

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ECF CASE

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AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE AND  
VETERANS FOR PEACE,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT OF  
AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION, OFFICE OF  
INFORMATION AND PRIVACY, OFFICE OF  
INTELLIGENCE POLICY AND REVIEW,  
FEDERAL BUREAU OF INVESTIGATION;  
DEPARTMENT OF STATE; AND CENTRAL  
INTELLIGENCE AGENCY,

Defendants.  
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04 Civ. 4151 (AKH)

ORDER

WHEREAS, Plaintiffs-Appellees submitted requests under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking, inter alia, the release of photographs and videos that were contained on a CD provided by Joseph Darby to the Department of Army Criminal Investigations Command and that depicted the treatment of detainees at Abu Ghraib prison (collectively, the “Darby Photos”);

WHEREAS, the Department of Defense (“DOD”) and Department of the Army (“DOA”) asserted that the Darby Photos were properly withheld from release pursuant to FOIA Exemptions 6, 7(C) and 7(F);

WHEREAS, this Court reviewed the Darby Photos ex parte and in camera on two occasions and narrowed the number of images that were potentially appropriate for release to 74 photos and 3 videos;

WHEREAS, in an opinion dated September 29, 2005, this Court ordered that DOD and DOA release the relevant 74 photos and 3 videos after appropriate redaction;

WHEREAS, DOD and DOA appealed this Court's order requiring release of the Darby Photos to the United States Court of Appeals for the Second Circuit;

WHEREAS, after the filing of the appeal by DOD and DOA in the Second Circuit, images were published on the website www.salon.com purporting to depict the treatment of detainees at Abu Ghraib prison;

WHEREAS, DOD and DOA subsequently entered into a stipulation and proposed order with plaintiffs providing for the dismissal of the appeal relating to the Darby Photos without further litigation and before receiving a ruling from the Second Circuit regarding the legal issues raised by that appeal;

WHEREAS, on April 3, 2006, the Second Circuit entered a Stipulation and Order dismissing the appeal on the Darby Photos;

WHEREAS, DOA represents that: (a) there are 29 other photos and 2 videos that are responsive to Plaintiffs' FOIA requests in this action and that are being withheld from release by DOD and DOA based solely upon FOIA Exemptions 6, 7(C) and/or 7(F) (the "Other Responsive Images"); and (b) the Other Responsive Images are the only other images in the possession of DOA that are responsive to Plaintiffs' FOIA requests and are being withheld solely on the basis of FOIA Exemptions 6, 7(C) and/or 7(F);

WHEREAS, the parties have reached an agreement regarding how to most efficiently and expeditiously litigate whether the Other Responsive Images can be withheld under FOIA Exemptions 6, 7(C) and/or 7(F); and

WHEREAS, the parties agree that the most efficient and expeditious way to resolve whether the Other Responsive Images should be released under FOIA is to create a record consisting of declarations that will supplement the record previously made before this Court on the Darby Photos and FOIA Exemptions 6, 7(C) and 7(F);

NOW, THEREFORE, it is hereby agreed between the parties and ORDERED as follows:

1. On or before April 25, 2006, the Government shall file with the Court any declarations in support of its invocation of Exemptions 6, 7(C) and/or 7(F) as to the Other Responsive Images.

2. On or before May 23, 2006, Plaintiffs will submit any declarations in response to the Government's submission as to the Other Responsive Images, and the Government will submit any additional declarations in reply within ten calendar days of plaintiffs' submission; if plaintiffs do not submit any additional declarations but rather rely upon declarations previously submitted to the Court relating to the Darby Photos, the Government will not submit any further declarations as to the Other Responsive Images without seeking leave of this Court for good cause shown.

3. To the extent that the withholding of the Other Responsive Images involves the same legal issues raised by the Darby Photos, the parties will not submit additional legal memoranda on Exemptions 6, 7(C) and 7(F), and the Court may instead rely upon the legal

briefing previously submitted by the parties on these issues. To the extent that the parties need to address any new legal issues raised by the Other Responsive Images, the parties shall do so in letter briefs to the Court not to exceed three pages and these letter briefs shall be submitted simultaneously with the filing of the parties' declarations.

4. The Court will consider the parties' submissions, set forth in paragraphs 1-3 above, as cross-motions for summary judgment regarding whether the Other Responsive Images must be released under FOIA.

5. After the Court issues its decision as to the Other Responsive Images, the parties will determine whether to appeal that decision on an expedited basis and will file any notice of appeal no later than 14 days of the Court's decision; during those 14 days, any order of release that the Court might issue as to the Other Responsive Images will be stayed.

6. To the extent that DOD has any responsive images in its possession that have been or will be withheld based in this case solely based on FOIA Exemptions 6, 7(C), and/or 7(F), the question of whether these other DOD responsive images should be released under FOIA Exemptions 6, 7(C) and/or 7(F) will be governed by the final ruling on appeal as to the Other Responsive Images.

Dated: New York, New York  
April \_\_\_\_\_, 2006

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Dated: New York, New York  
April \_\_\_\_\_, 2006

FOR PLAINTIFFS:

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So ordered this \_\_\_\_ day of  
\_\_\_\_\_, 2006

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HON. ALVIN K. HELLERSTEIN  
UNITED STATES DISTRICT JUDGE