



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

256 SOUTH OCCIDENTAL BOULEVARD

LOS ANGELES, CA 90057

Telephone: (213) 388-8693 ext. 310

Facsimile: (213) 386-9484

www.centerforhumanrights.org

January 7, 2008

Via facsimile and certified mail

Secretary Michael Chertoff
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20528

Gus Coldebella
General Counsel
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20528

Re: Texas Landowners' Objection to Access for Border Fence

Dear Secretary Chertoff:

This office represents Dr. Eloisa García Tamez, a private land-owner in south Texas who has not and will not sign DHS's "Right-of-Entry for Survey and Assessment." Despite the Department's express threat to sue Dr. García Tamez pursuant to its powers of eminent domain if she refuses, Dr. García Tamez will not allow her ancestral property to be surveyed for the erection of the highly controversial security border wall. Along with other property owners, as well as other Nde' and Basque-Ibero American citizens adversely impacted by DHS's ultimatum and intended actions, Dr. García Tamez will pursue all available legal avenues under domestic and international laws to protect her right to the full and uninterrupted enjoyment and use of her property. Dr. García Tamez's resolve reflects a national network of entities, both political and civic, individuals and organizations, that supports the land rights of indigenous peoples and resolutely opposes the building of the militarized border wall.

Dr. García Tamez has registered her concern over DHS's treatment of her and her neighboring landowners with the United Nations Committee for the Elimination of Racial Discrimination. We also intend to request that the International Indian Treaty Council intervene in this matter on her behalf and on behalf of similarly impacted members of the Lipan Apache people and Basque descent peoples in the Lower Rio Grande region, who are protected as indigenous groups of the Americas (Lipan Apache) and of Europe (Basque) in international customary law according to the United Nations Declaration on the Rights of Indigenous Peoples (the "UN Declaration"). As you are undoubtedly aware, the UN Declaration provides that the indigenous peoples living along the United States-Mexico border are entitled to the "enforcement of treaties, agreements and other

constructive arrangements concluded with” the United States (Article 37) and, *inter alia*, are protected against forced removal from their traditional lands (Article 10); have the right to “maintain, protect, and have access in privacy to their religious and cultural sites” (Article 12); have the right to “own, use, develop and control” the land that they have traditionally possessed or occupied and must be consulted with respect to proposed development of the property (Articles 26, 32); have the right to “a fair, independent, impartial, open and transparent process” with respect to their property rights, including the right of redress (Articles 27, 28); and are protected against the militarization of their traditional homelands (Article 30). *See also*, Articles 29, 31, 36, 37, 38.

Dr. García Tamez holds title to her inherited property, located in Cameron County Texas on the northern shores of the Rio Grande River, pursuant to the San Pedro de Carricitos Land Grant, of the Nuevo Santander region of South Texas, established by Spain in 1743. She is a descendent of both Nde’ (Apache), as well as the Basque-Ibero indigenous peoples sent to the region to serve as laborers in the settlement of Nuevo Santander colony. She is indigenous to and a member of the Lipan Apache ancestors. These ancestors were the native people of the Lower Rio Grande valley and Tamaulipas, the Mexican state to the south of her lands which is named for the derivative of the indigenous phrase “Ta ma ho lipam” or “the place where the Lipan pray.”

Dr. García Tamez has a distinguished and demonstrated commitment of service and advocacy to this country: She is a retired Lt. Colonel of the U.S. Army Reserve and retired Chief Nurse of a Veterans Administration Medical Center. At the age of 16 she led a rebellion against inferior and segregated education for indigenous children and went on to become one of the first indigenous women to earn a doctorate degree from the University of Texas, Austin.

In light of the U.S. Government’s violent obstruction of the title holder indigenous peoples from their lands in the 1930’s, resulting in the division of those lands by the present-day levee—including those lands now belonging to Dr. García Tamez—and the government’s ongoing denial of access to the ancestral, pastoral indigenous lands now found on both sides of that structure, Dr. García Tamez has attempted to discuss her legitimate concerns regarding any further encroachment upon her property rights directly with federal officials, including Border Patrol Officers, and the Army Corps of Engineers officers. To her dismay, she has met only with intimidation, harassment and ultimatums and has been instructed and given formal notice that she has “no choice” but to sign the enclosed waiver that has been presented to her. She has been warned in conversation with U.S. personnel that if she fails to sign, her name would be included in a list of “refusers” against whom legal action will be taken.

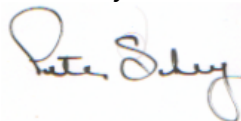
We are deeply concerned by the treatment of Indigenous citizens along the Texas/Mexico border at the hands of DHS, U.S. Border Patrol, and the Corp. of

Army Engineers. Additionally, we find it alarming that the waiver Dr. García Tamez is being pressured to sign does not guarantee her payment for use of Indigenous lands nor for property damages that may occur during the proposed survey and assessment. Further, it does not provide any assurance that the government will relinquish private property or Indigenous lands back to the rightful owners after the surveying has been completed. Nevertheless, a resolution of these ambiguities will not in and of itself resolve the multitude of affronts to Indigenous lands and culture that are presented by the proposed wall and accompanying militarization of the border.

With DHS' express threat of eminent domain bearing down on numerous American citizen Indigenous peoples, we note that neither the waiver nor the government's express threat of eminent domain take into account the recently enacted Section 564 of the Homeland Security section of the Omnibus Appropriations Bill, which strikes provisions of the earlier Secure Fence Act and expressly requires DHS to consult with property owners like Dr. García Tamez in order "to minimize the impact on the environment, culture, commerce, and quality of life" in areas considered for construction of the border fence. We also particularly note that section of the new act withholding funding pending "an analysis by the Secretary for each segment, defined as no more than 15 miles, of fencing or tactical infrastructure, of the selected approach compared to other, alternative means of achieving operational control; such analysis should include cost, level of operational control, possible unintended effects on communities, and other factors critical to the decision making process . . ." Furthermore, we believe that the new statutory provisions invalidate the Draft Environmental Impact Statement for fence construction published on the Department's behalf on November 16, 2007, pending completion of the required local consultations and other requirements as outlined in the Omnibus Bill.

While Dr. García Tamez looks forward to those future consultations mandated by the Omnibus Bill, this office, in conjunction with the South Texas Civil Rights Project, demands on her behalf that all direct oral and written communications with her cease, that future attempts to communicate with her be directed to the undersigned as her attorney, and that absolutely no attempt be made by any Government official to access her property without notice to this office sufficient to allow our seeking judicial intervention.

Sincerely,



Peter Schey
President and Executive Director
Center for Human Rights and
Constitutional Law