



SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

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October 7, 2008

Santiago A. Canton
Executive Secretary
Inter-American Commission on Human Rights
1889 "F" Street, N.W.
Washington, DC 20006

VIA FACSIMILE: (202)458-3992
AND OVERNIGHT MAIL

**RE: General Hearing on the Texas/Mexico Border Wall
October 22, 2008, 4:30 to 5:30 pm**

Dear Secretary Canton:

I am pleased to write in response to the letter directed to me by the Inter-American Commission on Human Rights (the "Commission") on September 22, 2008 granting our request for a hearing to address the human rights violations implicated in the construction by the United States of a border wall on the Texas/Mexico border. I am very pleased to confirm the attendance of the University of Texas Working Group on Human Rights and the Border Wall ("Working Group") at the hearing on this issue that the Commission has scheduled for October 22, 2008. The delegation of presenters will include:

Denise Gilman, Clinical Professor, University of Texas School of Law

Jeff Wilson, Assistant Professor, University of Texas at Brownsville

Margo Tamez, Scholar, Co-Founder of Lipan Apache Women Defense-Strength, and member of the Tamez family, which holds property on the Rio Grande River that dates back to an 18th century land grant from the Spanish crown and that is now scheduled to be taken by the United States government for construction of the wall

We expect that additional faculty and student members of the Working Group will attend the hearing and will be available to respond to questions by the Commission, to the extent helpful and appropriate. These additional members include: Jude Benavides (Assistant Professor, The University of Texas at Brownsville); Ariel Dulitzky (Visiting Professor, The University of Texas School of Law; Associate Director, Rapoport Center for Human Rights and Justice); Karen Engle (Professor, The University of Texas School of Law; Director, Rapoport Center for Human Rights and Justice); Barbara Hines (Clinical Professor, The University of Texas School of Law); Shannon Speed (Assistant Professor, Department of

Anthropology, The University of Texas); Melinda Taylor (Clinical Professor, The University of Texas School of Law); Karla Vargas (Master's Degree Candidate, LBJ School of Public Affairs; JD Candidate, The University of Texas School of Law); and Zachary Hurwitz (Masters Degree Candidate, Geography Department, The University of Texas).

As requested in the Commission's letter of September 22, 2008, I am attaching a written document summarizing the main points of the presentation that we will make at the hearing scheduled for October 22, 2008. In addition, I am attaching as background for the hearing a copy of the briefing papers on the Texas/Mexico border wall prepared by the Working Group and previously submitted to the Commission in June 2008. These papers can also be found at: <http://www.utexas.edu/law/academics/centers/humanrights/publications/>. The Working Group will likely submit additional statements and updated materials prior to the hearing.

Thank you very much for providing us this important opportunity to provide information regarding the Texas/Mexico border wall during the 133rd period of sessions of the Commission. Please do not hesitate to contact me if I may provide you with any further information regarding the hearing or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Gilman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Denise Gilman

Attachments



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**Presentation:
General Hearing on the Texas/Mexico Border Wall
October 22, 2008
4:30-5:30 pm
Room Padilha Vidal A**

The United States is in the process of constructing a massive wall along the Texas/Mexico border. Violations of human rights are already occurring as preparations are made for construction of the wall, and further serious violations are imminent as construction moves forward.

The United States Congress mandated construction of 670 miles of wall along the border between the United States and Mexico in the Secure Fence Act of 2006 and the Consolidated Appropriations Act for FY2008 and further mandated that 370 miles of that wall be constructed by December 31, 2008. The Department of Homeland Security plans to fulfill this mandate by constructing hundreds of miles of wall along the Texas/Mexico border before the end of 2008.

The United States' plans for the wall have generated significant opposition and clamor for further consultation and deliberation, coming from within the United States and internationally. Many small landowners living along the river, who would see their properties divided in two by the wall, have struggled to defend themselves against the United States government's condemnation proceedings. A number of municipalities along the Texas/Mexico border have joined a class action suit against the United States government asserting that the United States failed to properly consult with individuals and communities affected by the wall or to negotiate fairly regarding the taking of land. Mexico has adopted a formal position against the wall as an affront to the climate of cooperation and joint responsibility that it believes should exist with the United States and has received support for this position from other Latin American countries. In 2006, the Mexican government presented a declaration against the wall at the Organization of American States that received the support of 27 other countries. Mexico also obtained a resolution at the Summit of the Americas urging the United States to reconsider its decision to build a wall. Other State entities, such as the Senate of Chile, have condemned the wall as well. Yet, the United States has not modified its plans to move forward with the wall, making this situation urgent.

The violations of human rights resulting from the border wall plans include:

Articles II and XXIII of the American Declaration on the Rights and Duties of the Man ("American Declaration") guaranteeing equality before the law without distinction as to race, sex, language, creed or any other factor and guaranteeing the right to private property.

To build the wall, the United States is taking property that has been held by families for generations, in some cases dating back to Spanish and Mexican land grants from the 1700s and 1800s. Yet, the State is taking this property in an arbitrary and unjustified manner without properly considering other alternatives for controlling the border. The United States government has not explained why it is necessary to take property to build a border wall to meet the goals of impeding immigration and protecting national security. U.S. officials agree that the border wall will stop intending immigrants only for a matter of minutes and cannot point to national security breaches on the southern border of the United States. Nor has the U. S. government explained the rationale behind the placement of an intermittent fence in particular areas and not in others. The United States therefore cannot assert that the border wall, which violates property rights, is proportional and necessary to the goals it is said to meet.

In addition, the United States is treating property owners on the border unequally. Numerous small landowners will lose property to the wall while more lucrative developed properties and resorts are not included in the wall's path. A statistical analysis conducted by Professor Jeff Wilson of the working group demonstrates that the property owners impacted by the wall are poorer, more often Latino and less educated than those not impacted who also live along the border.

The wall will also negatively impact Native American communities, including individual landowners who are Lipan Apache and the federally recognized Kickapoo and Ysleta del Sur tribes that live and practice their traditional cultures and religions along the Texas/Mexico border. The Inter-American system has repeatedly recognized the unique and vitally important rights to property and equal protection guaranteed to members of indigenous communities. Yet, the United States has not adequately considered the impact of the wall on indigenous communities in its construction plans.

Article IV of the American Declaration guaranteeing the right to freedom of investigation, opinion, expression and dissemination.

The United States has not acted with transparency regarding its plans to build the border wall. The United States has failed to provide specific information regarding the exact locations for the wall or to explain the rationale for those locations. It has been extremely difficult for anybody outside the United States government to determine even how much and what type of wall is planned in which regions. In April 2008, the Working Group at the University of Texas filed requests under the Freedom of Information Act for documents and maps that would show the planned locations for the border wall and for records that might explain why the United States had decided to place the wall in certain areas rather than others as well as any information reflecting consideration given to the impact of the wall on Native American communities. As of this date, the United States government has failed to provide a single document or record, although federal law requires U.S. agencies to release information in response to a request under the Freedom of Information Act in a period of 20 days. The lack of transparency violates the right to freedom of investigation and dissemination. The paucity of

information also makes it much more difficult to define the exact contours of other violations of rights, such as the right to property, since it is not even possible to identify all victims and impacts of the wall.

The lack of information also negatively affects the right of impacted individuals to be consulted and to express an opinion about the border wall. The “consultations” carried out by the United States have been characterized by this lack of transparency regarding critical information as well as by a lack of possibility for discussion of the relevant issues. Attendees at the handful of public meetings organized by United States government officials have consistently reported that private citizens had no opportunity to enter into any sort of dialogue or question-and-answer discussion with government officials regarding the border wall. Rather, participants listened to prepared statements by officials, which lacked detail, and then were told to record their comments in writing or online. The lack of transparency and dialogue violates Article IV and has also made it impossible for the United States to comply with its obligation under the American Convention to ensure that no less restrictive alternatives to the wall exist and its obligation under International Labor Organization Convention No. 169 to consult with affected indigenous communities.

Articles V and XIII of the American Declaration protecting the right to private and family life and to culture.

The construction of a wall will irreparably damage a centuries-old culture in which families live and work on both sides of the Rio Grande River, which now constitutes the border between Texas and Mexico. The wall necessarily makes a powerful statement of separation of a community that has traditionally treated the border as a meeting point rather than a dividing line.

The communities along the border have also always treated the Rio Grande River dividing Mexico and Texas and its wildlife as an important part of their culture. According to experts, the wall will cause severe environmental degradation of these cultural treasures.

In addition, the wall impacts indigenous culture in violation of the norms guaranteeing special protections to the traditions of Native Americans. For example, the United States government’s own analyses recognize that the wall will impinge upon traditional ceremonies conducted by the Ysleta del Sur tribe along the banks of the Rio Grande River.

Article XVIII of the American Declaration guaranteeing the right to judicial protection.

The possibilities for a court challenge to the taking of property and construction of the border wall are extremely limited. For example, federal law gives the Secretary of the Department of Homeland Security (“DHS”) the authority to invoke the importance of border wall construction to overlook a long list of federal statutes that would normally apply to protect indigenous rights and the environment. DHS Secretary Michael Chertoff has exercised this authority

and has waived all applicable environmental laws and several laws guaranteeing indigenous rights, such as the Native American Graves Protection and Repatriation Act (NAGPRA). Thus far, the Supreme Court of the United States has declined requests to analyze the constitutionality of the broad grant of authority to the Secretary of DHS to issue these waivers. The United States has thus stripped away, in relation to the border wall, judicial protection that it otherwise provides.

Similarly, the Consolidated Appropriations Act for FY 2008 requires consultation with property owners, Indian tribes and local governments regarding the impact of the wall. However, the same provision clarifies that the consultation mandate creates no enforceable rights.

Property owners and members of indigenous communities affected by the wall face a blatant lack of judicial protection against actions of the United States affecting their land and culture. In addition, through its waivers of environmental laws, the United States has failed in its obligation to consider environmental harm and to take measures to limit likely damage. See I/A Comm. H.R., Report N° 40/04, Case 12.053, Maya Indigenous Community (Belize), Annual Report of the Inter-American Commission on Human Rights 2004, para. 147.

Finally, the U.S. government is violating the right of indigenous communities to enforce treaties and agreements, as supported by Article 37 of the United Nations Declaration of the Rights of Indigenous Peoples. The Native American tribes of Texas affected by the border wall are parties to various treaties, which guarantee protection of their civil and human rights. Yet, these rights have not been respected. In addition, by agreement with the United States government, at least one indigenous tribe in Texas—the Kickapoo—has been guaranteed the right to cross freely back and forth from Texas to Mexico, a right which will almost certainly be derogated or limited by the construction of a border wall.

At the hearing, Denise Gilman will present the findings of the University of Texas Working Group on the human rights impacts of the Texas/Mexico border wall as well as the difficulties the group has faced in obtaining information from the United States. In addition, Jeff Wilson will present a detailed analysis of the equal protection violations revealed in the statistical study of the properties to be affected by the wall. Margo Tamez will provide testimony relating to her experience as an affected property owner of indigenous Lipan Apache heritage whose land along the Texas/Mexico border has been held in the family for several hundred years.