

**NO. 06-51489**

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**UNITED STATES COURT OF APPEALS**

**FIFTH CIRCUIT**

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**UNITED STATES OF AMERICA,  
PLAINTIFF-APPELLEE**

**VS.**

**IGNACIO RAMOS and  
JOSE ALONSO COMPEAN,  
DEFENDANT-APPELLANTS**

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**ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE WESTERN  
DISTRICT OF TEXAS (EL PASO DIVISION)**

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**BRIEF OF APPELLANT  
JOSE ALONSO COMPEAN**

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**CERTIFICATE OF INTERESTED PARTIES**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

No. 06-51489

JOSE ALONSO COMPEAN,  
Defendant-Appellant

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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ROBERT T. BASKETT

## **REQUEST FOR ORAL ARGUMENT**

Jose Alonso Compean respectfully requests oral argument. The issues in this case are significant and of public interest and argument would be a benefit to the Court. Some are contentions of first impression.

## TABLE OF CONTENTS

Certificate of Interested Parties.....	i
Request for Oral Argument.....	iii
Table of Authorities.....	iv
Jurisdictional Statement.....	1
Issues Presented.....	2,3,4
Statement of the Case.....	4
Summary of Facts.....	5
Summary of Argument.....	8
Argument.....	29
Issue Number 1.....	13
Issue Number 2.....	29
Issue Number 3.....	40
Issue Number 4.....	42
Issue Number 5.....	46
Issue Number 6.....	52
Issue Number 7.....	53
Issue Number 8.....	54
Issue Number 9.....	55
Issue Number 10.....	55
Issue Number 11.....	56
Issue Number 12.....	57
Conclusion.....	59
Certificate of Service.....	59
Certificate of Compliance.....	61

## TABLE OF AUTHORITIES

### CASES:

Bihn v. United States, 328 U.S. 633, 66 S.Ct. 1174) (1946).....	45
Boggs v. Collins, 226 F3d 728, 743 (6 <sup>th</sup> Cir. 2000).....	23
Bollenbach v. United States, 326 U.S. 607, 613, 66 S.Ct. 402, 405 (1946).....	51
Bouie v. City of Columbia, 378 U.S. 347, 84 S.Ct. 1697 (1964).....	29
Boyd v. California, 494 U.S. 370, 379, 110 S.Ct. 1190, 1197 (1990).....	52
Boyce Motorlines v. United States, 342 U.S. 337, 72 S.Ct. 329 (1952).....	36
Brown v. Glossip, 878 F2d 871, 874 (5 <sup>th</sup> Cir. 1989).....	34
Bustic v. United, States, 446 U.S. 398, 405, 100 S.Ct. 1747, 1752 (1980).....	30
California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528 (1984).....	22
Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967).....	43
City of San Antonio v. Hernandez, 53 SW3d 404 (Tex. App. - San Antonio 2001, pet. denied).....	33
Connecticut v. Johnson, 460 U.S. 73, 103 S.Ct. 969 (1983).....	45

Courtney v. State, 908 SW2d 48, 52 (Tex. App. - Houston [st] 1995, review ref'd).....	33
Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142 (1986).....	14, 22
Darks v. Mullin, 327 F3d 1001 (10 <sup>th</sup> Cir. 2003).....	57
Delaware v. Fensterer, 474 U.S. 15, 22 106 S.Ct. 292, 295 (1985).....	25
Dorsey v. Chapman, 262 F3d 1181, 1188 (11 <sup>th</sup> Cir. 2001).....	25
Dyson v. State, 672 SW2d 460 460 (Tex. Crim. App. 1984).....	32
ExParte Drinkert, 821 SW2d 953 (Tex. Rim. App. 1991).....	32
Gibson v. Rich, 44 F3d 274 (5 <sup>th</sup> Cir. 1995).....	33
Graham v. Connor, 490 U.S. 386, 396-397, 109 S.Ct. 1865, 1872 (1989).....	32, 43
Homes v. South Carolina, 126 S.Ct. 1727, 1731 (2006).....	14
Hunter v. Bryant, 502 U.S. 224, 112 S.Ct. 534 (1991).....	34
Jones v. United States, 463 U.S. 354, 103 S.Ct. 304 (1983).....	41
Jones v. United States, 527 U.S. 373, 119 S.Ct. 2090 (1999).....	43

Kotteakos v. United States, 328 U.S. 750, 66 S.Ct. 1239 (1946).....	45
Lanzetta v. New Jersey, 306 U.S. 451, 453, 59 s.Ct. 618, 619 (1939).....	30
Mace v. City of Palestine, 213 F. Supp.2d 691 (E.D. Tex. 2002) aff'd., 333 F3d 621 (5 <sup>th</sup> Cir. 2003).	34
Maryland v. Craig, 497 U.S. 836, 845, 110 S.Ct. 3157, 3163 (1990).....	25
McElroy v. United States, 861 F. Supp. 585 (W.D. Tex. 1994).....	32
Michigan v. Lucas, 500 U.S. 145, 149-53 (1991).....	14
Moskal v. United States, 498 U.S. 103, 111, S.Ct. 461 (1990).....	39
Muscarello v. United States, 524 U.S. 125, 132, 118 S.Ct. 1911 1916 (1998).....	30
Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 04 L.E2d 40 (1987).....	22
Rewis v. United States, 401 U.s. 808, 91 S.Ct. 1056 (19710).....	39
Rock v. Arkansas, 483 U.S. 44, 556 107 S.Ct. 2704 (1987).....	23
Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304 (1957).....	29
Saucier v. Katz, 533 U.S. 194, 121 Sct. 2151 (2001).....	33

Scott v. Harris, no. 05-1631, __ U.S. __, April 30, 2007.....	32
Simpson v. United States, 435 U.S. 6, 13-14, 98 S.Ct. 909 (1978).....	30
State v. Diharce-Estrada, 526 F2d 637 (5 <sup>th</sup> Cir. 1976).....	57
Taylor v. Illinois, 484 U.S. 400, 409, 108 S.Ct. 646 (1988).....	14, 22
Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694 (1985).....	35
Wagner v. Bay City, Texas, 227 F3d 316 (5 <sup>th</sup> Cir. 2000).....	32
Washington v. Texas, 388 U.S. 14, 19 (1967).....	14
White v. United States, 300 F2d 813, 822-23 (8 <sup>th</sup> Cir. 1968).....	29
Wong v. Money, 142 F3d 313, 325 (6 <sup>th</sup> Cir. 1988).....	23
United States v. Abod, 770 F2d 1293, 1297 (5 <sup>th</sup> Cir. 1985).....	36
United States v. Alano, 507 U.S. 730, 113 S.Ct. 1770 (1993).....	51
United States v. Alston, 551 F2d 315m 316m (D.C. Cir. 1976).....	43
United States v. Angelos, 433 F3d 738 (10 <sup>th</sup> Cir. 2006).....	40

United States v. Armendariz-Mata, 949 F2d 151, 155 (5 <sup>th</sup> Cir. 1991) cert. Denied 112 S.Ct. 2246, 504 U.S. 945, 1119, L.Ed2d 212.....	27
United States v. Bass, 404 U.S. 226, 92, 515 (1971).....	39
United States v. Bell, 367 F3d, 452, 465 (5 <sup>th</sup> Cir. 2004).....	13
United States v. Blake, 941 F2d 334, 338-9 (5 <sup>th</sup> Cir. 1991).....	28
United States v. Brugman, 364 F3d 613 (5 <sup>th</sup> Cir. 2004).....	43
United States v. Canales, 744 F2d 413 (5 <sup>th</sup> Cir. 1984).....	57
United States v. Castillo, 77 F3d 1480, 1496 (5 <sup>th</sup> Cir. 1996).....	27
United States v. Caucci, 635 F2d 441 (5 <sup>th</sup> Cir. 1981).....	43
United States v. Clements, 73 F3d 1330, 1337 (5 <sup>th</sup> Cir. 1996).....	26
United States v. Contreras, 950 F2d 232 (5 <sup>th</sup> Cir. 1991) cert. denied, 504 U.s. 941, 112 S.Ct. 2276 (1992).....	37
United States v. Corrigan, 548 F2d 879 (10 <sup>th</sup> Cir. 1977).....	45
United States v. DeHernandez, 473 U.S. 531, 105 S.Ct. 3304, 87 L.E2d 381 (1985).....	24

United States v. Diharce-Estrada, 526 F2d 637 (5 <sup>th</sup> Cir. 1976).....	57
United States v. Dula, 989 F3d 772, 777 (5 <sup>th</sup> Cir. 1993) cert. denied 114 S.Ct. 172, 510 U.S. 859, 126 L.E2d 131.....	25
United States v. Edwards, 182 F3d 333 (5 <sup>th</sup> Cir. 1999).....	30
United States v. Gray, 958 F2d (1 <sup>st</sup> Cir. 1992).....	44
United States v. Guidry, 456 F3d 493 (5 <sup>th</sup> Cir. 2006) cert. denied, _U.S._, 127 S.Ct. 996 (2007).	37
United States v. Harris, 536 U.S. 545, 122 S.Ct. 2406 (2002).....	56
United States v. Herrera, 584 F2d 1137 (2 <sup>nd</sup> Cir. 1978).....	38
United States v. Hungerford, 465 F3d 1113 (9 <sup>th</sup> Cir. 2006).....	29
United States v. Jackson, 542 F2d 230, 233 (5 <sup>th</sup> Cir. 1976).....	44
United States v. Jimenez, 464 F3d 555, 558-59 (5 <sup>th</sup> Cir. 2006).....	13, 23
United States v. Johnson, 520 U.S. 461, 467-68, 117 S.Ct. 1544 (1997).....	47
United States v. Jones, 993 F2d 58 (5 <sup>th</sup> Cir. 1991).....	56

United States v. Lerma, 657 F2d 786 (5 <sup>th</sup> Cir. 1981).....	56
United States v. Mazuire, 419 U.S. 544, 95 S.Ct. 710 (1975).....	30
United States v. McClain, 545 F2d 988 1002 (5 <sup>th</sup> Cir. 1977) cert. denied, 444 U.S. 918, 100 S.Ct. 234 (1979).....	36
United States v. Morales-Palacios, 369 F3d 442, 445 (5 <sup>th</sup> Cir. 2004).....	54
United States v. Novaton, 271 F3d 968 (11 <sup>th</sup> Cir. 2001).....	37
United States v. O'Banion, 943 F2d 1422 (5 <sup>th</sup> Cir. 1991).....	29
United States v. Patterson, 431 F3d 832 (5 <sup>th</sup> Cir. 2005).....	54
United States v. Pineiro, 410 F3d 282 (5 <sup>th</sup> Cir. 2005).....	55
United States v. Prieto-Tejas, 779 F2d 1098 (5 <sup>th</sup> Cir. 1986).....	45
United States v. Reedy, 304 F3d 358, 367, n. 13 (5 <sup>th</sup> cir. 2002).....	39
United States v. Restivo, 8 F3d 274, 278 (5 <sup>th</sup> Cir. 1993).....	13
United States v. Robinson, 367 F3d 278 (5 <sup>th</sup> Cir. 2004).....	29

United States v. Serrano, 406 F3d 1208, 1211 (10 <sup>th</sup> Cir. 2005).....	14
United States v. Sheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 LEd2d 413 (1998).....	14, 22
United States v. Simmons, 923 F2d 934, 948 (2 <sup>nd</sup> Cir. 1991).....	26
United States v. Spector, 343 U.S. 169 72 S.Ct. 591 (1952).....	30
United States v. Stanfield, 521 F2d 1122 (9 <sup>th</sup> cir. 1975).....	44
United States v. Stokes, 506 F2d 771, 774, n.3 (5 <sup>th</sup> Cir. 1975).....	43
United States v. Sun Myung Moon, 718 F2d 1210, 1242 (2 <sup>nd</sup> Cir. 1983, Oaks, J. dissenting).....	45
United States v. Vasquez-Guadalupe, 407 F3d 492 (1 <sup>st</sup> Cri. 2005).....	37
United States v. Villareal, 324 F3d 319 (5 <sup>th</sup> Cir. 2003).....	58
United States v. Williams, 900 F2d 823 (5 <sup>th</sup> Cir. 1990).....	27
United States v. Williams, 343 F3d 423 (5 <sup>th</sup> Cir. 2003).....	37
United States v. Winn, 948 F2d 145 (5 <sup>th</sup> Cir. 1991).....	44
United States v. Winters, 174 F3d 478 (5 <sup>th</sup> Cir. 1999) cert. denied, 528 969, 120 S.Ct. 409 (1999).	37

United States v. Wylie, 919 F2d 969, 977 (5 <sup>th</sup> Cir. 1990).....	27
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**STATUTES:**

18 U.S.C. 242.....	8, 37
18U.S.C. 924( c).....	30,34,36,38,39,40,41,47,56,
18 U.S.C. 1512 ( c)(1).....	48, 49,55
18 U.S.C. 1512 ( c)(2).....	52,53,54,55
42 U.S.C. 1983.....	31

**RULES:**

F.R.A.P. 28(1).....	8, 13,43, 48, 52,53
Rule 404(b) F.R. Evid.....	2
Rule 608, F.R. Evid.....	15,16,28
Rule 52(b), F.R. Cr. P.....	38,42,47

**CONSTITUTIONAL PROVISIONS:**

5 <sup>th</sup> Amendment.....	24, 33, 36
6 <sup>th</sup> Amendment.....	14,20,22,24,20

NO. 06-51489

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UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE WESTERN  
DISTRICT OF TEXAS (EL PASO DIVISION)

---

BRIEF OF APPELLANT  
JOSE ALONSO COMPEAN

---

**JURISDICTIONAL STATEMENT**

Jurisdiction of this Court is invoked under Section 1291, Title 28, United States Code, as an appeal from a final judgment of conviction and sentence in the United States District Court for the Western District of Texas, El Paso Division, entered on the docket October 19, 2006, and signed October 23, 2006. Notice of

Appeal was filed by appellate counsel on October 25, 2006, and by trial counsel on October 19, 2006.

**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**ISSUE NUMBER ONE**

**THE TRIAL COURT ERRED IN RESTRICTING CROSS EXAMINATION WITH REGARD TO ALDRETE-DAVILA'S DRUG DEALINGS IMPAIRING APPELLANT'S RIGHT TO PRESENT A DEFENSE.**

**ISSUE NUMBER TWO**

**IS IT A VIOLATION OF FIFTH AMENDMENT DUE PROCESS PROTECTIONS TO APPLY 18 USC 924( c) TO A PEACE OFFICER WHO FIRES HIS SERVICE WEAPON IN THE LINE OF DUTY?**

**ISSUE NUMBER THREE**

**DOES THE TEN YEAR MANDATORY MINIMUM SENTENCE REQUIRED BY SECTION 924(c)(1)(A) (iii) VIOLATE EQUAL PROTECTION PRINCIPLES?**

**ISSUE NUMBER FOUR**

**THE JURY INSTRUCTION IN THE CIVIL RIGHTS COUNT (18 U.S.C. 242) MISPLACED THE BURDEN OF PROOF. WAS THIS PLAIN ERROR?**

**ISSUE NUMBER FIVE**

**WAS IT PLAIN ERROR THAT THE JURY INSTRUCTIONS OMITTED KEY DEFENSE ELEMENTS REGARDING THE**

**CIRCUMSTANCES UNDER WHICH A PEACE OFFICER  
MAY USE FORCE AND HOW THE JURY MUST EXAMINE  
SUCH ISSUE?**

**ISSUE NUMBER SIX**

**IS THE EVIDENCE INSUFFICIENT TO SUSTAIN  
THE VERDICT AS TO COUNT EIGHT?**

**ISSUE NUMBER SEVEN**

**IS THE EVIDENCE INSUFFICIENT TO SUSTAIN  
THE VERDICT AS TO COUNT 10?**

**ISSUE NUMBER EIGHT**

**DID THE COURT REVERSIBLY ERR IN DECLINING  
TO INSTRUCT THE JURY THAT TO CONVICT ON  
COUNT TEN THERE MUST BE AN EXISTING RECORD,  
DOCUMENT OR OTHER OBJECT?**

**ISSUE NUMBER NINE**

**IS THE EVIDENCE INSUFFICIENT TO SUSTAIN  
THE VERDICTS IN COUNTS TWO, THREE AND  
FIVE?**

**ISSUE NUMBER TEN**

**WERE THE VERDICTS IN COUNTS SIX, SEVEN  
EIGHT, AND TEN TAINTED BECAUSE VIOLATIONS  
OF BORDER PATROL POLICY WERE IMPROPERLY  
BOOTSTRAPPED INTO CRIMINAL OFFENSES?**

**ISSUE NUMBER ELEVEN**

**WAS THE INDICTMENT AS TO COUNT FIVE  
FUNDAMENTALLY DEFECTIVE FOR OMITTING  
OR MISSTATING AN ELEMENT OF THE  
STATUTORY OFFENSE?**

**ISSUE NUMBER TWELVE**

**IS THE CUMULATIVE EFFECT OF THE ERRORS  
IN THIS TRIAL SUFFICIENT TO CAUSE DOUBT  
ABOUT THE FUNDAMENTAL FAIRNESS OF THE  
PROCEEDINGS BELOW?**

**STATEMENT OF THE CASE**

Appellant Jose Alonso Compean (hereafter “Compean”) and co-appellant Ignacio Ramos were charged with various offenses in a multi-count indictment. Upon his not guilty plea, a jury convicted Compean on all but Count 1 (assault with intent to commit murder) on March 8, 2006.

Guilty verdicts were returned on the following counts:

**Count 2:** Assault with a Dangerous Weapon. 18 U.S.C. §§ 7(3),  
113(a)(6), and 2.

**Count 3:** Assault Resulting in Serious Bodily Injury. 18 U.S.C. §§ 7(3),  
113(a)(6), and 2.

**Count 5:** Discharge of a Firearm in Relation to a Crime of Violence. 18  
U.S.C. 924( c)(1)(A) (iii)and (D)(ii).

**Count 6:** Tampering with an Official Proceeding. 18 U.S.C. §§ 1512

( c)(1).

**Count 7:** Tampering with an Official Proceeding. 18 U.S.C. §§ 1512

( c)(2).

**Count 8:** Tampering with an Official Proceeding. 18 U.S.C. §§ 1512

( c)(2).

**Count 10:** Tampering with an Official Proceeding. 18 U.S.C. §§ 1512

( c)(1).

**Count 11:** Deprivation of Rights Under Color of Law. 18 U.S.C. § 242.

On October 19, 2006, the district court sentenced Compean to 24 months concurrent imprisonment on Counts 2,3,6,7,8,10, and 11, and 120 months imprisonment on Count 5, to be served consecutively to the other counts.

#### **STATEMENT OF FACTS**

On February 17, 2005, Border Patrol Agent Jose Compean (hereafter Compean) was on patrol in the Fabens area near the Rio Grande at approximately 1:00 p.m., when he observed a white sedan on the Mexican side of the river, riding low, as if the trunk was heavily loaded. 29 R 141-43<sup>1</sup>. Compean parked on the

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<sup>1</sup> Reference herein is to the volume and page of the officially numbered record, to-wit: ( \_ R \_ ).

levee, where he observed two people coming out of the river on the Mexican side. He observed marks in the river bed where something had been dragged out of the river. Nearby was a van. When he heard surveillance sensors going off, Compean gave a radio alert that the van was leaving the area, at a high rate of speed. 29 R 145-48.

Border Patrol Officer Oscar Juarez was patrolling nearby when he heard about the van over the radio. 24 R 141. Juarez pursued the van into Fabens, Texas, where he observed the van make a u-turn as he drove past. 24 R 157-58. Juarez activated the emergency lights in pursuit of the van. A high speed chase ensued where Juarez observed the van driver run red lights, fail to stop at a stop sign and violate speed limits while traveling back South to Mexico.

Officer Ramos also pursued the van (in front of Juarez' vehicle). The van finally skidded into the levee, leaving skid marks. 24 R 166-70. Ramos parked his cruiser behind the van. The driver fled the van and Juarez next observed him wade the canal and jump out on the other side. 24 R 170-74. The van contained over 700 pounds of marijuana. 26 R 273. Juarez observed Compean, on the far side of the levee, confront the suspect with a shotgun. The man ran when he saw Juarez, jumping across the canal at a point where Compean stood, blocking his path. Compean attempted to hit the man with the shotgun, but missed, falling into