



OFFICE OF THE PRESIDENT

THE UNIVERSITY OF TEXAS AT BROWNSVILLE and TEXAS SOUTHMOST COLLEGE

80 Fort Brown • Brownsville, Texas 78520 • (956) 882-8201 • Fax (956) 548-0020

Juliet V. García, Ph.D.

President

October 22, 2008

Inter-American Commission of Human Rights
Organization of American States
1889 "F" Street, N.W.
Washington, DC 20006

Dear Commissioners,

As president of the University of Texas at Brownsville and Texas Southmost College, which sits adjacent to the border with Mexico, I have spent the past eighteen months responding to plans by the U.S. Department of Homeland Security (DHS) to divide our campus with an 18-foot-high fence.

When we initially refused to grant DHS the right of entry on our property, DHS responded with the same lawsuit it has used against other property owners who refused entry. Unlike small property owners, however, we were in a position to negotiate with the federal government. After many failed attempts and broken promises, on July 31, 2008, we finally reached an agreement with the DHS that allows for an alternative to its originally proposed seizure of our land.

I have outlined in the attached document the long and difficult battle we faced, as well as the solution upon which we ultimately agreed. I believe our experience demonstrates that reasonable alternatives exist to the construction of the fence proposed by the government. Indeed, the federal judge who presided over our case proposed that our original settlement with DHS, which required DHS to consult with the university to reach a mutually agreed-upon solution, be used as a model for other property owners along the border.

The University of Texas at Brownsville and Texas Southmost College shares the commitment of the U.S. Congressional and executive branches to protect our country. We know that America's security is a national responsibility. However, we also know that what is needed is authentic security, which can only be achieved by deploying all of our assets, including fully resourced enforcement, a stable economy, trustworthy and open governance, and an educated citizenry.

I love my country and the best that it represents of an experiment to govern a free people. My life's work has been spent trying to guarantee that the next generation has access to an education and becomes vested in protecting, participating in and defending this democracy. It has been my duty to be a good steward not only of the resources entrusted to me, but also of the values and principles of our democracy.

I hope that you will find the story of our struggle to find an agreement useful in your proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Juliet V. Garcia'.

Juliet V. García

The Path to Settlement between University of Texas at Brownsville and the U.S. Department of Homeland Security

Juliet V. Garcia, PhD
President, University of Texas at Brownsville and Texas Southmost College
October 22, 2008

Early in the summer of 2007, we were notified of plans by the Department of Homeland Security (DHS) to build an 18 foot high fence on top of an existing levee, which would split our International Education Technology & Commerce (ITEC) campus from the rest of our campus. The university's ITEC campus would essentially be placed on the Mexican side of this new border fence. In addition, the plans would also build a fence 18 feet high on top of the levee just south of the Scorpion baseball field and of the Education and Business Campus (EDBC) parking lot, essentially placing our golf course on the Mexican side of the fence.

In October 2007, we received a letter from U.S. Customs and Border Protection asking for the right of entry onto university property. The request sought access to survey university land for the possible construction of the fence, to store equipment and supplies, take samples and to do any other work they found necessary for the proposed construction of the fence.

The same document informed us that there was some question as to whether DHS would be responsible for any damage done during this time by its activities. Finally, the letter stated that, should the U.S. government, determine need for any land, the university would be paid market value for the land.

I did not sign the document that would have granted access for several reasons.

1) There was the risk to our property investment because the government sought access to land from the levees to buildings in the very heart of our campus adjacent to the Student Union and the Life and Health Sciences Building.

Our campus is one of the fastest growing in the University of Texas System, with an enrollment of 17,000 and expected to grow to 20,000 within five years. The campus currently has eight construction projects in different stages of development for a total investment by the taxpayers of our community and of the state of over \$140 million dollars in new construction alone. Allowing the DHS unlimited access to a large portion of the campus had the potential of jeopardizing a significant public investment that was our duty to protect.

2) The right of entry was meant to support preparations for the building of a fence that would jeopardize campus security.

DHS had repeatedly reported to us that the plan to build a fence on the levee was for the purpose of channeling illegal entrants to a point presumably for easy apprehension. That point is the same opening in the fence that would also be used for entry and exit to the golf course, the headquarters for our golf team and directly behind the baseball park and the REK Center.

I could not sign the original right of entry because having an opening in an 18 foot high fence for the purpose of channeling all illegal entrants, including criminals, into the heart of our campus right next to classroom buildings, the library, the REK center, the baseball park, and the new soccer field would greatly endanger our students and jeopardize campus security and safety.

3) There had been no opportunity for genuine public input.

The only public hearing we were afforded was held on December 12, 2007 at the Brownsville Events Center where we were required to submit our feedback through a computer terminal or through a court reporter surrounded by armed agents.

For those who chose to participate through verbal input, it was necessary to meet in an open field across from the Events Center while being photographed by low flying aircraft.

4) The University of Texas at Brownsville has become a key player in the promotion of the ecotourism industry and in the reclamation of important wildlife areas inclusive of the thousands of acres of the Bahia Grande area. Many have worked for decades to design a campus that is respectful of the natural and rich environment of this special ecological zone.

Signing the original right of entry would have jeopardized the ecological systems of our region and obstructed the development of a campus environment that fosters the physical and mental well-being of our students. To create this environment we are designing and constructing bike trails, jogging paths and eco-trails.

5) Finally, the original right of entry jeopardized the important historical heritage of the campus. The University campus encompasses several significant historical sites, including historic Fort Brown and Fort Texas.

Because we could not in good conscience sign the document granting right of entry, the Department of the Army Corps of Engineers notified us in December 2007 of potential litigation to gain entry to the campus.

What was being demanded, under threat of legal action, was unimpeded access by military and civilian agencies to a University of Texas System campus and its state and locally financed buildings for an extended period of time for purposes of determining if land and buildings would be condemned and seized.

In January 2008, we were notified that a suit had been filed in federal court because of our refusal to sign the original right of entry. This heavy handedness and unwillingness to genuinely discuss alternatives to the right of entry's conditions was sufficient cause for serious concern.

Yet we continued to meet with various representatives from the federal government frustrating at times because often the assorted federal agencies did not have knowledge of each other's activities. However we persisted believing that compromise could be reached.

After days of intense negotiations between the university and U.S. Department of Justice an agreed settlement was reached on March 19th just hours before the federal hearing was to take place. While the original request for entry by the Department of Homeland Security (DHS) had asked for 18 months of unlimited access into the very heart of our campus and absolved DHS from any damages that might result from its work on our campus, the newly agreed order limited access to 6 months on a much smaller area restricted to the land adjacent to the levees and required DHS to either repair the damage or make an appropriate settlement. The order also specified that DHS would not be allowed to clear land or otherwise alter the physical landscape of the university, and required DHS to give Campus Police prior notice of all activities on the property and to take all reasonable action to promote safety and minimize any impact on our educational activities.

By entering into the agreement, DHS consented to consider our unique status as an institution of higher education, to jointly assess alternatives to a physical barrier, and to conduct investigations in order to minimize the impact of any tactical infrastructure on the environment, culture, commerce and quality of life for the communities and residents located near the university. That said, the judge recommended that DHS consider using the process set out as a template for dealing with other landowners regarding the border fence.

Over the ensuing three months, we proceeded to comply with the court order, investing hundreds of hours of time and engaging the services of experts at our own expense to seek alternative mechanisms for providing a secure border and safety for our students and university community. Our attempts to work responsibly and transparently and to engage DHS in the joint assessment process, however, were summarily dismissed. Instead, DHS unilaterally proceeded on its original plans for constructing a fence, explaining that it needed to satisfy a deadline set in the Secure Fence Act.

On June 19, 2008, we filed a Motion for Relief in federal court. The filing was in reaction to a notice we received from the Department of the Army informing us that it intended to seize 2.11 acres of university land on which to construct the border fence. We asked the court to enforce the provisions of the Order of Dismissal agreed upon in March. In a subsequent hearing, the federal judge presiding over the case ordered DHS to work with the university to find a reasonable solution.

On July 31, we entered into a final agreement with DHS, in which DHS and Border Patrol were to end condemnation actions against the university, effectively allowing us to retain ownership over all of our property. We agreed to enhance campus security in two ways, by augmenting university-owned fencing adjacent to the levee to a height of 10 feet (from its current six to eight feet) and to upgrade it with high-tech devices. We also agreed to collaborate with DHS and Border Patrol in the establishment of a center to study border issues including security. We will examine, among other elements, the use of technology for securing the border.

I believe this agreement demonstrates the hard work and good faith that were brought forth when the parties finally sat down at the table and talked about what solution would best serve the mutual interests. I am particularly pleased at what this agreement means for our educational mission and the continued safety of our students.