

U.S.C.A. 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, et al.,
Defendants-Appellees.

**AMICUS CURIAE BRIEF OF HANS M. KRISTENSEN, ROBERT
ALVAREZ, DR. JAMES E. DOYLE, AND
NUCLEAR WATCH NEW MEXICO IN SUPPORT OF
PLAINTIFF/APPELLANT
AND A REVERSAL OF THE JUDGMENT ON APPEAL**

Appeal from the United States District Court
For the Northern District of California, U.S.D.C. No C 14-01885 JSW
Honorable Jeffrey S. White, United States District Judge

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CORPORATE DISCLOSURE STATEMENT

Nuclear Watch New Mexico is a nonprofit "project" of the Southwest Research and Information Center (SRIC), a 501(c)3 corporation registered in New Mexico. There are no publicly held companies that own 10% or more of SRIC's stock. See Fed. R. App. P. 26.1.

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IDENTITIES OF THE AMICI CURIAE

A. HANS M. KRISTENSEN – Director of the Nuclear Information Project at the Federation of American Scientists

Hans M. Kristensen is widely considered one of the pre-eminent experts on worldwide nuclear forces, including global modernization plans. He is Director of the Nuclear Information Project at the Federation of American Scientists where he provides the public with analysis and background information about the status of nuclear forces and the role of nuclear weapons.

Between 2002 and 2005, Mr. Kristensen was a consultant to the nuclear program at the Natural Resources Defense Council in Washington, D.C. From 1998 to 2002, he directed the Nuclear Strategy Project at the Nautilus Institute in Berkeley, California, and he was a Special Advisor to the Danish Ministry of Defense in 1997-1998.

Mr. Kristensen is co-author of the Nuclear Notebook column in the *Bulletin of the Atomic Scientists* and the World Nuclear Forces overview in

the *Stockholm International Peace Research Institute Yearbook*. The Nuclear Notebook is regarded as the most accurate source of information on nuclear weapons and weapons facilities available to the public.

B. ROBERT ALVAREZ – Senior Scholar at the Institute for Policy Studies and Former Senior Policy Adviser to the U.S. Department of Energy Deputy Assistant Secretary for National Security and the Environment

A senior scholar at the Institute for Policy Studies, Robert Alvarez served as a senior policy adviser to the Energy Department's secretary and deputy assistant secretary for national security and the environment from 1993 to 1999. During this tenure, he led teams in North Korea to establish control of nuclear weapons materials. He also coordinated the Energy Department's nuclear material strategic planning and established the Department's first asset management program.

Before joining the Energy Department, Mr. Alvarez served for five years as a senior investigator for the U.S. Senate Committee on Governmental Affairs and as one of the Senate's primary staff experts on the U.S. nuclear weapons program.

Mr. Alvarez has published articles in *Science*, *The Bulletin of Atomic Scientists*, *Technology Review*, and *The Washington Post*. He has been featured in television programs such as *NOVA* and *60 Minutes*.

C. DR. JAMES E. DOYLE – Former Specialist in the Nuclear Non-proliferation Division at the Los Alamos National Laboratory

Dr. James E. Doyle was a specialist in the Nuclear Non-proliferation Division at Los Alamos National Laboratory (Los Alamos) from 1997 to July 2014. At Los Alamos, Dr. Doyle managed projects with Russia's nuclear weapons institutes on the joint development of

technologies and procedures for verifying the dismantlement and storage of nuclear warheads and fissile materials.

Dr. Doyle holds a Ph.D. in International Security Studies. His professional focus is on systems analysis, strategic planning and policy development, and his work includes defining educational requirements for nuclear security specialists and developing university training courses in this area.

Dr. Doyle's edited textbook, *Nuclear Safeguards, Security and Nonproliferation: Achieving Security with Technology and Policy*, is in use at many university departments that focus on the integration of technical and policy issues in the field of nuclear security. His articles on nuclear security issues have appeared in *Defense News*, *Science and Global Security*, *Nonproliferation Review*, *Arms Control Today*, *Comparative Strategy*, *Strategic Review* and *Abolishing Nuclear Weapons: A Debate*.

**D. NUCLEAR WATCH NEW MEXICO – A Nonprofit
Organization Devoted to Educating the Public on Nuclear
Weapons and Related Environmental Issues**

Nuclear Watch New Mexico is a nonprofit organization devoted to educating the public on nuclear weapons and related environmental issues, particularly pertaining to the Los Alamos National Laboratory (LANL). Its acclaimed web site receives around three million hits a year.

Executive Director, Jay Coghlan, has been central to successful efforts that stopped radioactive incineration, compelled National Environmental Policy Act review of the nuclear weapons complex, and obtained a federal court ruling that LANL had violated the Clean Air Act for over six years. In addition, Mr. Coghlan initiated congressionally-required independent expert review of the reliable lifetimes of plutonium pits, the radioactive cores of nuclear weapons. The subsequent conclusion that plutonium pits last a century or more led to the cancellation of government proposals for new-design nuclear

weapons and related expanded plutonium pit production. Mr. Coghlan also serves as president of the Alliance for Nuclear Accountability, a nation-wide network of 35 organizations that address Department of Energy nuclear weapons issues.

INTEREST OF THE AMICI CURIAE

Each of the four amici has extensive professional expertise in nuclear weapons policy, arms control, and proliferation issues. They are preeminent in their fields. As a result of their expertise, the amici have a profound understanding of the need for the U.S. to enter into multilateral, good faith negotiations related to nuclear disarmament, as explicitly required by the *Treaty on the Non-Proliferation of Nuclear Weapons*. The amici are deeply interested in seeing that this legal requirement is honored through the instant suit.

CONSENT TO FILE AMICUS CURIAE BRIEF

All parties have consented in writing to the filing of this brief.

Counsel for the parties did not author this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Thus, no person or entity— other than amici curiae or their counsel – contributed money intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a), (c)(5).

ARGUMENT

**I. THE POLITICAL QUESTION DOCTRINE DOES NOT
BAR THE DISTRICT COURT FROM ADDRESSING
WHETHER THE U.S. EXECUTIVE HAS BREACHED
ARTICLE VI OF THE *TREATY ON THE NON-
PROLIFERATION OF NUCLEAR WEAPONS*.**

**A. Nuclear Disarmament is the U.S. Executive's Declared
Policy.**

The district court granted the U.S. Executive's motion to dismiss based on a finding that the Political Question Doctrine applied.¹ In so finding, the district court erroneously concluded that the Marshall Islands seeks to challenge the Executive's declared policy on nuclear disarmament. Because declared U.S. policy calls for nuclear disarmament, as well as engagement in negotiations to achieve that

¹ ER 9-11.

objective, the Marshall Island's action does not challenge such policy, and the Political Question Doctrine does not apply.

The U.S. Executive's declared policy on nuclear disarmament has a long and consistent history. The *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT), which entered into force in 1970, is the foundational document that evidences the U.S. Executive's goal of nuclear weapons disarmament.² The U.S. Executive negotiated the NPT and ratified it, following Senate consent. This treaty thus became part of the supreme law of the land.³

Since the ratification of the NPT, the Executive has repeatedly reaffirmed its declared policy of nuclear disarmament.⁴ This policy is

² *Treaty on the Non-Proliferation of Nuclear Weapons*, art. VI, opened for signature July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161 (entered into force March 5, 1970).

³ U.S. Const. art. VI, cl. 2.

⁴ U.S. Department of Defense, *Nuclear Posture Review Report*, at iv-vi (April 2010), available at <http://www.defense.gov/npr/>; U.S. Department of State, *Remarks by John Kerry, secretary of state, made at the 2015 Nuclear*

most notably evidenced by the legislatively-mandated⁵ Nuclear Posture Review which establishes U.S. nuclear policy for the next five to ten years. The latest Nuclear Posture Review took place in 2010 producing a report that is considered the highest official nuclear weapons policy document of the U.S. government. In that report, the U.S. Executive stated its continued commitment to the NPT generally, and its commitment to disarmament specifically.⁶

Nonproliferation Treaty Review Conference (April 27, 2015), <http://www.state.gov/secretary/remarks/2015/04/241175.htm> (last visited on July 9, 2015).

⁵ National Defense Authorization Act for Fiscal Year 2008, PL 110-181, January 28, 2008, 122 Stat 3, Sec. 1070.

⁶ *Nuclear Posture Review Report*, *supra*, note 4, at 6-7, 10. See also the Defense Department's later reassessment of the Nuclear Posture Review, in which it proclaimed, "The United States seeks the peace and security of a world without nuclear weapons. This is a long-term goal, but it is imperative that we continue to take concrete steps toward it now." U.S. Department of Defense, *Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C.*, at 2 (June 12, 2012), http://www.defense.gov/pubs/ReporttoCongressonUSNuclearEmploymentStrategy_Section491.pdf.

In its February 2015 *National Security Strategy* report, the U.S. Executive again reaffirmed its objective of nuclear disarmament.⁷ The President stated, “No threat poses as grave a danger to our security and well-being as the potential use of nuclear weapons We therefore seek the peace and security of a world without nuclear weapons.”⁸

The Marshall Island’s request for a judicial determination that the Executive has violated the NPT does not challenge the U.S.’s declared policy as required by the Political Question Doctrine. Rather, the request presents a legal question the resolution of which is committed to the judiciary.⁹

⁷ The White House, *National Security Strategy*, at 11 (February 2015), available at https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf.

⁸ *Id.*

⁹ Appellant’s Opening Brief (AOB) 15-16, 19, 23.

B. The “Good Faith” Standard Enunciated in the Treaty is Judicially Discoverable and Manageable.

- 1. The parameters of the good faith standard are discoverable because domestic courts and international tribunals use it to adjudicate proceedings.**

Contrary to the district court’s ruling, there is a discoverable standard by which to resolve the parties’ dispute. NPT Article VI expressly requires “negotiations in good faith.” The particular framework to be used in applying the good faith standard is specifically discoverable because domestic courts and international tribunals regularly use it in adjudicating proceedings.¹⁰

¹⁰ AOB 24-26. See also Amicus Curiae Brief of Lawyer Committee on Nuclear Policy at 4-34; Amicus Curiae Brief of Global Justice Center at 4-11.

The U.S. Executive certainly believes that the good faith standard is a workable legal standard given its repeated reliance on it in international agreements. Not only did the Executive agree to use the good faith standard in the NPT,¹¹ it agreed to use the good faith standard in its historic July 2015 agreement with Iran regarding nuclear weapons.¹²

In the July 2015 Iran agreement, the United States and other parties constructed a framework for negotiations that had reasonable and appropriate timetables which included a deadline for the final text of the plan, yet allowed room for further negotiations.¹³ There is no reason to

¹¹ *Treaty on the Non-Proliferation of Nuclear Weapons*, *supra*, note 2, at art. VI.

¹² European Union, *Joint Comprehensive Plan of Action*, at 3, 13-14 (July 14, 2015), available at http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf.

¹³ U.S. Department of State, Bureau of Economic Affairs, *Parameters for a Joint Comprehensive Plan of Action regarding the Islamic Republic of Iran's Nuclear Program*, at 1 (April 2, 2015), available at <http://www.state.gov/documents/organization/240752.pdf>.

believe that such parameters could not be applied in fashioning a remedy in this matter.

2. The good faith standard is manageable because criteria exist to determine whether the U.S. Executive has met its obligations.

Because the district court misconstrued the Marshall Islands' claims, it failed to recognize criteria exist allowing it to resolve the claims before it. These criteria include the requirements that the U.S. Executive attend negotiations and that it not take steps contrary to its obligation to negotiate disarmament.¹⁴ Objective, public documentation shows the U.S. Executive has neither convened nor attended good faith negotiations related to nuclear disarmament as required by NPT Article VI, and, through its vertical proliferation of nuclear weapons, has acted contrary to its disarmament obligations under the NPT. The existence of

¹⁴ AOB 25-27.

such documentation underscores the manageability of the good faith standard.

- a. **Objective documentation showing the U.S. Executive has failed to pursue negotiations evidences the manageability of the good faith standard.**

Despite its legal obligation to pursue nuclear disarmament negotiations, the U.S. Executive has not undertaken such action.¹⁵ The Executive often proffers its efforts to reduce the number of nuclear weapons as proof it is fulfilling its obligations under the NPT. As discussed in the immediately following subsection, any asserted reduction in numbers of nuclear weapons by the United States often takes place only after newer, more capable nuclear weapons are created.

Also, as pointed out at the 2015 Nonproliferation Treaty Review

¹⁵ United Nations, U.N. Office for Disarmament Affairs, *Challenging the Status Quo: A Generation Rising for Peace, Justice, and Nuclear Abolition*, at 2 (May 1, 2015), available at <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/05/ak-bang.pdf>.

Conference by the South African Ambassador:

. . . reductions and nuclear disarmament are two different concepts. The concept of reduction means that we do not need so many and therefore we will reduce some. The concept of nuclear disarmament means that we must carve out a path for the total elimination of nuclear weapons.¹⁶

As detailed below, documentation shows that the U.S. Executive has not taken action to pursue nuclear disarmament negotiations in good faith. The objective nature of this documentation renders the good faith standard effectively manageable in the instant matter.

¹⁶ Republic of South Africa, South African Permanent Mission to the United Nations, *Statement by Ambassador Abdul Samad Minty on Behalf of South Africa, Subsidiary Body 1*, (May 13, 2015), <http://safricaun.ch/?p=151> (last visited on July 16, 2015).

b. Objective documentation showing the Executive's Vertical Proliferation of Nuclear Weapons evidences the manageability of the good faith standard.

The U.S. Executive has set on a course of indefinitely preserving nuclear weapons and increasing their military capabilities through the "modernization" of its stockpile, supporting research, and production infrastructure. The Executive is also aggressively planning to build completely new intercontinental ballistic missiles, heavy bombers and strategic submarines to deliver nuclear weapons. This course of action is commonly referred to as "vertical nuclear proliferation."¹⁷ The United States' vertical nuclear proliferation is antithetical to its legal obligations to enter into good faith negotiations related to nuclear disarmament as required by Article VI of the NPT.

¹⁷Victor Sidel, et al., *Proliferation of Nuclear Weapons: Opportunities for Control and Abolition*, American Journal of Public Health, Vol. 97, No. 9 (September 2007) at 1589, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1963312/pdf/0971589.pdf>.

The Executive's actions evidencing its vertical nuclear proliferation are found throughout governmental documents. One key document, the National Nuclear Security Administration's annual *Stockpile Stewardship and Management Plan*, is particularly informative.

The National Nuclear Security Administration (NNSA) is a semi-autonomous agency within the U.S. Department of Energy and is responsible for, *inter alia*, maintaining and enhancing the performance of the U.S. nuclear weapons stockpile.¹⁸ The NNSA's congressionally-required *Stockpile Stewardship and Management Plan* is thus the government's document of record on the Executive's plans to maintain, revitalize, and modernize the nuclear stockpile.¹⁹

¹⁸ U.S. Department of Energy, National Nuclear Security Administration, *Our Mission*, <http://nnsa.energy.gov/ourmission> (last visited on July 19, 2015).

¹⁹ U.S. Department of Energy, National Nuclear Security Administration, *Fiscal Year 2016 Stockpile Stewardship and Management Plan*, at 9-1 (March 2015), available at http://nnsa.energy.gov/sites/default/files/FY16SSMP_FINAL%203_16_2015_reducedsize.pdf.

In its *Fiscal Year 2016 Stockpile Stewardship and Management Plan*, the NNSA requested an 11.2 percent funding increase over that of fiscal year 2015.²⁰ This significant increase in funding will support aggressive Life Extension Programs²¹ designed to indefinitely preserve existing nuclear weapons and give them new military capabilities.²² The increase

²⁰ The 11.2 percent increase translates to \$891 million. *Fiscal Year 2016 Stockpile Stewardship and Management Plan*, *supra*, note 19, at i.

²¹ Life Extension Programs (LEPs) are modifications that refurbish warheads by replacing aged components with the intent of extending the service life of the weapon. *Fiscal Year 2016 Stockpile Stewardship and Management Plan*, *supra*, note 19, at 1-5. LEPs can extend the life of a warhead for up to 60 years. U.S. Department of Energy, National Nuclear Security Administration, *FY 2016 Congressional Budget Request*, Vol. 1, at 94 (February 2015), available at http://www.energy.gov/sites/prod/files/2015/02/f19/FY2016BudgetVolume1_1.pdf.

²² Of particular note is the current B61-12 Life Extension Program. The modifications undertaken to produce the B61-12 will render it considerably more capable than the previous variants thereby creating the world's first nuclear "smart" bomb. Hans M. Kristensen, *The B61 Life-Extension Program: Increasing NATO Nuclear Capability and Precision Low-Yield Strikes*, at 1-4, Federation of American Scientist (June 2011), available at <https://fas.org/issue-brief/b61-life-extension-program-increasing-nato-nuclear-capability-precision-low-yield-strikes/>.

will also fund the construction of new production plants to support the modernized stockpile²³ and the upgrade of existing facilities for expanded production of the plutonium pit cores of nuclear weapons.²⁴ The increased funding will support conceptual studies to create additional Life Extension Programs for other types of nuclear weapons as well.²⁵

The NNSA has quickly begun implementing these modernization plans and openly displays the B61-12's new guidance tail fin kit that endows the weapon with new military capabilities.²⁶ Similarly, various

²³ *FY 2016 Congressional Budget Request, supra, note 21, at 323 - 342.*

²⁴ *Fiscal Year 2016 Stockpile Stewardship and Management Plan, supra, note 19, at i; FY 2016 Congressional Budget Request, supra, note 21, at 343-368.*

²⁵ *Fiscal Year 2016 Stockpile Stewardship and Management Plan, supra, note 19, at i, 4-12. See also FY 2016 Congressional Budget Request, supra, note 21, at 10.*

²⁶ U.S. Department of Energy, National Nuclear Security Administration, *NNSA, Air Force Complete Successful B61-12 Life Extension Program Instrumented Flight Tests* (February 2, 2015)

branches of the U.S. armed forces have reported their implementation of the modernization programs and the resulting increases in the longevity of the nuclear weapons and/or delivery systems involved.²⁷ The U.S. Air Force and Navy are aggressively planning to build new nuclear-armed forces, including intercontinental ballistic missiles, long-range heavy bombers, and strategic submarines, expected to be operational until up

<http://nnsa.energy.gov/mediaroom/pressreleases/b61-12-lep-instrumented-flight-tests> (last visited on July 19, 2015); U.S. Department of Energy, National Nuclear Security Administration, *B61-12 Life Extension Program Undergoes First Full-Scale Wind Tunnel Test* (April 14, 2014) <http://nnsa.energy.gov/mediaroom/pressreleases/windtunnel> (last visited on July 19, 2015).

²⁷ *Status of Air Force Nuclear and Strategic Systems, Presentation to the Senate Armed Services Committee Strategic Forces Subcommittee United States Senate*, at 2, 6-8, 12-13, 17 (April 22, 2015), available at http://www.armed-services.senate.gov/imo/media/doc/Wilson_04-22-15.pdf; *FY2016 Budget Request for Nuclear Forces, Hearing Before the Subcommittee on Strategic Forces of the House Armed Services Committee*, at 5-8, (April 15, 2015), <http://docs.house.gov/meetings/AS/AS29/20150415/103008/HHRG-114-AS29-Wstate-BenedictUSNT-20150415.pdf>; *Statement of Admiral C. D. Haney, Commander, United States Strategic Command Before the Senate Committee on Armed Services*, at 6, 12, 14 (March 19, 2015), available at http://www.armed-services.senate.gov/imo/media/doc/Haney_02-27-14.pdf.

to 2080.²⁸ In all, the modernization and ongoing preservation of nuclear forces is expected to cost a trillion dollars or more over the next 30 years.²⁹

The plans to increase the capabilities of the nation's nuclear weapons are essentially at the direction of the U.S. Executive, as evidenced by the *Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C.*³⁰ In this authoritative document, the Executive directs that the U.S. nuclear weapons stockpile should be maintained so that it can be used in nuclear warfighting against military and leadership targets, as opposed to maintaining those weapons merely

²⁸ *Status of Air Force Nuclear and Strategic Systems*, *supra*, note 27, at 8; *FY2016 Budget Request for Nuclear Forces*, *supra*, note 27, at 5.

²⁹ Jon B. Wolfsthal, et al., *The Trillion Dollar Nuclear Triad*, James Martin Center for Nonproliferation Studies at 4, 11 (January 2014), available at http://cns.miis.edu/trillion_dollar_nuclear_triad/.

³⁰ 10 U.S.C. § 491.

for deterrence.³¹ Because of this directive, the size of the U.S. nuclear arsenal and delivery systems must be far larger and more capable than if a less aggressive strategy were chosen.³²

As discussed in the *Report on Nuclear Employment Strategy*, the Executive directs that, despite the modification of certain nuclear weapons through Life Extension Programs, the Department of Defense should maintain the older weapons for an indefinite period of time until confidence is achieved in the newly modified weapons. Thus, for some undisclosed period of time, the older weapons will be kept along side the modernized weapons, contrary to official claims that modernization

³¹ *Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C.*, *supra*, note 6, at 4. In more technical terms, the nation's nuclear stockpile is kept in a posture of "counterforce" instead of merely "countervalue."

³² U.S. Defense Department, *The Nuclear Matters Handbook, Expanded Edition*, at 240 (2011), available at http://www.acq.osd.mil/ncbdp/nm/nm_book_5_11/docs/NMHB2011.pdf.

will result in stockpile reductions.³³ Similarly, the U.S. Executive will not dismantle any nuclear weapons slated for retirement under the bilateral *New Strategic Arms Reduction Treaty* until production facilities for new nuclear weapons are built, expected in the late 2020's.³⁴

Objective documentation shows that the U.S. Executive intends to and in fact has begun to modernize all aspects of its nuclear enterprise,³⁵

³³ *Id.* at 7. To similar effect, see U.S. Government Accountability Office, *Nuclear Weapons: Actions Needed by NNSA to Clarify Dismantlement Performance Goal*, at 21, 25, 28-29 (April 2014), available at www.gao.gov/assets/670/662840.pdf; Robert Alvarez, *The Nuclear Weapons Dismantlement Problem*, *Bulletin of the Atomic Scientists*, Vol. 70, Issue 6 (November 3, 2014) at 2, available at <http://thebulletin.org/2014/november/nuclear-weapons-dismantlement-problem7791>.

³⁴ *Nuclear Weapons: Actions Needed by NNSA to Clarify Dismantlement Performance Goal*, *supra*, note 33, at 29.

³⁵ Hans M. Kristensen, et al., *US nuclear forces, 2015*, *Bulletin of the Atomic Scientists, Nuclear Notebook*, Vol. 7 (March 2015) at 110-111, 113-114, 116, available at <http://thebulletin.org/2015/march/us-nuclear-forces-20158075>; *Status of Air Force Nuclear and Strategic Systems*, *supra*, note 27, at 2; Hans Kristensen, et al., *Slowing nuclear weapon reductions and endless nuclear weapon modernizations: A challenge to the NPT*, *Bulletin of the Atomic Scientists, Nuclear Notebook*, (June 20, 2014), at 96, 102, available at <http://bos.sagepub.com/content/70/4/94>.

and that many of these modernization programs will introduce new or improved military capabilities to the weapon systems.³⁶ With this documentation, the district court can readily employ the good faith standard, making it an eminently manageable standard.³⁷

3. The good faith standard is manageable irrespective of the district court's ability to direct the actions of other signatories to the Treaty.

The district court found that the Marshall Island's request for an order directing the United States to convene negotiations "... failed to take into consideration the activities and willingness of other nations which are also signatories to the Treaty"³⁸ In so finding, the district court failed to acknowledge the interest of other countries in negotiating

³⁶ *Slowing nuclear weapon reductions and endless nuclear weapon modernizations, supra*, note 35, at 102.

³⁷ AOB 27.

³⁸ ER 11.

disarmament. It also failed to understand the nature and process of international negotiations.

Other countries do have an interest in engaging in nuclear disarmament negotiations. As a result of the NPT, other countries actually have a legal commitment to do so. Thus, in a purely legal sense, the district court's assertion of a lack of interest has no basis. The signatories are legally required to engage in disarmament negotiations.

Not only does the district court's finding regarding the interest of other countries have no legal basis, it misunderstands the nature of international negotiations. The process of international disarmament negotiations is an incremental one, often beginning with a small number of interested countries, and, over time, gaining support. Thus, a key feature of the process leading to a disarmament agreement is the inclusion of additional countries in the negotiation process over a period

of time.³⁹ What is fundamental to achieving the goal of disarmament is that negotiations actually begin.

C. Prudential Considerations Do Not Allow the Application of the Political Doctrine Question.

In determining the applicability of the Political Question Doctrine, the district court relied on the first two factors found in the test enunciated in *Baker v. Carr*, 369 U.S. 186, 217 (1962).⁴⁰ As discussed in the Marshall Islands' opening brief, neither of these factors renders the Political Question Doctrine applicable. Additionally, the last three factors enunciated in *Baker*, often called the "prudential considerations," cannot support the application of the Political Question Doctrine.⁴¹

³⁹ This issue is discussed more fully in section II.C.2. *supra*, and incorporated herein by reference; See also Amicus Curiae Brief of Lawyer Committee on Nuclear Policy at 33.

⁴⁰ ER 10-11.

⁴¹ AOB 17, 24, 30.

The *Baker* prudential considerations do not support the application of the Political Doctrine Question to this case because this matter does not (a) require the district court to express a lack of respect for the U.S. Executive; (b) present an unusual need for unquestioning adherence to a political decision already made; or (c) require dismissal because of potential Executive embarrassment.⁴²

Through the NPT, the United States has legally declared its objective of complete nuclear disarmament.⁴³ In the decades following this declaration, the United States has consistently reaffirmed its stated policy.⁴⁴ Under these circumstances, the district court's substantive adjudication of this matter would not express a lack of respect for the Executive or inappropriately question its declared policy. To the

⁴² *Baker*, 369 U.S. at 217.

⁴³ *Treaty on the Non-Proliferation of Nuclear Weapons*, *supra*, note 2 at art. VI.

⁴⁴ See section I.A., *supra*.

contrary, it would be an appropriate exercise of its constitutional duty to decide cases in accordance with treaties.⁴⁵ Such a decision would also ensure that the U.S. Executive fulfilled its declared policy mandate.

The district court's substantive adjudication of this matter would not embarrass the U.S. Executive. The United States has very publicly demonstrated its breach of Article VI of the NPT by failing to conduct disarmament negotiations and by modernizing its nuclear forces with the intent to maintain nuclear force through most of the 21st century.⁴⁶

The international community, as well as domestic observers, widely bemoan the United States' failure to comply with the NPT's negotiations and disarmament provisions.⁴⁷

⁴⁵ *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230 (1986).

⁴⁶ See section I.B.2.b., *supra*.

⁴⁷ See section I.B.2.b., *supra*. See also United Nations Office for Disarmament Affairs, *Promoting a Successful Outcome of the 2015 NPT Review Conference*, at 2 (April 27, 2015), available at <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/04/hr-swedish-sipri.pdf>; United Nations Office for Disarmament Affairs, *The Home Stretch*:

Rather than embarrassing the U.S. Executive, the district court's grant of the relief sought by the Marshall Islands would elevate the United States' standing.⁴⁸ The Executive recently stated that it must and “will lead by example.”⁴⁹ This leadership requires the United States to “. . . hold[] [itself] . . . to international norms and standards that we expect other nations to uphold, and admitting when we do not.”⁵⁰ The

Looking for Common Ground Ahead of the 2015 NPT Review Conference, at 2-3, (March 13, 2015) available at <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/03/hr-annecy.pdf>; *Reaching Critical Will, 2015 NPT Review Conference Joint Closing Statement As delivered by Austria* (May 22, 2015) http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/22May_Austria.pdf (last visited on July 25, 2015); *The Nuclear Weapons Dismantlement Problem*, *Bulletin of the Atomic Scientists*, *supra*, note 33, at 2.

⁴⁸ *The Home Stretch: Looking for Common Ground Ahead of the 2015 NPT Review Conference*, *supra*, note 47, at 2-3.

⁴⁹ *National Security Strategy*, *supra*, note 7, at 11.

⁵⁰ *Id.*

U.S. Executive understands that, by meeting its obligations under the NPT, it is more likely that other nations will meet theirs.⁵¹

None of the criteria found in *Baker* prevent the district court from rendering a substantive decision in this matter. Thus, the Political Doctrine Question does not apply, and the district court's grant of the Executive's motion to dismiss on this basis was error.

⁵¹ *Nuclear Posture Review Report*, note 4, at v-vi.

**II. THE MARSHALL ISLANDS HAS STANDING IN THE
INSTANT MATTER.**

**A. The U.S. Executive's Breach of the Treaty Has Inflicted
Concrete and Particularized Injury on the Marshall Islands.**

The district court ruled that the U.S. Executive's breach of the NPT could not, alone, support a finding of the injury necessary to provide the Marshall Islands with standing. This ruling is erroneous. As explained by the Marshall Islands its "... harm is that of a party that has honored its NPT obligations but is not receiving the quid pro quo of good faith disarmament negotiations, promised by the Executive."⁵² Although the denial of the Marshall Island's bargained-for right to the United States' participation in negotiations is a legally cognizable injury, the Marshall Islands has suffered concrete and particularized injury which provides it with an additional basis for asserting standing.

⁵²AOB 34-35, 37.

1. The district court mischaracterized and minimized the threat of injury faced by the Marshall Islands.

The district court found the Marshall Islands' Complaint failed to allege a concrete, particularized, and actual or imminent injury that is traceable to the defendants' breach of the NPT.⁵³ Because the Complaint sufficiently alleged the Marshall Islands has suffered such injury, the district court's dismissal based on a lack of standing must be reversed.

In refusing to recognize the Marshall Islands' injury, the district court relied on what it termed the ". . .generalized and speculative fear of the possibility of future use of nuclear weapons. . . ." ⁵⁴ The district court's finding misrepresents the level of threat caused by nuclear weapons and the injury the Marshall's suffers as a result of that threat.

⁵³ ER 7.

⁵⁴ ER 8.

The mischaracterization and minimization of nuclear threat is a common phenomenon that finds its roots in primitive human defense mechanisms.⁵⁵ Such defense mechanisms cannot, however, be a basis for the dismissal.

2. The high alert status of nuclear weapons maintained by the United States increases the threat of injury to the Marshall Islands.

Recent history reveals a long list of weapons systems failures that have resulted in nuclear detonation “close calls.”⁵⁶ Far from being

⁵⁵ Hanna M. Segal, *Silence is the Real Crime*, in *Psychoanalysis and the Nuclear Threat: Clinical and Theoretical Studies*, at 35, 39 (Howard B. Levine, et al. eds., 1988 ed.).

⁵⁶ Union of Concerned Scientists, *Close Calls with Nuclear Weapons*, at 1-2, (April 2015), available at <http://www.ucsusa.org/sites/default/files/attach/2015/04/Close%20Calls%20with%20Nuclear%20Weapons.pdf>. See also Amicus Brief of Physicians for Social Responsibility, International Physicians for The Prevention of Nuclear War, and Pax Christi International at 8-15.

unusual, such failures are frequent, even routine.⁵⁷ The grave threat caused by these failures is increased by the high alert status of U.S. nuclear weapons.⁵⁸

Around 900 warheads of the United States' strategic nuclear arsenal are continuously maintained on high alert.⁵⁹ As a result of this status, national leaders have “. . . just a few minutes for detecting and assessing an attack, briefing the top leaders, picking a response option, and implementing the option”⁶⁰ To engage in this process in a

⁵⁷ *Id.* at 2.

⁵⁸ Hans M. Kristensen, et al., *Reducing Alert Rates of Nuclear Weapons* United Nations Institute for Disarmament Research, (2012), available at <http://www.unidir.org/files/publications/pdfs/reducing-alert-rates-of-nuclear-weapons-en-307.pdf>; Global Zero Commission on Nuclear Risk Reduction, *De-Alerting and Stabilizing the World's Nuclear Force Postures*, pp. 1 , 6 (April 2015), available at http://www.globalzero.org/files/global_zero_commission_on_nuclear_risk_reduction_report_0.pdf.

⁵⁹ *Id.* at 1.

⁶⁰ *De-Alerting and Stabilizing the World's Nuclear Force Postures*, *supra*, note 58, at 2.

limited amount of time, the decision-making process has been reduced to “. . . a checklist-driven rote enactment of a prepared script that could too easily . . . collapse[] in confusion or le[a]d to a mistaken or unauthorized launch.”⁶¹

The increased threat caused by the high alert status of U.S. nuclear weapons is exacerbated by the threat of cyber attack. All computers systems, whether connected to the Internet or operating on a closed network, can be compromised by various hacking methods.⁶² This is also true of the United States' nuclear command and control structures.⁶³ The Secretary of Defense's Director of Operational Test and Evaluation

⁶¹ *Id.* at 1.

⁶² Jason Fritz, *Hacking Nuclear Command and Control*, International Commission on Nuclear Non-proliferation and Disarmament (2009) at 1, available at http://works.bepress.com/jason_fritz/4/.

⁶³ *Id.* at 1, 20.

issued a 2014 report stating ". . . almost every U.S. weapons program tested showed 'significant vulnerabilities to cyber attacks.'"⁶⁴

By maintaining a significant portion of its nuclear arsenal on "hair trigger alert," the United States has increased the already notable risk of an accidental or unauthorized nuclear launch.⁶⁵ The Marshall Islands' Complaint alleging an increased risk of harm is thus more than sufficient to show that it has standing based on a concrete, particularized, and imminent injury.⁶⁶

⁶⁴ *Id.* Also, the U.S. Defense Department has reported that it experiences thousands of cyber attacks on a daily basis. *De-Alerting and Stabilizing the World's Nuclear Force Postures*, *supra*, note 58, at 31.

⁶⁵ *De-Alerting and Stabilizing the World's Nuclear Force Postures*, *supra*, note 58, at 3.

⁶⁶ AOB 37-42.

B. The District Court can Redress the Injuries Suffered by the Marshall Islands.

1. The U.S. Executive's breach of Article VI of the Treaty is a redressable injury.

In ruling that the Marshall Islands does not have standing, the district court concluded that a favorable decision would not redress any injury suffered.⁶⁷ It is axiomatic that a judgment directing the United States to comply with the negotiations provision of Article VI of the NPT would redress the injury caused by a breach of that provision. Such a breach provides the Marshall Islands with standing because it need not show that the sought-after negotiations are connected to a particular substantive result.⁶⁸

The district court in this matter sorely misunderstood that negotiations are crucial even where the near-term success of those

⁶⁷ ER 8-9.

⁶⁸ AOB 43-44.

negotiations is unknown. In the longer-term, negotiations aimed at eliminating weapons of mass destruction do provide tangible benefits to participants. *The Biological Weapons Convention*⁶⁹ and *The Chemical Weapons Convention*⁷⁰ are but two examples of successful agreements arising from protracted weapons negotiations.⁷¹

A recent example of successful nuclear weapons negotiations is the July 2015 agreement with Iran regarding nuclear weapons. The U.S.

⁶⁹*The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, available at <http://www.unog.ch/80256EE600585943/%28httpPages%29/77CF2516DDC5DCF5C1257E520032EF67?OpenDocument>.

⁷⁰U.S. Department of State, *The Chemical Weapons Convention: Eliminating a Whole Category of Weapons of Mass Destruction*, <http://www.state.gov/r/pa/pl/176872.htm> (last visited on July 15, 2015).

⁷¹ See also, the June 2015 testimony of Dr. Graham T. Allison wherein he discusses the essential value of nuclear weapons negotiations in achieving disarmament. United States Senate, *Lessons Learned from past WMD Negotiations*, Hearing before Senate Committee on Foreign Relations, 114th Congress (2015) (statement of Graham T. Allison), available at http://www.foreign.senate.gov/imo/media/doc/062415_Allison_Testimony.pdf.

Executive, through lengthy negotiations, entered into a nuclear weapons agreement with Iran despite the widespread belief that such an agreement could not be achieved.⁷² In this agreement, entitled the *Joint Comprehensive Plan of Action* (JCPOA), the parties reaffirmed that, “. . .the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament”⁷³ President Obama, in discussing the JCPOA, emphasized that the agreement, as well as the safety it brought, could have only been achieved through negotiations, and quoted John F. Kennedy, stating, “Let us never negotiate out of fear, but let us never fear to negotiate. . .

.”⁷⁴

⁷² *Joint Comprehensive Plan of Action*, *supra*, note 12, at 2.

⁷³ *Id.* at 3.

⁷⁴ The White House, *Statement by the President on Iran*, (July 14, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/07/14/statement-president-iran>.

The district court can redress the injury caused by the U.S. Executive's failure to negotiate as required by the Article VI of the NPT by granting the relief requested by the Marshall Islands. Such relief will ensure the Marshall Islands receives the benefit of its bargain and that the United States pursues the only path that can lead to nuclear disarmament, that of negotiations.

2. The increased risk of danger to the Marshall Islands caused by the United States' breach of Article VI of the Treaty is a redressable injury.

The Marshall Islands alleges as an additional injury the increased risk of danger caused by the Article VI breach. This second injury is redressable because the United States' good faith participation in negotiations, even if those negotiations are imperfect, is an incremental

step toward reducing the Marshall Islands' substantial, increased risk of injury.⁷⁵

Major international agreements addressing arms control are achieved through incremental steps taking place over a protracted period of time. The district court's grant of the Executive's motion to dismiss was based in part on a failure to understand these fundamentals.

The Biological Weapons Convention,⁷⁶ *The Chemical Weapons Convention*,⁷⁷ and the NPT⁷⁸ are examples of agreements that came into

⁷⁵AOB 46.

⁷⁶The Nuclear Threat Initiative, *The Biological Weapons Convention*, at 3, <http://www.nti.org/analysis/articles/biological-weapons-convention/> (last visited on July 16, 2015).

⁷⁷ Organisation for the Prohibition of Chemical Weapons, *The Chemical Weapons Convention: Genesis and Historical Development*, <https://www.opcw.org/chemical-weapons-convention/genesis-and-historical-development/> (last visited on July 15, 2015).

⁷⁸ United States Department of State, Office of the Historian, *Milestones: 1961–1968*, <https://history.state.gov/milestones/1961-1968/npt> (last visited on July 16, 2015).

force only after years of incremental negotiations.⁷⁹ These agreements are also examples of negotiations that did not initially include the key countries that are now signatories. An important feature of each of these agreements was the addition of participant-countries throughout the negotiation process.⁸⁰

As experience shows, the district court's finding it could not redress the Marshall Islands' injury because it could not compel the participation of all the signatories to the NPT in negotiations misunderstands the nature of international weapons negotiations.⁸¹ It

⁷⁹ The July 2015 nuclear agreement with Iran came to fruition through a series of incremental steps taking place over a period of time. European Union, *Joint Statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif Switzerland* (February 4, 2015), available at http://eeas.europa.eu/statements-eeas/2015/150402_03_en.htm.

⁸⁰ *Milestones: 1961–1968*, *supra*, note 78 at 3, 5, 6; *The Chemical Weapons Convention: Genesis and Historical Development*, *supra*, note 77.

⁸¹ER 9.

also misunderstands the influence the United States has with respect to other countries.

Particularly in matters involving nuclear weapons, the United States wields immense influence over other countries.⁸² If it were to move forward with disarmament negotiations, this movement would encourage other countries to participate.⁸³ Parties attending the 2010

⁸² Examples of the United States' influence, particularly in military matters, is evident from its status as one of the five permanent members of the United Nations. United Nations, United Nations Security Council, *Current Members*, <http://www.un.org/en/sc/members/> (last visited on July 17, 2015). Also, the military commander of NATO is always an American. North Atlantic Treaty Organization, Allied Command Operations, *SACEUR*, <http://www.aco.nato.int/saceur2013.aspx> (last visited on July 17, 2015). The fact that the United States relies on a nuclear warfighting posture rather than one of simple deterrence is additional evidence of its strong influence in all matters involving nuclear weapons. *Report on Nuclear Employment Strategy of the United States*, *supra*, note 31, at 4.

⁸³ See, for example, the influence of the United States in the formation of the *Biological Weapons Convention*. *The Biological Weapons Convention*, *supra*, note at 76, at 3.

NPT Review Conference recognized the strong influence of the United States in leading the way toward negotiations when it affirmed:

. . . the need for the nuclear-weapon States to reduce and eliminate all types of their nuclear weapons and encourage[d], in particular, those States with the largest nuclear arsenals to lead efforts in this regard.⁸⁴

There are some signatories to the NPT who are eager to participate in disarmament negotiations. South Africa, a former nuclear weapons state, has voiced its commitment to comply with Article VI, and in so doing, has openly called for negotiations.⁸⁵ At the 2015 NPT Review Conference, the Austrian ambassador presented a statement joined in by 48 other countries expressing their desire to move forward with

⁸⁴ *2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document*, Vol. 1 at 20 (June 18, 2010), available at [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50(VOL.I)).

⁸⁵ *Statement by Ambassador Abdul Samad Minty on Behalf of South Africa, Subsidiary Body 1, supra*, note 16, at 6.

disarmament negotiations.⁸⁶ If the United States pursued disarmament negotiations, other key countries would be influenced to participate.

The negotiations giving rise to international agreements on weapons of mass destruction occur slowly, methodically, and often, without the initial support of key countries. Such negotiations, particularly when undertaken by an influential country such as the United States, are effective in reaching the ultimate goal of disarmament. With this understanding in mind, it is clear that the district court's grant of the Executive's motion to dismiss based on a lack of redressability was error requiring reversal.

⁸⁶ 2015 NPT Review Conference Joint Closing Statement As delivered by Austria, *supra*, note 47.

CONCLUSION

The judgment of the district court should be vacated and the case remanded for further proceedings.

Dated: August 7, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the undersigned hereby certifies that this brief conforms to the required specifications in that:

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Dated: August 7, 2015

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Dr. James E. Doyle, and

Nuclear Watch New Mexico

ADDENDUM OF STATUTES

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ADDENDUM A

Treaty on the Non-Proliferation of Nuclear
Weapons, T.I.A.S. No. 6839 (Mar. 5, 1970)

T.I.A.S. No. 6839 (U.S. Treaty), 21 U.S.T. 483 (U.S. Treaty), 1970 WL 104532 (U.S. Treaty)

UNITED STATES OF AMERICA

Multilateral

Treaty on the Non-Proliferation of Nuclear Weapons

Treaty on the Non-Proliferation of Nuclear Weapons

Done at Washington, London, and Moscow July 1, 1968;

Ratification advised by the Senate of the United States of America March 13, 1969;

Ratified by the President of the United States of America November 24, 1969;

Ratification of the United States of America deposited at Washington, London, and Moscow March 5, 1970;

Proclaimed by the President of the United States of America March 5, 1970;

Entered into force March 5, 1970.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

ARTICLE I

ARTICLE II

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[Signatures Affixed at Washington to the United States original of the Treaty on the Non-Proliferation of Nuclear Weapons]⁴

Note by the Department of State

Signatures Affixed at Washington to the United States original of the Treaty on the Non-Proliferation of Nuclear Weapons⁶

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

*1 WHEREAS the Treaty on the Non-Proliferation of Nuclear Weapons was signed at Washington, London, and Moscow on July 1, 1968 in behalf of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics and was signed at one or more of the three capitals in behalf of a number of other States;

WHEREAS the text of the Treaty, in the English, Russian, French, Spanish, and Chinese languages, is word for word as follows:

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

The States concluding this Treaty, hereinafter referred to as the "Parties to the Treaty",

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for the conclusion of an agreement on the prevention of wider dissemination of nuclear weapons,

Undertaking to cooperate in facilitating the application of International Atomic Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further the application, within the framework of the International Atomic Energy Agency safeguards system, of the principle of safeguarding effectively the flow of source and special fissionable materials by use of instruments and other techniques at certain strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear-weapon States from the development of nuclear explosive devices, should be available for peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for, and to contribute alone or in cooperation with other States to, the further development of the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament,

Urging the cooperation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning nuclear weapon tests in the atmosphere in outer space and under water¹ in its Preamble to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control,

Recalling that, in accordance with the Charter of the United Nations,² States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

ARTICLE I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

ARTICLE II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

ARTICLE III

1. Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency³ and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.

3. The safeguards required by this article shall be implemented in a manner designed to comply with article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

ARTICLE IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

ARTICLE V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

ARTICLE VI

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, and on a treaty on general and complete disarmament under strict and effective international control.

ARTICLE VII

Nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

ARTICLE VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

ARTICLE IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to article 102 of the Charter of the United Nations.

ARTICLE X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

ARTICLE XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depository Governments. Duly certified copies of this Treaty shall be transmitted by the Depository Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Treaty.

DONE in triplicate, at the cities of Washington, London and Moscow, this first day of July one thousand nine hundred sixty-eight.

**[Signatures Affixed at Washington to the United States original
of the Treaty on the Non-Proliferation of Nuclear Weapons]⁴**

FOR THE UNITED STATES OF AMERICA:

(Signature)

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

(Signature)

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

(Signature)

FOR NEPAL:

(Signature)

FOR THE SOMALI REPUBLIC:

(Signature)

FOR ICELAND:

(Signature)

FOR AFGHANISTAN:

(Signature)

FOR LAOS:

(Signature)

FOR FINLAND:

(Signature)

FOR TUNISIA:

(Signature)

FOR IRELAND:

(Signature)

FOR THE PHILIPPINES:

(Signature)

FOR AUSTRIA:

(Signature)

FOR THE DOMINICAN REPUBLIC:

(Signature)

FOR GHANA:

(Signature)

FOR SAN MARINO:

(Signature)

FOR HAITI:

(Signature)

FOR CYPRUS:

(Signature)

FOR THE REPUBLIC OF CHINA:

(Signature)

FOR MOROCCO:

(Signature)

FOR BOTSWANA:

(Signature)

FOR PARAGUAY:

(Signature)

FOR IRAN:

(Signature)

FOR GREECE:

(Signature)

FOR MALAYSIA:

(Signature)

FOR HUNGARY:

(Signature)

FOR COLOMBIA:

(Signature)

FOR NEW ZEALAND:

(Signature)

FOR ROMANIA:

(Signature)

FOR LIBERIA:

(Signature)

FOR EL SALVADOR:

(Signature)

FOR PANAMA:

(Signature)

FOR NORWAY:

(Signature)

FOR JORDAN:

(Signature)

FOR BOLIVIA:

(Signature)

FOR MAURITIUS:

(Signature)

FOR DENMARK:

(Signature)

FOR SENEGAL:

(Signature)

FOR CZECHOSLOVAKIA:

(Signature)

FOR LEBANON:

(Signature)

FOR POLAND:

(Signature)

(Signature) FOR NIGERIA:

(Signature) FOR BULGARIA:

(Signature) FOR VENEZUELA:

(Signature) FOR NICARAGUA:

(Signature) FOR PERU:

(Signature) FOR COSTA RICA:

(Signature) FOR THE REPUBLIC OF VIET-NAM:

(Signature) FOR URUGUAY:

(Signature) FOR CEYLON:

(Signature) FOR TOGO:

(Signature) FOR THE REPUBLIC OF KOREA:

(Signature) FOR KENYA:

(Signature) FOR BARBADOS.

(Signature) FOR THE IVORY COAST:

(Signature) FOR HONDURAS:

(Signature) FOR DAHOMEY:

(Signature) FOR LESOTHO:

(Signature) FOR ECUADOR:

(Signature) FOR YUGOSLAVIA:

(Signature) FOR CAMEROON:

(Signature) FOR LIBYA:

(Signature) FOR THE CONGO (DEMOCRATIC REPUBLIC OF):

(Signature) FOR CANADA:

(Signature) FOR MEXICO:

(Signature) FOR GUATEMALA:

(Signature)

FOR LUXEMBOURG:

(Signature)

FOR KUWAIT:

(Signature)

FOR SWEDEN:

(Signature)

FOR BELGIUM:

(Signature)

FOR THE KINGDOM OF THE NETHERLANDS:

(Signature)

FOR TRINIDAD AND TOBAGO:

(Signature)

FOR THE MALAGASY REPUBLIC:

(Signature)

FOR ETHIOPIA:

(Signature)

FOR THE MALDIVE ISLANDS:

(Signature)

FOR THE GAMBIA:

(Signature)

FOR THE UPPER VOLTA:

(Signature)

FOR ITALY:

(Signature)

FOR TURKEY:

(Signature)

FOR JAMAICA:

(Signature)

FOR MALTA:

(Signature)

FOR MALI:

(Signature)

FOR SWITZERLAND:

(Signature)

FOR THE FEDERAL REPUBLIC OF GERMANY:

(Signature)

FOR JAPAN:

(Signature)

FOR SINGAPORE:

(Signature)

FOR AUSTRALIA:

(Signature)

FOR INDONESIA:

(Signature)

I CERTIFY THAT the foregoing is a true copy of the United States depositary original of the Treaty on the Non-Proliferation of Nuclear Weapons, which original, done in the English, Russian, French, Spanish, and Chinese languages, was opened for signature at Washington on July 1, 1968 and is deposited in the archives of the Government of the United States of America.

IN TESTIMONY WHEREOF, I, WILLIAM P. ROGERS, Secretary of State of the United States of America, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia this fifth day of March, 1970.

(Signature)

[SEAL]

Secretary of State

(Signature)

Authentication Officer Department of State

WHEREAS the Senate of the United States of America by its resolution of March 13, 1969, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the Treaty;

WHEREAS the President of the United States of America on November 24, 1969 duly ratified the Treaty, in pursuance of the advice and consent of the Senate;

WHEREAS Article IX of the Treaty designates the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics as the Depository Governments and provides that the Treaty shall enter into force after its ratification by those States and forty other States signatory to the Treaty and the deposit of their instruments of ratification;

AND WHEREAS instruments of ratification having been deposited by the required number of States, including the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, the Treaty entered into force pursuant to the provisions of Article IX thereof on March 5, 1970;⁵

NOW, THEREFORE, be it known that I, Richard Nixon, President of the United States of America, do hereby proclaim and make public the Treaty on the Non-Proliferation of Nuclear Weapons, to the end that the Treaty and every article and clause thereof shall be observed and fulfilled with good faith, on and after March 5, 1970, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fifth day of March in the year of our Lord one thousand nine hundred seventy and of the Independence of the United States of America the one hundred ninety-fourth.

RICHARD NIXON

[SEAL]

By the President:

WILLIAM P. ROGERS

Secretary of State

Note by the Department of State

Signatures Affixed at Washington to the United States original of the Treaty on the Non-Proliferation of Nuclear Weapons⁶

FOR THE UNITED STATES OF AMERICA:

DEAN RUSK

WILLIAM C. FOSTER

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

PATRICK DEAN

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:

A. DOBRYNIN

FOR NEPAL:

JAI P. RANA

FOR THE SOMALI REPUBLIC:

Y. AZHARI

FOR ICELAND:

HÖRDUR HELGASON

FOR AFGHANISTAN:

A. MALIKYAR

FOR LAOS:

KHAMKING SOUVANLASY

FOR FINLAND:

OLAVI MUNKKI

FOR TUNISIA:

HAMED AMMAR

FOR IRELAND:

WILLIAM P. FAY

FOR THE PHILIPPINES:

SALVADOR P. LOPEZ

FOR AUSTRIA:

GERALD HINTEREGGER

FOR THE DOMINICAN REPUBLIC:

HECTOR GARCIA-GODOY

FOR GHANA:

EBENEZER DEBRAH

FOR SAN MARINO:

FRANCO FIORIO

FOR HAITI:

ARTHUR BONHOMME

FOR CYPRUS:

COSTAS PAPADEMAS

FOR THE REPUBLIC OF CHINA:

CHOW SHU-KAI

FOR MOROCCO:

AHMED OSMAN

FOR BOTSWANA:

P. P. MAKEPE

FOR PARAGUAY:

RAÚL SAPENA PASTOR

FOR IRAN:

HUSHANG ANSARY

FOR GREECE:

M. G. MAZARAKIS

FOR MALAYSIA:

TAN SRI ONG YOKE LIN

FOR HUNGARY:

SÁNDOR JOZAN

FOR COLOMBIA:

HERNAN ECHAVARRIA

FOR NEW ZEALAND:

FRANK CORNER

FOR ROMANIA:

CORNELIU BOGDAN

FOR LIBERIA:

S. EDWARD PEAL

FOR EL SALVADOR:

JULIO A. RIVERA

FOR PANAMA:

JORGE T. VELASQUEZ

FOR NORWAY:

ARNE GUNNENG

FOR JORDAN:

A. SHARAF

July 10, 1968

FOR BOLIVIA:

JULIO SANJINES-GOYTIA

FOR MAURITIUS:

GUY BALANCY

FOR DENMARK:

FLEMMING AGERUP

FOR SENEGAL:

SHEIKH IBRAHIMA FALL

FOR CZECHOSLOVAKIA:

DR. KAREL DUDA

FOR LEBANON:

SOLEIMAN FARAH

FOR POLAND:

JERZY MICHALOWSKI

FOR NIGERIA:

JOE IYALLA

FOR BULGARIA:

DR. L GUERASSIMOV

FOR VENEZUELA:

ENRIQUE TEJERA-PARIS

FOR NICARAGUA:

GUILLERMO SEVILLA-SACASA

FOR PERU:

CELSO PASTOR

FOR COSTA RICA:

RICARDO LARA

FOR THE REPUBLIC OF VIET-NAM:

NGUYEN HOAN

FOR URUGUAY:

JUAN FELIPE YRIART

FOR CEYLON:

O. WEERASINGHE

FOR TOGO:

MICHEL M. KEKEH

FOR THE REPUBLIC OF KOREA:

DONG JO KIM

FOR KENYA:

BURUDI NABWERA

FOR BARBADOS:

H. A. VAUGHAN

FOR THE IVORY COAST:

T. AHOUA

FOR HONDURAS:

A. ALVAREZ

FOR DAHOMEY:

M. ZOLLNER

FOR LESOTHO:

A S MOHALE

9th July, 1968

FOR ECUADOR:

C. MANTILLA

July 9/68

FOR YUGOSLAVIA:

BOGDAN CRNOBRNJA

10th July, 1968

FOR CAMEROON:

JOSEPH N. OWONO

17 July, 1968

FOR LIBYA:

FATHI ABIDIA

19th july, 1968

FOR THE CONGO (DEMOCRATIC REPUBLIC OF):

CHARLES SUMBU

22th july, 1968

FOR CANADA:

A. E. RITCHIE

July 23, 1968

FOR MEXICO:

HUGO B. MARGÁIN

July 26, 1968.

FOR GUATEMALA:

FRANCISCO LINARES ARANDA

July 26, 1968.

FOR LUXEMBOURG:

MAURICE STEINMETZ

le 14 août 1968

FOR KUWAIT:

DAWOOD M. AL-ATEEQI

August 15, 1968

FOR SWEDEN:

P B KOLLBERG

August 19, 1968

FOR BELGIUM:

BARON SCHEYVEN

le 20 Août 1968

FOR THE KINGDOM OF THE NETHERLANDS:

H. C. MACLAINE PONT

August 20th, 1968.

FOR TRINIDAD AND TOBAGO:

S S LUTCHMAN

August 20th, 1968

FOR THE MALAGASY REPUBLIC:

R G. RALISON

22 Août 1968

FOR ETHIOPIA:

GETACHEW ABDI

September 5, 1968

FOR THE MALDIVE ISLANDS:

A SATTAR

11th September, 1968.

FOR THE GAMBIA:

A. D. CAMARA

20th Sept. 1968

FOR THE UPPER VOLTA:

P ROUAMBA

25th Nov. 1968

FOR ITALY:

EGIDIO ORTONA

28th january 1969

FOR TURKEY:

MELIH ESENBEL

January 28, 1969

FOR JAMAICA:

E R RICHARDSON

April 14, 1969.

FOR MALTA:

ARVID PARDO

April 17, 1969

FOR MALI:

MOUSSA LEÓ KEITA

14.7.69.

FOR SWITZERLAND:

FELIX SCHNYDER

November 27 1969

FOR THE FEDERAL REPUBLIC OF GERMANY:

With reference to the not handed by the Government of the Federal Republic of Germany to the Government of the United States of America in its capacity as depositary government.

28. November 1969

ROLF PAULS

FOR JAPAN:

T. SHIMODA

February 3, 1970

FOR SINGAPORE:

E. S. MONTEIRO

February 5th 1970.

FOR AUSTRALIA:

KEITH WALLER

27 Feb 1970.

FOR INDONESIA:

SOEDJATMOKO

March 2nd 1970.

Footnotes

- 1 TIAS 5433; [14 UST 1313](#).
- 2 TS 993; 59 Stat. 1031.
- 3 TIAS 3873; [8 UST 1093](#).
- 4 Signatures affixed July 1, 1968 unless otherwise indicated.
- 5 As of March 5, 1970, instruments of ratification had been deposited at Washington, London, or Moscow by Afghanistan, Austria, Botswana, Bulgaria, Cameroon, Canada, Republic of China, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Ethiopia, Finland, Hungary, Iceland, Iran, Iraq, Ireland, Jamaica, Jordan, Laos, Liberia, Malaysia, Mali, Malta, Mauritius, Mexico, Mongolia, Nepal, New Zealand, Nigeria, Norway, Paraguay, Peru, Poland, Romania, Somali Democratic Republic, Swaziland, Sweden, Syrian Arab Republic, Togo, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States, Upper Volta, Yugoslavia.
- 6 Signatures affixed July 1, 1968 unless otherwise indicated.

T.I.A.S. No. 6839

End of Document

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ADDENDUM B

10 U.S.C. § 491

United States Code Annotated
Title 10. Armed Forces (Refs & Annos)
Subtitle A. General Military Law (Refs & Annos)
Part I. Organization and General Military Powers
Chapter 24. Nuclear Posture

10 U.S.C.A. § 491

§ 491. Nuclear weapons employment strategy of the United States: reports on modification of strategy

Effective: December 19, 2014

[Currentness](#)

(a) Reports.--By not later than 60 days before the date on which the President implements a nuclear weapons employment strategy of the United States that differs from the nuclear weapons employment strategy of the United States then in force, the President shall submit to Congress a report setting forth the following:

- (1) A description of the modifications to the nuclear weapons employment strategy, plans, and options of the United States made by the strategy so issued.
- (2) An assessment of effects of such modification for the nuclear posture of the United States.
- (3) The implication of such changes on the flexibility and resilience of the strategic forces of the United States and the ability of such forces to support the goals of the United States with respect to nuclear deterrence, extended deterrence, assurance, and defense.
- (4) The extent to which such modifications include an increased reliance on conventional or non-nuclear global strike capabilities or missile defenses of the United States.

(b) Annual briefings.--Not later than March 15 of each year, the Secretary of Defense shall provide to the congressional defense committees a briefing regarding the nuclear weapons employment strategy, plans, and options of the United States.

(c) Reports on 2010 nuclear posture review implementation study decisions.--During each of fiscal years 2012 through 2021, not later than 60 days before the date on which the President carries out the results of the decisions made pursuant to the 2010 Nuclear Posture Review Implementation Study that would alter the nuclear weapons employment strategy, guidance, plans, or options of the United States, the President shall--

- (1) ensure that the annual report required under section 1043(a)(1) of the National Defense Authorization Act for Fiscal Year 2012 ([Public Law 112-81](#); 125 Stat. 1576) is transmitted to Congress, if so required;
- (2) ensure that the report required under [section 494\(a\)\(2\)\(A\)](#) of this title is transmitted to Congress, if so required under such section; and

(3) transmit to the congressional defense committees a report providing the high-, medium-, and low-confidence assessments of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) as to whether the United States will have significant warning of a strategic surprise or breakout caused by foreign nuclear weapons developments.

[(d) Redesignated (c)]

CREDIT(S)

(Added Pub.L. 112-81, Div. A, Title X, § 1046(b)(1), Dec. 31, 2011, 125 Stat. 1579; amended Pub.L. 112-239, Div. A, Title X, §§ 1031(a), 1032, Jan. 2, 2013, 126 Stat. 1917, 1919; Pub.L. 113-66, Div. A, Title X, § 1052(b), Dec. 26, 2013, 127 Stat. 861; Pub.L. 113-291, Div. A, Title X, § 1071(c)(10), Dec. 19, 2014, 128 Stat. 3509.)

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

<June 19, 2013, 78 F.R. 37923>

Delegation of Reporting Functions Specified in Section 491 of Title 10, United States Code

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the reporting functions conferred upon the President by section 491 of title 10, United States Code.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

10 U.S.C.A. § 491, 10 USCA § 491

Current through P.L. 114-37 (excluding P.L. 114-27) approved 7-20-2015

End of Document

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ADDENDUM C

National Defense Authorization Act
for Fiscal Year 2008,
PL 110-181, January 28, 2008, 122 Stat 3

<< 10 USCA § 113 NOTE >>

SEC. 1069. STANDARDS REQUIRED FOR ENTRY TO MILITARY INSTALLATIONS IN UNITED STATES.

(a) DEVELOPMENT OF STANDARDS.—

(1) ACCESS STANDARDS FOR VISITORS.—The Secretary of Defense shall develop access standards applicable to all military installations in the United States. The standards shall require screening standards appropriate to the type of installation involved, the security level, category of individuals authorized to visit the installation, and level of access to be granted, including—

- (A) protocols to determine the fitness of the individual to enter an installation; and
- (B) standards and methods for verifying the identity of the individual.

(2) ADDITIONAL CRITERIA.—The standards required under paragraph (1) may—

- (A) provide for expedited access to a military installation for Department of Defense personnel and employees and family members of personnel who reside on the installation;
- (B) provide for closer scrutiny of categories of individuals determined by the Secretary of Defense to pose a higher potential security risk; and
- (C) in the case of an installation that the Secretary determines contains particularly sensitive facilities, provide additional screening requirements, as well as physical and other security measures for the installation.

(b) USE OF TECHNOLOGY.—The Secretary of Defense is encouraged to procure and field existing identification screening technology and to develop additional technology only to the extent necessary to assist commanders of military installations in implementing the standards developed under this section at points of entry for such installations.

(c) DEADLINES.—

(1) DEVELOPMENT AND IMPLEMENTATION.—The Secretary of Defense shall develop the standards required under this section by not later than July 1, 2008, and implement such standards by not later than January 1, 2009.

(2) SUBMISSION TO CONGRESS.—Not later than August 1, 2009, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the standards implemented pursuant to paragraph (1).

SEC. 1070. REVISED NUCLEAR POSTURE REVIEW.

(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify United States nuclear deterrence policy and strategy for the near term, the Secretary of Defense shall conduct a comprehensive review of the nuclear posture of the United States for the next 5 to 10 years. The Secretary shall conduct the review in consultation with the Secretary of Energy and the Secretary of State.

(b) ELEMENTS OF REVIEW.—The nuclear posture review shall include the following elements:

- (1) The role of nuclear forces in United States military strategy, planning, and programming.
- (2) The policy requirements and objectives for the United States to maintain a safe, reliable, and credible nuclear deterrence posture.
- (3) The relationship among United States nuclear deterrence policy, targeting strategy, and arms control objectives.
- (4) The role that missile defense capabilities and conventional strike forces play in determining the role and size of nuclear forces.
- (5) The levels and composition of the nuclear delivery systems that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying existing systems.
- (6) The nuclear weapons complex that will be required for implementing the United States national and military strategy, including any plans to modernize or modify the complex.
- (7) The active and inactive nuclear weapons stockpile that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying warheads.

(c) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress, in unclassified and classified forms as necessary, a report on the results of the nuclear posture review conducted under this section. The report shall be submitted concurrently with the quadrennial defense review required to be submitted under section 118 of title 10, United States Code, in 2009.

(d) SENSE OF CONGRESS.—It is the sense of Congress that the nuclear posture review conducted under this section should be used as a basis for establishing future United States arms control objectives and negotiating positions.

SEC. 1071. TERMINATION OF COMMISSION ON THE IMPLEMENTATION OF THE NEW STRATEGIC POSTURE OF THE UNITED STATES.

Section 1051 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3431) is repealed.

SEC. 1072. SECURITY CLEARANCES; LIMITATIONS.

<< 50 USCA § 435c >>

(a) IN GENERAL.—Title III of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 435b) is amended by adding at the end the following new section:

“SEC. 3002. SECURITY CLEARANCES; LIMITATIONS.

“(a) DEFINITIONS.—In this section:

“(1) CONTROLLED SUBSTANCE.—The term ‘controlled substance’ has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

“(2) COVERED PERSON.—The term ‘covered person’ means—

“(A) an officer or employee of a Federal agency;

“(B) a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status; and

“(C) an officer or employee of a contractor of a Federal agency.

“(3) RESTRICTED DATA.—The term ‘Restricted Data’ has the meaning given that term in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).

“(4) SPECIAL ACCESS PROGRAM.—The term ‘special access program’ has the meaning given that term in section 4.1 of Executive Order No. 12958 (60 Fed. Reg. 19825).

“(b) PROHIBITION.—After January 1, 2008, the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 102(1) of the Controlled Substances Act (21 U.S.C. 802)).

“(c) DISQUALIFICATION.—

“(1) IN GENERAL.—After January 1, 2008, absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who—

“(A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year;

“(B) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or

“(C) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed by, or acceptable to and approved by, the United States Government and in accordance with the adjudicative guidelines required by subsection (d).

“(2) WAIVER AUTHORITY.—In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with—

“(A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or

“(B) the adjudicative guidelines required by subsection (d).

“(3) COVERED SECURITY CLEARANCES.—This subsection applies to security clearances that provide for access to—

“(A) special access programs;

“(B) Restricted Data; or

“(C) any other information commonly referred to as ‘sensitive compartmented information’.

“(4) ANNUAL REPORT.—

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE REPUBLIC OF THE)	U.S.C.A. No. 15-15636
MARSHALL ISLANDS,)	
)	U.S.D.C. No. C 14-01885 JSW
Plaintiff/Appellant,)	Northern District of California
)	
v.)	
)	CERTIFICATE OF SERVICE
THE UNITED STATES OF)	
AMERICA, et al.,)	
)	
Defendant/Appellee.)	

I hereby certify that on August 7, 2015, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

I certify that the foregoing is true and correct. Executed on August 7,
2015, at San Diego, California.

/s/ *Andrea R. St. Julian*
Andrea R. St. Julian