

STATE OF NORTH DAKOTA
COUNTY OF MORTON

IN THE DISTRICT COURT FOR
THE SOUTH CENTRAL JUDICIAL
DISTRICT OF NORTH DAKOTA

State of North Dakota

Plaintiff

v.

CASE NO. 30-2017-CR-00223

**Defendant Chase Iron Eyes' August 20th
OPPOSITION TO THE STATE'S
MOTION IN LIMINE and Executive Summary
of His *Prima Facie* Showing of His "Good Faith
Beliefs and The Reasonably Well-Founded
Basis of Each**

Chase Alone Iron Eyes

Defendant

I

Introductory Statement

[1] Chase Iron Eyes, the life-long officially-enrolled member of The Standing Rock Sioux Reservation and member of The Oceti Sakowin Oyate (The People of The Seven Council Fires, known to Non-Native Americans as "The Sioux Tribe of Indians") – and the 2018 National Democratic Party Nominee for the single seat in the United States House of Representatives from the State of North Dakota - was arrested, on the afternoon of February 1st of 2017, by Morton County Deputy Sheriff Dion Bitz for the Class B Misdemeanor offense of "Trespassing" on a half-acre hilltop of high prairie grassland located some ½ mile from the site of the planned imminent finalization of the construction and putting into operation of the 910,000 gallon-an-hour Dakota Access Pipeline directly beneath the sole source of fresh drinking water of Chase Iron Eyes, his six-member Lakota family, and the 8,217 members of his Lakota Band of Sioux Indians, who resided on The Standing Rock Sioux Reservation in North Dakota. Chase Iron Eyes was also arrested, at that same time, by Deputy Bitz, for the Class A Misdemeanor of "Participating in a Riot" - because, when instructed by Deputy Bitz to leave the site where he and his fellow Tribal Members were in the midst of erecting seven tee-pees and beginning a small Sacred Ceremonial Fire to perform a traditional Lakota religious ceremony, Chase Iron Eyes and his fellow tribal Members chose to gather in a circle around their Sacred Camp Fire and "lock arms" in a traditional non-violent demonstration of their will to remain on the site and "not be moved" from performing their mission of holding this Sacred Traditional Lakota Religious Ceremony.

[2] On the day following his arrest with some 33 other officially-enrolled members of his Sioux Tribe on this half-acre of grassland¹, Chase Iron Eyes was, however, officially charged, *instead of* with the simple Class

¹ Arrested with Chase Iron Eyes and the fellow members of his Sioux Tribe of Indians were also a number of Non-Native Americans who had been invited by these Sioux Tribal members to participate with them in this traditional Lakota Religious Ceremony intended to invoke the "intervention" of these Lakota People's Tribal

A Misdemeanor of “Participating in a Riot”, with the Class C FELONY Crime of “Inciting a “Riot” (allegedly for purportedly “requesting, directing or advising five or more people to engage in tumultuous *and violent* conduct *with 100* or more people, which conduct *either*: (a) presented a danger or threat of grave bodily injury or damage to property OR (b) “substantially obstructed ...law enforcement.”²

[3] To these two State criminal charges, the first a Class B Misdemeanor “Trespassing” charge and the second a Class C Felony charge of “Inciting a Riot” (for the latter of which Chase Iron Eyes could be sentenced to up to *five years* in the North Dakota State Prison...and lose his North Dakota State Attorney’s License) Chase Iron Eyes pled NOT guilty, and asserted against these charges his Defense-In-Chief (asserting that he was simply “not guilty” of either charge, as a simple matter of fact... and law.) However, in order to place before The Bar of Justice in the United States...and The American People and The World at Large the extremely important issues that were posed by the arrest of his people, Chase Iron Eyes filed with the North Dakota State Criminal Court a series of five “Necessity Defenses.” In these Five Necessity Defenses, Chase Iron Eyes asserted that, *if*, for any reason, Chase’s Trial Court Judge found that The State had proffered to Chase’s November 5th, 2018-scheduled Jury adequate evidence to legally support a jury verdict of “guilty” against him on either charge, Chase was asserting that, *whatever* those actions were that a jury might have thought he had committed that, in their mind, were “unlawful”, those actions on his part had been “necessary” in order to have prevented or stopped from occurring a “Much Greater Harm” than any actual harm that may have been caused by his actions.

(A)

Defendant Iron Eyes’ Defense-In-Chief against the “Trespassing” Charge

In his Defense-In-Chief against the “Trespassing” Charge, Chase Iron Eyes asserted:

(1) That the half-acre of high prairie grassland on which he and his fellow Tribal Members had been arrested for “trespassing” on February 1st of 2017 was *in fact* - AND as a *matter of American LAW*,³ “Sovereign Sioux Territory” that had **never** been “ceded” to the United States Government and had been expressly officially recognized by the United States Government as belonging exclusively to The Sioux Tribe of Indians in The Treaty of Fort Laramie of 1851 and confirmed as such, once again, in The Treaty of Fort Laramie of 1868....which expressly provided that THAT land should remain *forever* the Sovereign Territory of The Sioux Tribe of Indians **and that, indeed, this same status applied to ALL**

Ancestors to assist them in stopping the final construction and putting into operation of this Dakota Access Pipeline under their sole source of fresh drinking water.

² Of the 843 people arrested and charged, by the State of North Dakota, with unlawful activity in connection with The Standing Rock Protest Against The Dakota Access Oil Pipeline, Chase Iron Eyes stands alone charged with “Inciting the Riot” at Standing Rock.

³ For Chase Iron Eyes was an attorney and a long-time member of the North Dakota Federal Bar.

of the land from The Cannonball River northward to The Heart River; (See: “Attachment A” for the detailed factual and legal proof of this.);

(2) That the State could produce no proof that ANY Party who *even purported* to “own” that half-acre of grassland on February 1st of 2017 (other than The Sioux Tribe of Indians) had, in fact, “authorized” or “asked” Deputy Bitz, or any other law enforcement officer of the State of North Dakota, to ORDER Chase Iron Eyes or the fellow members of his Tribe off that half-acre of grassland (which “proof” could be presented to support a charge of the Class B Misdemeanor “Trespassing”)⁴;

(3) That half-acre of grassland on which Chase Iron Eyes and his fellow Sioux Tribal Members had been arrested for “Trespassing” was plainly NOT *ever* “lawfully OWNED” by either The Energy Transfer Partners Corporation or The Dakota Access Pipeline Corporation because BOTH Corporations were expressly forbidden, BY A SPECIFIC NORTH DAKOTA STATE STATUTE, from either “acquiring” or “owning” such grassland in North Dakota;

(4) The State *itself* is in possession of an Official Police Video Recording in which Chase Iron Eyes *expressly informs* Morton County Deputy Sheriff Bitz that the area of land on which he and his fellow Tribal members were gathered was – and still is - “TREATY LAND” on which he and they possess a express “TREATY RIGHT” to be present – *as to which “Treaty” both Deputy Sheriff Bitz AND HIS COMMANDING OFFICER WHO PERSONALLY “GREEN-LIGHTED” THE ARREST OF CHASE IRON EYES AND HIS FELLOW TRIBAL MEMBERS FOR “TRESPASSING” ON THIS LAND had absolutely NO “training”, “instruction” or “knowledge” whatsoever*, indeed, which “Treaty information” they expressly testified “ was totally *above my pay grade*. ”

(B)

Defendant Iron Eyes’ Defense-In-Chief against the “Inciting a Riot” Charge

(1) The State is in possession of a February 1st early morning Facebook Transmission by Chase Iron Eyes in which he broadcasted a “call” for people to call “journalists” to come to the half-acre area where he and his fellow Tribal Members were assembling to perform their ceremony and on which they intended “to make

⁴When Attorney Chase Iron Eyes “confronted” The State with a demand to be shown any such “proof”, The State, *later*, proffered a LETTER from one Joey Mahmoud, a Vice President of the Energy Transfer Partners Corporation of Texas, *dated ON FEBRUARY 1st of 2017* – which had not been communicated to The State UNTIL AFTER CHASE IRON EYES AND HIS FELLOW TRIBAL MEMBERS HAD ALREADY BEEN ARRESTED FOR “TRESPASSING.” That letter stated, on its face, that that letter had been “emailed” to The State (thus, *potentially revealing the exact time of its delivery* –which would have *proved* that that letter had NOT, in fact, been sent and received **BEFORE** the arrest of Chase Iron Eyes and his fellow Tribal Members (thereby rendering the arrest of everyone on February 1st as having been “unauthorized” by any “Owner” of that land) - The State *immediately* “amended” its charge against Chase Iron Eyes, RAISING the “charge” against him to a “Class A” Misdemeanor “Trespassing” charge, which The State maintained did NOT require the attempted *State fabricated* letter of February 1st “authorizing” or “requesting” the removal or arrest of The Lakota People.

their *entirely peaceful and NON-violent* final stand” to protest the finalization of the construction of the final one mile of The Dakota Access Pipeline and the putting of that pipeline into immediate operation under the sole source of water for his people. And, in that same Facebook Transmission, Chase Iron Eyes also asked those who might be listening to come to the site themselves “to make this final stand with his Lakota people. BUT:

(a) The State has NO EVIDENCE *whatsoever* that this February 1st Facebook Transmission on the part of Chase Iron Eyes “Incited ANYONE” to engage in *violence*. Directly to the contrary, this very Facebook Transmission in the possession of the North Dakota Law Enforcement Authorities makes it perfectly clear that Chase Iron Eyes was expressly insisting that this gathering was to be “peaceful and “prayerful”...and expressly **NOT** “violent”indeed, was to be expressly “**NON-Violent.**”

(b) The State, indeed, has NO EVIDENCE *whatsoever* that this February 1st Facebook Transmission caused ANY specific person to COME TO that site on that half-acre of prairie grassland on which he was arrested...or that one SINGLE person who was was arrested for “trespassing” on that half-acre of prairie grassland that afternoon came there *because of* Chase Iron Eyes’ February 1st Facebook Transmission;

(2) The State asserts that the fact that Chase Iron Eyes “stepped forward” to speak with Bismarck Police Lieutenant Jason Stugelmeyer and his fellow Law Enforcement Field Commander Lt. Cody Trom at the south end of The Backwater Bridge on the morning of February 1st “proves that Chase Iron Eyes was The Leader” of what The State asserts became a “riot” (when The Lakota People “locked arms” and “pulled back” when law enforcement officers exerted physical force to pull the Lakota people apart, who had “locked arms” around their Sacred Fire.)

BUT The State is in possession of the Official Police Video Recording that proves beyond any doubt whatsoever that the ONLY reason why Chase Iron Eyes “stepped forward” at the south end of The Backwater Bridge *was because* Lt. Cody Trom “CALLED OUT” to the group: “ **Is CHASE IRON EYES HERE? Is ANYONE HERE CHASE IRON EYES?** This Police Video Recording Shows that it was ONLY in direct response to this CALLING OUT FOR HIM TO STEP FORWARD that Chase Iron Eyes *ever spoke* to Lt. Trom, to Lt. Stugelmeyer or to Deputy Sheriff Bitz. *This* is certainly NOT *any* proof whatsoever that Chase Iron Eyes was “The Leader” of any “Riot.”

(3) The State charged an independent journalist, one Jenni Monet, with “Trespassing” (of which charge she was summarily acquitted by Judge Thomas Schneider *after The State FORCED HER to have to produce to The Court, to “prove” that she was a bona fide “journalist,, an audio recording of two Lakota men on that half-acre hilltop other than Chase Iron Eyes* who, *between them, devised the tactic of “locking arms around the Sacred Camp Fire” as a specific way of implementing the general*

agreement among everyone to NON-violently “make a stand” on this land AS TREATY LAND. On that recording, Chase Iron Eyes can be heard to say ONLY the following:

[4] Chase Iron Eyes: “We want the road block lifted. We see the governor's play into turning the Standing Rock against the very people that they invited to come here to protect. It's the same as withholding rations in the late 1800's. If we didn't conform to whatever dictates they wanted, they would just withhold rations, with the sign or starve era and it's the same thing now by putting up a roadblock and starving an impoverished people from their main source of revenue and putting them under undue amounts of pressure. So, lifting the roadblock is our, one of our primary concerns and having the pipeline removed from where it's at. Those are, it's the same fight that you got arrested for. It's the same fight that six hundred people sacrificed for....” (someone interrupts)

[5] Second Lakota Male (clearly not Chase): “Yea, no I'm agreeing with all that. Wasté.”

Third Lakota Male (clearly not Chase): “One-hundred percent. I've been out here, too since August, so. Well I mean, um, so it goes for today. So, how this unfolds...it's, like we can decide how that looks. We can decide that it shows a display of power as opposed to just showing us like victims. The thing that I don't like about the violence part of it, like whenever they act violence on us, it makes us look like victims, and we're not. We're not victims. So, part of what I'm talking about, is how we get arrested, right? How we choose to get arrested in this situation, because that's gonna happen, you guys have been taking a stance, one-hundred percent fucking awesome, but how, how we get arrested is important, because we show a display of power or we are shown like victims? One of the two, and so, you know, I have a couple ideas of what that could look like for you guys, because they're going, they're going to come in, but I think this is about prayer and this is about that fire, and this is about...this is about holding this ground and standing with our ancestors. One thing that we haven't done very well here is, we haven't been just together like this. We just haven't been together. If everybody that is up here is willing to get arrested. Everybody is going to stay up here, I say go around the fire. Everybody lock arms back to back, and they can, it's going to be hard for them to pull, pull you apart.”

[6] Fourth Male voice (clearly not Chase): “Be like stones, be like stones. Yup, you're in a sacred place, man[son].”

[7] Chase Iron Eyes: “That is the plan for the people around the fire to lock arms like that? But is that, is that, is it like concentric circles, you know what I'm saying, circle-circle-circle like that?”

[8] Third Lakota Male Again (clearly not Chase): “Yup, I'd start with one circle back to back. One circle back to back.”

[9] Female voice: “Tight, tight circle, though.”

[10] Third Lakota Male Again (clearly not Chase): “As tight as you can get. Then immediately, on the other side of them, then them back to back as close as you can get, because it's gonna be hard for them to break that circle.”

[11] Chase: “We'll do it like the buffalo. Man. Maybe the women and those who...or if there's anybody older they are in the middle and all these young guys.” (Loud helicopter)

[12] Male voice (clearly not Chase): “They're gonna use chemical spray.....” (loud helicopter).

[13] Third Lakota Male Again (clearly not Chase): “That's, that's what I say, I think that's the strongest play in the situation then, so it's our people bringing showing the display of power.”

[14] Chase: “Yes and we stand in that and that's prayer.”

[15] Second Lakota Male Again: (clearly not Chase): “Yup, yup.”

[16] Chase: “Rather than chaos.”

[17] Julian BearRunner: “That’s what this is about....”

[18] Third Voice (clearly not Chase): “Yes, definitely.”

[19] Julian BearRunner: “Is that spiritual guidance. We waited until they told us, they told us that when that wall comes, “Wana”, and they came this morning, you know, so we packed up, we got ready. We did what they told us to do. Now we're here. So that's why, whatever they want to do, you know that's, that's our say so. That's our ground, you know and we're gonna go down holding...”

[20] Female voice: “Let’s go guys.”

[21] Third Lakota Male Again (clearly not Chase): “Is everybody that's here, everybody that’s here.”

[22] Chase: “Yeah, everybody, bro.”

[23] Female voice: “Can you give this to Shayla?”

[24] Jenni: “Hey Nick. Hi. I’m Jenni. I’m writing for The Center for Investigative Reporting uh, Indian Country Today, um you’re negotiating down there?”

[25] Nick: “Yeah, we’re, I’m just trying, I’m just trying. I mean, these are my people up here, so. We're trying to, we’re trying to understand the goals. So, what I say is, with all the shit like. Where’s Chase? Oh. I would say get all of this stuff, get all this stuff. Another thing to is, let's get this shit into a tipi. So, that this stuff whenever, whenever, whenever the image of the arrest happens, it's not. You know what I’m saying it's, not that's not the image.”

[26] Chase: “Grab one thing and take it to a tipi, guys. We’re gonna make concentric circles around the fires with the whole space.”

[27] Jenni: “What do you have that you want it to look clean and wholesome and peaceful up here?”

[28] Nick: “We want it to be a display of power of the reason why we’re here and the reason why the, why the spirits did this, so.”

[29] Jenni: “For full disclosure, I'm recording, I just want you to know that.”

[30] Nick: “O.K.”

[31] This recording documents repeatedly that the act of forming concentric circles was itself a First Amendment expression meant to convey that those standing their ground were not victims.

This audio recording does NOT support a reasonable conclusion on the part of a jury that Chase Iron Eyes “Incited” five or more people to engage in tumultuous *and violent* conduct. *Everything* that The State has offered ANY proof for as to what Chase Iron Eyes has EVER said was clearly advocating *ONLY* “NON-

violent” action. Moreover, Julian Bearrunner’s contemporaneously-recorded account of this series of events is explicitly confirmed by Sundance Chief Richard Gray Grass, whose Spiritual Vision generated this event – and Chief Gray Grass’ Sworn Declaration entirely exonerates Defendant Iron Eyes as having played any role at all in planning or directing this event. See Sworn Declaration of Chief Graygrass attached hereto as “Attachment B.”

(4) EVERY statement that The State has ANY evidence whatsoever of Chase Iron Eyes ever having said on February 1st of 2017 – (*or at any other time*) advocating *nothing* but *asking* “But is that, is that is it like concentric circles, you know what I’m saying, circle-circle-circle like that?” And then saying:

[32] “We’ll do it like the buffalo. Man. Maybe the women and those who...or if there's anybody older they are in the middle and all these young guys,” it would be *totally UNCONSTITUTIONAL* for a North Dakota Criminal Court to allow a jury to simply “speculate” or “surmise” that Chase Iron Eyes *might conceivably* have “agreed” with somebody...*anybody*... to ORDER or DIRECT *anybody* to “pull away” from law enforcement. Indeed, The State has provided *absolutely NO “discovery” evidence whatsoever* pursuant to demands from Chase Iron Eyes’ defense team to show that ANYONE ever consciously “planned”, “trained”, or “instructed” ANYONE to actually violently “pull away from” ...much less “grab hold of *others* and *help others* “pull away from” law enforcement officers when they were trying to arrest them as peaceful and prayerful Water Protectors.

[33] For The Court to allow a jury, based on *this* evidence, to “convert” demonstrably First Amendment Advocacy, on the part of Chase Iron Eyes, of explicitly NON-“violent” action *into* the offense of “Inciting a Riot” (the favorite caricaturization of defiance of authoritarian power) will be to “foreclose” any *such* NON-violent means of protesting the exercise of raw corporate or governmental power through *any form of “direct action”*... leaving The Field “open” *only* to the *totally* “passive” (and, *potentially* impotent) form of “resistance”....OR to the *truly* “violent.” And *that* is a very BAD set of “options” for a Court to present to our American people.

(5) Any direct evidence that The State has doesn’t prove *beyond any reasonable doubt* that Chase Iron Eyes’ comments heard on Jenni Monet’s recording, *however those* comments might be interpreted, by a jury, were, in fact, ever communicated, by Chase Iron Eyes, to “five or more persons” as required by the statute;

(6) If what The State characterizes as a “tug of war” is the “violence” which they assert Chase Iron Eyes “incited” by his comments recorded by Ms. Monet, then that “tumultuous and violent conduct” was, by The State’s OWN records, engaged in by no more than 74 people –NOT the 100 people that the Statute under which Chase Iron Eyes stands charged absolutely requires in order for such “incitement” to constitute a Class C felony;

(7) The activities that occurred a vast distance away from the site at which the Lakota People chose to “lock arms”, and even “tug *back*” against police, who were trying, forcefully, to “pluck them away” from the circle that they had formed (i.e. the activities of people *who had spontaneously come up onto Highway 1806 from the entirely separate and distinct Oceti Sakowin Camp because they mistakenly*

feared that the hundreds of heavily-armed, and heavily-armored law enforcement authorities who were moving southward, toward The Oceti Sakowin Camp, were coming to violently “break up” The Oceti Sakowin Camp... just as they had done to a separate camp on the east side of Highway 1806 on October 27th of 2016): (A) were expressly conceded: (i) by The Incident Commander, who was present for all of those activities; (ii) by the Mobil Force Field Commander, who was in charge of “moving that crowd ‘back’ ...to clear a pathway for the Arrest Team to move southward and westward onto The Last Child’s Camp Site and (iii) by a Stutsman County Deputy Sheriff NOT, in their professional opinion, to have been “engaged in a riot”; (B) were NOT, in any way “incited by” Chase Iron Eyes; (C) Only one single person, down on Highway 1806, was arrested among all of those people, down on Highway 1806, of “rioting” *all by himself*, and was charged with this by Lt. Cody Trom...when that person “pulled back” the large cloth Protest Banner *that Lt. Trom was trying to yank away from him without any legal justification for Lt. Trom having done that*; and

(8) The State variously *implies* (or attempts to confuse a jury into myopically *inferring*) that *because it was Chase Iron Eyes’ Service Pick-Up Truck* that had a quickly-put-out fire set in its cab, way down on the side of Highway 1806, that it is somehow *presumable* that CHASE IRON EYES either “set fire” to *his own vehicle....or that he ordered others to set fire to HIS truck.*

[34] Aside from this being totally counter-intuitive, The State is in possession of video footage of that very area (on which video cameras Forward Commander Glenn Ternes testified that he was able, that very morning, to *directly observe the people gathering on the grassy field at 6 AM that morning* – but the video of that area, at the time of the starting of the short-lived fire in the White pick-up truck, HAS NEVER BEEN TURNED OVER TO THE DEFENSE BY THE STATE. And Chase Iron Eyes has proffered to The Court the interview conducted by Special Forces Veteran Jack Murphy of a TigerSwan employee who asserts that TigerSwan C.E.O. James Reese, ordered into the Water Protector’s ranks two TigerSwan employees as part of a “Special Mission Unit” specifically assigned by TigerSwan C.E.O Jim Reese to engage in violent action and to try to incite Lakota people to engage in violence. (The defense has tentatively identified these two TigerSwan agent provocateurs as John Alvarez a/k/a “South Beach” and Mark Sanderson. So, it is *possible* (at least *possible enough* to raise a “reasonable suspicion” in the minds of a jury – *in light of the fact that The State has WITHHELD [or “erased”] the highly likely video footage of the persons who actually started that fire*) that it was *reasonably possible* that one of those active agents provocateur set this small fire. Moreover, the defense has been informed by Potential listed Witness KOURTNI DOCKTOR (an employee of the Energy Transfer Partners Corporation-hired private security company Leighton Security) that she “*personally witnessed* TigerSwan personnel setting fire to Precision Pipeline equipment to have these fires blamed on The Water Protectors!” Chase Iron Eyes intends to call her as a Witness in his trial.

[35] So, Defendant Iron Eyes believes that it is MORE THAN 51% probable that: (A) this Court will enter a Court-Ordered Acquittal of Defendant Iron Eyes at the conclusion The State's Case pursuant to Rule 29....or *prior to* Defendant Iron Eyes' having to put on his "Necessity Defense" - since there will NOT be legally-sufficient evidence before The Jury on the basis of which a jury could reasonably conclude *beyond a reasonable doubt* that Chase Iron Eyes committed acts that constitute every essential element of the two criminal charges that have been alleged against him by The State.

[36] However, IF The Court fails to STOP this case prior to the point in this case in which Chase Iron Eyes will be required to put on his "Necessity Defense" in order to PLACE THE BURDEN ON THE STATE to have to prove beyond any reasonable doubt that Chase Iron Eyes DID NOT possess a "Good Faith Belief" that it was "necessary" for him to have done WHATEVER ACT THIS COURT DEEMS TO BE SUFFICIENTLY "EVIDENCED" BY THE STATE TO SUPPORT A JURY VERDICT AGAINST HIM **ON EITHER OF THE TWO CRIMINAL CHARGES LODGED AGAINST HIM BY THE STATE**, in THAT case, Defendant Iron Eyes will submit to the Jury the following evidence to support the following facts:

II Procedural Background

[37] In June of 2017, North Dakota State Criminal Court Judge David Nelson was assigned to preside over Defendant Iron Eyes' criminal case in Morton County.

[38] On July 18, 2017, Defendant Iron Eyes filed with Judge Nelson his Notice of Defendant's Intention to Raise Affirmative Defenses at his Trial. In this initial Notice, Defendant Iron Eyes stated that:

[39] Defendant Iron Eyes intends to raise the affirmative defenses of self-defense, defense of others, and justification pursuant to NDCC § 12.1-05-01, NDCC § 12.1-05-03, NDCC § 12.1-05-04. Doc ID# 56.

[40] On October 19, 2017, again before Judge Nelson, Defendant Iron Eyes filed his "Notice of Intent to Argue an Affirmative Defense Rooted in Necessity." Doc ID# 114.

[41] Even though Rule 12 of the North Dakota State Rules of Criminal Procedure requires a criminal defendant to "serve notice" to The Court and to The State's Attorney's Office *only* as to his or her intention to present the specific "Affirmative Defense" of an "Alibi Defense" (N.D.R. Crim P. Rule 12.1) or the Affirmative Defense of "Insanity" (N.D.R. Crim P. Rule 12.2), Defendant Iron Eyes, in the spirit of transparency, provided "Notice" to The Court and to the Morton County State's Attorney's Office that Defendant Iron Eyes intended to present these NON-Notice-Required Affirmative Defenses of "Necessity" at his trial.

[42] In his Memorandum in Support of his Notice of Intent to Present An Affirmative Defense Rooted in Necessity, DOC ID# 115, Defendant Iron Eyes reported to The Court and to The Morton County State's Attorney's Office that, on February 1st of 2017, Chase Iron Eyes held a set of good faith beliefs that he sincerely believed were "well founded", which beliefs, he believed, made it "necessary" for him to undertake the specific actions for which he was being charged with "Trespassing" and "Inciting a Riot" on February 1st of 2017. He informed The Court that he undertook all of the actions that he undertook on February 1st of 2017 in order to prevent a "Much More Serious Harm" to himself, to his Lakota Family, to his entire Tribe (both on The Standing Rock Sioux Reservation on which he and his family lived but also the members of his Tribe who lived on other Reservations down-river from Lake Oahe) – asserting that the Greater Harms that he sought to prevent

by his actions were MUCH Greater than any “harm” that may have been actually caused by whatever actions he engaged in on February 1st of 2017...or by any action he is being accused of having “incited” five or more people to have engaged in on that day. Doc ID# 115.

III

The Factual Background of Defendant Iron Eyes’ Necessity Defense

[43] There were numerous concerns about the threat that the pipeline posed. As one overview reported those threats:

[44] Conservation groups worry about safety, and the impacts on air, water, wildlife and farming, because of the risk of the pipeline disruption. Greenpeace and a group of more than 160 scientists dedicated to conservation and preservation of threatened natural resources and endangered species spoke out against the pipeline. The Science & Environmental Health Network also rejected the pipeline.

[45] Environmentalists and Native Americans accused the USACE of hastily approving each stage of the review process and ignoring federal regulations and established treaties with Native American tribes. They claimed there was a lack of environmental foresight and consideration. They expressed their fears that the Missouri River might become contaminated in the event of a spill or leak, jeopardizing a source of drinking and irrigation water that millions of people depend on for clean water. They claimed that the environmental review that was performed to analyze the impact of the pipeline on its surroundings was incomplete, claiming that even much smaller, less risky development projects require more rigorous impact analysis than has been completed for the Dakota Access Pipeline. The company responded that the pipeline goes underneath Lake Oahe 90–150 feet (27–46 m) below the surface and it has automated valves on each side of the lake. They also explained that the water outtake for the Standing Rock Sioux Reservation will be 70 miles (110 km) downstream, and that contamination of the water supply is unlikely. It has been reported that the pipeline commercial operations started without oil spill response plan for the Missouri River crossing and without emergency response cleanup equipment stored nearby.

[46] Sunoco Logistics, the future operator of the pipeline, has spilled crude oil from its onshore pipelines more often since 2010 than any other US pipeline operator, with at least 203 leaks disclosed to the Pipeline and Hazardous Materials Safety Administration, with a total of 3,406 barrels (143,100 US gal; 541.5 m³) of crude oil spilled. The Iowa Environmental Council stated it is "concerned whether the state has enough protections—from state government oversight to ensuring the company has enough money in reserve to address any harm caused by a spill". Iowa state laws require pipeline owners to have only a \$250,000-reserve fund. Iowa Citizens for Community Improvement called the \$250,000-reserve fund "fiscally irresponsible" and suggested raising it to at least \$1 billion, indexed to inflation, which would match Alaska's precautions of protection.

https://en.wikipedia.org/wiki/Dakota_Access_Pipeline (footnotes omitted)

[47] The opposition to the pipeline was intense and extensive.

https://en.wikipedia.org/wiki/Dakota_Access_Pipeline_protests

[48] The policy and legal fight was also extensive.

Key Moments In The Dakota Access Pipeline Fight

- [49] <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>

February 22, 2017 4:28 PM ET

[Rebecca Hersher](#)

[50] The Dakota Access Pipeline's route takes it over four states and nearly 1,200 miles, from the Bakken oil fields in northwestern North Dakota through South Dakota, Iowa and down to a terminal in Illinois.

[51] But one Missouri River crossing just north of the Standing Rock Sioux Reservation in North Dakota has become the focal point of a fight over how the pipeline's route was analyzed and approved by the federal government.

[52] In legal challenges and public demonstrations, members of the tribe and their supporters have argued that they were not adequately consulted about the route. Running the pipeline under a Missouri River reservoir called Lake Oahe, member say, would jeopardize the primary water source for the reservation, and construction would further damage sacred sites near the lake, violating tribal treaty rights.

[53] After more than six months of legal wrangling, the Trump administration reversed a decision by the Obama administration and announced it is allowing the pipeline company, Energy Transfer Partners, to drill under Lake Oahe and finish building the last section of the pipeline.

[54] Here are some key moments in the fight over the Dakota Access Pipeline.

This story has developed over many months, and this timeline captures only a portion of the newsworthy developments that have occurred, focusing largely on legal and policy decisions.

Dec. 2015 - Jan. 2016

[55] The U.S. Army Corps of Engineers for the Omaha District [publishes a draft](#) of its plan to approve the Dakota Access Pipeline route under the Missouri River.

[56] The Corps opened the plan up to public comments, including comments on environmental and cultural impacts.

April 2016

[57] The U.S. Army Corps of Engineers office determines that no historic properties will be affected by the pipeline crossing.

[58] [A letter](#) from the Corps' senior field archaeologist for the project lists five "recorded cultural sites" within the area that could be affected by construction of the pipeline, and more than 30 others that are thought to be within a 1-mile radius.

The Two-Way

Army Approves Dakota Access Pipeline Route, Paving Way For The Project's Completion

[59] The letter supports the determination that "no historic properties will be subject to effect," by the crossing under Lake Oahe, and notes that the Standing Rock Sioux has requested further archaeological survey of the area.

June 2016

[60] The U.S. government's Advisory Council on Historic Preservation disputes the Corps determination [in a letter](#) to the assistant secretary of the Army, citing the need for cooperation with tribal leaders to identify areas of concern to them.

[61] In the letter, the advisory council director asks the Corps to justify its decision.

July 25, 2016

[62] The U.S. Army Corps of Engineers [approves](#) the portion of the Dakota Access Pipeline route that crosses the Missouri River at the Lake Oahe reservoir. The crossing is on Army Corps-controlled land.

[63] The 1,261-page report announcing the approval said of the public review process: "No significant comments remain unresolved."

[64] The Omaha district commander, Col. John Henderson, wrote, "I have evaluated the anticipated environmental, economic, cultural, and social effects, and any cumulative effects" of the river crossing and found it is "not injurious to the public interest."

Aug. 4, 2016

[65] The Standing Rock Sioux Tribe [sues](#) the U.S. Army Corps of Engineers. The tribe alleged that the Corps had failed to adequately consult tribe members before approving the pipeline, and had violated the National Historic Preservation Act when it "effectively authorized construction of the vast majority of the pipeline in and around federally regulated waters without any provision to ensure against destruction to culturally important sites."

[66] "There is a high risk that culturally and historically significant sites will be damaged or destroyed in the absence of an injunction," the tribe wrote in its court filing.

[67] In August 2016, demonstrators rally near the Standing Rock Sioux Reservation. That same month, a subsidiary of the company building the pipeline, accused protesters of halting construction activities.

Aug. 15, 2016

[68] Dakota Access LLC, a subsidiary of the pipeline company Energy Transfer Partners, [countersues](#) leaders of the Standing Rock Sioux, alleging that protesters near the Lake Oahe river crossing have "halted construction activities" that had been scheduled to begin five days earlier.

[69] "On Wednesday August 10, 2016, representatives of Dakota Access arrived at the Construction Site and were met with resistance by approximately 15 to 30 individuals ... who were protesting the construction of the Pipeline. By the afternoon, the number of individuals protesting at the Construction Site increased to approximately 100," the company wrote.

Sept. 3, 2016

[70] The Standing Rock Sioux Tribe issues a statement saying Energy Transfer Partners demolished an area that contained "significant Native artifacts and sacred sites" when construction crews bulldozed a two-mile-long area near the Lake Oahe river crossing and north of the Standing Rock Sioux Reservation.

[71] "I surveyed this land and we confirmed multiple graves and specific prayer sites," the tribe's historic preservation officer, Tim Mentz, said in the statement. "Portions, and possibly complete sites, have been taken out entirely."

Around the Nation

N.D. Pipeline Protester: 'It's About Our Rights As Native People'

[72] And [protests in North Dakota turned violent](#) when private security guards clashed with some protesters.

[73] As reporter Amy Sisk of the public radio collaboration Inside Energy [said in an NPR Live discussion on Facebook](#), "What happened is some protesters who've been camped out near this construction area broke through a fence to access this construction site and were met with some private security guards and guard dogs hired by the pipeline company. ... Law enforcement says the protesters attacked the security guards and the dogs." [She added that](#) demonstrators said the dogs "actually bit some of the protesters."

Sept. 6, 2016

[74] U.S. District Judge James Boasberg [temporarily halts construction](#) on the portion of the Dakota Access Pipeline that crosses the Missouri River at Lake Oahe, pending a full decision on the tribe's earlier lawsuit against the Army Corps.

Sept. 8, 2016

[75] North Dakota Gov. Jack Dalrymple [activates the North Dakota National Guard](#) to assist local law enforcement that had been monitoring demonstrations. In early December, a spokesperson for the guard told NPR that more than 500 National Guard members were on active duty and that multiple buses and military vehicles had been used to "aid law enforcement."

Emily Kask for NPR

Sept. 9, 2016

[76] U.S. District Judge James Boasberg [denies](#) the Standing Rock Sioux's request to stop construction. In his [decision](#), he writes that "the United States' relationship with the Indian tribes has been contentious and tragic." But he went on to say that the Army Corps "likely complied" with its obligation to consult the tribe, adding that the tribe "has not shown it will suffer injury that would be prevented by any injunction the Court could issue."

[77] But the Justice Department, the Department of the Army and the Interior Department [announced that construction](#) on Army Corps-controlled land near the Lake Oahe river crossing should not proceed — and asked that the pipeline company honor the request — pending further evaluation and consultation with the tribe.

The Two-Way

Protesters Mark A Solemn Thanksgiving Day At Standing Rock

Oct. 12, 2016

[78] Energy Transfer Partners proceeds with construction despite the request by the three federal agencies that it voluntarily halt activities near the Lake Oahe river crossing. The Morton County Sheriff [arrests 27 people](#) demonstrating at the site.

Oct. 24, 2016

[79]The chairman of the Standing Rock Sioux, Dave Archambault II, [sends a letter](#) to then-U.S. Attorney General Loretta Lynch requesting an investigation "to protect civil rights" of protesters, citing the "overall militarization of law enforcement response."

Nov. 2, 2016

[80] Then-President Obama [says in an interview](#) that the U.S Army Corps of Engineers is "examining whether there are ways to reroute this pipeline in a way. So we're going to let it play out for several more weeks and determine whether or not this can be resolved in a way that I think is properly attentive to the traditions of the first Americans."

Nov. 21, 2016

[81]Law enforcement [uses tear gas and sprays water](#) at crowds of demonstrators as the temperature drop below freezing, reports Amy Sisk of Inside Energy.

Nov. 25, 2016

[82]The U.S. Army Corps of Engineers [tells protesters](#) to leave some encampments on federal land by Dec. 5, and North Dakota Gov. Jack Dalrymple [follows up](#) with an evacuation order for the area, citing "harsh weather." [Nonetheless, many people stay.](#)

Cassi Alexandra for NPR

Dec. 4, 2016

[83]The Army Corps [halts construction](#) of the Dakota Access Pipeline and says it intends to issue an environmental impact statement with "full public input and analysis" before it approves the river crossing at Lake Oahe.

Jan. 18, 2017

[84] The Army [publishes a notice](#) in the Federal Register saying it is preparing the environmental impact statement and soliciting public comments until Feb. 20, 2017, on whether to grant the easement necessary to cross under Lake Oahe.

Jan. 24, 2017

[U.S.](#)

[In Their Own Words: The 'Water Protectors' Of Standing Rock](#)

[85] President Trump signs an executive memorandum instructing the Army to [expedite the review and approval process](#) for the unbuilt section of the Dakota Access Pipeline.

Jan. 31, 2017

[86] The [Army says](#) it has been directed to expedite the review process for the easement request, and that "the Assistant Secretary for the Army Civil Works will make a decision on the pipeline once a full review and analysis is completed in accordance with the [president's] directive."

Feb. 7, 2017

[87] The U.S. Army Corps of Engineers [grants the easement](#) allowing the Dakota Access Pipeline to cross under the Missouri River at Lake Oahe, north of the Standing Rock Sioux Reservation. The Corps also [issues a memo](#) saying it intends to terminate the public comment period and rescind its notice of intent to prepare an environmental impact assessment.

[88] The pipeline company immediately [began construction](#) near the crossing under Lake Oahe.

Feb. 9, 2017

[89] The Cheyenne River Sioux tribe [asks the U.S. District Court to issue a restraining order](#) to block construction of the final piece of the pipeline. The Standing Rock Sioux Tribe officially joins [the request](#) a few days later. Both reservations get their water downstream of the Lake Oahe crossing.

Feb. 13, 2017

[90] U.S. District Judge James Boasberg denies the tribes' joint motion, noting that oil is not yet flowing under the reservoir. In his decision, Boasberg requires Dakota Access LLC to update the court on Feb. 21, "and every Monday thereafter as to the likely date that oil will begin to flow beneath Lake Oahe."

Feb. 15, 2017

[91] The Standing Rock Sioux Tribe and Cheyenne River Sioux tribe [request a summary judgement](#) against both the Army Corps and Dakota Access LLC, a subsidiary of the pipeline company.

[92] The plaintiffs cite tribal land rights under the [1868 Ft. Laramie Treaty](#) and argue that the Corps decision to grant the easement was "arbitrary, capricious, and contrary to law."

Feb. 17, 2017

[93] The Corps formally terminates its environmental review in a [notice published](#) in the Federal Register.

Feb. 22, 2017

[94] North Dakota Gov. Doug Burgum sets this date [as a deadline](#) for the remaining protesters to leave an encampment on federal land near the area of the pipeline company's construction site.

March 7, 2017

[95] U.S. District Judge James Boasberg denies the motion by the Standing Rock Sioux and Cheyenne River Sioux tribes for a preliminary injunction against the pipeline company.

[96] In [his decision](#), Boasberg explains that he believes the tribes will be unlikely to prevail in their lawsuit at this point, and denies their request to either halt construction on the pipeline, or stop oil from flowing through it once it is complete.

[97] The previously filed motion for summary judgment is still outstanding.

IV

THE FEB. 1st, 2017 GOOD FAITH BELIEFS OF DEFENDANT CHASE IRON EYES

[98]Chase Alone Iron Eyes swore and affirmed, under oath, on July 20th, 2018, that, on February 1, 2017, he held each of the following good faith beliefs:

Belief #1. That the half-acre of high prairie grassland on which he and my fellow Lakota Tribal Members were participating in a Traditional Lakota Religious Ceremony on the morning of February 1st of 2017 was NOT legally owned by The Dakota Access Pipeline Corporation or by The Energy Transfer Partners Corporation;

Belief #2. That the half-acre of high prairie grassland on which he and his fellow Lakota Tribal Members were participating in a Traditional Lakota Religious Ceremony on the morning of February 1st of 2017 was, as a matter of law, “TREATY LAND” of The Sioux Tribe of Indians on which he and his fellow Lakota Tribal Members had a “Treaty Right” to be – and on which they had a “Treaty Right” to engage in any Traditional Lakota Religious Ceremony in which his people had traditionally engaged prior to the signing, by their Lakota Ancestors, of The Treaty of Fort Laramie of 1851 and The Treaty of Fort Laramie of 1868. Indeed, he believed that, he and his Lakota People had a right to exercise any of their traditionally-practiced traditions – even as “USUFRUCTUARY” Treaty Rights” - even on any “CEDED” territory (which this specific area of land was NOT) ...which Rights included their right to engage in a Traditional Religious Ceremony, even on such “ceded land”, so long as such “ceded” land was not inhabited or contained any structures with which the exercise of such a Treaty Right might unreasonably interfere - even if the United States Government asserted that IT had, somehow, come to have “owned” that area of land: (A) as “CORPS Land ”or (B) as “Ceded Land”...and then professed to have “sold” to some Third Party White Person pursuant to a U.S. “Land Patent” (neither one of which “conditions” [A or B] applied to the specific area of land on which he and his fellow Lakota People were participating in this Traditional Religious Ceremony on February 1st of 2017, since this specific area was “UN-Ceded Land” that had NEVER been lawfully transferred to the custody or ownership of the United States Government **any more than had the United States Government acquired “ownership” of The Black Hills by any Act of Congress.** (See, United States v. The Sioux Tribe of Indians, 448 U.S. 371, at 411-424 (1980); 100 S. Ct. 2716 ; 65 L. Ed. 2d 844; 1980 LEXIS 147.)

Belief #3. That the “imminent” finalization of the drilling, construction and putting into operation of The Dakota Access Pipeline under Lake Oahe (the sole source of fresh drinking water for himself, for his Lakota family...and, indeed, for his entire 8,217 member Lakota population of our Standing Rock Sioux Reservation)...which also constituted the imminent completion of the drilling, construction and putting into operation of The Dakota Access Pipeline under The Missouri River (which is the primary source of fresh water for the over 54,092 additional members of my Great Sioux Nation who reside on the Sioux Reservations that lie immediately southward of the planned Missouri River crossing of The Dakota Access Pipeline and depend upon The Missouri River for their water...as well as being the principle source of fresh water for over 17 million Non-Lakota people who live downstream from the planned Missouri River Crossing of The Dakota Access Pipeline) CONSTITUTED AN EXISTENTIAL THREAT TO THE FRESH DRINKING WATER OF HIMSELF, HIS LAKOTA FAMILY; HIS STANDING ROCK SIOUX TRIBE, AND ALL OF THE MEMBERS OF HIS GREAT SIOUX NATION WHO DEPEND ON LAKE OAHE AND THE MISSOURI RIVER FOR OUR FRESH DRINKING WATER – AND, THEREFORE, CONSTITUTED AN “EXISTENTIAL THREAT” TO THE VERY CONTINUED EXISTENCE OF HIS GREAT SIOUX NATION TRIBE AS A LANDED PEOPLE...in light of the record of The Energy Transfer Partners Corporation and its Integral Partner SUNOCO LOGISTICS in constructing and installing fossil fuel pipelines in North America...in which pipelines there had occurred OVER 291 SPILLS OR LEAKS GENERATING OVER \$66 MILLION IN PROPERTY DAMAGE in just the short 10-year period preceding the planned completion of the construction, installation and operation of this Dakota Access Pipeline under Lake Oahe and Missouri River in our homeland;

Belief #4. That the Executives of Dakota Access, LLC (and of its Texas-based parent corporation Energy Transfer Partners) had intentionally re-routed the Dakota Access Pipeline from the “more favorable” route objectively generated by the corporations’ own computer and computer program that ran 10 miles to the north of the 92% White community of Bismarck, North Dakota to a crossing that was less than ½ mile from the 82% Native American population of our Standing Rock Sioux Reservation. He believed, based on public media coverage and the publicly-available Construction Application filed by The Dakota Access Pipeline Corporation with the North Dakota Public Service Commission, that the Executives of The Dakota Access Pipeline Corporation and The Energy Transfer Partners Corporation had changed the route of the pipeline from the computer-identified “preferable” Northern Bismarck Route due to public input from the majority-white community of Bismarck. He realized that this reported “re-routing” of the pipeline effectively shifted *whatever* potential adverse impact might result from any oil spill or leak from this oil pipeline *away from* the 92% White community of Bismarck, North Dakota TO the 82% Native American population of our Standing Rock Sioux Reservation and Great Sioux Nation. This action on their part, he believed, as an educated North Dakota attorney, constituted an unlawful “*racially-discriminatory*” conspiracy, in violation of Section 601 of Title VI of the Federal Civil Rights Act of 1964, violating the legal principle of “environmental justice”...and was a violation of Section 241 of Title 18 of the United States Criminal Code and of Section 1985(3) of Title 42 of the United States Civil Code;

Belief #5. That the Executives of the Texas-based Dakota Access Pipeline Corporation (and of its Texas-based parent corporation Energy Transfer Partners Corporation), on September 3rd of 2016, had *intentionally* ordered the “bulldozing” of some 27 potential Sacred Gravesites and other Sacred Sites that had been specifically officially identified to the United States District Court for the District of Columbia on September 2nd of 2016 by Standing Rock Sioux Tribal Historical Preservation Specialist Tim Mentz...and, in response to the *fully-anticipated* reaction to this action on the part of members of our Lakota People, “called in” The TigerSwan Private Military Security Corporation from Apex, North Carolina to “put down” The Public Protest Against The Dakota Access Pipeline *knowing full well* of The TigerSwan Private Military Security Corporation’s past activity of “racially profiling” Indigenous Tribespeople and subjecting the members of these *racially-identified* Indigenous tribes to a full panoply of expressly knowingly illegal tactics depriving these Indigenous tribal peoples of their human rights and subjecting them, on a *racially-discriminatory basis*, to the deprivation of their Right to The Equal Protection of The Laws through the process of *falsely* “labeling” and “profiling” such tribal people as “Indigenous Jihadist Terrorists.” And he believed that these Energy Transfer Partners Corporation Executives and Dakota Access Pipeline Corporation Private Executives knew – and *intended* – that The TigerSwan Private Military Security Corporation Personnel would deploy, against his Lakota People, these well-developed illegal tactics against our Lakota Indigenous People, *on a racially-discriminatory basis*, which tactics the members of the TigerSwan Private Military Security Corporation had developed in The Middle East, in Africa and in Central America *in the process of their having protected Oil Corporations from lawful public demonstrations on the part of other Tribal Peoples against those oil corporations’ contamination of the water and land of the Indigenous tribal people in those tribal areas of the world who were organizing against and protesting the drilling of oil from and the digging and construction of oil pipelines through their land on these other continents*;

Belief # 6: That, prior to the arrival on the scene of the personnel of The TigerSwan Private Military Security Corporation, on or about September 5th of 2016, there had been a “comparatively cordial relationship” between the Lakota anti-Dakota Access Pipeline “Water Protectors” and North Dakota and Morton County local law enforcement leadership and personnel;

Belief # 7: That, upon their arrival in The Anti-Dakota Access Pipeline Protest Area, on or about September 5th of 2016, the Executives and Personnel of The TigerSwan Private Military Security Corporation “Racially

Profiled” himself and his Lakota People as “religiously-driven, Indigenous Jihadist Terrorists” and did so pursuant to a “class-based, invidious, racially-discriminatory, anti-Indigenous People animus”;

Belief # 8: That personnel of the TigerSwan Private Military Security Corporation, with the knowledge on the part of, and with the consent of, the Executives of both the Energy Transfer Partners Corporation & the Dakota Access Pipeline Corporation and of the Executives of the TigerSwan Private Military Security Corporation, thereafter undertook a series of unlawful actions that were expressly intended to “entice” and “incite” members of the Lakota People to engage in violent and unlawful activities ...which included, on the part of TigerSwan Personnel, their engaging in violence against Lakota people and cutting into the radio communications of Anti-Dakota Access Pipeline Water Protectors and (pretending to be Water Protectors) specifically calling for LAKOTA PEOPLE (such as “The Red Warrior Society Members”) to engage in violent and unlawful conduct;

Belief #9. That the personnel of The TigerSwan Private Military Security Corporation, as soon as they arrived “on the scene” at The Anti-Dakota Access Pipeline Protest Site in North Dakota, *in fact*, SO “intermingled” their “anti-Lakota People suppression activities” that were *racially-discriminatorily* directed against The Indigenous Lakota People with the “law enforcement activities” of State and Local law enforcement personnel who were deployed *initially* simply to enforce the law in and around The Protest Site to protect both pipeline Construction Workers and “Water Protectors” alike, so much so that the *racially-discriminatory animus* that was driving the *private* activities of the TigerSwan Private Military Security Personnel to deprive the Lakota People of the Equal Protection of the Law by falsely “*racially profiling*” them as “Indigenous Jihadist Terrorists” drew some members of the State, County and Municipal law enforcement agencies deployed in the field *previously* simply to enforce the law INTO the TigerSwan Personnel’s *previously purely private* unlawful, *racially-discriminatory*, anti-Lakota People conspiracy to deprive my Lakota People of our Constitutional Right to The Equal Protection of The Law AND THEN **into** a more general anti-civil rights conspiracy to deprive ALL “Water Protectors”, both Lakota and Non-Lakota alike, of their Right to The Equal Protection of The Law... which SECOND anti-civil rights conspiracy was, *thereinafter*, conducted “**under the color of State law**” in *criminal* violation of Section 242 of Title 18 of the United States Criminal Code and in violation of Section 1983 of Title 42 of The United States Civil Code;

Belief #10. That it was the ultimate completion and putting into full operation of The Dakota Access Pipeline directly under Lake Oahe and The Missouri River that, in his good faith belief, would carry into *full* and *irrevocable* effectuation *both* of these “private” *racially-discriminatory* unlawful anti-civil rights conspiracies that were being actively perpetrated, as of February 1st of 2017, against his Lakota People by the Executive Officials of The Energy Transfer Partners Corporation & The Dakota Access Pipeline Corporation AND the Executives and Personnel of the TigerSwan Private Military Security Corporation to deprive his Lakota People of their Right to The Equal Protection of The Laws;

Belief # 11. That it was, similarly, the ultimate completion and putting into full operation of The Dakota Access Pipeline directly under Lake Oahe and The Missouri River that, in his good faith belief, would carry into *full* and *irrevocable* effectuation the unlawful anti-civil rights conspiracy being conducted “under the color of state law”, as of February 1st of 2017, against *both* his Lakota People and the Non-Lakota People who were peacefully and prayerfully protesting the construction of The Dakota Access Pipeline (as *distinct* from action to be taken against the infinitesimally tiny fraction of people who had engaged in any actually “violent” conduct);

Belief # 12. That the imminent completion and putting into full operation of The Dakota Access Pipeline directly under Lake Oahe and The Missouri River...and its imminent transporting of 910,000 gallons-an-hour of crude oil out into the world to be refined, burnt and its effluents then expelled out into our planet’s atmosphere... generated an “imminent” “clear and present danger” of *inevitably* inflicting “grave physical injury” upon *billions* of his fellow human beings and his animal relatives... and of inflicting “grave physical damage” to *billions* of square miles of land and other material property on our Planet.

Belief # 13. That the completion and putting into full operation of The Dakota Access Pipeline directly under Lake Oahe and The Missouri River...and the immediate commencement of the transporting of 910,000 gallons-an-hour of crude oil from The BAKKEN Oil Fields in North Dakota out into the world, for each of the reasons identified above, presented a “clear & present danger” of *imminently* generating each of the above-identified “MUCH Greater Evils” or “MUCH Greater Harms” than any simple act of “trespassing” or of “the locking of arms in concentric circles” that he had been accused of engaging in or “inspiring” or “inciting” others to have engaged in on February 1st of 2017 on that half-acre high prairie grassland hilltop on the northern plains of North Dakota.

Belief # 14. That there was a reasonable chance that he and his fellow Lakota Tribal Members’ actions undertaken on that high prairie hilltop might result in the cessation of the construction of The Dakota Access Pipeline...in light of the previous decision on the part of the U.S. Justice Department, the United States Department of Interior, and the U.S. Army Corps of Engineers made on December 4th of 2016 that it was legally necessary to stop all construction on the pipeline until and unless a Full Environmental Impact Study was completed and a Full Environmental Impact Statement was finalized.

Belief # 15. That the threat of each of these “GREATER HARMS” was “imminent”, as of the morning of February 1st of 2017;

Belief # 16. That the conduct in which he engaged on February 1st - was “*less* harmful” that ANY one of the “GREATER HARMS” that these acts were intended to prevent;

Belief # 17. That the conduct which he was accused of “encouraging”, “advocating”, “directing” or “inciting” on the part of any five or more people to engage in on February 1st of 2017 was “*less* harmful” that ANY one of the “GREATER HARMS” that these acts were intended to prevent;

Belief # 18: That none of the Greater Harms that he sought to prevent through his actions undertaken on February 1st of 2017 were in any way caused by him.

Belief # 19: That none of the Greater Harms that he sought to prevent through his actions undertaken on February 1st of 2017 were in any way caused by any person whom he is accused of having “incited” on February 1st of 2017.

Belief # 20. That there existed no reasonably-available and timely “legal relief” available, on the morning of February 1st of 2017, to prevent any one of these “GREATER HARMS” within the limited time within which they would occur;

Belief # 21. That there was a reasonable “causal connection” between the conduct in which he engaged on February 1st - and any conduct which he is accused of having “encouraged”, “advocated”; “directed” or “incited” five or more people to engage in on February 1st of 2017 – and the prevention of each of the “GREATER HARMS” that these actions were intended to prevent;

Belief # 22. The “GREATER HARMS” that the conduct in which he engaged on February 1st - and any conduct which he is accused of having “encouraged”, “advocated”; “directed” or “incited” five or more people to engage in on February 1st of 2017 – were intended to prevent were NOT the exercise of any “Constitutionally-Guaranteed Right” of the nature at issue in The Sahr Case;

Belief # 23: The “Great Harm” of Existential Threat to Water & Tribe #1

That the threat posed by the completion and putting into full operation of the dakota access pipeline under the sole source of drinking water for him, his lakota family, and his lakota tribe constituted a “great harm”:

Belief # 24: The “Imminence” of this Greater Threat Occurring

That The Threat Posed By The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of drinking water for his, his Lakota family, and his Lakota Tribe was an “IMMINENT” Threat.

Belief # 25: Any “harm” caused by Defendant action LESS “Harmful”

That The Existential Threat to The Sole Source of drinking water for him, his Lakota family, and his Lakota Tribe was a “GREATER HARM” than any “harm” that was actually caused by his conduct on February 1st;

Belief # 26: Any “harm” caused by people “incited” LESS “harmful.”

That The Existential Threat to The Sole Source of drinking water for him, his Lakota family, and his Lakota Tribe was a “GREATER HARM” than any “harm” that was actually caused by any person whom it has been *proven* that he “instructed”, “directed” or “incited” *to perform any specific conduct*.

Belief # 27: Great Harm arose without fault of Defendant

That The Existential Threat to The Sole Source of drinking water for him, his Lakota family, and his Lakota Tribe was NOT caused by any action that he ever undertook

Belief #28: Great Harm arose without fault of those “Incited” by Def.

He Held The Good Faith Belief That The Existential Threat to The Sole Source of Drinking water for him, his Lakota family, and his Lakota Tribe was NOT caused by any action that any person whom it has been *proven* that he “instructed”, “directed” or “incited” *to perform any specific conduct “caused”*;

Belief # 29: Causal connection between Defendant conduct & prevent

That the specific actions that he undertook on the basis of which he stands charged with “trespassing” and “Inciting a Riot” had some rational chance of actually preventing The GREATER Harm of the completion and putting into full operation of The Dakota Access Pipeline

Belief # 30: Absence of reasonable availability of legal alternative

That, as of February 1st of 2017, there were no reasonable legally-available means by which he could have prevented the completion and putting into full operation of The Dakota Access Pipeline – and the consequent immediate imposition upon him, his Lakota Family, and his entire Lakota Tribe - of the “imminent threat” of the “Existential Threat” to his sole source of fresh drinking water...and to the very future existence of his tribe

Belief # 31: Absence of *Sahr* Constitutional Right of Performer of Great Harm

That the Energy Transfer Partners Corporation and the Dakota Access Pipeline Corporation did NOT have any “Constitutional Right” to drill and install the Dakota Access Pipeline under Lake Oahe and the Missouri River *without undertaking a Full Environmental Impact Study and filing a Full Environmental Impact Statement with the U.S. Army Corps of Engineers*. Therefore the conduct in which they were engaging – and which he was

attempting to “prevent” through his actions – did NOT qualify for “The *Sahr* Exception” to being considered a “GREAT HARM” which generated a legal “Necessity Defense” for him.

Belief # 32: Greater Harm of “Racial Conspiracy” to Move Pipeline #2

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for him, his Lakota family, and his Lakota tribe would have constituted the full effectuation of a criminal *private* anti-Native American anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of our constitutional Right to The Equal Protection of The Law which was a “GREAT HARM”:

Belief # 33: The “Imminence” of this Greater Threat Occurring

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for him, his Lakota family, and his Lakota tribe would have constituted the full effectuation of a criminal *private* anti-Native American anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law and was, therefore, a “GREAT HARM” the “*racially-discriminatory ‘disparate racial impact’* of which was, as of the afternoon of February 1st of 2017, IMMINENT:

Belief # 34: Any “harm” caused by Defendant action LESS “Harmful”

That the FULL EFFECTUATION of “The Unlawful Objective” of the deprivation of him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by his conduct on February 1st;

Belief # 35: Any “harm” caused by people “incited” LESS “harmful”:

That the FULL EFFECTUATION of “The Unlawful Objective” of the deprivation of his, his Lakota Family’s and those of all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by the conduct of any person who was “incited” by him on February 1st;

Belief # 36: Great Harm arose without fault of Defendant

That the potential full effectuation of the “unlawful objective” of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law was NOT caused by any action that he ever undertook on February 1st of 2017;

Belief #37: Great Harm arose without fault of those “Incited” by Def.

That the potential full effectuation of the “unlawful objective” of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive hi, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law was NOT caused by any action that was taken by any person whom he is accused of having “instructed”, “directed” or “incited” to engage in any conduct;

Belief # 38: Causal connection between Defendant’s conduct & preventing The Harm

That the specific actions that he undertook on the basis of which he stands charged with “trespassing” and “Inciting a Riot” had some rational chance of actually preventing The GREATER Harm of the carrying into full effectuation the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law;

Belief # 39: Absence of reasonable availability of legal alternative to His Action

That, as of February 1st of 2017, there were no reasonable legally-available means by which the carrying into full effectuation of the unlawful objective of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law could have been prevented;

Belief # 40: Absence of *Sahr* Const’l Right of Performer of Great Harm

That the Energy Transfer Partners Corporation and the Dakota Access Pipeline Corporation did NOT have any “Constitutional Right” to carry into full effectuation the “unlawful objective” of their criminal private anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law so as to have their conduct deemed to have qualified as a “Sahr Exception” to conduct that might reasonably – and lawfully – deemed to be a “GREAT HARM”;

Belief #41: Greater Harm of “Racial Conspiracy” to Racially-Profile #3

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for him, his Lakota family, and his Lakota tribe would have constituted the full effectuation of a criminal *private* anti-Native American anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their constitutional Right to The Equal Protection of The Law which was a “GREAT HARM”:

Belief # 42: “Imminence” of this Greater Threat Occurring

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for me, his Lakota family, and my Lakota tribe would have constituted the full effectuation of a criminal *private* anti-Native American anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their constitutional Right to The Equal Protection of The Law and was, therefore, a “GREAT HARM” the “*racially-discriminatory ‘disparate racial impact’* of which was, as of the afternoon of February 1st of 2017, IMMINENT:

Belief # 43: Any “harm” caused by Defendant action LESS “Harmful”

That the FULL EFFECTUATION of “The Unlawful Objective” of the deprivation of him, his Lakota Family and all of the Native American members of his Lakota Tribe of their constitutional Right to The Equal Protection of The Law would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by his conduct on February 1st;

Belief # 44: Any “harm” caused by people “incited” LESS “harmful”:

That the FULL EFFECTUATION of “The Unlawful Objective” of the deprivation of him, his Lakota Family and all of the Native American members of his Lakota Tribe of their constitutional Right to The Equal Protection of The Law would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by the conduct of any person whom he is alleged to have “incited” on February 1st;

Belief # 45: Great Harm arose without fault of Defendant

That the potential full effectuation of the “unlawful objective” of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law was NOT caused by any action that he ever undertook.

Belief #46: Great Harm arose without fault of those “Incited” by Def.

That the potential full effectuation of the “unlawful objective” of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of my Lakota Tribe of our Constitutional Right to The Equal Protection of The Law was NOT caused by any action that was taken by any person whom he is alleged to have ever “instructed”, “directed” or “incited” to engage in any conduct;

Belief # 47: Causal connection between Defendant conduct & prevent

That the specific actions that he undertook on the basis of which he stands charged with “trespassing” and “Inciting a Riot” had some rational chance of actually preventing The GREATER Harm of the carrying into full effectuation the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive his, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law

Belief # 48: Absence of reasonable availability of legal alternative

That, as of February 1st of 2017, there were no reasonable legally-available means by which the carrying into full effectuation of the unlawful objective of the private anti-civil rights conspiracy on the part of the Executives of the Energy Transfer Partners Corporation and the Executives of the Dakota Access Pipeline Corporation to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law could have been prevented;

Belief # 49: Absence of *Sahr* Constitutional Right of Performer of Great Harm

That the Energy Transfer Partners Corporation and the Dakota Access Pipeline Corporation did NOT have any “Constitutional Right” to carry into full effectuation the “unlawful objective” of their criminal private anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law so as to have their conduct deemed to have qualified as a “*Sahr* Exception” to conduct that might reasonably – and lawfully – deemed to be a “GREAT HARM”;

Belief # 50: Great Harm of “State Anti-Civil Rights Conspiracy” #4

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for him, his Lakota family, and his Lakota tribe would have constituted the carrying into full effectuation the “unlawful objective” of a criminal anti-Native American anti-civil rights conspiracy to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law *which had been “transmuted” into a “State-Sponsored”* criminal anti-civil rights conspiracy to deprive not only him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Right to Freedom of Assembly; their Constitutionally-guaranteed Right to Freedom of Expression; their Constitutionally-guaranteed Right to Be Secure in our Persons and Effects Against Unreasonable Searches & Seizures of their cell phone communications; their travel information; their private and confidential information and other Constitutionally-guaranteed rights and that that this was a “GREAT HARM”;

Belief # 51: The “Imminence” of this Great Threat Occurring

That The Completion and Putting Into Full Operation of The Dakota Access Pipeline Under The Sole Source of Drinking water for him, his Lakota family, and his Lakota tribe would have constituted the IMMINENT carrying into full effectuation the “unlawful objective” of a criminal anti-Native American anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Right to Freedom of Assembly; their Constitutionally-guaranteed Right to Freedom of Expression; their Constitutionally-guaranteed Right to Be Secure in our Persons and Effects Against Unreasonable Searches & Seizures of their cell phone communications; their travel information; their private and confidential information and other Constitutionally-guaranteed rights which was a “GREAT HARM”;

Belief # 52: Any “harm” caused by Defendant action LESS “Harmful”

That the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their constitutionally-guaranteed Right would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by his conduct on February 1st;

Belief # 53: Any “harm” caused by people “incited” LESS “harmful”:

That the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO

to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Rights would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* was a “GREATER Harm” than any “harm” that was actually caused by the conduct of any person whom he was accused of “incited” on February 1st;

Belief # 54: Great Harm arose without fault of Defendant

That the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Rights was NOT caused by any action that he ever undertook:

Belief #55: Great Harm arose without fault of those “Incited” by Def.

That the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Rights was NOT caused by any action that that was taken by any person whom he is accused of ever having “instructed”, “directed” or “incited” to engage in any conduct;

Belief # 56: Causal connection between Defendant conduct & prevent

That the specific actions that he undertook on the basis of which he stands charged with “trespassing” and “Inciting a Riot” had some rational chance of actually preventing The GREATER Harm of the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Rights would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water*

Belief # 57: Absence of reasonable availability of legal alternative

That, as of February 1st of 2017, there were no reasonable legally-available means by which the carrying into full effectuation of the unlawful objective of the FULL EFFECTUATION of “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their constitutionally-guaranteed Rights would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* to deprive him, his Lakota Family and all of the Native American members of his Lakota Tribe of their Constitutional Right to The Equal Protection of The Law could have been prevented;

Belief # 58: Absence of *Sahr* Constitutional Right of Performer of Great Harm

That the State and private participants in the conspiracy to carry into FULL EFFECTUATION “The Unlawful Objective” of a State-sponsored criminal anti-civil rights conspiracy to deprive not only him of his

Constitutional Right to The Equal Protection of The Law BUT ALSO to deprive of their Constitutionally-guaranteed Right to The Equal Protection of The Law ALL persons, Lakota AND NON-LAKOTA ALIKE, who were engaged in the exercise of their Constitutionally-guaranteed Rights would be fully and irreparably accomplished *upon the completion of the construction and the putting into full operation of The Dakota Access Pipeline directly under their sole source of fresh drinking water* did NOT have any “Constitutional Right” to carry into full effectuation the “unlawful objective” of their criminal anti-civil rights conspiracy so as to have their conduct deemed to have qualified as a “*Sahr* Exception” to conduct that might reasonably – and lawfully – deemed to be a “GREAT HARM”;

Belief # 59: Great Harm of contributing to climate chaos

On February 1, 2017, he held a good faith belief that the completion and putting into full operation of the Dakota Access Pipeline would further the contribution that the burning of fossil fuels is making to the destabilization of the climate, which, in turn, threatened him, his Lakota Family, his Lakota Tribe, and all of Humanity, indeed, the continued existence of civilization, and numerous ecosystems that support life and, therefore, constitutes a Great Harm

Belief # 60: Imminence of this Great Harm Occurring

On February 1, 2017, he held a good faith belief that the completion of the Dakota Access Pipeline, with the consequent transmission of oil, burning of oil, and emission of gasses causing climate change, would contribute to the climate chaos that is already being realized in extreme climate events and other highly destructive phenomena, which are being produced by the changing climate and, therefore, the threat is actual, not just imminent.

Belief # 61: Any "harm" caused by Defendant's actions were less harmful than the Great Harm sought to be prevented

On February 1, 2017, he held a good faith belief that the existential threat to civilization posed by climate chaos was a far greater harm than any harm caused by any actions he may have taken to prevent or at least mitigate such harm.

Belief #62: Any "harm" caused by people "incited" by Defendant was less harmful than the greater harm sought to be avoided, prevented, or mitigated.

On February 1, 2017, he held a good faith belief that the existential threat to civilization posed by climate chaos was a far greater harm than any harm caused by people whom he was accused of having "incited."

Belief #63: He did not contribute in any way to the threat posed by the completion of the Dakota Access Pipeline.

On February 1, 2017, he held a good faith belief that he had not contributed in any way to causing the greater harm of climate chaos that he sought to avoid, prevent, or mitigate.

Belief #64: Causal connection between Defendant's actions and preventing harm.

On February 1, 2017, he held a good faith belief that the actions he took would contribute to the prevention or at least mitigation of the greater harm of climate chaos that he sought to avoid, prevent, or mitigate.

Belief #65: Absence of reasonable availability of legal alternatives

On February 1, 2017, he had a good faith belief that there was no legal alternative to the actions he took that would effectively avoid, prevent, or mitigate the harm from climate chaos.

Belief #66: Absence of *Sahr* Constitutional Right of Performer of Great Harm

On February 1, 2017, he had a good faith belief that the great harm he was trying to avoid, prevent, and mitigate was not a constitutionally-protected harm.

However, instead of selecting this objectively MORE preferable computer-identified route for this dangerous oil pipeline, because these decision-makers of the Energy Transfer Partners Corporation and The Dakota Access Pipeline Corporation knew that the 91% White majority of North Dakota state citizens harbored a “class-based, invidious, *racially-discriminatory*, anti-Native American animus – *and this exact same* class-based, invidious, *racially-discriminatory*, anti-Native American animus was expressly shared by these Energy Transfer Partners Corporation and Dakota Access Pipeline Corporation decision-makers – these Energy Transfer Partners Corporation and Dakota Access Pipeline Corporation decision-makers chose to route this dangerous oil pipeline directly onto a route that carried this dangerously noxious infrastructure less than ½ mile north of the 82% racial minority Native American community of Standing Rock Sioux Reservation. This route passed directly under the sole source of fresh drinking water of The Great Sioux Nation, subjecting him, his Lakota wife and children, and all of his fellow members of The Great Sioux Nation, *on a racially-discriminatory basis*, to the potential contamination of the sole source of their fresh drinking water supply, and, therefore, to the “racially disproportionate impact” of any oil spill from this pipeline - thereby constituting the direct, immediate and irreparable violation of their federal Constitutional Right to The Equal Protection of The Law, which “protection” had been accorded to the White members of the 92% White community of Bismarck, North Dakota.

The pre-February 1st, 2017 official public documents of North Dakota’s own State Public Services Commission – and the pre-February 1st, 2017 public documents of The General Counsel’s Office of the U.S. Army Corps of Engineers and the United States Department of The Interior stated (as was widely reported in the North Dakota public news media) that it was “due to the public responses during the Environmental Assessment Process” of these alternative potential pipeline routes – and, apparently, due to the “input” of certain undisclosed “landowners and stakeholders”⁵ – that the *initially- COMPUTER-designated route* 10 miles north of the 92% White community of Bismarck, North Dakota was “eliminated” by the private Executives of the Energy Transfer Partners Corporation and the private Executives of the Dakota Access Pipeline, and the previously “LESS-Computer-preferred” route less than ½ mile from the 82% Native American Great Sioux Nation was “confirmed” by these private Executives as the “preferable” route.

Belief #69:

NECESSITY DEFENSE #3

As of February 1st of 2017, there was a SECOND *purely private* “class-based, invidious, *racially-discriminatory*, Anti-Native American civil rights conspiracy actively underway against him and his fellow Lakota Tribal Members. This was the anti-Lakota civil rights conspiracy commenced by the private corporate decision-makers of The TigerSwan Private Military/Security Corporation, who were hired by the decision-makers of the Energy Transfer Partners Corporation and The Dakota Access Pipeline Corporation on or about September 3rd of 2017, who thereupon undertook to “racially profile” the Lakota People as “religiously-driven Indigenous Jihadist Terrorists”...*racially possessing other racially-generic negative traits, such as “sexual deviance”; “violence”; “physically filth”, and others*, in order to deprive Lakota people of their fundamental Constitutional Right to The Equal Protection of the Law in violation of the Fifth, Ninth and Fourteenth Amendment to the United States Constitution; in violation of Title 18, Sections 241 and 242 of the United States Criminal Code; and in violation of Title 42, Section 1985(3), , through their “racially profiling” - and subjecting to the deprivation of their Equal Protection of The Law - himself and the other Native American members of The Great Sioux Nation by, among other unlawful actions, knowingly falsely identifying them TO: NORTH DAKOTA STATE NATIONAL GUARD OFFICIALS; NORTH DAKOTA STATE POLICE OFFICIALS; MORTON COUNTY SHERIFF'S DEPARTMENT OFFICIALS; LOCAL MANDAN CITY POLICE OFFICIALS, other Federal, State, and local law enforcement agencies AS WELL AS TO NORTH DAKOTA MEDIA OUTLETS (and, by the last of these actions, intentionally *racially profiling* Lakota People to the citizens of the State of North Dakota as “religiously-driven, *racially-defined*, Indigenous JIHADIST

TERRORISTS") and, pursuant to this specific conspiracy, subjecting these indigenous Lakota People to the systematic comparative deprivation of the same rights, privileges and immunities that other American citizens enjoy NOT to be subjected to the "Anti- TERRORIST" military tactics, such as: (a) the unlawful electronic eavesdropping on their cell phone conversations; (b) the photographic and audio surveillance of these Native people; (c) the unlawful physical surveillance of their comings and goings and their associations with others; (d) the generation against these Native American people of a knowingly false anti-Native American "Public Diplomacy Campaign" planting knowingly false "fake news" stories in local and state-wide news media sources in North Dakota ... and nationally .. falsely publicly accusing Native American people of being "dirty"; "sexual deviates"; "drug addicts"; "violent"; and "environmental polluters"; (e) monitoring the air and ground travel and public speeches of these people; (f) electronically eavesdropping on the computer communications and cell phone texts of these Native People; (g) physically infiltrating the meetings and gatherings of these Native People and secretly electronically recording their conversations, their religious ceremonies and their public policy discussions; (h) planting "agents provocateurs in the meetings and gatherings of these Native American people to undertake to "set up" these Native American people for false accusations of unlawful conduct such as illegal drug possession and illegal firearms possession; and (i) the performance against Native American people of other, as yet unidentified, unlawful actions on a racially-discriminatory basis.

All of these "tactics" the Executives and Personnel of the TIGERSWAN PRIVATE MILITARY SECURITY CORPORATION had been deployed - by their corporate employers - to systematically inflict upon the Lakota People as "Indigenous People"... which the Executives and Personnel of the TigerSwan Private Military Security Corporation had inflicted on Indigenous People in The Middle East in Iraq and Afghanistan, in Africa and in Latin America, this conspiracy of these TigerSwan corporate decision-makers enabling their oil corporation employers to despoil the environments and the fresh drinking water supplies of these other Indigenous People.

Belief #70: **NECESSITY DEFENSE #4**

Sometime between September 3rd of 2016 and prior to February 1st of 2017, the TigerSwan Co-Conspirators, through their "racially profiling" - and subjecting to the deprivation of their Equal Protection of The Law himself and his fellow Lakota members of The Sioux Tribe of Indians by the activities identified above, "drew in" a number of the members of the North Dakota State and Local law enforcement agencies INTO their previously *purely private* Section 1985(3) anti-Native American *racially-motivated* anti-civil rights conspiracy...and, THEREINAFTER, "*transformed*" this previous Title 18 U.S.C. Section 241 and Title 42 Section 1985(3) *purely private*, previously-*racially-motivated*, anti-INDIGENOUS, anti-civil rights conspiracy INTO a STATE-sponsored, Title 18 U.S.C. Section 242 and Title 42 Section 1983 anti-FIRST AMENDMENT anti-civil rights conspiracy that was, thereafter, directed against *not only* Indigenous Lakota People *but also* against NON-Indigenous People *because of their engagement in the "unpopular" exercise of their FIRST AMENDMENT RIGHTS of Freedom of Assembly; Freedom of Expression; Freedom of Speech; Freedom of Religion; Freedom to Travel and other First Amendment Rights* as well as various of their FOURTH AMENDMENT Rights *to be Secure in Their Persons, Places & Effects* as well as other Fundamental Constitutionally-Guaranteed Rights.

Belief # 71: **NECESSITY DEFENSE #5**

The reckless endangerment of the entire eco-system of our planet by exporting, through this oil pipeline 910,000 gallons-an-hour of crude oil being extracted from The Bakken Oil Fields in northern North Dakota and carried through this pipeline to be refined into over 600,000 gallons-an-hour of gasoline, diesel fuel, natural gas to be sold almost-exclusively to foreign purchasers.. to be burned in the immediate future - the burning of which will imminently emit into our planet's atmosphere untold amounts of carbon dioxide and other "global green house gases" - every hour - 24 hours a day - seven days a week - 52 weeks a year for the next 40 YEARS **CERTAIN to GENERATE** a substantial additional degree of Global Climate Change... with all of its

scientifically-confirmed attendant direct catastrophic consequences of inflicting “grave physical injury” on *millions* of people, “grave physical damage” to *trillions of dollars* worth of property - solely to increase in the profits for the private stockholders in the oil corporation clients of or partners in Energy Transfer Partners.

VI The Law Governing The Procedure For Making a *Prima Facie* Showing of Rational Support for a Necessity Defense

[99] The purpose of this Filing is to provide a *Prima Facie* Showing to The Court and to The State of North Dakota as to the precise Good Faith Beliefs that Defendant Chase Iron Eyes held on February 1st of 2017 – and to provide to The Court and to The State the information and evidence that supports the “well-grounded” nature or “reasonableness” of each of these beliefs. The Court has the authority – at some point closer to the eve of the trial - to make a judicial determination as to whether The Court is of the opinion that the information and evidence that Defendant Iron Eyes proposes proffering to his jury at trial adequately supports each of Defendant Iron Eyes’ proffered Affirmative Defenses *as a matter of law, so as to rationally support a jury’s belief – indeed, even ONE juror’s belief* – that Defendant Iron Eyes did, indeed, possess a Good Faith Belief supporting that particular Necessity Defense and that his Good Faith Belief was “reasonably well-grounded – which fact would have to be DIS-proven by The State *beyond any reasonable doubt*, once Defendant Iron Eyes has provided to his jury a *prima facie* showing to support each such Belief. Defendant Iron Eyes has, therefore, prepared and submitted his *Preliminary* Filing to The Court in the spirit of N.D.R.Crim.P. 12, despite the lack of any explicit requirement for either “notice” or the presentation of a *prima facie* case before presenting his proposed Necessity Defense to The Court in a Final Pre-Trial Status Hearing. DOC ID#61. The specific statutory requirements of N.D.R.Crim.P. 12 do not require anything more than a simple “notice” of such a *prima facie* Affirmative Defense in order to present his Affirmative Defense at trial. Thus, this *Preliminary* Filing, made over 70 days prior to Defendant Iron Eyes’ November 5th scheduled trial, is not *required* by *any* provision of the Century Code of North Dakota. Defendant Iron Eyes’ objective in making this *Preliminary* Prima Facie Showing to The Court is, therefore, to prepare The Court for its designing JURY INSTRUCTIONS to be provided to Defendant Iron Eyes’ jury *at the beginning of Defendant Iron Eyes’ trial*, preparing his jury to “hear” *and to understand* the evidence being presented to them during the course of his trial *in the light of* his “Necessity Defense” or “Justification Defense” *in the event that his jury, for any reason, should come to the initial determination that Defendant Iron Eyes had, indeed, committed ANY “unlawful act” at all on February 1st of 2017*. In light of the objective of this Filing – Defendant Iron Eyes’ obtaining such “Opening Jury Instructions” as to the nature...and effect...of evidence being provided to his jury “supporting” the “well-grounded nature” of Defendant Iron Eyes’ Good Faith Beliefs (in support of his *potentially necessary* “Necessity Defenses”) – the “standard of proof”, or *degree of* the “evidentiary burden”, that he should bear, in this Preliminary Filing, should not exceed the “evidential burden” that Defendant Iron Eyes would be required

to meet in order to obtain a specific jury instruction IF HE HAD SUBMITTED THIS INFORMATION AND EVIDENCE TO HIS JURY IN A COURT-ADMISSIBLE FORM **DURING THE COURSE OF HIS TRIAL.**

[100] For the sake of clarity - and because of the lack of specifically precise judicial precedent governing the specific “standard of proof” to be met pursuant to this procedure - Defendant Iron Eyes has analyzed the required “standard of proof” needed, at law, to obtain The Court’s *preliminary authorization* to present his specific “Necessity Defenses” to his jury as if this were a Pre-Trial Request for a Specific Set of Jury Instructions.

[101] A defendant, upon timely request, is entitled to a jury instruction on an affirmative defense theory if the defendant proffers to the court evidence that creates a reasonable *prima facie* ground for presenting such a defense to the jury in his case. State v. Zajac, 2009 ND 119 ¶12. United States v. Marchant, 774 F.2d 888, 894 (8th Cir.1985); United States v. Manning, 618 F.2d 45, 47-48 (8th Cir.1980).

[102] When ruling on a request for a specific jury instruction, a trial court is required to view the evidence proffered to the court by the defendant in the light most favorable to the defendant. State v. Ness, 2009 ND 182 ¶ 13.

[103] A North Dakota state criminal court commits reversible error if it refuses to instruct the jury as to the availability to the defendant of a specific Necessity Defense, once such an Affirmative Defense has been adequately raised and proffered, on a *prima facie* basis, to the court. Id.

[104] While North Dakota criminal courts are acknowledged to have *some degree* of discretion in determining the *quantity* and the *specific nature* of the evidence needed to be introduced at trial in order to constitute a “*prima facie* showing” adequate to require the Court’s issuance of a requested jury instruction, this degree of discretion has been expressly “limited” by appellate courts. See e.g. State v. Biby, 366 N.W.2d 460 (N.D. 1985). Specifically, a North Dakota state criminal court may NOT lawfully refuse to submit a requested jury instruction to the jury *unless* the specific jury instruction requested is “inapplicable” to the evidence proffered at trial; the requested jury instruction is “irrelevant” to any defense proffered by the defendant; or there is **no** *factual* basis proffered to The Court as *prima facie* evidence to support such a defense. Id. at 465.

[104] The Supreme Court of North Dakota treats claims of a “common law necessity defense” as an “affirmative defense” in criminal cases. Even though it is not required by any statute - and despite the possession on the part of a criminal defendant of a *Constitutional* Right to a “Jury Trial”... (this right obviously posing significant “due process of law concerns” raised by any *refusal* on the part of a criminal court judge to allow the presentation of a criminal defendant’s proffered common law defense of necessity to his jury), some North Dakota State criminal trial courts have required that a criminal defendant present to the court a “*prima facie* showing” of the support for his or her “necessity defense” before evidence supporting it can be presented to the jury. See, e.g. State v. Sahr, 470 N.W.2d 185, 190-91 (N.D. 1991); State v. Manning, 716 N.W.2d 466, 467 (N.D. 2006). This *pre*-trial showing is *in addition to* the requirement that a defendant make a *prima facie*

showing of necessity *at trial* in order to be entitled to a jury instruction on such a “necessity defense” *at trial*. State v. Brodie, 532 N.W.2d 557, 557 (Minn. 1995). The Supreme Court of North Dakota has asserted that “the burden *of production* for “the defense of lesser evils” (also known as “choice of evils” or a “necessity defense”) is placed on the defendant” in State v. Sahr, 470 N.W.2d 185, 189 (N.D. 1991). However, the Sahr court did NOT set out any clear “standard of proof” that had to be met by a criminal defendant identifying what *degree of “proof”* would need to be presented to a trial court in order to qualify as “a *prima facie* showing” that would require that a criminal defendant be allowed by the trial court to present his or her necessity defense to their jury. Generally in North Dakota, “if the party bearing the burden of proof presents evidence strong enough, if uncontradicted, to support a finding *by a jury* in his or her favor, that party has been deemed to have made a legally-adequate “*prima facie* showing.” M.E. v. M.E., 2017 ND 121, ¶ 1, 894 N.W.2d 877, 878. In fact, “a defendant is entitled to an instruction on a theory of his defense even though the evidentiary basis for that theory is ‘weak, inconsistent, or even of doubtful credibility.’” State v. Thiel, 411 N.W. 2d 66, 66- 67 (N.D. 1987). The standard of proof that would require a court to allow the presentation of an analogous justification defense, such as self-defense, to his or her North Dakota jury, is simply “if there is evidence to support” the affirmative defense at issue. State v. Olander, 1998 ND 50, ¶ 20, 575 N.W.2d 658. Similarly, **the U.S. Eighth Circuit Court of Appeals has held that the presentation to The Court of *any “underlying evidentiary foundation” supporting each element of the necessity defense, “regardless of how weak, inconsistent or dubious”, is legally sufficient to entitle the defendant to a jury instruction.*** United States v. Casperson, 773 F.2d 216, 223 n. 12 (8th Cir.1985); Also: United States v. Kabat, 797 F.2d 580 (8th Cir. 1986). This extremely low “standard of proof”, or “burden of production” is also the legal standard of proof to be met by a criminal defendant in other state criminal courts in this region. In Wyoming, for example, “any competent evidence is sufficient to establish a defense theory, even if it consists only of the testimony of the defendant.” Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002). In Texas, as a further example, **“if the defendant produces evidence, from whatever source and of whatever strength, raising every element of the defense, then he is entitled to an instruction on that defense, and the State must disprove the defense beyond a reasonable doubt.”** Wilson v. State, 777 S.W.2d 823, 825 (Tex. App. 1989).

[105] It follows, then, that, as a *preliminary* matter, a criminal defendant need meet only quite a low standard of proof in order to be entitled, as a matter of law, to present his Necessity Defense to his jury - by presenting “*some* evidence” to The Court, prior to trial, supporting each element of his proffered “necessity defense” in order to be deemed to have made a successful “*prima facie* showing”, requiring, as a matter of law, that a state criminal court allow the defendant to bring his evidence before his jury.

[106] The application of this standard of proof to the specific facts of this case is set forth below, correlated to the specific Necessity Defenses proffered to this court by Defendant Iron Eyes. Defendant Iron Eyes maintains that this “showing” demonstrates that Defendant Chase Iron Eyes, as a matter of law, has more than met his

“burden of going forward”, or “burden of production”, so as to require this Court to allow him to present his Good Faith Necessity Defense to his jury in November – and, thereupon impose upon The State the burden of proving, *beyond any reasonable doubt*, that Defendant Iron Eyes did *not* harbor a “Good Faith Belief” that was adequately “reasonably grounded” so as to require that his jury find him “not guilty” of *either* criminal charge filed against him by The State.

[107] Defendant Iron Eyes will, of course, be prepared to provide to The Court more such evidence prior to the commencement of his trial, allowing adequate time for The State to address any such additional offerings.

The Standard “Essential Elements” of a Necessity Defense

[108] Frankly stated, a successful “necessity defense”, in effect, “exonerates of guilt” an individual criminal defendant, who has been determined, by a jury, to have committed a violation of some specific criminal statute “under the pressure of circumstances” - if the harm that would have resulted had that defendant strictly complied with that specific criminal statute at issue would have “significantly exceeded” the harm that actually resulted from whatever the actions were that The State asserts breached that specific law. Griffin v. United States, 447 A.2d 776, 776 (D.C. Ct. App. 1982); State v. Marley, 54 Haw. 450, 471-72 (1973); See Also United States v. Lewis, 628 F.2d 1276 (10 Cir. 1980); United States v. Micklus, 581 F.2d 612 (7th Cir. 1978); La Fave Scott, Criminal Law § 50 at 381 (1972).

[109] The law of the State of North Dakota – and all other States in our Union –provide that such a “Necessity Defense” is available to any criminal defendant where:

1. There was no timely legal alternative available to the defendant that did not involve a violation of the law that would have actually stopped the greater harm from occurring. United States v. Bailey, 444 U.S. 394, 410 (1980); La Fave Scott, Criminal Law § 50 (1972).
2. The harm to be prevented was imminent., State v. Marley, 54 Haw. 450, 471-472 (1973); and
3. The defendant’s actions were reasonably “causally connected” to a reasonable *possibility* – not a *certainty* -of actually preventing or stopping the threatened greater harm. Id.

[109] The North Dakota State Supreme Court has ruled, similarly, that a criminal defendant before a criminal court in the State of North Dakota is entitled to present such a “necessity defense” - if he can establish, by a *prima facie* showing, three essential elements:

1. That the act charged was done to prevent a significant and immediate evil that has arisen without the fault of the defendant;
2. That there was no reasonable or adequate legal alternative available, in time, to have stopped or prevented the great harms at issue; and
3. Any actual harm caused by the defendant’s actions was not disproportionate to the harm avoided.” Brief of Appellant citing trial court Memoranda Decision, page 4, lines 20-23, State of North Dakota v. Manning, 716 N.W.2d 466 (N.D. 2006).

[110] In addition, the North Dakota State Supreme Court has ruled, in The Sahr Case, that, in order to support the presentation to one’s jury of one’s proffered “necessity defense, the greater “evil”, “harm”,

or “injury” that was sought to be avoided by the defendant by his actions can NOT be a *Constitutionally-protected* action. State v. Sahr, 470 N.W. 2d 185 (ND 1991).

[110] To be clear, in light of *Manning* and *Sahr*, in the State of North Dakota, the essential elements of a “necessity defense” can be broken down into six distinct “showings”:

1. That the defendant believed his act to be “causally connected” to preventing
2. an immediate and significant evil,
3. that has arisen through no fault on the part of the defendant.
4. That no reasonable or adequate legal alternative was reasonably-available to the defendant, in a timely manner, that had a reasonable probability of having prevented the greater evil at issue from occurring.
5. That any harm that was proven to have been actually caused by the defendant’s action was not “disproportionate to” the harm that his action sought to avoid or prevent.
6. And, finally, that the defendant did not act to try to stop the exercise on the part of another person his or her U.S. Supreme Court-recognized Constitutionally-protected right.

1. Causal Connection Between the Conduct of the Defendant and the Prevention of a Greater Evil

[111] The “theoretical basis of the [necessity] defense [is] that, in most instances, society benefits when one acts to prevent another from intentionally or negligently causing injury to people or property.” La Fave Scott, Criminal Law § 50 at 381 (1972). Thus, an “essential element of the [necessity] defense is a reasonable anticipation on the part of an accused criminal defendant of a causal relationship between the otherwise criminal act and the avoidance of the harm” United States v. Simpson, 460 F.2d 515 (9th Cir. 1972). The 8th Circuit Federal Court of Appeals has expressed some degree of skepticism as to the ability of some “political demonstrators” to be able to demonstrate, to a court, a legally-sufficient “causal connection” between that political demonstrator’s unlawful act actually committed and the avoidance of some “greater harm” that was the object of that defendant’s action that he asserts made it “necessary” for him to break some criminal law. United States v. Kroncke, 459 F.2d 697, 701 (8th Cir. 1972). However, the defendants in *The Kroncke Case* broke into a federal building in the nighttime and destroyed draft board records “in order to stop the Vietnam War.” Id. at 698. *The Kroncke Case*, therefore, stands for no more a general principle than that, where the “causal connection” between the specific action undertaken that has been asserted to have violated some specific statute and the goal of that action is “TOO tenuous and uncertain,” (emphasis supplied), a sufficient “causal connection” will not, normally, have been adequately “shown”, by the defendant, to have been demonstrated to the court. See, also: Dorrell, 758 F. 2d at 433 (9th Cir). In contrast, however, a criminal defendant is entitled to the defense of necessity if his action has any reasonable potential prospect of actually preventing the threatened greater harm. State v. Marley, 54 Hawaii, 450, 471 (1973).

2. Significant and Immediate Evil Identified

[112] An essential element of a “necessity defense” is the provision, by the defendant, of *prima facie* evidence supporting a belief on the part of the defendant that a specific threatened harm was “imminent” - such

as the threatened “imminent” occurrence of a disaster. La Fave Scott, Criminal Law § 50 at 387 (1972). Such a situation arises when the manifestation of such threatened harm is “imminent” and no timely legal option is reasonably available to the defendant that will reasonably avoid that harm, other than his literally disobeying the literal terms of some criminal statute (such as “trespassing.”) Id. The United States Supreme Court has identified such “imminence” as a necessary element of any necessity defense, noting that “the harm to be avoided must be so imminent that, absent the defendant’s acts, the harm is certain to occur.” United States v. Bailey, 444 U.S. 394, 410 (1980). The Federal Eighth Circuit Court of Appeals made this same observation, later, stating that “the harm to be avoided must be so imminent that, absent the defendant’s criminal acts, the harm is certain to occur.” United States v. Kabat, 797 F.2d 580, 590 (8th Cir. 1986)

[113] However, “imminence” and “certainty” can be established in a number of different ways. For instance, the nearby 10th Federal Circuit Court of Appeals has explicitly held that a “great evil” may be found to be “imminent” at any point in a chain of events which, *once begun*, will “certainly” *ultimately* result in a significant harm to the public [. . .] Imminence, thus, refers to the *nature* of the threat, rather than to the identification of any specific time when the endangerment initially arose.” Burlington N. & Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020-21 (10th Cir. 2007) (emphasis supplied.). Additionally, “the greater harm” identified in any specific case as the predicate for the necessity offense may be already happening and would simply be made *worse* by some particular action that would *increase* the harm that is already underway. People v. Gray, 571 N.Y.S.2d 851, 858-89 (Crim. Ct. 1991).

[[114] In *Gray*, the New York City Criminal Court acquitted defendants who were proffering a “necessity defense” in defense of their having “trespassed” on the site of the impending commencement of the construction of a new vehicular lane being built that would *add to* air pollution. Id. The *Gray* court predicated its ruling on the abundance of evidence that air pollution clearly adversely impacts human health. Id. “[T]he grave harm in this case is occurring every day. Id. The additional pollution breathed by all New Yorkers ... as a result of [the identified harm] of the construction of an additional vehicular lane is a concrete harm being suffered by the population at this moment.” Ibid. at 859. In Chase Iron Eyes’ case, the pending issuance of the absolutely indispensable U.S. Army Corps of Engineers’ Federal Certificate of Easement that was a *sine qua non* of the immediately-pending re-commencement of the construction of the final portion of the Dakota Access Oil Pipeline at issue in this case was only HOURS from occurring. And, the facts of this case show that the re-commencement of that construction was only FOUR DAYS away, itself, when Defendant Iron Eyes undertook the action he undertook to create the new encampment and join in Traditional Lakota Religious Ceremony to generate the “intervention” of both his Lakota Ancestors and the public at large to try to stop the re-commencement of that construction – which, once re-commenced, constituted the event that was the *initiation* of “the chain of causation” that would have “inevitably” led to “the great harm” that Defendant Iron Eyes sought to prevent: the finalization and putting into operation of the 910,000-gallon-an-hour Dakota Access Oil

Pipeline directly beneath the sole source of fresh drinking water for himself, his Lakota family and his entire Lakota Band of The Sioux Tribe of Indians, who were resident on several of the Indian Reservations in North and South Dakota, as well as the coming to full and irrevocable *fruition* a series of three federal criminal anti-civil rights conspiracies that were designed and intended to deprive Defendant Iron Eyes and the members of the Lakota Band of Sioux Indians in residence on those Reservations of their Constitutionally-guaranteed Right to The Equal Protection of The Law. That short a time available did not afford him, or his people, the reasonable time necessary to obtain reasonable access to legal alternatives to stop these “great evils” from coming to fruition at the end of The Chain of Causation that was in the “imminent” offing on that morning of February 1st of 2917. So that situation called for immediate action on the part of Chase iron Eyes and his fellow Lakota Sioux People.

[115] Further, a criminal defendant wishing to assert a necessity defense can establish, by a *prima facie* showing, that he acted to prevent a "significant evil." CALCRIM 3403- Necessity Jury Instructions (2017). The "significant evil" element requires that a defendant show that he acted to prevent “a very serious harm.” *Id.* However, someone's life need not always be in danger. (Though, in this case, *many* lives were certainly “endangered” by the “greater evils” sought to be stopped by the action of Chase Iron Eyes and his Lakota People.) For example, courts have found that a threatened physical assault on a Native American prison inmate by other inmates would be “significant *enough*” to support the availability of a necessity defense. See *People v. Lovercamp*, 43 Cal.App.3d 823, 825 (1974); See, also: *In re Eichorn*, 69 Cal.App.4th 382, 389-90 (1998). Thus, a range of “evils” may well constitute a “significant evil” adequate to require a criminal trial court to allow a defendant present to his jury his or her necessity defense.

3. Harm Arose Without Fault of the Defendant

[116] Moreover, so long as the defendant was NOT at fault in *creating* the “greater harm” that he sought to prevent through his action deemed to have been “unlawful”, he may assert a necessity defense. La Fave Scott, *Criminal Law* § 50 at 388 (1972). The Model Penal Code recognizes this element of the necessity defense, stating that “the defendant must be without blame in occasioning or developing the situation.” Model Penal Code § 3.02(2). For example, if a defendant was driving recklessly and, thereby, created a situation where he must either stay in the roadway and rundown A and B or go to the sidewalk and rundown only C, and he chooses that lesser harm, and hence strikes and kills C, he was “at fault” for creating “the greater harm” (of killing both A & B) because he brought about the threat of that greater evil. La Fave Scott, *Criminal Law* § 50 at 388 (1972). Consequently, the defendant-driver would be guilty of the reckless manslaughter of C. *Id.*

4. No Reasonable or Adequate Legal Alternative

[117] The defense of necessity is available whenever the criminal defendant is faced with a “choice between two evils.” He may either do something that violates the literal terms of a specific criminal statute even though, by violating that statute, he creates *some degree* of “harm” through his action, or he may *refrain from*

committing that lesser unlawful act and, thereby, allow a “greater harm” to occur. *Id.* at 387. Even in such a situation, however, the United States Supreme Court has found that, with regards to the necessity defense, “under any definition [...] one principle remains constant: if there was a reasonable, legal alternative to violating the law: i.e. “a chance to refuse to do the criminal act and also avoid the threatened harm,” then the defendant’s demand for “necessity defense” will fail. *United States v. Bailey*, 444 U.S. 394, 410 (1980). The Eighth Circuit, as well as a number of other jurisdictions, have ruled that an “element of any necessity defense is the lack of a reasonable alternative to violating the law.” These courts have held that the defense of necessity is not available to a defendant who was faced with simply making a choice among a variety of several alternative courses of action, many of which were entirely legal, that may well have been likely to have prevented the evil sought to have been prevented by the course of action that he chose that violated the law. His unlawful action, instead, must have been based on a real emergency. A necessity defense can be successfully asserted only by a defendant who was confronted with a crisis, such as a personal danger, which did not permit a selection from among several solutions, some of which did not involve criminal acts.” *United States v. Kabat* 797 F.2d 580, 590 (8th Cir. 1986); *United States v. Seward* 687 F.2d 1270, 1276 (10 Cir. 1982).

5. Harm Caused Not Disproportionate to the Harm Avoided

[118] The defense of necessity also requires a showing that the harm sought to be avoided was “greater”, or “*more* harmful” than any actual harm that was actually caused by the defendant's illegal actions. *Nelson v. State*, 597 P.2d 977, 980 (Alaska 1979). The greater harm that a defendant sought to avoid traditionally requires a reasonable belief that such conduct was necessary to avoid a public or private injury greater than any injury or damage that was actually caused by his unlawful conduct. La Fave Scott, *Criminal Law* § 50 at 386 (1972). “In other words, he must believe that his act [was] necessary to avoid the greater harm. An honest belief in the necessity of his actions is all that is required [...] even if, unknown to him, the situation did not in fact call for the drastic action taken.” *Id.* (emphasis supplied.)

[119] Therefore, any action that the defendant chose to undertake must cause less harm than the harm that he sought to avoid. See La Fave Scott, *Criminal Law* § 50 at 385 (1972). *United States v. Ashton* 24 F. Cas 873 (No. 14, 470) (C.C.D. Mass 1834). It follows, then, that, as an essential element of the necessity defense, the harm reasonably foreseeably resulting from a failure to act must be balanced against any harm that was actually caused by the illegal action. *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1080 (1981).

6. Absence of the *Sahr* exception for attempting to prevent any explicitly Constitutionally Protected Activity

[120] Finally, in the State of North Dakota, in order for a defendant charged with engaging in an unlawful act to be allowed to present a specifically proffered necessity defense, the United States Supreme Court must not have already officially deemed the “greater harm” that defendant sought to prevent through his

unlawful action undertaken to be a *Constitutionally*-protected act. *Sahr* is the case that, in North Dakota, inserts this additional element of the necessity defense in criminal cases in North Dakota. *State v. Sahr*, 470 N.W. 2d 185 (ND 1991). The *Sahr* court concluded that it did not need to determine the precise scope of the necessity defense because the defendants' criminal action in that case made their claim very clear. But The Supreme Court did not read the North Dakota State Statute expressly authorizing the "justification" defense to "license" the judicial extension of the "justification" defense to *just any* individualized or subjective conception of necessity. *Id.* The court did, however, expressly declare that the interest sought to be promoted by the commission of a specific crime must be "legally cognizable" in order to be justified as a "necessity." (See a detailed discussion of this *Sahr* Court analysis at pp. below.)

[121] In *Sahr*, several anti-abortion activists trespassed on the grounds of a North Dakota abortion clinic with the objective of shutting it down. *Id.* Charged with "trespassing", the defendants claimed a legal necessity. *Id.* However, the trial court held that the defense was not available to the trespassers because the United States Supreme Court, in *Roe v. Wade*, had expressly ruled that the specific behavior that the defendants in that case were trying to stop as "a great evil" was an especially-protected constitutional activity, and thus, could not be considered a "Great Evil" by a United States court, for the purposes of its needing to be stopped or avoided. *Id.*

VII
The Evidentiary Standard To Be Met by Defendant Iron Eyes
to Meet His Mere “Burden of “Going Forward”
To
Shift The Burden of PROOF Beyond a Reasonable Doubt to The State
As To
Each “Necessity Defense”

Type of Evidence Needed to Constitute a *Prima Facie* Showing of a Necessity Defense Case

[122] A defendant is entitled to a necessity defense jury instruction if the jury instruction requested sets forth a correct statement of the law and has support in the record. U.S. v. Marchant, 774 F.2d 888, 894 (8th Cir. 1995). The Eighth Circuit Federal Court of Appeals has explicitly held that it is legally sufficient that a criminal defendant seeking to assert his “necessity defense” simply assert an “underlying evidentiary foundation” for each element of the defense “regardless of how weak, inconsistent or dubious” the evidence on a given point may seem. U.S. v. Kabat, 797 F.2d 580, 590-591 (8th Cir. 1986). Such a proffered necessity defense *must be* submitted to a criminal defendant’s jury “if a reasonable person ‘might conclude’ that the evidence supports the defendant’s position.” *Id.* at 591. Further, a court *must* resolve a close question as to whether a criminal defendant movant has met his burden of production taking each proffer of evidence in the light most favorable to the movant defendant (just as a court would be required to do in favor of a plaintiff in response to a Rule 12(b)(6) Motion to Dismiss his complaint filed in a civil case.) People v. Gray, 571 N.Y.S.2d 851, 854 (N.Y. Crim. Ct. 1991). The burden of proof then shifts to the State to disprove the “Good Faith” nature of the defendant’s belief, beyond a reasonable doubt. *Id.* This is true whether the trier of fact is a jury or a Judge. *Id.*

[123] It follows, therefore, that a ruling as to whether a necessity instruction is necessary should not be decided until the evidence has been heard. Otherwise, the Court engages in fact-finding without the benefit of testimony from experts, lay witnesses or the defendants.

[124] While some jurisdictions have refused to allow the necessity defense to move forward in the context of indirect civil disobedience, such cases did not involve expert testimony to support the elements of the defense. See United States v. Schoon, 971 F.2d 193 (9th Cir. 1992); State v. Aver, 109 Wn.2d 303 (1987).

[125] In contrast, Defendant Iron Eyes wishes to proffer experts to explain the nature of the competing harms, so that the jury can ultimately arrive at an informed decision as to the pertinent facts.

[126] By the same token, with regards to the necessity defense, the element of “significant and immediate evil” is almost always a question for the trier of fact. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991); State v. Heyer, Dist Ct, Oakland County, 52d Dist, 1st Div. Nos. 83-101194 — 101228 [1985]; People v Jones, Nos. 83-101226 — 83-101228, slip opn, at 4-5, Mich Dist Ct, Mar. 2, 1984. Examples

of sufficient evidence include witnesses, studies, or the Defendant's own testimony. People v. Gray, 571 N.Y.S.2d 851, 860 (N.Y. Crim. Ct. 1991); Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002). To clarify, such evidence is sufficient for a Defendant to meet his burden of production at trial. A defendant may present even less evidence for a threshold determination of whether the jury may consider his necessity defense.

[127] What's more, The State will present to Defendant Iron Eyes' jury evidence purportedly contrary to Defendant Iron Eyes' evidence with regard to the competing harms in order to fulfill its obligation of proving the Defendant's guilt beyond a reasonable doubt. Thus, denying Defendant Iron Eyes the right to proffer evidence and call witnesses *before his jury* runs counter to the traditional structure of the adversarial system. Moreover, such preclusion runs counter to the Sixth Amendment "right to have compulsory process for witnesses in his favor." U.S. CONST. AMEND. VI.

[128] Second, a "minimally sufficient case" for the element of "causal connection" between the Defendant's conduct and his objective sought includes reference to historical effectiveness of such tactics. See State v. Thayer, 188 Vt. 482, 485-86 (2010); See Also People v. Gray, 571 N.Y.S.2d 851, 870 (N.Y. Crim. Ct. 1991); See Also People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979).

[129] Third, Courts systematically acknowledge the fact that activists do not "create" the harms challenged. Contrary to the State's assertion in its Motion in Limine, any State speculation that the Water Protectors utilized fossil fuels for transportation and for other commonplace purposes does not, in any way, undercut the message of their activism. For example, a New York Court found that "Transportation Alternatives," an organization devoted to the promotion of ecologically sound means of transportation, was not "at fault" for creating the deleterious traffic conditions that they challenged in New York City. People v. Gray, 571 N.Y.S.2d 851, 858 (N.Y. Crim. Ct. 1991). While it *may* be likely that, at some point in their lives, activists from the organization utilized car transportation, but, nonetheless, the New York Court found that the harms that the New York City roadway posed could not be said to have been "caused" through any fault of the defendants. Id.

[130] Fourth, "to dispense with the necessity defense by assuming that people always have access to effective legal means of protest circumvents the purpose of the defense. When courts rule as a matter of law that defendants always have a reasonable belief in other adequate alternatives, they are asserting that regardless of how diligent a party is in pursuing alternatives, no matter how much time has been spent in legitimate efforts to prevent the harm, no matter how ineffective previous measures have been to handle the emergency, the courts, in hindsight, can, if the court insists on doing so, find just one more conceivable "alternative" that a citizen *might have* tried and exhausted before acting out of necessity." People v. Gray, 571 N.Y.S.2d 851, 860-861 (N.Y. Crim. Ct. 1991). Thus, it has been held, over and over again, that, when a defendant testifies to a long history of attempts to prevent the harm sought to be prevented, such testimony satisfies the threshold evidentiary standard of the "no reasonable legal alternatives" element of the necessity defense. Id., See Also

People v. Largrou, Nos. 85-0000098 a 85-000100, 85-000192, 10-11 (Mich. Dist. Ct. Mar. 22, 1985). See Also People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979).

[131] Next, Courts have generally recognized that “the harms perceived by activists protesting nuclear weapons and power and United States domestic and foreign policy — nuclear holocaust, international law violations, torture, murder, the unnecessary deaths of United States citizens as a result of environmental hazards and disease — are far greater than those created by a trespass or disorderly conduct.” See, e.g. People v. Chachere, 428 N.Y.S.2d 781, 782 (N.Y. Dist. Ct. 1980). A defendant can meet his burden of going forward on this issue through their own testimony, as well as through the testimony of expert witnesses, *at his trial*.

[132] Finally, Defendant Iron Eyes need not meet an evidentiary threshold with regard to the Sahr element of the necessity defense, because this is not a case in which he acted to try to stop any act that the United States Supreme Court has expressly deemed to be an especially-protected Constitutionally-guaranteed right, as it has the Right to an Abortion. State v. Sahr, 470 N.W.2d 185, 192 (N.D. 1991). No corresponding constitutional rights exist to pollute water, contribute to life threatening climate change, racially discriminate, or deprive individuals of their constitutional rights to assemble to convey a message to the public and to their government.

[133] In short, in light of Defendant Iron Eyes’ favorably low threshold standard of proof that he needs to meet to satisfy his burden of going forward as to whether the evidence he has already proffered to this court is sufficient to permit a defendant to present a necessity defense to the jury, the offerings of July 20th and today demonstrate that Defendant Iron Eyes has more than met his burden.

VIII
The Evidence Constituting The *Prima Facie* Showing As to
the “Reasonably Well-Grounded” Nature of Each of These Beliefs
On The Part of Chase Iron Eyes

Necessity Defense #1

The Existential Threat to Defendant Iron Eyes’ & His Tribe’s Sole Source of
Fresh Drinking Water

**1. Defendant Iron Eyes Believed That His Actions Undertaken on February 1st of 2017 were *Causally Connected* to Preventing The Greater Harm That The Pipeline Posed to His Tribe’s Sole Source of
Fresh Drinking Water**

[134] The level of evidence required for justification defenses in North Dakota is simply “if there is evidence” of the affirmative defense at issue. State v. Olander, 575 N.W.2d 658,664 (1998). Similarly, the Eighth Circuit has held that showing an “underlying evidentiary foundation” as to each element of the necessity defense, “regardless of how weak, inconsistent or dubious” is sufficient to be entitled to a jury instruction. United States v. Casperson, 773 F.2d 216, 223 n. 12 (8th Cir.1985); See United States v. Kabat, 797 F.2d 580 (8th Cir. 1986). This low bar is echoed in other similarly-situated states. In Wyoming, “any competent evidence is sufficient to establish a defense theory even if it consists only of testimony of the defendant.” Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002).

[135] Accordingly, evidence demonstrates that Defendant Iron Eyes’ reasonably designed his conduct to actually prevent the threatened harm to Lake Oahe. For example, Dakota Access had previously halted construction of the pipeline on December 4, 2016 as the result of Water Protector actions at the construction site. See Robinson Meyer, “The Obama Administration Temporarily Blocks the Dakota Access Pipeline,” *The Atlantic* (2016).

[136] More importantly, evidence demonstrates that Defendant Iron Eyes and his fellow water protectors held a good faith belief that their actions in occupying Last Child’s Camp, erecting teepees, lighting a sacred fire, and praying to their ancestors would halt construction of the pipeline, hence protecting Lake Oahe from the millions of gallons of oil that the pipeline would imminently transport. For example, an audio recording submitted to this court in the case of Jenni Monet demonstrates the spiritual underpinnings of this belief. See Doc ID #633. As Julian BearRunner explains, the February 1, 2017 ceremony was “spiritual. The spirits told us to stand our ground.” The entire ceremony was planned with “spiritual guidance.” *Id.* The Lakota Water Protectors were not alone on the hill, but were “standing with [their] ancestors” *Id.* Further, the Lakota Peoples’ religious belief that prayer can result in ancestral intercession is well documented in academic.

https://scholarworks.iu.edu/dspace/bitstream/handle/2022/19811/Posthumus_indiana_0093A_13449.pdf?sequence=1;

[137] Also probative of the reasonable causal connection between Defendant Iron Eyes' water protection and the aversion of the threatened harm to the water is the historic halting of pipeline construction because of similar conduct. For example, December 2016 news articles evidence that similar water protection tactics resulted in the administrative block on pipeline construction. "Obama Administration Stops Dakota Access Pipeline in Historic Decision," Vice (December 2016) available at: https://news.vice.com/en_us/article/8xmwig/obama-administration-stops-dakota-access-pipeline-in-historic-decision, as well as a Memorandum from the Department of the Army, <https://web.archive.org/web/20170209040816/https://www.army.mil/e2/c/downloads/459011.pdf>. While the memorandum from the Army does not specifically address the protests, it only requires one small step to see that the reevaluation of the safety of the DAPL routing under Oahe would not have taken place without the protests. The fact that Judge Boasburg rejected a stay on construction in the SRST's civil action bolsters this contention that the pipeline construction was stopped by public protest and not the Court and – at that time the protests were the strongest force pushing for a halt to construction. Order, Standing Rock Sioux Tribe v. United States Army Corps of Engineers et. al., No. 16-5259 (Dist. Ct. of Columbia Cir. 2016) available at: http://earthjustice.org/sites/default/files/files/standing-rock_court-order-2016-10-09.pdf.

1. Defendant Iron Eyes believed that he acted in response to an emergency in order to prevent a "significant evil;" the perpetual pollution of Lake Oahe, the Tribe's sole source of fresh drinking water.

[138] Within the context of environmental danger, a finding that an activity may present an imminent and substantial harm does not require actual harm. Meghrig v. KFC Western, Inc. 516 U.S. 479, 485-486 (1996). Rather, the Supreme Court has explained that, while an imminent threat must exist, the impact of that threat may not be felt until later." Id. Courts have also consistently held that "endangerment" means a threatened or potential harm and does not require proof of actual harm, as of yet. United States v. Ottati & Goss, Inc., 630 F.Supp. 1361, 1394 (D.N.H.1985); United States v. Vertac Chemical Corp. 489 F.Supp. 870, 885 (E.D.Ark.1980). See also Ethyl Corp. v. EPA, 541 F.2d 1, 13 (D.C.Cir.) (en banc), cert. denied, 426 U.S. 941, 96 S.Ct. 2662, 49 L.Ed.2d 394 (1976) ("[c]ase law and dictionary definition agree that 'endanger' means something less than actual harm"). Additionally, other circuits have declared that the harm identified as the basis for the necessity offense may be already happening and be made worse by the particular activity that increases the harm. People v. Gray, 571 N.Y.S.2d 851, 858-89 (Crim. Ct. 1991).

[139] Within the context of criminal necessity in the field of preventing environmental damage, "the proper inquiry is not the immediacy of the threat but the immediacy of the need to respond to stop the inevitability of that harm occurring. If the threatened harm is such that it cannot be avoided if the intended victim waits much beyond the point in time at which he acted, the principles underlying the necessity defense

permits him to act earlier – “as early as is required to defend himself effectively.” LaFave & Scott, §5.7(d), 656, citing 2 P. Robinson, Criminal Law Defenses § 131(c)(1)(1984).

[140] Further, the element of “significant and immediate evil” as it relates to the necessity defense is a question for the trier of fact, which is the jury in this case. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991); State v. Heyer, Dist Ct, Oakland County, 52d Dist, 1st Div, Nos. 83-101194 — 101228 [1985]; People v Jones, Nos. 83-101226 — 83-101228, slip opn, at 4-5, Mich Dist Ct, Mar. 2, 1984. Sufficient evidence to show that an evil is significant and immediate include witnesses, studies, or the Defendant’s own testimony. People v. Gray, 571 N.Y.S.2d 851, 860 (N.Y. Crim. Ct. 1991); Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002). This evidence is sufficient for a Defendant to meet his burden of production at trial. The threshold determination of whether the jury may consider a Defendant’s necessity defense requires even less.

[141] In the instant case, evidence exists not only in the form of the Defendant’s own affidavit, but also in filings, court opinions, and orders stemming from the litigation pending in D.C. at the time of the Defendant’s arrest. Order, Standing Rock Sioux Tribe v. United States Army Corps of Engineers et. al., No. 16-5259 (Dist. Ct. of Columbia Cir. 2016) available at: http://earthjustice.org/sites/default/files/files/standing-rock_court-order-2016-10-09.pdf. Such documents reveal that the Army Corps did not adequately consider the serious and dangerous environmental consequences that the existence of the pipeline posed. The Standing Rock Sioux Tribe themselves submitted reports to emphasize that they were “very concerned with potential threats to their water quality and ensuring their fishery and wildlife resources in and adjacent to the river are not impaired” after the Game and Fish department conducted ecological surveys. Standing Rock Sioux Tribe, Appendix A: Standing Rock Sioux Tribe Game and Fish Department Missouri River High Consequence Area Assessment: Establishing Baseline Ecological Information and Impacts to Hunting and Fishing from the Proposed Dapl Pipeline in the Event of an Oil Spill in the Missouri River in North Dakota Adjacent to the Standing Rock Reservation 2017 from Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe, at 32-33 (2018).

[142] The ToxServices, LLC report that the National Resources Defense Council (NRDC) published on the specific risks associated with the Bakken light sweet crude oil that the DAPL now transports buttresses the well-founded nature of Defendant Iron Eyes’ and his Standing Rock Sioux Tribe’s well-founded belief that the construction of The Dakota Access Oil Pipeline directly beneath their sole source of fresh drinking water constituted an existential threat to their water and to their continued existence as a landed tribe. Standing Rock Sioux Tribe, Appendix D: Toxservices, LLC Greenscreen® for Safer Chemicals Assessment Report: Dapl Bakken Pipeline Crude Oil, a Report Prepared for the Natural Resources Defense Council December 2017 from Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe (2017). The report concludes: “The Tribe’s Municipal, Rural and Industrial (“MR&I”) program estimates that if its intakes on Lake Oahe are shut down due to an oil spill, the Tribe would have 3-days maximum of drinking water.” Id.

[143] Further, the declarations of tribal elders in Appendix G of the SRST report evidence the well-founded nature of the Standing Rock Sioux's concern of the threat the DAPL posed to their waters. The report explains how important traditional foods are to the maintenance of tribal health. Standing Rock Sioux Tribe, Appendix G: Declarations of Steve Sitting Bear, Butch Thunder Hawk, Cedric Goodhouse, Evelyn Goodhouse, Geraldine Agard, and Theo Iron Cloud From Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe (2018). These foods are especially important as 43.2% of SRST citizens live in poverty and may not be able to afford to purchase healthy foods since much of reservation land is in what is known as a "food desert," where access to supermarkets and fresh foods are limited by distance and lack of vehicle access. Id. The U.S. Department of Agriculture's Food Access Research Atlas evidences this reality. The research demonstrates that three of the four census tracts that make up the Standing Rock Reservation are considered low-income with a significant number of residents who live more than twenty miles from a supermarket, many without vehicle access. United States Department of Agriculture Economic Research Service, Food Access Research Atlas, available at: <https://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas/>.

[144] The declaration of SRST citizen Evelyn Goodhouse as evidenced in the Standing Rock Sioux tribe comments to the final Army Corps of Engineers Environmental Assessment report summarizes the tribe's concerns about the loss of health to future generations due to an oil spill:

"I worry about whether these things will be there for them. I worry about being able to give them medicine to stay healthy, or to get beans, or set lines to fish at the river. What about hunting-will they be able to go to the river to hunt? When I heard about the pipeline, I thought of my dad hunting and feeding us from right where the pipeline crosses-it is very upsetting." Standing Rock Sioux Tribe, Appendix G: Declarations of Steve Sitting Bear, Butch Thunder Hawk, Cedric Goodhouse, Evelyn Goodhouse, Geraldine Agard, and Theo Iron Cloud From Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe (2018).

[145] Additionally, the comments include the declarations of various Standing Rock Sioux elders such as Steven Sitting Bear, who stated that hunting and fishing allow youth to learn self-sufficiency and reduces tribal dependence on the government. Id. Nearly all of the elders draw a direct link between continuance of subsistence practices and maintenance of traditional Lakota culture. Id. The Standing Rock Sioux Tribe report attests to the importance of plants gathered from the Missouri riverbank for traditional medicine and cultural products. Id. Additionally, hunting and fishing are intimately linked to the identity of the Hunkpapa Lakota at Standing Rock, known by historians as the "hunting band." Id. The SRST report explains how the connection between water, hunting, and Lakota culture is bound up in Lakota oral histories, especially the creation story in which the first spirit Inyan sacrifices his blood to make the waters of the earth. Id. This story underlies the principle that water is life-giving and the expectation that Lakota men will harvest from the land to provide for

their community. These subsistence practices promote prayer, sustainability, and cooperation within the SRST community. The maintenance of traditional hunting territories also fosters peaceful interaction with other human and non-human nations, promoting the ethic of *mitakuye oyasin*, or “we are all related.” The report explains the significance of this value:

[146] “*Mitakuye oyasin* establishes an ethic of sustainability. No more game or fish are taken than what the resource allows, because we are related to the deer, antelope, elk and other game. All parts of the animal are used, nothing is wasted. Young hunters are taught to identify male game that no longer are able to reproduce – the wisdom of the elders, passed down, to help ensure a sustainable harvest of game for the future.” Id.

[147] These explanations elucidate the intimate connection between Lakota culture, water, and traditional subsistence practices such that an oil spill in Lake Oahe would be disastrous to the Standing Rock Sioux Tribe’s ability to maintain its cultural practices and therefore survive into the future as a distinct entity. Having grown up with this understanding, such evidence is highly probative of Defendant Iron Eyes’ belief that construction of the Dakota Access Pipeline posed a “significant evil” to his tribe. All of these Affidavits and Testimonies are included here in Defendant Iron Eyes’ filing by reference.

[148] As to the serious risks and consequences of a rupture or spill, see Attachment C [Affidavit of Clarence Johnson].

2. that had arisen without culpability on his part.

[149] Next, in this context, Courts tend to concede the fact that activists did not create the harms challenged. See People v. Gray, 571 N.Y.S.2d 851, 858 (N.Y. Crim. Ct. 1991). Similarly, the State cannot meet its burden of proving beyond a reasonable doubt that Defendant Iron Eyes caused the harm he sought to avoid, an imminent threat of contamination to the Standing Rock Sioux Tribe’s main water source, because the Dakota Access corporation is the sole perpetrator of the harm.

[150] Nonetheless, the State attempts to assert that Defendant Iron Eyes’ did “contribute to the need for a pipeline” because he, as well as other Water Protectors and the majority of the world for that matter, utilize fossil fuels. Doc ID #698. However, the State’s analysis is flawed for two reasons. (But see the more thorough critique of defendant Iron Eyes of the State’s position in Part VIII below.)

[151] For one thing, the North Dakota Necessity Defense standard for this element is that the harm “has arisen without the culpability of the Defendant.” Brief of Appellant, State v. Manning, 716 N.W.2d 466 (N.D. 2006). Such a standard is in no way synonymous with “contributing to the harm,” as the State implies. The State itself cites to the Schoon precedent that recognizes the need for a necessity defense in the context of actions protesting threats to the public. See United States v. Schoon, 939 F.2d 826 (1991). While citizens may benefit from a government policy, for important reasons they may feel obligated to engage in active measures to protect themselves, their families and their community from the actions of powerful corporations and government agencies when the legal and political system has failed to produce result in safeguarding their community. If the

State's reasoning were correct, then any time a citizen who incidentally benefited from a government program wished to demonstrate against that very program, the necessity defense would be unavailable. Such a conclusion runs counter to the very precedent that the State itself cites.

[152] To the second point, the State generalizes the harm in insinuating that because the Defendant is an American consumer, he contributes to the harm that the pipeline posed. The harm that the Dakota Access Pipeline posed to Lake Oahe is more specific than the harm of burning fossil fuels in general. The report that Turkish engineering firm Envy Energy and Environmental Investments prepared for the Cheyenne River Sioux Tribe (CRST) asserts that the Army Corps of Engineers understated the risk of an oil spill in its final assessment. The report arrived at its conclusion because the Horizontal Directional Drill (HDD) that Dakota Access intended to use to construct the pipeline under Lake Oahe represented one of the longest and deepest crossings ever attempted under a freshwater body and that such a crossing would create construction challenges and risks. Hakan Bekar & Envy Staff, *Technical Engineering and Safety Assessment: Routing, Construction, and Operation of the Dakota Access Pipeline in North Dakota* at 57 (2016), available at: <http://indigenoustrising.org/wp-content/uploads/2017/02/ENVY-Report-on-DAPL-EA-07Jan17.pdf>. In the report, they cautioned that the process of installing such a deep and long pipe through an HDD bore puts intense stress on a pipe and may increase the chance of leak or rupture. *Id.* The report also points out that the north Bismarck alternative route would not require nearly as dangerous an HDD due to a shallower crossing, indicating that the movement of the pipeline near SRST put them at greater risk than the residents of Bismarck would have been. *Id.* The report ultimately concludes that the proposed HDD is vastly out of sync with the industry standard for the transportation of crude oil. *Id.* Moreover, Envy concluded that “no mechanism [existed] to prevent the release of crude oil into freshwater Lake Oahe and water table via some connected aquifers.” *Id.*

[153] Additional evidence includes the Army Corps of Engineer's geotechnical engineer Dean Lang's November 2014 response to the Environmental Assessment, which lists a series of concerns about ETP not providing enough information for adequate evaluation of risk and calls the proposed HDD “World Record type length.” Dean Lang, Review Comments Dakota Access Pipeline, Geotech Review, p. 12-14 (2014). He also states:

[154] “I am not sure if this is the right location for a pipeline crossing because of the length, depth, elevation difference of the banks. It appears to be a very challenging project at the extreme limits of the technology.” *Id.*

[155] Such evidence indicates that Defendant Iron Eyes has more than met his burden in establishing that he was not culpable for the harm that such a dangerous drilling method posed to his tribe's main water source. This is so because, as the above-stated evidence tends to prove, Dakota Access, with the Army Corps of Engineer's endorsement, made the ultimate decision to effectuate such a perilous pipeline project.

3. That no reasonable or adequate legal alternative existed.

[156] As to the “no reasonable or adequate legal alternatives” element, “to dispense with the necessity defense by assuming that people always have access to effective legal means of stating their opposition to a dangerous corporate or government activity circumvents the entire purpose of the necessity defense. When courts rule as a matter of law that defendants always have a reasonable belief in other adequate alternatives, they are asserting that, regardless of how diligent a party might be in pursuing legal alternatives; no matter how much time has been spent in such legitimate efforts to prevent the harm at issue; no matter how ineffective previous measures attempted have been to prevent the great harm sought to be avoided, the courts, in hindsight, can always find just one more alternative that a citizen has not yet tried before acting out of necessity.” People v. Gray, 571 N.Y.S.2d 851, 860-861 (N.Y. Crim. Ct. 1991). Thus, when a defendant testifies to a long history of attempts to prevent the harm perceived, such testimony satisfies the threshold evidentiary standard to the no reasonable legal alternatives prong of the necessity defense. Id., See Also People v. Largrou, Nos. 85-0000098 a 85-000100, 85-000192, 10-11 (Mich. Dist. Ct. Mar. 22, 1985). See Also People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979).

[157] On February 1, 2017 a case was actively pending before the United States District Court for the District of Columbia in Washington D.C. directly pertaining to the construction of the Dakota Access Oil Pipeline. In addition, Standing Rock Sioux Reservation Tribal Chairman Dave Archambault II, Wasté Win Young, the Standing Rock Sioux Tribal Council Tribal Historic Preservation Officer – and virtually the entire Standing Rock Sioux Reservation Tribal Council - met with the Executives of the Energy Transfer Partners Corporation and the Dakota Access Pipeline Corporation as early as September 30, 2014 and communicated to the corporations the tribe’s adamant and inalterable opposition to the pipeline route beneath their sole source of fresh drinking water. Sept 30th DAPL Meeting with SRST, 2014, available at: <https://www.youtube.com/watch?v=ZlwtdnZXmtY>, DOC ID #536. At that meeting, Wasté Win Young asserted that the Dakota Access Pipeline represented the “exact scenario [which has] unfolded within the last three years on the Bakken pipeline and the Baker Lateral pipeline, where the concerns of the Standing Rock Sioux Tribe went totally un-responded to... while the construction commenced, and continued to push forward, on both pipelines. And in the case of the Baker Lateral Pipeline, that pipeline became fully operational while the Standing Rock Sioux Tribal Office [...] were waiting on a meeting that the Corps had promised to set up. And in that meantime, the Baker Lateral Pipeline became fully operational, and we were notified two weeks after it happened.” Id. See Attachment D (Declaration of Doug Crow Ghost).

[158] In addition, a Declaration that Tim Mentz filed in support of the tribe’s D.C. case highlights that Dakota Access acted with utter disregard toward any “legal step” the tribe took to try to stop the Dakota Access Pipeline. DOC ID#516-518. For example, the very next day after Tim Mentz filed his Official Declaration identifying numerous specific sacred Lakota sites along the pipeline’s route, the Dakota Access Pipeline

Corporation ordered its construction crew out, protected by private security personnel, atypically early on a Saturday morning, to bulldoze the very areas Mentz had identified for protection. Id.

[159] Finally, at the previously mentioned September 30, 2014 meeting between the Standing Rock Sioux Tribe and Dakota Access pipeline Corporation Executives, the Standing Rock Sioux Tribal Chairman, David Archambault II, expressly informed the Executives, at that meeting, that the Standing Rock Sioux Reservation Tribal Council had “a standing resolution that was passed in 2012 that opposes any pipeline within the treaty boundary.” Sept 30th DAPL Meeting with SRST, 2014, available at: <https://www.youtube.com/watch?v=ZlwtdnZXmtY>, DOC ID #536. Chairman Archambault went on to emphatically state that “the pipeline is something that the tribe is not supporting” because they still “recognize [their] treaty boundaries.” Id.

[160] Thus, the declarations of tribal officials available in public documents manifestly demonstrate that the Standing Rock Sioux Tribe, to which Chase Iron Eyes was one of their Legal Counsel, made every reasonable “legally-available” effort to stop the Dakota Access Oil Pipeline from being constructed beneath their sole source of fresh drinking water *before* Chase Iron Eyes, one of the Tribe’s Legal Counsel, and his fellow Lakota Band members undertook the action for which he stands before this Court charged with “trespassing” and “Inciting a Riot” when The Dakota Access Pipeline Corporation Executives *continued* to defy the Treaty Boundaries of their land by their then-immediately-pending re-commencement of the constructing and putting into full operation directly under their sole source of fresh drinking water their Dakota Access Oil Pipeline.

4. That the harm Defendant Iron Eyes actually caused from engaging in water protection was not disproportionate to averting the threat to the water.

[161] Next, Defendant Iron Eyes bears the burden of going forward to proffer to The Court “evidence strong enough to support a finding in his favor” *by a jury* that he reasonably possessed a good-faith belief that his actions were necessary to avert a greater harm than any actual harm that was caused by the action he took on February 1st of 2017; the loss of the few tribal resources that remained – Lake Oahe and the vibrant eco-system that it supports. See M.E. v. M.E., 894 N.W.2d 877, 878 (2017). If Defendant Iron Eyes meets his mere burden of going forward, this trial court may not properly refuse his right to present his necessity defense to his jury unless the evidence produced is inapplicable or irrelevant. See State v. Biby, 366 N.W.2d 460, 465 (N.D. 1985).

[162] Hence, unless the evidence proffered to this court is either “inapplicable” or “irrelevant”, then Chase Iron Eyes’ jury must be allowed by this court to hear this evidence, - and, once presented, The State has the legal obligation to dis-prove the credibility of his necessity defense evidence *beyond a reasonable doubt*.

[163] The State charges Defendant Iron Eyes with inciting a riot based on: 1) his purported encouraging media to come to document the February 1, 2017 events, and 2) his participation in a communal consensus to join arms in concentric circles around the sacred fire as a form of passive resistance and assertion of power

negating a characterization as victims. The illogical legal assumptions of these charges are discussed in a later section of this brief. These charges are germane to this section because the completion of the Dakota Access Pipeline and the associated desecration of Lake Oahe far eclipses any harm associated with Defendant Iron Eyes' performance of the aforementioned actions.

[164] For example, the previously mentioned Envy scientific assessment concluded that:

“any leakage of crude oil (or similar contaminating product fluid – natural gas is not viewed in the same risk category) into a large body of water has potential catastrophic impact on nature and the environment; however, the risk to freshwater vs salt or sea water is exponentially higher. Both contaminate the aquatic life forms that inhabit the waters contaminated, as well as the shore areas. Contamination of freshwater due to liquid hydrocarbons– like that in the Missouri River and Lake Oahe in particular – are of the most significant consequence that should be considered for project permits as communities are dependent on uncontaminated freshwater sources for safe human consumption, agricultural / irrigation use, domestic and wildlife animal consumption and other public consumption.” Hakan Bekar & Envy Staff, *Technical Engineering and Safety Assessment: Routing, Construction, and Operation of the Dakota Access Pipeline in North Dakota* at 57 (2016), <http://indigenousrising.org/wp-content/uploads/2017/02/ENVY-Report-on-DAPL-EA-07Jan17.pdf>.

[165] Moreover, the Standing Rock Sioux Tribe's Report underscoring the impacts of an oil spill on the tribe, which they submitted to the Army Corps of Engineers, supports the fact that Defendant Iron Eyes and his fellow water protectors believed that the pipeline's existence threatened the water and the existence of the tribe. Standing Rock Sioux Tribe, Appendix A: Standing Rock Sioux Tribe Game and Fish Department Missouri River High Consequence Area Assessment: Establishing Baseline Ecological Information and Impacts to Hunting and Fishing from the Proposed Dapl Pipeline in the Event of an Oil Spill in the Missouri River in North Dakota Adjacent to the Standing Rock Reservation 2017 from Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe, at 32-33 (2018). This fear was grounded in Energy Transfer Partners perilous track-record; from 2006-2017 of 291 hazardous pipeline incidents resulted from their pipelines, more than any other pipeline operator for that period. *Id.* Additionally, the SRST's Report reveals that when an oil spill contaminates Lake Oahe, the tribe will have only three days of fresh drinking water. *Id.* Finally, declarations of various Standing Rock Sioux members demonstrate that the oil spill would substantially interfere with the health, culture and economic vitality of the tribe. Standing Rock Sioux Tribe, Appendix G: Declarations of Steve Sitting Bear, Butch Thunder Hawk, Cedric Goodhouse, Evelyn Goodhouse, Geraldine Agard, and Theo Iron Cloud From Impacts of an Oil Spill from the Dakota Access Pipeline on the Standing Rock Sioux Tribe (2018).

[166] Hence, the aforementioned harms at the forefront of Defendant Iron Eyes' mind far eclipsed any harms that he caused by his actions. For example, the State refers to such harms as the trampling of the property rights of others, acting criminally, calling people to come and make a stand, as well as leaving waste at the camps. Doc ID #698. However, the State must buttress such conclusory assertions with facts and evidence that disprove the facts and evidence that Defendant Iron Eyes has proffered beyond a reasonable doubt.

[167] To the State's first assertion, Defendant Iron Eyes has met his burden in proffering evidence that he did not believe his conduct trampled the property rights of others. Such evidence includes the Fort Laramie Treaties, North Dakota's Corporate Farming Statute, as well as the Attorney General's complaint against Dakota Access for owning Cannonball Ranch in violation of the statute. DOC ID#553 & 554 *Treaty of Fort Laramie 1868; Treaty of Fort Laramie 1851*, N.D.C.C. 10-06.1, DOC ID#553 *Morton County AG DAPL Complaint, Stenehjem v. Dakota Access, LLC*, Civil No. 30-2018-CV-00612 (2018).

[168] To the State's second assertion, it should be noted that Defendant Iron Eyes did not believe that his conduct amounted to criminal activity.

[169] Next, the State insinuates that using social media to call people to come make a stand renders Defendant Iron Eyes' conduct more harmful than the harm the Dakota Access Pipeline posed to the water. However, the State offers only an unsubstantiated claim that somehow Defendant Iron Eyes was "responsible" for any "waste" that was purportedly "left" at The Oceti Sakowin Campsite because he had issued a call for people from around the country to come to the aid of his people to prevent this oil pipeline from being built beneath his tribe's sole source of fresh water – and the purported "waste" left by protesters "threatened the very ecosystem that the defendant allegedly sought to protect." Doc ID #698. Because, as mentioned earlier, Defendant Iron Eyes has offered "evidence strong enough to support a finding in his favor," the burden shifts to the State to proffer evidence strong enough to prove beyond any reasonable doubt that Defendant Iron Eyes' actions caused a harm that substantially overwhelmed the harm he sought to avert. However, the State offers no evidence whatsoever that any "waste" at the camp was "left" by protesters. They were, in fact, suddenly *driven out* of that site by heavily-armed men...who then simply "bulldozed" perfectly safe and well-contained food stuffs; tents; cooking facilities; sanitation facilities; brand new sleeping bags and winter clothing donated *and still in their original, totally sanitary, boxes and containers*, transforming these "supplies and provisions" INTO "waste" – which The State then *videoed* and *publicized to the citizen potential jurors in this case, knowingly falsely* portraying those supplies and provisions as "waste"...that "threatened the very ecosystem that the defendant allegedly sought to protect." That is a simple regurgitation of the *utterly false* propaganda line that was proposed by Mark Pfeiffle, the propaganda director for the Dakota Access Pipeline Project. This "fake news" tried to portray the "waste" as a greater harm than 910,000 gallons of oil pumped *every hour* under Lake Oahe.

[170] Hence, Defendant Iron Eyes has met the low North Dakota evidentiary threshold by providing scientific assessments, declarations, and court documents to prove his belief that he sought to avert a greater harm than the harm that he allegedly caused, this court must allow him "to present [his] version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967).

5 And finally, that his actions did not challenge constitutionally protected conduct.

[171] The *Sahr* Court refused to elaborate the elements of the North Dakota necessity defense because it found that, in the specific context of abortion protests, an anti-abortion protestor-defendant cannot assert the “necessity defense” because the United States Supreme Court has specifically ruled that American citizens have a Constitutionally-guaranteed right to secure an abortion – and, thus, abortion *could* not be legally deemed, by a lower American court, to be a “great evil” that could justify the invocation of the “necessity defense.” See *State v. Sahr*, 470 N.W. 2d 185 (ND 1991).

[172] Conversely, in the present case, Defendant Chase Iron Eyes has a right to assert the necessity defense because the United States Supreme Court has never deemed the right of an oil corporation (or its proxy pipeline construction subsidiary) to build a dangerous oil pipeline directly beneath the sole source of a community’s only source of fresh drinking water to be a “Constitutionally-guaranteed right”. Indeed, directly to the contrary, American courts – and numerous American Administrations – have expressly declared it to be a *violation of Title VI of the Federal Civil Rights Act of 1964, Section 601 & 602* to construct such “noxious” or “hazardous” infrastructures SUCH AS DANGEROUS UNDERGROUND OIL PIPELINES “in or near” racial minority communities. Indeed, the United States Supreme Court has held that it is Indian Tribes who have a United States Supreme Court-recognized fundamental right to access to fresh drinking and irrigation water that must be protected against industry. See *Winters v. United States*, 207 U.S. 564 (1908). Thus, Defendant Chase Iron Eyes has met his evidentiary threshold with regard to the *Sahr* element of the necessity defense, because his is not a case in which he acted to try to stop another American citizen from exercising his or her fundamental Constitutional Right that has already been expressly recognized as a Constitutionally-protected right by the United States Supreme Court as was the case in *State v. Sahr*, 470 N.W.2d 185, 192 (N.D. 1991).

The Racial Re-Routing of the Pipeline by Energy Transfer Partners

4. Defendant Iron Eyes believed his actions on February 1st of 2017 to be causally connected to preventing the Greater Harm that he sought to stop

[173] The proven historical effectiveness of actions taken similar to the actions that were taken by Defendant Iron Eyes’ on February 1st to secure the stopping of “Great Harms” in our democratic system is sufficient to make the necessary “minimally sufficient case” to satisfy the element of “causal connection” between Defendant Iron Eyes’ actions on February 1st and the potential preventing of the recommencement and completion of the final construction of the Dakota Access Oil Pipeline under Lake Oahe, thereby preventing the initiation of “The Chain of Causation” that would have inevitably resulted in achieving the ultimately-sought overt act of the racially motivated conspiracy identified by Defendant Iron Eyes in the Title 42, Section 241 complaint that he lodges against the Executives of The Energy Transport Partners Corporation and The Dakota Access Oil Pipeline Corporation. See *State v. Thayer*, 188 Vt. 482, 485-86 (2010); See Also *People v. Gray*,

571 N.Y.S.2d 851, 870 (N.Y. Crim. Ct. 1991); And People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979). Defendant Iron Eyes and the fellow members of his Lakota Sioux Tribe reasonably anticipated that their conduct would result in the cessation of the re-commencement of the final construction and putting into operation of the Dakota Access Oil Pipeline because the similar peaceful and prayerful activities of his fellow tribal members that had been undertaken prior to February 1, 2017 had, in fact, effectively motivated the United States Government to stop the construction of that very pipeline in December of 2016. See Robinson Meyer, “The Obama Administration Temporarily Blocks the Dakota Access Pipeline,” *The Atlantic* (2016), available at: <https://www.theatlantic.com/science/archive/2016/09/the-obama-administration-temporarily-blocks-the-dakota-access-pipeline/499454/> (last visited Jul 19, 2018); EPA finding requiring EIS: 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 FR 5543 (18 Jan 2018); Hilary Beaumont, “Obama Administration Stops Dakota Access Pipeline in "Historic" Decision,” *VICE News* (2016), available at: https://news.vice.com/en_us/article/8xmwjg/obama-administration-stops-dakota-access-pipeline-in-historic-decision (last visited Jul 19, 2018).

[174] More specifically, Defendant Iron Eyes and his fellow Lakota tribal members held a specific good faith belief that their actions in establishing The Last Child’s Camp, erecting tepees, lighting a sacred fire, and praying to their ancestors would help abate the ultimate goal of the private Energy Transfer Partners Corporate Executives’ and Dakota Access Pipeline Executives’ Anti-Lakota conspiracy identified to The Court in his Second Necessity Defense: the imminently-pending issuance of the U.S. Army Corps of Engineers’ Certificate of Easement and the resultantly-inevitable re-commencement of and completion of the construction and putting into operation of the Dakota Access Oil Pipeline Pipeline directly beneath their sole source of drinking water. An audio recording submitted to this court in the case of Jenni Monet demonstrates the spiritual underpinnings of this belief. See Doc ID #633. As Julian BearRunner explains, the February 1, 2017 ceremony was “spiritual. The spirits told us to stand our ground.” *Id.* The entire ceremony was planned with “spiritual guidance.” The Lakota Water Protectors were not alone on the hill, but were “standing with [their] ancestors” *Id.* (See also the Sworn Declaration of Sun Dance Chief Richard Graygrass submitted as “Attachment B” to this filing.

[175] The history of similar protests resulting in the halting of pipeline construction, as well as Defendant Iron Eyes’ strong Lakota religious belief that the ceremony on that hill to which he had been directed by Chief Graygrass would garner the support of his ancestors in blocking the construction of the pipeline, both grounded Defendant Iron Eyes’ Good Faith Belief that his actions undertaken on February 1st were causally connected to rationally stopping the ultimate coming to fruition of the anti-Lakota Energy Transfer Partners and Dakota Access Pipeline Executives’ anti-Lakota racially-discriminatory conspiracy.

5. an immediate and significant evil associated with a racist conspiracy

[176] The element of “significant and immediate evil” as it relates to the necessity defense is a question for the trier of fact, which is the jury in this case. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991); State v. Heyer, Dist Ct, Oakland County, 52d Dist, 1st Div, Nos. 83-101194 — 101228 [1985]; People v Jones, Nos. 83-101226 — 83-101228, slip opn, at 4-5, Mich Dist Ct, Mar. 2, 1984. Sufficient evidence to show that an evil is significant and immediate include witnesses, studies, or the Defendant’s own testimony. People v. Gray, 571 N.Y.S.2d 851, 860 (N.Y. Crim. Ct. 1991); Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002). This evidence is sufficient for a Defendant to meet his burden of production at trial. The threshold determination of whether the jury may consider a Defendant’s necessity defense requires even less.

[177] Defendant Iron Eyes intends to proffer statements from witnesses, studies, and his own testimony regarding Dakota Access’s private conspiracy to deprive Lakota people of their Constitutionally-guaranteed Right to The Equal Protection of The Law. Each such category of evidence would be sufficient in and of itself. For example, the statements of Standing Rock Sioux Tribal Chairman Dave Archambault II demonstrate that Defendant Iron Eyes and the official representatives of the Standing Rock Sioux tribe sincerely believed that private executives of the Energy Transfer Partners Corporation and of the Dakota Access Pipeline Corporation intentionally re-routed the Dakota Access Pipeline “towards tribal nations when other citizens of North Dakota rightfully rejected it in the interests of protecting their communities and waters.” Quote of Standing Rock Sioux Tribal Chairman Dave Archambault II, October 30, 2016 Statement, available at: <https://nativenewsonline.net/currents/standing-rock-sioux-tribe-chairman-record-etp-dapl-failures-ignored-government-officials/>. The underlying soundness of this belief on the part of Defendant Iron Eyes and his entire Lakota Tribe is further grounded in the racist comments uttered “repeatedly” by Joey Maumoud, the Executive Vice President of The Energy Transfer Partners Corporation on the ground in North Dakota and the insistence on the part of the Executives that the pipeline pass through the Standing Rock Sioux Tribe’s sole source of fresh water...despite the fact that the safety and advisability of this route was strongly questioned by numerous objective participants responsible for monitoring this project. DOC ID #515.

[178] Defendant Iron Eyes’ Good faith Belief in this regard was also grounded in the professionally-vetted reporting of various official news sources in the Bismarck-Mandan Area expressly reporting that the Dakota Access Pipeline Corporation and its parent corporation Energy Transfer Partners had *intentionally* re-routed the Dakota Access Pipeline away from a route located 10 miles to the north of the predominately White community of Bismarck, North Dakota to a point less than ½ mile north of the 82% Native American Standing Rock Sioux Reservation. See, for example: Amy Dalrymple, “Pipeline Route Plan First Called for Crossing North of Bismarck,” Bismarck Tribune (2016) available at: https://bismarcktribune.com/news/state-and-regional/pipeline-route-plan-first-called-for-crossing-north-of-bismarck/article_64d053e4-8a1a-5198-a1dd-498d386c933c.html. Professional news reports to this effect were reasonably based off various internal reports

of these corporations that reveal that the Executives of these corporations at first chose, but then reversed, its original objective, computer-generated decision to build the Dakota Access Oil Pipeline many miles away from the sole source of The Standing Rock Sioux Tribe's sole source of fresh water - and chose, instead to build that pipeline where *whatever* the threat was that was posed by that oil pipeline was *knowingly (i.e. intentionally) transferred* from the predominantly (92%) White community of Bismarck TO the predominantly (82%) Native American Standing Rock Sioux reservation, the latter being a route that clearly threatened the Standing Rock Sioux Reservation's sole source of water, directly beneath Lake Oahe. The Executives of The Energy Transfer Partners Corporation chose the final route directly beneath Lake Oahe despite the well-understood – *and expressly warned-of* – dramatically increased risk of a leak created by what U.S. Army Corps employees determined to be a “very challenging project, at the extreme limits of the technology” because of the unprecedented length of horizontal directional drilling required to run the pipeline under Lake Oahe. DOC ID #561. The final Environmental Assessment explicitly reported in the news media throughout the area – that was read by Chase Iron Eyes and his fellow Lakota tribal members – expressly stated that “public input and comment” triggered the decision on the part of the Executives of the Energy Transfer Partners Corporation to re-route the Dakota Access Oil Pipeline under Lake Oahe. DOC ID #563. It was entirely “reasonable” for Defendant Iron Eyes and his fellow Lakota tribal members to form the “good Faith Belief” that term “public input and comment” was referring to the predominantly White population of Bismarck and that phraseology was used by the media to avoid stating specifically that the re-routing of the pipeline down to The Sioux Reservation was undertaken to *avoid* the White community of Bismarck.

[179] The tenacity of the Energy Transfer Partners Corporation Executives in sticking to their decision to re-route the pipeline to the route beneath Lake Oahe - despite the *repeated* “questioning” on the part of the U.S. Army Corps of Engineers monitors of the wisdom of their decision places in stark relief the resolve with which that decision was adhered to by the Executives of the Energy Transfer partners Corporation despite the questions raised by the Corps of Engineers staff over the safety of that decision. A Memorandum written by David Cooper, the General Counsel of the U.S. Army Corps of Engineers, expressly stated that the USACE considered The North Bismarck Route to be a perfectly “viable alternative” to the re-route advocated by Energy Transfer under Lake Oahe. But this kept up, in the face repeated expressions of reservations on the part of the staff of the Corps as to the comparative safety of the re-route under Lake Oahe.

[180] USACE engineer Dean Lang emphatically criticized ETP's proposed geotechnical analysis of Lake Oahe. Lang cites a *series* of “concerns” about ETP's not providing enough information and warns of the risks involved in the ETP-proposed Horizontal Directional Drilling under Lake Oahe, which Lang characterizes as of “World Record type length.” He also states: “I am not sure if this is the right location for a pipeline crossing because of the length, depth, elevation difference of the banks. It appears to be a very challenging

project at the extreme limits of the technology.” Dean Lang, “Review Comments Dakota Access Pipeline, Geotech Review (Pages 12-14),” November 2014, DOC ID #561.

[181] Jonathan A. Shelman, lead COE staffer on NEPA and EA matters, similarly criticized the oAhe route on a May 2015 draft of the EA (before it was publicly available in November of 2015). His comment requests more information on why the pipeline was not routed north of Bismarck to avoid federal property, suggesting that the reasons for selecting the Oahe route were not clear. Dakota Access, LLC, “Draft Environmental Assessment- Dakota Access Pipeline Project Crossings of Flowage Easements and Federal Lands, Comments by ‘JAS,’” May 2015, DOC ID #562.

[182] Other Corps of Engineers comments on a later draft of the Energy Transfer Partners proffered Environmental Assessment from May 2016 calls ETP’s description of alternate routes “insufficient” and states that the Environmental Assessment “needs to provide more information on what criteria were the basis for changing the route.” Id. The Corps of Engineers were obviously troubled by ETP’s insistence on changing the route. And ETP was consistently providing “insufficient” justifications for its descision. The Corps critics of this decision specifically emphasize the Standing Rock Sioux Tribe’s insistence that the pipeline be *returned* to its original, objectively-computer-determined route ten miles north of Bismarck and the Corps demands *another*, “more robust” justification of ETP’s decision to re-route the pipeline down to the much more “challenging” route beneath Lake Oahe. Id. The Corps critics of this insistent decision on the part of ETP also insist that the rationale that ETP then offers – that the Lake Oahe route would enable the ETP to build the pipeline through a track of CORPS Land – has no merit at all. And The Corps critics of this decision state that the pipeline should not be rerouted to avoid running beneath Lake Oahe *because of the adamant opposition to this re-route on the part of The Standing Rock Sioux Tribe*. Id. These comments throw into very serious question ETP’s “transparency”, “accuracy” and “credibility” as to their *actual reason* for deciding to re-route the pipeline away from the North Bismarck Route. The May 2016 comments are particularly troubling - because they plainly show that the Corps of Engineers deemed to be entirely “insufficient” their discussion with ETP officials of their insistence upon re-routing the pipeline ... even after the North Dakota State Public Services Commission had approved the route. Though the federal U.S. Army Corps and the North Dakota State Public Services Commission have different jurisdictions and, therefore, evaluated different aspects of the pipeline, the fact remains that ETP managed to get PSC approval and began its construction of the pipeline running directly toward The Standing Rock Reservation and away from the North Bismarck Route *without* sufficiently justifying, to the U.S. Army Corps of Engineers, that their re-routed pipeline route would actually generate the minimal adverse impacts on the North Dakota environment. Dakota Access, LLC, “Draft Environmental Assessment- Dakota Access Pipeline Project Crossings of Flowage Easements and Federal Lands, Comments by ‘JAS’ ‘EAL’ and ‘C,’” May 2016, DOC ID #562.

[183] The table comparing the two routes was not included until the final Environmental Assessment (which the D.C. District Court later found to be deficient, precisely because it “failed to address” the potential adverse impact on the environment of The Standing Rock Sioux People), revealing that ETP was providing as little information as it could get away with, for as long as possible, to the U.S. Army Corps of Engineers under the Obama Administration about the “preferability” of The North Bismarck route, in the hope that no one would probe their decision more deeply. All of these criticisms support a perfectly reasonable belief on the part of Defendant Iron Eyes and his fellow Lakota tribal members - who have been racially discriminated against for literally *hundreds of years* by joint U.S. Government/Big Business alliances - that ETP’s re-routing of the Dakota Access Oil Pipeline under Lake Oahe had been motivated by an improper motive.

[184] The independent report from The Envy Corporation directly challenges the “safety evaluation” of the route alternatives, strengthening the case that The North Bismarck Route was changed for some entirely different reason than the mere “economic concerns” that were proffered by ETP as its rationale for the change of routes. DOC ID #557. The Envy Report also highlights the fact that ETP submitted its proposal for The Lake Oahe Route almost immediately after its September 30, 2014 meeting with the Standing Rock Sioux Reservation Tribal Council members, in which meeting all of the Council made it unequivocally clear that the entire Standing Rock Sioux Tribe adamantly opposed the pipeline being built inside their treaty boundaries. Sept 30th DAPL Meeting with SRST, 2014, available at: <https://www.youtube.com/watch?v=ZlwdtnZXmtY>, DOC ID #536. This fact is entirely absent from the North Dakota Public Services Commission Application (which has NO evaluation whatsoever of *any* “Environmental Justice” considerations) and the final Environmental Assessment (which was, later, officially declared, by the DC District Court, to be “deficient” – due to ETP’s failure to give adequate legal consideration to the potential adverse impact of any major oil spill on the environment of The Standing Rock Sioux Reservation) indicating that ETP chose to move forward with full knowledge of the Lake Oahe route’s potential controversial nature. The complete “erasure” of ETPs explicit and unequivocal knowledge of the Standing Rock Sioux Tribe’s ardent opposition to their pipeline coming onto their Treaty Territory and going directly beneath their sole source of water reveals either an unpardonable insensitivity to the interests and concerns of The Lakota People or an out-and-out disdain for those concerns. In either case, this is directly supportive of a perfectly logical conclusion on the part of Defendant Iron Eyes (who was one of the Legal Advisors for The Tribe concerning the pipeline) and on the part of all of the other members of his Tribe that the Executives of The energy Transfer Partners Corporation and of The Dakota Access Pipeline Corporation were *racially prejudiced against* The Lakota People...and that the “disregard” for them, for *their* rights and for *their* concerns on the part of the Executives of the ETP and the Dakota Access Pipeline Corporation was certainly ‘behind’ their decision to re-route their Dakota Access Oil Pipeline *from* Bismarck *to* The Standing Rock Sioux Reservation.

[185] Several other analyses highlight the resultant “insufficiency” of the USACE’s strictly *derivative* analysis of the “environmental justice” implications of the drilling and installation of the Dakota Access Oil Pipeline directly under Lake Oahe. For example, the Department of Interior Solicitor Hilary Tompkins’ Memorandum dated December 4, 2016 criticizes USACE for not making *their own* of analysis racial justice available to The Tribe. Hilary Tompkins, “Memorandum to the Secretary on Tribal Treaty and Environmental Statutory Implications of the Dakota Access Pipeline” (U.S. Department of the Interior, December 14, 2016). This lack of transparency on the part of *both* ETP and the Corps of Engineers was more than “troubling” - since it was The Lakota People who were, obviously, the “object” of the primary “Environmental Justice” concerns. Since the legal requirement to take into account the “racial” and “economic” justice implications of any major construction project like this of a “hazardous” or “noxious” infrastructure project exists as a concept to safeguard the rights of racial minorities, it was deeply concerning that this racial minority community was not even given access to a federal agency’s specific Environmental Justice analysis as to how this project was going to directly – and potentially adversely - affect them. This refusal on the part of ETP...and, *derivatively*, the U.S. Army Corps of engineers, to give any real attention to attempting to take into account the well-expressed (even vehemently expressed) “concerns” on the part of The Lakota People appeared to Defendant Iron Eyes and his Lakota People to virtually incarnate the same governmental and corporate paternalism and racism that the Environmental Justice requirements for government/corporate project were designed to address. *Id.*

[186] In addition, once the U.S. Army Corps of Engineers report was, finally, made publicly available through its inclusion in the final Environmental Assessment, it was immediately transparent that it was little more than a preemptively “doctored” effort to *rationalize* ETP’s as-yet never justified decision to re-route the Dakota Access Pipeline *away from* the 92% White community of Bismarck down to the 82% Native American Standing Rock Sioux Reservation...and to hastily assert that The Lake Oahe Route generated *fewer* racial Environmental Justice “concerns” than did The North Bismarck Route. DOC ID #563. The Corps of Engineers transparently simply “adopted” the previously-prepared Energy Transport Partners Corporation-prepared “Environmental Justice” report because The Corps just woodenly adopted the same transparently “gerrymandered” potential adverse impact zone that ETP had created to “disappear” the obvious *racially disparate* adverse impact that any spill or leak from the pipeline would have on the Native American population *immediately downstream* from any spill or leak into Lake Oahe. To “disappear” the entire Native American population of The Standing Rock Sioux...indeed, virtually all of The Lakota Band of Sioux Indians *in their entirety* who lived on the Sioux Reservations that relied on Lake Oahe and the Missouri River immediately downstream from Lake Oahe, ETP had arbitrarily created a potential adverse impact zone based on a 0.5-mile “corridor” to either side of the Dakota Access Pipeline centerline, conveniently terminating the area of study just 0.05 miles (i.e. just 264 feet) from the boundary of the Standing Rock Sioux Reservation, therefore preventing its analysis from having to consider ANY of the adverse effects that an oil spill from The Pipeline

would have on The Lakota People on those Reservations *downstream* from any such spill, or leak...or rupture. Id. This 0.5-mile standard was *rationalized* by ETP – and then, strictly *derivatively*, by The U.S. Army Corps, on the grounds that THAT was the standard practice for all natural gas pipelines and has never been used as a basis for evaluating the consequences of a spill, or a leak, or a rupture, of crude oil pipelines. Id. Indeed, there was a well-publicized *Bismarck Tribune* article, published only *after* all of the local White population in the Bismarck-Mandan area had been thoroughly mis-informed by an aggressive pro-Energy Transfer Partners publicity campaign falsely telling them that there were no potential adverse effects on Native People from The Pipeline. This June, 2017 *Bismarck Tribune* article *finally* summarized the expert criticism of this Environmental Justice evaluation, citing three main commenters. Amy Dalrymple and Caroline Grueskin, “Environmental Justice Factored into Judge’s Decision on DAPL,” *Bismarck Tribune*, June 16, 2017, DOC ID #563. However, this *mea culpa* apology piece was *not* by true repentance on the part of this newspaper that had shamelessly re-published virtual ETP and DAPL “puff pieces”, but was triggered, instead, only when Judge Boasberg of the DC Federal District Court declared that he was “hard pressed” to find this .5 mile impact zone to be “reasonable.” The fact is that this potential adverse impact zone used by ETP (and, derivatively, by The Corps of Engineers) was *not only* NOT “reasonable”; it was downright *transparently* bogus.... to The Lakota People...but was simply “accepted” by virtually all of the White population in Bismarck and Mandan. But when *both* Judge Boasberg of DC and the federal Environmental Protection Agency both expressly *publicly* “questioned” this 0.5-mile “buffer area” on the grounds that it failed to honestly evaluate the proper area potentially adversely affected by any major leak from the pipeline (specifically that the zone fabricated did not adequately account for the adverse effects of a spill on the Native American members of The Lakota Community, Id., only *then* did *The Tribune* take any note of this – long after Chase Iron Eyes and his fellow Lakota People had been arrested and charged with “trespassing” and “rioting”....and Chase charged with “Inciting” this purported “riot”....that consisted of “tugging *back*” when heavily-armed and body-armored law enforcement personnel started yanking people out of an otherwise peaceful circle around their Sacred Ceremonial Fire. What really “triggered” this response from *The Tribune* was University of North Dakota law professor James Grijalva, an expert on environmental justice in Indian country, “going public” and announcing his conclusion that the environmental review of ETP and The U.S. Corps of Engineers, as a whole, was woefully “insufficient” – specifically with regard to the potential adverse impact on The Lakota People. Id. Finally, and most importantly, when *The Bismarck Tribune* felt compelled to publish something in response to this public announcement of Professor Grijalva of their own University of North Dakota Law School Environmental Justice Expert, and solicited a comment from Texas Southern University sociologist Dr. Robert Bullard, known as “The Father of Environmental Justice.” Id. Professor Bullard said that he would give the Environmental Justice Assessment of the Energy Transport Partners Corporation and the U.S. Justice Department with regard to the Dakota Access Oil Pipeline “a grade of ‘F’,” saying that The Energy Transport

Partners Corporation and the U.S. Army Corps of Engineers had transparently “gerrymandered” the area of study in such a way so as to have made the Standing Rock Sioux Tribe invisible. *Id.*

[187] So, WHY would The Energy Transfer Partners Corporation and its subsidiary Dakota Access Pipeline Corporation DO a thing like that? More to the point, for the issue that is before The Court in this portion of Defendant Iron Eyes’ *Prima Facie* Showing, to WHAT *degree* does all of this “showing” of *racial disregard* for the interests –and safety – of the Lakota People on the part of The Energy Transport Partners Corporation and The Dakota Access Pipeline Corporation Executives – and the transparent manipulation, by these Executives, of the *racially-related data* concerning the “Adverse Impact Zone” in defiance of the “Environmental Justice” provisions of the Environmental Protection Act provisions of the federal law “support” a “reasonable ground” for Defendant Chase Iron Eyes (one of the very few *Lakota* Legal Counsellors for The Standing Rock Sioux Tribe – who, as such, was intimately familiar with all of these goings on) to form a “Good Faith Belief” that the *motive* for The Energy Transport Partners Corporation Executives and The Dakota Access Pipeline Corporation Executives (of a TEXAS-based Corporation like these) to have made this *seemingly irrational – and highly risk-prone* - decision to re-route their multi-billion dollar Dakota Access Oil Pipeline from 10 miles to the north of a 92% White community, down *under* the WIDEST POINT ON THE ENTIRE MISSOURI RIVER (under the sole source of fresh drinking water for virtually the *entire* Lakota Band of The Sioux Tribe of Indians) *directly in the face of* repeated warnings on the part of the staff of the U.S. Army Corps of Engineers telling those Executives that *that* re-routing was a VERY bad idea....and *had* to be reevaluated, was *racial*? And, if it was *racial*, exactly HOW was *this* illegal? And HOW could an intelligent Lakota Indian Attorney have the best chance of calling the attention of The People of Our Country TO this fact?

[188] There is ample evidence to support a conclusion, on the part of a Lakota Indian Attorney that this decision to re-route this pipeline under Lake Oahe was a *racial* decision generating a failure to honestly evaluate the Environmental Justice effects in the original environmental assessments, as well as an ultimately insufficient analysis of all of these effects on defendant Iron Eyes’ Lakota People.

[189] To reiterate, element of “significant and immediate evil” as it relates to the necessity defense is a question for the trier of fact, which is the jury in this case. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991); State v. Heyer, Dist Ct, Oakland County, 52d Dist, 1st Div, Nos. 83-101194 — 101228 [1985]; People v Jones, Nos. 83-101226 — 83-101228, slip opn, at 4-5, Mich Dist Ct, Mar. 2, 1984. The aforementioned evidence supports a determination that might be made by Defendant Iron Eyes’ jury that the racially motivated conspiracy of ETP in relocating the pipeline under Lake Oahe was a significant and immediate harm.

6. that had arisen without culpability on his part

[190] Third, in such a context, American courts tend to readily acknowledge the fact that activists have not created the harms that they challenge. Contrary to the State's assertion in its Motion in Limine, the fact that the Water Protectors may have utilized fossil fuels for transportation and other ordinary purposes does not mean that they have "created" The Great Harm that they are trying to stop. The elements of the necessity defense in State v. Manning require that the harm must have "arisen without fault of the actor." Brief of Appellant, State v. Manning, 716 N.W.2d 466 (N.D. 2006). In order to be disqualified from asserting a necessity defense predicated upon one's failure to establish a *prima facie* showing that one did not "create" or "cause" The Great Harm that one was trying to prevent by one's actions, the harm must *arise* because of an act on the part of the defendant. Merely tangentially "contributing to" that harm will not be sufficient to disqualify one from access to one's "necessity defense", so long as The Great Harm did not come into being because of the fault of the defendant. This is born out in the case law. For example, in People v. Gray, members of Transportation Alternatives, an organization devoted to the promotion of ecologically sound means of transportation, were charged with disorderly conduct for protesting the removal of a bicycle and pedestrian lane on the Queensboro bridge. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991). Despite the fact that the members of Transportation Alternatives had used the roadway – and, thereby, had tangentially increased the traffic and congestion that was the incentive to remove the bike lane, the members of Transportation Alternatives were deemed by the trial court NOT to have been directly involved in the planning or implementation of the harm that they were attempting to stop. See Id. Similarly, while the Water Protectors may tangentially use some petroleum products, such as clothing or plastics, the specific details of the routing of DAPL was at no point directly the result of any action or fault on the part of Defendant Iron Eyes. Id.

7. That no reasonable or adequate legal alternative existed

[191] The "no reasonable or adequate legal alternatives" element is not an element that can easily be dismissed because the prosecution or the Court imagines a more effective legal means of achieving the defendant's goal. As the court in People v. Gray explains, "to dispense with the necessity defense by assuming that people always have access to effective legal means of protest circumvents the purpose of the defense. When courts rule as a matter of law that defendants always have a reasonable belief in other adequate alternatives, they are asserting that regardless of how diligent a party is in pursuing alternatives, no matter how much time has been spent in legitimate efforts to prevent the harm, no matter how ineffective previous measures have been to handle the emergency, the courts in hindsight can always find just one more alternative that a citizen could have tried before acting out of necessity." People v. Gray, 571 N.Y.S.2d 851, 860-861 (N.Y. Crim. Ct. 1991). Thus, a defendant's testimony of a long history of attempts to prevent the harm satisfies the evidentiary standard for the no reasonable legal alternatives element of the necessity defense. Id.; See also People v. Largrou, Nos.

85-0000098 a 85-000100, 85-000192, 10-11 (Mich. Dist. Ct. Mar. 22, 1985); People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979).

[192] On February 1, 2017 the SRST case challenging the USACE permitting of DAPL was pending in Washington D.C. In addition, Tribal Chairman Dave Archambault II and Wasté Win Young, Tribal Historic Preservation Officer, had expressed the SRST's opposition to the DAPL route under Lake Oahe as early as September 30, and the SRST reiterated that opposition throughout the pipeline planning and construction process. DOC ID# 536; also available at <https://www.youtube.com/watch?v=ZlwdtnZXmtY>. Thus, by raising their legal challenge and expressing their concerns about the pipeline routing, the SRST continuously attempted to exhaust legal remedies to combat the racially motivated rerouting of DAPL under Lake Oahe.

[193] The SRST's efforts to work within the legal framework to oppose the racially motivated rerouting of DAPL is in contrast ETP's illegal actions to move construction forward. Tim Mentz, former SRST preservation officer filed a declaration in support of a temporary restraining order against DAPL construction through archeological sites along the DAPL route. DOC ID#516-518. However, the day after Tim Mentz filed his original declaration identifying sacred Lakota sites along the pipeline's route, Dakota Access sent its construction crew out with private security atypically early on a Saturday morning to dig out the very areas of archeological significance that Mentz identified. *Id.*

[194] In the face of the racially motivated conspiracy on the part of ETP to reroute the pipeline next to the SRST reservation, there was little that Defendant Iron Eyes could do. He ran to represent North Dakota's at-large congressional district in the 2016 election. *See 2016 Primary Election Contest/Candidate List, North Dakota Secretary of State*, available at: vip.sos.nd.gov. If he had been elected, Defendant Iron Eyes intended to further address issues with the routing of DAPL from inside Congress. While running for office, his time was taken up with that process. Once the election was over and he was not elected, he took the most appropriate action available at the time – to protest the racially motivated rerouting of DAPL from the ground. He knew of the actions being taken by the SRST to combat the pipeline, and he knew that the addition of his voice would not change the outcome of the SRST's efforts. The evidence points to a chronology of events in which SRST representatives attempted to utilize the legal system to assert their rights to clean water and tribal sovereignty and Defendant Iron Eyes worked within the system to run for Congress, while ETP abused legal procedure to get approval for a, racially motivated pipeline route that violates the rights of the Lakota people and illegally desecrated sacred Lakota sites. This evidence suffices to establish that no reasonable legal alternative existed to stop the rerouting of the pipeline –the legal system had failed to address the harm, let alone stop it.

8. That the harm Defendant Iron Eyes actually caused by engaging in water protection was not disproportionate to averting the ultimate purpose of the private racist conspiracy; completion of the Dakota Access Pipeline

[195] Significant evidence exists that proves that Defendant Iron Eyes, in deciding to participate in water protection, reasonably weighed any harm he could have foreseeably caused with the harm that the racist conspiracy to reroute DAPL posed.

[196] The State charges Defendant Iron Eyes with “trespass” and “inciting a riot.” However, Defendant Iron Eyes believed that he was not trespassing. He believed that Dakota Access did not legally own Cannonball Ranch since the company failed to lawfully comport their purchase of the land with North Dakota law. DOC ID#553 *Morton County AG DAPL Complaint*. Moreover, Defendant Iron Eyes believed that Cannonball Ranch was, as a matter of law, treaty territory on which he and his fellow Water Protectors had a right to pray and gather. DOC ID#553 & 554 *Treaty of Fort Laramie 1868; Treaty of Fort Laramie 1851*.

[197] On the other hand, internal Army Corps email excerpts that an EarthJustice FOIA uncovered, demonstrate the racist motivations of DAPL decision makers. For example, a May 2016 email chain documents Army Corps communications about ETP and Dakota Access, LLC. DOC ID #515. "Why do we tolerate these comments from an applicant? Someone needs to tell Joey the next RACIST comment will shut down the entire project," wrote Julie Price a cultural resources project manager for US Army Corps of Engineers, Omaha District. Id. She goes on to write, "This project is ruining our relationships with the Tribes." Id. The name referenced is Joey Mahmoud, the project executive for the pipeline and executive vice president of ETP. Id.

[198] A separate email further illustrates the racist attitudes of ETP. "Indians this, Indians that. Who is this Ed Wester guy anyway? The attitude from these guys is just atrocious. It's pretty obvious it pisses these guys off that they even have to talk to tribal folks," wrote Richard Harnois, a senior field archaeologist for the US Army Corps of Engineers, Omaha District Oahe Project Office. Id.

[199] He continues, "... some of the blatantly racist attitudes I keep hearing from them will just continue to make things worse." Ed Wester is the environmental project manager for the pipeline. Id.

[200] Harnois replied to the same email thread, "MY years of experience working with tribal PEOPLE, TCP's [Traditional Cultural Property], sacred and archaeological sites HERE, lead me to the exact conclusion that I have already stated: there is an area of concern that needs to be avoided if they want a permit for that crossing." Id.

[201] The mentioned excerpts highlight the racist attitudes of the pipeline developer, providing further credence to the conclusion that the Environmental Justice Assessment deliberately excluded or obscured evidence of disproportionate racial impact, in violation of Title VI of the Civil Rights Act of 1964.

[202] Thus, Defendant Iron Eyes 1) believed he had a right to be on the land, 2) to which DAPL did not lawfully hold title, 3) in order to engage in peaceful and prayerful water protection, 4) despite DAPL's determined efforts to effectuate their racist agenda to construct the pipeline in a way that disproportionately harms the Lakota people.

9. And finally, that his actions did not challenge constitutionally protected conduct

[203] Finally, Defendant Iron Eyes need not meet an evidentiary threshold with regard to the Sahr element of the necessity defense, because this is not a case where he acted against what the courts have already recognized as a constitutionally protected right, as in the abortion protests. State v. Sahr, 470 N.W.2d 185, 192 (N.D. 1991). No corresponding constitutional rights exist to deprive the Lakota people of their fundamental rights.

Private Anti-Lakota Civil Rights Conspiracy by TigerSwan

1. Defendant Iron Eyes believed his act to be *causally connected* to preventing the Great Harm of the Civil Rights Conspiracy

[204] The level of evidence required for justification or necessity defenses in North Dakota is simply “if there is evidence” of the affirmative defense at issue. State v. Olander, 575 N.W.2d 65, 664 (1998). Similarly, the Eighth Circuit has held that showing an "underlying evidentiary foundation" as to each element of the necessity defense, "regardless of how weak, inconsistent or dubious" is sufficient to be entitled to a jury instruction. United States v. Casperson, 773 F.2d 216, 223 n. 12 (8th Cir.1985); United States v. Kabat, 797 F.2d 580 (8th Cir. 1986). This low bar is echoed in other similarly-situated states. In Wyoming, “any competent evidence is sufficient to establish a defense theory even if it consists only of testimony of the defendant.” Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002).

[205] Stated only somewhat differently, when a defendant faces charges arising from an action taken to try to stop some great public harm from a policy or practice of a powerful corporation undertaken in coordination with a government agency which action is contrary to the wishes of a significant portion of the citizenry and that unpopular government and corporate activity has NOT been deemed to be “an especially-protected constitutional act, constitutional principles deem it “fundamental that [...such a defendant has...] a due process right to explain [...his...] conduct to a jury.” United States v. Bowen, 421 F.2d 193, 197 (4th Cir. 1970). In North Dakota, the level of evidence required for such a justification or necessity defense is simply “if there is evidence” of the affirmative defense at issue. State v. Olander, 575 N.W.2d 658, 664 (1998). Similarly, the Eighth Circuit has held that showing an "underlying evidentiary foundation" as to each element of the necessity defense, "regardless of how weak, inconsistent or dubious" is sufficient to be entitled to a jury instruction. United States v. Casperson, 773 F.2d 216, 223 n. 12 (8th Cir.1985); United States v. Kabat, 797 F.2d 580 (8th Cir. 1986). It follows, then, that a defendant need only meet a pre-trial standard “entry-level burden of producing competent evidence.” United States v. Maxwell, 254 F.3d 21, 29 (1st Cir. 2001); See Also Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002); See Also United States v. Kabat, 797 F.2d 580 (8th Cir. 1986).

[206] Accordingly, Defendant Iron Eyes has satisfied the “causal connection” aspect of his private anti-Lakota civil rights conspiracy necessity defense. As the sections below will demonstrate, competent evidence reveals that The Dakota Access Pipeline Corporation hired the TigerSwan Private Military Security Corporation to target, surveille, intimidate and effectively “put down” the Lakota People to stop them from exercising their fundamental rights. Hence, in order to stop that “great harm” from coming to its full fruition, Defendant Iron Eyes participated in the undertaking of a Traditional Lakota Religious Ceremony on an area of Sovereign Sioux Territory overlooking the site of the immediately-pending up-coming initiation of the re-commencement of the completion and putting operation of the Dakota Access Oil Pipeline directly beneath the sole source of fresh drinking water of his Lakota family and entire Standing Rock Sioux Tribe. His objective was to thwart the ultimate coming to fruition of the underlying purpose of that private, *racially-discriminatory* anti-civil rights conspiracy. conspiracy - the *racially-discriminatory* placing of that hazardous and noxious underground oil pipeline immediately adjacent to the 82% Native American Standing Rock Sioux Reservation *rather than* even 10 miles to the north of the 92% White North Dakota community of Bismarck.

2. an immediate and significant conspiracy to deprive the Standing Rock Sioux Tribe of equal protection of the law

[207] Defendant Iron Eyes has easily satisfied the “immediate and significant harm” aspect of his private anti-Lakota civil rights conspiracy necessity defense. For example, the TigerSwan Private Military Corporation generated a wire diagram of “The Leadership of the Anti-DAPL Organization” that reveals that the TigerSwan private co-conspirators targeted *exclusively* Indigenous Lakota people, including Defendant Iron Eyes (whom TigerSwan Executives and Personnel placed at the very “apex” of the Leadership Pyramid of the Lakota “Terrorists.” These “religiously-driven, Indigenous, Jihadist Terrorists” purportedly included not only Defendant Iron Eyes, but also: Wašté Win Young; Wiyaka Eagleman; Jeremiah Daniel Ironroad, and Sara Juanita Jumping Eagle (Defendant Iron Eyes’ Lakota wife, a well-known and widely-respected Medical Doctor and Licensed Pediatrician who is the Director of Federal Indian Health Services on The Pine Ridge Indian Reservation. DOC ID #600, *TigerSwan Generated Wire Diagram of Leadership of the Anti-DAPL Organization*. Defendant Iron Eyes has also proffered to this court an entire series of TigerSwan Private Military Corporation “Situation Reports”, that the TigerSwan private anti-Lakota anti-civil rights co-conspirators actively circulated to all law enforcement personnel involved in enforcing the law in the vicinity of The Standing Rock Sioux Reservation asserting that Lakota Peoples’ activism “follows the jihadist insurgency model; [so] one can expect the individuals who fought for and supported it to follow a post-insurgency model after its collapse.” DOC ID #525 John Porter, *DAPL SITREP 168*.

[208] An interview of Standing Rock Elder LaDonna Brave Bull also reveals that, during the Standing Rock prayers, Lakota individuals “knew that ETP’s hired surveillance team was following [...them...]” LaDonna Brave Bull Interview, Lakota People’s Law Project . The same interview further reveals the clear

“anti-Lakota animus” behind the TigerSwan surveillance against the Lakota People, Elder Brave Bull noting that “one elder approached two ex-military men in a truck during the tribal consultation period of the pipeline corridor to notify them that their vehicle was parked on top of the burial site of someone of importance to the Lakota People. Id. But, instead of moving their vehicle, the TigerSwan men, instead, in response to this request that they move their surveillance vehicle, drove “donuts”, repeatedly, on top of that spot - staring down Lakota Elder Brave Bull all the while. Id.

[209] Moreover, Defendant Iron Eyes has submitted to The Court evidence a psychological report that noted the fact that TigerSwan military personnel mounted a daily “Cessna plane conducting ongoing surveillance from the air... noting make and model of cars, vehicle plate numbers and descriptions of individuals within...intelligence gained through the use of infiltrators and informants...cyber-stalking behavior on multiple social media outlets occurring across five states to gain intelligence and conduct surveillance of Water Protectors movements and that of their allies and supporters....social media and surveillance used to develop a collection of the names of ‘Persons of Interest.’” Society of Indian Psychologist, Educational Paper Regarding the Use of Counterterrorism Tactics on Native People and Allies, (2019) available at: www.researchgate.net/publication/323706517_The_Society_of_Indian_Psychologists_SIP_Educational_Paper_Regarding_the_Use_of_Counterterrorism_Tactics_on_Native_Peoples_and_Allies.

[210] In this interview, Lakota Elder Brave Bull also notes that Lakota People, such as Waste Win Young, Chase Iron Eyes, and Holy Elk Lafferty, among others:

“were targeted because [...] every AIM (American Indian Movement) grandchild, or child that was in that camp was targeted by TigerSwan. They were named a leader, even though they were just helping and supporting, and they were watched. And infiltrators were sent in to all these people [...] they made them sound like terrorists [...] jihad terrorists. And if you know these people, that’s not what they do, that’s not who they are. They’re good people.” LaDonna Brave Bull Interview, Lakota People’s Law Project.

[211] While such an interview constitutes some evidence that the Lakota People, including Defendant Iron Eyes, knew that TigerSwan personnel were surveilling them, TigerSwan’s own Situation Reports expressly confirm the “well-founded nature” of this belief. For example, a TigerSwan Sit-Rep states:

[212] “We have already seen this ‘bleedout’ happen with the ideologically driven pipeline fighters from Standing Rock, as several of them are in the process of moving to Iowa, including high-profile drone flyer Dean Dedman Jr. Additionally, other camps are being set up and are actively recruiting Standing Rock diaspora, such as the Two Rivers Camp in Texas fighting the Trans-Pecos Pipeline.” DOC ID #525 John Porter, *DAPL SITREP 168*.

[213] Dean Dedman, Jr. is a well-known Lakota videographer.

[214] And:

“While we can expect to see the continued spread of the anti-DAPL diaspora and the proliferation of successful TTPs following the jihadist bleedout model, we were able to study the protesters’ successes and failures and so improve our preparedness. Aggressive intelligence preparation of the battlefield and active coordination between intelligence and security elements are now a proven methods of defeating pipeline insurgencies.” Id.

[215] Such reports represent competent evidence that corroborates Defendant Iron Eyes’ belief that TigerSwan conspired to profile and target Lakota people, deploying military tactics and language (such as “TTPS” [Tactics, Techniques & Procedures] and “jihadist bleedout model”) against them.

3. that had arisen without culpability on his part.

[216] As mentioned in previous sections of this brief, in the context of activist statements and activities, American courts tend to concede the fact that activists do not create the harms that they challenge. See, e.g. People v. Gray, 571 N.Y.S.2d 851, 858 (N.Y. Crim. Ct. 1991). Similarly, the State cannot meet its burden of proving beyond any reasonable doubt that Defendant Iron Eyes caused the harm he sought to avoid in the context of his Third Necessity Defense: the final effectuation of the private TigerSwan-led anti-Lakota *racial* conspiracy that threatened to culminate in the February 1st, 2017 then-imminent issuance of the U.S. Army Corps of Engineers Certificate of Easement and the immediate re-commencement and finalization of the construction of the Dakota Access Pipeline under Lake Oahe and its being put into then immediate operation beneath The Lakota People’s sole source of fresh drinking water.

[217] Defendant Iron Eyes, in fact, believes that he has met his only minimal “burden of going forward” on this issue by his proffering to The Court the e-mail chain, that EarthJustice obtained pursuant to an FOIA request, stemming from the Army Corps of Engineers’ survey for the Environmental Impact Statement (EIS) prepared by The Energy Transfer Partners Corporation. DOC ID #515. In this e-mail chain, U.S. Army Corps of Engineers employees recoil in the face of the persistent anti-Native American racist comments being consistently made by Energy Transfer Partner Executive Vice President Joey Mahmoud, made in connection with their application to the U.S. Army Corps of Engineers for the Lake Oahe Certificate of Easement Id. One, Julie Price, an Army Corps staff member responds to these comments as follows:

[218] Indians this, Indians that...The attitude from these guys [Energy Transfer Partners] is just atrocious. It's pretty obvious it pisses these guys off that they even have to talk to tribal folks. ‘I don't give a rats ass what they think they need to validate; I was there, heard the concerns and saw the areas. MY years of experience working with tribal PEOPLE, TCP's, sacred and archaeological sites HERE, lead me to the exact conclusion that I have already stated: there is an area of concern that needs to be avoided if they want a permit for that crossing... the blatantly racist attitudes I keep hearing from them will just continue to make things worse.” Id.

[219] Further, in February 2017 Congressional testimony, Joey Mahmoud mirrors TigerSwan’s militarized language arguing:

“[w]hether directly or not, the protest movement induced individuals to break into and shut down pump stations on four operational pipelines. Had these actions been undertaken by foreign nationals, they

could only be described as acts of terrorism.” Joey Mahmoud, “Hearing on Modernizing Energy and Electricity Delivery Systems: Testimony of Joey Mahmoud On behalf of Energy Transfer Partners,” House Energy and Commerce Committee, Subcommittee on Energy, February 15, 2017, DOC ID#544.

[220] Such language on the part of high level Energy Transport Partners Corporation Executives directly parallels the language quoted above from TigerSwan Situational Reports and makes it clear that The Energy Transfer Partners Corporation specifically hired the TigerSwan Private *Military* Security Corporation for the very purpose of having TigerSwan deploy “aggressive intelligence” tactics and “security elements” against The Lakota People and to portray Lakota People as a national security threat to deprive the Lakota People, as a race, of their Constitutional Right to The Equal Protection of the Law; including the same laws, rules and regulations that had previously safeguarded the 92% White citizens of Bismarck from being exposed to the hazardous and dangerous effects of such a perilous project that were now being “transferred” to the Lakota People. DOC ID #525 John Porter, *DAPL SITREP 168*; See also “Security Company Seeks Settlement in Dakota Access Dispute,” US News available at: <https://www.usnews.com/news/best-states/north-dakota/articles/2018-05-15/security-company-seeks-settlement-in-dakota-access-dispute> for TigerSwan’s admission that Energy Transfer Partners hired them to do such work...*not* simply to be a “Consultant.”

[221] Because Defendant Iron Eyes has previously proffered to this court, on July 20th, the U.S. Army Corps’ e-mails, TigerSwan’s situational reports, as well as Energy Transfer Partners Corporation Vice president Joey Mahmoud’s anti-Native American racist remarks and his congressional testimony into evidence, Defendant Iron Eyes maintains that he has now met his “burden of going forward” on this point and that, now, the burden shifts to The State to prove *to Chase Iron Eyes’ JURY*, beyond any reasonable doubt, that Energy Transfer Partners Executives did NOT hire and conspire with TigerSwan Private Military Corporation Executives and Personnel to deprive Defendant Iron Eyes and his fellow Lakota People of their Constitutional Right to The Equal protection of The Law.

4. That no reasonable or adequate legal alternative existed.

[222] The necessity instruction is available where there is some evidence of the lack of legal alternatives. See United States v. Kabat, 797 F.2d 580, 591 (8th Cir. 1986). Defendant Iron Eyes has offered evidence that he held a Good Faith Belief that a lack of adequate legal alternatives was available to him and his Lakota People to protect themselves from the ultimate consequences of this private on-going anti-Native American anti-civil rights conspiracy due to Dakota Access’s and TigerSwan personnel’s recalcitrance in obeying legal orders. For example, the Declaration of Tim Mentz, tribal archaeologist, filed in support of the tribe’s September 2016 Motion for a Temporary Restraining Order makes it evident the fact that, on the very day that he filed this legal Declaration in Support of a Motion for a Temporary Restraining Order against the construction of the pipeline on and near the sites of Sacred Artifacts, in which he identified, in detail, specific sites of cultural and spiritual importance located along the pipeline corridor, Dakota Access ordered the

bulldozing (or pay loader destruction) of *these very sites* on a Saturday morning (on which Saturdays all witnesses uniformly confirm that there was NO construction work *ever* done – *moreover, it being the Labor Day Weekend* – AND that this Saturday morning was during an expressly-agreed-upon “hiatus” in all construction negotiated between Morton County Sheriff and Overall Incident Commander Kyle Kirchmeier and the management of The Dakota access Pipeline Corporation *during a then-on-going Lakota Pow Wow* DOC ID#516-518. Directly pursuant to the orders of high-level Energy Transfer Partners Executives from The Dallas Office in Texas, As the Dakota Access Pipeline Corporation construction crew destroyed all evidence of the sites before the judge had a chance to rule on the Motion. Id.

[223] In addition, Defendant Iron Eyes submitted into evidence a September 30, 2014 meeting between Tribal Chairman Dave Archambault II and Wasté Win Young, Tribal Historic Preservation Officer, which revealed the tribe’s early opposition to the pipeline. Sept 30th DAPL Meeting with SRST, 2014, available at: <https://www.youtube.com/watch?v=ZlwdtnZXmtY>, DOC ID #536. Specifically, Wasté Win Young asserted at that meeting that the Dakota Access Pipeline represented the “exact scenario [which has] unfolded within the last three years on the Bakken pipeline and the Baker Lateral pipeline, where the concerns of the Standing Rock Lateral, the pipeline became fully operational while the Standing Rock Sioux Tribal Office [...] were waiting on a meeting that the Corps had promised to set up. And in that meantime, the pipeline Baker Lateral became fully operational, and we were notified two weeks after it happened.” Id.

[224] Moreover, Defendant Iron Eyes has already submitted evidence that Donald Trump signed an executive order to approve an easement for the pipeline despite the fact that such an order violates the Administrative Procedure Act and notions of comity since a case was still pending in Washington D.C. regarding the easement.

[225] Because more than the standard “some” evidence reveals that Standing Rock Tribe utilized the court system to thwart construction of the pipeline, the ultimate effectuation of the anti-Lakota conspiracy, and Dakota Access and the President refused to respect the court orders and procedures, such evidence supports the notion that no reasonable or adequate legal alternative existed.

5. Any harm that Defendant Iron Eyes actually caused (if any) from engaging in the actions that he undertook on February 1st was not disproportionate to The Great Harm that would have been effectuated by the culmination of the ultimate “overt act” that was the unlawful objective of the private *racially-discriminatory* anti-Lakota anti-civil rights conspiracy of The TigerSwan Private Military Corporation Executives

[226] As a threshold matter, a “necessity defense” instruction would be legally-required so long as there is “some evidence” that a specifically-identified legally-cognizable harm is imminently being threatened at the time a defendant undertakes the action that he asserts was undertaken with the objective of trying to stop or prevent that imminent threat of that identified harm from coming to fruition. See United States v. Kabat, 797 F.2d 580, 591 (8th Cir. 1986). Upon the presentation to The Court of some such evidence, the obligation of the State arises to have to prove, beyond any reasonable doubt, *to that defendant’s jury*, that any actual harm that the defendant caused by his conduct undertaken to stop that greater harm from imminently coming to fruition was “disproportionate to” the harm that the defendant was attempting to stop from occurring.

[227] Defendant Iron Eyes is prepared to submit to The Court numerous Sworn Affidavits from Lakota Tribal Elders – and many other witnesses...including law enforcement officers on the scene of the February 1st events....that they did not view the actions taken by Chase Iron Eyes and his fellow tribal members as causing ANY actual harm but, instead, as upholding the virtue of the United States Constitution “which says that they will obey all treaties, because they are the law of the land.” Madonna ThunderHawk Interview, Lakota People’s Law Project. Madonna ThunderHawk continues by stating that Lakota Treaty Rights were being ignored “up until the 60s, when [they] learned about treaty rights, because no one [...was...] taught. They could get in trouble for talking treaty rights. They could get in trouble for even speaking the language.” Id. The interview of Lakota Elder Madonna ThunderHawk supports Defendant Iron Eyes’ Good Faith Belief that he remained at the Last Child Camp on the day of his arrest, not do cause any “harm”, but, instead, to assert that the Lakota people “understand [their] inherent legal rights.” Id. Additionally, other interviews that can be – and will be - made available to The Court, emphasize that Defendant Iron Eyes and his fellow Lakota tribal members remained on The Grassy Knoll, not to “cause harm” to anyone, but, instead, to respect *Thunkasila’s* will (the Lakota Peoples’ name for God), to pray, to have their rights and cultural values respected. See also, Jon Eagle Interview, Lakota People’s Law Project; Phyllis Young Interview, Lakota People’s Law Project. Defendant Iron Eyes is prepared to submit signed written Sworn Affidavits on this point to meet his burden of going forward on this issue prior to trial. And these witnesses have been set forth on Defendant Iron Eyes’ Trial Witness List.

[228] This court must also consider the evidence that Defendant Iron Eyes has proffered to The Court as being legally-sufficient to meet his comparatively minor “burden of going forward” supporting Defendant Iron Eyes’ Belief that neither The energy Transfer Partners Corporation nor The Dakota Access Pipeline Corporation legally owned the Last Child’s camp Site on which he and his fellow Lakota tribal members were arrested for allegedly “trespassing”, because those corporations were expressly *prohibited*, by a specific North Dakota State Statute from either “acquiring” or “owning” that land. DOC ID#553 *Morton County AG DAPL Complaint*. Moreover, Defendant Iron Eyes knew that the land on which stood The Last Child’s Camp was, as a matter of law, **never “ceded”** Sovereign Sioux Indian Territory on which he and the fellow members of his Lakota Band

of Sioux Indians had an express Treat Right to gather and pray together. DOC ID#553 & 554 *Treaty of Fort Laramie 1868; Treaty of Fort Laramie 1851*. See, especially “Attachment A” to this Memorandum setting forth the plain law of the United States and of The Lakota People.

[229] Therefore, such evidence supports the assertion that has been made by Defendant Iron Eyes that he did not intend to – nor did he - cause *any* actual “harm” on the day of his arrest, whereas the previously identified and tendered internal U.S. Army Corps of engineers email excerpts reveal that the import of the continuous flow of racial slurs coming from Energy Transfer Partners Corporation Executives was SO “harmful” to Lakota People that its continuation(if ever discovered) could actually require the “shutting down of the entire project”, as was cited earlier, in a May 2016 email chain of U.S. Army Corps communications about ETP and Dakota Access, LLC. DOC ID #515. “Why do we tolerate these comments from an applicant? Someone needs to tell Joey the next RACIST comment will shut down the entire project,” wrote Julie Price, The Cultural Resources Project Manager for US Army Corps of Engineers, Omaha District. Id. She goes on to write, “This project is ruining our relationships with the Tribes.” Id.

[230] Additional emails provided to The Court by Defendant Iron Eyes further illustrate this racist attitude toward The Lakota People on the part of ETP officials, for example: “Indians this, Indians that. Who is this Ed Wester guy anyway? The attitude from these guys is just atrocious. It's pretty obvious it pisses these guys off that they even have to talk to tribal folks,” wrote Richard Harnois, the Senior Field Archaeologist for the US Army Corps of Engineers, Omaha District Oahe Project Office. Id. He continues, “... some of the blatantly racist attitudes I keep hearing from them will just continue to make things worse.” Id. (emphasis supplied to make clear that this was an on-going series of such “blatantly racist” statements being made by Energy Transfer Executives.) “Ed Wester” was The Environmental Project Manager for The Dakota Access Pipeline Corporation. Harnois replied to the same email thread, “MY years of experience working with tribal PEOPLE, TCP's [Traditional Cultural Property], sacred and archaeological sites HERE, lead me to the exact conclusion that I have already stated: there is an area of concern that needs to be avoided if they want a permit for that crossing.” Id.

[224] Defendant Iron Eyes maintains that the evidence that he has already submitted to this court is strong enough to shift the burden to The State to disprove, beyond any reasonable doubt, *to Defendant Iron Eyes JURY, at trial*, that the “Good Faith Belief” that Defendant Iron Eyes asserts to this court that he held on February 1st of 2017 that the ultimate completion of the pipeline would have constituted the ultimate fruition of the unlawful objective of the class-based, invidious, *racially-discriminatory* anti-Lakota Native American anti-civil rights conspiracy that Defendant Iron Eyes believed was underway against him and his Lakota People on the part of ETP/Dakota Access Pipeline Corporation and TigerSwan Executives and Personnel was NOT “reasonably well-grounded.”

[225] Finally, Defendant Iron Eyes has met his evidentiary threshold with regard to the Sahr element of the necessity defense, because he has demonstrated that this is not a case in which he acted to try to stop or interfere with the exercise on the part of another American citizen of any fundamental Constitutional right that had been expressly recognized by the United States Supreme Court - as was the narrow case with regard to The Right to Obtain an Abortion at issue in State v. Sahr, 470 N.W.2d 185, 192 (N.D. 1991).

The State Supported Civil Rights Conspiracy against All Water Protectors

1. Defendant Iron Eyes believed his act to be *causally connected* to preventing the State supported civil rights conspiracy.

[226] As previously established, the level of evidence required for a justification or necessity defense in North Dakota is simply “if there is evidence” of the affirmative defense at issue. State v. Olander, 575 N.W.2d 65, 664 (1998). Similarly, the Eighth Circuit has held that the showing of an “underlying evidentiary foundation” as to each element of the necessity defense, “regardless of how weak, inconsistent or dubious” is sufficient to be entitled to a jury instruction. United States v. Casperson, 773 F.2d 216, 223 n. 12 (8th Cir.1985). Thus, Defendant Iron Eyes believes that he has provided sufficient evidence to the court on this point to meet this comparatively low threshold standard required to establish that his actions undertaken on February 1st had a reasonable possibility of stopping the full achievement of the ultimate unlawful objective of the later-State-supported, TigerSwan-generated anti-civil rights conspiracy identified by Defendant Iron Eyes – because Defendant Iron Eyes has provided evidence to The Court demonstrating that it was clearly understood and believed by Defendant Iron Eyes (and virtually ALL of his Lakota People) that the performance, by The Lakota People, of that specific Traditional Religious Ceremony that he and his fellow Lakota tribal members were in the process of performing, *on that specific hilltop*, had been prophesized, by a recognized Lakota Spiritual Leader, one Sun Dance Chief Richard Gray Grass, to have a very real chance of generating the Spiritual Intervention of their Lakota Ancestors to help them stop the then-imminent issuance of the U.S. Army Corps of Engineers Certificate of Easement that would trigger the immediate re-commencement of the construction of the final mile of the Dakota Access Oil Pipeline directly beneath their sole source of fresh drinking water, Lake Oahe, that constituted the First Step of “The Chain of Causation” that would *inevitably* bring to full fruition the ultimate unlawful objective of the *initially* purely private *racially-discriminatory* anti-civil rights conspiracy against The Lakota People – but, by then, STATE-supported anti-civil rights conspiracy *against* “Water Protectors” who had come to the aid of The Lakota People to try to protect their water against despoliation by The Dakota Access Pipeline.

[227] In further support of his own Sworn Affidavit attesting to the truthfulness of all of this, Defendant Iron Eyes has submitted to The Court the transcript of the February 1st contemporaneous Interview of the

Lakota People directly involved in planning and preparing that Traditional Lakota Religious Ceremony as to what their expectations were with regard to that Ceremony. DOC # 633. This is the audio recording already provided to this court in the Julian Bear Runner and Jenni Monet cases that highlights the fact that Lakota Tribal Elder and Sun Dance Chief Richard Gray Grass received spiritual instructions to establish the Last Child Camp. In that contemporaneous recording, Lakota Spiritual Acolyte Julian Bear Runner explains that The Ancestors:

[229] “told us to set those tipis up at half moon, with those doors facing east, set that fire in the middle. Stand your ground. They said those Iktomis were gonna be here to help us. They said they were gonna stand on this hill and hold them back [...] but again like we said, all...all of us have agreed we’re honoring Crazy Horse. He fought to his death, his dying breath you know, so that we didn’t have to succumb to that reservation life, and we didn’t have to have somebody dictate to us from the outside part of our lives [...] we watched [our grandparents], [our grandparents] showed us, how to pray, how to take care of this and now we’re going to do it. We’re going to take all of those teachings they gave us and do it the way we are supposed to.” Id.

[230] An interview with Standing Rock Sioux Tribal Council Archeological Historian Jon Eagle evidences the seriousness with which Lakota People take such Spiritual Visions that come to their recognized Shamans directly from their Ancestors conveying such explicit instructions:

[231] If our people receive spiritual instructions... you know when you offer the *opagi* (tobacco offering) and you create the place to have the ceremony and you receive the instructions, you’re bound by those instructions.” Jon Eagle Interview, Lakota People’s Law Project.

[232] Defendant Iron Eyes also speaks on the Julian Bear Runner recording, explaining that:

{The State’s blocking off Highway 1806 to The Standing Rock Sioux Reservation Casino, one of the Tribe’s principal sources of revenue} is the same as withholding rations in the late 1800’s. If we didn’t conform to whatever dictates they wanted, they would just withhold rations, in ‘the sign or starve era.’ And it’s the same thing now, by putting up a roadblock and starving an impoverished people from their main source of revenue and putting them under undue amounts of pressure. So, lifting the roadblock is our, one of our, primary concerns and having the pipeline removed from where it’s at [...] it’s the same fight.” See Doc ID #633.

[233] Defendant Iron Eyes has already presented to this court the transcript of the Julian Bear Runner audio recording, and the recording itself is in the hands of The State (which it has NOT handed over to the defense) and Defendant Iron Eyes is prepared to obtain the Sworn Affidavit of Jon Eagle confirming his statements made in his interview. And both Lakota men have been listed as Defense Witnesses at Defendant Iron Eye’ trial. Such evidence constitutes support for the fact that the conduct for which the State charges Defendant Iron Eyes stemmed directly from express spiritual guidance which he and his fellow Lakota People believed, on February 1st of 2017 would evoke the support of their Lakota Ancestors in stopping the effectuation of the ultimate unlawful objective of the anti-civil rights conspiracy. Therefore, Defendant Iron

Eyes maintains that he has met the comparatively low evidentiary threshold required by the law in the State of North Dakota to satisfy the “causal connection” element of this necessity defense.

2. an immediate and significant evil associated with a state sponsored conspiracy to deprive all water protectors of their constitutional rights

[234] To the same effect, Defendant Iron Eyes has already proffered sufficient evidence to present the “immediate and significant evil element” of his necessity defense to his jury supportive of his charge that TigerSwan Executives and Personnel sought to – and succeeded in transforming their *previously* purely private, *racially-discriminatory* anti-civil rights conspiracy directed against Lakota People *into* a state-supported anti-civil rights conspiracy to deprive Non-Native American People of *their* Constitutional Right to The Equal Protection of The Law *because of their FIRST AMENDMENT-PROTECTED* activity. Pursuant to the invocation of the necessity defense, the aspect of the *bona fides* of the charged “significant and immediate evil” element of such a defense is a question of fact for the trier of fact – which, in a jury trial, is, of course, the defendant’s jury. People v. Gray, 571 N.Y.S.2d 851, 856 (N.Y. Crim. Ct. 1991); State v. Heyer, Dist Ct, Oakland County, 52d Dist, 1st Div, Nos. 83-101194 — 101228 [1985]; People v Jones, Nos. 83-101226 — 83-101228, slip opn, at 4-5, Mich Dist Ct, Mar. 2, 1984. Examples of a successfully sufficient degree of evidence to meet this comparatively low standard of proof include: public studies or the Defendant’s own testimony. People v. Gray, 571 N.Y.S.2d 851, 860 (N.Y. Crim. Ct. 1991); Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002). To clarify, such evidence is sufficient for a Defendant to meet his burden of going forward so as to be allowed to present his evidence to his jury.

[235] For example, the sworn deposition testimony of state law enforcement officials provided to Defendant Iron Eyes in this case reveals that such officials regularly attended TigerSwan-convened and TigerSwan-conducted meetings at a special hanger at The Mandan Airport in which Field Commanders of the TigerSwan Private Military Corporation would regularly propose utilizing unlawful tactics, and law enforcement officers would have to verbally advise them of the illegality of such matters, but then, nonetheless, would fail to arrest TigerSwan agents when those very tactics were utilized in the field. DOC ID #618.

[236] Moreover, these Sworn Depositions revealed that law enforcement were informed that TigerSwan Personnel were inciting violent conduct by “breaking into” the radio communications of both Lakota people and Non-Native Water Protectors and issuing false commands to them (pretending to be fellow Water Protectors) directing Water Protectors to engage in illegal actions and menacing Lakota People and Water Protectors alike with baseball bats in order to silence them in violation of their First Amendment rights. See DOC ID #611-622. The same depositions reveal that, despite this information, State and Local law enforcement failed to *ever* investigate TigerSwan. Id. Specifically, the deposition of Sheriff Kyle Kirchmeier verifies that the his deputies were informed that TigerSwan Personnel, even including their Field Commander, John Porter, were breaking

into the radio communications of the Water Protectors and pretending to be a fellow Water Protector in order to incite them to engage in violent conduct. DOC ID #622. Further, the testimony of State Trooper Derek Arndt and Deputy Dion Bitz verify that even though they were aware of the reports (verified by video footage) that the dogs had attacked Lakota People and Water Protectors, law enforcement nonetheless refused to investigate any of these private security companies – and directed any and all such investigations exclusively to persons who were engaged in First Amendment-protected activities.

[237] Thus, the sworn testimony of local law enforcement officers themselves supports Defendant Iron Eyes' Good Faith Belief that TigerSwan Executives and Personnel had succeeded in getting law enforcement officials and field commanders to join TigerSwan's conspiracy by state law enforcement officers refusing to accord persons engaged in their exercise of First Amendment rights their Right to The Equal Protection of The Law.

3. that had arisen without culpability on his part.

[238] In the context of cases like that of Chase Iron Eyes, Courts tend to concede the fact that activists did not create the harms challenged. See People v. Gray, 571 N.Y.S.2d 851, 858 (N.Y. Crim. Ct. 1991). Similarly, Defendant Iron Eyes has provided adequate evidence to The Court to constitute a *prima facie* showing that he did not “create”, or “cause” the transmutation of the earlier purely private TigerSwan *racially-discriminatory* anti-civil rights conspiracy of TigerSwan directed against The Lakota People *into* the State-supported anti-First Amendment anti-civil rights conspiracy that Defendant Iron Eyes specifically identified to The Court. It is now time for The State to be put to its proof, before Chase Iron Eyes' JURY, to prove, beyond a reasonable doubt, that Defendant Iron Eyes somehow “caused” the harm that he sought to avoid: the devolution of a previously purely private *racially-discriminatory* conspiracy against Lakota People *into* a state-supported anti-civil rights conspiracy to silence the message of an assemblage of American citizens to give effect to the will of The Energy Transfer Partners Corporation to drill and install the pipeline under Lake Oahe.

4. That no reasonable or adequate legal alternative existed.

[239] As to the “no reasonable or adequate legal alternatives” element, “to dispense with the necessity defense by assuming that people always have access to effective legal means of protest circumvents the purpose of the defense. When courts rule as a matter of law that defendants always have a reasonable belief in other adequate alternatives, they are asserting that, regardless of how diligent a party is in pursuing alternatives, no matter how much time has been spent in legitimate efforts to prevent the harm, no matter how ineffective previous measures have been to handle the emergency, the courts, in hindsight, can always find just one more alternative that a citizen could have tried before acting out of necessity.” People v. Gray, 571 N.Y.S.2d 851, 860-861 (N.Y. Crim. Ct. 1991). Defendant Iron Eyes has elucidated for The Court a long history of attempts to

prevent the harm perceived. Such evidence satisfies the threshold evidentiary standard to the no reasonable legal alternatives prong of the necessity defense. Id., See Also People v. Largrou, Nos. 85-0000098 a 85-000100, 85-000192, 10-11 (Mich. Dist. Ct. Mar. 22, 1985). See Also People v. Block, Crim. Nos. 3235 a 3245 (Cal. Sacramento County Mun. Ct. August 1979).

[240] As the above-referenced Sworn Depositions reveal, Defendant Iron Eyes and his fellow Lakota People were confronted with the reality of having private military contractors hired by the oil industry to crush them transparently violating their Right to The Equal Protection of The Laws and their First and Fourth Amendment rights.. while the state law enforcement authorities contemporaneously refused to protect his and his fellow Lakota People...and then The Water Protectors simply because they held a view unpopular to the locality.

[241] One the law enforcement people had been successfully “drawn into” TigerSwan’s paranoid “militaristic” view of Defendant Iron Eyes and his Lakota People....and, then, into a general state of anti-Constitutional fervor by TigerSwan Operatives, Defendant Iron Eyes and his fellow Lakota tribal members could no longer realistically depend upon local or State law enforcement authorities to conduct themselves in an even-handed manner toward Lakota People.

[242] As noted in previous sections, Standing Rock Sioux Reservation Tribal Chairman Dave Archambault II and Wasté Win Young, Tribal Historic Preservation Officer, met with DAPL as early as September 30, 2014 to explain the tribe’s opposition to the pipeline’s route. Sept 30th DAPL Meeting with SRST, 2014, available at: <https://www.youtube.com/watch?v=ZlwdtnZXmtY>, DOC ID #536. Also, in a declaration that Tim Mentz filed in support of the tribe’s D.C. case highlights that Dakota Access dug up sacred Lakota site before the D.C. court had a chance to rule on a TRO to protect those very sites. DOC ID#516-518.

[243] Furthermore, on February 1, 2017 a case was still pending in Washington D.C. regarding the construction of DAPL. In an interview, then Tribal Historic Preservation Officer Jon Eagle explains that the Standing Rock Lakota people felt “set up for failure” because the judge “had no comprehension of how [the desecration of the sacred sites] was going to affect” the Standing Rock Sioux Tribe; “of how it triggered historical trauma.” Jon Eagle Interview, Lakota People’s Law Project.

[244] Jon Eagle continues:

So, how we interpreted [the D.C. case] was that we had to reach out to all of our relatives all the other bands because we knew that if we stood alone, we were going to fail. We knew that. We had enough experience in federal consultation to see the divide and conquer tactics that, you know, they do and they do consultation individually with tribes, and all they need is one tribe to say, ‘yes.’ That’s all they need is just one to say yes, and then, they move forward with the project.” Id.

[245] Because Defendant Iron Eyes is willing to request and submit into evidence the sworn affidavits of the above-mentioned individuals, and their testimony tends to prove that he, his fellow Lakota tribal members and the non-Native Water Protectors utilized the legal system early and often in the process to stop the

pipeline project, all to no avail – NOT because they were not legally correct in their assertions (as was later proven when Judge Boasberg in Washington, DC ruled that Energy Transfer Partners had obviously “gerrymandered” the purported Zone of Potential Adverse Impact from the pipeline to willfully disappear all Lakota People p and that neither the Energy Transfer partners Corporation or the U.S. Corps of Engineers had given the legally-required degree of consideration to the rights of the Lakota People before The Corps issued its Certificate of Easement to ETP – and ETP *immediately began drilling and raced forward to as-immediately-as-humanly possible, to complete the construction of the pipeline under Lake Oahe* – BUT neither Judge Boasberg nor The Corps **did anything whatsoever** to STOP Energy Transfer from *continuing to drill and install the pipeline even after declaring it to be ILLEGAL!* Defendant Iron Eyes has satisfied his “burden of going forward” by evidencing to The Court “a long history of legal attempts to prevent the harm perceived;” the harm of completing the installation of the pipeline and silencing the Lakota People as well as, later, their non-Native allies, The Water Protectors, from conveying their message through peaceful, constitutionally-guaranteed measures.

5. Any “harm” actually caused by Defendant Iron Eyes by the actions he undertook on February 1st was not disproportionate to the averting the effectuation of the purpose of the civil rights conspiracy.

[246] Next, Defendant Iron Eyes bears the burden of going forward to proffer to The Court “evidence strong enough to support a finding in his favor” *by a jury* that he possessed a Good-Faith Belief that his actions were necessary to avert a greater harm; the loss, as a result of the now-state-supported anti-civil rights conspiracy that they faced, of the few tribal resources that his tribe still possessed – Lake Oahe and the vibrant eco-system that it supports. See M.E. v. M.E., 894 N.W.2d 877, 878 (2017). If Defendant Iron Eyes has met this burden of going forward, his trial court may not lawfully refuse to allow him to present to his jury, at trial, his necessity defense, unless, at the time of trial, the only evidence that he has to support his necessity defense is evidence is “inapplicable” or “irrelevant”. See State v. Biby, 366 N.W.2d 460, 465 (N.D. 1985).

[247] It follows that, unless the evidence Defendant Iron Eyes has proffered to The Court is either inapplicable or irrelevant, then his jury must be allowed to hear his evidence, and the State must, then, disprove its veracity beyond any reasonable doubt. The State conclusory proclaims, in its August 9th Motion for an Order in Limine, that Defendant Iron Eyes caused harm through his “criminal activities.” DOC ID# 698. Defendant Iron Eyes has proffered evidence to the Court that he believed that Dakota Access did not own the land on which he was arrested for “trespassing” because the corporation that purportedly ordered the law enforcement officers to order Defendant Iron Eyes off *its* property – and to arrest him for “trespassing” if he did not leave – did NOT, as a matter of law, own that property. In support of the “reasonably well-grounded” nature of his belief, Defendant Iron Eyes has not only has proffered to The Court “Attachment A” which makes clear that

there is MORE than “a good faith basis” for defendant Iron Eyes’ belief, on February 1st of 2017, that the land that he was on was the **never ceded** Sovereign Territory of his Sioux Tribe of Indians and DOC ID#553 & 554 *Treaty of Fort Laramie 1868; Treaty of Fort Laramie 1851*; but also that neither The energy Transfer Partners Corporation nor The Dakota Access Pipeline Corporation owned the land that he was on, as was being falsely asserted by police, his proffering to The Court DOC ID#553, *Morton County AG DAPL Complaint*..

[248] In the previously mentioned interview, Jon Eagle attests to the fact that:

Camp was a beautiful place [...] from day one until the last day when it was closed. But to see those tribes comes and still know their traditional protocols: how they’d come to the highway and they’d wait till somebody came out, and then they’d make that *opagi* (tobacco offering), and then share those gifts. They were bringing buffalo and elk and salmon and wood, and supplies and then they’d come into that camp, singing their traditional songs and dressed in their own regalia. [...] Tunkasila showed us a beautiful way, and that beautiful way was standing together.” Jon Eagle Interview, Lakota People’s Law Project.

[249] In his interview, Jon Eagle, the Official Standing Rock Sioux Tribal Cultural Historian, paints an image of camp completely different from the camp that the State falsely attempts to convey to The Court. The State has the ultimate burden to prove, beyond a reasonable doubt, that Defendant Iron Eyes chose to act in a way that caused greater harm than the harm he intended to avert, this Court must find that Defendant Iron Eyes has satisfied his preliminary evidentiary burden as to this element of his necessity defense.

6. And finally, that his actions did not challenge constitutionally protected conduct.

[250] The *Sahr* Court refused to elaborate the elements of the North Dakota necessity defense because it found that, within the context of abortion protests, a protestor-defendant could not assert the necessity defense, because the United States Supreme Court had definitively ruled that American citizens possess a Constitutional right to obtain an abortion and that lower American courts are, therefore, prohibited, as a matter of Constitutional Law from officially recognizing, as a GREAT HARM, the activity of a clinic providing abortion services to American women. See State v. Sahr, 470 N.W. 2d 185 (ND 1991).

[251] In the instant case, Defendant Iron Eyes has a right to assert his necessity defense because neither private nor state actors have any Constitutionally-protected right to suppress American citizens’ First Amendment rights. assembly. Thus, Defendant Iron Eyes has met the comparatively low evidentiary threshold with regard to the Sahr element of the necessity defense, because this is not a case where he acted against what

the courts have already recognized to be a Constitutionally protected right, as was the activity of attempting to secure an abortion in State v. Sahr, 470 N.W.2d 185, 192 (N.D. 1991).

THE THREAT OF THE GREATER HARM OF GLOBAL CLIMATE CHAOS

1. Defendant acted to prevent a Great Harm

[252] As early at 1977, the oil industry knew that the burning of fossil fuels, releasing massive amounts of carbon into the atmosphere, would change the climate of the planet.

<https://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>

The threat to climate stability became more public shortly thereafter. See Hamakerk, John D. and Weaver, Donald A, The Survival of Civilization Depends Upon Our Solving Three Problems: Carbon Dioxide, Investment Money and Population - Selected Papers of John D. Hamaker, Hamaker-Weaver Publishers; First Edition (June 1, 1982)

[253] Today, there is a general scientific consensus that the burning of fossil fuels is seriously destabilizing the planetary climate. See e.g. Climate Change 2014, Synthesis Report, Summary for Policy Makers; Intergovernmental Panel on Climate Change (IPCC).

[254] Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.

[255] Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.

[256] That consensus found expression in the Paris Agreement initially signed by every nation on Earth.⁶ <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>. The very existence of this agreement is *prima facie* evidence that climate change is a major harm that threatens civilization itself.

[257] Those seeking to prevent climate change are essentially attempting to protect civilization itself and the ecosystems of the planet that support all life. There could hardly be a greater harm than continuing to allow the fossil fuel industries to put civilization and the survival of innumerable non-human species at risk.

[258] The introduction of new oil pipelines to make it possible to extract more fossil fuels to be burned constitutes an attack on the human species itself because worst case scenarios have the planet warming to the extent of being uninhabitable for humans.

[259] Stopping the Dakota Access Pipeline from being completed would be a contribution to moving human civilization off fossil fuels and onto more sane forms of energy generation.

⁶ President Trump made the United States the first nation to withdraw from that international agreement. Doc ID# 540.

2. Defendant Iron Eyes actions had a causal connection to preventing the Greater Harm he sought to stop, mitigate, impeded, or otherwise reduce.

[260] The Dakota Access Pipeline was stopped once when the United States Department of Interior, Department of Justice, and the United States Army Corps of Engineers decided that The Corps needed to prepare a full Environmental Impact Statement (EIS). <https://www.politico.com/story/2016/12/us-army-corps-blocks-dakota-access-pipeline-232172>. That decision came in the midst of the Standing Rock water protector protests, characterized by encampments maintaining a continual witness and reaching out into the general community for support. That support undoubtedly played a role in the decision of the Obama administration to pursue the full EIS, rather than grant the certificate of easement.

[261] With those protests having succeeded in stopping the construction of the pipeline and the existing Oceti Sakowin encampment scheduled for closing, <https://theintercept.com/2017/02/25/video-a-closing-prayer-for-standing-rocks-oceti-sakowin/>, Defendant Iron Eyes joined with those establishing a new encampment to continue the same spiritual/political strategy.

[262] The use of a proven technique for stopping the pipeline satisfies the requirement for a *prima facie* showing that the actions taken by the Defendant had a causal connection to the prevention of harm sought by Defendant.

3. Defendant Iron Eyes had a good faith belief that the Greater Harm was actually manifesting.

[263] The threat of the Greater Harm must be imminent. The question then arises as to whether the threat of climate chaos is imminent.

[264] The global threat of climate chaos is beyond imminent and already manifesting. The Paris Accord and the many international studies document that manifestation.

[265] So do the fires in California, the rising sea levels, the melting ice caps and glaciers, the massive downpours and flooding, the record heat, algae blooms in Florida killing millions of fish, manatees, and dolphins -- the list of highly destructive global impacts of burning fossil fuels and releasing greenhouse gasses is quite extensive.

[266] The challenge facing the human family is not when the threat of climate chaos will be imminent. The chaos is already here.

[267] At Oceti Sakowin, the victory in stopping the pipeline was short-lived. The second official action taken by newly-elected President Trump on January 24, 2018 was to order the Army Corps of Engineers to cancel the EIS process already underway and grant the easement without any further study. Defendant Iron Eyes considers the President's actions illegal. See Attachment E [Lakota Peoples' Law Project Amicus Brief].

[268] With President Trump having ordered the issuance of the final easement, the flow of oil would begin shortly thereafter and the burning of the oil in that pipeline would begin its contribution to the gasses causing climate chaos.

[269] Defendant took what actions he could in the very short time frame available between the issuance of the President's Memorandum and the resumption of construction that would inevitably lead to the completion of the pipeline and the beginning of oil flow contributing new fuel to the atmospheric heat build up.

4. Defendant had no complicity in creating the Greater Harm:

[270] The Defendant asserting a necessity defense as the avoidance of a greater harm cannot have created the greater harm. Defendant Iron Eyes can hardly be responsible for a policy of extracting and burning fossil fuels that began long before Defendant was born.

5. Defendant had no legal alternatives to pursue:

[271] The State of North Dakota Public Service Commission approved the Dakota Access Pipeline.

[272] The United States Army Corps of Engineers approved the Dakota Access Pipeline.

[273] The President of the United States approved the Dakota Access Pipeline.

[274] All efforts by the Standing Rock Sioux Tribe and other Tribes to stop the pipeline through litigation did not succeed.⁷

[275] The United States Congress did not respond to appeals from the Standing Rock Sioux Tribe to stop the pipeline. <https://www.theguardian.com/us-news/2017/feb/07/dakota-access-pipeline-approved-standing-rock-sioux>

[276] Defendant was not going to find any relief from the State or Federal Governments. With those avenues closed, self help remained the only option with a potentially positive outcome available.

6. The harm caused by Defendant was not disproportionate to the harm being prevented.

[277] While not conceding that Defendant did any harm at all, the most that the State alleges as harmful action by the Defendant is making a Facebook live broadcast asking people to make contact with media to invite them to cover the establishment of the new camp and locking arms with fellow participants in the

⁷ The federal judge presiding over a lawsuit brought by the Standing Rock Sioux Tribe found that the easement was illegally granted because the United States Army Corp of Engineers did not adequately evaluate the impacts of the pipeline on the hunting and fishing rights of the Lakota people and because the United States Army Corps of Engineers did not adequately evaluate the pipeline's impact on a racial minority community as required by federal law. The judge remanded the case back to the United States Army Corps of Engineers for further work on those issues and refused to vacate the easement, i.e. the oil was allowed to flow even though the easement at issue was illegally approved.

spiritual ceremony taking place at Last Child Camp to prevent interruption of the ceremony by people trespassing on tribal land.

[278] Those alleged harms are *de minimis* and certainly do not constitute a threat to civilization or to the continued existence of human and other species living on the planet.

7. Defendant's actions did not challenge a constitutional right.

[279] There is no constitutional right to destroy civilization, put hundreds of millions of human lives at risk, or extinguish non-human species. The many cases in which judges are now granting defendants the right to pursue necessity defenses related to stopping climate change demonstrate a judicial acknowledgement that creating climate chaos is not a constitutionally protected right.

[280] To the contrary, a number of courts have recognized the right of defendant's to assert a climate chaos defense. See Attachment F [Climate Defense Project brief].

[281] The science of climate chaos is also becoming more precise and definitive as to the human contribution to the visible instability. <https://www.nbcnews.com/news/us-news/global-warming-can-make-extreme-weather-worse-now-scientists-can-n901751>

VI CONCLUSION

How & Why The State’s August 9th “Motion in Limini” is Legally and Factually Insufficient to Rebut Defendant Iron Eyes’ Having Met His “Burden of Going Forward” By His Presentation of a *Prima Facie* Showing of The Well-Grounded Nature of His Good Faith Beliefs To Support The Presentation of His Necessity Defenses to His Jury

A A Preliminary Matter re: “Treaty Defense”

[282] Directing the Court’s attention, for a moment, first, *from* The State’s August 9th arguments in support of this court’s issuance of An Order in Limine against Defendant Chase Iron Eyes’ presenting to his jury his Common Law and ultimately Sixth Amendment-guaranteed “Necessity Defense”⁸, let us turn, first, to The State’s argument, set forth in his Memorandum in Support of Its Motion for an Order in Limine, at ¶ 32, its assertion that that The Treaties of Fort Laramie of 1851 and 1868 did not provide to Defendant Iron Eyes - or to any of the other 30+ members of The Sioux Tribe of Indians who were arrested with him on February 1st for “trespassing” on the specific half-acre of land that is at issue in this case – any right to be on that land at issue or to perform, on that land, any Traditional Lakota Religious Ceremony.⁹

⁸ Which is a “right” that is plainly recognized by the North Dakota State Supreme Court in *The Sahr Case*. The State specifically mis-cites *The Sahr Case* for the incorrect proposition that the right of a criminal defendant to assert a necessity defense in his trial is *not* “recognized” by The State of North Dakota. Any such effort, The State argues, is nothing more than an attempt on the part of a criminal defendant to impermissibly “extend” the *only-statutorily-provided* defense of “Justification”...any such “extension” of which doctrine The State contends to be “appropriate” *only* for the legislature to undertake. This is a simple mis-reading of *The Sahr Case* in which the North Dakota State Supreme Court expressly states that the legislative history of NDCC Ch. 12.1-05 clearly states that this statute was **NOT** intended to preclude the *judicial development* of other justifications. The *Sahr* Court simply pointed out that NDCC Ch. 12.1-05 did not “license” criminal courts to engage in the *judicial* extension of justification to [just] *ANY individualized conception* of ‘necessity’ [emphasis provided]. This means, of course, that a state criminal court is not “licensed” by this legislatively endorsed authorization for criminal courts to “extend” this principle of “justification” to justify the “extension” of this principle of justification to just *any* individual defendant’s *purely subjective “individualized conception”* of a justification of his actions. This is, of course, entirely sound. For a defendant must provide *prima facie* evidence supporting the essential elements of a *Constitutionally*-authorized necessity defense. And the *Sahr* Court went on to explicitly elucidate what these elements are.

⁹ Defendant Iron Eyes would note for The Court that Defendant Iron Eyes’ invocation of his 1851 & 1868 Treaty Right to be on that specific half-acre of land, and to participate, on that land, in a Traditional Lakota Religious Ceremony, is NOT a part of any of his “Necessity Defenses” – even though he does invoke this Right as part of his Defense-In-Chief against the “Trespassing” charge - is attacked by The State as part of its Motion

[283] In ¶ 32, The State argues, in what can be fairly characterized as a simple display of historical *and legal* ignorance of Treaty Law, that The Treaties of Fort Laramie of 1851 & 1868 do not provide ANY “rights” to the members of The Sioux Tribe of Indians “other than to HUNT.” Id, at p. 19, line 9. The State then goes even further to assert, in ¶ 32, at line 10 of page 19, that “even that is caged down to only so long as the buffalo range in such numbers as to justify the chase”, citing Doc#575, at p.7 and Doc.#576, at p. 26. Referring *only* to “usufructuary rights” – which are “rights” *retained* by members of a Native American Tribe exclusively on land that has been officially “ceded” (or “given over”) by an Indian tribe to the United States Government, The State goes on to plainly confuse, indeed to utterly conflate, on the one hand, *such* expressly limited “usufructuary rights” *retained* to be exercised on “ceded” lands with, on the other, “SOVEREIGN Rights” that belong to Native People (in this case, to all Sioux People) on land that was expressly –and *officially* – acknowledged by the United States Government in The Treaty of Fort Laramie of 1851 AND AGAIN in The Treaty of Fort Laramie of 1868 to be the “sovereign territory” of The Sioux Nation of Indians which land was **never** “ceded” to the United States Government. The “sovereign “ status of such **never-“ceded”** lands over which The Sioux Tribe of Indians were expressly acknowledged, by the United States Government, to possess sovereignty in the 1851 and 1868 Treaties of Fort Laramie can be altered ONLY by a written agreement “signed by 3/4ths of the adult males of The Sioux Tribe of Indians.” See, The Treaty of Fort Laramie of 1868. This very principle was explicitly confirmed by the United States Supreme Court in 1980 in the case of United States v. The Sioux Tribe of Indians, 448 U.S. 37, at 411-424. The State then proceeds to seize upon what it apparently believes to be a dispositive piece of evidence that is supposed to convince this court that even the last minor vestige of their former sovereign rights over this land have now been fully extinguished by The State asserting that “defense exhibits 4(a) and 4(b) provide that the tribe actually owns a herd of buffalo (Bison) indicating that the buffalo (Bison) no longer range in sufficient numbers to justify the chase (See Doc# 575, at p. 7, and Doc#576, at p. 26...asserting, moreover, that, even pertaining to these much more limited “usufructuary rights”: “Nothing there discuss[es] religious ceremonies, as having been a right ‘reserved’ by the 1868 Treaty. The Tribe’s filings also

In Limine demanding that The Court ban Defendant Iron Eyes from attempting to present any of his “Necessity Defense” information to his Jury at the November Trial of his case.

indicate that they deemed the 1851 treaty to have been breached, meaning that the terms of that treaty would no longer have been binding.” Id.

[284] Rarely in the annals of American law does one find a single page of Government Legal Filings that is so shot-through with such a flagrant display of ignorance of American Treaty Law...or, indeed, of “law” *at all*.

[285] First: The State totally confuses the “sovereign rights” of The Sioux Tribe and its people to engage in the *full panoply* of their traditional “sovereign rights” within, and ON, the “sovereign territory” *expressly* “recognized” and *officially* “acknowledged” by our United States Government in *both* The Treaty of Fort Laramie of 1851 and The Treaty of Fort Laramie of 1868 to be their sovereign territory – with the mere “usufructuary rights” that are a much narrower category of vastly more “limited” rights of Native People who have expressly “retained” “usufructuary rights” on such “CEDED” LAND (that is, land which that tribe has intentionally “ceded” over to the United States Government.

[286] Next: The State then displays its ignorance of the fact that THE LAND IN QUESTION IN THIS CASE was **never** “ceded” to the United States Government, in *either* The Treaty of Fort Laramie of 1851 **OR in The Treaty of Fort Laramie of 1868**. Nor did The Act of Congress of February 28th of 1877 have any effect *whatsoever* in “transferring” title to that specific area of land to the United States Government. THIS LAND was, as of 1878, just as totally **NON-“Ceded”** to the United States Government by the enactment, by Congress, of The Act of Congress of February 28th of 1877 *as were THE BLACK HILLS*. And, this latter *legal FACT*, as was stated above, was *indisputably* and *authoritatively* decided by the United States Supreme Court in 1980 in United States v. The Sioux Tribe of Indians, Id. **And the United States Government has NEVER “proffered” a single DIME, in the form of any “Just Compensation” for The Last Child’s Camp Site Land that is issue in this case.**¹⁰ The State simply claims that this area of high prairie land *within the sovereign*

¹⁰ The U.S. Government “proffered” \$13 million to The Sioux Tribe of Indians for The Black Hills – in a universally-rejected *ex post facto attempted* exercise of Eminent Domain over The Black Hills in 1980. And it “proffered”, as well, a *purported* “fair market value” for THE LAND NORTH OF THE CANNONBALL RIVER in 1958 - **BUT ONLY FOR THE LAND EAST OF NORTH DAKOTA HIGHWAY 1806**, in another authoritarian exercise of its purported Power of Eminent Domain in 1958 on which land it created Lake Oahe as a reservoir behind the hydro-electric dam. But the United States Government **never** so much as

territory of The Sioux Tribe of Indians was purportedly “taken” by the simple enactment by Congress of The Act of Congress on February 28th of 1877....which was no more true for *this* area of land than that same assertion was found to be true, by the United States Supreme Court, in United States v The Sioux Tribe of Indians pertaining to The Black Hills.

[287] So, the simple fact is that the United States Government simply HAD no “Good Title” *whatsoever* to this area of 1851 Sovereign Treaty Territory of The Sioux Tribe of Indians that it could possibly have been *legally* “transferred”, by a U.S. Government Land Patent, to any *purported* “Predecessor-in-Title” to this area of grassland...from whom “Good Title” to this specific land area could possibly have been *legally* “purchased” *by anyone* prior to February 1st of 2017.

[288] Moreover, The State asserts, in ¶ 32, at line 16 of page 19, that, because The United States Government has been deemed by The Sioux Tribe of Indians to have “breached” The Treaty of Fort Laramie of 1851, this “mean[s] that the terms of that treaty would no longer have been binding”, asserting, it would seem, that the breaching of The Treaty of Fort Laramie of 1851 *by the United States Government* renders that Treaty *no longer “binding” on the United States Government*. That, surely, must be one of the most astounding readings of International Treaty Law ever presented to an American Court....even in Government cases against Indians!

[289] Thus, even though Defendant Iron Eyes has NOT asserted his position regarding the legal effect of The Treaties of Fort Laramie of 1851 & 1868 to be a ground of his “Necessity Defense”, but, instead, poses this position to The Court in support of his Defense-In-Chief against the charge of “Trespassing” on the land at issue in this case, The State has chosen to make this set of legal assertions in its Memorandum in Support of Its Motion For The Issuance of An Order In Limine against Defendant Iron Eyes’ *Necessity Defense*. So, Defendant Iron Eyes wished to address these assertions prior to addressing of the arguments of The State insisting that The Court impose an Order In Limine prohibiting him from raising his distinctively different

pretended to exercise Eminent Domain over THE LAST CHILD’S CAMP SITE Land Area that is *at issue in this case*, west of Highway 1806.

Necessity Defense against the charges filed against him in this case. (See: “Attachment A” to this Memorandum.)

B

The State's Arguments In Support of Its Demand For An Order In Limine

[290] As has been pointed out in footnote 3 above, The State, at the very opening of its Brief in Support of Its Motion For an Order in Limine, in ¶ 3, utterly misstates the import of *The Sahr Case* decided by our North Dakota State Supreme Court in 1991. The State asserts that *Sahr*, 470 N.W. 2d 185, stands for the principle that our State criminal trial courts have been directed by our Supreme Court *not* to interpret Chapter 12.1-05 of our North Dakota State Centennial Code (that expressly confirms the availability to criminal defendants in North Dakota of the common law “Justification Defense”) to “extend” the principle of “justification” to authorize the presenting of a “necessity” defense to a jury in North Dakota. As was pointed out above in footnote 3, this misstates the law in North Dakota. The admonition of The *Sahr* Court that our State criminal courts *not* read Chapter 12.1-05 as “licensing” our criminal courts to “extend” the “Justification Defense” to just any *individualized* conception of a “necessity” defense on the part of a criminal defendant was not – and does *not* – in any way diminish a criminal defendant’s common law and Constitutional right to present a “necessity” defense to his jury. Indeed, the *Sahr* Court, itself, goes on to set forth, as being expressly available to criminal defendants in North Dakota, the classical elements of necessity defense as being effectively synonymous with the legislature’s understanding of the “justification” defense.

[291] Parenthetically, in making this argument that Ch. 12.1-05 was somehow intended by our State Legislature to *exclude* the availability of the common law “necessity” defense in North Dakota, The State simply ignores Section 08 of Chapter 12.1-05 which provides that:

[292] A person's conduct is excused if he believes that the facts are such that his conduct is **necessary** and appropriate for any of the purposes which would establish a justification or excuse under this chapter, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

[293] While this provision of Chapter 12.1-05 refers to such a “necessity defense” as the affirmative defense of “excuse”, it is clear that The Court – and the State Legislature – were referring to the classic common law “necessity” defense. And, while this provision provides that “...if his belief is *negligently* or *recklessly held*, such a belief [which would, of course, then, NOT be a “good faith” belief] is not an excuse in a prosecution for an offense for which *negligence* or *recklessness*, as a case may be, suffices to establish culpability”, this provision does NOT assert that a defendant is excluded from asserting his “necessity” defense, if the action that he undertook that he believed to be “necessary” in order to avoid or prevent a much *greater* “harm” *may have* “recklessly” or “negligently” “created a *risk* of injury to other persons.” What this provision provides is that a “recklessly” or “negligently” held “belief” will not be allowed to serve as an “excuse” or

“justification” in a prosecution for an offense *for which negligence or recklessness*, as the case may be, suffices to establish

culpability. This makes perfect sense, since the *standard of culpability* for the commission of *such* an offense, in which the defense of “excuse” might be asserted, would be mere “negligence” – still providing for “guilt” *even if the defendant had been merely “negligent.”* But this “UN-availability” could NOT be invoked if the offense at issue *required* actual *scienter* or *willful intent*.

[294] So, it is the *standard of the degree of culpability* that would need to be established, as a matter of law, (either “negligence” or “specific scienter”) to have HAD to have been present in a defendant’s mind *pertaining to the specific crime with which that defendant stands CHARGED* in the case in which he invokes Chapter 12.1-05 that would govern the availability or NON-availability of the affirmative defense of “excuse” provided by Chapter 12.1-05 – **NOT** whether that defendant did, or did not, “negligently” create a risk of injury to another person by his having undertaken the specific action that he did that he believed to be “necessary” to avoid or prevent a *greater* “harm” that he was seeking to prevent by his action. Otherwise, the “greater harm” element of the classical “necessity” defense would have no meaning at all. For the defendant’s even “negligent” causing of any mere *risk* of an injury to another would *always* negate the availability of the common law defense of “necessity”...no matter HOW “grave” the “harm” he sought to prevent by his action.

[295] Suffering under this specific *misperception* of the state of the law here in North Dakota, The State then compounds its simple ignoring of Section 08 of Chapter 12.1-05 that specifically provides for a defense of “necessity”, even though this provision classifies this defense under the rubric of “excuse” (in The State’s effort to give this court the false impression that The *Sahr* Court intended to expressly bar its lower criminal courts from “extending” the “justification” defense TO a “necessity” defense [*purportedly* reserving any such authority to “extend” the “justification” defense TO a “necessity” defense *only* to the State Legislature]), The State then immediately proceeds to invoking Sub-Section 2 of Section -01 of Chapter 12.1-05 that provides, *similarly to Sub-Section 08 of Ch. 12.1-05’s exclusion of the “excuse” defense **from any case in which a defendant’s specific purported “excuse” Belief was held “recklessly” or “negligently” in which the standard of criminal culpability is mere “negligence” or “recklessness”***, that:

[296] If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable **in a prosecution for such recklessness or negligence** to *purportedly* ban this court from allowing the availability of the “necessity” defense – **even in a felony case in which the element of “specific scienter” is absolutely required to be proven beyond any reasonable doubt** – arguing that such a “necessity” defense must be rendered, by The Court, to be “unavailable” to any defendant IF the conduct which he deemed to be

“necessary” in order to avoid a demonstrably *greater* harm in any way may have “created a *risk* of” ANY injury to another...*even if that risk had been caused entirely “negligently” or “recklessly” by that defendant.*

The State then asserts that, because Chase Iron Eyes’ merely joined arms with others of his Lakota People around the Sacred Fire at The Last Child’s Camp when threatened with arrest for “trespassing” – which, The State argues, “recklessly” and “negligently” created a *risk of injury* to the police who decided to move in and arrest the demonstrators (rather than take the time to let the fire burn out), Defendant Iron Eyes must be barred, by The Court from asserting his “necessity” defense, or “excuse” defense in this case – **even though the specific offense with which he stands charged is the felony offense of “Inciting a Riot”...which expressly requires proof, beyond any reasonable doubt, that Defendant Iron Eyes possessed the specific *criminal scienter* of intending to “Incite a Riot.”**

[297] The Court can immediately see that The State is entirely *ignoring* the fact that Chapter 12.1-05-01 Sub-section 2 applies *only* to cases in which a defendant stands charged with an offense in which he is being prosecuted for “recklessness” or “negligence” – which is NOT the case in the case of Defendant Iron Eyes.

[298] Moreover, as was merely touched upon above, the *application* of this *specific* mis-interpretation on the part of The State of Sub-Section 2 of Chapter 12.1-05-02 – asserting that the potential creation of any *risk* of injury whatsoever to another, even “negligently” generated by a defendant’s having undertaken a specific action that he believed, even in good faith, to have been “necessary” in order to prevent a *greater* harm than any harm that he actually caused by his action would axiomatically render “unavailable” to a defendant the common law and Constitutionally-guaranteed right to assert his “necessity” defense – would render entirely meaningless the specific element of the common law “necessity” defense that requires The State to prove, beyond a reasonable doubt, that any harm – *even actually caused by the action undertaken by the defendant* – was MORE “harmful” than the purported *Greater* Evil that the defendant sought to prevent by his action.

[299] The next argument raised by The State in support of its demand that this court issue an Order in Limine banning Defendant Iron Eyes from presenting any of his “Necessity” Defenses, set forth in ¶ 4 of its Memorandum, is its assertion that “If allowed to go forward, a jury would lead down a path not of what the defendant did on that day, but a rabbit hole of political grandstanding.”

[300] The Morton County State’s Attorney (or Assistant State’s Attorney) is conflating a criminal defendant’s assertion of entirely legally-supported principles and factually-supported facts that are directly pertinent to judicially-recognized grounds on the basis of which to mount a defendant’s criminal defense...including a “Necessity Defense”... with “Political Grandstanding” –simply because he does not want what is being said in these defenses “publicized.” This is more a reflection of the Assistant State’s Attorney’s (and, perhaps, even the State’s Attorney’s) lack of direct experience with “politically-important” cases – of which there have been *many* in our country’s history.

[301] It may be true that there have not been a great number of such politically-important cases in North Dakota or South Dakota within the time period during which State's Attorney Koppy and Assistant State's Attorney Lingle have been personally involved in prosecuting such cases. But "The Leadership Cases" of the leaders of the American Indian Movement, who were involved in The Occupation of The Village of Wounded Knee on The Pine Ridge Indian Reservation in South Dakota in 1973, is a case in point. The defense that was mounted in those cases, without a doubt, would be labeled, by The Morton County State's Attorney's Office, as "Political Grandstanding." But the defense that was mounted in those cases actually overcame the tremendously high probability that those AIM Leaders were going to be convicted of a number of very serious crimes – including "Rioting"; "Engaging in a Federal Civil Disturbance"; "Attempted Murder of a Federal Officer" and more – but, instead, resulted in the DISMISSAL of all of those charges against The AIM Leadership *on the grounds of "Government Misconduct"*, an "Affirmative Defense." The literal meaning of "Grandstanding" is defined as: "acting or speaking in a way intended to attract the good opinion of other people who are watching." (The Cambridge Academic Dictionary.)

[302] However, it is clear that The Morton County State's Attorney (or, in this case, his Assistant) meant to invoke a more derogatory meaning of the word, implying "the engaging in a 'showy' or 'ostentatious' manner, so as to try to impress persons who are watching." However, this is exactly how a person who perceives himself to be a "representative" of the majority of the citizens in a community that has historically been engaged in repressing and racially discriminating against the members of the principal racial minority within that community might *caricaturize* the conduct of any person who attempts to draw public attention to the wrongdoing - or to the narrow-minded provincialism - of a County Prosecutor's Office whose staff is engaged in trying to silence or intimidate anyone who attempts to draw "outside" public attention to the fact of this repression and racial discrimination...and, more particularly, to the role that a specific state criminal prosecution, by that office, of a prominent member of that historically repressed and discriminated-against racial community, is playing into that still-on-going racial activity. Indeed, such a "representative" of such a community will, virtually certainly, actually *perceive*, and *experience*, ANY such attempt at drawing public attention to such a case as "Grandstanding", indeed, as "*Political* Grandstanding." This would be especially true when the very activity in which that Prosecutor's Office is engaged is so clearly "political" itself...that is, motivated by a clear motive of that inherently "political" *elected* office to cater to, and to give obeisance to, the very attitudes and social pressures extant within the majority of that community that are directly at play in the very case which that office is prosecuting.

[303] The Morton County State's Attorney's Office has filed *repeated* Motions with this Court seeking The Court's support in "sealing" all depositions taken in this case; *repeatedly* filed copies of public statements made about this case by Defendant Iron Eyes and his Counsel, and has taken dramatic steps to withhold from Defendant Iron Eyes *and the public* state-controlled documents and testimony. And the office clearly views *any*

effort on the part of Defendant Iron Eyes or his Counsel to communicate to people “in the outside world” what the “issues” are that are at play in this case...and surrounding the *racial* dimensions of the drilling and installing of a 910,000 gallon-an-hour oil pipeline directly under the sole source of fresh drinking water for The Lakota People in The Dakotas...*rather than* 10 miles north of the 92% White community of Bismarck, North Dakota – the very community in which this case is being criminally prosecuted by this Morton County State’s Attorney’s Office...and from which community this Court intends to try to seat a jury. These actions on the part of The Morton County State’s Attorney’s Office seek to keep the American public at large and “the outside world” in the dark, as much as possible, about the very issues that are the subject of a number of Defendant Iron Eyes’ specific “Necessity Defenses.” These issues include:

(1) the fact that, in the face of 195 nations’ December 2015 joint Paris Agreement that the continuation of the production and burning of petroleum is actively destroying the global climate system of our planet...and these nations (including our United States Government) agreeing to take active legal steps to *rapidly decrease* the production and distribution of crude oil, The Energy Transfer Partners Corporation of Dallas, Texas decided to *dramatically increase* the production and distribution of petroleum and established a Dakota Access Pipeline Corporation subsidiary to construct a 910,000-gallon-an-hour oil pipeline from Stanley, North Dakota, *southward, down through the 1851 Treaty of Fort Laramie U.S. Government-acknowledged sovereign territory of The Sioux Tribe of Indians, directly under Lake Oahe, the sole source of fresh drinking water for Defendant Chase Iron Eyes, for his five Lakota children and Lakota wife, and his over 8,000 fellow members of The Standing Rock Sioux Reservation, through which* to “transfer” the *tripled* output of petroleum TO THE OUTSIDE WORLD (with virtually *none* of this massive outpouring of oil being devoted to alleviating any purported “American Energy Crisis”;

(2) the fact that the building of this oil pipeline constituted an Existential Threat to the sole source of fresh drinking water of The Lakota People...and, therefore, to The Lakota People as a landed tribe;

(3) the fact that this Energy Transfer Partners Corporation, through its own objective corporate computer system, determined that the “most preferable” route for this “Dakota Access Oil Pipeline” was to have this underground oil pipeline built along a route that runs 10 miles to the north of the overwhelmingly White Bismarck community...but then “changed the route of the pipeline” southward, down under the sole source of fresh drinking water for the 82% Native American population of The Standing Rock Sioux Reservation...and *submitted a transparently FALSE “zone of potential adverse impact” by any major leak from this pipeline, IF INSTALLED ALONG THIS ROUTE, so as to utterly “disappear” the entire 82% Native American population of The Standing Rock Sioux Tribe* in a transparent effort to *conceal* the fact that this corporation *knew full well* that its “change of route” from the previous route did, indeed, expose Defendant Iron Eyes, his Lakota family, and his entire Standing Rock Sioux

Reservation Native American community to the THREAT of the “racially-disparate-adverse impact” of any spill or leak from this pipeline;

(4) the fact that, on September 2nd of 2016, immediately upon receiving actual notice that Standing Rock Sioux Reservation Sacred Artifacts Preservation Specialist Tim Mentz had filed a legally-required “Notice of Location of Sacred Native American Religious Artifacts & Burial Sites” within the zone of potential impact of this Dakota Access Oil Pipeline, the Executives of The Energy Transfer Pipeline Corporation in Dallas, Texas ordered the immediate *BULLDOZING* of those very “noticed” Lakota Sacred Sites...and caused those sites to be bulldozed the very next morning, on September 3rd – and then “called in” the North Carolina-based TigerSwan Private Military Corporation to crush and put down, by means of violent, “military” tactics developed and deployed in The Middle East by TigerSwan Founder & C.E.O., U.S. Army Special Forces Colonel James Reese, the Chief Liaison Officer between the U.S. Pentagon’s Joint Special Operations Command and the American C.I.A. in Iraq and Afghanistan and the former Director of World-Wide Anti-Terrorist Operations for **Blackwater, International** the explicitly-law enforcement-predicted “response” from the Native American Community” TO this September 3rd Outrage; and

(5) the fact that TigerSwan Private Military Security Corporation operatives immediately established, upon their arrival “on the scene” of the September 3rd “response” on the part of the Native American Community

to the willful and intentional “bulldozing” of their Sacred Sites and burial Ground, a TigerSwan Operating

Base in an airplane hanger at the Mandan Airport, in the immediate locale of the North Dakota State Law Enforcement Command Center in a nearby airplane hanger...and began chairing Daily Operations Briefings, giving directions and “advice” to law enforcement officials and private security company Defendant Chase Iron Eyes, whom TigerSwan Executives *racially-profiled* as “religiously-driven, Indigenous, Jihadist Terrorists”...and then to neutralize critics and protestors against The Dakota Access Pipeline who were clearly-First Amendment-protected, peaceful, public policy advocates and activists who

opposed the construction of the Dakota Access Pipeline – whom the TigerSwan Operatives conflated with an absolutely *minimal number* of persons (some of whom were Native American) who may have engaged in some anti-material acts against the construction equipment of The Energy Transfer Partners Corporation

- who, themselves, may have been “instigated” to commit those acts by members of a “Special Missions

Unit” of The TigerSwan Private Military Corporation deployed in North Dakota by TigerSwan C.E. O. James Reese as agents provocateur.

[304] In ¶ 5, The State, realizing that Defendant Iron Eyes does, in fact, have a fundamental Sixth Amendment *Constitutional Right* to present his “Necessity Defense” to his jury, moves on to acknowledge that it is well understood that a common law “Necessity Defense” *is* available to an American citizen put to trial for his freedom, so long as he can make a *prima facie showing* to his Trial Court, sometime prior to his trial, that he held a “good faith belief” that was “reasonably grounded”: (1) that he had been confronted with a choice of evils...and had chosen the lesser evil; (2) that he had acted to prevent an “imminent” harm; (3) that he reasonably anticipated a causal relationship between the conduct in which he chose to engage and the potential stopping of the greater evil that he sought to prevent, and (4) that he held a reasonable belief that there was no reasonably available legal alternative means by which he could have prevented that greater harm from occurring in a timely manner (citing *U.S. v. Schoon*, 971 F. 2d 193 (9th Cir. 1991). The State then adds a fifth “element” of a legally-sufficient “Necessity Defense” that it asserts “is widely used”, this being (5): that the defendant invoking a “necessity Defense” must not have “caused” or “contributed to” the Greater Harm that he was seeking to prevent, citing La Fave Scott, *Criminal Law*, § 50 at 388 (1972.)

[305] The State then goes on to attempt to convince The Court that Defendant Iron Eyes has failed provide to The Court, as of yet, legally-sufficient *prima facie* showing that he held a “good faith belief” that was “reasonably well-grounded” as to the existence of each of these six “elements” concerning one or more of his five proffered “Necessity Defenses.

[306] The specific reasons why – and how – Defendant Iron Eyes *has*, as a matter of law, made a *prima facie* “showing” as to why he held a “good faith belief” as to each of the beliefs that he held as of February 1st of 2017 – and why that belief was “reasonably well-grounded” – are set forth above, herein Defendant Iron Eyes Opposition to The State’s Motion for An Order *In Limine* Seeking To Bar Defendant Iron Eyes from Presenting His Necessity Defense to His Jury.

¶ 7

1. The Existence of an Existential Threat to The Sole Source of Fresh Drinking Water of Defendant Iron Eyes, His Lakota Family & His Entire Standing Rock Sioux Tribe

[307] While Defendant Iron Eyes has set forth the specific reasons why – and how – Defendant Iron Eyes *has*, as a matter of law, made a *prima facie* “showing” as to why he held a “good faith belief” as to each of the essential elements of his belief, as of February 1st, that the drilling, installment and putting into full operation of the 910,000-gallon-an-hour Dakota Access Oil Pipeline directly under Lake Oahe, the sole source of fresh drinking water for himself, his seven-person Lakota family, and his entire 8,000-person Native

American Standing Rock Sioux Reservation, Defendant Iron Eyes wishes to address the following specific points that The State has made in its August 9th Motion for An Order *In Limine*.

[308] The State asserts that Defendant Iron Eyes' and the 30+ fellow members of his Lakota Band of The Tetwan Council Fire of The Sioux Tribe of Indians who gathered on the hilltop of The Last Child's Camp some ½ mile from the site of the final preparations to commence the completion and putting into full operation The Dakota Access Oil Pipeline under Lake Oahe were NOT engaged in any action (which The State has deemed to be "unlawful") that would have had *any* rational prospect of having stopped the final construction and putting into full operation that Dakota Access Oil Pipeline. The State seizes upon the word "might" in its August 9th filing, ay page 4, line 8 as vitiating any adequate "causal connection" in the mind of Defendant Iron Eyes between his action and the actions of his fellow Sioux tribal members and the potential stopping of the construction of that oil pipeline. But The State, itself, adopts the standard, at page 3, line 8 of its memorandum in Support of its Motion, of whether Defendant Iron Eyes could have "reasonably anticipated" that his actions and those of his fellow Sioux tribal members could have rationally led to the stopping of the final construction and putting into operation of that pipeline.

[309] Defendant Iron Eyes argues, simply, that "could have 'reasonably anticipated'" that his actions and those of his fellow Sioux tribal members could have rationally led to the stopping of the final construction and putting into operation of that pipeline" is perfectly consistent with "*might have*"....even if it does NOT mean that he was absolutely *certain* that he would succeed. The State's demanding that The Court find that Defendant Iron Eyes was *absolutely certain* that his actions and those of his fellow Sioux tribal members WOULD HAVE, *to a certainty*, led to the stopping of the final construction and putting into operation of that pipeline is simply NOT the standard of proof that Defendant Iron Eyes is required, by the law, to establish before this Court before he is allowed to present this defense to his jury. He need provide to The Court – at *this* time – only adequate information and evidence that is analogous to a Preliminary Hearing, a Rule 12(b)(6) Motion to Dismiss Hearing, or a Rule 11 Hearing, on the basis of which this Court can reasonably believe that Defendant Iron Eyes – IF he is NOT prohibited, at *this* time, from continuing to prepare his Necessity Defense Information for his Jury in November – may well, *as a matter of law* ...and as a matter of a reasonable possibility, be able to be in possession of adequate factual information that he could present to his jury on November 5th (73 weeks from this date) – AND PRESENT TO THIS COURT NO LATER THAN WEDNESDAY, OCTOBER 31st in a Court-admissible form.

[310] The State argues, at page 4, lines 11-14, that Defendant Iron Eyes' provision of proof to The Court that very similar prayer ceremonies and peaceful "vigils" as those that Defendant Iron Eyes and his fellow Sioux tribal members were engaged in conducting at The Last Child's Camp Site HAD, in fact, STOPPED the final construction of The KEYSTONE XL Oil Pipeline; The SANDPIPER OIL PIPELINE and

THIS VERY DAKOTA ACCESS OIL PIPELINE in the just-recent past should be disregarded by The Court because *those* successes were “the result of months of actions...not just one day.” Id, at line 14.

This argument ignores the fact that Defendant Iron Eyes’ peaceful and prayerful actions and those of his fellow Sioux tribal members that were *just begun* that morning of February 1st: (A) followed, by just *seven days*, newly-elected President Donald J. Trump’s sudden January 24th *reversal* of the 2016 decision of the U.S. Army Corps of Engineers to *refuse* to grant a Federal Certificate of Easement to The Energy Transfer Partners Corporation of The Dakota Access Pipeline Corporation *until such time as a full and complete Environmental Impact Study could be completed* – the likelihood of the corporations *passing* of which was *very minimal*; (B) began *on the very morning that the U.S. Army Corps of Engineers unofficially informed the Executives of The Energy Transfer Partners Corporation that The Corps of Engineers had decided to succumb to Donald Trump’s Presidential Order to reverse the previous U.S. Government Administrative Decision to stop the Dakota Access Pipeline final construction until – and unless – the pipeline “passed” a full and complete Environmental Impact Study*; and (C) unlike those “months of actions” that had just-previously succeeded in stopping the final construction of all of those other similar oil pipelines – indeed, INCLUDING this very Dakota Access Oil Pipeline, THIS action being undertaken by Defendant Iron Eyes and his fellow Sioux tribal members **HAD ALREADY BEEN PRECEDED BY “MONTHS OF ACTIONS”**, the *continuing* social and political *lingering effect of which* was STILL OPERATIVE *as of February 1st*...making it MUCH more “reasonable” for Defendant Iron Eyes to have “reasonably *believed*” that his actions and those of his fellow Sioux tribal members *could rationally* have had a much more “accelerated” mobilizing effect than had the *earlier days* of the previous peaceful and prayerful ceremonies and vigils that HAD, in fact, previously STOPPED the final construction of this very pipeline.

[311] This argument failing on the part of The State, the Morton County State’s Attorney’s Office argues, “additionally”, at pp. 14-to-18 that: “This [i.e. the actions begun by Defendant Iron Eyes and his fellow Sioux tribal members on February 1st] is, in essence, a protest of the President’s [newly-elected President Donald J. Trump’s] using his power in issuing an order to the Army Corps [of Engineers] to review and reverse the decision regarding the commencement of drilling”, [asserting] Previously, Courts have been keen to avoid and not allow the necessity defense in protest of policies as is the case here” (citing United States v. Kroncke, 459 F.2d 697 (8th Cir. 1972).)

[312] The Kroncke Case *would be* certainly “daunting”, WERE Defendant Chase Iron Eyes’ actions and those of his fellow Sioux tribal members on the morning of February 1st of 2017 nothing more than a bare “protest” of an in-place, on-going, and operative “government *policy*”, as The State so self-servingly attempts to portray it. This was NOT the case in this case. AS OF the morning of February 1st, the policy of the United States Government was that there HAD to be a full and complete Environmental Impact Study conducted and

completed *before* The Energy Transfer Partners Corporation could re-commence construction of the Dakota Access Pipeline.

[313] Donald J. Trump was *TRYING* to unilaterally change that U.S. Government *Policy*. Defendant Iron Eyes and his fellow Sioux tribal members were praying and vigiling to MAINTAIN that “lawful” – and actively-*operational* – official U.S. Government *policy*...in the face of *just the FIRST of Donald J. Trump’s outrageous and un-Constitutional unilateral actions undertaken not only in transparent violation of the Administrative Procedures Act but also in violation of The Federal Environmental Protection Act.*¹¹ See Attachment E. And there was some rational chance, *as of the morning of February 1st of 2017* that the Federal Certificate of Easement authorizing the re-commencement of the final construction and putting into full operation of the Dakota Access Pipeline *could have been still STOPPED*...since that Certificate of Easement had NOT been “issued” as of that morning.

[314] Finally, at page 4, line 19 to page 5, line 8, The State argues that Defendant Iron Eyes’ belief that his actions and those of his fellow Sioux tribal members *begun* on the morning of February 1st of 2017 (*had* they NOT been interrupted and terminated by their arrest and removal from that site”) could NOT rationally have:

“mobilized world-wide public support for stopping the drilling of the pipeline...(and)...generat[ed] a massive hue and cry to stop the issuance of the Certificate of Easement” constitutes “clear evidence of the tenuous nature of the connection to the conduct of the defendant and the actual avoidance of the harm”, [and] that “The Defendant’s actions would, in his hope, cause a massive public outcry against The Corps’ granting the easement that would be an *immediate* decision to *retract*”¹² that granting...is tenuous, as the chances of such an *immediate* and massive outpouring of widespread public disapproval *because people trespassed and rioted with him having given commands*, among other actions, **is a long logical leap, at best**, its hope that this conduct would cause other conduct which would cause public outcry which would cause halting of construction.” (Emphasis supplied.)

[315] In *support* of this simple “declaration” on the part of The State, the Morton County State’s Attorney’s office offers no evidence of *any* kind.

¹¹ Donald Trump’s January 22nd initial Presidential Executive Order Banning All Muslim People from coming to the United States – *only after its having been “amended” and “modified” by Donald Trump (after its January 22nd form was declared illegal by several Federal Courts)* had, eventually, been held to be *barely* “lawful” by a 5-to-4 U.S. Supreme Court decision.

¹² It is important for The Court to know that the actions that Defendant Iron Eyes and his fellow Sioux tribal members undertook on the morning of February 1st of 2017 was NOT to try to “*retract*” the U.S. Army Corps of Engineers Certificate of Easement (as The State represents at line 4 of page 5 of its Memorandum.) The objective was to achieve the potentially much more easily-secured objective of STOPPING its *issuance*... which had, indeed, already been “held up” *for months* by “actions” just like those of defendant Iron Eyes and his fellow Sioux tribal members being undertaken on that morning. As anyone familiar with “government work” knows, it is *always* easier to KEEP some government action *from* happening in the first place than it is to get it “UN-done.”

[316] Defendant Iron Eyes' jury may – or may NOT – conclude that Defendant Iron Eyes did - or did not – hold “a good faith belief” that the peaceful and prayerful actions that he and his fellow Sioux tribal members *were in the process of performing* on the hilltop one-half mile away from the site of the impending recommencement of the final construction and putting into operation of The Dakota Access Oil Pipeline – HAD THEY NOT BEEN STOPPED FROM PERFORMING THOSE ACTIONS – would have – or would not have – “generated a massive hue and cry to stop the issuance of the Certificate of Easement.” But it certainly was NOT his and his fellow Sioux tribal members “*trespass[ing]*” and “*riot[ing]*... with him having given commands” that were the “actions” that Defendant Iron Eyes held a good faith belief would generate the stopping of the ultimate “granting of the Easement.” It was their *planned* PRAYER and VIGIL and broadcasting of “calls”, from that dramatically-located hilltop overlooking the very site of the planned commencement of the construction that were intended to potentially generate that result. So, the “actions” which The State identifies as THE “actions” that are to be evaluated as the potentially *causative* “actions” of Defendant Iron Eyes are simply incorrect.

[317] It was the “peaceful and prayerful” actions...and the “public calls for support” that *would have* been undertaken from that site that are the “actions” to be evaluated by The Court...and by Defendant Iron Eyes' jury – in determining whether Defendant Iron Eyes' “Belief” that he and his people *could* rouse The American Conscience *in time* to stop the then-still-“pending” granting of The Easement and the immediately-resulting recommencement and finalization of the construction of The Dakota Access Oil Pipeline under his peoples' sole supply of water.

[318] Defendant Iron Eyes has proffered to The Court *ample* evidence that the peaceful and prayerful actions of his fellow Native American People HAD, in fact, effectively STOPPED not only *other* underground oil pipelines here in North America, but, indeed, planned underground oil pipelines right in this very region of our country (i.e. The Keystone XL Oil Pipeline and The Sandpiper Oil Pipeline...indeed, THIS VERY Dakota Access Oil Pipeline, less than 60 days prior to Defendant Iron Eyes and his fellow Sioux tribal members undertaking this “Vigil.” Indeed, virtually *identical* such peaceful and prayerful actions had generated the WITHDRAWAL of *millions of dollars* of investment in this very oil pipeline...and threatened to *terminate* the outstanding contracts of The Energy Transfer Partners Corporation. These are NOT “Pipe Dreams” on the part of The Lakota People, as Morton County State's Attorney's Office would demand that this Court declare them to be as a matter of LAW...and fact.

[319] This was NOT some *de novo* “action” that was undertaken ...with NO *demonstrated* realistic potential ability to “mobilize” a national and international outpouring of wide-spread public disapproval of any potential issuing of the Certificate of Easement that was going to *immediately* generate the re-commencement of the final construction and putting into operation of the Dakota Access Pipeline. This “action” undertaken by Defendant Chase Iron Eyes and his fellow Sioux tribal members was, *on the contrary*, an “action” that had

every reasonable *demonstrated* possibility of *re-igniting* a barely-recently- hiatused “massive public outcry” against the finalization of the construction of *this very pipeline*, said “outcry” having been generated from virtually this very locale (which, as of February 1st of 2017, was still VERY “fresh in the minds” of literally *millions* of opponents of this pipeline *throughout the worl*). So, The State’s portrayal of this undertaken action on the part of Defendant Iron Eyes and his fellow Sioux tribal members as some Quixotic and functionally irrational undertaking with no rational or reasonable expectation of potential success is simply NOT supportive of this Court’s usurping the authority of Defendant Iron Eyes’ JURY to make its own determination as to with what degree of “good faith” Defendant Iron Eyes held his belief that his actions and the actions of his fellow Sioux tribal members undertaken on February 1st might well have resulted in a degree of “wide spread public disapproval” of the actual *issuance* of the U.S. Government Certificate of Easement *without which* the construction and operation of The Dakota Access Oil Pipeline *could* NOT have – and *would* NOT have – been re-commenced.

[320] In short, it was NOT “a long logical leap” from the “action” undertaken by Defendant Iron Eyes and his fellow Sioux tribal members on that morning and the potential *further* STOPPING of the final construction of the Dakota Access Oil Pipeline. There was *already IN PLACE* a virtual PUBLIC MEDIA BRIDGE between such “peaceful and prayerful actions” taken on that land between The Cannonball River and The Backwater Creek and *millions* of people who might very well have been motivated by the actions of Defendant Iron Eyes and his fellow Sioux Tribal members on that hilltop – HAD THEY not been arrested and removed.

¶ 8

[321] While Defendant Iron Eyes has set forth the specific reasons why – and how – Defendant Iron Eyes *has*, as a matter of law, made a *prima facie* “showing” as to why he held a “good faith belief” as to each of the essential elements of his belief, as of February 1st, that The Greater Harm that was in the immediate offing to be effectuated by the re-commencement of the final construction of and the putting into full operation of The Dakota Access Oil Pipeline under the sole source of fresh drinking water of his Lakota family and his entire Standing Rock Sioux Tribal Reservation has been set forth in detail above, there are a number of The State’s specific assertions that have been set forth in its August 9th Memorandum in Support of The State’s Motion for An order *In Limine* asking The Court to ban Defendant Iron Eyes from presenting his Necessity Defense to his jury regarding the Existential Threat that the building of this oil pipeline directly under the sole source of fresh drinking water of himself, his Lakota family, and all of the Native American members of his Standing Rock Sioux Tribe.

[322] At ¶ 8 of The State’s Memorandum, The State asserts that this Necessity Defense should be barred from being presented by Defendant Iron Eyes to his jury because

“the harm was not immediate. The concern for the water would be for when the oil was flowing, which would not have occurred immediately...While it is clear that this [the re-commencement of the final construction of the pipeline] is a step in the process to oil being transported through the pipeline, that is not enough to constitute an immediate harm necessitating criminal actions to avoid [it].”

Imminence Analysis

[323] When analyzing the “imminence” element of a necessity defense, one of the leading cases providing direction for The Court is Burlington N. & Santa Fe Ry. Co. v. Grant. Burlington N. & Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020-21 (10th Cir. 2007). Specifically, the 10th Circuit held:

An “imminent hazard” may be declared at any point in a chain of events which may ultimately result in harm to the public [. . .] Imminence, thus, refers to the nature of the threat rather than identification of the time when the endangerment initially arose.” Burlington N. & Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020-21 (10th Cir. 2007).

[324] Within the context of “environmental danger”, a finding that an activity may present an “imminent” and “substantial” harm does not require that a defendant seeking to prevent ultimate environmental damage wait until actual harm is on the very brink of occurring. Meghrig v. KFC Western, Inc. 516 U.S. 479, 485-486 (1996). Instead, the Supreme Court has explained that, as soon as a “current threat” is posed, the impact of such a threat “may not be felt until later.” Id. Courts have also consistently held that “endangerment” means a threatened or potential harm and does not require proof of that the actual harm is on the brink of occurring – or has already occurred. United States v. Ottati & Goss, Inc., 630 F.Supp. 1361, 1394 (D.N.H.1985); United States v. Vertac Chemical Corp. 489 F.Supp. 870, 885 (E.D.Ark.1980). See also Ethyl Corp. v. EPA, 541 F.2d 1, 13 (D.C.Cir.) (en banc), cert. denied, 426 U.S. 941, 96 S.Ct. 2662, 49 L.Ed.2d 394 (1976) (“[c]ase law and dictionary definition agree that “endanger” means something less than actual harm”). Additionally, other circuit courts have ruled that the “harm” that needs to be identified as the basis for a necessity offense may be already happening and be made worse by the particular activity that threatens to increase that harm that a “necessity defense defendant takes action to try to stop. People v. Gray, 571 N.Y.S.2d 851, 858-89 (Crim. Ct. 1991).

[325] As has been specifically stated by authoritative sources, in the context of criminal necessity, “the proper inquiry is not the immediacy of the threat but the immediacy of the response necessary in defense. If the threatened harm is such that it cannot be avoided if the intended victim waits until the last moment, the principle of self-defense must permit him to act earlier - as early as is required to defend himself effectively.” LaFave & Scott, §5.7(d), 656, citing 2 P. Robinson, Criminal Law Defenses § 131(c)(1)(1984).

[326] Therefore, the “imminence” element is not synonymous with “immediate,” but rather derives from whether the defendant acted “as early as is required to defend himself effectively.”

[327] In asking The Court to dismiss Defendant Iron Eyes’ argument already set forth for The Court at Doc#522, p. 28 that the Federal Certificate of Easement-authorization of and re-commencement of the final

construction of the Dakota Access Pipeline was the crucial STEP in initiating the unfolding of a “chain of causation” that would virtually inevitably lead to the flowing of oil through the Dakota Access Oil Pipeline directly under the sole source of his and his tribe’s fresh drinking water, The State asserts, at page 6, line 2 of its Memorandum that, the issuance of the then-immediately-pending issuance of The Federal Certificate of Easement and re-commencement of the final construction of The Dakota Access Oil Pipeline under Lake Oahe WOULD NOT have been the initiation of a “chain of causation” that would have virtually *inevitably* led to the effectuation of The Great Harm of effectively TRANSFERRING *whatever The Threat was that was posed to The Lakota Peoples’ sole source of fresh drinking water from* the 92% White community of Bismarck, North Dakota TO the 82% Native American population of The Standing Rock Sioux Reservation. The entire weight of this specific argument on the part of The State comes to rest on the *factual assertion*, found at line 2 of page 6 of The State’s Memorandum, where The State asserts that, even if the immediately-pending issuance of the Federal Certificate of Easement WAS granted and the final construction of the Dakota Access Pipeline WAS thereupon immediately re-commenced, “the end point” of “The Chain of Causation” which Defendant Iron Eyes argues would have inevitably led to the effectuation of The Great Harm of effectively TRANSFERRING *whatever The Threat was that was posed to The Lakota Peoples’ sole source of fresh drinking water from* the 92% White community of Bismarck, North Dakota TO the 82% Native American population of The Standing Rock Sioux Reservation “MAY NEVER OCCUR.”

[328] Now, THERE, is a “Pipe Dream”!

[329] Everyone was fully cognizant of the fact, as of February 1st of 2017, that it was the RE-COMMENCEMENT & IMMINENT FINALIZATION OF THE CONSTRUCTION OF THE DAKOTA ACCESS PIPELINE that would make it “inevitable” that *The Threat that was posed by this Dakota Access Oil Pipeline to the sources of water in the area of the pipeline* [whatever that degree of threat was] would have been be fully and effectively TRANSFERRED from the 92% White community of Bismarck, North Dakota TO the 82% Native American population of The Standing Rock Sioux Reservation....because it was virtually *inevitable* that once the re-construction of that pipeline was re-commenced The Oil Would Flow.

[330] The State’s mere entirely un-supported contention that “the end point of the chain *may* never occur” – when placed in direct *legal* contention with Defendant Iron Eyes’ “Good Faith Belief” that this “End Point” of The Great Harm WAS, indeed, “virtually *inevitable*” certainly entitles Defendant Iron Eyes to have HIS JURY decide *whether* THEY believe that Defendant Iron Eyes’ Belief that this “End Point” was *inevitable*, IF the re-commencement and completion of the construction of this pipeline was allowed to go forward upon the THEN-IMMEDIATELY-PENDING ISSUANCE of the Federally-required Certificate of Easement was – or was NOT – a “Good Faith Belief” that was “Reasonably well-grounded” – which, after all, IS what “The Issue” is before this Court .

[331] Has Defendant Iron Eyes proffered to this court adequate evidence and information on the basis of which – if it is developed into the form of Court-Admissible Evidence as of the time of its trial (actually, as of Wednesday, October 31st) – could lawfully support a finding on the part of HIS JURY that Chase Iron Eyes DID harbor a “Good Faith Belief” that WAS “reasonably well-grounded” that the *then-February 1st, 2017-immediately-pending* issuance of the federally-required Federal Certificate of Easement and the immediate re-commencement and completion of the construction of The Dakota Access Oil Pipeline would have made it “virtually inevitable” that The Greater Harm that he and his fellow Sioux tribal members sought to prevent by their planned peaceful and prayerful actions to be undertaken beginning on the morning of February 1st of 2017 *would occur?*¹³

¶ 9

[332] The State, at ¶ 9 of its Memorandum presents a very peculiar argument to the effect that Defendant Iron Eyes *somehow* “directly ‘created’ or ‘contributed to’ *causing*” The Existential Threat to His and His Tribe’s Sole Source of Drinking Water that was generated by the installing and operation of The Dakota Access Oil Pipeline under Lake Oahe. It is not at all clear to *what* evidence or facts The State is intending to direct The Court’s attention in support of this peculiar assertion on the basis of which The State asks this court to ban Defendant Iron Eyes from presenting his First Necessity Defense to his jury. The State, at line 7 of page 6 of its memorandum, directs The Court to “Paragraph 28” in search of this evidence, or factual support, for this peculiar assertion.

[333] This is apparently a mere clerical error on the part of The State. It would *appear* that The State meant to direct The Court to “Paragraph 27” of its Memorandum (since Paragraph 28 addresses only Defendant Iron Eyes’ supposedly-available “alternative *legal means* by which The State asserts that he might have prevented The “Great Harm” of Global Climate Change, *rather than* violating the law of trespassing: To wit: “putting up billboards” along public highways letting everyone know that (what?... That the polar ice caps are melting; or that California is on fire; or that island states are sinking beneath the sea and all of our planet’s coral reefs are dying, eliminating the base of the food-chain of all life in the sea?) So, we must look to Paragraph 27 to see exactly what the evidence is that The State proffers to The Court to support its rather strange assertion that Defendant Iron Eyes “created”, “caused” or “contributed to” the generation of The Existential Threat to

¹³ It is essential that The Court keep in mind the fact that it is NOT the actual massive contamination of the sole source of his and his tribe’s fresh drinking water that needs to be proven to have been “virtually inevitable” by Defendant Iron Eyes. It is the *completion* and *putting into operation* of The Dakota Access Pipeline that would have fully effectuated the *manifestation* of “The Great Harm” that Defendant Iron Eyes and his fellow Sioux tribal members sought to prevent...(that is the subject of his First Necessity Defense) which was the IMPOSITION ON HIM, ON HIS LAKOTA FAMILY, AND ON HIS ENTIRE STANDING ROCK SIOUX RESERVATION TRIBE, OF THE “EXISTENTIAL THREAT” POSED BY THIS PIPELINE TO THEIR SOLE SOURCE OF FRESH DRINKING WATER

The Sole Source of Fresh Drinking Water for His Tribe posed by the installation of The Dakota Access Oil Pipeline under lake Oahe.

[334] But, alas, even one's scouring of "Paragraph 27" proves to be of no avail in this regard. For this is a mere recitation of what The State asserts to be the "actions" that have been undertaken by Defendant Chase Iron Eyes *and all of the other people who participated in any way in the protests against The Dakota Access Pipeline* – like: "using gasoline to get to the protest camps"; "gasoline was also *more than likely* used to get supplies to camp"; gasoline would have been used to get the defendant to the camp, and is used on his various travels before and after these events", etc.

[335] Amusing as these anecdotal flourishes might be (in other settings), this excursion into the realm of "blame-sharing-for-global-climate-change" on the part of The State offers The Court *nothing* by way of evidence in support of The State's purported undertaking, in ¶ 9 to buttress its argument as to why Defendant Iron Eyes should be barred by this court from presenting to his jury his Necessity Defense demonstrating to his jury why his Belief that the construction of The Dakota Access Oil Pipeline directly under the sole source of his, and his Lakota family's, and his entire Standing Rock Sioux Tribe's fresh drinking water constituted an "Existential Threat" to that sole source of drinking water...and, indeed, to the very future existence of his Standing Rock Sioux Tribe as a landed people.

[336] Let us, for all intents and purposes, simply assume that The State *has* no such evidence that Defendant Iron Eyes "created", "caused" or "contributed to" THIS specific "Great Harm."

¶10

[337] The State insists, at ¶ 10, that Defendant Iron Eyes could have STOPPED the construction and operation of The Dakota Access Oil Pipeline under Lake Oahe if he had only: "attended public hearings at the Public Services Commission, but he did not" (citing Ms. Julie Fedorchak's July 2nd Deposition taken in this case, i.e. violating the State's vehement arguments against any use of Defendant's depositions in publicly available documents.)

[338] This assertion totally ignores the fact that Ms. Fedorchak, the Chairperson of the North Dakota State Public Services Commission that was responsible for "approving" The Dakota access Oil Pipeline Route, but simply assisting in having it inflict as little as possible damage to the environment as could be accomplished *while still enabling it to go forward..*

[339] This assertion also ignores the fact that the Sioux Tribe considered the pipeline route to be entering lands under Sioux jurisdiction, not the jurisdiction of the Public Service Commission. The Public Service Commission had no jurisdiction to "allow" Energy Transfer Partners to intrude into Sioux lands.

[340] The State also asserts, at page 6 of its Memorandum, at lines 12-13, that: Defendant Iron Eyes "could have submitted comments to the Army Corps, or to the federal government." The entire Standing Rock Sioux Tribal Council had SUEDE The United States Government...*and had inundated The United States*

Government with “comments” and “documents” and “studies”- and legal arguments - making it absolutely and unequivocally clear that the entire Tribe vehemently opposed allowing The Dakota Access Oil Pipeline to be built under Lake Oahe. But the United States Government had *not only* NOT stopped planning to allow The Energy Transfer Partners Corporation to drill and install The Dakota Access Oil Pipeline directly under the tribe’s sole source of fresh drinking water, the United States Government – and its U.S. Army Corps of Engineers had *aggressively “covered up”* the fact that The Energy Transfer Partners Corporation had willfully *fabricated* an entirely “gerrymandered” “potential adverse impact area” to *consciously exclude* ALL of The Standing Rock Sioux Tribal Members as “potentially adversely effected people”...even though THEY were the *most-immediately* and *most dramatically* potentially “adversely effected” people of any oil spill from The Dakota Access Oil Pipeline under Lake Oahe.

[341] So, The State is “whistling in the wind” if it thinks that this court is going to be convinced that Defendant Iron Eyes’ *either* “attending a public hearing before The State Public Services Commission” OR “submitting comments to” the U.S. Army Corps of Engineers or to the Government of the United States were “legal alternatives” that had any realistic chance of providing any chance of stopping the U.S. Army Corps of Engineers from “issuing” the immediately-impending Certificate of Easement to The Energy Transfer Partners Corporation to immediately re-commence, complete the construction of and to put into immediate operation The Dakota Access Oil Pipeline.

[342] The State also asserts that Defendant Iron Eyes could have “protested on the roadway, or in the ditch” – both of which locations *would* have subjected him to possible *immediate arrest* by local law enforcement officials who, by their own admission, under oath, in sworn depositions in this case, have repeatedly testified that they were empowered, at their virtually unbridled discretion, to *sua sponte* declare to be “off-limits” *any* portion of Highway 1806 or *any* “ditch” alongside Highway 1806...and subject to *immediate arrest* anyone who refused to get out of that road or out of that ditch...even though it was “public property.”

[343] Finally, The State asserts that Defendant Iron Eyes – “given his popularity/presence on social media” – he could have “shared on the social media what was happening, [and] what the concern with that was and asking for support.” At page 6, lines 18- 22. This is truly ironic, in that it is Chase Iron Eyes’ February 1st Face Page internet message to this exact effect that caused The State to “target” Defendant Iron Eyes as the only defendant who stands charged by The State with “Inciting Riot.” Indeed, at page 6, line 22 to page 7, line 3, The State actually states:

“The fact is that there is not one post currently publicly visible from the defendant’s Facebook from on, or just before, February 1st 2017. Either the defendant deleted potential evidence after he was released, knowing that it could be used against him, which would be a crime in itself. Or he didn’t in fact share anything on Facebook about this alleged harm.”

[344] What can one possibly say about an argument like this?

[345] If Defendant Iron Eyes had resorted to the “legal” option proffered to him by The State as his “legal alternative” to going up onto The Last Child’s Camp Site and engaging in the peaceful and prayerful activities that he and his fellow Sioux tribal members intended to participate in to attempt to mobilize both spiritual and public support for their effort to stop the final construction and putting into operation of The Dakota Access Pipeline, The State would have seized upon any such communication on Facebook to try to provide “evidence that could be used *against him*.” But, if he did what he did to try to engage in the peaceful and prayerful activities that he and his fellow Sioux tribal members intended to participate in to attempt to mobilize both spiritual and public support for their effort to stop the final construction and putting into operation of The Dakota Access Pipeline under his people’s sole source of fresh drinking water, he would be confronted by hundreds of heavily-armed and heavily-armored State Police and County Sheriffs, accompanied, “at a distance”, by equally heavily-armed and equally heavily-armored operatives of The TigerSwan Private Military Corporation, threatened, by them, with arrest for “trespassing” *on land that had belonged to his tribe – according to the White Peoples’ own laws* – those heavily-armed operatives of The State, purportedly being “authorized” to arrest him and his fellow Sioux tribal members *by a Corporation made up of a conglomerate of multi-billion dollar oil corporations* – which corporations were expressly *forbidden by an express State law from either acquiring or owning that area of land*. And, if he and his fellow Sioux tribal members insisted upon informing those heavily-armed men that Defendant Iron Eyes and his fellow Sioux tribal members were “ON 1851 TREATY LAND”, they would be *physically “set upon” by those heavily-armed men* (with the equally heavily-armed FORMER U.S. ARMY SPECIAL FORCES COMBAT VETERANS “waiting in the wings”, sealing off any potential “escape to The West” on the part of these Indian people) – and even so much as “attempting to ‘pull away from’” those heavily-armed men (who averaged well over 200 pounds in size) who were trying to physically subdue them, would be deemed, by a State Prosecutor’s Office...with NO Native American attorneys...and NO Native American employees of any kind...as “Rioting.” And then put in front of an ALL-WHITE jury....with not *any* Native American *even potential* Jurors among the Venire Pool of potential jurors....which all-White potential jurors, professional Jury Project Experts have *informed The Court, actively harbor an 87% to 89% degree of prejudice against ANY “Protestor Against The Pipeline ...and believe that any Anti-DAPL Protestor should be convicted of whatever he is charged with by The State.*

[346] Now *there’s* a promising “legal Option.”

[347] The State then goes on to proffer the following proposal, at lines 4-8, on page 7 of its Memorandum:

“Law enforcement gave the group, and specifically this defendant, several clear chances to leave or be arrested. The defendant didn’t leave. He could have left and maintained the narrative *and used that as a platform for the outcome he wanted. But he did not.* This is clearly a legal reasonable alternative to what he is alleged to have done, *that could have resulted in the same series of events that the defendant sought by his actual actions on that day.*” (Emphasis supplied.)

[348] It is not all clear what it is that The State is asserting here.

[349] Exactly *what* does The State *mean* by its assertion that Defendant Iron Eyes, when ordered to leave the hilltop, “could have left and maintained the narrative *and used that as a platform for the outcome he wanted*”?

[350] What Defendant Iron Eyes and his fellow Sioux tribal members *wanted* was to STOP the immediately-pending *issuance*, by the U.S. Army Corps of Engineers, of the U.S. Government Certificate of Easement to the Energy Transfer Partners Corporation *that was absolutely necessary for the corporation to have in order to immediately re-commence and complete the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe...which immediate re-commencement and completion of the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe* Defendant Iron Eyes wanted to STOP.

[351] It is entirely unclear how Defendant Iron Eyes, if he had “left”, “could have left and maintained the narrative *and used that as a platform for the outcome he wanted*. What does that even mean?

[352] And how was it that Defendant Iron Eyes’ “leaving”, when he was told to do so by law enforcement officers, was supposed to “*have resulted in the same series of events that the defendant sought by his actual actions on that day*”?

[352] The “*series of events that the defendant sought by his actual actions on that day* was to STOP the immediately-pending *issuance*, by the U.S. Army Corps of Engineers, of the U.S. Government Certificate of Easement to the Energy Transfer Partners Corporation *that was absolutely necessary for the corporation to have in order to immediately re-commence and complete the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe...which immediate re-commencement and completion of the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe* Defendant Iron Eyes wanted to STOP.

[353] There is NO way in which Defendant Iron Eyes’ simply “leaving”...or even “leaving *and using that* [his “leaving”...or his having been ORDERED to leave by police?] *as a platform for the outcome he wanted*”?

[354] Nor is there ANY way that Defendant Iron Eyes’ simply “leaving” would have “resulted in” STOPPING the immediately-pending *issuance*, by the U.S. Army Corps of Engineers, of the U.S. Government Certificate of Easement to the Energy Transfer Partners Corporation *that was absolutely necessary for the corporation to have in order to immediately re-commence and complete the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe...and, thereby, STOP the immediate re-commencement and completion of the constructing and putting into operation of The Dakota Access Oil Pipeline under Lake Oahe*.

[355] Because of this utter “dis-connect” between what The State is proposing that Defendant Iron Eyes could have *legally* done and ANY chance of that conduct having resulted in STOPPING The Great Harm that he sought to prevent, The State’s citing of United States v. Bailey, 444 U.S. 394 (1980) is of no avail at all for The State in its demand that this court bar Defendant iron Eyes from presenting his First Necessity Defense to his jury based upon his “Good Faith Belief” that *none* of these “legal alternatives” that have been proffered by The

State to The Court could conceivably stopped or prevented The Great Harm of The Existential Threat that final construction and putting into operation under Lake Oahe of The Dakota Access Oil Pipeline posed to his, to his Lakota family's and to his entire Standing Rock Sioux Tribe's sole source of fresh drinking water.

¶ 11

[356] Bizarrely, in its effort to quantify the “harm” *caused* by any of Defendant Iron Eyes’ actual actions undertaken on February 1st of 2017, The State resorts, at ¶ 11 of its Memorandum, to citing: “the harms experienced by his fellow protestors” that day...such as: “the arresting of over 70 people”, “the economic impact *to those persons who were arrested and [their] fac[ing] criminal charges.*”

[357] All of those “harms” were, of course, inflicted on Defendant Iron Eyes and his fellow Sioux tribal members by The State itself...NOT by Defendant Iron Eyes.

[358] Additionally, The State cites, as a “harm” *caused* by Defendant Iron Eyes, that “allegedly one individual present that day was hurt by a pole falling causing a concussion”...and “other far reaching effects that the defense just blows over.” The report of one young man having a tee-pee pole hit him on the head during the erection of one of the seven Sacred Tee-Pees, as part of the Traditional Lakota Religious Ceremony had absolutely nothing whatsoever to do with any purported *unlawful* activity on the part of Defendant Iron Eyes. That minor accident occurred during the entirely peaceful and prayerful putting up of one of the Seven Sacred Tee-Pees. There was *nothing* “unlawful” about *that* action...even if The State asserts that that Tee-Pee was being put up on land that did not belong to The Sioux Tribe. *That* “fact”, even if it were true (which it is NOT) had absolutely no functional *causative* relationship whatsoever to any “wrong-doing” alleged to have been committed by Defendant Iron Eyes.

[359] The *only* “harm” that The State has *ever* asserted was in any way *caused* by Defendant Iron Eyes was one police officer's having accidentally stepped into the edge of The Sacred Fire around which the Sioux tribal members had gathered and “locked arms” when they were threatened with being arrested for simple “trespassing.” And The State has absolutely NO evidence to show that Defendant Iron Eyes did anything to *cause* that police officer to accidentally step into the edge of that Sacred Fire. The State's “evidence”(which is an audio recording recorded by Independent Journalist Jenni Monet) shows nothing more than Defendant Iron Eyes' turning to one person and communicating to ONE person that “The plan [as is made abundantly clear *by The State's own sole piece of “evidence”* having been conceived by *someone other than Chase Iron Eyes*], See Doc ID#633 and Attachment B, is to lock arms in a circle around The Sacred Fire.” And Defendant Iron Eyes *asks* “Should that be in concentric circles, with the young children and elders in the middle circle?” And he, later, tells ONE person (whether it is the *same* person to whom he spoke earlier is not clear) “Yes. We are going to do it like the buffalo do.”

[360] The State then asserts, at page 8 of its Memorandum, at lines 5-9, that Defendant Iron Eyes, through his actions on February 1st “calling people from around the Country to come and make a stand” was *somehow* personally responsible for what The State characterizes as “the mass amount of waste left by these protesters that threatened the very ecosystem the defendant allegedly sought to protect”...asserting that “This post-arrest proof is just as relevant to the underlying necessity defense as these actions that were taking place on/before February 1st.”

¶12

2. The Racially-Discriminatory Re-Routing of The Dakota Access Pipeline from 10 Miles North of The 92% White North Dakota Community of Bismarck to One-Half Mile North of The 82% Native American Standing Rock Sioux Reservation

[361] While Defendant Iron Eyes has set forth the specific reasons why – and how – Defendant Iron Eyes *has*, as a matter of law, made a *prima facie* “showing” as to why he held a “good faith belief” as to each of the essential elements of his belief, as of February 1st, that the Executives of the Energy Transfer Partners Corporation of Dallas Texas and the Executives of the Dakota Access Pipeline Corporation of Dallas Texas made a decision to re-route their Dakota Access Oil Pipeline *from* a route previously objectively computer-determined to be the best available route for that pipeline that ran ten miles to the north of the 92% White North Dakota community of Bismarck, North Dakota...and crossed under the Missouri River over a distance that was no more than 100 yards wide TO a route that crossed many miles of Sacred Sites of The Sioux Tribe of Indians and ran only one-half mile to the north of the 82% Native American Standing Rock Sioux Reservation and crossed under Lake Oahe on The Missouri River in a manner that required drilling and installing The Dakota Access Oil Pipeline under a wide stretch of The Missouri River...taxing the very limits of known underwater drilling and pipe installation and made this decision pursuant to a Class-based, invidious, *racially-discriminatory* animus against Indigenous Native American People which these Energy Transfer Partners and Dakota Access Pipeline corporate executives from Texas shared with a significant majority of the 91% White population of the State of North Dakota, Defendant Iron Eyes wishes to address the following specific points that The State has made in its August 9th Motion for An Order *In Limine*.

[362] The principal line of argument that The State makes in support of its demand that this court enter an Order in *Limine* prohibiting Defendant Iron Eyes from presenting his Second Necessity Defense to his jury in November is a *purely statistical argument*, which The State sets forth at ¶ 12 and ¶ 13 of its Memorandum, at pp.8 & 9, in support of its Motion.

[363] The State does accurately perceive Defendant Iron Eyes’ *legal* assertion at the base of his Second Necessity Defense – that Defendant Iron Eyes’ actions on February 1st were, *in addition to having been motivated by his desire to stop “The Great Evil” of the coming to full fruition The Existential Threat posed to the sole source of fresh drinking water for himself, his Lakota Family and his entire Standing Rock Sioux Tribe of Indians resident on The Standing Rock Sioux Reservation*, also motivated by his desire to stop from coming

into full and final fruition the ultimate unlawful criminal overt act of a purely private, class-based, invidious, *racially-discriminatory*, anti-civil rights conspiracy intended to deprive Defendant Chase Iron Eyes, his Lakota Family and his entire Sioux Tribe of Indians of their Constitutionally-guaranteed Right to The Equal Protection of The Law. See, The State’s Memorandum in Support of its Motion for an Order *In Limine*, at page 8, lines 14 & 15. Though The State does not articulate the precise nature of Defendant Iron Eyes’ assertion in this regard, The State is *essentially* correct when it asserts that: “the defendant believed his actions that day would be the interdiction of [the] ultimate overt act of the private conspiracy that was an alleged racial re-routing of the pipeline.

[364] However, The State makes this purely *statistical* argument in support of only a *general* assertion that no such “Belief” could possibly be “reasonably well-grounded” – because The State’s way of *statistically* computing the racial makeup of various North Dakota communities is different than that which Defendant Iron Eyes – and his entire Native American community – employs to determine what the demographic boundaries of the communities around The Dakota Access Pipeline are. The State endeavors to persuade The Court that Defendant Iron Eyes has, therefore, failed to present to The Court adequate factual information that would constitute a *prima facie* showing that that this private racial conspiracy actually happened. Therefore, his “Belief” that there WAS a “Great [or “substantial”] Harm” in the offing at all could NOT possibly have been a “Good Faith” Belief ...because this was simply “incorrect.” (See, The State’s Memorandum, at line 16 of page 8.) In essence, this argument on the part of The State asserts that Defendant Iron Eyes’ “Belief” in this regard *could NOT* possibly be “reasonably well-grounded” (and *could not*, therefore, have been held “in Good Faith”), because it was simply UNTRUE....so it *could* NOT have been “substantial.”

[365] This argument, at best, goes to the issue of a “mistake” in *factual* judgment on the part of Defendant Iron Eyes.¹⁴ This argument does NOT address the *comparative* “GREATNESS” of the “EVIL” or “HARM” that such an event’s coming to fruition *would* HAVE RESULTED IN....IF it WERE to come to pass as *compared to* whatever “harm” The State might wish to attribute to the actions taken by Chase Iron Eyes on February 1st of 2017. *That* is the *first* essential “element” of this Second Necessity Defense. Defendant Iron Eyes sets forth his information and evidence on the basis of which he believes that his “Belief” in this regard WAS “reasonably well-grounded.” The State has NOT.

[366] The State has set forth, *instead*, information and evidence on the basis of which it believes that Defendant Iron Eyes’ “Belief”, in this regard, *could NOT* possibly have been “in Good Faith”...because it *could NOT have been* “reasonably well-grounded” – because, The State argues, “this was UNTRUE”, as a matter of FACT...and *could* NOT, therefore, have been expected to cause any “substantial” harm. The alleged non-existence of any such *racial* conspiracy, The State attempts to “prove” by ITS simple re-framing of the

¹⁴ though Defendant Iron Eyes wants to make VERY clear to The Court that he WAS –and REMAINS – correct in this “Belief.”

demographical AREAS that it argues *should be* the subject of one’s *statistical* analysis... *rather than* the demographics which Defendant Iron Eyes (and his entire Sioux Tribe) employ to come to his “Belief” that Energy Transfer’s decision to re-route The Dakota Access Oil Pipeline *was*, indeed, *racially*-motivated.¹⁵

[367] However, *in addition to* proffering this “statistical slight-of-hand” to The Court as the sole basis for challenging the “Good Faith” nature (actually the “Reasonably Well-grounded” aspect of the “Good Faith Nature”) of Defendant Iron Eyes’ (and his entire Tribe’s) “Belief” that this pipeline was, IN FACT, “re-routed” for *racial reasons* (purportedly challenging the “substantial” nature of any “harm” that could have been expected to be caused by this conspiracy.) The State proffers this *purely statistical* argument also to attempt to prove that “The Great Harm” of the ultimate effectuation of the Energy Partners Corporation and Dakota Access Pipeline Corporation private executives’ anti-Native American anti-civil rights conspiracy motivated by a “class-based, invidious, *racially-discriminatory* animus against Native American people was NOT “imminent” or “immediate”, in ¶ 13, at page 8, line 18.

[368] While The State’s page-long explication of its *alternative* “demographics” argument (at page 9 of its Memorandum), which is rationalized, it would seem, by its one-line statement, at line 17, stating that: “That’s all assuming that there will be a catastrophic leak or rupture” (which would allow The State to “draw into” *its* assessment of the “*demographics*” of the alternative “regions” to be analyzed to determine *whether* one route or the other might have the more *racially-discriminatory* “impact”, might be an interesting exercise (similar to the one undertaken by the Energy Transfer Partners Corporation in “gerrymandering” the “Zone of Potential Impact of an Oil Spill” which it used to “disappear” the entire Native American population of The Standing Rock Sioux Tribe in its DC Court-“questioned” submission to the U.S. Army Corps of Engineers (See, footnote 12 below), this “exercise”, in NO way whatsoever, addresses (much less, “resolves”) the issue of the “immediacy” or “imminence” of the effectuation of “The Great Harm” that would be caused WERE such a private, *racially-discriminatory*, anti-Native American, anti-civil rights conspiracy be *brought to its ultimate fruition*.”

[369] The question before The Court, in this regard, is: “What would be the “event” that would “*bring to its ultimate ‘culmination’, ‘fruition’, or ‘success’*, the specific class-based, invidious, *racially-discriminatory* anti-Native American, anti-civil rights conspiracy CHARGED by Defendant Iron Eyes in his Second Necessity Defense?”

¹⁵ This “gimmick” will be familiar to anyone who is familiar in depth with the history of this case, since The Energy Transfer Partners Corporation tried to pull this “fast one” on The Army Corps of Engineers, then on the Environmental Protection Agency, then on The District of Columbia Federal District Court, duplicitously “gerrymandering” the “Potential Zone of Adverse Impact” of any major oil spill from The Dakota Access Pipeline to utterly “disappear” the ENTIRE Native American population of The Standing Rock Sioux Tribe as “potentially adversely affected persons” of any major oil spill from this pipeline...even though it was THEY whose entire fresh water supply would be destroyed by any such major oil spill into its groundwater and Lake Oahe.

[370] It would, of course, be: the successful re-commencement, completion and putting into operation *under Lake Oahe* of The Dakota Access Oil Pipeline – the exact *same* “EVENT” that Defendant Iron Eyes has identified as “THE GREAT HARM” that was subject of his First Necessity Defense.

[371] And the *same* “factors” need to be addressed, by The State, in order to fulfil its legal obligation to convince The Court that the *threat* of this specific “event” taking place “imminently” could NOT have been “reasonably believed” by Chase Iron Eyes, or his Lakota People, so as to make his “Belief” as to this a “Good Faith” Belief.

[372] And The State has simply not done this, with regard to this Second Necessity Defense. It simply relies upon its *same* purely *statistical* argument purportedly to the effect that:

This “conspiracy” to re-route The Dakota Access Oil Pipeline *from* its originally-planned route taking it 10 miles to the North of the North Dakota community of Bismarck, *instead*, to a route taking it just one-half mile to the north of The Standing Rock Sioux Reservation, *whatever* the ‘motive’ for this re-routing might have been (citing *only* the entirely *after-the-fact* rationale of the Energy Transfer Partners’ “desk top re-evaluation” of The North Bismarck Route – that was simply “adopted” by the U.S. Army Corps of Engineers as its *purported* “motive” for re-routing The Pipeline), Energy Transfer Partners’ motive *could NOT* have been one of “*racial-discrimination*”...because (YOU SEE) OUR “demographic analysis” *shows* that there is NOT any significant *racial* distinction between the populations of the two “Potential Adverse Impact Zones” contiguous to The North Bismarck Route and The Lake Oahe Route (once your accept The State’s [i.e. The Energy Transfer Partners’] “demographic analysis.”

[373] In short, The State is simply adopting the *same* “tactic” that The Energy Transfer Partners Corporation devised in order to “rig” its Environmental Assessment (EA) to avoid revealing that it *knew* that it was violating the “**ENVIRONMENTAL JUSTICE**” requirement of the Environmental Protection Act – which is “THE KEY” to understanding Defendant Iron Eyes’ entire Second Necessity Defense. Both The Energy Transfer Partners Corporation, *and now The State*, are attempting to simply “gerrymander” the “demographic analysis” that they are presenting to The Courts (both The DC Federal District Court, on the part of the Energy Transfer Partners Corporation – and its subservient [“captured”] U.S. Army Corps of Engineers, and The State, through the Morton County State’s Attorney’s Office, to *this* Court) in order to conceal the fact that THIS LAKE OAHE ROUTE *significantly* imposes a “*Racially-DISPARATE Potential Adverse Impact*” on Native American People – and they all *know* it!

[374] And they *knew* it before they decided to re-route The Pipeline. Indeed, that’s WHY the re-routed The Pipeline WHERE they did....despite the fact that it was almost *irrational* to re-route a pipeline of this magnitude *from* a route pursuant to which it would cross the Missouri River at a point that was only approximately 100 yards wide (requiring a much shorter – and, therefore, much safer drilling and installation process) TO a location which may be the VERY widest location on the entire Missouri River (requiring a

drilling and installation process that taxed the very boundaries of the present drilling and installation technology), *purportedly* to “avoid having to cross under *two* , rather minor, water sites (on The North Bismarck Route) instead of “only one”, on The Lake Oahe Route, the former *two* not having been shown to constitute the “source” of *any* “drinking water” for White People, whereas, the latter [Lake Oahe] constitutes the SOLE source of fresh drinking water for literally *tens of thousands* of Native Americans.

[375] In short, rather than meeting its burden to provide to The Court *any* argument that addresses its obligation to refute Defendant Iron Eyes’ assertion that his “Belief” was held “in good faith” that the *threat* posed by the potential *manifestation* of THE GREAT EVIL that was to come to pass IF the Energy Transfer Corporation Executives’ and Dakota Access Corporation Executives’ purely private anti-Native American anti-civil rights conspiracy *came to full “fruition”* was “imminent”, The State merely attempts to re-assert its purely *statistical argument*, trying to convince The Court that the manifestation of The GREAT HARM purportedly being *threatened* as the object of Defendant Iron Eyes’ Second Necessity Defense “Good Faith Belief” could simply NOT possibly have been “imminent” because NO SUCH *racially-discriminatory, anti-Native American* anti-civil rights conspiracy could *possibly* have been taking place – because The State’s adoption of a basically *different* statistical demographic analysis of the “Potential Zones of Adverse Impact” of any major oil spill from The Pipeline.

[376] Thus, The State’s argument ultimately reduces itself to this: Since there could NOT have *been* any such *racially-discriminatory* conspiracy (because of *their* “*alternate reality demographic*”), the ultimate “HARM” that might *hypothetically* have been caused by any such conspiracy *coming to fruition* – were such a *hypothetical* racially-discriminatory conspiracy *actually* taking place - could NOT have been “imminent.” And *why* is that? Because *such* a *racially-discriminatory, anti-Native American, anti-civil rights* conspiracy could NOT have been taking place – see *our* alternative demographic study.

[377] So, The Court can see that The State provides absolutely NO analysis whatsoever as to WHY any GREAT HARM that might be caused by any such conspiracy, as that identified by Defendant Iron Eyes, coming to fruition would – or would not – have been “imminent” on the morning of February 1st of 2017.

[378] Defendant Iron Eyes’ response is simply that The GREAT HARM that was, indeed, “imminent”, on the morning of February 1st of 2017, was the “imminent” issuance of the U.S. Army Corps of Engineers’ Certificate of Easement that would have been The STEP that “initiated” The Chain of Inevitable Causation that was going to “inevitably” result in the *imposition upon Defendant Iron Eyes, his Lakota Family, and his entire Standing Rock Sioux Tribe in residence on The Standing Rock Sioux Reservation, of The Racially-Discriminatory DISPARATE IMPACT* of The *THREAT* posed to their drinking water *and to their entire survival, as a landed Native American Tribe – WHATEVER* that “Threat” might be.

[379] This was a *Threat* against which the members of the 92% White North Dakota community of Bismarck had been “protected”, by the Environmental Protection LAWS of the United States, the “enforcement” of which

laws had been accorded to *them*. But, the 82% Native American population of The Standing Rock Sioux Tribe (and other Native Americans on The Cheyenne River Sioux Reservation *and other Lakota Indian Reservations who depended upon Lake Oahe for their drinking water*) were NOT provided the EQUAL PROTECTION afforded by these same *laws* - because of the *intentionally* racially-discriminatory conduct on the part of the private Executives of the Energy Transfer Partners Corporation and of the Dakota Access Pipeline Corporation *who undertook intentionally deceptive “overt acts” to consciously conceal the fact that they were intentionally re-routing The Dakota Access Oil Pipeline away from the 92% White community of Bismarck, North Dakota TO a route that would impose a racially-discriminatory (i.e. racially-DISPARATE) THREAT of significant contamination of their water of LAKOTA People upon the members of that racial minority community.*

[380] And the imposition of THAT *racially-discriminatory (i.e. racially-DISPARATE) THREAT* upon that racial minority community was, indeed, “imminent” on the morning of February 1st of 2017, with the then- “*imminently-pending*” issuance of the U.S. Army Corps of Engineers Certificate of Easement and the *immediate* re-commencement of the finalization of the construction of The Dakota Access Pipeline and its being put into immediate operation – all of which events were virtually “inevitable” *as soon as that Certificate of Easement* was issued. (SEE, The Burlington Case.)

[381] The State has NO argument to refute the “imminence” of this Threat becoming *manifest* – other than to assert that there *was* NO such *threat* “imminent”...because there could NOT have been any such *racially-discriminatory* conspiracy actively underway on the morning of February 1st of 2017 – because there *was* NO “*racial DISPARITY*” between the two different Routes for The Pipeline.

¶ 14

[382] On page 9 of its Memorandum, in ¶ 14, The State purports to address the “element” of Defendant Iron Eyes’ assertion that he in no way “created” or “caused” or “contributed to” THE GREAT HARM that is the subject of his Second Necessity Defense – the coming to fruition of the ultimate objective of the private criminal conspiracy to deprive him, his Lakota family, and the members of his entire Standing Rock Sioux Tribe resident on The Standing Rock Sioux *Reservation* of their Constitutional Right to The Equal Protection of The Law, which conspiracy would culminate upon the effective “*Transfer*” of whatever the *threat* was from The Dakota Access Oil Pipeline *from* the 92% White population of Bismarck *to* the 82% Native American population of The Standing Rock Sioux Reservation The State’s only response to its obligation to refute this element of Defendant Iron Eyes’ Second Necessity Defense.

[383] However, all that The State says in its Memorandum, at line 19 on page 9 of its Memorandum is this:

“The defense asserts that the alleged harm arose without the defendant’s causation or contribution, which, if there is this ‘harm’, is, to some extent, accurate.”

[384] Defendant Iron Eyes has asserted that the *degree* to which this is “accurate” is 100%.

[385] All that The State says in its effort to rebut this, at lines 19 &20, is:

“Though, as previously discussed, the harm didn’t exist.”

[386] So, once again, The State offers no “refutation” *at all* of Defendant Iron Eyes’ assertion that he played no role whatsoever in “creating”, “causing” or “contributing to” THE GREAT HARM of the coming to fruition of the conspiracy that he has charged was on-going as of the morning of February 1st of 2017. Indeed, The State acknowledges that Defendant Iron Eyes’ assertion, in this regard, is “accurate.” The State simply asserts, once again, as a matter of purported FACT, that there simply *was* no such conspiracy underway. Why? Because The State’s (and the Energy Transfer Partners Corporation’s) *own* “demographic analysis” gives them a “colorable” argument to defend Energy Transport Partners from charges against them. But they are now attempting to forge that “shield” into a “sword” with which to “slay” Chase Iron Eyes, whom they have chosen to identify as their “Public Enemy #1.”

[387] But, as to *this* “element”, of *this* specific Necessity Defense, they *have* NO response.

[388] With regard to the “Legal Alternatives” available to Defendant Iron Eyes to his doing what he did on February 1st of 2017 to try to “interdict” this specific GREAT HARM, The State directs The Court simply to the same list of purported “effective” *legal* alternatives....which The State simply asserted would “*have resulted in the same series of events that the defendant sought by his actual actions on that day*”?

¶ 15

[390] At page 10, ¶ 15, The State moves to attempt to “refute” Defendant Iron Eyes’ assertion as to the “Good Faith” nature of his Third & Fourth Necessity Defense Beliefs, on February 1st of 2017, that James Reese, John Porter and other TigerSwan Private Military Corporation Executives, and their TigerSwan military personnel were “*racially profiling*” the Native American People in North Dakota as “religiously-driven, Indigenous Jihadist Terrorists” pursuant to a class-based, invidious, *racially-discriminatory animus* against Native American People that these TigerSwan Executives harbored, and, pursuant to that animus, engaged in a series of overt acts to both deprive Lakota people of their Constitutionally-guaranteed Right to The Equal Protection of The Law and to cause a certain number of North Dakota State law enforcement personnel and other law enforcement personnel as well as private security operatives to join them in undertaking a number of overt acts to deprive Lakota People of their Constitutional Right to The Equal Protection of The Law.

[391] Defendant Iron Eyes has asserted that *this* private Title 42, Section 241 and Section 1985(3) anti-civil rights conspiracy *on the part of individual Tiger/Swan Executives and Personnel* was, on February 1st of 2017, on the brink of being catapulted toward its thereafter “inevitable” culmination in the finalization and putting into operation, directly under Lake Oahe, of The Dakota Access Oil Pipeline, the initiation of which would be begun by the *same* actions that he identified as meeting the requirements of his First and Second Necessity Defenses, especially the requirements pertaining to the coming to full fruition of a private criminal conspiracy

to deprive Defendant Iron Eyes and his fellow Lakota Sioux People of their Constitutional Right to The Equal Protection of the Law.

[392] In response to this assertion on the part of Defendant Iron Eyes with regard to this TigerSwan private anti-civil rights conspiracy, The State simply asserts, at page 10, line 11, that: “There isn’t a reasonable relationship between the actions.” This is because The State purposely attempts to ignore Defendant Iron Eyes’ specific assertions, such as those set forth pertaining to the Energy Transport Partners’ anti-civil rights conspiracy, and attempts, on page 10, 7 thru 10, to mis-characterize Defendant Iron Eyes’ assertion of facts as follows:

“the defendant thought there was a conspiracy to deprive them of rights, their continuing to protect the water would thwart the ultimate goal of the conspiracy to finalize the pipeline.”

[393] Obviously, by identifying (or perceiving) Defendant Iron Eyes’ assertion of what the causal connection was between what he was doing on the morning of February 1st of 2017 and what he was trying to prevent from coming to full fruition pursuant to the TigerSwan private Executives’ anti-civil right conspiracy directed toward Native Americans in the vague and amorphous manner in which it has, this *would* make it difficult for The State to discern any causative connection between stopping an anti-civil rights conspiracy from achieving its ultimate goal of depriving Native American people of their Right to The Equal Protection of The Law and amorphously “continuing to protect the water.”

[394] Defendant Iron Eyes has been much more specific about what the “causal connection” was between exactly what he was doing on the morning of February 1st of 2017 and exactly what it was that the TigerSwan Executives and Personnel were engaged in doing as “overt acts undertaken to effectuate the ultimate objective of that conspiracy” and *how* his actions might logically thwart or prevent the clearly-identified “ultimate objective” of the specific conspiracy that he has clearly identified for The Court. And The State’s simple assertion that “There isn’t a reasonable relationship between the actions” is certainly no effective refutation of Defendant Iron Eyes’ specific assertions...whether The State believes them to be true or not.

[395] At ¶ 15 of its Memorandum, The State launches into a mere recitation of The TigerSwan Private Military Corporation’s defense *of itself* for its having undertaken its long series of Constitutional violations of the fundamental rights of Lakota people in North Dakota. This is nothing more than another way for The State to assert that “There WAS no such anti-civil rights conspiracy being undertaken”...this time, by The TigerSwan Private Military Corporation, just as The State tried to do for Energy Transfer Partners. This is so The State can argue that any endeavor to determine whether THE GREAT HARM that *would have been caused* by any such anti-civil rights conspiracy coming to its fruition was “imminent”; was “caused by” Defendant Iron Eyes; was *more* “harmful” than any “harm” that might have been caused by Defendant Iron Eyes by his conduct; etc.

Would be simply UNNECESSARY for The State to do. So, The State devotes its attention, *instead*, to trying to defend The TigerSwan Military Corporation *by trying to convince The Court that there simply was NO such “conspiracy” happening* – because TigerSwan was only monitoring “Open Sources”, was simply monitoring license plates of First Amendment-protected citizens, “stalking” people involved in peacefully exercising their Constitutional Right to assemble, to Associate, to speak freely; to Petition Their Government for a Redress of Their Grievances...and on and on.

[396] At page 11 of its Memorandum in Support of its demand that this court enter an order prohibiting Defendant Iron Eyes from presenting to his jury the ample evidence that The TigerSwan Private Military Corporation was “*racially-profiling*” Defendant Iron Eyes and his fellow Lakota People as “*religiously-driven Indigenous Jihadist Terrorists*”, The State demands that The Court *ignore*, indeed, exclude from its consideration the multiple “Sit-Reps” (or “Situation Reports”) prepared privately by the Executives and Personnel of The TigerSwan Private Military Corporation – and secretly “shared” with all of the North Dakota State and County law enforcement personnel involved in working with TigerSwan against The Lakota People, The State, at lines 3-5, argues that these secret internal “Sit-Reps” of The TigerSwan Private Military Corporation could NOT be considered by The Court as potential violations of the Constitutional Rights of Defendant Iron Eyes and his fellow Lakota People....because those references, within those Sit-Reps, to Defendant Iron Eyes and his fellow Lakota People as “religiously-driven, Indigenous Jihadist Terrorists” would not have been made “public” *but for* their having been “leaked” by *someone else*. Therefore, The State argues (in its effort to “protect” The TigerSwan Private Military Corporation from the civil-rights conspiracy charge leveled against them by Defendant Iron Eyes and his fellow Lakota People) that any *violation* of the Rights of Defendant Iron Eyes and his fellow Lakota People would “be on the leaker...and the publisher (i.e. THE INTERCEPT)...not on the company.”, at line 5.

[397] As to TigerSwan’s comparing Defendant Iron Eyes and his fellow Lakota People to Jihadist Fighters, The State makes a peculiar argument, at lines 5-thru-11 on page 11 of its Memorandum. It says:

“The comparison between pipeline fighters and foreign fighters is entirely subjective in the minds of the defense. The fact is, the protesters were fighting against the pipeline. As to the defense’s issue with the term ‘battlefield’ and its allegedly showing the desire of TigerSwan to use military tactics against U.S. Citizens, is a complete fallacy. The defense’s bias is incredibly obvious here, as ‘battlefield’ can refer to a courtroom, a house with a bat that won’t leave, or a number of other non-military situations.”

[398] This argument (aside from whatever The State is talking about concerning “a house with a bat that won’t leave”) totally ignores the fact that the “Sit-Reps” in which this designation of Defendant Iron Eyes and his fellow Lakota People as “religiously-driven, Indigenous Jihadist Terrorists” were being discussed and distributed in Daily TigerSwan “Order-of-Battle Briefings”, convened in an Airplane Hanger at The Mandan Airport that had been transformed, by TigerSwan, into an “Operations Center” by TigerSwan C.E.O. Colonel

James Reese and his all-former U.S. Army Special Forces combat veterans (Colonel Reese having been the Director of World-Wide Anti-Terrorist OPERATIONS for the infamously-violent and militarily-reckless BLACKWATER, INTERNATIONAL...as well as the former Chief Military Liaison between the United States Pentagon's equally-infamously-violent Joint Special OPERATIONS Command *and the United States C.I.A. in all of Iraq and Afghanistan* – And these references to the First Amendment-protected, U.S. Government-licensed and authorized “Public Protest Area” on the land ½ mile from the Dakota Access Oil Pipeline Drilling Site as “The Battleground” that was to be “prepared” by TigerSwan were being made, by The Chief of Operations for TigerSwan, one retired U.S. Army Special Forces Master Sergeant John Porter *in full combat, camouflaged*, body-armored U.S. Army dress – with a live-ammunition-filled AR 15 (or even M-16) military rifle slung around his neck.

[399] Thus, Defendant Iron Eyes' and his fellow Lakota People's having interpreted TigerSwan personnel's references to them as “religiously-driven, Indigenous Jihadist Terrorists” would NOT be entirely “subjective”, as The State suggests. This is especially true in light of the actual “Operations” *history* of Colonel Reese, Master Sergeant Porter and the TigerSwan personnel assembled by The Energy Transfer Partners Corporation to “neutralize” The Lakota People....whom The Corporation viewed (as The State itself does, in its Memorandum) as “fighters against the pipeline.”

¶ 17

[400] To further exemplify this point, The State, continuing, at ¶ 17, on page 11 of its Memorandum between lines 12 and 18, says the following:

“The defense then moves on to address that it [purportedly meaning THE GREAT HARM of the pending coming to full fruition of TigerSwan's Section 241 and Section 1985(3) anti-Native American anti-civil rights conspiracy] arose without culpability on the defendant's part. There is a clear misunderstanding of the basic definition of ‘terrorism’ by the defense here. Terrorism, as it is defined, is the unlawful use of violence and intimidation in pursuit of political ideals. While not the most sensitive of terms that could have been used, the actions of the water protectors are not completely incongruous with the basic generic definition of terrorism. Indeed, even before the events of 911 and the use of the term terrorism since then, ‘eco-terrorism’ was a term.”

[401] Let it suffice to say, in response to this transparent effort on the part of The State to defend its erstwhile Partner-in-Crime, TigerSwan, for branding Defendant Iron Eyes and his fellow Lakota People as “religiously-driven, Indigenous Jihadist Terrorists” in their “Sit-Reps” (that they liberally distributed among all law enforcement personnel who were deployed in the field to enforce the law in the area of the public demonstrations) AND in the TigerSwan Daily “Order of Battle Briefings” (that were attended, *every day*, by the command personnel of the State and Local law enforcement agencies...and always “delivered” by TigerSwan MILITARY personnel), that NO ONE has *ever* heard of a mere “ecological” activist being referred to as a “religiously-driven, Indigenous, JIHADIST Terrorist.” American citizen Native American people, like Chase Iron Eyes, the 2016 National Democratic Party Nominee for the only seat in Congress representing the State of

North Dakota, are NOT “Terrorists”! And heavily-armed, body-armored, and highly-trained combat *military* Special Forces men, experienced in *killing* Jihadist Terrorist’s referring, *repeatedly*, to such American opponents of The Dakota Access Oil Pipeline as “religiously-drive, Indigenous JIHADIST Terrorists” is a LOT more than simply “not the most sensitive of terms.” It is outright *racist profiling* that carries with it a clear and unequivocal message “branding” these Native American citizens as persons who should NOT be accorded the *same* Rights, Privileges and Immunities of other American citizens.

¶ 18

[402] In ¶ 18, The State, when confronted with its responsibility to explain what the “legally-available alternatives” were that were available to Defendant Iron Eyes to try to STOP this TigerSwan blatant anti-Lakota *racial profiling* and derivative undertaking of a series of “overt acts” to deprive the Lakota People of their Constitutional Rights, The State resorts to proffering such helpful advise as: “driving without license plates”, at page 11, lines 20-21 (apparently to stop TigerSwan combat personnel from photographing the license plates of - and then identifying, hunting down, compiling, AND *PROVIDING TO STATE AND COUNTY LAW ENFORCEMENT AUTHORITIES – INCLUDING THE MORTON COUNTY SHERIFF’S DEPARTMENT, THE NORTH DAKOTA STATE POLICE AND THE NORTH DAKOTA UNITED STATES ATTORNEY’* the political, medical, psychiatric ..and even sexual...backgrounds of those to whom those license plates were registered);”handing out fliers and taking out a billboard, or several of them, on busy roads. None of which were done by the defendant or even appear to have been attempted.” At page 12, lines 7-thru-9.

[403] Suffice it to say, that it is not very likely that any of these obviously-well-intended pieces of public protest advice on the part of The State would have been as effective in trying to stop the TigerSwan Private Military Corporation operatives from ultimately succeeding in achieving the unlawful objective of their conspiracy – which was to adequately deprive the Lakota People of their Right to The Equal Protection of The Law effectively enough so as to allow the impending completion and putting into operation of The Dakota Access Oil Pipeline under their sole source of drinking water – and exposing them to the imminent threat of being “dispersed” as a Landed People when their sole source of fresh drinking water became contaminated by one of the 591 spills or leaks that had plagued the fuel pipelines installed by The Energy Transfer Partners and their operational partner Sunoco Logistics.

¶ 19,

[404] In ¶ 19, The State fails entirely to address Defendant Iron Eyes’ argument that the carrying into full fruition of the ultimate strategic objective of TigerSwan’s criminal anti-civil-rights conspiracy against Defendant Iron Eyes and his fellow Lakota People (the imminent re-commencement, completion and putting into operation under Lake Oahe of The Dakota Access Oil Pipeline) the first step of The Chain of Causation that would inevitably generate this event that was on the very brink of happening that morning) was a GREATER HARM than was anything Defendant Iron Eyes did on February 1st of 2017. The State, in ¶ 20,

simply continues to refuse to see *that* it was the stopping of the achievement of the ultimate unlawful objective of the specific anti-civil rights conspiracy that was being perpetrated by the TigerSwan Executives and their personnel that Defendant Iron Eyes was attempting to effectuate by his actions on February 1st. So, “driving without license plates”, or even stopping talking on telephones, or stopping having private meetings (that TigerSwan personnel were infiltrating and in which they were trying to goad peaceful water protectors into carrying firearms or committing various violent acts) would NOT have stopped TigerSwan conspirators from performing *other* violations of their Constitutional Rights. But, stopping the pipeline WOULD HAVE. Because TigerSwan would then *leave* – and go violate some *other* “Tribal People’s” human rights...while protecting some *other* oil corporation, or oil pipeline, invading *their* ancestral territory – since *that* is the business that TigerSwan has chosen as its “area of expertise.”

¶ 20 & 21

[405] At ¶ 20 & 21, The State turns its only-cursory attention to Defendant Iron Eyes’ Fourth Necessity Defense, his charge that The TigerSwan Private Military Corporation Executives’ and Personnel’s previously *purely private* Title 18 United States Code, Section 241-prohibited criminal (and (Title 42, Section 1985[3] *civilly*-prohibited)-, *racially-discriminatory*, anti-Lakota anti-civil rights conspiracy was *transmuted*, *consciously*, by TigerSwan Operatives, INTO a Title 18, Section 242-prohibited criminal (and (Title 42, Section 1983 *civilly*-prohibited) anti-Native American anti-civil-rights conspiracy *being actively participated in by* “*persons operating ‘under the color of law’*”, by “drawing into” *that* anti-civil rights conspiracy a number of professional, on-duty, State and County (even Federal¹⁶) law enforcement officers and Officials....and *then* “converting” *that racially-discriminatory* anti-civil rights conspiracy INTO a Title 18, Section 242-prohibited criminal (and Title 42, Section 1983 *civilly*-prohibited) anti-civil rights conspiracy “*targeting” people who were engaged in First Amendment-protected activities such as exercising their Right to Freedom of Speech; Freedom of Assembly; Freedom of Association; Freedom to Travel; Right to Petition Their Government for a Redress of Grievances and various other First and Ninth Amendment-protected Rights, Privileges and immunities of Citizens of the United States.* However, The State does nothing more than woodenly assert, at page 13 of its Memorandum, at line 8, that Defendant Iron Eyes’ citing of the 1963 Civil Rights Case of Lombard v. Louisiana, 373 U.S. 267, a Black “Sit-In” Case at a racially-segregated lunch counter in New Orleans, constituted a “false equivalence” ...which “serves only to prejudice and mischaracterize the reality of what happened”, devoting no effort whatsoever to distinguish that case from what was done by TigerSwan Military operatives and those law enforcement officers who were “drawn into” the TigerSwan anti-civil rights conspiracy, first against Lakota People and, then, against Native People and non-Native People alike,

¹⁶ See, Bivens v. Six Unknown Named Federal Narcotics Agents, 409 U.S. 388 (1971), from 2nd Cir. Court of Appels Case 409 F.2d 718 (1969)

“targeting” them NOT because of their *race*, but, *instead*, by their participation (NOT in any acts of violence or law-breaking), but exclusively in First Amendment-protected activity expressing their opposition to the building of The Dakota Access Oil Pipeline under Lake Oahe.

[406] In its effort to represent to The Court that Defendant Chase Iron Eyes somehow “created”; “caused” or “contributed to” the GREAT HARM caused by this 1983 anti-First Amendment conspiracy on the part of The TigerSwan Private Military Corporation *into which* had been “drawn” a certain number of law enforcement officers and Officials, The State does nothing more, in ¶ 22, than complain that Defendant Iron Eyes and his defense “uses this Notice as nothing more than a platform to spread their belief the Law Enforcement sought to quell the rights to speech, assembly, religious exercise, and privacy, arguing, on page 14 of its memorandum, at lines 3-thru-5 that: “There have always been infringements on religion in the United States. Even to this day, many things in religious doctrine are not legal to do: stoning someone for certain crimes as a prime example” (once again, returning to the comparison of The Lakota People to reactionary Islamisist JIHADIST Terrorists known for “stoning” opponents of their fundamentalist interpretation of religion). And, going on to carry this implication into fuller flower by stating, at lines 5-thru-7: “These restrictions are constitutional because they preserve the rights of others as well; essentially, the ‘freedom of Religion is also the freedom from religion’” (still, once again, somehow suggesting that Defendant Iron Eyes and his fellow Lakota People, by their actions on February 1st (or, at other times during their peaceful and prayerful public opposition to The Dakota Access Oil Pipeline were somehow attempting to foist upon...or even coerce...the Non-Native American residents of Morton County or North Dakota...*their* “religious” views that their land and water were “Sacred” and that the activities of The TigerSwan Military Corporation (and those State and Local law enforcement officers whom they “drew into” *their* anti-civil rights conspiracy) were antithetical to and incompatible with what Defendant Iron Eyes and his fellow Lakota People viewed to be “Spiritual Principles.”¹⁷

[407] In ¶ 23, The State, once again, reiterates its *same* list of “Legal Alternatives” to Defendant Iron Eyes’ attempting to participate with his fellow Lakota Sioux tribal members in the Traditional Religious Ceremony in which he and they were attempting to participate at The Last Child’s Camp atop that hill on the morning of February 1st of 2017. This includes “The Billboards”, at line 16 of page 14 of its Memorandum; “handing out flyers in towns”, at line 16; and taking out “television ads”, at line 17. As discussed in other paragraphs above, none of these were suitably effective alternatives to what Defendant Iron Eyes did on February 1st.

¹⁷ Defendant Iron Eyes hastens to point out, here, that this same view was shared by *numerous* representatives of over two-dozen other Christian, Jewish, Buddhist; Islamic and other religious heritages who joined them in numerous inter-faith religious ceremonies attempting to make it clear to Federal, State, County and Local law enforcement people that 99.9% of the people who were publicly expressing their opposition to The Dakota Access Oil Pipeline being drilled and installed right through the middle of Sared Burial Sites of Lakota Ancestors and then under their sole source of fresh drinking water was contrary to *almost everyone’s* Spiritual Principles.

[408] In ¶ 24, The State purports to address “the weighing of harms element” of Defendant Iron Eyes’ Fourth Necessity Defense pertaining to the Section 1983 “State-Sponsored” anti-First Amendment conspiracy being carried out “under the color of State Law”, but, *rather than* comparing and contrasting the nature and scale of the *comparative “harms”* that might have been caused by, on the one hand:

1. a full-scale anti-First Amendment Conspiracy mounted jointly by combat-hardened U.S. Army-trained Special Forces Operatives under the command of the former Chief Liaison between the United States Pentagon’s Joint Special Operations Command and former Director of World-Wide Anti-Terrorist operations of BLACKWATER, INTERNATIONAL in close, daily-briefing coordination with armed operatives of The F.B.I.; The anti-Terrorism Division of The U.S. Justice Department and the full array of armed police from over 100 different Federal, State, County and Local law enforcement agencies from a five-State region....and, on the other hand,
2. a band of only a few dozen young peaceful and prayerful Lakota men and women and an equivalent number of equally unarmed, peaceful and prayerful Non-Native American young people – who did nothing worse than “pull back” against police officers trying to drag their fellow Water Protectors out of a circle that they formed around the small Sacred Fire-pit that they had built on the top of that hill

[409] The State, *instead*, launches into a rambling complaint asserting that Defendant Iron Eyes has “mischaracterized the deposition testimony of several individuals. For example, at page 15 of its Memorandum, at lines 3-thru-5,

[410] The State complains that:

“The defense states that ‘they had knowledge that TigerSwan personnel...were breaking into the radio communications of the Water Protectors...to incite them to engage in violent conduct’ (Doc. 552, pg. 77) The reality is that the witnesses stated that there had been rumors that this was going on, (See Kirchmeier Deposition pg. 118.)

[411] In point of fact, Sheriff Kirchmeier stated in his Sworn Deposition that he had taken this information so seriously that he had taken the action, based on this very information, of ordering all of his Deputy Sheriffs to turn in to him all of *their* radios through which *they* had been able to break into the Water Protectors’ radio communications *so HIS OFFICERS would not have that activity falsely attributed TO THEM*. He did NOT say that he had not credited this information. It, indeed, was the Assistant State’s Attorney who attended that Deposition of Sheriff Kirchmeier who “coached” or “coaxed” Sheriff Kirchmeier into stating that it had been “rumors” that this was, indeed, happening, that had caused him to order his Deputies to “turn in” the radios that *they* had that could break into those Water Protectors’ radio communications.

[412] The State – still not comparing and contrasting the nature and scale of the *comparative “harms”* that might have been caused, respectively, by what Defendant Iron Eyes did on February 1st of 2017 and what he

charged that TigerSwan, in close coordination with Federal, State, County and Local law enforcement officers and Officials, were doing pursuant to a specifically-described anti-First Amendment anti-civil rights conspiracy – goes on, at ¶ 25, at lines 5-thru-8, of its Memorandum, to state that:

“Any of the others (i.e. the *several* “other” sworn Deposition Witness Law Enforcement Officers) who stated that (i.e. “stated” that “they had knowledge that TigerSwan personnel...were breaking into the radio communications of the Water Protectors...to incite them to engage in violent conduct”) were also based on the foundationless exhibit, and, even then, was that’s what the rumor was.”

[413] The “foundationless exhibit” to which The State is referring in ¶ 25 is the February, 2018 Report prepared by retired 5th U.S. Army Special Forces HALO Jumper Jack Murphy who states that he interviewed an employee of The TigerSwan Private Military Corporation itself who informed Special Forces Veteran Murphy that he had been informed that TigerSwan North Dakota Field Commander Retired U.S. Army Special Forces Sergeant Major John Porter *himself* would “Go up onto the hill overlooking the bridge [that is, The Backwater Bridge that was the scene of a major physical confrontation between members of The Red Warrior Society of Oglala Sioux Indians and State Law Enforcement Officers] and break into the radio communications of the Water Protectors and, pretending to be a Water Protector, would give the command: ‘All Red Warriors! All Red Warriors! Come to The Bridge! Come to The Bridge!’”, explicitly trying to generate violence between the Water Protectors and State Law Enforcement.

[414] When shown that article, several of the Law Enforcement Officers who were deposed said, “Yes. I had heard that.” And the only reason why those reports were able to be characterized, by the *same* Assistant State’s Attorney who was in attendance at those Sworn Depositions as well was, as was stated by those Law Enforcement Officers: “No one *investigated* those reports!.”

[415] While The State might claim, at *this* stage of the Trial Preparation, that these “reports” are, at present, only in “Hearsay” form, these reports, confirmed, over and over again, *by The State’s OWN Law Enforcement Officers, under oath*, certainly constitute *prima facie* information on the basis of which a reasonable person could come to hold a “Good faith Belief” that this activity WAS, in fact, going on – AND THAT THE POLICE KNEW IT!

[416] Finally, at ¶ 26-thru-¶ 29, The State purports to address Defendant Iron Eyes’ Fifth and final Necessity Defense, his “Global Climate Change Defense.”

[417] The key to Defendant Iron Eyes’ “Global Climate Change Defense” is his assertion that the “Chain of Causation” standard for determining the “immediacy” of the manifestation of THE GREATER HARM, or “SUBSTANTIAL HARM”, with regard to environmental damage must be that which was set forth in the 2007 10th Circuit Court of Appeals case of Burlington N. & Santa Fe Ry. Co. v. Grant, Burlington N. & Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020-21 (10th Cir. 2007). Specifically, again, the 10th Circuit held:

An “imminent hazard” may be declared at any point in a chain of events which may ultimately result in harm to the public [. . .] Imminence, thus, refers to the nature of the threat rather than identification of

the time when the endangerment initially arose.” Burlington N. & Santa Fe Ry. Co. v. Grant, 505 F.3d 1013, 1020-21 (10th Cir. 2007).

[418] Thus, within the context of “environmental danger”, a finding that an activity may present an “imminent” and “substantial” harm does not require that a defendant seeking to prevent ultimate environmental damage wait until actual harm is on the very brink of occurring. Meghrig v. KFC Western, Inc. 516 U.S. 479, 485-486 (1996). Instead, the Supreme Court has explained that, as soon as a “current threat” is posed, the impact of such a threat “may not be felt until later.” Id. Courts have also consistently held that “endangerment” means a threatened or potential harm and does not require proof of that the actual harm is on the brink of occurring – or has already occurred. United States v. Ottati & Goss, Inc., 630 F.Supp. 1361, 1394 (D.N.H.1985); United States v. Vertac Chemical Corp. 489 F.Supp. 870, 885 (E.D.Ark.1980). See also Ethyl Corp. v. EPA, **541 F.2d 1**, 13 (D.C.Cir.) (en banc), cert. denied, 426 U.S. 941, 96 S.Ct. 2662, 49 L.Ed.2d 394 (1976) (“[c]ase law and dictionary definition agree that “endanger” means something less than actual harm”). Additionally, other circuit courts have ruled that the “harm” that needs to be identified as the basis for a necessity offense may be already happening and be made worse by the particular activity that threatens to increase that harm that a necessity defense defendant takes action to try to stop. People v. Gray, 571 N.Y.S.2d 851, 858-89 (Crim. Ct. 1991).

[419] Defendant Iron Eyes argues that, as has been specifically stated by authoritative sources, in the context of criminal necessity, “the proper inquiry is not the immediacy of the threat but the immediacy of the response necessary in defense. If the threatened harm is such that it cannot be avoided if the intended victim waits until the last moment, the principle of self-defense must permit him to act earlier - as early as is required to defend himself effectively.” LaFave & Scott, §5.7(d), 656, citing 2 P. Robinson, Criminal Law Defenses § 131(c)(1)(1984).

[420] What is The State’s response to this asserted basis, by Defendant Iron Eyes, that he, on February 1st of 2017, held a “Good Faith Belief” that the GREAT HARM that was “imminent” with the then-immediately-pending Issuance of the vital U.S. Army Corps Certificate of Easement was the “*initiating First Step*” in the “Chain of Causation” that would make “inevitable” the immediate re-commencement of final construction and putting into operation of the 910,000-gallon-an-hour crude oil Dakota Access Oil Pipeline directly under the sole source of fresh drinking water of The Standing Rock Sioux Reservation’s...and The Missouri River that was the source of fresh water for tens of thousands of additional members of Defendant Iron Eyes’ Sioux Tribe of Indians resident on the Sioux Reservations in North and South Dakota - and the burning ...and expelling into our planet’s atmosphere of literally *BILLIONS OF TONS* of Global Greenhouse Gas causing effluents?

[421] The State simply asserts, at lines 21 & 22 of page 15 of its Memorandum, that:

“The fact is that this oil HAD TO BE transported [because?] the demand was there for it. And this protest was unlikely to ever stop that oil from eventually being burned.” (emphasis supplied).”

[422] That is the State's simple bald assertion that NONE of these Anti-Global Climate Change Public Protests are *ever* going to be able to stop the exploration for; drilling for; fracking for; transporting of; refining of; shipping off into the world to foreign markets of; burning into our atmosphere of – and the killing of our planet – and ourselves – by Petroleum.

[423] This has not been proven to have been true for: human slavery; public torture; child labor; the burning of heretics at the stake; or cannibalism. Each of these once-common human practices has been STOPPED, by decent human beings, acting together, through public protests; public lobbying; writing treatises and other forms of “speaking out – and *acting* out – for justice...and for human sanity.

[424] The State of North Dakota's fatalism reflected in its “response” to Defendant Iron Eyes' assertion that there was - and is – some logical “connection” between what we DO to try to stop these self-destructive human activities is informative. While the issue of the “immediacy” of THE GREAT HARM that will be effectuated by the completion and putting into operation of this Dakota Access Oil Pipeline has been addressed above – and will be addressed, further, below - this issue of the “causal connection” between the kind of action that Defendant Iron Eyes and the fellow members of his Sioux Tribe of Indians...and their Non-Native American supporters took on February 1st of 2017 atop a barren hilltop overlooking a multi-billion-dollar drilling operation under their sole source of fresh water will echo down through the years, long after the smug and arrogant words that have been spoken by The State of North Dakota in The State's Memorandum have been long forgotten. And the “causal connection” between the “actions” taken by The Lakota People against this monstrous pipeline – and by others like them - and the eventual ending of the burning of petroleum and its effluents into our planet's Atmosphere – will not be doubted.

[425] The State's frivolous effort, set forth in ¶ 29 of its Memorandum, to try to attribute to Defendant Iron Eyes blame for “causing” or “creating” or “contributing to” THE GREAT HARM of Global Climate Change that he was trying to prevent by his actions on February 1st of 2017 takes the form of The State asserting that: “Vehicles were used to bring items/people to this new camp.” At page 17, line 11; “law enforcement responded and fuel was burned in that response, which, but for the actions of the defendant and his group may not have been burned that day”, at lines 18 & 19; “a truck belonging to the defendant was also set on fire which is likely to have released carbon into the atmosphere”, at lines 19 & 20; “People were arrested, thanks to his actions, including himself, causing people to have to travel to court appearances, which burns fossil fuels”, at 20-thru-22.” The State even goes so far as to argue that: “Even the depositions taken in this case, which was charged out because of the defendant's actions, required travel that would not have occurred but for the defendant and his defense”, [pointing out that] “The State actually sought to keep the depositions at the Morton County Courthouse, thus preventing the excess use of fuel to travel to these depositions.”

[426] All of these assertions on the part of The State are set forth as “HARMS” that Defendant iron Eyes purportedly “caused” through his actions to be “weighed against”.....WHAT “Great Harm” that The State might

concede is being caused to contribute to Global Climate Change by this pipeline? And *where* is *that* GREAT HARM even *acknowledged* by The State of North Dakota? Nowhere! At *no* time does The State even attempt to address THAT “Harm.” It simply goes on and on, listing, for an entire page (page 16 of its Memorandum) all of the “harms” purportedly “caused” by Defendant Iron Eyes on February 1st of 2017 ...which The State demands that The Court “weigh” against THE GREAT HARM of Global Climate Change....which The State, indeed, *never* even addresses, much less “weighs” against these bizarre “harms” allegedly “caused” by Defendant Iron Eyes.

[427] Indeed, The State spends its entire last two pages of its “specific responses” to Defendant Iron Eyes’ specific articulations of the evidence specifically supporting each of the several “elements” of *each* of his five “Necessity Defenses” simply *listing* the ways in which NOT Defendant Iron Eyes, but, *instead*, ALL of the protestors against The Dakota Access Oil Pipeline *themselves* “use petroleum products” ...thereby “contributing to” the *very* GREAT HARM that “they” (i.e. Defendant Iron Eyes) *purported* to wish to STOP by their actions undertaken on February 1st of 2017.

[428] One must assume that The State is, thereby, demanding that The Court enter an Order Prohibiting Defendant Iron Eyes from presenting to his jury, in November, his Global Climate Change Necessity Defense because, among other things: “The defendant’s clothing and most, if not all, of the protestors’ clothing, likely, is all thanks to fossil fuels, not only in the manufacturing process, but also in the delivery of them to wherever they were purchased.

[429] This is hardly grounds for this Court issuing an Order Prohibiting Defendant iron Eyes from presenting his defense to his jury.

[430] In ¶ **30-thru-33**, The State argues one other “General Issue” in *general* opposition to the right of Defendant Iron Eyes to be able to argue any Necessity Defense to his jury. In Paragraphs **#31** of its Memorandum in Support of The State’s Motion for The Issuance of an Order In Limine, The State demands that this Court issue An Order In Limine prohibiting Defendant Iron Eyes from presenting to his jury in November his “Necessity Defense #5 asserting (as The State puts it) that

“the defendant’s and his fellow protestors’ actions [were] protecting nature, doing what they have [done] to protect ‘the last remaining tribal resources, Lake Oahe’ ...and other such statements.” [Because], “had this been the case, there would not have been such a mass of waste and debris left at the [Oceti Sakowin] site when it was shut down. This stuff either would not have been there in the first place, or would have been removed by the protestors claiming to protect the water and the land. The fact is that, in the fight to allegedly protect the water and the natural resources of the tribe and the planet, the protestors, the defendant included, created a large potential hazard to not only the water they sought to protect, but also the land and the organisms that live there....The gasoline and other chemicals from the generators and vehicles would have leaked into the environment had it not been cleared by the State and other agencies and business.”

[431] This argument *appears to be* set forth in support of The State’s insistence that Defendant Iron Eyes be subjected, by this Court, to an Order in Limine prohibiting him from asserting to his jury that the action that he

took on February 1st of 2017 was an action on his part to try to protect Lake Oahe from being subjected to THE RISK of a petroleum leak from The Dakota Access Pipeline drilled directly under it to carry 910,000 gallons an hour of crude oil *under the sole source of his, his Lakota family's and his Standing Rock Sioux Rock Sioux Reservation fellow members of his Sioux Tribe* because The Law Enforcement Personnel of The State of North Dakota and of The TigerSwan Private Military Corporation, on February 22nd of 2017 *swept down upon the Lakota occupants of The Oceti Sakowin Oyate Encampment – and absolutely BULLDOZED literally hundreds of thousands of pounds of PERFECTLY SOUND AND OPERATIONAL winter clothes; food supplies; sleeping bags; propane stoves; and other perfectly functional camping equipment and tents and housing facilities – which THE STATE & TIGERSWAN PERSONNEL turned INTO “debris”... and then “weighed”...so they could publicly FALSELY announce TO THE CITIZENS OF BURLEIGH COUNTY AND MORTON COUNTY (prospective jurors in this case) THAT “The Lakota Protestors” (like Chase Iron Eyes) were “filthy” terrorists” WHOSE TRASH & GARBAGE “LEFT BEHIND” (when they were physically “run down” by bulldozers and armored vehicles AT GUNPOINT – and forced to flee WITHOUT THE ABILITY TO TAKE WITH THEM THESE PERFECTLY FUNCTIONAL “SUPPLIES”...which THE STATE and TIGERSWAN turned INTO “garbage & waste & debris.”*

[432] This “argument” is nothing more than a restatement, by The State Prosecutor, of The Social Engagement Program “line” authored by TigerSwan Founder & C.E.O. Colonel James Reese’s former Iraq War associate and Strategic Public Communications Director for The Iraqi War for the George W. Bush Administration, “Off-The-Record Strategies Corporation” Director Mark Pfeiffle. It is *false*. And any relation that the defendant in *this* case (Defendant Chase Iron Eyes) has to any such charge is the audio recording of February 1st of 2017 of Chase Iron Eyes requesting that people gathered at The Last Child’s Camp pick up any loose materials and store them in the tee-pees as the law enforcement operatives ascended the hill to threaten to arrest these people – in effect doing EXACTLY THE OPPOSITE of the *false* conduct which The State attempts to somehow attribute to HIM to constitute Defendant Iron Eyes’ “contributing TO ‘The Greater Harm’ that he purported to be trying to prevent from happening”, to wit” “polluting the Missouri River.”

[433] Next, still taking the State’s arguments in reverse order: in Paragraph 30, The State demands that this Court must prohibit Defendant Iron Eyes from presenting to his jury in November the aspect of Defendant Iron Eyes’ Defense-In-Chief¹⁸ against the “Trespassing” charge filed against him pursuant to which defense he asserts that, since neither The Dakota Access Pipeline Corporation nor the Energy Transfer Partners Corporation (at the specific request of one or the other of which The State asserts that it’s police were acting to

¹⁸ The State persists in misconceiving Chase Iron Eyes’ assertion that he harbored a Good Faith Belief that the Dakota Access Pipeline Corporation did NOT “own” the area of land at issue (*both* because that area was sovereign territory of The Sioux Tribe of Indians and because Dakota Access *could not, as a matter of law*, have lawfully purchased or owned that area of land) as an aspect of his “Necessity Defense.” As was made clear in Fn 4 above.

arrest for “trespassing” and then remove from that area Defendant Iron Eyes and the other members of his Sioux tribe) had no lawful authority to purchase that land and had no lawful authority to own that land, so agents or operatives of *neither* corporation had the right to order police to arrest Defendant Iron Eyes and his fellow Sioux tribal members for trespassing on *their* land or to “enclose *that* land so as to manifestly exclude” Defendant Iron Eyes or his fellow Sioux tribal members. The State asserts that The Court must prohibit this defense by Defendant Iron Eyes because “the legal matter *discussing* the *continued ownership* and the *legality* of ‘that’ [is] still pending” (emphasis provided by *italics*.) And The State asserts, additionally, that “...even if the land purchase and ownership [is] for some reason retroactively invalidated, the sale or attempted sale is a clear indication that Dakota Access was given the authority over the land, thus making the ownership itself an irrelevant issue to the charge at hand.”

[434] First: Chapter 10-06.1-02 of the North Dakota Century Code expressly “*prohibits*” any corporation or limited liability company such as Energy Transfer Partners or Dakota Access Pipeline from acquiring or owning North Dakota grasslands such as the land area at issue in this case that has been used for farming or ranching. Indeed, North Dakota State Attorney General Wayne Stenehjem has officially informed this very South Central Judicial District Court that “while there are exceptions to Chapter N.D.C.C. 10-06.1’s prohibition on land acquisition and ownership , DAPL does not qualify for any of these exceptions.” Wayne Stenehjem, Attorney General, ex rel., State of North Dakota v. Dakota Access, LLC., Civil Complaint No. 30-2018-CV-00612, In The District Court of The South Central Judicial District, COMPLAINT, ¶19, at p.3. To “*pro-hibit*” means to “for-bid”, to “pre-clude”; to “pre-vent”...*all* meaning to STOP some act from occurring ahead of time. It does NOT mean to *allow* a “forbidden” act to be undertaken and given full temporary effect... and then UN-“do” it....AFTER giving that *forbidden* act full effect for the entire period during which the “prohibited” actor WANTED the “value” of the prohibited act.

[435] Second: The fact that North Dakota State Attorney General Wayne Stenehjem did not *enforce* Chapter 10-06.1-02 against The Energy Transfer Partners Corporation or The Dakota Access Pipeline Corporation...or even that he *agreed* NOT to *enforce* Chapter 10-06.1-02 against The Energy Transfer Partners Corporation or The Dakota Access Pipeline Corporation did not grant legal title to The Energy Transfer Partners Corporation or The Dakota Access Pipeline Corporation over that land....any more than Congress’ passing of The Act of February 28th of 1877 *transferred title* to that area of land *from* The Sioux Tribe of Indians *to* The United States Government. This is NOT “high science”...or even really difficult “law.” It is basic hornbook property law.

[436] No party can *transfer* or *sell* any greater legal title to any piece of real property to another person or party than that first person *lawfully* holds. And the failure to – or, indeed, an agreement NOT to – *enforce* a specific criminal law on the part of a State Attorney General; a Federal Attorney General; a U.S. Attorney, or a Local District Attorney, does NOT make a specific act that is expressly and unequivocally *prohibited by law* “legal.”

[437] The State initially charged Defendant Iron Eyes with the Class B Misdemeanor of entering upon this area of land without license or authorization and remaining on the property of another after being requested to leave the property by a duly authorized individual. Defendant Iron Eyes challenged this charge, demonstrating that it was Morton County Sheriff Kyle Kirchmeier who ordered his deputies and police to arrest Defendant Iron Eyes and his fellow Lakota people for “trespassing” on that area of land...and they had no evidence showing that law enforcement officials were ordered or asked to do this by any owner of that land. When The State produced a signed letter from the Executive Vice President of The Energy Transfer Partners Corporation & Project Executive of The Dakota Access Pipeline (one Joey Mahmoud) *belatedly* directing Sheriff Kirchmeier to remove the Lakota people from that area or arrest them for trespassing if they refused to leave, evidence was developed that that directive was not given until AFTER Sheriff Kirchmeier had ordered the arrest of Defendant Iron Eyes and his fellow Sioux tribal members and they had all already been taken into custody.¹⁹ When one of the arresting officers was confronted with this evidence, in a June 6th Sworn Deposition, The State, within 3 hours of the completion of that Sworn Deposition, “amended” its criminal complaint against Defendant Iron Eyes, “upping” the charge against him *from* the Class B Misdemeanor of “entering upon an area of land without license or authorization and remaining on the property of another after being requested to leave the property by a duly authorized individual” *to the more serious* Class A Misdemeanor as an individual who “knowing that that individual is not licensed or privileged to do so, the individual enters or remains in any place so enclosed as manifestly to exclude intruders.”

¹⁹ This February 1st, 2017-dated Certified Mail letter purported, on its face, to have been “emailed” from Energy Transfer Partners Corporation Vice President Mamoud to Sheriff Kirchmeier on February 1st. But, when accused by Defendant Iron Eyes’ Counsel of having “*fabricated*” this letter after Defendant Iron Eyes’ arrest *without authorization of any Owner of that land*, The State *refused* to produce that email *so as to conceal the actual time-stamp of the emailing of that after-the-fact fabricated letter*. So, that letter was *excluded from admission into evidence*, by THIS very Court, in another case.

[438] It is the position of Defendant Iron Eyes – and it most certainly *should*...indeed *must*... be the position taken by this Court – that neither the Dakota Access Pipeline Corporation nor the Vice President of The Energy Transfer Partners Corporation had any *lawful* authority whatsoever to *either* order or direct state law enforcement officers to arrest *anybody* for “trespassing” on land that they did not own *or* to “enclose” land that they did not own so as to manifestly exclude Defendant Iron Eyes and his fellow Sioux Indians from harmlessly going onto that land to engage in a traditional Lakota ceremony and/or to peacefully “protest”...and to try to STOP...the finalization of the construction of the final mile of the Dakota Access Oil Pipeline under their sole source of fresh drinking water.

Dated this 20 day of August, 2018

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