

December 22, 2015

Pursuant to 28 U.S.C. § 1746, I, Liam M. Apostol, hereby declare under penalty of perjury that the following is true and correct:

1. I am an Associate Deputy General Counsel in the Office of the General Counsel for the Department of Defense (“OGC”). OGC is a component of the Office of the Secretary of Defense and provides legal advice to the Secretary of Defense, Office of the Secretary of Defense organizations and, as appropriate, other Department of Defense components. I have held my current position since September 2012 and have worked as an attorney for the Department of Defense since 2001. The statements in this declaration are based upon my personal knowledge and upon information made available to me in my official capacity.

2. The purpose of this declaration is to provide the Court with information regarding the process used to assist Secretary of Defense Ashton Carter in making his determination to certify certain photographs in accordance with the Protected National Security Documents Act of 2009 (PNSDA). This declaration does not provide all details of the process. Rather it highlights the differences between the process used for Secretary Leon Panetta’s 2012 certification and the process used for Secretary Carter’s 2015 certification. The process used in connection with Secretary Panetta’s 2012 certification is described in the Declaration of Megan Weis, dated December 19, 2014, attached hereto as Exhibit A.

3. Approximately six months before the November 9, 2015, expiration of Secretary Panetta’s 2012 certification, this office began to implement a robust, multi-phase process of reviewing the photographs that were previously certified under the PNSDA in order to enable military commanders and OGC to provide guidance to the Secretary or his delegate about possible recertification of some or all of the photographs.

4. OGC and the office of the Joint Staff, Deputy Director for Special Operations, Counterterrorism and Detainee Operations (Joint Staff J37) devised this review by considering the process undertaken for prior PNSDA certifications and the views of the district court. These offices re-examined and enhanced the thoroughness of the review

process previously undertaken. The review contained only photographs that were previously certified and no additional photographs.

5. In the first step of this process an attorney from OGC conducted an individualized review of each photograph one-by-one based on how likely it was that the public release of the photographs would result in the harm the PNSDA was intended to prevent, which is the endangerment of citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the U.S.

6. Upon completion of this first phase of review, the photographs were then reviewed by commissioned officers assigned to Joint Staff J37. These officers conducted an independent second phase of review with the same purpose – to review each photograph based on the likelihood of harm that the PNSDA was intended to prevent. The officers, based on their years of military service, past and present duties and responsibilities and military training, collectively have extensive knowledge of the Armed Forces and of the tactics, techniques and means employed by the enemies of the United States in Afghanistan, Iraq, and other regions of the Middle East and Africa.

7. After completion of the second phase of review by the officers in Joint Staff J37, three attorneys in OGC and one uniformed attorney attached to the Department of the Army, conducted a third review of the combined work product of the initial attorney and the officers assigned to Joint Staff J37. Neither the attorney who conducted the initial review for OGC, nor the officers attached to Joint Staff J37 took part in this third review. This third review consisted of the attorneys reviewing each photograph according to the likelihood of harm it would cause. Upon completion of this third review, the attorneys coordinated with the Joint Staff J37 officers and uniformed attorneys from the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff to reach final consensus.

8. Once final determinations were made, OGC developed a representative sample of the photographs for the Secretary's review. The goal of developing this representative sample was to provide the Secretary with the full understanding of the nature of the all of the photographs. This included the full scope of what the imagery in the photographs depicted as well as the full range of the gravity of the content.

9. In addition, the Secretary of Defense solicited and received recommendations from the Chairman of the Joint Chiefs of Staff, the Commander of U.S. central Command, The Commander of U.S. Africa Command, and the Commander U.S. Forces, Afghanistan. These recommendations and the representative sample of photographs were provided to the Secretary of Defense for his review.

10. Following a review of the photographs and recommendations described in paragraph 11, the Secretary of Defense declined to certify approximately 198 photographs. These photographs are currently being processed for release. On November 7, 2015, the Secretary of Defense pursuant to the authority vested in him by the Protected National Security Documents Act, certified the remaining photographs. That certification is attached as Exhibit B.

A handwritten signature in black ink, appearing to read "Liam M. Apostol". The signature is stylized and cursive, with a large initial "L" and "A".

Liam M. Apostol