



COMMITTEE ON HOMELAND SECURITY

The “Borderland Takings Defense Fund Act” As Introduced by Representative Val Demings (D-FL)

The Federal Government only owns around 35% of land at the U.S.-Mexico border.¹ To construct a 2,000-mile wall along the Southwest border, the Federal government would have to acquire 1,278 miles of privately-owned land, one way or another.² The Trump Administration has ambitious plans to build up its capacity to pursue Federal takings actions. Its Fiscal Year 2018 budget requested \$1.8 million to hire 12 eminent domain attorneys at the Department of Justice (DoJ)³. In December 2018, DoJ posted two job announcements for attorney positions to oversee property seizures in South Texas.⁴

“If you don’t have a lawyer, you’re just going to get railroaded,” Efrén Olivares of the Texas Civil Rights Project said.⁵

The ***Borderland Takings Defense Fund Act*** directs the Department of Homeland Security (DHS) to set up a \$20 million fund for low-income ranchers and landowners to access to get legal representation when the Trump Administration seeks to take privately-owned land to build President Trump’s wall. The Federal government regularly pays as little as \$100 for land whose

¹ “Brief Overview of Border Security Investments and Enforcement,” Prepared by the Subcommittee on Homeland Security, House Appropriations Committee.

² Based on the House Committee on Appropriations assessment that the Federal government currently has 654 miles of fencing, with an additional 22 forthcoming to ultimately total 676 miles, along the 1,954 mile U.S-Mexico border, 1,278 miles of privately owned land would need to be seized.

³ “FY 2018 Budget Request,” U.S. Department of Justice. Available at:

<https://www.justice.gov/file/968201/download>

⁴ Ted Hesson, “DOJ hiring attorneys to handle property seizures for border wall,” Politico, January 2019. Available at: <https://www.politico.com/story/2019/01/17/doj-property-seizures-border-wall-1093736>

⁵ Katie Zezima and Mark Berman, “Trump’s wall needs private property. But some Texans won’t give up their land without a fight,” Washington Post, January 2019. Available at:

https://www.washingtonpost.com/national/trumps-border-wall-would-need-private-property-but-texas-landowners-plan-to-dig-in-for-lengthy-legal-fight/2019/01/10/d7e4cba8-1443-11e9-803c-4ef28312c8b9_story.html?utm_term=.857e25e06b3b

sentimental and market value is at least 120 times greater.⁶ Legal representation is critical to ensuring that landowners receive just compensation. In fact, a 2017 ProPublica-Texas Tribune investigation of the 2007 Federal eminent domain actions to build 700 miles of fence on the southwest border found that Texas property owners with attorneys saw a tripling from initial offer to settlement while those without an attorney saw only a 33 percent increase.⁷

The ***Borderland Takings Defense Fund Act*** seeks to give private landowners, living on the U.S.-Mexico border, who do not have the means to protect their rights a fairer chance of keeping their land or actually receiving “just compensation.” Today, if landowners do not agree or attempt to negotiate for more, the government typically serves them a condemnation notice to seize the land quickly. However, in instances where landowners can challenge the Federal government in court, citizens have on average been awarded \$12,600 and up to \$1.1 million.⁸

In one case where landowners had representation, the government ended up paying \$4.7 million pursuant to a court order for a parcel of land for which the original offer was just \$233,000.⁹ But their land is long gone by the end of the court process.

Under the ***Borderland Takings Defense Fund Act***, the Secretary of Homeland Security would be prohibited from removing or installing barriers or roads between ports of entry on the U.S.-Mexico border until a \$20 million fund is established and made available to southwest border landowners in need of legal representation. The DHS Officer for Civil Rights and Civil Liberties would be required to select an individual with at least 3 years of relevant pro bono experience and, to the maximum extent practicable, a demonstrated record of fighting on behalf of citizens in legal proceedings with the Federal government to administer the fund. To access legal assistance, the landowner shall own property on the U.S.-Mexico border that is subject to the Federal takings, be a low-income head of household, or is otherwise determined by the fund administrator to need such assistance but lacking adequate resources.

⁶ Anne Ryman, Dennis Wagner, Rob O’Dell and Kirsten Crow, “Journey reveals reality of the border – and roadblocks to a wall,” USA Today. Available at: <https://www.usatoday.com/border-wall/>

⁷ T. Christian Miller, et al. “The Taking; The federal government’s boldest land grab in a generation produced the first border wall – and a trail of abuse, mistakes and unfairness,” *ProPublica and Texas Tribune*, December 2017. Available at: <https://features.propublica.org/eminent-domain-and-the-wall/the-taking-texas-government-property-seizure/>

⁸ John Burnett, “Landowners Likely To Bring More Lawsuits As Trump Moves on Border Wall,” NPR, February 2017. Available at: <https://www.npr.org/2017/02/23/516895052/landowners-likely-to-bring-more-lawsuits-as-trump-moves-on-border-wall>

⁹ Evan Siegfried, “Trump Can’t Build a Border Wall Without the Real Estate,” *Wall Street Journal*, February 2017. Available at: <https://www.wsj.com/articles/trump-cant-build-a-border-wall-without-the-real-estate-1487290376>