TRUE NORTH LAW
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Via email to: amanda.rudat@usdoj.gov

Amanda Rudat
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Environment & Natural Resources Division
Post Office Box 7611
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Re: *Castillo v. United States*, No. 16-1624, and *Menendez v. United States*, No. 17-1931

Dear Amanda,

I am responding to the Justice Department's recent emails concerning our efforts to reach an agreement for the pre-trial schedule and date of a trial to determine the compensation these owners are due. The government's constitutional obligation to pay these owners "just compensation" for the taking of their private property has been decided. See *Castillo v. United States*, 952 F.3d 1311, 1325 (Fed. Cir. 2020), *reviewed on remand*, 166 Fed. Cl. 299, 366 (2023). See also *Castillo v. United States*, No. 16-1624, ECF No. 113 (Order of Nov. 18, 2023, denying government's motion for reconsideration).

The federal government took these owners' private property shortly before Thanksgiving Day in 2016. It is now 2024. November 2016 is more than eight years ago. But, rather than acknowledge its obligation to pay these owners for what it took, the Justice Department chose to engage in a protracted – and very expensive – series of unsuccessful challenges to the government's obligation to pay these owners. The government lost on all counts. The Federal Circuit rejected all of the Justice Department's arguments, and the matter was remanded to the Court of Federal Claims for the task of determining the specific

compensation the government owes each of the twenty landowners in *Castillo* and *Menendez*. See *Castillo*, 952 F.3d at 1325.

Following remand by the Federal Circuit, the Justice Department now wants to protract this litigation further, and (as I understand the Justice Department's position) the government wants to depose each and every one of the twenty landowners. The Justice Department is seeking to turn the determination of that compensation due these Florida landowners into a multi-million-dollar endeavor – and this after already incurring millions in litigation expenses unsuccessfully challenging the government's liability. As I believe you know, many of these Florida landowners' native language is not English and to depose these owners, or have them testify at trial, will require that the government pay for an interpreter. To take the deposition of all these landowners with an interpreter and to have these landowners testify at trial, with an interpreter, will be a substantial additional expense. And it will be an expense the government must pay upfront and not part of the litigation costs the government must pay at the conclusion of this litigation.

The immediate task the court has requested the parties to undertake is to agree upon a schedule to resolve the compensation the government owes the owners of these twenty properties. You and your colleagues at the Justice Department and the counsel for the landowners have conferred and discussed this matter. The landowners' counsel has proposed an October trial setting with a proposed pre-trial schedule that complies with the court's pre-trial scheduling rules. The plaintiffs believe mediation would be helpful and are willing and eager to participate in mediation during the pre-trial preparation. But mediation should not delay a trial setting.

As I understand your recent emails, the government will not agree to this proposed trial and pre-trial schedule.

Failing to agree upon a date certain for trial and refusing to agree to a pre-trial schedule will require that we present this matter to the court. I would rather not have the court devote its limited resources to a dispute over a trial setting that we should be able to resolve between counsel. But, if necessary, we will present our position to the court for resolution. Before doing so, however, I think it fair that I share with you and your colleagues at the Justice Department my perspective on this matter and the points we will make should it be necessary to request the court to resolve a dispute about the trial setting and pre-trial schedule.

Fundamentally, it seems to me that the government fails to comprehend two essential facts that inform this litigation. *Fact One*: The Fifth Amendment is a self-executing right these Florida landowners are guaranteed by our Constitution. When the federal government took these Florida landowners' private property in 2016, the federal government violated these owners' constitutional and civil rights. This violation of these owners' civil rights is ongoing until such time as the government finally honors its constitutional obligation to pay these owners that "just compensation" for that property the government took in violation of the Fifth and Fourteenth Amendments. *Fact Two*: the government's payment of "just compensation" must be *prompt*. An almost decade-long delay in paying these owners just compensation *is not prompt*. The government's delay in paying these owners is a further violation of these owners' civil rights.

The government took these owners' private property, and the government has *a categorical* duty to pay these owners just compensation. See, *e.g.*, *Tyler v. Hennepin County*, 598 U.S. 631, 637 (2023) ("The Takings Clause, applicable to the States through the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation."); *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015)

(when the government "depriv[es] the owner of the right to possess, use and dispose of the property," and denies the owner's right to exclude others from his or her property, the government has a "categorical" duty to compensate the owner).

Every day that passes without these owners being paid is a further violation of these citizens' civil rights. See *Knick v. Township of Scott*, 139 S.Ct. 2162, 2170 (2019) ("a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it"); *Cedar Point Nursery v. Hassid*, 141 S.Ct. 1063, 2170-72 (2021). I amplify both these two points below.

In *Folsom v. City of New Orleans*, 109 U.S. 285 (1883), the Fifth Circuit relegated private landowners to a "*Folsom* Prison" in which the government sought to perpetually delay its obligation to pay plaintiffs.[1] In *Folsom*, Justice Harlan wrote, "[t]o withhold from the citizen who has a judgment for money the judicial means of enforcing its collection...is to destroy the value of the judgment as property." *Folsom*, 109 U.S. at 294, 297 (Harlan, J., dissenting). Justice Harlan explained that "[s]ince the value of the judgment, as property, depends necessarily upon the remedies given for its enforcement, the withdrawal of all remedies for its enforcement, and compelling the owner to rely exclusively upon the generosity of the judgment debtor, is, I submit, to deprive the owner of his property. *Id.* at 295.

Justice Harlan continued, "it is said that the plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the city. My

[1] *Folsom* is not a Fifth Amendment case but statutory case. 109 U.S. at 287 (The city's "liability for the damages is created by a law of the legislature, and can be withdrawn or limited at its pleasure.").

answer is, that such liability upon the part of the city is of no consequence, unless, when payment is refused, it can be enforced by legal proceedings." *Id.* (citing *Pumpelly v. Green Bay & Mississippi Canal Co.*, 80 U.S. 166, 177 (1871)).[2]

Justice Brennan followed Justice Harlan's example, dissenting in *San Diego Gas & Electric v. San Diego*, 450 U.S. 621, 654 (1981), when he explained the Fifth Amendment guarantee of just compensation is self-executing:

> *As soon as private property has been taken*, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has already suffered a constitutional violation, and *the self-executing character of the constitutional provision with respect to compensation is triggered.* This Court has consistently recognized that the just compensation requirement in the Fifth Amendment is not precatory: *once there is a "taking" compensation must be awarded*.[3]

Although Justice Brennan's view in *San Diego Gas* was stated in dissent, this Court later recognized its wisdom, expressly adopting Justice Brennan's analysis as the Court's holding in *First English Evangelical Lutheran Church of Glendale v. County of Lost Angeles*, 482 U.S. 304, 318 (1987).[4] As this Court explained in *Knick*,

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[2] Fourteen years following his dissent in *Folsom*, Justice Harlan would write the opinion for this Court in the landmark case of *Chicago, Burlington & Quincy Railroad Co. v. Chicago*, 166 U.S. 226, 241 (1897), applying the Fifth Amendment to the states.

[3] Emphasis added.

[4] This Court in *First English* held, "a landowner is entitled to bring an action in inverse condemnation as a result of 'the self-

> In holding that a property owner acquires an irrevocable right to just compensation immediately upon a taking, *First English* adopted a position Justice Brennan had taken in an earlier dissent. In that opinion, Justice Brennan explained that "once there is a 'taking,' compensation *must* be awarded" because "[a]s soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation."
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> 139 S.Ct. at 2172 (emphasis in original).

The Fifth Amendment's self-executing guarantee of "just compensation" is a principle recognized before the founding of the Republic. The Fifth Amendment's self-executing guarantee of "just compensation," rooted in Magna Carta and mandates that the determination of the compensation due an owner is an "inherently judicial" responsibility that cannot be assumed or barred by the legislature (or the executive branch).[5]

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executing character of the constitutional provision with respect to compensation.'" 482 U.S. at 315 (quoting *United States v. Clarke*, 445 U.S. 253, 257 (1980) (emphasis added).

[5] Chief Justice Roberts explained that the Fifth Amendment right of compensation arises from Magna Carta, stating, "The principle reflected in the [Just Compensation] Clause goes back at least 800 years to Magna Carta.... Clause 28 of that charter forbade any 'constable or other bailiff' from taking 'corn or other provisions from any one without immediately tendering money therefor....' The colonists brought the principles of Magna Carta with them to the New World, including that charter's protection against uncompensated takings of personal property." *Horne*, 576 U.S. at 358. See also *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327-28 (1893).

Blackstone instructed, "The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisition, without any control or diminution, save only by the laws of the land."[6]

Kent similarly observed the constitutional protection of property is a "principle in American constitutional jurisprudence, [that] is founded in natural equity, and is laid down by jurists as an acknowledged principle of universal law."[7] "As Chancellor Kent explained when granting a property owner equitable relief, the Takings Clause and its analogs in state constitutions required that 'a fair compensation must, in all cases, be *previously* made to the individuals affected.'" *Knick*, 139 S.Ct. at 2176.[8] Thus, this Court continued, at the founding,

> [i]f a government took property without payment, a court would set aside the taking because it violated the Constitution and order the property restored to its owner. The Framers meant to prohibit the Federal Government from taking property without paying for it. Allowing the government to keep the property pending subsequent compensation to the owner, in proceedings that hardly existed in 1787, was not what they envisioned.
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> *Id.*

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[6] William Blackstone, *Commentaries on the Law of England* (1768), Book I §§191-92 (the three rights are: "the right of personal security, the right of personal liberty, and the right of private property").

[7] James Kent, *Commentaries on American Law*, Lecture XXXIV.

[8] Quoting *Gardner* v. *Newburgh*, 2 Johns, Ch. 162, 166 (N.Y. 1816) (emphasis added by this Court in *Knick*).

Indeed, a landowner's right to be secure in his property is one of the primary objects for which the national government was formed. In *United States v. Jones*, 565 U.S. 400, 405 (2012), this Court recalled Lord Camden's famous holding in *Entick v. Carrington*, 95 Eng. Rep. 807 (K.B. 1765), a "case we have described as a 'monument of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted...." Quoting Lord Camden, this Court stated, "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave...if he will tread upon his neighbour's ground, he must justify it by law. *Jones*, 565 U.S. at 405.[9] Evoking John Locke, Lord Camden further declared, "The great end, for which men entered into society, was to secure their property."[10]

The Framers drafted our Constitution embracing the Lockean view that "preservation of property [is] the end of government, and that for which men enter into society...." John Locke, *Second Treatise on Civil Government*, Ch. XI §138. Madison declared, "Government is instituted to protect property of every sort.... This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*."[11] In *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972), this Court rightly observed, "the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights.... That

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[9] Quoting *Entick*, 95 Eng. Rep. at 817.

[10] *Entick*, 95 Eng. Rep. at 817. See also James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights* (3rd ed. 2008), p. 4 ("The framers of the Constitution were deeply concerned with the need to safeguard property rights.").

[11] Saul K. Padover, ed., *The Complete Madison* (1953), pp. 267-68 (published in *National Gazette* (March 29, 1792)) (emphasis in original).

rights in property are basic civil rights has long been recognized."[12]

The Supreme Court has long held the Fifth Amendment guarantee of compensation does not depend on the good graces of Congress, explaining landowners are "entitled to bring an action in inverse condemnation as a result of the 'self-executing character of the constitutional provision with respect to compensation'...." *First English*, 482 U.S. at 315. This Court has "frequently repeated...that, in the event of a taking, *the compensation remedy is required by the Constitution*." *Id.* at 316.[13] More recently Chief Justice Roberts declared, "a property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it." *Knick*, 139 S.Ct. at 2170.

In *Monongahela*, the federal government acquired a privately-owned lock and dam. The parties disputed the value of that property the government took. The government argued that Congress determined the amount of compensation the owner was entitled to be paid when Congress passed the legislation authorizing the taking and appropriated a specific sum for compensation. This Court rejected the government's argument and held the determination of "just compensation" is an exclusively judicial inquiry. This Court further held that private property may not be taken "unless a full and exact equivalent for it be returned to the owner." 148 U.S. at 326.

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[12] Citations omitted. See also Ely, *supra*, note 23, p. 9 ("given the framers' concern with protecting property as well as the nearly 150 years of Supreme Court activity in this field, the relegation of property rights to a lesser constitutional status is not historically warranted. The framers did not separate property and personal rights.").

[13] Emphasis added; citations omitted; quoting *Clarke*, 445 U.S. at 257.

Only after the owner has been compensated for the "true value" of his property can "it be said that just compensation for the property has been made." *Id.* at 337. In *Monongahela*, this Court further explained,

> The right of the legislature of a state by law to apply the property of the citizen to a public use, and then to constitute itself the judge of its own case, to determine what is the "just compensation" it ought to pay therefore...*cannot for a moment be admitted or tolerated under our constitution*.
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> 148 U.S. at 327-28 (emphasis added).

In *Seaboard Air Line Ry. v. United States*, the Supreme Court, citing *Monongahela,* held a landowner is "entitled [to] the full and perfect equivalent of the property taken," and the owner must be put "in as good position pecuniarily as he would have been if his property had not been taken."[14] 261 U.S. 299, 304 (1923). The determination of "just compensation" is exclusively a function of the judicial branch. *Monongahela*, 148 U.S. at 327.

In *Cedar Point Nursery*, the Supreme Court, quoting John Adams, reaffirmed the foundational tenet that "[p]roperty must be secured, or liberty cannot exist." 141 S.Ct. at 2071. The Court "noted that protection of private property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for

[14] The Fifth Amendment requires that "when [an owner] surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him." *Monongahela*, 148 U.S. at 325.

them.'" *Id.*[15] Put simply, "[t]he government must pay for what it takes." *Id.*

The government's taking of these Florida landowners' private property and the Justice Department's efforts to delay the government's obligation to pay these Florida landowners evokes the long-established legal principle, *ubi jus, ibi remedium*,[16] elucidated by Blackstone, applied by John Marshall in *Marbury* v. *Madison*,[17] and repeated by John Marshall Harlan in *Folsom*. By denying these Florida landowners the remedy guaranteed by the Fifth Amendment, the Department of Justice has essentially nullified these landowners' fundamental constitutional right to "just compensation." As the Supreme Court explained, "[t]he word 'just' in the Fifth Amendment evokes ideas of 'fairness' and 'equity.'" *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950).

Just compensation indefinitely delayed is just compensation denied. In *First English* and *Armstrong*, the Supreme Court reaffirmed its "frequently repeated" view that "in the event of a taking, the compensation *remedy is required* by the Constitution." 482 U.S. at 316 (emphasis added).

Chief Justice Marshall explained in *Marbury*:

> The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please

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[15] Quoting *Murr* v. *Wisconsin*, 137 S.Ct. 1933, 1943 (2017).

[16] "Where there is a right, there must be a remedy." 3 William Blackstone, *Commentaries on the Laws of England* 23 (1768).

[17] 5 U.S. 137, 147 (1803) ("It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress.").

> to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.
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> 5 U.S. at 176-77.

The right to just compensation under the Fifth Amendment demands a remedy. As Chief Justice Marshall further declared in *Marbury*,

> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. ... [W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.
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> 5 U.S. at 163, 166.

The Supreme Court later applied Chief Justice Marshall's declaration specifically in the context of the Fifth Amendment, stating, "In any society the fullness and sufficiency of the securities which surround the individual in use and enjoyment of his property constitute one of the most certain tests of the character and value of government." *Monongahela*, 148 U.S. at 324.

While the government's power of eminent domain allows it to take private property without paying the owner "up front," the payment must be certain and prompt. When he spoke of the legislation establishing the Court of Federal Claims, President Lincoln told Congress, "It is as much the

duty of government to render prompt justice against itself, in favor of its citizens, as it is to administer the same, between private individuals." Abraham Lincoln, *First Annual Message to Congress*, December 3, 1861, Cong. Globe, 37th Cong., 2d Sess., app. 2 (1862). This declaration is, literally, lapidary as it is now displayed at the doors of the Court of Federal Claims.

In *Bragg v. Weaver*, the Supreme Court stated, "where adequate provision is made for the certain payment of the compensation *without unreasonable delay* the taking does not contravene due process of law in the sense of the Fourteenth Amendment merely because it precedes the ascertainment of what compensation is just." 251 U.S. 57, 62 (1919). Likewise, in *Joslin Mfg. Co. v. City of Providence*, the Court explained, "the taking of property for public use...need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when the public faith and credit are pledged to a *reasonably prompt ascertainment and payment*, and there is adequate provision for enforcing the pledge." 262 U.S. 668, 677 (1923) (citing *Sweet v. Rechel*, 159 U.S. 380, 400, 404, 407 (1895) (emphasis added).

Sweet v. Rechel involved a Massachusetts statute enabling a city to condemn properties lacking adequate drainage as a nuisance in order to protect public health. 159 U.S. at 393. The owner of a condemned lot argued the statute violated the state constitution because "it did not provide for compensation to be made to the owners of the property *in advance* of its actual appropriation by the commonwealth." *Id.* at 396 (emphasis added). The Supreme Court held, "it is a condition precedent to the exercise of [the government's eminent domain] power that the statute make provision for reasonable compensation to the owner." 159 U.S. at 399 (Harlan, J.).

The Massachusetts statute complied with the Fifth Amendment, the Court held, because it provided that "the

owner became, *from the moment the property was taken, absolutely entitled to reasonable compensation*, the amount to be *ascertained without undue delay*, in the mode prescribed, and its *payment* to be *assured*, if necessary, *by decree against the city*, which could be *effectively enforced*." *Id.* at 407 (emphasis added). In so holding, Justice Harlan analyzed and followed, *inter alia*, a New York state court decision, where that court explained,

> It certainly was not the intention of the framers of the constitution to authorize the property of a citizen to be taken and actually appropriated to the use of the public, and thus to compel him to trust to the future justice of the legislature to provide him a compensation therefor. The compensation must be either ascertained and paid to him before his property is thus appropriated, or an appropriate remedy must be provided, and upon an adequate fund, whereby he may obtain such

> compensation through the medium of the courts of justice....[18]

Sweet, 159 U.S. at 405-06.[19]

The Supreme Court reviewed the constitutionality of a Massachusetts condemnation statute, which limited the height of buildings in a certain part of Boston, in *Williams* v. *Parker*, 188 U.S. 491, 503 (1903). In *Williams* the Court

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[18] Writing for the New York court, Chancellor Walworth continued, "I hold that *before* the legislature can authorize the agents of the state and others to enter upon and occupy, or destroy or materially injure the private property of an individual, except in cases of actual necessity which will not admit of any delay, *an adequate and certain remedy must be provided whereby the owner of such property may compel the payment of his damages, or compensation; and that he is not bound to trust to the justice of the government to make provision for such compensation by future legislation*." *Bloodgood* v. *Mohawk & Hudson Railroad Co.*, 18 Wend. 9, 17, 1837 WL 2871, at *17 (N.Y. 1837) (emphasis added) (following Chancellor Kent's decision in *Rogers* v. *Bradshaw*, 20 Johns. R. 735 (N.Y. 1823), holding "it was sufficient if a certain and adequate remedy was provided by which the individual could obtain such compensation without any unreasonable delay.").

[19] Quoting *Bloodgood v. Mohawk & Hudson Railroad Co.*, 18 Wend. 9, 17 (N.Y. 1837). Justice Harlan likewise quoted and followed the New York Supreme Court's decision in *People ex rel. Utley v. Hayden*, 6 Hill 359, 1844 WL 4447 (N.Y. Sup. Ct. 1844), holding that "[a]lthough it may not be necessary, within the constitutional provision, that the amount of compensation should be actually ascertained and paid before property is thus taken, it is...the settled doctrine...that, at least, certain and ample provision must be first made by law, except in cases of public emergency, so that the owner *can coerce payment through the judicial tribunals or otherwise without any unreasonable or unnecessary delay*." *Sweet*, 159 U.S. at 406 (emphasis added). "Otherwise," the court concluded, "the law making the appropriation is no better than blank paper." *Hayden*, 6 Hill at 361.

found the Massachusetts statute supplied an "adequate provision for the payment of the damages sustained by the taking" because the statute provided "a direct and appropriate means of ascertaining *and enforcing* the amount of all such damage." 188 U.S. at 504 (emphasis added). See also *Crozier v. Fried. Krupp Aktiengesell-schaft*, 224 U.S. 290, 306 (1912) (payment of compensation need not be paid in advance, but it is "sufficient...that adequate means be provided for a reasonably just and *prompt* ascertainment *and payment* of the compensation") (emphasis added).

Thus, the Supreme Court has allowed the government to take private property without first paying compensation *only so long as* the government provides the means to enforce and compel prompt payment of the "just compensation."

Here, the government took these landowners' private property in 2016 and has not yet paid, nor even offered to pay, these Florida landowners anything for that property the government took from them. An almost decade-long delay in payment defies any notion of promptness. The delay since the government's liability was established utterly fails any notion of a "reasonably prompt" or "without unreasonable delay" standard.

The Justice Department's litigation strategy – which seeks further fact discovery and expert discovery lasting beyond 2024 without setting a trial date seeks to further deny these landowners' right to be fairly and justly compensated for that property the government took and further deny these landowners a remedy for the government's violation of these owners' constitutional right to "just compensation." The Justice Department's opposition to these owners' right to be justly compensated stands in danger of "ceas[ing] to deserve th[e] high appellation of...a government of laws, and not of men." *Marbury*, 5 U.S. at 163.

The Justice Department's attempt to further delay a resolution of these owners' right to be paid just compensation would render the Fifth Amendment guarantee of "just compensation" nothing more than a "parchment barrier,"[20] or worse, "blank paper."[21]

So, let me state, as explicitly as I can, what I request you and your superiors at the Justice Department do. First, I expect the government to agree to the reasonable trial setting and pre-trial schedule along the lines plaintiffs' counsel have proposed. As we have stated, we are open to adjustments of the pre-trial schedule as long as trial is set for October. Also, I expect the government's counsel to cooperate in the fair and just resolution of the pre-trial matters necessary to bring this litigation to a final resolution such that these Florida landowners will, finally, receive that just compensation they are due before the end of 2024. Again, we welcome mediation and resolution through settlement, but trial must be scheduled so as to enable the court to resolve this case prior to the end of 2024 should settlement efforts prove unsuccessful.

The time between Pearl Harbor and Hiroshima was less than four years (December 7, 1941, to August 6, 1945). It is incomprehensible that the lawyers with the Justice Department would require more than twice the time it took to win World War II to resolve the "just compensation" the

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[20] See Federalist No. 48 (Madison) (Clinton Rossiter, ed., 1961), p. 308 ("Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?"). See also *Bank Markazi v. Peterson*, 578 U.S. 212, 249 (2016) (Roberts, C.J., dissenting) ("however difficult it may be to discern the line between the Legislative and Judicial Branches, the entire constitutional enterprise depends on there *being* such a line") (emphasis in original).

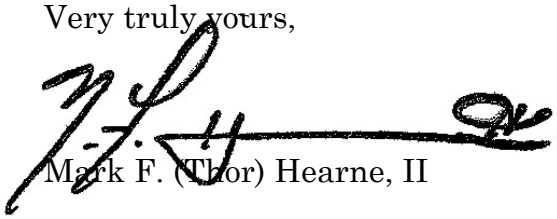
[21] See, *supra*, note 19.

federal government must pay these twenty Florida landowners for that land the government took from them in 2016.

Amanda, I recognize that you are the trial attorney the Environmental and Natural Resources Division has assigned to this case and must report to your supervisors in the Natural Resources Section management at the Department of Justice. So far, eight Justice Department attorneys have been involved in this litigation, including Jeffrey Wood, Todd Kim, Davene Walker, and you at the trial-court level, and Jeffrey Clark, Eric Grant, William Lazarus, and Kevin McArdle on appeal. I also recognize the federal government and the Department of Justice is a massive bureaucracy that operates with protocols and procedures. But frankly, I and the landowners I represent don't care. The United States Constitution guarantees their right to be compensated, and the federal employees with the Justice Department must respect this obligation. There is no more reason for dithering and delay and another year of litigation.

I look forward to working with you and your superiors at the Justice Department to bring this matter to a final conclusion. And I expect we can agree to a schedule for resolution of this matter by mediation, settlement, or, if necessary, trial, and final judgment in 2024. I welcome any opportunity to visit by phone with you and your superiors at the Justice Department to discuss this matter.

Very truly yours,



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cc: Meghan Largent, James Hulme, and Morgan Pankow