

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

ANNE WHITE HAT, RAMON MEJÍA,
KAREN SAVAGE, SHARON LAVIGNE,
HARRY JOSEPH, KATHERINE
AASLESTAD, PETER AASLESTAD, THEDA
LARSON WRIGHT, ALBERTA LARSON
STEVENS, JUDITH LARSON HERNANDEZ,
RISE ST. JAMES, 350 NEW ORLEANS, and
LOUISIANA BUCKET BRIGADE

Plaintiffs

VERSUS

JEFF LANDRY, in his official capacity as
Attorney General of Louisiana; BO DUHÉ, in
his official capacity as District Attorney of the
16th Judicial District Attorney’s Office;
RONALD J. THERIOT, in is official capacity
as Sheriff of St. Martin Parish

Defendants

* CIVIL ACTION
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* NO. 6:20-cv-00983
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* JUDGE
* ROBERT R. SUMMERHAYS
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* MAGISTRATE JUDGE
* CAROL B. WHITEHURST
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**MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION FOR SUMMARY
JUDGMENT FILED ON BEHALF OF M. BOFILL DUHÉ
IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR THE
16TH JUDICIAL DISTRICT, STATE OF LOUISIANA**

NOW INTO COURT, through undersigned counsel, comes **M. Bofill Duhé in his Official Capacity as District Attorney for the 16th Judicial District, State of Louisiana** (“Duhé” or “Movant”), who, pursuant to the Federal Rules of Civil Procedure Rules, including but not limited to Rules 12(c) and 56, and for the reasons set forth in the attached memorandum, the Statement of Facts as to Which There is No Genuine Issue, the Affidavit of M. Bofill Duhé, and further based on the exhibits attached in support of the motions, and further considering all of the pleadings and exhibits filed into the record of these proceedings, files this Motion for Judgment on the Pleadings and Motion for Summary Judgment, and prays for dismissal of the claims against him;

Movant prays for such other general and equitable relief to which he may be entitled in the premises.

Respectfully submitted,

s/ Ralph R. Alexis III

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Judicial District, State of Louisiana*

4891-9864-8338, v. 1

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**MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS
AND MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF M. BOFILL
DUHÉ IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY FOR THE 16TH
JUDICIAL DISTRICT, STATE OF LOUISIANA**

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42 U.S.C. §19838

MAY IT PLEASE THE COURT:

I. BACKGROUND

A. Introduction

The focus of this Motion for Summary Judgment is narrow. The question presented is whether District Attorney Duhé’s complete disavowal—expressed in writing and herein—of any intent to prosecute the hereinafter described “Arrestee Plaintiffs” is fatal to the standing of said plaintiffs to bring this lawsuit against Duhé.

The lawsuit arises out of protests occurring during the construction of the so-called “Bayou Bridge Pipeline.” Anne White Hat (“White Hat”), Ramon Mejia (“Mejia”), and Karen Savage (“Savage”)¹ allege that in August-September 2018, in connection with protests against the construction of the Pipeline on land in St. Martin Parish, they were arrested by the St. Martin Parish Sheriff’s Office for unauthorized entry of a “critical infrastructure” in violation of La. R. S. 14:61. (Rec. Doc. 1 ¶ 85-93.)² Indeed, it is undisputed that they were arrested on that charge. Statement of Material Facts, ¶¶ 1-3.

B. Plaintiffs

The original plaintiffs in this case were: White Hat, Mejia, Savage, Sharon Lavigne, Harry Joseph, Katherine Aaslestad and Peter Aaslestad, Theda Larson Wright, Alberta Larson Stevens, Judith Larson Hernandez, RISE St. James, 350 New Orleans, and Louisiana Bucket Brigade.

This Court has dismissed the claims of all plaintiffs other than those of White Hat, Mejia, and Savage. (Rec. Doc. 83.)

¹ Plaintiffs White Hat, Mejia, and Savage are sometimes referred to herein as the “Arrestee Plaintiffs.”

² Plaintiffs Mejia and Savage allege that they were also cited for “Remaining After Being Forbidden” in violation of La. R.S. 14:63.3, a misdemeanor. That statute is not at issue in these proceedings.

C. Defendants

1) Ronald J. Theriot in his official capacity as former Sheriff of St. Martin Parish

At the time of the arrests, Defendant Ronald J. Theriot was the sheriff of St. Martin Parish, the parish in which the Complaint alleges “protesters have been arrested, booked, detained, and charged with felonies under the recent amendment to La. R.S. 14:61.” (Rec. Doc. 1, ¶ 32.)

2) M. Bofill Duhé, in his official capacity as District Attorney for the 16th Judicial District

Defendant District Attorney M. Bofill Duhé is the District Attorney for the Sixteenth Judicial District (“Duhé”) which encompasses the parishes of Iberia, St. Mary, and St. Martin.³ Plaintiffs White Hat, Mejia and Savage assert that they are “...currently facing the possibility of Prosecution...” (Rec Doc. 1, ¶¶ 19-21). The Arrestee Plaintiffs do not allege that Duhé has initiated prosecution against them. In fact, it is undisputed that Duhé has declined and completely disavowed any intent whatsoever to prosecute them. Statement of Material Facts, ¶¶ 5-7; Affidavit of M. Bofill Duhé (at ¶¶ 6-7), attached to the Statement of Material Facts and hereinafter referred to as “Exhibit 1”.

D. The Expropriation and Trespass Proceeding

The Complaint contains extensive allegations concerning state court actions for expropriation brought in St. Martin Parish on behalf of Bayou Bridge Pipeline, LLC and a trespass action filed by various property owners against Bayou Bridge Pipeline, LLC.⁴ See, for example, Rec Doc. 1, ¶¶ 65-71. A trial was held before Judge Keith R. J. Comeaux on November 27-29,

³ La. R. S. 13:477 (16).

⁴ This Court can and respectfully should take notice of the Reasons For Judgment rendered by Judge Keith J. Comeaux in the matter entitled *Bayou Bridge Pipeline, LLC vs. 38 Acres, More or Less, Located in St. Martin Parish; Barry Scott Carline, et al*, bearing no. 87011 on the docket of the 16th Judicial District Court for the Parish of St. Martin, State of Louisiana. (Rec. Doc. 30-6).

2018. Judge Comeaux ruled that, the expropriation of land for a servitude to lay the pipeline served a public and necessary purpose and granted expropriation to Bayou Bridge Pipeline. He further found that, although Bayou Bridge Pipeline was entitled to a servitude to lay the pipeline, it had entered onto and disturbed certain landowners' property prior to the time it had acquired the right to do so. Judge Comeaux's ruling was appealed to the Louisiana Third Circuit, which affirmed the judgment in part, reversed the judgment in part, and remanded the case. *Bayou Bridge Pipeline, LLC v. 38.00 Acres, More or Less, Located in St. Martin Parish, et al.*, 2019-565 (La. App. 3 Cir. 7/15/20); 304 So.3d 52, affirmed and remanded, 2020-01017 (La. 6/29/21); 320 So.3d 1054.

E. Course of Proceedings

In pertinent part, Duhé moved to dismiss these proceedings against him on the grounds that the Court should abstain from exercising its jurisdiction and for failure to state a claim. (Rec. Doc. 32). Alternatively, Duhé moved that the case should be transferred to the Western District of Louisiana. The Honorable John deGravelles denied the motion to dismiss but granted the motion to transfer. Rec. Doc. 48. Thereafter Duhé filed a Motion for Reconsideration (Rec. Doc. 64). This Court granted Duhé's motion in part and dismissed the claims of all but the three Arrestee Plaintiffs. (Rec. Doc 83). In so doing, this Court held that only the Arrestee Plaintiffs had standing to sue. As to the standing of the Arrestee Plaintiffs to bring this action against Duhé, this Court opined thusly:

Here, the Arrestee Plaintiffs allege that they were arrested and are still under the threat of prosecution for violating La. R.S. 14:61 even though they have not been formally charged for those violations. In *Seals v. McBee*, the plaintiff was arrested for allegedly threatening a public official under La. R.S. 14:122. The plaintiff, however, was not formally charged and the district attorney disavowed prosecution. The Fifth Circuit nevertheless concluded that the plaintiff had adequately demonstrated an injury in fact because the plaintiff "has a concrete stake in this litigation because

the District Attorney can change his mind and prosecute him.” According to the court “the specter of prosecution for violating a potentially unconstitutional law” with prosecution hanging over the plaintiff’s head demonstrated an injury that was concrete, particularized, and actual or imminent.

The Arrestee Plaintiffs’ injury allegations here are stronger than the allegations in *Seals*—not only have they have been arrested by St. Martin Parish Sheriff’s Deputies for violating La. R.S. 14:61, there is no showing that Defendants have disavowed prosecution. Moreover, even if defendant Duhé disavows prosecution, the Arrestee Plaintiffs would be subject to the threat of prosecution until September 2022 under the four-year statute of limitations applicable to the type of felony offense created by La. R.S. 14:61.

The Arrestee Plaintiffs also have stated an injury based on their allegation that Defendants’ enforcement of La. R.S. 14:61 has a chilling effect on future protests directed toward the Bayou Bridge Pipeline. The Arrestee Plaintiffs allege that they would participate in future protests of the Bayou Bridge Pipeline but fear a felony prosecution under La. R.S. 14:61 given their prior arrests.

* * * * *

Finally, the Arrestee Plaintiffs have adequately alleged causation and redressability. To the extent that the Arrestee Plaintiffs’ injury flows from the enforcement of and prosecution under La. R.S. 14:61, their injury is “fairly traceable” to the actions of Defendants and can be redressed by declaratory and injunctive relief precluding enforcement of the statute. Specifically, the Arrestee Plaintiffs have pled that they were arrested—in some cases twice—by deputies from the St. Martin Parish Sheriff’s Office. Also, as the District Attorney for the 16th JDC, defendant Duhé has enforcement authority over La. R.S. 14:61 as well as decision-making authority over the prosecution of the Arrestee Plaintiffs for past alleged violations of the Amended Statute. The injunctive and declaratory relief requested by Plaintiffs would eliminate the threat of future arrests and prosecution. In sum, the Arrestee Plaintiffs have adequately demonstrated standing based on the allegations in the Complaint.

(Rec. Doc. 83, pp. 11-13; footnotes omitted).

F. The Disavowal of Prosecution by Duhé

A Louisiana District Attorney “... has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute.” La. C. Cr. Proc. art. 61; Louisiana Const. of 1974, Art. V, § 26 (B); La. R.S. 16:1. See also, Exhibit “A” to Exhibit “1”, at ¶ 3. Subsequent to the aforementioned ruling by this Court, Duhé exercised his prosecutorial discretion and determined not to prosecute the Arrestee Plaintiffs for any crime. Statement of Material Facts ¶ 5. Further, Duhé completely disavowed any intent whatsoever to prosecute Arrestee Plaintiffs. Statement of Material Facts ¶ 6; See also, Exhibit “1” at ¶¶ 6-7.

II. STANDARDS APPLICABLE TO MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION FOR SUMMARY JUDGMENT

A. Motion for Judgment on the Pleadings.

The **standard** for deciding a Rule 12(c) motion is the same as a Rule 12(b)(6) motion to dismiss. The court “accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.”⁵ The plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).

B. Motion for Summary Judgment

Summary Judgment is proper when the pleadings and evidence on file show that no genuine issue exists as to any material fact and that the moving party is entitled to judgment or partial judgment as a matter of law. See Fed. R. Civ. P. 56. Before a court may grant summary judgment, the moving party must demonstrate that it is entitled to judgment as a matter of law

⁵ *Guidry v. American Public Life Insurance Co.*, 512 F. 3d 177, 180 (5th Cir. 2007); *Hacienda Records, L.P. et al v. Ramos, et al*, 718 Fed. Appx. 223, 227-28 (5th Cir. 2018).

because there is no actual dispute as to an essential element of the non-movant's case. See *Topalain v. Ehrman*, 954 F.2d 1125 (5th Cir. 1992), cert. denied, 506 U.S. 825, 113 S.Ct. 82, 121 L.Ed 2d 46 (1992). The threshold inquiry, therefore, is whether there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251, 106 S. Ct. 2505 91 L.Ed 2d 202 (1986). Of course, "the substantive law will identify which facts are material." *Id.* At 248.

A movant for summary judgment need not support the motion with evidence negating the opponent's case; rather, once the movant establishes that there is an absence of evidence to support the non-movant's case, the burden is on the non-movant to make a showing sufficient to establish each element as to which that party will have the burden of proof at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-25, 106 S.Ct 2548, 91 L.Ed 2d 265 (1986).

Once the burden shifts, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis in original) (quoting Rule 56 (e)); see also *Fontenot*, 780 F. 2d at 1195-98. A party must do more than simply show some metaphysical doubt as to the material facts. *Matsushita*, 475 U.S. at 586, Stated another way, [i]f the record, taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *Friou v. Phillips Petroleum Co.*, 948 F.2d 972, 974 (5th Cir. 1991) (citing *Matsushita*, 475 U.S. at 587). In determining whether a genuine issue exists for trial, all of the evidence must be viewed in the light most favorable to the motion's opponent. *Gremillion v. Gulf Coast Catering Co.*, 904 F.2d 290, 292 (5th Cir. 1990).⁶

⁶ See also Judge F. A. Little's summary of applicable law in *Todd v. City of Natchitoches*, 238 F.Supp.2d 793, 798 (U.S.D.C. W.D. La. 2002). ("...Conclusory denials, improbable inferences, and legalistic argumentation are not an adequate substitute for specific facts showing that there is a genuine issue for trial....")

III. PLAINTIFFS LACK STANDING TO BRING THIS PROCEEDING

Article III of the U.S. Constitution restricts the jurisdiction of the federal courts to actual cases and controversies. The case or controversy requirement has been effectuated by several doctrines, the most important of which is standing. *Parkhurst v. Tabor*, 569 F. 3d 861, 865 (8th Cir. 2009), quoting *Allen v. Wright*, 468 U. S. 737, 750, 104 S. Ct. 3315, 82 L. Ed. 2d 566 (1984). To establish constitutional standing “the plaintiff must show that [she] has suffered an ‘injury in fact’ that is: concrete and particularized and actual or imminent, fairly traceable to the challenged action of the defendant; and likely to be redressed by a favorable decision.” *Lugan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The Plaintiffs are suing for prospective relief only, asking for a declaratory judgment regarding the constitutionality of R.S. 14:61 and an injunction to prevent the Defendants from enforcing this statute as it pertains to pipelines. To establish standing to sue for injunctive relief,⁷

... a party must: (1) have suffered an injury-in-fact; (2) establish a causal connection between the injury-in-fact and a complained-against defendant’s conduct; (3) show that it is likely, not merely speculative, that a favorable decision will redress the injury-in-fact; and (4) demonstrate either continuing harm or a real and immediate threat of repeated injury in the future. ... Even when a plaintiff has standing to sue for damages, he or she may lack standing to seek prospective injunctive relief. ...

Kokesh v. Curlee, 422 F.Supp.3d 1124, 1132 (2019).

In *Kokesh v. Curlee*, *supra*, Mr. Kokesh was a passenger in a motor vehicle which had stopped on the shoulder of Interstate 10 in New Orleans. A Louisiana state trooper stopped his vehicle behind the vehicle in which Kokesh had been riding. The officer handcuffed another passenger and accused him of spray-painting the wall adjacent to the shoulder of the road. After

⁷ The same restrictions are imposed on suits for declaratory relief. See *Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003).

determining that no spray painting had actually taken place, the officer began to uncuff the other passenger. While in that process, the officer noticed that Kokesh was videorecording the encounter. The officer then demanded identification from Kokesh. Kokesh refused. Whereupon the officer arrested Kokesh and charged him with resisting an officer in violation of La. R.S. 14:108(B)(1)(c). Mr. Kokesh was injured in the course of the arrest. Subsequently, the charge initiated against Kokesh were rejected by the Orleans Parish District Attorney. Mr. Kokesh then filed a lawsuit against, *inter alia*, the arresting officer, the superintendent of the Louisiana State Police, and the Orleans Parish District Attorney alleging false arrest and imprisonment, kidnapping, battery, malicious prosecution, § 1983 First Amendment retaliation; a § 1983 clam for Fourth Amendment “malicious prosecution;” and a § 1983 claim for unreasonable seizure, and excessive and unreasonable use of force. Kokesh also requested injunctive and declaratory relief.

The superintendent of the state police moved to dismiss the claims against him in pertinent part on the grounds that Kokesh did not allege facts presenting a justiciable case or controversy. In arguing that his claim for injunctive relief was justiciable, Kokesh, like the Arrestee Plaintiffs in the instant proceeding, cited to the Fifth Circuit’s decision in *Seals v. McBee*, 898 F.3d 587 (5th Cir. 2018). U.S. District Judge Mary Ann Vial Lemmon granted the motion, distinguishing *Seals*. The Court’s reasoning is instructive here:

The present case is distinguishable In *Seals*, the Fifth Circuit stated that “[w]hether the government disavows prosecution is a factor in finding a credible threat of prosecution.... is only one factor among many—for example, [the Supreme Court has] found standing because there was a history of enforcement, and the government would not disavow prosecution.” *Id.* at 592 (citations omitted). The *Seals* court also noted that the Supreme Court had previously “found standing because, even though the plaintiffs had not yet violated the statute and the statute had never been applied, the government would not disavow prosecution if plaintiffs engaged in their intended course of action.” *Id.* (citations omitted).

In the instant case, as conceded by counsel for Kokesh at oral argument, the attorney representing the New Orleans D.A.'s office in this case came before the court and stated on the record that the D.A. would not be prosecuting Kokesh for the charge, which it had refused. **This is not a non-committal promise, but a firm disavowal to prosecute on the charge, made on the record.** Moreover, neither side has presented the court with evidence concerning the history of enforcement of the challenged statute. Accordingly, Kokesh has not established the requisite threat of a "real and immediate threat of repeated injury." *Lyons*, 461 U.S. at 102, 103 S.Ct. 1660.

For an actual controversy to exist, Kokesh would have to find himself in a situation where he violated a law, was arrested by a state trooper, and the trooper invoked La. R. S. 14:108 to ascertain his identity. **While this sequence of events is not impossible, it is too speculative to constitute the immediate threat of injury required for standing to pursue prospective injunctive relief.**

Kokesh, supra, at 1133-1134; **emphasis added.**

The Orleans Parish District Attorney also moved to dismiss on several grounds, including lack of a justiciable controversy. Judge Lemmon, in an unreported decision, also granted that motion for the same reasons. Of particular pertinence to the instant case are her reasons for rejecting Kokesh's request for declaratory relief:

It appears that Kokesh's claims against the OPDA are purely speculative. While the alleged ambiguity of the challenged statute may be a legal question, vis-a-vis the OPDA, the only occasion referenced in plaintiff's complaint where it could have been enforced was rendered moot when the OPDA rejected the charge. Thus, there are no facts to suggest if, or how, the OPDA intends to enforce the statute in the future. Accordingly, any purported injury by the OPDA to plaintiff or anyone else is "contingent on future events that may not occur as anticipated, or indeed may not occur at all." Lopez, supra. The claim is therefore not ripe for adjudication. Further, it appears that plaintiff will suffer no hardship from the court withholding consideration of the claim. Kokesh has no charges pending against him stemming from the challenged statute, and in the event that he does at some future date, he may raise the claim then when an actual and concrete controversy exists. Accordingly,

the court lacks jurisdiction over the claims against defendant Cannizzaro.

Adam Kokesh v. Kevin Curlee, et al, Docket No. 19-cv-1372, Rec. Doc. 18 (E.D. La. 4/30/2019) (Not reported in F.Supp.).

Kokesh alleged that he “intends to continue his activism in Louisiana, intends to continue to rely upon and invoke his rights guaranteed by the state and federal constitutions, and therefore intends to continue to violate the unconstitutional strictures of La. R.S. 14:108(B)(1)(c).” In the instant case White Hat vaguely alleges that “The pending charges have affected her life and her ability to engage in further demonstrations against the Bayou Bridge pipeline and other petrochemical projects.” Rec. Doc. 1, ¶ 19. Savage vaguely alleges that “The law, with its harsh penalties has impacted and chilled her ability to observe and report on events that are of great public concern.” Rec. Doc. 1, ¶ 21.

The facts and circumstances of this case are identical to those in *Kokesh*. Duhé has not only declined to prosecute the Arrestee Plaintiffs; he has totally disavowed prosecution. In its aforementioned ruling this Court noted that “the Arrestee Plaintiffs would be subject to the threat of prosecution until September 2022 under the four-year statute of limitations applicable to the type of felony offense created by La. R.S. 14:61.” (Rec. Doc. 83, p. 11). However, it is abundantly clear from Duhé’s letter disavowing prosecution and this motion that there will be no such prosecution. That cannot be disputed. Moreover, like the allegations in *Kokesh*, the allegations of the Arrestee Plaintiffs are completely speculative. The undisputed facts show that there is no Article III case or controversy presented here. Accordingly, it is submitted that the undisputed facts support that the Arrestee Plaintiffs do not have standing to pursue the injunctive and

declaratory relief sought. It is further respectfully submitted that it would serve no purpose to allow the continuation of these proceedings against Duhé.

IV. CONCLUSION

For the reasons set forth herein, Movant prays that this Court dismiss this lawsuit as against Duhé.

Respectfully submitted,

s/ Ralph R. Alexis III

Ralph R. Alexis III, T.A. (2379)

Glenn B. Adams (2316)

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*Counsel for M. Bofill Duhé, his official
capacity as District Attorney for the 16th
Judicial District, State of Louisiana*

UNITED STATES DISTRICT COURT
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VERSUS

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**STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE
ISSUE FILED ON BEHALF OF M. BOFILL DUHÉ IN HIS OFFICIAL CAPACITY AS
DISTRICT ATTORNEY FOR THE 16TH JUDICIAL DISTRICT,
STATE OF LOUISIANA**

NOW INTO COURT, through undersigned counsel, comes M. Bofill Duhé in his Official Capacity as District Attorney for the 16th Judicial District, State of Louisiana, who submits the following Statement of Material Facts as to which there is no Genuine Issue, in support of his Motion for Summary Judgment:

Arrests of Plaintiffs Mejía, Savage, and White Hat

1. Plaintiffs Ramon Mejía (“Mejía”) and Karen Savage (“Savage”) were arrested by St. Martin Parish Sheriff deputies on August 18, 2018. [Rec. Doc. 1, at ¶¶ 20 – 21];

2. Anne White Hat (“White Hat”) was arrested by St. Martin Parish Sheriff deputies on September 18, 2018. [Rec. Doc. 1, at ¶ 19];
3. Mejía, Savage, and White Hat were each booked by St. Martin Parish Sheriff deputies under the charge of “Unauthorized Entry of a Critical Infrastructure” in violation of La. R.S. 14:61. [Rec. Doc. 1, at ¶¶ 19-21, 32];
4. Subsequent to the arrests of Mejía, Savage, and White Hat, the St. Martin Parish Sheriff forwarded its investigative files with respect to said arrests to the District Attorney for the 16th Judicial District for review and for a decision concerning whether or not to prosecute White Hat, Mejía, and Savage for any offense. [Affidavit of M. Bofill “Bo” Duhé, attached hereto as Exhibit “1”, at ¶ 5];

The Disavowal of Prosecution by Duhé

5. On July 7, 2021, Duhé issued a letter to counsel for White Hat, Mejía, and Savage, advising that he was declining to prosecute White Hat, Mejía and Savage for any offense arising out of their arrest. [See Exhibit “A” attached to Exhibit “1”, at ¶ 6];
6. In the said letter, Duhé further affirmatively disavowed any intent to prosecute White Hat, Mejía, and Savage for any alleged events occurring from August 2018 through September 2018, which includes any acts they were alleged to have taken on the date of their arrest; [See Exhibit “1”, at ¶ 7 and Exhibit “A” attached to Exhibit “1”];
7. As of April 18, 2022, Duhé has again affirmatively disavowed any future prosecution of White Hat, Mejía, Savage, or any of the individuals listed in said letter (attached to his Affidavit as “Exhibit A”), based on the events that allegedly took place in St. Martin Parish from August 2018 through September 2018 for which they were arrested. [Exhibit “1”, at ¶ 8];

8. Duhé has stated that his decision to decline and disavow prosecution was based upon the discretion vested in him by the Louisiana Constitution Art. 5 § 26, La. R.S. 16:1, and La. C. Cr. P. art 61. [Exhibit “1”, at ¶ 9].

s/ Ralph R. Alexis III

Ralph R. Alexis III, T.A. (2379)

Glenn B. Adams (2316)

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*Counsel for M. Bofill Duhé, his official
capacity as District Attorney for the 16th
Judicial District, State of Louisiana*

January 12, 2015. Hereinafter I refer to “District Attorney for the 16th Judicial District” or “my office.”

2. I make this affidavit on my own personal knowledge in support of the motion for summary judgment filed on my behalf in these proceedings in my official capacity.
3. Pursuant to the authority granted to me under La. Const. Art. 5 § 26, La. R.S. 16:1, and La. C. Cr. P. art 61, I have entire charge and control of every criminal prosecution instituted or pending in my district, and determine whom, when, and how [or whether] a case shall be prosecuted.
4. On August 18, 2018, Plaintiffs Ramon Mejía (“Mejía”) and Karen Savage (“Savage”) were arrested by St. Martin Parish deputies; and on September 18, 2018, Anne White Hat (“White Hat”) was also arrested by St. Martin Parish deputies. Mejía, Savage, and White Hat were each booked by the St. Martin Parish Sheriff under the charge of “Unauthorized Entry of a Critical Infrastructure” in violation of La. R. S. 14:61.
5. Subsequent to the arrests of White Hat, Mejía and Savage, the St. Martin Parish Sheriff forwarded its investigative files with respect to said arrests to my office.
6. On July 7, 2021, I issued a letter to counsel for White Hat, Mejía, and Savage advising that I was declining to prosecute White Hat, Mejía and Savage (and others) for any offense arising out of their arrest. (Exhibit “A”).
7. In the said letter, I further affirmatively disavowed any intent to prosecute White Hat, Mejía, and Savage (and others) for any alleged acts arising out of

the alleged events occurring from August 2018 through September 2018, which includes any acts they were alleged to have taken on the date of their arrest.


- 8. Further, I herein again affirmatively disavow any future prosecution of White Hat, Mejía, Savage, or any of the individuals listed in the letter based on the events that allegedly took place in St. Martin Parish from August 2018 through September 2018 for which they were arrested.
- 9. My decision to decline and disavow prosecution was based upon the aforementioned discretion vested in me by the aforementioned Louisiana constitutional and statutory provisions.
- 10. My decision to decline and disavow prosecution was not based on any alleged misconduct on behalf of the St. Martin Parish Sheriff's Office.

Further affiant sayeth not.



M. BOFILL "BO" DUHÉ
District Attorney for the Sixteenth Judicial District

**SWORN TO AND SUBSCRIBED BEFORE
ME, THIS 18th DAY OF APRIL, 2022.**



W. Claire Howington, LSBA# **33128**
NOTARY PUBLIC
STATE OF LOUISIANA
MY COMMISSION IS FOR LIFE



M. BOFILL DUHÉ
DISTRICT ATTORNEY

16TH JUDICIAL DISTRICT
Iberia • St. Martin • St. Mary

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July 7, 2021

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VIA EMAIL – HARD COPY TO FOLLOW

quigley77@gmail.com

Mr. William P. Quigley
Loyola University of New Orleans
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New Orleans, LA 70118

RE: Madeline Hicks
Ramon Daniel Mejia
Brittany Osland
Karen G Savage
Thomas George Tackett
Isabelle Gauthier
Elliot Kyle Anderson
Eric Moll
Cindy Spoon

Cherri Foytlin
Anna Rowe
Hunter Shortbear
Elliot Kyle Anderson
Anne Whitehat
Julie Dreamer
Renee Jackson
Marijade Summers
Sophia Cooks Phillips

Dear Mr. Quigley:

As District Attorney of the Sixteenth Judicial District for the State of Louisiana and pursuant to the authority granted to me under LA Const. Art. 5 § 26, LA R.S. 16:1, and La. C.Cr.P. Art. 61, I have refused prosecution as to all individuals listed above, arising out of the alleged events occurring from August 2018 through September 2018 ("the Incident"), for which they were arrested. My refusal to prosecute includes, but is not limited to, any alleged violation of La. R. S. 14:61.

To avoid any doubt, I write this letter as an assurance of non-prosecution and to affirmatively disavow any future prosecution of the above listed individuals arising out of the Incident.

Sincerely,

M. Bofill Duhé
District Attorney

EXHIBIT "A"

LAFAYETTE, LOUISIANA, this _____ day of _____, **2022**.

ROBERT R. SUMMERHAYS
UNITED STATES DISTRICT JUDGE

4868-6753-2818, v. 1