

Standing Rock Water Protectors Face Prosecution for Protest

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835 state criminal cases, [337 dismissed](#) and 171 ongoing, these numbers represent the prosecution of Dakota Access Pipeline protesters, better known as “Water Protectors.” The protesters vary in background, some are journalists, political activists and environmentalists, but a majority of them are indigenous people who don’t want a monstrous machine pumping crude oil through their sacred land. However, the prosecutors in these cases did not hold this same sentiment and charged protesters with criminal trespassing, rioting, and a number of serious felonies. These meritless charges serve as another method to chill or repress public dissent.

According to Andrea Carter, who is the legal director for the Water Protector Legal Collective (WPLC), 103 out of the remaining 171 cases are warrant cases, meaning that they are currently not set for trial and the defendants have not made an initial court appearance. Due to their pending status, warrant cases are considered inactive. Concurrently, Carter said that 70 cases are open and set for trial, she expects them to be resolved between June and October of this year. “We’d like folks to support them before, during and after [the trials],” she said.

Carter also provided details on the appeals, citing a specific set of cases in which the state attorney appealed a judge’s decision to dismiss with prejudice. The term “with prejudice” means a case can’t be filed again. Carter said that it is common for the state to file charges against Standing Rock defendants, only for them to be dismissed and recharged for the same incident or occurrence. The aforementioned ruling was based on the state’s failure to plead certain required elements of the alleged criminal offenses. Consequently, Carter said that there is one civil class action lawsuit filed by a Water Protector who claims that police used excessive force and conditioned confinement. This pending lawsuit cites the Nov. 20 incident, in which law enforcement used water cannons and shot various munitions against protesters. Meanwhile, a few of the high-profile protesters settled [non-cooperative plea agreements](#) with the federal government in exchange for lighter sentences and reduced charges. The WPLC states that a non-cooperating plea agreement does “not require snitching or giving any testimony, evidence or other information to be used against someone else.” This type of plea is significant because it shows that the defendants are in solidarity with fellow activists.

“It’s really important to us to highlight the people that were charged in federal court,” Carter said. She explained that a majority of the cases WPLC deals with are state cases, however, there are a handful of federal cases the organization defends as well. Carter noted that the potential punishments and sentencing for federal court are drastically different compared to state convictions. “With the state cases, we’ve only seen two people do post-

conviction jail time of less than a week, these federal cases however are very different, people are risking being sentenced to anywhere from three years up to life.”

A few notable Water Protectors who face federal charges include Michael “Little Feather” Giron, who is serving a [36-month](#) prison term in accordance with the non-cooperative plea agreement. The federal court dismissed his most serious charge, which was the use of fire to commit a federal felony offense, but imposed a 36-month sentence for a civil disorder charge. Judge Daniel Hovland, who presided over Little Feather’s trial, had the power to enforce the maximum of up to five years in prison due to Little Feather’s criminal history, but was strongly persuaded by his defense team to abandon this federal guideline. After enduring a tough childhood plagued with substance abuse and infractions with the law, Giron left Santa Barbara, California and underwent a four-day detox at Standing Rock. At the reservation, Giron formed strong alliances and friendships with the locals and regained his American Indian identity. He was given the name Little Feather and was entrusted with the task of protecting the camp. He was an “akicita” or warrior, meaning that his sole duty was to serve the community and defend its residents. Little Feather was the first water protector arrested for his involvement in the DAPL pipeline resistance at Standing Rock. He was also the [first to be sentenced](#) to a substantial amount of prison time and the first of the federal cases to conclude. Little Feather has been incarcerated since March 9, 2017, and will be credited with time served during the past 15 months. Giron’s legal team hopes that he will be released to a halfway house in 11 months.

Red Fawn Fallis and Michael “Rattler” Markus, both of the Oglala Lakota tribe, also accepted non-cooperative plea deals and await sentencing on federal charges on June 25 and Aug. 6 respectively.

Fallis was [arrested and detained](#) on October 27, 2016. Police alleged that when they tackled her and pinned her facedown on the ground, she fired three shots from a weapon underneath her stomach, which resulted in no injuries. It was later discovered that the gun belonged to a paid FBI informant who was in a romantic relationship with Fallis. The informant infiltrated the camp in August 2016 and remained by Fallis’s side for a majority of the time. The arrests were part of a mass law enforcement operation to evict pipeline opponents who were camped alongside North Dakota Highway 1806. Fallis pled guilty to two felony charges. Federal prosecutors dropped the most serious count, which was the discharge of a firearm in relation to a felony crime of violence, as a stipulation of her plea bargain. This charge alone carries a minimum 10-year mandatory prison sentence with the of chance of life imprisonment. Additionally, the state of North Dakota agreed not to pursue or reinstate the attempted murder charge.

Fallis’s legal team stated that her reason for accepting the plea deal had to do with jury bias, in which a screening of potential jurors revealed antagonistic sentiment towards anti-pipeline protesters. A [2017 study](#) by the National Jury Project found that 77 percent of potential jurors in Morton County and 85 percent in Burleigh County already determined that the Standing Rock defendants were guilty. Little Feather’s defense team motioned for a change of venue outside of the Bismarck area, citing this exact statistic, but were denied. Fallis’s arrest happened among a highly-militarized police raid of the camp and contributed to the government-concocted narrative that pipeline protesters are violent extremists who

pose terrorist threats. The case of [Markus](#) also bears this false characterization. Markus and his federal co-defendants are three of six native activists facing unprecedented federal charges for their involvement in the Standing Rock protests.

The Dakota Access Pipeline is now fully built after Trump's January 2017 order to expedite its completion, which overturns former President Obama's block on the project. In June of 2017, crude oil began pumping from North Dakota's Bakken Formation to the Mississippi River and through sanctified Lakota territories and burial sites. A judge had ruled [later that month](#), that the Army Corps of Engineers responsible for approving the pipeline's route of completion did not consider the injurious effects that the crude oil can have on the river's ecosystem, which was considered a partial victory for protesters. According to Esquire magazine, one major spill could vastly contaminate Standing Rock's main water supply, impacting more than [17 million](#) people who live downstream. "It's almost this indefinite and permanent presence there," WPLC's Carter said. "It effects them, they have to come into contact with that constantly."

The main issue concerning the Dakota Access Pipeline, Carter pointed out, is sovereignty. Sovereignty over certain areas has been a focal point in Native American and U.S government relations for centuries. The battle has been particularly fierce due to the underlying legacy of colonialism and racism in the United States. The [highly-militarized](#) police raid at Standing Rock (which was backed by federal, state, local and private entities) is the latest in [a series of egregious acts](#) committed against the indigenous community. Natives undergo constant persecution whenever they attempt to defend their land, traditions and heritage against law enforcement and corporate interests. In the case of Standing Rock, the land legally belongs to the Great Sioux nation had the Fort Laramie treaties of 1851 and 1868 been honored. Carter said that there are some contentious challenges over who is entitled to the land, a battle that continues to be hashed out in court. The police and government [insist](#) that the pipeline is technically not located on treaty land, however, this statement is erroneous. Energy Transfer Partners (ETP), the company behind the Dakota Access Pipeline, [purchased the land](#) in which the pipeline is currently located in September 2016. Water Protectors argue that the land is considered treaty land. The [treaties](#) assert that the highly sought-over territory is a place in which, "no white person...shall be permitted to settle...or without the consent of the Indians...pass through." Therefore, one must be an enrolled tribal member or granted permission by the native community in order to access the land, which the state government of North Dakota did not obtain. The land includes the entire half of present-day South Dakota west of the Missouri River, parts of present-day North Dakota, Montana, Wyoming and Nebraska, and the land between the Heart and Cannonball Rivers, where protesters were camped in the path of the pipeline.

Carter states that under treaty protections, indigenous people have the right to be in the pipeline area. The North Dakota government cannot enforce state criminal laws against tribal members, instead it would be tribal law and overlapping federal law that would have jurisdiction. Additionally, there is an argument that the camp, Oceti Sakowin, was made into an independent Indian community, therefore making it immune from federal prosecution.

Carter also cited laws protecting religious freedom as a reason to be immune from government prosecution. She said that such laws are applicable to this case because the pipeline facilitates direct access to the sacred sites, where religious and tribal ceremonies are performed. “I think one of the biggest impacts in the initial construction is that the pipeline actually destroyed and dug up a lot of sacred sites and sacred remains,” the attorney said. “If people think about how they would feel if their grandmother was unearthed... if we put pipelines through cemeteries and other places...that’s essentially what happened.”

Carter emphasizes how concerning these circumstances are for Standing Rock defendants, and how she hopes the public will continue to provide its unwavering attention and support. “We hope that folks won’t forget these people, even after they have their trials or their plea sentencing hearings if they’re convicted.”

If you want to write letters to the defendants or provide donations, click [here](#).