

US judge sets deadline in lawsuit over Iraq, Afghanistan torture photos

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The Obama administration is fighting a bitter rearguard action against the release of further damning evidence that the US military engaged in the torture of prisoners in both Iraq and Afghanistan.

The most recent development came Tuesday in a brief hearing before US District Judge Alvin Hellerstein in Washington DC, part of a long-running Freedom of Information Act lawsuit brought by the American Civil Liberties Union and several journalists seeking the release of 2,100 photographs depicting the torture of people detained by the US military.

The pictures are said to be more disturbing than those released in 2004 showing the abuse of prisoners at Abu Ghraib prison outside of Baghdad, which caused worldwide revulsion against the US occupation regime in Iraq.

The photographs were taken by individual soldiers in Iraq and Afghanistan, mainly between 2003 and 2006, for their own use and to exchange with fellow soldiers as trophies or memorabilia of their wartime activities. They were confiscated in the course of more than 200 internal investigations into charges of mistreatment and abuse of prisoners, all of which have been closed without charges being brought.

The US Army released descriptions of the photos to the ACLU plaintiffs, and even these brief captions make for chilling reading. They include soldiers pointing guns at the heads of detainees who are hooded and bound, soldiers beating detainees with their fists or objects, soldiers posing with groups of bound and restrained prisoners, soldiers posing with corpses, and, in at least one case, a female soldier pointing a broomstick at the rectum of a hooded detainee.

The Pentagon reportedly catalogued the 2,100 images in May 2009, dividing them into three categories according to the degree of political damage their release

would cause. The categories were described as follows:

- * Category A: Will require explanation; egregious, iconic, dramatic

- * Category B: Likely to require explanation; injury or humiliation

- * Category C: May require explanation; injury without context

The proceedings before Judge Hellerstein are the result of a protracted political and legal conflict going back to 2009, when President Obama released a few legal memorandums justifying torture that were written by the Bush Justice Department, and initially agreed to release the photographs as well.

After a month of intense lobbying by the military brass and former Bush administration officials, Obama reversed himself and withheld the photos, claiming, "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 administration appealed to the Supreme Court against a lower court order to release the photographs and prevailed on Congress to pass legislation giving the secretary of defense the authority to suppress such photographs for a three-year period (renewable indefinitely) by certifying that they would endanger US national security. Secretary of Defense Robert Gates issued that certification in November 2009, and his successor, Leon Panetta, did the same in November 2012.

The plaintiffs challenged the 2012 certification on a new ground, because Panetta had simply issued a half-page statement declaring all the photographs off-limits. Under the terms of the law, they argued, the Pentagon had to give specific reasons for withholding each photograph.

Last August, Judge Hellerstein agreed and issued an

order for the administration to release the material in redacted form—that is, showing the victims but with the faces of the torturers obscured—or give specific reasons why each photograph should be kept secret.

At Tuesday's hearing, the judge set a deadline of December 12 for the Justice Department to release the photographs or provide the explanations. He also set the date for a subsequent hearing, January 23, 2015, where the plaintiffs will be able to challenge the withholding of any photographs.

The case before Judge Hellerstein is only one of at least four different legal and political venues in which the Obama administration is engaged in an all-out defense and cover-up for American government personnel, both CIA and military, who engaged in the torture of prisoners.

The White House, Justice Department and CIA have been stalling for months the release of a massive report by the Senate Intelligence Committee on torture at CIA black sites overseas between 2003 and 2006. The committee voted to declassify the report and release it to the public last April, but Obama assigned the task of vetting the report to the agency that carried out the torture, and the CIA has continuously pushed back the deadline, now set for October 29.

According to a report last week by McClatchy News Service, the report fails to hold any officials of the Bush administration responsible for the torture of prisoners at CIA black sites, limiting its criticism to lower-level CIA personnel.

In another federal district courtroom in Washington, before Judge Gladys Kessler, the Justice Department is fighting an order to release videos of the force-feeding of prisoners at the Guantanamo Bay detention center, the result of a lawsuit by one of the prisoners, Abu Wa'el Dhiab.

At a hearing last week, Judge Kessler agreed to delay for 30 days her order to release the videos, giving the Obama administration time to file an appeal. (See: Judge delays order to release Guantanamo force-feeding videos).

According to a report Sunday in the *New York Times*, the Obama administration is now debating how to proceed at an upcoming session of the Committee Against Torture, a United Nations panel set up under the UN Convention Against Torture, which the US government ratified in 1994.

The Bush administration took the position that the torture convention applied only to actions by US personnel committed within the United States, but not to the actions taken overseas, as in war zones or CIA secret prisons. The Obama administration had distanced itself from that interpretation, which was a flagrant assertion of the “right” to torture, but officials were now said to be having second thoughts.

“But the Obama administration has never officially declared its position on the treaty, and now, President Obama's legal team is debating whether to back away from his earlier view,” the *Times* wrote. “It is considering reaffirming the Bush administration's position that the treaty imposes no legal obligation on the United States to bar cruelty outside its borders, according to officials who discussed the deliberations on the condition of anonymity.”



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