

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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AMERICAN CIVIL LIBERTIES UNION :
v. :
DEPARTMENT OF DEFENSE :
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Dkt. No. 05-6286-cv

STIPULATION AND ORDER OF DISMISSAL OF APPEAL

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

WHEREAS, the district 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, the district court ordered that the Government release the 74 photos and 3 videos after appropriate redaction;

WHEREAS, the Department of Defense and Department of the Army filed the above-captioned appeal to challenge the district court's order requiring release of the Darby Photos; and

WHEREAS, after the filing of this appeal, images were published on the website www.salon.com purporting to depict the treatment of detainees at Abu Ghraib prison;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. The above-captioned appeal shall be, and hereby is, dismissed with prejudice pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Plaintiffs-Appellees reserve the right to seek costs and attorney's fees by motion (including costs and fees incurred thus far on appeal) within 90 days of the dismissal of this appeal by stipulation and court order, and Defendants-Appellants will not to object to such motion on timeliness grounds.

2. The Department of Defense and Department of the Army will specifically identify and authenticate any photos and videos published on the website www.salon.com that are the same as the 74 photos and 3 videos that are subject the subject of this appeal. The Department of Defense and Department of the Army will identify and authenticate such photos and videos in writing within 7 calendar days of the Court approving this Stipulation and Order.

3. If there are any photos or videos that are the subject of this appeal but that have not been published on www.salon.com, the Department of Defense and Department of the Army will produce such photos and/or videos to Plaintiffs-Appellees, with redactions deemed appropriate by the district court, within 7 calendar days of the Court approving this Stipulation and Order.

4. The parties agree that the actions outlined in paragraphs 2 and 3 above by the Department of Defense and Department of the Army will constitute compliance with the district court's order of September 29, 2005, requiring release of the Darby Photos.

5. The parties agree that the district court's order requiring release of the Darby Photos, dated September 29, 2005, remains in effect and is binding on the parties. Nothing in this stipulation shall be interpreted as acquiescence by Defendants-Appellants in the correctness of that order.

6. This Stipulation and Order contains the entire agreement of the parties.

Dated: New York, New York
March 28, 2006

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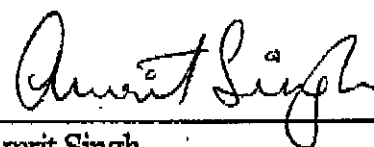
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SO ORDERED.

Dated: New York, New York
_____, 2006
