UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 3:12-CR-107
	)	
v.	)	JUDGES PHILLIPS/SHIRLEY
	)	
MICHAEL R. WALLI,	)	
MEGAN RICE, and	)	
GREG BOERTJE-OBED,	)	
	)	
Defendants.	)	

GOVERNMENT'S MOTION TO PRECLUDE DEFENDANTS FROM INTRODUCING EVIDENCE IN SUPPORT OF CERTAIN JUSTIFICATION DEFENSES

Comes now the United States of America, by and through the United States Attorney for the Eastern District of Tennessee, and files this Motion to Preclude the Defendants from Introducing Evidence in Support of Certain Justification Defenses.

I. INTRODUCTION

The defendants may attempt to present defenses based on necessity; international law; Nuremburg principles; First Amendment protections; the alleged immorality of nuclear weapons; good motive; religious, moral or political beliefs regarding nuclear weapons; and the United States government's policy regarding nuclear weapons. Courts in various federal circuits and this district have consistently rejected the aforementioned issues as defenses in similar cases involving anti-nuclear trespassers. Evidence pertaining to the foregoing issues would not be relevant to the charges against the defendants. Therefore, the defendants should not be allowed to present evidence at trial in support of the above issues.

II. FACTUAL SUMMARY

On July 28, 2012, at approximately 4:00 a.m., the defendants, Michael R. Walli, Greg Boertje-Obed, and Megan Rice surreptitiously entered the Y-12 National Security Complex ("Y-12 Complex") in Oak Ridge, Tennessee. The Y-12 Complex consists of 811 acres containing approximately 502 buildings. The buildings are within a designated protected area, which is surrounded by a series of eight-foot high security fences. These security fences have sensors and signs affixed that state, "Danger: Halt! Deadly force is authorized beyond this point." Using bolt cutters, the defendants cut through three security fences and made their way to the Highly Enriched Uranium Materials Facility ("HEUMF"). This building contains a large quantity of weapons-grade uranium. They splashed human blood and painted slogans on the exterior wall of the HEUMF. The defendants were arrested at the scene. Soon after they were apprehended officers found two flashlights, a set of binoculars, red "danger" tape, a backpack, two sets of bolt cutter tools, three hammers, six cans of spray paint, candles, flowers, seeds, plastic zip ties, matches, gloves, a "Plowshares" banner, a Bible, bread and copies of a letter. The letter stated, in part,

> We come to the Y-12 facility because our very humanity rejects the designs of nuclearism, empire and war. Our faith in love and nonviolence encourages us to believe that our activity here is necessary; that we come to invite transformation, undo the past and present work of Y-12; disarm and end any further efforts to increase the Y-12 capacity for an economy and social structure based upon war-making and empire-building.

The letter was signed by all three defendants.

The defendants made numerous public statements after their arrests admitting that they surreptitiously entered the Y-12 Complex on July 28, 2012, to further their cause of nuclear disarmament.

As a result of the offenses committed on July 28th, additional security officers responded to the Y-12 Complex and worked overtime as they assessed the nature and extent of the threat to the security of the complex. Measures were taken to begin repairs to the damage done to the facility by the defendants.

The defendants were charged in a three-count Indictment on August 7, 2012. The Indictment (3:12-CR-107) charges depredation against government property (18 U.S.C. § 1361), attempting to injure property in the special maritime and territorial jurisdiction of the United States (18 U.S.C. § 1363), and misdemeanor trespass (42 U.S.C. § 2278a(c), 10 C.F.R. §§ 860.3 and 860.5(b)).

III. DISCUSSION

A. Previous Rulings by this Court

This court has previously addressed motions on whether evidence of certain justification defenses could be introduced in cases involving anti-nuclear protesters charged with trespassing onto the Y-12 Complex. *United States v. Mellen*, No. 3:02-cr-47 (E.D. Tenn. Sept. 4, 2002) (M.J. Shirley)(attached); *United States v. Gump*, No. 3:10-cr-94 (E.D. Tenn. May 6, 2011) (M.J. Guyton)(attached).[1] The justification defenses the government sought to preclude in those cases were exactly the same as the defenses that the government seeks to preclude in this motion. In *Mellen* and *Gump*, this court thoroughly analyzed the issue of whether the defendants could introduce evidence related to such justification defenses. *Id.* The court ruled that the defendants were not allowed to admit evidence related to certain justification defenses, including expert testimony on the same. *Id.* The relief requested in this motion is consistent with prior rulings by this court on the same issues.

[1] Defendant, Michael R. Walli, was a defendant in *United States v. Gump*, No. 3:10-cr-94 (E.D. Tenn. May 6, 2011).

B. Relevant Evidence

A defendant's right to present evidence in his or her own defense is not absolute. In order to be admissible, the evidence must be relevant. Fed. R. Evid. 402. Further, a court may preclude an affirmative defense, as a matter of law, if the defendant is not able to establish its elements. *United States v. Johnson*, 416 Fed. 3d 464, 468 (6th Cir. 2005)(court held that the trial judge should not allow proffered evidence to the jury if it is legally insufficient to support a duress defense), *cert. denied,* 546 U.S. 1191 (2006). Thus, although the defendants have a wide-ranging right to present a defense, they do not have the right to present irrelevant evidence. *United States v. Maxwell*, 254 F.3d 21, 26 (1st Cir. 2001).

When the evidence in support of an anticipated affirmative defense is insufficient as a matter of law to create a triable issue, the court may preclude the defense entirely. (Citation omitted); *see also United States v. Ayala*, 289 F.3d 16, 26 (1st Cir. 2002); *United States v. Broadhead*, 714 F. Supp. 593, 595 (D. Mass. 1989)(finding that several federal circuits have approved district court rulings that preclude the introduction of affirmative defenses at trial). In particular, "a judge . . . generally should [ ] block the introduction of evidence supporting a proposed defense unless all of its elements can be established." *United States v. Urfer*, 287 F.3d 663, 665 (7th Cir. 2002)(citation omitted).

C. The Necessity Defense

Defenses of justification "pertain[] to the category of action that is exactly the action that society thinks the actor should have taken, under the circumstances[.] . . . '[N]ecessity' is a particular example of a defense that, when proved, will justify the defendant's action" under the theory "that the defendant's free will was properly exercised to achieve a greater good[.]" *United States v. Newcomb*, 6 F.3d 1129, 1133 (6th Cir. 1993). Generally, the necessity defense

is “designed to spare a person from punishment . . . if he reasonably believed that criminal action ‘was necessary to avoid a harm more serious than that sought to be prevented by the statute defining the offense.’” *United States v. Bailey*, 444 U.S. 394, 409-10 (1980). The availability of a “justification defense”[2] turns upon whether the evidence supports the following factors:

> (1) that defendant was under an unlawful and “present, imminent, and impending [threat] of such a nature as to induce a well-grounded apprehension of death or serious bodily injury,” . . . ;
>
> (2) that defendant had not “recklessly or negligently placed himself in a situation in which it was probable that he would be [forced to choose the criminal conduct],” . . . ;
>
> (3) that defendant had no “reasonable, legal alternative to violating the law, ‘a chance both to refuse to do the criminal act and also to avoid the threatened harm,’ ” . . . ; and
>
> (4) “that a direct causal relationship may be reasonably anticipated between the [criminal] action taken and the avoidance of the [threatened] harm.”

Newcomb, 6 F.3d at 1134 (quoting *United States v. Singleton*, 902 F.2d 471, 472 (6th Cir.), *cert. denied,* 498 U.S. 872 (1990)) (citations omitted and alterations in original). “The fifth requirement is that the defendant show that he did not maintain the illegal conduct any longer than absolutely necessary.” *Id*. at 1134-35 (citing *Singleton*, 902 F.2d at 473). The appellate court has emphasized that “the keystone of the analysis is that the defendant must have no alternative–either before or during the event–to avoid violating the law.” *Singleton*, 902 F.2d at 473; *see also Newcomb*, 6 F.3d at 1135.

Courts have consistently found the necessity defense lacking in cases of nuclear protesters and other cases involving indirect civil disobedience. *See Maxwell*, 254 F.3d 21; *United States v. Schoon*, 971 F.2d 193, 196 (9th Cir. 1991); *United States v. Montgomery*,

[2] The Court of Appeals for the Sixth Circuit used the “broader term of justification” to distinguish this defense from the more narrow, traditional common law defense of necessity from which it is derived. *Newcomb*, 6 F.3d at 1133.

772 F.2d 733 (11th Cir. 1985); *United States v. May*, 622 F.2d 1000, 1008-10 (9th Cir.), *cert. denied*, 449 U.S. 934 (1980); *Mellen, supra* (attached); *Gump, supra* (attached).

Imminence of Harm

The alleged imminent harm sought to be averted by the defendants' acts of destroying government property is nuclear proliferation and nuclear war. However, "[f]or a harm to be 'imminent,' the danger must not be physically distant or abstract, but so pressing that only immediate action averts the danger." *United States v. McSweeney*, 2008 Westlaw 2952778 (D. Mass. July 24, 2008). The defendant must be able to show some direct harm to himself, not a theoretical future harm to everyone. *May*, 622 F.2d at 1009. In *May*, the defendants failed to satisfy the imminent harm prong of the necessity defense when they could assert no harm to themselves from the government's allegedly illegal Trident missile system that was greater than the potential harm that might affect every other person in the United States. *Id.* In *Maxwell*, the court held that the deployment of nuclear submarines off the coast of Puerto Rico did not constitute an imminent harm: "[E]ven if Maxwell could have shown that a nuclear submarine was close at hand, it is doubtful that the mere presence of such a vessel, without some kind of realistic threat of detonation, would suffice to pose an imminent harm." *Maxwell,* 254 F.3d at 27.

No Reasonable, Legal Alternative to Violating the Law

The defendants will be unable to show that they had no legal alternative to violating the law. By participating in the political process, the defendants had a legal alternative to unlawfully trespassing and destroying property on the Y-12 Complex. *See United States v. Lowe*, 654 F.2d 562, 566-67 (9th Cir. 1981). "There are thousands of opportunities for the propagation of the anti-nuclear message: in the nation's electoral process; by speech on public streets, in

parks, in auditoriums, in churches and lecture halls; and by the release of information to media, to name only a few." *United States v. Quilty*, 741 F.2d 1031, 1033 (7th Cir. 1984). "Where the targeted harm is the existence of a law or policy, our precedents counsel that this reasonableness requirement is met simply by the possibility of congressional action. . . . [T]he 'possibility' that Congress will change its mind is sufficient in the context of the democratic process to make lawful political action a reasonable alternative to indirect civil disobedience." *Schoon*, 971 F.2d at 198-99. "People are not legally justified in committing crimes simply because their message goes unheeded." *Montgomery*, 772 F.2d at 736.

Reasonable Anticipation of Averting the Alleged Harm

The defendants cannot show that they had any reasonable belief that their conduct would avert nuclear war. In order to utilize a justification defense, such as necessity, the defendant must show a "direct causal relationship" between the illegal action taken and the avoidance of the greater harm. *Newcomb*, 6 F.3d at 1134. In necessity cases, there must be a close connection between the act undertaken and the result sought. *Schoon*, 971 F.2d at 198. Typically, it is the illegal act that, once taken, eliminates the evil. *Id.* Accordingly, courts faced with defendants seeking to cause political change have consistently found the lack of a direct causal relationship between the crime committed by the defendant and the avoidance of the alleged harm in question. *See Maxwell*, 254 F.3d at 29 (holding that the defendant had no reasonable belief that his trespass on a naval base would stop the deployment of nuclear submarines near Puerto Rico); *Montgomery*, 772 F.2d at 736 (holding that the defendants "could not hold a reasonable belief that a direct consequence of their actions [of destruction of government property at a defense plant] would be nuclear disarmament"); *United States v. Dorell*, 758 F.2d 427, 433-34 (9th Cir. 1985)(court determined that the defendant "failed as a matter of law to establish that his

entry into Vandenburg [Airforce Base] and his spray-painting of government property could be reasonably anticipated to lead to the termination of the MX missile program and the aversion of nuclear war"). In the instant case, the defendants could not reasonably expect their entry onto the Y-12 Complex and destruction of property on the premises to directly cause the complete cessation of the production of nuclear weapons or their components at the Y-12 Complex.

The necessity defense has been uniformly rejected by other circuits and this district in nuclear protest and civil disobedience cases. The defendants in the instant case cannot meet at least three of the five factors required for asserting this defense. The defendants were not acting to prevent imminent harm, they had other legal alternatives available to them, and there was no direct causal relationship between their acts of entering onto the Y-12 Complex and destroying property and the harm they intended to avert.

C. International Law

The defendants may contend that the production of nuclear weapons or weapon components at the Y-12 Complex violates international law. They may assert that the United States is a party to a number of treaties that make the use or threat of the use of nuclear weapons illegal. Accordingly, they may argue that they had a right and an obligation to enter onto the Y-12 Complex in order to stop the government's continued production of illegal nuclear weapons.

The issue of whether the United States possession, production, and policies regarding nuclear weapons violates international law or specific treaties to which the United States is a party is not one that the defendants can litigate in this court. *See Gump*, *supra*, at PageID# 585, 773, 783 (attached); *Mellen, supra,* at Attch Page # 9-18 (attached).

1. *Political Question*

In addition to declaring that treaties are part of the "supreme law of the land," the United States Constitution entrusts to Congress the "power to . . . provide for the common defense[.]" U.S. Const., Art. I, § 8, cl. 1. Questions implicating national defense policy are "political and governmental questions which are codified by the Constitution to the legislative and executive branches of the government" and are not within the jurisdiction of the courts. *Farmer v. Roundtree*, 252 F.2d 490, 491 (6th Cir.), *cert. denied*, 357 U.S. 906 (1958). Although the court will decide constitutional issues when such issues are properly before it, "the Constitution itself requires . . . deference to congressional choice" in matters of military needs and operations. *Rostker v. Goldberg,* 453 U.S. 57, 67-68 (1981). When courts have been confronted with cases involving a balancing of a representative branch's domestic and international obligations under the Constitution, they have generally found such cases non-judiciable on political question grounds. *See Oetjen v. Central Leather Company*, 246 U.S. 297, 302-03 (1918); *Farmer,* 252 F.2d 490.

In *Farmer*, the Sixth Circuit said that it was without jurisdiction to review a tax evasion defendant's claims that the government's involvement in the Korean War violated international law rendering him immune from prosecution since those claims "involved political and governmental questions which are confided by the Constitution to the legislative and executive branches of the government." *Farmer,* 252 F.2d at 491. Moreover, the Supreme Court has said that individual citizens lack standing to raise "generalized grievances" regarding whether Congress and the Executive are properly applying the Constitution and laws. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575-77 (1992); *see also Amer. Civil Lib. Union v. National Sec. Agency*, 493 F.3d 644, 675 (6th Cir. 2007)("[T]he injury must be 'distinct and palpable and not

abstract, and not abstract or conjectural,' so as to avoid 'generalized grievances more appropriately addressed in the representative branches' in the electoral process."). Therefore, the defendants would not have standing to directly challenge the legality of the United States nuclear weapons program, the primary goal of their criminal conduct.

2. _Congress is not bound by international law_.

Even if the nuclear weapons program is violative of international law, defendants are not excused from consequences of violating criminal laws simply because their acts were allegedly directed at international law violations. "Congress is not bound by international law. If it chooses to do so, it may legislate [in any manner contrary to the limits posed by international law]." *United States v. Allen*, 760 F.2d 447, 454 (2nd Cir. 1985)(quoting *United States v. Pinto-Mejia*, 720 F.2d 248, 259 (2d Cir. 1983), modified on other grounds, 728 F.2d 142 (2d Cir. 1984)). The court in *Allen* held that nuclear protesters could be prosecuted for the destruction of government property, despite their contention that their purpose was to enforce treaties to which the United States is a party and to uphold international law. *Id.* The court in *Allen* stated, "[w]e do not suggest that the deployment of nuclear armament systems does not violate international law, but merely that Congress has power to protect government property by statute." *Id.* at 454. If a person's actions violate the wholly independent federal law protecting government property, it matters not that his purpose was to uphold international law. *Id.* at 453.

3. _Nuremberg Principles_

Defendants may argue that they are bound by the rules and principles of the Nuremberg Tribunal. They may contend that such principles required them to avoid complicity with violations of international law by the United States Government. They may argue that they

would be culpable under Nuremberg Principles if they failed to prevent known violations of international law.

Even if the activities at the Y-12 Complex were in violation of international law, which, as discussed above, is not the case, defendants' reliance on the Nuremberg Principles is misplaced. Under Nuremberg Principles, individuals have "an obligation under international law to violate domestic provisions to prevent their country's continuing crimes against humanity." *United States v. Kabat*, 797 F.2d 580, 590 (8th Cir. 1986) (court rejected nuclear protesters defense premised on Nuremberg principles). Importantly, the Nuremberg defense only applies to "crimes of commission" – when domestic law requires individuals to engage in acts that violate international principles – not "crimes of omission." *Id.* Therefore, an individual cannot assert a privilege to disregard domestic law in order to escape liability under international law unless domestic law forces that person to violate international law. *Maxwell*, 254 F.3d at 29) (citations omitted). In the instant case, domestic law did not require defendants to act in any way contrary to international law. In particular, defendants cite no international law, and the Government is aware of none, that even suggests that an individual has a duty to correct a violation of international law by trespassing onto government premises and destroying property. Thus, the Nuremberg defense is not available for the defendants.

4. *<u>Operations at the Y-12 Complex did not violate international law</u>.*

Even if Congress were bound by international law, the operations at the Y-12 Complex were not in violation of international law. Anti-nuclear protesters occasionally cite the International Court of Justice's advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons (United Nations)*, 1996 I.C.J. 226 (July 8), as support for their contention that the threat

or use of nuclear weapons is "presumptively illegal."[3] However, such a contention is directly contrary to the Court's finding, by an 11-3 vote, that "[t]here is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons." *Id.* at 266. The Court further stated, "[i]n view of the present state of international law viewed as a whole . . . the Court is lead to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake." *Id*. at 263. In particular, the Court reviewed the Hague Convention, the Treaty on the Non-Proliferation of Nuclear Weapons and other treaties dealing with weapons of mass destruction cited by defendants and found that these documents do not constitute a present prohibition against recourse to nuclear weapons. *Id*. at 248-53. Moreover, the Court noted that environmental treaties do not deprive a State of the right to self-defense under international law. *Id*. at 242. Therefore, the activities at the Y-12 Complex are not illegal under international law, or under treaties to which the United States is a signatory, and do not provide an adequate basis for the defendants to introduce evidence regarding international law.

Furthermore, expert testimony about the state of international law on nuclear weapons is also irrelevant and not admissible at trial. *See. Urfer,* 287 F.3d at 665 (holding that questions of law, such as whether the defendants actions were privileged by international law, are for the judge and not the jury). *See also Gump, supra,* at PageID# 585, 784 (attached).

D. Moral, Political Or Religious Compulsion

The defendants should not be allowed to present evidence that their personal, moral, or religious convictions compelled them to enter onto the Y-12 Complex and injure government

[3] It is important to note that the Court emphasizes that the documents are an advisory opinion providing legal advice to the United National General Assembly and, thus, does not constitute law-making. 1996 I.C.J. 226, 236-38.

property. The defendants' moral, political, or religious convictions do not provide a defense to the charged offenses and, as such, are irrelevant and inadmissible at trial.

A defendant's moral, political or religious beliefs regarding the use or possession of nuclear weapons do not provide a defense for criminal conduct. *Urfer*, 287 F.3d at 665. "[D]isagreement with U.S. defense policy and moral disapproval of a law are not defenses to violating the law." *Id.* at 665. In *United States v. Cullen*, 454 F.2d 386 (7th Cir. 1971), the defendant contended that he should not have been precluded from arguing that he was compelled by his religious beliefs to burn draft records. *Id.* at 390. He asserted that this evidence was relevant to whether he possessed the necessary mental state of willfulness. John Paul Stevens authored the court's opinion and found that religious, moral or political purpose did not exculpate the defendant's illegal behavior. *Id.* at 392. Specifically, the court found that the defendant's religious convictions were irrelevant to the issue of his mental state because the government was not required to prove his motive in order to show that he acted willfully. *Id.* at 391-92.

> In a case such as this that the proof discloses that the prohibited act was voluntary, and that the defendant actually knew, or reasonably should have known, that it was a public wrong, the burden of proving the requisite intent has been met; proof of motive, good or bad, has no relevance to that issue. If defendant's theory of defense were valid, the character of his conduct would be judged not by the rule of law, but the end which his means were designed to serve.

Id. at 392. Judge Stevens went on to state: "One who elects to serve mankind by taking the law into his own hands thereby demonstrates his conviction that his own ability to determine policy is superior to democratic decision making. Appellant's professed unselfish motivation, rather than a justification, actually identifies a form of arrogance which organized society cannot tolerate." *Id.* at 392; *see also United States v. Best*, 476 F. Supp. 34, 48 (D. Colo. 1979)(court

precluded defendants from offering evidence for defenses concerning the morality or immorality of nuclear weapons, the good motive of the defendants, the wisdom of government policy concerning weapons, or a defendant's religious beliefs).

In the instant case, the fact that the defendants decided to intrude onto the Y-12 Complex and injure and deface property in order to further their own moral, political, and religious beliefs is not a defense to the charges with which they are charged. The defendants should not be permitted to introduce such evidence at trial.

E. First Amendment Defense

The defendants' First Amendment rights to freedom of speech and the free exercise of religion are not a defense to the crimes with which they are charged. The defendants may contend that their acts of physically intruding onto the Y-12 Complex and defacing property was symbolic speech. They may argue that their acts of painting slogans on a building and leaving a letter was an attempt to express their beliefs about nuclear weapons. However, the premises inside the protected area within the security fences were not a public forum. *See Gump*, *supra,* at PageID# 786 (attached).

> Even protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the government freely to grant access to all who wish to exercise their right to free speech on every type of government property without regard to the nature of the property or the disruption that might be caused by the speaker's activity.

Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 799-800 (1985). "A military base generally is not a public forum[.]" *United States v. Albertini*, 472 U.S. 675, 676 (1985); *see also Best*, 476 F. Supp. at 41 (there is no First Amendment right to commit criminal trespass).

The defendants in this case, as well as other anti-nuclear protesters, have been given ample opportunity to express their opposition to the government's policies concerning nuclear

weapons without intruding upon, defacing and destroying government property. They have been allowed to do this on property immediately adjacent to the Y-12 Complex and elsewhere. However, the defendants had no First Amendment rights to intrude upon the Y-12 Complex properties to exercise their freedom of speech or religion.

III. CONCLUSION

Evidence presented in support of the aforementioned justification defenses is not relevant to the charges against the defendants. Courts have consistently rejected those defenses in similar cases. Moreover, courts have precluded defendants from presenting any evidence in support of such defenses at trial, including expert testimony. Previous cases in this district involving anti-nuclear protesters trespassing onto the Y-12 Complex have presented the same issues raised by this motion. The relief sought in this motion is identical to what the court granted in those previous cases. While these types of defenses are sometimes referred to as necessity and international law, or under a myriad of other names masquerading as justification defenses, the real motivation behind them is to obfuscate the issue of whether or not the elements of the charged offense have been proven. *See Urfer*, 287 F.3d at 665. They are simply an indirect way to suggest jury nullification, which this Circuit has recognized is not valid and contrary to the impartial determination of justice based on law. *See United States v. Krzyske*, 836 F.2d 1013, 1021 (6th Cir. 1988).

WHEREFORE, the United States respectfully requests this Honorable Court to preclude the Defendants from presenting evidence related to the above defenses.

Respectfully submitted this 2nd day of November, 2012.

WILLIAM C. KILLIAN
United States Attorney

By: ***s/ Jeffrey E. Theodore***
Jeffrey E. Theodore

s/ Melissa M. Kirby
Melissa M. Kirby
Assistant United States Attorneys
800 Market Street, Suite 211
Knoxville, Tennessee 37902
(865) 545-4167

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: *s/ Jeffrey E. Theodore*
Jeffrey E. Theodore
Assistant United States Attorney