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Obama administration must justify suppression of never-before-seen photographs depicting US military torture of detainees

The Obama administration has until early December to detail its reasons for withholding as many as 2,100 graphic photographs depicting US military torture of detainees in Iraq and Afghanistan, a federal judge ordered on Tuesday.

By 12 December, Justice Department attorneys will have to list, photograph by photograph, the government's rationale for keeping redacted versions of the photos unseen by the public, Judge Alvin Hellerstein instructed lawyers. But any actual release of the photographs will come after Hellerstein reviews the government's reasoning and issues another ruling in the protracted transparency case.

While Hellerstein left unclear how much of the Justice Department's declaration will itself be public, the government's submission is likely to be its most detailed argument for secrecy over the imagery in a case that has lasted a decade.

"The only thing that bothers me is that we're taking a lot of time," Hellerstein told a nearly empty courtroom.

At issue is the publication of as many as 2,100 photographs of detainee abuse, although the government continues not to confirm the precise number. Said to be even more disturbing than the infamous Abu Ghraib photographs that sparked a global furor in 2004, the imagery is the subject of a transparency lawsuit that both the Bush and Obama administrations, backed by the US Congress, have strenuously resisted.

In 2009, US president Barack Obama reversed his position on the photographs' release and contended they would “ [further inflame anti-American opinion and ... put our troops in greater danger](#) ”. That year, Congress passed a law, the Protected National Security Documents Act, intended to aid the government in keeping the images from the public. Two secretaries of defense, Robert Gates in 2009 and Leon Panetta in 2012, have issued assertions that US troops in Afghanistan and Iraq would be placed at risk by the disclosure.

But in August, Hellerstein said the government's declaration was overbroad. Some of the photographs, which he said on Tuesday he had seen behind closed doors, “are relatively innocuous while others need more serious consideration”, Hellerstein said in August.

Disclosure, sought by the American Civil Liberties Union since 2004, will not come this year. Hellerstein scheduled a hearing to discuss the upcoming government declaration for 23 January.

The return of the US to war in Iraq raises the stakes for the case. Unlike in 2012, when Panetta certified that the release of the photographs would endanger the US military in Afghanistan, some 1,600 US troops are also now in Iraq again, this time to confront the Islamic State (Isis).

But while Hellerstein indicated he was interested in an “update” about current exposure to danger, he only ordered the government to specify its reasons for keeping each individual photograph withheld as of Panetta's November 2012 declaration.

Potential release of the photographs dovetails with another imminent torture disclosure. The Senate intelligence committee is expected to soon unveil sections of its long-awaited investigation into CIA torture. The government's most recent filing in a different transparency suit indicated the report's release will come on [29 October](#) , though the government has asked for extensions in the past and may do so again.

Marcellene Hearn, an attorney for the ACLU, portrayed the release of the torture photographs as an accountability measure.

“It’s disappointing that the government continues to fight to keep these photographs from the public,” Hearn said after the half-hour hearing. “The American people deserve to know the truth about what happened in our detention centers abroad. Yet the government is suppressing as many as 2,100 photographs of detainee abuse in Iraq and elsewhere. We will continue to press for the release of the photos in the courts.”