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October 9, 2016

VIA FACSIMILE: 701.667.3463

Kyle Kirchmeier
Morton County Sheriff
205 1st Ave. NW
Mandan, ND 58554

Dear Sheriff Kirchmeier:

Attorneys with the National Lawyers Guild and the Red Owl Legal Collective represent Myron Dewey and the Indigenous Environmental Network with regard to an incident that occurred on October 8, 2016. On that date, Tim Corcoran was unlawfully stopped by Morton County Sheriff deputies and other assisting law enforcement agencies while driving in the vicinity of County Road 83 one mile south of County Road 137 around 5 PM (CT). The stop was made without probable cause or a warrant. Mr. Dewey, a journalist with Digital Smoke Signals, was a passenger in Mr. Corcoran's vehicle. Digital Smoke Signals has provided press coverage of the protest related to the Dakota Access Pipeline (DAPL) throughout the nation, with Mr. Dewey acting as a key reporter on issues surrounding the DAPL.

Mr. Corcoran had not violated any traffic regulations and there was no lawful basis for the stop. Morton County Sheriff deputies then ordered Mr. Dewey to exit the vehicle and escorted Mr. Dewey away from the vehicle, detaining him against his will. The law enforcement officers present were clearly aware that Mr. Dewey is a journalist, as an officer referred to Mr. Dewey by his first name before requesting his photo identification. Mr. Dewey was asked to stand in an area where he would be unable to hear the exchange between law enforcement officers and the occupants in the vehicle in which Mr. Dewey was a passenger. Several times, Mr. Dewey questioned law enforcement officers for a reason as to why the vehicle was stopped, but officers refused to give him an answer. Mr. Dewey cooperated and complied with the instructions of law enforcement officers at all times.

Morton County Sheriff deputies then unlawfully searched Mr. Corcoran's vehicle without consent, a warrant or probable cause, and unlawfully seized the following:

- (1) Phantom 4 Drone (brand new and in perfect condition);
- (2) Phantom 4 Drone remote controller (brand new and in perfect condition);
- (3) Phantom 4 Drone case that is brand new and in perfect condition;
- (4) Micro SD card with stored data (brand new and in perfect condition); and
- (5) Other materials associated with the operation of the Phantom 4 Drone.

These actions of Morton County Sheriff's deputies and other assisting law enforcement agencies constitute thinly-veiled intimidation tactics oriented towards preventing Mr. Dewey from reporting on the issues surrounding the DAPL, and are a blatant attempt to chill reporting and media coverage. We understand that the company building the DAPL does not want the world to witness its destruction of sacred sites, that it does not want the public to see how it unleashes attack dogs on unarmed protesters, and we also understand that your office and other law enforcement agencies are uncomfortable having the

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public bear witness to highly-militarized officers in armored cars brandishing weapons against unarmed women and children. However, we have a free and open society where the First Amendment exists precisely for the purpose of allowing journalists to report on these activities. Your department's actions in targeting journalists are a clear violation of protected First Amendment rights. There is a long history of US Supreme Court jurisprudence that protects the rights of journalists, ranging from *Near v. Minnesota*, 283 U.S. 697 (1931), which found laws targeting newspaper publishers to be in violation of the First Amendment, to the landmark *New York Times Co. v. United States*, 403 U.S. 713 (1971), which provided broad protection to journalists.

Compounding this disregard for constitutional rights, Morton County Sheriff's deputies and assisting law enforcement went even further by brazenly violating Mr. Dewey's right to live free of unlawful searches and seizures as guaranteed by the Fourth Amendment. First of all, there was no lawful basis for the vehicle stop, and therefore the subsequent search was unlawful (*Wong Sun v. United States*, 371 U.S. 471 (1963)). Moreover, there was no probable cause or other lawful basis for the vehicle to be searched (*United States v. Ross*, 456 U.S. 798 (1982)). Finally, the seizure of the drone and any search of the drone required a warrant, which would also have to be supported by probable cause. The U.S. Supreme Court recently addressed searches and seizures related to digital media in *Riley v. California*, 134 S. Ct. 2473 (2014), with a unanimous ruling that the warrantless search and seizure of digital contents of a cell phone – even during an arrest – is unconstitutional. In this instance, your officers seized a drone containing digital media content – with the officer who conducted the seizure claiming that he had a warrant (but refusing to produce it), followed by an admission from another officer that no warrant had been issued. Nor could one be issued because there is simply no legal basis to search the drone and it was illegally seized during an illegal search of the vehicle after an illegal stop.

A final disturbing element of this incident was the refusal of your deputies and other law enforcement officers to identify themselves, even to the point of removing or obscuring name tags on their uniforms and refusing to give their names or badge numbers when asked by Mr. Dewey. Such conduct, which has been ongoing at pipeline protests, creates an environment where law enforcement officers lack accountability to the public they are obligated to serve.

We are disturbed by these deliberate constitutional violations and demand that the Morton County Sheriff: (1) immediately return the aforementioned equipment in the same condition as when it was unlawfully seized; (2) issue a public apology to Mr. Dewey for the violations of his constitutionally-guaranteed rights; (3) make a strong public commitment to protect First Amendment rights and the rights of journalists and news organizations to cover the ongoing protests against the DAPL; and (4) refrain from further actions that target journalists and news organizations.

We expect your office to comply with points (1), (2), and (3) above by no later than the close of business (5pm Central Time) on Tuesday, October 11, 2016. With respect to point (4), above, we would suggest scheduling a meeting to discuss developing protocols as to your department's conduct with respect to journalists and news organizations, which would include training law enforcement officers as to First Amendment press rights.

Meanwhile, please note that we are prepared to take all appropriate legal action to seek redress and prevent a reoccurrence of this abhorrent and unconstitutional conduct. In that regard, this letter should be deemed as a notice to preserve any all evidence, including any electronically-stored information relating to the seizure of the drone referenced in this letter, as well as any information concerning journalists or

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news organizations in your possession. Concurrently with this letter, we are transmitting a separate letter that details your obligation to preserve evidence as a result of this notice.

We appreciate your timely response and cooperation in this matter. Please respond to National Lawyers Guild attorney Jeffrey Haas via email. Mr. Haas's contact information is below.

Yours truly,

A handwritten signature in black ink, appearing to be 'RM', with a long horizontal flourish extending to the right.

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Midwest Region Vice President

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