No. 21-2548

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee
v.
JESSICA RAE REZNICEK,
Defendant-Appellant

BRIEF OF CLIMATE DEFENSE PROJECT, CENTER FOR PROTEST LAW & LITIGATION, HONOR THE EARTH, CLIMATE DISOBEDIENCE CENTER, AND CODEPINK AS AMICI CURIAE IN SUPPORT OF APPELLANT AND REVERSAL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
The Honorable Rebecca Goodgame Ebinger, United States District Judge
DC No. 4:19-CR-00172-001

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TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF *AMICI CURIAE* 1

II. CONSENT OF PARTIES 2

III. SUMMARY OF ARGUMENT 2

IV. ARGUMENT 3

A. THE EVIDENCE DOES NOT DEMONSTRATE THAT MS. REZNICEK'S OFFENSE TARGETED GOVERNMENT CONDUCT. 3

B. THE DISTRICT COURT VIOLATED MS. REZNICEK'S FIRST AMENDMENT RIGHTS BY IMPOSING THE TERRORISM ENHANCEMENT. 11

C. SENTENCING COMMISSION COMMENTARY SUPPORTS A NARROW INTERPRETATION OF THE TERRORISM ENHANCEMENT AND EQUIVALENT DEPARTURES. 15

D. THE NATURE AND CIRCUMSTANCES OF THE CASE WARRANT GREATER LENIENCY. 18

1. Oil Pipelines Are More Dangerous Than Those Who Protest Them. 18

2. Property Sabotage Is Not Synonymous With Violence. 22

3. Ms. Reznicek's Protest Was Part of a Wave of Community-Led Resistance to Fossil Fuel Projects That Has Been Met With Harsh Repression. 23

V. CONCLUSION 31

APPENDIX A A1

APPENDIX B A2

APPENDIX C A4

TABLE OF AUTHORITIES

FEDERAL CASES

Dawson v. Delaware,
503 U.S. 159 (1992) 12

De Jonge v. State of Oregon,
299 U.S. 353 (1937) 14, 15

N.A.A.C.P. v. Button,
371 U.S. 415 (1963) 13

United States v. Alhaggagi,
978 F.3d 693 (9th Cir. 2020) 4

United States v. Ansberry,
976 F.3d 1108 (10th Cir. 2020) 4, 6

United States v. Awan,
607 F.3d 306 (2d Cir. 2010) 4, 6, 7

United States v. Chandia,
514 F.3d 365 (4th Cir. 2008) 3, 7, 16

United States v. Christianson,
586 F.3d 532 (7th Cir. 2009) 7, 23

United States v. Dye,
538 F. App’x 654 (6th Cir. 2013) 3, 4, 7

United States v. Harris,
434 F.3d 767 (5th Cir. 2005) 7

United States v. Jayyousi,
657 F.3d 1085 (11th Cir. 2011) 5, 6, 7

United States v. Leahy,
169 F.3d 433 (7th Cir.1999) 6, 10

FEDERAL CASES (cont.)

United States v. Mandhai,
375 F.3d 1243 (11th Cir. 2004) ………………………………….... 3, 7, 11

United States v. McDavid,
396 F. App'x 365 (9th Cir. 2010) …………………………………… 3, 7, 11

United States v. Mohamed
757 F.3d 757 (8th Cir. 2014) …………………………………………… 4, 7

United States v. Paul,
290 F. App'x 64 (9th Cir. 2008) ………………………………………… 10

United States v. Richardson,
824 F. App'x 432 (8th Cir. 2020) ………………………………………… 13

United States v. Shehadeh,
No. 1:10-cr-1020 ENV, 2013 WL 6049001 (E.D.N.Y. Nov. 14, 2013) …. 12

United States v. Stein,
985 F.3d 1254 (10th Cir. 2021) …………………………….... 5, 6, 7, 9, 16

United States v. Stewart,
590 F.3d 93 (2d Cir. 2009) ………………………………………………… 4

United States v. Tankersley,
537 F.3d 1100 (9th Cir. 2008) …………………………………… 5, 6, 9, 10

United States v. Thurston,
No. CR 06-60069-01-AA, 2007 WL 1500176 (D. Or. May 21, 2007), *aff'd sub nom. United States v. Tubbs*, 290 F. App'x 66 (9th Cir. 2008) … 3, 4, 10

United States v. Van Haften,
881 F.3d 543 (7th Cir. 2018) …………………………………………… 5, 7

United States v. Wright,
747 F.3d 399 (6th Cir. 2014) ………………………………… 3, 4, 5, 6, 7

STATUTES

18 U.S.C.
§ 844(f)(1) …………………………………………………………... 10
§ 844(i) ……………………………………………………………… 10
§ 2332b(g)(5) ……………………………………………………….. 10
§ 3553(a) ……………………………………………………………. 18

LEGISLATIVE HISTORY

H.R. Rep. No. 104-383 (1995) ………………………………………… 17

U.S. SENTENCING GUIDELINES

U.S.S.G. § 2A1.1 …………………………………………………………... 16
U.S.S.G. § 3A1.4 ………………………………………………………… *passim*
U.S.S.G. § 4A1.3 …………………………………………………………... 12

SCHOLARSHIP

Maxine Burkett, *Climate Disobedience*, 27 Duke Env. L. & Pol'y Forum 1 (2016) ……………………………………………………………………………… 25

Mark Engler & Paul Engler, This Is An Uprising: How Nonviolent Revolt Is Shaping The Twenty-First Century (2016) ……………………………………... 22

Gene Sharp, Waging Nonviolent Struggle: 20th Century Practice and 21st Century Potential (2005) ………………………………………………………………… 22

Gene Sharp & Jamila Raqib, *Self-Liberation: A Guide to Strategic Planning for Action to End a Dictatorship or Other Oppression* (2009) …………………….. 22

Jeanette Wolfley, *Embracing Engagement: The Challenges and Opportunities for the Energy Industry and Tribal Nations on Projects Affecting Tribal Rights and Off-Reservation Lands*, 19 Vt. J. Envtl. L. 115 (2018) ………………………… 25

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Amal Ahmed, *Energy Transfer Partners Files Lawsuit Against Greenpeace*, Texas Monthly (Dec. 15, 2017) ………………………………………………………... 28

Alleen Brown, *The Green Scare*, The Intercept (Mar. 23, 2019) ……………….. 28

Talia Buford, *Sierra Club goes bolder*, Politico (Feb. 23, 2013) ……………….. 27

Susie Cagle, *"Protesters as Terrorists": Growing Number of States Turn Anti-Pipeline Activism Into a Crime*, The Guardian (Jul. 8, 2019) ………………. 27, 29

Dave Eisenstadter, *Lobster Boat Blockade: Two Activists Stand Trial After Helping Close Down a Coal Plant*, Occupy.com (Sept. 5, 2014) ………………………... 26

Energy Transfer Partners, *Energy Transfer Partners to Acquire Sunoco in $5.3 Billion Transaction* (Apr. 30, 2012) …………………………………………….. 21

Greenpeace USA, *Oil and Water: ETP & Sunoco's History of Pipeline Spills* (Apr. 17, 2018) ………………………………………………………………………. 21

Liz Hampton, *Sunoco, behind protested Dakota pipeline, tops U.S. crude spill charts*, Reuters (Sept. 23, 2016) ………………………………………………… 21

Allison Herrera, *Standing Rock activists: Don't call us protesters. We're water protectors*, The World (Oct. 31, 2016) …………………………………………….. 26

Indigenous Environmental Network & Oil Change International, *Indigenous Resistance Against Carbon* (Aug. 2021) ……………………………………….. 24

Eamon Javers, *Oil Executive: Military-Style 'Psy Ops' Experience Applied*, CNBC (Nov. 8, 2011) ……………………………………………………………….. 27

Antonia Juhasz, *Paramilitary Security Tracked and Targeted DAPL Opponents as 'Jihadists,' Docs Show*, Grist (Jun. 1, 2017) ……………………………….. 27, 28

Matt Kelso, *2021 Pipeline Incidents Update: Safety Record Not Improving*, FracTracker Alliance (Apr. 14, 2021) …………………………………………… 20

Terry Macalister, *Shell Abandons Alaska Arctic Drilling*, The Guardian (Sept. 28, 2015) 26

Bill McKibben, *Slow-Walking the Climate Crisis*, The New Yorker (Aug. 25, 2021) 25

Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, Brennan Center for Justice (Mar. 17, 2021) 29

Blake Nicholson, *As 'valve turner' activists take to shutting pipelines, firms push for stiffer penalties*, The Associated Press (Mar. 9, 2019) 18, 19

Doug Pensinger, *Bush-Era Energy Drilling Leases in Utah Canceled*, NBC News (Feb. 4, 2009) 26

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Pipeline and Hazardous Materials Safety Administration, *Pipeline Incident 20 Year Trends* (run date Aug. 19, 2021) 20

Jessica Reznicek & Ruby Montoya, *Two Women Claim Responsibility for DAPL Fires and Valve Destruction*, Earth First! Newswire (Jul. 24, 2017) 7, 8, 11, 14, 19, 30

Sue Skalicky & Monica Davey, *Tension Between Police and Standing Rock Protesters Reaches Boiling Point*, The New York Times (Oct. 28, 2016) 24

Tim Stelloh, Molly Roecker, Chiara A. Sottile & Daniel A. Medina, *Dakota Pipeline: Protesters Soaked With Water in Freezing Temperatures*, NBC News (Nov. 20, 2016) 29

Hiroko Tabuchi & Brad Plumer, *Is This the End of New Pipelines?* The New York Times (Jan. 18, 2021) 24

United Nations Committee on the Elimination of Racial Discrimination, *Letter to His Excellency Mr. Benjamin Moeling*, *CERD/EWUAP/104th session* (Aug. 25, 2021) 29

United Nations Committee on the Elimination of Racial Discrimination, *Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, Decision 1 (100)* (Dec. 13, 2019) ………………………………….. 30

Brett Wilkins, *Climate Activist gets eight-year sentence while Capitol rioters, Big Oil execs go free*, Salon (Jul. 6, 2021) ………………………………………… 30

APPENDICES

Mission Statements for *Amici Curiae* Organizations ……………………… App. A

U.S.S.G. § 3A1.4 ………………………………………………………… App. B

Declaration of Anthony Ingraffea, *Minnesota v. Klapstein*,
No. 15-CR-16-413 (9th Jud. Dist. Ct. Minn. 2016) ………………………... App. C

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), counsel states:

1. *Amici* organizations Climate Defense Project, Honor the Earth, and CodePink each certify that they are non-profit organizations. The Center for Protest Law & Litigation certifies that it is a project within the Partnership for Civil Justice Fund, a non-profit organization. The Climate Disobedience Center certifies that it is a fiscal sponsorship of the Social Good Fund, a nonprofit organization.

2. None of the *amici* organizations is a publicly held company; none has any parent corporation; none issues or owns any stock; and none has any financial interest in the outcome of this litigation.

Dated: November 10, 2021

/s/ Alexander Ian Marquardt
Alexander Ian Marquardt

I. Identity and Interest of *Amici Curiae*

Amici Curiae are nonprofit legal and civil society organizations dedicated to the defense of environmental activists, the protection of civil liberties and human rights, and the practice of nonviolence.[1] Their staff include legal practitioners with extensive experience in criminal defense and First Amendment cases; and advocates with specialized knowledge related to fossil fuel projects, nonviolent resistance, and indigenous rights. **Climate Defense Project** provides criminal defense representation and other legal resources to the climate justice movement. The **Center for Protest Law and Litigation** is a project of the Partnership for Civil Justice Fund, which defends human and civil rights secured by law and protects free speech and dissent. **Honor the Earth** is an advocacy organization dedicated to the protection of native peoples' environmental and civil rights in Minnesota and neighboring states. The **Climate Disobedience Center** supports community-led climate activism using principles of nonviolence. **CodePink** is a women-led grassroots advocacy organization dedicated to peace, human rights, and environmental justice, among other things. *Amici* believe that the outcome of this appeal will have important consequences for the exercise of civil liberties and political dissent in Iowa and across the country.

[1] Full mission statements for each signatory organization appear in Appendix A.

II. Consent of Parties

Pursuant to Fed. R. App. P. 29(a)(2), all parties consent to this brief's filing.

III. Summary of Argument

Amici believe that the District Court erred at sentencing by applying the terrorism enhancement provided in U.S.S.G. § 3A1.4, and that the sentence imposed was excessive. In Part A we offer our reading of jurisprudence on the terrorism enhancement, explaining why the fact pattern in this case does not clearly support a finding that Ms. Reznicek targeted government conduct. In Part B we explain why the District Court's reliance on Reznicek's political statements in imposing the terrorism enhancement violated First Amendment guarantees. In Part C we parse Sentencing Commission commentary and legislative history, concluding that the District Court's application of the enhancement conflicts with the intent of both Congress and the Commission. In Part D we summarize contextual information essential to the just adjudication of this case, including Reznicek's obvious regard for the physical safety of other persons; the theoretical basis for distinguishing property destruction from violence; and the widespread, years-long opposition to the expansion of fossil fuel infrastructure by impacted communities.

IV. Argument

A. The Evidence Does Not Demonstrate That Ms. Reznicek's Offense Targeted Government Conduct.

Application of the U.S.S.G. § 3A1.4 terrorism enhancement requires a finding of specific intent to target government conduct. *See United States v. Chandia*, 514 F.3d 365, 376 (4th Cir. 2008). Courts have upheld application of § 3A1.4 when the record contained direct evidence that the defendant intended to influence or retaliate against government conduct. *See, e.g.*, *United States v. Mandhai*, 375 F.3d 1243, 1247 (11th Cir. 2004) (plot to bomb public utilities and then demand release of Muslim prisoners and changes to U.S. foreign policy); *United States v. Thurston*, No. CR 06-60069-01-AA, 2007 WL 1500176, at *3 (D. Or. May 21, 2007), *aff'd sub nom. United States v. Tubbs*, 290 F. App'x 66 (9th Cir. 2008) (mailing of threatening and retributive communiqués to government and private victims in wake of arson attacks); *United States v. McDavid*, 396 F. App'x 365, 372 (9th Cir. 2010) (conspiracy to bomb federal facilities where defendant "had clearly expressed his . . . objectives in disrupting the government").

Indirect evidence may suffice to demonstrate specific intent, *United States v. Wright*, 747 F.3d 399, 408 (6th Cir. 2014) (specific intent "may be found even if the record does not contain direct evidence of the defendant's particular frame of mind"); *United States v. Dye*, 538 F. App'x 654, 666 (6th Cir. 2013) (approving use of circumstantial evidence in upholding enhancement), but any such evidence

must nevertheless show a close nexus between a defendant's actions and her intent to influence or retaliate against government conduct. *Compare Wright*, 747 F.3d at 405-06, 409-10 (upholding enhancement where defendants conspired to bomb state highway bridge, expressed interest in other government targets, and discussed likelihood that their actions would prompt increased government security measures) *and Dye*, 538 F. App'x at 666 ("natural inference" that defendant's attack on courthouse was retaliation for charges pending against him justified application of § 3A1.4) *with United States v. Alhaggagi*, 978 F.3d 693, 700 (9th Cir. 2020) (holding that defendant's opening of social media accounts for ISIS sympathizers did not establish specific intent under § 3A1.4) *and United States v. Stewart*, 590 F.3d 93, 99, 137-39 (2d Cir. 2009) (translation assistance in murder conspiracy case did not constitute mens rea required by § 3A1.4).

The inquiry into specific intent focuses on whether the defendant's calculated purpose was to target government conduct, not her motivations for committing the offense. *See, e.g.*, *United States v. Awan*, 607 F.3d 306, 317 (2d Cir. 2010); *United States v. Mohamed*, 757 F.3d 757, 760 (8th Cir. 2014). Thus, courts have declined to apply § 3A1.4 to offenses targeting purely private conduct. *See United States v. Ansberry*, 976 F.3d 1108, 1129 (10th Cir. 2020) (holding that "the conduct against which an offense is calculated to retaliate" must be "government conduct, objectively defined"); *Thurston*, 2007 WL at *15 ("[T]he

government must establish that the defendants targeted government conduct rather than the conduct of private individuals or corporations."); *United States v. Tankersley*, 537 F.3d 1100, 1116 (9th Cir. 2008) (affirming district court's imposition of twelve-level upward departure instead of § 3A1.4 for arson of private logging facility).

Where the offense targeted both government and private conduct, courts have generally upheld application of § 3A1.4. *See United States v. Stein*, 985 F.3d 1254, 1267 (10th Cir. 2021); *Wright*, 747 F.3d at 410. However, this case law has not always distinguished between a defendant's motivations versus the conduct targeted by her offense, lumping together the two concepts with words like "goals," "aims," and "objectives." Since, as noted above, the specific intent inquiry concerns itself with a defendant's purpose to target government conduct, not her motivations for doing so, cases in which defendants' "terroristic motive" coexisted with a "benign motive" offer little guidance in analyzing specific intent. *See, e.g.*, *United States v. Jayyousi*, 657 F.3d 1085, 1115 (11th Cir. 2011) (disregarding defendant's desire to help "oppressed Muslims"); *Van Haften*, 881 F.3d at 544-45 (discounting defendant's "innocent desire" for "safety and Islamic fellowship"). It may be problematic, then, that *Stein* and *Wright* cited those cases as support for their finding of specific intent by defendants who targeted *other conduct* along with government conduct. *See Stein*, 985 F.3d at 1267 (citing *Van Haften* and

Awan to uphold enhancement against defendant who targeted civilian population primarily); *Wright*, 747 F.3d at 408 (citing *Awan* and *Jayyousi* notwithstanding that defendants there expressly intended to "antagoniz[e] the 'one percent'").

Whether or not *Stein* and *Wright* were correctly decided, it is possible to see that fact patterns like the ones in those cases create an extra onus on the Government to isolate the defendant's purpose to target government conduct, particularly when the defendant's actions harmed private property exclusively, as in *Stein*. A *Stein*-like theory of the case is only plausible when there is clear evidentiary support for a defendant's purpose to target government conduct in addition to the more-immediate target of her offense. It is notable that in other non-material support cases with exclusively private "victims," courts have declined to apply § 3A1.4. *See Ansberry*, 976 F.3d at 1129 (rejecting § 3A1.4 for attempted bombing of police station in retaliation for off-duty murder by town marshal); *United States v. Leahy,* 169 F.3d 433, 445-48 (7th Cir.1999) (finding terrorism enhancement inapplicable to defendant whose scheme of sending toxins through the mail intended to victimize only private persons, although it may have indirectly affected government operations); *Tankersley*, 537 F.3d at 1116.

The following table contains a representative sampling of cases that have upheld application of § 3A1.4, grouped according to 1) whether the defendant targeted government conduct directly or indirectly (by acting upon something other

than government conduct objectively defined), and 2) whether the defendant targeted government conduct only, or other conduct in addition to government conduct. Outside of material support cases and those in which courts declined to apply § 3A1.4, very few cases fall into the indirect/more than one target (lower right) quadrant, with its greater attenuation and potential for ambiguity regarding a defendant's purpose to target government conduct. The table helps illustrate why we believe that *Stein* may be an outlier among non-material support cases, and why clear evidence is needed to justify the enhancement in such cases.

	Direct Targeting of Government	Indirect Targeting of Government
Gov't Conduct Only	• *Dye* • *United States v. Harris*, 434 F.3d 767 (5th Cir. 2005) • *United States v. Christianson*, 586 F.3d 532 (7th Cir. 2009)	• *Mohamed* • *Mandhai* • Many material support cases, such as *Jayyousi*
Gov't and Other Conduct	• *McDavid* • *Tubbs* • *Wright*	• *Stein* • Material support cases such as *Awan*, *Chandia*, and *Van Haften*

Here, Reznicek read her public statement outside the Iowa Utilities Board to "set the record straight" about why pipeline construction had been delayed. Jessica Reznicek & Ruby Montoya, *Two Women Claim Responsibility for DAPL Fires and Valve Destruction*, Earth First! Newswire (Jul. 24, 2017), https://earthfirstjournal.org/newswire/2017/07/24/two-women-claim-

responsibility-for-dapl-fires-and-valve-destruction/. The statement explained her belief in the government's dysfunction and its complicity in environmental degradation. *Id.*[2]

While Ms. Reznicek's motivations for committing the offense are evident from the statement, it is not evident that targeting the government was part of her purpose. The statement was not addressed to the government. It decried perceived failures of the government but did not make express or implied threats and did not articulate any hoped-for effect of the offense on government conduct. *See Two Women*. The only purpose articulated in the statement was to "[get] this pipeline stopped." *Id.*; *see also id.* (beginning and ending statement with discussion of pipeline, referencing potential for leaks "until the oil is shut off and the pipes are removed from the ground," and noting length of time construction was stopped and number of vehicles disabled). As such, the statement cannot support a finding of specific intent to influence or retaliate against government conduct.[3]

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[2] We explain in Part IV.B why it was improper for the Court to consider Reznicek's public statements at sentencing. However, for purposes of rebutting the Government's arguments, we include them in our analysis here.

[3] Ms. Reznicek's April 2017 article in *Via Pacis* refers to "dismantl[ing] the White House," and generally illustrates her iconoclastic state of mind during the final month in which the offense took place. *See* U.S. Sentencing Mem. 5-6. However, we question whether the Government may meet its evidentiary burden through reliance on a single article that expresses as much frustration with corporate conduct as with that of the government. Had Ms. Reznicek targeted government conduct with her protest, we believe that it would be a clearer question, but isolated words alone cannot justify imposition of the enhancement.

The statement minces no words in portraying the government as corrupt and unable to fulfill its mandate to protect the public interest, but this fact is equally consistent with the hypothesis that Reznicek had given up on government as with the hypothesis that she intended to target it. Further supporting this hypothesis, the statement references previous good-faith attempts by Reznicek and Montoya to influence the political process by lawful means, including "attending public commentary hearings, gathering signatures for valid requests for Environmental Impact Statements, [and] participating in civil disobedience, hunger strikes, marches and rallies, boycotts and encampments." *See id.*

Nor does the conduct underlying Reznicek's offense point clearly to the government. The offense targeted the operations of a private company. The attenuation between the government and private pipeline construction distinguishes this case from *Dye*, where the defendant targeted a court in retaliation for criminal charges. *See* 538 F. App'x at 666. While the use of private victims as an *indirect* means to target government conduct warranted the terrorism enhancement in *Stein*, 985 F.3d at 1267, there the defendants had planned to bomb an apartment complex and mosque — thus creating civilian casualties — and had written a statement addressed to the government. Here, the fact pattern seems most analogous to that of *Tankersley*, where arson of a private logging facility did not warrant application

of the enhancement even though logging implicates both environmental policy and interstate commerce. *See* 537 F.3d at 1102-03, 1114-16; *Thurston*, 2007 WL at *1.[4]

Part of the interpretive difficulty here may stem from the fact that pipelines implicate government policy. It is possible to construe 18 U.S.C.A. § 2332b(g)(5) such that a defendant's offense retaliates against government conduct whenever it touches an activity heavily regulated by the government, but such an interpretation would be overbroad and in conflict with *Tankersley* and *Leahy*. In other statutes, Congress has deliberately included the phrase "affecting interstate or foreign commerce," or phrases such as "any institution or organization receiving Federal financial assistance," *see, e.g.*, 18 U.S.C.A. § 844(i); 18 U.S.C.A. § 844(f)(1), to expand the scope of an offense beyond the property or conduct it targets in an immediate sense. Congress did not do so here. Ms. Reznicek's understanding of the government's role in permitting and regulating pipelines and its exclusive purview in promulgating environmental policy, *see Two Women*, cannot be conflated with a purpose to target government conduct in its own right.

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[4] This was in spite of the fact that Tankersley "helped research possible attacks on the United States Bureau of Land Management wild horse facility in Litchfield, California." 537 F.3d at 1105. Because Tankersley played a lesser role in the offense than her co-defendants, her sentence was only 41 months after an upward departure to achieve sentencing parity. *See id.* at 1102, 1104-05. For a similar case, see *United States v. Paul*, 290 F. App'x 64, 66 (9th Cir. 2008), which upheld an upward departure in place of the terrorism enhancement for a co-defendant of Tankersley who likewise targeted private conduct.

The nature of the evidence is illustrative in two cases where the terrorism enhancement was clearly warranted. In *Mandhai*, the defendant repeatedly made statements against the government during preparation for the attack, explicitly planned the attack in retaliation for the government's support of Israel, and considered targeting military facilities in addition to electrical substations. Br. United States at 5-9, *United States v. Mandhai*, 375 F.3d 1243 (11th Cir. 2004), No. 02-15933-BB. In *McDavid*, the defendant conspired, among other things, to destroy federal facilities including a tree genetics facility, dam, and fish hatchery, and the Ninth Circuit noted that "the object of the conspiracy was federal facilities." *McDavid*, 396 F. App'x at 372. While disruption of interstate commerce and interference with government policy were peripheral effects of the offenses in both *McDavid* and *Mandhai*, the reviewing courts mentioned these facts only in passing, if at all, and did not rely on them heavily in upholding application of the terrorism enhancement. *Id.*; *Mandhai*, 375 F.3d at 1248.

B. The District Court Violated Ms. Reznicek's First Amendment Rights By Imposing the Terrorism Enhancement.

The District Court erred, as a matter of law and discretion, in its consideration of the Government's submissions in support of the terrorism enhancement. Ms. Reznicek's statements after the fact expressed her protected First Amendment activities of free speech or were expressions of abstracted political ideas and criticisms of the government, not evidence of an intent to coerce

or retaliate against the government. Since they were protected under the First Amendment and not clearly linked to the activities for which she pled guilty, the statements may not be used to attach the terrorism enhancement or otherwise increase her sentence.

Although courts may consider a wide range of relevant material at sentencing, the U.S. Constitution restricts the consideration of expressions or information that are protected by the First Amendment, including in terrorism cases. In *United States v. Shehadeh*, in considering the applicability of the terrorism enhancement under U.S.S.G. § 4A1.3, the court properly excluded from consideration the defendant's First Amendment protected core political speech:

> The PSR suggested that an upward departure from the recommended criminal history category might be appropriate under U.S.S.G. § 4A1.3 on the ground that "the defendant used several websites in order to promote acts of terrorism" during the course of his offense. As also expressed during the sentencing hearing, the Court does not find the fact that Shehadeh created and administered websites regurgitating certain violent jihadist propaganda to be an appropriate basis for punishment consistent with the First Amendment.

No. 1:10-cr-1020 ENV, 2013 WL 6049001, at *4 n. 5 (E.D.N.Y. Nov. 14, 2013).

The U.S. Supreme Court, while rejecting an absolute and *per se* barrier to the admission of evidence concerning protected expressions, beliefs, or associations, *Dawson v. Delaware*, 503 U.S. 159, 165 (1992), has expressly "extend[ed] the protection of the First Amendment to evidence introduced at a sentencing hearing," *id.* at 168. In *Dawson*, the Supreme Court found that the

defendant's "First Amendment rights were violated by the admission of the Aryan Brotherhood [group membership] evidence in this case, because the evidence proved nothing more than [his] abstract beliefs" and was not sufficiently tied to the underlying offense. 503 U.S. at 167; s*ee also United States v. Richardson*, 824 F. App'x 432, 434 n. 2 (8th Cir. 2020) (restating rule that exclusion is permissible upon showing that the evidence is protected speech and that consideration is inappropriate). Thus, if the evidence is protected under the First Amendment and not clearly linked to the underlying offense, it may not be relied upon at sentencing to increase the defendant's sentence.

Although freedom of expression is not absolute, "precision of regulation must be the touchstone" when First Amendment expressions are involved. *N.A.A.C.P. v. Button*, 371 U.S. 415, 438 (1963). This is especially true with criminal sanctions or enhancements because the consequences of improper consideration can result in the loss of liberty for years.

As explained above, Ms. Reznicek issued a public statement in July 2017 clearly confirming that the actions to which she pled guilty were *not* intended to influence or retaliate against government conduct but were intended, quite literally and physically, to disable and halt the operation of the pipeline, as their factual basis and context would suggest. *See supra* at Part IV.A. As the Judge recognized

in the sentencing hearing, "[t]hese were actions taken to cause harm to this pipeline to make a political statement," not to affect the government. Sent. Tr. 60:7-8.

Moreover, Ms. Reznicek's references to the government in her public statement were conceptually attenuated from the underlying offense. Her observation that, "[f]or some reason, the courts and the ruling government value corporate property and profit over our inherent human rights to clean water and land," *Two Women*, is not a retroactive expression of intent to intimidate or retaliate against the government but a generalized statement regarding political conditions, which is well within the core of First Amendment protected speech. Her references to the federal government in her public statement and in her *Via Pacis* article, *see supra* at Part IV.A, reflect background core political beliefs, consideration of which is inappropriate in imposing a longer prison sentence.

Applying the terrorism enhancement to Reznicek's sentence does not merely punish her for the crime to which she pled — conspiracy to damage an energy facility — but unconstitutionally criminalizes her protected speech, adding additional punishment for the expression of personal political beliefs. *See De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937) (holding that mere participation in a lawful public discussion, peaceable political action, or peaceable assembly cannot be made a crime). Relying on her speech in this way is an

imprecise, unconstitutional regulation of her First Amendment rights. As the U.S. Supreme Court wrote in *De Jonge*:

> The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means.

Id. To apply the terrorism enhancement here is to curtail and criminalize the core constitutional rights of freedom of speech, press, and assembly. Reznicek's evident purpose was to target a private corporation, specifically the physicality of the pipeline. Her after-the-fact references to the government in her public statement do not transform the offense into one contemplated by the terrorism enhancement and, thus, were improperly relied upon by the District Court.

C. Sentencing Commission Commentary Supports a Narrow Interpretation of the Terrorism Enhancement and Equivalent Departures.

The Sentencing Commission provides guidance for appropriate sentencing when a defendant directed her offense toward a civilian population rather than government conduct. Comment 4, an amendment to U.S.S.G. § 3A1.4 added in 2002, provides in subpart B an upward departure as an alternative to the guideline — but not to exceed punishment under the guideline — when the defendant otherwise committed a federal crime of terrorism, but "the terrorist motive was to

intimidate or coerce a civilian population, rather than to influence or affect the conduct of government [. . . .]" U.S.S.G. § 3A1.4 (App. B); Editor's and Revisor's Notes, § 2A1.1 (describing "offenses that involve terrorism but do not otherwise qualify [under the guideline]").

Although written for circumstances different from those of this case, the Commission's commentary is instructive. First, it acknowledges that a defendant's offense can resemble terrorism but fall outside the purview of § 3A1.4 when it did not target government conduct narrowly defined. Comment 4 distinguishes between civilian populations and the government in spite of the fact that the government represents public interests, and despite civilian populations' closer relationship to public priorities, social policy, and constitutional function than that of other potential victims of terrorism, including private corporations. Particularly since cases involving civilian populations often involve the government as well, *see, e.g.*, *Stein*, 985 F.3d at 1267, the Commission's distinguishing of the two in Comment 4 suggests that analytical clarity is warranted in the determination of what constitutes "government conduct" under the statute. It suggests, for instance, that a defendant who knows that her offense implicates a governmental interest and may even know that it is likely to provoke a reaction from the government does not, without more, fall under the guideline. *See also United States v. Chandia*, 675 F.3d 329, 340 (4th Cir. 2012) (distinguishing knowledge from intent).

Second, Comment 4 mentions *only* civilian populations. With its separate upward departure identical in scope to the § 3A1.4 guideline, Comment 4 seems to suggest that civilian populations are uniquely analogous to the government. *Expressio unius est exclusio alterius*. This interpretation is supported by the Congressional drafting committee's focus on "crimes . . . motivated to affect the conduct of government or social policy." H.R. Rep. No. 104-383, at 39 (1995). In adding Comment 4, the Sentencing Commission appears to have intended to hew closely to this focus on social policy and public priorities.

The Sentencing Commission's 3A1.4 commentary, then, views terrorism through a bifurcated lens much in the same way that Congress did: either sentencing falls under a public rubric (the guideline or, alternatively, Comment 4), *or* it should rely on some other, distinct logic appropriate to non-terrorism cases — that is, offenses directed at neither the government nor civilian populations, such as private corporations — which, presumably, would reflect the lesser severity of such cases as a matter of public policy. Here, the District Court's assertion that applying the guideline had no effect whatsoever on the sentence imposed, Sent. Tr. 65:3-8, is a misprision of the public values underlying the statute, guideline, and accompanying commentary. The court erred in failing to explain why an equally severe sentence would have been justified without either the guideline or the equivalent departure for civilian populations.

D. The Nature and Circumstances of the Case Warrant Greater Leniency.

Since Ms. Reznicek's protest appears to have posed less danger than the routine operation of pipelines and was not obviously violent, and in light of the larger struggle for community self-determination of which her actions formed a part, *Amici* believe that she deserved greater leniency at sentencing regardless of whether application of the terrorism enhancement was warranted. Consideration of these factors furthers interests in individualized sentencing and fits readily within the framework established in 18 U.S.C. § 3553(a).

1. Oil Pipelines Are More Dangerous Than Those Who Protest Them.

The inherent dangerousness of oil pipelines distinguishes this case from those in which defendants created dangers entirely of their own making. Although the routine operation of pipelines poses serious risks to human and natural health, it is remarkable that *Amici* are aware of no documented accidents at pipeline sites involving protesters.

Protesters in both the United States and Canada have safely disabled oil pipelines using manual shut-off valves, taking care to notify pipeline companies beforehand. Blake Nicholson, *As 'valve turner' activists take to shutting pipelines, firms push for stiffer penalties*, The Associated Press (Mar. 9, 2019), https://www.registerguard.com/news/20190309/as-valve-turner-activists-take-to-shutting-pipelines-firms-push-for-stiffer-penalties. During state prosecutions of the

seven "valve turner" protesters, who manually shut off tar sands pipelines in four states in 2016, expert testimony at trial and in written declarations established that any additional risk caused by the protesters' use of manual shut-off valves was miniscule. *See, e.g.*, Decl. Anthony Ingraffea, *Minnesota v. Klapstein*, No. 15-CR-16-413 (9th Jud. Dist. Ct. Minn. 2016) (App. C). Only one defendant served more than two days in prison. Nicholson, *As 'valve turner' activists take*.

While distinguishable from the valve-turner protests in the amount of economic damage it caused, Ms. Reznicek's protest was likewise designed to avoid harming people. She targeted empty bulldozers and pipes, not office buildings, research facilities, or functioning infrastructure. She almost certainly viewed oil flow through the pipeline as an obstacle to her objective rather than an opportunity to further it, since her sabotage stopped around the time she reported discovering that oil had begun flowing. *See* Jessica Reznicek & Ruby Montoya, *Two Women Claim Responsibility for DAPL Fires and Valve Destruction*, Earth First! Newswire (Jul. 24, 2017), https://earthfirstjournal.org/newswire/ 2017/07/24/two-women-claim-responsibility-for-dapl-fires-and-valve-destruction/ (narrating sabotage of "empty steel valves," stating that discovery of oil flow in first week of May was "disheartening," and implying that no further incidents of sabotage occurred after such discovery). The Government's characterization of Reznicek's

actions as wildly irresponsible and dangerous, U.S. Sentencing Mem. 10-11, is difficult to sustain when juxtaposed against these facts.

In contrast to the dearth of protest-related accidents, a very large number of spills, explosions, and other tragedies have occurred during the routine operation of pipelines and accidental citizen encounters with them. The Pipeline and Hazardous Materials Safety Administration logged 5,749 "significant incidents" involving oil and gas pipelines between 2001 and 2020, resulting in 1,142 injuries and 256 fatalities. *Pipeline Incident 20 Year Trends* (run date Aug. 19, 2021), https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-20-year-trends. The FracTracker Alliance reports 6,950 total "incidents" involving pipelines since 2010 — a number that translates to 1.7 per day. Matt Kelso, *2021 Pipeline Incidents Update: Safety Record Not Improving* (Apr. 14, 2021), https://www.fractracker.org/ 2021/04/2021-pipeline-incidents-update-safety-record-not-improving/. Economic damage from "hazardous liquid" routes alone — a category that includes oil pipelines — totaled nearly $3 billion. *Id.* Iowa saw at least 100 pipeline accidents between 2004 and 2017; in the decade prior to 2017, Iowa pipelines spilled over 10,000 barrels of hazardous liquids, causing nearly $20 million in damage. William Petroski, *Iowa's Pipeline Safety Record Spotty*, Des Moines Register (Mar. 5, 2017), https://www.desmoinesregister.com/story/news/investigations/2014/09/07/iowa-pipeline-safety-spotty-records-large-scale-

disasters-spills-since-bakken-oil-propane-natural-gas-anhydrous-ammonia/15230791/.

The safety record of the companies behind the Dakota Access Pipeline provides no greater assurances. A 2016 analysis by Reuters found that Sunoco "spills crude more often than any of its competitors." Liz Hampton, *Sunoco, behind protested Dakota pipeline, tops U.S. crude spill charts* (Sept. 23, 2016), https://www.reuters.com/article/us-usa-pipeline-nativeamericans-safety-i-idUSKCN11T1UW.[5] A 2018 Greenpeace report found that pipelines owned by Energy Transfer Partners and Sunoco leaked every eleven days on average over a sixteen-year period, causing $115 million in property damage and proposed penalties of $5.6 million from federal regulators. *Oil and Water: ETP & Sunoco's History of Pipeline Spills* (Apr. 17, 2018), https://www.greenpeace.org/usa/reports/oil-and-water/.

In this larger context, the fact that tampering with pipelines is dangerous does little to clarify the issues. Fossil fuel pipelines themselves are demonstrably more dangerous than pipeline protests, and Ms. Reznicek's belief that preventing

[5] Energy Transfer Partners merged with Sunoco in 2012. Energy Transfer Partners, *Energy Transfer Partners to Acquire Sunoco in $5.3 Billion Transaction* (Apr. 30, 2012), https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-partners-acquire-sunoco-53-billion-transaction.

completion of the Dakota Access Pipeline might reduce harms to persons and property was reasonable.

2. Property Sabotage Is Not Synonymous With Violence.

Destruction or sabotage of property does not fit neatly within nonviolent tradition, but neither is it violent. Gene Sharp, a leading theorist of nonviolent resistance, defined violence as "physical violence against other human beings" that inflicts or threatens to inflict injury or death. Gene Sharp & Jamila Raqib, *Self-Liberation: A Guide to Strategic Planning for Action to End a Dictatorship or Other Oppression* at 53 (2009), https://www.aeinstein.org/wpcontent/uploads/2013/09/ SelfLiberation.pdf.[6] While there are important evidentiary questions in sabotage cases about the scale of damage and potential for further harm, no easy categorical distinctions are available with which to condemn the tactic as violent — especially when, as here, no humans faced an imminent risk of harm.[7]

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[6] Sharp did not believe that sabotage could be effective as a form of nonviolent resistance. *See* Waging Nonviolent Struggle: 20th Century Practice and 21st Century Potential 390-91 (2005). However, the efficacy of an unlawful tactic is distinct from how much punishment an individual deserves for engaging in it.

[7] Sharp did not equate nonviolent resistance with moral pacifism: properly practiced, nonviolent resistance *always* involves confrontation and disruption. Mark Engler & Paul Engler, This Is An Uprising: How Nonviolent Revolt Is Shaping The Twenty-First Century 145, 148 (2016).

Amici acknowledge that a more-expansive definition of "violence" may sometimes be appropriate — as when, for instance, vague threats imply physical injury but do not make it explicit. *See, e.g.*, *United States v. Christianson*, 586 F.3d 532, 538 (7th Cir. 2009) (noting defendants' use of phrase "we are watching" in vandalism of vehicles at government research facility). No such threats are present in this case: Reznicek's activities were narrowly directed toward preventing pipeline construction.

Moreover, the balance of equities is complex when a defendant's protest responded to abuses of power, and when political activists face ongoing harassment or retaliation by corporate actors whose policies they oppose, as has been the case for climate protesters in recent years. *See infra* Part IV.C.3. It is possible to draw a principled distinction between crimes that are strategically offensive or ideological in nature versus those undertaken in defense of natural resources or human rights. Here, Reznicek's offense was a last-ditch effort to prevent harms to the environment and to the health and safety of Iowans.

3. Ms. Reznicek's Protest Was Part of a Wave of Community-Led Resistance to Fossil Fuel Projects That Has Been Met With Harsh Repression.

The fight over the Dakota Access Pipeline (DAPL) has occurred in the context of widespread community-led nonviolent resistance to the continued expansion of U.S. fossil fuel infrastructure. Over the past decade, a large number

of proposed projects, many of them intended to transport fuel for export, have faced protracted grassroots resistance — often led by indigenous peoples whose land is traversed by the projects and often including civil disobedience and arrests — including the Keystone XL pipeline in South Dakota, the Line 3 pipeline in Minnesota, the Mountain Valley and Atlantic Coast pipelines in Virginia and North Carolina, the Bayou Bridge pipeline in Louisiana, the Northeast Supply Enhancement pipeline in New York, the West Roxbury Lateral pipeline in Massachusetts, the Jordan Cove LNG Project in Oregon, and the Permian Highway pipeline in Texas, among many others. *See, e.g.*, Hiroko Tabuchi & Brad Plumer, *Is This the End of New Pipelines?* The New York Times (Jan. 18, 2021), https://www.nytimes.com/ 2020/07/08/climate/dakota-access-keystone-atlantic-pipelines.html; Indigenous Environmental Network & Oil Change International, *Indigenous Resistance Against Carbon* at 6-11 (Aug. 2021), https://www.ienearth.org/wp-content/uploads/2021/09/Indigenous-Resistance-Against-Carbon-2021.pdf. Resistance to DAPL by encamped protesters was particularly intense and sustained, becoming a national focal point. *See* Sue Skalicky & Monica Davey, *Tension Between Police and Standing Rock Protesters Reaches Boiling Point*, The New York Times (Oct. 28, 2016), https://www.nytimes.com/2016/10/29/us/dakota-access-pipeline-protest.html.

The climate movement today is overwhelmingly nonviolent by any definition, relying predominantly on tactics such as peaceful occupation, economic non-cooperation, and mass civil disobedience. *See* Maxine Burkett, *Climate Disobedience*, 27 Duke Env. L. & Pol'y Forum 1, 6-10 (2016) (describing diversity of climate activism tactics). Pipeline protests have rightly focused on infrastructure that will have long-term environmental effects: pipelines prime the pump for additional damage, "becom[ing] the justification for future extraction." Bill McKibben, *Slow-Walking the Climate Crisis*, The New Yorker (Aug. 25, 2021), https://www.newyorker.com/news/annals-of-a-warming-planet/slow-walking-the-climate-crisis.

Resistance to fossil fuel pipelines has often cited immediate threats to the water supplies and treaty rights of indigenous tribes, *see, e.g.*, Jeanette Wolfley, *Embracing Engagement: The Challenges and Opportunities for the Energy Industry and Tribal Nations on Projects Affecting Tribal Rights and Off-Reservation Lands*, 19 Vt. J. Envtl. L. 115, 119, 120 (2018) (noting that the DAPL "crosses the 1851 Treaty Reservation and traditional territories of the tribes" and "crosses federally regulated waters of the United States under the [Army] Corps' jurisdiction at least 204 times"), representing a convergence between racial justice and environmental concerns. Indigenous groups' preference for terms such as "water protectors" and "land defenders" has thrust those terms into the popular

lexicon and made the stakes of the conflict clearer. *See* Allison Herrera, *Standing Rock activists: Don't call us protesters. We're water protectors*, The World (Oct. 31, 2016), https://www.pri.org/stories/2016-10-31/standing-rock-activists-dont-call-us-protesters-were-water-protectors.

Many protests have been credited with halting fossil fuel projects, directly or indirectly, including Shell's plans to drill in the Arctic, *see* Terry Macalister, *Shell Abandons Alaska Arctic Drilling*, The Guardian (Sept. 28, 2015), https://www.theguardian.com/business/2015/sep/28/shell-ceases-alaska-arctic-drilling-exploratory-well-oil-gas-disappoints, a coal plant in Massachusetts, Dave Eisenstadter, *Lobster Boat Blockade: Two Activists Stand Trial After Helping Close Down a Coal Plant*, Occupy.com (Sept. 5, 2014), https://www.occupy.com/article/lobster-boat-blockade-two-activists-stand-trial-after-helping-close-down-coal-plant#sthash.ULE0NSSo.dpbs, the sale of drilling leases in Utah by the Bureau of Land Management, *see* Doug Pensinger, *Bush-Era Energy Drilling Leases in Utah Canceled*, NBCNews.com (Feb. 4, 2009), http://www.nbcnews.com/id/29017638/ns/us_news-environment/t/bush-era-energy-drilling-leases-utah-canceled/#.WE8nlldIDq0, and, most famously, the Keystone XL pipeline — a struggle during which the Sierra Club endorsed civil disobedience for the first time in its history, expressing "deepening frustration with the inaction from Washington and the big energy companies to make any large-

scale progress to address the climate crisis," Talia Buford, *Sierra Club goes bolder*, Politico (Feb. 23, 2013), https://www.politico.com/story/2013/02/sierra-club-goes-bolder-in-climate-fight-087973. According to data from Oil Change International, indigenous opposition to fossil fuel projects has already prevented the equivalent of twelve percent of combined U.S. and Canadian 2019 greenhouse gas emissions. *Indigenous Resistance Against Carbon* at 12.

Conservative lawmakers' characterization of pipeline protest as eco-terrorism has served to justify anti-protest laws and the militarized repression of protests by fossil fuel companies. Susie Cagle, *"Protesters as Terrorists": Growing Number of States Turn Anti-Pipeline Activism Into a Crime*, The Guardian (Jul. 8, 2019), https://www.theguardian.com/environment/2019/jul/08/wave-of-new-laws-aim-to-stifle-anti-pipeline-protests-activists-say. The fossil fuel industry began borrowing language from the war on terror at least a decade ago: at a 2011 conference attended by members of the industry, an Anadarko Petroleum executive recommended military-style tactics against citizens' groups protesting hydraulic fracturing, telling other attendees, "I want you to download the US Army/Marine Corps counterinsurgency manual because we are dealing with an insurgency here." Eamon Javers, *Oil Executive: Military-Style 'Psy Ops' Experience Applied*, CNBC (Nov. 8, 2011), https://www.cnbc.com/id/45208498; *see also* Antonia Juhasz, *Paramilitary*

Security Tracked and Targeted DAPL Opponents as 'Jihadists,' Docs Show, Grist (Jun. 1, 2017), https://grist.org/justice/paramilitary-security-tracked-and-targeted-nodapl-activists-as-jihadists-docs-show/ (describing use of "jihadist" label). Attempts by private corporate interests to conflate animal rights and environmental activism with terrorism date back even further and have directly influenced lawmakers and law enforcement:

> The fur and biomedical industries had spent years lobbying the Justice Department and lawmakers to go after eco-activists, who had damaged their property, held audacious demonstrations decrying their business activities, and cost them millions of dollars. When the planes hit the twin towers, industry groups seized on the opportunity to push legislation, and federal law enforcement ramped up pursuit of radical activists in the name of counterterrorism.

Alleen Brown, *The Green Scare*, The Intercept (Mar. 23, 2019), https://theintercept.com/2019/03/23/ecoterrorism-fbi-animal-rights/.

While recent anti-pipeline activism is far less controversial, the response to it has been heavy-handed. Fossil fuel companies have responded to nonviolent protests by mobilizing private security forces, including military contractors, who have surveilled, harassed, and injured protesters, *see, e.g.*, Juhasz, *Paramilitary Security*, using lawsuits and other legal tactics against organizations who support protesters, *see, e.g.*, Amal Ahmed, *Energy Transfer Partners Files Lawsuit Against Greenpeace*, Texas Monthly (Dec. 15, 2017), https://www.texasmonthly.com/news-politics/energy-transfer-partners-files-

lawsuit-greenpeace/, and lobbying for — and, in some cases, drafting — "critical infrastructure" laws to secure harsh new penalties for protest at oil and gas sites, Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, Brennan Center for Justice (Mar. 17, 2021), https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements; Cagle, *"Protesters as Terrorists."* In their effort to stop DAPL construction nonviolently, indigenous protesters and their allies have described harrowing scenes reminiscent of war zones, encountering tear gas, pepper spray, rubber bullets, water cannons, beanbag grenades, long-range acoustic devices, and more. *See, e.g.*, Tim Stelloh, Molly Roecker, Chiara A. Sottile & Daniel A. Medina, *Dakota Pipeline: Protesters Soaked With Water in Freezing Temperatures*, NBC News (Nov. 20, 2016), https://www.nbcnews.com/storyline/dakota-pipeline-protests/dakota-pipeline-protesters-authorities-clash-temperatures-drop-n686581.

In both the United States and Canada, construction of controversial oil pipelines and the suppression of protests against them have prompted concern from the United Nations over suspected human rights violations. *See* Committee on the Elimination of Racial Discrimination, *Letter to His Excellency Mr. Benjamin Moeling*, *CERD/EWUAP/104th session* (Aug. 25, 2021), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CER

D_ALE_USA_9448_E.pdf; Committee on the Elimination of Racial Discrimination, *Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, Decision 1 (100)* (Dec. 13, 2019), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_EWU_CAN_9026_E.pdf.

Here, Ms. Reznicek clearly identified herself with the indigenous-led resistance to fossil fuel pipelines, particularly the DAPL, through her references to indigenous sovereignty, land grabs, and illegal surveillance, her use of statements such as "water is life," and her repeated use of the word "peaceful." *See* Jessica Reznicek & Ruby Montoya, *Two Women Claim Responsibility for DAPL Fires and Valve Destruction*, Earth First! Newswire (Jul. 24, 2017), https://earthfirstjournal.org/newswire/ 2017/07/24/two-women-claim-responsibility-for-dapl-fires-and-valve-destruction/. It is in part because of the obvious injustice of recent pipeline construction and the history of force used against protesters that the climate movement rallied around Reznicek after her sentence was announced. *See* Brett Wilkins, *Climate Activist gets eight-year sentence while Capitol rioters, Big Oil execs go free*, Salon (Jul. 6, 2021), https://www.salon.com/2021/07/06/climate-activist-gets-eight-year-sentence-while-big-oil-execs-capitol-rioters-go-free_partner/. Her actions must be considered in the context of a broad grassroots movement to protect human and

natural systems from the destructive activities of private energy companies and accompanying state violence.

V. Conclusion

For the foregoing reasons, this Court should vacate the sentence imposed by the District Court and remand the case for new sentencing proceedings.

Dated: November 10, 2021

Respectfully submitted,

____

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Attorney for Amici Curiae

CERTIFICATE OF COMPLIANCE

1. I certify pursuant to Circuit Rule 29-2(c)(2) that the attached brief is proportionally spaced, has a typeface of 14 points, and contains 6,466 words.

2. Pursuant to Fed. R. App. P. 29(a)(4)(E), I certify that no party's counsel authored this brief in whole or in part, nor did any party or party's counsel contribute funds toward its preparation or submission, nor did any other person contribute such funds.

3. This brief and appendices have been scanned for viruses and are virus-free.

Dated: November 10, 2021

/s/ Alexander Ian Marquardt
Alexander Ian Marquardt

APPENDIX A

Climate Defense Project (CDP) is a 501(c)(3) nonprofit organization that provides criminal defense representation and other legal support to the climate justice movement. CDP supports front-line activists, advances innovative legal arguments, and connects attorneys with communities and campaigns.

The **Center for Protest Law & Litigation** is a project of the Partnership for Civil Justice Fund (PCJF), a 501(c)(3) public interest legal organization dedicated to the defense of human and civil rights secured by law, the protection of free speech and dissent, and the elimination of prejudice and discrimination. For over 25 years the PCJF has litigated impact cases to vindicate fundamental constitutional rights of public protest and assembly. It has defended the free speech rights of activists and organizations across the country.

Honor the Earth is a nonprofit environmental organization focused on protection of native peoples' environmental and civil rights. Honor the Earth works directly with tribes, indigenous individuals, and allied non-indigenous individuals and communities in Minnesota and neighboring states by promoting their engagement in tribal, federal, state, and local environmental decision making. It advocates against development of environmentally harmful projects, including those related to fossil fuel infrastructure, mines, and industrial agriculture, and advocates for indigenous-owned clean energy, sustainable agriculture, and other sustainable businesses. Full expression of individual civil rights is a necessary component in all of Honor the Earth's efforts.

The **Climate Disobedience Center** exists to support a growing community of climate dissidents who take the risks of action, grounded in love, commensurate with the scale and urgency of the crisis.

CodePink is a women-led grassroots organization working to end U.S. wars and militarism, support peace and human rights initiatives, and redirect our tax dollars into healthcare, education, green jobs and other life-affirming programs.

APPENDIX B

USSG, § 3A1.4, 18 U.S.C.A.
§ 3A1.4. Terrorism

(a) If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32.

(b) In each such case, the defendant's criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be Category VI.

(Effective November 1, 1995; amended effective November 1, 1996; November 1, 1997; November 1, 2002.)

Application Notes:

1. "Federal Crime of Terrorism" Defined.--For purposes of this guideline, "federal crime of terrorism" has the meaning given that term in 18 U.S.C. § 2332b(g)(5).

2. Harboring, Concealing, and Obstruction Offenses.--For purposes of this guideline, an offense that involved (A) harboring or concealing a terrorist who committed a federal crime of terrorism (such as an offense under 18 U.S.C. § 2339 or § 2339A); or (B) obstructing an investigation of a federal crime of terrorism, shall be considered to have involved, or to have been intended to promote, that federal crime of terrorism.

3. Computation of Criminal History Category.--Under subsection (b), if the defendant's criminal history category as determined under Chapter Four (Criminal History and Criminal Livelihood) is less than Category VI, it shall be increased to Category VI.

4. Upward Departure Provision.--By the terms of the directive to the Commission in section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, the adjustment provided by this guideline applies only to federal crimes of terrorism. However, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to

promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. § 2332b(g)(5)(B), but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the sentence resulting from such a departure may not exceed the top of the guideline range that would have resulted if the adjustment under this guideline had been applied.

APPENDIX C

STATE OF MINNESOTA | DISTRICT COURT
COUNTY OF CLEARWATER | NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

ANNETTE MARIE KLAPSTEIN,
EMILY NESBITT JOHNSTON,
STEVEN ROBERT LIPTAY, and
BENJAMIN JOLDERSMA,

Defendants.

Case File Nos. 15-CR-16-413
15-CR-16-414
15-CR-16-425
15-CR-17-25

DECLARATION OF ANTHONY INGRAFFEA

I, ANTHONY INGRAFFEA, hereby declare as follows:

1. I make and offer this declaration in support of defendants in *State of Minnesota vs. Annette Marie Klapstein, Emily Nesbitt Johnston, Steven Robert Liptay, and Benjamin Joldersma*, Case Nos. 15-CR-16-413, 141, 425 and 15-CR-17-25.

2. I received a B.S. in Aerospace and Aeronautical Engineering from the University of Notre Dame in Indiana in May 1969.

3. I received a M.S. in Civil Engineering from The Polytechnic Institute of New York in June 1971.

4. I received a PhD in Civil Engineering from the University of Colorado in 1977.

5. I am a registered Professional Engineer in Colorado, Texas, and New York.

6. I worked for two years as a structural engineer with the Grumman Aerospace Corporation and for two years as a county engineer in Venezuela.

7. I have served as a professor at Cornell University since 1977. I have taught courses on structural mechanics, finite element methods, and fracture mechanics.

8. I am the Founder and Senior Technical Advisor of the Cornell Fracture Group. The Group studies the physical mechanisms that control the failure of engineering structures. We promote understanding of the causes of deformation and failure of structures.

9. I am a principal author of the American Petroleum Institute Recommended Practice (RP) 1102: Steel Pipelines Crossing Railroads and Highways.

10. I am the author of over 200 papers related to complex fracturing processes.

11. I have been a principal investigator on over $37 million worth of research and development projects from the U.S. Department of Transportation, the Gas Research Institute, EXXON, AMOCO, and others.

12. I am the Co-Editor-in-Chief of *Engineering Fracture Mechanics.*

13. Based on my extensive knowledge of pipeline flow and fracture risks, the defendants in *State of Minnesota vs. Annette Marie Klapstein, Emily Nesbitt Johnston, Steven Robert Liptay, and Benjamin Joldersma*, Case Nos. 15-CR-16-413, 141, 425 and 15-CR-17-25 took safety measures reasonably calculated to prevent damage such as a fracture.

14. Pipelines are regularly shut down and restarted for maintenance, repairs, etcetera. The same procedure occurred in this case following the phone call that defendants made to the pipeline company. The actions of the defendants did not pose any threat to the community.

15. My testimony is relevant to the lack of harm caused by the defendants in the action that they undertook to prevent a greater harm, i.e. the worst impacts of climate change.

16. Attached as Exhibit 1 is my C.V.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Executed this 4th day of September, 2018, in Ithaca, New York.

ANTHONY INGRAFFEA