



photographs responsive to Plaintiff's FOIA request, unless it moves promptly to cure its failure to submit an individualized certification. *See Am. Civil Liberties Union v. Dep't of Defense*, No. 40 F.Supp.3d 377, 388 (S.D.N.Y. Aug. 27, 2014) ("The statute provides that the Secretary of Defense shall issue a certification '[f]or any photograph' if the 'disclosure of that photograph' would meet certain criteria. . . . This plain language refers to the photographs individually—"that photograph"—and therefore requires that the Secretary of Defense consider each photograph individually, not collectively.") (citing PNSDA § (d) (1)) (emphasis added).

In its letter, the Government requests that this order be stayed on two grounds. First, it proposes that staying the order until the conclusion of the 2015 recertification process would promote judicial economy, as it could render the appeal of the 2012 Certification moot. However, I have already found that the 2012 Certification is inadequate and, having declined to follow my instructions for bringing the 2012 Certification into compliance, the Government gives the Court no reason to believe that the 2015 Certification would fare better. Second, the Government proposes a 60-day stay so that the Solicitor General may make a determination regarding appeal. *See Fed. R. App. P. 4(a)(1)(B)*. The order is hereby stayed for 60 days, even though the Government has had ample time to evaluate its legal position and the desirability of an appeal. The Government has known since August 27, 2014 that I considered a general, *en grosse* certification inadequate. Certainly, that has been clear since the hearing on February 4, 2015. I commented on February 4<sup>th</sup> that it appeared the Government's conduct reflected a "sophisticated ability to obtain a very substantial delay," tending to defeat FOIA's purpose of prompt disclosure. Tr. of Feb. 4, 2015 Hearing at 23:2-4. Accordingly, any subsequent stays must be issued by the Court of Appeals.

