

# Water Protector Legal Collective

On-the-ground legal support for the Dakota Access Pipeline resistance at Standing Rock



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## **Judge Merrick finds two Water Protectors guilty for first amendment activity.**

Mary Redway and Alexander Simon are the first two Water Protectors to receive a sentence of jail time for any protest-related misdemeanors. Both Redway and Simon, like many originally arrested on trespass and fleeing first charged with Trespass and Engaging in a riot were later re-charged in a new case with charges more likely to stick. The State's Attorney did not dismiss the initial two although those were not successfully proven at trial but kept them for a total of five charges faced at trial.

The vast majority of the approximate 140 people arrested on the same day as these two, October 22, 2016, saw all charges dismissed before going to trial for lack of evidence. Others arrested on 10/22 who have already gone to trial have been acquitted of all charges. Others were convicted at trial and the judge did not find jail time to be appropriate. There is no logic or consistency to the different outcomes people received on these same charges. Judge Merrick's decision to sentence them to jail demonstrates disparate treatment. He did so despite the fact that the State's Attorney did not recommend jail time. The Judge was made aware that Alexander Simon, 27, a teacher living in New Mexico would lose his job if forced to spend 18 days in jail. Mary Redway is 64 years old, and a retired environmental biologist from Rhode Island.

This is a clear indication of bias on the part of Judge Thomas Merrick, who, just months ago signed a petition trying to change the law that temporarily allows out-of-state attorneys (pro hac vice) to represent Water Protectors on the noDAPL cases. That effort failed. We see this decision as his attempt to send a message; that people will face harsh sentences regardless of innocence or guilt as a means to put pressure on others with pending charges to take pleas and forgo trial. The prosecutorial discretion and conviction of some and not others has been arbitrary and targets what police and State's Attorneys call agitators.

This is an encroachment on the right of people to engage in lawful, constitutionally protected conduct. The statute for one of the charges, disorderly conduct has an explicit exception for constitutionally protected activity to be excluded. The Judge gave no reason for the sentence other than "don't break the law." But the question remains, what law? Perhaps he meant do not disobey police regardless of whether they issue lawful or unlawful orders. Well, police must comply with the law too. The police do not have the power to suppress speech protected by first amendment or the rights of sovereign indigenous communities simply because they are inconvenienced as was testified by law enforcement.

The physical obstruction of a government function charge also requires some interference with a lawful enforcement action. Here no evidence or specific action was offered, only an allegation that Simon was locking arms at one point. Moreover, no representatives from Dakota Access Pipeline LLC or the myriad of different private security companies hired onsite that day were brought forward as a witness so that the defendants would confront their accusers. Additionally, no officer who testified offered any memory or evidence of either individual engaging in any specific conduct.

When asked why people were arrested prior to any damage occurring a law enforcement officer at trial stated: "we didn't want to chase them around all day."

Please write and visit these political prisoners:

Alex Simon and Mary Redway both at:  
4000 Apple Creek Rd, Bismarck, ND 58504