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4 Attorney for Amicus Curiae,
5 Nuclear Watch New Mexico

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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT**
9 **OAKLAND DIVISION**
10

11 THE REPUBLIC OF THE MARSHALL
12 ISLANDS, a non-nuclear-weapon State
party to Treaty on the Non Proliferation
13 of Nuclear Weapons,

14 Plaintiff,

15 v.

16 THE UNITED STATES OF AMERICA;
PRESIDENT BARACK OBAMA, THE
17 PRESIDENT OF THE UNITED STATES
OF AMERICA; THE DEPARTMENT
18 OF DEFENSE; SECRETARY CHARLES
HAGEL, THE SECRETARY OF
19 DEFENSE; THE DEPARTMENT OF
ENERGY; SECRETARY ERNEST
20 MONIZ, THE SECRETARY OF
ENERGY; AND THE NATIONAL
21 NUCLEAR SECURITY
ADMINISTRATION,

22 Defendants.
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Civil Case No. 4:14-cv-01885-JSW

**NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF
NUCLEAR WATCH NEW MEXICO
IN SUPPORT OF PLAINTIFF AND IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS;
SUPPORTING POINTS AND
AUTHORITIES**

Hon. Jeffrey S. White
Hearing Date: October 10, 2014
(but related to an earlier hearing set for
September 12, 2014 at 9:00 a.m.)
Time: 9:00 A.M.
Courtroom: Oakland Courthouse,
Courtroom 5 – 2nd Floor,
1301 Clay Street
Oakland, CA 94612

MOTION AND NOTICE OF MOTION FOR LEAVE TO FILE AMICUS BRIEF

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Nuclear Watch New Mexico hereby moves the Court for leave to file a brief amicus curiae in the above-captioned case in support of Plaintiff and the Plaintiff's Opposition to the Defendants' Motion to Dismiss. This motion is noticed for hearing on October 10, 2014 at 9:00 a.m., and amicus anticipates a further motion to shorten that hearing date. A copy of the proposed amicus brief is attached as an exhibit to this motion.

Dated: August 21, 2014

Respectfully submitted,

/s/ Andrea R. St. Julian
Andrea R. St. Julian
Attorney for Nuclear Watch
New Mexico

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1 **POINTS AND AUTHORITIES**

2 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF AS**
 3 **AMICUS CURIAE**

4 “District courts frequently welcome amicus briefs from non-parties concerning
 5 legal issues that have potential ramifications beyond the parties directly involved or if
 6 the amicus has unique information or perspective that can help the court, beyond the
 7 help that the lawyers for the parties are able to provide.” *Sonoma Falls Devs., LLC v.*
 8 *Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). See also *MillerWohl*
 9 *Co., Inc. v. Comm’r of Labor & Indus., State of Mont.*, 694 F.2d 203, 204 (9th Cir.1982);
 10 *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.Supp.2d 1061, 1067–68
 11 (N.D.Cal.2005); *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C.2003); *Ryan v. Commodity*
 12 *Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir.1997) .) As discussed below,
 13 those standards are met here.

14
 15 **II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

16 Amicus curiae, Nuclear Watch New Mexico (Nuclear Watch), is a not-for-
 17 profit organization devoted to educating the public on nuclear weapons and related
 18 environmental issues. Nuclear Watch promotes safety and environmental protection
 19 at regional nuclear facilities, in particular the Los Alamos National Laboratory
 20 (LANL). Declaration of Jay Coghlan, ¶¶ 1-2. Nuclear Watch’s standing in the field of
 21 nuclear issues is evidenced by its fifteen-year history and its heavily trafficked
 22 website.¹ Declaration of Jay Coghlan, ¶¶ 1-2. The extensive experience of Nuclear
 23 Watch’s Executive Director and staff reinforce the organization’s standing.
 24 Declaration of Jay Coghlan, ¶¶ 1, 4-5, 7.

25
 26
 27 ¹ Nuclear Watch’s web site, www.nukewatch.org, receives approximately 1.1
 28 million hits a year. Declaration of Jay Coghlan, ¶¶ 2.

1 To accomplish its mission, Nuclear Watch rigorously complies, synthesizes,
2 and analyzes information on nuclear issues. Nuclear Watch specializes in "connecting
3 the dots" across voluminous, disparate documents, such as the Department of
4 Energy's annual Congressional Budget Requests, the Stockpile Stewardship and
5 Management Plans of its semi-autonomous nuclear weapons agency, the National
6 Nuclear Security Administration (NNSA), the Government Accountability Office
7 (GAO) audits, Department of Energy Inspector General reports, and many other
8 kinds of documents. Declaration of Jay Coghlan, ¶¶ 1-3.

9 In addition to using its in-depth analysis to educate the public, Nuclear Watch
10 engages key federal agencies and officials so as to positively influence government
11 policy. Declaration of Jay Coghlan, ¶ 4. These key agencies and officials include the
12 NNSA, the White House Office of Management and Budget, the GAO, the Defense
13 Nuclear Facilities Safety Board, members and staff of the House and Senate Armed
14 Services Committees and Appropriations Committees that authorize and fund the
15 nation's nuclear weapons budget. Declaration of Jay Coghlan, ¶¶ 2-3. The Nuclear
16 Watch Executive Director has also challenged the Department of Energy (DOE) over
17 major violations of the federal Clean Air Act through successful litigation.
18 Declaration of Jay Coghlan, ¶ 4.

19 The United States Government in various ways and venues claims it is in
20 compliance with the Treaty on the Non-Proliferation of Nuclear Weapons, (July 1,
21 1968) 21 U.S.T. 483, 729 U.N.T.S. 161.² Declaration of Jay Coghlan, ¶ 6-9, 11-14. Article
22 VI of the Treaty obliges the United States to pursue negotiations on effective
23 measures toward nuclear disarmament. The Government's claims of compliance,
24 however, have historically been and continue to be at odds with its actions.
25 Declaration of Jay Coghlan, ¶¶ 6-9, 11-14. Nuclear Watch and its staff gather and
26

27 ²This document is also available at [http://www.un.org/disarmament/WMD/](http://www.un.org/disarmament/WMD/Nuclear/NPTtext?lang=en)
28 Nuclear/NPTtext?lang=en.

1 disseminate information that exposes this dissonance. Declaration of Jay Coghlan, ¶¶
2 6-7.

3 4 **III. AMICUS CURIAE'S EXPERTISE WILL BENEFIT THIS COURT**

5 Nuclear Watch's fund of knowledge and experience engaging the public and
6 government officials on nuclear issues leads it to understand on a profound level the
7 dangerous consequences of the United States Government's failure to comply with
8 the Non-Proliferation Treaty. The world's most serious existential threats are nuclear
9 war between India and Pakistan and the acquisition of nuclear weapons by Al
10 Qaeda/Islamic State-inspired terrorists through possible Pakistani sources.

11 Declaration of Jay Coghlan, ¶ 8. The United States largely ignored Pakistan's
12 clandestine nuclear weapons programs while covertly fighting the Soviets in
13 Afghanistan. It is commonly believed that Pakistan and/or its agents subsequently
14 proliferated nuclear weapons technologies to North Korea, Libya and possibly Iran.³
15 Declaration of Jay Coghlan, ¶ 8. A Pakistani-derived nuclear weapon in the hands of
16 "terrorists" could now be our nation's greatest threat. Declaration of Jay Coghlan, ¶ 8.
17 Eliminating the threat to our national security created in part by the described actions
18 of the United States can only be assured through the global abolition of nuclear
19 weapons the Non- Proliferation Treaty contemplates,⁴ and which the Republic of the
20

21 ³ "In 2004, the Bush administration chose not to press the Pakistani government
22 to punish the nuclear scientist A.Q. Khan for selling nuclear technology
23 (including a nuclear weapons design) to Iran, Libya, and North Korea." *Nuclear,*
24 *Biological, and Chemical Weapons and Missiles: Status and Trends*, Congressional
25 Research Service, (July 2, 2004) p. 3, [http://fas.org/spp/starwars/crs/](http://fas.org/spp/starwars/crs/RL30699.pdf)
26 [RL30699.pdf](http://fas.org/spp/starwars/crs/RL30699.pdf).

27 ⁴ Global abolition must be universal and verifiable, which is no small task, one in
28 which the U.S. nuclear weapons establishment could and should provide the
necessary verification and monitoring technologies instead of stockpile
"modernization." Declaration of Jay Coghlan , ¶ 10.

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EXHIBIT

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 obligation. 6

 III. The United States is creating new military capabilities for U.S.
 nuclear weapons..... 10

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SUMMARY OF ARGUMENT

1
2 The United States claims to be in compliance with its Non-Proliferation Treaty
3 (NPT) Article VI obligation to pursue negotiations on effective measures toward
4 nuclear disarmament. This claim rests on its asserted reduction in the number of
5 nuclear weapons in its stockpile. The U.S., however, and other nuclear weapons
6 powers have not acted in good faith in even the initial step of pursuing the required
7 negotiations, much less engaged in comprehensive disarmament measures. To the
8 contrary, the U.S. is embarking upon an immense "modernization" program that will
9 qualitatively improve its nuclear weapons stockpile, delivery systems, supporting
10 research and production complex, that will likely cost more than a trillion dollars over
11 thirty years. The operational lives of nuclear weapons will be extended for as long as
12 six decades while endowing them with new military capabilities, despite government
13 denials at the highest levels. Irreversible dismantlements have dramatically slowed
14 and non-proliferation programs are being cut.

15 While some numerical reductions have recently been made to the declared
16 "active" versus "reserve" stockpile, even that is fungible and thus is not evidence of
17 "effective measures relating to... nuclear disarmament." New nuclear weapons
18 production facilities are being built that are expected to be operational until 2075 and
19 beyond. Despite quantitative reductions to the stockpile, qualitative improvements to
20 existing nuclear weapons, their delivery systems, and the nuclear weapons research
21 and production complex strongly indicate that the U.S. is not in compliance with its
22 NPT Article VI obligation "to pursue negotiations **in good faith** on effective measures
23 relating to cessation of the nuclear arms race at an early date and to nuclear
24 disarmament." (Emphasis added.)

INTEREST OF THE AMICUS CURIAE

1
2 Amicus curiae, Nuclear Watch New Mexico (Nuclear Watch), is a not-for-profit
3 organization devoted to educating the public on nuclear weapons and related
4 environmental issues. Nuclear Watch promotes safety and environmental protection
5 at regional nuclear facilities, in particular the Los Alamos National Laboratory
6 (LANL). Declaration of Jay Coghlan, ¶¶ 1-2. Nuclear Watch's standing in the field of
7 nuclear issues is evidenced by its fifteen-year history and its heavily trafficked
8 website.¹ Declaration of Jay Coghlan, ¶¶ 1-2. The extensive experience of Nuclear
9 Watch's Executive Director and staff reinforce the organization's standing. Declaration
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11 To accomplish its mission, Nuclear Watch rigorously complies, synthesizes,
12 and analyzes information on nuclear issues. Nuclear Watch specializes in "connecting
13 the dots" across voluminous, disparate documents, such as the Department of
14 Energy's annual Congressional Budget Requests, the Stockpile Stewardship and
15 Management Plans of its semi-autonomous nuclear weapons agency, the National
16 Nuclear Security Administration (NNSA), the Government Accountability Office
17 (GAO) audits, Department of Energy Inspector General reports, and many other kinds
18 of documents. Declaration of Jay Coghlan, ¶¶ 1-3.

19 In addition to using its in-depth analysis to educate the public, Nuclear Watch
20 engages key federal agencies and officials so as to positively influence government
21 policy. Declaration of Jay Coghlan, ¶ 4. These key agencies and officials include the
22 NNSA, the White House Office of Management and Budget, the GAO, the Defense
23 Nuclear Facilities Safety Board, members and staff of the House and Senate Armed
24 Services Committees and Appropriations Committees that authorize and fund the
25 nation's nuclear weapons budget. Declaration of Jay Coghlan, ¶¶ 2-3. The Nuclear
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27 ¹ Nuclear Watch's web site, www.nukewatch.org, receives approximately 1.1
28 million hits a year. Declaration of Jay Coghlan, ¶¶ 2.

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 2 major violations of the federal Clean Air Act through successful litigation. Declaration
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 7 VI of the Treaty obliges the United States to pursue negotiations on effective measures
 8 toward nuclear disarmament. The Government's claims of compliance, however, have
 9 historically been and continue to be at odds with its actions. Declaration of Jay
 10 Coghlan, ¶¶ 6-9, 11-14. Nuclear Watch and its staff gather and disseminate
 11 information that exposes this dissonance. Declaration of Jay Coghlan, ¶¶ 6-7.

12 Nuclear Watch's fund of knowledge and experience engaging the public and
 13 government officials on nuclear issues leads it to understand on a profound level the
 14 dangerous consequences of the United States Government's failure to comply with the
 15 Non-Proliferation Treaty. The world's most serious existential threats are nuclear war
 16 between India and Pakistan and the acquisition of nuclear weapons by Al
 17 Qaeda/Islamic State-inspired terrorists through possible Pakistani sources. Declaration
 18 of Jay Coghlan, ¶ 8. The United States largely ignored Pakistan's clandestine nuclear
 19 weapons programs while covertly fighting the Soviets in Afghanistan.
 20 It is commonly believed that Pakistan and/or its agents subsequently proliferated
 21 nuclear weapons technologies to North Korea, Libya and possibly Iran.³ Declaration of
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23 ²This document is also available at [http://www.un.org/disarmament/WMD/
 24 Nuclear/NPTtext?lang=en](http://www.un.org/disarmament/WMD/Nuclear/NPTtext?lang=en).

25 ³ "In 2004, the Bush administration chose not to press the Pakistani government
 26 to punish the nuclear scientist A.Q. Khan for selling nuclear technology
 27 (including a nuclear weapons design) to Iran, Libya, and North Korea." Library
 28 of Congress, *Nuclear, Biological, and Chemical Weapons and Missiles: Status and
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1 Jay Coghlan, ¶ 8. A Pakistani-derived nuclear weapon in the hands of “terrorists”
 2 could now be our nation’s greatest threat. Declaration of Jay Coghlan, ¶8. Eliminating
 3 the threat to our national security created in part by the described actions of the
 4 United States can only be assured through the global abolition of nuclear weapons the
 5 Non-Proliferation Treaty contemplates,⁴ and which the Republic of the Marshall
 6 Islands seeks to ensure through the instant action. Declaration of Jay Coghlan , ¶ 9.

7 Clearly, this case’s legal issues have significant impact far beyond the directly
 8 involved parties, impacting the entire world. Given its considerable expertise with the
 9 relevant issues, Nuclear Watch, through the instant amicus curiae brief seeks to
 10 provide insightful analysis and add broader practical context to this record evidence.

11 DISCUSSION

12 As Plaintiff the Republic of the Marshall Islands explains, “The U.S. is in
 13 Continuing Breach of its Obligation to Pursue Negotiations in Good Faith on Effective
 14 Measures Relating to Nuclear Disarmament.” Complaint for Breach of the NPT, p. 14.
 15 Plaintiff also notes, “In the 2010 Treaty Review Conference Final Document, the
 16 parties resolved in Action 1 as follows: “All States parties commit to pursue policies
 17 that are fully compatible with the Treaty and the objective of achieving a world
 18 without nuclear weapons.” *Id.*, p 12, ¶51.

19 Defendants’ Motion to Dismiss this action claim:

20 According to the Report accompanying the Senate’s resolution of advice
 21 and consent to ratification, the NPT’s “fundamental purpose is to slow
 22 the spread of nuclear weapons by prohibiting the nuclear weapon states
 23 which are party to the treaty from transferring nuclear weapons to
 24

25
 26 ⁴ Global abolition must be universal and verifiable, which is no small task, one in
 27 which the U.S. nuclear weapons establishment could and should provide the
 28 necessary verification and monitoring technologies instead of stockpile
 “modernization.” Declaration of Jay Coghlan, ¶ 10.

1 others, and by barring the nonnuclear-weapon countries from receiving,
2 manufacturing, or otherwise acquiring nuclear weapons.

3 Motion to Dismiss, p. 2.

4 Defendants also claim:

5 ...an order of this Court declaring the United States in violation of its
6 international Treaty obligations would squarely contradict, and interfere
7 with, the position of the United States that it is “in compliance” with all
8 its obligations under arms control, nonproliferation, and disarmament
9 agreements and commitments.

10 Motion to Dismiss, pp. 5-6.

11 Defendants contend, “This Court Cannot, And Should Not, Grant Plaintiff Its
12 Requested Relief After Failing to Raise Its Claim in Federal Court for Almost Two
13 Decades.” *Id.*, 12. Defendants further contend:

14 . . .the issuance of declaratory (and associated injunctive) relief would be
15 contrary to the public interest, as it would risk interfering with the
16 efforts of the Executive Branch in the foreign and military arenas, where
17 discussions regarding the appropriate steps in support of nuclear
18 disarmament are ongoing.

19 Motion to Dismiss, p. 12.

20 Each of the Defendants’ claims and contentions are without merit. First, the Motion
21 to Dismiss fails to address the singular question that the Republic of the Marshall
22 Islands brings to the Court: Has the United States honored the Non-Proliferation
23 Treaty? The general contours of Government’s arguments are drawn with its
24 invocation of the U.S. Senate’s interpretation that the fundamental purpose of the NPT
25 is to bar non-weapons states from acquiring nuclear weapons.

26 The problem with that interpretation is that it is wholly inaccurate. As Plaintiff
27 notes, “The Treaty reflects the grand bargain made by the parties to it: the non-nuclear
28 weapon States agreed not to acquire nuclear weapons and the States possessing

1 nuclear weapons agreed to negotiate their elimination.” Complaint for Breach of the
2 NPT, ¶ 38.

3 As Plaintiff correctly states, the Non-Proliferation Treaty is a two-sided bargain
4 between nuclear weapons states and non-weapons states, and not even the U.S. Senate
5 can change that straightforward meaning of the treaty. The mutual bargain requires
6 all states to “pursue negotiations,” etc. The simple test of Defendants’ claim that the
7 United States is in compliance with all non-proliferation agreements is the question,
8 did the U.S. “pursue negotiations in good faith on effective measures relating to
9 cessation of the nuclear arms race at an early date and to nuclear disarmament....” or
10 not? The answer is clearly no. In simple fact, the nuclear weapons states have not
11 shown good faith in even the beginning step, which is the pursuit of required
12 negotiations. It therefore logically follows that the U.S. and other nuclear weapons
13 states have not honored their solemn obligation under the NPT’s bargain, which
14 Plaintiff seeks to rectify.

15 With respect to Defendants’ claim that there is some kind of statute of limitations
16 that bars Plaintiff from pursuing its complaint, it should be noted that only in the last
17 few years has the scope, extent and immense expense of U.S. modernization plans
18 become clear.⁵ Under these circumstances, Plaintiff’s complaint is well timed indeed.

19 **I. DEFENDANTS’ CLAIM THAT PLAINTIFF’S COMPLAINT IS CONTRARY**
20 **TO PUBLIC INTEREST IS SIMPLY WRONG.**

21 The remainder of this *amicus curiae* brief addresses Defendants’ claim that the relief
22 sought by Plaintiff would be contrary to the public interest, “as it would risk
23 interfering with the efforts of the Executive Branch in the foreign and military arenas,
24 where discussions regarding the appropriate steps in support of nuclear disarmament
25

26 ⁵ See, for example, the congressionally-required Department of Energy, *Fiscal Year*
27 *2014 Stockpile Stewardship and Management Plan* (June 2013)
28 http://nnsa.energy.gov/sites/default/files/nnsa/06-13-inlinefiles/FY14SSMP_2.pdf,
Sections 2.6, pp. 2-13 to 2-27.

1 are ongoing.” Defendants’ Motion to Dismiss, p. 13. Nuclear Watch’s extensive
 2 research has not revealed any public documentation of such Executive Branch
 3 deliberations, other than echoes of the President’s lofty but unfulfilled rhetoric. There
 4 is certainly not any concrete movement toward genuine nuclear disarmament, despite
 5 somewhat meaningless adjustments in the numbers of “active” versus “reserve”
 6 nuclear weapons. As a litmus test of real progress toward genuine nuclear
 7 disarmament, irreversible dismantlements of U.S. warheads have slowed to a crawl
 8 under the Obama Administration, with only an estimated 309 warheads taken apart in
 9 the last six years.⁶

10 On the other hand, extensive sources demonstrate that the U.S. has chosen not to
 11 disarm its nuclear stockpile in the foreseeable future, but is instead “modernizing” the
 12 arsenal and its supporting research and production complex for the long haul, as
 13 explained below.

14 II. FUTURE FUNDING LEVELS FOR NUCLEAR WEAPONS

15 MODERNIZATION PROGRAMS INDICATE THAT THE U.S. IS NOT 16 COMMITTED TO ITS NPT OBLIGATION.

17 The United States is not committed to its NPT obligations. The first obvious
 18 indicator is the level of funding the U.S. plans to spend on modernization of nuclear
 19 weapons, their delivery systems, and research and production complex over the next
 20 thirty years. Last December, the nonpartisan Congressional Budget Office (CBO)
 21 released its study *Projected Costs of Nuclear Forces 2014 -2023*.⁷ Its stunning conclusion
 22 is that estimated costs for maintenance and modernization of the nuclear weapons
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24 ⁶ See Kristensen, Hans, *US Nuclear Weapons Stockpile Number Declassified: Only 309*
 25 *Warheads Cut By Obama Administration*, Federation of American Scientists (April
 26 29, 2014) <http://fas.org/blogs/security/2014/04/nuclearstockpile/>. See also
 Declaration of Jay Coghlan, ¶ 11.

27 ⁷Congressional Budget Office, *Projected Costs of Nuclear Forces 2014 -2023*.
 28 (December 19, 2013) [http://www.cbo.gov/sites/default/files/cbofiles/
 attachments/12-19-2013-NuclearForces.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/12-19-2013-NuclearForces.pdf).

1 stockpile, delivery systems, and research and production complex will total \$355
 2 billion over the next decade, which includes three new multi-billion dollar nuclear
 3 weapons production facilities expected to be operational until 2075.⁸ The CBO also
 4 reported that costs after 2023 for the following two decades would increase yet more
 5 rapidly since modernization is only now beginning. From there it is reasonable to
 6 extrapolate that the U.S. will spend more than a trillion dollars over the next 30 years.⁹
 7 And, to make an obvious point, these “modernized” nuclear weapons and
 8 increasingly sophisticated (and expensive) delivery systems are clearly intended to
 9 last far beyond the 30 years of projected and extrapolated budgets.

10 Approximately two-thirds of modernization costs will be for new submarines,
 11 bombers, missiles that could be operational for the rest of this century, and their
 12 command and control. This is contrary to the Obama Administration’s rhetoric of a
 13 future world free of nuclear weapons. The remaining, and more imminent,
 14 expenditures will be for refurbished nuclear weapons and their supporting research
 15 and production complex, which includes the Los Alamos, Lawrence Livermore and
 16 Sandia National Laboratories.¹⁰ These labs, run by for-profit corporations, plan a
 17 never-ending cycle of exorbitantly expensive “Life Extension Programs” that will
 18 extend the service lives of existing nuclear weapons for decades while also endowing
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 21 ⁸ These three facilities are the Chemistry and Metallurgy Research Replacement
 22 Project at LANL (to support expanded plutonium pit production), the Uranium
 23 Processing Facility near Oak Ridge, TN (for production of nuclear weapons
 24 “secondaries,”) and the new Kansas City Plant for production/procurement of
 the thousands of types of non-nuclear parts (e.g. fuzes, guidance systems, radars,
 tritium reservoirs, etc.) that go into nuclear weapons.

25 ⁹ See, for example, Wolfstal, Lewis, and Quint, James Martin, *The Trillion Dollar*
Triad, Center for Nonproliferation Studies (January 2014). p.2,
 26 http://cns.miis.edu/opapers/pdfs/140107_trillion_dollar_nuclear_triad.pdf.

27 ¹⁰ Congressional Budget Office, *Projected Costs of U.S. Nuclear Forces 2014 - 2023*,
 (December 2013), p. 2, <http://www.cbo.gov/sites/default/files/cbofiles/a>
 28 [attachments/12-19-2013-NuclearForces.pdf](http://www.cbo.gov/sites/default/files/cbofiles/a/attachments/12-19-2013-NuclearForces.pdf).

1 them with new military capabilities (discussed below). This is illustrated by a
 2 December 2009 Sandia Labs News article, whose title alone is instructive (*Program to*
 3 *update W76 warhead is biggest weapon project in 20 years*). Among other things it states:

4 We changed out the whole arming, fuzing, and firing [AF&F] system....

5 The AF&F system includes critical components that ensure the safety of

6 the weapon as well as providing the detonation function at the correct

7 fuzing height... The integrated design provides packaging and

8 performance enhancements... The updated weapon, while incorporating

9 modern safety enhancements, extends the service life of the weapon

10 from 20 to 60 years.¹¹

11 President Obama's *Fiscal Year 2015 Congressional Budget Request* immediately
 12 implements this planned long-term budget trend for modernization. It asks for a 7%
 13 increase for NNSA's nuclear weapons research and production programs. "Total
 14 Weapons Activities" are slated to rise to \$8.3 billion in fiscal year (FY) 2015 and to \$9.7
 15 billion by FY 2019 (24% above this current fiscal year 2014). Obama's FY 2015 budget
 16 request sets a new record for DOE nuclear weapons research and production
 17 spending, exceeding even the Cold War high point in 1985 set under President
 18 Reagan's military buildup.¹²

19 While rebuilding nuclear weapons at exorbitant expense, the Obama
 20 Administration proposes to slash dismantlements by 45%, from an already paltry
 21 \$54.2 million in FY 2014 to \$30 million in FY 2015. Dismantlements are described as a
 22 "a workload leveler across all programs," indicating that instead of being a prioritized
 23 step toward a future world free of nuclear weapons, it is merely filler work in between

24
 25 ¹¹Sandia Labs, *Program to update W76 warhead is biggest weapon project in 20 years*,
 26 Sandia Labs News, (December 4, 2009) [http://www.sandia.gov/LabNews/
 091204.html#three](http://www.sandia.gov/LabNews/091204.html#three).

27 ¹² Nuclear Watch New Mexico, *Analysis of the National Nuclear Administration FY*
 28 *2015 Budget Request*, at fn. 5, [http://www.nukewatch.org/economics/
 FY2015_NNSA_Budget_Print.pdf](http://www.nukewatch.org/economics/FY2015_NNSA_Budget_Print.pdf) (Last visited August 21, 2014.)

1 Life Extension Programs.¹³

2 Moreover, “retirement” of U.S. nuclear weapons is fungible, as the Government
3 Accountability Office recently reported:

4 ...in our analysis of NNSA’s dismantlement schedule as of March 2013
5 for weapons retired prior to fiscal year 2009, we found that
6 approximately 9 percent of the weapons retired prior to fiscal year 2009
7 are scheduled to be reinstated during fiscal year 2013 through fiscal year
8 2022 or later.¹⁴

9 NNSA’s proposed FY 2015 budget slashes key non-proliferation programs
10 designed to halt the spread of nuclear weapons by \$300 million (a decrease of 21%
11 from fiscal year 2014),¹⁵ despite the fact that both the Obama Administration and
12 Congress recognize nuclear weapons as the greatest existential threat to the United
13 States.

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¹³National Nuclear Security Administration, *Fiscal Year 2015 Budget Request*, p. 109, [http://energy.gov/sites/prod/files/2014/04/f14/Volume%201 %20NNSA. pdf](http://energy.gov/sites/prod/files/2014/04/f14/Volume%201%20NNSA.pdf) (Lasted visited August 21, 2014.)

¹⁴ General Accounting Office, *Nuclear Weapons: Actions Needed by NNSA to Clarify Dismantlement Performance Goal*, GAO-14-449 (April 2014), p. 25 www.gao.gov/assets/670/662840.pdf.

¹⁵*Id.* at p. 1.

1 **III. THE UNITED STATES IS CREATING NEW MILITARY**
2 **CAPABILITIES FOR U.S. NUCLEAR WEAPONS.**

3 At the plenary session of the 2010 NPT Review Conference at the United Nations,
4 Ellen Tauscher the U.S. State Dept. Under-Secretary for Arms Control and
5 International Security, Thomas D'Agostino who is the head of NNSA, and Secretary
6 of State Hillary Clinton explicitly told the international delegations that the U.S.
7 would never endow its existing nuclear weapons with new military capabilities.
8 Declaration of Jay Coghlan, ¶ 13. This is also formally articulated in President
9 Obama's 2010 Nuclear Posture Review, the U.S.'s top nuclear weapons policy
10 document, which explicitly states, "Life Extension Programs...will not support new
11 military missions or provide for new military capabilities."¹⁶ The reality on the
12 ground, however, is different from official claims made to the international
13 community.

14 The last completely "new" nuclear weapon, the sub-launched W88 warhead, was
15 produced up until July 1989, when a FBI raid investigating alleged environmental
16 crimes shut down plutonium pit production at the Rocky Flats Plant near Denver.
17 Since then, the U.S. has endowed existing nuclear weapons with new military
18 capabilities, generally substituting more precisely targeted lower yield nuclear
19 weapons for higher yield weapons. This is evidenced by the two cases.

20 The first case demonstrating new military capabilities for existing U.S. nuclear
21 weapons is the NNSA's Life Extension Program. The NNSA is currently conducting a
22 Life Extension Program for the single most common nuclear warhead in the U.S.
23 stockpile, the sub-launched W76 Trident warhead. It is being retrofitted with a new-
24 design fuze that is believed capable of selecting more precise heights-of-burst. In
25 combination with the increased accuracy of the newer D5 Trident missile, this gives

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27 ¹⁶U.S. Department of Defense, *Nuclear Posture Review* (April 2010) p. xiv,
28 [http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20rep
ort.pdf](http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20report.pdf).

1 the 100-kiloton W76 the hard target kill capability of the more powerful 450-kiloton
2 W88 Trident warhead. As explained by Rear Admiral George "Pete" Nanos:¹⁷

3 The demonstrated capability of the D5 [the new Trident II missile] is
4 excellent. Our capability for Mk 4 [the W76 reentry vehicle], however, is
5 not very impressive by today's standards, largely because the Mk 4 was
6 never given a fuse that made it capable of placing the burst at the right
7 height to hold other than urban industrial targets at risk. With the
8 accuracy of D5 and Mk 4, **just by changing the fuze in the Mk 4 reentry**
9 **body, you get a significant improvement.** The Mk 4, with a modified
10 fuze and Trident II accuracy, can meet the original D5 hard target
11 requirement. Why is this important? Because in the START II regime, of
12 course, the ICBM hard target killers are going out of the inventory and
13 that cuts back our ability to hold hard targets at risk."¹⁸ (Emphasis
14 added.)

15 In other words, with a new fuze and increased missile accuracy, the military
16 characteristics of the refurbished W76-1 are transformed from being a countervalue
17 weapon of deterrence ("city buster") into a counterforce weapon ("hard target killer"),
18 which is a new military capability. The head of U.S. Navy Strategic Systems knew this
19 in 1997. Government officials at the highest levels, however, having been telling the
20 international community ever since then that the U. S. would never endow its existing
21 nuclear weapons with military capabilities.

22 To emphasize, dramatically increased accuracy is key to the W76's new military
23 capabilities. In a different but still applicable context, Richard Garwin, a prominent

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25 ¹⁷ Then head of the Navy's Strategic Systems, later to become LANL Director.

26 ¹⁸Nanos, G. P., *Strategic Systems Update*, The Submarine Review (April 1997)
<http://fas.org/wp-content/uploads/sites/4/W76nanos.pdf>.

27 "ICBM hard target killers are going out of the inventory" is a reference to the
28 treaty-required retirement of land-based MX missiles heavily armed with up to
10 independently targeted 300-kiloton W87 warheads.

1 scientist consultant to the government and ex-LANL nuclear weapons designer, noted
 2 “An early entry into the RRW [Reliable Replacement Warheads] literature was the
 3 2000 page paper by Steve Younger¹⁹ who explained that the factor 5 improvement in
 4 U.S. strategic ballistic missile accuracy would allow a factor 125 reduction in explosive
 5 yield for destroying a hardened target such as a missile silo. So a 500 kt [kiloton]
 6 warhead could be replaced by a 4-kt new-design warhead that could be deployed
 7 without testing and that would be reliable and safe.”²⁰

8 It is important to understand that the accuracy of existing W76 warheads is being
 9 improved in three dimensions, not just the 2 dimensions of a targeted flat plane.
 10 Again, because of the previous quote by Nanos and other indicators, it is believed that
 11 new-design fuzes will provide more precise heights of burst. This is militarily
 12 significant because just the right blast height magnifies nuclear weapons destructive
 13 effects through the “Mach stem” phenomena, where ground surface reflection of the
 14 blast wave intersects with the original blast wave.²¹ At the same time, higher altitude
 15 bursts have much less radioactive fallout compared to ground bursts, which is
 16 militarily and politically desirable for reduced collateral damage. Increased precision
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19 ¹⁹RRW was a proposed new-design nuclear weapon called the Reliable
 20 Replacement Warhead that Congress rejected in 2007, partially out of concern for
 21 the adverse proliferation example, and partially out of the lack of clear need
 22 given the Nuclear Watch NM-requested study that showed that plutonium pits
 23 last more than twice as long as previously thought. Steven Younger was a
 prominent LANL nuclear weapons designer and later director of the Nevada
 Test Site.

24 ²⁰Garwin, Richard, *Replacement Warhead Without Testing* (March 23, 2006)
 25 http://www.nukewatch.org/importantdocs/resources/garwin/Replacement-warheads-without-testing_2006 .

26 ²¹ See, for example, Nuclear Archives, *The Mach Stem*,
 27 <http://www.atomicarchive.com/Effects/effects6.shtml> stating, “The overpressure
 28 at the front of the Mach wave is generally about twice as great as that at the
 direct blast wave front.”

1 in burst height is the prerequisite for achieving just the right balance of blast effect
2 (not too high) and reduced fallout (not too low).

3 The second case demonstrating new military capabilities for existing U.S. nuclear
4 weapons is a planned ambitious Life Extension Program for the B61 bomb with a first
5 production unit in 2020.²² Each of the estimated 400 bombs will literally cost more than
6 twice their weight in gold to refurbish.²³ In addition to extending the service life of the
7 bomb by decades, this Life Extension Program will meld three tactical or "battlefield"
8 variants and one strategic variant of the B61 bomb "family" together into one
9 all-purpose "B61-12" nuclear bomb.²⁴ This will erase the long held distinction between
10 tactical and strategic nuclear weapons, which is made possible by improved accuracy
11 and lethality.²⁵ The LEP will also transform the B61 from a simple analogue bomb into
12 a digital bomb that interfaces with future super stealthy fighter aircraft (the F-35 Joint
13 Strike Fighter).²⁶ A separate Air Force program for a new tail guidance kit.²⁷ will

15 ²²National Nuclear Security Administration, Life Extension Programs,
16 [http://nnsa.energy.gov/ourmission/managingthestockpile/
17 lifeextensionprograms](http://nnsa.energy.gov/ourmission/managingthestockpile/lifeextensionprograms).

18 ²³Sahay,Usha and Reif, Kingston, *Center for Arms Control Fact Sheet: The B61 Life
19 Extension Program*, Center for Arms Control (August 2, 2013)
[http://armscontrolcenter.org/publications/factsheets/fact_sheet_b61_life_extensio
20 n_program/](http://armscontrolcenter.org/publications/factsheets/fact_sheet_b61_life_extension_program/)

21 ²⁴Donald Cook, *NNSA Deputy Administrator for Defense Programs, Statement on B61
22 Life Extension Program and Future Stockpile Strategy before the House Armed Services
23 Subcommittee on Strategic Forces* (Oct 30, 2013)
[http://nnsa.energy.gov/sites/default/files/nnsa/2013-10-30%20HASC-SF%20Cook
24 %20testimony_0.pdf](http://nnsa.energy.gov/sites/default/files/nnsa/2013-10-30%20HASC-SF%20Cook%20testimony_0.pdf)

25 ²⁵Kristensen, Hans and Norris, Robert, *The B61 family of nuclear bombs, Bulletin of
26 the Atomic Scientists* (April 22, 2014) [http://fas.org/blogs/security/2014/04/
27 b61family/](http://fas.org/blogs/security/2014/04/b61family/).

28 ²⁶Statement of Mr. Andrew Weber Assistant Secretary of Defense for Nuclear,
Chemical, and Biological Defense Programs On Fiscal Year 2015 Budget Request
for Atomic Energy Defense Activities and Nuclear Forces Programs Before the
Strategic Forces Subcommittee Committee on Armed Services, U.S. House of

1 transform the "dumb" B61 into the world's first nuclear smart bomb. Despite all this,
 2 the U.S. government still denies that these are new military capabilities, which flies in
 3 the face of common sense

4 In January 2014 former Air Force Chief of Staff Norton Schwartz confirmed that
 5 the pending B61-12 would have enhanced accuracy and a lower yield with less fallout
 6 compared to previous modifications. Gravity bombs are relatively inaccurate
 7 compared to missile warheads, consequently larger nuclear bombs are needed to
 8 effectively impact a target. With its guided tail kit, the B61-12 will be accurate to
 9 within 30 meters from a target and therefore only requires a 50-kiloton warhead.
 10 Schwartz stated that greater accuracy would both improve the weapon and create a
 11 different target set for it (which is in effect a new military capability). This is because
 12 the lower-yield B61-12's greater accuracy will still put underground targets within its
 13 destructive cratering impact.²⁸

14 In sum, while there are ongoing modest quantitative reductions to the active
 15 nuclear weapons stockpile, which is the U.S.'s proffered argument that it is complying
 16 with the NPT, this is not a qualitative reduction leading to the NPT's goal of global
 17 nuclear disarmament. In fact, it is precisely because nuclear weapons are being so
 18 radically improved that nuclear war planners can live with numerical reductions.
 19 Valuable enemy assets no longer need to be targeted by multiple incoming warheads
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 21

22 Representatives (April 8, 2014)

23 [http://docs.house.gov/meetings/AS/AS29/20140408/102090/
 HHRG-113-AS29-Wstate-WeberA-20140408.pdf](http://docs.house.gov/meetings/AS/AS29/20140408/102090/HHRG-113-AS29-Wstate-WeberA-20140408.pdf).

24 ²⁷National Nuclear Security Agency. *NNSA Reaches B61-12 Life Extension Program*
 25 *Milestone: First Full-System Mechanical Environment Test Completed Successfully*,
 26 Press Release (Feb 4, 2014) [http://nnsa.energy.gov/mediaroom/
 pressreleases/b61lep](http://nnsa.energy.gov/mediaroom/pressreleases/b61lep).

27 ²⁸See Kristensen, Hans, *General Confirms Enhanced Targeting Capabilities of B61-12*
 28 *Nuclear Bomb*, Federation of American Scientists (January 24, 2014)
<http://fas.org/blogs/security/2014/01/b61capability/>.

1 to guarantee destruction, leading to a quantitatively smaller but qualitatively
2 improved nuclear weapons stockpile.

3 CONCLUSION

4 Nuclear Watch New Mexico's perspective is uniquely different from Plaintiff's,
5 formed by its detailed analysis of U.S. nuclear weapons policies and budgets since
6 1999. Defendants' claims that Plaintiff's complaint is contrary to public interest and
7 that the U.S. is in compliance with its non-proliferation obligations are not valid or
8 credible. A government's stated position is one thing, while the facts are another.
9 Nuclear weapons modernization programs are expected to cost U.S. taxpayers more
10 than a trillion dollars over thirty years. Life Extension Programs arguably endow
11 nuclear weapons with new military capabilities. New nuclear weapons production
12 facilities are expected to be operational until approximately 2075. Dismantlement and
13 non-proliferation programs are being cut. In my view, these are very strong indicators
14 that the United States is in material breach of its Article VI obligation under the Non-
15 Proliferation Treaty "to pursue negotiations in good faith on effective measures
16 relating to cessation of the nuclear arms race at an early date and to nuclear
17 disarmament" (emphasis added). Any remotely similar conclusion by the Court
18 would be in the public and even global interest. Clearly the implications of this case go
19 far beyond just those of the directly involved parties, instead impacting the entire
20 world.

21 Dated: August 21, 2014

Respectfully submitted,

23 /s/ Andrea R. St. Julian
24 Andrea R. St. Julian
25 Attorney for Nuclear Watch
26 New Mexico

1 **DECLARATION OF JAMES J. COGHLAN**

2 I, JAMES J. COGHLAN, under penalty of perjury, declare as follows:

3 1. I have been the Executive Director of Nuclear Watch New Mexico since 1999.

4 Nuclear Watch New Mexico is a not-for-profit organization based in Santa Fe.
5 Through comprehensive research, public education and effective citizen action,
6 Nuclear Watch New Mexico seeks to promote safety and environmental protection at
7 regional nuclear facilities; mission diversification away from nuclear weapons
8 programs; greater accountability and cleanup in the nation-wide nuclear weapons
9 complex; and consistent U.S. leadership toward a world free of nuclear weapons. We
10 focus in particular on the Los Alamos National Laboratory (LANL). Key to our
11 successful work is Program Director Scott Kovac, now with Nuclear Watch for a
12 decade, and an active Steering Committee that includes two formally designated
13 LANL whistleblowers.

14 2. Nuclear Watch analyzes, synthesizes, compiles and disseminates pertinent
15 information via our heavily visited website and blog at www.nukewatch.org (which
16 receives approximately 1.1 million hits a year), and through fact sheets and frequent
17 press and radio opportunities. We amplify our own efforts by helping other
18 organizations become more knowledgeable and effective. For example, we prepare
19 and disseminate budget and policy analyses that are widely used by others. Our
20 research specializes in "connecting the dots" across voluminous, disparate documents,
21 such as the Department of Energy's annual Congressional Budget Requests, the
22 Stockpile Stewardship and Management Plans of its semi-autonomous nuclear
23 weapons agency, the National Nuclear Security Administration (NNSA), Government
24 Accountability Office audits, Department of Energy Inspector General reports, and
25 many other kinds of documents. In addition to the public, our efforts target key
26 federal officials, including the NNSA, the White House Office of Management and
27 Budget, Government Accountability Office, the Defense Nuclear Facilities Safety
28 Board, members and staff of the House and Senate Armed Services Committees as

1 well as Appropriations Committees that authorize and fund the nation's nuclear
2 weapons budget, and our own New Mexican delegation.

3 3. Nuclear Watch frequently and successfully uses the Freedom of Information Act
4 (FOIA) to get the information we need. One successful FOIA lawsuit resulted in
5 uncovering a strange plan by LANL to have the United States Postal Service build it a
6 large "Science Complex," which the Postal Service backed out of within three days
7 after we exposed it. In another FOIA lawsuit, we compelled the NNSA to release its
8 annual Performance Evaluation Reports of its contractors, raising contractor
9 transparency and accountability which led to diminished bonuses and the suspension
10 of automatic contract extensions. Nuclear Watch also successfully persuaded a U.S.
11 senator (now retired) to require a study of the lifetime of plutonium pits, the fissile
12 cores of nuclear weapons. The resulting conclusion by independent experts that most
13 pits last at least 100 years (more than double the government's previous estimates) led
14 to congressional rejection of new-design nuclear weapons and related expansion of
15 plutonium pit production. The lack of clear need also led to the government's
16 "deferral" in 2012 of a new approximately \$6 billion plutonium facility at Los Alamos.

17 4. Before December 1999, I was director of a LANL watchdog program at
18 Concerned Citizens for Nuclear Safety, a position I created in 1989 within that existing
19 organization. While there, I was central to successful lawsuits against the Department
20 of Energy (DOE) over major violations of the federal Clean Air Act by LANL's
21 radioactive air emissions; DOE's failure under the National Environmental Policy Act
22 to prepare an environmental impact statement for open-air explosive experiments
23 with plutonium; and the DOE's failure to prepare a federal court-stipulated
24 programmatic environmental impact statement for its national cleanup program,
25 which resulted in a \$6.25 million settlement for citizen studies across the country.

26 5. I also served for six years, and am now again serving, as president of the Board
27 of Directors of the Alliance for Nuclear Accountability. The Alliance is a nation-wide
28 network of local, regional and national groups that address nuclear weapons issues

1 and related environmental issues, including cleanup of the massive contamination
2 across the nuclear weapons complex. Since 1987 the Alliance has held 27 consecutive
3 "DC Days" bringing activists from across the country to the nation's capitol to press
4 Congress for meaningful nuclear weapons policy reforms and genuine,
5 comprehensive cleanup.

6 6. As a citizen of New Mexico, I believe I have a special interest in this case
7 because, according to its most recent Congressional Budget Request, the NNSA plans
8 to spend 41% of its nation-wide FY 2015 nuclear weapons budget in this state alone.
9 Currently, the stated purpose of NNSA's programs is "modernization" of the nuclear
10 weapons stockpile and its supporting research and production complex. Its real
11 purpose is to indefinitely preserve existing nuclear weapons while endowing them
12 with new military capabilities, despite denials at the highest levels of the U.S.
13 government.

14 7. During my twenty-five-year professional career I have learned to view
15 government claims on U.S. nuclear weapons policies with deep skepticism. Early on, I
16 became aware that in the late 1950's the Eastman Kodak Corporation deduced that
17 radioactive fallout from the Nevada Test Site was damaging its film in Rochester, New
18 York. The government then secretly agreed to warn Eastman Kodak so it could shield
19 its film, but never saw fit to warn "downwinder" citizens in Nevada, Utah, Idaho, etc.,
20 after which hundreds of Americans families suffered from malignant cancers. In
21 another instance, inflated claims and false promises by Edward Teller, then-director of
22 the Lawrence Livermore National Laboratory, convinced President Ronald Reagan to
23 hold out for ballistic missile defense (AKA "Star Wars"). This dashed hopes for an
24 historic nuclear weapons abolition agreement that was nearly reached by Reagan and
25 Mikhail Gorbachev in 1989 at Reykjavik, Iceland. Given this and much more, current
26 government claims to be in compliance with the NonProliferation Treaty must be
27 carefully scrutinized and not just simply accepted on faith.

28

1 8. I share the widely held view that the world's most serious existential threats are
2 nuclear war between India and Pakistan, or alternatively the acquisition of nuclear
3 weapons by Al Qaeda/Islamic State-inspired terrorists through possible Pakistani
4 sources. It is instructive to recall that the U.S. largely ignored Pakistan's clandestine
5 nuclear weapons programs while covertly fighting the Soviets in Afghanistan. It is
6 commonly believed that Pakistan and/or its agents subsequently proliferated nuclear
7 weapons technologies to North Korea, Libya and possibly Iran.

8 9. It is doubly ironic that a Pakistani-derived nuclear weapon in the hands of
9 "terrorists" could now be our nation's greatest threat. This convinces me that
10 ultimately our own national security can only be assured through the global abolition
11 of nuclear weapons that the Non-Proliferation Treaty contemplates, and which the
12 Republic of the Marshall Islands seek to uphold. Because of that, I have a strong
13 professional interest in this case, and a strong personal interest by virtue of being a
14 father and grandfather. Clearly this case's legal issues have significant impacts far
15 beyond the directly involved parties, impacting the entire world.

16 10. Global abolition must be universal and verifiable, which is no small task, one
17 in which the U.S. nuclear weapons establishment could and should provide the
18 necessary verification and monitoring technologies instead of stockpile
19 "modernization."

20 11. Defendants ,at page 13 of their Motion to Dismiss, argue that the relief
21 Plaintiff's request ". . .would be contrary to the public interest, as it would risk
22 interfering with the efforts of the Executive Branch in the foreign and military arenas,
23 where discussions regarding the appropriate steps in support of nuclear disarmament
24 are ongoing." I am not aware of public documentation of such Executive Branch
25 deliberations, other than echoes of the President's lofty but unfulfilled rhetoric. There
26 is certainly not any concrete movement toward genuine nuclear disarmament, despite
27 somewhat meaningless adjustments in the numbers of "active" versus "reserve"
28 nuclear weapons. As a litmus test of real progress toward genuine nuclear

1 disarmament, irreversible dismantlements of U.S. warheads have slowed to a crawl.
2 According to the respected nongovernmental organization the Federation of
3 American Scientists, during the last six years under the Obama Administration only
4 an estimated 309 warheads have been taken apart.

5 12. Abundant evidence exists demonstrating that the U.S. is not only NOT
6 disarming its nuclear stockpile anytime in the foreseeable future, but is instead
7 "modernizing" the arsenal and its supporting research and production complex for the
8 long haul, out to 2075 and beyond so as to effectively increase its nuclear stockpile.
9 Four prominent examples of these documents, with which an informed reader can
10 connect the dots, are:

11 (a) The annual *NNSA Congressional Budget Requests*, such as the *Department*
12 *of Energy FY 2015 Congressional Budget Request*, National Nuclear Security
13 Administration, March 2014, Office of Chief Financial Officer, Volume I,
14 <http://energy.gov/sites/prod/files/2014/04/f14/Volume%201%20NNSA.pdf>;

15 (b) The annual *NNSA Stockpile Stewardship and Management Plans*, such as
16 the *Department of Energy Fiscal Year 2014 Stockpile Stewardship and Management Plan*,
17 *Report to Congress*, June 2013, [http://nnsa.energy.gov/sites/default/files/nnsa/](http://nnsa.energy.gov/sites/default/files/nnsa/06-13-inlinefiles/FY14SSMP_2.pdf)
18 [06-13-inlinefiles/FY14SSMP_2.pdf](http://nnsa.energy.gov/sites/default/files/nnsa/06-13-inlinefiles/FY14SSMP_2.pdf);

19 (c) The annual *NNSA Performance Evaluation Plans* and follow-on Reports
20 for its eight sites, one of which is *Fiscal Year 2014 DOE/NNSA Strategic Performance*
21 *Evaluation Plan (PEP) Template FOR MANAGEMENT AND OPERATION OF THE LOS*
22 *ALAMOS NATIONAL LABORATORY*, November 2013, FY 2014 Performance
23 Evaluation Plan, Los Alamos National Security, LLC; and

24 (d) The annual *NNSA Ten-Year Site Plans* for its eight sites, one of which is
25 *LANL Ten-Year Site Plan FY 2014, LA-UR-13-24676*, June 2013,
26 [http://nnsa.energy.gov/sites/default/files/nnsa/04-14-inlinefiles/2014-02-06%20TYSP%2](http://nnsa.energy.gov/sites/default/files/nnsa/04-14-inlinefiles/2014-02-06%20TYSP%20LANL%20Ten-Year%20Site%20Plan%20FY%202014.pdf)
27 [0LANL%20Ten-Year%20Site%20Plan%20FY%202014.pdf](http://nnsa.energy.gov/sites/default/files/nnsa/04-14-inlinefiles/2014-02-06%20TYSP%20LANL%20Ten-Year%20Site%20Plan%20FY%202014.pdf).

28

1 Items (c) and (d) were made publicly available only because of Nuclear Watch
2 Freedom of Information Act lawsuits.

3 13. I attended a plenary session of the 2010 NPT Review Conference at the
4 United Nations. I personally witnessed Ellen Tauscher the U.S. State Dept.
5 Under-Secretary for Arms Control and International Security, Thomas D'Agostino the
6 head of NNSA, and Secretary of State Hillary Clinton (by video link) explicitly tell all
7 international delegations that the U.S. would never endow its existing nuclear
8 weapons with new military capabilities.

9 14. NNSA is currently conducting a Life Extension Program for the single most
10 common nuclear warhead in the U.S. stockpile, the sub-launched W76 Trident
11 warhead. It is being retrofitted with a new-design fuze that is believed capable of
12 selecting more precise heights-of-burst. In combination with the increased accuracy of
13 the newer D5 Trident missile, this gives the 100-kiloton W76 the hard target kill
14 capability of the more powerful 450-kiloton W88 Trident warhead. This is nothing
15 new to the nuclear weapons labs. A December 2009 Sandia Labs News declared that
16 Life Extension Programs (LEPs) could extend warhead life for up to 60 years, and
17 referred to "reinventing the weapon's AF&F [arming, fuzing & firing] system"
18 which "provides packaging and performance enhancements."
19 <http://www.sandia.gov/LabNews/091204.html#three>.

20 15. No counsel for a party authored the amicus curiae brief in whole or part, nor
21 did any person, entity, or party make a monetary contribution to the preparation or
22 submission of the brief.

23
24 FURTHER I DECLARE NOT.

25
26 Dated: August 21, 2014


James J. Coghlan, Declarant

1 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
2 OAKLAND DIVISION
3

4 THE REPUBLIC OF THE MARSHALL
5 ISLANDS, a non-nuclear-weapon State
6 party to Treaty on the Non Proliferation
of Nuclear Weapons,

7 Plaintiff,

8 v.

9 THE UNITED STATES OF AMERICA;
10 PRESIDENT BARACK OBAMA, THE
11 PRESIDENT OF THE UNITED STATES
12 OF AMERICA; THE DEPARTMENT OF
13 DEFENSE; SECRETARY CHARLES
14 HAGEL, THE SECRETARY OF
DEFENSE; THE DEPARTMENT OF
ENERGY; SECRETARY ERNEST
MONIZ, THE SECRETARY OF
ENERGY; AND THE NATIONAL
NUCLEAR SECURITY
ADMINISTRATION,

15 Defendants.
16

Civil Case No. 4:14-cv-01885-JSW

**[PROPOSED] ORDER GRANTING
MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE OF
NUCLEAR WATCH NEW MEXICO**

Hon. Jeffrey S. White
Hearing Date: September 12, 2014
Time: 9:00 A.M.
Courtroom: Oakland Courthouse,
Courtroom 5 - 2nd Floor,
1301 Clay Street
Oakland, CA 94612

17
18 Upon consideration of the Motion for Leave to File Brief Amicus Curiae of Nuclear
19 Watch New Mexico (the "Motion for Leave"), in Support of the Plaintiff and in
20 opposition to Defendants' Motion to Dismiss, the Court hereby grants the Motion for
21 Leave.

22
23 **IT IS SO ORDERED.**

24
25 Dated: _____, 2014

26 JEFFREY S. WHITE
United States District Judge

1 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
2 OAKLAND DIVISION

3
4 THE REPUBLIC OF THE MARSHALL
5 ISLANDS, a non-nuclear-weapon State
6 party to Treaty on the Non Proliferation
of Nuclear Weapons,

7 Plaintiff,

8 v.

9 THE UNITED STATES OF AMERICA
ET. AL.,

10 Defendants.

Civil Case No. 4:14-cv-01885-JSW

11 **CERTIFICATE OF SERVICE**

12
13 I hereby certify that on August 21, 2014, I electronically filed the foregoing
14 documents with the Clerk of the Court for the United States District Court for the
15 Northern District of California by using the CM/ECF system. I certify that all
16 participants in the case are registered CM/ECF users and will be served by the
17 CM/ECF system.

18 I further certify that the foregoing is true and correct. Executed on August 21,
19 2014 at San Diego, California.

20
21 /s/ Andrea R. St. Julian
22 Andrea R. St. Julian