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9 AGAINST A RADIOACTIVE  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

13 THE REPUBLIC OF THE MARSHALL )  
14 ISLANDS, a non-nuclear-weapon State party )  
15 to the Treaty on the Non Proliferation of )  
16 Nuclear Weapons, )  
17 Plaintiffs, )

18 v. )

19 THE UNITED STATES OF AMERICA, )  
20 PRESIDENT BARACK OBAMA, THE )  
21 PRESIDENT OF THE UNITED STATES )  
22 OF AMERICA; THE DEPARTMENT OF )  
23 DEFENSE; SECRETARY CHARLES )  
24 HAGEL, THE SECRETARY OF )  
25 DEFENSE; THE DEPARTMENT OF )  
26 ENERGY; SECRETARY ERNEST MONIZ, )  
27 THE SECRETARY OF ENERGY; AND )  
28 THE NATIONAL NUCLEAR SECURITY )  
ADMINISTRATION, )  
Defendants.

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

**MOTION FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE OF TRI-VALLEY  
CAREs IN SUPPORT OF VENUE IN THE  
NORTHERN DISTRICT COURT OF  
CALIFORNIA**

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

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT **Tri-Valley Communities Against a Radioactive**  
 3 **Environment (CAREs)** hereby moves this Court for leave to file a brief as *amicus curiae* in the  
 4 above-captioned case in support the Plaintiff's choice of venue in the Northern District Court of  
 5 California and to oppose dismissal based on that choice of venue. A copy of the proposed brief is  
 6 appended as an exhibit to this motion.<sup>1</sup>

7 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF AS AMICUS**  
 8 **CURIAE**

9 "District courts frequently welcome *amicus* briefs from non-parties concerning legal  
 10 issues that have potential ramifications beyond the parties directly involved or if the amicus has  
 11 unique information or perspective that can help the court, beyond the help that the lawyers for  
 12 the parties are able to provide." *Sonoma Falls Devs., LLC v. Nev. Gold & Casinos, Inc.*, 272 F.  
 13 Supp. 2d 919, 925 (N.D. Cal. 2003 (quoting *Cobell v. Norton*, 246 F. Supp 2d 59, 62 (D.D.C.  
 14 2003)).

15 Plaintiff in this case has brought important matters before this Court that have an  
 16 international scope of potential ramifications far beyond the Marshall Islands. Additionally, as  
 17 alleged in Plaintiff's Complaint, the United States of America's ("U.S.") lack of compliance with  
 18 Article VI of the *The Treaty on the Non-Proliferation of Nuclear Weapons*, 1968, 21 U.S.T. 483,  
 19 729 U.N.T.S. 161 (hereinafter the "Treaty" or the "NPT") also has serious ramifications in and  
 20 around the communities in the Northern District of California that house facilities that maintain,  
 21 design, develop, and are currently modernizing the U.S. nuclear weapons arsenal.

22 In the absence of "negotiations in good faith on effective measures relating to cessation  
 23 of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general  
 24

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25 <sup>1</sup> TVC has received consent to file this Motion and the attached Brief from Plaintiff's, the  
 26 Republic of the Marshall Islands, Counsel, Ms. Laurie Ashton. Additionally, TVC notified  
 27 Defendants' Counsel at the U.S. DOJ, Mr. Samuel Singer, of its intention to file this Motion and  
 28 Brief, and on 8/9/2014 via email he notified TVC that Defendants would not oppose the filing.  
 Additionally, no party to this case in any way prepared this Motion and Brief or contributed  
 funds to its preparation.

1 and complete disarmament under strict and effective international control,”<sup>2</sup> the U.S. continues  
2 to maintain a large nuclear arsenal that is monitored, maintained and undergoing “improvement”  
3 by three nuclear weapons labs, Lawrence Livermore National Laboratory (“LLNL”) in  
4 Livermore, California, Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico,  
5 and Sandia National Laboratory, with locations in Albuquerque, New Mexico and Livermore,  
6 California. LLNL and LANL share responsibility for designing, developing, maintaining and  
7 modernizing the nuclear explosives package for all of the nuclear weapons in the U.S. arsenal.  
8 Under a true disarmament regime of the type mandated by the NPT and envisioned by the  
9 Plaintiff in this case, the significant nuclear weapons development activities that take place at  
10 LLNL would greatly diminish and, at an early date, cease. This would have major ramifications  
11 for the Livermore community in which *Amicus* is based, and which lies in the Northern District  
12 of California.

## 13 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

14 Tri-Valley Communities Against a Radioactive Environment (CAREs) (hereinafter  
15 “TVC”) is a community-based, non-profit organization that was founded in 1983 by concerned  
16 neighbors living around Lawrence Livermore National Laboratory (hereinafter “LLNL”), a  
17 Department of Energy (hereinafter “DOE”) National Nuclear Security Administration<sup>3</sup>  
18 (hereinafter “NNSA”) site where research, design, and development of nuclear weapons is  
19 conducted.

20 TVC has closely monitored the nuclear weapons activities and environmental cleanup  
21 activities at LLNL for 31 years. TVC currently represents approximately 5,600 members, the  
22 majority of whom reside or work in the vicinity of LLNL. TVC is concerned with the dangers  
23 nuclear weapons pose internationally, nationally and locally, where it works directly to protect  
24 the public and worker health and the environment from the harmful impacts of nuclear weapons  
25 development at LLNL. Nearly 2,000 former and current employees of LLNL have filed for

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27 <sup>2</sup> Treaty on the Non-Proliferation of Nuclear Weapons art. VI, July 1, 1968, 21 U.S.T. 483, 729  
28 U.N.T.S. 161, *available at* <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

<sup>3</sup> The NNSA is a semi-independent agency that Congress established within DOE in 2000.

1 compensation and health benefits due to illnesses they believe are a result of on the job  
2 exposures at LLNL.<sup>4</sup> Since 1987, the LLNL main site has been on the U.S. EPA's National  
3 Priorities List of the most contaminated sites in the country, also known as Superfund. In 1990,  
4 LLNL's Site 300 was placed on the Superfund list. Historical and current practices have caused  
5 releases of radioactive and toxic materials into our air, soil, surface waters and groundwater  
6 aquifers.

7 Nuclear disarmament is one of the main goals of TVC, thus we have sent delegates to  
8 participate in the NPT's Preparatory Committee Meetings, Review Conferences and the related  
9 Non-Governmental Organization conferences.

10 TVC members understand the wide reach that compliance with Article VI of the NPT,  
11 "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear  
12 arms race at an early date and to nuclear disarmament," by all nine Nuclear Weapons States  
13 would have. It would not only bring about a more peaceful and equitable world, but would result  
14 in a safer and healthier environment around active nuclear weapons facilities like LLNL that  
15 would cease dangerous nuclear weapons research and development under such a regime.

### 16 **III. *AMICUS CURIAE'S* EXPERTISE WILL BENEFIT THIS COURT**

17 TVC's mix of community residents, including some current and retired Livermore Lab  
18 scientists, gives it a uniquely qualified voice to speak out on nuclear weapons, and related policy  
19 and environmental issues - locally, nationally and internationally. Moreover, TVC is a key  
20 partner in regional, state and national alliances that provide up-to-date information to  
21 communities and decision-makers. TVC staff have been called upon to testify before the  
22 California Legislature and the U.S. Congress on LLNL and the NNSA nuclear weapons complex  
23 of which it is a part. With 31 years of work monitoring LLNL's nuclear weapons research and  
24 development, TVC offers this Court a particularly useful perspective in resolving one of the

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26 <sup>4</sup> United States Department of Labor, Office of Energy Employee Occupation Illness  
27 Compensation, EEOICPA Statistics,  
28 <http://www.dol.gov/owcp/energy/regs/compliance/statistics/WebPages/LLNL.htm> &  
[http://www.dol.gov/owcp/energy/regs/compliance/statistics/WebPages/S\\_NTL\\_LAB\\_LIVMO.htm](http://www.dol.gov/owcp/energy/regs/compliance/statistics/WebPages/S_NTL_LAB_LIVMO.htm)

1 issues presented in this litigation, and a basis for Defendants’ Motion to Dismiss, namely;  
2 whether LLNL’s nuclear weapons research and development is a substantial enough part of the  
3 Defendants’ Article VI violation so as to render the Northern District of California an  
4 appropriate venue under 28 U.S.C. §1391(e)(1)(B).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Tri-Valley CAREs respectfully request this Court’s leave to  
7 submit the attached brief as *amicus curiae*.

8  
9  
10 Dated this 21<sup>st</sup> day of August, 2014

11 /S/

12 Scott Yundt (CSB #242595)  
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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on August 20, 2014, I electronically filed the foregoing with the Clerk of the  
21 Court using CM/ECF system, which shall send notification of such filing to all CM/ECF  
22 participants.

23 /s/ Scott Yundt

24 Scott Yundt

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IN THE UNITED STATES DISTRICT COURT  
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SAN FRANCISCO DIVISION

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14 THE REPUBLIC OF THE MARSHALL )  
15 ISLANDS, a non-nuclear-weapon State party )  
16 to the Treaty on the Non Proliferation of )  
17 Nuclear Weapons, )  
18 Plaintiffs, )  
19 v. )

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

**[PROPOSED] ORDER GRANTING  
MOTION FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE OF TRI-VALLEY  
CAREs IN SUPPORT OF VENUE IN THE  
NORTHERN DISTRICT COURT OF  
CALIFORNIA**

19 THE UNITED STATES OF AMERICA, )  
20 PRESIDENT BARACK OBAMA, THE )  
21 PRESIDENT OF THE UNITED STATES )  
22 OF AMERICA; THE DEPARTMENT OF )  
23 DEFENSE; SECRETARY CHARLES )  
24 HAGEL, THE SECRETARY OF )  
25 DEFENSE; THE DEPARTMENT OF )  
26 ENERGY; SECRETARY ERNEST MONIZ, )  
27 THE SECRETARY OF ENERGY; AND )  
28 THE NATIONAL NUCLEAR SECURITY )  
ADMINISTRATION,  
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Hearing Date: September 12, 2014  
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Having considered this matter and good cause appearing therefore,

IT IS HEREBY ORDERED that the pending Motion for Leave to File Amicus Curiae Brief of Tri-Valley Communities Against a Radioactive Environment (CAREs) in Support of Venue in The Northern District Court Of California is hereby GRANTED.

IT IS SO ORDERED.

DATED\_\_\_\_\_.

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**HONORABLE JEFFREY S. WHITE**  
**United States District Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which shall send notification of such filing to all CM/ECF participants.

*/s/ Scott Yundt*

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9 ENVIRONMENT (CAREs)

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

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27 ) ENERGY; SECRETARY ERNEST MONIZ, )  
28 ) THE SECRETARY OF ENERGY; AND )  
THE NATIONAL NUCLEAR SECURITY )  
ADMINISTRATION, )

Defendants.

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

**BRIEF AMICUS CURIAE OF TRI-  
VALLEY CAREs IN SUPPORT OF  
VENUE IN THE NORTHERN DISTRICT  
COURT OF CALIFORNIA**

Hearing Date: September 12, 2014

Time: 9:00 A.M.

Courtroom: Oakland Courthouse,  
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Oakland, CA 94612

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**A. Venue in the Northern District of California is Appropriate Because a Substantial Part of The Events Giving Rise to Plaintiff’s Claims That the U.S. is in Violation of Article VI of the Nuclear Non-Proliferation Treaty Have Occurred in the Northern District of California At the Department of Energy National Nuclear Security Administration’s Lawrence Livermore National Laboratory.....6**

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1           **I.       INTERESTS OF *AMICUS CURIAE***

2           Tri-Valley Communities Against a Radioactive Environment (CAREs) (hereinafter  
3 “TVC”) is a community-based, non-profit organization founded in 1983 by concerned neighbors  
4 living around Lawrence Livermore National Laboratory (hereinafter “LLNL”), a Department of  
5 Energy (hereinafter “DOE”) National Nuclear Security Administration<sup>1</sup> (hereinafter “NNSA”)  
6 site. LLNL is one of the two locations that have designed every nuclear weapon in the U.S.  
7 stockpile and is today the site where significant U.S. nuclear weapons research, design,  
8 development and modernization occur.

9           TVC’s overarching mission is to promote peace, justice and a healthy environment by  
10 pursuing five goals that integrate U.S. nuclear weapons policy change with local, national and  
11 global safety and security: 1) Convert Livermore Lab from nuclear weapons development and  
12 testing to socially beneficial civilian science research; 2) End all further nuclear weapons  
13 development and testing in the U.S.; 3) Eliminate nuclear weapons worldwide, and achieve an  
14 equitable, successful non-proliferation regime; 4) Promote forthright communication and  
15 democratic decision-making in public policy on nuclear weapons and related environmental  
16 issues, locally, nationally, and globally; 5) Clean up the radioactive and toxic pollution  
17 emanating from Livermore Lab.

18           With nuclear disarmament as a main goal of TVC, the group sends delegates to  
19 participate in the Nuclear Non Proliferation Treaty’s<sup>2</sup> (hereinafter “NPT”) Preparatory  
20 Committee Meetings, Review Conferences and the related Non-Governmental Organization  
21 conferences.

22           TVC’s mix of community residents, including some current and retired Livermore Lab  
23 scientists, gives the group a unique voice to speak out on nuclear weapons and related policy and  
24 environmental issues - locally, nationally and internationally. Moreover, TVC is a key partner in  
25

26 \_\_\_\_\_  
27 <sup>1</sup> The NNSA is a semi-independent agency that Congress established within DOE in 2000

28 <sup>2</sup> *The Treaty on the Non-Proliferation of Nuclear Weapons*, dated July 1, 1968, 21 U.S.T. 483,  
729 U.N.T.S. 161

1 regional, state and national alliances that provide up-to-date information to communities and  
2 decision-makers.

3 A more descriptive statement of TVC and its work is contained in the accompanying  
4 Motion for Leave to File Amicus Brief.

5 TVC's 31 years of work monitoring LLNL's nuclear weapons research and  
6 development offers this Court a particularly useful perspective in resolving one of the issues  
7 presented in this litigation, and which constitutes a basis for Defendants' Motion to Dismiss,  
8 namely, whether the nuclear weapons research and development at LLNL, a DOE NNSA site  
9 in the Northern District of California, contributes a sufficiently substantial part of Defendants'  
10 Article VI violations so as to render the District an appropriate venue.

## 11 II. INTRODUCTION

12 The Defendants filed a Motion to Dismiss on 7/21/14 alleging venue in the Northern  
13 District of California was improper and as a result, the case should be dismissed. 28 U.S.C.  
14 §1391(c) defines residence for "(1) natural persons; (2) entities, whether or not incorporated; and  
15 (3) defendants who do not reside in the United States." 28 U.S.C. §1391(e)(1)(B) states that the  
16 proper venue for civil actions against officers and employees of the United States or its agencies  
17 is in a judicial district in which **"...a substantial part of the events or omissions giving rise to  
18 the claim occurred."**

19 *Amicus* will demonstrate below that venue is proper under Section 1391(e)(1)(B) because  
20 the Defendants' failure to adhere its NPT Article VI obligation "to pursue negotiations in good  
21 faith on effective measures relating to cessation of the nuclear arms race at an early date and to  
22 nuclear disarmament" is significantly evidenced by the nuclear weapons activities pursued at  
23 LLNL for the federal government in its role as a DOE NNSA nuclear weapons laboratory, thus  
24 giving rise to Plaintiff's claims, in the following ways: 1) The Lawrence Livermore National  
25 Laboratory, located in the Northern District, is one of two locations in the United States that has  
26 designed and developed every nuclear weapon in the U.S. arsenal; 2) Since the NPT entered into  
27 force in 1970, the Lawrence Livermore National Laboratory has been given the lead role in  
28 designing, developing and/or modifying fourteen distinct nuclear warheads and bombs; 3)

1 Eighty-nine percent of the Fiscal Year 2015 DOE NNSA budget at the Lawrence Livermore  
2 National Laboratory is slated for Nuclear Weapons Activities<sup>3</sup>; 4) The Lawrence Livermore  
3 National Laboratory's proposals for new and modified nuclear warheads continue through 2030  
4 and beyond; and, 5) The Lawrence Livermore National Laboratory both promotes ideas for new  
5 and modified nuclear weapons and responds to U.S. government initiatives to develop them.

6 Additionally, *Amicus* reminds the Court that the law generally favors Plaintiff's choice of  
7 forum, which is entirely proper when the district has an interest in the case. Because the  
8 Plaintiff's chose the Northern District of California, due presumably to its convenience and  
9 because a major, full-scale DOE NNSA nuclear weapons laboratory exists in the Northern  
10 District, giving the District an interest in the case, venue in the District is proper.

### 11 III. DISCUSSION

#### 12 A. Venue in the Northern District of California is Appropriate Because a 13 Substantial Part of the Events Giving Rise to Plaintiff's Claims That 14 the U.S. is in Violation of Article VI of the NPT Have Occurred in the 15 Northern District of California At DOE NNSA's Lawrence Livermore National Laboratory

16 Since 1952, LLNL has been one of the two U.S. nuclear weapons research and design  
17 laboratories, the other being Los Alamos National Laboratory (hereinafter "LANL") in New  
18 Mexico.<sup>4</sup> Every nuclear warhead in the U.S. arsenal was designed at one of these two facilities.

19 LLNL maintains a 1-square-mile main site on the eastern edge of the city of Livermore,  
20 about 50 miles east of San Francisco in Alameda County. Approximately 6500 full-time  
21 employees work at LLNL. Additionally, Livermore Lab maintains Site 300, a 7000 acre  
22

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23 <sup>3</sup> United States Department of Energy, *FY2015 Congressional Budget Request*, Volume 1,  
24 National Nuclear Security Administration, March 2014, [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)

25 <sup>4</sup> Sandia National Laboratory is sometimes referred to as the third nuclear weapons laboratory. It  
26 has two campuses, one in Albuquerque, New Mexico and one in Livermore, California. Sandia's  
27 website at [www.sandia.gov](http://www.sandia.gov) distinguishes its activities from nuclear weapons design and  
28 development laboratory activities with the appellation: America's Nuclear Weapons Engineering  
Laboratory. LLNL and LANL weapon designs are engineered to correspond to their delivery  
vehicles through the work at Sandia Albuquerque and Livermore campuses.

1 Experimental “High Explosives” Test Site about 13 miles east of Livermore to support its  
 2 nuclear weapons activities. Sandia National Lab also operates a facility directly adjacent to  
 3 LLNL’s main site. All three facilities are in the Northern District of California.

4 In March 2014, the DOE NNSA sent its Fiscal Year 2015 Budget Request to Congress  
 5 for nuclear weapons and related activities.<sup>5</sup> The budget requested \$1.16 billion for LLNL for the  
 6 year.<sup>6</sup> Of that, \$1.03 billion was for the budget line titled, Nuclear Weapons Activities. Nuclear  
 7 Weapons Activities comprise 89% of the total DOE NNSA funding requested for LLNL.<sup>7</sup> By  
 8 any measure, this is a significant amount of activity occurring at LLNL. Moreover, as one of  
 9 only two such locations in the nation, LLNL activities comprise a significant amount of the U.S.  
 10 historical and current nuclear weapons design activity.

11 Despite U.S. ratification and entry into force of the NPT in 1970, there was little effect on  
 12 the pace, scope or scale of new nuclear weapons development at the DOE NNSA’s Lawrence  
 13 Livermore National Laboratory. The chart below lists the nuclear warheads for which LLNL has  
 14 had a lead role in designing and/or modernizing since the NPT entered into force.

#### 15 **LLNL’s Nuclear Weapon Designs since Enactment of the NPT<sup>8</sup>**

16  
 17 <sup>5</sup> United States Department of Energy, *FY2015 Congressional Budget Request*, Volume 1,  
 18 National Nuclear Security Administration, March 2014, [http://energy.gov/sites/prod/files/](http://energy.gov/sites/prod/files/2014/04/f14/Volume%201%20NNSA.pdf)  
 19 [2014/04/f14/Volume%201%20NNSA.pdf](http://energy.gov/sites/prod/files/2014/04/f14/Volume%201%20NNSA.pdf)

19 <sup>6</sup> *Id.*

20 <sup>7</sup> *Id.*

21 <sup>8</sup> **Sources for chart:** Hansen, Chuck, *Swords of Armageddon*, VI-439 to VI-442, 1996; Hansen,  
 22 Chuck, *The Nuclear Weapons Archive*, <http://nuclearweaponarchive.org/Usa/Weapons/.html>;  
 23 Hansen, Chuck, *U.S. Nuclear Weapons: The Secret History*, 1988; Cochran, Thomas B., Arkin,  
 24 William M., and Hoenig, Milton M, *Nuclear Weapons Databook: U.S. Nuclear Forces and*  
 25 *Capabilities*, 1984; Norris, Robert S., Kristensen, Hans M., Handler, Joshua, *The B61 Family of*  
 26 *Bombs*, *The Bulletin of the Atomic Scientists*, Vol. 62, No. 1 (Jan./Feb. 2006), p. 68-71;  
 27 Medalia, Jonathan, *Nuclear Weapons: The Reliable Replacement Warhead Program*,  
 28 CRS-RL32929, Congressional Research Service, The Library of Congress (2006); Sefcik, Joseph  
 A., *Nuclear Weapons Research After the Cold War, Nuclear Weapons Reductions: START and*  
*Beyond*, Energy and Technology Review, Lawrence Livermore National Laboratory, UCRL-  
 52000-92-1 (January - February 1992), United States National Nuclear Security Administration,  
*FY2013 Performance Evaluation Report for Lawrence Livermore National Security, LLC*,  
 (November 22, 2013),  
[http://www.trivalleycares.org/new/govdocs/Livermore\\_Performance\\_Incentives\\_Performance\\_E](http://www.trivalleycares.org/new/govdocs/Livermore_Performance_Incentives_Performance_Evaluation_Report_for_FY2013.pdf)  
[valuation\\_Report\\_for\\_FY2013.pdf](http://www.trivalleycares.org/new/govdocs/Livermore_Performance_Incentives_Performance_Evaluation_Report_for_FY2013.pdf)

<b>Weapon Type</b>	<b>Appx. Years of work</b>	<b>Delivery System</b>
W70	April 1969 – mid 70s	Surface-to-Surface
W79	January 1975- 1977	Nuclear Artillery
W70 (MOD-4)	April 1976 -?	Surface to Surface
W82	February 1978 -?	Nuclear Artillery
W84	October 1978 – August 1984	Ground Launched Cruise Missile
B83	January 1979 – December 1984	Strategic Bomb
W87	February 1982 – December 1988	Intercontinental Ballistic Missile (ICBM)
W89	1986-1991	Short Range Attack Missile (Air to Ground)
W80-0	1976-1990	Attack Submarine
W80-1	~ 2001-2003	Air Launched Cruise Missile
Robust Nuclear Earth Penetrator ("RNEP")	2002 - 2005	Gravity Bomb based on LLNL B83 design
Reliable Replacement Warhead ("RRW")	2005-2010	Submarine Launched
W78 Life Extension Program/ Interoperable Warhead 1 ("IW-1")	2012 – (presently interoperable W78/88-1 version put on hold for 5 years)	Interoperable Submarine & ICBM Launched
Long-Range Stand Off ("LRSO") Warhead	2013 - presently	New Air-Launched Cruise Missile

This chart illustrates the rapid pace at which nuclear weapons have been developed at LLNL post NPT ratification. During the Cold War, the federal government used the weapons labs to fan the flames of the arms race with a largess that allowed for building a nuclear weapons stockpile of over 30,000 weapons, with a new design added to the mix nearly every other year by either LLNL or LANL.

The DOE NNSA is skilled at exploiting ongoing developments in the world and playing on policy makers' fears to expand activities at the nuclear weapons laboratories and increase their budgets. When the Cold War ended and the U.S. declared a moratorium on full-scale testing of nuclear weapons in 1992, the DOE NNSA still managed to increase the funding at the

1 weapons laboratories by promoting a massive Stockpile Stewardship program based on using  
2 huge experimental facilities and the world's fastest computers to model the behavior of  
3 exploding nuclear weapons and continue their development, without full-scale nuclear testing.

4 After the laboratories improved their ability to model the effects of aging and other  
5 comparatively modest modifications to existing nuclear weapons in the 1990s, the DOE NNSA  
6 began to take advantage of the nation's concern about terrorism after the events of 9-11-2001. To  
7 do that, the NNSA laboratories attempted to reinvent nuclear weapons, which are extremely  
8 effective as agents of mass destruction, and make them also into finely tuned weapons for use  
9 against small and hard to reach targets, for example with plans at the DOE NNSA's Lawrence  
10 Livermore National Laboratory for the Robust Nuclear Earth Penetrator (hereinafter "RNEP").

11 Following RNEP, DOE NNSA sought support for the so-called Reliable Replacement  
12 Warhead (hereinafter "RRW") program as an opportunity to expand the LLNL mission "from a  
13 program of warhead refurbishment to one of warhead replacement."<sup>9</sup> DOE NNSA hoped to  
14 develop a new Reliable Replacement Warhead every five years.<sup>10</sup>

15 Following the demise of the RRW program, DOE NNSA continued to escalate its nuclear  
16 weapons research and development activities by expanding the mission of Life Extension  
17 Programs (hereinafter "LEPs"). LEPs are presently introducing extreme modifications that add  
18 new military capabilities to the nuclear arsenal. Overall, the FY 2014 budget request showed a  
19 nearly 80% rise in spending on LEPs in just one year to more than \$1 billion.<sup>11</sup> Included in that  
20 was \$73 million to begin the LEP study at Livermore Lab for the "interoperable" W78/88-1  
21 warhead (also known as the Interoperable Warhead – 1 or IW-1) to be launched from either land  
22

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23  
24 <sup>9</sup> O'Brien, K.H., et al. *Sustaining the Nuclear Enterprise—A New Approach*. May 20, 2005.  
UCRL-AR-212442. [www.armscontrolwonk.com/Sustaining\\_the\\_Enterprise.pdf](http://www.armscontrolwonk.com/Sustaining_the_Enterprise.pdf)

25 <sup>10</sup> U.S. Department of Energy. Secretary of Energy Advisory Board, *Recommendations for the*  
26 *Nuclear Weapons Complex of the Future*. Draft Final Report of the Nuclear Weapons Complex  
Infrastructure Task Force, July 13, 2005. [www.seab.energy.gov/publications/NWCITFRept-7-11-05.pdf](http://www.seab.energy.gov/publications/NWCITFRept-7-11-05.pdf)

27 <sup>11</sup> United States Department of Energy, *FY2014 Congressional Budget Request*, Volume 1,  
28 National Nuclear Security Administration, April 2013 [http://fire.pppl.gov/FY14\\_Budget\\_NNSA\\_details.pdf](http://fire.pppl.gov/FY14_Budget_NNSA_details.pdf)

1 based silos or submarines.<sup>12</sup> The proliferation-provocative new weapon concept involved a  
2 massive redesign of both the Air Force's W78 warhead that sits atop the Minuteman III  
3 Intercontinental Ballistic Missile and the Navy's W88 warhead that tops Submarine-Launched  
4 Ballistic Missiles, using elements of both nuclear weapons combined with the plutonium pit  
5 (core) of a third warhead type, the W87, to create the new IW-1 "common platform" warhead.  
6 The full cost of the IW-1 is likely to end up in the \$28 billion range, according to independent  
7 sources. The NNSA estimated \$14 billion for the program.

8 The IW-1 project began in July 2010 when the NNSA designated LLNL as the lead  
9 nuclear weapons design lab for the Life Extension Program for the W78, which had been  
10 originally a Los Alamos Lab design. A team of about thirty Livermore Lab physicists, engineers  
11 and chemists put together the Phase 6.1 options study to "life extend" the W78 warhead, and they  
12 did not resist the chance to go beyond maintenance of the W78 to push for an exotic new weapon  
13 design that would fill their coffers for many years, despite its proliferation risks. According to  
14 Livermore Lab's magazine, the weaponeers considered refurbishing the existing design for the  
15 W78, but preferred, instead, to undertake the more complex and novel concept of reusing  
16 components from other stockpiled designs to create a new W78/88-1, or IW-1, that could be  
17 placed interchangeably on land-based Intercontinental Ballistic Missiles and Submarine-  
18 Launched Ballistic Missiles.<sup>13</sup>

19 The Government Accountability Office (GAO) stated that LLNL's interoperable concept  
20 would be "introducing changes to the design of Navy warheads." The report goes on to say,

21 (T)he Navy has concerns about changing the warhead design. In its June 2012  
22 approval of the start of the feasibility study, the Nuclear Weapons Council  
23 directed that the Project Officer's Group investigate design options for an  
24 interoperable nuclear explosives package that included insensitive high explosive.

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25 <sup>12</sup> *Id.*

26 <sup>13</sup> *Extending the Life of an Aging Weapon*, Science & Technology Review, Lawrence Livermore  
27 National Laboratory, March 2012, <https://str.llnl.gov/Mar12/obrien.html>; United States  
28 Department of Energy, *FY2014 Stockpile Stewardship and Management Plan – Report to  
Congress*, June 2013, [http://nnsa.energy.gov/sites/default/files/nnsa/06-13-  
inlinefiles/FY14SSMP\\_2.pdf](http://nnsa.energy.gov/sites/default/files/nnsa/06-13-inlinefiles/FY14SSMP_2.pdf)

1 Navy officials noted that because the interoperable warhead is expected to involve  
2 a new design, it would require extensive flight testing and certification...<sup>14</sup>

3 LLNL's choice to design, and conduct active advocacy for, what would be the U.S.  
4 government's first "interoperable" warhead (i.e., a substantially new-design warhead) is at odds  
5 with the NPT's Article VI obligations.

6 Additionally, LLNL is currently working to support DOE NNSA's development of a new  
7 Long-Range Stand Off (LRSO) warhead to sit atop a new air-launched cruise missile. There are  
8 two warheads being considered for redesign for the new LRSO, the W80-1 and the W84. The  
9 W80-1 is fielded on present day air launched cruise missiles. The W84 is from the ground-  
10 launched cruise missile, now banned by treaty. LLNL, which designed the W84 and also has  
11 responsibility for the W80-1, touted its completion of 30-day and 90-day studies to move the  
12 LRSO design concept forward. Its latest "performance evaluation" stated that even though  
13 Livermore started this work with no LRSO budget it nonetheless prioritized the studies above  
14 other, funded activities.<sup>15</sup> Sandia National Lab called the LRSO "inherently thrilling" because the  
15 last time a missile and warhead were concurrently designed and fielded was during the 1980s  
16 cold war-era. According to Sandia's magazine, its staff has gone to Washington, DC to "help"  
17 decision-makers prioritize the LRSO.<sup>16</sup> The NNSA weapons labs' redesign and production of a  
18 new warhead for the LRSO is estimated to cost about \$20 billion and take until 2030 to  
19 complete.

20 DOE NNSA, and its predecessor agencies, have consistently acted through the nuclear  
21 weapons labs contrary to the requirements of international agreements on nuclear weapons.  
22 Additionally, LLNL has acted to the limits of its authority, if not beyond, to further U.S. nuclear

23  
24 <sup>14</sup> United States Government Accountability Office, *ICBM Modernization, Approaches to Basing  
25 Options and Interoperable Warhead Designs Need Better Planning and Synchronization*, GAO-  
26 13-831 (September 2013)

27 <sup>15</sup> United States National Nuclear Security Administration, *FY2013 Performance Evaluation  
28 Report for Lawrence Livermore National Security, LLC*, (November 22, 2013)  
[http://www.trivalleycares.org/new/govdocs/Livermore\\_Performance\\_Incentives\\_Performance\\_Evaluation\\_Report\\_for\\_FY2013.pdf](http://www.trivalleycares.org/new/govdocs/Livermore_Performance_Incentives_Performance_Evaluation_Report_for_FY2013.pdf)

<sup>16</sup> Janes, Mike, *LRSO – Sandia Plays Key Role in Long-Range Stand-Off Warhead*, Sandia Lab News, Vol. 65 No. 15, August 23, 2013

1 weapons development. LLNL's own 1982 report entitled *30 Years of Technical Excellence*,  
 2 *1952-1982* quotes John Foster, the then LLNL director, saying "challenges arose...centered on  
 3 the testing moratorium" that the U.S. had entered at the time. Foster further commented that,

4       The Lab's view was that the test ban was not likely to continue indefinitely. So  
 5 we chose to be ready to test once the ban was lifted. We decided to staff up and  
 6 procure material above the authorized levels. These moves were a little at odds  
 7 with the administration in Washington, which wanted to assure that that Russians  
 8 were not given evidence that could lead them to believe that we were about to  
 9 test. I guess it is an example of the value of a relatively independent Laboratory,  
 10 one that could execute actions at slight variance to the consensus in Washington.<sup>17</sup>

11       This flagrant attitude with respect to international agreements entered into on behalf of  
 12 the U.S. persisted at LLNL and is still perceivable in the way DOE NNSA and its LLNL  
 13 approach the Nation's NPT Article VI obligations as demonstrated by the examples herein,  
 14 including the LRSO studies and the other thirteen distinct weapons designs.

#### 15                   **B.       The Law Favors Preserving Plaintiff's Choice of Forum**

16       Defendant's moved to dismiss the case based on several factors including improper  
 17 forum. However, generally, a plaintiff's choice of forum is afforded substantial deference when  
 18 the district court is considering a motion to transfer under 28 USCS § 1404. *Ctr. for Biological*  
 19 *Diversity v. Export-Import Bank of the United States*, 2013 U.S. Dist. LEXIS 133694 (N.D. Cal.  
 20 Sept. 17, 2013). See Also *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843  
 21 (9th Cir. Mont. 1986) ("defendant must make a strong showing of inconvenience to warrant  
 22 upsetting the plaintiff's choice of forum"); see *Creative Tech., Ltd. v. Aztech Sys.*, 61 F.3d 696,  
 23 703 (9th Cir. 1995) ("there is normally a strong presumption in favor of honoring the plaintiff's  
 24 choice of forum"); *Securities Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir.  
 25 1985) ("unless the balance of factors is strongly in favor of the defendants, the plaintiff's choice  
 26 of forum should rarely be disturbed").

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27 <sup>17</sup> Liberatore, Daniel, *At the 30-year mark: The Directors look back at Lab history*, 30 Years of  
 28 Technical Excellence, 1952 – 1982, Lawrence Livermore National Laboratory (1982), Page 9.  
 On Page 15 of the same document, LLNL Director (in 1982) Roger Batzel says the "movement  
 for a freeze on nuclear weapons" was another "challenge" LLNL was "facing today." Id.

1 Defendants contend that Plaintiff's choice of forum is entitled to minimal deference  
2 because the operative facts giving rise to this action occurred in Washington D.C., and because  
3 the activities at Livermore Lab fail to "bear... anything more than a tangential relationship to this  
4 case." Defs.' Mtn. at 12. However, as stated above, that is not the standard. This Court has found  
5 venue proper even where the operative facts giving rise to the action did not occur within the  
6 Northern District of California, and where no particularized local impact was identified that  
7 would result from the Defendants' alleged unlawful conduct. *Ctr. for Biological Diversity*, 2013  
8 U.S. Dist. LEXIS 133694 (N.D. Cal. Sept. 17, 2013). In that case the Plaintiff defended a motion  
9 to transfer by simply contending that Defendants failed "to show that the Northern District of  
10 California (had no) particular interest in the parties or the subject matter of this litigation." *Id.* As  
11 *Amicus* has shown above, in this case, the Northern District of California does have an interest in  
12 the subject matter of this litigation given the presence of a major DOE NNSA nuclear weapons  
13 lab, LLNL, in its jurisdiction.

14 Additionally, the Defendants have made no showing of inconvenience and it is clearly  
15 more convenient for the Plaintiff, a small island republic located in the Pacific Ocean, to choose  
16 a west coast venue. Because LLNL is the most significant nuclear weapons facility on the west  
17 coast and its work is highly relevant to the case, the Northern District of California a logical and  
18 proper choice.<sup>18</sup>

#### 19 IV. CONCLUSION

20 *Amicus curiae* respectfully request this Court retain venue over this very important  
21 matter. Venue is proper under Section 1391(e)(1)(B) because the Defendants' failure to adhere  
22 its NPT Article VI obligation "to pursue negotiations in good faith on effective measures relating  
23 to cessation of the nuclear arms race at an early date and to nuclear disarmament" is significantly  
24 evidenced by the nuclear weapons activities pursued at the DOE NNSA's Lawrence Livermore  
25 National Laboratory, thus giving rise to Plaintiff's claims. DOE NNSA advocates year after year,  
26 even post NPT ratification, that the US Congress fund nuclear weapons research at LLNL that

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27  
28 <sup>18</sup> It should also be noted that there is no nuclear weapons facility anywhere near Washington  
DC. While NNSA maintains its headquarters there, it also maintains a field office at LLNL.

1 further enhances weapons technology rather than adopting an approach focused on curatorship of  
2 the current arsenal until such time as these weapons are dismantled; thereby DOE NNSA makes  
3 good faith negotiations difficult in the face of funding commitments for new, enhanced (i.e.  
4 modernized) nuclear weapons.

5 Additionally, the law favors preserving Plaintiff's choice of forum, especially when the  
6 District has an interest in the litigation. With the presence of a major nuclear weapons research  
7 and design laboratory, LLNL, the Northern District of California has a stake in the ensuring that  
8 the U.S. meet its Article VI obligations under the NPT. Thus, the Northern District of California  
9 a proper venue for this matter under 28 U.S.C. §1391(e)(1)(B).

10  
11 Dated this 20<sup>th</sup> day of August, 2014

12  
13 /s/ Scott Yundt

14 Scott Yundt (CSB #242595)  
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21  
22 **CERTIFICATE OF SERVICE**

23 I hereby certify that on August 20, 2014, I electronically filed the foregoing with the Clerk of the  
24 Court using CM/ECF system, which shall send notification of such filing to all CM/ECF  
25 participants.

26  
27 /s/ Scott Yundt

28 Scott Yundt