs to -- I mean,
22 he may need to review it, I don't know.

23 But certainly, if you question him and he says, I'm
24 just not familiar, there's either -- you can point it out to
25 him, or I can actually -- she can review it with him. But I'm

1 not sure at this point I need to do that.

2 MS. STILLINGER: Well, let me tell you, Your Honor, my
3 question is -- I was going to ask him, could he point out to me
4 where it says no charges will be brought.

5 THE COURT: Well, ask him, and let's see if he can.

6 MS. STILLINGER: Okay.

7 BY MS. STILLINGER:

8 Q. Mr. Aldrete, could you point out to me where, in that
9 document, it says that no charges will be filed against you?

10 A. No.

11 MS. STILLINGER: I guess at this point I would ask if
12 the interpreter could review the document with him.

13 THE COURT: Okay.

14 Could the attorneys approach a the bench?

15 (Bench conference:)

16 THE COURT: Okay. First of all, get closer. Get
17 closer. The reporter --

18 MS. STILLINGER: Mary Stillinger for Ignacio Ramos,
19 Your Honor.

20 My point is, the document does not actually say that.
21 And if it was in Spanish, or if he spoke English, I could have
22 him review it and ask him the question again.

23 He would say, Oh, I was wrong, it doesn't say that.

24 THE COURT: Two things. Why can you not just ask the
25 question about where he got that idea from? Was it told him by

1 the translator who translated the document, or is this
2 something -- because I know there's been some discussion with
3 the prior witness about whether he was told that and whether it
4 was actually contained in the document. And then if he says,
5 you know, number one, it was told me; or, number two, no, it
6 was my understanding it was in the document, then that's a
7 different issue.

8 MS. STILLINGER: I thought that I had gone through
9 those steps.

10 THE COURT: I did not hear that. Now, maybe I missed
11 it. I try to concentrate on 100 things at the same time. But
12 I don't think I heard that. Am I wrong? I don't think he went
13 over where he got that.

14 MR. GONZALEZ: Jose --

15 THE COURT: That was his understanding of what the
16 deal was, but I don't know where he got that understanding.
17 Because he said the agent talked to him, and he said that he
18 got the document.

19 MR. PETERS: Steve Peters.

20 He said that he understood that he would not be
21 prosecuted for the events of February 17th, 2005.

22 THE COURT: But he didn't clarify where he got that
23 idea, right, whether it was from the --

24 MR. PETERS: I thought he said it was a piece of
25 paper.

1 MS. STILLINGER: I thought he said orally and a piece
2 of paper.

3 THE COURT: Clarify that. If he says both, say, Could
4 you review that document with the interpreter and see where in
5 that piece of paper you believe it says that?

6 (End of bench conference; open court.)

7 BY MS. STILLINGER:

8 Q. Mr. Aldrete, I'm going to ask you about two specific things
9 in this immunity agreement. One is the provision that you've
10 told us that you would not be prosecuted for anything that
11 happened on February 17th. Is it your belief that that
12 provision is in that document?

13 A. Yes.

14 Q. Okay. And the other question I wanted to ask you, another
15 provision of what you've described as the immunity agreement is
16 that this is conditioned upon you telling the truth. Do you
17 believe that's also in that written document?

18 A. Yes.

19 Q. Okay.

20 MS. STILLINGER: I guess at this point, Your Honor,
21 I'd like to ask Mr. Aldrete to review that document through the
22 interpreter, so I could ask him again, having reviewed the
23 document, if he still believes that.

24 THE COURT: Okay. How long is that document?

25 MS. STILLINGER: It's very short. Just a little over

1 a page.

2 THE COURT: All right. Could you go over that with
3 him?

4 THE INTERPRETER: Your Honor, the interpreter will
5 sight translate the document for the witness.

6 THE COURT: Okay. Yeah, it's not -- it doesn't need
7 to be -- so he can understand.

8 (Interpreter reading in Spanish to defendant from
9 document.)

10 BY MS. STILLINGER:

11 Q. Would you agree with me, Mr. Aldrete, that that agreement
12 says that they will not use your statements or your testimony
13 against you?

14 A. Yes.

15 Q. But would you also agree that it does not say that the
16 Government is not going to prosecute you?

17 A. Yes.

18 Q. Okay. And, therefore, if the Government had other evidence
19 of your guilt of a crime, that might include the identification
20 by these agents that you were involved with that day, if they
21 had that evidence, they could prosecute you, couldn't they?

22 MR. GONZALEZ: Your Honor, that calls for speculation
23 as to what the Government would do. He has no way of knowing
24 what we would do.

25 THE COURT: All right. I will overrule the objection.

1 A. Would you repeat what you said?

2 BY MS. STILLINGER:

3 Q. Yes. The question was this: Therefore, if the Government
4 had other evidence that you committed a crime, including the
5 identification of these two agents that you were involved with
6 that day, they could use that evidence against you to prosecute
7 you?

8 A. Well, yes.

9 Q. Okay. And your understanding that no charges at all would
10 be brought against you, that was told to you by Agent Sanchez?

11 A. Yes.

12 Q. Okay. And your understanding that, as long as you told the
13 truth, that you would have immunity, that was also part of
14 your -- what Agent Sanchez explained to you, correct?

15 A. Yes.

16 Q. And you required this piece of paper, what I've marked as
17 Defendant Ramos's Exhibit Number 2, you required that piece of
18 paper before you would be interviewed by Agent Sanchez. Is
19 that correct?

20 A. He was going to take it before we had the interview.

21 Q. Okay. And that was a condition that you put upon having
22 the interview, wasn't it?

23 A. Yes, so I could have it. But he wasn't going to take it
24 before we met. When he -- when he and I met, then he was going
25 to take it.

1 Q. Right. But he had to present it to you at the beginning of
2 the interview, before you would be interviewed, didn't he?

3 A. Yes.

4 Q. Okay. And was that your idea, to ask for the immunity
5 agreement?

6 A. No, no. He mentioned to me that, if I would come and
7 interview and cooperate with him, that he would give it to me.
8 It wasn't done on my initiative.

9 Q. Okay. Well, initially, when you talked to Rene Sanchez
10 about this, you told him you didn't want to talk without having
11 an immunity agreement, didn't you?

12 A. No, not specifically an immunity agreement. I told him I
13 didn't want to talk to him, because I didn't want to have any
14 problems over here.

15 Q. Okay. Was it Rene Sanchez that suggested an immunity
16 agreement for you?

17 A. Yes. He mentioned to me that it could be handled this way.
18 And then, when I talked to Agent Sanchez with Chris, then they
19 explained it to me, and then they gave it to me.

20 Q. Okay. Just so we don't confuse the two Sanchezes, it was
21 Rene Sanchez that suggested this to you. And then later you
22 talked to Chris Sanchez about it?

23 A. Yes.

24 Q. Okay.

25 MS. STILLINGER: I think I need to approach the bench

1 at this point.

2 THE COURT: All right.

3 (Bench conference:)

4 MS. STILLINGER: This is Mary Stillinger for
5 Mr. Ramos.

6 Your Honor, I've put it off as long as I can. I want
7 to ask him the value of this immunity agreement to him, which I
8 can't ask unless I ask him what was he -- what did he do that
9 day that he's getting immunity for.

10 THE COURT: Well, here is my question, and that has to
11 do with -- what is he getting immunity for, Ms. Stillinger?

12 MS. STILLINGER: He's getting immunity for being
13 involved in transporting 700-something pounds of marijuana.

14 THE COURT: Well, my understanding, from what you've
15 clarified, he doesn't have immunity. He has use immunity,
16 which is they can't use statements. He doesn't have
17 prosecutorial immunity.

18 MS. STILLINGER: He understands that he does.

19 MS. KANOF: Debra Kanof.

20 Prosecutorial immunity was orally explained to him by
21 Agent Sanchez, based on Ms. Gardes' instruction.

22 THE COURT: So is he under prosecutorial immunity as
23 to that day as opposed to use immunity?

24 Can we have Mr. Boyaki come up here?

25 MR. PETERS: Yes.

1 MS. KANOF: Walter?

2 THE COURT: It's his client that's incriminating
3 himself. My concern is -- what I'm trying to clarify, are we
4 talking about prosecutorial or use immunity here? The letter
5 seems to indicate use immunity. However, there's been
6 discussion that there was prosecutorial immunity offered to him
7 orally.

8 My concern is there's a difference, and so for the
9 purposes of determining whether or not -- what I'm going to
10 allow everybody to get into, I need to know, are we talking
11 about use or prosecutorial immunity?

12 MS. KANOF: I believe -- Debra Kanof.

13 Agent Sanchez testified that he told him, if he told
14 the truth, nothing that he said, based on what he did that day,
15 would be used against him.

16 THE COURT: Which is use immunity, not --

17 MS. KANOF: It's basically use immunity. But more
18 specific, in that the letter, the use immunity letter, is very
19 general. It doesn't specifically say, You won't be prosecuted.

20 But the agent told him -- expanded, so to speak, on it
21 and said, Whatever you tell us about what happened that day
22 will not be used against you, if you tell the truth.

23 In other words, if you committed a crime that day and
24 you tell us about it, you will not be prosecuted for that, as
25 long as you tell the truth.

1 What he communicated to him is exactly what the
2 proffer letters that are given to the agents that testified,
3 that is, whatever they tell about that day, if they tell you
4 they committed a crime and they're truthful, that information
5 won't be used against them.

6 MS. STILLINGER: Maybe you need to look at the
7 exhibit. That's not what it says. I mean, for one thing, that
8 restriction -- I think Agent Sanchez clarified that restriction
9 in there the same way it's in the proffer letter.

10 THE COURT: That's my concern. So I just want to make
11 sure that we are talking about prosecutorial versus use
12 immunity.

13 MS. STILLINGER: I think Agent Sanchez was very clear
14 he orally communicated the instructions, Brandy Gardes'
15 instructions, that he has prosecutorial or transactional
16 immunity for anything that happened that day.

17 THE COURT: I understand that maybe that's what he
18 communicated. That's my understanding. Okay. That's my
19 understanding of what was communicated.

20 But that is not in the letter. And I am just
21 concerned that if some charges come up later, there's some
22 misunderstanding of what he was given or not given in that
23 letter, as opposed to orally.

24 And so I just want to -- number one, I want it on the
25 record, and I want to be clear before I rule. So does anybody

1 want to enlighten me? Is it prosecutorial, use, some
2 combination?

3 MS. KANOF: Your Honor, it's a weird hybrid, that the
4 written immunity letter is use immunity. What she had the
5 agent communicate to him was an expansion of that use immunity,
6 specifically saying, not that he wouldn't be prosecuted for
7 anything he did on that day, but he wouldn't be prosecuted if
8 he told the truth for anything he told us he did on that day.
9 And that's a distinction. Okay? Because --

10 THE COURT: Well, it's a big distinction. As
11 Ms. Stillinger just said, they don't need him to say what he
12 did. They didn't know what he did.

13 MS. KANOF: Right. Well, they know, but they would
14 never have been able to identify him. They didn't know who did
15 it.

16 THE COURT: Now they can, without him, and that is
17 because of the bullet in his leg.

18 MR. PETERS: It's because Agent Compean got a good
19 enough look at him. I don't know about Agent Ramos. But
20 Compean --

21 Steven Peters.

22 -- got a look at him, and he can identify him in
23 court. He didn't even need to be here. He saw him on the
24 17th.

25 THE COURT: But I guess -- I guess my concern -- my

1 concern is that -- again, I understand that to be use immunity,
2 which is not the same thing as prosecutorial immunity. And
3 again, now, if he is facing prosecution, my concern is that
4 he's now up on the witness stand, and you're about to ask him
5 questions about what he did on that day.

6 And I don't know -- I just am concerned if at some
7 point there's a decision to prosecute him for those crimes.

8 MS. STILLINGER: I understand Ms. Kanof to be saying
9 that the hybrid is he's getting transactional immunity, but
10 only for those events that he discloses. So if it turns out he
11 murdered somebody on that day, he doesn't have immunity for
12 that. But he does have transactional immunity for every event
13 he told them about.

14 MS. KANOF: As long as he tells the truth. As long as
15 he tells the truth.

16 MS. STILLINGER: So it was an expansion on what's
17 written.

18 THE COURT: So immunity from prosecution on those.

19 MS. STILLINGER: The prosecutorial, as long as it's an
20 event he disclosed to them honestly about.

21 THE COURT: Okay. So, given that, you can go into
22 what he did on that day.

23 MS. KANOF: What about the amount?

24 THE COURT: I think they can go into what he did that
25 day, including the amount.

1 MR. GONZALEZ: If they can establish that he knew the
2 amount, Your Honor.

3 THE COURT: Of course. I don't want numbers being
4 thrown out there. This is what he knew, not anything else.
5 Okay?

6 MS. KANOF: Can Mr. Gonzalez advise him? He advised
7 him of the motion in limine. He needs to advise him what he
8 can talk about, what we're talking about right now.

9 You think he knows?

10 THE COURT: Again, tread cautiously, because I don't
11 need a mistrial. I want this case tried clean and fair. All
12 right?

13 (End of bench conference; open court.)

14 THE COURT: You may proceed.

15 MS. STILLINGER: Thank you.

16 BY MS. STILLINGER:

17 Q. Mr. Aldrete, what were you worried about being prosecuted
18 for that you did on the day of February 17th, 2005?

19 A. The offenses that I was worried about?

20 Q. Yes, the offenses that you were worried about.

21 A. Because of what I was transporting.

22 Q. Okay. And what were you transporting?

23 A. Well, it was drugs. I don't know what type of drugs it
24 was.

25 Q. Okay. And you're talking about transporting that in the

1 van that you were driving?

2 A. Yes.

3 Q. Okay. Mr. Aldrete, let -- let me start at the beginning of
4 that day. I know you told us about driving up into Fabens.

5 Let me start a little earlier than that and ask: When did you
6 come into possession of this van?

7 A. That day, a few minutes before, from when I got it to when
8 I got to the traffic lights. It was from the time that -- from
9 the river to where I was there. It was about five minutes,
10 more or less.

11 Q. Okay. And did you cross the river that day to come into
12 the United States?

13 A. Yes.

14 Q. Okay. Actually, that's kind of a silly question, because
15 you have to cross the river.

16 But what I meant is, did you enter through a port of
17 entry, or did you cross the river on foot, where there's not a
18 bridge?

19 A. I crossed the river walking, where the van was.

20 Q. Okay. And where did you cross?

21 A. Where the van was stopped, a little bit there. Not -- not
22 where the van ended up, but a little bit to the side of Ysleta.

23 Q. A little bit further west?

24 A. Yes.

25 Q. Okay. Is it an area known as Las Pompas?

1 A. I don't know.

2 Q. Okay. Is that what you told the agents, or Agent Sanchez,
3 Agent Rene Sanchez, originally, that you crossed at a place
4 called Las Pompas?

5 A. I don't know Las Pompas.

6 Q. Okay. Where did you tell him that you crossed?

7 A. I crossed, really, through Colorado, that's on the Mexican
8 side. That's what they call it.

9 Q. Okay.

10 MS. STILLINGER: Could I approach the witness,
11 Your Honor?

12 THE COURT: Yes, you may.

13 BY MS. STILLINGER:

14 Q. I'm going to show you a map that I will mark as Defendant
15 Ramos Exhibit 6.

16 A. Okay.

17 Q. And you can look at it for a minute, just to orient
18 yourself. See, this is Fabens up here (indicating), correct?

19 A. Okay.

20 Q. And this (indicating) is the road coming south of Fabens
21 that you eventually took when you were trying to leave,
22 correct?

23 A. Yes.

24 Q. Okay. Can you show me on this map where you crossed and
25 found the van?

1 A. Here (indicating), more or less. More or less, not
2 exactly.

3 Q. Okay. I understand that's just an approximation. I'm just
4 going to put a red arrow for us. Okay?

5 And was the van on a dirt road?

6 A. Yes.

7 Q. How did you know to find the van there?

8 MR. GONZALEZ: Objection, Your Honor. Could we
9 approach?

10 THE COURT: Yes.

11 (Bench conference:)

12 MR. GONZALEZ: We would object --

13 Jose Luis Gonzalez, for the Government.

14 We object to this line of questioning, anything prior
15 to him -- who contacted him and how it was arranged and all of
16 those things. That's irrelevant. I think that goes to what
17 the Court ruled previously was inadmissible.

18 MS. STILLINGER: And I would say, Your Honor, the
19 scope of this involvement in the offense that he's getting
20 immunity is important for the value of the immunity agreement.

21 For instance, if this were his marijuana, that would
22 be very important, because he's not just a mule, and he gets
23 more points for that and would have a heavier sentence.

24 But, besides that, there is already evidence that he
25 withheld information from Agent Sanchez, which is a breach of

1 the immunity agreement. And I think I have a right to get into
2 the fact that he violated the agreement, and the Government is
3 not doing anything about it. And he violated by protecting
4 people he was working with.

5 MS. KANOF: What involvement -- where did he lie to
6 Agent Sanchez after he received immunity?

7 MS. STILLINGER: By withholding information,
8 protecting people.

9 MS. KANOF: This is Debra Kanof.
10 You're not saying he lied.

11 MS. STILLINGER: I think he did, too, of course. But
12 I don't think that's --

13 MS. KANOF: Your Honor, the witness just testified he
14 didn't know what kind of drug it was. I think that sort of
15 answers the question as to his knowledge as to what his
16 potential crime would have been.

17 And I do think that she can certainly cross-examine
18 him regarding the benefit he's getting. Do you know that --
19 you know, he could go to jail or something like can that.

20 Now she's talking about the facts underlying the drug
21 trafficking, and putting -- basically, putting him on trial not
22 based on his immunity, but based on the crime that he committed
23 that day, for which he received immunity, and the Government
24 objects.

25 You know, I guess we could be here all day about the

1 specifics. She could ask him who gave him the marijuana, did
2 he own the marijuana. I mean, I don't know how any of that is
3 relevant, since he's the victim.

4 THE COURT: I think this question had to do with, How
5 did he know where the truck was?

6 MS. STILLINGER: How did he know to pick it up.

7 THE COURT: Okay.

8 MR. GONZALEZ: Your Honor, Jose Luis Gonzalez.

9 Of course, if he were allowed to answer that, he would
10 testify that he was told where the van would be. He was told
11 by the people who recruited him. That's what we were afraid
12 of, that we're going to get in this area --

13 THE COURT: I don't want to get into a whole other
14 area. I also think some -- it didn't drop out of the sky, so I
15 don't necessarily have a problem with him saying that he was
16 told to pick up the van.

17 What I'm trying to avoid is, he is not on trial here.
18 And so what I want to make sure is that -- I don't have a
19 problem with you asking him how he knew the van was there. He
20 was told.

21 But I do not want to get into the drug trafficking
22 organization or all of that kind of stuff. You can ask him if
23 he owned the marijuana, if he knew what the drug was. You can
24 go into circumstances like that. But I don't want to get into
25 this entire crime, okay, because he is not on trial.

1 MS. RAMIREZ: Maria Ramirez on behalf of Compean.

2 I think we can certainly ask him if he knew what the
3 weight was, because I think that has to do with his punishment.
4 If he thought -- if he knew.

5 THE COURT: Okay. Unless he knew specifically, then
6 move on.

7 MS. STILLINGER: May I ask him if he was getting paid
8 to do this?

9 THE COURT: You may, yes.

10 MS. STILLINGER: Yes? Okay. Okay.

11 (End of bench conference; open court.)

12 THE COURT: You may proceed, Ms. Stillinger.

13 BY MS. STILLINGER:

14 Q. Mr. Aldrete, I think the question I had asked, that you can
15 answer now, is: How did you know to pick the van up right
16 there?

17 A. Because from the Mexican side, where I was going to cross
18 the river, I could see the van, that it was there.

19 Q. Okay. But you didn't just happen to see a van and say, I
20 think I will drive that van away. Did you know the van had
21 something in it?

22 A. It's logical, yes.

23 Q. It's logical. Okay. Did somebody tell you that?

24 A. Of course.

25 Q. Okay. And what did they tell you about what was in the

1 van?

2 A. They didn't tell me exactly what it had. I mean, they just
3 said that I was going to drive it. I mean, they didn't say it
4 has this much or it has this other.

5 Q. Okay. Were you being paid to drive the van?

6 A. They were going to pay me. They hadn't paid me anything.

7 Q. And what were they going to pay you?

8 A. They said it was going to be between 1,000 and 1,500.

9 Q. And, from your experience, did you have a belief about what
10 would be in the van?

11 MR. GONZALEZ: Objection, Your Honor, assumes facts
12 not in evidence, what his experience is.

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

14 Restate the question.

15 BY MS. STILLINGER:

16 Q. Did you have a belief about what was in this van?

17 A. Well, only that they had told me it was drugs. But it
18 wasn't like they had told me -- I mean, it wasn't like I knew
19 what it was or what it had. I mean, I couldn't say that I
20 already knew what was in it.

21 Q. Okay. So, as far as you knew, before you crossed to get
22 this van, you knew it was drugs, but you didn't know if it was
23 marijuana, cocaine, heroin, or anything else. Is that fair?

24 A. Yes, it's true. I didn't know.

25 Q. Okay. And when you crossed the van, I guess -- you're

1 saying you could see it from the Mexican side, correct?

2 A. Yes.

3 Q. Okay. And did it have keys in it waiting for you?

4 A. Yes, they were on the ignition.

5 Q. Okay. So I take it you did not see the van loaded. Is
6 that correct?

7 A. No.

8 Q. Okay. And you took the keys, got in the van. Did you
9 happen to look in the back of the van?

10 A. No. I got -- I got in the van and I took the keys. I
11 didn't get the keys and get into the van. And I didn't look
12 back.

13 Q. Okay. When you get in the van, is there any kind of
14 partition behind you that obstructs your view from the back of
15 the van?

16 A. No.

17 Q. Okay. Are you saying you didn't see anything in the back
18 of the van?

19 A. There's some vans that have something that's right behind
20 you. But, even if it's there, you can still see if there's
21 some obstruction. But I didn't turn around to see if there was
22 an obstruction.

23 Q. Okay. I guess what I'm asking -- I understand you didn't
24 make a point -- what you're saying is you didn't make a point
25 of looking around into the back of the van. But what I'm

1 asking is: When you get in the van, it seems like you couldn't
2 help but see what's the back of the van, did you?

3 A. Well, no. There were just some bundles there.

4 MS. STILLINGER: Your Honor, can we approach the
5 bench?

6 THE COURT: Sure.

7 (Bench conference:)

8 MS. STILLINGER: He's saying he didn't --

9 Mary Stillinger for Ignacio Ramos.

10 Your Honor, what I wanted to ask him about was what
11 I've marked here as Defendant Ramos Exhibit 8, which is a
12 picture taken at the scene before the bundles were removed,
13 where you can see through to the driver's seat, and it appears
14 very obviously.

15 THE COURT: So the record is clear, it has two panels,
16 which demonstrate what the driver could see.

17 MS. STILLINGER: Yes.

18 THE COURT: This one doesn't.

19 MS. STILLINGER: The larger of the two pictures. The
20 back doors are open.

21 THE COURT: This -- if -- he didn't open the back
22 doors. So what's your request?

23 MS. STILLINGER: My request, I wanted to ask about
24 this.

25 MR. GONZALEZ: Jose Luis for the Government.

1 The larger one shows the back area. That's the --

2 THE COURT: What I'm saying -- I don't know what this
3 is here, but it's got the doors open. If she's trying to say
4 that he couldn't get in this van without seeing -- and then he
5 looks in the rearview mirror, without seeing all of this, this
6 is the only picture that would show that.

7 MR. GONZALEZ: My concern is, if she were to present a
8 picture from the vantage point from the seat back, then I would
9 have no objections. There's not going to be any evidence that
10 he knew what was contained in there.

11 THE COURT: There's no question it was potatoes.
12 Okay?

13 MR. GONZALEZ: But that he went back, had the vantage
14 point, because it's extremely prejudicial if he didn't see this
15 the way it -- she's --

16 MR. PETERS: Stephen Peters for Defendant Ramos.

17 It's incredible -- it is unbelievable to imagine he
18 couldn't have seen that. And I think we should be entitled to
19 show the jury what was sitting right there. Our position is
20 that he's lying.

21 THE COURT: I understand. For that reason I will
22 allow this larger picture, which is -- doesn't show any
23 obstructions. I understand that it may be somewhat
24 prejudicial. Everyone already knows there was marijuana back
25 there. For the purposes of his vantage point and

1 cross-examination, I will allow the larger picture, not the
2 smaller picture. It has nothing to do with what he's testified
3 to. Either that or you can cut it or something.

4 MS. KANOF: Do you have a scissor?

5 THE COURT: I might. I don't know how you want to do
6 this. If you need to take a short break to use scissors or to
7 send someone out, that's fine. But you cannot use the entire
8 thing.

9 MS. STILLINGER: I understand.

10 MR. PETERS: I didn't think I could bring scissors
11 into this building.

12 THE COURT: You probably can't. But my judicial
13 assistant could have one. I think Javier went to get scissors.

14 MR. PETERS: I'll cut it. Just to be clear, we're
15 going to cut this part out. That's fine.

16 THE COURT: That's fine. You cut it here, and you can
17 use this to mark on.

18 MR. PETERS: Okay.

19 (End of bench conference; open court.)

20 MS. STILLINGER: May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 BY MS. STILLINGER:

24 Q. Mr. Aldrete, I'm showing you what I've marked as Defendant
25 Ramos Exhibit 8. Does that picture look familiar to you?

1 A. Yes. I believe so. It's the interior of the van, no?

2 Q. Okay. That's the van that you were driving on February 17,
3 2005?

4 A. Yes.

5 Q. Okay. And, in that picture, you can see the driver's seat
6 of the van, correct?

7 A. Yes.

8 Q. Okay. And I understand this picture is taken from the rear
9 of the van. But is that the condition of the rear of the van
10 when you were sitting in the driver's seat?

11 A. Yes.

12 Q. Okay. So you could see these rather large bundles,
13 couldn't you?

14 A. Yes.

15 Q. Okay.

16 MS. STILLINGER: Your Honor, I move for admission of
17 Defendant Ramos Exhibit Number 8.

18 MR. GONZALEZ: No objection.

19 THE COURT: It will be admitted.

20 BY MS. STILLINGER:

21 Q. And, Mr. Aldrete, when you got in the van, then, and you
22 saw all these very large bundles, at that point, did you
23 realize you were carrying marijuana?

24 A. No.

25 Q. Okay. Mr. Aldrete, what did you think was in these

1 bundles?

2 A. Well, nothing came to mind. I mean, there's a lot of
3 things that can be crossed.

4 Q. Okay. What other --

5 MS. STILLINGER: May I put this on the -- oh, never
6 mind.

7 BY MS. STILLINGER:

8 Q. What else did you suppose might be in these bundles besides
9 marijuana? If you could, give me some examples.

10 A. Well, it's not that I suppose anything. I mean, everybody
11 knows that there's a lot of different things that get crossed,
12 a lot of types of drugs.

13 And I don't know how they package those drugs. I
14 don't know if they package them in big bundles, if it's
15 cocaine, if it's anything like that. I -- I don't have any
16 idea of the different drugs that are crossed.

17 Q. Okay. But you did know that these were drugs, correct?

18 A. Yes.

19 Q. Okay. And did it occur to you that this was a fairly large
20 quantity of drugs?

21 A. No, I didn't think about the amount at that time.

22 Q. Did you know it was illegal to be driving or possessing
23 drugs in the United States?

24 A. Yes. That, I did.

25 Q. Okay. And are you telling us you did not know what type of

1 drug or the quantity of drugs?

2 A. Yes.

3 Q. Okay. Let's talk about Fabens a little bit. You
4 identified a number of pictures for Mr. Gonzalez of various
5 streets in Fabens. Are you very familiar with Fabens?

6 A. Yes.

7 Q. Have you ever lived in Fabens?

8 A. No.

9 Q. How do you know Fabens so well?

10 A. When I used to have my border crossing card, and -- because
11 I used to have it before they took it away -- I used to go over
12 and go buy things, and I crossed by that bridge there. I mean,
13 I know Alameda Street and some of the streets. I don't know
14 all houses or everything else all that well.

15 Q. Okay. When you picked up this van, you said it was on a
16 dirt road, correct?

17 A. Yes.

18 Q. How did you know where to go from there?

19 A. The people had told me which way to go.

20 Q. Okay. So what was -- where were you going first?

21 A. I was just going to go up to the traffic light in Fabens,
22 and that was it. I was going to turn left, and there was going
23 to be a car there that was going to make -- give me a signal,
24 and that was it.

25 Q. Okay. But you knew how to get from the dirt road by the

1 river up to the traffic light on Alameda Street?

2 A. Yes.

3 Q. Okay. And so you're familiar with those dirt roads that
4 take you over to Fabens Road, correct?

5 A. No. Dirt roads, no.

6 Q. Oh. Did they just give you very specific instructions of
7 how to find your way into Fabens?

8 A. Yes. They gave me instructions of how to get to the
9 asphalt road. Once I get to the asphalt, I'm fine. They gave
10 me very specific instruction on how to get there. The dirt
11 roads, I don't know. But once I get out onto the asphalt, I'm
12 fine.

13 Q. Okay. And how fast were you driving away from the river,
14 where you picked up the van? How fast were you driving when
15 you were going towards Fabens?

16 A. Normal, speed limit, one could say.

17 Q. Okay. Well, on dirt roads there's probably not a speed
18 limit, correct?

19 A. No.

20 Q. So how fast were you driving on the dirt roads?

21 A. About 35; 40, at the most.

22 Q. Okay. And then when you headed up the paved road, you went
23 the speed limit?

24 A. Yes.

25 Q. Okay. And so you slowed down to ten miles an hour when you

1 came to the ten-mile-an-hour sign?

2 A. Yes.

3 Q. Okay. And I could --

4 MS. STILLINGER: May I approach the witness again,
5 Your Honor?

6 THE COURT: You may.

7 BY MS. STILLINGER:

8 Q. I would like to show you this map again. And --

9 MS. STILLINGER: You know what? I'm sorry. I would
10 like to see if we can put this on the Elmo.

11 THE COURT: All right. We need to turn off the
12 lights.

13 MR. GONZALEZ: Judge, I don't have it marked as
14 evidence here.

15 MS. STILLINGER: It's not. It's just a map, though.

16 THE COURT: Just make sure they have no objections to
17 the map.

18 MS. STILLINGER: I put this here, where he showed me.

19 THE COURT: Okay. Ready?

20 BY MS. STILLINGER:

21 Q. This is the map that I just showed you a minute ago,
22 correct?

23 A. Yes.

24 Q. Okay. I'm going to move it up a little bit. Okay. Let's
25 see if we can -- this arrow we put on there to show more or

1 less where you thought you picked up the van, correct?

2 A. Yes.

3 Q. Okay. And this -- I'm going to try to get all the
4 important part on here.

5 This is the road into Fabens, correct?

6 A. Yes.

7 Q. Okay. So you came over to this road, correct?

8 A. Yes.

9 Q. And you headed north towards Fabens. Is that right?

10 A. Yes.

11 Q. Okay. And are you saying you first saw a Border Patrol
12 agent behind you -- that wasn't until you got to the stoplight
13 in Fabens?

14 A. Yes. The first agent that I saw, I saw him when I was
15 stopped at the traffic light.

16 Q. Okay. So you actually hit the red light at the
17 intersection of Fabens Road and Alameda?

18 A. Yes. It was on red.

19 Q. And you didn't see a Border Patrol agent anywhere in this
20 section of the road?

21 A. No.

22 Q. Okay. And, in this section of the road going into Fabens,
23 you're testifying that you were driving the speed limit this
24 whole time, correct?

25 A. Yes.

1 Q. Okay. Let's see if this comes out all right. If I could
2 just tell you, this is a close-up of Fabens Road coming into
3 Fabens. And actually --

4 MS. STILLINGER: Could I approach the witness? I
5 would like to show it to him personally, first.

6 THE COURT: Sure.

7 BY MS. STILLINGER:

8 Q. I'm showing you what I've marked for identification
9 purposes as Defendant Ramos 9. And this is a small map,
10 correct?

11 A. Yes.

12 Q. And you see that the big street coming through here is
13 Highway 20, correct?

14 A. Yes. It's Alameda.

15 Q. Okay. So you recognize this area of Alameda Street,
16 correct?

17 A. Yes.

18 Q. And this is the road coming into Fabens from the south,
19 correct?

20 A. Yes.

21 Q. Now, when I had it up here on the projector, could you see
22 it well enough or --

23 A. Yes.

24 Q. Let me try to ask you questions from -- okay.

25 Let me ask you -- I'm going to be over here, but I'm

1 going to hand you that pointer, and see if you can point to --
2 but let me -- let me first point to -- so you can get oriented
3 on this.

4 Okay. This is the road coming in from the south into
5 Fabens (indicating), correct?

6 A. Yes.

7 Q. Okay. And then this is the stoplight right here
8 (indicating), correct?

9 A. Yes.

10 Q. And you didn't see any agent parked here (indicating), that
11 you happened to drive past on your way to the stoplight?

12 A. No.

13 Q. Okay. What did you see? When you stopped at the stoplight
14 here (indicating), what did you see behind you, as far as this
15 Border Patrol agent?

16 A. No, I didn't see any agent in back, just the one that gave
17 a U-turn and came back.

18 Q. Okay. Could you point out with the pointer? I didn't
19 understand where that -- I thought that was the agent behind
20 you. But could you explain where that agent was?

21 A. I was stopped here (indicating), and the agent was coming
22 from Alameda over there (indicating). And I stopped there
23 (indicating). He made a U-turn and came back.

24 Q. Okay. The agent was coming along this road (indicating)?

25 A. Yes.

- 1 Q. And he did a U-turn in this intersection (indicating)?
- 2 A. No. At the intersection, he turned right.
- 3 Q. Okay. So he came down this way (indicating)?
- 4 A. And when he turned right, he passed alongside where I was
- 5 on the van, and then he turned back.
- 6 Q. Okay. Where -- can you point to me where he did his
- 7 U-turn?
- 8 A. Right about that (indicating), between that street and the
- 9 other.
- 10 Q. Okay. And it was right in here (indicating)?
- 11 A. Yes.
- 12 Q. Okay. Mr. Aldrete, I noticed when you're using the pointer
- 13 you're holding your right hand up with your left. Do you have
- 14 a problem with your right hand?
- 15 A. I don't have -- I don't have a -- my hand doesn't hold
- 16 steady.
- 17 Q. Okay. Because I thought I saw you earlier holding it with
- 18 your left hand.
- 19 A. No. It's my right.
- 20 Q. Okay. This agent turned around, and he followed you this
- 21 way (indicating). Is that what you're saying?
- 22 A. Yes.
- 23 Q. And then you followed down here and here (indicating),
- 24 correct?
- 25 A. Yes.

- 1 Q. And this agent is behind you. Is that right?
- 2 A. Yes.
- 3 Q. When is it, or where are you, when you see a second Border
4 Patrol vehicle join?
- 5 A. When I was getting close to that curve, about there
6 (indicating).
- 7 Q. Okay. When you're getting ready to turn back onto this
8 road?
- 9 A. No, I'm already on that road.
- 10 Q. You're already on this one here (indicating)?
- 11 A. Yes.
- 12 Q. And where did the second vehicle come from? Did you see?
- 13 A. No.
- 14 Q. Okay. Now, when you were making -- I think you had told
15 Mr. Gonzalez that you decided to turn to the left, because you
16 saw the Border Patrol vehicle. Is that right?
- 17 A. Yes.
- 18 Q. Okay. When you saw the Border Patrol vehicle, then, what
19 was your intention, when you turned to the left?
- 20 A. Return to the river.
- 21 Q. Okay. And you know that you can make that circle and get
22 back on this road southbound?
- 23 A. Yes.
- 24 Q. Okay. But I think you also said to me earlier that this is
25 where you thought you would run into somebody that would tell

1 you where to take the marijuana -- or take your cargo.

2 A. When I would turn left into Alameda, I was going to meet up
3 with a car. It wasn't going to be exactly right there. As I
4 moved along Alameda, I was going to run into a vehicle that was
5 going to signal me.

6 Q. Okay. And tell you where to take your cargo, correct?

7 A. Yes. They just told me that he was going to signal me, and
8 for me to follow him.

9 Q. Okay. But when you saw the Border Patrol -- well, did you
10 have some indication that the Border Patrol agent was following
11 you?

12 A. No.

13 Q. Okay. You just saw the agent and said, Yikes, I'm going to
14 get out of here?

15 A. Yes.

16 Q. Okay. So that's when you made your decision to get away
17 from them and try to go back to Mexico, correct?

18 A. Yes.

19 Q. Okay. And when you're making these turns on these streets,
20 then, are you going fast?

21 A. The -- you can't drive fast there, because the corners are
22 very --

23 Q. They're very sharp corners, correct?

24 A. They're very narrow. You haven't even finished turning
25 one, and you're already at the other.

1 Q. Okay. And, as you come down this road, then, do you
2 accelerate?

3 A. Yes.

4 Q. And you said it's your intention to go back to Mexico. Was
5 it your intention to try to get the van back to Mexico, also?

6 A. No, just me.

7 Q. Okay. You weren't worried about getting in trouble --
8 getting in trouble -- if you went back without that van?

9 A. I didn't think about it at that time. All I wanted was to
10 get back myself.

11 Q. Okay. And you wanted to get back because you were
12 concerned that you could be arrested, correct?

13 A. Yes.

14 Q. Okay. And you were concerned that you could go to jail,
15 correct?

16 A. Yes.

17 Q. And did you have any idea what kind of jail time you would
18 be looking at if you were caught with that marijuana?

19 A. No. I didn't even know it was marijuana.

20 Q. Okay. I know you said you thought it might be cocaine,
21 which -- which you know cocaine is a more serious drug, right?

22 A. No, I didn't say I thought it was cocaine. I said it could
23 be anything.

24 Q. Okay. I guess what I'm asking is: Did you know that you
25 were -- the seriousness of the offense that you were involving

1 yourself in?

2 A. Yeah, I had an awareness, but I got it when I thought that
3 I had been found out. When I went to pick up the van, I -- I
4 didn't have any idea that that was going to turn out that way.

5 Q. Okay. When you went to get the van, you thought this was
6 going to be a less serious offense that you were involving
7 yourself in?

8 A. Yes. I didn't think it was anything that serious.

9 Q. Okay. Well, you were going to get paid 1,000 to \$1,500.
10 That's pretty much money, isn't it?

11 A. Yes.

12 Q. Okay. But when the -- when the Border Patrol agent, you
13 believe he sees you, you're very scared of getting arrested and
14 going to jail, aren't you?

15 A. Yes.

16 Q. Okay. When you're driving south, towards the border, are
17 you exceeding the speed limit?

18 A. Yes.

19 Q. Are you driving dangerously?

20 A. Well, it's a straightaway. I was exceeding the speed
21 limit, but I wasn't going...

22 Q. Okay. Were there any people or other vehicles, on the
23 drive, that you were endangering by how fast you were driving?

24 A. Well, I didn't see any other vehicles, other than the
25 patrol cars.

1 Q. Okay. And I forgot to ask you: When was it that you first
2 noticed the Border Patrol agent's lights on? And I'm talking
3 about either the lights on top or the lights in front of the
4 vehicle.

5 A. When I came out to the block where I turned, when I caught
6 the Fabens Road going south.

7 Q. Okay. I'm putting the map up here, Defendant's -- for
8 identification purposes -- Defendant Ramos 9, again, for just a
9 moment.

10 You're talking about when you came out of this curve
11 and started going south here (indicating)?

12 A. More or less.

13 Q. Okay. And the vehicles had what we call emergency lights
14 on top of them, correct?

15 A. Yes. They had them, but only one had them on. The other
16 one didn't.

17 Q. Okay. You talked about the other one that had lights in
18 front of it on, correct?

19 A. Both of them had their front -- their headlights on.

20 Q. Okay. I'm not talking about headlights. I'm talking
21 about -- the fronts of these vehicles have some emergency
22 lights, the red and blue, they call wigwag lights, in front.

23 A. No, not those. They just had on their headlights that one
24 uses at night.

25 Q. Okay. So -- so you first saw emergency lights when you're

1 coming back south here. And that was apparently, I guess, on
2 the first Border Patrol vehicle?

3 A. Yes.

4 Q. Okay. Did you know that that's an indication that they
5 want you to stop?

6 A. Well, yes. Yes.

7 Q. Okay. And you made a conscious decision at that point that
8 you were going to try to run away from the Border Patrol?

9 A. Not at the time that they turned on their emergency lights.
10 From the moment I turned, I wanted to go back to Mexico.

11 Q. Okay. I understand. From -- from the moment you saw the
12 Border Patrol vehicle, you -- that's when you decided you were
13 going to run away from them. Is that right?

14 A. Yes.

15 Q. Okay. But when he turns on his emergency lights, you know
16 that he's telling -- signaling you to stop. So that's the
17 first time you do not follow, I guess, the -- the commands of
18 the Border Patrol agent, correct?

19 A. Yes, I understand. I mean, when they've given me some kind
20 of infraction, they not only turn on the emergency lights, they
21 sometimes call out to you and talk to you. And so, I mean,
22 they did turn the emergency -- he did turn on the emergency
23 light. But, I mean, he didn't say, Hey, stop, or whatever. So
24 I went on.

25 Q. Okay. But you understood he wanted you to stop, correct?

1 A. Well, yes.

2 Q. Okay. When you're driving south on Fabens Road heading
3 towards the border, you said you didn't see any other vehicles
4 besides Border Patrol vehicles, right?

5 A. Yes.

6 Q. Okay. And, in fact, one of the vehicles you saw was
7 another Border Patrol vehicle coming towards you on that road,
8 didn't you?

9 A. I saw one to the side, not that it was coming towards me.

10 Q. Okay. Are you saying that was parked?

11 A. Yes. They were at the exit of the road. One was here
12 (indicating), and then on the other side was the other. So I
13 just went through.

14 Q. Okay. I'm going to put up the map that we marked as
15 Defendant Ramos 7 previously, which -- again, this is the road
16 coming out of Fabens (indicating).

17 And I'm sorry, if I need to move this on the projector
18 somehow, tell me.

19 When you saw these other vehicles, was that before
20 what we call the S curve or after it?

21 A. Afterwards.

22 Q. Okay. So it's somewhere in this section (indicating)?

23 A. Yes. One was exactly where I came out, right there
24 (indicating).

25 Q. I'm sorry. Could you put the pointer up there again?

- 1 A. Right there (indicating).
- 2 Q. Okay. Was he parked along the side road, in there
- 3 (indicating)?
- 4 A. He was on the road, the road that runs into the one I was
- 5 with. He was there, stopped.
- 6 Q. Okay. And did he join the procession of vehicles following
- 7 you?
- 8 A. I didn't notice.
- 9 Q. Okay.
- 10 A. I didn't notice.
- 11 Q. Because, at that point, you had already had two Border
- 12 Patrol vehicles behind you, correct?
- 13 A. Yes.
- 14 Q. Okay. Where did the other Border Patrol -- where did you
- 15 see the other Border Patrol vehicle?
- 16 A. A little bit further ahead, but on the left side.
- 17 Q. Okay. Could you show us with the pointer, please?
- 18 A. Right here (indicating).
- 19 Q. Okay. Pointing to over here (indicating), maybe?
- 20 A. Perhaps, yes.
- 21 Q. At that point, this is where we could tell from the map
- 22 that the road changes from pavement to dirt road. Does that
- 23 sound about right, that that's where it changes from pavement
- 24 to dirt?
- 25 A. Well, I don't know if exactly there. But I would say that

1 perhaps a little further on, I would say. I don't know exactly
2 there.

3 Q. Okay. When you saw the second Border Patrol vehicle,
4 and -- were you already on the dirt road?

5 A. When I saw the second one?

6 Q. The second one, besides the two that are following you
7 already.

8 A. No, I was still on the asphalt.

9 Q. Okay. And this also was the vehicle that was parked on the
10 side as you passed by?

11 A. Yes. He was there on the side of the road.

12 Q. Okay. So your testimony is, as you're driving south
13 towards the border, you never see another Border Patrol vehicle
14 coming north on that road.

15 A. No.

16 Q. Okay. And you never tried to endanger any of the drivers
17 of any of these Border Patrol vehicles. Is that right?

18 A. No.

19 Q. Okay. Now, when you first -- well, no. No, let me
20 continue on -- I'm sorry. Let me continue with the events of
21 that day.

22 When you were driv- -- did you know that you were
23 going to hit that canal?

24 A. Hit the canal?

25 Q. Yes.

1 A. I don't know what canal.

2 Q. Okay. Let me --

3 MS. STILLINGER: If I could have just a moment.

4 THE COURT: Could the attorneys approach really quick?

5 MS. STILLINGER: Yes.

6 (Bench conference:)

7 THE COURT: I don't know if that's a Spanish term.

8 It's about two hours. I was thinking about taking a
9 break. That way, you can look for your picture. Anybody have
10 any problems with that?

11 MS. STILLINGER: That's fine.

12 (End of bench conference; open court.)

13 THE COURT: Ladies and gentlemen of the jury, I like
14 to take a break about midafternoon. We started a little late,
15 but I am going to take a break right now. So we are going to
16 take about a 15-minute recess.

17 And remember you remain under all the instructions of
18 the Court. The Court stands in recess for 15 minutes.

19 (Recess; open court, parties present, jury not
20 present.)

21 THE COURT: Anything we need to take up before we take
22 a recess?

23 MR. GONZALEZ: Not from the Government, Your Honor.

24 MS. STILLINGER: No, Your Honor.

25 THE COURT: All right. Yes, Mr. Boyaki. I don't know

1 that you have any speaking rights here, Mr. Boyaki -- no, I'm
2 just teasing. Yes, sir.

3 MR. BOYAKI: It's fascinating, but can I leave?

4 THE COURT: Could you approach?

5 (Bench conference:)

6 THE COURT: I don't know where we're going from here,
7 but I have some concerns. And unless Ms. Stillinger -- who is
8 going to do the cross?

9 If Ms. Ramirez tells me there's other concerns, then
10 I'm going to tell you you can't.

11 MR. BOYAKI: Okay.

12 MS. STILLINGER: Sorry, Walter.

13 THE COURT: That way it's not on me.

14 MR. BOYAKI: Okay. That's fine. I have to tell
15 everybody, I have to go to Seattle in the morning, and I leave
16 at, like, 8:30, so if we could slug it out today on this issue.

17 THE COURT: We are going to try. All right. Thank
18 you.

19 MR. BOYAKI: Okay. That will be fine. Then I don't
20 mind staying.

21 THE COURT: All right. Thank you.

22 (End of bench conference; open court.)

23 THE COURT: All right. We're in recess.

24 (Recess; open court, parties present, jury not
25 present.)

1 THE COURT: You may be seated. Ready to bring the
2 jury back in?

3 MS. STILLINGER: Yes, Judge.

4 THE COURT: Go ahead, Kenny.

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

6 THE COURT: You may be seated.

7 You may proceed, Ms. Stillinger.

8 MS. STILLINGER: Thank you.

9 BY MS. STILLINGER:

10 Q. Mr. Aldrete, I was just asking you about driving into a
11 canal, and maybe I used the wrong word. But I'm talking
12 about -- can you see this picture from where you are?

13 A. Yes.

14 Q. And, for the record, I'm showing you what's been exhibited
15 as Government's Exhibit Number 9. This is where your van
16 stopped, correct?

17 A. Yes.

18 Q. Okay. And I was asking about this canal, or maybe you
19 called it a ditch, here.

20 A. I call it a ditch, drainage.

21 Q. Okay. And, by the way, when you picked up the van, was it
22 on the north side or the south side of this ditch?

23 A. North.

24 Q. Okay. But you were aware that this ditch was there; is
25 that right? Is that right?

1 A. Yes.

2 Q. Okay. When you're driving south, towards this ditch, you
3 know you're not going to be able to cross the ditch, don't you?

4 A. It's logical. I wanted to cross, not the van.

5 Q. Okay. You weren't going to try to go real fast and maybe
6 jump the ditch?

7 A. No. I'm not -- I don't have suicidal tendencies either.

8 Q. Okay. How fast were you going when you drove up to the
9 ditch?

10 A. I wasn't driving as fast as I was before. I wasn't driving
11 60 or 70, but I was driving fast enough so that the van was not
12 able to stop soon enough on the dirt road, and it looked like
13 it was going to go into the canal.

14 Q. Okay. And you said that the closest Border Patrol vehicle
15 behind you, when you're going south from Fabens, was about 10
16 meters, correct?

17 A. More or less; 10 or 15.

18 Q. Okay. And when you got onto the dirt road, the vehicles
19 behind you slowed down, had to give you more space, didn't
20 they?

21 A. What do you mean more space, if I was the one in the front?
22 I don't understand.

23 Q. I'm asking, were they further behind you? Or maybe you
24 couldn't see them.

25 A. Well, I didn't notice. I didn't look. When I was getting

1 close to the ditch, I didn't turn back.

2 Q. Okay. But you're driving on the dirt road and going pretty
3 fast. You're kicking up a lot of dust behind you, aren't you?

4 A. Yes.

5 Q. So you couldn't actually see the vehicle -- on the dirt
6 road, you couldn't see the vehicle behind you, could you?

7 A. Well, no. But, in addition, the dust that I was kicking up
8 didn't stay there. I mean, the wind moves it away from the
9 road.

10 Q. Okay. Well, I'm just asking whether you could or could not
11 see -- when you're driving on the dirt road, could you see the
12 vehicle behind you?

13 A. I didn't turn.

14 Q. Okay. Then when you get to the ditch, and your van stopped
15 on the edge of the ditch, you're thinking of running back to
16 Mexico, correct?

17 A. Yes.

18 Q. And you already see that there's another Border Patrol
19 vehicle on the south side of the ditch, right?

20 A. Yes.

21 Q. Okay. And that doesn't stop you. You decide that you're
22 going to go south and get around this person, right?

23 A. Yes.

24 Q. Okay. And you didn't stop and get out of the van with your
25 hands in the air, did you?

- 1 A. No.
- 2 Q. Okay. That's what you told Agent Sanchez, isn't it?
- 3 A. No. I didn't tell him that.
- 4 Q. And let me tell you specifically, because we have two agent
5 Sanchezes. I'm talking about when you spoke to Agent Chris
6 Sanchez by telephone on March 11th.
- 7 A. Well, I talked to him that day, but we didn't talk about
8 specifics about what happened. I mean, that was the day I
9 talked to him on the phone, right, on the 11th?
- 10 Q. Yes. I'm talking about a telephone conversation you had
11 with him.
- 12 A. No. That day we didn't talk about specifics as to what had
13 happened at the river.
- 14 Q. Okay. So you're saying that you did not tell him that you
15 stopped the van and got out of the van with your hands in the
16 air.
- 17 A. No. I told him that I put my hands up when I crossed the
18 water and saw the other agent.
- 19 Q. Okay. Mr. Aldrete, tell me about that ditch that you
20 crossed. What is it like?
- 21 A. Well, there's a lot of bushes. The water gets up to your
22 knees, a little bit below, a little bit above, perhaps.
- 23 Q. Okay. And it's very steep going down into the ditch and
24 coming back out of it, isn't it?
- 25 A. Yes.

1 Q. Okay. And the ditch is pretty deep, isn't it?

2 A. Yeah. Well, at least it's deeper than my height.

3 Q. Sure. So when you're inside of it, you're -- you're below
4 the level of the ground around you, correct?

5 A. Yes.

6 Q. Okay. And you ran down the ditch. And I believe you said
7 it's when you were coming back out of it that you turned around
8 and saw other agents that approached?

9 A. Yeah. When I was halfway through the slope, that's when I
10 saw the agent that was coming.

11 Q. Okay. And the agents behind you, to the north, were they
12 yelling something at you?

13 A. Well, I heard some yelling, but I didn't understand
14 specifically what they were yelling. The only thing I heard
15 was what I -- specifically -- was what I said, the agent that
16 was in front, that I already talked about.

17 Q. Okay. But the three agents behind you, that had their
18 weapons drawn, they were calling out something to you, correct?

19 MR. GONZALEZ: Objection, Your Honor, as to the
20 characterization of the number of agents behind him.

21 THE COURT: All right. Restate the question.

22 I'll sustain.

23 MS. STILLINGER: Let me just back up a little bit.

24 BY MS. STILLINGER:

25 Q. I think -- you're right. I think you said that there were

1 two or three agents behind you, to the north?

2 A. Yes. When I was on the other side of the water, I turned
3 around, and I saw two or three agents.

4 Q. Okay. And those two or three agents, or somebody to the
5 north of you, was also yelling something at you, weren't they?

6 A. Obscenities.

7 Q. Okay. They weren't telling you to stop?

8 A. No.

9 Q. Okay. You understood they wanted you to stop, though,
10 didn't you?

11 A. Well, it's a very different way of getting across, so one
12 can understand it.

13 Q. Okay. Let me ask you the question again.

14 You understand they wanted you stop, didn't you?

15 A. Yes, and I stopped.

16 Q. Okay. Well, I understood that you kept walking with your
17 hands up, didn't you?

18 A. When I stopped, when they yelled at me to stop, I stopped,
19 and I raised my hands, and I remained stopped. And that's when
20 I saw the agent -- and that's when I saw the agent in front.

21 And then I walked up towards the agent with my hands
22 up, and that's when he came closer with the rifle. That was
23 the lapse of time that I walked with my hands up.

24 Q. Okay. So you stopped first, and then you decided to keep
25 walking. Is that right?

1 A. I stopped, and then I took one step.

2 Q. Okay. Well -- and didn't you say that you -- that you
3 decided, since the agent was here (indicating), you decided you
4 were going to try to get around him to the left?

5 A. When I decided to avoid him by going left, they hadn't
6 started yelling yet.

7 When I went that way (indicating), that's when the
8 agent got closer to me. And he was about a step away, and
9 that's when I raised my hands.

10 Q. Okay. You're coming up out of the ditch, you turn around,
11 and you see two or three agents with weapons pointed at you,
12 but they're not telling you to stop. Is that what you're
13 saying?

14 A. Exactly.

15 Q. Okay. But you do understand they want to arrest you, don't
16 you?

17 A. Well, since they were aiming at me, I believe that was
18 another intention.

19 Q. Did you think they wanted to shoot you right then?

20 A. Well, yeah, because that's when I raised my hands, and
21 that's when the agent tried to hit me. If he had wanted to
22 arrest me, he would have just handcuffed me, and that -- and it
23 would have all been over.

24 Q. Okay. I'm asking about the time before you got very close
25 to the agent on the south side of the ditch. I'm asking about

1 what happened in the -- probably seconds before you got close
2 to that agent.

3 When you first turn around and you see two or three
4 armed agents behind you, okay? I'm talking about right then.

5 And you're telling us that you thought they were going
6 to try to shoot you, that they didn't want to arrest you, they
7 wanted to shoot you.

8 A. If we're talking about two seconds before, when I was
9 coming out, I turned around and I saw the armed people, and
10 they were aiming at me. But I didn't think that those agents
11 could shoot to kill there at that point. And so that's why I
12 didn't stop.

13 It wasn't until I saw the third agent who was pointing
14 directly at me that I stopped. But I never thought that they
15 could shoot to kill. That's why I didn't stop.

16 Q. Okay. Then you didn't think that the agents behind you to
17 the north, you didn't think they were there to try to kill you,
18 did you?

19 A. Yes.

20 Q. Okay. Didn't you understand they were just trying to
21 arrest you?

22 A. Yes.

23 Q. Okay. But because you thought, They're not going to kill
24 me, I'm just going to take off and try to go to Mexico. Is
25 that correct?

1 A. Well, I didn't think they were going to kill me, and so
2 that's why I thought that I was going to run to Mexico. But
3 then when I saw the other agent, I started to give up and let
4 him arrest me, and then he tried to hit me. And so I got
5 scared, and then that's when I took off running.

6 Q. Okay. And you're saying that -- so you were going to run
7 to Mexico, but when you got very close to the agent -- and I
8 guess you were going towards him, weren't you? You were
9 continuing to walk closer to the agent on the south side of the
10 ditch, weren't you?

11 A. No. I gave -- took one step, and then he came towards me
12 with the rifle.

13 Q. Okay. And you went running around him, to go towards
14 Mexico, correct?

15 A. After he had attacked me with the rifle, yes.

16 Q. Well, he didn't actually hit you, correct?

17 A. No, because I blocked it.

18 Q. Okay. Now, at this point in time, your goal is to get as
19 quickly as possible to Mexico, correct?

20 A. Yes.

21 Q. Okay. And do you run in a direct line towards the river?

22 A. No, I ran a little bit slanted, to the right side.

23 Q. Okay. And why is that?

24 A. Because I tried to go around the patrol, or the patrol was
25 right there, and so I ran that way.

1 Q. Okay. And when you say "the patrol," do you mean the
2 patrol vehicle?

3 A. Yes.

4 Q. Okay. And what are you carrying with you?

5 A. Nothing.

6 Q. Okay. How about your telephone?

7 A. It stayed in the van.

8 Q. Okay. And did you use that to call any friends, to tell
9 them to come pick you up across the river?

10 A. No.

11 Q. Okay. Did you have another phone with you, that you were
12 going to use to call those people to come meet you at the
13 river?

14 A. No. It was the only one, and it stayed in the van.

15 Q. Okay. The people that hired you to come over and get this
16 van, they didn't get you a phone so that they would be able to
17 contact you on that phone?

18 A. No, just that.

19 Q. Oh, they had your cell phone number?

20 A. What, my number?

21 Q. Yes.

22 A. Yes, they were the ones that called me. It was Nextel.

23 Q. Okay. Okay. And you knew how to contact them, as well,
24 then, on that telephone. Is that what you're saying?

25 A. No. They called me only.

1 Q. Okay. Well, how did you contact the people to come pick
2 you up on the other side of the river?

3 MR. GONZALEZ: Objection, Your Honor. I think, based
4 on what I'm hearing, there's a misunderstanding as to what he
5 said as to who owned that telephone. All right?

6 If you can clarify that, I think that -- my
7 understanding is she believes that he owned it, and that's not
8 what I heard him say.

9 THE COURT: All right. Well, you can clarify that.
10 But I think the question has to do with: How did they -- how
11 did you get someone to pick you up on the other side of the
12 river?

13 MS. STILLINGER: Yes. That's the question I have
14 right now.

15 A. What?

16 BY MS. STILLINGER:

17 Q. How did you get somebody to pick you up on the other side
18 of the river?

19 A. No, I didn't get anybody. I walked by myself, and then
20 they came towards me.

21 Q. Okay. And somebody got out of their car and ran over to
22 you to help you?

23 MR. GONZALEZ: Your Honor, may we approach?

24 THE COURT: Yes.

25 (Bench conference:)

1 MR. GONZALEZ: Your Honor, I'm going to object to any
2 other -- further questions in this line of testimony as to, you
3 know, who picked him up, why, how. All that is irrelevant.

4 THE COURT: I'll overrule. I think she's trying to
5 come up with their defense, that there was some shiny object.
6 That's cross. I'll give her a little latitude.

7 I don't want you to go into any extraneous, like,
8 offense, or any of that. But you can question him about -- in
9 case you can impeach his testimony about whether he had a
10 phone. That's why I'm giving you a little latitude.

11 MS. KANOF: In discovery, we did provide to the
12 defense the fact that there was a phone left in the van.

13 THE COURT: Okay. But, you know, in case he had a
14 second phone or some other thing that --

15 MS. KANOF: Okay. All right. Thanks.

16 (End of bench conference; open court.)

17 MS. STILLINGER: I think we had a response that had
18 not been translated yet, which we're waiting for.

19 A. I walked a little bit, and then an auto came by and left.
20 And then, later, a friend of mine came by with a van, and he
21 was the one that came and got close and met me.

22 BY MS. STILLINGER:

23 Q. Okay. And nobody got out of the first car to help you?

24 A. No.

25 Q. Okay. And how long did you have to wait for your friend to

1 come by?

2 A. No, I didn't wait. He got there first, as a matter of
3 fact, before I got to the road.

4 Q. Okay. And you're saying this is just coincidence?

5 A. No, it wasn't a coincidence. I imagine that people that
6 hired me were watching to see -- I mean, they weren't going to
7 give me that merchandise and not be watching. So I imagine
8 they saw me get shot. How could it be a coincidence that they
9 just happened to find me?

10 Q. Well, they certainly couldn't see you the whole way driving
11 into Fabens, could they? They couldn't see you from the river,
12 could they?

13 A. No. What I've known is that they have glasses, and they
14 can tell when all that goes on.

15 Q. Okay. So you're saying they could have watched with
16 binoculars from the river up all the way into Fabens?

17 A. Not from the river. After I had my surgery, I found out
18 that they actually get up on the hills and watch with
19 binoculars. They watch everything.

20 Q. Okay. My question is this: When you turned around -- when
21 you were in Fabens and you decided to turn around and head back
22 to Mexico, did you call someone to notify them, I'm going back
23 south?

24 A. No.

25 Q. So these people weren't expecting you to come back -- when

1 I say "these people," I mean the drug traffickers. They
2 weren't expecting you to come back south, were they?

3 MR. GONZALEZ: Objection, Your Honor, calls for
4 speculation.

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

6 BY MS. STILLINGER:

7 Q. Did you know of any reason, if you would know, why they
8 would still be watching you at the river, when they were
9 expecting you to go north?

10 MR. GONZALEZ: Again, Your Honor, calls for
11 speculation.

12 THE COURT: I'll sustain.

13 MS. STILLINGER: I just asked if he knew, Your Honor.

14 THE COURT: I'll sustain.

15 BY MS. STILLINGER:

16 Q. The phone that was in the van, was that your telephone, or
17 was that a telephone that was given to you for the purpose of
18 helping you do this transaction?

19 A. Yeah, they gave it to me when I got on the van. When they
20 sent me there, they gave it to me. I didn't have a telephone.

21 Q. Okay. And they gave you the phone charger with it?

22 A. No, just the telephone.

23 Q. Okay. So the phone charger -- there was a phone charger in
24 the van, wasn't there?

25 A. I don't know. They just gave me the telephone. I don't

- 1 know if there was a charger or not.
- 2 Q. Okay. Was the phone -- did they give you the phone before
3 you crossed over or was it waiting in the van for you?
- 4 A. The telephone, they gave it to me when I crossed.
- 5 Q. Okay. And you're saying you did not have a telephone of
6 your own?
- 7 A. No.
- 8 Q. How about a weapon? Did you have a weapon on you that day?
- 9 A. No.
- 10 Q. A radio? Did you have a radio with you?
- 11 A. No. The telephone is a Nextel. It's a telephone and
12 radio. What we use is the radio, not the telephone.
- 13 Q. Okay. And they had given it to you to cross over. You
14 didn't think you should take a telephone with you to cross back
15 south?
- 16 A. Well, no. But I mean, if they had told me that I was going
17 to have to return running back south, I wouldn't have gone in
18 the first place.
- 19 Q. Well, you're the one who decided to go running back south,
20 aren't you?
- 21 A. Yes.
- 22 Q. Okay. Well, you're saying you wouldn't have done this if
23 you had known you were going to get caught. Is that what
24 you're saying?
- 25 A. No. It's logical, I didn't have -- or if they had told me

1 that I had to take a -- some kind of a weapon, I mean, that
2 would have told me that it was a very dangerous job. And, no,
3 I wouldn't have even done the job in that case.

4 Q. Okay. You knew there was a risk you would get caught doing
5 this, correct?

6 A. Yes, it's logical. But I didn't think about that at that
7 moment.

8 Q. Okay. Let me get back to what you do when you're running
9 away there at the border. You said that you were running with
10 your head down and your hands behind your head?

11 A. Yeah. I was leaning forward a little bit, and I had my
12 hands on my head, trying to keep them from -- well, you know,
13 what protection can the hands give me? But I was trying to
14 keep them from shooting me in the head.

15 Q. Okay. You weren't trying to run as fast as you possibly
16 could?

17 A. Yes.

18 Q. Okay. Well, wouldn't you agree that running like that is
19 not going to be the fastest way you can run?

20 A. Yeah, but at that time, you're not going to think about
21 what's the most practical manner to get there at fast as
22 possible. I wanted to protect myself, and that's how I was
23 running.

24 Q. Okay. And didn't you tell the agents that interviewed you
25 that you were running as fast as you could?

1 A. I didn't understand the question.

2 Q. When you were interviewed by Agent Sanchez, didn't you tell
3 him that you were running as fast as you possibly could?

4 A. Yes.

5 Q. Okay. Did you ever look behind you when you were running
6 away?

7 A. No.

8 Q. Okay. When you got to the river, there's -- there's a lot
9 of foliage next to the river, isn't there, a lot of brush?

10 A. Yes.

11 Q. Okay. And I believe you said you were -- you felt a shot
12 right when you got there to the edge of the river, right?

13 A. Yes.

14 Q. Okay. Did you go down in that brush that's next to the
15 river?

16 A. No. I fell on the edge, on the level ground. It was just
17 grass. There were no trees there.

18 MS. STILLINGER: May I approach the witness,

19 Your Honor?

20 THE COURT: You may.

21 BY MS. STILLINGER:

22 Q. I'm going to show you what's been admitted as Government's
23 56A. Isn't that where you said you went down?

24 A. Yes, there (indicating).

25 Q. Okay. And where you're pointing to is right in front of

1 the bushes by the river. Is that right?

2 A. Yes.

3 Q. Okay. But you're already -- the slope is already downwards
4 towards the river, correct?

5 A. Yes, but I didn't fall in the bushes. I fell near the
6 bushes on level ground.

7 Q. Okay. You're saying this is level ground right here
8 (indicating)?

9 A. Yes, that's level ground. I mean, in reference to the
10 slope that you're talking about, that's level ground.

11 Q. Okay. And you managed to get through these bushes, then?

12 A. Yes, I could.

13 Q. Okay. And you managed to cross through the water in the
14 river, correct?

15 A. I fell three times. I crossed on hands and knees, but I
16 could do it.

17 Q. Okay. And then it was a friend that picked you up on the
18 other side, correct?

19 A. Almost getting to the asphalt of the highway, Juarez --
20 from here (indicating) to that asphalt, I walked by myself.

21 Q. Okay. Let me -- well, let me --

22 MS. STILLINGER: Let me just approach -- may I
23 approach the witness, Your Honor?

24 THE COURT: Yes, you may.

25

1 BY MS. STILLINGER:

2 Q. Let me show you Government's Exhibit Number 28. And you've
3 looked at this before.

4 A. Okay.

5 Q. And this is the river (indicating), where it says,
6 Rio Grande River, correct?

7 A. Yes.

8 Q. Okay. Where is the road you're talking about that you
9 walked to?

10 A. Over here (indicating), where those houses are.

11 Q. Okay.

12 MS. STILLINGER: I'm sorry. I would like to put this
13 up on the overhead projector.

14 THE COURT: Go ahead.

15 BY MS. STILLINGER:

16 Q. It's still a little bit dark. We're going to do our best,
17 and maybe we will mark a copy later.

18 But where these white letters are right here
19 (indicating) is where I just showed you. That's the Rio Grande
20 River, correct?

21 A. Yes.

22 Q. And it looks like there's some sort of dirt road here
23 (indicating). You're not talking about that -- that's not the
24 highway you're talking about, is it?

25 A. No, I crossed that.

1 Q. Okay. You're talking about a highway that's up here
2 (indicating), where some of these plants are, and houses?

3 A. Yeah. It's over there (indicating), more or less.

4 Q. Okay. And that's where your friend picked you up?

5 A. Yes, he came to find me. I hadn't gotten to the highway
6 yet.

7 Q. Okay. And he came looking for you. You're saying that's
8 not a coincidence, but he also works for the people that you
9 were working for when you did this?

10 MR. GONZALEZ: Objection, Your Honor. That's not his
11 testimony, and relevance.

12 THE COURT: I'll sustain.

13 BY MS. STILLINGER:

14 Q. Let me ask it this way: You're saying it's not a
15 coincidence that your friend was there to pick you up?

16 MR. GONZALEZ: Objection, Your Honor. That's been
17 asked and answered.

18 THE COURT: Sustained.

19 BY MS. STILLINGER:

20 Q. Okay. But you didn't call anybody to come pick you up?

21 MR. GONZALEZ: Objection. He already testified he had
22 no telephone.

23 MS. STILLINGER: Well, he did have a telephone,
24 certainly, before he got out of the van.

25 THE COURT: All right, but it's been asked and

1 answered. Let's move on.

2 MS. STILLINGER: Okay.

3 BY MS. STILLINGER:

4 Q. But this is a friend of yours that picked you up and took
5 you to a clinic, correct?

6 THE INTERPRETER: Picked you up and took you where?

7 BY MS. STILLINGER:

8 Q. Took you to a clinic.

9 A. Yes.

10 Q. And Agent Sanchez asked you who this friend was, didn't he?

11 A. Yes.

12 Q. And you refused to disclose that name, didn't you?

13 MR. GONZALEZ: Objection, Your Honor, relevance.

14 MS. STILLINGER: It's a violation of the terms of the
15 immunity agreement, Your Honor. I think I can go into that.

16 MR. GONZALEZ: May we approach the bench, Your Honor?

17 THE COURT: Yes.

18 (Bench conference:)

19 MR. GONZALEZ: Our objection, this line of questions
20 is a violation of the motion in limine. It's not been
21 authorized.

22 MS. KANOF: In addition, Your Honor, I think she's
23 trying to make it sound that, since he wouldn't give the name
24 of his friend, that he was not following -- or not within the
25 confines of the agreement. But I don't think not giving the

1 name of your friend is a violation of that agreement, the way
2 it's written.

3 THE COURT: Okay. But my question, Ms. Stillinger,
4 is: What relevance does it have?

5 MS. STILLINGER: The relevance is, Your Honor -- and I
6 think Agent Sanchez already testified -- he viewed it as a
7 violation of the immunity agreement. And the relevance --

8 MR. GONZALEZ: He said it was up to the United States
9 Attorney's office, not up to him.

10 MS. STILLINGER: He wasn't supposed to protect people,
11 and it's a violation. What you guys did about it was up to
12 you.

13 MS. KANOF: The Government doesn't view not giving
14 your friend's name that picks you up protecting somebody.

15 MR. GONZALEZ: That's not what we're investigating.

16 MS. KANOF: Because protecting them would be
17 protecting them within the confines of the crime that was under
18 investigation, like if he wanted to protect the Border Patrol
19 agent. We weren't investigating the drug trafficking offense.

20 MS. STILLINGER: That's fine, if they make the choice
21 to permit the violation. But it clearly is a violation of the
22 terms of the agreement. And my point is they're giving him an
23 even broader immunity, because they're still giving immunity,
24 notwithstanding the fact that he violated the agreement.

25 THE COURT: And your question is?

1 MS. STILLINGER: That he refused to give Chris Sanchez
2 the name of the friend that picked him up. My point is he's
3 said it's not a coincidence the friend was there.

4 THE COURT: I understand. That's abundantly clear. I
5 guess I'm just not sure why we're going into all of that. I
6 certainly -- my concern is that we're going off onto something
7 that the jury already knows, that it wasn't a coincidence. He
8 testified they were probably watching him. And he's already
9 testified that he didn't call him.

10 Why does it matter whether or not he gave up his
11 friend for the purposes of the immunity or not? They know he's
12 gotten an immunity agreement. What are you trying to prove?

13 MS. STILLINGER: Because he violated it. Most of the
14 times I've represented people, if they don't give completely --

15 THE COURT: What's that got to do with --

16 MS. STILLINGER: They're bending over backwards to do
17 whatever they can. The immunity keeps getting broader and
18 broader and broader, and we're entitled to show the jury how
19 broad the immunity is.

20 MR. PETERS: Stephen Peters.

21 It goes to understanding the scope of the agreement.
22 He's over here cooperating, but he didn't want to have to tell
23 him who his friends are helping him escape from a lawful
24 arrest.

25 THE COURT: All right. The Court will rule that you

1 can ask him the question of whether he understood that he had
2 to disclose who this person was, but I don't want you to go
3 into who it was or what relation this guy had to anything that
4 was going on that day.

5 MS. STILLINGER: All right.

6 THE COURT: All right. Move on.

7 (End of bench conference; open court.)

8 BY MS. STILLINGER:

9 Q. Mr. Aldrete, I believe the question I had, when we took a
10 moment there, was whether you refused to tell Agent Sanchez the
11 name of your friend that picked you up.

12 A. Yes.

13 Q. Okay. And did you understand that, under the terms of the
14 immunity agreement that we reviewed, you were not supposed to
15 protect anybody?

16 A. No.

17 Q. Okay. As far as you understand, you still have your
18 immunity agreement, correct?

19 A. Yes.

20 Q. Okay. I want to ask you a couple of questions about your
21 relationship with Agent Rene Sanchez.

22 How long have you known him?

23 A. All my life.

24 Q. Okay. When is the last time -- prior to this trial, when
25 is the last time you saw him?

- 1 A. I don't remember. It's been a long time. More than half a
2 year.
- 3 Q. Okay. Have you seen him, since this incident when you were
4 shot, until the trial? Have you seen him any time then, in
5 that time period?
- 6 A. Yes. Rene? Yes.
- 7 Q. Okay. When did you see him?
- 8 A. I don't remember. It's been a long time. I saw them there
9 by my mother's house.
- 10 Q. Okay. You saw him -- is that in San Isidro?
- 11 A. Yes.
- 12 Q. Okay. And what did you do with him?
- 13 A. What did I do with who? With Rene?
- 14 Q. Yes.
- 15 A. I greeted him.
- 16 Q. Okay. Did you spend some time together?
- 17 A. About half an hour.
- 18 Q. Okay. Did you talk about this case?
- 19 A. We talked about the bullet wound, how I felt, not about the
20 case.
- 21 Q. Okay. When you first talked to Rene Sanchez about this
22 case, that would have been maybe the end of February or early
23 March of last year?
- 24 A. More or less.
- 25 Q. Okay. And did you tell him that it occurred when you were

1 just trying to enter the country, and then get out of the
2 country, that you were shot in the back?

3 A. Yes.

4 Q. You didn't tell him anything about having any drugs with
5 you when you first spoke to him, did you?

6 A. When I talked to him, yes. When my mother spoke to his
7 mother-in-law, when they first told her, no, they didn't say
8 anything about that.

9 Q. Okay. So -- okay. When you talked to Rene, what did you
10 tell him, that you had been crossing -- or, rather, that you
11 had been driving a van with -- what did you tell Rene Sanchez?

12 A. I told him that I was driving a van that had drugs, and
13 that I was coming across back to Mexico, when the shooting --
14 or the shot happened.

15 Q. Okay. And I know you said you didn't know what kind of
16 drug or how much it was. Did Rene Sanchez find that out for
17 you?

18 MR. GONZALEZ: Objection, Your Honor, relevance.

19 MS. STILLINGER: Your Honor, he apparently knew what
20 he was carrying when he talked to Chris Sanchez. So I'm trying
21 to find out when he became aware of that, or how.

22 MR. GONZALEZ: Your Honor --

23 THE COURT: All right. Hold on. Let me look at the
24 exact question.

25 All right. I'll sustain.

1 Restate the question.

2 BY MS. STILLINGER:

3 Q. Okay. Mr. Aldrete, when you spoke to Chris Sanchez on the
4 telephone on March 11th, didn't you tell him that you were
5 afraid of being prosecuted for the load of marijuana you were
6 transporting on February 17th?

7 A. Yes.

8 Q. How did you know, at that point in time, that you had been
9 carrying a load of marijuana?

10 A. By the report that came out in the news about them getting
11 ahold of the van. And there, it specified what type of drug it
12 had.

13 Q. Okay. And did it specify the quantity?

14 A. I don't remember.

15 Q. Okay. Did you know -- did you ever discuss the quantity of
16 drugs when you spoke to Rene Sanchez?

17 A. No.

18 Q. Okay. When you made the immunity agreement that you signed
19 on March 16th, did you know the quantity of drugs that you had
20 been carrying in the van?

21 A. No.

22 Q. Okay. We're looking at Defendant Ramos Exhibit Number 8.
23 And you can see, in the front of that, there's one big bundle,
24 correct?

25 A. Yes.

1 Q. Okay. And, actually, when you looked at the picture when I
2 showed it to you, and you can see it in better light, there's a
3 number of bundles like that, correct?

4 A. Yes.

5 Q. Okay. And when you found out that this was marijuana, did
6 you think that that looked like a lot of marijuana?

7 MR. GONZALEZ: Your Honor, I'm going to object. This
8 kind of questioning, about the amount of marijuana, has already
9 been asked and answered, Your Honor.

10 THE COURT: All right. I will overrule the objection.

11 Go ahead.

12 BY MS. STILLINGER:

13 Q. The question was: Did you think that was a lot of
14 marijuana?

15 A. When did I think it was a lot of marijuana? Right now,
16 when you showed it to me?

17 Q. Well, really, what I want to know is, when you signed the
18 immunity agreement, what did you think you were getting
19 immunity from?

20 A. For the charge of transporting drugs.

21 Q. Okay. And it was for the charge of transporting a lot of
22 drugs, wasn't it?

23 A. I don't know. When I see a package like that, I see a big
24 package. I don't know. I don't know if it has a lot of tape,
25 if it has -- how it was packaged.

1 I mean, it's like a ring. If they give you a ring in
2 a big box, you know, you don't know. I mean, I saw the
3 package, but I didn't know how well it was wrapped, how much it
4 was pressed. I'm not up-to-date on how they do that and how
5 well they tape them up and package them. I don't know that.

6 Q. And you never found out -- before you signed the immunity
7 agreement, you're saying you never found out what the quantity
8 of marijuana was that you were carrying?

9 MR. GONZALEZ: Objection, Your Honor. Asked and
10 answered.

11 THE COURT: I'll overrule.

12 A. No.

13 MS. STILLINGER: I would like to approach the bench.

14 THE COURT: Sure.

15 (Bench conference:)

16 MS. STILLINGER: Your Honor, this witness is going --
17 bending over a little bit backwards to try to get people to
18 think he doesn't know what packages of marijuana look like.
19 And any normal person would say it looks like a lot of
20 marijuana. And he's taking it upon himself to say, I don't
21 know how they package.

22 I think I can ask him, Have you ever seen any other
23 packages of marijuana? You have no other involvement in the
24 business?

25 MS. KANOF: She can ask him, maybe, if he had seen it

1 before, but not after the date of this offense, because it's
2 based on his knowledge at the time. But in addition to that,
3 Your Honor, it's the jury's -- it's the jury's decision, or the
4 jury's job, to determine whether he's being credible or not.

5 The fact that he is saying that he didn't know -- he's
6 not saying -- he's saying he didn't know what was in those
7 packages or how those were packaged. And I do not think that
8 that opens the door to something that happened nine months
9 later.

10 THE COURT: Right. So what are you asking? What do
11 you want to know? I think you've asked him. He's answered.
12 Whether it's credible or not, it's up to the jury. What do you
13 want to ask?

14 MS. STILLINGER: What I want to ask, Your Honor, is
15 whether he had any other experience with packaging marijuana or
16 not.

17 THE COURT: I'll sustain the objection.

18 MR. ANTCLIFF: Chris Antcliff, on behalf of
19 Mr. Compean.

20 Before you do, I would ask you to reconsider. He
21 testified just now that he didn't know how it was packaged, how
22 it was wrapped, how it was taped, how it was pressed. And
23 those are all indicators that he has knowledge, actually, of
24 how those things happen.

25 MS. KANOF: So they can argue it.

1 THE COURT: What's the question? Where do you want to
2 go with that? Obviously, he's involved in drug trafficking on
3 that day. Where do you want to go with this?

4 MS. STILLINGER: My opinion is, Your Honor, that he's
5 trying to portray himself as a very innocent person, and would
6 not have any clue how marijuana is packaged. And I would like
7 to ask, You didn't have any other experience with how marijuana
8 was packaged?

9 MS. KANOF: There is no rule that permits that for
10 impeachment. She can impeach him on truth and veracity. If
11 she does that, it has to be by reputation or opinion testimony
12 by another individual, not specific acts.

13 She can impeach him on bias. This does not go to
14 bias. There is no indication, from what he said, and they have
15 no evidence, that he ever engaged in any kind of drug
16 trafficking prior to this time.

17 MS. STILLINGER: I don't have any evidence specific
18 that he did this prior.

19 THE COURT: There isn't any relevance, so let's move
20 on. I don't think --

21 (End of bench conference; open court.)

22 THE COURT: You may proceed, Ms. Stillinger.

23 BY MS. STILLINGER:

24 Q. Mr. Aldrete, when you talked to Rene -- I think you told
25 me, when you spoke to Rene Sanchez, he's the one that suggested

1 to you that you get immunity from the Government, correct?

2 A. Yes.

3 Q. Did he also talk to you about getting medical attention in
4 this country for your injury?

5 A. Yes.

6 Q. Okay. And did he also talk to you about maybe being able
7 to file a lawsuit against the Border Patrol here?

8 A. Yes.

9 Q. Okay. And did he help you find a lawyer for that purpose
10 here?

11 A. Yes.

12 Q. Okay. And, Mr. Aldrete, you are very angry about getting
13 shot that day, aren't you?

14 A. Yes.

15 Q. And some of your friends that were involved in this with
16 you were very angry, as well, weren't they?

17 MR. GONZALEZ: Objection, Your Honor; relevance, and
18 calls for speculation, as well.

19 THE COURT: All right. Where are we going with this?

20 MS. STILLINGER: I was going to ask about discussions
21 that they had about taking revenge.

22 THE COURT: Could you approach?

23 MS. STILLINGER: Yes, Your Honor.

24 (Bench conference:)

25 THE COURT: Okay. What relevance does revenge have?

1 MS. STILLINGER: It's bias, Your Honor. It's bias.
2 Your Honor, he's that angry, that they were talking about
3 getting together a hunting party to go shoot Border Patrol
4 agents.

5 THE COURT: But what's that got to do with bias
6 regarding this case? I mean, he's --

7 MS. STILLINGER: If he's willing to shoot them, he
8 might be willing to perjure himself to get these guys, to get
9 revenge.

10 MR. GONZALEZ: That's ridiculous.

11 Jose Luis.

12 It's -- if she wants to talk to his friends, that's
13 who she needs to ask questions of. He's not the one -- that's
14 remedial action he's taken. If he shot at them, if he did
15 something, they can ask him about that, not about what
16 his friends --

17 MS. KANOF: Okay. This is Debra Kanof.

18 Pursuant to the law, she's talking about an extrinsic
19 fact that could be considered a conspiracy to commit an
20 assault. That is not admissible to impeach, unless it goes to
21 bias, to his testimony about what he's testified today.

22 In addition, even if it is admissible, the Court can
23 make a decision as to the probative value. But as far as bias
24 is concerned, how does the fact that he's said he was angry --
25 okay, very angry, yes.

1 But how does going into the specific actions of his
2 anger, when he didn't do it -- he didn't let anybody hurt them.
3 How is that relevant, because the fact of what he did about his
4 anger is not really relevant. The fact is relevant -- I think
5 she got that out. Other than that, it's too prejudicial.

6 THE COURT: I'll sustain the objection at this time.

7 (End of bench conference; open court.)

8 THE COURT: You may proceed.

9 MS. STILLINGER: I think I'm almost done, Your Honor.

10 THE COURT: All right.

11 BY MS. STILLINGER:

12 Q. Mr. Aldrete, when you came to the United States on March
13 16, to go to William Beaumont Hospital, were you given a
14 permit, an I-94, to enter the United States?

15 A. They gave me a permit. I don't know if it's an I-94 or
16 what, but they did give me a permit so that I could come see
17 the doctor.

18 Q. Okay. And that permit was good for a certain time period,
19 approximately a month, correct?

20 A. Yes.

21 Q. And, during the time that you had that permit, you could
22 enter the United States as often as you wanted, correct?

23 A. Yes.

24 Q. And you could enter for any purpose, correct?

25 A. Well, yes.

1 Q. For any lawful purpose, I should say.

2 A. Yes. Yes.

3 Q. And, when that permit expired, you got another permit
4 later, didn't you?

5 A. Yes. They have been renewing it.

6 Q. Okay. And have they renewed it consistently since March of
7 last year?

8 A. Yes, up to about four -- three months ago, for Christmas, I
9 didn't get another permit. Because I had to be coming over to
10 have them change my tube. And whenever I did that, I had to
11 leave all the things that I do to earn money over there. So I
12 started having it changed over there. It was a little bit
13 cheaper, too.

14 Q. Okay. And the Government was going to arrange for you to
15 have surgery to fix -- completely fix the urethra, weren't
16 they?

17 A. Yes.

18 Q. And have you had that surgery, yet?

19 A. No.

20 Q. Okay. And you've decided to get medical attention in
21 Mexico more recently?

22 A. Yes. I'm taking care of myself every month, on a monthly
23 basis, in Mexico.

24 Q. Okay. But why haven't you had the surgery that the
25 Government is offering to provide you at no cost?

1 A. I haven't done the surgery because they did a lot of
2 analysis. And when they did all these analyses, they
3 determined that the urethra wasn't just cut the way they
4 thought, but it was missing about an inch.

5 So it was a more serious surgery than they had
6 initially understood it to be, and so they're going to do more
7 analysis, and a lot of doctors do this kind of operation.

8 The other reason is because the date for this trial
9 was getting near.

10 Q. Okay. Is it your testimony that the Government has --
11 well, they have offered to provide you with that surgery at no
12 cost to you, correct?

13 A. Yes.

14 Q. Okay. And you said that you haven't been coming over here
15 for medical attention because you're employed in Mexico. How
16 are you employed?

17 A. I don't have a job. What I do is I take some provisional
18 jobs to paint cars. And sometimes they would bring me the
19 cars, and I would promise to have them on a certain date, and
20 then it would turn out that that day is when I had to come and
21 get my tube changed. And so I would lose a lot of time, and I
22 would lose the work, also.

23 Q. Okay. You have a commercial driver's license, don't you?

24 A. Yes.

25 Q. Okay. And that is valid today, isn't it?

1 A. No.

2 Q. When did that expire?

3 A. It expired in 2004, at the end of -- on November 2004.

4 MS. STILLINGER: May I approach the witness,

5 Your Honor?

6 THE COURT: You may.

7 BY MS. STILLINGER:

8 Q. I'm going to show you what I've marked for identification
9 purposes as Defendant Ramos 10. It's a photocopy. Do you
10 recognize what that is a photocopy of?

11 A. It's my license.

12 Q. Okay. And that is your commercial driver's license,
13 correct?

14 A. Yes.

15 Q. And could you read the date that it expires, please?

16 A. It's that it's got various expiration dates, every two
17 years. So it's got 2005, 2007, 2009, 2011.

18 Q. Okay. And this was issued in December 2003, correct?

19 A. Okay. This license, I took it out in 2003. And it's the
20 license that authorizes the driving of hazardous materials. If
21 you can see, it's got a VI.

22 Now, I have another license, and I don't know -- maybe
23 Chris has a copy of it -- which I took out. But since I
24 started driving trucks with gas, then I took this license out
25 in 2003, which allows me to drive hazardous materials.

1 Q. Okay. And would you agree with me that, at least on this
2 license, the expiration date is 2013?

3 A. The license expires in 2013, but it needs to be renewed.
4 If I didn't renew it in 2005, then the license doesn't -- is
5 not valid.

6 Q. Okay. It needs a special certification, and that would
7 expire December 23rd, 2005. Is that correct?

8 A. This one. The other one expired in 2004.

9 Q. Okay. The other one -- okay. But you had this commercial
10 driver's license that was good at least through December of
11 2005, correct?

12 A. Yes.

13 Q. Okay. So when you told Agent Sanchez that your commercial
14 driver's license had expired, you were talking about some other
15 commercial driver's license, not this commercial driver's
16 license?

17 A. On this one, what I didn't have current was a permission to
18 go into Pemex. And without that permission to go into Pemex,
19 even if the license itself is valid, it's no good.

20 MS. STILLINGER: Okay. I'm sorry. May I approach the
21 witness again, Your Honor?

22 THE COURT: Yes.

23 BY MS. STILLINGER:

24 Q. Is this the permission that you're talking about to go into
25 Pemex?

1 A. Yes.

2 Q. And what date does this show that this expired?

3 A. There it is. It expired September of 2004.

4 Q. Okay. So your testimony is that when you told Agent
5 Sanchez that your commercial driver's license had expired, and
6 you needed money to renew it, you're talking about this Pemex
7 permission, that it had expired maybe six months previous. Is
8 that right?

9 A. Yes. Either fixing up this permission to Pemex, or fixing
10 up my license that's not the Pemex, which expired in November
11 of 2004.

12 Q. Mr. Aldrete, are you going to have the surgery to fix your
13 urethra?

14 A. If it can be done, yes.

15 MS. STILLINGER: I'll pass the witness, Your Honor.

16 THE COURT: Could the attorneys approach, including
17 Mr. Boyaki?

18 (Bench conference:)

19 THE COURT: I assume you have cross, and I assume it's
20 going to take as long as -- at least somewhat as long as
21 Ms. Stillinger. It's 5:30, which means that would put us
22 somewhere around 7:00. Then I assume you would probably have
23 redirect.

24 I know Mr. Boyaki is going to leave tomorrow. I'm
25 trying to decide whether we should try to wrap him up tonight,

1 or -- any realistic expectation that we can get it done
2 tonight?

3 MS. STILLINGER: My guess is we could. There's only
4 one other issue. I will -- I don't know if you will let me
5 have permission to take this witness out of the hearing of the
6 jury, to make a proffer of the evidence that we're trying to
7 get into.

8 MS. KANOF: At which point he's going to take the
9 Fifth Amendment. His attorney has told me that. So once the
10 Court knows that, even out of the hearing of the jury, my
11 understanding from Mr. Boyaki, he will invoke the Fifth
12 Amendment. We're informing the Court so, therefore, no hearing
13 will be had.

14 THE COURT: All right. And --

15 MS. STILLINGER: I think we can make a proffer without
16 the witness.

17 THE COURT: That's fine. But -- all right. So then
18 if that's the case, do we need to finish him up tonight?
19 Because then Mr. Boyaki doesn't need to be here. My concern is
20 the jury. They've been here a long time. This does get kind
21 of tedious.

22 MR. PETERS: I don't know that -- I expect jurors want
23 to know --

24 MS. KANOF: That was Mr. Peters.

25 MR. BOYAKI: Judge, I could be on the phone.

1 THE COURT: My concern is, once the Fifth Amendment is
2 invoked, everything else has been talked about. There may be
3 other minor issues. I'm going to have to rule on those.
4 That's really regarding this incident, and I'm not so concerned
5 with you being here. I mean, you're certainly welcome to be
6 here. If your intention is to invoke the Fifth, then I think
7 that clears it up.

8 MR. PETERS: Judge, Stephen Peters.

9 I don't want to disagree with anything anybody's said,
10 because I don't know -- I have a question about whether anybody
11 can invoke the Fifth when they have a testimonial immunity.
12 I've never heard of anybody being able to invoke the Fifth in
13 face of immunity.

14 MS. KANOF: Yes, he can. He doesn't -- has limited
15 use immunity, not testimonial. And he doesn't ever, ever, ever
16 have to talk about another crime that wasn't involved in this
17 case. He can always take the Fifth.

18 MR. PETERS: By the same token, right now, the Court
19 has ruled that on -- you know, on various evidentiary bases,
20 that we are not allowed to go into. However, in the event that
21 we are allowed to go into it, or in the event we should have
22 been allowed to go into it, then his -- his -- I mean --

23 MS. RAMIREZ: Maria Ramirez on behalf of Mr. Compean.

24 What he's saying is that -- he's saying that he's
25 going to take the Fifth. He's going take the Fifth.

1 MR. PETERS: If he's got immunity from anything he
2 testifies to --

3 THE COURT: No, not true.

4 MS. STILLINGER: Only with respect to what happened on
5 February 17th.

6 THE COURT: And, for the purposes of the record, any
7 Court of Appeals will have the doc -- the sealed documents, for
8 purposes of reviewing whether he should have had any immunity
9 or whether he should have, you know, had -- whether it was
10 any -- was there any relevance to it or any purpose behind
11 admitting it, et cetera. I'm not concerned about any bill,
12 other than getting on the record that he is going to invoke the
13 Fifth.

14 MS. STILLINGER: Mary Stillinger.

15 The only thing that I would like to ask him, also, for
16 the purpose of making the bill, is whether he knows that they
17 know about that October load. Because if he knows about it,
18 then he would apparently -- he's assuming he's getting a walk
19 on it.

20 MS. KANOF: I can respond to that. Wait a minute.
21 The Government has not discussed it with him, and has no
22 knowledge that he has knowledge.

23 In addition to that, I believe Mr. Boyaki is standing
24 here, so he can also tell you, also, he has not discussed it
25 with him. As far as I know, he doesn't know that we know.

1 MR. BOYAKI: That's correct.

2 MS. KANOF: Right. Your Honor, he --

3 MS. STILLINGER: I'm not sure he can take the Fifth on
4 whether he knows he's been under investigation, Your Honor.

5 THE COURT: So what's the specific question you want
6 to ask him that you're telling me that you're not sure?

7 MS. STILLINGER: Making a bill, is he aware he's been
8 implicated? He's discovered at the house of Cipriano Ortiz in
9 September 2005.

10 MS. KANOF: He can take the Fifth on that question.

11 THE COURT: Well, my concern is that that's an
12 investigation, and to my knowledge, ongoing investigation.
13 That has no relevance to him, other than his ability to be
14 impeached for the purposes of bias, if he thought somehow his
15 immunity agreement extends to that.

16 So I don't have a problem, if you want to know what
17 his thoughts are. I don't have a problem with the questions
18 such as: Do you think the immunity agreement extended -- went
19 on forever, or for any subsequent illegal activities, a general
20 question.

21 But I have a huge problem with going into specifics of
22 any investigation without some information that he believes
23 would extend beyond that day. Because he has said at least --
24 I was sitting here counting -- at least five times, I had
25 immunity from that day, for that day -- for that day. And the

1 record is replete with that day, nothing about subsequent.

2 So unless he says, you know, he thought he was just
3 immune from any prosecution forever, then I don't think whether
4 they were investigating him has any relevance. And certainly,
5 it's an ongoing investigation, to my knowledge.

6 MS. KANOF: I don't believe the Government has said
7 this for the record. But we have not offered him immunity or
8 any benefit for anything he did on any day other than that day.

9 THE COURT: He has said that repeatedly. So again --

10 MS. KANOF: Your Honor, I have another issue, since
11 we're up at the bench.

12 THE COURT: I'm going to go ahead and let the jury go,
13 unless -- because you've just rested.

14 MS. RAMIREZ: I just want to make sure he's going to
15 be back tomorrow.

16 MS. KANOF: He will be back tomorrow, since he's still
17 in the Government's case. The Government will continue to pay
18 for him.

19 MS. RAMIREZ: Thank you, Ms. Kanof.

20 MR. BOYAKI: Judge, I will be back Friday.

21 (End of bench conference; open court.)

22 THE COURT: Ladies and gentlemen of the jury, it is --
23 again, I can't see the clock, but my time indicates it's about
24 5:45, which is about quarter to 6:00. So at this time, the
25 Court is going to recess for the evening. I'm going to go

1 ahead and let you take a break until tomorrow morning. I'm
2 going to ask you again to be here tomorrow morning about 8:30.

3 Remember, you remain under all the rules of the Court,
4 specifically the rules regarding discussing this case with
5 anyone, doing any independent investigation of any of the
6 testimony or facts that you've heard in this case, and reading
7 any media articles or listening to anything on the TV or the
8 radio. Again, if you see anything, you need to immediately
9 turn it off or stop reading it. All right?

10 And then we will see you back here tomorrow morning at
11 8:30. Thank you.

12 (Recess; open court, parties present, jury not
13 present.)

14 THE COURT: You may be seated.

15 All right. Ms. Stillinger has rested. I do believe
16 there is an issue we need to take up outside the presence of
17 the jury, and before tomorrow. Is that correct or no?

18 MS. KANOF: No. Mr. Gonzalez says that we need to
19 talk to -- talk about it a little bit more. It may not be
20 something that is relevant to this.

21 THE COURT: Okay. Well, could the attorneys approach
22 a second?

23 (Bench conference:)

24 THE COURT: I think we're talking about something
25 different. I'm --

1 MS. KANOF: As to surgery.

2 THE COURT: I'm talking about invoking the Fifth.

3 MS. KANOF: Oh. We need to do this with Mr. Boyaki
4 present.

5 THE COURT: Okay. I don't have any problem dealing
6 with the public. I just have a problem in front of the jury.

7 MR. PETERS: Stephen Peters.

8 During Ms. Ramirez's cross-examination tomorrow,
9 somehow the door -- they opened to getting into the October,
10 he's going to invoke the Fifth?

11 THE COURT: He's going to invoke the Fifth.

12 MS. KANOF: She can't open the door to a motion in
13 limine; only the Government can.

14 THE COURT: Yeah, but on top of that, once he's
15 invoked the Fifth, she can't ask.

16 MS. RAMIREZ: He's going to invoke the Fifth?

17 MR. PETERS: Yeah, Boyaki won't be here.

18 MS. KANOF: My understanding of the law, Your Honor,
19 is if you know he's going to invoke the Fifth, you can't ask
20 him anything.

21 THE COURT: I understand. Ms. Kanof is against that
22 request.

23 MS. STILLINGER: For the purposes of making an appeal
24 right now, he believes he had immunity from any criminal
25 action. I can't say anything specific about what we're talking

1 about in front of him or the public, correct?

2 THE COURT: You can ask him that question in front of
3 the jury.

4 MS. RAMIREZ: Maria Ramirez on behalf of Jose Compean.

5 I don't know --

6 THE COURT: Well, let me say I would prefer to get the
7 record clear that you ask him that outside of the presence of
8 the jury. And he may say, no, he thought he was immune from
9 everything forever.

10 If he says that, then we may have a different issue.
11 But let's clear that one. If he says that -- if he says that
12 he believes that he's only immune for that day, he's entitled
13 to invoke the Fifth. Once he says that, then we're talking
14 about a subsequent investigation.

15 THE COURT: Okay.

16 (End of bench conference; open court.)

17 MS. KANOF: Your Honor, for the purposes of this
18 hearing, is it okay if he's my witness instead of
19 Mr. Gonzalez's witness?

20 THE COURT: Yes, that's fine.

21 All right. It's my understanding -- who is going
22 to -- the defense wants to raise a bill. Who is going to raise
23 it?

24 MS. STILLINGER: Your Honor, I will, because
25 Ms. Ramirez may have something to add to it on behalf of --

1 THE COURT: That's fine, but I need somebody to start.

2 VOIR DIRE EXAMINATION

3 BY MS. STILLINGER:

4 Q. Mr. Aldrete, did you believe that the immunity that the
5 Government gave you --

6 THE COURT: Before you do, let's just make sure the
7 record is clear.

8 We are now on recess for the evening outside the
9 presence of the jury. Ms. Stillinger, you have a bill you
10 would like you make. Is that correct?

11 MS. STILLINGER: Yes, Your Honor.

12 THE COURT: All right. You may proceed. I apologize.

13 MS. STILLINGER: Thank you.

14 BY MS. STILLINGER:

15 Q. Mr. Aldrete, the immunity agreement that the Government
16 gave you -- and I'm talking about the written agreement, as
17 well as any other oral promises that have been made to you --
18 did you understand that that gave you immunity for any criminal
19 conduct from February 17th on?

20 A. No. The 17th, just that day.

21 Q. Okay. Would you expect, because of your cooperation with
22 the Government in this case, that you would be given anymore
23 favorable treatment for any other criminal activity other than
24 the February 17th?

25 A. No. No, of course not. I believe it was just in reference

1 to that day and in reference to this case.

2 Q. Okay.

3 MS. STILLINGER: And I guess, just for purposes of
4 making the record complete, I guess I would just like to make
5 sure it is on the record that, if I asked about any specific
6 conduct, that Mr. Aldrete would be invoking his Fifth
7 Amendment?

8 MS. KANOF: Yes, Your Honor. That is the position of
9 Mr. Aldrete, as communicated to me by his attorney, Walter
10 Boyaki, who is here in the courtroom.

11 THE COURT: All right. Mr. Boyaki, for purposes of
12 the record, is that correct?

13 MR. BOYAKI: Yes, ma'am.

14 THE COURT: All right. For purposes of the record, he
15 does invoke his Fifth.

16 Anything further?

17 MS. STILLINGER: That's all I have, Your Honor.

18 THE COURT: All right. Ms. Ramirez, anything further?

19 MS. RAMIREZ: Okay, Judge. So I -- just so the record
20 is clear, so I can't ask him about any other date?

21 THE COURT: That's correct.

22 MS. RAMIREZ: Okay.

23 THE COURT: The Fifth has been invoked.

24 MS. RAMIREZ: Thank you, Judge.

25 THE COURT: All right. Anything further?

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

2 THE COURT: All right. We'll see everybody tomorrow
3 at 8:30. Thank you.

4 (Transcript continues in Volume VIII.)

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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

David A. Perez, CSR, RPR