

Judge Orders End to Pentagon Stalling on Torture Photos

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A federal judge ordered the Pentagon Friday to make public an estimated 2,100 photographs depicting torture of prisoners at US military facilities in Iraq and Afghanistan, or to file an individualized certification for each photo to support claims that their release will directly threaten the lives of US military personnel.

US District Judge Alvin Hellerstein suspended his order for 60 days to give the Obama administration time to decide whether to appeal his ruling. The Pentagon has been fighting an American Civil Liberties Union lawsuit seeking release of the torture photos for more than a decade, since they came to light in the course of investigations sparked by revelations of prisoner abuse at Abu Ghraib, Iraq in 2004.

The exact number of pictures and exactly what they depict are both in doubt. The figure of 2,100 refers to all images held in files assembled by military investigations into allegations of prisoner abuse. Many more such images may exist. The Pentagon has only admitted that 29 of the images depict obvious mistreatment of prisoners.

Among the images are US soldiers pointing guns at the heads of bound and helpless detainees, and at least one picture of a female prisoner pretending to sodomize a naked prisoner with a broomstick. Others resemble those already made public in the Abu Ghraib scandal, showing naked prisoners in various arrays and positions.

When Obama first took office in 2009, he ordered the photos released, then reversed himself under pressure from top military officers. The Democratic-controlled Congress then passed the Protected National Security Documents Act, amending the Freedom of Information Act to “provide that photographs could be made exempt from disclosure for a three-year certification by the Secretary of Defense to the effect that publication would endanger American lives.”

Secretary of Defense Robert Gates issued such a certification in 2009, and his successor Leon Panetta followed suit in 2012. But Judge Hellerstein issued a ruling in August 2014 that a half-page blanket certification for 2,100 photographs was inadequate, ordering that the Pentagon give a credible reason why each photograph should be withheld.

Given that the photographs have already been “scrubbed” to remove the faces and nametags of US military personnel, making identification of individual soldiers impossible, the only reason for withholding them is to suppress evidence of criminality on the part of the chain of command, leading right up to the White House.

In October, Judge Hellerstein ordered the Pentagon to produce the photographs or the individualized certifications, giving the government until January 23, 2015 to respond. When the Pentagon continued to stall, Hellerstein told federal attorneys, "I could give you more time to satisfy my ruling ... but I am not changing my view."

In his order Friday, Hellerstein told the Pentagon to "disclose each and all the photographs unless it moves promptly to cure its failure to submit an individualized certification," but gave the government another 60 days to appeal, "even though the Government has had ample time to evaluate its legal position and the desirability of an appeal." Any appeal would be heard by the New York-based Second Circuit US Court of Appeals.

The Pentagon position is that release of the photographs is a danger to US military personnel, exacerbated by the emergence of Islamic State of Iraq and Syria (ISIS). According to Rear Admiral Sinclair Harris, vice director for operations for the Joint Chiefs of Staff, in a December court filing, ISIS "would use these photographs to further encourage its supporters and followers to attack US military and government personnel."

ACLU spokesman Jameel Jaffer responded,

"The Obama administration's rationale for suppressing the photos is both illegitimate and dangerous. To allow the government to suppress any image that might provoke someone, somewhere, to violence would be to give the government sweeping power to suppress evidence of its own agents' misconduct. Giving the government that kind of censorial power would have implications far beyond this specific context."

The Obama administration's efforts to block release of the torture photos is in line with its policy of covering up for the crimes of the Bush administration and blocking any prosecution of those who are implicated, including Obama's own CIA director, John Brennan.

Hellerstein's decision comes three months after the release of the Senate Intelligence Committee report on CIA torture, which documented in detail clear and grave violations of domestic and international law by the top intelligence agency. Since the report's release, it has been dropped by the media, along with any suggestion that anyone should be held accountable.

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