

4. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

5. Plaintiffs Ana Maria Herrera, Alejandro Muzquiz, Pedro and Pauline Felan, and Adolfo Garcia all reside in Eagle Pass, Texas.

6. Plaintiff Ana Maria Herrera is the niece of Plaintiff Alejandro Muzquiz, and their facts and claims are the same.

7. Plaintiffs Pedro and Pauline Felan are married, and their facts and claims are the same.

8. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security, an executive agency of the United States of America.

FACTS

9. In the Secure Fence Act of 2006, Congress authorized DHS to construct a border fence in Eagle Pass. On January 14, 2008, the Government sued the City of Eagle Pass for a temporary, six-month easement for access to conduct studies in preparation for Fence construction. *United States v. 233.0 Acres of Land, More or Less Situated in Maverick County, City of Eagle Pass* (“233.0 Acres”), No. DR-08-CV-003-AML (W.D.Tex. Del Rio Div. filed Jan. 14, 2008). This Court granted the easement with an ex parte order on the same day. *233.0 Acres, Order*, Jan. 14, 2008. The temporary easement expired July 13, 2008.

10. Plaintiffs Muzquiz and Herrera own land that was encompassed within the 233.0 acres for the temporary easement because they own lands adjacent to the 44.420 acres that were condemned by the City of Eagle Pass in *Eagle Pass v. Unknown Owners*, in which that court adjudicated the Muzquiz family to be owners of the 44.420 acres. See *233.0 Acres*, Doc 12-2, Feb. 1, 2008 and Intervenor Herrera’s Reply, Mar. 24, 2008.

11. DHS plans for the Fence to pass on and through the 44.420 acres, and onto the lands adjacent to this tract that are owned by the Muzquiz family. In its response to this Court's order to show cause, the United States conceded that the Muzquiz family had a legitimate property interest, and agreed that Plaintiff Herrera should be joined as a proper party to the temporary taking suit. *233.0 Acres*, Pl. Resp. to Mot. Interv. 7-8, June 2, 2008.

12. Plaintiffs Pedro and Pauline Felan own a rectangular shaped lot that is bounded by "Ryan Alley" on the east and the Rio Grande River on the west. See Exhibit P1. Their original deed was first recorded with Maverick County on January 12, 1973, and then a correction deed was filed August 30, 1982.

13. Plaintiff Adolfo Garcia owns a rectangular shaped lot that is bounded by Ryan Alley on the east and the Rio Grande River on the west. See Exhibit P2. Plaintiff Garcia's lot is immediately south of the Felan lot and was recorded with Maverick County on May 16, 1979.

14. The United States did not attempt to negotiate with, consult with, or compensate Plaintiffs Felan and Garcia for the temporary easement that expired July 13, 2008 or for their land that is currently being used to prepare for construction and to construct the Fence even though their deeds were duly recorded and their land was encompassed within the tract at issue in *233.0 Acres*. Construction has already begun on property adjacent to the Felan and Garcia tracts, and Kiewit Texas Construction, L.P., vehicles are going over the Felan and Garcia tracts. Kiewit is the contractor that is building the fence.

15. The United States did not attempt to negotiate with, consult with, or compensate the Muzquiz family for the temporary easement or for their land that is currently being used to prepare for construction and/or construct the Fence even though the United States had notice of

the family's claims from 233.0 Acres, in which the United States conceded the family had a legitimate property interest.

16. DHS took interests in Plaintiffs' land by:

- a. Entering upon the land to conduct surveys and testing prior to September 2008 without a court order awarding this interest as against Plaintiffs;
- b. Entering upon the land during and after September 2008 to move and/or store equipment, materials, and personnel for purposes of staging Fence construction;
- c. Beginning Fence and/or associated road construction upon the land.

17. DHS commenced physical construction of the Fence during the week of September 15, 2008, after conducting surveys and other testing of Plaintiffs' land that involved physical entry.

18. DHS plans call for the Fence to cross each Plaintiffs' lands.

19. DHS and private contractors are presently entering each Plaintiffs' lands while building, and preparing to build the Fence, without Plaintiffs' permission and without the court order of possession that is required by 8 U.S.C. § 1103(b), and which the Government has actually sought in all related cases.

20. Bill Moody is a wealthy, Caucasian rancher who owns 55,000 acres along 35 miles of the Rio Grande River between Eagle Pass and Del Rio, Texas.

21. The Secure Fence Act of 2006 authorizes border fence from Del Rio to Eagle Pass, including all 35 miles of border along Mr. Moody's riverfront ranch.

22. On information and belief, on or about July 2007, U.S. Congressmen, DHS officials and other federal officials consulted with Mr. Moody in Del Rio regarding the effects of the proposed border fence on his ranch. Mr. Moody opposed the Fence.

23. When DHS announced the location of the Fence in 2008, DHS planned no fence for Mr. Moody's ranch.

FIRST CLAIM: FAILURE TO NEGOTIATE

24. Defendant DHS failed to attempt negotiations with Plaintiffs for a reasonable price before taking land for temporary or permanent use for the border fence in violation of 8 U.S.C. § 1103(b).

SECOND CLAIM: FAILURE TO CONSULT

25. Defendant DHS failed to attempt consultations with Plaintiffs before taking their land in violation of the Consolidated Appropriations Act of 2008, Pub. L. 110-161, 121 Stat. 1844 § 564(a)(2)(B)(ii) (enacted Dec. 26, 2007, amending Sec. 102(b)(1) of the IIRIRA to add "(C) Consultation..." to be codified at 8 U.S.C. § 1103 note (Note)); and the Department of Homeland Security Appropriations Act of 2009, 110th Cong., H.R. 2638, Div. D, Title II, (12).

THIRD CLAIM: FIFTH AMENDMENT TAKINGS CLAUSE

26. Congress's statutes establish which takings are "for public purposes" under the Fifth Amendment, and the Government has not complied with Congress's border fence takings statute, 8 U.S.C. § 1103(b). By initiating physical construction and entry in preparation for construction of the Fence on Plaintiffs' properties, Defendant DHS has taken their private property for public use without just compensation in violation of the Fifth Amendment of the U.S. Constitution.

FOURTH CLAIM: FIFTH AMENDMENT EQUAL PROTECTION

27. All Plaintiff landowners are Mexican-American and indigent.

28. Defendant DHS discriminated against Plaintiffs on the bases of race and wealth by not consulting with them regarding the effects of the border fence, while consulting with wealthy, Caucasian landowners, contrary to the Fifth Amendment of the U.S. Constitution.

29. Defendant DHS discriminated against Plaintiffs by unequally applying the Secure Fence Act to their properties, while not applying it on equal terms to the properties of wealthy, Caucasian landowners, contrary to the Fifth Amendment of the U.S. Constitution.

PRAYER FOR RELIEF

Plaintiffs pray that this Court:

30. Declare that the Government's actions in seizing property without following the procedures required by Congress violates Plaintiffs' statutory and constitutional rights;

31. Enter a temporary restraining order, and then after hearing, a preliminary injunction to restrain Defendants from constructing the Fence, and entering Plaintiffs' property in preparation of constructing the Fence, until any, ownership issues are resolved, and statutorily required negotiations and consultations occur;

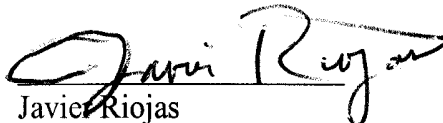
32. Adjudicate title of the lands upon which the Fence will be built;

33. Order Defendant DHS to justly compensate Plaintiffs for their private property upon which the Fence will be built, and for all interest in their property taken to date, including temporary uses;

34. Order Defendants to pay costs;

35. Grant any other appropriate relief in law and equity.

Respectfully submitted,



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