

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

ANNE WHITE HAT, RAMON MEJÍA,
and KAREN SAVAGE,

Plaintiffs,

v.

Civil Action No. 6:20-cv-00983

BECKET BREAUX, in his official
capacity as Sheriff of St. Martin Parish;
BOFILL DUHÉ, in his official capacity as District
Attorney of the 16th Judicial District Attorney's
Office,

JUDGE ROBERT R. SUMMERHAYS

MAGISTRATE JUDGE
CAROL B. WHITEHURST

Defendants.

X

PLAINTIFFS' RULE 56.1 STATEMENT OF UNDISPUTED FACTS

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RULE 56.1 STATEMENT OF UNDISPUTED FACTS

INTRODUCTION

This statement of uncontested facts is submitted in support of Plaintiffs' motion for summary judgment. This case presents a challenge to the constitutionality of the 2018 amendments to La. R.S. 14:61, Louisiana's law prohibiting unauthorized entry upon critical infrastructure ("Critical Infrastructure Law" or "the Statute"). The amendments incorporated Louisiana's vast networks of pipelines into the definition of critical infrastructure, making it a felony punishable by up to five years to remain after being forbidden on or near a pipeline.

BACKGROUND OF THE CASE

I. PIPELINES IN LOUISIANA

1. Louisiana has approximately 125,000 miles of oil and gas pipelines running through it, including onshore pipelines and thousands of miles offshore in Louisiana waters. (Declaration of Pamela Spees of April 18, 2022 ("Spees Decl.") Ex. A at p. 4, Ex. B. at p. 38).

2. Most pipelines are underground and not visible to those standing above ground, or underwater and not visible to those on waterborne vessels, and often are not clearly marked or not marked as to their exact location. (Spees Decl. Ex. C-F)

3. Because the state's pipeline maps were outdated and inaccurate, as early as 2004, Louisiana Oil Spill Research and Development Program commissioned researchers from the Louisiana Geological Survey to update the locations of pipelines and crossings of the Ouachita/Black River system, and locations in the Lafayette area. According to researchers mapping the Ouchita/Black River area, "[t]he source maps [for pipelines] and their digital counterparts are also possessive of several kinds of cartographic and spatial error, which lead to incorrectly located crossing points, and to 'phantom' crossings that do not even exist." (Spees

Decl., Ex. C at p. 2; Ex. D).

4. The Office of Pipeline Safety of the United States Department of Transportation created the National Pipeline Mapping system to “support the development of a reasonably accurate digital pipeline system” but notifies system users that the accuracy of the pipeline location data is “+/- 500 feet.” (Spees Decl. Ex. E).

5. A report of the Louisiana Geological Survey noted that the data in the National Pipeline Mapping System “are not spatially accurate in many cases” and that “[m]any operators have submitted data to the NPMS without verifying the data quality” and many “have not submitted data to the mapping system at all.” (Spees Decl. Ex. D at p. 10).

6. The same report concluded that the compilation and spatial analysis of pipeline data for Louisiana “is a complex process that will take years to accomplish.” (*Id.* at p. 23).

7. Federal and state agencies, including the Pipeline & Hazardous Materials Safety Administration (“PHMSA”) of the U.S. Department of Transportation, require contractors and landowners to inquire about the presence of pipelines before they dig. (Spees Decl. Ex. F).

8. PHMSA notes that pipeline operators are required to post brightly-colored markers “along” their right of way “to indicate the presence of – but not necessarily the exact location of – their underground pipelines.” (*Id.*)

9. According to data compiled by PHMSA, the “root cause” of the majority of pipeline accidents caused by excavation damage in Louisiana since 2010 was insufficient “locating practices” for the pipeline. The second leading cause was because the “One-Call Notification Practices” were not sufficient. (Spees Decl. Ex. G).

II. CONTROVERSIAL PIPELINE PROJECT DRAWS PUBLIC OPPOSITION, PROTESTS, AND LOCAL AND NATIONAL MEDIA ATTENTION.

10. In 2017, community leaders, indigenous leaders, crawfishers, and environmental advocates in Louisiana began speaking out in opposition to the Bayou Bridge Pipeline project, a controversial pipeline that would traverse eleven parishes in south Louisiana, from Calcasieu to St. James. (Spees Decl. Ex. H; Declaration of Anne White Hat (“White Hat Decl.”) ¶¶ 4-5; Declaration of Karen Savage (“Savage Decl.”) ¶¶ 5-7; Declaration of Ramon Mejía (“Mejía Decl.”); Declaration of Anne Rolfes (“Rolfes Decl.”)).

11. The Bayou Bridge Pipeline (“BBP” or “Bayou Bridge” or “the pipeline”) was to be the southern end of the same network of pipelines that included the controversial Dakota Access Pipeline, which gave rise to fierce protests in Standing Rock, and drew local and national attention and media coverage. (Savage Decl. ¶¶ 5-6; Spees Decl. Ex. H).

12. The pipeline was slated to run through the Atchafalaya Basin, where some of the arrests under this challenged law took place, and Bayou Lafourche, the source of drinking water for surrounding communities including the United Houma Nation. (Savage Decl. ¶ 7).

13. Its terminus would be near Freetown, a historic Black community in St. James Parish, in the heart of the area that is widely known as “Cancer Alley.” (Savage Decl. ¶ 7).

14. The project was extremely controversial and incurred intense and sustained opposition and protest as well as local and national media attention. (Spees Decl. Ex. H; Savage Decl. ¶ 7).

15. In the midst of these and other pipelines protests, reports began to emerge about new legislation that sought to impose harsher and in some cases felony-level penalties on peaceful protesters through critical infrastructure in different states. (Spees Decl. Ex. H 14-19).

16. Oklahoma was among the first to pass such legislation, introducing criminal penalties

for trespassing on and intending to cause damage to pipelines and other “critical infrastructure.” The law also created conspiratorial liability for any organization that conspired to violate the law and imposed with steep fines. (Spees Decl. Ex. I).

17. It was reported that the bill’s sponsor acknowledged that he introduced it in response to the Dakota Access pipeline protests. (Spees Decl. Ex. H(14, 16)).

18. Shortly after the Oklahoma legislation was passed, the American Legislative Exchange Council (ALEC), a corporate-funded membership association of state legislators, adopted and pushed model legislation based on the Oklahoma critical infrastructure law. (Spees Decl. Ex. J).

19. ALEC acknowledged it “[drew] inspiration from two laws enacted in 2017 by the State of Oklahoma.” (*Id.*)

20. Since ALEC adopted and began pushing its model legislation, 44 bills imposing criminal penalties on protesters on or near “critical infrastructure,” including pipelines, have been introduced in 24 states. (Spees Decl. Ex. H-20)

21. National industry associations also viewed the Louisiana legislation as part of the broader plan to deal with pipeline protestors. GAIN, which stands for Grow America’s Infrastructure Now, a national coalition of businesses and trade associations, urged passage of the law as a way to counter “anti-pipeline protestors across the country [who] have opposed the permitted construction of energy infrastructure projects.” (Spees Decl. Ex. K).

22. In a letter to the editor of the Daily Iberian entitled “Pipeline protests negatively impact Louisianians,” GAIN spokesperson Craig Stevens observed in a letter to the editor of the Daily Iberian that, “Thankfully, Louisiana has already taken steps to protect infrastructure investment” against such opposition through “[l]egislation implemented this past August [which]

increases the penalty for trespassing and vandalizing critical infrastructure, including pipelines.”
(*Id.*)

23. Stevens further noted that a “number of other states across the country are also considering similar legislation.” (*Id.*)

III. LEGISLATIVE HISTORY: LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION DRAFTS AND PUSHES AMENDMENT INCREASING PENALTIES FOR PROTESTS ON OR NEAR PIPELINES.

24. In the midst of this intense opposition to and protest against the Bayou Bridge Pipeline, the president of the Louisiana Mid-Continent Oil and Gas Association (LMOGA) drafted and proposed House Bill 727, an amendment to La. R.S. 14:61, Louisiana’s Critical Infrastructure law. The amendment sought to incorporate Louisiana’s massive network of pipelines of all kinds into the definition of critical infrastructure. (Spees Decl. Ex. L).

25. LMOGA advertises that it “exclusively represent[s] all sectors of the oil and gas industry operating in Louisiana and the Gulf of Mexico.” (Spees Decl. Ex. N).

26. At a public forum held at Tulane University Law School on March 22, 2019, Tyler Gray, then President of LMOGA, told those in attendance that he drafted the original legislation that became House Bill 727 and based it on the Oklahoma legislation, working from LMOGA’s counterpart, the Oklahoma Oil and Gas Association. (Quigley Decl. ¶ 16). Gray also explained in testimony to the Senate Judiciary Committee of the Louisiana Legislature that the Oklahoma law was a starting point for the amendments they developed and proposed in 2018. (Spees Decl. Ex. M at pp. 10:19-11:4)

27. In some ways, LMOGA’s HB 727 went further than the Oklahoma legislation. The Oklahoma law confines the prohibited area to “a crude oil or refined products storage and

distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below or aboveground pipelines or piping and truck loading and offloading facility.” And then only if those areas are “completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization” and “any aboveground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, railroad facility or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders.” (Spees Decl. Ex. I).

28. The penalty for trespassing on critical infrastructure under the Oklahoma law is a misdemeanor unless it is determined the trespasser intended to “willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility” in which case the offense is a felony punishable by one year imprisonment and a fine of not less than \$10,000.00. (*Id.*)

29. HB 727, on the other hand, as passed in the resulting law in Louisiana as amended, had no features cabining criminal punishment such as limiting the reach to only areas demarcated by a fence or physical barrier or clearly marked. Instead, it included all aspects and portions of the pipeline networks in the state, including the 125,000 miles of oil and gas pipelines. (Spees Decl. Ex. L; La. R.S. 14:61).

30. HB 727 also included an inchoate conspiracy offense which provided that if two or more persons conspired to commit unauthorized entry (heretofore a misdemeanor trespass), as broadly defined by the substantive portion of the statute, without actually committing the trespass, they could be imprisoned with or without hard labor for up to five years and fined up to

\$10,000.00. (*Id.*)

31. The bill also proposed a separate law which prohibited damage to a critical infrastructure. (Spees Decl. Ex. L). That bill was enacted at the same time as the amendments to La. R.S. 14:61 and later became La. R.S. 14.61.1.

32. After the legislation was introduced during the 2018 legislative session by then-Representative Major Thibaut, the lead sponsor, LMOGA President Gray appeared next to him at a legislative hearing “to provide information and answer any questions that come up in a legal nature or any other things like that.” (Spees Decl. Ex. M at p. 2:15-17).

33. At a hearing on April 24, 2018, before Senate Judiciary Committee C, committee members posed multiple questions concerning the First Amendment implications of the bill. After the bill’s drafter and sponsor testified before the committee, there were numerous individuals speaking out in opposition to the bill on similar grounds. (Spees Decl. Ex. M).

34. During one hearing on the bill before the Senate Judiciary Committee on April 24, 2018, Rep. Thibaut testified that “[t]his bill does nothing to impact the ability to peacefully protest. It only comes into play when there is damage to that critical infrastructure, so if you don’t damage anything, this law does not apply.” (*Id.* at p. 1:23-25)

35. Later in the hearing, Thibaut reiterated this point in response to concerns about the bill’s possible impact on political protests: “This bill only deals with criminal damage to that critical infrastructure, so the intent-... doesn’t prohibit anything.” (*Id.* at p. 5:14-15).

36. Also during that hearing, Tyler Gray of LMOGA testified that after Oklahoma enacted its law, “...we evaluated Louisiana statutes. [...]” and consulted with a former U.S. attorney “to analyze the way the current law was, and establish a framework that could be utilized here in the state to protect that infrastructure...” (*Id.* at p. 10:19-11:4).

37. Gray further testified that “We found that in 2017, during the criminal justice reform that, inadvertently, there was a piece by reference removed dealing with criminal damage... We analyzed the law and determined that we were not in line with the current US statutory code which is federal law 1366 which relates to destruction of an energy facility.” (*Id.* at p. 11:4-9).

38. One exchange between the Gray and the committee chairman highlighted the potential for confusion and concern about “who has the right to tell people to get off the pipeline:”

Sen Mills: Thank you, Mr Chairman. On page two line 18, it says whoever commits the crime of unauthorized entry of a critical infrastructure. If you just look at the Atchafalaya Basin, there's so many pipelines that are all over the place. There's so many that are even exposed. What's the intent of that section of law? Knowing that there's agricultural portions, tell me what you're trying to get to.

Chairman: In his question, well, inherent in that is how do you know when you're trespassing?

Mills: That's what I'm trying to get to.

Gray: That piece of the law is actually from 2015 that's already currently in law. The unauthorized entry, the way that we were able to establish exactly what you're looking at, which is where's that fine line between being on public property and private property, and there are two pieces to that. If there is a physical barrier and the infrastructure is completely enclosed and you are trespassing, you are in violation of the law. The other one is if there is not a complete enclosure but you are asked to leave the property, then you have an intent to remain, so there are two different tests.

Either the property is completely enclosed or if you're talking about a situation with a pipeline, you would have to be told by the property owner that they need to leave from that private property and you remain, at that point, you would be trespassing. That's how they differentiate between the two.

Chairman: You said property owner, but the property

owner may have given a usufruct. Are you talking about the person with the usufruct or are you talking about the property owner?

Gray: It depends on that relationship on the lease. It would have to pact.

Mills: What about state-owned property?

Gray: That would be the determination of the state if they told them to leave.

Mills: Your definition of unauthorized entry, that's because of critical infrastructure? That's the point that you say is a present law critical infrastructure piece?

Gray: Right, critical infrastructures, so when you're talking about state law-- I'm sorry, what I should of said is this is only critical infrastructure, so when you're talking about state water bottoms and all that kind of stuff in state law, this doesn't even apply to that. This is only critical infrastructure that is determined under this definition, you were asked to leave, it is not enclosed and you remain, you're in violation of this law. Very narrow. That's the only situation it applies.

Mills: It's a pretty broad though what are pipelines in Louisiana? Pipeline can be agriculture, it can could affect hunters, it could affect anything. Are you talking about all pipelines now are considered critical infrastructure?

Gray: Yes.

Mills: Okay, thank you.

Chairman: All right, just a little follow up on that for my edification as well. I have a piece of property, I'm a farmer and I got a pipeline going through my property. Given the usufruct or maybe the state or somebody else's taking it through eminent domain and says that it's going through, who has the right to tell the people to get off the pipeline?

Gray: This is something we're actually working to define through the Sheriffs Association. Current law is that it would have to be the property owner unless it's detailed in the lease. It's really a fact by fact situation in which you go through that. Based on what you're describing, whether it's a usufruct or the naked owner, the landowner, the

leaseholder it depends on what that relationship is between the property owner. Now this is only with a pipeline because all the critical infrastructure would end up being fully enclosed.

Chairman: There's no way we can fully enclose 60,000 miles of pipeline.

Gray: Correct.

Chairman: What I'm hearing is for now it's a case by case basis where I'm the farmer and I like the idea of the pipeline coming through my property, I like the idea of making my neighbors in the north warm in the winter, and safely getting product into the refineries. I can tell folks that were unhappy with that, "Don't come on my property." Maybe, I don't know, Marathon wouldn't be in the position to say that unless it's nuance through what the actual lease or the manner in which they got it. All right, so it would require some cooperation with the property owner.

Gray: Correct.

Chairman: I sometimes worry about the usufruct folks having command over the peoples' property that if granted the usufruct. I don't they necessarily ever thought they were giving up all the rights that they have to their property. Do you see that being an issue?

Gray: The naked owner, where if you've granted a usufruct, then the naked owner would have the right to alienate, so the usufruct, if it's not defined in that relationship in the lease or whatever that usufruct is granted, then it would defer back to the naked owner under property law, but they would have to be detailed. It'd be a case by case basis in that situation. coming all the way back to the actual situation with the farmer and what happens, I want to make sure it's clear that if there were ever any unintentional damage, then this law would not apply.

This law only applies in a very narrow situation, critical infrastructure, it has to fall within the definition. There must be a damage for anything in this thing to be triggered. I want to just make sure that that point is clear when we're looking at this.

(*Id.* at p. 5:21-8:24) (emphasis added).

39. Despite concerns raised by some legislators about how the law, as actually written, would operate and its potential to restrict peaceful speech and expression, the Legislature passed portions of HB 727 into law. The legislation was signed by the Governor on May 30, 2018, and went into effect on August 1, 2018.

40. As amended, La. R.S. 14:61 now reads:^{1*}

§61. Unauthorized entry of a critical infrastructure

A. Unauthorized entry of a critical infrastructure is any of the following:

- (1) The intentional entry by a person without authority into any structure or onto any premises, belonging to another, that constitutes in whole or in part a critical infrastructure that is completely enclosed by any type of physical barrier.
- (2) The use or attempted use of fraudulent documents for identification purposes to enter a critical infrastructure.
- (3) Remaining upon or in the premises of a critical infrastructure after having been forbidden to do so, either orally or in writing, by any owner, lessee, or custodian of the property or by any other authorized person.
- (4) The intentional entry into a restricted area of a critical infrastructure which is marked as a restricted or limited access area that is completely enclosed by any type of physical barrier when the person is not authorized to enter that restricted or limited access area.

B. For the purposes of this Section, the following words shall have the following meanings:

- (1) "Critical infrastructure" means any and all structures, equipment, or other immovable or movable property located within or upon chemical manufacturing facilities, refineries, electrical power generating facilities, electrical transmission substations and distribution substations, water intake structures and water treatment facilities, natural gas transmission compressor stations, liquefied natural gas (LNG) terminals and storage facilities, natural

¹ Language amending in pipelines and construction sites in **bold and underlined**.

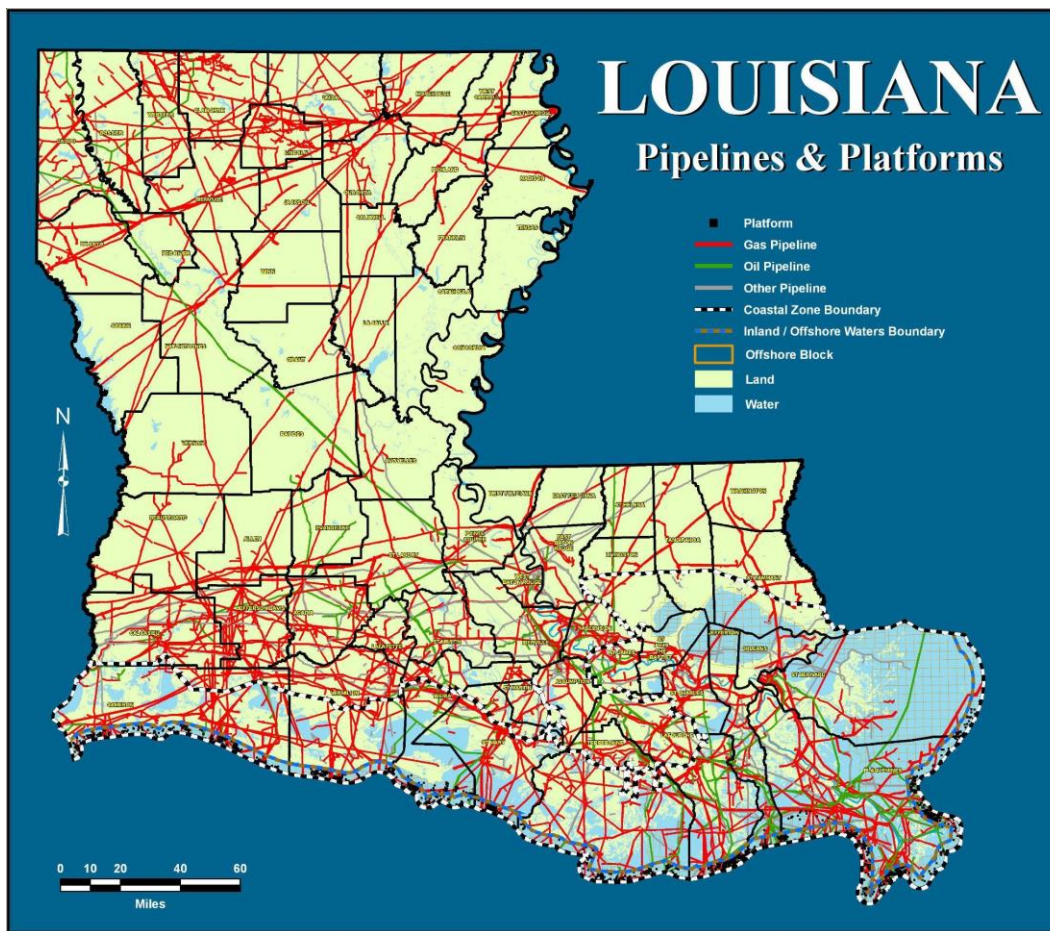
gas and hydrocarbon storage facilities, transportation facilities, such as ports, railroad switching yards, **pipelines**, and trucking terminals, **or any site where the construction or improvement of any facility or structure referenced in this Section is occurring.**

- (2) "Fraudulent documents for identification purposes" means documents which are presented as being bona fide documents which provide personal identification information but which are, in fact, false, forged, altered, or counterfeit.
 - (3) **"Pipeline" means flow, transmission, distribution, or gathering lines, regardless of size or length, which transmit or transport oil, gas, petrochemicals, minerals, or water in a solid, liquid, or gaseous state.**
- C. Whoever commits the crime of unauthorized entry of a critical infrastructure shall be imprisoned with or without hard labor for not more than five years, fined not more than one thousand dollars, or both.
- D. Nothing in this Section shall be construed to apply to or prevent the following:
- (1) Lawful assembly and peaceful and orderly petition, picketing, or demonstration for the redress of grievances or to express ideas or views regarding legitimate matters of public interest, including but not limited to any labor dispute between any employer and its employee or position protected by the United States Constitution or the Constitution of Louisiana.
 - (2) Lawful commercial or recreational activities conducted in the open or unconfined areas around a pipeline, including but not limited to fishing, hunting, boating, and birdwatching.
 - (3) Nothing in this Section shall be construed to prevent the owner of an immovable from exercising right of ownership, including use, enjoyment, and disposition within the limits and under the conditions established by law.

IV. THE LEGISLATURE ADDS LOUISIANA’S MASSIVE NETWORK OF PIPELINES TO THE DEFINITION OF CRITICAL INFRASTRUCTURE WITHOUT LIMITATION AND CLEAR GUIDANCE FOR LAW ENFORCEMENT.

41. When the Louisiana legislature adopted the amendments proposed via HB 727, large swathes of the state suddenly became critical infrastructure, as shown on this map of Louisiana’s pipelines obtained from the website of the Louisiana Department of Environmental Quality.

(Spees Decl. Ex. O). Red lines represent gas pipelines; green lines represent oil pipelines.



42. After the amendment became effective, remaining on or near a pipeline after being forbidden – which had previously been punishable as a misdemeanor - became a felony offense punishable by up to five years at hard labor. La. R.S. 14:61.

43. Historically, and today, protesters seek to demonstrate and engage in speech where the injustices they seek to remedy are happening. (*See* Savage Decl. ¶ 4). The 2018 amendments made such protest more dangerous and difficult, which was the point.

44. Within only weeks after the law went into effect on August 1, 2018, seventeen people who were either protesting or reporting on the Bayou Bridge Pipeline, including the three plaintiffs in this case, had been arrested and charged under the new law. (Quigley Decl. ¶ 3)

45. Before August 1, 2018, La. R.S. 14:61 prohibited unauthorized entry of critical infrastructure which was comprised of facilities like refineries, chemical manufacturing facilities, and water treatment plants which occupy visible and discrete land areas often completely enclosed by physical barriers and/or clearly demarcated by signs.

46. The law before August 1, 2018, gave notice to those who would enter such facilities without authorization, or remain after being forbidden, that they were on specially designated and protected property.

47. As of August 1, 2018, the definition of critical infrastructure includes the vast network of running through Louisiana, which includes water pipelines as well as the 125,000 miles of oil and gas pipelines.

48. There is no instruction or guidance in the amended law to help law enforcement officers know how to enforce it, or where to enforce it, or who determines when permission to remain on pipeline critical infrastructure has been forbidden, particularly with regard to private property. La. R.S. 14:61.

49. There is no requirement in the amended law that a trespasser do or have any intent to do damage, cause harm, or commit any act of violence or other criminal offense, even though it carries a harsh sentence of imprisonment of up to five years and a heavy fine. *Id.*

50. There is no indication in the amended law as to what area around a pipeline is to be considered part of the “pipeline” or critical infrastructure. *Id.*

51. There is no indication in the amended law as to who can revoke permission from those who have lawfully entered onto the pipeline or infrastructure. *Id.*

52. There is no indication in the amended law as to the rights of a landowner who has either agreed to or has been forced through eminent domain to allow a pipeline to be laid in the ground on their property and whether the landowner can be forbidden from parts of their property and thus face five years in prison for remaining on the portion of their property that is considered the “pipeline” after being forbidden – and with no intent to do damage or cause harm or commit any other offense. *Id.*

53. There is no instruction or guidance in the amended law about pipelines that run through public property – under or over sidewalks, parks, roads, streets, or highways – where the public generally has a right to be present. *Id.*

54. There is no instruction or guidance in the amended law about navigable and public waterways through which pipelines may run and when or how recreational or commercial boaters, fishing vessels or crawfishers may be forbidden and in violation. *Id.*

55. There is no instruction or guidance in the amended law about how to determine whether pipelines are present in places where there is no notice or marker, or how to determine if markers are accurate. *Id.*

VI. A PIPELINE COMPANY WAS TRESPASSING AND PROTESTERS AND LANDOWNERS WERE TRYING TO CONVINCE DEPUTIES WHO WERE BEING PAID BY THE PIPELINE COMPANY.

56. At the time the amendments to La. R.S. 14:61 went into effect, the Bayou Bridge Pipeline was being contested in the courts and constructed in St. Martin Parish amid ongoing protests. (Spees Decl. Exs. H (10-12); White Hat Decl.; Mejía Decl.; Savage Decl.; Rolfes Decl.; Aaslestad Decl.)

57. Pipeline construction crews and protesters converged on a very remote 38-acre parcel of property in a part of the Atchafalaya Basin in St. Martin Parish known as Bayou Chene, which is only accessible by boat. (Savage Decl. ¶¶ 11-13; Aaslestad Decl.; Quigley Decl. ¶ 6)

58. As set out further infra, a state trial court later determined after a full expropriation trial that BBP itself had been intentionally and willfully trespassing on the property at the time of these events and Plaintiffs' arrests. (Aaslestad Decl. ¶¶ 7-14 and Exs. A and B)

59. The parcel of property was co-owned by hundreds of landowners, including Katherine and Peter Aaslestad, and Theda Larson Wright, formerly plaintiffs in this action. (Aaslestad Decl. ¶ Ex. B)

60. Peter Aaslestad and Theda Larson Wright had granted the protesters permission to be on the property and made her wishes known in an email sent on July 25, 2018, that was shown to Sheriff's Office employees. (Quigley Decl. ¶¶ 7-13; Spees Decl. Ex. P).

61. On July 27, 2018, landowner Peter Aaslestad filed for an injunction to stop BBP's illegal construction on the property. (Aaslestad Decl. ¶ 8; Quigley Decl. ¶ 11).

62. On August 24, 2018, co-counsel for Plaintiffs in this matter, William Quigley, sent Defendant Duhé and former St. Martin Parish Sheriff Ronald Theriot emails from Aaslestad and Wright expressing their permission for the protesters to be present and their opposition to the

pipeline. (Quigley Decl. ¶¶ 8-11 and Ex. A).

63. Also on August 24, 2018, Quigley sent by fax longer letters to Theriot and Duhé advising him of the situation and the fact that BBP did not have the legal authority to be on the land and providing them with the injunction pleadings that Aaslestad had filed one month earlier to stop the pipeline construction and get BBP off the property. (Quigley Decl. Ex. B).

64. Quigley also advised the sheriff that “[t]hese protesters do not want to violate the law. They are not out there to get arrested. They do want to protest but they do not want to violate the law.” (Quigley Decl. Ex. A).

65. Quigley also noted in his letter that it seemed that “law enforcement is arresting the wrong people.” (*Id.*).

66. By that time, however, BBP had secured the services of a private security firm which arranged with the sheriff’s office to employ sheriff’s deputies to provide security at the construction site. (Spees Decl. Ex. Q at p. 18, Ex. S at p. 36).

67. One deputy recalls making “north of thirty” dollars an hour for his services; other arresting officers could not recall how much they were paid. (Spees Decl. Ex. R at p. 28:16-18).

68. Quigley also sent letters to the governor and secretary of the Department of Corrections, which also had employees working private security at the behest of BBP. (Quigley Decl. Ex. B; Savage Decl. ¶¶ 8-9).

69. St. Martin Parish Sheriff’s Office employees were also provided an affidavit from another co-owner of the property who had signed an easement agreement with BBP, which purported to give Bayou Bridge the authority to determine who could be on the property. (Spees Decl. Ex. T).

70. The affidavit stated that “any individual on the Property that refuses to leave the

Property upon request by Bayou Bridge is trespassing, and I request that law enforcement remove them from the property.” (*Id.*)

71. Shortly after Aaslestad filed for the injunction, BBP filed its expropriation suit. *Bayou Bridge Pipeline, LLC v. 38 Acres, More or Less, in St. Martin Parish*, Case No. 87011, 16th Judicial District Court, St. Martin Parish. (Aaslestad Decl. ¶ 9).

72. Peter and Katherine Aaslestad and Theda Larson Wright challenged the expropriation and counterclaimed for trespass and violation of their rights to due process. (Aaslestad Decl. 11-14; Quigley Decl. ¶¶ 14-15).

73. On December 6, 2018, the trial court found that Bayou Bridge Pipeline, LLC, had knowingly and intentionally committed a trespass when it made the decision to enter the property, destroy trees, and begin construction of the pipeline, but awarded the landowner-defendants nominal damages. (Aaslestad Decl. 11-14)

74. On appeal, the Louisiana Third Circuit Court of Appeal held that the company’s intentional and flagrant trespass also constituted a violation of the landowners’ rights to due process, noting that, “When BBP consciously ordered construction on this property prior to obtaining a judicial determination of the public and necessary purpose for that taking, it not only trampled Defendants’ due process rights as landowners, it eviscerated the constitutional protections laid out to specifically protect those property rights.” (Aaslestad Decl. ¶13).

75. The Third Circuit substantially increased the damages due the landowners as a result of that violation and the Louisiana Supreme Court upheld the award of attorneys’ fees. (Aaslestad Decl. Ex. B); *Bayou Bridge Pipeline, LLC v. 38.00 Acres, More or Less, Located in St. Martin Par.*, 320 So. 3d 1054 (La. 2021).

76. Despite the fact that it had no legal authority to be on the property, the company

purchased the services of state and local law enforcement officers, specifically personnel from the Louisiana Department of Probation and Parole, Department of Corrections, and officers from the St. Martin Parish Sheriff's Office, to act as private security. (Savage Decl. ¶¶ 8-9; Spees Decl. Ex. Q at p 18, Ex. R at p. 28, Ex. S at p. 16-17; 36).

77. These public employees moonlighting as private security appeared at the property wearing clothing that had official state insignia, with official badges, carrying their duty weapons and using official boats and vehicles. (Spees Decl. Ex. Q at p.18-20)

78. These public law enforcement officers, working at times as private security, proceeded over the next several weeks to arrest the Plaintiffs and pipeline opponents who had been at or near the construction site.

VI. PLAINTIFFS WERE ARRESTED AND CHARGED WEEKS AFTER 2018 AMENDMENTS WENT INTO EFFECT FOR ALLEGEDLY REMAINING ON A NON-EXISTENT PIPELINE RIGHT OF WAY.

79. The amendments went into effect on August 1, 2018, and had an immediate effect. Landowner Peter Aaslestad was very upset about the pipeline company's trespass but could not get law enforcement to address that fact. (Aaslestad Decl. ¶ 7-17)

80. With other pipelines running through the property, he is also unclear about what authority he has over that portion of his property and whether he himself could face charges under the law for remaining there if the pipeline company forbid him. (*Id.* at ¶18)

81. Plaintiffs White Hat and Mejía, who were protesting the pipeline, as well as plaintiff Savage, a journalist, who had Aaslestad and Wrights' permission to be there, endeavored to stay off of areas that could be deemed critical infrastructure, particularly because they did not want to risk felony charges. (White Hat Decl. ¶¶ 6-7; Mejía Decl. ¶¶ 7-8; Savage Decl. ¶¶ 14-19; Quigley Decl. ¶ 13).

A. Arrests of August 18, 2018 - Karen Savage and Ramon Mejía

82. On August 18, 2018, St. Martin Parish Sheriff's Deputy Detective Gabriel T. Gauthier arrested plaintiffs Ramon Mejía, a protester, and Karen Savage, a journalist, who were among a "group of about four people standing beneath a 'tree house' which he averred was located in the pipeline's 'right of way.'" (Spees Decl. Ex. U, V).

83. According to the affidavits prepared after their arrests, Savage and Mejía were "standing beneath a 'tree house,'" in which a person was sitting in protest near the site. *Id.*

84. According to Deputy Gauthier's affidavit and testimony, when Savage and Mejía allegedly remained where they were standing thirty minutes after being told by officers to leave, they were arrested and first charged with "Remaining After Being Forbidden" under La. R.S. 14:63.3, a misdemeanor. *Id.*

85. While Savage and Mejía were being transported to the jail, Detective Gauthier stated that another St. Martin Parish Sheriff's Deputy, Lt. Chris Martin, "came out to the site of the arrest and positively verified that the location the four people were standing is clearly in the 'right of way' of the pipeline and that they are in violation of LARS 14:61 Unauthorized Entry of a Critical Infrastructure." *Id.*

86. Savage and Mejía were then booked and also charged with violation La. R.S. 14:61, without specifying which provision of La. R.S. 14:61.

87. However, Lt. Chris Martin testified in a deposition that there were no survey markers in the area where Savage and Mejía had been standing near the tree, and that in order to determine that they were standing in the "right of way," he "eyeballed" it from two survey markers about 50 yards away and "then was able to line that up with a tree further down that was also five, about five yards off the berm." (Spees Decl. Ex. Q at pp. 27:16-25; 28:1-13; 40:22-

41:3).

88. Martin also testified that he himself had not seen exactly where Savage and Mejía had been standing at the time they were arrested. *Id.* at 41:5-8.

B. Arrests of September 18, 2018 - Anne White Hat and Karen Savage

89. On September 18, 2018, officers arrested Savage again and plaintiff Anne White Hat for allegedly having stood on a right of way on the same property in a separate incident two weeks earlier, and charged them with unauthorized entry of a critical infrastructure. On September 18th, they were at a public boat launch and White Hat had just finished leading the group through a sacred prayer and ceremony. (Spees Decl. Ex. W, X; White Hat Decl. ¶¶ 13-15).

90. St. Martin Parish Sheriff's deputy Andrew Bonvillain stated in an affidavit in support of arrest warrants for White Hat and Savage that he reviewed body cam footage recorded during an incident on the property on September 3, 2018. Bonvillain affidavit. (Spees Decl. Ex. W, X).

91. The affidavit for White Hat's arrest states that for one of the charges under La. R.S. 14:61, that when Bonvillain arrived he observed "approximately 30-35 protesters on the pipeline right of way" and that the "protesters included Anne Whitehat [sic]." (Spees Decl. Ex. W).

92. Bonvillain's affidavit states that he approached the protesters and advised them that they were trespassing on critical infrastructure and they needed to move off the right of way but the protest leader advised him they were not leaving, at which point, according to Bonvillain, the protesters were in violation of La. R.S. 14:61. *Id.*

93. Bonvillain's affidavit further states that as he attempted to arrest the protest leader, she began to fall down the incline of the berm, and he attempted to grab her leg to keep her from falling, at which point several protesters grabbed her and pulled her "down the decline" [sic]. After he let her go, the others then pulled her down the incline. *Id.*

94. At that point, the “other protesters, including Whitehat, then moved down the incline.” Bonvillain’s affidavit states that once on level ground he advised the protesters they needed to stay off the right of way marked by wooden stakes with blue and white ribbon at which point “[a]ll of the protesters moved off the right of way.” *Id.*

95. According to Bonvillain, the protest leader told Lt. Capterville that “if the pipeline workers leave the right of way, then her people will leave as well” but that Bonvillain told the workers at that time they could resume working again. *Id.*

96. Bonvillain’s affidavit states that when the workers started the engines, the protesters, including Whitehat, started to walk back up the incline but were stopped by Sgt. Noel, and “[a]t this time, Whitehat is in violation of La. R.S. 14:61 Unauthorized entry of a critical infrastructure.” *Id.*

97. Bonvillain’s affidavit then states that the protest leader told Lt. Capterville that “if the workers leave, the protesters will leave” at which point the officers had the workers “leave from the work site.” All of the protesters “then moved off the right of way into the woods,” according to Bonvillain. *Id.*

98. Bonvillain’s affidavit also mentions that the “St. Martin Parish Sheriff’s Office has been dealing with the protesters at the Bayou Chene worksite since August 18, 2018.” *Id.*

99. He further stated that on August 18th, 19th, and 21st, “Sheriff’s Office arrested a total of six people” – five of which were for trespassing on the right of way. *Id.*

100. The affidavit for Savage’s arrest warrant states that “After reviewing the body worn camera footage from the incident, I [Bonvillain] observed that when Foytlin fell on the berm, Karen Savage walked onto the top of the berm” and “was taking pictures of me holding Foytlin’s leg to keep her from falling.” At that time, according to Bonvillain, “Savage is in

violation of La. R.S. 14:61 Unauthorized entry of a critical infrastructure.” (Spees Decl. Ex. X).

101. Deputies Martin, Gauthier, and Bonvillain were all working private security for a company retained by Bayou Bridge at the time of they effectuated Plaintiffs’ arrests. (Savage Decl. ¶¶ 8-9; Spees Decl. Ex. Q at p 18, Ex. R at p. 28, Ex. S at p. 16-17; 36).

102. White Hat was anxious and fearful for her safety because she knew she had done nothing wrong the day of her arrest and did not learn until later that she was arrested for something that had occurred two weeks prior, when she had also intended to comply with the law. (White Hat Decl. ¶¶ 13-15).

VII. LAW ENFORCEMENT OFFICIALS DIFFER AS TO WHAT IS COVERED BY THE 2018 AMENDMENTS AND THE NEW LAW LED TO ARBITRARY AND DISCRIMINATORY APPLICATIONS.

103. La. R.S. 14:61(A)(3) prohibits “[r]emaining upon or in the premises of a critical infrastructure after having been forbidden to do so, either orally or in writing, by any owner, lessee, or custodian of the property or by any other authorized person.”

104. The definition of “pipeline” amended into the definition of critical infrastructure at La. R.S. 14:61(B)(3) does not address in any way what area is to be considered “premises” when it comes to a pipeline and application of the statute:

"Pipeline" means flow, transmission, distribution, or gathering lines, regardless of size or length, which transmit or transport oil, gas, petrochemicals, minerals, or water in a solid, liquid, or gaseous state.

105. The definition of critical infrastructure at La. 14:61(B)(1) does provide any elucidation as to what area around a pipeline constitutes critical infrastructure, or what constitutes the boundaries of a “site where the construction” of a pipeline is occurring:

..any and all structures, equipment, or other immovable or movable property located within or upon chemical manufacturing facilities, refineries, electrical power generating facilities, electrical transmission substations and

distribution substations, water intake structures and water treatment facilities, natural gas transmission compressor stations, liquified natural gas (LNG) terminals and storage facilities, natural gas and hydrocarbon storage facilities, transportation facilities, such as ports, railroad switching yards, pipelines, and trucking terminals, or any site where the construction or improvement of any facility or structure referenced in this Section is occurring.

106. The 2018 amendments do not limit premises to a right of way or visible portions of a pipeline. Nor does the statute indicate how any right of way might be determined or what area around a pipeline is subject to the law.

107. Because of the uncertainties and lack of clarity around the law and its harsh penalties, the law has had a chilling effect on other environmental advocates who also opposed the Bayou Bridge Pipeline project. (Rolfes Decl. ¶¶ 7-10).

108. The Louisiana Bucket Brigade is a non-profit health and justice organization based in New Orleans that works in partnership with communities in Louisiana located near oil refineries and chemical plants; and has members, staff, and volunteers who frequently exercise their First Amendment Rights to document, and protest against, environmental injustices, including pipeline projects. (*Id.* at ¶¶ 1-3).

109. Members, partners, staff and volunteers also protested against the Bayou Bridge Pipeline. Bucket Brigade staff also reported live sites along the pipeline, filming interviews with experts, community members, and activists at or near pipeline construction sites and have been threatened with arrest by pipeline security personnel and law enforcement. (*Id.* at ¶¶ 1-7).

110. Once the law came into effect and given the uncertainties and felony implications, Bucket Brigade members and staff had change how they had been conducting their activities and explore with their volunteers and community partners other ways of expressing opposition and documenting corporate violations and oversight failures by state agencies. (*Id.* at ¶¶ 7-10).

111. In the first round of briefing on defendants' motions to dismiss, the Louisiana Attorney General and the District Attorney of the 16th Judicial District, Defendant Bofill Duhé, had different views as to what area was covered by the statute's definition of pipelines as a form of critical infrastructure.

112. Attorney General Jeff Landry, chief legal officer for the state of Louisiana with supervisory authority over the state's district attorneys, suggested "premises of a pipeline" meant an entire tract of land where "a pipeline exists or does not." Dkt. 30-1 at 14. According to the Attorney General, that should settle the matter because a person is either "present on that tract or is not, and the person has been forbidden from remaining or not." *Id.*

113. "Tract" is defined by Black's Law Dictionary as "a lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension."

114. Elsewhere in his brief, the Attorney General referred to "a pipeline right of way." *Id.* at fn. 6.

115. Defendant Duhé, the official tasked with deciding whether or not to prosecute the three Plaintiffs in this case who were arrested and charged under La. R.S. 14:61, suggests the question of what constitutes "premises" is clear for the landowner Plaintiffs in St. Martin Parish as a result of the expropriation judgment setting a 50-foot right of way for the pipeline. Dkt. 64-1 at 17-18.

116. However, the judgment Duhé referenced was entered into after the arrests of Plaintiffs. Dkt. 30-7.

117. On July 7, 2021, Defendant Duhé rejected all the charges against those who had been arrested in St. Martin Parish and charged with violating La. R.S. 14:61 as amended in 2018 and disavowed prosecution. In accordance with La. C.Cr.P. art. 572(2), they are still susceptible

to prosecution until the four-year time limitation runs.

118. The officers who arrested Plaintiffs could not say with certainty what area was covered by the statute as a general matter when it came to “premises.”

119. When asked how he would determine if someone were violating the law with a pipeline that has already been built and is underground, Sgt. Bonvillain testified that, “Again, I would need a complaint of trespassing, which is what we had, and it’s a marked area.” (Spees Decl. Ex. S at pp. 38:23-39:5).

120. Deputy Martin testified that if he was asked to enforce La. R.S. 14:61 on a pipeline that was underground and not clearly marked, he wouldn’t enforce it there because he believed the statute required that critical infrastructure be “clearly marked”:

“I don’t remember verbatim and I don’t have the actual statute in front of me to quote it, but from what I could remember there were several subsections that said it had to be clearly marked, designated, fenced off, where somebody would know it was a restricted area and not just a pipeline or under construction. And if none of those applied you wouldn’t be able to apply that statute to that crime.”

(Spees Decl. Ex. Q at p. 49-50:5).

121. In response to questions about how to determine if a person is violating the critical infrastructure law with respect to a pipeline, and not a construction site, Deputy Gauthier testified at one point, “...I really don’t know how to answer that question.” (Spees Decl. Ex. R at pp. 25-9-26:19).

122. Later, when asked again how he would determine whether someone is violating the critical infrastructure law with respect to a pipeline that is underground, where there is no construction site, he testified, “I would confirm that there’s a pipeline there.” When asked how he would confirm it, he testified “Through the man – the pipeline manager that called us there.”

When asked where the protesters needed to be in order to be charged with respect to the pipeline that the pipeline manager tells you is in the ground, he testified “I would establish the boundary of being the clear cut portion at the sides of the pipeline and if they were in there that – they would – they would be in violation of [the critical infrastructure law].” When asked how he would go about establishing that, he answered: “It’s – it’s hard for me to answer these hypothetical questions because there would be several other – there would possibly be several other circumstances on each complaint.” (*Id.* at pp. 34-35:7).

123. Sgt. Bonvillain testified that he later learned that Bayou Bridge Pipeline, LLC, had been found by a court to have been trespassing on the property at the time it had secured the services of off-duty sheriff’s deputies and when he made these arrests. (Spees Decl. Ex. S at pp. 20:23-21:16).

124. When asked whether knowing that the pipeline company itself did not have a right to be there would have affected his decision to seek arrest warrants for the protesters, he answered, “No.” (*Id.* at p. 21:12-16).

125. Sgt. Martin also testified that he learned later that the pipeline company he was providing off-duty services for through the St. Martin Parish Sheriff’s Office was found by a court to have been trespassing at the time of these arrests. (Spees Decl. Ex. Q at pp. 29:3-30).

126. Martin testified that had he known at the time the pipeline company was trespassing, his “thought would have changed” and that, “If I knew they [the pipeline company] couldn’t be there we would have enforced them not being there.” (*Id.* at p. 30:2-10).

127. Martin also testified that had he known Bayou Bridge did not have the legal authority to be out on the property where the arrests were made, he did not know whether he would have made the arrests or not, but that “I definitely would have consulted with risk

management and our attorneys about what we do from there.” (*Id.* at pp. 46:7-47:2).

128. Capt. Gauthier testified that he had not known that Bayou Bridge Pipeline, LLC, had later been found to have been trespassing on the property where the arrests were made by a court in St. Martin Parish. (Spees Decl. Ex. R at p. 18:3-19). When asked whether he believed the protesters were guilty of trespassing on critical infrastructure at the time, if the company itself was trespassing, Capt. Gauthier testified that “I can’t really say what I believe right now based upon that.” (*Id.* at p. 29:6-17).

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Respectfully submitted,

s/Pamela C. Spees

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