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

2 THE COURT: Call the case.

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

5 MS. KANOF: Debra Kanof and Jose Luis Gonzalez for the
6 United States.

7 MS. STILLINGER: And Mary Stillinger and Steve Peters
8 for Ignacio Ramos, Your Honor.

9 MS. RAMIREZ: Maria Ramirez and Christopher Antcliff
10 on behalf of Jose Alonso Compean.

11 THE COURT: We are outside the presence of the jury.
12 Anything we needed to take up before we bring the jury in?

13 MS. STILLINGER: Your Honor, I did have an issue I
14 wanted to raise, and I'm raising this based on what we
15 discovered yesterday, which is that Mr. Aldrete will be
16 claiming the Fifth Amendment privilege as to any questions
17 having to do with any conduct other than February 17th, 2005.

18 I did a little research last night, and found that the
19 defendant does have a right to complain about a due process
20 violation, when the Government is using an immunity privilege
21 to unfairly skew the facts presented to the jury.

22 What I'm asking the Court specifically to do is, for
23 the Court to grant testimonial immunity, complete testimonial
24 immunity, to Mr. Aldrete. And I would like to just explain a
25 little bit.

1 And I know the Court has said, you know, Mr. Aldrete
2 is not on trial, and I understand that. He is, however, the
3 only witness who can say he didn't have a gun with him that
4 day, or he didn't have something shiny in his hand when he
5 turned around and looked at these agents, with something shiny
6 in his hand that could have been mistaken for a gun. He is the
7 only one -- and I know you haven't heard from the other agents.

8 But -- but I -- my understanding of the facts is that
9 none of the other agents saw that sequence of events. So
10 Mr. Aldrete is the only person who can testify, which makes him
11 an extremely important witness, and his credibility is
12 extremely important.

13 In a normal case, Your Honor, he would have an
14 immunity agreement like the other three agents in the case.
15 There are three agents that have immunity agreements, and it is
16 a testimony -- it's a proffer letter, a typical proffer letter,
17 which gives them testimonial immunity, so long as they are
18 truthful, et cetera.

19 But the testimonial immunity covers whatever they
20 testify about. It's not limited to February 17th. It's about
21 whatever they testify about.

22 For example, if a Border Patrol agent says, Yes, I
23 discharged my weapon five other times and I didn't report it,
24 they are not going to get charged with any criminal offense.

25 Or they say, I shot a guy and didn't report it,

1 they -- that testimony cannot be used against them, because
2 they have complete testimonial immunity.

3 The immunity agreement that Mr. Aldrete has is a very
4 unusual -- in my experience -- an unusual immunity agreement,
5 in that it covers only February 17th.

6 The effect of this, Your Honor, is that we don't have
7 the opportunity to even discover if there is Brady material or
8 Giglio material that might become admissible.

9 For instance, yesterday the witness testified, as I
10 said at the bench, made a big deal about how he has no idea how
11 marijuana is packaged. He doesn't know how much it is, because
12 he's never seen anything like this before.

13 And -- and if I knew that he had done it before, I
14 could bring that out, and he would have opened the door to
15 that. And I could have said, Well, what about the last five
16 times you, you know, carried marijuana across the river?

17 And I don't have information that that happened. But,
18 Your Honor, I'm being prevented from even asking that question.
19 And, in a normal case, the Government would have a duty -- I
20 understand the Government can't ask that question either right
21 now, because he has immunity, and he's going to claim the
22 Fifth.

23 So I'm not saying the Government is withholding from
24 us, because I don't believe they have that information. I know
25 if they did they would tell us about that information. But,

1 because the immunity agreement is so limited, they also can't
2 discover that information. And the result is, Your Honor --
3 what I'm concerned about, and I would like to cite the Court to
4 a case that's United States versus Bustamante, at 45 F3d 933.

5 Now, this case actually went -- it was a little
6 different situation. It was an immunized witness who the
7 defense wanted to call, and the Government was saying, You had
8 immunity for one day, you don't for other days. But it was a
9 defense witness.

10 And, in that case, the Court said, Well, no, a defense
11 witness, you know, you testify at your own risk. And they --
12 the Court said -- and they go through a couple of cases, where
13 they said that -- and in United States versus Chagra, for
14 instance, another case that went against this, it says that the
15 Sixth Amendment compulsory process right does not enable a
16 witness to demand that the Government shield a witness from the
17 consequences of his own testimony.

18 But then they go on to say -- and they talk about a
19 couple of other cases that, unless the Government has abused
20 its immunity power, a defendant has no due process right to
21 have the trial Court immunize the defense witnesses.

22 Of course we're not talking about defense witnesses,
23 we're talking about a Government witness. I'm not saying I
24 have a witness over here that I want to come forward with,
25 would you please give him immunity. This is a Government

1 witness.

2 And what the Court goes on to say, after talking about
3 a couple of cases, they say, These decisions illuminate the
4 underlying principle that a defendant only has grounds to
5 complain about the treatment of a witness' immunity when the
6 Government is using its immunity privilege to unfairly skew the
7 facts presented to the jury, thereby breaching the defense
8 right to due process of law.

9 And -- and my concern is -- you know, it might turn
10 out that nothing else exists, well, prior to February 17th.
11 But we don't know that, Your Honor. And we cannot know that.

12 And my concern is the facts are being skewed unfairly
13 to the jury, because they're hearing this man testify that he
14 doesn't know anything about anything about marijuana
15 trafficking.

16 I think we have some facts that give us cause to
17 believe that that is not the case, and I think we're entitled
18 to inquire about that. We are being prevented from inquiring
19 about that, because of the limitations of the immunity
20 agreement.

21 If the Court were to -- and the Court could, I
22 believe, 18 United States Code 6002 and 6003 -- and -- and I
23 apologize that my research is not completely thorough. But,
24 obviously, based on these cases, the trial Court does have the
25 right -- even without the Government's request -- the trial

1 Court does have the right to grant a testimonial immunity. And
2 I'm asking the Court to grant that testimonial immunity,
3 complete testimonial immunity, to Mr. Aldrete, so that we could
4 have a hearing outside the presence of the jury to discover if
5 there is any other information that would be admissible in this
6 case.

7 THE COURT: Okay. Before I allow the Government to
8 respond, let me ask you a couple of questions, Ms. Stillinger.

9 First of all, we have heard testimony from this
10 witness regarding his involvement in the drug trafficking on
11 that day. And so, obviously, the jury is aware of his
12 involvement on that day.

13 MS. STILLINGER: Right.

14 THE COURT: I understand that there is some issue
15 about his credibility, but that's up to the jury to assess,
16 based on the way he responds to questions.

17 Regarding the issue of his weapon, even if the Court
18 were to allow you to go into, you know, prior packaging or
19 whatever it is that you're concerned about, how does that go to
20 whether or not he had a weapon on that day, and -- and the
21 issue of violence? I mean, do you have any indication that
22 this witness -- or any indication that there was violence that
23 he may have been involved in in the past? And how does that go
24 to a weapon on that day, if that's what you're trying to prove?

25 MS. STILLINGER: No, Your Honor, I'm not -- I'm not

1 saying to inquire about violence or -- that would go to
2 specifically whether he had a weapon. But it goes to
3 credibility. And what I'm saying, his credibility is extremely
4 important as to the issue of whether he had a weapon or a cell
5 phone in his hand, something -- something shiny, that these
6 agents could have mistaken for a weapon. He is the only
7 witness on that subject for the government, and so his
8 credibility is very important.

9 THE COURT: And that's why we've gone into his
10 involvement --

11 MS. STILLINGER: Right.

12 THE COURT: -- and the issues of immunity on the whole
13 day.

14 MS. STILLINGER: Right. And -- and I'm not saying
15 that, you know, he's been a drug trafficker for six years, that
16 that makes him -- that that, in and of itself, goes to his
17 credibility.

18 But if he has taken the stand, as he had, and said, I
19 don't know what marijuana looks like. I don't know how to
20 package marijuana. I don't know what they were hiring me to
21 carry, and it turns out that he's done it five other times,
22 then that shows that he was lying about that. He was trying to
23 make the jury think that he was an innocent person when he
24 wasn't.

25 THE COURT: All right. And --

1 MS. STILLINGER: And if he lies about that, he may
2 well lie about whether or not he had a weapon or -- or
3 something else in his hand that could have been mistaken for a
4 weapon.

5 THE COURT: Now, the other -- the second part of my
6 question to you has to do with, even if it's somewhat relevant,
7 how is it not highly prejudicial?

8 MS. STILLINGER: Well, it may be prejudicial. But
9 it's very prejudicial to these defendants, who are the ones
10 that have the right to a fair trial. I mean, Mr. Aldrete is
11 not on trial. And Mr. Aldrete -- I mean, I'm not saying that
12 we shouldn't be fair to him and treat him appropriately. But
13 he's not the one on trial and, therefore, he doesn't have due
14 process concerns.

15 And I think it is much more prejudicial to them to
16 limit their right to present to the jury a fair view of the
17 facts. And I can't tell you how many cases I've tried where an
18 informant or cooperator wants to make himself look so good.
19 You know, I -- I -- I, you know, found God, and decided to
20 cooperate, and this was the only time I've done this, and go
21 through, okay, well, what about this? What about this? What
22 about this? And their credibility is destroyed.

23 THE COURT: Uh-huh.

24 MS. STILLINGER: And that's very important to the
25 jury. Because when they hear, oh, that guy was trying to

1 pretend how innocent he was, and on cross-examination it turned
2 out it wasn't true, and they throw his testimony out the
3 window.

4 THE COURT: And do you have any -- any information of
5 prior involvement, prior involvement in drug trafficking?

6 MS. STILLINGER: I don't. I do not have any
7 information of prior involvement. And -- and I can just tell
8 you that I think all -- circumstances that we could discuss
9 more freely at the bench, but there are circumstances that seem
10 to me as more likely than not, but I do not have any specific
11 information of prior involvement.

12 But, in a normal case, I would be able to at least ask
13 and find out. I mean, normally, that would all come in a --
14 you know, an interview that the agents had done, and I would
15 have that pretrial, and I would be able to decide whether or
16 not to ask the person about it, or the Court would be able to
17 rule whether it's admissible. But the status we're in right
18 now, the Court can't even tell me whether it's admissible,
19 because we don't even know if it exists.

20 THE COURT: All right. Ms. Kanof?

21 MS. KANOF: Let me go first to Ms. Stillinger's case.
22 And I haven't read the case, because I just got the cite for
23 the first time. But she, in reading it, it appears to me that
24 the case that she's citing goes to prosecutorial misconduct.
25 Because the two things that she read were, Unless the

1 Government abuses the immunity power -- the Court hasn't made a
2 ruling that the Government has abused their immunity power. If
3 the Court does rule that way, then I would like time to
4 research it -- and that the Government unfairly skewed the
5 facts.

6 We're not trying to be unfair. Again, it's a
7 prosecutorial bad faith or impropriety issue. And, in this
8 case, the Government hasn't attempted to do -- to do anything
9 improper, to unfairly skew anything or to abuse their immunity
10 power. So I don't think that case stands for the proposition
11 at all.

12 The Court asked the absolute positive key question:
13 Do you have any information that he ever engaged, prior to
14 February 17, 2005, in any drug trafficking activity?

15 Ms. Stillinger does not have that information, and I
16 will represent to the Court, neither does the Government.
17 There is no evidence. We have no knowledge of him ever being
18 involved before.

19 I think the big issue that they're talking about is
20 that he said he didn't know how it was pressed. And they want
21 to leap to the fact that he's been in drug trafficking before,
22 because he used that terminology. Now, he's from a small town
23 on the border. And I'll tell you, you know, my niece and
24 nephew understand pressing marijuana, and they're not drug
25 traffickers.

1 Your Honor, the issue, as she represented to the
2 Court, the issue here is his credibility. There are laws,
3 rules, and cases that govern what you can impeach. For the
4 purpose of credibility, it's Rule 608. You can do it through
5 reputation or opinion testimony.

6 There's -- I mean, she came right out and told the
7 Court, it's all about credibility. If you want to provide
8 evidence that is offered for an individual's truth or untruth,
9 you do not use extrinsic facts.

10 And, in this case, they can't use extrinsic facts.
11 There aren't any that occurred before this date. You can use
12 reputation testimony. If they want to bring half the people
13 from San Isidro to say, you know, he has a reputation of being
14 a liar, or he has -- I believe he's a liar, fine. Even then
15 they couldn't talk about -- well, then they could be questioned
16 as to their -- their -- what they know or how they know that.
17 But, basically, nothing has changed from the Court's ruling
18 before.

19 That case she cites isn't talking about this
20 situation. It doesn't appear to be on point. It appears to be
21 talking about prosecutorial misconduct. Of coures, I don't
22 know, because I haven't read the case.

23 But the Government has not tried to unfairly skew
24 anything. The Government has tried to try the defendants and
25 not this witness. And there is nothing he has said to open the

1 door to any other drug trafficking activity that he may or may
2 not have engaged in.

3 Also, Ms. Stillinger misstated that he's the only
4 witness that can say whether or not there was gun, because
5 Oscar Juarez sees him with his hands up and sees him take off
6 running. And there is also circumstantial evidence that he did
7 not have a gun and that the defendants did know he did not have
8 a gun. They're charged with that, and that's covering it up.

9 MS. STILLINGER: Your Honor, I just briefly --
10 Ms. Ramirez pointed out to me -- and I'm surprised that I
11 missed this. But Ms. Ramirez pointed out to me that letter of
12 limited use immunity, which is Defendant Ramos Exhibit 2 --
13 which has not been admitted -- but the written use immunity
14 agreement does not limit it to February 17th of 2005.

15 I know we had a lot of discussions about this, and
16 some at the bench. And I think what came out is that the
17 Government orally broadened the immunity to cover a
18 transactional immunity for February 17th.

19 But, actually, looking at the terms of the written
20 agreement, he does have complete testimonial immunity. I don't
21 think the Government can orally limit that, or restrict it to
22 less than what they gave him in this letter.

23 And I guess I would like to -- for the purposes of
24 this issue, I would like to move for the admission of Defendant
25 Ramos Exhibit 2, so the Court could have that in front of it.

1 THE COURT: All right.

2 MS. STILLINGER: And I guess I -- I'm sorry, but I may
3 have misphrased the issue. I guess what I -- maybe what I'm
4 complaining about is their -- their interpretation of the
5 immunity agreement. Because reading that, he doesn't have the
6 Fifth Amendment when he testifies. And if he doesn't have the
7 Fifth Amendment when he testifies, I don't think there would be
8 any restriction in us asking him those questions, at least
9 outside the hearing of the jury, if not in front of the jury.

10 MS. KANOF: Your Honor, in response to that, bias does
11 not go to what the letter says. Bias goes to his understanding
12 of what his immunity is. Bias goes to his motive to testify.
13 And he has testified over and over again that his understanding
14 is he only gets a walk for what he did on February 17th.

15 THE COURT: All right. Can I have the cite of the
16 case one more time real quick?

17 MS. STILLINGER: Yes. And, Your Honor, let me -- the
18 case that I pulled these other cases from, it's United States
19 versus Bustamante.

20 THE COURT: All right.

21 MS. STILLINGER: And that's 45 F3d 933.

22 THE COURT: Okay.

23 MS. STILLINGER: It's headnote 12 --

24 THE COURT: All right.

25 MS. STILLINGER: -- specifically. And there's several

1 other cases cited in there, which -- which I must admit I
2 didn't read all of those.

3 THE COURT: Okay. But it's 45 F3d 933?

4 MS. STILLINGER: Yes, ma'am.

5 THE COURT: Okay. All right. Anything else?

6 MS. STILLINGER: Not at this time, Your Honor.

7 THE COURT: All right. Let's just take a real short
8 recess, get ready, and I will rule in just a second.

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

11 THE COURT: You may be seated.

12 All right. The Court has reviewed the case provided
13 by Ms. Stillinger and the law, as quickly as we can. And the
14 Court will deny the request.

15 Are we ready to proceed?

16 MS. RAMIREZ: Yes, Your Honor.

17 MR. GONZALEZ: Yes, Your Honor.

18 THE COURT: All right. Go ahead and bring in the
19 jury.

20 MS. KANOF: Your Honor, I'm very, very warm, and I'm
21 52 years old. Would it be okay if I kept my jacket off?

22 THE COURT: Yes, that's fine. That's absolutely fine.

23 MS. RAMIREZ: Judge, is it okay if I turn on the Elmo?

24 THE COURT: Sure.

25 (Open court, parties and jury present.)

1 THE COURT: Good morning, ladies and gentlemen. You
2 may be seated.

3 JURORS: Good morning.

4 THE COURT: Whenever you're ready, Ms. Ramirez.

5 MS. RAMIREZ: Thank you, Your Honor.

6 OSVALDO ALDRETE-DAVILA, GOVERNMENT'S WITNESS, SWORN

7 TESTIFIED THROUGH THE INTERPRETER JORGE DIEPPA

8 CROSS-EXAMINATION

9 BY MS. RAMIREZ:

10 Q. Good morning Mr. Davila.

11 A. Good morning.

12 Q. My name is Maria Ramirez. And I, along with Mr. Antcliff,
13 represent Mr. Compean. And this morning I will be asking you a
14 number of questions. If you don't understand the question, I
15 want you to please stop me, and I will try to rephrase it in a
16 manner that you can understand.

17 A. Okay. Yes.

18 Q. Okay. And, if you answer my question, I'm going to assume
19 that you understood it. Is that fair?

20 A. Yes.

21 Q. Okay. Is that fair?

22 A. Yes.

23 Q. Okay. I'm just going to take you back just a little bit to
24 the afternoon of February 17th, 2005.

25 THE COURT: And can you try to stay at the podium,

1 so...

2 MS. RAMIREZ: Yes, ma'am.

3 THE COURT: That would be great. Thank you.

4 A. Yes.

5 BY MS. RAMIREZ:

6 Q. And you testified yesterday that you had crossed into the
7 United States illegally, correct?

8 THE INTERPRETER: I'm sorry, would you speak up,
9 please?

10 BY MS. RAMIREZ:

11 Q. You had testified yesterday that you entered into the
12 United States illegally, correct?

13 A. Yes.

14 Q. And, that right before you entered, you had been given a
15 cell phone. Is that correct?

16 A. Yes.

17 Q. So there was at least -- there were some people there at
18 the river with you when you were given that cell phone,
19 correct?

20 A. No. It was alone. There was only one person there.

21 Q. Okay. So at least two people were there at the river right
22 before you crossed. And then -- you and that other person,
23 before you went to the van and got into the van, correct?

24 A. Yes.

25 Q. Okay. Now, you stated that you got right into the van,

- 1 correct?
- 2 A. Yes.
- 3 Q. And then you were told to drive north, correct?
- 4 A. Yes.
- 5 Q. And eventually you would get to Fabens, correct?
- 6 A. Yes.
- 7 Q. Okay. You were unfamiliar with that area, but you knew
- 8 where Alameda was, correct?
- 9 A. Yes.
- 10 Q. Okay. Now, when you saw the Border Patrol units, once you
- 11 got to Alameda, you turned around, made a U-turn, and you
- 12 headed straight for Mexico, correct?
- 13 A. Yes.
- 14 Q. But yet, when you went back to Mexico, you didn't take the
- 15 same path as when you came in, correct?
- 16 A. Yes. When I turned around, when I went around the block,
- 17 I -- then I got the same route.
- 18 Q. Okay. Well, you took Fabens Road, but you didn't take
- 19 Island Road, which is the road that took you to Fabens Road,
- 20 correct?
- 21 A. Yes. I -- logically, I went straight. And then when I got
- 22 down there, I went towards the north.
- 23 Q. So, instead of being in unfamiliar area, which you stated
- 24 yesterday, correct --
- 25 A. Yes.

1 Q. -- and instead of taking the area -- or the road that you
2 were -- already knew coming into Fabens, correct, you took
3 another road that you weren't familiar with. Yes?

4 A. Well, the other -- the other road that I wasn't familiar
5 with, I went straight ahead. And you can see the drainage up
6 ahead.

7 Q. Okay. Well --

8 MS. RAMIREZ: May I approach the Elmo?

9 THE COURT: Yes.

10 BY MS. RAMIREZ:

11 Q. Well, this is one of the Government's Exhibits, Exhibit 47.
12 And you can't see the drainage ditch from there.

13 A. No, not from there.

14 Q. Okay. But you recognize this road as the road you were
15 traveling on on February 17, 2005, correct?

16 A. Yes.

17 Q. Okay. And this one is also an area that you identified
18 yesterday. Yes?

19 A. Yes.

20 Q. And you can't see where the loaded -- I'm sorry -- where
21 the road is leading you on that exhibit, either, correct?

22 MR. GONZALEZ: Excuse me. May I see the exhibit
23 number?

24 MS. RAMIREZ: Yes. That's Exhibit Number 48.

25 A. No, it cannot be seen.

1 BY MS. RAMIREZ:

2 Q. And on this exhibit, which is Exhibit 49, you can't see it
3 either, correct?

4 A. No.

5 Q. Okay. And some of the roads aren't marked with a sign that
6 has the name of the road on it in this area, correct?

7 A. No.

8 Q. Okay. And on this exhibit, on Exhibit 50, you can't see
9 the drainage ditch from there, either, correct?

10 A. No.

11 Q. Okay. Now, you stated that from the time you picked up the
12 van to the time that you got to Fabens, Alameda, it was about
13 five minutes. Yes?

14 A. From five to ten minutes.

15 Q. Okay. But yesterday you were really sure it was five
16 minutes. Yes?

17 A. I commented yesterday that it was between five and ten
18 minutes.

19 Q. Well, yesterday I wrote down, or as I recall your
20 testimony --

21 MR. GONZALEZ: Objection, Your Honor, argumentative.

22 THE COURT: I'll sustain.

23 BY MS. RAMIREZ:

24 Q. So you're telling the jury today that it was not -- that it
25 was not five minutes, that it was five to ten minutes. Yes?

1 MR. GONZALEZ: Objection, Your Honor, asked and
2 answered.

3 THE COURT: I'll overrule. This is cross.

4 A. That's -- that's what I said yesterday. Yesterday I did
5 not say that it was five minutes. I said that it was between
6 five and ten minutes.

7 BY MS. RAMIREZ:

8 Q. Okay. And you were also really clear that -- that you
9 really didn't do anything in the van. You just got in it, the
10 keys were in it, and you drove straight where you were going,
11 correct?

12 MR. GONZALEZ: Objection, compound question and
13 argumentative.

14 THE COURT: All right. I'll sustain regarding
15 compound. Break it down.

16 MS. RAMIREZ: Yes, ma'am.

17 BY MS. RAMIREZ:

18 Q. You were very clear yesterday that you got in the van,
19 correct?

20 A. Yes.

21 Q. Turned on the ignition.

22 A. Yes.

23 Q. And drove to Alameda.

24 A. I drove up to Alameda.

25 Q. And you didn't do anything else in the van?

1 A. No, only drive.

2 Q. Okay. And -- okay. When you got in the van, did it smell
3 like marijuana?

4 A. I didn't notice any odor.

5 Q. Okay. So then the marijuana hadn't been there for very
6 long, in the van, if it didn't smell like marijuana?

7 MR. GONZALEZ: Objection, Your Honor. This calls for
8 speculation.

9 THE COURT: All right. Restate the question.

10 BY MS. RAMIREZ:

11 Q. Did the van smell like marijuana?

12 A. I didn't notice any odor.

13 Q. Okay.

14 MS. RAMIREZ: Well, can I approach the bench?

15 (Bench conference:)

16 MS. RAMIREZ: Maria Ramirez on behalf of Mr. Compean.
17 Can I ask him what marijuana smells like, if he knows? Would
18 that be a violation of the motion in limine?

19 THE COURT: I'm not concerned about answering the
20 question of what marijuana smells like. My concern in ruling
21 is regarding the issue of how long. So it wasn't in the van,
22 assuming that he knew how long it had been there, and whether
23 that makes a difference. And, frankly, I just don't think
24 that's a proper question.

25 If you want to ask him if he knows how long the

1 marijuana was in there, I don't have a problem, or if he saw it
2 loaded. But my concern with that question, the question that
3 was asked, and if it's in there one day kind of question.
4 Okay? So anything else?

5 MS. RAMIREZ: I'm sorry?

6 THE COURT: Whenever you're ready.

7 (End of bench conference; open court.)

8 BY MS. RAMIREZ:

9 Q. Now, yesterday you said --

10 MS. RAMIREZ: And I'm going to lean on the podium,
11 because the jurors said they can't hear me, Judge.

12 BY MS. RAMIREZ:

13 Q. Yesterday you said, Mr. Davila, that anything could have
14 been in those packages, correct, that were in the van?

15 A. I said I didn't know what drug might be there, that it
16 could be anything.

17 Q. Okay. That it could be heroin or cocaine, correct?

18 A. I don't know what it could have been.

19 Q. Okay. And that it was packaged with tape, yes?

20 A. You can see that in the photo, that it was tape or whatever
21 else.

22 Q. Okay. And then you said, also, that you didn't know
23 whether it was pressed, correct?

24 A. Yes. Yes, I said that.

25 Q. Okay. And you said that the reason that you found out it

1 was marijuana is because you saw it in the news, yes?

2 A. Yes.

3 Q. So it's not because you told Agent Sanchez -- and I'm
4 talking about Christopher Sanchez -- that you knew it was
5 marijuana when you got into the van, correct?

6 A. I didn't tell him.

7 Q. So if Agent Sanchez said, Mr. Davila told me on March 16,
8 '05, that the marijuana was in the van, and he knew that the
9 marijuana was in the van when he got into the van, then that
10 would be incorrect?

11 MR. GONZALEZ: Objection, that's improper impeachment.

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

13 BY MS. RAMIREZ:

14 Q. So you never said, I saw the marijuana when I got in the
15 van, correct?

16 A. That's right.

17 Q. Okay. And anybody who said that would not be telling the
18 truth, correct?

19 MR. GONZALEZ: Objection, Your Honor. That's an
20 improper question.

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

22 BY MS. RAMIREZ:

23 Q. Now, on -- you said you knew that the marijuana was in the
24 van because of the news. Well, what news report did you see,
25 Mr. Davila?

1 A. I don't remember it. On television.

2 Q. Television. Okay. Well, did the television report also
3 say that one of the agents that was involved in this seizure
4 was a dark-skinned Hispanic male five-six to five-eight?

5 MR. GONZALEZ: Objection, Your Honor. Calls for
6 speculation, unless -- and relevance to this line of
7 questioning.

8 THE COURT: I'll overrule.

9 A. I didn't see that. I just saw that it was saying that it
10 was marijuana.

11 BY MS. RAMIREZ:

12 Q. But you knew that information when you talked to
13 Christopher Sanchez on March 11th. Is that correct?

14 THE COURT: And I'm going to ask you to clarify which
15 information, because we're talking about two -- at least, from
16 what I got, two informations. One, that there was marijuana;
17 and, two, I guess a description of an agent. So I -- which
18 information are you referring to?

19 BY MS. RAMIREZ:

20 Q. You knew the description of the Border Patrol agent
21 involved in the seizure when you talked to Christopher Sanchez
22 on March 11th, correct?

23 A. No.

24 Q. So you're saying that you didn't give him a description of
25 the Border Patrol agent that was involved in the seizure,

1 correct?

2 A. I didn't give it to him the first time that I talked with
3 him over the telephone.

4 Q. Okay. Did you talk to Rene Sanchez -- and I'm talking
5 about your lifelong friend -- did you talk to him on March 11th
6 of 2005?

7 MR. GONZALEZ: Objection, Your Honor. Object to the
8 characterization. There's been no testimony that they're
9 lifelong friends; lifelong acquaintances.

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

11 BY MS. RAMIREZ:

12 Q. Did you talk to Rene Sanchez on March 11, 2005?

13 A. I don't remember.

14 Q. Could you have gotten a description from him of the Border
15 Patrol agent that was involved in the seizure?

16 A. That I could have gotten it or that Rene could have gotten
17 it?

18 Q. No, that Rene Sanchez gave you that description.

19 MR. GONZALEZ: Objection, Your Honor. I mean, what
20 Border Patrol agent is she referring to? There are many
21 involved --

22 MS. RAMIREZ: I said the Border Patrol agent that was
23 involved in the seizure, Judge.

24 MR. GONZALEZ: Which one? There's like nine or ten,
25 Your Honor, involved in the seizure.

1 THE COURT: I assume, from the question, that there is
2 a report dated March 11th describing a five-foot-six to
3 five-foot-eight agent. And that's what you're referring to.
4 Is that correct?

5 MS. RAMIREZ: Yes, Judge.

6 THE COURT: I'll overrule the objection.

7 THE INTERPRETER: For the interpreter, would you
8 please repeat the question?

9 MS. RAMIREZ: Yes.

10 BY MS. RAMIREZ:

11 Q. Did you get the description, possibly, from Rene Sanchez?

12 A. I don't understand the question. The description of Rene
13 or of the agent?

14 Q. Okay. Let me go back. On March 11th you had a
15 conversation with Christopher Sanchez. Is that correct,
16 Mr. Davila?

17 A. Yes.

18 Q. And you had previously told the ladies and gentlemen of the
19 jury that you did not talk to him about specifics about the
20 incident on February 17, 2005. Is that correct, Mr. Davila?

21 A. I don't understand very well this thing between 11 and 17.
22 Was it on the 11th that I talked with Chris?

23 Q. Well, I don't know. You tell me. When did you talk to
24 Agent Christopher Sanchez, Mr. Davila?

25 A. Well, I don't have any -- I don't have the dates written

1 down. I don't keep a calendar where I have written down, On
2 this day I spoke with this person, on that day I spoke with the
3 other one. And I don't have all -- it's just in my mind. And
4 I don't have on my mind -- in my mind which -- which day I
5 spoke with whom.

6 Q. Okay. But you did talk to Christopher Sanchez before you
7 went to the consulate in Ciudad Juarez, correct?

8 A. Yes. I spoke by telephone with him.

9 Q. Okay. And you did talk to him about the incident on
10 February -- about the incident that took place here in the
11 United States with the Border Patrol agents that we're here
12 about today, correct?

13 A. Yes. That was the theme. That was the subject.

14 Q. And you say that you did not give him a description of the
15 Border Patrol agent or Border Patrol agents that were involved
16 in that incident in February of '05, when you talked to him at
17 that first telephone conversation. Is that what you're telling
18 the ladies and gentlemen of the jury, Mr. Davila?

19 A. If we talked about that subject, I didn't talk to him about
20 the size, was he taller, was he shorter. What we -- we did
21 talk -- if we talked about it, it was not about details of that
22 agent.

23 Q. Okay. And you never -- now, let's go to March 16, '05,
24 when you met with Christopher Sanchez in Juarez. Did you bring
25 an attorney with you?

1 A. No.

2 Q. You had stated you were going to hire an attorney. Is that
3 correct?

4 A. When had I said that?

5 Q. I'm asking you. Had you stated that you were going to hire
6 an attorney?

7 A. On March 16th, if we're talking about that date, I had not
8 said it.

9 Q. Before March 16th did you tell Mr. Sanchez that you were
10 going to hire an attorney?

11 A. Which Sanchez?

12 Q. Christopher Sanchez.

13 A. I commented, Could I take an attorney?

14 Q. Did you tell him that you were -- Christopher Sanchez --
15 that you were going to hire an attorney?

16 A. I -- I didn't tell him that, but Rene had commented that I
17 could take an attorney. But I -- and I -- and I commented with
18 Chris that I might take an attorney.

19 Q. Okay. When you met with Christopher Sanchez on March 16,
20 '05, in Juarez, he took a photo lineup with him. Is that
21 correct?

22 A. Yes.

23 Q. And you couldn't identify any of those persons as being one
24 of the Border Patrol agents that you saw on the ditch or the
25 levee or the vega on February 17, 2005. Is that correct,

1 Mr. Davila?

2 A. No, I could not identify any of them.

3 Q. Okay. Now, I'm going to take you to -- back to Alameda,
4 which is Texas 20, as you described it in your testimony
5 yesterday. And you're heading south, towards Mexico.

6 A. Yes.

7 Q. You stated that there were two Border Patrol units in back
8 of you.

9 A. Yes.

10 Q. And there was dust in back, is that correct, once you got
11 to the dirt road?

12 A. Well, yes.

13 Q. Now, you saw one of the Border Patrol units, because it
14 was, you said, 20 to 30 feet in back of you, correct?

15 MR. GONZALEZ: Objection, Your Honor, to the
16 characterization of that question. I think he spoke in meters
17 yesterday, not in feet or yards.

18 THE COURT: All right.

19 MS. RAMIREZ: Okay. If it's meters, then --

20 THE COURT: No, restate the question.

21 MS. RAMIREZ: Okay.

22 BY MS. RAMIREZ:

23 Q. Did you state yesterday that you could see one of the
24 Border Patrol units in back of you, and that it was 20 to 30
25 meters in back of you?

1 A. Not 20, 30 meters.

2 Q. Okay. Well, how far away would you say that it was?

3 A. Maybe between 10 and 15 meters. I didn't say 20 nor 30.

4 Q. All right. You're sure about that, that you didn't say 20

5 to 30?

6 A. Yes, I am sure.

7 Q. Now, you could see also the other Border Patrol unit that

8 was in back of the first Border Patrol unit that was in back of

9 you?

10 A. No, no. I wasn't paying too much attention to the mirror.

11 Q. But you could see the lights, through the dust, that the

12 Border Patrol units had on, correct?

13 A. I could see the front lights. The emergency lights, they

14 turned them off. After they began chasing me, they turned them

15 on -- maybe the emergency light, they turned them on for maybe

16 about a minute, and then they turned them off again. What I

17 could see, the lights that I could see through the dust, were

18 the front lights, headlights.

19 Q. But when you talk, you talk about the two units. But

20 you're telling the ladies and gentlemen of the jury that you

21 could only see one Border Patrol unit, correct?

22 MR. GONZALEZ: Objection, Your Honor, vague question

23 as to which point in time.

24 THE COURT: I'll sustain.

25

1 BY MS. RAMIREZ:

2 Q. Well, during the whole time that you were heading south
3 from Alameda and Fabens, that turned into Jess Harris Road, to
4 the ditch, you could only see one Border Patrol unit in back of
5 you. Is that correct?

6 A. Well, I always saw two units from the time that I -- I
7 finally turned on Alameda. And by the time I went around the
8 block, I could see two.

9 I could see two of them. One of them turned on the
10 emergency lights and turned them off, and then that's the way
11 it was until I got to the dirt road.

12 Q. Even though you said you were busy looking in your --
13 heading south towards Mexico, correct?

14 A. Yes.

15 Q. Because you panicked when you saw the Border Patrol units?

16 A. Well, I didn't panic 100 percent. I just simply wanted to
17 get to Mexico.

18 Q. Okay. Well, what percentage of you panicked?

19 A. Well, I was -- I was in fear, but I was not -- not enough
20 to -- to make mistakes. I was -- I was aware of what I was
21 doing, and that I -- and what -- and what I had to do.

22 If something -- if something had crossed in front of
23 me, and would not have said that I -- I would not -- that I
24 would not have seen it. I was afraid, but I was -- I was aware
25 of what I was doing, but not to the degree that I didn't

1 know -- not to the degree that I didn't know what I was doing.

2 Q. Well, to the degree that you violated a lot of traffic
3 laws, correct?

4 A. Yes, I violated the speed limit laws.

5 Q. Okay. To the degree that you didn't stop when you knew the
6 Border Patrol units wanted you to stop, correct?

7 A. Yes.

8 Q. Because you were terrified, or afraid, that you were going
9 to get arrested for the marijuana and for being in the
10 United States illegally, correct?

11 MR. GONZALEZ: Objection, Your Honor, to the
12 characterization of that question, as to what he thought he was
13 going to get arrested for. She said he knew it was marijuana.
14 There's been no testimony to that effect.

15 THE COURT: I'll overrule.

16 A. Well, I was not -- I didn't want to get arrested. And I
17 was -- but that I was in terror or in panic, because I think I
18 would have stopped and just thrown myself on the ground.

19 I was -- I became terrorized when I had been shot and
20 was on the ground.

21 BY MS. RAMIREZ:

22 Q. And you became more panicked and afraid when you pulled up
23 to Jess Harris Road and you saw another Border Patrol unit,
24 correct?

25 A. Well, no. The fear that I had from when the time that the

1 agent saw -- the agent saw me, and I turned around and went,
2 that -- that agent -- that fear was all the same one.

3 I -- the -- the panic entered when I was in fear of
4 dying. But the -- but the -- but the other -- the other fear
5 about when I saw the agent and was trying to get away, that was
6 all the same one.

7 Q. Well, you weren't afraid enough to just lie there,
8 Mr. Davila, correct?

9 A. Well, the fear I had was I didn't want to die. If I got
10 the courage to get up, it was the courage that, when I saw the
11 agents coming up, that I was going to get up and -- I was going
12 to try to get up and go get help. I wasn't just going to lay
13 there.

14 Q. Well, if you had been so afraid, and you were lying there,
15 the Border Patrol units -- the Border Patrol agents weren't
16 doing anything to you at that time, correct?

17 A. Well, the fear was -- the fear I had came the minute they
18 started chasing after me. I -- I can't distinguish between did
19 I have a little bit -- a little bit more fear or a little bit
20 less fear or -- or -- I was -- the -- the fear was, was I going
21 to get beaten?

22 And then, when I -- after I started to run, I can't
23 say that the fear was so much percentage more or so much
24 percentage less.

25 Q. Okay. So you were afraid when you saw the Border Patrol

1 units, correct?

2 A. Yes.

3 Q. You were afraid driving down -- racing down Jess Harris
4 Road, correct?

5 A. I was afraid from the moment I saw the patrols until I got
6 to the clinic. I always had fear.

7 MS. RAMIREZ: I'm going to object, Your Honor. He's
8 being nonresponsive to the question. Would you please instruct
9 the witness to answer my question?

10 THE COURT: I'll overrule the objection. You can --
11 BY MS. RAMIREZ:

12 Q. And you were afraid, when you got to the ditch, Sierra
13 ditch, correct?

14 A. To the drainage?

15 Q. Yes, sir. The drainage ditch.

16 A. There was -- there was always fear.

17 Q. Okay. And yet you didn't surrender at any time, did you,
18 Mr. Davila?

19 A. Well, fear makes one do many things.

20 Q. But you didn't surrender. Is that correct, Mr. Davila?

21 A. No.

22 Q. Now, when you got to the drainage ditch, Mr. Davila -- I
23 haven't asked a question yet. Sorry.

24 A. Okay.

25 Q. You saw an agent there at the top of the drainage ditch.

- 1 Is that correct?
- 2 A. On the south side.
- 3 Q. And this is after you had already run the van into the
4 ditch. Is that correct?
- 5 A. I didn't run the van into the ditch.
- 6 Q. Okay. I'm going to show you -- refresh your recollection
7 with Government's Exhibit Number 9. It doesn't look like you
8 ran the van into the ditch?
- 9 A. No. When it's in, it's got to be all the way in. This
10 only shows that the front tires there are in the ditch.
- 11 Q. So you're saying you just halfway drove the van into the
12 ditch, correct?
- 13 A. No. Not even halfway.
- 14 Q. All right. A third, then?
- 15 A. No.
- 16 Q. Okay. Now, did you jump across the ditch?
- 17 A. No.
- 18 Q. You ran down the ditch, correct?
- 19 A. I got to the ditch. I stopped the van, I got out, and I
20 went and I -- I went down, and I crossed through the water and
21 I -- my -- my feet were wet, if that's what you want to know.
- 22 Q. Well, you're making it sound like you just drove up, opened
23 the door, got out, and then walked down the ditch, correct?
- 24 A. Yes, that's right.
- 25 Q. But, in realty, you were racing down that road. And, when

- 1 you got to the ditch, you jumped out of the van as it was still
2 moving, correct?
- 3 A. No. I stopped the van first.
- 4 Q. And you opened the door and got down?
- 5 A. Yes.
- 6 Q. Okay. That ditch is about -- how deep would you estimate
7 that ditch is, Mr. Davila?
- 8 A. Well, the depth of the water, more or less, came up to the
9 level of my knees, maybe a little above, maybe a little below.
10 But how deep the ditch was, I don't know. It's a little taller
11 than -- it's a little higher than I am tall.
- 12 Q. Okay. Well, you're approximately six feet tall. Is that
13 correct?
- 14 A. In meters, I am one meter 65 centimeters. In feet, I don't
15 know what that is.
- 16 Q. Okay. Well, could you estimate in meters, since you were
17 in the ditch, how deep it is?
- 18 A. No, I don't understand.
- 19 Q. You don't understand my question?
- 20 A. No.
- 21 Q. My question is: Since you were in the ditch, how deep
22 would you approximate that it is, in meters?
- 23 A. Maybe two and a half meters.
- 24 Q. Is that approximately 12 feet?
- 25 A. I don't know. It's approximately two and a half meters.

1 In feet, I don't know what it could be.

2 Q. Okay. And you ran down the ditch, correct?

3 A. Yes.

4 Q. And you climbed up the other side of the ditch. Is that
5 correct?

6 A. Yes.

7 Q. And if someone were to say that you actually used your
8 hands to climb up the ditch, that wouldn't be correct?

9 MR. GONZALEZ: Objection, Your Honor, improper
10 question.

11 THE COURT: I'll sustain.

12 BY MS. RAMIREZ:

13 Q. You used your hands to climb the other side of the ditch.
14 Is that correct, Mr. Davila?

15 A. No.

16 Q. Well, your hands were down when you used -- when you went
17 up the ditch. Is that correct?

18 A. Well, up to a certain point I had them downward, but only
19 what -- what is -- only what is normal.

20 Q. Okay. And then you confronted the Border Patrol agent that
21 you claim had this rifle, that you described it as, correct?

22 A. Yes.

23 Q. Okay. And this is -- I'm showing you 51B of Government's
24 Exhibit. Do you recognize this exhibit?

25 A. Yes.

- 1 Q. And you stated that the first position where you met the
2 agent was there (indicating). Is that correct?
- 3 A. On point Number 1, yes.
- 4 Q. And that you moved to point Number 2, correct?
- 5 A. Yes. I tried to go around him to the left.
- 6 Q. Okay. But you didn't walk over there, right, Mr. Davila?
- 7 A. Yes.
- 8 Q. Okay. You're saying that you actually walked like this,
9 like I'm walking in front of you, Mr. Davila?
- 10 A. No, no. I wasn't going to church; I was running.
- 11 Q. So you didn't walk over there.
- 12 A. No, I went over to that side, running as fast as I could.
- 13 Q. Because you were still afraid of getting arrested?
- 14 A. Of course.
- 15 Q. For the marijuana?
- 16 A. For a crime. At that particular moment I didn't know it
17 was marijuana.
- 18 Q. Right. Because you hadn't told the agent on March 16, '05,
19 that it was marijuana, right?
- 20 A. It's logical I had not talked with the agent there.
- 21 Q. Okay. All right.
- 22 And you stated on direct examination that the agents
23 said to stop, "parate," correct?
- 24 A. What do you mean, "direct examination"?
- 25 Q. When Mr. Gonzalez was asking you questions. That's the

1 gentleman that's seated here on that table that you talked to
2 last week.

3 A. Okay. Now, would you please repeat the question?

4 Q. On direct examination yesterday you testified that you
5 heard the agent tell you to stop, parate.

6 A. No, he didn't say parate. That's not what I said
7 yesterday.

8 Q. He didn't say stop, parate.

9 A. No, he didn't say stop. He didn't say stop. He said,
10 "Parate, Mexicano de mierda."

11 Q. So he did say parate, P-A-R-A-T-E, correct?

12 A. Yes, except that he added a little bit more.

13 Q. Thank you. Okay. Now --

14 MS. RAMIREZ: May I approach the witness, Judge?

15 THE COURT: You may.

16 MS. RAMIREZ: I'm going to mark this as Defense
17 Compean 1 -- no, I don't think -- is it 1 and 2?

18 THE COURT: For Compean?

19 MS. RAMIREZ: Yes.

20 THE COURT: Hold on. Give me just a second.

21 I have 1 and 2 for Compean as photos. So it would be
22 3.

23 MS. RAMIREZ: Thank you, Judge.

24 May I approach the witness?

25 THE COURT: You may.

1 MR. GONZALEZ: Your Honor, I'm not sure what
2 Ms. Ramirez is going to use that for, but I would object if she
3 intends to use that, since a shotgun -- since a shotgun is
4 nowhere that length. We have a shotgun in the courtroom for
5 demonstrative purposes, Your Honor.

6 MS. RAMIREZ: I do, Judge. But I --

7 THE COURT: Okay. Well, let's take a short break.
8 It's about 10:30, and I have to take up a matter, so let me --
9 let's take a short break, and then we will have you right back
10 in.

11 Remember, ladies and gentlemen of the jury, you remain
12 under all the instructions. We'll take about a 15-minute
13 break.

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

15 THE COURT: I have a 10:30 I need to take up real
16 quick.

17 MS. RAMIREZ: I can use that, Judge, if he says --

18 THE COURT: That's fine.

19 MS. RAMIREZ: I can't use a weapon, and I don't want
20 to use a weapon in front of the witness.

21 THE COURT: That's fine. You don't need to use a
22 weapon. You certainly can use the map he used.

23 MS. RAMIREZ: Okay.

24 THE COURT: All right.

25 MS. STILLINGER: We don't have anything else,

1 Your Honor.

2 THE COURT: Okay. Short recess on this case while I
3 take up the other case.

4 (Recess; open court, parties present, jury not
5 present.)

6 THE CLERK: Court is back in session.

7 THE COURT: You may be seated. Are we ready?

8 MS. RAMIREZ: Yes, ma'am.

9 THE COURT: Before we bring in the jury, have we
10 resolved the issue? I -- my understanding is there was some
11 issue about -- I knew you wanted to approach. I don't have
12 problems with that, but we were talking about the demonstra- --

13 MS. RAMIREZ: I'm not going to use it.

14 THE COURT: Oh, okay.

15 MS. RAMIREZ: Thank you, Judge.

16 THE COURT: Everybody ready?

17 MS. RAMIREZ: Yes, Judge.

18 MR. GONZALEZ: Yes, Your Honor.

19 THE COURT: Ms. Stillinger?

20 MS. STILLINGER: I'm sorry. Yes.

21 THE COURT: That's okay. Just making sure.

22 All right. You can bring in the jury.

23 (Open court, parties and jury present.)

24 THE COURT: You may be seated.

25 Whenever you're ready.

1 MS. RAMIREZ: Okay. Thank you, Judge.

2 BY MS. RAMIREZ:

3 Q. Mr. Davila, you stated yesterday that when you were at that
4 ditch you saw one Border Patrol agent in front of you that had
5 what you described as a rifle, correct?

6 A. Yes.

7 Q. And you saw two other -- two or three other Border Patrol
8 agents in back of you that also had their weapons drawn,
9 correct?

10 A. When I turned around they were -- they were standing on the
11 other side of the water.

12 Q. Okay. And they had their weapons drawn, correct?

13 A. Yes.

14 Q. And you never said that to Christopher Sanchez when you
15 were at the consulate in Juarez, correct?

16 A. I don't remember. We didn't really specify all of the
17 details of what had happened until afterward.

18 Q. Okay. Well, would you agree with me that that's an
19 important detail?

20 A. Well, yes.

21 Q. And you say now that you don't recall whether you told
22 Agent Sanchez that on March 16, 2005, when you met with him in
23 Juarez, correct?

24 A. Yes.

25 Q. All right. Now, you were very clear that, when you were at

1 the ditch, there was no physical contact between you and the
2 Border Patrol agents. Is that correct?

3 A. It is very clear to me.

4 Q. Okay. And that when you ran around the agent, the Border
5 Patrol agent that had the rifle in -- that was in front of you,
6 you ran over the levee and towards the Rio Grande, correct?

7 A. No, I didn't jump over. That's wide enough to hold a car.
8 I ran across it, and then I ran down the other side, and -- I
9 ran down the other side.

10 MS. RAMIREZ: Judge, can I approach the bench?

11 THE COURT: Sure.

12 (Bench conference:)

13 MS. RAMIREZ: Judge, can I look at the question?

14 Because I could have sworn I said "ran over the levee," to see
15 if I said ran over the levee?

16 THE COURT: Okay. And you wanted to ask "ran over the
17 levee"?

18 MS. RAMIREZ: I want to make sure the translation was
19 correct.

20 THE COURT: Let me look at it. You need to go back,
21 and if it's wrong, then I will clarify that it was wrong, and
22 you need to restate it.

23 MS. RAMIREZ: Okay.

24 (End of bench conference; open court.)

25 MS. RAMIREZ: I just want to make sure that I asked

1 the question correctly.

2 THE COURT: Okay. Give me a second.

3 MS. RAMIREZ: Thank you.

4 THE COURT: Okay. I'm going to ask Mr. Perez if you
5 could read back the question.

6 (The record was read as requested.)

7 THE COURT: Okay. Would you translate that question
8 again for the witness?

9 (Interpreter repeating question.)

10 A. Yes.

11 MS. RAMIREZ: I said Rio Grande. Correct?

12 THE COURT: Yes.

13 MS. RAMIREZ: Okay.

14 THE COURT: Let's clarify, because the translator is
15 using -- I mean, the interpreter -- Rio Bravo. That is the
16 Mexican term for the Rio Grande. Is that correct?

17 THE INTERPRETER: That's correct. The Rio Grande, for
18 the US, has a distinction of having two names. In Mexico it's
19 called the Rio Bravo. In the United States it's called
20 Rio Grande, for the record.

21 MS. RAMIREZ: Okay. Thank you.

22 Thank you, Judge.

23 THE COURT: You're welcome.

24 BY MS. RAMIREZ:

25 Q. And as you were running towards the Rio Grande, also known

1 as the Rio Bravo, you turned around and saw some other agents.

2 Is that correct, Mr. Davila?

3 A. No. As I was running towards the Rio Bravo, I at no -- at
4 no moment did I turn around to look back.

5 Q. Okay. So you wouldn't have told anybody -- you wouldn't
6 have told Agent Sanchez that you turned around and saw other
7 Border Patrol agents on the levee as you were running towards
8 the Rio Grande. Is that correct?

9 A. No. When I saw the other agents is when I was -- when I
10 was down on the ground. But when I was running, I never turned
11 around at all.

12 Q. Okay. And the levee is really made up of gravel. Is that
13 correct, Mr. Davila?

14 A. Yes.

15 Q. Okay. And it's not level. And when I mean it's not level,
16 I mean that it's not flat. It goes over a hill -- it goes
17 over, like a hill, and then goes up and then comes down,
18 correct?

19 A. Well, it has its -- it has its up side, and then across the
20 top it's level, and then it has the -- it has a down side. But
21 where the vehicles travel across, that is flat.

22 Q. Okay. And then the vega is also made up of dirt and
23 shrubbery. Is that correct, Mr. Davila?

24 A. What's the vega?

25 Q. That's the area between the levee and the Rio Grande.

1 A. Yes. It consists of sand and grasses.

2 Q. Okay. And you stated that you fell -- I think you said it
3 a couple of different ways, Mr. Davila. First, you stated you
4 fell twice before you got to the Rio Grande, between the levee
5 and the Rio Grande, on the vega.

6 MR. GONZALEZ: Objection, Your Honor. That's a
7 mischaracterization of the witness' testimony. He has never --

8 THE COURT: Hold on. All right.

9 Restate the question. What's the question?

10 BY MS. RAMIREZ:

11 Q. Okay. Did you state yesterday that you fell twice between
12 the levee and the Rio Grande?

13 A. No. I fell in -- in the river, when I -- when I was shot.

14 Q. Okay. Do you mean you fell into the river when you got
15 shot?

16 A. No. What I mean to say, that after I got -- after I got
17 shot, I got up and went across to the other side. But -- and
18 I -- there, I fell down twice. But between the levee and the
19 river I didn't fall at all.

20 Q. Okay. Now, when you went to seek medical treatment in
21 Mexico, you went to a clinic. Is that correct, Mr. Davila?

22 A. I was taken to a clinic. I was already unconscious.

23 Q. Okay. And you had to sell your truck in order to get this
24 medical attention. Is that correct?

25 A. I sold mine, my sister sold two of hers, and then we

1 borrowed some.

2 Q. And you also used your savings, correct?

3 A. Yes.

4 Q. Okay.

5 A. Well, no. Well, okay, I had no savings.

6 Q. But you said yes.

7 A. Savings, yes. We used my sister's savings. I had no
8 savings.

9 MS. RAMIREZ: May I approach the witness, Judge?

10 THE COURT: You may.

11 BY MS. RAMIREZ:

12 Q. Mr. Davila, I'm going to show you what's been marked as
13 Defense Compean Exhibit Number 3. And you recognize that
14 document, yes?

15 A. Yes.

16 Q. And that's the document that you said that allows you to go
17 to Pemex?

18 A. Yes.

19 Q. That was -- that was actually expired in 2004. Is that
20 correct?

21 A. Yes.

22 Q. Okay. And you handed this document, or you took this
23 document to Mr. Agent Sanchez, Christopher Sanchez. Is that
24 correct?

25 A. Yes.

1 Q. And that was to show that that was -- that was the reason
2 why you had brought -- or, rather, you had brought the load
3 in -- I'm sorry, no. That is not correct. Strike that
4 question.

5 That was the reason why you needed the money, because
6 you didn't have a commercial driver's license. It had expired.
7 Is that correct?

8 MR. GONZALEZ: Objection, Your Honor, as to relevance.

9 THE COURT: I'll overrule.

10 A. Yes. Not for this, for the license.

11 BY MS. RAMIREZ:

12 Q. Well, yesterday you said that your commercial driver's
13 license was effective until 2005. Is that correct?

14 MR. GONZALEZ: Your Honor, excuse me. I think there's
15 an indication from the jury that they can't hear.

16 THE COURT: All right. And I -- and, Ms. Ramirez,
17 unless you have something you need to give to him, I'd ask you
18 to go to the podium. I'd appreciate it.

19 MS. RAMIREZ: Yes, ma'am.

20 THE COURT: Okay. He can answer.

21 BY MS. RAMIREZ:

22 Q. Well, yesterday you stated --

23 THE COURT: No, he's still on a question. You had
24 just translated.

25 A. Could you repeat the question?

1 BY MS. RAMIREZ:

2 Q. Well, yesterday you stated that your commercial driver's
3 license was effective until 2005. Is that correct?

4 A. Yes.

5 Q. But that permit that allows you to go into Pemex had
6 expired in 2004. Is that correct?

7 A. Exactly.

8 Q. Okay. Well, do you -- do you know that the Government
9 translated that document, and in the translation of that
10 document it states that that document --

11 MR. GONZALEZ: Objection, Your Honor.

12 BY MS. RAMIREZ:

13 Q. -- is not expired, Mr. Davila?

14 MR. GONZALEZ: Your Honor, we object.

15 MS. RAMIREZ: What's the objection?

16 THE COURT: Hold on.

17 Go ahead.

18 MR. GONZALEZ: The document that she's going to read
19 from, it's not an official translation, Your Honor.

20 MS. RAMIREZ: Well, that's what they gave me, Judge,
21 in discovery. They gave me a translation that states that that
22 document was -- is not expired. That the effective date is
23 September 8th, 2004. They're the ones who gave me that
24 document, translating --

25 THE COURT: I understand. My concern is what --

1 what's your question for the defendant -- for the witness?

2 BY MS. RAMIREZ:

3 Q. Isn't it true, Mr. Davila, that that document is not
4 expired?

5 A. This document has expired.

6 Q. Isn't it true that that document was -- is effective and
7 was effective on September 8th, 2004?

8 THE INTERPRETER: September the 4th?

9 BY MS. RAMIREZ:

10 Q. September 8th, 2004.

11 A. It expires that day.

12 Q. Okay. And what word are you looking at, Mr. Davila, for
13 the basis for what you're saying that that document is expired?

14 A. Here it says in -- under "vigencia," it says, Issued and in
15 order until September 8, 2004.

16 Q. It says vigencia, V-I-G-E-N-C-I-A. Is that correct?

17 A. Yes.

18 Q. And that means effective, in English. Is that correct?

19 MS. RAMIREZ: Well, I'm going to ask the translator.

20 BY MS. RAMIREZ:

21 Q. What do you think vigencia means, Mr. Davila?

22 A. Well, this document -- this word vigencia, means that it is
23 in effect, and went into effect until -- until September 8,
24 2004. And over here it says that it went into effect on March
25 8th, 2004.

1 THE COURT: Let -- my -- did -- to my knowledge, this
2 document has not been admitted. Is that correct?

3 MS. RAMIREZ: If the Government didn't have an
4 objection, Judge, I was going to admit it as DC 3. And then I
5 have the translation that was given to me by the Government as
6 DC 4. And they did not have an objection, prior to me asking
7 the defendant about this question.

8 THE COURT: Okay. Well, unless it's an official
9 translation, I have an objection. But I guess --

10 MR. GONZALEZ: Your Honor --

11 THE COURT: Hold on. Can I clarify something?
12 Is there any reason, in order to enlighten the jury,
13 because we're talking about dates, if we can put this up on
14 the -- if no one objects to it being admitted -- so that they
15 can see for themselves what he's talking about? Because I'm
16 trying to understand, and I think it would help the jury if
17 they could see the dates. Anybody have a problem with that?

18 MR. GONZALEZ: No, Your Honor. She did show me those
19 two documents, but I did not say that I was going to agree to
20 their admission.

21 THE COURT: All right. But do you have a problem --

22 MR. GONZALEZ: No, Your Honor. In fact, if she wants
23 to admit the documents in front of them, we'll go ahead and
24 stipulate to its admission.

25 THE COURT: All right. What's the exhibit number?

1 MS. RAMIREZ: DC 3, Judge. And I'm just going to ask
2 him another couple of questions, Judge, and then I'll go on.

3 THE COURT: Okay. So Defendant Compean 3 -- I thought
4 that was photos already. Am I wrong about that?

5 MS. RAMIREZ: No. I had marked DC 3 a paper --

6 THE COURT: Oh, that's right.

7 MS. RAMIREZ: -- but I'm going to withdraw that. And
8 DC 3 will be that permit from Pemex.

9 THE COURT: Okay. So DC 3, over no objection, will be
10 admitted.

11 MS. RAMIREZ: Thank you, Judge. May I approach the
12 witness?

13 THE COURT: Yes. Could you turn out the lights for
14 us? If you could put it up on the screen, that way, they can
15 see what dates you're talking about.

16 BY MS. RAMIREZ:

17 Q. And the word that you're saying that doesn't mean effective
18 is vigencia?

19 THE INTERPRETER: That doesn't mean?

20 BY MS. RAMIREZ:

21 Q. That doesn't mean effective, is vigencia, correct?

22 A. What do you mean, that I don't want to say that it's not
23 effective?

24 Q. Well, you said it expired on September 8, 2004, correct?

25 A. It's in effect until September 8th.

1 Q. That's what you say?

2 A. Yes.

3 Q. Okay. Thank you.

4 MR. GONZALEZ: Your Honor, I only briefly saw this
5 document earlier. I didn't see -- can we substitute a clean
6 copy, without the quotation marks and the underlining?

7 MS. RAMIREZ: That's fine, Judge.

8 THE COURT: Yeah, that's fine.

9 MS. RAMIREZ: And this is DC 4.

10 MR. GONZALEZ: And we will object to that.

11 MS. RAMIREZ: And this was given to me during
12 discovery, Judge.

13 THE COURT: That's the translation?

14 MS. RAMIREZ: Yes.

15 THE COURT: I'll sustain the objection.

16 MS. RAMIREZ: Okay.

17 THE COURT: Unless it's -- unless it's certified.

18 BY MS. RAMIREZ:

19 Q. I'm just going to ask you some more questions about the
20 immunity agreement, Mr. Davila.

21 A. Very well.

22 Q. Yesterday you said that you got a 30-day permit that was
23 effective between April -- I'm sorry -- that was effective
24 until April of '05. Is that correct?

25 A. It went into effect on the -- on that date that was there.

1 And it was -- it was given to me for three months. But what
2 day it went into effect or for how long, for how many days, I
3 don't know.

4 Q. Okay. And then did you get a border crossing card?

5 A. No, I've had my local crossing card since I was a child.

6 Q. Okay.

7 A. And I lost it.

8 Q. So you got some other type of parole document to come into
9 the United States to get your medical care?

10 A. No, only with the permit that Chris gave me, and with my
11 voter's card. That was the -- that Chris gave me to come in,
12 and with my voter registration card, that was all.

13 Q. Okay. And that was effective until November of '05. Is
14 that correct?

15 A. Well, what was the -- in effect, my voter registration
16 card?

17 Q. No. Let me rephrase the question.

18 The document that you were given -- the document that
19 you were given, Mr. Davila, to come into the United States,
20 from Agent Sanchez, was effective until sometime in November of
21 '05. Is that correct?

22 A. Well, I don't know what date that I was given or what -- or
23 what month it expired. I just know that the document allowed
24 me to -- to come in. And then I was -- it was renewed, until
25 the last one that I got, which was for three months. But I

1 don't remember exactly on what date it started or what day it
2 ended.

3 Q. Okay. But the last document -- and I'm talking about the
4 document that you received from Agent Sanchez to come into the
5 United States -- expired, or was not renewed, sometime before
6 Christmas. Is that correct?

7 A. Well, the last document, the very last document that
8 Sanchez gave me, he has it. And it's because of that document
9 that I am here.

10 But that last document, the ones -- and before that, I
11 don't know on what date they expired.

12 Q. Okay. When you would come to your monthly appointments at
13 William Beaumont, you stated that Mr. Sanchez would bring
14 you -- and I'm talking about Agent Sanchez -- correct?

15 MR. GONZALEZ: Objection, Your Honor. We need
16 clarification. There's two Agent Sanchezes.

17 THE COURT: All right.

18 MS. RAMIREZ: Christopher Sanchez.

19 THE COURT: Restate.

20 A. Yes.

21 BY MS. RAMIREZ:

22 Q. Okay. And then also, I believe Agent Rene Sanchez's
23 mother-in-law would bring you to the appointments. Is that
24 correct?

25 A. Yes, sometimes.

1 Q. How many times, if you recall, did she bring you to the
2 appointments at William Beaumont, if you recall?

3 A. No, I don't remember.

4 Q. Okay. But it was -- was it more than three or four, if you
5 can recall?

6 A. I don't remember.

7 Q. Okay. And I just have a couple of follow-up questions on
8 the surgery that was scheduled for October of 2005.

9 You do remember that that surgery was scheduled in
10 October of 2005, Mr. Davila?

11 A. I had an appointment for -- that was scheduled for some
12 surgery. But I don't remember the date that it was scheduled
13 for.

14 Q. Okay. And that was cancelled?

15 A. Yes.

16 Q. Okay. And you stated yesterday, on cross-examination, that
17 the last time you saw Agent Rene Sanchez was about six months
18 ago, correct?

19 A. Well, yes.

20 Q. Okay. And that would be around October of 2005. Is that
21 correct?

22 A. It's more or less six months. It could have been around
23 that month.

24 Q. Okay. He also knows your brother, Sergio Aldrete-Davila.
25 Is that correct?

1 A. Yes. They are friends since childhood.

2 Q. And I've been calling you Mr. Davila, but your true and
3 correct name is Osvaldo Aldrete-Davila. Is that correct?

4 A. Osvaldo Aldrete-Davila.

5 Q. Okay. Have you ever used any other name, like Sergio
6 Aldrete-Davila?

7 A. No. Sergio is my brother.

8 Q. Okay. Mr. Davila, I just have a couple of other questions
9 for you.

10 You've consistently said the following things: That
11 you were in the United States on that day, on February 17th,
12 2005, illegally. Is that correct?

13 A. Yes.

14 Q. Okay. And that --

15 MS. RAMIREZ: Excuse me, Judge.

16 BY MS. RAMIREZ:

17 Q. And that you want --

18 MS. RAMIREZ: Excuse me, Judge, I have something --

19 Excuse me, ladies and gentlemen.

20 THE COURT: Do we need to take a short break, or are
21 you going to be all right?

22 MS. RAMIREZ: No, I just got the water stuck in my
23 throat. Excuse me.

24 Excuse me, Mr. Davila.

25 A. Of course.

1 BY MS. RAMIREZ:

2 Q. And that you -- when you headed south towards the border,
3 it was to flee the Border Patrol agents. Is that correct?

4 MR. GONZALEZ: I would object to this line of
5 questions as asked and answered, Your Honor.

6 THE COURT: All right. Where are we -- I -- I don't
7 know where we're going. I will -- it has been asked and
8 answered. I don't know if it's laying groundwork for some
9 other question.

10 MS. RAMIREZ: I'm about to finish, Judge.

11 THE COURT: All right. He can answer it.

12 A. Yes, it was for that reason.

13 BY MS. RAMIREZ:

14 Q. Okay. And you were leaving -- you were trying to elude
15 authorities as quickly as possible. Is that correct?

16 A. I was trying to flee to Mexico. I don't know how many
17 other authorities were there or not. I just simply wanted to
18 flee to Mexico.

19 Q. Okay. And nobody touched you. No Border Patrol agent
20 touched you at the Sierra ditch. Is that correct?

21 A. No, none.

22 Q. Okay. And when you run at the Sierra ditch, towards the
23 Rio Grande, you ran at a right angle. Is that correct? You
24 ran to the right, correct?

25 A. I went around the agent to the right, and then I -- I ran

1 to that side.

2 Q. Okay. And when you reached -- or almost reached the
3 Rio Grande, you turned around and you saw at least two Border
4 Patrol agents on the vega. Is that correct?

5 A. There at the edge of the Rio Grande, I turned around and
6 saw two agents.

7 Q. Okay. And, even though it would have been faster for you
8 to run straight to the Rio Grande, you elected to run to the --
9 at an angle to the Rio Grande. Is that correct?

10 A. Yes.

11 Q. Okay. And you're not going to serve one day in prison for
12 the offenses that you committed on that day. Is that correct?

13 A. No. No, that was the agreement that we made.

14 Q. Okay. And you're suing the US Government for \$5 million.
15 Is that correct?

16 A. Yes. That's a suit I've just found out about, about maybe
17 four or five days ago.

18 Q. So you hadn't hired Mr. Boyaki prior to four or five days
19 ago, Mr. Davila?

20 A. Well, I went to Mr. Boyaki the first time back in March.
21 And I didn't -- but I didn't find out about the suit until I
22 saw it in the paper and I saw him yesterday. And I hadn't seen
23 Mr. Boyaki until then, since March of '05.

24 Q. Okay.

25 MS. RAMIREZ: I don't have any further questions of

1 the witness, Judge.

2 THE COURT: All right. Mr. Gonzalez?

3 MR. GONZALEZ: The Government has no questions of this
4 witness at the time.

5 THE COURT: All right. Ms. Stillinger?

6 MS. STILLINGER: If I could just ask a few follow-up
7 questions.

8 THE COURT: That's fine.

9 RE-CROSS-EXAMINATION

10 BY MS. STILLINGER:

11 Q. Mr. Aldrete -- or should I -- I'm sorry. Should I call
12 you -- I was calling you Mr. Aldrete, and Ms. Ramirez is
13 calling you Mr. Davila. How should I address you?

14 A. I am Aldrete-Davila. What you wish. Whatever you wish.

15 Q. Well, how -- what do you go by?

16 A. Aldrete-Davila.

17 Q. Mr. Aldrete-Davila. Okay.

18 You're not saying that you didn't hire Mr. Boyaki to
19 file a claim against the Border Patrol, are you?

20 A. I'm not saying I didn't hire him. I hired him. Well, I
21 didn't -- I hired him. But I didn't hire him -- well, I was
22 told, and I heard, that I could get -- I could recover my
23 medical expenses.

24 I -- I didn't know that the Government was going to be
25 sued for millions and millions. I -- I was concerned about

1 suing, because I heard that I could cover my -- my medical
2 expenses and my health. That is all.

3 Q. Okay. And who told you this?

4 A. What I told you, I -- what I've just told you, I -- I just
5 told it to you. No one told me this.

6 Q. Well, Mr. Aldrete-Davila, you just said, "they told me I
7 could sue to get my medical expenses paid." I'm asking: Who
8 is the "they" you're talking about?

9 A. Rene Sanchez.

10 Q. Okay. Anybody else?

11 A. His wife's mother-in-law.

12 Q. Okay. And, of course, you are already getting your medical
13 expenses paid, though, by the Government, aren't you?

14 A. No, not at all of them. No. It's been about three months
15 now where I have been paying for the expenses.

16 Q. Okay. But you could have been coming here to get those
17 expenses -- to get that medical attention for free in this
18 country, correct?

19 A. Well, I -- I could have gotten them free. I could have
20 come over. But then to do that, I would have been in derelict
21 to the jobs -- to the job I had there, and providing for my
22 children. So I thought they would -- it would be more in my
23 interest to -- to take care of -- to cover my own medical
24 expenses and take care of them there, so I could also attend to
25 my children and not be derelict to the jobs I would get there,

1 instead of coming over here and getting them free.

2 Q. Okay. And what you're talking about, being derelict to
3 your children, you're talking about it maybe takes you an hour
4 of travel time from Mexico to go to William Beaumont. Is that
5 what you're talking about?

6 A. Well, the -- it wasn't just -- it wasn't just the hour
7 coming over. It was the wait. And then whenever they change
8 the --

9 THE INTERPRETER: I believe he's saying catheter.

10 A. -- that it was really very painful. And then there was --
11 it was painful enough so sometimes I was laid up in bed for up
12 to three to four days.

13 And so when I -- but, over there, it was -- I -- I
14 paid for it myself, but it was -- it was done so that I
15 would -- it didn't hurt as much, and so I didn't lose any job
16 time.

17 BY MS. STILLINGER:

18 Q. Okay. So you're saying you preferred to get the medical
19 attention in Mexico because it's faster and, I guess, better?

20 A. Well, the -- it was less painful. In Mexico I could -- the
21 doctors were fewer who could do a surgery of that nature. In
22 that case, yes, the surgery is inferior in Mexico, and it would
23 be much better, in case -- there are fewer doctors here that
24 can do that; there's even less in Mexico.

25 And -- but if I were to have the surgery, of course I

1 would do that here, because surgery of that magnitude would be
2 very important.

3 Q. Okay. Mr. Aldrete-Davila, please try to listen to my
4 question and answer my question.

5 I'm asking you: If you chose to go get the medical
6 treatment in Mexico -- I'm talking about your checkups, your
7 regular visits -- because it was faster and better medical
8 care. I'm not asking about the surgery right now.

9 A. Yes, you could say that it was -- it was -- it was -- it
10 was faster. But it was also less painful. It had less side
11 effects, and so I would have to spend less time in bed.

12 Q. And, Mr. Aldrete-Davila, it had nothing to do with the fact
13 that your permit to come into the United States was not
14 renewed?

15 A. No.

16 Q. Okay. Mr. Aldrete-Davila, you said -- when Ms. Ramirez was
17 asking questions, you said that you had to sell several
18 vehicles to pay the clinic where you were treated when you
19 first were injured. Is that right?

20 A. Yes.

21 Q. How did you go pay the clinic, if you didn't know what
22 clinic you had been to?

23 A. Well, because by the time I went to pay, I had already been
24 taken care of. I was no longer unconscious. I -- I was -- I
25 was conscious, and so I could go pay it. And we went to pay it

1 because, between my siblings, two of hers, and one other, and
2 some others, we went and made those payments.

3 Q. So when you paid the clinic, obviously, you knew where the
4 clinic was, correct?

5 A. Yes.

6 Q. Okay. But when Agent Sanchez asked you what clinic you
7 were treated in, you told him you don't know, right?

8 A. Well, when I first came out of the -- when I first came out
9 of the clinic, I didn't know the name of the clinic.

10 My sister is the one that made the arrangements for
11 the payment. And she made some arrangements, so we could drop
12 a note so that I could pay later.

13 After my -- after my sister made those arrangements to
14 pay, then my sister later came back with the -- with the --
15 with the sheet that indicated where it was paid.

16 Q. Okay. And -- and when did your sister give you that sheet
17 of paper showing you where you needed to make your payments?

18 A. Well, she just -- she didn't give it to me. She -- she
19 showed it to me. And it was -- and it was only one payment
20 that we made. But it had to be done within a certain amount of
21 time.

22 And then after I -- after -- while I was recuperating,
23 because I was on crutches for a while and under a lot of
24 medication, and I would sleep a lot. And it was maybe after
25 two or three days later, after the -- the -- after -- after I

1 came out of the clinic, when it was -- I was told that it was
2 going to be paid.

3 Q. Okay. Mr. Aldrete-Davila, if you could please listen to
4 the question and answer my question.

5 Agent Chris Sanchez asked you the name of the clinic
6 where you were treated, and you told him you didn't know. Is
7 that correct?

8 A. And I still don't know.

9 Q. Okay. Your sister knows, doesn't she?

10 A. Yes.

11 Q. And you knew, when she showed you the paperwork --

12 MR. GONZALEZ: Objection, Your Honor. This is
13 irrelevant, this whole line of questions as to what his sister
14 knows.

15 THE COURT: All right. Well, I haven't heard the next
16 question.

17 Go ahead. What's the question, and I'll rule.

18 MS. STILLINGER: The question I asked right then was
19 that, when she showed you the paperwork, you knew.

20 THE COURT: All right. You can answer that question.

21 A. Well, no. She didn't show me the paper. I know where
22 the -- I know where the clinic is. I can -- I know how to get
23 there. I don't know what the name is.

24 BY MS. STILLINGER:

25 Q. Okay. And you told Mr. Sanchez that you knew where it was

1 and you knew how to get there?

2 A. I don't remember.

3 Q. Okay. In any event, you knew that Agent Sanchez wanted to
4 know the name of the clinic, correct?

5 A. No.

6 Q. Well, didn't he ask you the name of the clinic?

7 A. No, not me. He spoke with my sister a few times, but I
8 don't know if she gave it to him.

9 Q. Okay. Did you get a note from the clinic where you were
10 treated the day that you were shot?

11 A. Yes. My sister was the one that received it.

12 Q. Okay. When did she get that?

13 A. I don't know. My sister is the one that did all --
14 attended to all of that.

15 THE COURT: And can I --

16 MS. STILLINGER: May I approach the witness,
17 Your Honor?

18 THE COURT: Yeah, just a second, though. I want to
19 clarify.

20 Are we talking about a financial note or are we
21 talking about, like a memo note?

22 MS. STILLINGER: Like a memo note.

23 THE COURT: Could we clarify that with him, because
24 I --

25 (Interpreter clarifying with witness.)

1 THE COURT: Okay.

2 A. Well, I don't know if -- any of that. My sister is the one
3 who attended to all of that. I don't know if it was a note for
4 payment or some other kind of a note.

5 But I do know that there was some kind of instructions
6 for the doctors who were to attend me, so that they would know
7 what happened.

8 MS. STILLINGER: May I approach the witness,
9 Your Honor?

10 THE COURT: Sure.

11 BY MS. STILLINGER:

12 Q. Mr. Aldrete-Davila, let me show you what I've marked as
13 Defendant Ramos Exhibit 10, and ask you if you know what that
14 is.

15 MS. STILLINGER: Your Honor, I'm sorry, but I would
16 ask you to instruct the witness just to answer the question.
17 He's being nonresponsive at this point.

18 THE INTERPRETER: For the record, the answer is not on
19 the record.

20 THE COURT: Okay. Go ahead and answer, and then I
21 will deal with your objection.

22 A. This was a note that the doctor gave my sister recommending
23 a urologist. But that urologist was very -- was very
24 expensive, so they -- they -- they found a urologist for her
25 that was cheaper.

1 THE COURT: And I would ask you -- in response to your
2 question, I'll sustain.

3 I would ask you, Mr. Aldrete-Davila, to listen to the
4 question and answer the question she asked you. And in this
5 case, the question was whether or not you recognized that
6 document.

7 A. Yes.

8 BY MS. STILLINGER:

9 Q. Now, that document doesn't have the name of a clinic on it
10 or a hospital, does it?

11 A. No.

12 Q. And it doesn't have a name of a doctor on it, does it?

13 A. No.

14 Q. And isn't it true that you were trying to conceal from
15 Agent Sanchez the name of the doctor and the clinic where you
16 were treated the day you were shot?

17 A. No, it's not true.

18 Q. Okay. And that is the document that you and your sister,
19 or your sister, provided to Agent Sanchez, correct?

20 A. Yes.

21 MS. STILLINGER: Your Honor, I would move for the
22 admission of Defendant Ramos Exhibit 10.

23 THE COURT: Any objection?

24 MR. GONZALEZ: No objection, Your Honor.

25 THE COURT: It will be admitted.

1 BY MS. STILLINGER:

2 Q. Mr. Aldrete-Davila, I noticed a couple of times in your
3 testimony that you referred to Agent Sanchez as Chris. Are you
4 very friendly with Agent Sanchez?

5 A. No, but I've been dealing with him for a year now, and I
6 feel comfortable enough to call him Chris.

7 Q. How much time have you spent with him this year? How
8 many -- often have you met with him?

9 A. Many.

10 Q. Okay. And, Mr. Aldrete-Davila, the last -- your last entry
11 into the United States, Agent Sanchez -- Agent Chris Sanchez --
12 arranged for you to get the permit to enter into the
13 United States, correct?

14 MR. GONZALEZ: Objection, Your Honor. She's already
15 gone over this on her cross-examination of this witness.

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

18 A. Would you repeat it, please?

19 BY MS. STILLINGER:

20 Q. Yes. This last time you got a permit to enter the
21 United States for this trial, Agent Chris Sanchez arranged for
22 that permit, didn't he?

23 A. Well, yes. He's the one that went and picked me up at the
24 bridge. I don't know if he's the one that also got the permit.

25 Q. Okay. He met you at the bridge, correct?

1 A. Yes.

2 Q. And he actually is holding onto your permit, correct?

3 A. Yes.

4 Q. The other times you had a permit it was just given to you
5 for you to use whenever you wanted, right?

6 MR. GONZALEZ: Objection, Your Honor, asked and
7 answered.

8 THE COURT: I'll sustain.

9 BY MS. STILLINGER:

10 Q. Okay. Mr. Aldrete-Davila, have you been in Agent Sanchez's
11 custody or presence ever since you came into this country this
12 time?

13 MR. GONZALEZ: Objection, Your Honor, relevance.

14 THE COURT: I'll overrule. He can answer.

15 MR. GONZALEZ: Your Honor, may we approach the bench?

16 THE COURT: Sure.

17 (Bench conference:)

18 MR. GONZALEZ: Your Honor, our position is she's
19 getting into the fact that he's in our custody, and that's part
20 of the motion in limine. That's part of the thing -- what
21 absolute relevance does that have at present?

22 MS. STILLINGER: He's spending all of his time since
23 he's been here with one of the other witnesses. That's
24 extremely relevant. Chris Sanchez is a witness in this case.
25 Every time I see him in the hallway, Chris is walking with him.

1 MS. KANOF: Your Honor, I will respond.

2 Agent Sanchez hasn't been with him except during the
3 day, to take him to the bathroom. He is in custody, basically.
4 Agent Sanchez is not responsible for that custody.

5 THE COURT: If you want to ask him if they have talked
6 about the case, then ask. But let's move on, because I don't
7 want to get into whether he's in custody or whose arrangements,
8 et cetera. I don't have any problems with the question, if
9 that's where you're going. But let's go there.

10 (End of bench conference; open court.)

11 BY MS. STILLINGER:

12 Q. Mr. Aldrete-Davila, have you spent time with Agent Chris
13 Sanchez since you entered the United States for the trial?

14 A. Only in the course from the bridge to the hotel.

15 Q. Okay. And, of course, when you're at the courthouse,
16 correct?

17 A. No. When I'm here, I'm with another agent. But here --
18 well, he is here now.

19 Q. Well, didn't -- weren't you -- when you were on break,
20 weren't you just walking with Agent Sanchez, Chris Sanchez, in
21 the hallways?

22 A. Yes. We went to the bathroom.

23 Q. Okay. And when you spend time together at breaks or things
24 like that, do you talk about the case?

25 A. No.

- 1 Q. Okay. It's fair to say you spent a lot more time together
2 before the trial started, correct?
- 3 A. Today?
- 4 Q. No. Before you entered the United States for the trial.
- 5 A. Well, yes.
- 6 Q. And he's helped you a lot, hasn't he?
- 7 A. Yes. He accompanied me to the hospital.
- 8 Q. And he translated for you at the hospital, didn't he?
- 9 A. Yes.
- 10 Q. Okay. I would like to ask you just a couple of other
11 questions about -- Ms. Ramirez brought up the question about
12 whether you could smell the marijuana in the van, and I wanted
13 to ask you this: Did you smell something funny, and you didn't
14 know what it was, or you just didn't smell anything at all?
- 15 A. No, I didn't notice any strange smell.
- 16 Q. Okay. No smell at all?
- 17 A. No.
- 18 Q. And, Mr. Aldrete-Davila, you've said many times you didn't
19 know what was in the van when you first got in the van,
20 correct?
- 21 A. I didn't know specifically what it was or what I was
22 moving.
- 23 Q. Okay. And you -- but you would have brought it into the
24 country. Whatever it was, you were willing to bring it into
25 this country, correct?

1 A. Yes.

2 Q. And I know you've been given immunity by the United States
3 Attorney. But weren't you also worried about being prosecuted
4 in Mexico?

5 MR. GONZALEZ: Objection, Your Honor. May we approach
6 the bench?

7 THE COURT: You may.

8 (Bench conference:)

9 MR. GONZALEZ: Jose Luis Gonzalez for the Government.
10 We totally object to any questions in reference to
11 what prosecutions may or may not occur in Mexico. That's
12 irrelevant to this trial.

13 THE COURT: Where are we going?

14 MS. STILLINGER: Your Honor, Mary Stillinger for
15 Mr. Ramos.

16 He stated to Agent Sanchez, and it's in a report we
17 have from Agent Sanchez, that he was worried about being
18 prosecuted in Mexico and the United States. We're talking
19 about the February 17th event.

20 What I want to know about is whether they have to
21 arrange for him in Mexico about -- because he can certainly be
22 prosecuted there in Mexico, if you're a Mexican citizen, for a
23 crime. And this jury decision for crime --

24 MR. GONZALEZ: That's ridiculous.

25 MS. STILLINGER: It's true. Besides that, everybody

1 knows the marijuana came from Mexico.

2 THE COURT: If your question is, did the United States
3 do anything for immunity for that date, then I think it's
4 relevant, and you can ask that question.

5 MR. GONZALEZ: It is. She asked that question
6 yesterday.

7 MS. STILLINGER: Not about immunity in Mexico.

8 THE COURT: I don't recall it.

9 MR. ANTCLIFF: I did it with agent --

10 THE COURT: I don't remember her asking him. Okay.

11 MR. GONZALEZ: How would he know what immunity we
12 granted?

13 MS. STILLINGER: Because you would tell him.

14 THE COURT: Hold on. One at a time. You can ask him
15 what he is aware of. I have no problem with that. It goes to
16 his bias. Let's move on.

17 (End of bench conference; open court.)

18 BY MS. STILLINGER:

19 Q. Mr. Aldrete-Davila, you had also mentioned to Agent Chris
20 Sanchez that you were worried about being prosecuted in Mexico
21 for the events of February 17th, correct?

22 A. Yes.

23 Q. And did Agent Sanchez or anybody else help you to get
24 immunity from prosecution in Mexico?

25 A. No.

1 Q. So, as you sit here today, your belief is you could still
2 be prosecuted in Mexico?

3 A. It could be.

4 Q. Okay. And you also know that you could be prosecuted by
5 the State of Texas, correct?

6 A. Well, yes.

7 Q. Okay. And do you know whether Agent Sanchez or anybody
8 else has arranged for you to get immunity from the State of
9 Texas?

10 A. No, I don't know.

11 Q. Okay. So, as you sat here today and admitted a serious
12 offense, for all you know, you could be arrested for that
13 offense by the El Paso County Sheriff when you leave here?

14 A. Yes.

15 Q. Okay. Agent Chris Sanchez, or nobody else, has given you
16 any assurance that you will be able to go back to Mexico when
17 this is over?

18 A. Yes. He did tell me that when this was over I could -- I
19 could return to Mexico, after my participation was over. But
20 that if I were -- but if I were required again to come back,
21 well, then I would have to come back.

22 Q. Okay. But your understanding is you will be able to go
23 back to Mexico when this is over without any charges being
24 filed against you for the events of February 17th, correct?

25 A. Yes.

1 Q. And Agent Sanchez hasn't asked you, or required you, to
2 answer any questions about anything happening before
3 February 17th or anything happening after February 17th, has
4 he?

5 A. No.

6 Q. Okay. Mr. Aldrete-Davila, Ms. Ramirez asked you a few
7 questions about Rene Sanchez. And I would just like to ask you
8 about your relationship with him prior to you being shot.

9 How often did you see him in the year prior to being
10 shot, for instance?

11 A. Well, not -- not very frequently, because he was -- he was
12 working in McAllen. And so it was when I was working in
13 Reynosa where -- where we did, but they were very few. They
14 were few and far between.

15 Q. Okay. When he was in McAllen and you were in Reynosa, did
16 you see each other one time or several times there?

17 A. Once.

18 Q. Okay. And how about since he's been in Arizona?

19 A. I haven't -- no. Well, I haven't seen him anymore.

20 Q. Okay. Did you ever talk to him on the phone?

21 A. No.

22 Q. Okay. Not at all, until you got shot?

23 A. Yes, not at all.

24 Q. For how long? Years?

25 A. Well, since -- it could be. Since he came from -- well,

1 let's see. When I came from Reynosa -- from the time I came
2 from Reynosa to when I was shot, let's see. What was it? A
3 year, maybe.

4 Q. Okay. When Agent Sanchez was in McAllen and you were in
5 Reynosa, did you-all ever talk about his work?

6 A. No.

7 Q. Okay. Did he ever give you information that he obtained
8 during the course of his work?

9 A. No.

10 Q. Did you ever give him information about anything that might
11 assist him in his work?

12 A. No.

13 Q. How about with your brother? He's good friends with your
14 brother, correct?

15 MR. GONZALEZ: Objection, Your Honor, relevance. And
16 that's outside her cross-examination, and it's way outside my
17 direct examination.

18 THE COURT: I'll sustain.

19 MS. STILLINGER: Okay. Could I have just a moment,
20 Your Honor?

21 THE COURT: Sure.

22 MS. STILLINGER: I only have one other question, I
23 promise.

24 THE COURT: All right.

25 MS. STILLINGER: It might be a long one. No.

1 BY MS. STILLINGER:

2 Q. Mr. Aldrete-Davila, the phone that you said you were given
3 on February 17, 2005, did you plug it into the phone charger
4 that was in the van?

5 THE INTERPRETER: Of the van?

6 MS. STILLINGER: Yes. The phone charger that was in
7 the van.

8 A. No.

9 MS. STILLINGER: I'll pass the witness, your Honor.

10 MR. GONZALEZ: We have no questions, Your Honor.

11 THE COURT: Anything further, Ms. Ramirez?

12 MS. RAMIREZ: No, Your Honor.

13 THE COURT: All right. He may step down.

14 Ladies and gentlemen of the jury, it is about 12:15.

15 We're going to go ahead and take a break for lunch. I need
16 everybody to be back at 1:15.

17 Remember you remain under all rules of the Court.

18 Thank you.

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

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

21 MR. GONZALEZ: May the witness be taken to the
22 restroom?

23 THE COURT: Sure. I just wanted to take up anything
24 we need outside the presence of the jury. So he's free to step
25 down. He's done.

1 MR. GONZALEZ: It's -- actually, it's in reference
2 to -- he's asked to make a request of the Court whether, after
3 his testimony today, he can be excused to go back to Mexico to
4 finish one of his point jobs. He's owed \$300 on it. He needs
5 to finish that job and return the car so he can get paid. He
6 says he needs three or four hours to finish that job. And he's
7 asked me to convey that to the Court.

8 THE COURT: You mean so he can leave today to be back
9 tomorrow? Is that the question?

10 MR. GONZALEZ: To be back whenever the Court says,
11 Your Honor.

12 THE COURT: All right. I don't know if we're going to
13 need him today, tomorrow, or what.

14 MR. GONZALEZ: And then there's also the issue of, you
15 know, once he's here, as we explained to the Court yesterday,
16 there's an issue of who is going to be paying for his hotel,
17 for his meals. So we don't have an objection to him staying as
18 long as he needs to in Mexico. And we'll ask him to come back
19 whenever you want him back in the court.

20 MS. STILLINGER: Your Honor, on behalf of Mr. Ramos,
21 we would not object to him returning, so long as the Government
22 can assure us that he would come back. And I guess the kind of
23 assurance I would want is that if he doesn't come back -- if we
24 need him as a witness and he doesn't come, then I'm sure they
25 would agree to dismiss the case.

1 MR. GONZALEZ: We're not giving that assurance,
2 Your Honor.

3 MS. STILLINGER: I mean -- Your Honor, I mean, I --
4 I --

5 THE COURT: Well --

6 MS. STILLINGER: I don't really mean to be making a
7 joke out of it, because I'm really actually serious. I mean,
8 he's a very important witness.

9 THE COURT: I under- --

10 MS. STILLINGER: We don't know what other agents --
11 there's going to be other agents that are going to be
12 testifying. We don't know what they're going to say, and we
13 may very well need him back here, Your Honor.

14 THE COURT: Okay. And, Ms. Ramirez, did you want to
15 add something?

16 MS. RAMIREZ: No, Judge. We join in Ms. Stillinger's
17 position on behalf of Mr. Compean. I mean, we're just -- we're
18 just afraid that if he goes to Mexico -- we understand his
19 financial situation, if that is what it is.

20 However, if he goes to Mexico, and -- there's always a
21 possibility -- or the possibility that he might not return, and
22 then what assurances we have -- do we have that, if an issue
23 comes up that we need to recall him for, that he's going to be
24 able to come back and be on the stand?

25 THE COURT: Well, if he fails to return, there are

1 consequences that either side may face, because I don't know
2 what problems may present.

3 But let me ask the Government: Have you had any
4 problems with him being here when you've asked him to be here?

5 MR. GONZALEZ: Your Honor, I will let the Court
6 address that, if you don't mind, to Agent Sanchez, because he's
7 the one who has had the contact with him; I have not
8 personally.

9 THE COURT: Agent Sanchez, have you had any problems
10 with him returning when you've needed him to return?

11 AGENT SANCHEZ: Yes, ma'am.

12 THE COURT: You have?

13 AGENT SANCHEZ: Yes, ma'am. He's hard to get ahold
14 of. He doesn't have a home phone number, it's just hard to get
15 ahold of his sister sometimes, and then she has to track him
16 down.

17 THE COURT: All right. Well, then, I have a concern.
18 We're in the middle of trial. And -- I mean, I certainly
19 understand his financial situation. But if we're in the middle
20 of a trial, we're in the middle of a trial, and I don't know
21 what to tell you.

22 MR. GONZALEZ: No, I know, Your Honor, but he asked me
23 to make the request of you.

24 THE COURT: And -- and you just need to let him know
25 that we're in the middle of a trial, and he just needs to stay

1 here, and we'll try to get this resolved as soon as we can, but
2 he needs to stay here.

3 MR. GONZALEZ: Yes, Your Honor.

4 THE COURT: All right.

5 MR. GONZALEZ: Thank you.

6 MS. KANOF: I have another issue, Judge.

7 THE COURT: Sure. So -- go ahead, Ms. Kanof.

8 MS. KANOF: The Government has prepared -- we haven't
9 filed it yet. But we've prepared a motion to suppress two
10 subpoenas that were issued to two DEA agents by Mr. Compean's
11 counsel, duces tecum. And I had asked Ms. Ramirez if she would
12 voluntarily rescind -- they haven't been served, I'll tell the
13 Court that, because counsel for DEA will not allow them to be
14 served, because they're in violation of the law.

15 But the -- I have a motion to suppress those. And
16 if -- I asked Ms. Ramirez if she would withdraw them. They're
17 the agents that go to the issue that you limined.

18 THE COURT: Okay.

19 MS. KANOF: And I just wanted to do it on the record,
20 because if she's not, then I'm going to serve my motion to
21 suppress.

22 THE COURT: All right. Do you intend to attempt to
23 serve those subpoenas?

24 MS. RAMIREZ: Judge, I haven't had a chance. She told
25 me right before we started. I haven't had a chance to talk to

1 co-counsel about it, so...

2 THE COURT: Okay. Talk to counsel, let Ms. Kanof know
3 what you intend to do.

4 Ms. Kanof, if you need to file something, file it, and
5 I will have a hearing.

6 MS. KANOF: Thank you, Judge.

7 One more thing, Your Honor. I think we talked about
8 this a long time ago. We have two doctors that are very, very
9 busy at Beaumont. And we made a representation that they would
10 testify this week. And one of them is only available, on their
11 surgical schedule, at 4:00 this afternoon. If 4:00 comes and
12 we have a witness on the stand -- he's pretty difficult to deal
13 with, Judge, I'll tell you. In fact, we went ahead and served
14 him with a subpoena because of it, which we normally wouldn't
15 do. It's because he's on contract. He's not in the military.
16 The one in the military is not happy, but he doesn't have a
17 choice. The one that's on contract, we went ahead and served
18 him.

19 If we have another witness on the stand, can we recess
20 that witness and stick the doctor --

21 THE COURT: Well, from what Mr. Aldrete-Davila says,
22 he had plenty of waiting to do, and nobody worried about his
23 waiting. No, I -- you know, I --

24 MS. KANOF: I agree.

25 THE COURT: And I've waited a few times in doctors'

1 offices, as I'm sure many people in this room have.

2 You know, I -- I understand they're busy, but we are
3 all busy. I will do my best to accommodate any witness, doctor
4 or not doctor. But you need to let him know he is under
5 subpoena, and if he wants to violate the subpoena, then he can
6 talk to me. All right? But I will -- you can let him know I
7 will do my best, but we have lots of busy people.

8 MS. KANOF: I agree with the Court. I just had to
9 make the request.

10 THE COURT: I understand, and I appreciate that, on
11 his behalf.

12 All right. We are in recess for lunch.

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

15 THE CLERK: Court is back in session.

16 THE COURT: You may be seated.

17 All right. We are back after lunch outside the
18 presence of the jury.

19 I did receive a motion that was filed. Is there --
20 are we -- do we need to take up anything before the next
21 witness?

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

23 MS. RAMIREZ: Nothing from Mr. Compean.

24 MS. STILLINGER: No, Your Honor.

25 THE COURT: All right. Then you may bring in the

1 jury.

2 (Open court, parties and jury present.)

3 THE COURT: You may be seated.

4 You may call your next witness.

5 MS. KANOF: Again, for a limited purpose, Your Honor,
6 and subject to recall, we call Special Agent Christopher
7 Sanchez.

8 THE COURT: You are still under oath, Agent Sanchez.

9 THE WITNESS: Yes, ma'am.

10 MS. KANOF: May I proceed, Your Honor?

11 THE COURT: Yes.

12 CHRISTOPHER SANCHEZ, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

13 DIRECT EXAMINATION

14 BY MS. KANOF:

15 Q. Special Agent Sanchez, you had previously testified that
16 one of the things that you did in the investigation of this was
17 to gather weapons of the individual agents that responded to
18 the levee scene on September 17 -- I mean -- I'm sorry --
19 February 17th, 2005. Is that correct?

20 A. Yes, ma'am.

21 Q. Did you also -- as part of your investigation, did you hear
22 that a rifle was possessed by the Defendant Compean?

23 A. A shotgun.

24 Q. I'm sorry, a shotgun.

25 A. Yes, ma'am.

1 Q. And what did you do with regard to obtaining that shotgun?

2 A. We obtained it from the Border Patrol station in Fabens.

3 Q. And --

4 MS. KANOF: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY MS. KANOF:

7 Q. I'm going to hand you what's been marked as Government's

8 Exhibit Number 13, and ask whether that is the shotgun that you

9 obtained from the Border Patrol.

10 A. Yes, ma'am.

11 Q. Okay. And what efforts did you make to determine that that

12 was the same shotgun that was possessed by the Defendant

13 Compean on February 17, 2005?

14 A. They -- like I said, the Border Patrol agents, when they

15 would check out a shotgun or M-4, they signed the -- there's a

16 checkout sheet, and that's what we obtained.

17 MS. KANOF: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 BY MS. KANOF:

20 Q. I'm going to hand you what's been marked as Government

21 Exhibit Number 13A. Could you identify that document, please?

22 A. That's the checkout sheet for the Fabens -- for the

23 Remington 870.

24 MS. KANOF: We move admission of Government's Exhibits

25 13 and 13A into evidence, Your Honor.

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

2 MS. STILLINGER: No objection, Your Honor.

3 THE COURT: They will be admitted.

4 BY MS. KANOF:

5 Q. Government's 13A basically shows Defendant Compean's
6 initials for having checked it out on that day. Is that
7 correct?

8 A. Yes, ma'am.

9 Q. Now, changing subjects.

10 With regard to -- we talked a little bit about climate
11 that day. Did you have an opportunity to check with -- not you
12 personally, but your agency -- the National Climatic Data
13 Center, which is actually part of the United States Department
14 of Commerce, to determine what the weather was on that day?

15 A. Yes, ma'am.

16 Q. And have they responded to you, I think initially, by
17 providing you preliminary local climatological data?

18 A. Yes, ma'am.

19 MS. KANOF: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MS. KANOF:

22 Q. I'm handing you what's been marked as Government's Exhibit
23 Number 86. Is that what was provided to you?

24 A. Yes, ma'am.

25 MS. KANOF: We would ask that Government's Exhibit

1 Number 86 be moved into evidence, Your Honor.

2 THE COURT: Any objection?

3 MS. STILLINGER: Yes, Your Honor. On behalf of
4 Mr. Ramos, we would object on a couple of bases. One, he
5 obtained this information, but that doesn't -- that's not a
6 proper foundation for this information.

7 But more importantly, this is from the El Paso
8 station, and none of this happened in El Paso. It happened in
9 Fabens, which is a completely different area, meteorologically
10 speaking.

11 MS. KANOF: Your Honor, I can clear that up, I think,
12 a little bit.

13 THE COURT: All right. Go ahead and respond.

14 MS. KANOF: Oh, I'm sorry.

15 THE COURT: No, go ahead and respond first, Ms. Kanof,
16 and then I'll --

17 MS. KANOF: Oh, I'll -- well, I was going to clear it
18 up with the witness. But there is only one station in this
19 area. It's called the El Paso station. There isn't a station
20 in Fabens, number one.

21 And I forgot what the other objection was.

22 THE COURT: Well, not proper foundation, is what I
23 understood.

24 MS. KANOF: That's what I was going to do with the
25 witness. I was moving to admit it, Your Honor, under Rule

1 803.6, regularly conducted activity. And, actually, I was
2 going to ask the Court to take judicial notice of it, because I
3 think we can do that under Rule 803.6.

4 But I can lay more foundation for both defense counsel
5 and the Court.

6 THE COURT: All right. Anything else, Mr. Antcliff,
7 before I -- she proceeds?

8 MR. ANTCLIFF: I don't have anything in addition to
9 what Ms. Stillinger already said.

10 THE COURT: All right. Thank you.

11 BY MS. KANOF:

12 Q. Special Agent Sanchez, based on your knowledge of the
13 National Climatic Data Center, do they keep -- they keep data
14 of the climate in the El Paso station every day, as part of
15 their normal course of business?

16 A. My understanding, yes.

17 MS. STILLINGER: Your Honor, I'm going to object as to
18 his foundation for having that knowledge, because I don't think
19 he has anything to do with the National Climatic Data Center.
20 So whatever knowledge he has is going to be hearsay, and I
21 don't think he can testify about that.

22 THE COURT: All right. How --

23 MS. KANOF: I would just ask the Court to take
24 judicial notice of it, then, Your Honor.

25 THE COURT: Okay. Response? She's asking me to take

1 judicial notice.

2 MS. STILLINGER: I don't think the Court can take
3 judicial notice of this, Your Honor. But I'm -- Your Honor, I
4 don't think it qualifies as something the Court can take
5 judicial notice of.

6 Let me go over it very quickly, because we just got
7 this, Your Honor.

8 Mr. Antcliff is pointing out to me that, at the top of
9 the page, it says, Please note this information is preliminary
10 and subject to revision. So right there it has a qualifier on
11 it.

12 MR. ANTCLIFF: It's also not certified. On its face
13 it says it's not certified, Judge. And so I think the Court
14 cannot take judicial notice of it, as well.

15 THE COURT: All right. How does this comply with Rule
16 803.6, Ms. Kanof?

17 MS. KANOF: Your Honor, what 803.6 basically says,
18 Your Honor, is an exception to the hearsay rule. And because
19 that's basically -- that is what the basis of their objection
20 is, is that it's hearsay to this witness.

21 And 806 is memorandums, reports, records or data --
22 memorandums, reports, data or data compilation in any form of
23 acts, events, conditions -- and conditions is what we're
24 looking at here -- opinions or diagnoses made at or near the
25 time by or from information transmitted by a person with

1 knowledge, if kept in the course of a regularly conducted
2 business activity.

3 MS. STILLINGER: And, Your Honor, I don't think that
4 this witness can lay the proper foundation, because he --

5 THE COURT: I'll sustain the objection.

6 MS. KANOF: Okay.

7 BY MS. KANOF:

8 Q. With regard to the location that we're talking about,
9 the -- more specifically of the shooting, of the assault
10 alleged in the indictment, I'm going to put --

11 MS. KANOF: Government's Exhibit Number 29 is in
12 evidence. Is that correct, Your Honor?

13 THE COURT: Let me check. Yes.

14 BY MS. KANOF:

15 Q. Agent Sanchez, we talked a lot about where this is located
16 geographically in relationship to the city of Fabens and in
17 relationship to Mexico.

18 MS. KANOF: May I approach the witness, Your Honor?

19 THE COURT: Yes, you may.

20 BY MS. KANOF:

21 Q. Is some of the property, as depicted in Government's
22 Exhibit Number 29, property designated to the United States
23 Government, that is the jurisdiction of the United States
24 Government?

25 A. Yes, ma'am.

1 Q. And could you please point out, by using the laser, where
2 the State of Texas ends and the United States Government land
3 begins?

4 A. Let's see. It's right here (indicating). Here is the
5 drainage ditch. It's right north --

6 Q. Okay.

7 A. So it's right there. This is the drainage ditch
8 (indicating).

9 Q. Okay.

10 A. And it's -- the Government property starts at the foot of
11 the north slope of the levee, which is about right here
12 (indicating). And it goes to the middle of Rio Grande.

13 Q. Okay. And is that what you -- is that what's known as the
14 special territorial and maritime jurisdiction of the
15 United States?

16 A. Yes, ma'am.

17 Q. Is that land exclusively reserved by the United States for
18 its use and control?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. KANOF: Pass the witness.

22 THE COURT: All right. And this witness is subject to
23 recall. This is just for a limited purpose. Is that correct?

24 MS. KANOF: Yes, Your Honor.

25 THE COURT: All right.

1 MS. STILLINGER: I have no questions.

2 MR. ANTCLIFF: I don't have any questions of him at
3 this time.

4 THE COURT: All right. You may step down. Thank you.
5 You may call your next witness.

6 MR. GONZALEZ: Government calls Oscar Benavides.

7 THE COURT: You've already been sworn. Is that
8 correct?

9 THE WITNESS: Yes, Judge.

10 THE COURT: You may proceed.

11 OSCAR BENAVIDES, GOVERNMENT'S WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. GONZALEZ:

14 Q. Sir, would you please state your full name for the record?

15 A. Oscar P. Benavides.

16 Q. And who are you employed by?

17 A. U.S. Border Patrol.

18 Q. And how long have you been with them?

19 A. 13 years, 6 months.

20 Q. And what are some of your current duties and
21 responsibilities?

22 A. Currently, I'm the field operations supervisor for the
23 Office Of Internal Audit, basically, internal affairs.

24 Q. And, sir, essentially what I would like to talk to you
25 about this afternoon is about this radio traffic, some

1 communication that occurred on or about February 17th, 2005.

2 A. Okay.

3 Q. Are you familiar with the radio transmissions that I'm
4 referring to?

5 A. Somewhat familiar, yes.

6 Q. Before we get into that, sir, would you please explain to
7 us, what are the different means that an officer out in the
8 field can communicate, either with sector or with one another?

9 A. Okay. Basically, I'll start from the -- from scratch.
10 Every station has a channel. For example, Fabens, they have a
11 channel called rim rock. Another example, El Paso station has
12 Yandell. Every station has at least one tower, radio tower.

13 For example, rim rock, out of Fabens, is situated near
14 Sierra Blanca.

15 Ysleta, which is the adjacent station, has another
16 tower, Ysleta tower, at the station itself.

17 Now, you're able to communicate -- there's a
18 communication center, per se, at the El Paso sector
19 headquarters, which is at 8901 Montana. That is where the law
20 enforcement communications assistants are 24 hours a day. If
21 you need to run any type of immigration check, criminal check,
22 so on and so forth. You have a radio in your vehicle, and you
23 also have a handheld radio.

24 Now, there's three different means of communicating on
25 a radio. One of them is --

1 Q. I'm sorry. You said there's a radio in the vehicle,
2 correct?

3 A. Correct.

4 Q. And then there's a handheld radio. And the handheld radio,
5 is that one that's portable, that you can take when you leave
6 the car, et cetera?

7 A. Yes.

8 Q. It goes to the car?

9 A. No, no. It's a portable walkie-talkie.

10 Q. Okay. Let's talk about the radio that's in the vehicle.

11 A. Okay.

12 Q. What's the capability of that radio?

13 A. There's -- from my understanding, there's three different
14 ways you can use that radio. The first way is what we call
15 local, which is in the local area, car to car.

16 There's a second way, which is what we call repeater,
17 which means when you communicate on that radio you hit the
18 tower, and the tower relays to the sector communications
19 office.

20 Q. To Fabens sector or to El Paso sector?

21 A. Well, the radio communications center is at the El Paso
22 sector headquarters which, again, is at 8901 Montana. That's
23 where all the radio traffic from all the different stations
24 arrives at, if you're on the repeater. If you're --

25 Q. I'm sorry. At the El Paso sector there's, I guess, one

1 frequency designated for Fabens station?

2 A. Yes.

3 Q. Is that the correct terminology?

4 A. Yes. There's one frequency for every station, and there's

5 12 stations within the El Paso sector Border Patrol.

6 Q. Okay. So you talked about the second way, which is the

7 repeater. And is there a third way to communicate?

8 A. The third way is repeater encrypted, which means that no

9 one else -- basically, it's garbled up language, and only the

10 Border Patrol frequency is able to listen to that.

11 Nonencrypted, someone, if they have the technology,

12 can basically unscramble the signal and listen to it. So

13 that's why it's -- if you go to encrypted, they're not able to

14 do that.

15 Q. And how do you physically do that on the radio?

16 A. There's buttons to do that.

17 Q. Okay. All right. Now, let's talk about the portable

18 radio.

19 A. Same thing.

20 Q. Same thing. And you can communicate locally, I mean, from

21 car to car, or person to person?

22 A. Person to person.

23 Q. And you could also hit the repeater?

24 A. Yes.

25 Q. And also the encrypted repeater?

1 A. Yes.

2 Q. Okay.

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

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. And, in preparation for this trial, were you asked to
7 obtain some radio traffic, or transmissions, that recorded over
8 the repeater frequency for February 17th, 2005?

9 A. Yes.

10 Q. Okay. And if you do, do you recognize Government's Exhibit
11 Number 9?

12 A. I believe so. The one that I looked at had the times --
13 military times, 1300 to 1600, I believe.

14 Q. I'm showing you what I'll be marking as Government's
15 Exhibit 91 for identification purposes. Is this what you're
16 referring to?

17 A. Yes.

18 Q. And so Government's Exhibit 90 was taken from Government's
19 Exhibit 91. Is that correct? Is that your understanding?

20 A. That's my understanding, yes.

21 Q. And have you had an occasion to listen to what was recorded
22 on February 17th, 2005, between 1:00 and 3:30 in the afternoon?

23 A. I've listened to it, yes.

24 Q. And are there any alterations or deletions on that tape?

25 A. Not that I'm aware of.

1 MR. GONZALEZ: Your Honor, at this time we would offer
2 Government's Exhibit 90 into evidence, and tender it to defense
3 for any objections.

4 MS. STILLINGER: I have no objection, Your Honor.

5 MR. ANTCLIFF: No objection.

6 THE COURT: All right. Then Exhibit 90 will be
7 admitted. And that's the tapes, correct, or the transcript?

8 MR. GONZALEZ: The actual tape, Your Honor.

9 Your Honor, we've also prepared Government's Exhibit
10 92, which is a transcript of the Government's Exhibit, I think,
11 90, and we've provided copies to defense counsel. And we would
12 like to introduce that into evidence, as well.

13 MS. STILLINGER: There's no objection to the
14 transcript, Your Honor. There is a preface to it that we might
15 need to excise, and I guess we could talk about that before the
16 final version is admitted.

17 THE COURT: Is there any objections to excising that
18 portion, Mr. Gonzalez?

19 MR. GONZALEZ: No, Your Honor.

20 THE COURT: All right. Any objection, Mr. Antcliff?

21 MR. ANTCLIFF: I don't have any objection if that
22 front part of the report is taken out.

23 THE COURT: All right.

24 MR. GONZALEZ: Your Honor, what we would like to do is
25 go ahead and play the tape for the jury and give them a copy of

1 the transcript. However, it all has the front page. The only
2 reason the front page is there is because there's one line in
3 there that pertains to the transmission.

4 THE COURT: Okay. But I guess my concern is, if we're
5 excising, then it does not need to be given to the jury.

6 MR. GONZALEZ: I guess we can tear off that first
7 page, because there's very little on it. There's only one
8 line.

9 THE COURT: All right. Either that --

10 MR. PETERS: Just take a pair of scissors to it.

11 THE COURT: We have a pair of scissors --

12 MR. GONZALEZ: Okay.

13 THE COURT: -- that I think we obtained yesterday.

14 Subject to the portion that's been agreed to being
15 removed, Exhibit 92 will be admitted.

16 MR. GONZALEZ: I guess I will ask a few questions,
17 Your Honor.

18 THE COURT: All right. Go ahead.

19 BY MR. GONZALEZ:

20 Q. The repeater channel -- is that what it's called?

21 A. That's the way I understand it. It's -- well, the channel
22 is called rim rock, in Fabens.

23 Q. The rim rock channel. Okay.

24 A. And I believe it's numbered Channel 12.

25 Q. Let me ask you, if you know: When an officer -- a Border

1 Patrol officer is engaged in a high-speed chase and he wants to
2 find out the license plate number of a given car that he's
3 pursuing, what should he be using, which frequency?

4 A. I would use the repeater, because the repeater is the only
5 one that can allow you to transmit from the vehicle, or if
6 you're walking, to the repeater, the antenna, to the radio
7 communications, to speak to a person to acquire information.

8 Q. Okay. And the information, say, for a license plate number
9 would be where?

10 A. The law enforcement communications assistant, basically,
11 the radio operator, would have a system to acquire that
12 information.

13 Q. Someone at the El Paso sector?

14 A. At the communication center.

15 Q. Okay. And that's in the El Paso sector?

16 A. El Paso sector headquarters, yes.

17 Q. And that's the only way you can get a license plate number.
18 Is that correct?

19 A. For Border Patrol.

20 Q. For Border Patrol?

21 A. Yes.

22 Q. And so you can't do that using the local car to car. Is
23 that correct?

24 A. Local car to car will not allow you to hit the repeater and
25 talk to a communications assistant.

1 Q. Thank you.

2 MR. GONZALEZ: Your Honor, may we publish the
3 transcripts to the jury?

4 THE COURT: Yes. Are you ready to proceed?

5 MR. GONZALEZ: Let me go ahead and give you the
6 redacted one, for the record.

7 THE COURT: That's fine.

8 MR. GONZALEZ: May we go ahead and play the tape,
9 Your Honor?

10 THE COURT: Yes.

11 (Tape playing for jury.)

12 BY MR. GONZALEZ:

13 Q. Agent Benavides, do you have a copy of the transcript in
14 front of you?

15 A. No, I don't.

16 THE COURT: He's welcome to use mine.

17 MR. GONZALEZ: Thank you, Judge.

18 BY MR. GONZALEZ:

19 Q. Agent Benavides, are you familiar with the different, I
20 guess lingo, or terminology, that's within this transcript?

21 A. I should be, yes.

22 Q. First of all, then, it states that this started at 1311.
23 What time is that, sir?

24 A. That's military time for 1:11.

25 Q. Okay.

1 A. P.M.

2 Q. And the last recorded conversations that we heard on this
3 tape occurs at what time, sir?

4 A. 1416:02. Which is --

5 Q. I'm sorry. You didn't have the benefit of the transcript
6 with you, and I believe that it -- the last conversation that
7 the jury just heard was at 1328, or 1329. It's at the top of
8 that page that you're looking at.

9 A. Oh, at the very top? 1328:20, which is 1:28.

10 Q. 1:28? So approximately 17 minutes were covered on that
11 tape?

12 A. Approximately, yes.

13 Q. And that's not real time. Is that correct?

14 A. No.

15 Q. Okay. Well, what's -- what are the other minutes that are
16 missing?

17 A. Well, when we get requests to download radio traffic,
18 either the -- it is done at the sector headquarters
19 communications office or at our Office of Internal Audit,
20 which -- I'll refer to it as internal affairs. It's easier.

21 We have the capability of downloading this radio
22 traffic. And the way we download it is, we download it with a
23 date and stamp time. That female voice that you hear is a
24 computer voice, a generated voice.

25 The radio traffic, the way it's recorded, or the way

1 we download it, is voice activated. The reason we do that is
2 so we can get the time and date stamp. And, also, we don't --
3 if you download it wrong, it takes longer to download it. So
4 the reason we do it, again, is to get the date and time stamp.

5 And we also have a -- in certain areas we have video.
6 So, in order to match the radio with the video, we do the time
7 stamp so we can match that up.

8 Q. Okay. On the first page, again, or that first little
9 excerpt that you have, it says, Channel 12. And what is that,
10 sir, again?

11 A. That is the channel designated for rim rock, for the Fabens
12 station.

13 Q. Okay. And on the next page, at the beginning of the --
14 under the line 1311:47, it says 705 -- 705, port 23. What is
15 that in reference to, sir?

16 A. Those numbers are sensor numbers that are being called out.

17 Q. Okay. And where it states Compean, what's your
18 understanding of what that means?

19 A. Where are we at? What page?

20 Q. I'm sorry, the same page, some three lines from -- two
21 lines from where you just spoke about. The top of that page
22 that you were looking at.

23 A. The first page?

24 Q. Yes, sir.

25 THE COURT: Why don't we do this? It might make it a

1 little easier.

2 MR. GONZALEZ: May I approach?

3 THE COURT: Well, the other thing is, put it on the
4 overhead and point to it, and he can tell you what it means.
5 It might make it a little easier.

6 MR. GONZALEZ: I've written all over mine.

7 THE COURT: Well, do you want mine again?

8 MR. GONZALEZ: No, that's fine, Judge. Thank you.

9 May I approach the witness and get the -- do you have
10 the --

11 BY MR. GONZALEZ:

12 Q. I think the jury has their own copy. I think they'll be
13 able to follow.

14 These numbers, you said, were sensor hits. Is that
15 correct?

16 A. Yes. Those 705s, yes.

17 Q. Okay. And what is that, sir, for the record?

18 A. It's a sensor that is implanted out in the field, so when
19 it is activated, it's computerized. And the signal ends up at
20 the radio communications office. So the radio communications
21 operator relays out to the field, This sensor has gone off, you
22 need to check it.

23 Q. Okay. And right here, it says Compean, what is your
24 understanding of that, sir?

25 A. You are talking about the 10-23 rim rock?

1 Q. Yes, sir.

2 A. 10-23 means to clear the channel, basically, emergency
3 situation. Allow for these agents that are conducting this
4 business to conduct it. Basically, don't muddle up the
5 channel.

6 Q. 10-20 means to clear the channel?

7 A. 10-23, yes, sir.

8 Q. And that's a person by the name of Compean issuing out that
9 command. Is that correct?

10 A. Yes.

11 Q. And rim rock is what, again?

12 A. That's the channel.

13 Q. And it says, Sector, 10-4, right beneath that.

14 A. That's the radio communications assistant saying 10-4,
15 which is saying, Okay.

16 Q. Okay. And after that -- let's see. I think everything is
17 understandable. Let's turn the page to page 3, sir.

18 And it says, I guess, the 3rd, Juarez?

19 A. Okay.

20 Q. It says, 99 -- I'm sorry -- 89-6, 10-23. What does that
21 mean?

22 I'm sorry. It's under Mendoza. It says 89-6, 10-23.

23 A. That 89 could be a star number. I don't know what that is.
24 10-23, again, is to clear the channel.

25 Q. Channel 40, what does that mean?

1 A. Well, with channels -- you're talking about rim rock
2 channel. And I believe 40 is a sign to a -- to an agent.
3 That's his star number that's designated to the agent.

4 Q. When you say "star number," what do you mean?

5 A. Everybody is assigned a star number. For example, I have a
6 star number. Mine is Quebec 14. So everybody is assigned a
7 designation, so that way you know who you're talking to.

8 Q. For example, on the next page, page 4 at the very top, it
9 says, Attention, vehicle, hotel 9 1 73, 8-80, 10-18. What
10 does all that mean.

11 A. Okay. That specific line, it's saying, Government vehicle
12 hotel 9173, that's a vehicle number. 8-80 is the designation
13 number for the radio communications office at the sector
14 headquarters. They also have a designated number. 10-18 means
15 that they're checking up on him. Are you okay?

16 Q. Okay. And then two lines down it refers to Foxtrot 15.

17 A. That's a designated agent.

18 Q. So there's an agent that uses that?

19 A. Foxtrot 15.

20 Q. And you said yours was Quebec what?

21 A. Well, mine is Quebec 14.

22 Q. Okay.

23 A. Every station has different acronyms, or different letters.
24 Fabens is Foxtrot. For example, El Paso is Echo.

25 Q. And do you know who Foxtrot 15 was assigned to?

1 A. I believe it was assigned to Ignacio Ramos, but don't quote
2 me on that.

3 Q. Then you're not sure of that?

4 A. I'm not sure, no.

5 Q. All right. Then it says 10-1. What does 10-1 mean?

6 A. 10-1 means, I can't -- I can't hear you.

7 Q. 10-1 means I cannot hear you?

8 A. Yeah. Say it again. Unreadable, basically.

9 Q. And Foxtrot supervisor 8-80. What does that mean?

10 A. Okay. This, where it says sector, that's the law
11 enforcement communications assistant, the radio operator,
12 advising a Foxtrot supervisor, who is a supervisor out in the
13 field in Fabens, basically just saying, calling for a
14 supervisor -- let me go back.

15 It's the sector communications operator calling for a
16 supervisor out in Fabens.

17 Q. That's sector calling out for a supervisor?

18 A. Yes.

19 Q. Okay. And here it says, Foxtrot to supervisor, 8-80.

20 What --

21 A. That --

22 Q. Go ahead.

23 A. Again, that's the radio operator calling for a supervisor.

24 Q. And, if you know, do you know who Foxtrot 3 is?

25 A. I believe that's field operations supervisor Jonathan

1 Richards.

2 Q. Thank you.

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

4 THE COURT: Sure.

5 BY MR. GONZALEZ:

6 Q. And on page 4 of this transcript it states, Foxtrot -- I
7 think, Foxtrot 15, what's your 20?

8 What does that mean to you?

9 A. 20 is location.

10 Q. So where it says Richards, Richards is asking Foxtrot 15
11 where your location is, where you're located?

12 A. Yes. Where are you at?

13 THE COURT: Mr. Gonzalez, could we go to the bottom of
14 the page? I just want to --

15 MR. GONZALEZ: What page, Your Honor, page 4?

16 THE COURT: The same page you were on.

17 MR. GONZALEZ: Yes, ma'am.

18 THE COURT: And it says -- Richards says, That vehicle
19 and that agent will be 10-19. What does that mean, at the very
20 bottom?

21 THE WITNESS: Yes. 10-19 is the code for the agent is
22 okay.

23 THE COURT: Okay.

24 MR. GONZALEZ: Thank you.

25 At this time we will pass the witness.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MS. STILLINGER:

4 Q. Agent Benavides, you and I visited for a little bit the on
5 the phone yesterday about how the radio transmissions work,
6 right?

7 A. Yes, ma'am.

8 Q. Okay. And, just so that we're clear, there's lots of --
9 well, is it obvious to you, from reading this transcript, that
10 there were car-to-car transmissions going on also?

11 A. I can't answer that. I don't know.

12 Q. Okay. Car-to-car transmissions are not recorded, correct?

13 A. Correct. They are not.

14 Q. Okay. And car-to-car transmissions -- well, let me back up
15 a minute.

16 There's no regulations or guidelines that you know of
17 that tell you when you're supposed to use car to car versus to
18 when you're supposed to use the tower, right?

19 A. That I know of, no.

20 Q. Okay. But wouldn't you say that it's fairly obvious, from
21 looking at this transcript, that there were other transmissions
22 that weren't recorded?

23 For instance, the page 4 that we were just looking at,
24 and the question the judge just asked about at the bottom,
25 where Richards is saying that vehicle and agent will be 10-19,

1 which means okay, we don't see anywhere in the transcript where
2 Richards has got that information, do we?

3 A. At the beginning of page 4?

4 Q. No, at the bottom of page 4. The question the judge was
5 asking you about, at the bottom of the page --

6 A. Yes.

7 Q. -- about the agent -- the vehicle and the agent are 10-19.

8 A. Yes.

9 Q. He's basically reporting this vehicle and this agent -- we
10 can't really tell who he is talking about, but he's saying they
11 are okay. Right?

12 A. Correct, yes, ma'am.

13 Q. Okay. You can't see in the transcript where he got that
14 information, can you?

15 A. Yes.

16 Q. Oh, you can? Okay. Well, help me out here. Where is
17 that?

18 A. If you go back, the sector calls out that vehicle hotel
19 number 9173, that the signal went off, which is the -- there's
20 a button, that if you hit that button, it automatically alerts
21 the sector communications of an emergency. It's an emergency
22 button.

23 Q. Okay.

24 A. A safety button.

25 Q. Okay. Okay. And they're calling out -- you're talking

1 about the top of page 4, right?

2 A. I believe somewhere in the radio transmission the radio
3 operator puts that out to the field and says, Hey, supervisor,
4 hotel 9173, the emergency button has gone off. I believe --

5 THE COURT: It's in the middle to the bottom of page
6 4. It says, Sector Foxtrot supervisor, we have got a signal on
7 vehicle --

8 THE WITNESS: Okay.

9 THE COURT: Is that the one?

10 THE WITNESS: That's it, yes.

11 BY MS. STILLINGER:

12 Q. So that -- what you're saying is, that's the sector
13 operator saying, This vehicle's emergency button has been
14 pressed. We're not getting a response.

15 A. Correct. It was activated. And, at that point, the radio
16 operator calls out -- that's why the radio operator is calling
17 out to the supervisor, Hey, vehicle 9173, that button's gone
18 off. Somebody go check on that guy.

19 Q. Right. And this is what I'm asking, is -- and Richards
20 responds about a minute -- less than a minute later. He
21 responds the vehicle and agent are 10-19, which means they're
22 okay, right?

23 A. Correct.

24 Q. Okay. What I was asking about, doesn't that indicate to
25 you that Richards got that information on some other radio

- 1 channel, so that he can relay that information to sector?
- 2 A. No, it's the same radio channel.
- 3 Q. Okay.
- 4 A. It's rim rock.
- 5 Q. Right. Okay. What I'm asking, maybe -- maybe I'm just not
6 understanding this. But it seems to me that Richards has
7 checked on hotel 9173 and has found out from hotel 9173 that
8 hotel 9173 is okay and he's reporting that back.
- 9 A. Correct.
- 10 Q. Correct. Okay. Well, I guess -- I was assuming Richards
11 got that on the radio, on some other radio channel, because
12 that's not on the transcript, where 9173 calls in to Richards
13 and says, I'm okay.
- 14 A. Correct. Correct.
- 15 Q. Okay.
- 16 A. I don't know if it was communicated via radio or if he
17 physically went out there and checked.
- 18 Q. Okay. I see what you're saying.
- 19 A. All that's communicated is, He's okay, or the person in
20 this vehicle is okay.
- 21 Q. Okay. And on that same page, if you go a little bit up,
22 when -- I guess about a third of the way down the page, where
23 Richards is saying, You're not readable, Joe, we can't tell
24 what he's responding to, can we? Because we don't see anything
25 right in front of that that it's not readable coming in from

- 1 Joe.
- 2 A. Correct. The line before that, where it says, 10-1, can
3 you go tower, get us a status?
- 4 Richards is not listening. He's unable to --
- 5 Q. Or he's not hearing?
- 6 A. He's not hearing --
- 7 Q. Right.
- 8 A. -- or it's not readable what he's saying.
- 9 Q. Right. Okay. And what I'm saying -- I'm just saying,
10 if -- if there was something unintelligible coming in to him,
11 that would be on the transcript, right? I mean, even if it was
12 garbled, it would be on your recording, right?
- 13 A. It would be on the recording. The transcript, I don't
14 know, because, who -- who -- I guess Chris Sanchez did the
15 transcript. And it might be on the recording. I don't know.
- 16 Q. Well, we just heard the recording, though, right?
- 17 A. Yes.
- 18 Q. Okay. And, I don't know, were you following along?
- 19 A. I didn't have this.
- 20 Q. Oh, okay. You didn't have it. But did you look at it
21 before?
- 22 A. I listened to it. I don't have --
- 23 Q. Did you --
- 24 A. -- I don't have it memorized, but I listened to it, yes.
- 25 Q. Okay. Well, I think we can -- we can remember whether or

1 not there was something unintelligible. But let's assume for a
2 moment that this transcript is an accurate transcript of the
3 recording.

4 A. Okay.

5 Q. Okay. And what I'm trying to get to is, doesn't that
6 indicate to you that somebody is using another radio channel,
7 the car-to-car channel? Because Richards is saying, You're not
8 readable, Joe. So we're not seeing anything Joe said in here
9 that's not readable.

10 A. Well, when you say "another channel," I don't know if
11 they're using a different channel.

12 Q. Maybe I'm using the wrong word. When you go car to car, do
13 you call that a different channel, or what do you call that?

14 A. You call it either local or direct.

15 Q. Okay.

16 A. That's the lingo.

17 Q. Okay. What I'm asking is, doesn't that indicate to you
18 that Joe -- at this point in time, Joe, at least, is using a
19 local radio?

20 A. It could be that he's using local. But it also could be
21 that the signal is not being transmitted.

22 Q. Okay. But Richards heard something, right? I mean, if
23 he's saying, Joe, I'm not reading you, he's hearing something
24 from somebody he knows to be Joe, right?

25 A. You would have to assume that he's listening to something

1 that's garbled, yes.

2 Q. Okay. And that's not on our tape. Assuming this is an
3 accurate transcript, whatever he heard is not -- was not on
4 that tape of the tower transmissions, right?

5 A. Correct.

6 Q. Okay. Which -- I'm not asking you to speculate. I'm just
7 asking you, in reading things like that, doesn't that make you
8 think that there was some car-to-car activity going on?

9 A. It's possible.

10 Q. Okay. You wouldn't have any way of knowing that?

11 A. No.

12 Q. Okay. Now, by the way, do you know who hotel 9173 is? I
13 mean, I know that's a vehicle. But do you know whose vehicle
14 that is?

15 A. No.

16 Q. Okay. And on the very last page there, where somebody is
17 calling in, Texas 9 golf sierra whiskey 89, are they calling in
18 a license plate to be verified?

19 A. Yes.

20 Q. Okay. The local radio traffic, meaning the car-to-car
21 traffic, that's broadcast in the station, isn't it?

22 A. In the local -- in the local area.

23 Q. Right. So the local traffic, if the agents in the Fabens
24 area are talking to each other car to car, that's being
25 broadcast in the Fabens station, correct?

- 1 A. In the immediate area.
- 2 Q. I'm sorry?
- 3 A. In the immediate area. It depends how far it would travel.
- 4 Q. Oh, okay.
- 5 A. As I was telling you yesterday, local -- it doesn't hit the
6 tower, so it's in the local area. And it would depend on the
7 terrain, so on and so forth, on how far that signal would
8 travel.
- 9 Q. Okay.
- 10 A. Sometimes it can travel ten miles, sometimes a mile. It
11 just depends on the terrain.
- 12 Q. And the area -- are you familiar with the area that we're
13 talking about, where this all happened?
- 14 A. Semi familiar, yes.
- 15 Q. Okay. You know, in this area in Fabens, there's no
16 mountains out there, right?
- 17 A. Correct.
- 18 Q. Okay. And I think where this happened is maybe within
19 three miles or so of the station -- well, actually, sometimes
20 closer, right? Where the vehicles were was sometimes much
21 closer to the station, right?
- 22 A. Correct.
- 23 Q. Okay. Which -- and I don't know if you're qualified to
24 answer this question or not. But would you expect that the
25 car-to-car traffic in that whole area would be coming into the

1 station there in Fabens?

2 A. Repeat that.

3 Q. Okay. Prefacing this by saying, I'm not sure you're
4 qualified to answer this. But do you -- would you expect that
5 the car-to-car traffic -- and I'm talking about what happened
6 from -- from the end of Jess Harris Road up into Fabens and
7 back -- would that car-to-car traffic be able to be broadcast
8 in the station?

9 A. What do you mean, "in the station"?

10 Q. Well, I'm talking about in the station in Fabens, the local
11 station.

12 A. The area or -- see, when you say "station," I'm talking
13 about the building, so...

14 Q. Right. Okay. Let me -- let me back up.

15 What I understand is that there is -- that, in this
16 station I'm talking about, where the supervisor hangs out in
17 Fabens, that they are constantly listening to radio traffic.
18 Is that right?

19 A. They should be, yes.

20 Q. They should be. Right. Of course. They're supposed to
21 be. Somebody is always supposed to be monitoring the radio
22 traffic there, right?

23 A. Correct.

24 Q. Okay. And what they're monitoring includes car-to-car
25 radio traffic, right?

1 A. I don't know -- I don't know if they can -- I can't answer
2 that. I haven't been at the Fabens station when someone is
3 talking on local, so I can't answer that.

4 Q. Okay. And is that because you don't know the mechanics of
5 it, or -- or -- let me see how to ask this.

6 Physically, it would be possible to receive the
7 car-to-car traffic at the local station, correct, in Fabens?

8 A. I don't know.

9 Q. You don't know?

10 A. Because, again, it would depend on where the agent is
11 calling from. And if I'm in the station and, you know, the
12 individual is six miles away, depending on terrain, so on and
13 so forth --

14 Q. Okay.

15 A. -- I do not know.

16 Q. Okay. And I understand that there may be some variables.
17 But let's just assume for a minute -- we're talking about radio
18 traffic from -- from an agent that's down there at the corner
19 of Alameda or Texas Highway 20 and Fabens Road. And you know
20 that's very close to the station, right, within a few blocks?

21 A. Yes.

22 Q. Okay. So, certainly, the radio waves can travel that far
23 to the station. But what I'm asking, is it set up so that they
24 do listen to car-to-car traffic in the supervisor's office, or
25 the station there, in Fabens?

1 A. Well, it's possible that an agent could be out in the field
2 calling -- say, for example, I'm at the Fabens station, and the
3 agent is calling on local. It's possible that I could hear it.
4 But I -- I just don't know, because I -- I don't work out
5 there. So I don't -- I don't know if, in this instance, if
6 they were talking on local, if the supervisor could hear that
7 radio transmission at the station. I don't know.

8 Q. You just don't know. Okay. Okay.

9 MS. STILLINGER: Could I have just a moment,
10 Your Honor?

11 THE COURT: Sure.

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

13 THE COURT: All right. Hold on. Don't pass the
14 witness yet.

15 MS. STILLINGER: Okay.

16 THE COURT: He's changing his paper.

17 MS. STILLINGER: Oh.

18 THE COURT: All right. Now, you can pass the witness,
19 Ms. Stillinger.

20 MS. STILLINGER: I'll pass the witness, Your Honor.

21 THE COURT: Okay. Thank you.

22 Mr. Antcliff?

23 MR. ANTCLIFF: Thank you, Your Honor.

24

25

1 CROSS-EXAMINATION

2 BY MR. ANTCLIFF:

3 Q. Good afternoon, sir.

4 A. Good afternoon.

5 Q. The repeater, as I understand it, is line of sight
6 oriented. So transmissions designated for the repeater, or the
7 tower, may not always be recorded if they're out of the line of
8 sight. Is that right?

9 A. If I understand your question, just like anything, if you
10 transmit, it goes to the tower. It might not get to the sector
11 radio room, if that certain transmission doesn't get there.
12 Sometimes it's possible it doesn't.

13 Q. Exactly. On the radios, the car radios, there are a number
14 of buttons. Is that true?

15 A. Correct.

16 Q. Okay. There are buttons to designate local, repeater,
17 encrypted, an emergency, at the very least, correct?

18 A. Correct.

19 Q. An agent in the car designates where the traffic is going
20 to go, I guess for lack of a better way to put it, by hitting a
21 button for local or repeater, correct?

22 A. Correct.

23 Q. He doesn't have to hit that button every time he transmits
24 over the radio, right?

25 A. Well, for example, if you're on repeater and you want to go

- 1 local, you hit local, and it will stay on local.
- 2 Q. And it stays local until you hit the button to go to
3 repeater again?
- 4 A. Correct.
- 5 Q. Regardless of what's transmitted, it stays local until you
6 hit the button?
- 7 A. Correct.
- 8 Q. Okay. You haven't spent your entire career in the Office
9 of Internal Audit, correct?
- 10 A. Correct.
- 11 Q. You've served as an agent in the field, I would assume?
- 12 A. Yes.
- 13 Q. What stations have you served at?
- 14 A. The only one I've served at is El Paso station.
- 15 Q. Okay. And you were -- you started your career as a Border
16 Patrol agent in a vehicle?
- 17 A. Correct.
- 18 Q. There was a radio in that vehicle?
- 19 A. Correct.
- 20 Q. And you had to designate periodically, when you're
21 transmitting, whether it went to the repeater or local?
- 22 A. Correct.
- 23 Q. Okay. Do you know whether or not, in the El Paso station,
24 local traffic is heard by the supervisors in the station?
- 25 A. At the El Paso station, no.

1 Q. So local traffic is not monitored in the El Paso station?

2 A. The El Paso station is at 8935 Montana.

3 Q. Okay.

4 A. And we work downtown. And if I remember correctly, it does
5 not -- on local, you cannot hear it at the El Paso station, no.

6 Q. Okay. And --

7 A. And that is about eight miles away. So it's -- I believe
8 it's not possible, though.

9 Q. I think your testimony was that supervisors are -- should
10 monitor radio traffic. Is that right?

11 A. You should have your radio on, yes.

12 Q. That's at the station, as well?

13 A. Yes.

14 Q. Okay. If you can't hear it, how are you monitoring it, I
15 guess is the basic question I've got, as a supervisor.

16 A. Well, if you can't hear it, I would assume that -- you
17 would assume that there's no traffic.

18 Q. Okay.

19 THE COURT: Maybe I'm not following you. There's more
20 than one kind of traffic. There's direct traffic and then
21 there's the traffic that comes from the repeater.

22 THE WITNESS: Yes.

23 THE COURT: Okay. Direct traffic, you're saying they
24 can't hear because it's too far of a distance?

25 THE WITNESS: At the El Paso station.

1 THE COURT: At the El Paso station. If it's on the
2 other, the repeater or whatever it is, they should be able to
3 hear it?

4 THE WITNESS: Yes.

5 THE COURT: And so I think Mr. Antcliff is asking, if
6 it's on -- well, I don't know what he's asking. But if it's on
7 the repeater and you don't hear anything, that's when you're
8 saying there is no traffic?

9 THE WITNESS: I'm not saying there is no traffic. I'm
10 just saying that maybe it's unreadable.

11 THE COURT: Okay. But if it's direct traffic and you
12 can't hear it, it might be because you just can't hear it any
13 time, right? There's a difference between those two kinds of
14 traffic?

15 THE WITNESS: Ask me that again.

16 THE COURT: Okay. There's two kinds of traffic, at
17 least.

18 THE WITNESS: Well --

19 THE COURT: One's car to car and one's coming off of
20 that repeater.

21 THE WITNESS: It's all the same traffic.

22 THE COURT: Okay --

23 THE WITNESS: The same channel.

24 THE COURT: I understand. But -- but they're received
25 different ways, right?

1 THE WITNESS: Yes.

2 THE COURT: Or no?

3 THE WITNESS: Well, no, they're not.

4 THE COURT: Okay. Then I'm confused, too.

5 THE WITNESS: The -- let me go back to -- the local,
6 the direct --

7 THE COURT: Right.

8 THE WITNESS: -- it doesn't go to the tower.

9 THE COURT: Okay.

10 THE WITNESS: Therefore, it doesn't reach the
11 communications office where it's recorded. All that stuff is
12 recorded.

13 THE COURT: Through the tower?

14 THE WITNESS: Through the tower. It's got to go
15 through the tower.

16 THE COURT: Okay.

17 MR. ANTCLIFF: Which is at sector?

18 THE WITNESS: Yes, correct.

19 THE COURT: Okay. So the one that he -- when he's
20 asking you if he can't hear it, is that the one going through
21 the tower?

22 THE WITNESS: No.

23 THE COURT: Okay. The one --

24 THE WITNESS: That would be the local or direct.

25 Local, direct, is -- for example, is having a walkie-talkie

1 that you buy out in the store, and you can only hear for 20
2 feet. That's local.

3 THE COURT: Okay. So if the supervisor has got a
4 bunch of people running around doing work, how does he hear
5 them? What radio would he be using to hear it?

6 THE WITNESS: It would depend. At the office there
7 are radios that are -- you have the portable radio and you also
8 have a mounted radio.

9 THE COURT: Okay. And what's the difference between
10 the portable and the mounted?

11 THE WITNESS: Well, the portable, you're not able to
12 transmit as far.

13 THE COURT: Is that like the walkie-talkie?

14 THE WITNESS: Yes.

15 THE COURT: Okay. And what's the mounted?

16 THE WITNESS: The mounted would be hooked up to an
17 electrical plug, which is more reliable than the portable.

18 THE COURT: Okay. And is that through the tower or
19 no?

20 THE WITNESS: It would depend. If it's -- if it's
21 local it's not tower. Local, direct, it's not tower.

22 THE COURT: Okay. So a supervisor could have more
23 than one radio that's local and not through the tower? He
24 could have one that's plugged in and one that he holds in his
25 hand?

1 THE WITNESS: Well --

2 THE COURT: I'm totally confused. I don't know
3 about -- does the jury understand all of this?

4 You're getting it? Okay. Then I guess I'm the only
5 one confused here.

6 BY MR. ANTCLIFF:

7 Q. That mounted radio that's in the station that you're
8 talking about can receive traffic, local and tower?

9 A. It -- the radio can receive all kinds of traffic --

10 Q. There you go. That's what I was talking about.

11 A. -- local, encrypted, or not encrypted.

12 Q. Okay. That's what I want to know.

13 A. Okay.

14 Q. Based on the transcript and the tape that you listened to
15 with the jury, the incident that we're discussing here began at
16 1311, approximately. Is that right?

17 A. That's the time that the recording started, yes.

18 Q. And that's the time the first call for 76, a van going
19 quickly, came out. Is that right?

20 I think it says, Blue van leaving 76, going pretty
21 quick, or something along those lines.

22 A. And that would be at what time, I'm sorry?

23 Q. It's on the very first page. I think it's 1311.

24 A. No.

25 JUROR: It's on the little piece on top.

1 A. Oh, okay.

2 MR. ANTCLIFF: Thank you.

3 BY MR. ANTCLIFF:

4 Q. Okay. That's when it began?

5 A. Yes.

6 Q. On the last page it says 10-24 the channel at 1328, and
7 that means the -- effectively, that series of the incident is
8 over?

9 A. I don't know if the incident is over. The 10-24 is just
10 saying resume normal traffic.

11 Q. Okay. So, in effect, whoever made that call is saying
12 that, We're done with this for now?

13 A. I would assume, yes.

14 Q. Very well.

15 Given the time that you've spent in the El Paso
16 station, prior to you going to the Office of Internal Audit, is
17 it fair to say that the vast bulk of radio traffic is local?

18 A. I can't answer that question because, personally, I've
19 rarely worked on local.

20 Q. So everything you did was on the repeater?

21 A. I tried to be on the repeater, yes.

22 Q. Is there a reason for that?

23 A. Well, it's a safety issue. It was my personal safety
24 issue, that if I was ever communicating, I wanted it recorded,
25 and I wanted somebody else to be hearing me.

1 Q. I understand. You've known many Border Patrol agents
2 during the course of your career, correct?

3 A. Yes.

4 Q. And do all of them share that personal safety issue
5 regarding the repeater that you just informed us about?

6 A. No.

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

8 THE COURT: Sure.

9 MR. ANTCLIFF: I'll pass the witness.

10 THE COURT: Okay. Mr. Gonzalez?

11 REDIRECT EXAMINATION

12 BY MR. GONZALEZ:

13 Q. The car-to-car local traffic is heard by who?

14 A. The agents that are close by.

15 Q. Okay. And I think you testified earlier that who can hear
16 it will depend on the terrain, proximity, those types of
17 things, correct?

18 A. Correct.

19 Q. And so the safest way to make sure that your communications
20 are heard is through the repeater, through the tower. Is that
21 correct?

22 A. Correct.

23 Q. Now, I think there was reference in the transcript to
24 someone hitting their emergency button. Do you know what I'm
25 talking about?

1 A. Yes.

2 Q. Is that a frequent occurrence, that someone hits the
3 emergency button and it really means nothing?

4 A. It happens quite a bit, yes.

5 Q. On page 5 of the transcript, at 1354, that's -- what time
6 is that? 1:54? Is that correct?

7 A. Yes.

8 Q. And towards the middle it says, Can you, uh, run, uh,
9 28-29?

10 What does that mean, sir?

11 A. That's a vehicle registration vehicle. It's a code to run
12 the license plate.

13 Q. Okay. And then, Have it faxed to the Fabens.

14 What does that mean, sir?

15 A. Have a hard copy faxed to the Fabens station.

16 Q. From where?

17 A. From the communications office at the sector headquarters.

18 Q. Which is the only place you can get this information,
19 correct?

20 A. For Border Patrol, yes.

21 Q. And do you know what O S -- what does that mean, if
22 anything?

23 A. That's an acronym for the office.

24 Q. Which office?

25 A. The Fabens. He's referring to the Fabens office.

1 Q. Okay. And Texas 9 golf Sierra whiskey 89, what is that,
2 sir?

3 A. That's the license plate.

4 Q. That they want it faxed back to them, the information on
5 that plate?

6 A. That's the license plate on the vehicle that they want run.

7 Q. Thank you.

8 MR. GONZALEZ: I'll pass the witness, Your Honor.

9 THE COURT: Ms. Stillinger, any questions?

10 RE CROSS-EXAMINATION

11 BY MS. STILLINGER:

12 Q. Agent Benavides, you said that local traffic will be heard
13 by agents close to you. But just again, to be clear, you don't
14 know, in the Fabens area, how close "close" means, correct?

15 A. Correct.

16 Q. Okay. And there are some other reasons you may want to use
17 local radio. For instance, isn't it a little faster?

18 A. Yes.

19 Q. Okay. And sometimes, certainly not in an emergency
20 situation, but sometimes you might feel like you shouldn't be
21 tying up the tower, correct?

22 A. Correct.

23 Q. Okay. Because if you're using the tower, that means
24 somebody else can't use the tower, right?

25 A. Correct.

1 MS. STILLINGER: Thank you.

2 I'll pass the witness.

3 RECCROSS-EXAMINATION

4 BY MR. ANTCLIFF:

5 Q. Sir, you stated to either Ms. Stillinger or the judge
6 earlier -- I'm not sure which -- you were talking about
7 walkie-talkies traveling a distance of 20 feet as an analogy.
8 Do you remember that?

9 A. Yes.

10 Q. You are not saying, though, that local traffic traveling
11 over the Border Patrol vehicle radios only goes 20 feet.

12 A. No, no. I was just giving an example.

13 MR. ANTCLIFF: Very well. Thank you.

14 I'll pass the witness.

15 REDIRECT EXAMINATION

16 BY MR. GONZALEZ:

17 Q. And, sir, in reading this transcript, is there anything in
18 it that tells you that there's a high-speed chase going on?

19 A. No.

20 Q. Or any kind of emergency situation, for that matter. Is
21 that correct?

22 A. The only thing that I can tell is that there is a van
23 that's leaving a certain area.

24 MR. GONZALEZ: Thank you.

25 THE COURT: Anything further, Ms. Stillinger?

1 that lets you know that there is a pursuit, correct?

2 A. If it's on local?

3 Q. Yes. I mean, if you're hearing it. I'm -- I'm --

4 A. Yeah, if you're --

5 Q. If you hear someone call in and say, These people are
6 failing to yield, then you know there's a pursuit going on,
7 right?

8 A. If that were said, yes.

9 Q. Okay.

10 MS. STILLINGER: Thank you. I'll pass the witness.

11 MR. ANTCLIFF: Briefly, Your Honor.

12 RECCROSS-EXAMINATION

13 BY MR. ANTCLIFF:

14 Q. And let's be clear, Agent. On February 17, 2005, you
15 weren't out working in the Fabens sector, correct?

16 A. No, I wasn't.

17 Q. You weren't listening to this transmission, all of these
18 transmissions, in real time that day, were you?

19 A. No.

20 MR. ANTCLIFF: Okay. Pass the witness.

21 MR. GONZALEZ: No further questions, Your Honor.

22 THE COURT: All right. Is he free to go, or are we
23 going to need him?

24 MS. STILLINGER: No objection, Your Honor.

25 MR. GONZALEZ: No objection, Your Honor.

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

2 THE COURT: All right. You're free to go. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: You may call your next witness.

5 MR. GONZALEZ: The Government calls Oscar Juarez,
6 Your Honor.

7 THE COURT: You've already been sworn in. Is that
8 correct?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Whenever you're ready, Mr. Gonzalez.

11 MR. GONZALEZ: Yes, ma'am.

12 OSCAR JUAREZ, GOVERNMENT'S WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. GONZALEZ:

15 Q. Sir, would you please state your full name for the record?

16 A. Oscar Juarez.

17 Q. And who are you employed by?

18 A. The United States Border Patrol.

19 Q. And how long have you been with the United States Border
20 Patrol, sir?

21 A. Two and a half years.

22 Q. And what are some of your duties and responsibilities?

23 A. Main duties are to patrol the border and apprehend illegal
24 aliens.

25 Q. And that's for two and a half years?

1 A. Yes, sir.

2 Q. And is that what you're currently doing?

3 A. No, sir.

4 Q. What are you doing now?

5 A. Right now on administrative duties.

6 Q. How long have you been on administrative duties?

7 A. A year.

8 Q. Since when?

9 A. Since last year, I believe, in March '05.

10 Q. Why were you placed on administrative duties?

11 A. I was placed on administrative duties during the

12 investigation of the shooting at Fabens, Texas.

13 Q. Okay. And which shooting are you referring to, sir?

14 A. The shooting with Mr. Aldrete and Agent Compean and Ramos.

15 Q. Do you see Agent Compean in the courtroom this afternoon?

16 A. Yes, I do, sir.

17 Q. Could you please describe what he's wearing for the Court

18 and for the record?

19 A. Agent Compean is the agent there with the suit.

20 Q. The person that just stood up with the tan suit?

21 A. Yes, sir.

22 MR. GONZALEZ: Your Honor, may the record reflect that

23 the witness has identified the defendant, Jose Alonso Compean?

24 THE COURT: It will so reflect.

25

1 BY MR. GONZALEZ:

2 Q. And who else did you say?

3 A. Agent Ramos.

4 Q. Okay. And do you know his full name?

5 A. Ignacio Ramos.

6 Q. Do you see him in the courtroom this afternoon?

7 A. Yes, he's back there.

8 MR. GONZALEZ: And, Your Honor, may the record reflect
9 that the witness has identified defendant, Ignacio Ramos?

10 THE COURT: It will so reflect.

11 BY MR. GONZALEZ:

12 Q. And you were placed on administrative duty for which
13 reason?

14 A. For the shooting incident that happened at Fabens, Texas.

15 Q. Did you shoot?

16 A. No, sir.

17 Q. And why were you placed on administrative duty?

18 A. Because I was a witness of the shooting.

19 Q. And what did you do or did not do?

20 A. I failed to report it.

21 Q. At this time are you even allowed to carry a gun?

22 A. Sir?

23 Q. Are you allowed to carry any kind of weapon?

24 A. Yes.

25 Q. You have a weapon. Now that you're on administrative duty

1 are you allowed to carry a weapon anymore?

2 A. No, not at all.

3 Q. A badge?

4 A. No.

5 Q. A uniform, anything like that?

6 A. No.

7 Q. Now let's talk about February 17, 2005. Where were you
8 that day, sir, at, approximately, 1:00 in the afternoon?

9 A. Approximately, I was in Zone 2. That was my area of
10 concern for that day.

11 Q. I'm sorry. I can't --

12 A. Area 2. Zone 2.

13 Q. Thank you.

14 MR. GONZALEZ: Your Honor, may I retrieve an exhibit?

15 THE COURT: You may.

16 BY MR. GONZALEZ:

17 Q. And you say Zone 28?

18 A. Zone 2.

19 Q. Two. I'm sorry.

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

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. I'm going to show you two maps. And you tell me which of
24 these two maps best shows the zone where you were patrolling
25 that afternoon. I'm showing you, first of all, Government's

1 Exhibit 84. Can you see this?

2 A. Yes.

3 Q. Does this help you, sir?

4 A. Yes.

5 Q. The next exhibit is Government's Exhibit Number 1. Which
6 one will help you tell us what occurred that day?

7 A. I need to get my bearing on the map.

8 Q. And you need to speak up because he needs to take down
9 everything you say, sir.

10 A. This one will help me more.

11 Q. And I have a third map. Maybe that would help you as well.
12 And that's Government's Exhibit Number 2. For the initial part
13 of your testimony, which map is more helpful, sir?

14 A. This one.

15 Q. Government's Exhibit Number 2?

16 A. Yes.

17 MR. GONZALEZ: And, Your Honor, I don't believe that's
18 in evidence. If it's not --

19 THE COURT: I checked. I don't believe it is. No, I
20 don't show that it is.

21 MR. GONZALEZ: We'll move Government's Exhibit Number
22 2 into evidence. There's flags we'll remove.

23 MR. ANTCLIFF: No objection.

24 MS. STILLINGER: No objection.

25 THE COURT: All right. Government's Exhibit Number 2

1 will be admitted.

2 BY MR. GONZALEZ:

3 Q. Mr. Juarez -- or is it Agent Juarez?

4 A. Mr. Juarez, Agent Juarez. It's up to you. I don't care.

5 Q. Mr. Juarez, were you patrolling that afternoon?

6 A. That afternoon I was patrolling a large group of illegal

7 aliens attempting to cross by a ranch called Martinez Farming.

8 Q. What time was that, sir?

9 A. Approximately noonish.

10 Q. And about 1:15 did you hear a radio transmission?

11 A. Yes, I did.

12 Q. And what did you understand from that transmission?

13 A. It was a transmission telling that -- be on the lookout for

14 possible 46, a minivan -- correction. Light in color.

15 Q. I'm sorry. What?

16 A. A minivan.

17 Q. Minivan?

18 A. Light in color to be on the look out, a possible 46.

19 Q. And on that map, approximately, where were you when you

20 heard that transmission? Government's Exhibit Number 2, I

21 believe.

22 A. May I get up? Approximately -- I was over there, which is

23 not on the map, on the levee side.

24 Q. And on that map is the Fabens port of entry -- is that off

25 the map as well?

1 A. I believe it's not on the map.

2 Q. Thank you. So --

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

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. Let me direct your attention to Government's Exhibit Number

7 1. Does that show -- from this map could you tell where you

8 were about 1:00 or 1:15 when you heard that radio

9 transmission -- I think it's 1:11 -- to be on the lookout for a
10 minivan?

11 A. No, I can't see on this location. It's down there.

12 Q. Still further on this map? Further?

13 A. No, that's Jess Harris.

14 Q. I'm sorry, I brought you the wrong map. Let's try it
15 again.

16 Government's Exhibit Number 84. Does that show where
17 you were? I'm showing you where Jess Harris is on the top,
18 upper left-hand corner.

19 A. Yes, it does show where I was.

20 Q. Okay. Point out to the jury where you were at,
21 approximately, 1:11?

22 A. At approximately 1:11 I was in the area here, which is
23 Martinez Farming.

24 Q. And were you on a road or -- what were you on, sir?

25 A. I was on my patrol unit.

1 Q. But are you on a paved street, dirt road, what?

2 A. No, when I was -- when I hear that call, I was on the levee
3 pushing back that large group of aliens.

4 Q. And there's only one levee in that area. Is that correct?

5 A. Yes.

6 Q. One American levee?

7 A. Yes, American levee is only one levee.

8 Q. And you heard the call. What do you do?

9 A. That's when I responded. And I exit the levee to try to
10 locate the van.

11 Q. And when -- were you riding by yourself that afternoon?

12 A. Yes, I was.

13 Q. So what do you do to try to find this van?

14 A. I get off the levee by using a gate that is called C.C.
15 Bills gate. And then I took Wingo Road. And that led me to
16 Island Road. And then I went left on Lower Island.

17 Q. Okay. Thank you.

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

19 THE COURT: You may.

20 BY MR. GONZALEZ:

21 Q. I'm showing what's been marked for identification purposes
22 as Government's Exhibit Number 83A. Do you recognize what's
23 shown in that photograph?

24 A. Yes, I do.

25 Q. And what is that, sir?

- 1 A. That is C.C. Bills gate.
- 2 Q. And do you recognize what is shown in Government's Exhibit
- 3 83B?
- 4 A. Yes, I do.
- 5 Q. And what is that, sir?
- 6 A. That's Wingo Reserve Road.
- 7 Q. And also shows the C.C. Bills gate leading to Wingo Reserve
- 8 Road. Is that correct?
- 9 A. Yes.
- 10 Q. Is that the gate that you used to get to Wingo Reserve Road
- 11 on February 17, 2005?
- 12 A. Yes.
- 13 Q. And, in fact, is this gate locked or is it -- how do you
- 14 access it?
- 15 A. It was unlocked.
- 16 Q. What?
- 17 A. Unlocked, the gate was unlocked, wide open.
- 18 Q. Should it be unlocked?
- 19 A. I had it unlocked. We have keys to it so I could control
- 20 my area. If we have aliens going north, I can easily go
- 21 through the gate and apprehend them. Or else I have to go
- 22 through the P.O.E.
- 23 Q. You need to answer my question. Do you have access to that
- 24 gate, yes or no?
- 25 A. Yes, I do.

1 Q. All right. Now, Government's Exhibit 86 -- 83D. Do you
2 recognize what's shown on that photograph?

3 A. Yes.

4 Q. And what is that, sir?

5 A. That's the chain and the gate.

6 Q. And 83E, is that the lock on that gate?

7 A. Yes.

8 Q. It's your testimony that you had left that gate open, the
9 lock?

10 A. Yes.

11 Q. For the record, you left the gate unlocked?

12 A. Unlocked.

13 MR. GONZALEZ: Your Honor, at this time we'll move for
14 Government's Exhibits 83A, B, C, D, E to defense counsel for
15 inspection and objection, if any.

16 MS. STILLINGER: Your Honor, I would just object. I
17 might be missing it. I would object on relevance. I don't
18 understand what this has to do with anything.

19 MR. ANTCLIFF: I'll join that objection.

20 THE COURT: All right. I don't know what the
21 relevance is. Where are we going?

22 MR. GONZALEZ: Just to establish where he was and how
23 long it took to where he ended up. This shows what he had to
24 travel. That's the relevance.

25 THE COURT: Can I see them?

1 MR. GONZALEZ: Sure.

2 THE COURT: Can the attorneys approach?

3 (Bench conference:)

4 THE COURT: So he's here or here?

5 MR. GONZALEZ: He's on the levee road and he has to go
6 through the gate to get to where --

7 THE COURT: So he goes up here and then where does he
8 have to go?

9 MR. GONZALEZ: Yes, Your Honor. He has to go the road
10 that he's traveling.

11 THE COURT: Then what?

12 MR. GONZALEZ: Then these are just different -- same
13 thing. Then he has to travel on Wingo Reserve Road then Middle
14 Island to --

15 THE COURT: Enlighten the jury. If you're going to
16 explain it from here to this one. I don't have a problem with
17 its relevance. I think these are just excessive, especially if
18 the gate was wide open. But if you're trying to explain --

19 MR. GONZALEZ: You're right. Eighty-three A and B
20 would be sufficient.

21 THE COURT: Do you have any problem? Can we save them
22 for later, then?

23 MS. KANOF: This is Debra Kanof. They do become
24 relevant later because there's another witness that will
25 testify about an encounter and a conversation with Defendant

1 Compean at the C.C. Bills gate.

2 THE COURT: Can we admit those then?

3 MS. KANOF: Yeah.

4 THE COURT: Because I think you're -- that's not going
5 to -- it might help the jury if you're trying to help show the
6 travel from that to the scene where the shooting occurred. Any
7 problem with that?

8 MS. STILLINGER: I don't have a problem with, really,
9 any of the pictures. Now that I understand. I just didn't
10 understand.

11 THE COURT: That's up to you. I don't know. This
12 will help the jury. All right.

13 MR. GONZALEZ: Thank you, Judge.

14 THE COURT: All right. We've reviewed the photos at
15 sidebar. Is there still an objection?

16 MS. STILLINGER: No. No objection to the photos.

17 MR. ANTCLIFF: Not to the two he's offering.

18 THE COURT: So 83A and B will be admitted.

19 BY MR. GONZALEZ:

20 Q. Mr. Juarez, let me direct your attention to Government's
21 Exhibit 83A. Can you see what is shown?

22 A. Yes, I do. I could see.

23 Q. And you said you were on the levee. Is that correct?

24 A. Yes, I was.

25 Q. And so at about 1:11 you're in this area. Is that true?

- 1 A. I was more to the left.
- 2 Q. Okay. And when you hear the phone call, do you travel this
3 path, is that correct, get off the levee and onto the roads,
4 paved roads?
- 5 A. Yes, I did.
- 6 Q. And let me show you Government's Exhibit 83B. So that's
7 the C.C. Bills crossing. Is that correct?
- 8 A. Yes.
- 9 Q. This area?
- 10 A. Yes, it is correct.
- 11 Q. And that's the C.C. Bills gate?
- 12 A. That is C.C. Bills gate.
- 13 Q. You said you left it unlocked. Did you still have to get
14 off your car to open the gate, or was the gate wide open?
- 15 A. I had the gate wide open.
- 16 Q. And did you have to close the gate after you got through
17 there?
- 18 A. No, of course not.
- 19 Q. You left it open?
- 20 A. Yes, I did.
- 21 Q. I'm sorry, 83B. There's a road there, is that correct,
22 right around there?
- 23 A. It is a road.
- 24 Q. What road is that?
- 25 A. That is called Wingo Reserve Road.

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

2 THE COURT: You may.

3 MR. GONZALEZ: Is it okay if I stand here, Judge?

4 THE COURT: That's fine. If you cannot hear him, let
5 me know.

6 BY MR. GONZALEZ:

7 Q. Show us on this map, if you can, where you exited, where
8 C.C. Bills crossing is -- the C.C. Bills gate.

9 A. It's, approximately, here. That's where I exited on the
10 C.C. Bills gate -- correction, sorry. Right here, leading to
11 Wingo Reserve Road.

12 Q. So where my finger is pointing, that's where you exited and
13 this is Wingo Reserve Road?

14 A. Yes, it is.

15 Q. And how far do you travel on Wingo Reserve Road?

16 A. That's, approximately, about almost two miles to get to the
17 next intersection.

18 Q. What was the next intersection?

19 A. I believe it's called Guadalupe Island.

20 Q. And on this map would you please point to --

21 A. This one.

22 Q. This says Robinson. This is the road you're talking about?

23 A. Yes.

24 Q. You get to Island Guadalupe and do what?

25 A. Left.

- 1 Q. How far do you go on Island Guadalupe left?
- 2 A. Not much, about quarter of a mile.
- 3 Q. And you turned which direction?
- 4 A. I went right.
- 5 Q. And what street, sir?
- 6 A. That is Guadalupe which turns into Lower Island.
- 7 Q. And then Lower --
- 8 A. Lower Island would take me to Jess Harris.
- 9 Q. Okay. Let's see this other map. Do you see Jess Harris?
- 10 A. Yes, I do.
- 11 Q. Now I'm pointing to Island Guadalupe Road on the map. Is
- 12 that the road that you were on?
- 13 A. Yes, that was the road.
- 14 Q. Did you make it all the way to Jess Harris from Fabens
- 15 Road?
- 16 A. Yes, I did.
- 17 Q. All right. And from Fabens Road in what direction did you
- 18 travel?
- 19 A. When I reached the intersection, I went right, which is
- 20 north, away from the border.
- 21 Q. And -- all right. So we're going to -- I'm going to ask
- 22 you about what occurred at this location on Island Guadalupe
- 23 Road and Fabens Island Road. Okay?
- 24 A. Yes, sir.
- 25 Q. You're taking that -- you head in that direction because

1 you hear a radio communication that there is a van, correct?

2 A. Yes.

3 Q. Do you get a color description of the van that's leaving
4 that area?

5 A. Light color, I recall.

6 Q. Have you listened in my office to the radio transcriptions
7 of the radio traffic of that date?

8 A. Yes, I did.

9 Q. And would you like to refresh your memory?

10 A. Light blue.

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

12 THE COURT: You may.

13 BY MR. GONZALEZ:

14 Q. And I'm showing you what I believe is Government's Exhibit
15 Number 91. And that reflects a transcript of the radio
16 transmissions that were recorded on February 17, 2005. Sir, at
17 the bottom of that page, what does it indicate? To yourself so
18 you can refresh your memory.

19 What color van did Mr. Compean or Agent Compean call
20 out?

21 A. Blue.

22 Q. So do you start looking for a blue van?

23 A. Yes, I was.

24 Q. And were you able to locate a blue van right off the bat?

25 A. No, I did not.

1 Q. Do you ever see a van?

2 A. Yes, I saw a van.

3 Q. And the first van you see can you tell the color of that
4 van?

5 A. I saw a gray van.

6 Q. And when you saw that van, did you think that was the same
7 van that Agent Compean had radioed?

8 A. I thought that could be the van since he came out from the
9 area that said -- the traffic, be on the lookout even though it
10 was a different van.

11 Q. So what did you say? What did you do?

12 A. I got on the radio and advised Agent Compean that I saw a
13 full-size van, gray in color, traveling northbound away from
14 the levee.

15 Q. And how did you communicate that time, sir?

16 A. Via the service radio in the patrol unit.

17 Q. And to my understanding, that radio you can have local
18 communication as well as repeater communication, is that your
19 understanding?

20 A. Yes.

21 Q. And which communication did you employ?

22 A. I don't remember.

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

24 May I approach again, Your Honor?

25 THE COURT: You may.

1 BY MR. GONZALEZ:

2 Q. Are you nervous, sir?

3 A. No, I'm not.

4 Q. I'm showing you Government's Exhibit 92. And I think I
5 previously referred to 91. But it's 92, the transcript of the
6 radio transmissions. Now why don't you look at that and
7 refresh your memory.

8 Okay. So what radio communication did you use, sir,
9 what type?

10 A. In order to copy that must be repeater.

11 Q. I'm sorry, what?

12 A. Repeater.

13 Q. Yes.

14 A. The repeater has to be on repeater.

15 Q. You used the repeater?

16 A. Yes, I did.

17 Q. And why did you use the repeater?

18 A. It's better communication. No static.

19 Q. Okay. And, in fact, during that communication does someone
20 say and, specifically, Agent Compean, is he 10-23? If you
21 don't recall, look at that exhibit to refresh your memory.

22 A. I need to know what's 10-23. I forgot.

23 Q. You don't know?

24 A. It's been a year. So I want to make sure. I don't have my
25 ten codes with me.

- 1 Q. Why don't you look at the document and see if that can help
2 you refresh your memory. Has that refreshed your memory?
- 3 A. I see 10-23. But I'm trying to see what -- what's the ten
4 code.
- 5 Q. The what?
- 6 A. What's the meaning of the ten code?
- 7 Q. What is sir?
- 8 A. I don't remember. I don't have my ten codes with me.
- 9 Q. Okay. After that communication, whatever that means, 10-23
10 rim rock, is there a clear communication on channel 12?
- 11 A. I think 10-23 is clear the channel.
- 12 Q. That's -- is that your testimony?
- 13 A. I think. I have to look at my ten codes. But I believe
14 it's 10-23.
- 15 Q. And it's been a year since you've been on duty. Is that
16 correct?
- 17 A. Yes.
- 18 Q. All right. So you're on the repeater channel, correct?
- 19 A. Yes.
- 20 Q. What are the directions Agent Compean is giving?
- 21 A. He only mentioned be on the lookout for van leaving the
22 area.
- 23 Q. And when you see the van, do you try to get clarification
24 to find out is it the same van he's looking for?
- 25 A. Yes, I did.

- 1 Q. And what do you find out from Agent Compean?
- 2 A. He said that could be it.
- 3 Q. What?
- 4 A. It could be it, the van, even though it's a different van.
- 5 Q. Okay. And you're on Fabens Island Road near Jess Harris,
- 6 is that correct, when these communications are going on. Is
- 7 that correct?
- 8 A. Yes, it is.
- 9 Q. And is that when you spot a van?
- 10 A. Yes, that was the first time.
- 11 Q. Okay. And the color of the van was what, sir?
- 12 A. Was a gray color.
- 13 Q. And what direction was the van traveling?
- 14 A. It was traveling away from the border going northbound.
- 15 Q. And when you see this van, what do you do?
- 16 A. I try to caught up with the van.
- 17 Q. Try to catch up to the van?
- 18 A. To catch up to the van.
- 19 Q. And when you see it, are you able to catch up to it?
- 20 A. Not immediately.
- 21 Q. Okay. When you're on Fabens Road, does Fabens -- I'm sorry
- 22 Jess Harris Road, does it curve, referred to as the S curve,
- 23 and becomes Fabens Road?
- 24 A. Yes, it does.
- 25 Q. Okay.

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

2 THE COURT: Yes, you may.

3 BY MR. GONZALEZ:

4 Q. And first of all, let me direct your attention to
5 Government's Exhibit Number 85. Do you recognize what's shown
6 on that photograph?

7 A. Yes, I do.

8 Q. And what is that, sir?

9 A. That is Fabens Road before you get to the S turn.

10 Q. Okay. And on either side of that road, what do we see?

11 A. I see pecan orchards.

12 MR. GONZALEZ: And, Your Honor, at this time we would
13 move into evidence Government's Exhibit Number 85. I will
14 tender it to defense counsel.

15 THE COURT: It's a photo of --

16 THE WITNESS: A field, pecan orchards.

17 MR. GONZALEZ: A road going between a field of pecan
18 orchards, Your Honor.

19 THE COURT: Okay. Any objection?

20 MS. STILLINGER: No objection.

21 MR. ANTCLIFF: No objection.

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

23 THE COURT: It will be admitted, 85.

24 BY MR. GONZALEZ:

25 Q. Mr. Juarez, on this map where I have Island Guadalupe and

1 Fabens Island, where are you on this road when you first see
2 the van?

3 A. Approximately, there.

4 Q. This area?

5 A. Yes.

6 Q. And is there any kind of traffic control device at the
7 intersection of Fabens Island and, which is also Jess Harris,
8 and Island Guadalupe?

9 A. Yes, it is.

10 Q. Is it?

11 A. It's a stop sign.

12 Q. And you see the van on the left-hand side of the Fabens
13 Island Road or the right-hand side?

14 A. I see it on the left side.

15 Q. And when it passes the intersection of Island Guadalupe and
16 Fabens Island, you -- how far away from that intersection?

17 A. I would say, approximately, 50 yards.

18 Q. And the van continues northbound. Is that correct?

19 A. Yes, it is.

20 Q. And Government's Exhibit Number 85, that is the same road,
21 that's Fabens Island Road that I'm pointing to here on
22 Government's Exhibit Number 1?

23 A. Yes, it is.

24 Q. And when you get to that intersection, do you make a
25 right-hand or left-hand turn?

- 1 A. I made a right-hand turn.
- 2 Q. And when the van is -- do you see the van when it turns?
- 3 A. I could see the rear.
- 4 Q. And it turns where it makes the S curve. Is that correct?
- 5 A. Yes, it is.
- 6 Q. And so you're from, approximately, near the intersection of
- 7 Island Guadalupe and Fabens Road when you see the back lights
- 8 of the van. Is that correct?
- 9 A. I was already on the Fabens Road.
- 10 Q. Okay. And is that the van you follow that afternoon?
- 11 A. Yes, that was the van.
- 12 Q. And when you see the van, do you speed up to catch up to
- 13 it, sir?
- 14 A. Yes, I did.
- 15 Q. And were you able to catch up to it?
- 16 A. Not right away.
- 17 Q. How long did it take you before you caught up to the van?
- 18 A. I would say two, three miles.
- 19 Q. Okay. And two or three miles, where does that take you?
- 20 A. That's going to take me into Fabens, the city traffic
- 21 lights.
- 22 Q. And at the city traffic lights, what does the van do?
- 23 A. The van -- I noticed it was a red light. So that the van
- 24 yielded, had to slow down. That's when the green light turned
- 25 green and I crossed the intersection.

1 Q. Okay. Mr. Juarez, let me direct your attention to
2 Government's Exhibit Number 40. And is this the path of the
3 van that -- it was taking?

4 A. Yes, it is.

5 Q. And where I'm holding my pen, is that where the Fabens
6 light control is situated?

7 A. Yes, that's the location.

8 Q. Okay. And you're driving behind the van. Is that correct?

9 A. At that point I was able to be catch up with the van, yes.

10 Q. So it's not until you get to the -- this intersection, the
11 intersection of Alameda and Fabens, that you're able to get
12 close enough to the van, that you catch up to the van. Is that
13 correct?

14 A. That is correct.

15 Q. And prior to that you had remained behind at a distance?

16 A. I was behind, yes.

17 Q. And at the intersection of Alameda and Fabens, what does
18 the van do?

19 A. He was lucky to catch the green light. So he proceeded to
20 cross the intersection.

21 Q. And what direction did the van turn?

22 A. He turned left.

23 Q. Left. And what did you do?

24 A. I, immediately after he crossed the intersection, I
25 activated my lights, emergency lights on.

- 1 Q. When you say your emergency lights, to what are you
2 referring?
- 3 A. The overhead lights. The emergency lights.
- 4 Q. And why did you activate your emergency lights?
- 5 A. I was attempting to do the immigration check on that van.
- 6 Q. Is that what you're supposed to do?
- 7 A. Yes.
- 8 Q. Okay. And does the van stop when you turn on your lights?
- 9 A. He slowed down, but he never stopped.
- 10 Q. Where does the van go?
- 11 A. He immediately made a left turn in the immediate left. And
12 then he made another left at the immediate intersection.
- 13 Q. So follow my pen and tell me if this is correct. At the
14 intersection the van turns left, makes another left and then a
15 right. Is that accurate?
- 16 A. That is correct.
- 17 Q. And what do you do; do you follow behind?
- 18 A. Yes, I was behind.
- 19 Q. And somewhere along this route you turn on your emergency
20 lights?
- 21 A. I did it on the main road.
- 22 Q. On the main road?
- 23 A. Right after I turned left on the main road.
- 24 Q. And did you leave your lights on?
- 25 A. Yes, I did.

1 Q. And -- but at some point in time did you turn off your
2 lights?

3 A. Yes, I did.

4 Q. How far had you traveled before you turned off your lights,
5 sir?

6 A. Oh, that was already away from town.

7 Q. Okay. Follow my pen. Tell me when to stop.

8 A. About there.

9 Q. Okay. So you had traveled from downtown Fabens until this
10 point. And there's an arrow that says Fabens C. Is that
11 approximately where you turned off your emergency lights?

12 A. Yes.

13 Q. How long did it take you to travel the path from the
14 stop -- the intersection light to the point where you turned
15 off your lights?

16 A. Almost a mile.

17 Q. No. How long did it take you, sir?

18 A. Oh, minutes.

19 Q. Minutes?

20 A. A minute.

21 Q. And you're following the van. Is that correct?

22 A. Yes, that is correct.

23 Q. And why do you turn off your lights?

24 A. That way the driver would see my emergency lights and he
25 will stop and pull over.

1 Q. And then you turn them off, right?

2 A. Yes, I did.

3 Q. Why did you turn them off?

4 A. I turned them off because Agent Ramos advised me to turn
5 them off.

6 Q. How did that happen?

7 A. He gave me a signal.

8 Q. Okay.

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

10 THE COURT: Yes, you may.

11 BY MR. GONZALEZ:

12 Q. You're following behind the van, correct? All around the
13 corner, around the block, right?

14 A. Yes.

15 Q. And you said that you follow with your lights activated.

16 Is that correct? You wanted to make an immigration stop?

17 MS. STILLINGER: Object to his leading.

18 THE COURT: I'll sustain.

19 BY MR. GONZALEZ:

20 Q. At some point you said that Agent Ramos tells you to turn
21 them off. Is that right?

22 A. That's correct.

23 Q. Where does that happen?

24 A. That was about this area here.

25 Q. Where does Agent Ramos show up in this scene?

- 1 A. Immediately after he went back Fabens Road south, that's
2 when he took over.
- 3 Q. Let me direct your attention to Government's Exhibit Number
4 40. The arrow nearest the red dot, is that where Agent Ramos
5 took over?
- 6 A. Yes.
- 7 Q. And when you say Agent Ramos took over, what do you mean?
- 8 A. He took the eye.
- 9 Q. Sir, what does that mean, to take the eye?
- 10 A. He's responsible for the car.
- 11 Q. Responsible in what manner, sir?
- 12 A. Meaning on radio traffic.
- 13 Q. Traffic with who?
- 14 A. With the other principal agents.
- 15 Q. To tell them what kinds of things to --
- 16 A. To get directions and to call out landmarks that could help
17 us, you know, join the pursuit, or help him, or assist him.
- 18 Q. Okay. And you're telling me that he communicated to you to
19 turn off your emergency lights. Is that correct?
- 20 A. Yes, it is.
- 21 Q. How did he communicate that to you? Was it through the
22 radio?
- 23 A. No, it wasn't.
- 24 Q. How did he do that?
- 25 A. He grabbed his hand and he went like this.

- 1 Q. What do you mean?
- 2 A. He was driving. So with the left hand, he went like that.
- 3 Q. Hit the top of the hood?
- 4 A. The side door. He went like that. So that's when I say,
- 5 oops, I have them --
- 6 Q. You said what?
- 7 A. Oops, I have the lights on.
- 8 Q. So because of that you turned off your lights?
- 9 A. Yes, I did.
- 10 Q. And did Agent Ramos turn on his lights?
- 11 A. No, he never did.
- 12 Q. And did you follow behind them?
- 13 A. Yes, I did.
- 14 Q. And how fast were they traveling in your approximation?
- 15 A. They were going fast.
- 16 Q. What's the speed limit in those areas?
- 17 A. It varies. Down to 35, 45. And the highest, I think, is
- 18 55.
- 19 Q. Okay. And were they exceeding all those limits?
- 20 A. Yes.
- 21 Q. Were you also exceeding them?
- 22 A. Yes.
- 23 Q. Sir, when you're involved in that kind of a pursuit, aren't
- 24 you required to notify a supervisor?
- 25 MS. STILLINGER: Object to leading again.

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

2 BY MR. GONZALEZ:

3 Q. Sir, when you're chasing someone in excess of the posted
4 speed limit, are you required to notify a supervisor?

5 A. Yes, we are.

6 Q. Now, as far as you know, did you notify a supervisor?

7 A. No, I did not.

8 Q. And as far as you could hear from the radio traffic
9 communications that you heard over the radio, did Agent Ramos
10 indicate that he was involved in a high-speed chase to a
11 supervisor?

12 A. No, he did not.

13 Q. And this chase continues until when, sir?

14 A. Continues until they reach the levee. The canal,
15 irrigation canal.

16 Q. And did you -- were you able to see when the van actually
17 arrived at the irrigation canal?

18 A. No, I did not.

19 Q. Where were you, sir?

20 A. I had to fall behind, because the road is not all paved.
21 Before you get to -- right after Wingo, it becomes dirt road.

22 Q. Okay. So you fell behind because of the dirt road?

23 A. Very unsafe to drive fast.

24 Q. And what about Agent Ramos, did he also fall behind from
25 what you could see?

- 1 A. No, he did not.
- 2 Q. How close did he remain to the van as far as you could see?
- 3 A. I would say pretty closely.
- 4 Q. Approximately, sir.
- 5 A. Less than a car length.
- 6 Q. Is that on the dirt road or on the paved road?
- 7 A. Almost all the way through.
- 8 Q. He didn't slow down once they were on the paved road -- I
- 9 mean on the dirt road?
- 10 A. I guess, if he slowed down, the driver had to slow down.
- 11 Q. As far as you could tell it was constant. Is that correct?
- 12 A. It was constant, yes.
- 13 Q. And when -- how far away were you when they came to a stop?
- 14 A. I was approximately six to eight cars behind.
- 15 Q. When they -- and then you take seconds to get there. Is
- 16 that correct?
- 17 A. Take seconds, yes.
- 18 Q. Where do you park?
- 19 A. I park to the left of their vehicles.
- 20 Q. Okay. Were they parked next to one another?
- 21 A. The van, yes.
- 22 MR. GONZALEZ: May I approach the witness, Your Honor?
- 23 THE COURT: You may.
- 24 BY MR. GONZALEZ:
- 25 Q. Mr. Juarez, I'm showing you what's been marked for

1 identification purposes as Government's Exhibit 10. I think
2 it's in evidence. I'm sorry.

3 THE COURT: Ten is not.

4 MR. GONZALEZ: That's correct.

5 THE COURT: Nine is.

6 MR. GONZALEZ: Yes, Your Honor.

7 THE COURT: And so is 15.

8 MR. GONZALEZ: Thank you.

9 BY MR. GONZALEZ:

10 Q. Do you recognize what's shown as Government's Exhibit
11 Number 10?

12 A. Yes, I do.

13 Q. And what does that show, sir?

14 A. That shows the van that I was following.

15 Q. And Government's Exhibit Number 12, what does it show?

16 A. That shows he came to a complete stop near the canal.

17 Q. And does it also show a picture of a person in there?

18 A. Yes, it does.

19 Q. Who is that person?

20 A. That is Agent Ramos.

21 Q. And Government's Exhibit Number 16. Is that the right side
22 view of the van?

23 A. Yes, it is.

24 MR. GONZALEZ: Your Honor, at this time we will offer
25 Government's Exhibits 10, 12 and 16 and tender it to defense

1 counsel for inspection and objection.

2 MS. STILLINGER: No objection.

3 MR. ANTCLIFF: No objection.

4 THE COURT: All right. 10, 12 and 16 will all be
5 admitted.

6 BY MR. GONZALEZ:

7 Q. Now, Agent Juarez, when you were in pursuit of this van,
8 when you were chasing this van, initially, did you know what
9 was in that van?

10 A. No, I did not.

11 Q. Why is that?

12 A. It was too far away for me to see it.

13 Q. Let me direct your attention to the side panel, the windows
14 there. Can you see them?

15 MR. GONZALEZ: Your Honor, may I give him a different
16 exhibit?

17 THE COURT: Sure.

18 BY MR. GONZALEZ:

19 Q. I'm handing you Number 12. It's a picture of the van as
20 well. And you see the side windows?

21 A. Yes, I do.

22 Q. What do the side windows have -- is there anything blocking
23 the view?

24 A. Yes.

25 Q. What is that?

1 A. It looks like curtains to me.

2 Q. And I'm showing the left side view. Let me show you the
3 left side. Does that have curtains as well?

4 A. Yes, it does.

5 Q. So when this van was driving around downtown, you had no
6 idea what was in that van, did you?

7 A. No, I did not.

8 Q. And you got closest to the van before Agent Ramos did,
9 didn't you?

10 A. Yes, I did.

11 Q. And yet you did not know what was in it, correct?

12 A. That's correct.

13 Q. And is that why you were going to make an immigration
14 check?

15 A. That is correct.

16 Q. That's what you're charged to do, immigration checks?

17 MS. STILLINGER: I'm going to object to leading.

18 THE COURT: I'll sustain.

19 BY MR. GONZALEZ:

20 Q. What's your primary responsibility, sir?

21 A. Immigration, to enforce immigration laws.

22 Q. Thank you. Agent Juarez, you see where the van is,
23 correct?

24 A. Yes, I do.

25 Q. Where did Agent Ramos end up behind the van?

- 1 A. His unit was -- I mean, almost right there behind the van.
- 2 Q. Behind the van?
- 3 A. Yes.
- 4 Q. And where did you park your unit when you arrived?
- 5 A. I parked left on the other side of the road.
- 6 Q. This area where I'm indicating with my pen?
- 7 A. Yes, on the left side.
- 8 Q. And did you -- how far did you drive? Did you drive as far
- 9 as this van did, or did you stop before this van?
- 10 A. I almost went there because I was going fast, so the
- 11 brakes -- I kind of slid. So the tires were also touching the
- 12 lip of the canal, my tires.
- 13 Q. You get to the -- that's where the van ended up. That's
- 14 the end of Jess Harris Road. Is that correct?
- 15 A. That is correct.
- 16 Q. All right. You get to that location, what do you do?
- 17 A. What I do, I get out of the unit and I go down the canal.
- 18 Q. Okay. When you say the canal, are you referring to the
- 19 irrigation ditch?
- 20 A. Yes, I do.
- 21 Q. You get out of the vehicle, and do you look across?
- 22 A. Yes, I did.
- 23 Q. I'm sorry?
- 24 A. Yes, I did.
- 25 Q. Do you see anything?

1 A. Yes, I did.

2 Q. What do you see?

3 A. I see Agent Compean's unit and also I see Agent Compean
4 outside his unit.

5 Q. Okay. And what's Agent Compean doing when you see him?

6 A. He's standing, holding his shotgun.

7 Q. Okay.

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

9 THE COURT: Yes.

10 BY MR. GONZALEZ:

11 Q. Where is Agent Compean standing?

12 A. He is on the other side of the canal, which is on the south
13 side.

14 Q. And you say he's holding a shotgun?

15 A. Yes.

16 Q. I'm handing to you what's been marked Government's Exhibit
17 13. Is this the shotgun you're referring to?

18 A. Yes, that looks like the shotgun.

19 Q. How is he holding it?

20 A. He was holding it at port arms.

21 MR. GONZALEZ: May the witness stand?

22 BY MR. GONZALEZ:

23 Q. What kind of arms?

24 A. Port arms.

25 Q. Part arms?

- 1 A. Port arms.
- 2 Q. What does that mean, sir?
- 3 A. Just ready.
- 4 Q. Ready. Okay. Is there anything special called "hot
5 ready"?
- 6 A. Yes, it is.
- 7 Q. What does that mean?
- 8 A. Hot ready means you have to just press the safe and round
9 the chamber.
- 10 Q. So he's standing the with the shotgun when you first see
11 him. Is that correct?
- 12 A. That is correct.
- 13 Q. And what does he do? Does he stay there?
- 14 A. He's just there.
- 15 Q. Does he move?
- 16 A. Not yet.
- 17 Q. Go ahead, have a seat. You're watching him, right?
- 18 A. Yes.
- 19 Q. You also get off the car, right?
- 20 A. Yes.
- 21 Q. And when you get off the car, does anything happen?
- 22 A. Not yet.
- 23 Q. Okay. Okay. What happens next then?
- 24 A. When I go down, that's when I noticed the driver of the van
25 inside the canal.

- 1 Q. He's in the canal? What side?
- 2 A. On the north side.
- 3 Q. Nearest the American side?
- 4 A. Yes. He was almost right across from van but inside,
5 almost near the water.
- 6 Q. What's he doing?
- 7 A. He looked at me. And that's when he went like a bullet
8 across the water.
- 9 Q. And are you holding -- did you pull your weapon?
- 10 A. No, I did not.
- 11 Q. Why not?
- 12 A. I felt it was no threat.
- 13 Q. Why didn't you feel a threat?
- 14 A. Well, he also -- we were almost there at the canal. I
15 figured out he just wanted to go back where he came from.
- 16 Q. Where is that?
- 17 A. That is Mexico.
- 18 Q. Okay. So he gets across to the other side, to the south
19 side of the ditch?
- 20 A. Yes, he did.
- 21 Q. All right. And as he moves, where are you when you're
22 observing this?
- 23 A. I'm still inside the canal.
- 24 Q. How --
- 25 A. The north side.

1 Q. How did you get inside the canal? How did you end up
2 inside the canal?

3 A. I went down there to try to locate the driver of the van.

4 Q. Okay. And you see him jump across?

5 A. Yes, I did.

6 Q. What did you do? Do you yell anything to him?

7 A. No.

8 Q. Do you see Agent Ramos?

9 A. I don't see Agent Ramos there.

10 Q. You're looking at who at that point in time?

11 A. I was looking at Agent Compean.

12 Q. Okay. And as this fleeing person jumps across, what does
13 Agent Compean do?

14 A. He moves, makes a couple of steps towards him. And -- may
15 I get up?

16 MR. GONZALEZ: Your Honor?

17 THE COURT: Yes.

18 A. That's when the driver of the van went in front. That's
19 when Agent Compean moved in front of his path. And I don't
20 know if he was going to block him or he was going to go like
21 this.

22 BY MR. GONZALEZ:

23 Q. What do you see happen?

24 A. He raised his butt, the weapon.

25 Q. And aimed it at who?

- 1 A. At the driver of the van.
- 2 Q. And did he not only aim it, did he actually swing it?
- 3 A. He went like this.
- 4 Q. And just a partial swing or full swing?
- 5 A. No, it was a full swing.
- 6 Q. And did he hit the fleeing driver?
- 7 A. No, he did not.
- 8 Q. But before that happened, did you happen to see what the
9 driver was doing?
- 10 A. He was just trying to get on the other side.
- 11 Q. Did you notice the driver's hands?
- 12 A. Yes, I did.
- 13 Q. And where did he have his hands?
- 14 A. When he got over there, I noticed the driver when Agent
15 Compean attempted to block him or hit him, the driver of the
16 van went like this. But he was fast. I mean, that driver was
17 fast. He went like that. And went, boom, he took off right
18 away.
- 19 Q. But as he's approaching Agent Compean, do you see if his
20 hands are raised or lowered?
- 21 A. No. Almost like this, like trying to block. Trying to
22 block him or --
- 23 Q. But his hands were already raised when he attempts to
24 block?
- 25 A. Yes, they were.

1 Q. Did you see anything in his hands?

2 A. No, I did not.

3 Q. Did you think he might have a weapon or anything like that
4 in his hands?

5 A. No, I did not.

6 Q. You didn't see anything, right?

7 A. No, I didn't see anything.

8 Q. Did anyone yell "cover", there's a weapon?

9 A. No, I did not.

10 Q. Was that part of your training, what's required to be done
11 if there's a weapon?

12 A. Yes, it is.

13 Q. Did anyone ever yell that that afternoon?

14 A. No.

15 MS. STILLINGER: Objection, leading.

16 THE COURT: I'll sustain. Don't lead.

17 MR. GONZALEZ: Yes, Your Honor.

18 BY MR. GONZALEZ:

19 Q. So Agent Compean strikes. And do you see what the driver
20 does?

21 A. Yes, I did.

22 Q. And you say he does what?

23 A. I think he attempted to block it with his hand. Then he
24 moves, and then he ran towards the levee.

25 Q. Around Agent Compean?

- 1 A. No, because he fell down.
- 2 Q. Who fell down?
- 3 A. Agent Compean.
- 4 Q. You saw that?
- 5 A. Yes, I did.
- 6 Q. Okay. And where are you standing when you see him fall?
- 7 A. Inside the canal.
- 8 Q. Okay.
- 9 MR. GONZALEZ: Your Honor, can he show how he fell?
- 10 THE COURT: How Agent Compean fell?
- 11 MR. GONZALEZ: Yes, Your Honor.
- 12 THE COURT: Yes.
- 13 BY MR. GONZALEZ:
- 14 Q. Agent Juarez, would you stand over here please?
- 15 A. When Agent Compean attempted to hit him, he was on the
- 16 edge. So he went -- that's when he lost balance. He hit the
- 17 ground and everything -- the shotgun went down the canal.
- 18 Q. Okay. Have a seat, thank you. So he dropped his shotgun?
- 19 A. Yes.
- 20 Q. Did he retrieve it right there and then?
- 21 A. No.
- 22 Q. What did he do?
- 23 A. He got up and ran back.
- 24 Q. In that area is there a lot of dirt and dust?
- 25 A. Oh, yes.

1 Q. Did the fleeing driver -- at any time, did you see him
2 throw any dust or dirt at Agent Compean?

3 A. No, I did not.

4 Q. Did you ever see him touch Agent Compean?

5 A. No, I did not.

6 Q. After he falls, he gets up, correct?

7 A. Yes, he does.

8 Q. What does Agent Compean do?

9 A. He gets up and he runs after him.

10 Q. And what's the next thing you see or hear?

11 A. The next thing I saw Agent Compean shooting.

12 Q. Where were you when you see him shooting?

13 A. At this time I was outside the canal already walking
14 towards the driver's van.

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

16 THE COURT: Yes, you may.

17 BY MR. GONZALEZ:

18 Q. I'm showing to you what's been marked for identification
19 purposes as Government's Exhibit Number 20. Do you recognize
20 what it shows?

21 A. Yes, I do.

22 Q. Okay. And is this the approximate location where you saw
23 Agent Compean shooting?

24 A. Yes, it is.

25 Q. And you see the top of his body where, sir?

1 A. I saw him waist up to the head.

2 Q. Okay. And in this photograph, is there a vehicle in it as
3 well?

4 A. Yes.

5 Q. Okay. And is that the way his vehicle was positioned?

6 A. I don't recall. I think it is.

7 Q. That's fine. And, of course, this photograph was not taken
8 on that day, because there's other people involved. Obviously,
9 we don't have a recording of what occurred, do you agree?

10 A. Yes.

11 MR. GONZALEZ: Your Honor, at this time we'd offer
12 Government's Exhibit Number 20 into evidence and tender it to
13 defense counsel for inspection and objection, if any.

14 MS. STILLINGER: Your Honor, I would object to this
15 exhibit, number one, because the witness is not able to
16 identify whether that's where the -- it's attempting to be a
17 recreation of what happened. And there's somebody posing in
18 here. And so we would object to it being a recreation.
19 Particularly, Agent Juarez said he's not sure this is accurate.
20 He doesn't know where the vehicle was.

21 MR. ANTCLIFF: Join the objection.

22 THE COURT: I'll sustain.

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

24 THE COURT: You may.

25

1 BY MR. GONZALEZ:

2 Q. Other than the location of this vehicle, is that what you
3 saw -- and when I'm referring to the person in this photograph,
4 is that the angle that you saw?

5 A. Yes.

6 MR. GONZALEZ: Your Honor, we can take that once
7 again. We offer it into evidence. And we'd be happy to take
8 out the --

9 THE COURT: Can I see the picture?

10 MR. GONZALEZ: Yes, Your Honor.

11 THE COURT: Could the attorneys approach?

12 MS. STILLINGER: Yes.

13 (Bench conference:)

14 THE COURT: What is this Agent attempting to depict?
15 Is this before he fell, after he fell?

16 MR. GONZALEZ: That's after he fell. He slipped on
17 something. That's where he sees him shoot. That's when he's
18 shooting.

19 THE COURT: That's the amount of his body that he saw
20 when he's shooting? All right.

21 MR. ANTCLIFF: Nobody can hear. This is Chris
22 Antcliff on behalf of Mr. Compean, Judge.

23 The objection that I made still stands. And, I guess,
24 if necessary, I would ask to take this witness on voir dire as
25 to his knowledge of this recreation.

1 MS. STILLINGER: I need to take the witness on voir
2 dire, whether or not he remembers the positions. But I think
3 the photo recreating the offense is very prejudicial. He can't
4 testify about it.

5 MR. ANTCLIFF: I don't think it has any probative
6 value, given the testimony everybody has heard.

7 MR. GONZALEZ: Given the topography of this, I think
8 it is very necessary and probative. There's a vega, there's a
9 ditch, you know, the Rio Grande. I think it can be very
10 confusing. I think this person will help the jury understand
11 what transpired on that day.

12 MR. ANTCLIFF: I disagree.

13 THE COURT: I thought there was another photo.

14 MR. ANTCLIFF: We've got a million of them.

15 THE COURT: I thought there was an actual photo that
16 day that shows the van.

17 MR. GONZALEZ: There is one. We can use that one.

18 THE COURT: Why don't you show me that one before I
19 rule?

20 MR. GONZALEZ: Sure.

21 MS. KANOF: This is Debra Kanof.

22 Are you going to take a break? Now might be a very
23 good time. I was going to ask you something about the doctor.

24 THE COURT: Oh, I can't wait.

25 (End of bench conference; open court.)

1 THE COURT: At this time, the Court is going to take a
2 short recess, ladies and gentlemen of the jury. I do have to
3 take an afternoon recess. 3:45. So we stand in recess for 15
4 minutes.

5 (Recess; open court, parties present, jury not
6 present.)

7 THE COURT: Since the jury is out, I'm going to just
8 do it.

9 MS. KANOF: Your Honor --

10 THE COURT: Does this need to be on the record?

11 MS. KANOF: No.

12 (Off-the-record bench discussion.)

13 THE COURT: Can we talk about this picture real quick?

14 I will go ahead and rule on the record. But what I
15 want to get on the record, outside the presence of the jury, is
16 we have a picture -- I think it's Government Exhibit Number
17 20 -- that has been asked to be admitted depicting, I guess,
18 the approximate angle that Agent Juarez could see Agent
19 Compean.

20 And then the Court has, also, exhibits number --
21 requests Government Exhibits 9 and 15, which were taken on the
22 actual day. And it will be the Court's ruling that Government
23 Exhibit 20 will not be admissible; that 15 and 9 do depict the
24 angle that you're concerned about. And I will be happy to
25 share that with the jury when they come back.

1 MR. ANTCLIFF: Can I look at them, Judge?

2 THE COURT: These have already been admitted.

3 MR. ANTCLIFF: Oh, they are both in.

4 THE COURT: Both 9 and 15 have been admitted.

5 MR. GONZALEZ: Your Honor, could this witness go ahead
6 and stand down.

7 THE COURT: Yes, he can take a break.

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

10 THE CLERK: Court is back in session.

11 THE COURT: Are we ready to bring the jury in?

12 MS. KANOF: Yes, Your Honor.

13 THE COURT: Okay. And when we do, if you would just
14 explain -- ask me, and then I can explain to them that we're
15 taking this witness out of turn.

16 MS. KANOF: I will.

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

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

19 MS. KANOF: May I proceed, Your Honor?

20 I would like to ask the Court's permission and the
21 jury's indulgence to take this witness out of order, in the
22 middle of the direct testimony of the prior witness.

23 This witness is Dr. Todd Miller. He's a urological
24 surgeon at William Beaumont Army Medical Center. They're
25 shorthanded. He has a lot of surgeries waiting for him and a

1 lot of patients. And we wanted to know if the Court would let
2 him -- he has a brief amount of time right now, where he is
3 available to the Government as a witness, if we could do that.

4 I know it's unusual. But, for the doctor's schedule
5 and for the benefit of his patients, if we could do that.

6 THE COURT: All right. We'll go ahead and take the
7 doctor out of turn. You may proceed.

8 MS. KANOF: Thank you, Your Honor.

9 This witness has not been sworn.

10 THE COURT: All right. If you would swear him in.

11 (Witness sworn.)

12 THE COURT: You may proceed.

13 MS. KANOF: Thank you, Your Honor.

14 TODD MILLER, GOVERNMENT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MS. KANOF:

17 Q. Could you state your name, please?

18 A. Dr. Todd Miller.

19 Q. And your profession is physician. Is that correct?

20 A. Physician, correct.

21 Q. Could you give the jury a little bit about your medical
22 background, starting with the undergrad, medical school,
23 specialties, things like that?

24 A. I have a chemistry degree from Juniata College, which is a
25 small school in Pennsylvania.

1 Then I was -- went to a medical school at Georgetown
2 University School of Medicine.

3 I then did a residency -- internship, initially, in
4 general surgery, at Tripler Army Medical Center, in Honolulu,
5 Hawaii, followed by a urological residency at Tripler Army
6 Medical Center.

7 And I have been board certified since 2001 and a
8 practicing urologist since 2000.

9 Q. Okay. You are board certified in urology. Is that
10 correct?

11 A. Correct.

12 Q. And you mentioned locations like Tripler. That's a
13 military hospital in Hawaii, correct?

14 A. Correct.

15 Q. Were you in the service at that time?

16 A. I was in the service from 1994 till 2004.

17 Q. And you left the service. Did you stay at William Beaumont
18 Army Medical Center as a contract physician?

19 A. Correct.

20 Q. Okay. And that is what you do now. Are you contracted
21 full-time to Beaumont?

22 A. I'm contracted full-time to Beaumont, yes.

23 Q. Okay. You do -- are you -- you said you are a urologist.
24 Is that correct?

25 A. Correct.

- 1 Q. Are you also a urological surgeon?
- 2 A. Correct.
- 3 Q. Dr. Miller, what's a urologist?
- 4 A. A urologist is a physician, a surgeon, who actually manages
5 the genitourinary tract; kidneys, bladder, both from a medical
6 and a surgical standpoint. But our specialty is actually the
7 surgical management of the genitourinary system.
- 8 Q. William Beaumont Army Medical Center generally sees
9 servicemen and women and their dependents, correct?
- 10 A. Correct, plus trauma.
- 11 Q. And, in addition to that, there's a trauma center. And so
12 you're just not restricted to seeing people that are in the
13 armed forces or related to the armed forces?
- 14 A. Correct.
- 15 Q. And, for example, you also do rape kits for the FBI?
- 16 A. I think the emergency room does, correct.
- 17 Q. Okay. Certainly not your department.
- 18 And, on occasion, do you know whether or not Beaumont
19 is called upon to treat other individuals that the Federal
20 Government requests?
- 21 A. Yes, we do.
- 22 Q. On March 16th, 2005, was William Beaumont Army Medical
23 Center asked to treat a patient by the name of Osvaldo
24 Aldrete-Davila?
- 25 A. Correct.

1 Q. Okay. Did you have an opportunity on that day to see him?

2 A. I was not the attending surgeon on that day, but I was the
3 supervising -- more experienced urologist. So I was in the
4 operating room on the day they went to the operating room.

5 Q. Okay. You were sort of in charge that day?

6 A. Correct.

7 Q. And, as such, were you present when procedures were
8 performed on this individual?

9 A. Yes.

10 Q. Okay. And could you explain how he presented, what the
11 purpose of the treatment was?

12 A. I was actually only involved when they got to the operating
13 room. And reading the chart at that point, knowing that there
14 was an injury, gunshot, through the buttocks. And the main
15 reason he was there was to look at the genitourinary system and
16 to retrieve what felt, and by imaging, was a round that was
17 lodged in his right thigh.

18 Q. Okay.

19 A. He had already been treated in Juarez, or in Mexico, and
20 had a suprapubic tube, which is mainly a catheter, that -- to
21 drain his bladder through the abdominal wall down into his
22 bladder, rather than a regular Foley catheter, because of our
23 assumption that they could not put that in at that time.

24 Q. Okay. First of all, what is a Foley catheter?

25 A. A Foley catheter is, mainly, a drainage tube that goes

1 through the urethra, the urine tube, up into the bladder.

2 Q. Okay. And what's the entrance location of a Foley
3 catheter.

4 A. The urethral meatus.

5 Q. And that would be, in a man, through the penis?

6 A. Correct.

7 Q. Okay. And you can say those words in a courtroom.

8 And he did not have a Foley catheter. Is that
9 correct?

10 A. Correct.

11 Q. Had you -- had you seen him immediately upon his receiving
12 that gunshot wound, would you have inserted one of these
13 catheters or a Foley catheter?

14 A. Initially, you would attempt to try to pass a Foley
15 catheter.

16 Q. And you don't know whether that was done or not. Is that
17 correct?

18 A. No idea.

19 Q. Okay.

20 MS. KANOF: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 BY MS. KANOF:

23 Q. I'm going to show you what's been marked and admitted into
24 evidence as Government's Exhibits 64, 65, 66, and 68.

25 And, first of all, I'll show you Government's Exhibit

1 Number 66. Is this the individual that you're talking about
2 that you saw in the operating room at William Beaumont in March
3 of last year?

4 A. Correct.

5 Q. Okay. That's Osvaldo Aldrete-Davila?

6 A. Correct.

7 Q. And, handing you Government's Exhibits 64, 65, and 68, if
8 you want to take a look at them, and then maybe I will have you
9 refer to them during your testimony.

10 Now, there was no Foley catheter. There was what kind
11 of catheter?

12 A. A suprapubic tube.

13 Q. And, basically, what does that mean?

14 A. It means that, in order to drain the bladder, you need to
15 take and place a tube through the abdominal wall, right below
16 the bellybutton, into the bladder that way.

17 Q. Okay. And how is that done, under local anesthesia or
18 general anesthesia?

19 A. I don't know how his was done, because it was done in
20 Mexico. A lot of times that can be done under a local in the
21 emergency room, if we had to, or something along those lines.
22 Or could be done under general anesthetic, either way.

23 Q. Okay. So when you first saw him, he had the suprapubic
24 tube, as is connoted in those photographs. Is that correct?

25 A. Correct.

- 1 Q. Okay. And what was the urological purpose for -- well,
2 when you saw him, had he already received anesthesia?
- 3 A. Yes, ma'am.
- 4 Q. So he was out?
- 5 A. Correct.
- 6 Q. And what position was he laying in?
- 7 A. He was laying flat on the table.
- 8 Q. On his back?
- 9 A. On his back, correct.
- 10 Q. Okay. And were surgeons al- -- when you entered the
11 surgical suite, were surgeons already working on him?
- 12 A. I think they were doing the prep.
- 13 Q. Okay. And you had a colleague there that day that was also
14 a urologist. Is that correct?
- 15 A. Correct.
- 16 Q. Okay. And, while he was under anesthesia, did they perform
17 both services, that is, remove the bullet and do what you
18 needed to do to find out what was wrong with him urologically?
- 19 A. Yes.
- 20 Q. Okay. Which was done first, if you know?
- 21 A. Actually, the bullet was taken out first.
- 22 Q. Okay. And what happened next?
- 23 A. After that, we brought the fluoroscopic C arm in, which is
24 a mobile x-ray unit. And then some imaging pictures were
25 taken, using a contrast, which is a dye, so things light up.

1 And, through the catheter that was already in place,
2 we took and injected some of the dye, just so we could see the
3 bladder, and looked at the bladder.

4 We also took some contrast material in a syringe at
5 the tip of the penis, and injected backwards, to see if there
6 was a communication present.

7 Q. By "communication," what do you mean?

8 A. The normal genitourinary tract will go from the tip of the
9 penis into the bladder, so we should be able to, with a gentle
10 pressure, be able to put contrast into the bladder and fill the
11 bladder, so that we can see the bladder and then the whole way
12 out through the penis.

13 Q. With regard to the anatomy of an individual male -- this
14 individual male was about 24 years old at the time, correct?

15 A. Correct.

16 Q. Okay. If the medical records said that, that's what you
17 would go on?

18 A. Yes.

19 Q. Okay. And when -- where is the bladder, physiologically,
20 in the body, in relationship to where that tube comes out of --
21 in Osvaldo Aldrete-Davila's body? Is it directly --

22 A. It's directly under there.

23 Q. Directly under that tube?

24 A. Correct.

25 Q. Okay. So that's where you first injected dye. Is that

1 correct?

2 A. Correct.

3 Q. And what were you looking for?

4 A. Mainly, we were looking to see what the bladder neck -- the
5 bladder neck being the opening from the bladder neck -- and
6 then into the urethra, the urine tube, to see what that looked
7 like. And whether, when we put contrast in, the dye, whether
8 we actually had any contrast that extravasated, which would
9 mean spread, outside of the normal system.

10 Q. Okay. What is a urethra?

11 A. The urethra is the urine tube.

12 Q. Okay. And it's a tube that leads from the bladder to
13 where?

14 A. Bladder, through the prostate, through the sphincter, out
15 through the shaft of the penis.

16 Q. Okay. And you were looking to see if that's intact,
17 basically, correct?

18 A. Correct.

19 MS. KANOF: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 BY MS. KANOF:

22 Q. I'm going to hand you what we've marked but have not
23 admitted as Government's Exhibit Numbers 93, 94, and 95. I
24 don't know if they're in the right order. If you could, put
25 them in the correct order for me.

- 1 A. Yes, 93 was first.
- 2 Q. Luck.
- 3 What are you holding in your left hand?
- 4 A. Okay. On the image --
- 5 Q. No, just tell me what it is.
- 6 A. Oh.
- 7 Q. It's a film --
- 8 A. Film, x-ray.
- 9 Q. Okay. It's an x-ray film. And was that x-ray film
- 10 basically taken -- you said you had a fluoroscope, correct?
- 11 A. Right.
- 12 Q. And a fluoroscope is what?
- 13 A. It's an intraoperative x-ray machine, in which we can take
- 14 pictures during the operative procedure.
- 15 Q. And it's an x-ray machine that moves around in a surgical
- 16 suite, correct?
- 17 A. Correct.
- 18 Q. Okay. And so while you were putting that dye in, you took
- 19 pictures with that x-ray machine, correct?
- 20 A. Correct.
- 21 Q. And are Governments Exhibits 93, 94, and 95 the
- 22 fluoroscopic images that were taken on March 16th, while you
- 23 were there, while this procedure was being formed on the
- 24 individual depicted in Government's Exhibit Number 66?
- 25 A. Correct.

1 MS. KANOF: We would ask they be admitted into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. PETERS: May I see them?

5 THE COURT: Sure.

6 MR. PETERS: No objection, Your Honor.

7 MR. ANTCLIFF: No objection, Your Honor.

8 THE COURT: Admitted.

9 BY MS. KANOF:

10 Q. You said 93 was, in fact, first.

11 MS. KANOF: So could we get the lights, Judge, please?

12 THE COURT: Yes.

13 BY MS. KANOF:

14 Q. Tell me if I have it upside down or -- the image that --

15 A. That's fine.

16 Q. Okay. And what is this large image, first of all?

17 A. That would be the contrast material inside the bladder.

18 Q. Okay. And you -- so this is sort of a picture of the
19 bladder, then?

20 A. Correct.

21 Q. Okay. And then, on this photograph, the urethra -- is it
22 here (indicating)?

23 A. Right here (indicating).

24 Q. Okay. So that was the first -- that was when you
25 immediately put the contrast material in, correct?

1 A. Can you shift to the other image, please?

2 Actually, this is the first image that was taken.

3 Sorry.

4 Q. Go ahead.

5 A. This actually -- here is the image in which they took the

6 contrast injected here --

7 Q. Okay.

8 A. -- through the urethra. This is called a retrograde

9 urethrogram, right up to this point, where you can see that no

10 more contrast goes up and fills the bladder. So the retrograde

11 urethrogram was obtained first.

12 Then you can shift to the other image over there.

13 At that point the contrast material was put down

14 through the suprapubic tube and fills the bladder.

15 Q. And the suprapubic tube is what was inserted in Juarez,

16 correct?

17 A. Right below the bellybutton, correct.

18 Q. You didn't put your own in to do that?

19 A. Not yet.

20 Q. Okay. Go ahead.

21 A. So we're using the suprapubic tube that was already there.

22 Because if you look here (indicating), you can get the faint

23 outline of the urethra, from the initial picture we took over

24 on this film. And you can get the outline of the bladder and

25 the bladder neck coming down.

1 But, as you can see in this area here, which is mainly
2 where the prostate gland sits in a male, there's no
3 communication between the bladder neck and the urethra.

4 Q. Okay.

5 MS. KANOF: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 BY MS. KANOF:

8 Q. Let me get the other -- hopefully, this is the next one.

9 Is this the next image that was taken by the
10 fluoroscope?

11 A. It's the next image.

12 Q. Okay.

13 A. And that's showing --

14 THE COURT: And that's -- I'm sorry. And that's
15 number --

16 MS. KANOF: Government's Exhibit 94.

17 THE WITNESS: Sorry.

18 THE COURT: That's all right.

19 A. They're actually all showing the same image. We have the
20 bladder again. They injected a little bit more contrast
21 material through the urethra, to be able to outline that a
22 little better.

23 And you can see that there's a noncommunication
24 between the urethra and the bladder neck, in the same location
25 as the potential shell fragments.

- 1 BY MS. KANOF:
- 2 Q. That was what I was going to ask you. There's some images
3 on this fluoroscope, like one right there (indicating). Is
4 that something that normally appears in a man's body?
- 5 A. No.
- 6 Q. What is that?
- 7 A. It's a foreign body of some type.
- 8 Q. Okay. And, based on your treatment in this case, did you
9 determine that to be a bullet fragment?
- 10 A. Most likely.
- 11 Q. Okay. And this?
- 12 A. The same.
- 13 Q. Okay. And the last image?
- 14 A. It doesn't actually --
- 15 Q. There's --
- 16 A. It shows, really, nothing more.
- 17 Q. Okay. Is this the same fragment that we were talking about
18 before?
- 19 A. Yes.
- 20 Q. And are these other fragments, or are those naturally
21 what's in the body?
- 22 A. They're the same fragments. This picture is just taken at
23 an oblique, which is a turned angle. So you're just seeing it
24 in different dimensions and different planes.
- 25 Q. Okay. So, at least based on these three fluoroscopic

1 images, there's -- we see four bullet fragments, correct?

2 A. In that general location, correct.

3 Q. Okay. Did you have an opportunity to look at x-rays, as
4 well? Or did you look at x-rays that had been taken
5 presurgery? And if you didn't, that's fine.

6 A. No.

7 Q. Okay. Now, you were talking about the lack of
8 communication in the urethra. What do you mean by
9 "communication"?

10 A. The fact that the urethra is a system that will go from the
11 bladder the whole way out through the tip of the penis. So it
12 has to be -- in order to drain urine, or to be able to urinate,
13 it's got to be connected the entire way. And there's a
14 definite disconnection there.

15 Q. What do you mean by "disconnection"?

16 A. It's no longer intact.

17 Q. Okay. So the urethra is no longer intact?

18 A. Correct.

19 Q. And the -- what happens if the urethra is not intact?

20 A. The patient is unable to urinate, and they actually will
21 have back pressure, and potential back pressure into the
22 kidneys, if they're unable to urinate.

23 Q. Okay. What do you mean by that?

24 A. The bladder fills, they get a pressure sensation, as though
25 they have to urinate, but cannot. And that pressure will be

1 transmitted back to the kidneys over time.

2 Q. Okay. And, over time, then, what would happen to the
3 kidneys?

4 A. Anybody that actually was obstructed for that period of
5 time could potentially have some acute renal failure.

6 Q. Okay. And is that a life-threatening problem?

7 A. Yes.

8 Q. What about infection?

9 A. Infection, because you're not draining your bladder system,
10 is there. It's a possibility. But the renal failure, or the
11 back pressure and the discomfort, is going to be the number one
12 things.

13 Q. Okay. And what about bladder rupture?

14 A. Bladder rupture is unusual, to actually see that, because
15 most people are going to present with something as far as pain
16 and discomfort before that. Is it a possibility? It's always
17 a possibility, but it would be very rare.

18 Q. Did you also do a cystogram?

19 A. The cystogram was the first image that you saw.

20 Q. Okay.

21 A. You saw the retrograde urethrogram, which showed that. And
22 a cystogram is actually where they fill up the bladder with the
23 contrast material.

24 Q. Okay.

25 A. We actually did look in there, a cystoscopy.

- 1 Q. Okay. And what is a cystoscopy?
- 2 A. A cystoscopy is actually taking a small fiberoptic camera
3 down through the urethra, to look and see if, not only by the
4 images we see there's disruption, or discommunication of the
5 urethra, we can actually visually see if there is any way to
6 pass a tube or catheter, to realign the anastomosis.
- 7 Q. Anastomosis?
- 8 A. Oh, I'm sorry.
- 9 Q. Could you spell it?
- 10 A. Realign? No, not that one.
- 11 Q. Anastomosis.
- 12 A. A-N-A-S-T-O-M-O-S-I-S.
- 13 Q. Okay. Explain what that is, then.
- 14 A. The anastomosis is where we would take the two ends and put
15 it back together, so that it would be in communication.
- 16 Q. Okay. And were you able to do that?
- 17 A. No. When we actually looked into the urethra, we got up to
18 the area right near where the sphincter would be. The
19 sphincter is the control mechanism for urination. At that
20 point, there was --
- 21 Q. The on and off spigot, so to speak?
- 22 A. Okay.
- 23 Q. Okay. No, I'm asking you.
- 24 A. That's fine.
- 25 Q. Okay.

- 1 A. At that point we had a wall, so there was no more
2 communication. It was just fibrotic. It was disrupted, and
3 there was no area to go into further.
- 4 Q. "Fibrotic" meaning?
- 5 A. Fibrotic meaning that there already was starting some
6 scarring.
- 7 Q. Okay.
- 8 A. A small amount. Which you -- actually, any time your body
9 is injured, you'll start getting some inflammatory response
10 within the first 24 to 48 hours.
- 11 Q. So there was basically the -- the stage of the scarring, at
12 the time you saw him, was such that you could not do surgery to
13 put the ends back together. Is that correct?
- 14 A. Correct.
- 15 Q. Was there actually a piece missing?
- 16 A. It's unlikely that there was a piece missing, but we have
17 no way to know at this point.
- 18 Q. Okay. Until the --
- 19 A. Until the final --
- 20 Q. -- reconstruction surgery?
- 21 A. -- reconstruction, correct.
- 22 Q. Okay. But, at the time you saw him, was a determination
23 made that he could not have surgery to put his urethra back in
24 proper working order?
- 25 A. Correct.

1 Q. Okay. And was an estimate of time given as to how long it
2 would be before that -- you would look at it again to make an
3 attempt?

4 A. Yes.

5 Q. And what was that estimate, initially?

6 A. There's two ways to handle an injury like this. The first
7 way is to try to realign it, get it back in line, at the time
8 of the injury, so within the first 12 to 24 hours.

9 If you're outside that window and you can't simply do
10 it, you're better off waiting anywhere from six to nine months,
11 to allow the amount of scarring that's going to occur, because
12 you have had injuries to both ends.

13 And if you don't allow the scarring to occur and allow
14 that to happen over time, when you go and put it back together,
15 your potential for failure is quite high.

16 So normally, in this situation, when it was a delayed
17 period of time before we had initial assessment, from our
18 standpoint --

19 Q. Since it wasn't in the first 24 to 48 hours?

20 A. Yes. We would actually recommend six to nine months before
21 you repair.

22 Q. Okay. Now, what did you determine was the cause of the
23 injury to the urethra that you saw on that day?

24 A. Based upon the patient's history, we have to assume that
25 it's from the fragments that are in the area and the bullet.

- 1 Q. Okay. Did you remove those fragments?
- 2 A. No.
- 3 Q. Why?
- 4 A. They actually will cause more harm trying to remove them.
- 5 In that same area is the nerves, the blood supply for
- 6 erections, for continence, and everything else.
- 7 Q. Okay. Let's talk a little bit about continence. What's --
- 8 I think everybody here knows what an erection is. What is
- 9 continence?
- 10 A. The ability to control urination without leakage.
- 11 Q. Before, you talked about a part of the urinary system
- 12 called the sphincter. And I said we called it the on or off
- 13 spigot. What does the sphincter have to do with relationship
- 14 to continence?
- 15 A. The sphincter is what controls your continence.
- 16 Q. Okay. What, if anything, occurred as the result of these
- 17 fragments, bullet fragments, to the sphincter?
- 18 A. It's actually hard to tell. But, based upon -- if you put
- 19 back up 93.
- 20 Q. This image or this image?
- 21 A. That one is fine.
- 22 Q. Okay.
- 23 A. The sphincter is located right at the level of where we see
- 24 this fragment and this fragment. You can see the urethra
- 25 coming up right here (indicating). The sphincter is located in

1 this area (indicating).

2 So, based upon the mechanism of the injury, and the
3 injury that was sustained, one does not know, until we take and
4 do the final reconstruction, as to whether he will have
5 control. That sphincter could have been damaged at the time of
6 the injury. And whether or not he will have control one will
7 not know until the reconstruction is done, and then he's
8 approximately one to two months out from the reconstruction.

9 But, based upon the location, there's a high
10 likelihood that there could be some incontinence.

11 Q. Okay. And incontinence meaning lack of control?

12 A. Yes, correct.

13 Q. Would that be permanent?

14 A. There are other procedures that could be done to correct
15 that.

16 Q. Okay. What procedures can be done to correct that?

17 A. If the sphincter was injured, you can actually take and put
18 in an artificial urinary sphincter, which is a device that
19 actually is implanted. And what it is, it's a cuff mechanism
20 and a hydraulic system that goes around the urethra, to provide
21 compression at this exact location here (indicating).

22 And, like anything that is a hydraulic, mechanical, or
23 implantable device, they have life expectancies. And the life
24 expectancy is about eight to ten years, which would require
25 replacement of that every eight to ten years.

1 Q. Okay. So a 24-year-old person may have to have more than
2 one surgery?

3 A. Potentially. If, at the time of the reconstruction the
4 sphincter actually is damaged, and he's unable to control that,
5 then yeah, that's what he would have -- that's what he would be
6 required, in order to have him be continent of urine.

7 Q. Okay. Dr. Miller, when -- what -- how complex is the
8 surgery to reverse the impairment of the bodily function that
9 was lost?

10 A. The surgery actually -- because of the location, and the
11 fact that it comes right into the area which is called the
12 membranous urethra, which is the area where the sphincter is
13 at, the control mechanism, I believe the surgery should
14 actually be done by a few people, people that actually are
15 fellowship trained and have done a reconstruction fellowship in
16 ureteral reconstruction.

17 Q. And you haven't done that. Is that correct?

18 A. That's not me. No.

19 Q. You wouldn't do this surgery?

20 A. No. I actually recommended he be referred to one of three
21 places.

22 Q. Okay. And where were those places?

23 A. One is actually another military installation in
24 San Antonio.

25 Q. Brooks Army Medical Center?

1 A. Correct. Another place is UCSF.

2 Q. And that's --

3 A. University of San Francisco.

4 Q. Okay.

5 A. And the last place, but the person is no longer there, was

6 Duke University.

7 Q. Okay. And those were your recommendations?

8 A. Correct.

9 MS. KANOF: May I have a moment. Your Honor?

10 I'll pass the witness.

11 THE COURT: All right.

12 CROSS-EXAMINATION

13 BY MR. PETERS:

14 Q. Good afternoon, Dr. Miller.

15 A. Hello.

16 Q. My name is Stephen Peters. I'm an attorney, and I
17 represent Ignacio Ramos. I just want to ask you a few
18 questions about your testimony. And I know you want to get
19 going, so I won't be very long.

20 A. No problem.

21 Q. The first thing I want to ask you about is, you mentioned a
22 Foley catheter.

23 A. Correct.

24 Q. You don't know whether a Foley catheter could have been
25 inserted if he had been -- received medical treatment

1 immediately, correct?

2 A. Correct. I do not.

3 Q. Sometimes it can, sometimes it can't. And you can't say
4 that it could have been inserted, right?

5 A. Correct.

6 Q. Okay. You also testified -- and I was just curious about
7 this. You testified that the bullet was removed from his thigh
8 before you -- the operating team investigated what was wrong
9 with the rest of him.

10 Was that based on sound medical procedure, or was that
11 based on the evidentiary gathering function that was taking
12 place at the time?

13 A. I wasn't the primary surgeon at the time. So, I mean, was
14 the fact there was something life-threatening to remove that at
15 that point? No.

16 I think it was more so the fact that that was going to
17 be something that could be done quickly, and then the second
18 portion may take a little bit more time. And normally, if you
19 can do something quicker, you take care of that, and then go do
20 the one that's actually going to take a little bit more time.

21 Q. Okay. So it was done the way you would have done it, if
22 there hadn't been a special agent -- an agent standing there
23 waiting for the bullet, right?

24 A. No. The agent doesn't --

25 Q. Take into anything --

1 A. No.

2 Q. All right. Now, you mentioned -- and we saw on the
3 projector, that there was some x-rays taken with a fluoroscope.

4 A. Correct.

5 Q. Now, these x-rays are of the urinary system, correct?

6 A. Correct.

7 Q. And you were asked whether you reviewed any other x-rays,
8 and you said no.

9 Do you know whether there were other x-rays taken?

10 A. I was asked to review the ones that were done in the
11 operating room, so there could have been. I don't know.

12 Q. You don't -- you didn't see any?

13 A. No.

14 Q. And so you wouldn't know whether there were any x-rays
15 taken that could have been used to figure out the exact
16 trajectory and course of the bullet through the body, right?

17 A. No, I do not know.

18 Q. Okay. Now, I'm a little bit unclear about -- just because
19 of the way that the colloquy went when you were answering
20 questions about the bullet fragments.

21 Do you know that those are bullet fragments?

22 A. I said they were foreign objects. I mean, that's what I
23 can say.

24 Q. Okay. So you can't even -- you -- you can't tell the jury
25 with medical certainty that those are, in fact, bullet

1 fragments?

2 A. All I can say is that they are foreign bodies that are of a
3 density greater than bone.

4 Q. Okay. And -- okay. They may be bullet fragments?

5 A. Correct.

6 Q. Okay. You also testified about the problems that can arise
7 to physiology when the urethra is not functioning. You talked
8 about pressure on kidneys, destruc- -- eventual destruction of
9 the kidneys, renal failure, infection.

10 Does the suprapubic tube alleviate those problems?

11 A. Yes.

12 Q. Okay. So, in fact, if a patient, or an individual who was
13 injured, received the type of medical treatment that this
14 individual received in Mexico, those problems of kidney failure
15 and so forth, those are alleviated. Those aren't really going
16 to happen, right?

17 A. Correct. I believe I said that.

18 Q. Okay. Now, did I also understand you to say that the
19 reason that the corrective surgery on the urethra hasn't taken
20 place to date -- because you said, ideally, it would be six to
21 nine months, right?

22 A. Correct.

23 Q. Okay. It's been 12 months, right?

24 A. Just about, correct.

25 Q. Okay. But the reason it hasn't happened is what?

- 1 A. I can't answer that. I don't know.
- 2 Q. Okay. Do you know of any reason why it wasn't done three
3 or six months ago?
- 4 A. I do not.
- 5 Q. Okay. Now, when I was reviewing your resume, Doctor --
- 6 A. Uh-huh.
- 7 Q. -- I noticed that you had attended a war trauma course at
8 Fort Bliss.
- 9 A. Yes.
- 10 Q. In March 2003.
- 11 A. Yes.
- 12 Q. And what was that course about?
- 13 A. It was mainly looking at extremity injuries that are
14 sustained during the time of war prior to deploying to Iraq.
- 15 Q. And you went to Iraq?
- 16 A. I did not.
- 17 Q. Okay. You also attended a combat casualty care course, and
18 you were certified with that in 1994 and 2001. Is that
19 correct?
- 20 A. Correct.
- 21 Q. Okay. What are the immediate effects of a traumatic injury
22 upon a human being, such as being shot with a bullet? Apart
23 from the immediate damage to the area where the bullet
24 persists -- where the bullet goes, what happens to the
25 physiology, and what happens to the -- what happens to the

1 person? Apart from the immediate injury, what happens to his
2 metabolism?

3 A. I'm not sure exactly where these questions are going or why
4 I'm being asked.

5 Q. Okay. Well, when -- you learned to treat combat injuries,
6 right? You're trained to do that, right?

7 A. I was, correct.

8 Q. Right. And combat injuries include --

9 MS. KANOF: Your Honor, I'm going to object. Even if
10 there was a relationship, the kind of weaponry that's used in
11 combat is vastly different than a .40 caliber Beretta. And I
12 don't think it's relevant to be asking him these questions in
13 the confines of this case.

14 THE COURT: All right.

15 MR. PETERS: Well, Your Honor, I -- first of all,
16 that's not true, because -- because I can ask this witness if
17 he knows. But I think that there are injuries from sidearms in
18 combat. But all I'm trying to get at is to see if he knows the
19 effect on the metabolism on a human being, such as, for
20 example, Mr. Aldrete-Davila, when he's shot with a bullet.

21 THE COURT: I understand. I'll overrule the
22 objection.

23 BY MR. PETERS:

24 Q. Does -- when a person is shot with a bullet, they go into
25 shock, right?

1 A. It depends, as far as where they're shot, what the degree
2 of the injury is.

3 Q. Okay. All right. If a person -- you're familiar with the
4 injury that -- with the gunshot wound that Mr. Aldrete-Davila
5 received, correct?

6 A. Correct.

7 Q. Okay. What would happen to a normal human being, in terms
8 of shock, if he had been shot in that way?

9 A. I mean, there's a wide variety.

10 Q. What do you --

11 A. I mean, it depends upon -- I mean, it really depends upon
12 what injuries were sustained at that time.

13 Q. Okay.

14 A. Could his system withstand -- not going into full-blown
15 shock? Yes. It just depends upon where things are at --

16 Q. Okay.

17 A. -- and what was injured at that time.

18 Q. Okay. Would it be common for the person's heart rate to
19 speed up?

20 A. The heart rate is going to speed up.

21 Q. Okay. Would it be common -- now, would it be normal for
22 the person's sense of time to be affected, in the immediate
23 instance after being shot with a bullet?

24 A. I'm still not sure where you're going. I mean...

25 Q. Well, you've heard the expression, you know, It only took a

- 1 minute, but it felt like a week, right?
- 2 A. Correct.
- 3 Q. Okay. Is there a -- is it a common occurrence, when
4 someone is shot, for their sense of time to be distorted where
5 what may -- where they may not be able to tell how long
6 something is taking?
- 7 A. I really couldn't tell you. I mean, I did not go to Iraq.
8 I did not treat patients that had been shot on a regular basis.
9 The classes that you actually are saying that I have taken, one
10 was a nuclear chemical biological hazard class, and the other
11 one was a trauma class, on applying fixiters onto broken legs
12 and arms.
- 13 Q. So that would be outside of your area of expertise?
- 14 A. Correct.
- 15 Q. Okay. You reviewed the records of Mr. Aldrete-Davila,
16 correct?
- 17 A. I reviewed some of them, correct.
- 18 Q. You didn't review them all?
- 19 A. Not all of them.
- 20 Q. Okay. Did the portions of the medical records that you did
21 review indicate that the bullet shattered -- and I may not
22 pronounce this correctly -- the symphysis pubis.
- 23 A. There is a mention of that, correct.
- 24 Q. Okay. And will you tell the jury what that is?
- 25 A. The easiest way is on one of the x-rays. The symphysis

1 pubis is the bony structure that sits right below where the
2 suprapubic tube was placed. So it's the bone right on the
3 front of your pelvis.

4 Q. Is that located more or less -- if you were to draw a
5 straight line through the middle of the body, from the top of
6 your head down to the ground, would that be located pretty much
7 in the middle of your body?

8 A. There's two pubic symphysis. So it is pretty close to the
9 midline. The one that actually has the bony fragments taken
10 off is on the right side.

11 Q. It's on the right side?

12 A. Correct.

13 Q. Okay. Not on the left side, the right side?

14 A. Correct.

15 Q. Okay. And would that -- if you know; you may or may not
16 know the answer to this question -- would that -- that's a
17 fairly small bone. Is that correct?

18 A. The pubic symphysis?

19 Q. Yes.

20 A. Or the fragment?

21 Q. The pubic symphysis.

22 A. Not really.

23 Q. Okay.

24 MR. PETERS: What's our next number, Your Honor?

25 THE COURT: You are -- hold on. Give me just a

1 second. I show 11. Is that correct? I show DR-11.

2 MS. STILLINGER: That's correct. It should be 11.

3 MS. KANOF: There's actually an x-ray in here of his
4 pubic symphysis, if you want to use those.

5 MR. PETERS: May I approach the witness?

6 THE COURT: You may.

7 BY MR. PETERS:

8 Q. Doctor, I'm going to hand you what has been marked as
9 Defense Ramos Exhibit 11 and ask you if you recognize the
10 diagram that's on that page.

11 A. Correct.

12 Q. Okay. And what is that a diagram of?

13 A. The bony pelvis.

14 Q. Excuse me?

15 A. I said it's the bony pelvis. It's a picture of the pelvis
16 and just looking at the bones.

17 Q. Okay. Is that -- and you're -- of course, as a doctor,
18 you're familiar with the appearance of that bone structure,
19 correct?

20 A. Correct.

21 Q. Is that an accurate depiction of it?

22 A. Yes.

23 Q. Okay. And if I could --

24 MR. PETERS: May I approach him again?

25 THE COURT: Sure.

1 MR. PETERS: Let me put it on the overhead.

2 BY MR. PETERS:

3 Q. Okay. Now, can you point with -- do you still have the
4 pointer up there?

5 A. Yes, I do.

6 Q. Okay. I believe that, according to this, the one on the
7 right-hand side is the male pelvis. Can you show the jury
8 where the -- what that bone we were just discussing, the pubic
9 symphysis, is?

10 A. It's this area here (indicating).

11 Q. You've pointed to those circular round things, or the thing
12 right in the middle between it?

13 A. We have one on each side, so it's the circular things on
14 each side. And there's a ligament that goes between them.

15 Q. Okay. And if -- are -- do you have any knowledge of
16 whether these bones can deflect or would normally deflect a
17 bullet? Is that something that you would know or not know?

18 A. No idea on trajectory and deflection, no.

19 Q. Okay. But it is your testimony that the one that was
20 shattered by the bullet was on the right side?

21 A. If I could see the x-ray again I would verify that for you.
22 But, yeah it --

23 Q. If I can find it, I'll be happy to give it to you.

24 Can you look at it there?

25 A. I don't care.

1 Q. I don't know which ones you want.

2 A. Yes.

3 Q. Yes?

4 A. Right side.

5 Q. Okay. Thank you.

6 MR. PETERS: No further questions.

7 MR. ANTCLIFF: Judge, I don't have any questions.

8 THE COURT: Anything further?

9 MS. KANOF: A little bit.

10 THE COURT: All right.

11 MS. KANOF: May I approach the witness?

12 THE COURT: Yes, you may.

13 REDIRECT EXAMINATION

14 BY MS. KANOF:

15 Q. I'm going to hand you what's been marked as Government's
16 Exhibit 89. If you'd look at that, and in your professional
17 experience as a physician, based on how the fluoroscopic images
18 reflect fragments, and that x-ray that you're holding in your
19 hand has fragments, does that look like it might be Osvaldo
20 Aldrete-Davila?

21 A. Yes.

22 Q. Okay.

23 MS. KANOF: We ask Government's Exhibit 89 be admitted
24 into evidence.

25 THE COURT: Any objection?

1 MR. PETERS: Your Honor, if he would actually identify
2 as being Mr. Aldrete-Davila I wouldn't object, but he didn't.

3 So --

4 BY MS. KANOF:

5 Q. Well, there's some words on there.

6 A. I'm sorry?

7 Q. Do you recognize the printing on the upper right hand of
8 that x-ray?

9 A. Yes, I do.

10 Q. And what is it?

11 A. Aldrete-Davila, Osvaldo.

12 Q. Okay. It's got his name on it, right?

13 A. Correct.

14 Q. And it has William Beaumont Army Medical Center's initials
15 on it?

16 A. Plus his ID number that was given to him at our facility.

17 MS. KANOF: Okay. Now I move to admit Government's
18 Exhibit 89.

19 MR. PETERS: Without objection.

20 MR. ANTCLIFF: No objection.

21 THE COURT: All right. And it's 89?

22 MS. KANOF: Yes.

23 THE COURT: 89 will be admitted.

24 BY MS. KANOF:

25 Q. Okay. With regard to the actual x-ray, then, Doctor,

1 instead of the diagram, could you again show us where the pubic
2 symphyses are?

3 A. The pubic symphyses are right here (indicating).

4 Q. Okay. What happened in this one?

5 A. You can see a break right -- right where the radio dense
6 structures are, radio dense being these things that look like
7 foreign bodies. And you can see there's a break in the bone
8 right there on the right pubic symphysis.

9 Q. So the object -- in the lower left hand there's a large
10 object, correct?

11 A. Correct.

12 Q. What part of the anatomy is that large foreign body? Is
13 that his right leg?

14 A. Are you saying what part of the anatomy is that located in?

15 Q. That's what I meant.

16 A. Okay. Yes, that's in his right thigh.

17 Q. Is that the bullet before it was taken out?

18 A. I believe so.

19 Q. Okay. And the -- so the bullet -- from this x-ray can you
20 tell whether, because of the fragments and the location of the
21 fragments and the break, the bullet first hit that bone?

22 A. I can't. I'm not --

23 Q. You're not an orthopedist, correct?

24 A. I'm not an orthopod, and I'm not a trajectory expert, so I
25 cannot -- I can say that there's foreign objects in the

1 location of his pubic symphysis, and there's a foreign object
2 here (indicating) that are very radio dense, greater than bone,
3 meaning they're hard, solid substances. I cannot say more than
4 that.

5 Q. You said you're not a trajectory expert, correct?

6 A. Not at all.

7 Q. What's a trajectory expert, since you know that you are not
8 one.

9 MR. PETERS: Objection, Your Honor. I don't know that
10 this witness is qualified to say what a trajectory expert is.

11 MS. KANOF: Well, he knows he's not one, so he must
12 know what --

13 THE COURT: He used the term. He can define it as he
14 knows it to be.

15 BY MS. KANOF:

16 Q. Okay. What's a trajectory expert?

17 A. A trajectory expert, from what I would define it, is
18 someone who studies the anatomy, the injuries, and the location
19 of entrance/exit wounds, and locations of fragments, bullets,
20 whatever.

21 Q. Okay. From a doctor's perspective, correct?

22 A. Correct.

23 Q. And is there -- in medical school, can you take trajectory
24 101?

25 A. Not that I'm aware of.

1 Q. Okay. Doctors don't automatically have that expertise. Is
2 that correct?

3 A. Correct.

4 MS. KANOF: I pass the witness.

5 THE COURT: All right. Anything further, Mr. Peters?

6 MR. PETERS: Just briefly.

7 RE CROSS-EXAMINATION

8 BY MR. PETERS:

9 Q. Again, Doctor, I may be asking you something that's outside
10 your expertise, and if so, that's just fine. But I wonder if,
11 from this x-ray or any other evidence you've seen, you can tell
12 what portion -- if these are bullet fragments -- how much of
13 the bullet is in these fragments?

14 A. I couldn't even tell you what the normal size of that
15 bullet is, so I couldn't say.

16 Q. Can you tell what the volume mass weight or any other
17 identifiable quantification of the fragments are?

18 A. I would just be guessing.

19 Q. Okay. Thank you.

20 MR. PETERS: No further questions, Judge.

21 MR. ANTCLIFF: No questions.

22 MS. KANOF: Nothing further.

23 Your Honor, may this witness be permanently excused?

24 MR. PETERS: No objection.

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

1 THE COURT: Thank you, Doctor. You're free to go.

2 THE WITNESS: Thank you.

3 THE COURT: Could the attorneys approach?

4 (Bench conference:)

5 THE COURT: It's 5:00. This trial is going to take as
6 long as it takes, and I'm not much for letting everybody sit
7 here until 7:00. I assume Oscar Juarez is going to go for a
8 while. So any problems with leaving?

9 MR. ANTCLIFF: They're not even done on direct.

10 MS. KANOF: That's fine.

11 MS. STILLINGER: I think so.

12 THE COURT: Then we'll do it.

13 (End of bench conference; open court.)

14 THE COURT: Ladies and gentlemen of the jury, it is
15 about -- a little after 5:00. We're going to go ahead and
16 recess for the evening. Again, you remain under all of the
17 rules the Court has previously given you, and we will see you
18 tomorrow morning about 8:30. All right? Thank you.

19 (Recess; open court, parties present, jury not
20 present.)

21 THE COURT: You may be seated.

22 Anything we need to take up.

23 MS. RAMIREZ: Your Honor, I went into the ladies' room
24 outside, and one of the jurors was in the stall. And we didn't
25 talk about anything about the case, but, I mean, I think that

1 the jurors should be told they need to use the bathrooms in the
2 jury area.

3 THE COURT: Okay. I will check, because there are
4 bathrooms back there. I will check with the CSO and see what's
5 going on.

6 MS. RAMIREZ: Because, I mean, you never know who's
7 going to be --

8 THE COURT: I understand. I will check.
9 All right. And --

10 MS. RAMIREZ: They're hanging around in the hallway.

11 THE COURT: Could I have the attorneys up here for
12 just a second? This is a conversation off the record.

13 (Off-the-record bench discussion.)

14 (Transcript continues in Volume IX.)

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* * * * *

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

23

24 Signature: _____ Date: _____

25

David A. Perez, CSR, RPR

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