

personnel and civilians in the Middle East will be subject to a likely, serious, and grave risk if the responsive Darby Photos described in paragraphs 21-23 are publicly released. Release of these images will be portrayed as part and parcel of the alleged, continuing effort of the United States to humiliate Muslims and, given the patterns of violence observed there, will be used by the insurgents as propaganda to increase calls for violence against U.S. and Coalition personnel. I believe that if the responsive Darby Photos are released, riots, violence, and attacks by insurgents will result.

26. I am also concerned that, while the photos and videos taken together are illustrative only of isolated activity by one military unit, the members of which have been the subject of criminal investigations, prosecutions, and convictions,¹ their graphic and offensive nature makes it easy to falsely generalize from those images and characterize the abuse as more widespread than it was, and to impugn the United States Armed Forces as a whole, thereby generating a more vehement – and violent – reaction. The offensiveness of these images will make it more difficult to counteract calls for violence against U.S. and Coalition Forces despite the United States Government's immediate and forceful denunciation of the conduct portrayed in these photos, the numerous investigations into the activities and personnel they depict, and the criminal and military prosecution of those confirmed to be involved.

¹A separate addendum is attached that delineates the current status of disciplinary actions taken against those personnel who were involved in the abuse and mistreatment of detainees at Abu Ghraib, some of which is depicted in the Darby photos.

The Effect of the Responsive Darby Photos on the Predominantly Muslim Populations of Iraq and Afghanistan.

27. Specifically, with respect to the video images described in paragraph 23, as common experience has shown and as viewing of the video clips has confirmed, video images are more powerful than still photographs. Video captures a continuum of action, shows cause-and-effect, and portrays the range of emotions of those depicted in a manner that a still photo – which is devoid of those dynamic qualities – fails to convey. The video images, thus, evoke a visceral and empathetic connection between the viewer and the person being victimized, and are much more likely to generate a violent reaction or be exploited by insurgents for violent ends.

28. Iraqi and foreign detainees have indicated that an important motivation for their fighting against the Coalition and U.S. forces is their perceived mistreatment of Iraqis at Abu Ghraib prison. Thus, for example, al Qaeda leader Abu Musab al-Zarqawi demanded the release of all female detainees as the sole condition for the release of American hostages Jack Hensley, Eugene Armstrong, and British hostage Kenneth Bigley, all of whom were subsequently beheaded. British hostage Margaret Hassan (who was also killed by her abductors) also pleaded in a video released by her captors for the release of female detainees.

29. Similarly, on February 28, 2005, a statement by the Media Wing of Abu-Mus'ab al Zarqawi-al-Qa'ida of Jihad Organization in the Land of the Two Rivers [Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn] was posted on various pro-Al-Qaeda Internet sites in which the group warned and reminded Muslims of the tactics of the enemies of Islam: "2. They have incarcerated our women in concentration camps, where they raped them and violated their honor... 3. They gave the rejectionists (Shi'a) access to our women,

and the Ministry of Interior jails can testify to the fact. They gave them access to our Mosques, and their impudence reached the point of writing on the Mosques' walls, 'Today [we take] your land. tomorrow [we will take] your honor, [rape your women].'"

Redaction of the Responsive Darby Photos Does Not Alter These Conclusions

30. Redaction of the responsive Darby Photos to obscure individuals' faces and identifying information and, where necessary, genitalia, does not change my opinion. Release of the photographs and videos, even in redacted form, will very likely lead to riots and violence across the Middle East, posing grave risk to both military forces and civilians.

31. This is because the privacy concerns of the detainees are separate and distinct from the inflammatory nature and offensiveness of the conduct depicted in the responsive Darby Photos – and thus the risk of harm to our personnel – which remains apparent despite redaction. Even with the images redacted, the abuses will be apparent. The official release of these graphic photos and videos depicting this type of behavior and abuse by U.S. military personnel will very likely incite violence and result in casualties, and redaction of the photographs and videos will not alleviate or lessen this risk.

Not Only the Responsive Darby Photos Themselves,
But the Official Act of Releasing Them Could Lead to
Harm to American Troops and Civilians

32. In my opinion, not only the images themselves, but also the official act of releasing the responsive Darby Photos could significantly harm U.S. interests and endanger U.S. personnel, as well as Iraqi and Afghan civilians, police, and military personnel working in coordination with Coalition and NATO forces. Our democratic idea of public accountability – the airing of misdeeds by government officials and

employees in order to hold government to the highest standards of conduct – is an idea that is misunderstood in other parts of the world. The insurgents likely will perceive and portray an official United States Government release of the Darby Photos as a deliberate tactic in the war and a conscious degradation to the dignity of Iraqis. While the acts of abuse were originally inflicted by rogue individuals acting illegally and contrary to U.S. policy, this official release will be perceived as the re-infliction of that degradation in full public view and under the full authority of the U.S. Government. Demagogues will be free to characterize the public disclosure of these images as further evidence of U.S. immorality and hypocrisy. Such a characterization by violent extremists will – in my opinion – put the lives of American troops and civilians in extreme danger. It also will fuel the efforts of extremists to generate or stimulate opposition to U.S. policies throughout the broader Middle East. It is likely to increase pressures on friendly governments in the region to distance themselves from the U.S. All this would be a serious setback to the U.S. Government's efforts to fight the War on Terrorism alongside mainstream Muslim allies and friends in the Middle East.

Release of Photographs That Were Previously Leaked to the Press
Poses a Threat to the Safety of Troops and Civilians

33. As an initial matter, the photographs that were previously leaked were not officially released. An official release by the United States Government lends an imprimatur – an official patina – that has never been attached to these photos.² As described above, many individuals in the Middle East will not understand that this

² The United States Government has not previously released the responsive photos to the general public, but, as required by law, has provided relevant photos to civilian and military defense counsel in military courts-martial proceedings. Those disclosures have been subject to the requirements and proscriptions of the Military Rules of Evidence, the Rules for Courts-Martial, the Military Rules of Professional Conduct, and applicable military precedent.

official release is not an intentional effort to further ridicule and humiliate the individuals depicted, their culture, or their religion.

34. Before the Newsweek report of alleged Koran desecration, similar reports had been published by mainstream media publications. In particular, several media outlets previously reported that a Koran had allegedly been flushed down a toilet. Yet it was not until the Newsweek report cited a Government source, who appeared to confirm the reports, that the allegations touched off riots and death abroad. Similarly, official release of the responsive Darby Photos by the United States Government (even if some of the images had been leaked before to the press by unofficial sources) is bound to have a much different and more serious effect, different in kind from the prior unofficial release.

35. In addition, some of the previously released photographs have not been widely circulated. An official release of these photos significantly increases the chances that they will receive much greater circulation through publicly available channels and thereby inflame public sentiments and exacerbate tensions in sensitive geographic areas.

Sealing Portions of This Declaration

36. In some of the paragraphs of this Declaration, I provide descriptions of the records that are the subject of this litigation. The disclosure of the descriptions could reasonably be expected to endanger the lives and physical safety of persons described in paragraph 2, above. For that reason, I respectfully request the Court seal the following paragraphs: (the captions above paragraphs and) 21-23.

CONCLUSION

In light of the knowledge and information described herein, and given the provocative and offensive nature of the Darby Photos, I believe that the Darby Photos that I have identified in this declaration must be withheld in order to protect the lives of: members of the United States Armed Forces, forces operating in cooperation with the United States, and contractors operating with those forces; U.S. officials; Iraqi and Afghan police and military personnel working in coordination with our government and military forces; as well as to protect against the increased likelihood of violence against U.S. interests, personnel, and citizens world-wide.

I declare under penalty of perjury that the foregoing is true and correct.


RICHARD B. MYERS

Date: Washington, D.C.
August 25, 2005