

No. 15-15636

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE REPUBLIC OF THE MARSHALL ISLANDS,

Plaintiff - Appellant,

v.

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,

Defendants - Appellees.

Supporting Appellant's Appeal and Reversal of the Order Granting Motion to
Dismiss from the United States District Court for the Northern District of
California: No. C 14-01885 JSW The Honorable Jeffrey S. White

AMICUS CURIAE BRIEF

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I. INTEREST OF *AMICUS CURIAE*

A. Statement of Identity of *Amicus Curiae*

Tri-Valley Communities Against a Radioactive Environment (CAREs) (hereinafter “TVC”) is a community-based, non-profit organization founded in 1983 by concerned neighbors living around Lawrence Livermore National Laboratory (hereinafter “LLNL”), a Department of Energy (hereinafter “DOE”) National Nuclear Security Administration¹ (hereinafter “NNSA”) site. LLNL is one of the two locations that have designed every nuclear weapon in the U.S. stockpile and is currently the site where significant U.S. nuclear weapons research, design, development, and modernization occur.

TVC’s overarching mission is to promote peace, justice and a healthy environment by pursuing five goals that integrate U.S. nuclear weapons policy change with local, national and global safety and security: (1) Convert Livermore Lab from nuclear weapons development and testing to socially beneficial civilian science research; (2) End all further nuclear weapons development and testing in the U.S.; (3) Eliminate nuclear weapons worldwide and achieve an equitable, successful, non-proliferation regime; (4) Promote forthright communication and democratic decision-making in public policy on nuclear weapons and related

¹ The NNSA is a semi-independent agency that Congress established within DOE in 2000.

environmental issues, locally, nationally, and globally; (5) Clean up the radioactive and toxic pollution emanating from Livermore Lab.

B. Interest in the Case and Source of Authority

With nuclear disarmament as a main goal of TVC, the group sends delegates to participate in the Nuclear Non-Proliferation Treaty's² (hereinafter "NPT") Preparatory Committee Meetings, Review Conferences and the related Non-Governmental Organization conferences.

TVC's mix of community residents, including some current and retired Livermore Lab scientists, represents approximately 5,600 members, the majority of whom reside or work in the vicinity of LLNL, within the Northern District of California. TVC is concerned with the dangers nuclear weapons pose internationally, nationally and locally, where it works directly to protect the public and worker health and the environment from the harmful impacts of nuclear weapons development at LLNL. Nearly 2,000 former and current employees of LLNL have filed for compensation and health benefits due to illnesses they believe are a result of on the job exposures at LLNL. Since 1987, the LLNL main site has been on the U.S. EPA's National Priorities List of the most contaminated sites in the country, also known as Superfund. In 1990, LLNL's Site 300 was placed on

² The Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483,729 U.N.T.S. 161.

the Superfund list. Historical and current practices have caused releases of radioactive and toxic materials into our air, soil, surface waters and groundwater aquifers.

TVC is a key partner in regional, state and national alliances that provide up-to-date information to communities and decision-makers. TVC staff have been called upon to testify before the California Legislature and the U.S. Congress on LLNL and the NNSA nuclear weapons complex of which LLNL is a part.

TVC's thirty-two years of work monitoring LLNL's nuclear weapons research and development offers this Court a particularly useful perspective in resolving one of the issues presented in this litigation, namely, whether the nuclear weapons research and development at LLNL is contrary to the NPT's good faith requirement to take effective measures to cease the nuclear arms race and to nuclear disarmament. Additionally, TVC's perspective is useful in determining whether the nuclear weapons research and development at LLNL contributes a sufficiently substantial part of Appellees' Article VI violations so as to render the District an appropriate venue.

TVC members understand the wide reach that compliance with Article VI of the NPT would have. Article VI and customary international law require these States "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." It

would not only bring about a more peaceful and equitable world, but would result in a safer and healthier environment around active nuclear weapons facilities like LLNL that would cease dangerous nuclear weapons research and development activities under such a regime.

II. PARTY STATEMENT

According to the circuit advisory committee note to the 9th Cir. R. 29-3 (Motions for leave to file Amicus Curiae brief), (Fed. R. App. P. 29(a)) permits the timely filing of an amicus curiae brief without leave of the Court if all parties consent to the filing of the brief; obtaining such consent relieves the Court of the need to consider a motion. TVC received such consent to file this Amicus Curiae brief from both the Appellant and the Appellees.

Neither Appellant nor Appellees authored or contributed money that was intended to fund preparing or submitting this brief. TVC funded and prepared this entire Amicus Curiae brief.

III. SUMMARY

Amicus Tri-Valley CAREs (hereinafter “Amicus”) submitted a similar brief in this case before the Northern District of California. It offers this updated brief with many of the same facts, to support specific legal arguments of the Appellant.

The district court dismissed this case on two grounds: the political question doctrine and standing. This Amicus Curiae brief will focus on one of the two political question grounds, from *Baker v. Carr*, 369 U.S. 186, 217 (1962), that the district court found barred this case: a lack of judicially discoverable and manageable standard to resolve the dispute.

However, *Amicus* must express its agreement with the Marshal Islands that the reasoning relied upon by the district court to dismiss based on the political question doctrine, is intended to grant the Executive authority *to make* treaties. The NPT, however, is a treaty already entered into and properly ratified, with outstanding legal rights and obligations. Once a proper treaty exists, such as the NPT, our Constitution expressly commits authority over cases arising under that treaty, such as whether the United States is complying with specific articles of a treaty, to the judiciary.

Yet, even if this court decides to evaluate this case using the *Baker* factors as the district court did, this case should survive. Appellant contends that “courts routinely analyze whether parties have engaged in good-faith negotiations—which is the required procedure under NPT Article VI... Good-faith standards are discoverable and manageable.” Appellant Br. 10. They go on to assert that, “Objectively, good-faith negotiations require a party to at least... refrain from taking steps contrary to the aim.”

In our duty a Lawrence Livermore National Laboratory “watchdog” group, we have directly observed the Appellees take continuous and on-going steps contrary to the aim of Article VI of the NPT. Thus, *Amicus* has specialized knowledge that can assist this court in conducting its *exhaustive search* for an applicable standard by which to adjudicate the Appellant’s claims.

Additionally, because a substantial part of the events giving rise to the Appellant’s claims that the U.S. is in violation of Article VI of the NPT have occurred at Livermore Lab, which is in the Northern District of California, venue in Northern District of California is appropriate.

IV. DISCUSSION

A. The United States has Failed to Meet its Obligations to Negotiate Nuclear Disarmament in Good Faith Under Article VI of the NPT by Taking Steps Contrary to Its Commitment at the Lawrence Livermore National Laboratory

At issue here is whether the Appellees failed to act in good faith under Article VI of the NPT by taking steps contrary to its commitment. Because *Amicus* has expertise in the activities of the Appellees’ Lawrence Livermore National Laboratory, our inquiry will be limited to whether the activities at that facility have been contrary to the Article VI commitment.

The relevant Article VI commitment is that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament....”

Thus, it is reasonable to assert that if a party to the treaty undertook activities to provoke and/or continue the nuclear arms race and/or took steps to build up its nuclear stockpile with new and modified, more advanced nuclear weapons, those actions would be construed as contrary to this treaty commitment.

As stated by the Appellant's in their Brief:

Parties obligated to negotiate in good faith must act “in such a manner that [a treaty's] purpose can be realized” and without abnormal delay in negotiations. *Gab ikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, ¶ 142 (Sept. 25); *Lake Lanoux Arbitration (Fr. v. Spain)*, 12 R.I.A.A. 281 (Arb. Trib 1957). Thus, a party's refusal to discuss any timeframe whatsoever to achieve the aim is inconsistent with good-faith negotiations. Similarly, conduct that frustrates the aim of the obligation is contrary to good faith. ER 61 (¶60), 79 (¶12). Put differently, parties must not “accomplish acts which would defeat the object and purpose” of the obligation. Antonio Cassese, *The Israel-PLO Agreement and Self-Determination*, 4 Eur. J. Int'l L. 564, 567 (1993).³

Appellant Br. 29.

The concept of good faith as applied to the NPT has been a frequent subject at the NPT review conferences:

“Good faith is a fundamental principle of international law, without which all international law would collapse,” declared Judge Mohammed Bedjaoui during the first week of the PrepCom. Bedjaoui was President of the International Court of Justice when it gave its 1996 advisory opinion on nuclear weapons, and more recently, Algerian Foreign Minister. He delivered the keynote address to a conference, “Good Faith, International Law, and the Elimination of Nuclear Weapons: The Once and Future Contributions of the International Court of Justice,” held on 1 May at the Warwick Hotel in Geneva. A

³ Available at <http://www.ejil.org/pdfs/4/1/1219.pdf>.

major portion of Judge Bedjaoui’s address was devoted to the legal significance of the addition of the phrase “good faith” to NPT Article VI, which requires each state party to “pursue in good faith negotiations on effective measures ... relating to nuclear disarmament”. The phrase also figures in the Court’s unanimous formulation of the obligation, based on NPT Article VI, “to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects.” He explained that general legal principles governing good faith negotiation as applied in the NPT context include:... **refraining from acts incompatible with the object and purpose of the NPT...**⁴

Since 1952, LLNL has been one of the two U.S. nuclear weapons research and design laboratories, the other being Los Alamos National Laboratory (hereinafter “LANL”) in New Mexico.⁵ Every nuclear warhead in the U.S. arsenal was designed at one of these two facilities.

LLNL maintains a one-square-mile main site on the eastern edge of the city of Livermore, about fifty miles east of San Francisco in Alameda County.

Approximately 6500 full-time employees work at LLNL. Additionally, Livermore Lab maintains Site 300, a 7000 acre Experimental “High Explosives” Test Site

⁴ John Burroughs, *Good Faith: A Fundamental Principle of International Law*, Lawyers’ Comm. on Nuclear Policy (28 April – 9 May 2008), http://www.lcnp.org/wcourt/BurroughsNiRarticle_May2008.pdf.

⁵ Sandia National Laboratory is sometimes referred to as the third nuclear weapons laboratory. It has two campuses, one in Albuquerque, New Mexico and one in Livermore, California. Sandia’s website at www.sandia.gov distinguishes its activities from nuclear weapons design and 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.

about thirteen miles east of Livermore to support its nuclear weapons activities. Sandia National Lab also operates a facility directly adjacent to LLNL's main site. All three facilities are in the Northern District of California.

In February 2015, the DOE NNSA sent its Fiscal Year 2016 Budget Request to Congress for nuclear weapons and related activities.⁶ The budget requested \$1.17 billion for LLNL for the year.⁷ Of that, \$999 million was for the budget line titled, Nuclear Weapons Activities. Nuclear Weapons Activities comprise 85% of the total DOE NNSA funding requested for LLNL.⁸ By any measure, this is a significant amount of nuclear weapons activity occurring at LLNL. Moreover, as one of only two such locations in the nation, LLNL activities comprise a significant amount of the U.S. historical and current nuclear weapons design activity.

The chart below lists the nuclear warheads for which LLNL has had a lead role in designing and/or modernizing since the NPT entered into force.

⁶ 1 Nat'l Nuclear Sec'y Admin., U.S. Dep't of Energy, DOE/CF-0107 *FY 2016 Congressional Budget Request* (2015), available at http://energy.gov/sites/prod/files/2015/02/f19/FY2016BudgetVolume1_1.pdf.

⁷ *Id.*

⁸ *Id.*

LLNL's Nuclear Weapon Designs Since Enactment of the NPT

Weapon Type	Appx. Years of work	Delivery System
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 – present	New Air-Launched Cruise Missile

(Sources for chart ⁹)

⁹ Jonathan Medalia, Cong. Research Serv., RL32929, *Nuclear Weapons: The Reliable Replacement Warhead Program* (2006); 6 Chuck Hansen, *Swords of*

This chart illustrates the rapid pace at which nuclear weapons have been developed at LLNL post-NPT ratification, and that this work continues today.

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. After the laboratories improved their ability to model the effects of aging and other comparatively modest modifications to existing nuclear weapons in the 1990s, the DOE NNSA began to take advantage of the nation's concern about terrorism after the events of 9-11-2001. To do that, the NNSA laboratories attempted to reinvent nuclear weapons, which are extremely effective as agents of mass destruction, to also make them into finely tuned weapons for use against small and hard to reach targets, for example with plans at

Armageddon, 439-442 (Eleanor Hansen et al. eds., 2d ed. 1996); Chuck Hansen, *U.S. Nuclear Weapons the Secret History* (1988); Thomas B. Cochran, et al., *Nuclear Weapons Databook: U.S. Nuclear Forces and Capabilities* (1984); 62 Robert S. Norris, et al., *The B61 Family of Bombs: the Bulletin of Atomic Scientists*, No. 1 at 68-71 (Jan./Feb. 2006); Joseph A. Sefcik, UCRL-52000-92-1, *Nuclear Weapons Research After the Cold War, Nuclear Weapons Reductions: START and Beyond, Energy and Technology Review*, Lawrence Livermore National Laboratory (January - February 1992); U.S. Nat'l Nuclear Sec. Admin., *FY2013 Performance Evaluation Report for Lawrence Livermore National Security*, (November 22, 2013) http://www.trivalleycares.org/new/govdocs/Livermore_Performance_Incentives_Performance_Evaluation_Report_for_FY2013.pdf; available at <http://nuclearweaponarchive.org/Usa/Weapons/Wpngall.html>.

the DOE NNSA's Lawrence Livermore National Laboratory for the Robust Nuclear Earth Penetrator (hereinafter "RNEP").

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

Following the demise of the RRW program, DOE NNSA continued to escalate its nuclear weapons research and development activities by expanding the mission of Life Extension Programs (hereinafter "LEPs"). LEPs are presently introducing extreme modifications that add new military capabilities to the nuclear arsenal. Overall, the FY 2014 budget request showed a nearly 80% rise in spending on LEPs in just one year to more than \$1 billion.¹² Included in that was \$73

¹⁰ K.H. O'Brien, et al. UCRL-AR-212442, *Sustaining the Nuclear Enterprise—A New Approach* (May 20, 2005) <http://www.wslfweb.org/docs/usg/sustainingtheenterprise.pdf>.

¹¹ U.S. Dep't of Energy, Sec'y of Energy Advisory Bd., *Recommendations for the Nuclear Weapons Complex of the Future*. Draft Final Report of the Nuclear Weapons Complex Infrastructure Task Force, (July 13, 2005) <http://www.bits.de/NRANEU/docs/NW-Complex-Report05.pdf>.

¹² Nat'l Nuclear Sec'y Admin., U.S. Dep't of Energy, DOE/CF-0084 *FY 2014 Congressional Budget Request* (2013), available at <http://energy.gov/sites/prod/files/2013/04/f0/Volume1.pdf>. The DOE NNSA budget requests since FY2014 have continued that trajectory, the latest request, for FY2016 asks for \$1.303 billion for Life Extension Programs, a 21% increase over the amount Congress appropriated in FY2015. 1 Nat'l Nuclear Sec'y Admin., U.S. Dep't of

million to begin the LEP study at Livermore Lab for the "interoperable" W78/88-1 warhead (also known as the Interoperable Warhead – 1 or IW-1) to be launched from either land based silos or submarines.¹³ The proliferation-provocative new weapon concept involved a massive redesign of both the Air Force's W78 warhead that sits atop the Minuteman III Intercontinental Ballistic Missile and the Navy's W88 warhead that tops Submarine-Launched Ballistic Missiles, using elements of both nuclear weapons combined with the plutonium pit (core) of a third warhead type, the W87, to create the new IW-1 "common platform" warhead. The full cost of the IW-1 is likely to end up in the \$28 billion range, according to independent sources. The NNSA estimated \$14 billion for the program.

The IW-1 project began in July 2010 when the NNSA designated LLNL as the lead nuclear weapons design lab for the Life Extension Program for the W78, which had been originally a Los Alamos Lab design. A team of about thirty Livermore Lab physicists, engineers and chemists put together the Phase 6.1 options study to "life extend" the W78 warhead, and they did not resist the chance to go beyond maintenance of the W78 to push for an exotic new weapon design that would fill their coffers for many years, despite its proliferation risks.

According to Livermore Lab's magazine, the weaponeers considered refurbishing

Energy, DOE/CF-0107 *FY 2016 Congressional Budget Request* (2015), available at http://energy.gov/sites/prod/files/2015/02/f19/FY2016BudgetVolume1_1.pdf.

¹³ *Id.*

the existing design for the W78, but preferred, instead, to undertake the more complex and novel concept of reusing components from other stockpiled designs to create a new W78/88-1, or IW-1, that could be placed interchangeably on land-based Intercontinental Ballistic Missiles and Submarine-Launched Ballistic Missiles.¹⁴

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

[T]he Navy has concerns about changing the warhead design. In its June 2012 approval of the start of the feasibility study, the Nuclear Weapons Council directed that the Project Officer's Group investigate design options for an interoperable nuclear explosives package that included insensitive high explosive. Navy officials noted that because the interoperable warhead is expected to involve a new design, it would require extensive flight testing and certification....¹⁵

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

¹⁴ U.S. Nat'l Nuclear Sec. Admin., *FY2013 Performance Evaluation Report for Lawrence Livermore National Security*, (November 22, 2013) http://www.trivalleycares.org/new/govdocs/Livermore_Performance_Incentives_Performance_Evaluation_Report_for_FY2013.pdf.

¹⁵ U.S. Gov't Accountability Office, GAO-13-831, *ICBM Modernization, Approaches to Basing Options and Interoperable Warhead Designs Need Better Planning and Synchronization* (September 2013).

Additionally, LLNL is currently working to support DOE NNSA's development of a new Long-Range Stand Off (LRSO) warhead to sit atop a new air-launched cruise missile. The warhead on which the new design will be based is the W80-1. LLNL, which has responsibility for the W80-1, touted its completion of 30-day and 90-day studies to move the LRSO design concept forward. Its FY2013 "performance evaluation" stated that even though LLNL started this work with no LRSO budget it nonetheless prioritized the studies above other, funded activities.¹⁶

Sandia National Lab called the LRSO "inherently thrilling" because the last time a missile and warhead were concurrently designed and fielded was during the 1980s cold war-era. According to Sandia's magazine, its staff has gone to Washington, DC to "help" decision-makers prioritize the LRSO.¹⁷ The NNSA weapons labs' redesign and production of a new warhead for the LRSO is estimated to cost about \$20 billion and take until 2030 to complete. The FY2016

¹⁶ 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_Evaluation_Report_for_FY2013.pdf.

¹⁷ Mike Janes, *LRSO – Sandia Plays Key Role in Long-Range Stand-Off Warhead*, 65 No. 15 Sandia Lab News (Aug. 23, 2013), http://www.sandia.gov/news/publications/LabNews/archive/_assets/documents/labnews08-23-13.pdf.

budget request for the new LRSO warhead development in the coming 12-month period is \$195 million, up from \$9 million in FY2015.¹⁸

A “good faith” party to an agreement does not take steps that are contrary to that agreement. All of the above outlined activities are directly contrary to the NPT Article VI and serve as evidence of the Appellees’ failure to act in good faith to undertake the negotiations required by the treaty.

B. Venue in the Northern District of California is Appropriate

Below, venue was raised as a possible grounds for dismissal. Though the district court did not take a stance, *Amicus* wishes to reiterate the appropriateness of venue in the Northern District of California.

Amicus agrees with the Appellant that:

Venue is proper in the Northern District of California under 28 U.S.C. § 1391(e)(1)(A), which provides that this case could be brought in any district in which “a defendant in the action resides.” Addendum 30. Section 1391(c)(2) defines residency “[f]or all venue purposes” and provides that a legal entity “shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question” *Id.* Amended in 2011, this new definition “clearly includes Section 1391(e).” 14D Wright & Miller, Federal Practice and Procedure §3815 at p. 341. Personal jurisdiction is not disputed here, and therefore venue is proper under Section 1391(e)(1)(A). ER 52-55 (¶¶ 16-20, 27, 29).

¹⁸ 1 Nat’l Nuclear Sec’y Admin., U.S. Dep’t of Energy, DOE/CF-0107 *FY 2016 Congressional Budget Request* (2015), available at http://energy.gov/sites/prod/files/2015/02/f19/FY2016BudgetVolume1_1.pdf.

Appellant Br. 56-57.

Venue is *also* proper under 28 U.S.C. § 1391(e)(1)(B) because “a substantial part of the events or omissions giving rise to the claim occurred” in the Northern District of California. As Section IV.A. of this brief details, the Appellees carry out significant nuclear weapons programs, in breach of NPT Article VI, at LLNL in Livermore, California. The District thus bears a substantial connection to significant events material to this case.¹⁹

Additionally, generally, a plaintiff's choice of forum is afforded substantial deference when the district court is considering a motion to transfer under 28 U.S.C. § 1404.²⁰

Venue is proper even where the operative facts giving rise to the action did not occur within the Northern District of California, and where no particularized local impact was identified that would result from the Defendants' alleged unlawful

¹⁹ See *Gulf Ins. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005); see also 115 Cong. Rec. 6204 (directly linking United States vertical nuclear weapons proliferation to NPT Article VI).

²⁰ *Ctr. for Biological Diversity v. Export-Import Bank of the U.S.*, No. C 12-6325 SBA, 2013 U.S. Dist. LEXIS 133694 (N.D. Cal Sept. 17, 2013); See also *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum); *Creative Tech. v. Aztech Sys.*, 61 F.3d 696, 703 (9th Cir. 1995) (there is normally a strong presumption in favor of honoring the plaintiff's choice of forum); *Sec. Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985) (unless the balance of factors is strongly in favor of the defendants, the plaintiff's choice of forum should rarely be disturbed).

conduct.²¹ In that case, the Plaintiff defended a motion to transfer by simply contending that the Defendants failed “to show that the Northern District of California (had no) particular interest in the parties or the subject matter of this litigation.”²² As *Amicus* has shown in section IV.A. of this brief, the Northern District of California does have an interest in the subject matter of this litigation given the presence of a major DOE NNSA nuclear weapons lab, LLNL, in its jurisdiction.

Additionally, the Appellees made no showing of inconvenience in the lower court proceedings and it is clearly more convenient for the Appellant, a small island republic located in the Pacific Ocean, to choose a west coast venue. Because LLNL is the most significant nuclear weapons facility on the west coast and its work is highly relevant to the case, the Northern District of California a logical and proper choice.

V. CONCLUSION

Amicus curiae respectfully request this court overturn the lower court’s dismissal and direct the Appellees to conduct good faith negotiations as required by Article VI of the NPT.

²¹ *Ctr. for Biological Diversity v. Export-Import Bank of the U.S.*, No. C 12-6325 SBA, 2013 U.S. Dist. LEXIS 133694 (N.D. Cal Sept. 17, 2013).

²² *Id.*

Appellees significant and ongoing nuclear weapons research and development at LLNL are contrary to NPT's Article VI obligation "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." DOE NNSA advocates year after year, even post NPT ratification, that the US Congress fund nuclear weapons research at LLNL that further enhances weapons technology rather than adopting an approach focused on curatorship of the current arsenal until such time as these weapons are dismantled; thereby DOE NNSA makes good faith negotiations difficult in the face of funding commitments for new, enhanced (i.e. modernized) nuclear weapons. By taking these contrary steps, the US has failed in its obligation to negotiate in good faith under the treaty.

Additionally, Venue is proper under § 1391(e)(1)(B) because the Appellees failure to adhere its NPT Article VI obligation "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament" is significantly evidenced by the nuclear weapons activities pursued at the DOE NNSA's Lawrence Livermore National Laboratory.

The law favors preserving Plaintiff's choice of forum, especially when the District has an interest in the litigation. With the presence of a major nuclear weapons research and design laboratory, LLNL, the Northern District of California has a stake in the ensuring that the U.S. meet its Article VI obligations under the

NPT. Thus, the Northern District of California is a proper venue for this matter under § 1391(e)(1)(B).

Dated this 16th day of July, 2015

s/ Scott Yundt

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, *Amicus* states that it is not aware of any related case pending in this court.

CERTIFICATE OF COMPLIANCE

This brief complies with the type volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4409 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

RESPECTFULLY SUBMITTED this 16th day of July, 2015

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 16, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated this 16th day of July, 2015

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