

Standing Rock Defendants Move to Dismiss on Basis of Factual Disputes

Thunderhawk v. County of Morton, North Dakota

Media Contact: Ghislaine Pagès, 212-854-3987 or gmp2142@columbia.edu

New York, February 15, 2019. Today, state and county defendants in *Thunderhawk v. County of Morton et al.* filed motions to dismiss plaintiffs' First Amended Complaint. In their court filings, defendants attach 160 exhibits contesting the peaceful nature of the NoDAPL movement, arguing that their discriminatory closure of Highway 1806 was factually justified. Defendants ask the United States District Court to accept their factual account of the NoDAPL movement over the plaintiffs'.

"These factual allegations are not only misleading and false, but have no place at this juncture of the litigation," Columbia Law School [Professor Bernard Harcourt](#) said. "We're eager for the opportunity to prove our facts at trial."

In contrast to defendants' factual allegations, plaintiffs have alleged in their amended complaint that "[t]housands of Water Protectors prayed, marched, sang, waved placards, and chanted on thousands of occasions over the course of a nearly year-long period without any incident." By closing the primary public road in the area to the Tribe and its supporters, plaintiffs assert, defendants placed an enormous burden not only on this speech and prayer, but on plaintiffs' ability to shop, visit family, seek needed medical care, and otherwise engage in the day-to-day necessities of life.

"Perhaps most striking about the defendants' filings is not what they deny, but what they admit," Columbia Law School [Lecturer in Law Noah Smith-Drelich](#) added. "They concede that their policing at Standing Rock was not simply a neutral and even-handed attempt at keeping the peace or maintaining public order, as they claimed at the time, but was motivated in large part by their desire to see the disputed pipeline project through to conclusion."

This is made clear on page 33 of County Defendants' memo, which states that road was closed "in furtherance of the nation's interest in constructing and operating pipeline infrastructure." County Defendants further clarify on page 39 that their "interest" in closing the road was to ensure the "completion of the DAPL project."



“It’s basic law 101 that motions to dismiss are not the proper place to raise factual disputes,” Harcourt said. “Clearly the defendants are appealing to the court of public opinion, rather than addressing the law or the federal court for that matter.”

The plaintiffs are represented by Columbia Law School [Lecturer in Law Noah Smith-Drelich](#) and Professor [Bernard E. Harcourt](#) through the [Columbia Center for Contemporary Critical Thought \(CCCCT\)](#). The litigation forms part of the [Practical Engagements](#) initiative of the CCCCT, which engages in *pro bono* public-interest representation. Last year, the CCCCT organized a [seminar on Standing Rock](#) that explored many of the legal issues and civil rights violations associated with the Standing Rock movement.

More information and documents on the lawsuit are available here: <https://cccct.law.columbia.edu/content/standing-rock-litigation>

###