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On January 25, 2017, President Trump issued an executive order on border security and immigration enforcement. The President instructed the Secretary of the U.S. Department of Homeland Security (DHS) to “take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border.”¹

The Democratic staff of the Senate Committee on Homeland Security and Governmental Affairs is conducting ongoing congressional oversight over the Administration’s efforts to construct a southern border wall. On April 18, 2017, the Democratic staff of the Committee issued an initial report on the border wall, concluding that costs for a concrete wall along the southern border could soar to nearly \$70 billion—not including the significant costs and legal resources required for land acquisition.²

Since the release of that report, the Democratic staff of the Committee have obtained additional information regarding land acquisition associated with border wall construction, and have contacted private landowners and public officials who live and work along the U.S.-Mexico border. At the request of Ranking Member Claire McCaskill, this minority staff report summarizes information provided to date.

Key findings include:

- The Trump Administration can exercise the power of eminent domain to enable the federal government to acquire land necessary to build the border wall. As a sign of the Trump Administration’s intent to exercise eminent domain for construction of a border wall, on July 25, 2017, U.S. Customs and Border Protection (CBP) issued a notification that officials from the CBP and the Army Corps of Engineers would immediately begin conducting in-person reviews of property records available at county courthouses for “border wall requirements” in the Rio Grande Valley of Texas.
- Despite the Administration’s request for an initial down payment of \$1.6 billion to pay for 74 miles of wall construction and replacement fencing in Fiscal Year 2018, the Committee was informed that the Administration cannot provide the Committee with any definitive real estate costs or requirements, cannot tell the Committee how many American citizens will have their land seized, and has no timeline for completing land acquisition efforts necessary to build the wall that President Trump has ordered.
- Challenges associated with the exercise of eminent domain to acquire privately owned land, particularly in South Texas, have impeded federal efforts to construct physical barriers along the southwest border in the past and will likely pose the same obstacles to future construction. Landowners whose land was taken through the exercise of eminent domain during prior border fencing efforts told Democratic staff that the federal government did not provide just compensation for their property.
- To handle the “initial surge” of condemnation cases, the Administration is seeking nearly \$2 million to hire additional land acquisition attorneys within the Department of Justice to secure the “hundreds or thousands of parcels of land” necessary to facilitate border wall construction. The Administration also anticipates that DHS attorneys will provide “significant litigation support in

¹ Exec. Order 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

² U.S. Homeland Security and Governmental Affairs Minority Staff Report, *Southern Border Wall: Soaring Cost Estimates and Lack of Planning Raise Fundamental Questions about Administration’s Key Domestic Priority* (Apr. 18, 2017) (www.hsgac.senate.gov/border-wall-report).

defense of various challenges to the construction of the physical wall as well as in the condemnation of land along the southwest border.”

FEDERAL GOVERNMENT HAS POWER AND INTENT TO ACQUIRE PRIVATE LAND FOR BORDER WALL CONSTRUCTION

The President’s Fiscal Year (FY) 2018 budget proposal for DHS requests approximately \$1.6 billion for the construction of 74 miles of border barrier.³ The proposal includes 32 miles of “new border wall system” in the Border Patrol’s Rio Grande Valley sector, 28 miles of “new levee wall” in the Rio Grande Valley sector, and 14 miles of “replacement secondary barrier” in the San Diego sector.⁴

Before beginning construction, the federal government must acquire the land upon which the wall will be built. The Attorney General has the legal authority to acquire land “adjacent to or in the vicinity of an international land border when the Attorney General deems the land essential to control and guard the boundaries and borders of the United States[.]”⁵

Former DHS Secretary John Kelly informed the Committee that the preferred approach of CBP for acquiring privately held property is “to negotiate a voluntary sale with the appropriate landowners.”⁶ The Attorney General may contract or buy any interest in land “as soon as the lawful owner of that interest fixes a price for it and the Attorney General considers that price to be reasonable.”⁷ The Attorney General may also accept the interest in land for the United States as a gift.⁸

Despite this preference for voluntary sales, the federal government likely will be required to exercise its power of eminent domain—also referred to as “condemnation”—in order to build new barriers on privately held property. When confronted with landowners unwilling to participate in a voluntary sale of their property, the Attorney General may, under condemnation, acquire real estate for the federal government for public use.⁹ Although the exercise of eminent domain enables the government to assume ownership of private property for public use, the Fifth Amendment of the U.S. Constitution requires that landowners be justly compensated for each taking.¹⁰

Prior to his election, President Trump praised the seizure of privately owned property, calling eminent domain “wonderful,”¹¹ “a good thing,”¹² and “an absolute necessity.”¹³

On July 25, 2017, as a sign of the Trump Administration’s intent to exercise eminent domain for construction of a border wall, CBP issued a notification that officials from CBP and the Army Corps of

³ U.S. Department of Homeland Security, *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

⁴ *Id.* CBP plans to spend another \$341 million in FY 2017 to replace 40 miles of existing fencing in the San Diego, El Centro, and El Paso sectors. In a March 27, 2017 briefing with Committee staff, CBP listed the ease of building on federally-owned land as the top consideration for fence construction in San Diego, a direct admission that decision-making regarding border barrier deployment is influenced, at least in part, by issues associated with land acquisition. U.S. Customs and Border Protection, Briefing with Senate Homeland Security and Governmental Affairs Committee Staff (Mar. 27, 2017).

⁵ 8 U.S.C. 1103(b)(1).

⁶ U.S. Department of Homeland Security, *Responses to Post-Hearing Questions for the Record Submitted to the Honorable John F. Kelly: “Improving Border Security and Public Safety”* (July 27, 2017).

⁷ 8 U.S.C. 1103(b)(2).

⁸ 8 U.S.C. 1103(b)(4).

⁹ 40 U.S.C. 3113. According to 8 U.S.C. 1103(b)(3), in the circumstances of land acquisition deemed essential to control and guard the border: “When the Attorney General and the lawful owner of an interest ... are unable to agree upon a reasonable price, the Attorney General may commence condemnation proceedings[.]”

¹⁰ U.S. Const. amend. V.

¹¹ *Donald Trump: ‘Eminent Domain is Wonderful’*, National Review (Oct. 7, 2015) (www.nationalreview.com/article/425212/donald-trump-eminent-domain-wonderful-jim-geraghty).

¹² *Transcript: Eighth Republican Debate, New Hampshire 2016*, CBS News (Feb. 7, 2016) (www.cbsnews.com/news/transcript-eighth-republican-debate-new-hampshire-2016/).

¹³ *Id.*

Engineers (USACE) would immediately begin conducting in-person reviews of property records available at county courthouses.¹⁴ The research is associated with a project to install 35 gates where gaps exist in previously constructed fencing in Hidalgo County and Cameron County, Texas.¹⁵ The notification stated:

*It is important to note that this is not the only project in RGV [Rio Grande Valley] that will require extensive landownership data research. Using existing funds for preparatory activities, CBP and USACE will soon begin public-facing real estate research activities for RGV border wall requirements in the President's FY 2018 budget.*¹⁶

THE ADMINISTRATION CANNOT ESTIMATE HOW MUCH IT WILL COST, HOW MANY PARCELS WILL BE SEIZED, OR HOW LONG IT WILL TAKE TO ACQUIRE LAND FOR THE WALL

Despite the Administration's request for \$1.6 billion to pay for wall construction and replacement fencing along the southern border in FY 2018, DHS and CBP officials cannot provide the Committee with any definitive real estate costs or requirements, cannot tell the Committee how many American citizens will have their land seized, and have no timeline for completing land acquisition efforts necessary to build the wall that President Trump has ordered.

On July 27, 2017, former Secretary Kelly stated, "CBP cannot provide any definitive real estate costs or requirements until CBP begins conducting the necessary planning and research."¹⁷ He wrote, "It is too early to tell how many American citizen landowners may be affected by border barrier construction. Once final real estate needs are determined, meetings will be arranged with the appropriate stakeholders."¹⁸

The former Secretary also stated: "At this early stage, DHS does not know and cannot reasonably forecast the timeline for acquiring the land necessary to fulfill the requirements of Executive Order 13767."¹⁹ DHS confirmed this as recently as September 2017, when it informed the Committee: "DHS cannot state with certainty how many parcels of unacquired land have been identified for the border wall. DHS is ... start[ing] landownership research and will not have a definitive answer until that process is complete."²⁰ This statement echoed information provided to the Committee on July 10, 2017, during a staff-level briefing at which a CBP official said that land acquisition posed an ongoing challenge and that title research may "never be finalized."²¹

Administration officials have acknowledged concerns involving title research throughout the consideration of border wall construction. As early as January 25, 2017, in response to questions from Democratic staff of the Committee, DHS officials stated, "CBP is not in a position to conduct the necessary title research to identify landownership of current unfenced border area."²² On April 3, 2017, department officials further clarified: "CBP cannot identify the number of land owners or tracts until land

¹⁴ U.S. Customs and Border Protection, *Notification Regarding Landownership Research* (July 25, 2017).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Department of Homeland Security, *Responses to Post-Hearing Questions for the Record Submitted to the Honorable John F. Kelly: "Improving Border Security and Public Safety"* (July 27, 2017).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.S. Department of Homeland Security, *Responses to Post-Hearing Questions for the Record Submitted to the Honorable John F. Kelly: "The Department of Homeland Security Fiscal Year 2018 Budget Request"* (Sept. 20, 2017).

²¹ U.S. Customs and Border Protection, *Briefing with Senate Homeland Security and Governmental Affairs Committee Staff* (July 10, 2017).

²² Email from U.S. Department of Homeland Security, Office of Legislative Affairs, to Senate Homeland Security and Governmental Affairs Democratic Committee Staff (Jan. 25, 2017).

records research is conducted and access is gained to the properties to perform surveys and title work."²³

PRIOR FENCING EFFORTS ILLUSTRATE CHALLENGES ASSOCIATED WITH EMINENT DOMAIN

Past fencing efforts illustrate immense difficulty in securing privately owned land for the construction of border barriers. Just one-third of the approximately 2,000-mile U.S. land border with Mexico is federally or tribally owned. Land along the remaining two-thirds of the border is owned by states or private landowners.²⁴ Much of the private land is in Texas, where just 115 miles of the state's 1,254-mile border with Mexico are fenced.²⁵ It is estimated that well over 1,000 parcels of privately held property exist along the Texas-Mexico border.²⁶

The federal acquisition of privately owned land has posed significant challenges during prior fence deployment efforts, particularly in South Texas, and will continue to impede future border wall construction. In one past fencing project, CBP spent approximately \$78 million on land acquisition along 211 miles of the southwest border.²⁷ More than 600 distinct tracts of property had to be acquired for the project. According to CBP, 330 condemnation lawsuits were filed in U.S. District Court, primarily in the Southern District of Texas. Although most of the 330 condemnation lawsuits were filed in 2008 and 2009, approximately 90 cases are still pending.²⁸ The projected total cost of resolving the pending lawsuits is \$21 million.²⁹

In the past, condemnation cases for land along the border have required significant lengths of time to resolve, and the federal government's payments to landowners have often significantly exceeded initial offers. Although CBP informed the Committee in March 2017 that it expected land acquisition associated with the President's border wall proposal to take 12 to 24 months to complete,³⁰ this expectation does not align with past experience. It took nearly four years on average to resolve 167 condemnation cases filed in Hidalgo County, Cameron County, and Starr County, Texas, according to data compiled by NPR.³¹ The government also paid significantly more than it initially offered landowners for cases that were the subject of condemnation lawsuits. According to an analysis of 167 cases that were settled in the Southern District of Texas, the average settlement amount per case was \$69,229.³² In one case in Cameron County, Texas, a landowner was initially offered \$233,000 for 3.1 acres. After a three-year legal battle, the government eventually paid at least \$4.7 million, a nearly 2,000% increase over the initial offer.³³

Conducting title research and establishing landownership can be particularly difficult in South Texas, where land grants issued by the King of Spain in the mid-1700s predate the formation of the United

²³ Email from U.S. Department of Homeland Security, Office of Legislative Affairs, to Senate Homeland Security and Governmental Affairs Democratic Committee Staff (Apr. 3, 2017).

²⁴ U.S. Government Accountability Office, *Southwest Border: Issues Related to Private Property Damage* (GAO-15-399) (Apr. 2015).

²⁵ Email from U.S. Customs and Border Protection, Office of Congressional Affairs, to Homeland Security and Governmental Affairs Committee Staff (Apr. 18, 2017); Texas Department of Transportation, Texas-Mexico Border Crossings (<http://www.txdot.gov/inside-txdot/projects/studies/statewide/border-crossing.html>) (accessed Aug. 5, 2017).

²⁶ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Efrén Olivares, Racial and Economic Justice Director, Texas Civil Rights Project (July 26, 2017).

²⁷ Email from U.S. Customs and Border Protection, Office of Congressional Affairs, to Senate Homeland Security and Governmental Affairs Democratic Committee Staff (Apr. 18, 2017).

²⁸ *Id.*

²⁹ U.S. Customs and Border Protection, Briefing with Senate Homeland Security and Governmental Affairs Committee Staff (Mar. 27, 2017).

³⁰ *Id.*

³¹ *Landowners Likely to Bring More Lawsuits as Trump Moves on Border Wall*, NPR (Feb. 23, 2017) (www.npr.org/2017/02/23/516895052/landowners-likely-to-bring-more-lawsuits-as-trump-moves-on-border-wall).

³² *Id.*

³³ *Landowners on Border Say They Were Shortchanged*, Associated Press (Oct. 15, 2012) (www.usnews.com/news/us/articles/2012/10/15/landowners-on-border-say-they-were-shortchanged).

States and Texas's admittance into the Union.³⁴ According to CBP, common difficulties include cases where there are multiple owners of a single tract of land, situations where landownership is in dispute, and instances where landowners cannot be identified due to faulty recordkeeping of historic title transfers.³⁵

PAYMENT FOLLOWING THE EXERCISE OF EMINENT DOMAIN MAY NOT ADEQUATELY COMPENSATE LAND OWNERS

Several Texas landowners that the Democratic staff of the Committee interviewed can attest to the challenges associated with border barrier construction and the inadequacy of just compensation following the exercise of eminent domain by the federal government.

Ray Loop

On the outskirts of Brownsville, Texas, about one mile from the Rio Grande River, an 18-foot-tall steel fence bisects the Loop family farm.³⁶ In South Texas, where the centerline of the Rio Grande River demarcates the international boundary with Mexico, existing fencing was often installed hundreds of feet from the river's edge, on levees, to avoid construction in the floodplain. In some instances, fencing was built as far as two miles north of the river, creating wide swaths of privately owned property that some South Texas residents refer to as "No Man's Land."³⁷

For the Loop family, the fence that was built nearly 10 years ago divided roughly 900 acres in two. North of the fence, Ray Loop's father grew orange and grapefruit trees.³⁸ South of the fence, Mr. Loop and his brother grew soybeans, watermelons, and other produce.³⁹ The house where Mr. Loop lived with his wife and three daughters was trapped south of the fence in "No Man's Land." To access his property, Mr. Loop had to enter a code into an electronic keypad, opening a large metal gate sealing a gap in the fence.

Mr. Loop informed Democratic staff of the Committee that the government did not consider the impact the fence would have on land lying south of the fence when it initially attempted to determine fair market value. "When the Army Corps of Engineers made their assessment, they were evaluating four-and-a-half acres along the levee," he explained. "They ignored the devaluation of 600 acres south of the fence."⁴⁰ Mr. Loop said that, after the fence was constructed, he tried unsuccessfully to borrow money for his daughters' education using the equity in his home as collateral, but "There wasn't a lending institution that would touch me," he said.⁴¹ On January 11, 2017, the home that Mr. Loop and his family lived in was destroyed by fire.⁴² Mr. Loop said firefighters were slow to respond to the blaze because the 18-foot fence on his property blocked their entry.⁴³

³⁴ *Trump's Border Wall May Divide Families' Land Settled Since the Spaniards*, NBC News (May 25, 2017) (www.nbcnews.com/news/latino/texas-land-settled-spaniards-coveted-trump-border-wall-n763296).

³⁵ U.S. Customs and Border Protection, *Notification Regarding Landownership Research* (July 25, 2017).

³⁶ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Ray Loop (Mar. 29, 2017).

³⁷ *Id.*

³⁸ *All Walled Up: How Brownsville's Battle Against the Federal Government's Border Fence Ended in Defeat and Disillusionment*, Texas Observer (Jan. 21, 2010) (www.texasobserver.org/all-walled-up/).

³⁹ *Some Angry Texans Are Stuck South of the Border*, Los Angeles Times (Feb. 28, 2011) (<http://articles.latimes.com/2011/feb/28/nation/la-na-texas-fence-20110228>).

⁴⁰ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Ray Loop (Mar. 29, 2017).

⁴¹ *Id.*

⁴² *US Family Stranded on South Side of Border Fence*, CNN (Apr. 4, 2017) (www.cnn.com/2017/04/04/us/eminent-domain-us-mexico-border-loop-family/index.html).

⁴³ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Ray Loop (Mar. 29, 2017).

Sergio Garcia

The federal government has the authority to take private property and begin construction before landowners receive compensation.⁴⁴ In instances in 2007 and 2008 when CBP could not reach a settlement on fair market value, attorneys for the Department of Justice filed Declarations of Taking in U.S. District Court. According to CBP, a number of these Declarations of Taking were filed simply to establish ownership of the property in question.⁴⁵ Under federal law, Declarations of Taking must state the amount of money the government considers to be just compensation for the land being taken.⁴⁶ After depositing that amount of money in the court registry, the land can be condemned and construction activities can commence—even before the landowner receives compensation.⁴⁷

This happened to Sergio Garcia, who lives with his mother, Maria, and aunt, Raquel, in a small house outside of San Benito, Texas. Mr. Garcia reported to the Democratic staff of the Committee that around 2008, the government acquired a strip of land about 50 feet from the backdoor of the house after determining the land was worth approximately \$1,000.⁴⁸ A steel fence was erected on top of a concrete levee in the family's backyard, but, according to Mr. Garcia, his mother and aunt have not yet been compensated. “Why they haven't moved any further on it, I'm not sure,” Mr. Garcia said. “I don't think the government had any idea how much this was going to cost—not just the construction, but all of the other matters involving the whole process.”⁴⁹

Noel Benavides

Despite years of correspondence with the federal government, fencing has not yet been built on land owned by Noel Benavides' family in Roma, Texas. According to Mr. Benavides, the roughly 150-acre property, with abundant wildlife, ample fishing, and “a beautiful wooded ecosystem that cannot be replaced,” has about one mile of frontage along the Rio Grande River. It was part of a Spanish land grant issued to his wife's ancestors in 1767. Mr. Benavides, a former scoutmaster, remembers camping trips on the property and large Easter picnics with his family. “My children enjoyed the river tremendously,” he said. “My grandchildren can no longer do that.”⁵⁰

Mr. Benavides said he first began receiving letters from the federal government seeking a 5-acre strip of land that cuts through his property in or around 2007.⁵¹ Condemnation proceedings were initiated in June 2008. For years, Mr. Benavides ignored government correspondence. He said that, eventually, the letters stopped—until February 2017 when he received notification from U.S. District Court that the complaint against his family had been amended.⁵²

If a continuous wall were built along the 5-acre strip of land the government is seeking, as much as 30 acres of the Benavides family's land would be trapped on the south side of the wall. “What value can you put on a property behind a wall?” Mr. Benavides asked.⁵³ He questioned

⁴⁴ 40 U.S.C. § 3114.

⁴⁵ U.S. Customs and Border Protection, Briefing with Senate Homeland Security and Governmental Affairs Committee Staff (July 10, 2017).

⁴⁶ 40 U.S.C. § 3114(a)(5).

⁴⁷ 40 U.S.C. § 3114(b).

⁴⁸ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Sergio Garcia (July 28, 2017).

⁴⁹ *Id.*

⁵⁰ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Noel Benavides (July 28, 2017).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

how the reduction in value of his property would impact public entities that rely on property tax revenue, such as the Roma Independent School District.⁵⁴

Mr. Benavides declined to inform Democratic Committee staff of the amount of money the government has offered his family for their land, stating only, “they’re not offering just compensation.”⁵⁵ He added, “They could offer me a billion dollars, and I wouldn’t take it.”⁵⁶

Mauricio Vidaurri

About 70 miles northwest of Roma, in Zapata County, Texas, Mauricio Vidaurri is also worried about the ramifications of the wall that President Trump has ordered. Mr. Vidaurri has not received any indication that the federal government is interested in buying his property, but, as someone who owns land along the border, he is still concerned. “If we get a letter from the Army Corps of Engineers, that’s it,” Mr. Vidaurri said. “We’re going to lose our land.”⁵⁷

Like Mr. Benavides, Mr. Vidaurri owns land that was part of a Spanish land grant dating back to the 18th Century. The land was divided and subdivided as it passed from one generation to the next. When Mr. Vidaurri’s father died in 2015, he inherited approximately 140 acres, on which he grows hay. Mr. Vidaurri irrigates his land using water from the Rio Grande River. “Without access to that water pump—our access to the river—our operations are dead,” he said. “How are we going to water our land?”⁵⁸

Mr. Vidaurri also wonders what will become of a family cemetery that lies close to the river’s edge. Mr. Vidaurri’s great-grandfather, grandfather, and father are all buried in the cemetery. His father was a World War II veteran who was wounded in the Battle of Iwo Jima. “My father shouldn’t have to sacrifice twice,” Mr. Vidaurri said. “He served this country, and he bled for this country. We think it would be very disrespectful to keep him out behind a fence or a wall.”⁵⁹

THE ADMINISTRATION PLANS TO HIRE ADDITIONAL LAND ACQUISITION ATTORNEYS FOR UPCOMING “SURGE” IN CONDEMNATION CASES

The President’s FY 2018 budget proposal requests \$1.8 million for 20 new positions, including 12 land acquisition attorneys, in the Department of Justice’s Environment and Natural Resources Division (ENRD).⁶⁰ The congressional budget justification for ENRD states that “hundreds of miles of new fencing and border wall ... will be constructed,” and that “hundreds or thousands of parcels of land are needed” to facilitate the construction.⁶¹ The congressional justification states that attorneys in ENRD’s Land Acquisition Section will assist CBP and the Army Corps of Engineers with real estate identification, negotiations with landowners, appraisals, surveys, and legal filings.⁶²

The congressional budget justification also states that ENRD attorneys will review all condemnation lawsuits that are filed in U.S. District Court; train Assistant U.S. Attorneys and Army Corps of Engineers realty staff who are not familiar with federal condemnation practice; provide initial case pleadings,

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Senate Homeland Security and Governmental Affairs Committee, Democratic Staff, Interview of Mauricio Vidaurri (July 24, 2017).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ U.S. Department of Justice, Environment and Natural Resources Division, *FY 2018 Performance Budget Congressional Justification* (www.justice.gov/file/968711/download).

⁶¹ *Id.*

⁶² *Id.*

draft legal briefs, argue motions, and conduct hearings “for the initial surge of cases”; and handle cases with valuations in excess of \$1 million, political sensitivities, or complex legal, valuation, or title matters.⁶³

In addition to staffing increases planned at the Department of Justice, the President’s budget request for the Office of Chief Counsel within CBP would provide \$57.6 million in funding for 380 positions in FY 2018.⁶⁴ The FY 2018 congressional justification for CBP anticipates “an unprecedented increase in legal support in real property, procurement, fiscal law, as well as overall programmatic support” for its Office of Chief Counsel.⁶⁵ The congressional justification further states that the Office of Chief Counsel will provide “significant litigation support in defense of various challenges to the construction of the physical wall as well as in the condemnation of land along the southwest border.”⁶⁶

CONCLUSION

The personal experiences of Ray Loop, Sergio Garcia, Noel Benavides, and Mauricio Vidaurri; complications associated with previous fence deployment efforts; and planned staffing increases at the Department of Justice and CBP illustrate a point that DHS itself has made: “Real estate acquisition for border fence construction is a very complex issue, particularly in Texas.”⁶⁷ Before spending billions of taxpayer dollars on the construction of a wall along the southwest border, CBP, DHS, and the President have an obligation to Congress – and to the American people – to address questions related to land acquisition that, to date, remain unanswered.

⁶³ *Id.*

⁶⁴ U.S. Department of Homeland Security, *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Email from U.S. Department of Homeland Security, Office of Legislative Affairs, to Senate Homeland Security and Governmental Affairs Democratic Committee Staff (Jan. 25, 2017).