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Criminalization of Human Rights Defenders of Indigenous Peoples Resisting Extractive Industries in the United States

Report to the Inter-American Commission on Human Rights

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Introduction

1. Peaceful demonstrations are a catalyst for the advancement of human rights. Yet around the world governments are criminalizing dissent and suppressing public protest, often as a means to protect corporate interests. In this context, indigenous peoples increasingly find themselves as the subjects of arrests, criminal prosecution and police violence when defending the lands they rely upon for their existence and survival from resource extraction by industries who are operating without the free prior and informed consent of the affected communities.[1]

2. This report is submitted to the Inter-American Commission on Human Rights (IACHR) in conjunction with a thematic hearing held during the 172nd period of sessions.[2] At the hearing, Commissioners heard directly from those involved in the indigenous-led resistance to the Dakota Access Pipeline (DAPL) at Standing Rock, North Dakota.[3] This report addresses the criminalization and suppression of protest by indigenous human rights defenders and their allies by United States (U.S.) federal, state and local governments, working hand-in-hand with private security forces, specifically in relation to the construction and operation of DAPL by Energy Transfer Partners and Dakota Access, LLC (Dakota Access) and the connected Bayou Bridge Pipeline (collectively the "Bakken Pipeline").

3. Standing Rock is an emblematic case of indigenous resistance to extractive industry that drew attention from around the world as water protectors met on the banks of the Missouri River in peaceful assembly in what was the largest gathering of indigenous peoples in the U.S. in 100 years.[4] Standing Rock is merely one example of how the U.S. government works with industry to approve energy projects carried out without the meaningful participation or consent of indigenous nations.[5] Indigenous peoples are left with no choice but to peacefully protest and then are criminalized for their efforts to defend their lands and resources.

4. Since Standing Rock, there has been an alarming trend by the United States government and state legislatures to criminalize opposition to pipelines and other energy projects. These anti-protest and so-called "critical infrastructure laws"[6] progress towards criminalizing dissent and implicitly condone the use of excessive force towards human rights defenders, often including indigenous peoples and their allies who are at the forefront of resistance to extractive industries. As the international community has acknowledged, these laws are incompatible with domestic and international law.[7] The governments' use of excessive force and mass arrests to threaten, intimidate, and silence "water protectors" seeking to defend their lands, resources, and culture, and the collusion with private security forces, violate fundamental human rights to free speech and assembly enshrined in international human rights law[8] and the US Constitution.[9]

5. The information provided here builds on a 2016 request for Precautionary Measures filed by the Standing Rock, Cheyenne River and Yankton Sioux[10] tribes, past Commission hearings on similar matters that remain unsettled, and reports on *Indigenous Peoples and Extractive Activities,*[11] and *the Criminalization of Human Rights Defenders*.[12] In addition, the United Nations has reported on the situation at Standing Rock through the Expert Mechanism on the Rights of

Indigenous Peoples,[13] the Permanent Forum on Indigenous Issues[14] and the Special Rapporteur on the rights of indigenous peoples.[15] Despite condemnation from these international bodies and mechanisms, water protectors continue to suffer impacts from the criminalization of their dissent, while the United States moves forward permitting new pipeline projects on indigenous territories.[16]

Background on Dakota Access Pipeline Project

6. The 1172-mile DAPL crosses the Missouri River in North Dakota half a mile north of the Standing Rock Sioux reservation and continues south towards the Gulf Coast.[17] The pipeline crosses through the traditional territory of the Great Sioux Nation or Oceti Šakowiŋ – the "Seven Council Fires" – who have occupied the area since time immemorial. The territory was formally recognized in the 1851 Fort Laramie Treaty with the United States government.[18] In 1868, the United States entered into a second treaty with the leaders of the Great Sioux Nation (1868 Treaty),[19] stipulating that this territory would be considered unceded Indian land.[20] The Oceti Šakowiŋ have never relinquished the unceded lands.

7. The US Army Corps of Engineers ("Corps"), a federal agency, issued the permits necessary for the construction of the Dakota Access pipeline. The Corps was obligated to consult with the affected tribes under section 106 of the National Historic Preservation Act,[21] and other federal laws and polices even though the impacted areas are outside existing reservation boundaries.[22]

8. The Corps first met with the Standing Rock Sioux Tribe on February 28, 2016, nearly three months after the release of a draft Environmental Assessment on the Dakota Access Pipeline. By that time, the Corps had already adopted the proposed environmental assessment prepared by the oil company.[23] The permits were issued in the absence of meaningful consultation and without the free, prior and informed consent of the affected tribes: Standing Rock Sioux, Yankton Sioux, and Cheyenne River Sioux.[24] This lack of consultation violates both treaties with the Great Sioux Nation and the United States' obligations under the American Declaration on the Rights of Indigenous Peoples.[25]

9. On December 4, 2016, during Barack Obama's presidency, the Corps denied an easement, effectively halting construction of the pipeline[26] and later announced it would begin a comprehensive environmental review of the project.[27] Four days after his inauguration, President Donald Trump quickly moved to undo the Obama-era decision and issued a presidential memorandum to approve and expedite construction of the pipeline.[28] This executive action prompted the Corps to forgo further environmental impact studies and grant the easement.[29] The pipeline became operational on June 1, 2017. Shortly thereafter, the US District Court for the District of Colombia found that the Corps "did not adequately consider the impacts of an oil

spill on the fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial."[30]

10. The Dakota Access pipeline leaked at least five times in 2017.[31] The District Court recognized the inherent risk of oil pipelines to tribal lands and ordered: (1) the finalization and implementation of oil-spill response plans at Lake Oahe; (2) completion of a third-party compliance audit; and (3) public reporting of information regarding pipeline operations.[32] The company, Energy Transfer Partners, was allowed to continue operating the pipeline while the new environmental analysis moved forward despite court precedent requiring operations to cease pending compliance with the National Environmental Protection Act.[33] The Corps completed its analysis on August 31, 2018, standing by its prior conclusion that no formal reconsideration of the pipeline's impacts was needed.[34]

11. The pipeline poses significant harm to the Tribes' primary source of drinking water and threatens sacred sites.[35] An oil spill in the Missouri River is more than a minor encroachment on land, it threatens the tribes' physical and cultural survival.[36] Standing Rock has stated that "subsistence hunting and fishing, and the cultural norms that remain intact, are jeopardized by an oil spill from DAPL."[37]

12. Energy Transfer Partners, the company that built, owns, and operates the Dakota Access Pipeline in North Dakota, has also partly constructed the Bayou Bridge Pipeline, a 162.5-mile pipeline in Louisiana which connects the Dakota Access Pipeline to the Gulf of Mexico. The Bayou Bridge Pipeline traverses 11 parishes and cuts across 700 waterways, including through the Atchafalaya Basin, the largest river swamp in the country that is vital for flood control in the region.[38] The pipeline also runs below a key source of drinking water for the indigenous Houma Nation.[39] There is strong opposition to the Bayou Bridge pipeline from indigenous leaders, fishermen, conservationists, and advocates for environmental justice from African American communities in "Cancer Alley," a heavily polluted region and petrochemical corridor disproportionately impacting Black communities in Louisiana.[40]

State and private security violence against protesters

13. As it became clear that DAPL construction in North Dakota would proceed in the absence of meaningful consultation and consent, indigenous leaders and community members gathered to oppose construction of the pipeline and to protect their rights to lands and resources; self-determination; equality; religion; culture; and free prior and informed consent.[41]

14. In August 2016, the Standing Rock Sioux Tribe issued a call for international observers[42] that was taken up by Amnesty International,[43] and many other indigenous nations, organizations, media outlets and individual supporters. Chief Edward John of the UN Permanent Forum on Indigenous Issues, and Mr. Baskut Tuncak, UN Special Rapporteur on Human Rights and Hazardous Substances and Wastes,[44] were among the international observers who visited the

Oceti Šakowiŋ camp. By September, thousands of indigenous water protectors and their allies had gathered to resist the construction of the pipeline.

15. During the seven months from September 2016 to February 2017, at least 76 different law enforcement agencies, federal agencies, and private security firms hired by the oil company were present at some time.[45] Law enforcement and private security donned heavy-duty riot gear and used highly dangerous Specialty Impact Munitions (SIM),[46] explosive flash-bang grenades and chemical weapons against water protectors.[47]

16. Energy Transfer Partners, private security company TigerSwan,[48] and other contractors worked closely with local law enforcement, providing surveillance information and even infiltrating the camp. They were present inside law enforcement's Joint Operation Command Center, helped prosecutors build cases against water protectors, and were reported to have been directing law enforcement at times.[49] These actions substantiate the concerns of the UN Special Rapporteur on Human Rights Defenders over the "growing tendency worldwide for public forces to have dual functionality [as] [m]emorandums of understanding between companies and police forces often contribute to the blurring of limits between public and private security, a situation in which the police become the asset of private interests and fail to protect local communities."[50]

17. On September 2, 2016, Standing Rock tribal officials informed the federal government and Dakota Access construction managers that the proposed pipeline construction was in direct conflict with traditional sacred areas and burial grounds. Dakota Access declined to suspend construction and instead accelerated the destruction of these areas the next day. On Saturday, September 3, 2016, water protectors were on a peaceful march and pipe ceremony when they encountered workers bulldozing the now known ancestral burial sites.[51] The water protectors approached the construction site to pray and to attempt to protect the graves and sacred areas from permanent destruction and desecration. They were met by security guards who had been brought in by Dakota Access and used attack dogs and pepper spray against the water protectors. A number of indigenous people, including a pregnant woman, were bitten and sprayed and one person was deliberately struck with a truck. Law enforcement, including Morton County Sheriff personnel, failed to intervene in the unwarranted attacks on peaceful protestors.[52]

18. In response to overwhelming tribal and public outcry, on September 9, 2016, the Corps withdrew an easement to drill and install a pipeline under Lake Oahe and repeatedly requested that Dakota Access cease all construction within 20 miles of Lake Oahe. Dakota Access ignored these repeated requests from the Corps. Instead, the parent company, Energy Transfer Partners, hired military contractor, TigerSwan, to run an "information operations campaign" which included surveilling, infiltrating, sowing divisions within and attempting to discredit the growing movement against DAPL and falsely portray the water protectors as dangerous and violent.[53]

19. Rather than halting the illegal construction, law enforcement increased their use of force and arrests of water protectors, responding to nonviolent expression in an increasingly militarized and violent fashion. On multiple occasions in October 2016, law enforcement conducted indiscriminate and unlawful mass arrests of people who were expressing opposition to the

pipeline, accompanied by unjustified violence against nonviolent protesters. For example, on October 22, 2016, law enforcement surrounded a peaceful prayer march and arrested 128 people without any warning or opportunity to disperse. The arrestees were strip searched and detained in jails all over the state.

20. Another method state and local officials used to suppress the speech, assembly, and prayer associated with the resistance movement was to close the main highway between the Standing Rock reservation and the nearest city, Bismarck, location of the nearest hospital, airport, and shopping center. On October 24, 2016, Morton County, North Dakota indefinitely closed a nine-mile stretch of Highway 1806 to water protectors, while allowing pipeline workers to continue to use the road. In the months prior to the closure, this road had been a primary location of speech, assembly, and prayer for members of the movement including travel to and from the water protector camps. Authorities kept the road closed for approximately five months, intentionally curtailing expressive or religious activity by the Tribe and its supporters at its sacred sites and treaty lands close to the pipeline route until the highway was reopened on March 21, 2017. Icy road conditions in winter regularly rendered alternate routes between the reservation and the region's nearest population center prohibitively difficult.

21. On October 27, 2016, local law enforcement forcibly ousted water protectors from a camp on Sioux unceded treaty land in the path of the DAPL construction, despite the federal halt on construction in that area, very close to Lake Oahe. Hundreds of law enforcement officers[54] in Humvees and helicopters descended on the small camp, destroying tepees and ceremonial items, and using an array of weapons including a Long Range Acoustic Device sound weapon, explosive teargas grenades, chemical agents, Tasers, rubber bullets, batons and a Directed Energy weapon on nonviolent water protectors.[55] 142 people were arrested, including elders and other people who were pulled from prayer ceremonies in an aggressive and often brutal fashion. As medics arrived to aid the injured, officers arrested them, pulling one medic from her moving vehicle and shoving another into the still moving car, hitting and kicking him.[56]

22. One of the indigenous women who testified at the IACHR thematic hearing, a Councilwoman for the Ponca Tribe of Oklahoma, described the event:

> On October 27th of 2016, I was attending a THPO (Tribal Historic Preservation Office) meeting in Fort Yates, N.D. as an elected official of the Ponca Tribe of Oklahoma. Before the forced removal to Oklahoma, the Ponca Tribe had lived along the Missouri River since time immemorial and felt that it was necessary to protect our ancestral territory from potential harm if the Dakota Access Pipeline was allowed to proceed with drilling under the Missouri River. As a prayer for lunch was being said on that day, we learned that a militarized police force of hundreds of individuals, tanks, helicopter, planes, and private security personnel were approaching the unarmed encampment of indigenous water protectors at nearby Treaty Camp close to Cannonball N.D. We voted unanimously to caravan to the Treaty Camp to act as Observers and ensure that no harm would be inflicted on unarmed men, women and children.

> Once we arrived at the Treaty Camp, we observed hundreds of police in riot gear slowly approaching the encampment with armed personnel vehicles, ATVs, percussion grenades, Tasers, pepper spray, sound cannons, guns, helicopters, planes and it was terrifying to see and hear the chaos they were creating.
>
> Our people stood or sat in prayer. Some chanted, some sang, some observed and filmed the assault that happened. We were violently overcome. None of us were armed with anything more than our prayers and Sacred Pipes and Eagle Feather Staffs. Several of us were Elders of our Nations, 70 and above. Many were our Sacred Youth. We were pepper sprayed in our faces, struck down, tazed, then hands zip-tied behind us, thrown to the ground and eventually 142 of us were taken by bus to jail. Before we were put on the bus, each of us had a number written on our arm. It felt like when the Jews were taken to be gassed. Eventually, we were taken to the basement of the jail in Bismark, N.D. where we were strip searched and placed in chain link dog cages.
>
> I'll always hold one image in my mind. When I had last seen my oldest son, he was being assaulted and dragged away by 5 police in riot gear because he was asking for the Elders to have the zip-ties removed or at least placed in front of our bodies. The next place I saw him was in the basement of that jail, he was injured and in a dog cage, but alive.
>
> Our cages, the women's, was separated from the men's by a tarp. There were 37 women in one cage and 34 in the other. We on a bare cement floor and the cages were about the size of a 15 passenger van. There is more, this is only part of what happened.

23. When the arbitrary mass arrests in October failed to deter all protests, law enforcement resorted to even more violent tactics. On November 2, 2016, hundreds of protesters, including indigenous elders, held a prayer ceremony across a river from the pipeline construction site. When a few protesters entered the frigid river, law enforcement bombarded the entire group with tear gas and SIM,[57] endangering their safety and health. Again on November 15, 2016, at a protest on a public roadway near a DAPL construction yard, law enforcement responded with widespread and indiscriminate use of chemical agents and stun guns.

24. The most violent attack occurred on November 20, 2016, on the Backwater Bridge, just north of the road block. When a few individuals tried to remove abandoned vehicles that law enforcement had placed as part of a road block,[58] officers immediately began shooting at water protectors with SIM and chemical weapons. In response, more water protectors gathered at the bridge, peacefully praying, chanting, singing and protesting the road block and the pipeline construction. More law enforcement agents arrived in armored vehicles, and used high pressure fire hoses to spray water protectors despite the below freezing weather. They shot SIM, chemical agent canisters, explosive flashbangs and “stinger” grenades indiscriminately into the crowd over

a period of more than eight hours, without justification, and without providing any clear warnings or opportunity to disperse.[59] Law enforcement used this force despite the fact that the water protectors were not threatening or attacking the officers or attempting to breach the barricade.

25. Over 200 people were injured,[60] including a Navajo woman who was shot in the eye with a tear gas canister by a law enforcement agent as she was helping journalists to safety.[61] Another young woman lost part of her arm when the police launched an explosive device at her. Dozens of people were hospitalized, while medics worked around the clock at the camp to tend to people suffering broken bones, bruising, lacerations, head injuries, and hypothermia. Even the medics themselves were targeted with chemical weapons as they rendered urgent medical aid south of the bridge.

26. On November 25, 2016, the Corps issued an eviction notice advising the Standing Rock Sioux Tribal Chairman that they would be closing access to the Oceti Šakowiŋ camp by December 5, 2016. [62] The water protectors remaining at the camp were forcibly evicted on February 23, 2017.

Disproportionate punishment of indigenous and environmental activism

27. Over these seven months, law enforcement and prosecutors aggressively arrested and charged 841 water protectors exercising their rights to free expression and peaceful assembly. Many of the arrestees were detained under abusive conditions, subjected to unnecessary strip searches, and bussed to jails hours away from their camps. Local authorities prosecuted criminal charges against all of those arrested, despite the fact that there was no probable cause to support the vast majority of the arrests and no evidence to prove almost any of the charges.

28. Members of the press were also arrested, their equipment confiscated, and websites voicing opposition to DAPL were shut down. Low-flying helicopters, planes, and drones kept the camps under constant surveillance as cell phones were locked and protestor's phone calls were recorded.[63]

29. According to records compiled by the Water Protector Legal Collective, 836[64] criminal cases were prosecuted in North Dakota state court. Of these, 392 were dismissed, forty-two were acquitted at trial, 188 agreed to accept diversion, which resulted in dismissal of those cases, 146 accepted plea agreements involving no jail time (primarily to avoid having to return to court from out of state), and twenty-six were convicted, of whom only two served jail time. There are still forty state court cases remaining on inactive status and two currently open cases.[65] Charges included rioting and trespassing. The vast majority of these criminal cases should never have been brought or continued due to lack of evidence and witnesses, lack of probable cause, and legal defenses of privilege and lawful conduct.

30. Prosecutors brought the most serious charges in federal court, against five indigenous water protectors, all alleged to arise from the October 27, 2016, incident discussed in paragraphs 21-22 above. Despite extensive documentation of bias in the local jury pool from the oil company's publicity campaign, the federal court denied the federal defendants' motions for change of venue. Forced to proceed in a hostile forum, and with the court denying them essential discovery, each of the federal defendants had no choice but to accept plea agreements to avoid harsh sentences. None of the plea agreements involved any cooperation with law enforcement investigations.

31. The federal defendant who received the most severe sentence, Red Fawn Fallis, is an Oglala Lakota indigenous woman from Pine Ridge, South Dakota. Red Fawn was charged related to possession of a firearm that was shown to belong to an FBI informant who had infiltrated the water protector camp.[66] During legal proceedings, virtually every motion made by her defense team was denied. Facing up to life in prison, she accepted a non-cooperating plea agreement on January 22, 2018, and is serving 57 months in prison.[67] She provides the following statement from a federal prison in Texas:

> I was at the Oceti Sakowin Camp at Standing Rock to defend the water, the land, and the treaties of the Lakota, Dakota and Nakota Nations. I was also there to honor the memory and the lifework of my mother, Troylynn Star Yellow Wood, who passed to the spirit world on June 11, 2016. At Oceti Sakowin Camp, I found a place where I belonged. I worked with elders and youth, and I was trained as a medic for the people. During my time there, I was arrested three times. The first arrest was on August 11, 2016 in a ditch along a public right of way where a small group of us were exercising our free speech rights against the Dakota Access Pipeline (DAPL). We were not obstructing traffic or workers. Not everyone there was arrested.
>
> On September 28, 2016, I was arrested along with 20 other people. We were praying and tying prayer ties to a fence. We did not cross any fences. As we were leaving, Morton County sheriff's deputies began arresting us – for praying peacefully on our treaty homeland.
>
> On October 27, 2016, I was tackled from behind and brutally arrested without probable cause and accused of having a gun. The only gun that was brought into camp was brought by Heath Harmon, an FBI informant. He started a dishonest relationship with me. It was his gun I was accused of possessing at the time of my arrest. This was an especially difficult day for me as it was the anniversary of my mother's birthday.
>
> As we go forward it is important for indigenous voices to be heard and our treaties honored. We have been defenders of the water, the air, and the earth for centuries. We understand the importance of our reciprocal relationship with water and all the life that it supports. The land that my family and I watch over on the Pine Ridge Reservation no longer has water because it was polluted by uranium mining. It was the contamination and theft of our traditional lands, that inspired me and hundreds

of thousands of others from hundreds of indigenous nations, and other peoples from various nations and faiths and traditions to take a stand at Standing Rock.

32. The other four federal defendants were each charged with use of fire to commit a federal felony and civil disorder, with possible sentences of up to fifteen years in prison. Each took a non-cooperating plea to the civil disorder charge.

a. Michael Giron is from the Coastal Band of the Chumash Nation in Santa Barbara, California. Giron was sentenced to a thirty-six month federal prison term. He was incarcerated 1,300 miles from his family, at a maximum-security prison in West Virginia. Scheduled to be released in October, 2019, authorities are requiring him to live in North Dakota during this three-year parole rather than in New Mexico where his wife and family reside.

b. Michael Markus is Oglala Lakota from Pine Ridge, South Dakota. Markus was also sentenced to thirty-six months in prison. He was placed at FCI Sandstone in Minnesota[68] and currently has a release date of May 1, 2021.[69]

c. Dion Ortiz, a member of the San Felipe Pueblo in New Mexico, is twenty-two years old, the youngest of the federal defendants. He was sentenced to a sixteen-month prison term. [70]

d. James White is the only federal defendant who is a Standing Rock Lakota. White was sentenced to time served plus two years of supervised release, which he is serving at Standing Rock.[71]

33. Energy Transfer Partners, the corporation behind DAPL that is trying to construct the tail end of the Bakken pipeline in Louisiana, again contracted with private security corporations to crack down on pipeline opposition in Louisiana. TigerSwan, the controversial private security firm the oil company employed in North Dakota, also attempted to obtain a license to operate in Louisiana. The license was denied. Materials produced in response to a public records request confirm that immediately after the denial, a TigerSwan employee formed a new non-descript corporation and attempted to obtain a license without disclosing her employment with TigerSwan.[72] The companies later contracted with another local private security company which employed off-duty law enforcement officers who violently arrested and detained protesters, and charged them with felonies under the newly passed critical infrastructure law.[73] In 2018, through a series of public records requests it was revealed that the FBI, Governor's Office of Homeland Security, and other law enforcement agencies were surveilling the activities of Bayou Bridge pipeline opponents, including L'Eau Est la Vie, an indigenous-led camp formed to oppose the pipeline.[74]

Water Protectors Efforts to Seek Redress for Human Rights Violations in U.S. Domestic Court

34. Water Protector Legal Collective is pursuing a federal civil rights class action lawsuit[75] in which nine named plaintiffs are suing local governments on behalf of the hundreds of water protectors who were injured by unlawful police violence on November 20, 2016. In December, 2016, the federal court denied the water protectors' initial request that it enjoin the indiscriminate use of high pressure fire hoses in freezing temperatures, impact munitions and other life threatening weapons on peaceful protesters.

35. Within a month, another young indigenous water protector was severely injured when he was shot in the face by a Morton County Sheriff's Deputy with a so-called "bean bag" munition on January 19, 2017.[76] One or more lead pellets entered his left eye socket, tearing his face open and damaging his cervical spine. As a result, the twenty-one-year-old Navajo man lost much of his vision, his sense of taste, and hearing.[77]

36. The WPLC civil litigation, which seeks both injunctive relief and damages, continued, but at the time of writing has been in limbo for a full year awaiting the local federal court's decision on a law enforcement motion to dismiss the case.

37. The individual excessive force lawsuit filed by Sophia Wilansky, who suffered a severe arm injury, is also currently awaiting the court's decision on a similar dismissal motion.[78]

38. The status of the lawsuit filed by four local residents concerning the constitutionality of the road closure is similar. The plaintiffs claim, with substantial support (including official governmental reports and statements), that the true purpose of the closure was to hinder water protectors' exercise of constitutional rights and to extort political concessions from the Standing Rock Sioux Tribe. [79]

Legislation intended to suppress protest and criminalize dissent

39. The United States takes pride in the constitutional protections of the rights to free expression and assembly as being stronger within its borders than virtually any other place in the world.[80] This reputation may soon change. As Commissioner Macaulay stated during a hearing on the rights to freedom of association, expression and peaceful assembly in the United States: "We are concerned about what has been happening lately…. there is a regression in these pillars of democracy…. from the highest levels of power."[81] Since the May 9, 2019 thematic hearing, the federal government has attempted to ramp up the criminalization of protesters who interfere with pipeline construction. On June 3, 2019 the Trump administration announced that it would seek to amend current legislation that prescribes a maximum penalty of 20 years in prison for damaging or destroying existing pipelines. The amendment would apply that same penalty to pipelines under construction as well as disruption of pipelines.[82]

40. This federal action follows an alarming trend by 35 state legislatures who have proposed approximately 100 anti-protest bills, 14 of which have passed into law, 26 which are pending and 58 that have expired or been defeated. [83] The bills typically impose draconian and disproportionate punishments on nonviolent civil disobedience including up to 10 years in prison and $100,000 in fines.[84] Some bills criminalize organizations that "aid" protestors making them liable for actions of their members.[85] Oil and gas interests are pushing to criminalize protests against their fossil fuel projects by engineering bills purported to protect against "critical infrastructure sabotage" but they are really about suppressing the growing anti-fossil fuel movement in which indigenous people and nations have played a central role.[86] These bills are a direct response to the indigenous-led protests at Standing Rock, and are designed to stifle debate and silence opposition to pipelines and other extractive industry projects. According to Defending Rights and Dissent:

> With high profile and effective campaigns against oil and gas pipelines, such as the resistance to the Dakota Access Pipeline by Standing Rock Water Protectors, these civil society movements have come under fire from powerful interests. As part of the effort to silence them, a number of states are considering "critical infrastructure" bills. These bills purport to protect against "critical infrastructure sabotage" --which sounds serious--but they're really about shutting down social movements. Bills vary from state to state, but they typically impose draconian and disproportionate punishments on nonviolent civil disobedience. In some cases, they are so broad they may even criminalize First Amendment protected activity. These bills are part of a campaign to demonize protesters and portray them as threatening. And, these bills are being pushed by industry connected groups, including the American Legislative Exchange Committee (ALEC)."[87]

41. At the IACHR thematic hearing, the U.S. representatives stated that these bills do not criminalize acts protected by the 1st Amendment of the US Constitution (free speech and assembly) and American Declaration and that criminal trespass and tampering with infrastructure are not protected activities. However trespass and damage to private property are already criminal offences; these laws are unnecessary and intended to dissuade protestors.

42. The state of North Dakota, the location of DAPL, went so far as to introduce a bill[88] that eliminated civil and criminal liability for drivers running into protestors blocking public roads, a method increasingly used to attack protestors.[89] The bill's sponsor explained that it was in direct response to DAPL.[90] Fortunately, this bill was not passed by the legislature[91] but similar bills are being introduced around the country.[92] A recent North Dakota bill that did pass on March 2019, increased criminal penalties for tampering with "critical infrastructure" or "public service" and includes fines for organizations who help human rights defenders.[93]

43. Since the State of Louisiana passed HB727[94] in March 2018, 16 protestors have been arrested for resisting the Bayou Bridge Pipeline.[95] The Louisiana Mid-Continental Oil and Gas Association drafted the amendment to the state's critical infrastructure law that greatly increased the penalties for protesters near pipelines or pipeline construction sites. [96] The new law was

immediately used to target peaceful pipeline opponents who were arrested by corporate security rather than police.

44. In South Dakota, a Senate bill was passed to restrict protest to twenty or fewer people and increase penalties for protest on public lands.[97] The legislation was a direct response to DAPL and passed in anticipation of indigenous resistance to the Keystone XL pipeline in South Dakota.[98] The Governor sent letters to nine tribal chairmen encouraging them to "work together to manage potential protests that are likely to occur in South Dakota relating to the KXL Pipeline."[99] Tribal leaders objected to the bill and said it "targeted Native Americans and that tribes were not adequately consulted."[100]

45. Another bill recently passed in South Dakota imposes hefty monetary penalties, not only on pipeline protesters, but on anyone who supports them in any way.[101] The Cheyenne River Sioux and the Sisseton Wahpeton tribes are voicing their opposition to the law and its impact on indigenous peoples' human rights.[102] The Cheyenne River Sioux tribal chairman stated that: "The Governor has not discussed any proposed legislation with the Sioux Nation or Cheyenne River Sioux Tribe. … This legislation only shows that [the state legislature] are more concerned with saving money while suppressing South Dakotans rights of assembly and intimidating anyone who is considering options to stand up for what they believe is right."[103] The Oglala Sioux Tribe banished the South Dakota governor from their reservation.[104]

46. The American Civil Liberties Union (ACLU) filed a constitutional challenge to these South Dakota laws that threaten criminal and civil penalties for protesters and organizations that support them, including resistance to the Keystone XL Pipeline.[105] The ACLU notes one provision that allows damages to be collected from protestors to pay for law enforcement operations essentially requiring protestors to fund the thing they are protesting.[106]

47. Illinois House Bill HB1633 is aimed specifically at anti-pipeline protesters[107] to silence opposition to pipelines/fracking and other energy projects. The bill defines critical infrastructure broadly, to include everything from pipelines, rail yards and freight transportation facilities, to telephone poles, radio transmission facilities, electrical transmission structures, coal mines and water treatment plants. Anyone caught trespassing at one of these sites could be charged with a class 4 felony and subject to a fine of $1,000 to $25,000 and one to three years in prison. Damage to critical infrastructure would be punishable by a fine of up to $100,000 and ten years in prison, no matter how minor the damage. Although the bill includes a First Amendment "savings clause" exempting "exercise of the right of free speech or assembly that is otherwise lawful" in the labor organizing context, the concern is with non-violent civil disobedience.

48. In Texas, opposition to the Trans-Pecos pipeline, the terminus of the Keystone XL pipeline, the Permian Highway pipeline and the LNG plant has led to a number of criminalization bills being introduced. SB 1993 dramatically increase sentences for protesting, blockading or vandalizing "critical infrastructure" or construction equipment for it, and creates vicarious civil liability for organizations who support anyone who is convicted.[108] HB 3557 expands the definition of

"critical infrastructure" and creates vicarious civil liability.[109] HB 4448 creates new penalties for using drones to document extraction projects (or prisons).[110] Finally, SB 2229 creates heightened penalties of up to 10 years in prison for protest at "critical infrastructure" facilities.[111]

49. Among those fighting the pipelines and associated bills is the Carrizo Comecrudo Tribe of South Texas. Because the Tribe is not federally recognized, the energy companies are not required by law to consult with them regarding the construction. The Chairman and other Tribal members attended the vote on House Bill 3557 on May 7, 2019. They were detained and given a "criminal trespass warning" before they were escorted out of the building and told if they returned to the Capitol with "ill intent" they would be formally charged with trespass. [112]

50. Texas also passed HB 2730 that encourages SLAPP suits (Strategic Lawsuit against Public Participation).[113] SLAPP suits are increasingly being used by corporate interests in a blatant attempt to silence water protectors.[114] In August 2017, Energy Transfer Partners filed a $900 million SLAPP suit against Greenpeace in order to rewrite the indigenous-led movement at Standing Rock.[115] The lawsuit included claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), a law created to prosecute organized crime.[116] In July 2018, a federal court ordered Energy Transfer Partners to file an amended complaint, explaining that the "187-page complaint is impossible to summarize," and found the company "failed to state plausible RICO claims against Greenpeace," and "failed to comply with basic rules of pleading." Despite this rebuke, the oil company not only amended its complaint, but continued the legal assault on human rights defenders by adding other defendants.[117] In February 2019, the lawsuit was fully dismissed[118] in a blistering opinion by a federal court judge. Nevertheless, Energy Transfer Partners pressed on with legal intimidation tactics against indigenous rights advocates by repackaging its federal lawsuit and filing in North Dakota state court.[119] The venue may have changed, but the misrepresentations about Standing Rock and meritless legal claims continue.

State failure to protect indigenous human rights defenders

51. The situation at Standing Rock is not an isolated event but part of a pattern of violence and discrimination against indigenous peoples. It is one example of an increasing trend to criminalize indigenous peoples, organizations and movements voicing opposition to energy extraction and other projects carried out without their participation or consent.[120] In many parts of the world indigenous peoples are disproportionately affected by police violence and imprisoned without due process as they defend against corporations looking to exploit their lands and resources.[121]

52. The law enforcement response to *peaceful* protests at Standing Rock stands in stark contrast to the response even to *violent* occupations and armed protests involving non-indigenous peoples. Examples include the Neo-Nazi march in Charlottesville, Virginia[122] and standoffs in the states of Oregon and Nevada led by the Bundy family and anti-government militias.[123] In those cases there was little law enforcement intervention, compared to the heavy, militarized response to Standing Rock.[124] In this respect, the state has failed to take special measures to protect indigenous water protectors defending their lands, resources and cultural survival.

53. The Inter-American Commission has identified indigenous peoples as particularly vulnerable human rights defenders[125] and outlined the duties states have to protect human rights in the context of extractive industry development[126] including: 1) the duty to prevent violence; 2) the duty to guarantee access to justice through investigation and punishment; and 3) access to adequate reparations for human rights violations.[127] The Inter-American Commission joined regional UN human rights offices in issuing a statement of concern over the deteriorating situation for human rights defenders in the Americas.[128] They noted "among the groups most affected by this violence are defenders of the land, territory, and environment" and that "rights defenders in the region face a series of obstacles to their efforts, such as criminal cases brought against them for their work or smear campaigns to stigmatize and defame them."[129]

54. The UN Special Rapporteur on the situation of human rights defenders, Michel Forst, reported that violations against defenders mostly occur within energy sectors operating in communities and include criminalization, killings, intimidation, and threats.[130] He warned that "[h]uman rights defenders who are pressing for companies to be held accountable should not be criminalised or threatened." [131]

55. During the IACHR thematic hearing, the U.S. government made reference to an interagency working group to monitor violence against environmental defenders ("IAWG") around the world. There is very little publicly available information about this "informal" working group formed by the U.S. Department of State. According to the State Department, IAWG held 17 meetings in 2018 "to engage stakeholders and review UN, NGO and U.S. government reporting about violence against environmental defenders to best inform US policy."[132]

56. The IAWG "identified trends in *publicly available reporting* [emphasis added] that indicate long-standing grievances, often pertaining to land use, can be at the root of social protest or action in which state-backed security forces have responded, sometimes with force. Many of these conflicts could be avoided if there were adequate stakeholder access to environmental information, public participation, and access to justice and if environmental quality monitoring were strengthened."[133] The IAWG aimed to improve these areas and indicated that they "seek to evaluate and identify practices to better provide, with parterns (*sic*), strengthened and relevant stakeholder access to environmental information, robust environmental impact review of extractive sector, energy, and infrastructure tenders and projects, transparency, and access to justice in cases of violence."[134] The goals of the IAWG can be achieved by implementing the recommendations of the GOA report mentioned in paragraph 61. Providing greater access to environmental information for stakeholders can be achieved through improved tribal consultation.

Failure to consult tribes and comply with existing US laws and treaties

57. During the IACHR thematic hearing, United States representatives pointed to a number of laws, policies and other government initiatives in an attempt to show that the current domestic

legal framework is sufficient to protect the rights of indigenous human rights defenders. The United States acknowledged its duty to consult with Tribes under federal statutes,[135] executive orders,[136] treaties, and agency or departmental regulations and policy statements. However, many of these laws and policies have been interpreted to be primarily procedural and provide no rights that can be legally actionable before domestic courts.[137]

58. More often than not, government agencies consult with tribes on development projects after the fact, and information is often provided by email and phone calls, with little to no face-to-face conversations. Unrepresented or unrecognized tribes enjoy no rights of consultation under U.S. law. A number of development projects are currently under construction on indigenous peoples traditional lands without meaningful consultation or consent from impacted indigenous communities including Enbridge Line 3[138] and TC Energy (formerly TransCanada) KXL pipelines;[139] Resolution Copper mine on the sacred Oak Flats of the San Carlos Apache;[140] and the Snowbowl ski resort on the San Francisco Peaks, an area sacred to 13 Tribes in the southwest United States.[141]

59. According to Foley Hoag, the law firm who once served as the Secretariat that administers the Voluntary Principles on Security and Human Rights (*infra para 62 & 63*):

> Under U.S. federal law, if a project is not sited on Indian country, tribal consent is almost never required. Tribes have a right to consultation when projects are not sited on Indian country only in limited circumstances, typically when a federal action would impact their cultural heritage, legally recognized hunting/fishing/gathering rights, or the environment on Indian country. Compounding the challenges, no single federal agency has overall jurisdiction over oil pipelines. As a consequence, permits are typically only required for small portions of such projects, and the portion of the pipeline's cultural or environmental impacts that is likely to require tribal consultation under federal law is correspondingly limited.[142]

60. On September 9, 2016, the Department of Justice, the Department of the Army, and the Department of the Interior issued a Joint Statement[143] regarding *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* and committed to holding a series of formal, government-to-government "listening sessions"[144] on improving tribal consultation to determine whether new federal legislation was needed to achieve this goal. The findings were issued in the January 2017 report "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions" (2017 Consultation Report).[145] The government's recommendations mainly reinforced existing policies, practices and laws and acknowledged that "[w]ith regard to infrastructure projects, historically Federal agencies have not, as a matter of policy, sought out Tribal input or consistently worked to integrate Tribal concerns into the project approval processes."[146]

61. The 2017 Consultation Report was re-evaluated in March 2019 after members of Congress requested a review of the federal programs and policies affecting Tribes. The lawmakers' call came following criticism over the approval of DAPL and other controversial infrastructure projects. In response, the United States Government Accountability Office (GOA) issued its report

"Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects."[147] The GOA report reviewed the tribal consultation policies and processes of 21 federal agencies and input from 100 tribes and found that many agencies fail to consult Tribes properly on infrastructure projects. According to Tribal representatives, agencies do not consider their input and consultations start too late; and according to agencies, they have difficulty obtaining contact information to consult and experience other challenges.[148] The GOA issued 22 recommendations in its report including the development of a government-wide system to identify and notify tribes of consultations.

62. During the IACHR thematic hearing, the U.S. government assured the Commission that it encourages its companies to implement the Voluntary Principles on Security and Human Rights. The United States has in fact taken this pledge and is one of less than a dozen countries to join the Voluntary Principles Initiative. The Voluntary Principles are the only human rights "guidelines" designed specifically for extractive sector companies. Energy Transfer Partners, Enbridge, and TC Energy (formerly TransCanada) are not on the list of US corporations who participate in the Voluntary Principles initiative.[149]

63. Under the Voluntary Principles, a government is encouraged to "promote and protect human rights, consistent with its international human rights obligations" [150] (including the UN and American Declarations on the Rights of Indigenous Peoples) and to "take appropriate steps to prevent, investigate, punish and redress human rights abuses within their territories and/or jurisdiction by third parties, including extractive companies and public and private security service providers, through policies, legislation, regulations, and adjudication, as well as take appropriate action to prevent recurrence." [151] In this case the United States should provide redress for the victims of human rights abuses perpetrated by Energy Transfer Partners and TigerSwan private security firm.

64. While the United States has created a National Action Plan on Responsible Business Conduct[152] there are no enforcement or grievance mechanisms to address violations aside from the Specific Instance process,[153] within the US National Contact Point of the OECD (Organization for Economic Co-operation and Development). The Specific Instance process is, "merely an offer to facilitate neutral, third party mediation or conciliation to assist the parties in voluntary, confidential and good faith efforts to reach a cooperative resolution of their concerns." [154] Companies are not required to participate in the grievance mechanism or engage in mediation.

Conclusions and Recommendations

65. Freedom of expression, association, and peaceful assembly are secured by the First Amendment of the United States Constitution[155] and international human rights law.[156] The United States has a positive obligation to ensure and protect these rights. As the UN Rapporteur on Freedom of Expression noted, the U.S. has ratified the International Covenant on Civil and Political Rights and so the "[c]ovenant enjoys status under the U.S. Constitution as supreme law of the land."[157] Furthermore, the UN Declaration on Human Rights Defenders protects the right

to defend human rights, including the right to free expression and assembly, from violations by state agents and private entities.[158]

66. The United States has failed in its duty to prevent and protect against the use of excessive force and unlawful arrests and to investigate, punish, and provide reparations for these human rights abuses. By condoning the behavior of state law enforcement and private security in this context, the United States is normalizing, encouraging, and emboldening state and non-state actors to act similarly in future situations.

67. We encourage the United States to comply with its obligations under the U.S. Constitution, the American Declaration of the Rights and Duties of Man and the American Declaration on the Rights of Indigenous Peoples, specifically the rights of all citizens to: free expression, peaceful assembly, judicial protection, and equality before the law and the rights of indigenous peoples to their culture, religion and property, including rights and interests in traditional territories and sacred areas designated as public lands.

68. We call upon the Commission to follow up on the requests to the United States issued by the UN Special Rapporteur on the Rights of Indigenous Peoples to "develop and provide anti-oppression and anti-racism training to federal and state law enforcement agents, and to mandate the Department of Justice to open an investigation into the excessive use of force and militarized response to the water protectors at the Standing Rock Sioux Reservation, including the use of non-lethal weapons."[159] In addition, we ask the Commission to urge the United States to:

a) Review and reconsider criminal proceedings against DAPL water protectors, the vast majority of who were arrested without probable cause;
b) Investigate, punish, and provide appropriate reparations for human rights violations in relation to DAPL;[160] or convene a truth commission with indigenous representative institutions;
c) Adopt a regulatory framework to supervise and monitor activities of extractive industries and energy companies,[161] private security firms and other non-state actors to prevent future violations against indigenous peoples and their lands;
d) Provide training to law enforcement and private security on best practices for managing peaceful demonstrations; the right to free expression and assembly; and indigenous peoples' rights under international law;[162]
e) Implement national measures to protect indigenous human rights defenders in compliance with the UN Declaration on Human Rights Defenders, the UN and American Declarations on the Rights of Indigenous Peoples and other international standards to ensure the full enjoyment of their rights to free expression and assembly;[163]
f) Reject or amend state legislation, including critical infrastructure laws, that violate the rights to free assembly and free speech;
g) Ensure that state and local emergency powers are not abused in the context of social protest; and

h) Implement the American Declaration on the Rights of Indigenous Peoples into domestic law and policy.

69. We further urge the Commission to report on the corporate conduct and human rights accountability of the companies and investors behind the Dakota Access Pipeline[164] and the need to sanction those responsible for human rights violations.

Submitted June 24, 2019 by:

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[1] The recently announced New Global Campaign against the Criminalization and Impunity of Indigenous Peoples is a global human rights monitoring system and collaboration run by and for indigenous peoples. Julie Molin, *UN to Launch Global Campaign against Criminalization of Indigenous Peoples*, TRUTHOUT (April 26, 2019) https://truthout.org/articles/un-to-launch-global-campaign-against-criminalization-of-indigenous-peoples/ *See also* Anna Berry, *UN Aims to Protect Indigenous Peoples Fighting for Land and Resource Rights*, NONPROFIT

QUARTERLY (May 2, 2019) https://nonprofitquarterly.org/2019/05/02/un-aims-to-protect-indigenous-peoples-fighting-for-land-and-resource-rights/

[2] Criminalization of Human Rights Defenders of Indigenous Peoples and the Extractive Industry in the United States, IACHR 172nd Period of Sessions (May 9. 2019) https://www.youtube.com/watch?v=D6dZIhWxcWk&list=PL5QlapyOGhXvvyKD3Y0-GblPrDQ1xE_Ht&index=16&t=3501s

[3] Dakota Access, LLC, is a Delaware Limited Liability Company authorized to do business in North Dakota and engaged in the business of constructing the 1,154-mile-long Dakota Access Pipeline that is intended to transport crude oil from the Bakken Shale of North Dakota to refineries in Patoka, Illinois. "The Dakota Access Pipeline (DAPL) and the Energy Transfer Crude Oil Pipeline (ETCO), collectively the "Bakken Pipeline" went into service on June 1, 2017. The Bakken Pipeline is a 1,872-mile, mostly 30-inch pipeline system that transports domestically produced crude oil from the Bakken/Three Forks productions areas in North Dakota to a storage and terminalling hub outside Patoka, Illinois, and/or down to additional terminals in Nederland, Texas. The Bayou Bridge pipeline project will connect the Dakota Access pipeline, to refineries in St. James Parish and export terminals, forming the southern leg of the Bakken Pipeline. The Bakken Pipeline is a joint venture between Energy Transfer Partners with a 38.25 percent interest, MarEn Bakken Company LLC ("MarEn") with a 36.75 percent interest, and Phillips 66 Partners with a 25 percent interest. MarEn is an entity owned by MPLX LP and Enbridge Energy Partners L.P." Energy Transfer Partner L.P., Bakken website http://www.energytransfer.com/ops_bakken.aspx (last visited April 2, 2019)

[4] Jack Healy, *From 280 Tribes, A Protest on the Plains*, THE NEW YORK TIMES (Sept. 11, 2016) https://www.nytimes.com/interactive/2016/09/12/us/12tribes.html

[5] *See* para. 58 *infra, see also* note 24.

[6] Ltr from Thomas W. Wetterer, General Counsel, Greenpeace Inc. to Paulo Abrão, Executive Secretary, Inter-American Commission on Human Rights (April 24, 2019) (Attached as "Appendix A") "While the bills themselves vary in content, in general they (1) broadly redefine critical infrastructure, (2) increase criminal penalties for activists engaged in peaceful protest—for example changing a misdemeanor trespass charge into a felony—and (3) impose liability on organizations that seek to support protests. In effect, these bills create new causes of action for companies like Energy Transfer to target activists and organizations alike who are trying to protect the health and rights of people who live near pipelines, many of them Indigenous."

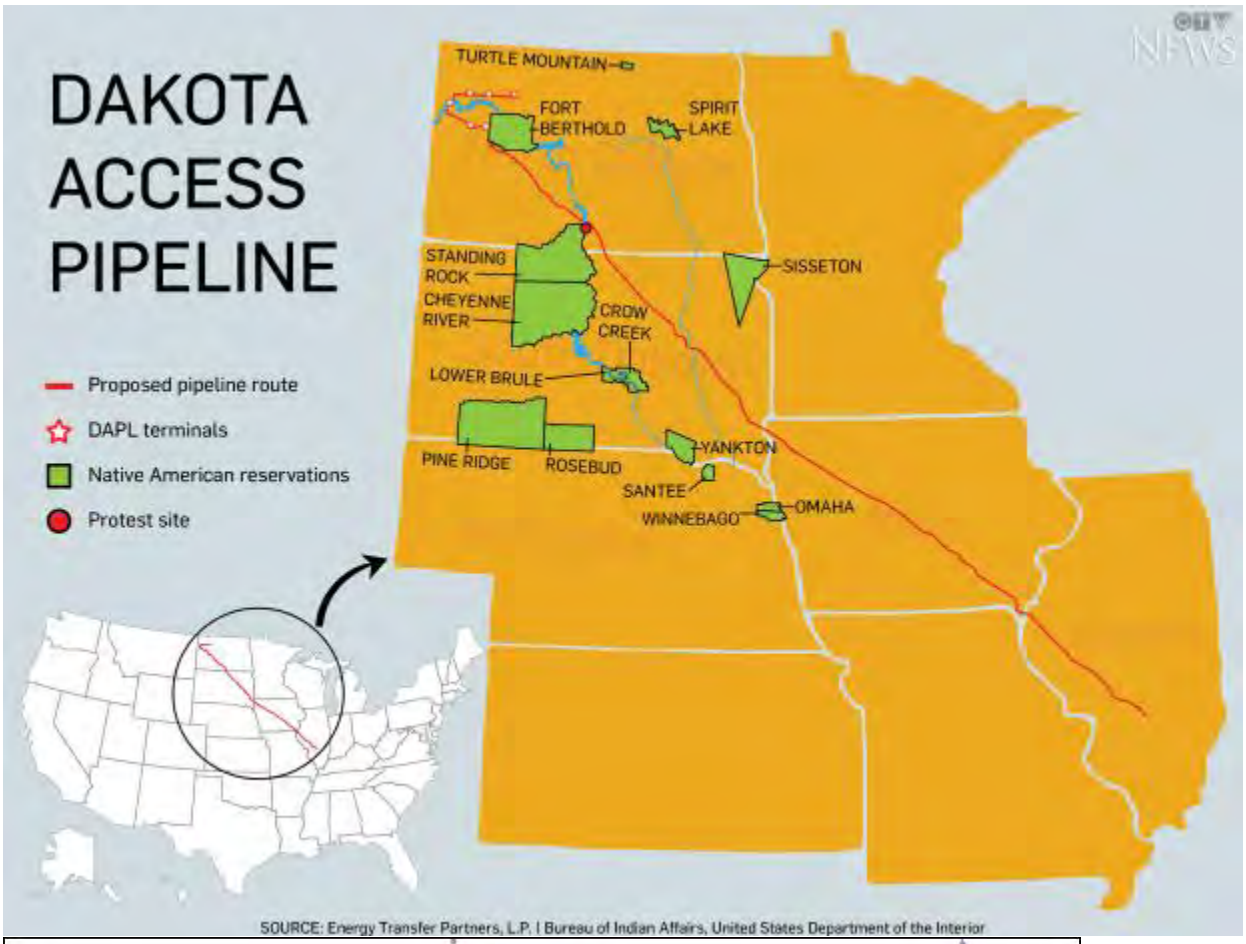
[7] The Special Rapporteurs on Free Expression and Free Assembly called on U.S. lawmakers "to stop the 'alarming' trend of 'undemocratic' anti-protest bills designed to criminalize or impede the rights to freedom of peaceful assembly and expression." They denounced the bills "as incompatible with US obligations under international human rights law and with First Amendment protections" and acknowledged that "[in] Colorado, North Dakota and Oklahoma, several bills [were] proposed as a response to the protests organized by activists and opponents of the Dakota Access Pipeline in North Dakota." OHCHR, *UN rights experts urge lawmakers to stop "alarming" trend to curb freedom of assembly in the US* (March 30, 2017) (Attached as "Appendix B") http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21464&LangID=E *See also* Ltr from Thomas W. Wetterer, *id*.

[8] Right to free expression- Article IV American Declaration of the Rights and Duties of Man and Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR); Right to free assembly- Article XXI and XXII of the American Declaration and Article 20 UDHR & Article 22 ICCPR; Right to security of the person-Article 1 of the American Declaration and Article 3 UDHR & Art. 9 ICCPR; Right to be free from arbitrary arrest and detention- Article XXV of the American Declaration and Article 9 UDHR & ICCPR; Right to be free from inhuman and degrading treatment-Article 5 UDHR & Article 7 ICCPR.

[9] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I, 1789 (rev. 1992).

[10] *See* Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, and the Yankton Sioux Tribe: Request for Precautionary Measures Pursuant to Article 25 of the Inter-American Commission Rules of Procedure Concerning Serious and Urgent Risks of Irreparable Harm Arising out of Construction of the Dakota Access Pipeline (Dec. 2, 2016) para. 102-125 https://www.scribd.com/document/333074630/Standing-Rock-Cheyenne-River-Yankton-Sioux-Tribes-Request-for-Precautionary-Measures-FINAL-Dec-02-2016-With-Exhibits (Attached as "Appendix C")

[11] IACHR, "Indigenous Peoples, Afro-descendant Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities," OEA/Ser.L/V/II.
Doc. 47/15 (Dec.31, 2015)
http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.docx
[12] IACHR, "Criminalization of the Work of Human Rights Defenders," OEA/Ser.L/V/II. Doc. 49/15 31 (Dec. 2015)
http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf
[13] A/HRC/36/56 (para. 6) (Excerpt attached as "Appendix D")
[14] E/2017/43-E/C.19/2017/11, para. 23 (Excerpt attached as "Appendix E") *See* UN DSPD, Statement from the Chair and PFII Members Dalee Dorough and Chief Edward John on the Dakota Access Pipeline
(Nov. 4, 2016) https://www.un.org/development/desa/indigenouspeoples/news/2016/11/statement-from-the-chair-and-pfii-members-dalee-dorough-and-chief-edward-john-on-the-dakota-access-pipeline/
See also Report and Statement from Chief Edward John Expert Member of the United Nations Permanent Forum on Indigenous Issues: Firsthand observations of conditions surrounding the Dakota Access Pipeline (North Dakota, USA), November 1, 2016, http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Report-ChiefEdwardJohn-DAPL2016.pdf
[15] The UN Special Rapporteur, Victoria Tauli-Corpuz, noted her concern over the "militarized, at times violent, escalation of force by local law enforcement and private security forces" … "the aggressive manner in which peaceful demonstrations were met by local, state, private and national guards' … "testimonies of war-like conditions and cases of blunt force trauma and hypothermia as a result of battery with batons, attack dogs and water cannons blasting individuals at freezing temperatures"… "protestors being strip-searched and placed in kennels as temporary holding cells during various and frequent mass raids by local, state and federal enforcement officials, sometimes in the middle of a spiritual and cultural energy cleansing ritual" and information that "over 700 indigenous and non-indigenous people were arrested during the protests, some of whom remain in custody." Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Mission to the United States of America, A/HRC/36/46/Add.1 (Aug. 9, 2017)
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/46/Add.1, paras. 72, 73 & 93 (Excerpt attached as "Appendix F") and Annual Report to the Human Rights Council A/HRC/39/17 (Aug. 10, 2018) para. 91-96 (Excerpt attached as "Appendix G")
[16] Keystone XL (USA), Atlantic Coast Pipeline (USA), Enbridge Line 3 (USA), LNG Coastal GasLink Pipeline (Canada), TransMountain Pipeline (Canada)
[17]


DAKOTA ACCESS PIPELINE
Proposed pipeline route
DAPL terminals
Native American reservations
Protest site
TURTLE MOUNTAIN
FORT BERTHOLD
SPIRIT LAKE
STANDING ROCK
CHEYENNE RIVER
CROW CREEK
SISSETON
LOWER BRULE
PINE RIDGE
ROSEBUD
YANKTON
SANTEE
WINNEBAGO
OMAHA
SOURCE: Energy Transfer Partners, L.P. | Bureau of Indian Affairs, United States Department of the Interior

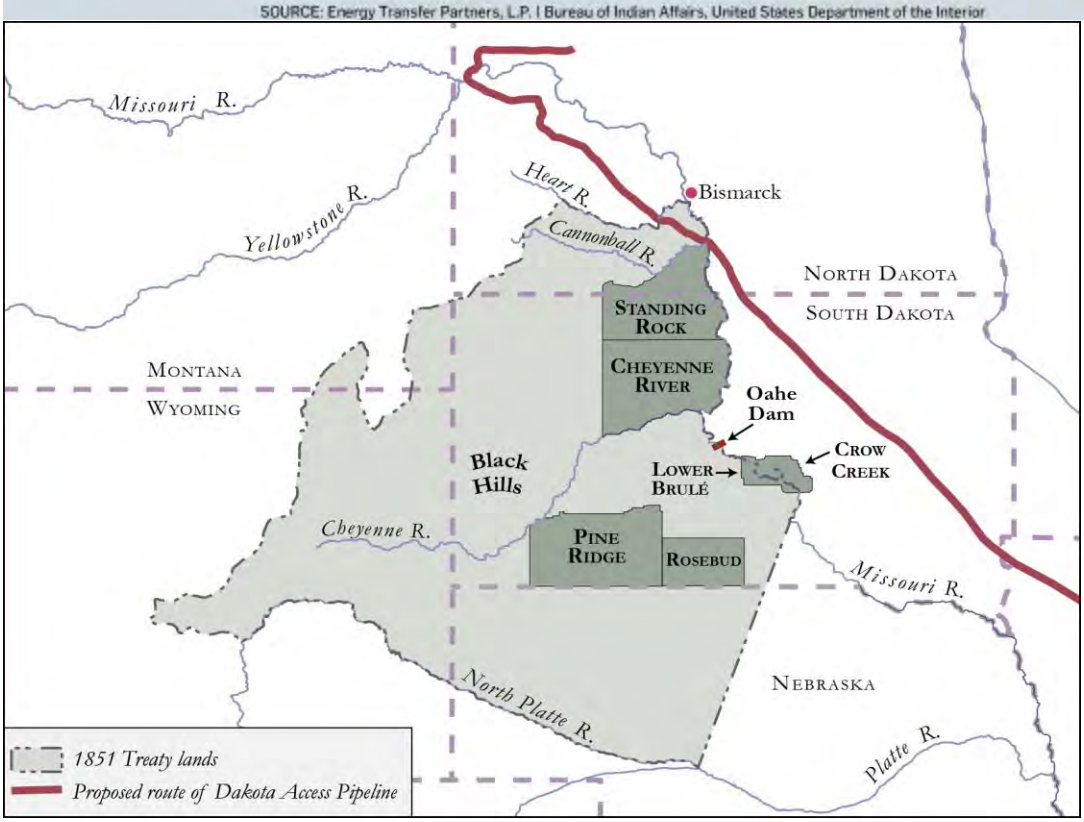

Missouri R.
Yellowstone R.
Heart R.
Cannonball R.
Bismarck
North Dakota
South Dakota
Montana
Wyoming
Standing Rock
Cheyenne River
Oahe Dam
Crow Creek
Lower Brulé
Black Hills
Cheyenne R.
Pine Ridge
Rosebud
Missouri R.
Nebraska
North Platte R.
Platte R.
1851 Treaty lands
Proposed route of Dakota Access Pipeline

Photo source: *'The Supreme Law of the Land': Standing Rock and the Dakota Access Pipeline, Shouldn't the US obey the Constitution?* Jeffrey Ostler and Nick Estes, Indian Country Today (Jan 16, 2017). https://indiancountrymedianetwork.com/news/opinions/supreme-law-land-standing-rock-dakota-access-pipeline/

[18] 11 Stat. 749 (Sept. 17, 1851)

[19] 15 Stat. 635 (Apr. 29, 1868), Article XVI

[20] For more details on the status of the lands, pipeline permitting and construction *see*: Complaint for Declaratory and Injunctive Relief, Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 1:16-cv-01534, U.S. District Court for the District of Columbia (July 27, 2016) ("Complaint, Standing Rock") https://earthjustice.org/sites/default/files/files/3154%201%20Complaint.pdf; Complaint for Declaratory and Injunctive Relief, Yankton Sioux Tribe et. al. v. United States Army Corps of Engineers et al., 1:16-cv-01796, U.S. District Court for the District of Columbia (Sept. 8, 2016) ("Complaint, Yankton Sioux") https://www.courtlistener.com/recap/gov.uscourts.dcd.181496.1.0.pdf

[21] 54 U.S.C. § 306108.

[22] Walter E. Stern, "Black Snakes" Or Essential Infrastructure: Dakota Access Pipeline, Standing Rock Sioux Tribe v. U. S. Army Corps of Engineers, The Federal Government's Tribal Consultation Obligations, and Why This Matters' Modrall Sperling, (Jan. 4, 2018) https://www.modrall.com/2018/01/17/black-snakes-essential-infrastructure-dakota-access-pipeline-standing-rock-sioux-tribe-v-u-s-army-corps-engineers-federal-governments-tribal-consultation-obligations-m/#fnref-4131-25

[23] See Draft Environmental Assessment prepared by Dakota Access, LLC, Nov. 2015; Final Environmental Assessment: Dakota Access Pipeline Project, crossings of flowage easements and federal lands, July 25, 2016, https://usace.contentdm.oclc.org/digital/collection/p16021coll7/id/2801; Comments of the Standing Rock Sioux Tribe Water Resources Control Board (Nov. 30, 2016) p.2. https://www.achp.gov/sites/default/files/2018-05/45%20-%20Standing%20Rock%20Sioux%20Water%20Resources%20Control%20Board.pdf

[24] The Yankton Sioux Tribe was not consulted. Complaint, Yankton Sioux Tribe, *supra* note 20. The Cheyenne River Sioux participated in public forums and submitted comments, but has not had meaningful consultation with the Corps. The Standing Rock Sioux repeatedly expressed concerns and objections to no avail.
See Precautionary Measures Request, *supra* note 10 ¶¶102-125.

[25] United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf Article 18: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions."
Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
Article 32(2): "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

[26] Memo from Joe-Ellen Darcy, Asst. Sec. of the Army, Department of Defense to Commander, U.S. Army Corps of Engineers, *Proposed Dakota Access Pipeline crossing at Lake Oahe, North Dakota,* (undated) https://www.army.mil/e2/c/downloads/459011.pdf

[27] *Department of the Army, Notice of Intent To Prepare an Environmental Impact Statement in Connection With Dakota Access, LLC's Request for an Easement To Cross Lake Oahe, North Dakota,* 82 Fed Reg. 5543, 5543-5545 (January 18, 2017) Doc No: 2017-00937 https://www.federalregister.gov/documents/2017/01/18/2017-00937/notice-of-intent-to-prepare-an-environmental-impact-statement-in-connection-with-dakota-access-llcs

[28] Memo from President Donald J. Trump to the Secretary of the Army, *Presidential Memorandum Regarding Construction of the Dakota Access Pipeline* (Jan. 24, 2017) https://www.gpo.gov/fdsys/pkg/DCPD-201700067/pdf/DCPD-201700067.pdf

[29] U.S. Army Corps of Engineers, *Corps grants easement to Dakota Access, LLC* (Feb. 8, 2017), http://www.nwo.usace.army.mil/Media/News-Releases/Article/1077134/corps-grants-easement-to-dakota-access-llc/

[30] Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 255 F. Supp. 3d 101, 102 (D.D.C. June 14, 2017) ("Memorandum Opinion") https://www.leagle.com/decision/infdco20170615a83

[31] Alleen Brown, *Five Spills, six months in operation: Dakota Access Track Record Highlights Unavoidable Reality-Pipelines Leak,* THE INTERCEPT (Jan. 9 2018) https://theintercept.com/2018/01/09/dakota-access-pipeline-leak-energy-transfer-partners/

[32] Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 16-1769, 2017 WL 6001726, 3 (D.D.C. Dec. 4, 2017). https://earthjustice.org/sites/default/files/files/Order-re-conditions.pdf

[33] *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs (Standing Rock IV*), 282 F. Supp. 3d 91, 96 (D.D.C. 2017) (citing *Standing Rock III*, 255 F. Supp. 3d at 111–112); and cases cited in Plaintiffs Reply Brief Regarding Remedy, (August 28, 2017) https://earthjustice.org/sites/default/files/files/SRST-CRST-Reply-Brief-re-Remedy.pdf.

[34] The Standing Rock, Cheyenne River, Yankton, and Oglala Sioux Tribes are challenging this further in the ongoing federal court litigation.

[35] Memorandum Opinion, *supra* note 30.

[36] "The Standing Rock and Cheyenne River Sioux Reservations are the permanent and irreplaceable homelands for the Tribes….Their core identity and livelihood depend upon their relationship to the land and environment -- unlike a resident of Bismarck, who could simply relocate if the [Dakota Access] pipeline fouled the municipal water supply, Tribal members do not have the luxury of moving away from an environmental disaster without also leaving their ancestral territory. This underscores the far-reaching effects of a DAPL spill's potential environmental impacts on the Tribes' historic, cultural, social, and economic interests." US Dept. of Interior, Office of Solicitor, Memo to Secretary of Dept. of Interior: Tribal Treaty and Environmental Statutory Implications of The Dakota Access Pipeline, M-37038, Dec. 4, 2016 at p.30 Filed (and withdrawn) as Exhibit 4 to Case No. 1:16-cv-1534-JEB https://shadowproof.com/wp-content/uploads/2017/02/document_ew_05.pdf

[37] Standing Rock Sioux Tribe*, Standing Rock Sioux Tribe Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe* (February 21, 2018) https://www.standingrock.org/sites/default/files/uploads/srst_impacts_of_an_oil_spill_2.21.2018.pdf

[38] Lauren Zannolli, *They're billin' us for killin' us': activists fight Dakota pipeline's final stretch* THE GUARDIAN (OCT. 17, 2018) https://www.theguardian.com/environment/2018/oct/16/dakota-access-pipeline-bayou-bridge-protest-activism

[39] Anne Rolfes, *Bayou Bridge Pipeline is an environmental threat to Louisiana | Opinion*, Nola.com (Jan. 17, 2018) https://www.nola.com/opinions/2018/01/bayou_bridge_pipeline.html

[40] EarthJustice, Protecting the Atchafalaya Basin from the Bayou Bridge Pipeline, https://earthjustice.org/cases/2018/bayou-bridge-pipeline

[41] American Declaration on the Rights of Duties of Man *supra* note 8, American Declaration on the Rights of Indigenous Peoples Articles 3, 4, 5, 11, 12, 14-19, 23-32, 36 & 46.

[42] Indigenous Environmental Network: http://www.ienearth.org/urgent-appeal-for-international-observers/

[43] Amnesty International, *Amnesty International USA Calls on Authorities to Protect Peaceful Protest at Dakota Access Oil Pipeline* (Aug. 30, 2016) https://www.amnestyusa.org/press-releases/amnesty-international-usa-calls-on-authorities-to-protect-peaceful-protest-at-dakota-access-oil-pipeline-site/

[44] UN DESA, Statement from the Chair and PFII Members Dalee Dorough and Chief Edward John on the Dakota Access Pipeline (Nov. 4, 2016) https://www.un.org/development/desa/indigenouspeoples/news/2016/11/statement-from-the-chair-and-pfii-members-dalee-dorough-and-chief-edward-john-on-the-dakota-access-pipeline/

Report and Statement from Chief Edward John Expert Member of the United Nations Permanent Forum on Indigenous Issues: Firsthand observations of conditions surrounding the Dakota Access Pipeline (North Dakota, USA) (Nov. 1, 2016) http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Report-ChiefEdwardJohn-DAPL2016.pdf

[45] For the list of 76 state agencies present *See*: Thomas Dresslar, *How Many Law Enforcement Agencies Does It Take to Subdue a Peaceful Protest?* AMERICAN CIVIL LIBERTIES UNION (Nov. 30, 2016) https://www.aclu.org/blog/free-speech/rights-protesters/how-many-law-enforcement-agencies-does-it-take-subdue-peaceful

[46] Lead-filled, shotgun-fired "beanbag" rounds and rubber-plastic "sponge" rounds.

[47] Including water cannons, sound cannons, tear gas, concussion grenades, rubber bullets, ban bag projectiles, and ferocious dogs.

Dundon v. Kirchmeier et al., First Amended Civil Rights Class Action Complaint for Damages and Injunctive Relief (Jan. 29, 2018) ("Dundon Amended Complaint") No. 1:16-cv-406 DLH-CSM, ¶6.
Curtis Waltman, *Indiana reveals the arsenal they brought with them to Standing Rock*, Muck Rock (March 6, 2017) https://www.muckrock.com/news/archives/2017/mar/06/indiana-reveals-arsenal-they-brought-them-standing/

[48] TigerSwan documents leaked to The Intercept indicate that during TigerSwan's first weeks working on the pipeline, TigerSwan operatives met with law enforcement in Iowa and North Dakota, who "agreed to sharing of information." By September 13, the documents indicate, TigerSwan had placed a liaison inside the law enforcement "joint operation command" in North Dakota. TigerSwan sent situation reports and intelligence briefings to a number of law enforcement recipients who were involved in policing the protests. TigerSwan also aided prosecutors in building cases against pipeline opponents including collecting video and photo evidence and building "Person of Interest (POI) folders". Activists on the ground were tracked by a Dakota Access helicopter that provided live video coverage to their observers in police agencies, according to an October 12 email thread that included officers from the FBI, DHS, BIA, state, and local police. In one email, National Security Intelligence Specialist Terry Van Horn of the U.S. attorney's office acknowledged his direct access to the helicopter video feed, which was tracking protesters' movements during a demonstration. https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/. TigerSwan even infiltrated the protesters. https://theintercept.com/2018/12/30/tigerswan-infiltrator-dakota-access-pipeline-standing-rock/. The North Dakota Investigative and Security Board, a state administrative agency, sued TigerSwan for operating without a license and therefore illegally provided services to Energy Transfer Partners. ETP was fined $2m and Tigerswan was prohibited from operating without a license. The case is on appeal to Supreme Court of North Dakota. https://www.prairiebusinessmagazine.com/news/government-and-politics/4612572-north-dakota-supreme-court-hears-arguments-pipeline-security
North Dakota Investigative and Security Board v. Tiger Swan (Jun. 12, 2017), State of North Dakota, County of Burleigh, In District Court, South Central Judicial District, Verified Complaint and Request for Injunction, https://ccrjustice.org/sites/default/files/attach/2017/11/Ex.%20A%20N.D.%20Complaint_0.pdf
The Society of Indian Psychologists issued a report expressing concern with TigerSwan's alleged use of counterterrorism tactics against water protectors.
The Society of Indian Psychologists, *(SIP) Educational Paper Regarding the Use of Counterterrorism Tactics on Native Peoples and Allies* (February 26, 2018) https://osf.io/72rd5/

[49] "The cooperation extended beyond DAPL security and law enforcement, according to an email from Michael Futch. Instructions at times originated from Energy Transfer Partners and were sent to TigerSwan personnel, which were then forwarded to law enforcement." C.S. Hagen, *The Laney Files, September: 2016*, HIGH PLAINS READER (Dec. 27, 2017) http://hpr1.com/index.php/feature/news/the-laney-files-september-2016/
It is reported that Energy Transfer Partners paid for security costs in North Dakota and other states. "North Dakota got $15 million on from the builder of the Dakota Access pipeline to help pay law enforcement bills related to months of protests over the project's construction." James Macpherson, *Dakota Access Developer Gives $15M Toward Security Costs,* ASSOCIATED PRESS (Sept. 28, 2017), https://www.usnews.com/news/us/articles/2017-09-28/apnewsbreak-pipeline-firm-gives-15m-toward-security-costs

[50] United Nations, *Report of the UN Special Rapporteur on the situation of human rights defenders, Situation of Human Rights Defenders,* A/72/170 (July 19, 2017) at ¶18 https://www.protecting-defenders.org/sites/protecting-defenders.org/files/N1722075.pdf

[51] Request for Precautionary Measures, *supra* note 10, Exhibit 1 p. 5 University of Colorado Timeline; and Exhibit 17 Declaration of Ta'sina Sapa Win Smith para. ¶¶17&41.

[52] Request for Precautionary Measures, *supra* note 10, p. 8 citing Exhibit 17 p. 256 Declaration of Ta'sina Sapa Win Smith.
See also Democracy Now, *FULL Exclusive Report: Dakota Access Pipeline Co. Attacks Native Americans with Dogs & Pepper Spray* (Sept. 6, 2016)
https://www.democracynow.org/2016/9/6/full_exclusive_report_dakota_access_pipeline

[53] *Supra* note 48.

[54] Morton County Sherriff's Department and many other agencies from across the state.

[55] *Dundon v. Kirchemeier*, 1:16-cv-00406-DLH-CSM (D.N.D.)(Nov, 25, 2016) (Dundon Trial Pleading). https://waterprotectorlegal.org/wp-content/uploads/sites/7/2017/02/Dundon-Complaint-2.pdf) ¶31.

[56] Alleen Brown, Will Parrish, Alice Speri, *The Battle of Treaty Camp*, The Intercept (Oct. 27, 2017) https://theintercept.com/2017/10/27/law-enforcement-descended-on-standing-rock-a-year-ago-and-changed-the-dapl-fight-forever//
See also: Sandy Tolan, *North Dakota pipeline activists say arrested protesters were kept in dog kennels,* Los Angeles Times (Oct. 28, 2016) http://www.latimes.com/nation/la-na-north-dakota-pipeline-20161028-story.html
[57] *Supra* note 46.
[58] *Dundon v. Kirchemeier*, *supra* note 55, ¶¶ 36-43.
[59] *Dundon v. Kirchmeier*, *supra* note 55, ¶2.
[60] *Id.* ¶2.
[61] *Id.* ¶36.
[62] Daniela A. Media, *U.S. Army Corps Gives Eviction Notice to Dakota Access Protest Camp*, NBC NEWS, (Feb. 3, 2017) https://www.nbcnews.com/news/us-news/u-s-army-corps-gives-eviction-notice-dakota-access-protest-n716686
[63] Sandy Tolan, *Journalist Faces Charges after Arrest while Covering Dakota Access Pipeline Protest,* LA TIMES (Feb. 5, 2017) http://www.latimes.com/nation/la-na-standing-rock-journalist-arrest-20170205-story.html;
Chris Sommerfeldt, *SEE IT: Journalist Shot While On-Air at Standing Rock Protests,* New York Daily News (Nov. 4, 2016) http://www.nydailynews.com/news/national/journalist-shot-on-air-standing-rock-protests-article-1.2857929;
Committee to Protect Journalists, *Charges for journalists covering Standing Rock protests* (Feb. 17, 2017); https://cpj.org/blog/SRock-NEW.pdf
Alexandra Ellerbeck, Journalists covering Standing Rock face charges as police arrest protesters Committee to Protect Journalists (Feb. 17, 2017) https://cpj.org/blog/2017/02/journalists-covering-standing-rock-face-charges-as.php
Unicorn Riot, *Statement on Recent Censorship of #NoDAPL Coverage* (Sep. 20, 2016) https://www.unicorniot.ninja/2016/statement-recent-censorship-nodapl-coverage/
Alleen Brown, *Arrests of Journalists at Standing Rock Test the Boundaries of the First Amendment,* THE INTERCEPT (Nov. 27, 2016) https://theintercept.com/2016/11/27/arrests-of-journalists-at-standing-rock-test-the-boundaries-of-the-first-amendment/
[64] This is the number of state criminal case in North Dakota that have a separate docket number. There may be several charges in each case, some individuals have had more than one case.
[65]Current as of May 1, 2019. Data provided by Water Protector Legal Collective. This is the number of state criminal cases that have a separate case number. It may change over time if cases are dismissed due to lack of evidence and then re-charged (with new charges and case numbers). There may be several charges involved in any one case and some people may have more than one case. For more information about the criminal proceedings *see* https://waterprotectorlegal.org/criminal-defense/
[66] Will Parish, *An Activist Stands Accused of Firing a gun at Standing Rock. It belonged to her lover-An FBI Informant*, THE INTERCEPT (Dec. 11, 2017) https://theintercept.com/2017/12/11/standing-rock-dakota-access-pipeline-fbi-informant-red-fawn-fallis/
C.S. Hagen, *Infiltrated: No-DAPL Activist Hoodwinked by Paid FBI Informant, Defense Says,* HIGH PLAINS READER (Jan. 11, 2018), http://hpr1.com/index.php/feature/news/infiltrated-no-dapl-activist-hoodwinked-by-paid-fbi-informant-defense-says/?platform=hootsuite
Water Protector Legal Collective, Red Fawn Fallis, (2019) https://waterprotectorlegal.org/red-fawn-fallis/
[67] *US v. RedFawn Fallis*, United States District Court for the District of North Dakota Western Division, Docket Number 1:17-CR-00016-DLH (July 11, 2018).
[68] *US v. Michael Markus*, United States District Court for the District of North Dakota Western Division, Docket Number 1:17-CR-00030-DLH-1 (Sept. 27, 2018).
[69] According to a search executed on the Federal Bureau of Prisons "Find an Inmate" website (www.bop.gov/inmateloc/), search executed on June 20, 2019 with the name "Michael Markus."
[70] *US v. Dion Ortiz*, United States District Court for the District of North Dakota Western Division, Docket Number 1:17-cr-00030-DLH-5, October 22, 2018
[71] *US v. James White*, United States District Court for the District of North Dakota Western Division, Docket Number 1:17-CR-00030, (Dec. 5, 2018).

[72] Petitioner Reply to Tigerswan's Opposition to Petition to Intervene with Exhibits, Before the Louisiana State Board of Private Security Examiners (March 27, 2018). https://ccrjustice.org/sites/default/files/attach/2018/03/Petitioners%27%20Reply%20to%20Opp%20to%20Intervene%20with%20Exhibits.pdf

[73] Alleen Brown & Will Parrish, *Recent Arrests Under New Anti-protest Law Spotlight Risks that Off-duty Cops Pose to Pipeline Opponents,* THE INTERCEPT (Aug. 22 2018) https://theintercept.com/2018/08/22/recent-arrests-under-new-anti-protest-law-spotlight-risks-that-off-duty-cops-pose-to-pipeline-opponents/

[74] Center for Constitutional Rights, *No Bayou Bridge Pipeline - Public Records Request to Department of Environmental Quality* https://ccrjustice.org/home/what-we-do/our-cases/no-bayou-bridge-pipeline-public-records-request-department-environmental

[75] Dundon v. Kirchmeier et al., First Amended Civil Rights Class Action Complaint for Damages and Injunctive Relief (Jan. 29, 2018) ("Dundon Amended Complaint") D.N.D. Case No. 1:16-cv-406 http://www.sfbla.com/wp-content/uploads/2017/07/1st-Amd-Complaint.pdf (asserting violations of (asserting violations of U.S. Const. Amend. I (right to speech, assembly, press, and religious exercise) and IV (right to be free of government excessive force).)

[76] Will Parrish, *Standing Rock activist faces prison after officer shot him in the face*, THE GUARDIAN – US Edition (Oct. 4, 2018) https://www.theguardian.com/us-news/2018/oct/04/standing-rock-marcus-mitchell-shooting-charges

[77] *"I'm Afraid They Are Out to Kill": Water Protectors Testify to Police Violence at Standing Rock*, DEMOCRACY NOW! (Jan. 25, 2017) https://www.democracynow.org/2017/1/25/im_afraid_they_are_out_to: *DAPL: Navajo Water Protector Shot in Eye By Police Near Standing Rock Tells What Happened*, MINING AWARENESS (Mar. 8, 2017) https://miningawareness.wordpress.com/2017/03/08/dapl-navajo-water-protector-shot-in-eye-by-police-near-standing-rock-tells-what-happened/

[78] *Wilansky v. Morton County, North Dakota et al, U.S. District Court*, D.N.D. Case No. 18-cv-00236.

[79] *Thunderhawk et al. v. County of Morton, North Dakota et al*.; D.N.D. Case No. 1:18-cv-00212 (Attached as "Appendix H") https://cccct.law.columbia.edu/sites/default/files/content/Pleading%2044%20-%20Amended%20Complaint.pdf (asserting violations of U.S. Const. Amend. I (Right to Speech, Assembly, Press, and Religious Exercise); U.S. Const. Amends. V, XIV (Right to Travel); U.S. Const. Art. 4 § 2 (Right to Travel); U.S. Const. Art. 1, § 8 cl. 3 (Right to Commerce).) *See* American Declaration on the Rights of Indigenous Peoples, Arts. IV (Sovereignty), XXI (Autonomy).

[80] Guy E. Carmi, *Dignity Versus Liberty: The Two Western Cultures of Free Speech,* 26 B.U. INT'L L.J. 277, 300 (2008) "The United States is exceptional in its individualistic approach to free speech, and virtually all other democracies leave more room to community norms in its free speech laws. The 'community-free zone' that is characteristic of First Amendment law is unparalleled."

[81] Statement by Commissioner Margarette May Macaulay at IACHR hearing on *Rights to freedom of association, peaceful assembly and freedom of expression in the United States*, during the 166th period sessions (Dec. 7, 2017) https://www.youtube.com/watch?v=yft7VCzxXUg&t=479s&list=PL5QlapyOGhXt0BSFvgydHBu6yz2atqEN2&index=1

[82] E.A. Crunden, "Trump pushes up to 20 years in prison for pipeline protesters," THINK PROGRESS, (June 3, 2019) https://thinkprogress.org/trump-pipeline-protestors-20-years-texas-7d6e4e06a33b/

[83] See Anti-Protest Legislature Chart, prepared for the WPLC by the Center for Constitutional Rights (Attached as "Appendix I") For updates *See* International Center for Not-For-Profit Law, US Protest Law Tracker: http://www.icnl.org/usprotestlawtracker/?location=&status=enacted&issue=&date=&type=legislative
"Among other things, the new laws expanded the definition of criminal trespass, and raised the penalty for a riot conviction. Though the measures were clearly in response to Standing Rock, they also reflected a much broader conservative backlash to direct action—a backlash that resulted in a wave of legislation introduced in states across the United States." Zoë Carpenter, *PHOTOS: Since Standing Rock, 56 Bills Have Been Introduced in 30 States to Restrict Protests*, THE NATION (Feb. 16, 2018) https://www.thenation.com/article/photos-since-standing-rock-56-bills-have-been-introduced-in-30-states-to-restrict-protests/

[84] Illinois HB633
http://www.ilga.gov/legislation/billstatus.asp?DocNum=1633&GAID=15&GA=101&DocTypeID=HB&LegID=116175&SessionID=108
Idaho SB1090 https://legislature.idaho.gov/sessioninfo/2019/legislation/S1090/

[85] Idaho SB1090 https://legislature.idaho.gov/sessioninfo/2019/legislation/S1090/

[86] See International Center for Nonprofit Law, Legislative Briefer: "Guilt by Association" Critical Infrastructure Bills and the Right to Protest (Sept. 2018) http://www.icnl.org/programs/US%20Programs/Critical%20Infrastructure%20Legislative%20Briefer.pdf

[87] Defending Rights and Dissent, Defending Rights and Dissent Protest under Fire: Critical Infrastructure Bills and the targeting of Anti-Pipeline Protest. A Toolkit for Activists. (Jan, 2019), https://rightsanddissent.org/news/protest-under-fire-drad-launches-three-toolkits-for-activists/

[88] "Liability exemption for motor vehicle driver. Notwithstanding any other provision of law, a driver of a motor vehicle who negligently causes injury or death to an individual obstructing vehicular traffic on a public road, street, or highway may not be held liable for any damages." North Dakota H.R. 1203, 65th Leg. Assembly (Jan. 9, 2017), https://www.legis.nd.gov/assembly/65-2017/documents/17-0351-01000.pdf

[89] On August 12, 2017, an Ohio man drove a car into a crowd of individuals demonstrating against a white nationalist gathering injuring 19 individuals and killing 32 year-old Heather Heyer. Michael Edison Hayden, M.L. Nestel, *Timeline: What led to the violence that unfolded in Charlottesville,* ABC NEWS, (Aug 14. 2017), http://abcnews.go.com/US/timeline-led-violence-unfolded-charlottesville/story?id=49207428

In October of 2016, a pick-up driver plowed through a group of people during a protest in downtown Reno, Nevada hitting two protestors. The protest was put on by the American Indian Movement of Northern Nevada. Sam Levin, *Video Shows Pickup Truck Plowing into Native American Rights Protesters,* THE GUARDIAN (Oct. 11, 2016) www.theguardian.com/us-news/2016/oct/11/native-american-rights-protesters-hit-by-truck-nevada

[90] Jennifer Brooks, *North Dakota bill aimed at Standing Rock Protest*, STAR TRIBUNE (Jan. 16, 2107) http://www.startribune.com/north-dakota-bill-aimed-at-standing-rock-protest/410860535/

[91] North Dakota Legislative Branch, Bill Actions for HB 1203 (Feb 13, 2017) http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba1203.html

[92] On April 27, 2017, the North Carolina legislature, in a 67-48 vote, passed House Bill 330 ("HB 330") An Act Providing That a Person Driving an Automobile While Exercising Due Care is Immune from Civil Liability for any Injury to Another if the Inured Person was Participating in a Protest or Demonstration and Blocking Traffic in a Public Street or Highway at the Time of the Injury https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H330v2.pdf

[93] ND SB 2044, 66th, Leg. Assembly (March 25, 2019), https://www.legis.nd.gov/assembly/66-2019/bill-index/bi2044.html; James MacPherson, *Legislature approves bumping pipeline tampering penalties*, ASSOCIATED PRESS (March 25, 2019), https://apnews.com/cd39b04dbbc84246b61171dd9900c1e3 ("The bill says someone who intentionally tampers with infrastructure faces up to five years in prison and a $10,000 fine. It also increases those fines up to $100,000 for an organization found to have conspired with multiple individuals.")

[94] LA HB727 (May 30, 2018) https://legiscan.com/LA/text/HB727/2018 See Ltr from Loyola University College of Law to Senate Judiciary Committee, Louisiana State Senate (April 19, 2018) (Attached as "Appendix J")

[95] Naveena Sadasivam, *After Standing Rock, protesting pipelines can get you a decade in prison and $100K in fines, Grist* (May 14, 2019) https://grist.org/article/after-standing-rock-protesting-pipelines-can-get-you-a-decade-in-prison-and-100k-in-fines/

[96] Steve Hardy, *Environmentalists see proposed Louisiana law to protect pipelines and penalize protesters as overreach,* The Advocate (March 31, 2018). https://www.theadvocate.com/baton_rouge/news/crime_police/article_1b087942-34ee-11e8-8dcb-2b3538173f63.html

[97] South Dakota Senate Bill 176 (March 13, 2017) http://sdlegislature.gov/docs/legsession/2017/Bills/SB176ENR.pdf

[98] The Governor's office announced "The reason for bringing this legislation is the protests in North Dakota and the upcoming construction of the Keystone XL pipeline in South Dakota. Governor Daugaard wants to learn from North Dakota's experience to be prepared." Georgetown University, The Free Speech Project (Aug. 29, 2017) http://freespeechproject.georgetown.domains/state-and-local-government/south-dakota-legislature-senate-bill-176-2017/

[99] John Hult, *Daugaard urges calm from tribes*, ARGUS LEADER (March 14, 2017) https://www.argusleader.com/story/news/2017/03/14/daugaard-urges-calm-tribes/99162354/

[100] *Id.*

[101] South Dakota SB189 (March 11, 2019) https://sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?File=SB189P.htm&Session=2019&Version=Printed&Bill=189
[102] Levi Rickert, *Cheyenne River Sioux Chairman reject South Dakota Governors' call to stop protest*, NATIVE NEWS ONLINE NET, (March 5, 2019), https://nativenewsonline.net/currents/cheyenne-river-sioux-chairman-rejects-south-dakota-govenors-call-to-stop-protests/; South Dakota: Official statement from Ella Robertson Chairwoman of the Sisseton Wahpeton Oyate, Lastreal Indians (March 12, 2019) https://lastrealindians.com/news/2019/3/12/mar-12-2019-sisseton-wahpeton-oyate-opposes-anti-protest-legislation
[103] Rickert, *id.*
[104] Lisa Kaczke, *Oglala Sioux Tribe bans Gov. Kristi Noem from Pine Ridge Reservation* SIOUX FALLS ARGUS LEADER (May 2, 2019) https://www.argusleader.com/story/news/politics/2019/05/02/oglala-sioux-tribe-reservation-gov-kristi-noem-south-dakota/3655328002/ Oglala Sioux Tribe Press Release, South Dakota Governor Noem and the Keystone XL Pipeline (Attached as "Appendix K")
[105] *Dakota Rural Action v. Noem*, Case Number 5:19-cv-5046, U.S. District Court for the District of South Dakota Western Division, March 28, 2019, https://www.aclusd.org/sites/default/files/field_documents/complaint_0.pdf
[106] Sadasivam, *supra* note 95.
[107] Illinois HB 1633, 101st Gen. Assembly (April 11, 2019), http://www.ilga.gov/legislation/billstatus.asp?DocNum=1633&GAID=15&GA=101&DocTypeID=HB&LegID=116175&SessionID=108
[108] Texas SB 1993, 86th Leg. Session (March 27, 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB1993
[109] Texas HB 3557 1993, 86th Leg. Session (April 23, 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB3557
[110] Texas HB 4448, 86th Leg. Session (April 4, 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB4448
[111] Texas SB 2229, 86th Leg. Session (March 21, 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB2229
[112] Frank Hopper, *Kill the bill! Save the land! Native protectors disrupt Texas legislature*, INDIAN COUNTY TODAY (May 10, 2019) https://newsmaven.io/indiancountrytoday/news/kill-the-bill-save-the-land-native-protectors-disrupt-texas-legislature-qNlvwX7lPkeLgU5y6wJVpw/
[113] Texas HB 2730, 86th Leg. Session (April 18, 2019), https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB2730
[114] Protect the Protest, "What is SLAPP?" https://www.protecttheprotest.org/category/resource-categories/what-is-slapp/
[115] Energy Transfer Equity, L.P., and Energy Transfer Partners L.P., v. Greenpeace International et al., Case 1:17-cv-00173-CSM (Aug. 22, 2017) https://earthrights.org/wp-content/uploads/ETP-complaint.pdf
[116] Michael Short, "Greenpeace v. Energy Transfer Partners: The Facts," Greenpeace, https://www.greenpeace.org/usa/global-warming/greenpeace-v-energy-transfer-partners-facts/
[117] Earth Rights International, "Energy Transfer Partners v. Krystal Two Bulls Indigenous Water Defender Sued by Company Behind Dakota Access Pipeline," https://earthrights.org/case/etp-v-krystal-two-bulls/
[118] Protect the Protest, *Court Dismisses Abusive Dakota Access Pipeline Company Lawsuit against Activists and Environmental Groups,* (Feb. 15, 2019) https://www.protecttheprotest.org/2019/02/15/court-dismisses-abusive-dakota-access-pipeline-company-lawsuit-against-activists-and-environmental-groups/
[119] Blake Nicholson, *Dakota Access developer sues Greenpeace in state court,* ASSOCIATED PRESS (Feb. 23, 2019) https://apnews.com/c86795a2c7a64cb1b5c1f7e42c649dba
[120] In Latin America, social protests in the region have been incredibly repressed and criminalized by applying anti-terrorism laws. In 2014 the Inter-American Court found that the Chilean government had violated the right to free expression of Mapuche indigenous leaders by imprisoning them under counter-terrorism laws. IACtHR, Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Judgment of May 29, 2014. (Merits, Reparations and Costs) www.corteidh.or.cr/docs/casos/articulos/seriec_279_ing.pdf

See also Cultural Survival, *Indigenous Activist Jailed in Guatemala* (March 24, 2015) https://www.culturalsurvival.org/news/indigenous-activist-jailed-guatemala
See also International Network of Civil Liberties Organizations, *Take Back the Streets: Repression and Criminalization of Protest around the World" American Civil Liberties Union*, ACLU (October 2013) www.aclu.org/report/take-back-streets-repression-and-criminalization-protest-around-world.

[121] Of the 281 human rights defenders killed in 25 countries in 2016, almost half had been defending their land, environment and indigenous rights. Front line Defenders, *Annual Report on Human Rights Defenders at Risk in 2016*, https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2016
Historically, indigenous people's unique expressions of their cultural identity and assertions of self-determination have been criminalized in the United States. *See* Nick Estes, *Fighting for Our Lives: #NoDAPL in Historical Context*, The Red Nation, (Sept. 18, 2016), https://therednation.org/2016/09/18/fighting-for-our-lives-nodapl-in-context/ "The anti-colonial uprising taking place in Oceti Sakowin treaty territory and spilling onto the world stage was met with violent state repression. AIM leaders were assassinated and many were imprisoned. For example, Native leader Leonard Peltier, who participated in this movement for the life and dignity of his people, to this day sits behind bars as one of the longest serving political prisoners in United States history. From 1977 to 2012 South Dakota's prison population increased 500 percent. One-third of its prison population is Native, although Natives make up only nine percent of the total population."
Native Americans are disproportionately in contact with the criminal justice system, are over-incarcerated, and are more likely to be killed by law enforcement than any other racial or ethnic group. Mike Males, *Who are Police Killing*? Center on Juvenile and Criminal Justice (August 26, 2014), http://www.cjcj.org/news/8113; *See also*, U.S. Census Bureau, 2010 U.S. Census, Overview of Race and Hispanic Origin: 2010, at 4 (March 2011), https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf. *See also*, John Swaine, et al., The Counted, 2015 and 2016 datasets, THE GUARDIAN (2017) https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/about-the-counted. *See also,* Elise Hansen, *The Forgotten minority in police shootings* (Nov. 13, 2017), http://www.cnn.com/2017/11/10/us/native-lives-matter/index.html?sr=fbCNN111317native-livesmatter0737PMStoryLink. "Native Americans are killed in police encounters at a higher rate than any other racial or ethnic group, according to data from the Centers for Disease Control and Prevention. Yet rarely do these deaths gain the national spotlight."

[122] On August 11, 2017 approximately 100 white nationalists demonstrated in opposition to the Charlottesville City Council decision to remove the statute of Confederate general Robert E. Lee from a city park. The white nationalists chanted "white lives matter," and the Nazi-associated phrase "blood and soil." Some white nationalists brawled with counter-protestors which contributed to the tension and violence that ensued the next day in a "Unite the Right" rally that resulted in 19 injuries and the killing of Heather Heyer. An independent investigation and review of the incident was very critical of law enforcement's response. Hunton & Williams LLP, Final Report: Independent Review of the 2017 Protest Events in Charlottesville, Virginia (Nov. 24, 2017) https://docs.wixstatic.com/ugd/c869fb_04949e939e2e440d99520dfb8400219c.pdf
See also: United Nations, CERD early warning and urgent action decision 1(93) (Aug. 18, 2017), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_EWU_USA_8285_E.pdf

[123] Beginning in March 2014, Cliven Bundy, his sons, and co-conspirators "led a massive assault against federal law enforcement officer in Bunkerville, Nevada." Kirk Siegler, *Cliven Bundy's Arrest Caps Years Of Calls For Government To Take Action,* National Public Radio (Feb. 11, 2016) https://www.npr.org/2016/02/11/466451287/cliven-bundys-arrest-caps-years-of-calls-for-government-to-take-action
Law enforcement did not engage Bundy and the hundreds of armed protestors because they were outnumbered and did not want to pose a risk to themselves. Criminal Complaint U.S. v. Bundy, 2:16-mj-00127-PAL, p.p. 28-31 (Feb. 11, 2016) https://www.scribd.com/document/298998019/2-11-16-Doc-1-U-S-A-v-Cliven-Bundy-Criminal-Complaint; On January 2, 2016, Cliven Bundy's son Ammon Bundy amassed an armed group of mostly white protesters, demonstrating against the federal use of land by taking over a federally-owned National Wildlife Refuge. "ABC News reported at the time of the standoff that the federal government was taking a "low key" approach to dealing with the militia group. Eventually a lengthy negotiations process was set up by authorities, but protesters stayed in control of the federal land for nearly 40 days." Catherine Thorbecke, *Oregon Siege and North*

Dakota Protest: Both Land Battles, But Similarities End There, ABC NEWS (Oct. 28, 2016) http://abcnews.go.com/US/comparing-contrasting-protests-oregon-north-dakota/story?id=43131318

[124] The ACLU submitted an open records requests to the Morton County Sheriff's Department and North Dakota Highway Patrol to determine if there were incidents of racial profiling in policing and surveillance technologies to spy on and track protesters. They made the request in preparation for a civil lawsuit against the law enforcement agencies for First and Fourteenth Amendment violations. The request was denied and the ACLU has appealed the decision. Ltr from ACLU to Morton County Sheriff's Department (Sept. 27, 2016) https://www.aclund.org/sites/default/files/field_documents/ora_mortoncounty_dapl.pdf
Ltr from ACLU to North Dakota Highway Patrol (Sept. 27. 2016) https://www.aclund.org/sites/default/files/field_documents/ora_ndhwyptrl_dapl.pdf

[125] IACHR *Second Report on the Situation of Human Rights Defenders in The Americas*, OEA/Ser.L/V/II, doc. 66 (2011) ¶253 https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf
See also United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples*, UN Doc.A/HRC/12/34/Add.8 (2009) http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf ¶19-21. "It is imperative that States adopt the measures necessary to secure the right of indigenous peoples and individuals to peacefully express opposition to extractive projects, as well as to express themselves on other matters, free from any acts of intimidation or violence, or from any form of reprisals. States should provide adequate training to security forces, hold responsible those who commit or threaten acts of violence, and take measures to prevent both State and private agents from engaging in the unjustifiable or excessive use of force. Additionally, criminal prosecution of indigenous individuals for acts of protest should not be employed as a method of suppressing indigenous expression and should proceed only in cases of clear evidence of genuine criminal acts. Instead, the focus should be on providing indigenous peoples with the means of having their concerns heard and addressed by relevant State authorities."

[126] IACHR *Report on Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development* ¶47-15. (Dec. 31, 2015).

[127] I*d.*

[128] IACHR Press Release, IACHR and UN Regional Human Rights Offices Express Concern over Deteriorating Situation for Rights Defenders in the Americas (Dec. 8, 2017) http://www.oas.org/en/iachr/media_center/PReleases/2017/204.asp

[129] *Id.*

[130] The rapporteur further explained that Indigenous communities are more vulnerable to threats and attacks because of the "lack of political and economic capital or because they belong to groups that have suffered social marginalization." (¶ 20) As such the 'work of human rights defenders in the field of business and human rights is crucial to protecting the land and the environment, securing just and safe conditions of work, combating corruption*, respecting indigenous cultures and rights* and achieving sustainable development." (¶ 1). Special Rapporteur on the situation of human rights defenders, Michael Forst, Report on Situation of Human Rights Defenders, ¶¶ 10 & 15 (July 2017) A/72/170 http://undocs.org/en/A/72/170

[131] OHCHR, Statement of Michel Forst, Human rights defenders face worsening risks for challenging firms, UN expert warns (Oct. 25, 2017) http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22297&LangID=E

[132] U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, "Fact Sheet: U.S. Government Efforts to Advance Business and Human Rights in 2018," (Nov. 19, 2018) https://www.state.gov/remarks-and-releases-bureau-of-democracy-human-rights-and-labor/u-s-government-efforts-to-advance-business-and-human-rights-in-2018/

[133] 2018 Annual Report of the Government of the United States of America for the Voluntary Principles on Security and Human Rights Initiative, at p. 4 https://docs.wixstatic.com/ugd/f623ce_e2b7e5e1951147cbbd23ade707d70fb4.pdf.

[134] 2018 Annual Report of the Government of the United States of America for the Voluntary Principles on Security and Human Rights Initiative, at p. 4 https://docs.wixstatic.com/ugd/f623ce_e2b7e5e1951147cbbd23ade707d70fb4.pdf.

[135] National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. §§ 4321–4347, the National Historic Preservation Act (NHPA) 54 U.S.C. §§ 3000101–306131, the Native American Graves Protection and Repatriation Act (NAGPRA)

25 U.S.C. §§ 3001–3013, the Archaeological Resources Protection Act (ARPA) 16 U.S.C. §§ 470aa–470mm, American Indian Religious Freedom Act, Public Law 95-341 (1978) (codified at 42 U.S.C. s. 1996 (2012).

[136] Executive Order 13007 of May 24, 1996, Sec. 2; and. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (2000). Executive Order 13175 does not provide for a right on the basis of free and prior informed consent but seeks only "input" and "consensual mechanisms." Statement on Signing the Executive Order on Consultation and Coordination With Indian Tribal Governments, 2807-2808 (Nov. 6, 2000), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO13175tribgovt.pdf

[137] Tarah Bailey, *Consultation with American Indian Tribes: Resolving Ambiguity and Inconsistency in Government-to-Government Relations*, COLO. NAT. RESOURCES, ENERGY & ENVTL. L. REV., 196 Vol. 29:1 (2018) https://www.colorado.edu/law/sites/default/files/attached-files/bailey_final_1_web_1.pdf

[138] *Red Lake Band of Chippewa Indians, et al. v. Minnesota Public Utilities Commission*, Minnesota Court of Appeals No. A19-0510; Nina Berglund, *We must stop the catastrophe that is Line 3 pipeline in its tracks,* THE GUARDIAN (Dec. 20, 2018). https://www.theguardian.com/commentisfree/2018/dec/20/enbridge-line-3-pipeline-battle-protest-minnesota

[139] Native American Rights Fund, "The Tribes' Case Against KXL Still Stands," (June 7, 2019) https://www.narf.org/keystone-xl/

[140] Apache Stronghold, Protect Oak Flat http://apache-stronghold.com/

[141] Petition to IACHR, submitted by the Navajo Nation against the United States of America, (March 2, 2015) http://www.nnhrc.navajo-nsn.gov/docs/sacredsites/Navajo%20Nation%20Petition%20to%20IACHR%20March%202%202015.pdf

[142] Foley Hoag LLP, Public Summary of Foley Hoag LLP Report, Good Practice for Managing the Social Impacts of Oil Pipelines in the United States, 8 (May 9, 2017) http://www.foleyhoag.com/-/media/files/foley%20hoag/publications/ebooks%20and%20whitepapers/2017/public%20summary%20of%20foley%20hoag%20llp%20report%20good%20practice%20for%20managing%20the%20social%20impacts%20of%20oil%20pipelines%20in%20the%20united%20states.ashx

[143] US DOJ, Office of Public Affairs, Press Release Number 16-1034 (Sept. 9, 2016) https://www.justice.gov/opa/pr/joint-statement-department-justice-department-army-and-department-interior-regarding-standing

[144] See Comments of Chairman Dave Archambault, II, Standing Rock Sioux Tribe On Federal Consultation with Tribes on Infrastructure Decision Making (Nov. 22, 2016) https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/pdf/idc2-055454.pdf See also Comments of the Standing Rock Sioux Tribe Water Resources Control Board (Nov. 30, 2016) https://www.achp.gov/sites/default/files/2018-05/45%20-%20Standing%20Rock%20Sioux%20Water%20Resources%20Control%20Board.pdf

[145] U.S. Department of the Interior, U.S. Department of the Army & U.S. Department of Justice (Jan. 2017) https://www.achp.gov/sites/default/files/reports/2018-06/ImprovingTribalConsultationandTribalInvolvementinFederalInfrastructureDecisionsJanuary2017.pdf

[146] *Id.* at p. 2.

[147] United States Government Accountability Office, Report to Congressional Requesters, "Tribal Consultation, Additional Federal Actions Needed for Infrastructure Projects," GAO-19-22, (March 2019) https://www.gao.gov/assets/700/697694.pdf

[148] *Id.*

[149] US Department of State, The Voluntary Principles on Security and Human Rights, (May 29, 2019), https://www.state.gov/the-voluntary-principles-on-security-and-human-rights/

[150] Voluntary Principles Initiative – Guidance on Certain Roles and Responsibilities of Governments, p. 1 https://docs.wixstatic.com/ugd/f623ce_64253cb1f65740b7940068d7702157c8.pdf

[151] Id p. 2.

[152] US Department of State, Responsible Business Conduct: First National Action Plan for the United States of America (Dec. 16, 2016), https://2009-2017.state.gov/e/eb/eppd/csr/naprbc/265706.htm

[153] Specific Instance Process, U.S. Department of State (April 24, 2019), https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/#SpecificInstance

[154] A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises, U.S. Department of State, pg. 7-8 (March 8, 2019), https://www.state.gov/u-s-national-contact-point-for-the-oecd-

guidelines-for-multinational-enterprises/a-guide-to-the-u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/

[155] *Supra*, note 9.

[156] *Supra*, note 8.

[157] David Kaye, *State Execution of the International Covenant on Civil and Political Rights,* 3 UC Irvine L. Rev. 95, 96 (2013) https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1082&context=ucilr

[158] *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (March 8, 1999) Preamble, Arts. 2,9, and 12, A/RES/53/144. Although not a legally binding instrument, the Declaration on human rights defenders contains rights that are already recognized in many legally binding international human rights instruments, including the ICCPR. In addition, the Declaration was adopted by consensus by the General Assembly, which consequently REPRESENTS STATES' STRONG COMMITMENT TOWARDS ITS IMPLEMENTATION.

[159] *Supra* note 15, ¶93.

[160] The ACLU asked the United States Department of Justice (DOJ) to investigate "possible constitutional rights violations in the police response to peaceful protestors demonstrating against the Dakota Access pipeline." *See* Ltr from ACLU to DOJ (Nov. 4, 2016) https://www.aclu.org/letter/aclu-standing-rock-letter-justice-department *See also* Recommendation of the UN Special Rapporteur on Indigenous Peoples: "mandate the Department of Justice to open an investigation into the excessive use of force and militarized response to the water protectors at the Standing Rock Sioux Reservation." Report A/HRC/36/46/Add.1, *supra note* 15 at para. 93.

[161] For example, Canada has created the "Canadian Ombudsperson for Responsible Enterprise (CORE)" to respond to human rights complaints arising from Canadian companies operating abroad, as well as a multi-stakeholder Advisory Board on Responsible Business Conduct. https://mailchi.mp/dist/iachr-welcomes-creation-by-canada-of-an-ombudsperson-to-oversee-canadian-companies-operating-abroad?e=01f98b5eb0

[162] Foley Hoag LLP, *Public Summary of Foley Hoag LLP Report, Good Practice for Managing the Social Impacts of Oil Pipelines in the United States,* 8 (May 9, 2017) http://www.foleyhoag.com/-/media/files/foley%20hoag/publications/ebooks%20and%20whitepapers/2017/public%20summary%20of%20foley%20hoag%20llp%20report%20good%20practice%20for%20managing%20the%20social%20impacts%20of%20oil%20pipelines%20in%20the%20united%20states.ashx

[163] *See* Precautionary Measures Request, *supra* note 10.

[164] Energy Transfer Family of Partnerships and joint partners and subsidiaries including Sonoco, MarEn Bakken Company LLC, Phillips 66, and Enbridge Energy Partners L.P. "Sunoco Logistics is one of the largest pipeline operators in the United States. Energy Transfer is constructing the Dakota Access pipeline to pump crude produced at North Dakota's Bakken shale fields to the U.S. Gulf Coast. Once completed, it will hand over the pipeline's operation to Sunoco." Liz Hampton, *Sunoco behind protested Dakota pipeline, tops U.S. crude spill charts*, Reuters (September 23, 2016) https://www.reuters.com/article/us-usa-pipeline-nativeamericans-safety-i/sunoco-behind-protested-dakota-pipeline-tops-u-s-crude-spill-charts- *See also* Energy Transfer, *Sunoco Logistics Partners and Energy Transfer Partners Announce Successful Completion of Merger* (April 28, 2017) http://ir.energytransfer.com/phoenix.zhtml?c=106094&p=irol-newsArticle&ID=2267001

APPENDIX A

GREENPEACE
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Washington DC 20001
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greenpeace.org

April 24, 2019

Paulo Abrão
Executive Director
Inter-American Commission on Human Rights
1889 F Street, NW
Washington, DC 20006

Re: Criminalization of human rights defenders of Indigenous peoples by the extractive industry in the U.S.; Hearing – 172th Extraordinary Period of Sessions

Dear Executive Secretary Abrão:

This letter is submitted for consideration at the above referenced hearing in support of the Water Protector Legal Collective and the Indigenous Peoples Law and Policy Program. It highlights ways the extractive industry is trying to manipulate U.S. law to unjustly target human rights defenders of Indigenous peoples in an attempt to silence their speech.

In August 2017, Energy Transfer, the company behind the Dakota Access Pipeline (DAPL), filed a $900 million strategic lawsuit against public participation (SLAPP)[1] against Greenpeace defendants, and others, in a blatant attempt to silence those fighting for the environment and human rights. It was also an attempt to rewrite the Indigenous-led movement at Standing Rock to protect water, land, and sacred rights from the threats posed by DAPL. The lawsuit included claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), a law created to prosecute organized crime. You can read more background on this lawsuit at https://www.greenpeace.org/usa/global-warming/greenpeace-v-energy-transfer-partners-facts/.

In July 2018, a federal court ordered Energy Transfer to file an amended complaint, explaining that the "187-page complaint is impossible to summarize," and otherwise found the company "failed to state plausible RICO claims against Greenpeace," and "failed to comply with basic rules of pleading." Despite this rebuke, Energy Transfer not only amended its complaint, but also continued the legal assault on human rights defenders by adding other defendants, including Krystal Two Bulls, an Indigenous Water Defender[2].

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[1] https://www.protecttheprotest.org/category/resource-categories/what-is-slapp/
[2] https://earthrights.org/case/etp-v-krystal-two-bulls/

This past February, the lawsuit was fully dismissed[3] in a blistering opinion by a federal court judge. Nevertheless, Energy Transfer pressed on with its legal intimidation tactics against Indigenous rights advocates by repackaging its federal lawsuit into one filed in a North Dakota state court[4]. The venue may have changed, but the misrepresentations about Standing Rock and meritless legal claims continue.

This crackdown on speech is also taking place in state legislatures across the United States. Beginning in 2015, lawmakers started introducing new anti-protest bills to restrict the speech of specific social justice movements. After the resistance at Standing Rock over DAPL, this trend expanded to include increasing criminal penalties for activists engaged in "critical infrastructure" protests.

To date, nearly 100 anti-protest bills have been introduced in state legislatures, and two dozen of these address fossil fuel pipeline protests. The American Legislative Exchange Council is pushing these bills and fossil fuel companies are hiring lobbyists to advocate for their enactment. Even the mere introduction of these bills has the power to chill speech, and where we see these new laws go into effect, activists are facing felony arrests.

While the bills themselves vary in content, in general they (1) broadly redefine critical infrastructure, (2) increase criminal penalties for activists engaged in peaceful protest—for example changing a misdemeanor trespass charge into a felony—and (3) impose liability on organizations that seek to support protests. In effect, these bills create new causes of action for companies like Energy Transfer to target activists and organizations alike who are trying to protect the health and rights of people who live near pipelines, many of them Indigenous.

To learn more about critical infrastructure bills, please check out http://polluterwatch.org/State-Bills-Criminalize-Peaceful-Protest-Oil-Gas-Critical-Infrastructure-pipelines, a blog post on PolluterWatch, a project of Greenpeace. And to see all the bills that have been filed to undermine the right to dissent across the country, please check out the International Center for Not-for-Profit Law's U.S. protest law tracker at http://www.icnl.org/usprotestlawtracker/.

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[3] https://www.protecttheprotest.org/2019/02/15/court-dismisses-abusive-dakota-access-pipeline-company-lawsuit-against-activists-and-environmental-groups/

[4] https://apnews.com/c86795a2c7a64cb1b5c1f7e42c649dba

You can also read more about Energy Transfer's poor corporate behavior regarding human rights, free speech, and the environment, including the issues identified above, in the Greeenpeace reports Too Far Too Often[5] and Still Too Far[6]

Thank you for granting this hearing and for considering the information provided in this letter. Please do not hesitate to contact me if you need any clarification or further information.

Very truly yours,

Thomas W. Wetterer
General Counsel
Greenpeace, Inc.
Greenpeace Fund, Inc.

[5] https://www.greenpeace.org/usa/reports/too-far-too-often/
[6] https://www.greenpeace.org/usa/wp-content/uploads/2018/10/greenpeace-report-still-too-far.pdf

APPENDIX B

UN rights experts urge lawmakers to stop “alarming” trend to curb freedom of assembly in the US

GENEVA (30 March 2017) – Two UN human rights experts* are calling on lawmakers in the United States to stop the “alarming” trend of “undemocratic” anti-protest bills designed to criminalize or impede the rights to freedom of peaceful assembly and expression.

Since the Presidential Elections in November, lawmakers in no fewer than nineteen states have introduced legislation restricting assembly rights by various degrees. The moves come just as the United States is seeing some of the largest and most frequent protests in its history.

“Since January 2017, a number of undemocratic bills have been proposed in state legislatures with the purpose or effect of criminalizing peaceful protests,” the experts said.

“The bills, if enacted into law, would severely infringe upon the exercise of the rights to freedom of expression and freedom of peaceful assembly in ways that are incompatible with US obligations under international human rights law and with First Amendment protections. The trend also threatens to jeopardize one of the United States’ constitutional pillars: free speech.”

Concerns about the implication of these bills were recently raised by the experts in a recent communication sent to the US authorities on 27 March 2017. The bills come amid a wave of US protests over the past few years which have intensified in recent months.

“From the Black Lives Matter movement, to the environmental and Native American movements in opposition to the Dakota Access oil pipeline, and the Women’s Marches, individuals and organizations across society have mobilized in peaceful protests, as it is their right under international human rights law and US law,” the experts said.

“These state bills, with their criminalization of assemblies, enhanced penalties and general stigmatization of protesters, are designed to discourage the exercise of these fundamental rights.”

In Indiana, Senate Bill No. 285 would allow law enforcement officials to “use any means necessary to clear the roads of people unlawfully obstructing vehicular traffic”. Several bills, such as those proposed in Arkansas, Florida, Georgia, Indiana, Iowa, Michigan, Minnesota and Missouri, disproportionately criminalize protestors for “obstructing traffic”. One Missouri bill proposes a prison term of up to seven years for “unlawful obstruction of traffic”.

Other bills in Florida and Tennessee would have the effect of exempting drivers from liability if they accidentally hit and even kill a pedestrian participating in assemblies. Bills in Florida, Indiana, Minnesota and Missouri refer to what they consider “unlawful” or unauthorized assemblies, and in Minnesota and North Carolina, individuals could be liable for the total public cost of ending “unlawful

assemblies".

In Minnesota, the proposed bill could have the effect of criminalizing peaceful protesters for participating in demonstrations that turn violent or result in property damage – even if those protesters did not personally participate in the violence or property damage.

In Colorado, North Dakota and Oklahoma, several bills proposed as a response to the protests organized by activists and opponents of the Dakota Access Pipeline in North Dakota, would have a chilling effect on environmental protestors.

The experts took particular issue with the characterization in some bills of protests being "unlawful" or "violent".

"There can be no such thing in law as a violent protest," the experts said. "There are violent *protesters*, who should be dealt with individually and appropriately by law enforcement. One person's decision to resort to violence does not strip other protesters of their right to freedom of peaceful assembly. This right is not a collective right; it is held by each of us individually," the experts stressed.

"Peaceful assembly," they added, "is a fundamental right, not a privilege, and the government has no business imposing a general requirement that people get permission before exercising that right."

The experts also emphasized that legislators should be mindful of the important role that the right to freedom of peaceful assembly has played in the history of American democracy and the fight for civil rights.

"We call on the US authorities, at the federal and state level, to refrain from enacting legislation that would impinge on the exercise of the rights to freedom of peaceful assembly, expression and opinion," they concluded.

(*) The UN experts: **Mr. Maina Kiai, Special Rapporteur on freedom of peaceful assembly and of association**, took up his functions as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association in May 2011. He is appointed in his personal capacity as an independent expert by the UN Human Rights Council. **Mr. David Kaye** (USA) was appointed as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in August 2014 by the United Nations Human Rights Council.

Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.
UN Human Rights, country page: United States

For more information and **media requests**, please contact: Marion Mondain (+41 22 91 79 540 / freeassembly@ohchr.org)

For **media inquiries** related to other UN independent experts:
Bryan Wilson, OHCHR Media Unit (+ 41 22 917 9826 / mediaconsultant1@ohchr.org)

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APPENDIX C

December 2, 2016

Mr. Emilio Álvarez Icaza Longoria
Executive Secretary
Inter-American Commission on Human Rights
1889 F. Street, N.W.
Washington, D.C. 20006

Re: Request for Precautionary Measures Pursuant to Article 25 of the IACHR Rules of Procedure Concerning Serious and Urgent Risks of Irreparable Harm Arising Out of Construction of the Dakota Access Pipeline

Honorable Mr. Álvarez:

By this request, the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, and the Yankton Sioux Tribe (the "Tribes") respectfully request that this Commission call on the United States to adopt precautionary measures to prevent irreparable harm to the Tribes, their members, and others resulting from the ongoing and imminent construction of the Dakota Access Pipeline ("DAPL"), and from the harassment and violence being perpetrated against people gathered in prayer and protest in opposition to DAPL.

The construction and operation of DAPL would cause serious and irreparable harm to lands and waters that are sacred to the Tribes, central to the survival of their culture, and essential to their physical integrity and health. As such, granting the easement allowing the final stage of construction would cause imminent, serious and irreparable violations of the Tribes' rights to culture, life, liberty and personal security, health, water, property, and equality before the law. Because the United States has failed to meaningfully consult with the Tribes in granting permits for the pipeline, or to perform an adequate assessment of the environmental and social effects of granting the permits, granting the final easement would also seriously and irreparably violate the Tribes' rights to information and participation in government. Finally, ongoing and escalating violence and harassment of peaceful protesters by state and local police forces, and private security guards, and the continued failure of the United States to ensure the safety of the protesters, pose an immediate threat of grave and irremediable violation of the Tribes' and others' rights to life, liberty and personal security, health, peaceable assembly, association, and protection from arbitrary arrest.

I. Beneficiaries

The beneficiaries of this request are the members of the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Yankton Sioux Tribe, as well as some members of other tribes, and other individuals, peacefully praying and protesting in opposition to DAPL.

II. Facts

A. The Tribes and Their Lands and Waters

Since time immemorial, the *Oceti Šakowiŋ* – the "Seven Council Fires" or the Great Sioux Nation – has lived in the northern Great Plains of North America in what are now the states of North Dakota, South Dakota, Montana, Wyoming, and Nebraska. In two treaties signed in 1851 and 1868, the *Oceti Šakowiŋ* reserved land rights "set apart for the absolute and undisturbed use and occupation" of the Indians. The unilateral abrogation of these treaties and other acts of the U.S. government ultimately resulted in the creation of nine much smaller Sioux reservations, including the current Standing Rock, Cheyenne River, and Yankton Sioux Reservations.

Locations of the treaty lands, and of the Standing Rock Sioux, Cheyenne River Sioux, and Yankton Sioux reservations.

The Standing Rock Sioux Reservation in North Dakota and South Dakota is the sixth largest Indian reservation in the United States. The Standing Rock Sioux Tribe has approximately 18,000 enrolled members. The Cheyenne River Sioux Reservation is adjacent to the Standing Rock Sioux Reservation to the south. Like Standing Rock, Cheyenne River's eastern border is Lake Oahe. The Cheyenne River Sioux Reservation is the fourth largest Indian reservation in the United States. The Cheyenne River Sioux Tribe has 16,000 enrolled members. The Yankton Sioux Reservation borders the Missouri River in southern South Dakota. The Yankton Sioux Tribe has approximately 9,000 members.

The culture and identity of the Tribes are deeply connected to the land and waters of their traditional territories. Because of a history of colonization, dispossession, and genocidal government policies, the Tribes have lost, or nearly lost, important parts of their land, language, stories, and history. Their connection to sacred, cultural and historical sites associated with their traditional territories is essential to maintaining what remains of their culture and identity.

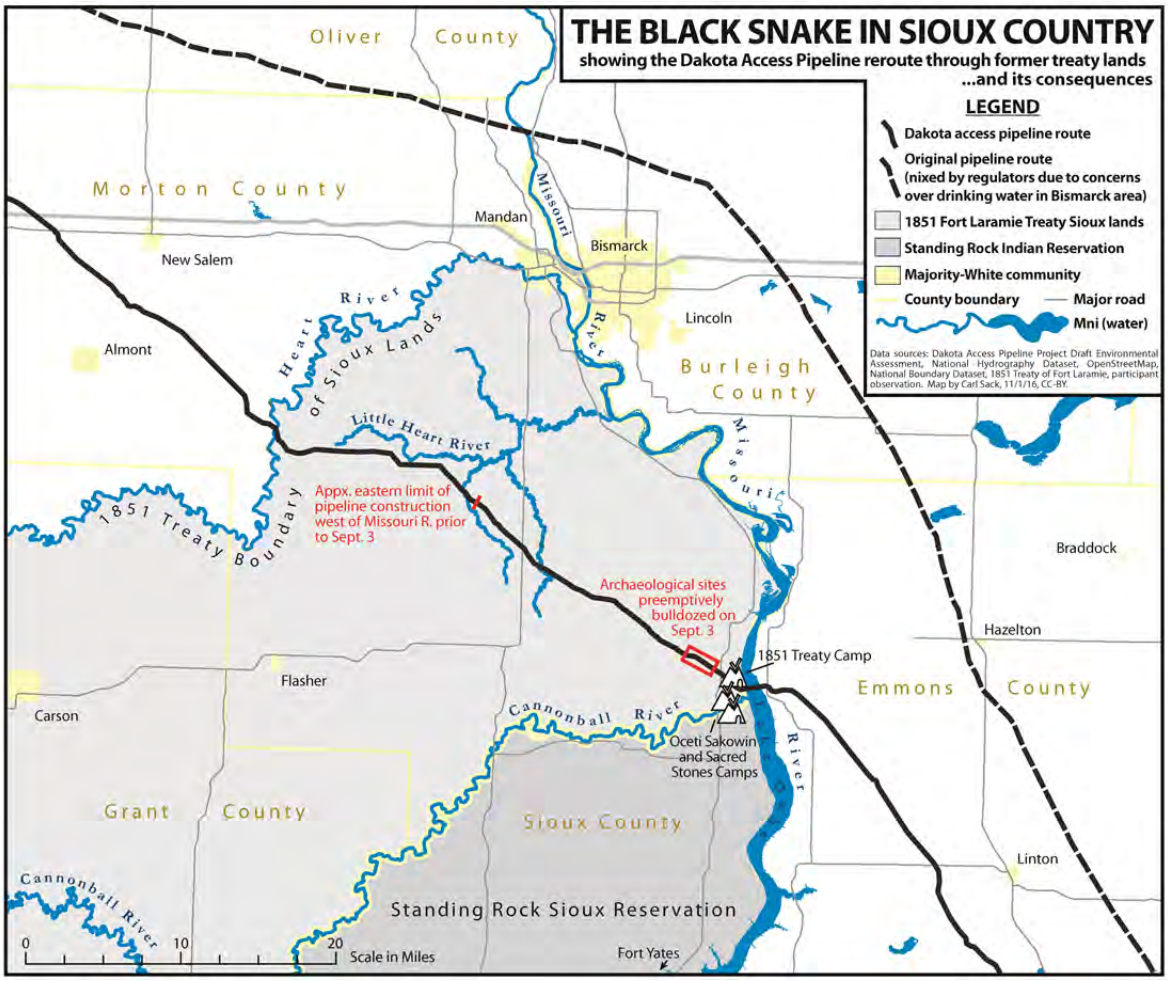
The Sioux understand that all beings are connected, that all life – the people, animals, and plants, the air, land, and water – has a spirit and is related. Central to this cultural and spiritual understanding is the Sioux's relation to water. Water is considered to be sacred medicine – *Mni Wiconi* or Water of Life. It is known as the "first medicine," as we are all born from the water in our mothers' wombs. As part of their sacred obligation to the next seven generations, the Tribes are responsible for ensuring that the waters remain clean and uncontaminated. This concept is reflected in the Lakota saying, "*Le makoce kin teunkilapi sni ki, hehan un Lakotapi kte sni*," "When we no longer cherish the land, we will no longer be Lakota."

The waters of the Missouri River, or *Mni Šoše,* run through the heart of the Tribes' treaty territory. These waters are sacred to the Tribes and constitute the lifeblood of their spirituality and traditions. The treaties and legal doctrines that govern the Tribes' rights establish that the Tribes enjoy rights to waters that are clean and suitable for drinking, agriculture use, hunting, and fishing among other uses.[1] These property rights are subject to the special trust relationship between the United States and the Tribes which necessitates consultation when these rights and resources are threatened by federal action. The river provides drinking water for the people of all three reservations, and is a place where their members fish, swim, and conduct ceremonies. One of the Sioux's most important spiritual ceremonies, the Sun Dance, is often performed on the banks of the Missouri River.

B. The Dakota Access Pipeline

The Dakota Access Pipeline is a 1,168-mile-long pipeline that, if completed, would carry 570,000 barrels of crude oil daily from the Bakken region of North Dakota across four states to refineries in southern Illinois.[2] Dakota Access, LLC, a subsidiary of Texas-based Energy Transfer Partners, is building the pipeline. The pipeline intersects the treaty reservation and traditional territories of the Tribes, lands to which the Tribes continue to have strong cultural, spiritual, and historical ties.[3] The pipeline also runs near the Missouri River, upstream of the water supply of numerous tribal nations, and crosses under the river at Lake Oahe, less than one

mile north of the Standing Rock Sioux Reservation and upstream from the primary water intake for the Standing Rock Sioux Tribe. The Cheyenne River Sioux Tribe also draws its drinking water directly from the Missouri River downstream of Standing Rock via a multi-million dollar federal-tribal water project called *Mni Waste* or "good water." The Yankton Sioux Tribe draws its drinking water from the Missouri River through two uptakes downstream of the proposed pipeline crossing, one in Pickstown, South Dakota, and another in Platte, South Dakota.



Source: Carl Sack

The U.S. Army Corps of Engineers (the "Corps"), an agency of the U.S. government, is responsible for issuing numerous permits necessary for construction of DAPL, including authorization to drill beneath the Missouri River at Lake Oahe. Before granting these permits, U.S. law requires that the Corps, in consultation with potentially affected indigenous peoples, assess potential environmental and social impacts of the project. This Commission has noted that international law requires the same.[4] The Corps failed to adequately complete either form of assessment, or to include the participation of the Tribes, despite the Tribes' consistent and continuing objection to construction of the pipeline because of the risks of irremediable harm its construction and operation pose to sacred and historical sites and resources, including the waters of the Missouri River.

This Commission has repeatedly indicated that when undertaking activities that affect indigenous peoples' right to property, it is necessary that the state ensure that the indigenous peoples have the opportunity to participate in the decision-making processes, have full information concerning the activities that might affect them, and have access to protection and judicial guarantees in case their rights are not respected.[5] The Inter-American Court has specified that project assessments should be of a "social and environmental" character and "must go further than the strictly environmental impact studies normally required in order to evaluate and mitigate the possible negative impacts upon the natural environment" and allow the indigenous peoples to participate in the realization of prior environmental and social impact assessments.[6] None of this occurred with respect to DAPL.

On February 17, 2015, almost six months *after* the Corps had selected a pipeline route – without tribal input – that put the Tribes' interests directly at risk, the Corps sent the Standing Rock Tribal Historical Preservation Office a generic form letter attempting to initiate a "consultation" as required under U.S. federal law.[7] Immediately in response to the February 17 letter, and multiple times over the following months, the Standing Rock Sioux Tribe sent the Corps letters forcefully expressing concern about cultural impacts from DAPL, and seeking full consultation.[8] Despite these letters, the Corps provided no response. After seven months of silence, on September 3, 2015, the Corps sent another form letter inquiring "if [the Tribe] would like to consult" and asking the Tribe to provide, within one month, any "knowledge or concerns regarding historic properties" that the Tribe wanted the Corps to consider.[9] The Tribe again responded – twice – expressing its concerns and objections.[10] On December 8, 2015, the Corps responded by approving a draft Environmental Assessment ("EA") that completely ignored the interests of the Tribes and incorrectly stated the Tribe's position on the project's impact on cultural resources.[11] Maps included in the draft EA omitted the presence of any tribal lands, and made no mention of the pipeline's proximity to the Standing Rock, Cheyenne River, or Yankton reservations, or that it would cross treaty lands. Since that time, although the tribal government has met with the Corps to discuss various issues, the Corps has failed to engage the Tribe in a good-faith or meaningful way.

The Cheyenne River Sioux Tribe also was not meaningfully consulted. Along with the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe participated in the public meeting process associated with the issuance of DAPL's permits and submitted technical comments on the environmental assessment of the Lake Oahe crossing. The Cheyenne River Sioux Tribe has repeatedly attempted to engage with the Corps on a government-to-government basis to discuss concerns related to DAPL. The Corps provided no more opportunity for real consultation with the Cheyenne River Sioux Tribe than it did for the Standing Rock Sioux Tribe.

In the case of the Yankton Sioux Tribe, there has been a complete absence of consultation or communication regarding DAPL's impact on cultural and natural resources.[12] After exchanging a series of letters through which the Yankton Sioux Tribe attempted to set a date for consultation with the Corps, the Tribe and the Corps finally agreed to meet on May 18, 2016.[13] At that meeting, the Corps officials arrived late and stated that they only had a limited window of time to meet with the Tribe. The Corps and the Tribe therefore agreed that the May 18, 2016, meeting

would constitute a "pre-consultation" meeting, and that they would reconvene at a later date to conduct actual consultation.[14] However, before the parties were even able to set a date for consultation, the Corps released the final EA with no input from the Yankton Sioux Tribe.[15] Notably, the Yankton Sioux Tribe is not mentioned once in this document, highlighting the absence of assessment of the impacts of the project on the Tribe.

Without meaningful input from the Tribes or their experts, the Corps was unable to identify or understand the significance of cultural and spiritual resources that might be harmed by construction or operation of DAPL. In fact, when a former tribal historic preservation officer for the Standing Rock Sioux Tribe was finally invited to survey the pipeline route near the crossing at Lake Oahe on August 28, 2016, he documented five different cultural and religious sites, none of which had been recorded in previous archaeological surveys, including those done by paid consultants.[16] These faulty cultural surveys had already been shown to have missed the discovery of significant religious and cultural sites directly in the pipeline's proposed route in North Dakota and Iowa.[17] For example, on October 17, 2016, pipeline officials found a previously undiscovered group of stone cairns – symbolic rock piles that traditionally mark burial grounds – on a site where construction was planned.[18] Instead of stopping construction and notifying the proper authorities, Dakota Access continued work, only disclosing the existence of the sites ten days later when government officials inquired about the finding.

During the Corps' consideration of the DAPL permits, three U.S. federal agencies expressed concerns about the Corps' approval of DAPL in the absence of legitimate consultation and engagement with tribal governments. The Advisory Council on Historic Preservation described concern that the Corps' lack of consultation regarding cultural resources violated domestic law, citing letters from the Tribes expressing objections to the project's impacts on known burial sites and cultural artifacts.[19] The Corps did not respond to these concerns for over seven months. The U.S. Environmental Protection Agency and the U.S. Department of the Interior also wrote letters questioning the Corps' failure to meet the environmental review requirements for projects affecting indigenous natural resources, and calling for a full environmental impact statement that addresses DAPL's threat to drinking water, which has yet to be completed.[20]

Despite the lack of adequate social, cultural or environmental assessment, and the complete absence of consultation with or participation by the Tribes, on July 25, 2016, the Corps gave multiple domestic authorizations permitting the construction of DAPL. One such authorization permitted construction beneath the Missouri River at Lake Oahe, while another authorized the discharge of materials and waste into waters throughout the Tribes' ancestral lands.

Construction of DAPL is over 90% complete. Final construction awaits only a single easement to allow drilling beneath the Missouri River at Lake Oahe. On September 9, 2016, in response to public outcry, lawsuits from the Tribes, and protest by thousands of water defenders, the federal government announced that it would consider whether to revisit its earlier decisions regarding the pipeline.[21] Although the U.S. government claims to be considering rerouting the pipeline,[22] the Tribes are aware of no concrete progress toward a rerouting plan, and a decision on the easement could take place at any time. Moreover, even if a rerouting plan were developed, there would be no time to implement it before U.S. President-elect Donald Trump takes office, at

which time his vow to "unleash" America's oil reserves[23] and his financial ties to the DAPL parent company[24] strongly suggest that he will remove any remaining obstacles to completion of the pipeline.

C. Harassment and Violent Suppression of Water Defenders

The controversy surrounding DAPL has drawn thousands of people – members of the Tribes and many indigenous and non-indigenous members of civil society not formally associated with the Tribes – to the banks of the Missouri River outside of Cannon Ball, North Dakota, near where DAPL would cross under the river, for prayer and peaceful protest in defense of the lands, resources, cultural property, and waters threatened by DAPL. Spanning over 7 months, this gathering has been visited by representatives of indigenous communities from all over the world. At this point, the assembly represents the largest gathering of indigenous peoples in the United States in more than 100 years.

Although the Army Corps of Engineers granted a special use permit for gathering and demonstrations on a portion of land south of the Cannonball River,[25] the majority of the prayer and protest has taken place north of the Cannonball River, near where DAPL would cross the Missouri. Nevertheless, the entire gathering and all the prayers and protest are taking place on lands reserved to the Tribes by the 1851 Treaty of Fort Laramie.

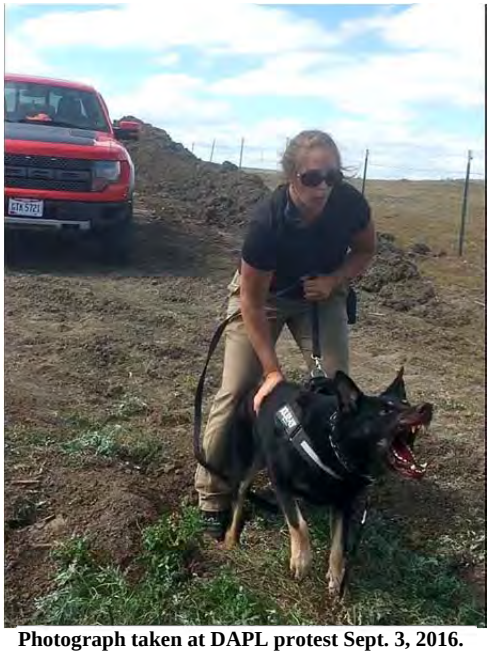
The camp and all who visit have maintained a message of prayer and peace as they seek to protect the land and the water and uphold tribal sovereignty. The direct actions taken to protest DAPL have been almost completely non-violent and peaceful, despite continued escalation from law enforcement. The gathering has galvanized indigenous communities throughout the world, serving as a flashpoint for the shared experiences in protecting indigenous land and resources from extractive and infrastructure projects.

Photograph taken at DAPL protest, Sept. 3, 2016.
Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

Despite the encampment's foundation in peace and prayer, from its beginning, North Dakota state and county officials as well as private security employed by the pipeline company have threatened and violated the human rights of tribal members and their allies participating in the protests.[26] For example, North Dakota Governor Jack Dalrymple declared a "state of emergency" and deployed the Army National Guard to maintain a checkpoint on –

and periodically to block – Highway 1806, the primary road connecting the Standing Rock Sioux Reservation with Bismarck.[27]

Members of the National Guard have used heavy-duty riot gear and military grade weapons to intimidate peaceful protesters.[28] Low-flying helicopters and planes operated by local law enforcement and private security companies have kept the protesters under constant surveillance, and there are reports that various law enforcement agencies have blocked cellular telephone service and recorded protesters' calls.[29] Private security forces hired by Dakota Access, LLC, the company developing DAPL, have attacked nonviolent demonstrators with pepper spray.[30] The private guards have used trained attack dogs to bite and cause serious injuries to at least eight nonviolent demonstrators, released dogs from their leashes to attack and cause fear, and allowed dogs to attack demonstrators' horses.[31] Private security guards have also charged, body-slammed, and punched demonstrators.[32]



Photograph taken at DAPL protest Sept. 3, 2016. Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

Thus far, over 500 people, including a number of tribal elders and tribal government leaders, have been arrested and subjected to dehumanizing treatment by law enforcement officers including being strip searched, hooded, deprived of adequate food and water, confined in dog kennels, and having their bodies marked with numbers.[33] Journalists have also been targeted for arrest and harassment in apparent attempts to stifle media coverage. An arrest warrant was issued for one journalist in response to her role in reporting the dog attacks on September 2, and a documentary filmmaker was arrested and charged with felonies that could result in as much as 45 years in prison.[34] Reports suggest that private property such as vehicles, video equipment, and sacred ceremonial objects taken from arrested protesters have been returned severely damaged, if at all.[35]

Photograph taken at DAPL protest, Sept. 3, 2016 . Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

The actions of the police have become more violent and militarized over time, as demonstrated by events on the night of November 20, 2016.[36] That night, a large number of people had gathered to pray and protest peacefully at a bridge on Highway 1806 north of the Standing Rock Sioux Reservation.[37] While they were there, police

from sheriffs' departments and a city police department arrived.[38] Although observers have testified that the people on the bridge were acting peacefully[39] and that they heard no warnings or orders to disperse from the police,[40] the police opened fire on them with an array of weapons, including concussion grenades, pepper spray, rubber bullets and beanbags, teargas, and chemical sprays.[41] They also used long range acoustic devices known to cause hearing loss.[42] The police shot people who were praying,[43] had their backs to the police,[44] were lying on the ground in a protective position,[45] or were trying to protect others.[46] The police appeared to target people's heads.[47] They also appeared to have continued firing on protesters they had encircled with barricades and police in riot gear.[48]

Despite below-freezing temperatures and wind,[49] police also sprayed one or more high pressure water cannons at the water defenders.[50] The police sprayed these water cannons regularly, for extended periods of time, throughout the night,[51] frequently targeting particular individuals.[52] They continued to spray people after ice had formed on them.[53] One participant saw police behind a barricade fire the water cannon at a woman who was kneeling and praying about twelve feet from the barricade.[54] The police continued to spray her even after the water had knocked her down.[55]

These attacks injured many people quite seriously. Medics at the encampment reported treating broken bones, chemical burns to the faces and bodies of protesters, as well as at least one cardiac arrest, and one seizure.[56] There were numerous blunt-force injuries, including a disproportionate number to people's heads.[57] Over one-hundred people were treated for hypothermia after having been indiscriminately sprayed with water.[58] At least one woman sustained a severe eye injury when she was hit in the eye with a teargas canister.[59] One man required 17 staples to seal a head-wound from being shot with a rubber bullet at close range.[60] And one young woman suffered serious injuries that may require amputation of her arm when a concussion grenade detonated near her during the confrontation.[61]

Wound from dog-bite suffered by DAPL protester, Sept. 3, 2016. Source: Declaration of Ta'sina Sapa Win Smith (attached as Exhibit 17)

On November 25, 2016, the Corps gave notice that, as of December 5, 2016, it would rescind its special use permit and close the land north of the Cannonball River to public access, and would establish a "free speech zone" in an area south of the Cannonball River.[62] Although the Corps clarified two days later that it would not forcibly remove anyone from the northern area, it characterized as "unauthorized" anyone who chooses to stay, indicating that they will be in violation of federal, state, or local laws, and that safety measures "cannot be adequately provided" to people who remain.[63] On November 29, 2016, following the Corps' announcement, the Governor of North Dakota issued an "emergency evacuation" order that he said was effective immediately.[64]

Although his office stated that the state would "not be using law enforcement or national guard to enforce the order,"[65] the local sheriff's department has threatened to fine people who deliver supplies to the camp as much as $1000.00.[66] Some protesters have already indicated their intention to remain,[67] which is not surprising because the construction that will violate the Tribes' rights and that threatens the health of the Missouri River will happen north of the Cannonball River.

Thus, rather than ensuring that police, military, and private security forces do not harm or violate the rights of the people gathered to pray and protest peacefully, the United States has chosen to leave the protesters unprotected. Worse, despite evidence that abuse and violations of freedom of speech, association, and assembly are escalating, and despite requests for assistance from the chairmen of the Standing Rock and Cheyenne River Sioux Tribes,[68] as well as from the United Nations and others,[69] the United States has telegraphed to those who would harm the protesters that the federal government will not intervene to protect them. Such action by the United States substantially exacerbates the risk of serious harm to the protesters.

III. <u>This Situation Merits the Granting of Precautionary Measures</u>

The Rules of Procedure of the Inter-American Commission allow for precautionary measures in "serious and urgent situations presenting a risk of irreparable harm to persons…."[70]

A. Seriousness

A "serious … situation" "refers to a grave impact that an action or omission can have on a protected right."[71]

1. *The Dakota Access Pipeline*

As noted above, it is nearly certain that, absent some intervention, the Corps will issue the final pipeline easement. Once it has done so, serious and irreversible harm to the Tribes is essentially inevitable.

The Missouri River is sacred to the Tribes; their cultural identity depends in part on their relationship to the river and their responsibility to protect and honor it. For this reason, simply constructing a pipeline under the river would violate the Tribes' rights to culture, water, and property.

The Inter-American Court of Human Rights has explained that the cultural survival of indigenous peoples, and thus the protection of their right to culture,

> entails much more than physical survival, rather it "must be understood as the ability of the [people] to 'preserve, protect and guarantee the special relationship that [they] have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs

> and traditions are respected, guaranteed and protected….' That is, the term 'survival' in this context signifies much more than physical survival."[72]

This Commission has elaborated that, "since the requirement to ensure their 'survival' has the purpose of guaranteeing the especial relationship between [indigenous] peoples with their ancestral territories, reasonable deference should be given to the understanding that the indigenous and tribal peoples themselves have in regards to the scope of this relationship, as authorized interpreters of their cultures."[73] The Commission has explained that states have a mandatory duty *not* to approve "any project that would threaten the physical or cultural survival of the group."[74]

In this case, the Tribes have clearly indicated that constructing a pipeline beneath the Missouri River violates their relationship with the river, threatens their cultural integrity, and thus violates their human right to culture.

In addition to the construction of the pipeline, its operation, which will begin as soon as construction is complete, poses a serious threat of oil spills that jeopardize the health of the Missouri River and other waters that are sacred to the Tribes and that provide them clean water and other gifts.

Water is life. This Commission has been explicit that access to water is essential to ensuring the rights to life and personal integrity, and to health.[75] State obligations to provide the basic conditions for a dignified life therefore include guaranteeing access to clean drinking water.[76]

The right to access to water has special aspects in the context of indigenous peoples and their rights over their lands and the natural resources. The Inter-American Court has recognized that, for indigenous peoples,

> access to their ancestral lands and to the use and enjoyment of the natural resources found on them is closely linked to … access to clean water. In this regard, [the UN] Committee on Economic, Social and Cultural Rights has highlighted the special vulnerability of many groups of indigenous peoples whose access to ancestral lands has been threatened and, therefore, their possibility of access to means of obtaining … clean water.[77]

This Commission has noted that "one of the most severe violations that has been documented is how access to water by persons who are in the area of influence of projects, as well as by remote communities that depend on safe drinking water sources affected by extraction activities, is being undermined."[78] The Tribes' enjoyment of their rights to culture, life, health, property, and water thus depends on the health of the river.

Pipelines like DAPL frequently spill or leak oil. A spill into the Missouri River or its tributaries would contaminate the water the Tribes depend on for personal use, would threaten the survival of species they depend on and care for, and would violate their responsibility to care for the waters.

The likelihood of a spill from DAPL is not speculative. A sample of just a few of the more recent pipeline spills demonstrates how common spills are:

- On September 9, 2016, a 36-inch pipeline owned by Colonial Pipeline Company ruptured in Alabama, spilling an estimated 336,000 gallons of gasoline. The spill was not detected by the pipeline's leak-detection system but by an inspector who happened to be on unrelated business nearby.[79]
- In June of 2016, nearly 30,000 gallons of crude oil spilled from a pipeline in a residential area, coating the riverbed, rocks, and plants.[80]
- In May 2016 and September 2015, Shell Oil Company's San Pablo Bay Pipeline ruptured near Tracy, California. Each spill released about 20,000 gallons of crude oil.[81]
- In April 2016, the Keystone I Pipeline leaked nearly 17,000 gallons of diluted bitumen in South Dakota.[82]
- In May 2015, a pipeline owned by Plains All American Pipeline spilled 143,000 gallons of crude oil near Santa Barbara, California.[83]
- In January 2015, the Poplar Pipeline, which runs under the Yellowstone River as DAPL is proposed to run under Lake Oahe, spilled approximately 50,000 gallons of crude oil into the frozen river, contaminating the drinking water intake system for the city of Glendive, Montana.[84]
- In September 2013, in one of the largest inland oil pipeline spills in the country, a Tesoro Logistics pipeline released more than 865,000 gallons of crude oil in Tioga, North Dakota, over several days without being detected by the company. [85]

These spills demonstrate the inadequacies of U.S. domestic pipeline oversight and the inability of pipeline companies to protect the public from spills that threaten health and safety. The likelihood of a crude oil spill from DAPL is highlighted by a recent study that showed that Sunoco Logistics Partners LP, the future operator of DAPL, is responsible for over 200 pipeline spills and leaks since 2010 alone, more than any of its competitors.[86]

A spill from DAPL would have grave consequences. Before routing DAPL near the Tribes' reservations, the Corps considered having the pipeline cross the Missouri River approximately 10 miles north of Bismarck, North Dakota's capital city. The Corps assessed the risk of a spill from the pipeline and concluded that this route was not viable, labeling the portion of the river above Bismarck a "high consequence area" due to its proximity to the municipal water supply. [87] Crude oil spilled into Lake Oahe near the intake for Tribal water use, or at any of the numerous crossings of upstream tributaries, could contaminate the Tribes' primary water supply, resulting in similarly high consequences, and violating their rights to life, health and water. Because of their spiritual and cultural relationship to the waters of the Missouri, such contamination would also violate the Tribes' right to culture.

Despite a risk to the Tribes' drinking water identical to the threat to Bismarck's water, the Corps has never even assessed this risk, much less taken steps to provide equivalent protection for the Tribes and their members as was granted the people of Bismarck.[88] This starkly contrasting treatment of the Tribes' interests, coupled with the failure to consult with the Tribes that is

described above, constitutes a violation of the Tribes' right to equality under the law, as established in Article II of the American Declaration of the Rights and Duties of Man. Approving DAPL without a full environmental and social assessment in consultation with the Tribes would constitute a further serious violation of this right.

This Commission has emphasized the importance of

> [c]onducting prior, adequate, effective consultations with the peoples and communities ... whenever there are intentions to undertake any natural resource extraction activity or project on indigenous lands and territories or to draw up an investment or development plan of any other kind that would entail potential impacts on their territory, *especially with respect to possible impacts on the access to quality water in adequate amounts for a dignified life*.[89]

As outlined in detail above, in allowing the continued construction of the pipeline, the United States has failed to meet its legal obligations. Despite domestic laws requiring a "government to government" consultation with tribal governments, the complete breakdown of communication and lack of meaningful involvement in the review of DAPL has rendered the existing regulatory framework insufficient, limiting information gathering and sharing, and prohibiting effective participation from the Tribes. Throughout the planning and permitting process of DAPL, the Corps has ignored the Tribes' requests for engagement in assessing the project, which poses grave and imminent threats to their vital cultural, spiritual, and physical resources. This is particularly concerning given the ongoing and threatened violations of the basic human rights of the Tribes and their members such as right to clean drinking water, cultural life and resources, property, health, access to information, and public participation in public decision-making.

Without actions to remedy the situation, the Tribes' cultural and natural resources are continually at risk of being destroyed, causing injury to the Tribes and their people grave and imminent harm. As this Commission has noted:

> Infrastructure or development projects...as well as concessions for the exploration or exploitation of natural resources in ancestral territories, may affect indigenous populations with particularly serious consequences, given that they imperil their territories and the ecosystems within, for which reason they represent a mortal danger to their survival as peoples, especially in cases where the ecological fragility of their territories coincides with demographic weakness.[90]

In light of the Corps' failure to consult with the Tribes, granting the final easement without meaningful consultation with the Tribes would violate the Tribes' right to be consulted, which is derived from their rights to property, to participate in government, and to a healthy environment.[91] Moreover, because the risk of a spill from DAPL threatens harms related to "ecotoxicity, the generation of contaminants, [or] the use of toxic substances," this Commission has indicated that the project may be of sufficient intensity to necessitate obtaining the Tribes' consent.[92]

2. *Harassment and Violent Suppression of Water Defenders*

As noted above, police, military and private security guards for the company constructing DAPL have threatened, harassed and injured people peacefully praying and protesting in defense of the waters and the Tribes' rights. Although with extremely few exceptions those gathered to pray and protest have acted peacefully, assaults and harassment by the police forces have been increasing in frequency and severity to include teargas, concussion grenades, rubber bullets, and other tools of force and injury. This conduct, and the failure of the U.S. government to protect the protesters, constitutes an extremely grave violation of the protesters' rights to life, physical integrity and personal liberty, security, health, protection against arbitrary arrest, and freedom of association and assembly. As noted above, the situation is exacerbated by the U.S. government's threat that protesters remaining north of the Cannonball River will be there illegally and that it will do nothing to protect them from harm.

The rights to assembly, expression and association are some of the primary and most important foundations of a democratic society, because, as this Commission has stated, "the undermining of freedom of expression directly affects the central nerve of the democratic system."[93] The Tribes, their members, and their supporters thus have the right to actively express opposition to DAPL. This includes the right to do so by organizing and engaging in peaceful acts of protest without active and hostile opposition from the State.[94] Perhaps predicting gatherings such as the one at the Cannonball River near the Standing Rock Sioux Reservation, the OAS Special Rapporteur for Freedom of Expression has recognized that

> the most impoverished sectors of our Hemisphere face discriminatory policies and actions; their access to information on the planning and execution of measures that affect their daily lives is incipient and, in general, traditional channels to make their complaints known are frequently inaccessible. Confronting these prospects, in many of the Hemisphere's countries, social protest and mobilization have become tools to petition the public authorities, as well as channels for public complaints regarding abuses or human rights violations.[95]

This Commission has forcefully addressed the right of people to peacefully protest projects associated with extractive development affecting indigenous peoples. In its 2015 report *Indigenous Peoples, Communities of African Descent, Extractive Industries*, the Commission recalled

> that the right to assembly is protected by articles XXI of the American Declaration and 15 of the American Convention. As was signaled previously, the political and social participation which happens through the exercise of the right to assembly is an essential element for the consolidation of democratic life and, for this reason it amounts to an imperative social interest. The IACHR reiterates that peaceful social protest, as a manifestation of freedom of assembly, is a fundamental tool in the defense of human rights, is essential for engaging in political and social criticism of authorities' activities, as well as for establishing positions and plans of action with regards to human rights. The right to public protest is protected by the Convention so long as it is exercised peacefully

> and without arms. *To comply with this obligation to respect and guarantee the right to assembly, States must not only avoid obstructing it, but also take positive measures to guarantee its exercise before, during and after a protest.* These measures must guarantee the exercise of this right from the moment authorities are informed of the intent to carry out a protest, during the protest protecting the rights of participants and involved third parties, and afterwards, to investigate and sanction any person, including state agents, who committed acts of violence against the right to life and physical integrity participants and involved third parties."[96]

The Commission specifically rejected the use of military force in response to protest by indigenous peoples: "The IACHR considers that the public interest does not justify military presence in indigenous territories to guarantee the feasibility of extraction or development plans and projects that have not been consulted with nor been consented to by indigenous peoples."[97] The Commission has also noted "a pattern of criminalization of demonstrations or social protest by leaders of various indigenous and tribal peoples, linked to the defense of their rights against extractive or development projects."[98] This is exactly what is happening at the encampment north of the Standing Rock Sioux Reservation. Police have targeted those they consider leaders of the encampment, and have charged them with felonies for actions that would, under normal circumstances, at most be deemed a misdemeanor.[99] Numerous water protectors have been cited with "rioting" for simply demonstrating, using only signs and their voices, at virtually isolated sites of construction in rural North Dakota.[100]

The Commission has described specific measures states should take to guarantee these rights of expression and association, which include protecting demonstrators from physical violence by persons who may hold the opposite opinion, escorting mass gatherings to guarantee safety, and providing services to make the gathering possible.[101]

Despite numerous specific requests, the United States, the State of North Dakota, local governments, and the pipeline developer have taken none of these steps. As a result, extremely serious violations of the human rights of those gathering to protest and pray are certain to continue happening.

B. Urgency

The Commission may grant precautionary measures in an "urgent situation," which "refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action."[102]

1. *The Dakota Access Pipeline*

As noted above, the only thing preventing the immediate completion of DAPL is an easement from the U.S. Army Corps of Engineers to allow drilling beneath federal lands adjacent to the Missouri River at Lake Oahe. With respect to the easement, the Corps has indicated that it wishes to take additional input from two tribes before making its decision, but it has not provided any sort of timeframe. If the Corps decides to grant the easement, it must submit its notice of

intent to do so to two Congressional bodies prior to actually issuing the easement. While Corps guidelines provide for a 14-day waiting period once the notice of intent is submitted to the Congressional bodies, this waiting period has been waived in the past.

The outgoing administration of President Barack Obama has just a short time to decide whether to deny the easement or reroute the pipeline. Whatever it decides, however, Donald Trump has disclosed political incentives as well as personal financial incentives to allow DAPL to go forward as planned. And, while it could take as long as several weeks or months, there is literally nothing preventing the new Trump administration from granting that easement on January 21.

Moreover, once the easement is granted, the pipeline company is almost certain to move forward immediately. For other segments of DAPL, the company has begun construction before the relevant authorization was granted, agreeing to assume the risk that the authorization would not be granted. There is nothing to suggest the company would move any more slowly to finalize the pipeline once it obtained the final easement allowing it to drill adjacent to the Missouri River. It is thus urgent that the Commission issue precautionary measures before the Trump Administration can act and before any easement is granted.

But the urgency is even greater than that. The best chance to prevent Donald Trump from immediately granting the DAPL easement is for the Obama Administration to deny the easement on the basis of a strong record that can help protect the decision against reversal. Urgent encouragement from this Commission would help ensure that the Obama Administration takes such action.

2. *Harassment and Violent Suppression of Water Defenders*

As noted, the police and National Guard are already using extremely violently tactics on people who are peacefully praying and protesting in defense of the water and the Tribes. Their tactics appear to be getting worse every week. Moreover, the Corps' recent closure of the area north of the Cannonball River – and particularly its irresponsible statement that people who choose to remain would be unprotected – substantially increases the likelihood of imminent harm to the protesters. The threats to the rights of these people could not be more urgent.

C. Irreparable harm

For the purpose of granting precautionary measures, "irreparable harm" refers to "injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation."[103]

1. *The Dakota Access Pipeline*

Drilling under the Missouri River would permanently alter land that is sacred to the Tribes. It would permanently alter the Tribes' sacred relationship to the land and the waters. There can be no reparation of or compensation for violations of spiritual and cultural rights such as this.

While the waters and their ecosystem might recover from an oil spill in a matter of decades or possibly years, and the loss of drinking water might be compensated for financially or logistically, there can be no compensation for the spiritual injury that would occur if the waters became contaminated with toxic crude oil. Moreover, as long as the pipeline is in place, the likelihood of repeated spills, with their attendant spiritual and physical injuries, will persist.

2. *Harassment and Violent Suppression of Water Defenders*

Numerous water defenders have been physically injured; one may have to have her arm amputated. There is no true compensation for such serious injuries and related trauma, which are violations of the right to physical security and integrity, and health, and could escalate into violations of the right to life. As the violence by the police forces escalates, the likelihood of more frequent irreparable injuries grows. There is no remedy for such injuries.

IV. Precautionary Measures Requested

In light of the preceding information, we respectfully request that this Commission call on the Government of the United States to protect the rights of the Tribes by taking the following actions immediately:

1. Deny the easement allowing construction of the pipeline under the Missouri River at Lake Oahe as soon as possible;

2. Complete a full environmental impact statement in formal consultation with the Tribes;

3. Establish clear rules requiring that indigenous peoples who may be affected by government decisions have the opportunity for full and meaningful prior informed consent within the meanings established in the UN Declaration on the Rights of Indigenous Peoples and the jurisprudence of the Inter-American Court and this Commission;

4. Establish clear rules ensuring full environmental and social assessment of activities that may affect indigenous peoples, with the full participation of the affected indigenous peoples;

5. Immediately take all actions necessary to guarantee the safety of those engaging in peaceful prayer and protest concerning DAPL, and to ensure the full enjoyment of their rights to expression and assembly;

6. Any other action this Commission deems appropriate.

Respectfully,

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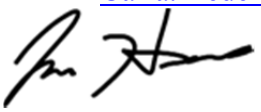

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NOTES

[1] *See Winters v. United States*, 207 U.S. 564 (U.S. Supreme Court 1908).

[2] For a timeline of the pipeline development and other issues described in this petition, *see* Timeline of Dakota Access Pipeline (attached as Exhibit 1). For a more detailed explanation of the facts of the pipeline planning and construction process, *see* Complaint for Declaratory and Injunctive Relief, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-cv-01534, U.S. District Court for the District of Columbia (July 27, 2016) (attached as Exhibit 2); Complaint for Declaratory and Injunctive Relief, *Yankton Sioux Tribe et. al. v. United States Army Corps of Engineers et al.*, 1:16-cv-01796, U.S. District Court for the District of Columbia (Sept. 8, 2016) ("Complaint, Yankton Sioux Tribe") (attached as Exhibit 3); First Amended Complaint, *Standing Rock Sioux Tribe & Cheyenne River Sioux Tribe v. U.S. Army Corps of Engineers et al.*, 1:16-cv-01534, U.S. District Court for the District of Columbia (Sept. 8, 2016) (attached as Exhibit 4).

[3] *Id.*

[4] Inter-American Commission on Human Rights (IACHR), *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II, Doc. 47/15 http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf (last accessed Nov. 29, 2016) (IACHR, Dec. 31, 2015), paras. 160 & 213 (IACHR, Human Rights & Extractive Activities).

[5] IACHR, Human Rights & Extractive Activities, *supra* note 4, para. 156.

[6] InterAmerican Court of Human Rights, *Case of the Saramaka People v. Suriname, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*, Inter-Am. Ct. H.R., Judgment of August 12, 2008, Series C No. 185, paras. 16, 133.

[7] Letter from Martha Chieply to Waste Win Young (Feb. 17, 2015) (attached as Exhibit 5).

[8] *See, e.g.*, Letter from Waste Win Young to Martha Chieply (Feb. 25, 2015) (attached as Exhibit 6); Motion for Preliminary Injunction, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-CV-1534 (U.S. District Court for the District of Columbia, Aug. 4, 2016) (attached as Exhibit 7), pp. 10-11.

[9] Letter from John W. Henderson to Dave Archambault II (Sept. 3, 2016) (attached as Exhibit 8).

[10] Letter from Waste' Win Young to John W. Henderson (Sept. 28, 2016) (attached as Exhibit 9); Letter from Kelly Morgan to Martha Chieply (Dec. 8, 2015) (attached as Exhibit 10).

[11] The draft EA is over 900 pages long, and is not attached to this document. Petitioners would be happy to provide it if the Commission would like to review it.

[12] Complaint, *Yankton Sioux Tribe*, *supra* note 2, 17.

[13] *Id*. at 18.

[14] *Id*.

[15] *Id*.

[16] Supplemental Declaration of Tim Mentz, Sr. in Support of Motion for Preliminary Injunction, *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 1:16-cv-01534, U.S. District Court for the District of Columbia (Sept. 2, 2016) (attached as Exhibit 11).

[17] The Gazette, *Dakota Access disputes archaeologist's findings that Bakken route crosses tribal burial grounds*, June 7, 2016, http://www.thegazette.com/subject/news/government/dakota-access-disputes-archaeologists-findings-that-bakken-route-crosses-tribal-burial-grounds-20160607 (last accessed Nov. 29, 2016). *See also*, The Guardian, *Dakota Access: Company under scrutiny over sacred artifacts in oil*

pipeline's path, Nov. 5, 2016, https://www.theguardian.com/us-news/2016/nov/05/dakota-access-oil-pipeline-native-american-artifacts-discovered (last accessed Nov. 29, 2016).

[18] *Dakota Access: Company under scrutiny over sacred artifacts in oil pipeline's path, supra*, note 17.

[19] Letter from U.S. Advisory Council on Historic Preservation to the Army Corps of Engineers (March 15, 2016) (attached as Exhibit 12), at 2.

[20] Letter from U.S. Environmental Protection Agency to Army Corps of Engineers (March 11, 2016) (attached as Exhibit 13), at 4; Letter from U.S. Department of the Interior to Army Corps of Engineers (March 29, 2016) (attached as Exhibit 14), at 2.

[21] Department of Justice, Office of Public Affairs, *Joint Statement from the Department of Justice, the Department of the Army and the Department of the Interior Regarding Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* (Sept. 9, 2016), https://www.justice.gov/opa/pr/joint-statement-department-justice-department-army-and-department-interior-regarding-standing (last accessed Nov. 29, 2016).

[22] *See* National Public Radio, *Obama: Army Corps Examining Possible Rerouting Of Dakota Access Pipeline* (Nov. 2, 2016), http://www.npr.org/sections/thetwo-way/2016/11/02/500363689/obama-army-corps-examining-possible-rerouting-of-dakota-access-pipeline (last accessed Dec. 1, 2016).

[23] *An America First Energy Plan*, https://www.donaldjtrump.com/policies/energy (last accessed Nov. 29, 2016).

[24] Forbes, *Where Trump will make an immediate impact on energy policy* (Nov. 14. 2016), http://www.forbes.com/sites/rrapier/2016/11/14/where-donald-trump-will-make-an-immediate-impact-on-energy-policy/2/#57234ec4413f (last accessed Nov. 29, 2016) ("Trump reportedly owns stock in Energy Transfer Partners, the parent company behind the Dakota Access Pipeline. The CEO of Energy Transfer Partners has also donated to Trump's campaign.").

[25] US Army Corps of Engineers, *US Army Corps of Engineers grants special use permit to Standing Rock Sioux* (Sept. 16, 2016), http://www.nwo.usace.army.mil/Media/News-Releases/Article/947688/us-army-corps-of-engineers-grants-special-use-permit-to-standing-rock-sioux-tri/ (last accessed Nov. 29, 2016).

[26] *See generally* Letter from Standing Rock Sioux Tribe to U.S. Attorney General Loretta Lynch (Oct. 24, 2016) (attached as Exhibit 15).

[27] Bismarck Tribune, *North Dakota National Guard to Provide Backup for Law Enforcement* (Sept. 8, 2016), http://bismarcktribune.com/news/state-and-regional/north-dakota-national-guard-to-provide-backup-to-law-enforcement/article_57090461-12d0-5376-bf6b-041a4511ce4f.htm (last accessed Nov. 29, 2016).

[28] Democracy Now, *Standing Rock Special: Dallas Goldtooth on Police Violence and Repression of Movement against DAPL* (Nov. 24, 2016), https://www.democracynow.org/2016/11/24/standing_rock_special_dallas_goldtooth_on (last accessed Nov. 30, 2016).

[29] NBC News, *At Dakota Pipeline, Protesters Questions of Surveillance and 'Jamming' Linger* (Oct. 5, 2016), http://www.nbcnews.com/storyline/dakota-pipeline-protests/dakota-pipeline-protesters-questions-surveillance-jamming-linger-n675866 (last accessed Nov. 29, 2016). See also, The Huffington Post, *Helicopter Allegedly Hired by North Dakota Authorities Found Flying in Violation of FAA Rules*, (Oct. 7, 2016), http://www.huffingtonpost.com/georgianne-nienaber/helicopter-allegedly-hire_b_12320482.html (last accessed Nov. 29, 2016).

[30] Declaration of Ta'sina Sapa Win Smith, *Standing Rock Sioux Tribe & Cheyenne River Sioux Tribe v. Army Corps of Engineers et al.*, 1:16-cv-1534, U.S. District Court for the District of Columbia (Sept. 6, 2016) ("Smith Decl.") (attached as Exhibit 17), para. 24 and attached photographs; Letter from Cheyenne

River Sioux Tribe to U.S. Attorney General Loretta Lynch (Sept. 14, 2016) (attached as Exhibit 16); Democracy Now, *FULL Exclusive Report: Dakota Access Pipeline Co. Attacks Native Americans with Dogs & Pepper Spray* (Sept. 6, 2016), https://www.democracynow.org/2016/9/6/full_exclusive_report_dakota_access_pipeline (last accessed Nov. 29, 2016).

[31] Smith Decl., *supra* note 30, para. 28 and attached photographs.

[32] Letter from Cheyenne River Sioux Tribe to Loretta Lynch, *supra* note 30.

[33] Democracy Now, *Dakota Excess Pipeline?: Standing Rock Protectors Strip-Searched, Jailed for Days* (Oct. 17, 2016), https://www.democracynow.org/2016/10/17/dakota_excess_pipeline_standing_rock_protectors (last accessed Nov. 29, 2016); The Intercept, *Video: Police Viciously Attacked Peaceful Protestors at the Dakota Access Pipeline* (Oct. 25, 2016), https://theintercept.com/2016/10/25/video-police-viciously-attacked-peaceful-protestors-at-the-dakota-access-pipeline/ (last accessed Nov. 29, 2016); Los Angeles Times, *North Dakota pipeline activists say arrested protesters were kept in dog kennels* (Oct. 28, 2016), http://www.latimes.com/nation/la-na-north-dakota-pipeline-20161028-story.html (last accessed Nov. 29, 2016).

[34] The Huffington Post, *Filmmaker Arrested At Pipeline Protest Facing 45 Years in Felony Charges* (Oct. 14, 2016), http://www.huffingtonpost.com/entry/deia-schlosberg-arrested-north-dakota_us_58004d81e4b0162c043b342d (last accessed Nov. 29, 2016).

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[36] *See generally* PBS Newshour, *Police deploy water hoses, tear gas against Standing Rock protesters* (Nov. 21, 2016), http://www.pbs.org/newshour/rundown/police-deploy-water-hoses-tear-gas-against-standing-rock-protesters/ (last accessed Nov. 29, 2016); The Washington Post, *Police Defend use of water cannons on Dakota Access protesters in freezing weather* (Nov. 21, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/11/21/police-citing-ongoing-riot-use-water-cannons-on-dakota-access-protesters-in-freezing-weather/ (last accessed Nov. 29, 2016); The Intercept, *Medics Describe How Police Sprayed Standing Rock Demonstrators with Gas and Water Cannons* (Nov. 21, 2016), https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/ (last accessed Nov. 29, 2016).

[37] *See Vanessa Dundon v. Kyle Kirchmeier*, 1:16-cv-00406-DLH-CSM (U.S. District Court for the Western District of North Dakota 2016) ("*Dundon*"), available at https://www.nlg.org/complaint-1983-class-action/ (last accessed Nov 2016).

[38] *Id.*, Declaration of R. Michael Flynn, *Dundon v. Kirchmeier*, Nov. 22, 2016, para. 5 ("Flynn Decl.") (attached as Exhibit 18).

[39] *Id.*, paras. 4, 10; Declaration of Crystal Wilson, *Dundon v. Kirchmeier*, Nov. 22, 2016 ("Wilson Decl.") (attached as Exhibit 19), paras. 10-11, 13; Declaration of Matthew Lonergan, *Dundon v. Kirchmeier*, Nov. 21, 2016 ("Lonergan Decl.") (attached as Exhibit 20), para. 14; Declaration of Guy Dullknife III, *Dundon v. Kirchmeier*, Nov. 22, 2016 ("Dullknife Decl.") (attached as Exhibit 21), para. 8.

[40] *See* Flynn Decl., *supra* note 38, para. 5; Wilson Decl., *supra* note 39, para. 14.

[41] Flynn Decl., *supra* note 38, para. 4; Declaration of Jade Kalikolehuaokalani Wool, *Dundon v. Kirchmeier*, Nov. 22, 2016 ("Wool Decl.") (attached as Exhibit 22), para. 8; Declaration of Vanessa Bolin Clemens, *Dundon v. Kirchmeier*, Nov. 21, 2016 ("Clemens Decl.") (attached as Exhibit 23), paras. 9-10; Lonergan Decl., *supra* note 39, para. 13; Dullknife Decl., *supra* note 39, paras. 8, 10.

[42] Wilson Decl., *supra* note 39, para. 11; Lonergan Decl., *supra* note 39, para. 10; Clemens Decl., *supra* note 41, para. 33. *See also*, The Washington Post, *Police Defend use of water cannons on Dakota Access protesters in freezing weather* (Nov. 21, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/11/21/police-citing-ongoing-riot-use-water-cannons-on-dakota-access-protesters-in-freezing-weather/ (last accessed Nov. 29, 2016).

[43] Declaration of Noah Michael Treanor, *Dundon v. Kirchmeier*, Nov. 21, 2016 ("Treanor Decl.") (attached as Exhibit 24), paras. 5-7.

[44] Declaration of Israel Hoagland-Lynn, *Dundon v. Kirchmeier*, Nov. 21, 2016 ("Hoagland-Lynn Decl.") (attached as Exhibit 25), para. 9; Treanor Decl., *supra* note 43, para. 6.

[45] Hoagland-Lynn Decl., *supra* note 44, para. 10.

[46] Dullknife Decl., *supra* note 39, para. 8 *et seq*.; Hoagland-Lynn Decl., *supra* note 44, para. 9.

[47] Clemens Decl., *supra* note 41, para. 19.

[48] Flynn Decl., *supra* note 38, para. 6.

[49] *Id*., para. 4; Wilson Decl., *supra* note 39, para. 11; Wool Decl., *supra* note 41, para. 5; Lonergan Decl., *supra* note 39, para. 5.

[50] Flynn Decl., *supra* note 38 para. 4; Treanor Decl., *supra* note 43, para. 7.

[51] *Id.*; Wilson Decl., *supra* note 39, para. 13; Wool Decl., *supra* note 41, para. 10; Clemens Decl., *supra* note 41, para. 11; Lonergan Decl., *supra* note 39, para. 16.

[52] Dullknife Decl., *supra* note 39, para. 8; Wool Decl., *supra* note 41, paras. 11-12.

[53] Clemens Decl., *supra* note 41, para. 37.

[54] Dullknife Decl., *supra* note 39, para. 8.

[55] *Id*.

[56] The Intercept, *Medics Describe How Police Sprayed Standing Rock Demonstrators with Gas and Water Cannons* (Nov. 21, 2016), https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/ (last accessed Nov. 29, 2016).

[57] Clemens Decl. *supra* note 41, para. 19.

[58] The Guardian, *Dakota Access pipeline: 300 protesters injured after police use water cannons* (Nov. 21, 2016), https://www.theguardian.com/us-news/2016/nov/21/dakota-access-pipeline-water-cannon-police-standing-rock-protest (last accessed Nov. 30, 2016); The Intercept, *Medics Describe How Police Sprayed Standing Rock Demonstrators with Gas and Water Cannons* (Nov. 21, 2016), https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/ (last accessed Nov. 29, 2016).

[59] *Dundon v. Kirchmeier, supra* note 37, paras. 7 *et seq*.

[60] Hoagland-Lynn Decl., *supra* note 44, para. 15.

[61] The Huffington Post *Woman's Arm May Be Amputated After Horrific Injury At Standing Rock Protests* (Nov. 22, 2016), http://www.huffingtonpost.com/entry/standing-rock-arm-amputation_us_5834853ee4b09b6055ff01ec (last accessed Nov. 29, 2016).

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[68] Letter from Standing Rock Sioux Tribe to Loretta Lynch, *supra* note 26; Letter from Cheyenne River Sioux Tribe to Loretta Lynch, *supra* note 30; NBC News, *Tribe Asks DOJ to Intervene in Dakota Access Pipeline Protests* (Oct. 24, 2016), http://www.nbcnews.com/storyline/dakota-pipeline-protests/tribe-asks-doj-intervene-escalating-dakota-access-pipeline-protests-n671541 (last accessed Nov. 29, 2016).

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[71] *Id.*, art. 25.2a.

[72] IACHR Human Rights & Extractive Activities, *supra* note 4, para. 165 (citing *Saramaka*, *supra* note 6).

[73] *Id*., para. 166.

[74] *Id*., para. 160.

[75] IACHR, *2015 Annual Report*, Chapter IV.A, "Access to Water In The Americas: An Introduction To The Human Right to Water in the Inter-American System" (IACHR Access to Water), para. 30, http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-agua-EN.pdf (last accessed Nov. 29, 2016).

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[77] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment of June 17, 2005.,Series C No. 125, para. 167 (*citing* The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) (29th session 2002), para. 16).

[78] IACHR Access to Water, *supra* note 75, para. 4.

[79] Letter from Honor the Earth, Sierra Club, and Indigenous Environmental Network, Re: Submission of New Information on the Environmental Impacts on the Proposed Dakota Access Pipeline Project; Request for Additional Review under the National Environmental Policy Act and Clean Water Act; and Request for Stay Pending Review, Oct. 10, 2016, https://d3n8a8pro7vhmx.cloudfront.net/honorearth/pages/2295/attachments/original/1477095838/DAPL_Letter_to_Corps_10.10.16_SC_HTE_IEN.pdf?1477095838 (last accessed Nov. 29, 2016) (citing Dennis Pillion, *Alabama pipeline leak: What we know so far about the spill, gas shortages and more*, Sept. 18, 2016, http://www.al.com/news/birmingham/index.ssf/2016/09/how_alabama_pipeline_leak_led.html).

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[83] *Id.* (citing Joseph Serna, *Refugio oil spill may have been costlier, bigger than projected*, Aug. 5, 2015, http://www.latimes.com/local/lanow/la-me-ln-refugio-oil-spill-projected-company-says-20150805-story.html).

[84] *Id.* (citing EPA Region 8, "Bridger Pipeline Release," https://www.epa.gov/region8/bridgerpipeline-release).

[85] *Id.* (citing New York Times, *Oil Spill in North Dakota Raises Detection Concerns*, Oct. 23, 2013, http://www.nytimes.com/2013/10/24/us/oil-spill-in-north-dakota-raises-detection-concerns.html?_r=0).

[86] *Id.* (citing *Dakota Access operator Sunoco has terrible spill record, September 26, 2016*, http://www.eenews.net/greenwire/2016/09/26/stories/1060043413).

[87] The Bismarck Tribune, *Pipeline plan first called for crossing north of Bismarck* (Aug. 18, 2016), http://bismarcktribune.com/news/state-and-regional/pipeline-route-plan-first-called-for-crossing-north-of-bismarck/article_64d053e4-8a1a-5198-a1dd-498d386c933c.html (last accessed Nov. 29, 2016).

[88] Letter from Honor the Earth, *et al.*, *supra* note 79.

[89] IACHR, Access To Water, *supra* note 75, para. 152.

[90] IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II, Doc. 56/09, Dec. 30, 2009, para. 205, http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf (last accessed Nov. 29, 2016).

[91] *See generally* IACHR, Human Rights & Extractive Activities, *supra* note 4, paras. 172-212.

[92] *See id*., para. 189.

[93] InterAmerican Commission on Human Rights, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.124, Doc. 7 (Feb. 27, 2006), Chapter V, para. 93, http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&lID=1 (last accessed Nov. 29, 2016) (citing numerous decisions of the U.S. Supreme Court).

[94] *See generally, id.*, Chapter V.

[95] *Id.*, Chapter V, para. 1.

[96] IACHR, Human Rights & Extractives Activities, *supra* note 4, para. 303 (emphasis added).

[97] *Id*., para. 193.

[98] *Id.,* para. 297.

[99] Morton County Sheriff's Department, "Felony Charges Pursued in DAPL Protest Activities" (News Release Sept. 14, 2016), http://www.unicornriot.ninja/wp-content/uploads/2016/09/9-14-release-on-protest-felony-arrests.pdf (last accessed Nov. 30, 2016); Common Dreams, *Peaceful Dakota Access Protesters Face Felony Charges, Escalating Police Violence* (Sept. 15, 2016), http://www.commondreams.org/news/2016/09/15/peaceful-dakota-access-protesters-face-felony-charges-escalating-police-action (last accessed Nov. 30, 2016).

[100] New York Times, *Tension Between Police and Standing Rock Protesters Reaches Boiling Point* (Oct. 28, 2016), http://www.nytimes.com/2016/10/29/us/dakota-access-pipeline-protest.html?_r=0 (last accessed Nov. 30, 2016); New York Times, *Judge Rejects Riot Charge Against Amy Goodman of "Democracy Now" Over Pipeline Protest* (Oct. 17, 2016), http://www.nytimes.com/2016/10/18/us/judge-rejects-riot-charge-against-amy-goodman-of-democracy-now-over-pipeline-protest.html (last accessed Nov. 30, 2016).

[101] Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, 31 Dec. 2009, para. 193, https://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf (last accessed Nov. 29, 2016).

[102] IACHR, *Rules of Procedure of the Inter-American Commission on Human Rights* (effective Aug. 1, 2013), art. 25.2b, http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp (last accessed Nov. 29, 2016).

[103] *Id.*, art. 25.2c.

APPENDIX D

United Nations A/HRC/36/56

General Assembly

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Human Rights Council
Thirty-sixth session
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Agenda item 5
Human rights bodies and mechanisms

Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned — 2007-2017

Report of the Expert Mechanism on the Rights of Indigenous Peoples

GE.17-13467(E)

1713467

criminalizing indigenous activists and organizations and movements, often engendered by conflicts over investment projects in indigenous territories.[3]

6. In 2016, in a movement emblematic of such conflicts around the world, thousands of indigenous peoples gathered to protest the construction of an oil pipeline over the treaty-guaranteed traditional lands of the Standing Rock and Cheyenne River Sioux tribes in North Dakota, United States of America. The project had been permitted by the Government despite the objections of the indigenous peoples in question and in the absence of meaningful consultation, with significant harm to the tribes' sacred sites and risks to its drinking water.[4] The situation, along with indigenous peoples' expressions of concern during the tenth session of the Expert Mechanism on natural resource development on indigenous lands across the world without their consent, was a significant factor in the decision by the Expert Mechanism to devote its 2018 thematic report to the issue of free prior and informed consent, not only in the context of natural resource development, but also with respect to other State and industry activities that affect indigenous peoples' rights to land and culture, as well as legislative and restitution measures that affect them, as specified in the Declaration.

7. In the light of ongoing challenges, much more can be done to realize the true potential of the Declaration, through enhanced implementation of its provisions. The Declaration reaffirms and clarifies international human rights standards to ensure respect for indigenous peoples' rights to self-determination, cultural, language, land, natural resources, environmental protection, consultation and free prior and informed consent. Thus, recommendations and observations to States — by United Nations agencies, treaty bodies, the Permanent Forum on Indigenous Issues, special procedures of the Human Rights Council, such as the Special Rapporteurs,[5] working groups and under the universal periodic review mechanism — seeking the implementation of Declaration rights should be implemented.

8. An overview of such recommendations, as well as good practices, will serve as the basis for an analysis of the status of implementation of the Declaration today, and also serve to inform the implementation of the new mandate of the Expert Mechanism as to the choice of thematic studies, definition of priorities for country engagement and other undertakings toward achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples.

9. Many scholars consider that, apart from its solemn and aspirational nature, the Declaration has significant normative weight, having been formally endorsed by the majority of States Members of the United Nations.[6] As a form of international law, the Declaration may be used by courts when attempting to construe the meaning of treaties, statutes and other legal instruments. It is well established that General Assembly resolutions that declare norms can build on or reflect customary international law.[7] The declaration

[3] Such as the prosecution of defenders of the Mapuche people under antiterrorist laws in Chile for which Chile was held liable in 2014 by the Inter-American Court of Human Rights. See: ww.corteidh.or.cr/docs/casos/articulos/seriec_279_ing.pdf.

[4] When the protestors camped out and joined forces to stop bulldozers from raising burial sites, law enforcement attacked the protesters using dogs, crowd-control spray, freezing water and rubber bullets. Dozens of people were arrested and imprisoned for asserting and protecting their rights to free speech and assembly, and to self-determination, property, natural resources, equality, treaty rights, religious freedoms, cultural expression and free prior and informed consent. See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E.

[5] Including the Special Rapporteurs on the rights of indigenous peoples; on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; on the situation of human rights defenders; in the field of cultural rights; and on the rights of persons with disabilities.

[6] See A/HRC/15/37/Add.1.

[7] See judgment of the International Court of Justice dated 20 February 1969, in which the Court defined the requirements needed to establish new customary international law as very widespread, including representative State practice in support of the purported new rule, including the specially affected states, as well as a feeling to be obligated (*opinio juris*). See also https://ruwanthikagunaratne.wordpress.com/2017/04/04/nuclear-weapons-advisory-opinion/.

APPENDIX E

E/2017/43-E/C.19/2017/11

Economic and Social Council
Official Records, 2017
Supplement No. 23

Permanent Forum on Indigenous Issues

Report on the sixteenth session (24 April-5 May 2017)

United Nations • New York, 2017

studies and reports by the national human rights institutions in the promotion and protection of indigenous rights and invites those institutions to present their reports and studies in future sessions.

21. Notwithstanding the developments in international human rights standards, indigenous peoples continue to face denial of their most basic human rights, including the right to self-determination. The Permanent Forum notes the affirmation that the rights of indigenous peoples are a matter of international concern and that the United Nations has an important role to play in the promotion and protection of their rights, as stated in articles 19 and 20 of the Declaration. The Permanent Forum remains committed to promoting respect for, and the full application of, the provisions of the Declaration and to following up on its effectiveness.

22. Recalling the recommendations made by the Special Rapporteur appointed to undertake a study on the status of implementation of the Chittagong Hill Tracts Accord of 1997 (E/C.19/2011/6, sect. VIII), and given that the situation of the indigenous peoples of the Chittagong Hill Tracts remains a matter of concern, the Forum encourages the Government of Bangladesh to allocate sufficient human and financial resources and set a time frame for the full implementation of the Accord.

23. The Permanent Forum calls upon the Government of the United States of America to comply with the provisions recognized in the Declaration and to ensure the rights of the Great Sioux Nation to participate in decision-making, as set out in article 19 of the Declaration, given that the construction of the Dakota access pipeline will affect their rights, lives and territory. Furthermore, the Forum recommends that the Government of the United States initiate an investigation of alleged human rights abuses by private security and law enforcement officers that occurred during protests to prevent construction of the pipeline.

24. The Permanent Forum takes note of the Deatnu (Tana/Teno) river fishing agreement between the Governments of Finland and Norway that was adopted by their respective Parliaments in March 2017. The Sami Parliaments of Finland and Norway have informed the Forum that the agreement was adopted without the free, prior and informed consent of the Sami. The Forum requests the Governments of Finland and Norway to renegotiate the agreement with the full and effective participation of Sami rights holders.

25. The Permanent Forum urges Colombia to promote and guarantee the rights of indigenous peoples in the development of the regulatory framework of the Colombian peace agreement and to ensure that a process of free, prior and informed consent is established for the implementation of the “ethnic chapter” of the agreement with their full and effective participation.

26. The Permanent Forum recommends that the United Nations Multidimensional Integrated Stabilization Mission in Mali, the African Union and the European Union establish special mechanisms for the protection of indigenous peoples in areas of conflict and high insecurity in the countries of the Sahel and Sahara region, in particular Tuaregs in Mali and Libya.

27. The Permanent Forum continues to hear numerous accounts from indigenous peoples who are threatened by alien commercial ventures, militarization and administrative decisions that interfere with their governance over their lands, territories and resources and ultimately inhibit their capacity for sustainable development and well-being for future generations. The Forum strongly recommends that such disputes be considered in accordance with article 27 of the United Nations Declaration on the Rights of Indigenous Peoples and paragraph 21 of the outcome document of the World Conference on Indigenous Peoples, ensuring that a mechanism exists that provides for fair, independent, impartial, open and

APPENDIX F

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples on her visit to the United States of America from 22 February to 3 March 2017. In the report, the Special Rapporteur examines the human rights situation of indigenous peoples in the United States, with a particular focus on extractive industries.

The issues surrounding energy development underscore the need for reconciliation and improvement of the government-to-government relationship moving forward. Significant work remains to be done to implement policies and initiatives to further the rights of indigenous peoples to self-determination and consultation. In the current political context, with increased incentives for fossil fuel energy development and decreased budgets for environmental and indigenous peoples' protection agencies, the threats facing indigenous peoples may be further exacerbated.

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1713652

68. While many of the circumstances surrounding the protest constitute examples of poor practices, there were also a number of positive developments. The Chairman of the Standing Rock Sioux Reservation stated that the protest brought together all seven bands of the Great Sioux Nation for the first time in the last 150 years and galvanized indigenous peoples nationally and from around the globe, who came by the thousands to show their support for the Standing Rock Sioux and other affected tribes.

69. Another positive development was the series of consultations held by the federal Government with Indian tribes to better integrate tribal views on infrastructure decisions. The consultations[32] sought to better inform federal agencies about tribal involvement in decision-making that implicates their rights and resources. In December 2016, the Army Corps announced that it would conduct a full environmental review of the pipeline's impacts to determine the basis on which to grant the final easement needed to complete the pipeline.

70. These positive steps were overshadowed when newly-elected President Donald Trump issued a memorandum which called for the expedited review and approval of the Dakota Access Pipeline, circumventing the ongoing environmental review. The Army Corps executed the President's directive, cancelled the environmental impact statement and granted the last easement necessary to begin construction of the pipeline under Lake Oahe. On 1 June 2017, the pipeline became fully operational, transporting oil through traditional tribal lands and underneath the water supply of the Sioux tribes.

71. The tribes continued to battle for the protection of their rights in domestic courts and in June 2017, a United States Federal Court agreed with the Standing Rock Sioux that the Army Corps had not adequately considered environmental justice issues nor the risk of oil spill, which could have impacts on treaty reserved hunting and fishing rights. The Special Rapporteur will continue to monitor the situation and expresses concern that issues raised by the tribes remain unresolved.

72. As is well-documented, the controversy surrounding the Dakota Access Pipeline drew thousands of people to the boundaries of the Standing Rock Sioux Reservation as they sought to protect their land and water and uphold tribal sovereignty. While the actions that took place were mostly non-violent and peaceful, there has been a militarized, at times violent, escalation of force by local law enforcement and private security forces. The previous Special Rapporteur noted that indigenous peoples had the right to oppose extractive activities that impacted their land and resources, free from reprisals, acts of violence or undue pressure to accept or enter into consultations about extractive projects.[33]

73. The Special Rapporteur noted with particular concern the aggressive manner in which peaceful demonstrations were met by local, state, private and national guards. She heard testimonies of war-like conditions and cases of blunt force trauma and hypothermia as a result of battery with batons, attack dogs and water cannons blasting individuals at freezing temperatures. She was concerned about protestors being strip searched and placed in kennels as temporary holding cells during various and frequent mass raids by local, state and federal enforcement officials, sometimes in the middle of a spiritual and cultural energy cleansing ritual. According to information received, over 700 indigenous and non-indigenous people were arrested during the protests, some of whom remain in custody.

74. Given the impacts of the Dakota Access Pipeline on indigenous peoples, the Special Rapporteur remains deeply concerned by the Presidential memorandum of 24 January 2017, which resulted in the granting of the last easement necessary to begin construction of the Dakota Access Pipeline under Lake Oahe and the Notice of Termination of the Intent to Prepare an Environmental Impact Statement.

[32] Unites States of America, Departments of the Interior, the Army and Justice, *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*, January 2017. Available at https://www.bia.gov/cs/groups/public/documents/document/idc2-060030.pdf..

[33] A/HRC/24/41.

with additional funding to courts and law enforcement. In that regard, she also urges the Government to seriously consider mandating sexual assault protocols.

Health impacts of energy development

91. **The federal Government should continue to support indigenous peoples in developing their capacity to address the health impacts of energy projects and provide them with additional services for the treatment of mental health, alcoholism and drug addiction, including drug rehabilitation services and hospitals.**

Education

92. **The federal Government should continue to support tribal colleges with adequate tax incentives, education grants and financial resources to empower indigenous peoples to realize their self-determined economic development goals in line with the United Nations Sustainable Development Goals.**

Criminalization of indigenous dissent

93. **The federal Government should develop and provide anti-oppression and anti-racism training to federal and state law enforcement agents; collect disaggregated data to reflect the rate of incarceration of indigenous peoples at both the federal and state levels; mandate the Department of Justice to open an investigation into the excessive use of force and militarized response to the water protectors at the Standing Rock Sioux Reservation, including the use of non-lethal weapons; consider granting clemency to Leonard Peltier.**

94. **The state Governments should prohibit state taxation of lands held in trust for the benefit of indigenous peoples. Where states impose taxes on Indian lands, such tax revenues should be re-invested into tribal lands to provide infrastructure and services.**

95. **Indigenous peoples should continue to develop policies to take control of renewable and non-renewable energy development and guidelines for doing business to facilitate tribal development. They should work with other indigenous peoples in other parts of the world on issues of common concern; go beyond formal engagements with members of the federal Government and develop personal relationships with them; and negotiate agreements for energy development on their own terms.**

APPENDIX G

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples

Note by the Secretariat

The Secretariat has the honour to present to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples, prepared pursuant to Council resolution 33/12. In the report the Special Rapporteur briefly refers to the activities undertaken since the submission of her last report, provides a thematic study on attacks against and the criminalization of indigenous human rights defenders and reflects on available prevention and protection measures. She concludes with recommendations on how various stakeholders can prevent violations and improve protection.

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ensure that third-country Governments provided appropriate protection to indigenous communities and human rights defenders, and bring perpetrators of crimes against them to justice.[35] The Special Rapporteur welcomes the strong public stance taken by the European Union, which can play an important role in preventing violations.

87. At the international level, in March 2018 UNEP adopted a policy entitled "Promoting greater protection for environmental defenders" which identifies violations against indigenous peoples as a key concern which urgently requires prevention and protection measures to be stepped up. The policy provides for the establishment of a rapid response mechanism to speak out on individual cases and to advocate for the rule of law in environmental matters. UNEP simultaneously launched the Environmental Rights Initiative which urges Governments to strengthen institutional capacities to develop and implement policy and legal frameworks that protect environmental rights and that aims to assist businesses to better understand their environmental rights obligations.[36]

88. Another prevention initiative at the global level is the Framework of Analysis for the Prevention of Atrocity Crimes developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect as a guide for assessing the risk of genocide, crimes against humanity and war crimes from an early warning perspective. With the help of the Framework, various actors can sound the alarm, promote action, improve monitoring or early warning by different actors and help Member States to identify gaps in their atrocity prevention capacities and strategies. The Offices of the Special Advisers use the Framework to collect information and conduct assessments of situations that could potentially lead to atrocity crimes or their incitement.[37]

IX. Conclusions and recommendations

A. Conclusions

89. **States carry the primary responsibility for ensuring that indigenous peoples are able to safely exercise their rights and that accountability is established for violations against indigenous defenders. Concerted action is urgently needed to halt the trend of attacks, criminalization and impunity for those who commit violations against indigenous peoples.**

90. **Large-scale development projects are major drivers fuelling the escalation of attacks and the criminalization of indigenous peoples. The frequent undertaking of such projects without genuine consultation or measures to seek the free, prior and informed consent of the indigenous peoples concerned must cease. Indigenous peoples are not against development, but they reject "development" models which have been imposed on them without their participation and undermine their rights to self-determination and their right to set their own priorities for the development of their lands, territories and resources.**

B. Recommendations

91. **The Special Rapporteur addresses the following recommendations to States:**

(a) **All violent attacks against indigenous defenders must be promptly and impartially investigated and measures taken to provide for effective redress and reparation;**

[35] See www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0279+0+DOC+XML+V0//EN.

[36] See www.environmentalrightsinitiative.org.

[37] See www.un.org/en/genocideprevention/documents/publications-and resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

(b) **A zero-tolerance approach to the killing of and violence against indigenous human rights defenders must be adopted at the highest level of Government. All public officials must refrain from stigmatizing indigenous communities affected by large-scale development projects and those defending their rights, and recognize that their concerns are legitimate components in a process aimed at securing sustainable development;**

(c) **States should ensure that legislation creates due diligence obligations for companies registered in their jurisdictions and those of their subsidiaries where there is a risk of human rights violations against indigenous peoples;**

(d) **Addressing criminalization requires a comprehensive review of national laws, the adoption of laws to ensure due process and the revocation of laws and criminal procedures that violate the principle of legality and contradict international obligations. Legislation that criminalizes indigenous livelihoods such as rotational agriculture, hunting and gathering should be repealed;**

(e) **Legislation and policies should be adopted to expressly support the protection of indigenous defenders and communities. Protection measures should ensure that both individual and collective protection aspects are addressed in practice, in close consultation with the indigenous peoples concerned. Indigenous-led protection initiatives should inform the design of all measures that are adopted by authorities in favour of indigenous communities at risk;**

(f) **In order to address the root causes of attacks and criminalization, collective land rights of indigenous peoples need to be recognized. This requires, inter alia, accessible, prompt and effective procedures to adjudicate land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; effective protection from encroachment, including through early warning systems and on-site monitoring systems; and the prohibition of forced evictions;**

(g) **Law enforcement officials and prosecutors should be trained on human rights standards and refrain from the criminalization of indigenous peoples who are peacefully defending their rights to lands and resources;**

(h) **In order to implement the right to consultation and to free, prior and informed consent, such processes need to be based on good faith. It is indispensable that indigenous peoples be afforded genuine participation and access to information in a culturally appropriate manner in a language they understand. This requires their involvement at all phases, including human rights impact assessments, project planning, implementation and monitoring.**

92. **The Special Rapporteur recommends that independent national human rights institutions closely monitor complaints relating to large-scale development projects through regular dialogue with and visits to affected indigenous communities at risk of attacks.**

93. **The Special Rapporteur recommends that private companies:**

(a) **Exert human rights due diligence in all operations and adopt clear policy commitments to that effect;**

(b) **Perform ongoing human rights impact assessments for all projects, with the full participation of potentially affected indigenous communities;**

(c) **Avoid any acts of defamation which stigmatize indigenous peoples.**

94. **The Special Rapporteur recommends that international financial institutions and donors, as well as State agencies that provide international assistance, should adopt and implement environmental and social safeguards that are consistent with human rights obligations, including by:**

(a) **Requiring human rights impact assessments of all projects;**

(b) **Including specific protections for indigenous peoples;**

(c) **Requiring the effective participation of affected indigenous communities;**

(d) **Providing for effective procedures to pursue remedies.**

95. **The Special Rapporteur recommends that the international community monitor whether human rights impact assessments are conducted and whether specific attention is given to the participation and protection needs of indigenous communities. Accountability mechanisms should be supported.**

96. **The Special Rapporteur recommends that civil society continue to provide support and legal advice and facilitate the sharing of experiences in relation to protection measures for indigenous people.**

APPENDIX H

UNITED STATES DISTRICT COURT

DISTRICT OF NORTH DAKOTA

WESTERN DIVISION (BISMARCK)

CISSY THUNDERHAWK; WAŠTÉ WIN YOUNG; REVEREND JOHN FLOBERG, and JOSÉ ZHAGÑAY on behalf of themselves and all similarly-situated persons, Plaintiffs, vs. COUNTY OF MORTON, NORTH DAKOTA; SHERIFF KYLE KIRCHMEIER; GOVERNOR DOUG BURGUM; FORMER GOVERNOR JACK DALRYMPLE; DIRECTOR GRANT LEVI; SUPERINTENDENT MICHAEL GERHART JR; TIGERSWAN LLC; and DOES 1 to 100 Defendants.	Case No. 1:18-cv-00212-DLH-CSM **CIVIL RIGHTS CLASS ACTION** **FIRST AMENDED COMPLAINT FOR DAMAGES** **DEMAND FOR JURY TRIAL**

INTRODUCTION

1. From April 2016 to February 2017, tens of thousands of individuals, known as "Water Protectors," united in support of the Standing Rock Sioux Tribe's opposition to the

construction of the Dakota Access Pipeline (DAPL) at camps located near the intersection of Highway 1806 and the Cannonball River in south-central North Dakota.

2. Since the movement first began, Water Protectors relied heavily on Highway 1806. As the largest and most direct road connecting the Standing Rock Sioux Reservation and the various camps on its northern border to Bismarck and Mandan, Highway 1806—especially the stretch between Cannon Ball and Mandan—served as the primary route by which Water Protectors (and press) traveled to the camps, gathered supplies at Bismarck and Mandan, and sought medical treatment at the nearest major hospital. Moreover, because DAPL crosses Highway 1806 several miles north of the camps, in an area rich with sacred and ceremonial sites, Highway 1806 also served as the primary means by which Water Protectors traveled to assemble, speak, and pray in opposition to the construction of DAPL.

3. But Highway 1806 was not only important to Water Protectors. For thousands of local residents, Highway 1806 is their primary means of visiting family, shopping, seeking medical attention, and conducting other routine and necessary life activities. Highway 1806 is a key north-south public right-of-way for residents of south-central North Dakota, north-central South Dakota, the Standing Rock Reservation, and the Cheyenne River Reservation.

4. As the "NoDAPL" movement grew, so too did the divide between the predominantly Native American Water Protectors and the predominantly non-indigenous residents of Morton County. By late-summer, racial, religious, and political polarization had begun to infect the relationship between the Water Protectors and law enforcement Defendants, led by Defendant Morton County Sheriff Kyle Kirchmeier.

5. One of the ways through which this polarization was exhibited was state and local officials' persistent mischaracterization of Water Protectors and the NoDAPL movement. Using selective, misleading, and false descriptions of Water Protector conduct, including in press statements, official declarations, and criminal charging documents, state and local officials

engaged in a concerted effort to portray the movement as a whole as far more dangerous or criminal or disruptive than was actually the case.

6. On October 24, 2016, Sheriff Kirchmeier and Morton County, operating with the assistance and approval of Governor Jack Dalrymple, NDDOT Director Grant Levi, and Highway Patrol Superintendent Michael Gerhart Jr., discriminatorily closed Highway 1806 from Fort Rice to Fort Yates. This road closure was directed only at the Tribe and its supporters: residents of Fort Rice were allowed to drive southbound on Highway 1806, as were employees of DAPL. In fact, DAPL employees were permitted to use the closed portion of the road for the duration of the discriminatory closure. The stretch of Highway 1806 from the Cannonball River to Fort Rice remained fully closed to travel by the Tribe and its supporters until March 17, 2017. And the road remained effectively closed to any expressive or religious activity by the Tribe and its supporters until March 21, 2017.

7. From October 28, 2016 until early March, Defendants maintained a reinforced concrete and concertina wire barricade on Highway 1806 immediately north of the Backwater Bridge. This barricade presented a physical boundary to any travel past the bridge on *or around* Highway 1806 (but it did not prevent travel onto the bridge itself). Defendants also enforced an absolute prohibition on travel for the Tribe and its supporters—including foot, horseback, and ATV travel—on Highway 1806, regularly arresting Water Protectors who approached the barricade on foot.

8. Defendants' five-month absolute prohibition of any travel by the Tribe and its supporters on an approximately nine-mile stretch of this public right-of-way infringed Plaintiffs' Fifth and Fourteenth Amendment right to interstate and intrastate travel and, as a consequence, substantially burdened Plaintiffs in seeking needed medical care, in purchasing supplies (and in other ways engaging in commerce), in meeting with, speaking to and being interviewed by media, in gathering and reporting the news, and in visiting family members.

9. The travel limitations also prevented Plaintiffs from exercising their First Amendment right to assemble, speak, and pray in the area in question, including but not limited to a nearly nine-mile stretch of a public road abutting numerous sacred and ceremonial sites, as well as portions of the public road near the pipeline's path. The discriminatory road closure also unnecessarily burdened the First Amendment rights of journalists or supporters who wished to join or visit the camps and thereby limited the camps' and Standing Rock Reservation's access to the press as well as the press's access to the camps and to the Standing Rock Reservation.

10. Plaintiffs suffered substantial and irreparable injury as a result of Defendants' actions.

JURISDICTION & VENUE

11. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1331 (in that they arise under the United States Constitution) and 28 U.S.C. § 1343(a)(3) (in that the action is brought to address deprivations, under color of state authority, of rights, privileges, and immunities secured by the United States Constitution). This Court has supplemental jurisdiction of state law claims pursuant to 28 U.S.C. § 1367.

12. Venue is properly placed in the United State District Court for the District of North Dakota pursuant to 28 U.S.C. § 1391(b) because the Defendants are located in the District of North Dakota and because many of the acts and/or omissions described herein occurred in the District of North Dakota.

13. Intradistrict venue is proper in the Western Division of the District of North Dakota pursuant to D.N.D. Civ. L.R. 3.1 and Gen. L.R. 1.1 because the claims asserted herein arise from acts and/or omissions that occurred in County of Morton, North Dakota.

PARTIES

14. Plaintiff Cissy Thunderhawk is an enrolled member of the Standing Rock Sioux Tribe and was the owner and primary operator of My Auntie's Place, a business located in Fort

Yates, North Dakota, through the duration of the time in question. During this time period, Cissy Thunderhawk resided in Mandan, North Dakota and worked in Fort Yates, North Dakota.

15. Plaintiff Wašté Win Young is an enrolled member of the Standing Rock Sioux Tribe who, for the duration of the time in question, resided in Fort Yates North Dakota and at the camps alongside the Cannonball River.

16. Plaintiff Reverend John Floberg is the Priest for St. James' Episcopal Church in Cannon Ball, North Dakota, where he worked for the duration of the time in question. Over this same time period, Reverend John Floberg resided in Bismarck, North Dakota.

17. Plaintiff José Zhagñay is and was a resident of New York who, during the time in question, established legal residency in North Dakota due to his relocation to the camps alongside the Cannonball River in support of the NoDAPL movement. José Zhagñay is a U.S. citizen by birth and is indigenous Ecuadorian.

18. Defendant Kyle Kirchmeier is, and at all material times herein was, a law enforcement officer, the Sheriff of Defendant County of Morton, and an authorized policymaker for Defendant County of Morton. Defendant Kyle Kirchmeier is sued in his individual and official capacity.

19. Defendant County of Morton is a body corporate for civil purposes and subject to suit pursuant to N.D. Cent. Code § 11-10-01.

20. Defendant Grant Levi was at all material times herein the director of the North Dakota Department of Transportation and an authorized policymaker for the State of North Dakota. Defendant Levi is sued in his individual capacity.

21. Defendant Doug Burgum is the Governor of the State of North Dakota, is an authorized policymaker for the State, and was an authorized policymaker during much of the time in question. Defendant Burgum is sued in his individual capacity.

22. Defendant Michael Gerhart Jr. was, during the time period in question, the

Superintendent of the North Dakota Highway Patrol. Defendant Gerhart Jr. is sued in his individual capacity.

23. Defendant Jack Dalrymple was the Governor of the State of North Dakota throughout much of the time period in question, during which he was an authorized policymaker for the State. Defendant Dalrymple is sued in his individual capacity.

24. Defendant TigerSwan is a limited liability company organized under the laws of the State of North Carolina, and is registered as a foreign limited liability company with the State of North Dakota providing "security services." Among other things, TigerSwan uses its own trademarked methodologies, "F3EAR" and "NIFE," to provide consulting and security services to corporate interests. During the time period in question, TigerSwan acted under color of state law and in close cooperation with law enforcement Defendants to implement and enforce the discriminatory road closure. TigerSwan lent its investigatory, consulting, and security services to law enforcement officers and agencies, providing, among other things, situation reports to law enforcement and "static and mobile security operations in support of the pipeline construction throughout North Dakota." TigerSwan's services and cooperation with the law enforcement officers and agencies named herein specifically related to the speech, travel, assembly, and prayer of Plaintiffs on Highway 1806, as well as the discriminatory closure of Highway 1806.

25. Plaintiffs do not know the true names and/or capacities of Defendants sued herein as Does 1 through 100, inclusive, and therefore sue said Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. The Doe Defendants include other individuals or entities who supervised and/or participated in the conduct complained of herein. Plaintiffs are informed and believe and therefore allege that each of the Doe Defendants is legally responsible and liable for the incident, injuries, and damages hereinafter set forth, and that each of said Defendants proximately caused said incidents, injuries, and damages by reason of their negligence, breach of duty, negligent

supervision, management or control, violation of constitutional and legal rights, or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency, employment, or control, or upon any other act or omission. Plaintiffs will ask leave to amend this complaint to insert further charging allegations when such facts are ascertained.

26. In doing the acts alleged herein, Defendants, and each of them, acted within the course and scope of their employment.

27. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted under color of authority and/or under color of law.

28. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted as the agent, servant, employee, and/or in concert with each of said other Defendants.

GENERAL ALLEGATIONS

29. At all times relevant herein, all wrongful acts described were performed under color of state law.

30. Plaintiffs [Thunderhawk, Young, Floberg, and Zhagñay] are at times herein referred to collectively as "Plaintiffs."

31. Defendants [Levi, Kirchmeier, Burgum, County of Morton, Dalrymple, Gerhart, TigerSwan LLC, and DOES 1 to 100] are at times herein referred to collectively as "Defendants."

32. Defendants [Levi, Kirchmeier, Burgum, Dalrymple, Gerhart, TigerSwan LLC, and DOES 1 to 75] are at times herein referred to collectively as "non-municipality Defendants."

33. Defendants [Levi, Kirchmeier, Burgum, Dalrymple, Gerhart, and DOES 1 to 50] are at times herein referred to collectively as "State Defendants."

34. Defendants [Kirchmeier, Morton County, and DOES 51-100] are at times herein referred to collectively as "Local Defendants."

35. At all times relevant herein, Defendants were acting in concert with or as agents on behalf of one another.

BACKGROUND

36. The Dakota Access Pipeline is a 30" pipeline designed to transport up to 570,000 barrels a day of crude, fracked oil from the Bakken shale fields in North Dakota to refineries in Pakota, Illinois. The pipeline was originally planned to cross the Missouri River north of Bismarck. But due to concern over the risk of contamination to the water supply, the pipeline company, Dakota Access LLC, rerouted the pipeline to cross the Missouri River less than one mile north of the Standing Rock Reservation boundary.

37. The area through which DAPL now runs includes a number of sites of significant cultural, historical, and spiritual value to the Lakota people. The Missouri River is also the sole water source for the two neighboring Lakota tribes, the Standing Rock Sioux Tribe and the Cheyenne River Sioux Tribe, and for many other indigenous and non-indigenous people throughout the region.

38. The tribes and their supporters opposed the construction of the pipeline through this area, expressing numerous concerns with the risks presented by the pipeline and with the process by which it was approved at its current route.

39. Moreover, DAPL's route, including the entirety of the Lake Oahe crossing, traverses land over which the tribes still claim ownership. The tribes and their supporters opposed the construction of the pipeline for this reason as well: the 1851 and 1868 treaties both recognize the land in question as being part of the territory of the Oceti Šakowiŋ (otherwise known as the Great Sioux Nation) and guarantee the territory against intrusions by the United States and outsiders. The tribes have alleged that the pipeline—approved by the Federal Government against the express wishes of the tribes of the Oceti Šakowiŋ—therefore violates these treaties.

40. Starting in April 2016, representatives of more than 300 indigenous nations and numerous other supporters gathered in increasing numbers near the construction route in a spiritually based movement demanding that construction of the pipeline be halted. The locus of this movement was a group of camps located where Highway 1806 intersects the Cannonball River at the current border of the Standing Rock Sioux Reservation.

41. One of the primary functions served by the camps was symbolic, with the very act of staying at or visiting the camps representing the primary means by which numerous individuals expressed their support for the movement. Central to this symbolism was the resettlement of lands over which the Oceti Šakowiŋ continues to claim ownership, with hundreds of Water Protectors becoming legal residents of the camps located on federally and tribally owned land during the time period in question. These camps were only accessible via Highway 1806, which is also the principal route between the Standing Rock Sioux Reservation and Bismarck/Mandan—the closest major cities to Standing Rock.

42. Although, during the period in question, the majority of individuals at these camps were out-of-state visitors to the region, there remained at all times a strong contingent of North Dakota locals.

43. By September 2016, these camps reached a sustained population of approximately 7,000-10,000 individuals.

44. From April 2016 through October 2016, one of the primary locations of speech, assembly, and prayer for these individuals was Highway 1806's wide curtilage near where the pipeline was slated to cross the highway, an area that has long been open to the public for, among other things, use as a thoroughfare, and that could be (and routinely was) visited safely without impeding or disrupting traffic. Plaintiffs regularly engaged in a range of expressive and religious conduct on this land, including hanging prayer ties and signs within sight of passing drivers, as well as speaking and praying individually and in small, medium, and large groups.

45. This was in keeping with the longstanding use of this road and other similar roads in the region: the road and curtilage in question have historically been used not only for travel by cars, trucks, horseback, ATVs, and pedestrians but also, as the only public space throughout much of this area, for a range of expressive activity. This has long included traditionally indigenous expressive practices, such as hanging prayer ties and undertaking horseback 'rides' (like the Bigfoot Ride and the Dakota 30+8 Ride, which each occur in the broader region). Most recently prior to the challenged road closure, for example, this specific right-of-way hosted a spiritual ride from Cannon Ball to Tioga, ND and a similarly expressive youth 'run' from Standing Rock to Washington D.C.

46. In addition to hosting expressive activity and travel, Highway 1806's wide curtilage has historically been used for runoff control during the spring melt and for the occasional highway repair. The wide shoulders in question slope gradually from the paved road surface and are flanked by fence lines delineating the private property that abuts the public thoroughfare.

47. The importance of this specific stretch of road and curtilage for speech, assembly, and prayer increased dramatically in early-September after Tim Mentz Sr., the Standing Rock Historic Preservation Officer, identified ancient burial and ceremonial sites and other significant cultural artifacts in the area; after Dakota Access LLC immediately subsequently attempted to destroy these sites; and after a resulting confrontation between DAPL-employed security officers and Water Protectors led to the officers unleashing dogs against Water Protectors. These events drew local, national, and international attention to not only the NoDAPL movement but this specific stretch of highway; it is possible that no public right-of-way in North Dakota history has been the topic of international discourse to the extent that this several-hundred-yard tract of Highway 1806 has.

48. Additionally, in September, local spiritual leaders and tribal elders confirmed the appropriateness and desirability of praying in the public area immediately abutting Highway 1806 and these specific sites.

49. The vast majority of the speech, assembly, prayer, and travel in this area was completed in a peaceful and lawful manner.

50. Thousands of Water Protectors prayed, marched, sang, waved placards, and chanted on thousands of occasions over the course of a nearly year-long period without any incident.

51. Nevertheless, Defendants, and the agencies and individuals operating under their control, engaged in a determined and concerted campaign to suppress the speech, assembly, and prayer of the tens of thousands of individuals who traveled, or who intended to travel, through this area to oppose the construction of DAPL.

52. One of the primary methods used by Defendants to chill constitutionally protected conduct associated with the NoDAPL movement was by controlling the roads in a manner designed to discourage NoDAPL travel, speech, assembly, and prayer.

53. On October 17, 2016, Sheriff Kirchmeier publicly announced that blocking roads "affects people's rights."

54. Then, beginning on October 24, 2016—exactly one week later—Morton County and the NDDOT, in consultation with Governor Dalrymple and Superintendent Michael Gerhart Jr., closed a significant portion of Highway 1806 to the Tribe and its supporters—including the entire stretch of Highway 1806 abutting the specifically identified sacred and ceremonial sites as well as the DAPL construction that had been the primary center of Plaintiffs' speech, prayer, and assembly for the past several months.

55. In the months leading up to the discriminatory road closure, this thoroughfare was overwhelmingly used by three distinct groups: (1) the Tribe and its supporters; (2) non-tribal

residents of the area; and (3) DAPL and its associates. These groups were clearly divided along racial, religious, and viewpoint-based lines: on the one hand, the Tribe and its supporters were predominantly indigenous, practitioners of indigenous religious beliefs, and anti-DAPL; on the other hand, the non-tribal residents of the area and DAPL and its associates were almost exclusively non-indigenous, not practitioners of indigenous religious beliefs, and supporters of DAPL.

56. This discriminatory closure immediately followed the Cheyenne River Sioux Tribe's declaration of eminent domain over a small portion of the land adjacent to Highway 1806 (and the resulting relocation of approximately 100 Water Protectors to this land). The effect of the closure was to freeze travel throughout much of the region for the Tribe and its supporters, and, therefore, to substantially and materially burden the Plaintiffs' speech, worship, travel, and associative rights.

57. On October 27, following a violent police and private-security-led raid on a camp located on the land declared as eminent domain by the Cheyenne River Sioux Tribe, Defendants [except Burgum] used several trucks to block the Backwater Bridge, a small bridge on Highway 1806 crossing Cantapeta Creek less than a mile north of the northern boundary of the Standing Rock Sioux Tribe.

58. On October 28, Defendants [except Burgum] erected a heavily reinforced concrete barricade on and immediately north of the Backwater Bridge.

59. Defendants have given varying reasons for the need for this barricade but consistently acknowledged that its target was the Tribe and its supporters. For example, Maxine Herr, a spokesman with the Morton County Sheriff's Department, stated about this barricade: "We are trying to create a barrier between the protestors and that private property." On the other hand, two press releases on October 28 and October 31 gave a different reason for the barricade:

the bridge would remain closed "until all damage to the structure is evaluated by bridge engineers."

60. Although such an evaluation would have been safe and feasible as early as October 28, 2016, the North Dakota Department of Transportation (NDDOT) delayed conducting a full investigation of the bridge until December 22, 2016—nearly two months after it was closed. Plaintiffs and the Standing Rock Sioux Tribe reached out to the State and Local Defendants on numerous occasions between October 28 and December 22 to arrange the safe inspection of the bridge (and in any other way necessary facilitate its reopening), but were rebuffed.

61. On January 12, the NDDOT revealed the results of its inspection: the bridge was and had been structurally sound. Nevertheless, Defendants [except Dalrymple] continued to maintain the closure of the nine-mile stretch of Highway 1806 in question for 68 additional days, stating that the bridge would remain closed "[u]nder the authority of the North Dakota Governor and the Morton County Sheriff's Department" until there was an "assurance no criminal activity will take place and federal law enforcement has been introduced into the protest camp to restore law and order."

62. On February 10 and 13, 2017, the NDDOT completed several non-structural repairs to the Backwater Bridge, declaring afterwards that its Backwater Bridge repairs had been completed.

63. On February 23, 2017, the last Water Protectors were removed from state or federal land in the area. On February 27, 2017, the last Water Protectors were removed from *any* of the camps in the area, including those located on the Standing Rock Reservation.

64. Highway 1806 was partially reopened to the Tribe and its supporters on March 17, 2017, with only pilot car-led travel allowed. The Tribe and its supporters continued to be

prohibited from speaking or worshiping on the curtilage of the road, however, until it was fully reopened on March 21, 2017.

65. The effect of Defendants' discriminatory closure of Highway 1806 was to prevent travel past the Backwater Bridge from the camps or Reservation, thereby requiring those traveling between the camps/Reservation and Bismarck/Mandan to take a detour on worse-maintained small roads that added significant time, stress, and danger to the trip and imposed additional costs on Plaintiffs in gas, car maintenance, etc. For instance, for a Plaintiff in the vicinity of Cannon Ball, ND hoping to visit the Huff Hills Ski Area, the detour not only more than doubled the length and time of the trip, but required travel on roads that were far more susceptible to winter closures or unsafe driving conditions. Likewise, for a reporter leaving the Bismarck Tribune's office to report on a fast-developing story at the Backwater Bridge, the detour added 17 miles and, in good weather conditions, approximately 20 minutes of driving time in each direction. In icy or snowy conditions (which persisted throughout most of the duration of the discriminatory closure), the detour added substantially more in travel time—often an hour or more—and, on numerous occasions, the detour was impassable even when Highway 1806 would not have been.

66. Ironically, given State and Local Defendants' justification regarding the need for the barricade to protect the potentially damaged bridge, the barricade did not actually prevent access onto the bridge from the various camps or the Reservation: it only prevented travel *past* the bridge.

67. Moreover, Defendants used the bridge itself to maintain its barricade, placing numerous concrete blocks that added substantial sustained concentrated weight to the bridge that they claimed might be damaged—imposing more stress than an occasional passing car or ambulance would.

68. Additionally, the barricade extended significantly to each side of Highway 1806, thereby preventing those traveling on foot, horseback, or ATV who safely circumvented the bridge from continuing north along Highway 1806.

69. Given these circumstances, State and Local Defendants' expressed concerns about the need to maintain the discriminatory road closure to protect the structural integrity of the bridge appear to have at all times been a pretext.

70. Plaintiffs' expressive and associational rights were not merely burdened because of Defendants' blockade-related restrictions on Highway 1806: at the same time as they closed Highway 1806 to the Tribe and its supporters, Defendants began implementing a de facto cordon of the construction area and of the nearby sacred and ceremonial sites. Defendants enforced this cordon not only with several checkpoints around Fort Rice and, on the southern-most end, with the heavily reinforced barricade immediately north of the Backwater Bridge, but by preventing any travel in the general vicinity. On November 2, hundreds of Water Protectors, including indigenous elders, held a prayer ceremony across a river located approximately one mile from the pipeline construction site and apparently on the edge of Defendants' unstated, but strictly enforced, cordon of the area. When a few Water Protectors entered the frigid river, Defendants [except Burgum] reacted with significant force. Such conduct not only chilled expressive and associational rights, but had the effect of barring the symbolic speech of entering the river and crossing on the opposite bank, while demonstrating Defendants' [except Burgum's] adherence to such a broad cordon. Defendants aggressively enforced this cordon, using significant force when necessary to prevent Water Protectors from so much as walking around their barricade by the Backwater Bridge.

71. The purpose and effect of Defendants' discriminatory road closure was to keep Plaintiffs *miles* away (well out of line-of-sight or earshot) from the construction workers, security guards, and sites that had for months prior been a primary focus of Plaintiffs' First

Amendment activity. This effectively left Plaintiffs without any other means of communicating with one of their principal desired audience (construction workers and security officers) or in one of their most symbolically important forums (Highway 1806's curtilage abutting the identified sacred and ceremonial sites near to where the pipeline would and eventually did cross).

72. For the vast majority of the duration of this discriminatory road closure, there was no active construction in the area. The construction of DAPL where it intersects with Highway 1806 was completed in early-November. On December 4, 2016, the Army Corps announced that it would not be granting DAPL the easement necessary for DAPL to drill under the Missouri River at the nearby Lake Oahe crossing. The decision (and therefore a legal prohibition on the only remaining construction in the area) remained in place until the Army Corps of Engineers reversed this determination on February 8, 2017 (and drilling was completed within two weeks of that date). Throughout this time, Plaintiffs, nevertheless, continued to desire to speak, assemble, and pray in public areas at or near the sacred and ceremonial sites and the site of DAPL's crossing that they were unable to access given Defendants' absolute prohibition on travel by the Tribe and its supporters on this stretch of highway.

73. Given that the decision on the Lake Oahe crossing (and, ultimately, the operation of the pipeline) had an uncertain outcome, Plaintiffs and the tribes had a compelling and vital First Amendment need to be able to speak and assemble on the curtilage of the closed portion of the highway near the site of completed construction to express their ongoing opposition to the potential construction and operation of the pipeline.

74. Access to the public land abutting the neighboring sacred sites was also vital to Plaintiffs' First Amendment right to physically pray at their traditional religious lands and to demonstrate by their physical presence both the sacredness of such lands to the Oceti Šakowiŋ and their continuing claim to such lands.

75. This prohibition on travel on nine miles of Highway 1806 had the effect of preventing Plaintiffs from engaging in constitutionally protected conduct within the proximity of the construction site or the nearby sacred or ceremonial sites, and it deterred others from joining or supporting Plaintiffs.

76. On the other hand, during the time in question, State and Local Defendants permitted DAPL and its employees and its contractors, as well as others residing in the area not affiliated with the Tribe and its supporters, to use the road—including, if they wished, for purposes related to expression. This policy was either controlled by guidelines that were specifically tailored to exclude the Tribe and its supporters, while impacting as few others as possible; or, in the alternative, it was controlled by guidelines or a system of exemptions that were so vague as to give officers nearly unlimited discretion in determining who was permitted use of this forum.

77. Regardless, although the overwhelming majority of the impacted population (the Tribe and its supporters) had legitimate and lawful reasons to use the road—including, for many, business reasons—during the time in question, the effect of any guidelines or exemptions here was to only exclude those who Defendants associated with the Tribe and its supporters; any broader impacts were incidental and marginal.

78. As a result, the effect and intent of Defendants' conduct was to severely burden residents of the Reservation by limiting access to and from the Reservation. This region of North Dakota experienced severe winter weather for much of the period of the discriminatory road closure, including multiple major blizzards and prolonged periods of sub-zero temperatures. In conjunction with Defendants' closure of the quickest and safest route to the nearest major hospital in Bismarck and to the nearest source of many life-saving supplies, this weather greatly increased the risk of serious bodily injury and death to those gathered by the Cannonball River, as well as those who resided on the nearby Reservation. Altogether, the emotional and financial

costs of this discriminatory closure, measured in, among other things, additional gas, car wear and tear, time, stress, and lost business revenues, were substantial, and disproportionately impacted the Standing Rock Sioux Tribe and tribal members.

79. Indeed, these grave burdens reflect Defendants' true purpose for discriminatorily closing the road in question (in addition to hindering Plaintiffs' exercise of their constitutional rights): to extort political concessions from the Standing Rock Sioux Tribe. The concessions Defendants demanded of the Tribe include the Tribe changing its position vis-à-vis Water Protectors in North Dakota and the existence of the camps under its jurisdiction.

80. This is supported by the extent and duration of the discriminatory closure itself, which was substantially broader and longer than necessary to accomplish any other goals, and by Defendants' own statements.

81. First, in a formal report completed prior to the discriminatory road closure, the North Dakota State and Local Intelligence Center first concluded that this stretch of Highway 1806 "is the primary access for those traveling between the Bismarck/Mandan metro area and the SRR [(Standing Rock Reservation)]" and, therefore, that the Backwater Bridge specifically is "imperative to the flow of commerce and emergency responders to and from the Standing Rock Reservation." The report then contemplates "the potential for barricades to be setup on or near the [Backwater or Cannonball] bridges to prevent travel of . . . protestors (by law enforcement)."

82. Second, a strategic plan similarly circulated in the weeks before the discriminatory closure details closing Highway 1806 with a "[b]arricade." This "[t]raffic [c]ontrol," the plan notes, would be used to obtain political concessions from the Tribe. The plan lists several of these concessions explicitly: the Standing Rock Tribal Council would "[f]ormally request[] law enforcement assistance from the federal and state government to aid in restricting access to the camps" and "publicly decree[] that all camps must be vacated by January 31, 2017, and no new occupation can be attempted." The strategic plan in question was circulated to, at the

very least, the State Highway Patrol, and bears the official insignia of North Dakota, North Dakota Department of Emergency Services, North Dakota State Patrol, and Morton County.

83. Third, State and Local Defendants made public statements throughout the duration of the discriminatory road closure stating that the road's re-opening was conditioned on, among other things, Defendants achieving their political objective of dismantling the camps located on Army Corps and tribally owned land in the region (2/3 of which were under the jurisdiction of the Tribe). Sheriff Kirchmeier, for example, stated on January 12, 2017 that "the ND Highway 1806 roadway north of the bridge will remain closed until federal law enforcement is introduced into the protest camp to restore law and order." On January 30, 2017, a North Dakota Joint Information Center release describes "ongoing talks between the state, Morton County and the Standing Rock Sioux Tribe" for purposes of, among other things, "potentially re-opening State Highway 1806 in a conditions-based, phased approach. . . . The reestablishment of rule of law is the key condition." Sheriff Kirchmeier added, in the same document, "Highway 1806 will not be completely re-opened until rule of law in the area is restored." A January 31, 2017 press release from the Morton County Sheriff's Department notes that the NDDOT "removed the top layer of jersey barriers from the Backwater Bridge in a good faith effort in response to work done by the protest camp to clean up and clear out." In a February 2, 2017 statement, Sheriff Kirchmeier noted that because "[t]he actions of [a] rogue group of protestors have been condemned by the Standing Rock Sioux Tribe and cleanup efforts seem to be progressing in order to clear the main camp before spring flooding, [] I am willing to take the next steps to open the Backwater Bridge. . . . However, rule of law in the area must be restored prior to a full re-open." On March 15, 2017, Sheriff Kirchmeier stated that "[t]he conditions were met to continue our phased approach to reopening Highway 1806. . . . We understand that opening this road is important to facilitate the routine business and commutes that take place

along the 1806 corridor." Governor Doug Burgum added: "With the camps and roadway cleared, we can now move toward re-establishing traffic on Highway 1806."

84. Fourth, State and Local Defendants made these same demands in private meetings on numerous occasions: Morton County would only re-open the road if the Tribe complied with Defendants' demands. A non-exclusive list of these meetings include a December 19, 2016 meeting between Governor Burgum and various tribal officials; a January 25, 2017 meeting between Governor Burgum, Michael Gerhart Jr, and various state and tribal officials (where, among other things, Governor Burgum explicitly made clear his, Michael Gerhart Jr.'s, Sheriff Kirchmeier's, and Morton County's responsibility for maintaining the discriminatory road closure); and a February 16, 2017 meeting between representatives from Governor Burgum's office, including Scott Davis, a representative from Morton County, and several Water Protectors.

85. Throughout the time period in question, state and local law enforcement judged a number of alternative strategies effective for ensuring traffic and public safety with respect to the NoDAPL movement. This includes maintaining a non-militarized police presence near demonstrators in public areas, arresting and detaining lawbreakers (but not those peacefully and lawfully gathered), maintaining slower speed limits on the roadways, implementing cautionary road signage and traffic safety checkpoints, implementing speed bumps and other similar traffic mitigation measures, and even non-discriminatorily closing short—several-hundred feet—stretches of the road to traffic for only the minutes or hours during which a large demonstration was occurring. Had Defendants used such alternative strategies in a targeted and limited fashion in lieu of the discriminatory road closure in question, the result would have been to substantially improve public safety in the area while decreasing the cost of policing to State and Local Defendants. Such an approach, moreover, would have left open public forums in the area to substantially more speech and free exercise, to substantially more effective speech (as the Tribe

and its supporters could have reached one of their key audiences—DAPL employees) and meaningful exercise (as the Tribe and its supporters could pray along identified sacred sites), to substantially decreased burdens on interstate and intrastate travel, and on substantially decreased burdens on commerce.

PLAINTIFFS

Cissy Thunderhawk

86. Plaintiff Cissy Thunderhawk, aka Geraldine Dunn, was the owner of My Auntie's Place Restaurant in Fort Yates, and is a resident of Mandan, ND. Throughout the time period in question, she traveled back and forth between Fort Yates and Bismarck and Mandan regularly for business purposes as well as to shop. The discriminatory road closure impacted her personally and her business, adding time, additional car expenses, danger, and inconvenience to her commute. The discriminatory road closure also limited access to her business for her customers, and both Cissy and her business were financially injured as a result of the closure's severe limitation of travel to and from the Reservation. Cissy was forced to close My Auntie's place shortly after the events in question.

Wašté Win Young

87. Plaintiff Wašté Win Young is a member of the Standing Rock Sioux Tribe who resides in Fort Yates, North Dakota and, during the period in question, also resided at the camps alongside the Cannonball River. Wašté Win was a strong supporter of the efforts to oppose the construction of DAPL since before the events in question, and has prayed, assembled, traveled, and spoken in various public locations near where DAPL is or was intended to be constructed on numerous occasions. Wašté Win wished to pray, speak, travel, and assemble with others in public locations that she was unable to access because of Defendants' discriminatory closure of Highway 1806. The road closure therefore substantially impacted her speech, assembly, prayer, and travel, and she suffered significant and tangible emotional distress as a result.

88. Moreover, Wašté Win has a documented medical condition requiring routine and regular travel to Bismarck. Wašté Win has children and travels regularly to Bismarck to shop for her children, and she also had to fly out of the Bismarck airport during this time period. The discriminatory closure added substantially in time, gas, car wear, and stress to this necessary travel and, consequently, limited where and when Wašté Win could go.

John Floberg

89. Plaintiff Father John Floberg is the Episcopalian Priest for the St. James' Episcopal Church in Cannon Ball, North Dakota. Currently, and throughout the time period in question, Father Floberg resided in Bismarck, North Dakota and commuted between Bismarck and Cannon Ball multiple days each week. The discriminatory road closure personally impacted him in his work and in his ministry, adding time, gas money, danger, and inconvenience to his commute, and burdened his ability to minister to his congregation as well as his congregation's ability to worship.

90. Father John Floberg was also the primary organizer of a peaceful and lawful gathering of five hundred clergy who traveled to Standing Rock, mostly from out-of-state, to participate in peaceful prayers and demonstrations of solidarity with the Tribe and its supporters south of the Backwater Bridge. This religious and expressive exercise was also substantially burdened by the discriminatory road closure, which made attending materially more difficult for the vast majority of clergy who did or would have attended but for the closure—disproportionately so for those who sought to attend from out-of-state, due to its location. As a result of these burdens, Father John Floberg suffered significant and tangible emotional distress.

José Zhagñay

91. José Zhagñay is a New Yorker of indigenous Ecuadorian heritage who traveled to North Dakota in September and again in October to support the Standing Rock Sioux Tribe in its opposition to DAPL (and in affirmation of indigenous rights and environmental justice). When

he returned in October, José sought to and ultimately did establish legal residency in North Dakota, with his sole domicile in the camps. At the camps, José primarily volunteered with the Mní Wičhóni Nakíčižiŋ Owáyawa, the camps' homeschool resource center, to ensure that families staying at the camps were able to provide their school-age children with the necessary education for their children to succeed, and to meet the applicable legal requirements for homeschooling. In this role, José regularly traveled to Bismarck to get food and other supplies for both himself and for the resource center. After Highway 1806 was discriminatorily closed, this travel—and, by virtue, his relocation to North Dakota—became substantially more difficult, and he ultimately left both the camps and North Dakota in December.

92. Moreover, José visited the curtilage alongside Highway 1806 to speak and to join in prayer before the relevant stretch of road was closed. But for the discriminatory closure, José would have returned to this area to speak, pray, and gather in solidarity, and he suffered significant and tangible emotional distress as a result.

TIGERSWAN ALLEGATIONS

93. From September 2016 through the end of the period in question, TigerSwan coordinated and implemented all security and intelligence operations for their client, Energy Transfer Partners. As the lead security contractor, TigerSwan "conduct[ed] static and mobile security operations in support of the pipeline construction throughout North Dakota," collected intelligence on Water Protectors who resided in the camps, and delegated out security tasks to at least four other security contractors also working for Energy Transfer Partners.

94. Immediately upon its arrival in North Dakota, TigerSwan initiated a course of joint participation with law enforcement officials in operations, including, eventually, as they respected the challenged discriminatory road closure.

95. TigerSwan's intertwinement with North Dakota law enforcement officials began with the installation, in September 2016, of a TigerSwan Liaison Officer directly in the law

enforcement Joint Operations Center. Doing so permitted "coordination" between TigerSwan and law enforcement in planning operations. TigerSwan circulated Situation Reports indicating consistent coordination and "parallel planning" with law enforcement in the lead-up to, and over the course of, the discriminatory closure.

96. TigerSwan actively provided logistical support to law enforcement in the days prior to the highway closure by, at a minimum, purchasing and shipping a computer for law enforcement and preparing a building on private property for law enforcement use.

97. Prior to and during the closure, TigerSwan performed tasks in intelligence and evidence collection traditionally reserved for law enforcement officials. These actions included:

a) Conducting flights over water protector camps with forward-looking infrared cameras to gather "[s]ignals intelligence;"

b) Constructing "person of interest" folders on Water Protectors;

c) Directing the infiltration of Water Protector camps by individuals using false names and identities;

d) In at least once instance, connecting law enforcement's intelligence unit to the live feed of a company's helicopter video surveillance;

e) Presenting video and photo evidence to the North Dakota Bureau of Criminal Investigation in support of prosecuting Water Protectors;

f) Using "coding techniques" to surface Water Protector profiles and groups on social media;

g) Supplying intelligence and surveillance information, upon request, to federal authorities.

98. Moreover, for much of the time period in question, starting on October 28, 2016, the FAA imposed a no-fly order in the region. Under that order: "Only relief aircraft ops under direction of North Dakota Tactical Operations Center [was] authorized in the

airspace." Meanwhile, aircraft operated by private security under the direction of TigerSwan continued to fly over the area to conduct surveillance—which the FAA confirmed would have only been legal if the aircraft in question were participating in a law enforcement action. And indeed, in describing his team of officers assigned to clear Water Protectors from a bridge on October 27, 2016, Lt. Cody Trom included a "DAPL air asset."

99. TigerSwan's intelligence was accepted by and informed State and Local Defendants. For example, after TigerSwan highlighted the presence of "Islamic individuals" among the Water Protectors, the law enforcement intelligence unit exchanged emails regarding information provided by "company [i]ntel" about "Shia Islamic" individuals. Similarly, footage from TigerSwan-organized private security flights during the no-fly period were used by prosecutors in cases brought against Water Protectors. And as TigerSwan persistently and misleadingly labeled indigenous speech and prayer as riotous, State and Local Defendants increasingly adopted and misleadingly applied this label.

100. The intelligence, logistical support, personnel, and equipment that TigerSwan provided to State and Local Defendants made possible State and Local Defendants' decision to discriminatorily close the road, as well as the implementation and maintenance of the discriminatory road closure.

101. Moreover, in the weeks preceding the closure, TigerSwan shared purported intelligence with law enforcement officials presenting the Water Protectors as dangerous individuals. Specifically, TigerSwan spread allegations that Water Protectors possessed weapons and that certain individuals were pushing the Water Protectors into violent action. TigerSwan's persistent and selective mischaracterization of Water Protectors as potentially violent, dangerous, and criminal was intended to, and did, distort State and Local Defendants' perception of the movement. This was also intended to, and did, encourage the implementation and continued maintenance of excessive measures against the Tribe and its supporters, primarily including the

road closure in question.

MUNICIPAL & SUPERVISORY ALLEGATIONS

102. Sheriff Kirchmeier is the policy-making authority for Morton County, as it relates to the maintenance of policies, customs, or practices, and training, supervision, or discipline of Sheriff Kirchmeier's and Morton County's law enforcement officers and employees.

103. Sheriff Kirchmeier, together with the assistance of state officials [including Jack Dalrymple, Grant Levi, and Michael Gerhart Jr.] made and implemented Morton County's policy decision to close off the road and bridge in whole and in part to the Tribe and its supporters. Morton County's policy was approved by Jack Dalrymple, Grant Levi, and Michael Gerhart Jr. in the final weeks of October, who respectively provided material support to Sheriff Kirchmeier in his implementation and maintenance of the discriminatory closure, including financial, logistical, and manpower support (such as designating state highway patrolmen and press officers from their respective offices to closure-related work). Similarly, Governor Burgum approved the continuation of this policy in his first weeks as governor of North Dakota, and Governor Burgum continued to work with Grant Levi and Michael Gerhart Jr. to provide material support to Sheriff Kirchmeier and Morton County, including financial, logistical, and manpower support (such as designating state highway patrolmen and press officers from their respective offices to closure-related work), in maintaining the discriminatory closure. Sheriff Kirchmeier, Grant Levi, Michael Gerhart Jr., Jack Dalrymple, and Doug Burgum are or were at the times in question authorized by law or vested with power under law to make such decisions and did so under color of law.

104. Sheriff Kirchmeier, working with the approval of and in coordination with Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials maintained policies, customs, or practices, including the following:

a) Implemented [except Burgum] an absolute prohibition on all travel by the Tribe and its supporters on Highway 1806 over an approximately nine-mile stretch running from the Backwater Bridge to Fort Rice;

b) Maintained this absolute prohibition on all travel by the Tribe and its supporters with a reinforced concrete and concertina wire barricade located immediately North of the Backwater Bridge;

c) Defended this absolute prohibition on all travel by the Tribe and its supporters by arresting people who approached the closed portion of the road—even on foot—for trespassing;

d) Defended this absolute travel prohibition with significant force on several occasions, including on November 20 [except Burgum on this date].

105. Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials] knew, or should have known, that employees under their command, including Defendant DOES 1 to 100, were inadequately trained, supervised, or disciplined resulting from their inadequate policies, customs, or practices carried out by Sheriff Kirchmeier's [and Doug Burgum, Jack Dalrymple, Grant Levi, and other such officials'] law enforcement officers and employees.

106. Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials] failed to implement or to maintain adequate policies, customs, or practices related to the training, supervision, and discipline of law enforcement officers and employees. Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., or other such officials] were either aware of the non-existence or inadequacy of such policies, customs, or practices, believing, mistakenly, that they were not necessary, or were deliberately indifferent to the non-existence or inadequacy of these policies, customs, or practices.

107. Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., or other such officials] were on notice of the inadequate policies, customs, or practices carried out by their law enforcement officers and employees through multiple sources, including, but not limited to: news/media reports, past incidents of misconduct to others, multiple harms that occurred to the Plaintiffs, misconduct that occurred in the open, the involvement of multiple officials in the misconduct, releases from the ACLU about the unconstitutionality of road closures of this nature in this context, and a notice sent from the Water Protector Legal Collective to state and local officials noting the existence of serious constitutional violations associated with the exact prohibitions on travel on this portion of Highway 1806 challenged in this lawsuit.

108. Despite knowing that employees operating under their direction were maintaining this unconstitutional closure, State and Local Defendants took no steps to ameliorate the situation for months on end, let alone adequate steps. To the contrary, Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials] continued to maintain the policies, customs, or practices carried out by their law enforcement officers and employees that were the source of these violations.

109. In fact, on numerous occasions, many of which are detailed elsewhere in this Complaint, Sheriff Kirchmeier [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials] publicly acknowledged their approval and authorization of the acts in question.

110. Sheriff Kirchmeier's [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael Gerhart Jr., and other such officials'] acquiescence in or deliberate indifference to the policies, customs, or practices carried out by Morton County and Sheriff Kirchmeier's law enforcement officers and employees contributed to and was the moving force behind Plaintiffs' injuries, described herein. Sheriff Kirchmeier's [and Doug Burgum, Jack Dalrymple, Grant Levi, Michael

Gerhart Jr., and other such officials'] law enforcement officers and employees, including Defendant DOES 1 to 100, were not adequately trained, supervised, or disciplined in a manner that made them aware that the policies, customs, and practices were unauthorized, improper, and not tolerated.

111. That the discriminatory road closure was a Morton County policy implemented and/or maintained by Defendants is reflected in the fact that each non-Doe individual defendant, at various times, either made or authorized statements expressly claiming or implying a personal role in the implementation or maintenance of the road closure. For example, one Morton County press release noted that Morton County "along with" NDDOT and the North Dakota Highway Patrol "has changed the closure point on ND Highway 1806 south of Mandan to County Road 135." (This change still left the highway discriminatorily closed for "approximately ten miles.") Moreover, non-Doe State and Local Defendants personally corresponded with or personally directed correspondence to the Standing Rock Sioux Tribe or its supporters as part of negotiations to re-open the road to the Tribe and its supporters and similarly claimed a role in supporting the continued road closure, as well as influence in re-opening the road. Finally, the implementation and maintenance of the road closure was conducted predominantly by Doe Defendants reporting directly to Sheriff Kirchmeier, Doug Burgum, Jack Dalrymple, Grant Levi, and Michael Gerhart Jr.

CLASS ALLEGATIONS

112. The treatments to which Plaintiffs and the class they represent have been subjected—namely, the restrictions on non-DAPL travel, speech, prayer, and assembly, including foot travel, on a multiple-mile stretch of Highway 1806—were all performed pursuant to policies, customs, or practices of Local Defendants with the assistance and approval of State Defendants and TigerSwan.

113. Defendants intentionally made travel to and from the Standing Rock Sioux

Reservation and the camps near the Cannonball River as unnecessarily unpleasant and dangerous as possible so as to deter Water Protectors, with whom they disagree, from lawfully pursuing their constitutional rights to travel, assemble, pray, and express their viewpoints.

114. That this was the impermissible purpose of the discriminatory road closure is highlighted not only by statements to that effect made by State and Local Defendants, described herein, but by the Defendants' conduct, which was inconsistent with any of the reasons that have been publicly offered by State and Local Defendants.

115. Plaintiffs, on behalf of themselves and of a class of similarly situated persons, seek damages related to Defendants' absolute prohibition on their travel on an approximately nine-mile portion of Highway 1806, including the Backwater Bridge, pursuant to unlawful blanket policies, customs, or practices.

116. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated, pursuant to Federal Rule of Civil Procedure 23. Plaintiffs seek certification of a class defined as follows:

> All those persons who resided or visited, or who intended to reside or visit, in Morton or Sioux Counties, or in any other areas, and who therefore would have traveled on the closed portion of Highway 1806 but were prohibited by the Defendants, including but not limited to any of those persons who wished to speak, assemble, and pray along the closed portions of Highway 1806. In addition, the following are excluded from the class: (a) Defendants; (b) Dakota Access LLC and its affiliates for all relevant times; (c) any officers or employees of Dakota Access LLC and its affiliates for all relevant times; (d) any of the lawyers for Plaintiffs or Defendants; (e) any judge who is, or potentially may be, assigned to this matter; (f) members of the immediate

family of any excluded person; or (g) any entity in which any excluded person or entity has, or had for the relevant times, a controlling interest.

117. The members of the class are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact number of class members. Plaintiffs are informed and believe, and thereupon allege, that there are more than 10,000 persons in the class defined hereinabove.

118. The following questions are common to the class and predominate over any individual question:

a. whether Defendants' prolonged and absolute prohibition on Plaintiffs' travel on a nine-mile portion of Highway 1806 from October through March violated Plaintiffs' First Amendment rights;

b. whether Defendants' prolonged and absolute prohibition on Plaintiffs' travel from October through March violated Plaintiffs' Fifth and Fourteenth Amendment rights to travel, as well as Plaintiffs' right to travel protected under the Privileges and Immunities Clause of the U.S. Constitution;

c. whether Defendants' restriction on travel, assembly, speech, and religious exercise, enforced with militarized barricades and extreme demonstrations of force, was narrowly tailored to a significant or compelling government interest, or represented a narrowly tailored or the least restrictive means of satisfying that interest;

d. whether Defendants' restriction of travel on this major and public thoroughfare connecting numerous business interests on the Standing Rock Reservation to the nearest major off-Reservation city improperly burdened commerce among the Standing Rock Sioux Tribe, Cheyenne

River Sioux Tribe, and various states in violation of the Commerce Clause of the United States Constitution; and

e. whether the restriction on travel, assembly, speech, commerce, and religious exercise described herein was intended to punish, inconvenience, or endanger the Tribe and its supporters.

119. Plaintiffs' claims are typical of the class they seek to represent. Plaintiffs all resided in or visited the area during the time period in question and all travel or would have traveled regularly on Highway 1806 for business and pleasure, as did class members—and have all been injured in a like manner by the prohibition on travel on Highway 1806 as a result. Moreover, Plaintiffs have the same interests and suffered the same type of injuries as the proposed class. Plaintiffs' claims arose because of Defendants' policies, customs, or practices. Plaintiffs' claims are based on the same legal theories as the claims of the proposed class members. Each proposed class member suffered actual damages resulting from the treatment to which they were subjected and from the circumstances surrounding the discriminatorily closed and blockaded right-of-way. The actual damages suffered by Plaintiffs are similar in type and amount to the actual damages suffered by each proposed class member.

120. Plaintiffs will fairly and adequately protect the class's interests. Plaintiffs' interests are consistent with and not antagonistic to the interests of the class.

121. Prosecutions of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, with respect to incompatible standards of conduct for the parties opposing the class.

122. Prosecutions of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would, as a practical matter, substantially impair or impede the interests of the other members of the class to protect their interests.

123. Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate the final injunctive or declaratory relief sought, with respect to the proposed class as a whole.

124. This class action is superior to other available methods for the fair and equitable adjudication of the controversy between the parties. The interests of members of the class in individually controlling the prosecution of a separate action is low, in that most class members would be unable individually to prosecute any action at all. Moreover, the amounts at stake for individuals are sufficiently small that separate suits would be impracticable. Most members of the proposed class will not be able to find counsel to represent them. And, it is desirable to concentrate all litigation in one forum because all of the claims arise in the same location; e.g., the closed portion of Highway 1806. It will promote judicial efficiency to resolve the common questions of law and fact in one forum, rather than in multiple courts.

125. In violation of State and Federal Constitutional and Statutory provisions, Defendants, and their agents and employees, including Defendant DOES 1 to 100, have, unnecessarily and illegally, subjected Plaintiffs, and the class of those similarly situated whom they seek to represent, to the unjust and improper closure of Highway 1806 associated with Plaintiffs' opposition to DAPL.

126. As a result of the discriminatory road closure, named Plaintiffs and class Plaintiffs have experienced economic damages, including increased fuel costs, increased car maintenance, and loss of business, and physical and emotional symptoms including nervousness, anxiety, recurring nightmares, and fear and apprehension of Defendants' conduct, and have been chilled, inhibited or interfered with in the exercise of their constitutional rights as described in these allegations.

CAUSES OF ACTION

COUNT I

VIOLATION OF RIGHT TO SPEAK AND ASSEMBLE (FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; 42 U.S.C. § 1983)
(AGAINST ALL DEFENDANTS)

127. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

128. Plaintiffs were prevented, chilled, or inhibited in engaging in constitutionally protected First Amendment activity when Defendants, acting or purporting to act in the performance of their official duties as law enforcement officers, or in any other capacities such as Sheriff or similar office as set forth above, or under color of law, completely closed an approximately nine-mile portion of Highway 1806 to Plaintiffs' travel starting on October 24, 2016.

129. One of the effects of this discriminatory closure was to deny Plaintiffs access to this public nine-mile stretch of Highway 1806 and its curtilage for purposes of speaking, assembling, or otherwise exercising their First Amendment expressive rights. Part of the closed road and curtilage included a symbolically crucial and previously active forum for such expression.

130. Defendants' indefinite and absolute restriction of Plaintiffs' travel on nine miles of this public right-of-way, lasting ultimately five months, was not a reasonable time, place, or manner restriction on speech, nor did it fulfill an important government interest.

131. This discriminatory road closure also severely hampered the ability of the press—both local and national—in covering this movement, which was of great local and national interest. The detour added substantial time and stress to the drive from Bismarck/Mandan, where the majority of local and national press were based, to the camps, where a majority of the events being covered related to the NoDAPL movement took place. Given the unpredictable and fast-developing nature of press-worthy circumstances throughout this time period, the road closure

represented a serious impediment on the press's ability to cover the events in question, resulting in materially less and materially worse coverage.

132. By making it substantially more difficult for local press in particular to independently obtain first-hand evidence of what was happening in or around the camps (unlike national and independent press, who more often stayed on the Reservation, local press almost exclusively resided in the Bismarck/Mandan area), the road closure led the local press to rely more significantly on statements made by state and local officials in their reporting. This, in turn, further amplified, especially throughout North Dakota, state and local officials' exaggerated and often false portrayal of Water Protectors as violent and criminal, and of the NoDAPL movement as defined by mayhem.

133. Defendants' determination of who could speak, assemble, pray, or travel on this road or its curtilage was impermissibly based on the purported viewpoint of those who wished to speak, assemble, pray, or travel, or of the content of their expressive activities. This is most clearly revealed through Defendants' restrictions on who was permitted use of this forum: Water Protectors, but not DAPL workers, were prohibited from accessing the forum in question; expressions of opposition to the pipeline were excluded from the forum while expressions of support were not.

134. Defendants' actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

135. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages and declaratory and injunctive relief against all Defendants, and punitive damages against non-municipality Defendants.

COUNT II

VIOLATION OF RIGHT TO FREE EXERCISE (FIRST AND FOURTEENTH

AMENDMENTS TO THE U.S. CONSTITUTION; 42 U.S.C. § 1983)
(AGAINST ALL DEFENDANTS)

136. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

137. Plaintiffs' free exercise of religious practices, especially as they relate to sincerely held and meaningful indigenous religious beliefs, were substantially burdened when Defendants, acting or purporting to act in the performance of their official duties as law enforcement officers, or in any other capacities such as Governor or Sheriff, or under color of law, completely and indefinitely closed an approximately nine-mile portion of Highway 1806 to Plaintiffs' travel starting on October 24, 2016. Defendants prevented Plaintiffs from praying at, worshiping by, or even visiting identified sacred and ceremonial areas located alongside this public nine-mile stretch of Highway 1806. Indigenous religious practices do not treat places of worship as fungible, and so the intent and effect of Defendants actions, therefore, was to severely penalize—fully halting some—conduct prescribed by Plaintiffs' religious beliefs.

138. Moreover, despite granting numerous exemptions to this road closure—including to employees and associates of DAPL and its affiliates and to certain non-indigenous local residents—Defendants refused to extend any exemptions to Plaintiffs who sought to exercise their religious beliefs in the public areas that had previously been serving as a significant local place of worship.

139. For the reasons described throughout these allegations, the discriminatory road closure impacting Plaintiffs was neither neutral nor generally applicable.

140. Much of the religious exercise that was substantially burdened by the discriminatory road closure also had an accompanying significant expressive purpose or assembly component, as described in Count I and elsewhere in these allegations. Prayer flags or prayer ties, for example, are inherently symbolic and expressive in addition to playing a central

role in indigenous land-based religious exercise. Similarly, much of the religious exercise that was substantially burdened, like prayer 'rides' and prayer 'runs,' also had an accompanying travel interest.

141. The effect and intent of Defendants' actions was to fully prevent Plaintiffs from in any manner exercising their religious beliefs at these public sites, which had been the location of daily prayer in the months leading up to their closure.

142. Defendants' actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

143. This evil motive or intent was demonstrated through, among other things, Defendants' persistent mischaracterization of public indigenous religious observances in this area as riotous, violent, and/or dangerous. This mischaracterization, fueled by TigerSwan's intentionally misleading intelligence regarding Water Protector conduct, then served as pretext for state and local officials to publicly misrepresent the effect of and to persecute the practice of indigenous religious beliefs in the area.

144. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages and declaratory and injunctive relief against all Defendants, and punitive damages against non-municipality Defendants.

COUNT III

VIOLATION OF RIGHT TO TRAVEL (FIFTH AND FOURTEENTH AMENDMENTS TO THE, AND PRIVILEGES AND IMMUNITIES CLAUSE OF THE, U.S. CONSTITUTION; 42 U.S.C. § 1983; 42 U.S.C. § 1985(3)) (AGAINST ALL DEFENDANTS)

145. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

146. Plaintiffs' fundamental right to travel was significantly and discriminatorily

burdened when Defendants, acting or purporting to act in the performance of their official duties as law enforcement officers, and as state officials, or in cooperation with law enforcement officers and state officials, completely closed a nine-mile portion of Highway 1806 to the Tribe and its supporters. In this closure, Defendants prevented Plaintiffs from traveling—whether by car, by bike, by foot, by horse, or by any other means—on a public right-of-way during all hours of the day and all days of the week, for approximately five months straight. Defendants did not have a compelling interest in limiting travel in this manner on this public right-of-way and Defendants' approximately five-month duration, nine-mile long absolute prohibition of travel by the Tribe and its supporters is not narrowly tailored. Plaintiffs also have a right to travel along said highway for the purpose of reaching places of religious sanctity for prayer and to engage in speech or expressive conduct along the highway near the site of continuing or completed construction of the pipeline.

147. Given the location of this discriminatory closure, travel was substantially burdened within North Dakota, between North Dakota and the Standing Rock Reservation, and between North Dakota and South Dakota.

148. Indeed, the thoroughfare in question is, as state and local officials recognized just weeks prior to the discriminatory closure, "imperative to the flow of commerce and emergency responders to and from [the] Standing Rock Indian Reservation." Consequently, given the lack of other roads in the area, poor condition of the other roads in the area, and economic hardship experienced by many people in this area, the discriminatory road closure regularly rendered traveling for cultural, political, and social activities, to obtain needed medical services or treatment, to shop, to get gas, to go to restaurants, or for other such reasons, prohibitively difficult for Plaintiffs.

149. The effect and purpose of this closure was to render substantial portions of Morton County, which were served only by Highway 1806, entirely inaccessible to Plaintiffs.

150. Moreover, one of the effects and one of the purposes of this discriminatory road closure was to burden Plaintiffs in their attempts to relocate to and become permanent residents of the camps located alongside Highway 1806, including Sacred Stone Camp (which was located entirely on privately and tribally owned land on the Standing Rock Reservation), and Rosebud Camp, which the Army Corps of Engineers expressly held out as a "free speech zone" for most of the time in question.

151. This effect of the discriminatory closure was substantial: by making it more difficult to, for example, travel to, resupply, or seek medical care from these camps, the road closure deterred numerous Plaintiffs from making such an interstate or intrastate relocation.

152. This purpose of the closure is revealed through the statements and actions of Defendants described throughout these allegations and by a number of other tactics used or threatened by Defendants—such as when State and Local Defendants, in the midst of harsh winter conditions, threatened to fine any individuals bringing food, building materials, or portable bathrooms to the main camp.

153. Given the location of the camps in relation to the road closure and to the nearest major shopping centers, hospital, airport, etc., the burdens of this road closure were intended by Defendants to and, in fact, did disproportionately and discriminatorily fall on residents of these camps.

154. Defendants' actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' Fifth and Fourteenth Amendment and Privileges and Immunities Clause rights secured by the U.S. Constitution, or were wantonly or oppressively done.

155. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages and declaratory and injunctive relief against all Defendants, and punitive damages against non-municipality Defendants.

COUNT IV

IMPROPER RESTRICTION ON COMMERCE (COMMERCE CLAUSE OF THE U.S. CONSTITUTION; 42 U.S.C. § 1983) (AGAINST ALL DEFENDANTS)

156. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

157. Defendants' five-month absolute prohibition on any Plaintiff travel on Highway 1806 was not rationally related to any purported interest in protecting the integrity of the bridge (or any other reasonable state interests).

158. The intent and effect of Defendants' restriction on travel was to sanction and substantially burden travel and therefore commerce to/from the Standing Rock Reservation: as state and local officials themselves recognized just weeks before implementing the discriminatory closure, the thoroughfare in question is "imperative to the flow of commerce and emergency responders to and from [the] Standing Rock Indian Reservation."

159. Defendants sought, through the road closure's disproportionate economic impact on Standing Rock-related commerce, to punish the Standing Rock Sioux Tribe for its support of the NoDAPL movement and to improve the State's negotiating position with tribal leaders and elders vis-à-vis this movement. Moreover, the economic force of the road closure was intended to, and did, have a substantial and material impact on the Standing Rock Sioux Tribe's ultimate decisions around the NoDAPL movement, in part due to the significant economic losses experienced by businesses on the Reservation, including the Tribe's casino and Plaintiff Cissy Thunderhawk's restaurant, as a direct result of this closure.

160. Moreover, because the Standing Rock Reservation straddles North Dakota and South Dakota, any commerce restriction directed at the Reservation was also necessarily directed at South Dakota; the Tribe's economic resources, consisting in large part of income derived from its casino, are distributed to each of its members, including widely throughout its South Dakota

communities. Defendants' efforts to economically injure the Tribe, therefore, were intended to and did extend beyond North Dakota's borders and into South Dakota.

161. Additionally, by design, the impact of this closure on purely North Dakota businesses, including the Morton County hospitality industry, was relatively minimal. This was ensured through not only the placement of the closure, but in the disparate way in which it treated customers of on-Reservation and off-Reservation businesses: Defendants made efforts to focus the closure's impacts on the Tribe and its supporters (who, although regular customers of on-Reservation businesses, were relatively less likely to engage in commerce off of the Reservation); more frequent customers of Mandan- and Bismarck-area businesses, like residents of Fort Rice, were permitted to use most of the road—at least for traveling to and from these Mandan and Bismarck businesses.

162. The closure also directly and disproportionately impacted non-Reservation-related commerce between North Dakota and South Dakota. Because Highway 1806 is a key thoroughfare connecting North Dakota to South Dakota, and with the South Dakota border located just 35-miles south of the closure on the road in question, the effect of this discriminatory closure was to burden travel and therefore commerce to/from South Dakota.

163. For the reasons detailed throughout this Complaint, the public benefits of the discriminatory road closure were slight at best. On the other hand, its burden on commerce between North Dakota, South Dakota, and the Standing Rock Reservation totaled in the millions of dollars. Indeed, even only considering its direct burdens on South Dakota (and other state) commerce unrelated to the Standing Rock Reservation's South Dakota communities, its minimal local benefits were nevertheless exceeded by the costs that it imposed on interstate commerce.

164. Defendants' actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' Commerce Clause rights secured by the U.S. Constitution, or were wantonly or oppressively done.

165. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages and declaratory and injunctive relief against all Defendants, and punitive damages against non-municipality Defendants.

COUNT V

RETALIATION (FIRST, FIFTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, PRIVILEGES AND IMMUNITIES CLAUSE, COMMERCE CLAUSE; 42 U.S.C. § 1983) (AGAINST ALL DEFENDANTS)

166. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

167. Plaintiffs were prevented from engaging in constitutionally protected activity, including First, Fifth, and Fourteenth Amendment activity, and Commerce between the states and tribes, when Defendants, acting or purporting to act in the performance of their official duties as law enforcement officers and state officials, or under color of law, completely closed a nine-mile portion of Highway 1806 to Plaintiffs. Defendants prevented Plaintiffs from speaking, assembling, praying, or traveling anywhere on this public nine-mile stretch of Highway 1806—an area that includes known and identified sites sacred and ceremonial to Plaintiffs, and which serves as an important thoroughfare for business and safety. Defendants' adverse actions were substantially motivated as a response to Plaintiffs' exercise of constitutionally protected conduct.

168. Indeed, in meetings with the Tribe and its supporters and in public statements Governor Burgum and Sheriff Kirchmeier conditioned the re-opening of the road on the cessation of constitutionally protected conduct in the area, such as speech occurring on tribally owned land, directing, among others, Grant Levi and Michael Gerhart Jr. to ensuring this.

169. Defendants' retaliation was motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' First, Fifth, and Fourteenth Amendment rights, as well as Plaintiffs' rights under the Commerce Clause, secured by the U.S. Constitution, or was wantonly

or oppressively done.

170. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages against all Defendants, and punitive damages against non-municipality Defendants.

COUNT VI

UNCONSTITUTIONAL POLICIES, CUSTOMS, OR PRACTICES (FIRST, FIFTH, & FOURTEENTH AMENDMENTS TO AND THE COMMERCE CLAUSE AND PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION; 42 U.S.C. § 1983; 42 U.S.C. § 1985(3)) (AGAINST ALL DEFENDANTS)

171. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

172. Defendants, acting under color of state law, promulgated and/or maintained policies, customs, or practices permitting, implementing, carrying out or deliberately indifferent to, and the moving force behind, the violation of, Plaintiffs' First, Fifth, and Fourteenth Amendment, and Commerce and Privileges and Immunities Clause rights, secured by the U.S. Constitution.

173. Defendants, acting under color of state law, promulgated and/or maintained inadequate policies, customs, or practices, in reckless disregard or deliberate indifference to Plaintiffs' First, Fifth, and Fourteenth Amendment, and Commerce and Privileges and Immunities Clause rights, secured by the U.S. Constitution. The inadequacy of the policies, customs, or practices, and the need for such policies, customs, or practices to be adequate, is patently obvious—and has been repeatedly brought to Defendants' attention.

174. The actions and inactions of Defendants were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' First, Fifth, and Fourteenth Amendment and Commerce and Privileges and Immunities Clause rights, or were wantonly or oppressively done.

175. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages against all Defendants, and punitive damages against non-municipality Defendants.

COUNT VII

VIOLATIONS RESULTING FROM TRAINING, SUPERVISION, OR DISCIPLINE (FIRST, FIFTH, & FOURTEENTH AMENDMENTS TO AND THE COMMERCE CLAUSE AND PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION; 42 U.S.C. § 1983) (AGAINST ALL DEFENDANTS)

176. Plaintiffs restate each and every allegation in the foregoing paragraphs as if fully set forth herein.

177. Defendants, acting under color of state law, maintain inadequate training, supervision, or discipline permitting or deliberately indifferent to the policies, practices, or customs and were the moving force behind the violation of Plaintiffs' First, Fifth, and Fourteenth Amendment, and Commerce Clause rights, secured by the U.S. Constitution.

178. Defendants, acting under color of state law, maintain inadequate training, supervision, or discipline permitting or acquiescing to the policies, practices, or customs in reckless disregard or deliberate indifference to Plaintiffs' First, Fifth, and Fourteenth Amendment, and Commerce Clause rights, secured by the U.S. Constitution. The inadequacy of the training, supervision, or discipline, and the need for such adequate training, supervision, or discipline, was patently obvious and likely to result in the violation of persons' First, Fifth, and Fourteenth Amendment, and Commerce and Privileges and Immunities Clause rights, secured by the U.S. Constitution.

179. Defendants' actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs' First, Fifth, and Fourteenth Amendment, and Commerce and Privileges and Immunities Clause rights, secured by the U.S. Constitution, or were wantonly or oppressively done.

180. As a direct and proximate result of Defendants' actions and inactions, Plaintiffs suffered injuries entitling them to receive compensatory damages and declaratory and injunctive relief against Defendants, and punitive damages against non-municipality Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, those they represent, and all others similarly situated, seek Judgment as follows:

1. For compensatory, general, and special damages for Plaintiffs, and for each proposed member of the class, according to proof at trial;

2. For an award of exemplary/punitive damages against non-municipality Defendants in an amount sufficient to deter and to make an example, because their actions and/or inactions, as alleged, were motivated by evil motive or intent, involved reckless or callous indifference to the federally protected rights, or were wantonly or oppressively done;

3. For an award of reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, and any other statute as may be applicable; and

4. For an award of any other further relief, as the Court deems fair, just, and equitable.

Dated: January 31, 2019

Respectfully Submitted

By: _____

Noah Smith-Drelich
Counsel of Record
Bernard E. Harcourt
Columbia Law School
435 W. 116th St.

New York, NY 10027
(605) 863 0707

JURY TRIAL DEMAND

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs.

Dated: January 31, 2019

Respectfully Submitted,

By: 

Noah Smith-Drelich
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APPENDIX I

State	Legislature
FEDERAL	• Executive Order 13809: Giving riot gear and other military equipment to local police • HR 6054: Harsh penalties for protesters who conceal their identity • Racketeering Influenced and Corrupt Organizations (RICO) Act • Defamation laws • Riot laws • S. 720/HR 1697: Anti-BDS bill • S. 1/HR 336: Anti-BDS bill • S. 852: Directs U.S. DoE to use definition of antisemitism adopted by the IHRA when investigating complaints of antisemitism on campuses • HR 221: Upgrades the global antisemitism envoy to the ambassador level, which would impose a 90-day limit on how long the position can remain unfilled • HR 72: Conflates criticism of Israel with antisemitism and characterizes on-campus advocacy for Palestinian rights as antisemitic
Alabama	• HB 94: Felony charges for disruptive protesters • AL ST § 13A-11-150 to 158: Ag-gag law • SJR 6: Non-binding resolution condemning the BDS movement • SB 81: Anti-BDS bill
Alaska	
Arizona	• SB 1033: Felony penalty for protesters who conceal their identity • SB 1142: Expanded definition of "riot" • HB 2007: Harsh penalties for protesters who conceal their identity (worst parts of bill removed before passing) • HB 2587: Ag-gag law • HB 1167: Anti-BDS law • HB 2617: Anti-BDS law

Arkansas	• SB 118: Criminal penalties for school and university campus protesters • AB 550: Criminalizing "unlawful mass picketing" • HB 1665: Ag-gag law • Act 710/SB 513: Anti-BDS law
California	• AB 2844: Anti-BDS law • SCR 35: Promotes re-definitions of antisemitism that encompass criticism of Israeli policy • SR 58: Promotes re-definitions of antisemitism that encompass criticism of Israeli policy • AB 1551: Prohibits California's public pension funds from investing in companies that boycott Israel
Colorado	• SB18-264: Barring teachers from protesting in support of a teachers' strike • SB 17-035: Heightened penalties for protesting near oil and gas equipment • S 42: Ag-gag law • HB 16-1284: Anti-BDS bill
Connecticut	• HB 6866: Anti-BDS bill
Delaware	
Florida	• EXECUTIVE ORDER 17-264: Declaring a state of emergency ahead of Richard Spencer speech at University of Florida in Gainesville • SB 1096/HB 1419: Eliminating driver liability for hitting protesters • HB 741/SB 1272: Anti-BDS law • HB 371: Anti-BDS law • HB 545: Anti-BDS law • SB 86/HB 527: Anti-BDS law • HR 1001/SR 1184: Non-binding resolution condemning BDS movement • SR 894: Resolution opposing academic boycotts in support of Palestinian rights
Georgia	• SB 160: Heightened penalties for blocking traffic • SB 1: Expanding definition of "domestic terrorism"

	• SB 339: Mandatory sanctions for campus protesters (passed following amendments that removed most restrictive provisions) • SB 327: Anti-BDS law
Hawaii	
Idaho	• SB 1090: New penalties for protests near critical infrastructure • Idaho Code § 18-7042: Ag-gag law (passed, though provisions were later struck down by Ninth Circuit Court of Appeals) • HB 569: Anti-BDS law
Illinois	• HB 2280: Mandatory sanctions for campus protesters • HB 1633: New penalties for protests near critical infrastructure • HB 2939: Mandatory sanctions for campus protesters • HB 4015: Anti-BDS law • SB 1761: Anti-BDS law • SJR 59: Calls on university presidents to condemn the academic boycott
Indiana	• SB 471: New penalties for protests near critical infrastructure • SB 78: Increased penalties for protesters who conceal their identity • SB 285: Heightened police response to protests that block traffic • SB 373: Ag-gag law • SB 101: Ag-gag law • Resolution 59: Condemns BDS • HB 1378: Anti-BDS bill
Iowa	• SF 2222: Heightened penalties for protesters who block traffic • 2012 Agricultural Production Facility Fraud law: Ag-gag statute • Iowa Code §717A.3A: Ag-gag statute • SSB 3087/HSB 583: Anti-BDS law
Kansas	• HB 2612: New penalties for protesters who conceal their identity • KS ST 47-1825 – 1830: Ag-gag law • HB 2647: Anti-BDS law

	• HB 2186: Anti-BDS law • HB 2409: Anti-BDS law • HB 2482: Anti-BDS law
Kentucky	• HB 238: New penalties for protests near pipelines and other infrastructure • HB 53: Eliminating driver liability for hitting protesters • BR 175: Criminalizing face coverings and weapons near protests • SB 143: Anti-BDS law • HB 298: Anti-BDS law • HB 350: Anti-BDS law • Executive Order 2018-905: Anti-BDS law
Louisiana	• HB 727: Heightened penalties for protesting near a pipeline • HB 269: Mandatory sanctions for campus protesters • Executive Order 18-15:Anti-BDS measure
Maine	• LD 882/SP 282: Anti-BDS law
Maryland	• Executive Order 01.01.2017.25: Anti-BDS law • SB 739/HB 949: Anti-BDS bill • HB 647/HB 998: Anti-BDS bill • 2015 budget included provision condemning ASA over academic boycott
Massachusetts	• HD 2369: Prohibition on masked demonstrations • HB 916: New penalties for protesters who block traffic • S1689/H1685: Anti-BDS law • HD 4156: Anti-BDS bill
Michigan	• HB 4436: New limits on campus protests • SB 350: Mandatory sanctions for campus protesters • HB 4643: Heightened penalties for picketing and protesting • HB 5823: Anti-BDS bill • HB 5822: Anti-BDS bill • HB 5821: Anti-BDS bill

Minnesota	• SF 2011: New penalties for protests near gas and oil pipelines • HF 1383: Mandatory sanctions for campus protesters • HF 390: New penalties for protesters who block traffic • SF 3463: New penalties for "critical infrastructure" protesters and their supporters • HF 1066/SF 918: Heightened penalties for protesters who block traffic • HF 896/SF 803: Heightened penalties for protesters who block traffic • HF 322/SF 679: Charging protesters for the cost of responding to a protest • HF 390: Heightened penalties for protesters who block traffic • HF 400/SF 247: Anti-BDS bill
Mississippi	• SB 2474: New penalties for protesters who block traffic • SB 2754: New penalties for protests near critical infrastructure • SB 2730: New penalties for protesters who block traffic • HB 761: Anti-BDS law
Missouri	• HB 1413: Limiting public employees' ability to picket • HB 113: New penalties for protests near gas and oil pipelines • SB 293: New penalties for protests near critical infrastructure • HB 442: Mandatory sanctions for campus protesters • HB 288: Expanded definition for "unlawful assembly" and new penalties for protesters who block traffic • HB 2423: Mandatory sanctions for campus protesters • HB 2145: Expanded definition for "unlawful assembly" and new penalties for protesters who block traffic • SB 813: Heightened penalties for protesters who block highways

	• HB 1259: Heightened penalties for blocking traffic • HB 179: New penalties for protesters who conceal their identity • SB 631: Ag-gag law • SB 308 MO: Anti-BDS law • SB 849/HB 2179: Anti-BDS law
Montana	• MT ST 81-30-101 to 81-30- 105: Ag-gag law • HB 493: Anti-BDS law • HB 501: Anti-BDS bill
Nebraska	
Nevada	• SB 26: Anti-BDS law
New Hampshire	• HB 110: Ag-gag law
New Jersey	• AB 2853: Expanded definition of "riot" • AB 4777: Expanded definition of "riot" • A925/S1923: Anti-BDS law • A2940: Anti-BDS law • S3044/A4665: Anti-BDS bill • AJR 122/SJR 81: Condemns boycotts for Palestinian rights as antisemitic
New Mexico	• SB 167: Use of drones to conduct surveillance of farms illegal
New York	• SB 2430: Anti-BDS bill • S.2492: Anti-protest bill targeting Palestinian advocacy • S2493: Anti-protest bill targeting Palestinian advocacy • Executive Order 157: Anti-BDS law • S6438/A8392: Anti-BDS bill
North Carolina	• HB 330: Eliminating driver liability for hitting protesters • SB 229: Heightened penalties for threats against former officials • HB 249: Criminalizing certain protests as “economic terrorism” • HB 405/SB 433: Ag-gag law • HB 161:Anti-BDS law
North Dakota	• SB 2044: Heightened penalties for protests near critical infrastructure

	• EXECUTIVE ORDER 2017-01: Mandatory evacuation of Dakota Access Pipeline protest camp • HB 1426: Heightened penalties for riot offences • HB 1293: Expanded scope of criminal trespass • HB 1304: New penalties for protesters who conceal their identity • HB 1203: Eliminating driver liability for hitting protesters • Animal Research Facility Damage Act: Ag-gag law
Ohio	• SB 33: New penalties for protests near critical infrastructure • SB 250: New penalties for protests near "critical infrastructure" • HB 423: Harsh penalties for protesters who conceal their identity • HCR 10: Resolution condemning boycotts for Palestinian rights as anti-Semitic • HB 476: Anti-BDS law
Oklahoma	• HB 1123: New penalties for protests near critical infrastructure • HB 2128: Heightened penalties for protesters who trespass onto private property • SB 592: Steep fee for protesting at the state capitol • HB 1512: Anti-BDS bill • HR 1035: Condemns boycotts for Palestinian rights
Oregon	• SB 540: Mandatory expulsion for college students convicted of rioting • SCR 9: Links support for boycotts for Palestinian rights to a rise in antisemitic actions on college campuses, specifically naming Portland State University and condemns Boycott, Divestment, and Sanctions activities, including academic boycotts of Israel

	• SCR 25: Same resolution as SCR 9, previously introduced in 2017 and failed to pass
Pennsylvania	• SB 323: Charging protesters for the costs of responding to a protest • SB 754: Charging protesters for the costs of responding to a protest • SB 652: Heightened penalties for protests near critical infrastructure • HB 1968: Anti-BDS bill • HB 1969: Anti-BDS bill • SR 136/HR 370: Non-binding resolution condemning BDS • SR 279: Condemns ASA academic boycott
Rhode Island	• HB 5690: Eliminating driver liability for hitting protesters
South Carolina	• SB 33: Mandatory sanctions for campus protesters • H.3643: Anti-BDS law • Budget bill passed mirroring H.3643 language • H3583: Anti-BDS law • HR 4635: Resolution condemning ASA over its boycott in support of Palestinian rights
South Dakota	• SB 189: Expanded civil liability for protesters and protest funders • SB 176: Expanding governor's power to restrict certain protests • HB 1206: Anti-BDS bill • HCR 1017: Condemns boycotts for Palestinian rights and claims that boycott campaigns on college campuses result in animosity and intimidation against Jewish students
Tennessee	• SB 0902: New penalties for protesters who block traffic • SB 264: New penalties for protests near gas and oil pipelines • HB 0668/SB 0944: Eliminating driver liability for hitting protesters • HB 1838: Ag-gag law

	• HB 600/SB 1250: Anti-BDS bill • HB 2357/SB 2389: State version of the unconstitutional federal Anti-Semitism Awareness Act • HB 2142/SB 1727: Anti-boycott bill • SB 581/HB 885: Bill to redefine antisemitism • SJR 170: Non-binding resolution condemning the BDS movement
Texas	• SB 2229: New penalties for protests near critical infrastructure • SB 1993: New criminal and civil penalties for protests around critical infrastructure • HB 250: Eliminating driver liability for hitting protesters • Texas Government Code 423: Drone use is legal as a part of US military operation , pursuant to a valid search warrant, if the image is captured under limited circumstances related to investigations or pursuits by a law enforcement authority or a person who is under contract or acting on behalf of a law enforcement authority, if the image is captured by state or local law enforcement authorities or persons acting on their behalf for the purpose of surveying the scene of a catastrophe to determine if a state of emergency should be declared, to preserve public safety, protect property, or survey damage, or to conduct routine air quality sampling, if the image is captured by the owner or operator of an oil, gas, water or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines and other facilities without the intent to conduct surveillance on an individual or real property, in connection with oil pipeline safety and rig protection

	• HB 2730: Aims to gut the public's freedom of speech under the anti-SLAPP law (TCPA) • HB 1643: Illegal to use drone to take photos over concentrated animal feeding operation • SB 491/HB 793: Anti-BDS bill
Utah	• Utah Code § 76-6-112: Ag-gag law • HR 005: Opposes boycotts for Palestinian rights
Vermont	
Virginia	• Executive Order No. 15: State of emergency in preparation for Charlottesville anniversary • Executive Order No. 67: Temporary ban on protests near General Lee monument • Executive Order No. 66: State of emergency due to protests in Charlottesville • HB 1601: Banning protests by members of domestic terrorist groups • HB 1791: Expanded definition of "incitement to riot" • SB 1055: Heightened penalties for participation in an "unlawful assembly" • HB 2261: Anti-BDS bill • HB 1282: Anti-BDS bill • HJR 177: Anti-BDS non-binding resolution
Washington	• SB 5941: New penalties for protesters who conceal their identity • SB 5009: Heightened penalties for protests that block traffic and interfere with "economic activities" • HJM 4004: Anti-BDS non-binding resolution • HJM 4009: Anti-BDS non-binding resolution
West Virginia	• HB 4618: Eliminating police liability for deaths while dispersing riots and unlawful assemblies

	• HB 2675: Prohibits access to "nonpublic areas" for reasons other than intent to perform authorized work, including capturing photographs and videos or removing other data or documents
Wisconsin	• AB 395/SB 303: Expanded definition of "riot" • AB 396/SB 304: New penalties for blocking traffic during a riot • AB 397/SB 305: New penalties for carrying a weapon during a riot • AB 299: Mandatory sanctions for campus protesters • AJR 103: Resolution condemning BDS • SB 450/AB 553: Anti-BDS law • Executive Order 261: Anti-BDS law
Wyoming	• HB 10: New penalties for protests near critical infrastructure • HB 0137: Mandatory sanctions for campus protesters • SF 0074: New penalties for protests near "critical infrastructure" • Data Trespass Law: Ag-gag law • HB 279: Anti-BDS bill • HJ 0004: Rejects the BDS movement and calls on state agencies to not" a company's participation in BDS campaigns when considering bids for state contracts

Status: Enacted

Status: Defeated/expired

Status: Pending

* This document was created at the request of Water Protector Legal Collective (WPLC) on behalf of Center for Constitutional Rights (CCR). Therefore, this document when used should be credited to these organizations.*

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https://palestinelegal.org/federal

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APPENDIX J

LOYOLA UNIVERSITY NEW ORLEANS
COLLEGE OF LAW
Law Faculty

Senate Judiciary Committee C
Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

Dear Senator:

We understand that you will soon be considering a bill to amend the existing state critical infrastructure law. Louisiana House Bill 727 would, *inter alia*, expand the definition of protected infrastructure and to create two new crimes for damaging critical infrastructure, and for conspiring to engage in the unauthorized entry into or criminal damage to critical infrastructure. We are professors at Loyola University New Orleans College of Law, where we teach in the areas of constitutional law, federal courts, and social justice.[1] In our view, House Bill 727 is unnecessary and duplicative of Louisiana laws that punish trespass, arson, conspiracy, and vandalism. In addition, its broad and ambiguous language will chill important First Amendment protected speech, and could expose the State of Louisiana to liability for violating federal constitutional rights. We hope you will reject it.

I. The Statutory Framework and Proposed Amendments

Louisiana Revised Statute 14:61 currently provides for a fine of not more than $1000 and a term of not more than six years for the crime of unauthorized entry into a critical infrastructure.[2] Under this law, critical infrastructure "shall include but not be limited to chemical manufacturing facilities, refineries, electrical power generating facilities, electrical transmission substations and distribution substations, water intake structures and water treatment facilities, natural gas transmission compressor stations, liquefied natural gas (LNG) terminals and storage facilities, natural gas and hydrocarbon storage facilities, and transportation facilities, such as ports, railroad switching yards, and trucking terminals."[3] Unauthorized entry includes intentional entry into a critical infrastructure that is "completely enclosed by any type of physical barrier;"[4] "[t]he use of fraudulent documents" to enter such an area;[5] "[r]emaining upon or in the premises of a critical infrastructure after having been forbidden to do so, either orally or in writing, by any owner, lessee, or custodian of the property or by any other authorized person;"[6] or "[t]he intentional

[1] Institutional affiliation listed for identification purposes only. This letter was prepared with the assistance of Leila Abu-Orf ('19) and Amber Frey McMillan ('19).
[2] LA. STAT. ANN. § 14:61(C) (2018).
[3] *Id*. at (B)(1).
[4] *Id.* at (A)(1).
[5] *Id.* at (A)(2).
[6] *Id.* at (A)(3).

entry into a restricted area of a critical infrastructure which is marked as a restricted or limited access area that is completely enclosed by any type of physical barrier . . ."[7]

The proposed law, HB 727, expands the term "critical infrastructure" to include pipelines of any kind "or any site where the construction or improvement of any facility or structure . . . is occurring."[8] It then creates two new crimes: critical damage to a critical infrastructure[9] and conspiracy to engage in unauthorized entry of a critical infrastructure or to engage in a criminal damage to a critical infrastructure.[10] The crime of criminal damage is defined as the "intentional damaging of a critical infrastructure" [11] and is punishable by imprisonment of "not less than one year, nor more than fifteen years"[12] and a fine of not more than ten thousand dollars.[13] In addition, if the crime is committed "wherein it is foreseeable that human life will be threatened or operations of a critical infrastructure will be disrupted as a result of such conduct shall be in imprisoned at hard labor for not less than six years nor many than twenty years, fined not more than twenty-five thousand dollars, or both."[14] The conspiracy crime provides that if "two or more persons conspire" to commit either unlawful entry or criminal damage, the co-conspirator will also be subject to the same penalties.[15]

HB 727 is duplicative of existing Louisiana laws that punish vandalism, arson, trespass, and conspiracy. For example, state law punishes criminal damage to property with fines and terms of imprisonment ranging from a maximum of one thousand dollars and six months to a maximum of ten thousand dollars and ten years, depending upon the seriousness of the damage.[16] In addition, there is a separate provision for aggravated criminal damage wherein it is foreseeable that human life might be endangered, which provides for a maximum term of imprisonment of not more than fifteen years.[17] The crimes of arson and aggravated arson are separately punishable, and also carry significant terms of imprisonment.[18] For less significant intrusions, state law penalizes various forms of criminal mischief with fines of not more than five hundred dollars or six months in jail, or both.[19] State law also penalizes criminal trespass with penalties scaling from a maximum of five hundred dollars fine and a thirty day term of imprisonment for the first offense to a maximum one thousand dollar fine and/or sixth month term of imprisonment for the third offense.[20] Importantly, unlike the proposed legislation, the existing law on criminal trespass also makes special exceptions for law enforcement, firefighters, government officials, and other specialized personnel who may have to enter private property in emergency situations,[21] as well as for land surveyors, delivery people, and owners of wandering livestock, and other people who may have a limited need to enter onto the property of another without prior authorization.[22] Finally, the existing crime of criminal conspiracy provides for the punishment of any person who agrees with another to commit any of the above crimes.[23]

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[7] *Id.* at (A)(4).
[8] H. B. 727 § 61(B)(1), 2018 Leg., Reg. Sess. (La. 2018).
[9] *Id.* at § 61.1.
[10] *Id.* at § 61.2.
[11] *Id.* at § 61.1(A).
[12] *Id.* at § 61.1(B).
[13] *Id.*
[14] *Id.* at § 61.1(C). "A person convicted under the provisions of this Section may be ordered to make restitution to the owner of the property pursuant to Code of Criminal Procedure Article 883.2." *Id.* at § 61.1(D).
[15] *Id.* at § 61.2.
[16] *See generally* LA. STAT. ANN. § 14:56 (2018).
[17] LA. STAT. ANN § 14:55 (2018).
[18] *See* LA. STAT. ANN. § 14:52 (2018); LA. STAT. ANN. § 14:51 (2018).
[19] *See* LA. STAT. ANN. § 14:59 (2018).
[20] LA. STAT. ANN. § 14:63(G) (2018).
[21] *Id.* at § 14:63(E)(1)-(4) (2018).
[22] *Id.* at § 14:63(F)(1)-(8) (2018).
[23] *See* LA. STAT. ANN. § 14:26 (2018).

Existing state law thus already provides all the tools necessary to address any crime covered by HB 272, and is more carefully drafted to address important exceptions.

As this analysis makes clear, HB 727 was not proposed in order to fill any identifiable gap in Louisiana law; rather, it is part of a national effort by energy companies to suppress opposition to fossil fuel extraction projects. The bill tracks closely to model legislation proposed by the American Legislative Exchange Council, a non-profit think tank, which is primarily funded by around 300 corporate sponsors including many from the energy industry.[24] In January 2018, ALEC adopted a model policy, the Critical Infrastructure Protection Act,[25] in response to protests against the Dakota Access Pipeline project.[26] That month, critical infrastructure legislation was proposed in Ohio and Iowa. It has now been introduced in at least five states, supported by lobbyists from the extractive industries.[27] A critical infrastructure bill was recently vetoed by the governor of Wyoming on the grounds that the proposed legislation was unnecessary, poorly drafted, and would have unintended consequences on the people of Wyoming.[28]

II. Potential Legal Challenges to HB 727

HB 727 could potentially be challenged under the First Amendment because it would prevent and chill important political speech. The law purports to criminalize only unlawful entry and criminal damage to property (both of which are already punishable under Louisiana law). Unfortunately, however, the way that HB 727 is drafted both substantially broadens the scope of the territory on which entry is unlawful and makes its boundaries unclear.

The current law, Louisiana Revised Statute 14:61, defines unauthorized entry into critical infrastructure to include both unauthorized entrance into "areas that are completely enclosed by any type of physical barrier," and "remaining upon or in the premises of a critical infrastructure after having been forbidden to do so." The forms of critical infrastructure specified in the current law – like refineries and water purification facilities – generally occupy a visible and discrete land area that can either be completely enclosed or marked by signs. HB 727 expands the definition of critical infrastructure to include pipelines carrying oil, gas, petrochemicals, or water, as well as any site on which construction on any of these projects is occurring. Unlike other types of "critical infrastructure," most pipelines are not be fully enclosed by any physical barrier. Nonetheless, a person could still be prosecuted for unlawful entry if she failed to leave the "premises" of the pipeline after being directed to do so by an "authorized" person. In addition, pipelines often occupy public land and waterways, as well as private land belonging to other landowners.[29] Therefore this law could be used to impose substantial criminal penalties for

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[24] Mark Strassmann & Phil Hirschkorn, *Who is ALEC?*, CBS NEWS (June 30, 2012, 8:50 PM), https://www.cbsnews.com/news/who-is-alec/.

[25] *Critical Infrastructure Protection Act*, ALEC, https://www.alec.org/model-policy/critical-infrastructure-protection-act/ (last visited Apr. 17, 2018).

[26] Grant Kidwell, *Protecting Everyday Life Means Protecting America's Infrastructure*, ALEC (Jan. 24, 2018), https://www.alec.org/article/protecting-everyday-life-means-protecting-americas-infrastructure/.

[27] *See, e.g.*, William Petroski, *Iowa Senate bill would ban sabotage of pipelines, other 'critical infrastructure,'* DES MOINES REG. (Jan. 25, 2018, 9:07 PM), https://www.alec.org/model-policy/critical-infrastructure-protection-act/ (last updated Jan. 26, 2018, 5:59 PM) (noting that supporters of the bill include Energy Transfer, MidAmerican Energy, and Alliant Energy, among others).

[28] Wyoming Governor Matthew H. Mead, Opinion Letter on Reasons for Vetoing Wyoming Senate File 74 (Mar. 14, 2018), https://drive.google.com/file/d/1rTXBiN1IE8Y3qCEl0bf4K-Lizg7LKVs9/view.

[29] Under LA. STAT. ANN. § 19:2 (2018), for example, domestic and foreign corporations in the extractive industries may exercise the power of eminent domain to take private property for use in their development projects. Often this occurs in the form of an easement or servitude that allows the corporation access to build across private property. *See* Sabrina Canfield, *Louisiana Pipeline Project Spurs Demand for Land-Grab Records*, COURTHOUSE NEWS SERV. (Jan. 17, 2018), https://www.courthousenews.com/louisiana-pipeline-project-spurs-demand-for-land-grab-records/.

speech occurring on public land – or on the land of a consenting landowner. These ambiguities raise constitutional concerns for the proposed legislation.

First, government may not impose content-based restrictions on speech in public spaces.[30] As the United States Supreme Court has said, "[A]bove all else, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content,"[31] for "[t]o allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth."[32] In determining whether a restriction on speech is content-based or content-neutral, "[t]he principal inquiry . . . is whether the government has adopted [the regulation] because of disagreement with the message it conveys."[33] The history of HB 727 makes clear that it is being adopted for the purpose of suppressing speech and protest against pipeline projects. It is one of numerous bills that have been introduced around the country in response to the Dakota Access Pipeline protests and with the support of lobbyists from the oil and gas industry.

However, even if a reviewing court were to conclude that HB 727 lacks a discriminatory purpose, content-neutral time, place, and manner restrictions on speech must be "narrowly tailored to serve a significant government interest, and [must] leave open ample alternative channels for communication of the information."[34] For example, in *Hill v. Colorado*,[35] the Supreme Court upheld a Colorado statute that prevented any person within 100 feet of the entrance door of a health care facility from approaching within eight feet of another person, without consent, "for the purpose of passing a leaflet to, displaying a sign to, or engaging in oral protest, education, or counseling with such person."[36] In determining that this regulation was a reasonable time, place, and manner restriction, the Court specifically noted that the eight-foot restriction would not prevent pedestrians from hearing the protesters' speech (both at a conversational level or amplified) or from seeing their signs. By contrast, even assuming that HB 727 is motivated by a significant government interest, it is not narrowly tailored. HB 727 would allow penalties for refusal to leave the undefined "premises" of oil, gas, petrochemicals, and water pipelines as well as any pipeline construction site, dramatically increasing the public and private spaces in which protest can be prohibited with no provision ensuring alternative channels of communication.

HB 727 would also be subject to challenge on the grounds that it is unconstitutionally vague and overbroad. "To survive a vagueness challenge, a statute must 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited' and 'provide explicit standards for those who apply [the statute]'" [37] to limit the risk of discriminatory enforcement.[38] A reasonable person would not be able to determine what constitutes the "premises" of a pipeline.[39] As a result, protesters who were directed to leave the area around a pipeline would have no way to verify whether they were on the "premises" and therefore required to comply. Moreover, the bill's broad language invites discriminatory enforcement of its provisions to apply

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[30] This is true whether the speech is occurring in a traditional public forum (a government property that has historically been open for private speech) or in a limited public forum (a public property that the government has opened for some public speech use).

[31] Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

[32] Consol. Edison Co. v. Pub. Serv. Comm'n, 447 U.S. 530, 538 (1980).

[33] Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

[34] *Id.* (citing Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984)).

[35] 530 U.S. 703 (2000).

[36] *Id.* at 742.

[37] Video Software Dealers Ass'n v. Webster, 968 F.2d 684, 689 (8th Cir. 1992) (quoting Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)) (brackets in original).

[38] United States v. Williams, 553 U.S. 285, 304 (2008).

[39] *See* Serv. Emp. Int'l Union v. City of Houston, 595 F.3d 588, 605 (5th Cir. 2010) (holding that the Houston park ordinance was unconstitutionally vague because it failed to define the term "public gathering.").

only to those the bill is targeting – members of the community who wish to protest carbon extraction projects. On its face, HB 727 would sweep in a wide range of actors. It could be invoked to punish a careless driver who crashed into a bulldozer on a street where a water pipe was being repaired, or ran into the fence surrounding a pumping station. It could be used to punish a farmer who, while working on his own land, inadvertently drove a truck over pipeline constructional materials, or a hunter who strayed onto the premises of a pipeline and refused to leave.[40] Given the genesis of the bill, however, it's likely that this legislation would be selectively invoked to target people engaged in protected speech activities.

Finally the conspiracy provision of HB 727 could be challenged as overbroad. "[T]he threat of enforcement of an overbroad law deters people from engaging in constitutionally protected speech, inhibiting the free exchange of ideas."[41] This is particularly true "when the overbroad statue imposes criminal sanctions."[42] HB 727 creates the crime of criminal conspiracy for engaging in unauthorized entry or criminal damage. Under this provision, an indigenous tribe or civil society organization that helped to organize a pipeline protest could potentially face charges if even one of their members engaged in an act penalized under this statute. This threat of prosecution would have a real chilling effect on the important speech and associational activities of property owners, tribes, environmental activists, and others who might wish to express their opposition to these construction projects.

In sum, HB 727 is unnecessary to punish acts of trespass and vandalism, or conspiracy to commit those crimes. Its real impact would be to chill important First Amendment protected activities in our state. Far from solving any real problems with current Louisiana state law, HB 727 would create new ones, potentially involving the state in lengthy constitutional litigation. We hope you will take this into consideration in your deliberation.

Sincerely,

/s/ Johanna Kalb

Johanna Kalb
Professor of Law
Loyola University New Orleans College of Law

/s/ William P. Quigley

William P. Quigley
Professor of Law
Director, Loyola Law Clinic & Gillis Long Poverty Law Center

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[40] This is true even though these defendants did not intend to commit a crime. LA. STAT. ANN. § 14:61 is a general intent crime. It is well established in Louisiana law that, "In general intent crimes, criminal intent necessary to sustain a conviction is shown by the very doing of the acts which have been declared criminal." State v. Elliot, No. 2000 KA 2637, p. 4 (La. App. 1 Cir. 6/22/01); 809 So. 2d 203, 206.

[41] Williams, 553 U.S. at 292.

[42] Virginia v. Hicks, 539 U.S. 113, 119 (2003).

APPENDIX K

Oglala Sioux Tribe
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Julian Bear Runner

FOR IMMEDIATE RELEASE

South Dakota Governor Noem and the Keystone XL pipeline

I, President Bear Runner, have met with South Dakota Governor Kristi Noem on occasions to improve the relations between the Oglala people and the State of South Dakota.

I have read Governor Noem's proposed legislation and I am standing on our original authorities as the predecessor sovereigns in this land that is now called South Dakota. I am standing on the shoulders of my grandmothers and grandfathers who gave their lives to protect these waters and lands for our posterity. I am asking all veterans who stood with us at Standing Rock to be on standby for we may need peaceful and nonviolent humanitarian aid. I am standing on our right, as Indigenous nations, to right to Free Prior and Informed Consent and the protection of priority Oglala treaty and water rights in the proposed act of international trespass and aggression known as the Keystone XL pipeline project.

Governor Noem met with TransCanada (the owner of KXL pipelines) and soon thereafter proposed legislation to preemptively set up the legal framework by which to punish those who oppose this trespass, aggression and unbearable risk to our only drinking water resources and to diminish the rights of all South Dakotans, Americans and Indigenous peoples who will stand in peaceful resistance to this atrocious act.

All Americans possess constitutional rights to free speech and assembly which Noem seeks to diminish. Indigenous nations, the original landlords, who entered treaties with Noem's predecessors in the United States government, have a birthright to protect our homelands for our benefit and for the benefit of the millions of people who depend on the Missouri river and Ogallala aquifer. This is what I am committed to doing on behalf of the Oglala people, the Sioux Nation and all South Dakotans who demand their governor respect their and their children's right to clean drinking water and healthy ecosystems.

In fact, Noem should promote healthy ecosystems and clean water by not inhibiting the legalization of Industrial Hemp, an industry which most South Dakotans are ready for. Let us concentrate on smart ways to take our constituents into the future. We do not have to tie ourselves to obsolete fossil fuels and technologies that do not make sense anymore. Thank you to those legislator and constituents who are weathering the storm and asking yourselves just who does Governor Noem represent and who does she answer to? Agriculture and Tourism; those are our industries. We should not be pass through lessee's for big oil. Our children deserve better.

Clean water is a matter of national security that Noem must take seriously. There is no agricultural security without clean water. Ask those near Sisseton, SD who live with the 200,000 gallons TransCanada's Keystone pipeline spilled on their lands and waters November of 2017.

All pipelines leak. The only question is who is forced to live in the sacrifice zone. Noem is following suit with North Dakota's leadership during the #NoDAPL struggle for which I am still facing charges of riot and trespass on my own treaty protected lands.

Noem has a duty to gain Sioux Nation consent. Noem knows South Dakota cannot possibly assert rightful title to the land because it is currently held in a state of illegal annexation as long as the Sioux Nation exists and has never been made whole for outstanding treaty violations. The entire South Dakota portion of the proposed pipeline route west of the east bank of the Missouri river is protected by the Oglala and the Sioux Nation. The Dakota Access Pipeline is already causing dangerous risks to the drinking water of the Oglala people. We cannot stand by as outside forces (TransCanada) pit us against each other so they can all reap profits while we are left living with the cancerous risks. Private military contractors and Law Enforcement departments will all be reimbursed by US taxpayers for the costs of criminalizing those who peacefully protect water.

I am asking all our allies to standby ready to help us deal with this attack on our homelands and our rights.

Wopila Tanka Icicapelo

President Julian Bear Runner,
Oglala Sioux Tribe

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