



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

October 29, 2009

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, D.C. 20543

United States Department of Defense v. American Civil Liberties Union,
S. Ct. No. 09-160

Dear Mr. Suter:

I am writing to advise the Court of further developments with respect to the above-captioned case. The petition for a writ of certiorari in this case was filed on August 7, 2009, and the petition is scheduled to be considered at the Court's conference tomorrow, Friday, October 30, 2009.

This case concerns whether the Freedom of Information Act, 5 U.S.C. 552, requires the government to disclose a set of photographic records concerning allegations of abuse and mistreatment of detainees in United States custody overseas. See Pet. i. In letters to the Court dated October 8 and 16, 2009, we informed the Court that the House of Representatives had approved and the Senate was expected to consider approval of the conference report for the Department of Homeland Security Appropriations Act, 2010 (H.R. 2892), which includes a provision to authorize the Secretary of Defense to exempt from mandatory disclosure photographs relating to the treatment of detainees held by the United States overseas if he certifies that such disclosure would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States.

On October 20, 2009, the Senate approved the conference report. 155 Cong. Rec. S10,542, S10,558 (daily ed. Oct. 20, 2009). Yesterday, October 28, 2009, the President signed into law the Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, 123 Stat. 2142 (2009). Petitioners intend to submit a supplemental brief to the Court (we anticipate by the time of next week's conference) regarding the effect of the intervening legislation on the appropriate disposition of the petition for a writ of certiorari.

Sincerely,

Elena Kagan
Solicitor General

cc: See Attached Service List

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