



February 10, 2017

Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Honorable Tom Wheeler
Acting Assistant Attorney General
U.S. Department of Justice
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Washington, DC 20530

Dear Attorney General Sessions and Acting Assistant Attorney General Wheeler:

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We are requesting that the Department of Justice send federal observers to North Dakota to protect the rights of those individuals peacefully assembled around the Dakota Access Pipeline. We are renewing our November 4, 2016, and December 30, 2016, requests that the Department of Justice investigate possible violations of federal laws and the U.S. Constitution as a result of law enforcement responses to those organizing near the Standing Rock Sioux Tribe Reservation. We also respectfully request a meeting with you to discuss this matter further.

These requests come in light of the U.S. Army granting the final permit to complete construction of the Dakota Access pipeline¹ in response to a January 24th presidential memorandum encouraging the Army Corps of Engineers to override environmental review and speed up construction of the pipeline.²

Reports indicate an ongoing, highly militarized response by law enforcement to indigenous groups and others organizing and protesting near the Standing Rock Sioux Tribe's Reservation in North Dakota in possible violation of the groups' First Amendment rights to free speech and peaceably assemble and the Fourth Amendment's prohibition against excessive use of force and unreasonable searches

¹ Valerie Volcovici & Ernest Scheyder, *U.S. to grant final permit for controversial Dakota pipeline: court filing*; REUTERS, Feb. 7, 2017, <http://www.reuters.com/article/us-north-dakota-pipeline-1jUSKBN15M2DU>.

² Presidential Memorandum Regarding Construction of the Dakota Access Pipeline, Jan. 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-regarding-construction-dakota-access-pipeline>.

and seizures.³ The Morton County Sheriff's Department, with over 75 law enforcement agencies from cities, counties, and states across the U.S.,⁴ has used armored vehicles, automatic rifles, sound cannons, and other offensive military weapons and equipment against organizers and water protectors there.⁵ North Dakota has received over 3 million dollars in military weapons and equipment, including rifles, silencers, aircraft, and MRAPs, through the Department of Defense 1033 program since the program began in the 1990s.⁶ And given North Dakota's statewide response, as well as the dozens of out-of-state law enforcement, it is a near certainty that federally resourced military weapons and equipment are being used against organizers and water protectors at Standing Rock.⁷

Tensions over policing practices spiked on November 20, 2016, when police in riot gear used water cannons for many hours in subfreezing weather to disperse a group of protestors. An estimated 300 were injured then, of whom 26 were hospitalized.⁸ Reported injuries ranged from hypothermia to impaired vision from being shot in the face by a rubber bullet.⁹ An account from Angela Bibens of the Indigenous Environmental Network detailed the physical harm that resulted, including several demonstrators suffering seizures, broken ligaments, loss of bowel control, some losing consciousness, and an elder going into cardiac arrest.¹⁰ And activist Sophia Wilansky went into critical condition after reportedly being hit by a concussion grenade, suffering from an arm injury requiring multiple surgeries and threat of amputation.¹¹

³ Zoe Carpenter, *Militarized police are cracking down on Dakota Access Pipeline protesters*, THE NATION, Oct. 26, 2016, <https://www.thenation.com/article/militarized-police-are-cracking-down-on-dakota-access-pipeline-protesters/>.

⁴ Thomas Dresslar, *How Many Law Enforcement Agencies Does It Take to Subdue a Peaceful Protest?*, ACLU BLOG, Nov. 30, 2016, <https://www.aclu.org/blog/speak-freely/how-many-law-enforcement-agencies-does-it-take-subdue-peaceful-protest>.

⁵ Ben Norton, *Dakota pipeline protesters say they were detained in dog kennels; 268 arrested in week of police crackdown*, SALON, Oct. 31, 2016, <http://www.salon.com/2016/10/31/dakota-pipeline-protesters-say-they-were-detained-in-dog-kennels-268-arrests-in-week-of-police-crackdown/>; *North Dakota: Militarized police raid anti-pipeline camp, arrest 141*, DEMOCRACY NOW, Oct. 28, 2016, http://www.democracynow.org/2016/10/28/headlines/north_dakota_militarized_police_raid_anti_pipeline_camp_arrest_141.

⁶ Shawn Musgrave, Tom Meagher, and Gabriel Dance, *The Pentagon finally details its weapons-for-cops giveaway*, THE MARSHALL PROJECT, Dec. 3, 2014, <https://www.themarshallproject.org/2014/12/03/the-pentagon-finally-details-its-weapons-for-cops-giveaway#.ivhTroZKt>.

⁷ Tracy Loeffelholz Dunn, *Why police from seven different states invaded a Standing Rock camp – and other questions*, YES! MAGAZINE, Oct. 31, 2016, <http://www.yesmagazine.org/people-power/why-the-assaults-on-standing-rock-require-police-from-seven-different-states-and-other-questions-20161031>; Sam Allard, *The Ohio State Highway Patrol sent troops to North Dakota this weekend*, CLEVELAND SCENE, Oct. 31, 2016, <http://www.clevescene.com/scene-and-heard/archives/2016/10/31/the-ohio-state-highway-patrol-sent-troops-to-north-dakota-this-weekend>.

⁸ Alleen Brown, *Medics describe how police sprayed Standing Rock demonstrators with tear gas and water cannons*, THE INTERCEPT, Nov. 21, 2016, <https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/>.

⁹ *Sophia Wilansky Critically Injured During Police Attack at Standing Rock*, DEMOCRACY NOW, Nov. 22, 2016, https://www.democracynow.org/2016/11/22/headlines/sophia_wilansky_critically_injured_during_police_attack_at_standing_rock.

¹⁰ Jamil Dakwar, *Police at Standing Rock are using life-threatening crowd-control weapons to crack down on water protectors*, ACLU BLOG, Nov. 22, 2016, <https://www.aclu.org/blog/speak-freely/police-standing-rock-are-using-life-threatening-crowd-control-weapons-crack-down>.

¹¹ Colin Moynihan, *Cause of Severe Injury at Pipeline Protest Becomes New Point of Dispute*, THE NEW YORK TIMES, Nov. 24, 2016, http://www.nytimes.com/2016/11/24/us/dakota-pipeline-sophia-wilansky.html?_r=1.

This excessive and militarized response by law enforcement to organizers in Standing Rock resembles the response to protestors in Ferguson, Missouri more than two years ago. There, the Department of Justice correctly noted that “[u]nder the Constitution, what a person says generally should not determine whether he or she is jailed.”¹² The Department also advised that “great restraint of police powers should be used to protect the rights of lawful demonstrators” and “use of force via less-lethal weapons should be a last resort.” The Department was critical of law enforcement in Ferguson that used canine units—like those used at Standing Rock¹³—that “exacerbated tensions by unnecessarily inciting fear and anger” and “deploy[ed] [tear gas] inappropriately without proper warnings,” as well as deployed “tactical officers with military style uniforms, equipment, weapons, and armored vehicles [that] produced a negative reaction.”¹⁴ Law enforcement in North Dakota appear to be employing the very tactics that the Department of Justice has cautioned against.

Therefore, we ask, along with over 250,000 supporters,¹⁵ that the Department of Justice send federal observers to North Dakota to protect the rights of those individuals peacefully assembled around the Dakota Access pipeline and investigate possible violations of federal laws and the U.S. Constitution as a result of law enforcement responses to those organizing near the Standing Rock Sioux Tribe Reservation.

We hope the Department of Justice will intervene to ensure that North Dakota and other law enforcement present in Standing Rock will adopt policies and practices for the deployment of crowd-control weapons that align with civil and human rights principles,¹⁶ including:

- The use of crowd-control weapons should be an absolute last resort when dealing with genuine and imminent threats to the safety of those present, and only after all other means have been exhausted;
- The most effective method to prevent violence is to engage in negotiations and open dialogue with protesters;
- Even if some protesters engage in or incite others to engage in acts of violence that require police intervention, the explicit goal of intervention should be to deescalate the situation and promote and protect the safety and the rights of those present—protestors, journalists, medical personnel, monitors, and bystanders;
- All deployment of crowd control weapons must be documented, and the reports retained for public record; and
- Adequate training must be provided on the use of crowd-control weapons for out-of-state police to ensure a proportionate level of force is applied to the threat.

¹² Dept. of Justice, CRT, Investigation of the Ferguson Police Department, Mar. 4, 2015, p. 24,

https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

¹³ Karen E. Quinones Miller, *Standing firm at Standing Rock—Native Americans face dogs and pepper spray to protect ancestral lands*, HUFFINGTON POST, Sept. 7, 2016, http://www.huffingtonpost.com/entry/standing-firm-at-standing-rock-thousands-of-native-us_57d04161e4b0f831f706679d.

¹⁴ Dept. of Justice, COPS, After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri, 2015, <https://ric-zai-inc.com/Publications/cops-p317-pub.pdf>.

¹⁵ ACLU Action, Demilitarize Standing Rock, <https://action.aclu.org/secure/Standing-Rock> (last updated Jan. 25, 2017).

¹⁶ Jamil Dakwar, *Standing firm at Standing Rock — Native Americans face dogs and pepper spray to protect ancestral lands*, HUFFINGTON POST, Jan. 26, 2017, http://www.huffingtonpost.com/entry/standing-firm-at-standing-rock-thousands-of-native-us_57d04161e4b0f831f706679d.

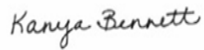
Adherence to these principles will help increase accountability, transparency, and the safety of everyone.

Thank you for your attention to this matter. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel with the ACLU, phone: (202) 715-0808 or email: kbennett@aclu.org or Jennifer Cook, Policy Director at the ACLU of North Dakota, phone: (701) 478-9924 or email: jcook@aclu.org.

Sincerely,



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