



March 10, 2009

VIA FACSIMILE AND FEDERAL EXPRESS

Sean Lane  
Assistant U.S. Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, 5th Floor  
New York, New York 10007

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

RE: *Am. Civil Liberties Union v. Dep't of Defense*, No. 06-3140-cv  
(2d Cir.).

PLEASE RESPOND TO:  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2660  
F/212.549.2654  
WWW.ACLU.ORG

Dear Sean,

In light of President Obama's recently issued directives on Transparency and the Freedom of Information Act ("FOIA"), I write to request that your clients, the Departments of Defense and the Army, reconsider their position in *American Civil Liberties Union v. Department of Defense*, No. 06-3140-cv (2d Cir.).

CALIFORNIA OFFICE  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111-4805  
T/415.343.0770  
F/415.395.0950

As you know, Plaintiffs in this case seek disclosure under FOIA of images (redacted for individually identifying information) of prisoners being abused in U.S. custody in Iraq and Afghanistan. Plaintiffs have sought release of these images for almost five-and-a-half years, since they first filed their FOIA request in October 2003 for records relating, *inter alia*, to the treatment of prisoners held in U.S. custody overseas. Litigation relating to these records commenced in June 2004.

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RICHARD ZACKS  
TREASURER

On September 22, 2008, a unanimous panel of the Second Circuit Court of Appeals ordered release of these images, observing that "the facts of this case place governmental accountability at the center of the dispute," and that "there is significant public interest in the disclosure" of the prisoner-abuse photographs, which the Government concedes "yield evidence of governmental wrongdoing." See *Am. Civil Liberties Union v. Dep't of Def.*, 543 F.3d 59, 82, 87 (2d Cir. 2008).<sup>1</sup> On November 6, 2008, the Departments

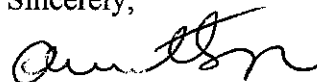
<sup>1</sup> The Court also noted that the defendants had conceded that its decision would be dispositive not only for the 21 images specifically at issue in that appeal, but also for other prisoner-abuse images in its possession. *Id.* at 65 n.2.

of Defense and the Army filed a petition for rehearing *en banc*, which remains pending before the Court of Appeals to this date.

The Departments of Defense and the Army should reconsider their litigation position in light of President Obama's recently issued directives on Transparency and the Freedom of Information Act. In a January 21, 2009 directive, President Obama committed to "an unprecedented level of openness in Government." *See* Memorandum for the Heads of Executive Departments and Agencies: Transparency and Open Government, 74 Fed. Reg. 4,685 (Jan. 21, 2009). In another directive relating specifically to FOIA, the President emphasized that "a democracy requires accountability, and accountability requires transparency." *See* Memorandum for the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4,683 (Jan. 21, 2009). That directive requires all agencies to "adopt a presumption in favor of disclosure" with respect to "all decisions involving FOIA." *Id.* Significantly, the FOIA directive prohibits the Government from "keep[ing] information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Both of the aforementioned directives underscore the same principles pursuant to which Plaintiffs have sought disclosure of the prisoner-abuse images. In light of these directives, I urge your clients to reconsider their litigation position, and I look forward to hearing from you at your earliest convenience.

Sincerely,



Amrit Singh  
Staff Attorney  
American Civil Liberties Union  
Immigrants' Rights Project  
125 Broad St, 18<sup>th</sup> Floor  
New York, N.Y. 10004  
Ph: 212 549 2609  
Fax: 212 549 2654

*Counsel for Plaintiffs-Appellees*

cc: Jenny-Brooke Condon