

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

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<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

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| 9th Circuit Case Number(s): | 15-15636 | |
| District Court/Agency Case Number(s): | C 14-01885 JSW | |
| District Court/Agency Location: | The Northern District of California, Oakland Division | |
| Case Name: | The Republic of the Marshall Islands | v. The United States of America, et. al. |
| If District Court, docket entry number(s) of order(s) appealed from: | Docket entry numbers 54 and 55 | |
| Name of party/parties submitting this form: | The Republic of the Marshall Islands, Appellant | |

Please briefly describe the dispute that gave rise to this lawsuit.

The Marshall Islands alleges that the United States, through its agencies, is in breach of its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"). The NPT requires the U.S. to negotiate in good faith for cessation of the nuclear arms race and nuclear disarmament, but the U.S. refuses to negotiate and is instead modernizing its nuclear arsenal. Under the Constitution, the judicial authority extends to all cases arising under treaties. The Marshall Islands suit seeks (i) declaratory relief on the meaning of the NPT obligations as well as whether the U.S. is in breach of the NPT obligations, and (ii) injunctive relief requiring the U.S. to meet its NPT obligations, including by calling for and convening negotiations for cessation of the nuclear arms race and nuclear disarmament.

Briefly describe the result below and the main issues on appeal.

The district court granted the defendants' motion to dismiss, ruling that:

- (i) the Marshall Islands lacks standing to bring the suit because (a) harm from a U.S. NPT breach is speculative, and (b) the Court cannot redress any harm because it cannot order the U.S. to comply with its NPT obligations; and
- (ii) the political question doctrine bars the suit because (a) the Constitution textually commits the issues to the Executive, and (b) there are no judicial standards for determining whether an NPT party is negotiating in good faith.

The main issues on appeal are whether:

- (i) denial of the Marshall Islands' NPT right to have the U.S. participate in negotiations is sufficient harm--at least an identifiable trifle--for standing purposes;
- (ii) a court can interpret the NPT, find the U.S. in breach of it, and order a remedy;
- (iii) the Constitution textually commits this case to the judiciary (not the Executive) by extending the judicial power to all cases arising under treaties;
- (iv) there is at least one judicial standard for determining whether an NPT party is legally negotiating in good faith;

and
(v) the district court erred in holding that absent necessary parties precluded relief here, at the pleading stage, where the U.S. did not identify a single absent necessary party.

Describe any proceedings remaining below or any related proceedings in other tribunals.

There are no proceedings remaining below in the district court. The Marshall Islands filed on April 24, 2014 an Application against the U.S. in the International Court of Justice, raising similar claims of breach of the NPT, and inviting the U.S., pursuant to ICJ rules, to participate in that litigation. The U.S. has not responded to the invitation so that case is not proceeding.

Provide any other thoughts you would like to bring to the attention of the mediator.

This case was dismissed on jurisdictional grounds, before the U.S. filed an Answer or submitted any evidence, and without any analysis of the merits of the claims. However, upon the dismissal of this case, the U.S. Embassy in the Marshall Islands on February 5, 2015 issued a press release welcoming the dismissal and reciting that "the U.S. commitment to achieving the peace and security of a world without nuclear weapons is unassailable." If the U.S. were willing to demonstrate that commitment by calling for and convening negotiations in good faith for cessation of the nuclear arms race and nuclear disarmament under the NPT (which is the very relief sought by the Marshall Islands), then this case could have strong potential for a successful mediation.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

(see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

Pursuant to Ninth Circuit Rule 3-2(b), appellant The Republic of the Marshall Islands, a Non-Nuclear-Weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, provides the following service list, containing all parties to this action and identifying their counsel by name, firm, address, telephone number, and e-mail address:

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2. Appellees The United States of America, President Barack Obama, The President of the United States of America; The Department of Defense; Secretary Ashton Carter, The Secretary of Defense; The Department of Energy; Secretary Ernest Moniz, The Secretary of Energy; and The National Nuclear Security Administration

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