Is the Takings Clause a "Self-Executing" Waiver of Sovereign Immunity?

"As a general matter, the federal government cannot be sued for damages without its consent. Congress has waived its immunity through several statutes. For example, the Federal Torts Claims Act provides a limited waiver of sovereign immunity for certain types of torts. And the Supreme Court has also *implied* certain waivers of sovereign immunity. Through so-called *Bivens* claims, plaintiffs can seek monetary damages for violations of the Fourth and Fifth Amendment. But the Supreme Court has held that there is no waiver of sovereign immunity for suits based on other provisions of the Bill of Rights, such as the Eighth Amendment. And in recent years, the Supreme Court has put the brakes on future *Bivens* claims. This much is straightforward doctrine,"discusses Josh Blackman in ***Reason***.

"But what about the Takings Clause? It is the only provision of the Bill of Rights that clearly states landowners are entitled to monetary damages: 'nor shall private property be taken for public use, **without just compensation**.' Is the Takings Clause a self-executing waiver of sovereign immunity?"

"In traditional eminent domain questions, the issue of sovereign immunity is irrelevant. Why? The government initiates a condemnation proceeding against a landowner. In other words, a private landowner does not need to sue the federal government. But there is another common type of takings case, known as an *inverse* condemnation suit. Here, the government regulates a person's property, but insists there is no taking. Then, the landowner sues the federal government, alleges a violation of the Takings Clause, and seeks 'just compensation.'"

Read the article.