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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,)
et al,)

Plaintiffs,)

v.)

04 Civ. 4515 (AKH)

DEPARTMENT OF DEFENSE et al,)
Defendants.)

Pursuant to 28 U.S.C. § 1746, I, Sinclair M. Harris, Rear Admiral, United States Navy, hereby declare under penalty of perjury that the following is true and correct:

I. ~~(S)~~ I am the Vice Director of Operations for the Joint Staff at the Pentagon and have served in this capacity since April 28, 2014. In my capacity as the Vice Director of Operations, I assist in the execution of all Department of Defense (DoD) operational matters outside of the continental United States. As such, I coordinate and communicate frequently with the staffs of the Unified Combatant Commands, to include U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Pacific Command, U.S. Southern Command, U.S. Strategic Command, U.S. Transportation Command and U.S. Special Operations Command, as well as with the Intelligence Community, to ensure on behalf of the Chairman of the Joint Chiefs of Staff that the President of the United States' and Secretary of Defense's direction and guidance are conveyed and executed, and that combatant command concerns are addressed by the Joint Staff. I evaluate and synthesize such concerns and advise and make recommendations to the Chairman of the Joint Chiefs of Staff regarding our worldwide military operations.

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2. ~~(S)~~ I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity. My conclusions are based on my years of service in the United States military and on my assessments and evaluations of the current situation worldwide as it relates to individuals and organizations that are hostile to the U.S. Government and its efforts, as well as the historical precedents discussed below. I have served in the United States Armed Forces for over thirty years at various levels of command and staff. As a commander of U.S. forces, I commanded the Expeditionary Strike Group 5 and served as the Commander of U.S. Naval Forces Southern Command and U.S. 4th Fleet. As the Vice Director of Operations, I receive and review daily operational plans and briefings, reports, and intelligence analyses from the Combatant Commands, the Joint Staff, and the Intelligence Community. I assist with the supervision of the National Military Command Center, which is responsible for monitoring worldwide events affecting national security and U.S. interests twenty-four hours a day, seven days a week. I have traveled in an official capacity to a number of countries where U.S. forces are conducting ongoing operations against Al Qaeda and other terrorist groups, engaging with senior military and government officials. As a result of my experiences, I have extensive knowledge of our military forces and their capabilities, current operations, and the conventional and unconventional forces and capabilities of the enemies arrayed against us.

3. ~~(S)~~ I am aware that the American Civil Liberties Union (ACLU) requested, through the Freedom of Information Act (FOIA), records related to the treatment and death of individuals held abroad in United States custody after 11 September 2001. I am also familiar with the Protected National Security Documents Act of 2009 (PNSDA).

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4. (S) I have been informed that this Court has requested that the government explain the present day harm that would ensue from official release of the photographs referenced in the opinion in *United States Department of Defense v. American Civil Liberties Union*, 543 F.3d 59 (2d Cir. 2008), vacated & remanded, 130 S. Ct. 777 (2009), as well as other photographs of similar character taken between 11 September 2001 and 22 January 2009 that also relate to the treatment of individuals engaged, captured, or detained after 11 September 2001 by U.S. Armed Forces engaged in operations outside the United States (hereinafter the "photographs").

5. (S) I am familiar with the 9 November 2012 certification renewal issued by Secretary of Defense Leon Panetta pursuant to the PNSDA and the supporting recommendations of the Chairman of the Joint Chiefs of Staff, Commander, United States Central Command, and Commander, International Security Assistance Force/United States Forces-Afghanistan, that all concluded that public disclosure of the photographs would "endanger citizens of the United States, members of the Armed Forces, or employees of the United States government deployed outside the United States."

6. (S) This declaration provides my assessment of the present day harm that would occur if the photographs were released. I have reviewed a representative sample of the photographs and, for the reasons set forth in this declaration, I have concluded that the official release of the photographs, in whole or in part, could reasonably be expected to "endanger citizens of the United States, members of the Armed Forces, or employees of the United States government deployed outside the United States."

7. (S) The danger associated with release of these photographs is heightened now, at a time when numerous groups continue in their efforts to attack U.S. personnel and interests both abroad and within the continental United States. In recent months the Islamic State of Iraq and

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the Levant (ISIL) have called on members to commit attacks in retaliation for the actions of the United States in Syria and Iraq. On 16 September 2014, an Arabic-language document titled "A Message to 2.6 Million Muslims in the United States This Is How to Respond To Obama's War on Islam" was posted to the Al-Minbar al_I'lami Jihadist Forum which called upon Muslim Americans and Muslims in other Western countries to commit "open source jihad, or lone wolf operations" against certain individuals. The message advocated "focusing on human targets," specifically, "military personnel...police and law enforcement...Department of State and Defense Department personnel." The message advocates for these lone-wolf attacks because they are "impossible for the security authorities to abort," and offer extreme flexibility, without any "training, preparation or any channel of communication with any party or individual" required in advance. On 21 September 2014, an audio message attributed to the ISIL spokesman was posted in a forum which advocated for lone offenders in the West to attack "soldiers, patrons, and troops...their police, security and intelligence members." He indicated that lone offenders should kill such government personnel in any manner and that such attacks are legitimate.

8. (U) Western countries such as the UK, Australia and Canada have recently disrupted plotting, or otherwise suffered attacks by, individuals linked to ISIL. On 18 September 2014, Australian officials detained 15 ISIL-linked individuals suspected of plotting a terrorist attack on Australian citizens which would consist of publicly beheading random Australians similar to videos recently released by ISIL. On 8 October 2014, UK officials arrested five British individuals believed to be in the early stages of planning a significant attack in the UK that allegedly had links to ISIL. In October 2014, Canada suffered two attacks by what are believed to be ISIL-inspired terrorists, resulting in the deaths of two Canadian military personnel. These

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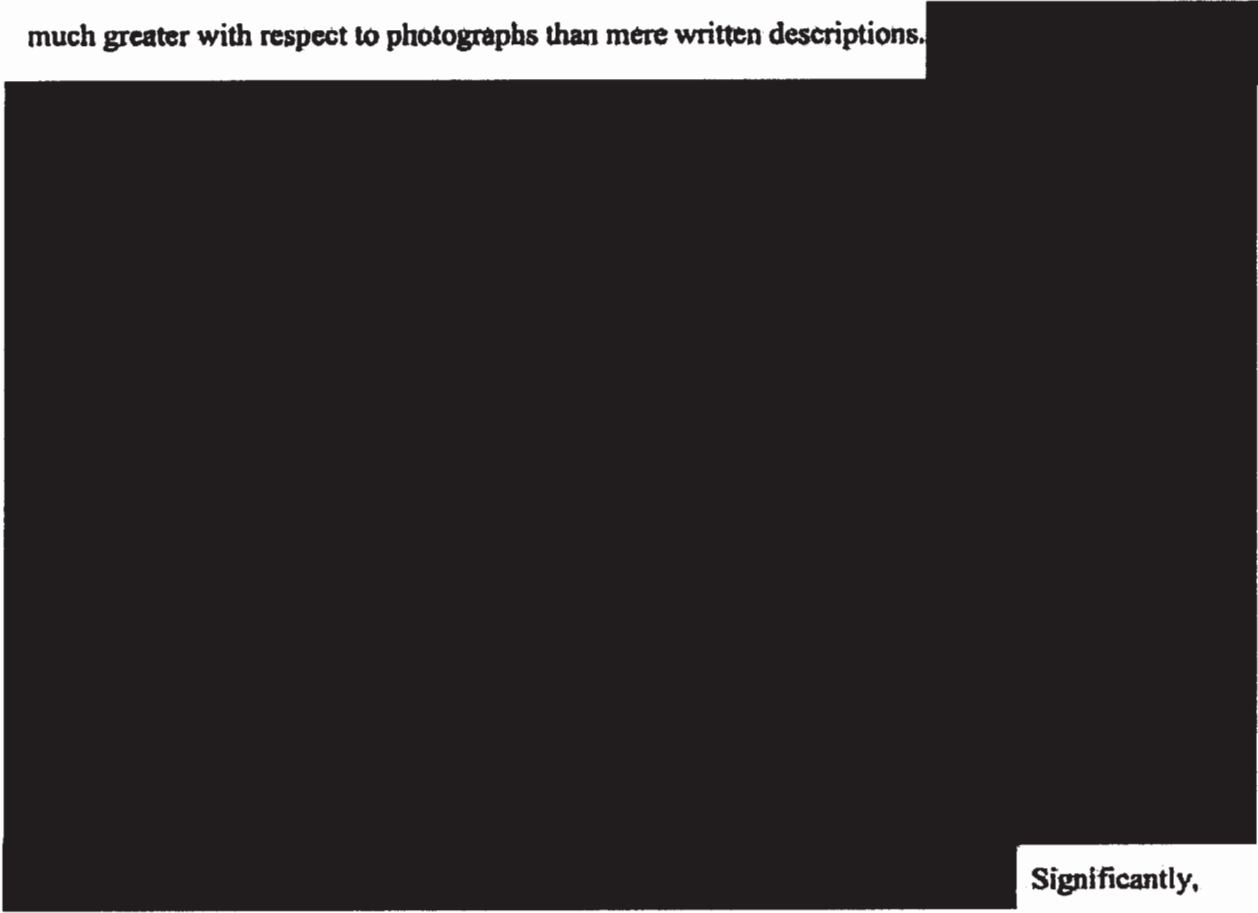
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events further the concern that calls to violence by ISIL and its supporters are being answered and could motivate attacks on U.S. personnel.

9. ~~(S)~~ As described below, public release of the photographs is the type of event that could lead to further encouragement of attacks against the United States by these groups. ISIL would use these photographs to further encourage its supporters and followers to attack U.S. military and government personnel.

10. ~~(S/NF)~~ The photographs are susceptible to use as propaganda to incite a public reaction and could be used as recruiting material to attract new members to join enemy forces. This risk is much greater with respect to photographs than mere written descriptions.



Significantly,

ISIL has a particular interest in using imagery associated with U.S. detention practices as part of its propaganda and recruitment efforts. For example, in early September 2014, when ISIL released a video showing the beheading of journalist Steven Sotloff, Mr. Sotloff was forced to make

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a statement that he was paying the price for U.S. intervention in Iraq. In addition, Mr. Sotloff was clothed in an orange jumpsuit at the time of his execution, as were James Foley, Alan Henning, and David Haines, a symbol commonly associated with the detainees housed at Guantanamo Bay based on imagery of Guantanamo Bay detainees released in 2001. Imagery such as that found in the photographs and descriptions of such imagery would similarly be particularly useful to ISIL's propaganda and recruitment efforts [REDACTED]

11. (S) Al Qaeda also remains active in its efforts to spur members to action against the United States and its citizens. For example, Al Qaeda in the Arabian Peninsula (AQAP) recently released a video threatening to kill U.S. citizen Luke Somers if the U.S. government did not meet its demands. Mr. Somers appeared in the video identifying himself.

12. (S) One of Al Qaeda's primary propaganda tools is the online magazine "Inspire", an English language magazine published by AQAP, aimed at Westerners and meant to inform and persuade followers to take action, to include committing attacks against non-Muslims. Among other things, Inspire informs readers exactly what steps they can take to launch attacks against the United States and other Western countries, and invokes the USG's treatment of detainees to encourage such attacks. For example, the Spring 2014 edition of Inspire follows a theme of encouraging lone-wolf attacks by individuals who cannot obtain more formal training and provides instruction on how to make a car bomb and plan a car bomb attack, to include advice on how to avoid being detected by authorities. The article advises that this type of car bomb is used to kill individuals and says jihadists should target places such as sports events and festivals where there will be thousands of potential victims. The article states that America is "our first target, followed by United Kingdom, France and other crusader countries". The magazine also includes an article written by a former Guantanamo Bay detainee transferred in 2006, Sheikh Ibrahim Ar-Rubaysh. The article criticizes President Obama's comments that Al Qaeda is on the

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road to defeat and points out that “most of America’s action lately are either retreating or preparation to retreat”, arguing that Al Qaeda are the ones “making events” happen now, not America. The magazine also contains an article discussing recent history as showing a decline of the United States’ power and discussing the “Immoral States of America”; notably, the article specifically highlights the USG’s treatment of its detainees abroad. The pertinent portion of the article reads:

“Later, when the cold war came to an end, many more believed America will face no match. It will police the world and the world would become a safer place. However, did this turn out to be the true state of affairs? Did this sweet dream come true?...we are certain that the sweet dream America propagated vanished into a terrifying nightmare: Abu Ghraib, black sites, Guantanamo and the US soldiers’ crimes in Afghanistan and Iraq are too clear to need clarification. Actually, there is no possible way to express these inhumane crimes perpetrated against human rights. Here we could say America has lost the most important element of global leadership: morals and principles.”

The photographs, which depict detainees in U.S. custody, who sustained visible injuries, would likely be seized upon by Al Qaeda for use in its continued propaganda war against the United States. This risk is much greater with respect to photographic images of detainees than mere written descriptions.

13. (S) Consistent with the 2012 determination of the Secretary of Defense and the recommendations of the Chairman, Joint Chiefs of Staff, Commander, United States Central Command, and Commander, International Security Assistance Force/United States Forces-Afghanistan, the release of these photographs is likely to endanger U.S. military and civilian personnel who continue to operate in various locations in the Central Command (CENTCOM)

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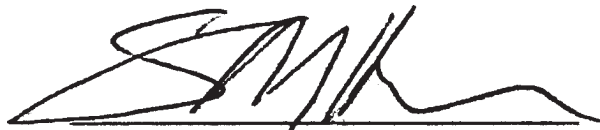
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region, such as Afghanistan and Iraq. At this time, we still have [REDACTED] U.S. citizens (both military and civilian USG personnel as well as non-USG personnel) on the ground in Afghanistan, and [REDACTED] U.S. citizens (both military and civilian USG personnel as well as non-USG personnel) on the ground in Iraq, with a plan to double the number of military personnel in Iraq (from 1,500 to 3,000), as the President has stated. The subject of U.S. detainee operations remains extremely sensitive with the governments and citizens of these countries as well as other countries whose nationals we detain. Public release of the photographs would facilitate the enemy's ability to conduct information operations and could be used to increase anti-American sentiment, thereby placing the lives of U.S. personnel serving in Afghanistan and Iraq at risk. These concerns are not hypothetical, as evidenced by the prior violence that resulted from release of other information, videos and photographs as referenced in the 2012 Commander, United States Central Command, and Commander, International Security Assistance Force/United States Forces-Afghanistan memorandum.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 16 day of December 2014 in Arlington, VA.



Rear Admiral Sinclair M. Harris, USN

Vice Director of Operations, J-3, Joint Staff

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