

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i> ,)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,)	
)	
v.)	GREENPEACE
)	INTERNATIONAL’S BRIEF IN
GREENPEACE INTERNATIONAL, <i>et al.</i> ,)	SUPPORT OF GREENPEACE
)	DEFENDANTS’ MOTION TO STAY
Defendants.)	PROCEEDINGS TO ENFORCE
)	THE JUDGMENT WITHOUT
)	BOND, OR IN THE ALTERNATIVE
)	WITH MODIFIED SECURITY
)	

[¶1] To begin, Greenpeace International (“International”) joins and incorporates by reference Greenpeace Inc.’s Brief in Support of Motion to Stay Proceedings to Enforce the Judgment Without Bond, or in the Alternative with Modified Security. International separately briefs this Court as to issues specific to International regarding whether a bond requirement should be imposed (and, if so, at what amount). For one, International maintains that this Court does not properly have jurisdiction over International. In addition, enforcement against International would require domesticating the judgment through the Dutch courts.

[¶2] Personal jurisdiction is required as “as a matter of constitutional due process[.]” *First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 749 (5th Cir. 2012), *as revised* (Jan. 17, 2013) (internal quotation marks omitted). As to this constitutional right, this Court, in its recent Memorandum Opinion, referenced Judge Marquart’s pre-trial February 2020 Order and held: “The Court already decided this issue [of personal jurisdiction]

Energy Transfer, LP, et al. v. Greenpeace International, et al.
 Greenpeace International’s Brief ISO Greenpeace Defendants’ Motion To Stay Execution Of Judgment Without Bond, Or In The Alternative With Modified Security

and it need not revisit the decision.” See Doc ID 5397, ¶ 4. Respectfully, Judge Marquart’s statements regarding personal jurisdiction were only a prima facie determination rather than a final determination on personal jurisdiction. That Order simply allowed Plaintiffs to proceed to the evidentiary stage, at which point it was Plaintiffs’ burden to prove by a preponderance of the evidence that the Court had personal jurisdiction over International.

[¶3] Prior to trial, in 2019, International filed a Motion to Dismiss which included the argument that it should be dismissed from this lawsuit for lack of personal jurisdiction under N.D.R.Civ.P. 12(b)(2). See Dkt 48, ¶ 48. Thereafter, International filed a Motion to Dismiss First Amended Complaint, which again included the argument that it should be dismissed from this lawsuit for lack of personal jurisdiction under N.D.R.Civ.P. 12(b)(2). See Doc ID 134, ¶ 35.

[¶4] After International’s Motion to Dismiss, Plaintiffs requested and were granted oral argument. (Dkt 193). To defeat International’s Motion to Dismiss, Plaintiffs were only required to make a prima facie showing of personal jurisdiction. *Northstar Founders, LLC*, 2014 ND 200, ¶ 22, 855 N.W.2d 614, 625; *Creative Calling Sols., Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015) (“At the motion stage, the action should not be dismissed for lack of jurisdiction if the evidence, viewed in the light most favorable to [Plaintiff], is sufficient to support a conclusion that the exercise of personal jurisdiction over [Defendant] is proper.”). An evidentiary hearing was never held, and after oral argument only, in February of 2020, Judge Marquart issued a Memorandum Opinion and Order finding that the court had personal jurisdiction over International. Dkt 242. More specifically, that decision— at the outset of the case— (1) speculated that International could potentially have waived personal jurisdiction by filing an answer in the federal court action, and (2) that based on the unverified allegations of the

Energy Transfer, LP, et al. v. Greenpeace International, et al.
Greenpeace International’s Brief ISO Greenpeace Defendants’ Motion To Stay Execution Of Judgment Without Bond, Or In The Alternative With Modified Security

complaint, Plaintiffs had made a prima facie showing of personal jurisdiction under Rule 12. At the January 23, 2026 oral argument Plaintiffs' counsel incorrectly asserted: "And because they answered in the federal court case, and it was then remanded to Your Honor, it was waived." Dkt 5408 pp. 31-32. Contrary to Plaintiffs' counsel's statement to the Court, no answers were filed in the federal court cases by any party, including International, and thus International did not waive jurisdictional objections. *See* Exhibit A (Civil Dkt Case # 1:17-cv-00173-BRW-CRH); Exhibit B (Civil Dkt Case # 1:19-cv-00049-DLH-ARS). As Judge Marquart did not conduct an evidentiary hearing, his pre-trial ruling was based on unsubstantiated allegations, not evidence.

[¶5] If a prima facie finding of personal jurisdiction is made, then "[t]he plaintiff bears the burden of proof on the issue of personal jurisdiction, and must establish jurisdiction by a preponderance of the evidence at trial or when the court holds an evidentiary hearing." *Creative Calling Sols., Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015) (citing *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1387 (8th Cir. 1991)). This never happened. As a result, to date, personal jurisdiction has never been properly established over International.

[¶6] At trial, at the close of Plaintiffs' evidence, International made an oral Motion for Judgment as a Matter of Law, asserting that Plaintiffs did not establish jurisdiction by a preponderance of the evidence. March 10, 2025 Trial Transcript, pp. 30:5-13. The Court did not rule on that Motion. March 10, 2025 Trial Transcript, pp. 77:1-78:4. At the close of all evidence at trial, International renewed this same motion, and again, the Court did not rule on that Motion. March 14, 2025 Trial Transcript, pp. 13:10-13:24. On March 10, 2025, International made a written Motion for Judgment as a Matter of Law asserting the Court did not have jurisdiction over International, and the Court did not make a ruling. Dkt. 5016. After trial, International again

Energy Transfer, LP, et al. v. Greenpeace International, et al.
Greenpeace International's Brief ISO Greenpeace Defendants' Motion To Stay Execution Of Judgment Without Bond, Or In The Alternative With Modified Security

raised the issue of personal jurisdiction in its Motion for Judgment as a Matter of Law. Dkt. 5110. The Court did not address the same in its Opinion on that Motion. Dkt. 5321. International once more raised this issue of personal jurisdiction in its Motion for Reconsideration. Dkt. 5341. In its recent Order on Reconsideration, this Court only referenced Judge Marquart's prima facie finding. After the pleading stage, the Court never made the required determination on personal jurisdiction based on evidence.

[¶7] Personal jurisdiction “protects an individual’s liberty interest in not being subject to the binding judgment of a forum with which he has established no meaningful contacts, ties, or relations.” *First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 749 (5th Cir. 2012), as revised (Jan. 17, 2013) (internal quotation marks omitted).

[¶8] International has no such ties to North Dakota. Indeed, the court in the federal predecessor to this case held that BankTrack, an organization based in the Netherlands (like International) did not subject itself to personal jurisdiction in North Dakota by writing and publishing that letter. *See Energy Transfer Equity, LP v. Greenpeace Int’l*, No. 1:17-CV-00173-BRW, 2018 WL 4677787, at *6 (D.N.D. July 24, 2018). International was merely one of over 500 signatories to the allegedly defamatory letter that BankTrack authored and published. If by writing and publicizing that letter, BankTrack did not subject itself to North Dakota’s jurisdiction, then common sense tells us that by signing the letter, International could not have done so either. The evidence at trial also confirmed International did not direct any conduct to North Dakota in relation to the DAPL protests; indeed, the jury’s verdict did not find International liable for any of the “ground torts.”

[¶9] Even if the Court disagrees with International and determines that personal jurisdiction was established not only at the prima facie stage but also after trial, this constitutional issue is nonetheless a substantial one. Therefore, it would be equitable for this Court to exercise its discretion and waive bond for International until the constitutional question is resolved by the North Dakota Supreme Court.

[¶10] Second, the judgment cannot yet have a direct effect in the Netherlands, where International's assets are held. Because there is no treaty between the U.S. and the Netherlands regarding mutual recognition of civil judgments, enforcement against International will require domesticating the judgment through Dutch courts (Section 431 of the Dutch Code on Civil Proceedings). Requiring International to move its assets into the U.S. to post a bond effectively pre-judges the Dutch process for recognizing and executing the judgment, and would not be required by Dutch courts of a U.S. defendant in comparable circumstances. It would therefore be inequitable.

[¶11] For the foregoing reasons, International respectfully requests this Court to exercise its discretion and stay enforcement of the judgment either without bond or with a substantially reduced bond.

Dated: March 9, 2026.

s/ Derrick Braaten
Derrick Braaten, ND Bar # 06394
BRAATEN LAW FIRM
109 North 4th Street, Suite 100
Bismarck, ND 58501
(701) 221-2911
derrick@braatenlawfirm.com

Energy Transfer, LP, et al. v. Greenpeace International, et al.
Greenpeace International's Brief ISO Greenpeace Defendants' Motion To Stay Execution Of Judgment Without Bond, Or In The Alternative With Modified Security

s/ Everett W. Jack, Jr.

Everett W. Jack, Jr. (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
560 SW 10th Avenue Suite 700
Portland, OR 97205
(503) 241-2300
everettjack@dwt.com

Laura Handman (*pro hac vice*)
Adam Caldwell (*pro hac vice*)
DAVIS WRIGHT TREMAINE LLP
1301 K Street, NW, Suite 500
Washington, DC 20005
(202) 973-4200
laurahandman@dwt.com
adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International

/s/ Elizabeth Elsberry

Elizabeth Elsberry (#06286)
Christopher Rausch (#06277)
ELSBERRY & SHIVELY, P.C.
2800 N Washington St.
Bismarck, ND 58503
Phone: (701) 557-3384
Fax: (701) 425-0500
Email: betsy@nodaklaw.com
chris@nodaklaw.com

Attorneys for Greenpeace International

Energy Transfer, LP, et al. v. Greenpeace International, et al.
Greenpeace International's Brief ISO Greenpeace Defendants' Motion To Stay Execution Of Judgment
Without Bond, Or In The Alternative With Modified Security