

United States Senate

WASHINGTON, DC 20510

January 17, 2019

The Honorable Kirstjen Nielsen
Secretary
Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20528

Dear Secretary Nielsen:

We write today to express our concerns regarding the Trump Administration's efforts to exercise the power of eminent domain against the Roman Catholic Diocese of Brownsville, Texas and other religious organizations in support of building a wall along the southwestern border of the U.S. We request that you provide transparency regarding how many religious organizations and American citizens will have their land seized so that President Trump can build his border wall.

In October 2018, the Department of Justice, on behalf of Customs and Border Protection, sued the Diocese demanding an easement of property in the Rio Grande Valley owned by the Catholic Church to begin preparatory work needed to plan a barrier on the border.¹ The affected property includes La Lomita Chapel, a 153-year old structure created by missionaries from the Oblates of Mary Immaculate and referred to by parishioners as their "mother church."²

The Diocese challenged the Trump Administration's exercise of eminent domain on religious grounds. The Diocese is unable to consent to an easement or to any other action that would facilitate the construction of a border wall on its property because the proposed border wall is "fundamentally inconsistent with Catholic values and, if completed, would substantially burden the free exercise of religion by restricting access to La Lomita Chapel, a sacred site of the [Rio Grande] Valley's Catholic community."³

The Trump Administration's lawsuit against the Diocese raises important questions on the exercise of eminent domain to build a border wall and the impact it will have on religious organizations and American taxpayers. According to a report released by the minority staff of the Senate Committee on Homeland Security and Governmental Affairs, the Trump administration has been unable to provide specific information regarding how many American citizens will have their land seized, definitive real estate costs or requirements, or a timetable for completing

¹ Defendant Roman Catholic Diocese of Brownsville's Supplemental Brief in Opposition to Plaintiff's Motion for Immediate Possession, *U.S. v. Roman Catholic Diocese of Brownsville et al.*, No. 7:18-CV-329 (Dec. 31, 2018).

² *Id.*

³ *Id.*

land acquisition efforts necessary to build President Trump's border wall.⁴ In addition, landowners whose land was taken through eminent domain during prior border efforts told Congress that the federal government did not provide just compensation for their property and—in some instances—were still waiting to be compensated for takings that occurred nearly a decade ago.⁵

Given that 67 percent of the land along our southwest border belongs to entities other than the federal government, we are troubled that President Trump has not provided any estimates regarding the impact of using eminent domain to build a border wall. We are particularly concerned by President Trump's praise of the seizure of privately-owned property, calling eminent domain "wonderful" and "absolutely necessary."⁶ In addition, although required by law, the Department of Homeland Security has not yet provided Congress with a plan to consult local elected officials on the eminent domain process relating to physical barriers along the border.⁷

The federal government must exercise extreme caution when seizing private property, especially with respect to sacred sites like La Lomita Chapel. Even then, eminent domain should not be invoked in violation of any religious organization's First Amendment right of free exercise of religion, Fifth Amendment right to just compensation for any public taking of private property, or the Religious Freedom Restoration Act.

To better understand how President Trump's exercise of eminent domain to build a border wall will impact religious organizations and American citizens, we ask that you respond to the following questions by January 31, 2019:

1. How many religious organizations and American citizens will have their land seized through the exercise of eminent domain to build a border wall?
2. What are the estimated real estate costs or requirements for land seizures from religious organizations and American citizens through the exercise of eminent domain to build a border wall?
3. What is the estimated timetable for completing land acquisition efforts necessary to build a border wall?

⁴ *Eminent Domain: Administration Lacks Plans or Cost Estimates for Land Seizures Necessary to Construct Border Wall*, Minority Staff of the Senate Committee on Homeland Security and Governmental Affairs (Nov. 13, 2017) (accessible at <https://www.hsgac.senate.gov/imo/media/doc/REPORT-Eminent-Domain-Administration-Lacks-Plans-or-Cost-Estimates-for-Land-Seizures-Necessary-to-Construct-Border-Wall.pdf>).

⁵ *Id.*

⁶ *Donald Trump: 'Eminent Domain is Wonderful'*, National Review (Oct. 7, 2015) (accessible at www.nationalreview.com/article/425212/donald-trump-eminent-domain-wonderful-jim-geraghty); *Transcript: Eighth Republican Debate, New Hampshire 2016*, CBS News (Feb. 7, 2016) (accessible at www.cbsnews.com/news/transcript-eighth-republican-debate-new-hampshire-2016/).

⁷ Section 231 of the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141).

4. Has the Department ever waived, or does it plan to waive, the requirements of the Religious Freedom Restoration Act to build a border wall?

Thank you for your prompt attention to this matter.

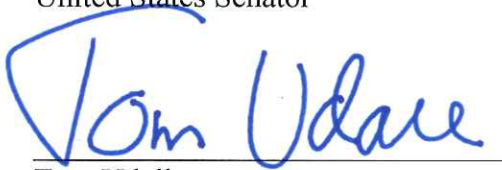
Sincerely,



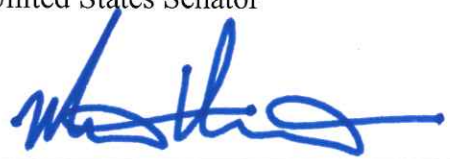
Charles E. Schumer
United States Senator



Richard J. Durbin
United States Senator



Tom Udall
United States Senator



Martin Heinrich
United States Senator

cc: The Honorable Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection