

JUDGE HELLERSTEIN: YES, THE REDACTED TORTURE AUTHORIZATION PERTAINS TO THE SEPTEMBER 17, 2001 TORTURE AUTHORIZATION

I'm still working my way through the ACLU FOIA docket in light of my ongoing series (post 1, post 2, post 3, post 4) on the Obama Administration's efforts to keep the authorization for the torture program—that is, probably the September 17, 2001 Memorandum of Notification—secret.

Now that I've laid all that out, this order from Judge Alvin Hellerstein is hysterical.

By order dated October 8, 2010, I directed that the parties submit a briefing schedule with respect to the September 17, 2001 presidential directive. On October 21, 2010, I received an ex parte, classified submission from the Government requesting that I reconsider that order in light of the parties' upcoming appeals of the October 1, 2010 Order of Final Judgment on Fourth and Fifth Motions for Partial Summary Judgment. Upon reviewing the Government's classified submission in camera, I have determined that litigation of the presidential directive is intertwined with the issues presented by the parties' appeals of the October 1, 2010 Order, and that resolution of the appeals may be dispositive.

Accordingly, it is hereby ORDERED that litigation of the September 17, 2001 presidential directive is stayed pending resolution of the parties' appeals of the October 1, 2010 Order.

So Judge Hellerstein orders the government to release the language describing the authorization for the torture program—which I believe is the September 17, 2001 MON—on October 1, 2010. And then the government, all secret-like, in a classified ex parte submission, asks him to hold off on the next issue in the litigation, discussions about the September 17, 2001 “Directive” noted in the Dorn declaration.

So he turns around and writes an order saying, “Hey, you know that language about who or how the torture program was authorized, that I believe the government is improperly hiding as an intelligence method? Well, the government just came to me and secretly told me it’s, um, ‘intertwined’ with questions about whether the government should have to release that September 17, 2001 Presidential directive that, as Dorn explained, ‘pertains to the CIA’s authorization to detain terrorists.’”

Next up, Hellerstein will be writing an order reading: “the resident-Pay thorized-oay the orture-tay rogram-pay.”