

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
950 Pennsylvania Avenue, NW
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>.

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

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:

