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FILED
IN THE OFFICE OF THE
CLERK OF THE SUPREME COURT
OCTOBER 2, 2017
STATE OF NORTH DAKOTA

Supreme Court of the State of North Dakota
Attn Penny Miller, Clerk of the Supreme Court
600 E. Boulevard Avenue Bismarck,
ND 58505-0530
supclerkofcourt@ndcourts.gov

2 October 2017

Dear Clerk Miller,

Amnesty International USA is taking this opportunity to submit comments to the Supreme Court of North Dakota regarding the Petition to Terminate the Special Provision of Legal Services by Qualified Attorneys from Outside North Dakota for those who have been charged with crimes while protesting the Dakota Access Pipeline (DAPL). Amnesty International USA previously supported the implementation of the special provision earlier this year. We urge the Supreme Court to reject the current petition and continue to allow out of state attorneys to represent those people facing trial for their involvement in opposing the DAPL either as public defenders for those who cannot afford to pay for an attorney or for those who can afford an attorney but are unable to secure one within the state.

According to reports, the public defender system in North Dakota struggled to handle the case load stemming from the more than 500 arrests related to protests of the DAPL. The provision that was implemented by the North Dakota Supreme Court seeks to alleviate this problem and ensure that those who were charged with crimes during the protests against the Dakota Access Pipeline (DAPL) have access to attorneys when the public defender system was overloaded and when private attorneys within the state would not or could not take on DAPL-related cases. While the petition to terminate the special provision claims that it is no longer needed due to the lack of any new criminal filings, according to the Water Protector Legal Collective, as recently as 11 September, as many as 159 individuals who still face charges are without representation. Considering the fact that charges were dismissed in at least 267 cases and several more individuals who went to trial were acquitted, ensuring access to attorneys for those individuals who are

unrepresented and facing charges is a priority and the Court should continue this program until these cases are resolved.

More generally, as noted in our previous comment to the Court, Amnesty International USA remains concerned regarding the charges brought against the Dakota Access protesters. We previously wrote to the Morton County Sheriff's and State Attorney's offices regarding charges for trespassing that were brought against a member of the media who was acting in her role of covering the protests that took place on 3 September 2016 and making that information available to the public. Even though the charges were eventually dismissed, the act of bringing charges could be perceived as an attempt by authorities to discourage further reporting of other protests of the DAPL. While Amnesty International cannot speak to the specifics of each individual currently facing charges and awaiting trial in Morton County, we feel it is imperative that individuals have access to representation during these proceedings in order to determine the validity of and mount a proper challenge to the charges filed. Should the Supreme Court decide to grant this current petition to terminate the program, defendants may be forced to represent themselves pro se or face undue delays while waiting for an attorney in North Dakota that doesn't have a conflict of interest to be retained. Not only would this violate international standards on the right to a fair trial, but it could also be construed as being unconstitutional.

Everyone deprived of their liberty or facing a possible criminal charge has the right to the assistance of a lawyer to protect their rights and to help in their defense. Under international human rights law and standards, the right to a lawyer generally means that a person has the right to legal counsel of their choice. Because of the importance of trust and confidence between those accused and their lawyers, the accused has the right to choose who will represent him or her. There must be a reasonable and objective basis for restrictions on choosing counsel, which should be open to challenge before a court. If the person does not have a lawyer of their choice, they have the right to effective, qualified assigned counsel, when the interests of justice require. The assigned counsel must be free of charge if the person cannot afford to pay.

The assistance of counsel is a primary means of protecting the human rights of people accused of criminal offences, and in particular their right to fair trial. Whether or not individuals are assisted by a lawyer often determines whether or not they can participate in legal proceedings in a meaningful way. States must provide sufficient resources to ensure the availability, throughout the country, of adequate and effective appointed legal counsel for those charged with criminal offences. This is essential to ensure the right to a fair trial without discrimination, the right to equality before the courts, the right of those accused to defend themselves, and the principle of equality of arms. Lastly, everyone charged with a criminal offence has the right to be tried without undue delay. The length of time judged reasonable will depend on the circumstances of the case.

The State Bar of North Dakota has the ability to ensure that out of state attorneys are properly licensed and in good standing in the state where they practice. Therefore, for all of the reasons contained herein, Amnesty International USA urges the Court to deny this petition as a matter of justice for those accused of crimes related to their protesting activities in North Dakota.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret Huang". The signature is fluid and cursive, with the first name "Margaret" written in a larger, more prominent script than the last name "Huang".

Margaret Huang
Executive Director
Amnesty International USA