



November 4, 2016

Honorable Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Honorable Karol Mason
Assistant Attorney General
U.S. Department of Justice
Office of Justice Programs
810 Seventh Street, NW
Washington, DC 20531

Dear Assistant Attorney General Gupta and Assistant Attorney General Mason:

We are requesting that the Department of Justice investigate possible violations of federal laws and the U.S. Constitution by law enforcement in their responses to those individuals peacefully assembled around the Dakota Access pipeline in North Dakota. We are also asking that the Department immediately suspend law enforcement's use of any federally resourced military weapons and equipment as it determines whether constitutional and federal law violations have occurred.

Recent reports indicate a highly militarized response by law enforcement to indigenous groups and others organizing 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 Fourth Amendment's prohibition against excessive use of force and unreasonable seizures and searches. Law enforcement in North Dakota have used armored vehicles, automatic rifles, sound cannons, concussion grenades, attack dogs, pepper spray, beanbag bullets, riot gear, and other offensive military weapons and equipment against organizers and water protectors there.¹ A horse shot by a rubber bullet had to be euthanized. Organizers have been arrested, hooded, tagged with numbers on their arms, strip searched, and detained in dog kennels by law enforcement.²

¹ Ben Norton, *Dakota pipeline protestors 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.

² *Id*; Amy Goodman, *On strip searches and press freedom in North Dakota*, DULUTH READER, Oct. 27, 2016, http://duluthreader.com/articles/2016/10/26/8192_on_strip_searches_and_press_freedom_in_north; Brenda Norell, *War crime: Morton County engaged in torture—hooded water protector*, CENSORED NEWS, Oct. 25, 2016, <http://bsnorrell.blogspot.com/2016/10/war-crime-morton-county-engaged-in.html?m=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 rightly noted that “[u]nder the Constitution, what a person says generally should not determine whether he or she is jailed.”³ 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 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.”⁴ Law enforcement in North Dakota appear to be employing the very tactics that the Department of Justice has cautioned against.

In addition to determining if the militarized response at Standing Rock violates the First and Fourth Amendments, the Department of Justice should determine if any federally resourced military weapons and equipment are being used in a manner inconsistent with Department and Interagency Working Group on Federal Equipment (Working Group) policy.⁵ To ensure this is not the case, the Department should immediately suspend the use of such equipment pending the outcome of the federal investigation requested. Working Group policy requires the consideration of violations of federal civil rights statutes or programmatic terms when assessing a department’s eligibility for federally resourced military weapons and equipment.⁶ Furthermore, suspension—which can be done in consultation with the Department of Defense in the case of the 1033 program—is not unprecedented given the 184 state and local police departments that have been suspended for missing weapons or failure to comply with other guidelines.⁷ A suspension will also allow for proper determination of compliance with other Working Group policies, including those policies on local governing body approval, training, interagency equipment sharing, and significant incident reports.⁸

³ 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.

⁴ 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>.

⁵ See Dept. of Justice, BJA, Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Acquisition, May 2015, https://www.bja.gov/publications/LEEWG_Report_Final.pdf; See Executive Order 13688, Federal Support for Local Law Enforcement Acquisition, Jan. 16, 2015, <https://www.whitehouse.gov/the-press-office/2015/01/16/executive-order-federal-support-local-law-enforcement-equipment-acquisit>.

⁶ Dept. of Justice, BJA, Implementation of Recommendations: Federal Support for Local Law Enforcement Acquisition, Oct. 1, 2015, <https://www.bja.gov/programs/LEEWG-Implementation-Plan.pdf>; See Dept. of Justice, BJA, Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Acquisition, May 2015, https://www.bja.gov/publications/LEEWG_Report_Final.pdf.

⁷ Daniel Rivero & Jorge Rivas, *Fusion investigates: How did America’s police departments lose loads of military-issued weapons?*, Aug. 25, 2014, <http://fusion.net/story/6371/fusion-investigates-how-did-americas-police-departments-lose-loads-of-military-issued-weapons/>.

⁸ Dept. of Justice, BJA, Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Acquisition, May 2015, https://www.bja.gov/publications/LEEWG_Report_Final.pdf.

North Dakota has received over 3 million dollars in military weapons and equipment through the Department of Defense 1033 program since the program began in the 1990s. Many local departments, including the Morton County Sheriff's Office, have received military style rifles through 1033. Through 1033, the North Dakota Attorney General Bureau of Criminal Investigations has received military aircraft and a small arms weapon suppressor or silencer. The Richland County and Stutsman County Sheriffs' Offices both acquired Mine Resistant Ambush Protected vehicles (MRAPs) through 1033.⁹ Given North Dakota's statewide response, as well as its enlistment of more than half a dozen 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.¹⁰

We also have concerns that law enforcement in North Dakota may be acting in violation of the 6th Amendment, which provides a right to counsel for those subject to incarceration, and the 8th Amendment, which prohibits excessive bail. It is estimated that over 140 people, many of whom live in poverty, face felony charges and bonds of \$1,500 each.¹¹ There are also reports that those jailed are being denied access to an attorney.¹² As the Department of Justice has made clear in recent statements of interest, "the United States has an interest in ensuring that all jurisdictions—federal, state, and local—are fulfilling their obligation under the Constitution to provide effective assistance of counsel"¹³ and that "bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violates the Fourteenth Amendment."¹⁴

⁹ 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>.

¹⁰ 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>.

¹¹ 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>.

¹² *Twenty-three jailed water protectors being denied attorney visits 'NO DAPL!'*, INDIGENOUS NETWORK, Sept. 15, 2016, <http://indigenous-network.com/twenty-three-jailed-water-protectors-being-denied-attorney-visits-no-dapl/>.

¹³ Statement of Interest of the United States, *Hurrell-Harring v. New York*, Case No. 8866-07, Aug. 14, 2013, https://www.justice.gov/sites/default/files/press-releases/attachments/2014/09/25/statement_of_interest.pdf

¹⁴ Brief for the United States as Amicus Curiae, *Walker v. Georgia*, No. 16-10521-HH, Aug. 18, 2016, <https://www.justice.gov/crt/file/887436/download>.

Thank you for your attention to this matter. We also respectfully request a meeting with you to discuss this matter further. If you have any questions or comments, please feel free to contact Jennifer Cook, Policy Director at the ACLU of North Dakota, phone: (701) 478-9924 or email: jcook@aclu.org; Kanya Bennett, Legislative Counsel with the ACLU, phone: (202) 715-0808 or email: kbennett@aclu.org; or Sakira Cook, Counsel with the Leadership Conference on Civil and Human Rights, phone: (202) 263-2894 or email: cook@civilrights.org.

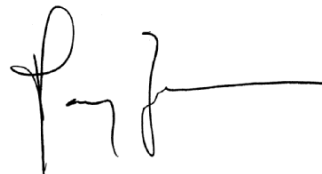
Sincerely,



Karin Johanson
Director, Washington Office
ACLU



Wade Henderson
President & CEO
Leadership Conference



Nancy Zirkin
Executive Vice President
Leadership Conference

cc: Honorable Loretta Lynch, Attorney General of the United States
Honorable Ashton Carter, Secretary of Defense
Lieutenant General Andrew E. Busch, Director of Defense Logistics Agency