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COURT UPHOLDS CONVICTIONS OF BORDER AGENTS FOR WOUNDING DRUG SMUGGLER *(United States v. Compean; Ramos)*

The United States Court of Appeals for the Fifth Circuit last week upheld the convictions and lengthy prison sentences imposed on two U.S. Border Patrol Agents for chasing down and wounding a Mexican drug smuggler transporting almost 750 pounds of marijuana in a van across the Mexico-Texas border. Both agents testified at their trial that they fired several shots after seeing a metallic object in the smuggler's hand, but only one bullet hit the smuggler, wounding him slightly. He then ran across the Rio Grande River back to Mexico. The drug smuggler was later located and given immunity by the Department of Justice to testify against the two border agents. Agent Ignacio Ramos received 11 years in prison and Agent Jose Compean received 12 years for depriving the drug smuggler of his civil rights. The prosecutors invoked a 10-year mandatory prison law, which was intended to be used against gun-toting criminals and drug dealers.

The court of appeals ruled that the jury rejected the agents' claim of self-defense, although, as WLF argued in its brief, the jury instructions failed to inform the jury that the burden of proof was on the government to show beyond a reasonable doubt that the agents did *not* have a reasonable fear for their safety. It was not incumbent on the defendants to prove beyond a reasonable doubt that they *did* reasonably fear for their safety. More importantly, the court upheld the prosecutors' use of a mandatory 10-year prison term provision that was designed to be wielded against drug dealers who carry and use weapons rather than against law enforcement officers carrying out their duties. However, the court did overturn part of the conviction based on several minor counts that the two agents allegedly violated policy for failing to timely report the shooting incident, but that partial victory will not affect the 10-year mandatory prison sentence provision.

This case has received nationwide criticism, including calls by Members of Congress who have asked President Bush to give the agents a commutation. Senator Dianne Feinstein was also very critical of the Justice Department for their handling of the case. The drug smuggler also sued the U.S. for \$5 million in damages. The decision is expected to have a chilling effect on the ability of other border agents (and all other law enforcement personnel) to carry out their difficult duties to enforce the law. The agents will file a petition for rehearing and, if necessary, seek review in the Supreme Court.

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