

3-17-2008

Order of dismissal - Civil Action No. B-08-56

United States. District Court (Texas: Southern District)

Andrew S. Hanen

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

MAR 19 2008

Michael N. Milby
Clerk of Court

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
37.52 ACRES OF LAND, more or less,)
situate in CAMERON COUNTY, STATE)
OF TEXAS; and TEXAS SOUTHMOST)
COLLEGE DISTRICT, ET AL.)

Civil Action No. B-08-56

ORDER OF DISMISSAL

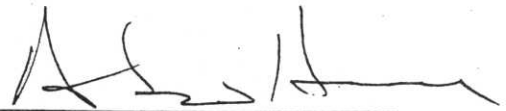
On this day, the Court considered Plaintiff's Motion for Order for Immediate Delivery of Possession (Docket No. 4) and ORDERS as follows:

1. This Order is without prejudice to Defendants' rights to later assert statutory and/or constitutional challenges to the condemnation of an interest in any property in which Defendants have an interest.
2. Plaintiff's employees and contractors shall have the right to enter upon the property described in Exhibit "C" to Plaintiff's Declaration of Taking (Docket No. 2) for the purpose of assessing methods of securing operational control of the border through the use of tactical infrastructure. Separate and apart from this eminent domain proceeding, Plaintiff, acting through the Department of Homeland Security, will jointly assess with Defendants alternatives to a physical barrier. Plaintiff's studies may include environmental assessments and property surveys, including the right to temporarily store, move and remove necessary equipment and supplies; survey, stake out, appraise, bore and take soil and/or water samples, and perform any other such work which may be necessary and incidental to Plaintiff's assessment, subject to the limitations described in this Order. This Order specifically authorizes Plaintiff to conduct such studies as are required to consult with Defendants. However this order would not require a written report.
3. In conducting its studies, Plaintiff will consider Defendants' unique status as an institution of higher education. Specifically, pursuant to 8 U.S.C. § 1103, Note, Pub. L. 110-161, Div. E., Title V § 564(a), Plaintiff will conduct such investigations as will permit it to consult

with Defendants 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 property subject to this Order.

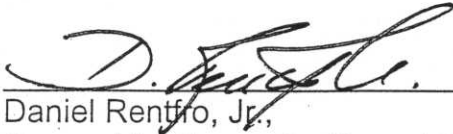
4. Recognizing that the property is part of a university campus, Plaintiff will take all reasonable action to promote safety and minimize any impact on the educational activities thereon.
5. Plaintiff is granted access to the property for six months.
6. The rights granted herein include the right of ingress and egress on other lands of the Defendants not described in this Order, provided such ingress and egress is necessary to access the property and is not otherwise conveniently available to Plaintiff. Plaintiff shall give Defendants prior notice of all activities on the property and shall coordinate entry to the property with Defendants and Defendants' police department.
7. All tools, equipment, and other property taken upon or placed upon the land by Plaintiff shall remain the property of the Plaintiff and may be removed by the Plaintiff at any time up to the expiration of Plaintiff's right of access.
8. If any action of the Plaintiff's employees or agents damage real property, Plaintiff will, at its option, either repair such damage or make an appropriate settlement with the Defendants. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. Plaintiff's liability for damage may not exceed appropriations available for such payment. The provisions of this Order are without prejudice to any rights the Defendants may have to make a claim under applicable laws for any other damages. To the extent possible, the Government shall use contractors that have appropriate liability insurance.
9. Plaintiff will not clear land, mow grass, or otherwise alter the physical landscape of the property without Defendants' consent.
10. The Clerk is ordered to close this case on the docket. However, the Court retains jurisdiction to resolve interpretations of this Order, or any claims for damages under paragraph 8.

Signed this 15th day of March, 2008.

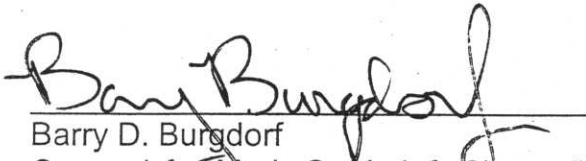


Andrew S. Hanen
United States District Judge

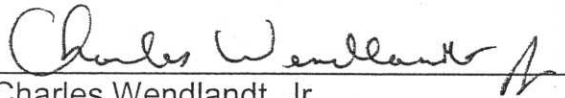
AGREED:



Daniel Rentfro, Jr.,
Counsel for Texas Southmost College District



Barry D. Burgdorf
Counsel for Mark G. Yudof, Chancellor, The University of Texas System; The Board of Regents of The University of Texas System and The University of Texas at Brownsville



Charles Wendlandt, Jr.
Counsel for The United States of America