

US Supreme Court suppresses torture photos

Tom Eley

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The US Supreme Court on Monday nullified an appeals court order that would have obligated the Obama administration to release photographs depicting US soldiers subjecting prisoners in Afghanistan and Iraq to horrific acts of torture.

In an unsigned three-sentence decision in the case, *Department of Defense v. ACLU, 09-160*, the Supreme Court granted an Obama administration petition vacating the order and sent the case back to the US Court of Appeals for the Second Circuit in New York, telling the lower court it must review the case in light of a law passed by Congress and signed into law by President Obama in October.

The law in question was written as a specific response to the circuit court's ruling in October 2008 requiring that the photos be released. Attached to an appropriations bill for the Department of Homeland Security and signed into law by Obama, it gave Secretary of Defense Robert Gates the power to suppress the torture photos if he determines they may threaten US military operations. Gates invoked the measure on November 13.

It is now anticipated that the circuit court will side with the Obama administration and rule against the Freedom of Information Act (FOIA) lawsuit brought by the American Civil Liberties Union (ACLU.)

There are reportedly at least 21 specific photos at stake from Iraq and Afghanistan, although their release could open the way for hundreds more. In a brief to the Supreme Court, Obama's solicitor general, Elena Kagan, wrote that among the photos are images of US soldiers "pointing pistols or rifles at the heads of hooded and handcuffed detainees," "a soldier hold[ing] a broom as if sticking its end into the rectum of a restrained detainee," and a soldier hitting a prisoner with the butt end of a rifle. There is every reason to believe that the photos Kagan did not describe show even more shocking scenes.

The Obama administration told the Supreme Court that release of the photos would "pose a clear and grave risk of inciting violence and riots against American troops and coalition forces." This is in fact a damning admission. Obama confesses that making the photos public would increase opposition among Iraqis and Afghans, the great majority of whom already despise the occupations. It is at the same time tacitly understood that their publication would further reduce public support for the wars in the US.

A trial judge first ordered the release of the photos some four years ago. The Bush and Obama administrations have carried on a legal battle to keep them suppressed ever since.

The Bush administration argued that the photos could remain classified under a clause in FOIA applicable when "information compiled for law enforcement purposes" might "endanger the life or physical safety of any individual."

The Second Circuit Court unanimously rejected that argument in October 2008, reasoning that it is "plainly insufficient to claim that releasing documents could reasonably be expected to endanger some unspecified member of a group so vast as to encompass all United States troops, coalition forces and civilians in Iraq and Afghanistan." Such a claim could create "an alternative secrecy mechanism far broader than the government's classification system," the court warned.

The Obama administration announced in April it would comply with the court order to release the photos. This announcement roughly coincided with the court-ordered release of Bush administration Office of Legal Counsel memos that had crafted a pseudo-legal justification for torture. In response, the military-intelligence apparatus, spearheaded by former vice president Dick Cheney,

launched an attack on the Obama administration.

Obama reversed himself in May after revealing that high-ranking members of the military brass had intervened against the photos' release. "The publication of these photos would not add any additional benefit to our understanding of what was carried out in the past by a small number of individuals," Obama offered. "The most direct consequence of releasing them, I believe, would be to further inflame anti-American opinion and to put our troops in greater danger."

The Justice Department then petitioned the Supreme Court against the release, and in the interim, Congress passed the law banning publication of the photos.

The way the Supreme Court justices voted was not made public, although the order acknowledged that the newly appointed Sonia Sotomayor, who served on the Second Circuit until August, did not participate.

With the Supreme Court decision—itsself an extraordinary concession by the judiciary to the legislative and executive branches—every branch of the US government has now joined in the effort to suppress the torture photos. In Congress, just six senators—and but one Democrat—voted against the Department of Homeland Security Appropriations Act that gave to Gates the presumptive right to block their publication. And the Obama administration has been leading the charge through its intervention with the Supreme Court and Gates's dismissal of the circuit court ruling.

It should be recalled that Obama entered office promising Americans "a new era of openness" and that "transparency and the rule of law will be the touchstones of this presidency." His role in the suppression of the photos demonstrates once again the essential continuity of his administration with that of George W. Bush.

Yet the Obama administration's victory at the Supreme Court in suppressing graphic evidence of torture in Afghanistan and Iraq will do nothing to obscure Washington's bloody record since 2001. An incontrovertible body of evidence has been built up showing that it has put in place a worldwide regime of abduction, torture, and murder carried out by the US military and the CIA and their accomplices in a number of countries. The most horrific forms of torture are

extensively documented. These include beatings, extreme solitary confinement, simulated drowning, exposure to extreme cold, rape, sexual humiliation, and threatened executions and rape of prisoners' family members.

The record also shows that many of these actions were ordered and overseen by the highest-ranking members of the Bush administration and with the direct knowledge and tacit support of leading congressional Democrats. For its part, the US media for years covered up, ignored, or minimized the horrors that were common knowledge to the people of Iraq and Afghanistan.

It should be clear enough that Obama defends the preceding administration not because of "mistaken" policy decisions, as his ex-liberal and ex-radical allies lament. He does so because the entire ruling class is implicated in the abuses, and because the US military is carrying on the same policies, up to and including torture, as recent revelations from Afghanistan demonstrate (see: "Torture continues at US prisons in Afghanistan").

Torture ultimately arises from the character of imperialist war itself, as history has taught time and again. Washington has not employed its military machine and hundreds of billions of dollars to "liberate" Iraqis and Afghans. Its goals are to control the region's vast oil and natural gas supplies and strengthen its strategic position versus its major economic rivals.

These predatory aims inevitably require the use of brutal methods in order to suppress widespread popular opposition. Just as surely, they require the gutting of democratic rights in the US, including the right of the population to know the activities of the government.



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