[Oral argument not scheduled]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HUZAIFA PARHAT, *et al.*,

Petitioners,

v.

ROBERT M. GATES, *et al.*,

Respondents.

No. 06-1397

PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION TO ASSIGN SEPARATE DOCKET NUMBERS AND TREAT FILING AS SEVEN SEPARATE PETITIONS FOR REVIEW

I. INTRODUCTION

The government's first order of business in this litigation is to ask the Court to break the case into seven separate cases, with seven separate docket numbers. Unless Respondents are trying to make this case more burdensome for Petitioners and their pro bono counsel to litigate, the point of this requested action is entirely unclear. The effect of it, however, is certain: delay, inefficiency, and pointless burdening of judicial resources.

Petitioners have filed a single action asserting claims arising out of the same basic facts. This wholly unremarkable; it literally happens every day in our judicial system. The petition in this case is entirely consistent with the relevant law and this Court's rules; it does not implicate any of the standing or other issues raised by Respondents. Certainly there is nothing that requires the court to treat each Petitioner has having brought a separate case. Petitioners respectfully urge the Court to deny Respondent's Motion to Assign Separate Docket Numbers and Treat Filing as Seven Separate Petitions for Review, and promptly move the case forward to a hearing on the merits.

II. THIS CASE CAN AND SHOULD PROCEED AS FILED

A. Breaking the Case into Seven Cases Would Be Pointless.

This case is a novel form of action recently created for men such as Petitioners who are detained indefinitely as "enemy combatants" at Guantanamo Bay. Detainee Treatment Act of 2005 at § 1005(e)(2), Pub. L. No. 109-148, 119 Stat. 2680 (Dec. 30, 2005) ("DTA"). Cases arising under the DTA are unique in that they may be brought in the first instance in this Court, without any ruling by a district court or by an agency acting pursuant to a proper delegation of authority from Congress.

Congress vested this Court with jurisdiction "to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly

detained as an enemy combatant." *Id.* § 1005(e)(2)(A). Under the statute, the Court is to consider: "whether the status determination of the Combatant Status Review Tribunal with regard to [the petitioner] was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence)." *Id.* § 1005(e)(2)(C)(i). The statue specifies no particular procedures for the Court's "consideration" of these issues.[1]

For all the things the parties disagree about, they agree on one key issue presented by Respondents' motion. There is no dispute that the Court must determine as to each Petitioner "whether the status determination of the [CSRT] as to [him] was consistent with the standards and procedures specified by the Secretary of Defense for [CSRTs]." DTA § 1005(e)(2)(C)(i). As a factual matter, Petitioners believe that the evidence will show that Petitioners stand or fall as a group because they—and men previously exonerated by the CSRTs—are identically situated.[2] That does not, of course, mean that the Court will not make

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[1] On December 23, 2006, Petitioners filed Emergency Motion for an Order Setting Procedures Governing Petition for Immediate Release and Other Relief Under Detainee Treatment Act of 2005. In that motion, Petitioners asked the Court to set a timetable and appropriate procedures for considering Petitioners' claims. Among other things, Petitioners urged the Court to adopt a protective order, order Respondents to produce relevant documents and information necessary to this Court's review, appoint a special master to resolve factual disputes, and set a schedule for dispositive motions before this Court.

[2] As discussed in detail in the Petition, Respondents have conceded that Petitioners are seven of eighteen Uighurs currently or formerly imprisoned at Guantanamo whose circumstances were the same in every material way. CSRTs determined that five of the eighteen were not enemy combatants. A sixth was determined to be a noncombatant until Washington ordered the result changed. In every particular, Petitioners were situated precisely the same as those whom the CSRTs determined were not enemy combatants. *See* Petition for Immediate Release and Other Relief Under Detainee Treatment Act of 2005, and, in the Alternative, for Writ of Habeas Corpus at ¶¶ 8, 46-56, 62-90, 125-142.

an individualized determination as to each Petitioner; it simply means that the facts will compel the Court to come to the same conclusion as to each individual. Nothing does or could prevent the Court from making these individualized determinations. As to the Court's evaluation of the merits, assigning each Petitioner a separate case number changes nothing.

B. Nothing Requires the Court to Break the Case Up into Seven Different Cases.

Respondents argue that the case must be broken up into seven separate cases because a single action presents both joinder and standing problems. Respondents are wrong.

1. Rule 15 does not support Respondents' argument.

Respondents argue that under Federal Rule of Appellate Procedure 15 Petitioners may not present their claims through a single petition. That Rule provides: "Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in an petition to the same court to review the same order." Fed. R. App. Pro. 15(a)(1). Rule 15 applies to the traditional review of agency actions. It does not apply here because the CSRT determination is not an "agency order" within the meaning of the rule. Moreover, Rule 15 should not prevent all Petitioners from proceeding in a single case. Certainly, Petitioners' common interests, common counsel, and the common legal and factual issues presented mean that proceeding as a single case is not merely "practicable," it is highly efficient.

a. This Is Not an Administrative Agency Review Case

Respondents make a number of erroneous assumptions. First and foremost, this is not an administrative law case. This Court regularly reviews rule makings

and adjudications conducted by executive agencies pursuant to a statutory grant of authority by Congress. An agency's power to act depends entirely on the scope of authority granted by Congress. *See, e.g., FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000) ("[N]o matter how 'important, conspicuous, and controversial' the issue, and regardless of how likely the public is to hold the Executive Branch politically accountable, an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress"); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) ("Reviewing court must conduct a substantial inquiry and determine whether the Secretary acted within the scope of his authority."); *United States v. Article of Drug Bacto-Unidisk*, 394 U.S. 784, 800 (1969) ("[I]n our anxiety to effectuate the congressional purpose of protecting the public, we must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.") (internal quotation omitted). But Congress did not create the CSRTs, the Executive did.

The Executive established the CSRTs on July 7, 2004, just nine days after the Supreme Court ruled against the government in *Rasul v. Bush*, 542 U.S. 466 (2004) and *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). On that day, Deputy Secretary of Defense Paul Wolfowitz issued an "Order Establishing Combatant Status Review Tribunal" ("CSRT Order"). Three weeks later, on July 29, 2004, Secretary of the Navy Gordon England issued an order entitled "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants detained at Guantanamo Bay Naval Base, Cuba" ("CSRT Implementing Procedures").[3]

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[3] The CSRT Order and CSRT Implementing Procedures were attached as Exhibits A and B, respectively, to the Petition. The CSRT Order is also available at http://defenselink.mil/news/Jul2004/d20040707review.pdf. The CSRT Implementing Procedures are also available at http://defenselink.mil/news/Jul2004/d20040730comb.pdf.

Neither the CSRT Order nor the CSRT Implementing Procedures refer to any Congressional grant of authority, or purport to implement any statute.[4] Certainly, nothing in the authorization for the Afghanistan war created or authorized the CSRTs. *See* Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001). Nor, of course, were the CSRTs created by either the DTA or the Military Commissions Act of 2006. Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680 (Dec. 30, 2005) (implicitly assuming that the CSRTs exist, but omitting any authorizing language); Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006) (same). The Executive created the CSRTs on its own authority, and for its own benefit.

Whatever validity the CSRT may or may not have, it is most certainly not an agency rule making or adjudication. 5 U.S.C. § 553(a)(1) (exempting the military from the Administrative Procedures Act's rule making requirements); 5 U.S.C. § 554(a)(1) (exempting the military from the APA's agency adjudication requirements). *See also Brown & Williamson*, 529 U.S. at 161 (agency authority controlled by statue); *Overton Park*, 401 U.S. 402 (same); *Article of Drug Bacto-Unidisk*, 394 U.S. at 800 (same).

The lack of any statutory authority for the CSRT is fatal to Respondents' argument that the this is an administrative law case. But beyond that, it is simply absurd to compare the CSRTs—which have ratified the military's *ex ante* decision to lock human beings up indefinitely—with decisions about where to locate proposed highways, or the proper regulation of the energy industry.

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[4] On the contrary, the CSRT Order specifically states that it is directed to internal management issues. *See* CSRT Order § j ("This Order is intended solely to improve management within the Department of Defense concerning its management of enemy combatants at Guantanamo Bay Naval Base, Cuba, and it does not, and is not intended to, create any right or benefit, substantive or procedural, enforceable at law, in equity, or otherwise[.]").

The CSRTs do not remotely approach the levels of transparency, deliberateness and rationality required of administrative agency actions. Even "informal" rule making requires publication in the Federal Register of a general notice of the proposed rule making, an announcement of the time, place, and nature of public rule making proceedings, and a statement of the legal authority under which the rule is proposed. 5 U.S.C. § 551(b). Interested persons must have "an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." 5 U.S.C. § 551(c). The agency must publish a substantive rule not less than 30 days before its effective date. 5 U.S.C. § 551(d). Interested parties may petition the agency for issuance, amendment or repeal of a rule. 5 U.S.C. § 551(e).

The CSRTs are nothing like that process. The rules and procedures were created hastily and in secret by the Executive—apparently on its own authority—and announced as a fait accompli. The CSRT hearings themselves took place in secret. The prisoners were forbidden to have the assistance of counsel. The Tribunals based their decisions on secret evidence—indeed on evidence that is known only to Respondents to this day.

Even where—unlike here—administrative law principals apply, an agency cannot avoid a thorough, probing, in-depth review of its regularity. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971). An agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made," *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962), and the court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Overton Park*, 401 U.S. at 416. Where an agency fails to set out its reasoning or expressions of agency understanding, agency actions do not command deference

from the federal courts. *S. D. Warren Co. v. Maine Board of Environmental Protection*, 126 S. Ct. 1843, 1848-1849 (2006).

The CSRTs are not entitled to usual administrative law deference because they were not conducted to a Congressional delegation of authority. *United States v. Mead Corp.*, 533 U.S. 218, 226-227 (2001) (administrative deference is warranted only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority"). *See also generally Gonzales v. Oregon*, 126 S. Ct. 904, 916 (2006) (an agency's interpretation of a law outside the scope of its authority is "entitled to respect" only to the extent it has the "power to persuade").

Respondents' administrative law argument cannot help them avoid a thorough examination of the CSRTs, because the DTA demands such a thorough review. Under the DTA, this Court is to consider "whether the status determination of the Combatant Status Review Tribunal . . . was consistent with the standards and procedures specified by the Secretary of Defense." DTA § 1005(e)(2)(C)(i). There can be no deference where the statue commands a review of the standards and procedures used.

In sum, this is not an administrative law case. This has many implications for how the case is to proceed. One of those implications is that the CSRT determination is not an "agency order" within the meaning of Rule 15. There is no reason to break the case into multiple cases.

b. This case is an original action, and should be treated as such.

The Federal Rules of Appellate Procedure do not prevent Petitioners from proceeding in a single action. Moreover, because this is an original action, not an appeal, the Court's handling of it should be informed by the usual rules and

procedures that govern litigation in the federal courts. Under the everyday joinder principles that govern federal court litigation, Petitioners can (and have) brought a single action to vindicate their individual claims arising out of the same basic facts. The Federal Rules of Civil Procedure codify long-standing principles of permissive joinder of parties. "All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." Fed. R. Civ. P. 20(a). Respondents have offered the Court no reason why this common principle of litigation should not apply here.

Respondents' only argument is that each Petitioner faced a separate CSRT. That may be true—the applicable procedures contemplate separate tribunals—but Respondents have not provided any evidence that it is. Respondents have not provided this Court or Petitioners' counsel with any evidence that Petitioners have been classified as enemy combatants, or that they were so classified by separate CSRTs.[5] One of the Congressionally-mandated purposes of this action is to test whether the CSRT followed its own procedures; the Court may not simply assume that it did. But regardless of whether Petitioners faced seven CSRT Tribunals or one, the fact remains that their cases arise out of the same facts, and present the same legal issues.[6] There is no reason to break the case into redundant

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[5] *See* Petition at ¶ 17 (alleging "[o]n information and belief" that Respondents convened a CSRT as to each Petitioner, and each Petitioner was classified as an "enemy combatant") & 6 n.2 (noting that Respondents represented to the district court in *Kiyemba v. Bush* that each Petitioner was designated an "enemy combatant," but that Respondents never provided any proof of this to either Petitioners' counsel or to the district court).

[6] Respondents quote the Petition out of context to support their incorrect assertion that Petitioners "concede" that "the CSRT determination with respect to [each] is unique." Motion at 4. Petitioners make no such concession. In fact, in the sentence immediately proceeding the one partially quoted by Respondents, Petitioners state: "The few relevant documents that are publicly available show that the

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proceedings.

2. Petitioners clearly have standing.

Petitioners have standing to bring this action. Respondents concede, as they must, that each Petitioner has standing to challenge his own illegal detention. Motion at 5. But Respondents go on to assume—for no apparent reason other than to set up a straw-man—that Petitioners are asserting claims on behalf of others. They are not. No Petitioner is making claims on behalf of another Petitioner, and each stands in his own shoes.[7] Respondents' standing argument is therefore irrelevant.

C. Litigating Every DTA Claim a Separate Action Would be Needlessly Burdensome.

The only effect of breaking the case into seven separate cases would be to needlessly consume judicial resources, and to make the case more burdensome to litigate. The legal issues presented by this case are, we believe, identical as to each of the seven Petitioners. We also believe the material facts are identical. If the Court were to grant Respondents' Motion, in just this case, every motion would become seven motions. Rather than convening just one motions panel and one merits panel, the Court would need to convene seven different motions panels and

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military viewed the [eighteen Uighur] men as identically situated." Petition at ¶ 138. *See generally id.* at ¶¶ 8, 46-56, 62-90, 125-142 (detailing how all eighteen Uighurs are identically situated).

[7] Because Petitioners Abdulsabour and Khalid Ali have thus far been denied access to counsel, Jamal Kiyemba acts as their next friend. The role of the "next friend" in the Guantanamo cases generally has been to "identify[] those detainees who seek to challenge their detention in the first instance." *Adem v. Bush*, 425 F.Supp.2d 7, 13 (D.D.C. 2006). "In those habeas cases initiated since the creation and entry of the [November 8, 2004] Protective Order, the detainees who initiated a habeas petition on behalf of a fellow detainee generally do not seek to serve as a 'next friend' in the traditional sense, but are simply passing on another detainee's request for help, a fact that can be confirmed once counsel meets directly with the detainee." *Id.* Counsel currently are scheduled to meet with Abdulsabour and Khalid Ali in January 2007.

seven different merits panels. Rather than holding a single hearing, the Court would hold seven—likely entirely redundant—hearings.

The approach advocated by Respondents would be pointless and wasteful here. If the Court adopted the rule urged by Respondents, and require each of the nearly 400 men currently at Guantanamo to file a separate DTA case, the burden on the Court could be enormous.[8] As noted above, that increased burden would change nothing at all about the Court's consideration of the merits. Litigating Petitioners claims as seven cases rather than one is inefficient for the Court and for the parties. For this reason as well, Respondents' Motion should be rejected.

III. THE COURT IS NOT LIMITED TO THE MILITARY'S BARE CSRT HEARING RECORD.

Although not relevant to the relief requested by their motion, Respondents nevertheless assert, without any support whatsoever, that this Court's review of Petitioners' classification as "enemy combatants" is limited to "the record complied by the CSRT in each particular enemy combatant case." Motion at 3-4. This is wrong. Nothing requires this Court to turn a blind eye to relevant evidence, whether or not included in the CSRT record. On the contrary, the DTA specifically requires the Court to look outside the bare CSRT record.

Under the DTA, the Court must determine whether Petitioners' classification as enemy combatants "was consistent with the standards and procedures specified

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[8] Apparently realizing just how burdensome it proposed rule would be on the Court, Respondents try to have it both ways. While arguing that the case should be broken into seven inefficient pieces, Respondents also assert that "appropriate coordination of all the DTA petitions likely to be filed in the Court on behalf of the almost 400 current Guantanamo Bay detainees is necessary and is called for." Motion at 5 (calling for consolidation of DTA cases for purposes of entering a protective order, and for unspecified "procedural purposes"). If, as Respondents contend, each and every one of the nearly 400 men at Guantanamo must bring a separate DTA action in this Court, then there can be no justification for consolidating them. Certainly, the Court should not accede to Respondents' request to set up a litigation system that maximizes the burden of getting to the merits on the prisoners and their pro bono counsel, while minimizing the burdens of the process on the government that has jailed them for so long.

by the Secretary of Defense for Combatant Statues Review Tribunals." DTA § 1005(e)(2)(C)(i). The relevant procedures are set out the CSRT Order and CSRT Implementing Procedures. Petitioners' classification as "enemy combatants" is valid only if their CSRTs operated in accordance with these standards and procedures. DTA § 1005(e)(2)(C)(i).

Under the CSRT Order and CSRT Implementing Procedures, the CSRT process involves three distinct phases: pre-hearing, hearing and post-hearing. In the pre-hearing phase, the military is required to take a number of steps, including notifying each prisoner "of the opportunity to contest designation as an enemy combatant [in the CSRT], of the opportunity to consult with and be assisted by a personal representative . . . and of the right to seek a writ of habeas corpus in the courts of the United States." CSRT Order § b. The military must also assign each detainee a non-lawyer military officer to be his "personal representative," and this officer "shall be afforded the opportunity to review any reasonably available information in the possession of the Department of Defense that may be relevant to a determination of the detainee's designation as an enemy combatant." *Id.* § c. The Tribunal is to be convened within thirty days of the "personal representative" having been "afforded the opportunity to review reasonably available information in the department of defense" and "an opportunity to consult with the detainee." CSRT Order § d.

The military's compliance with the CSRT these and other pre-hearing procedures is absolutely critical to whatever legitimacy the CSRT process could possibly have. The CSRT Procedures mandate a "non-adversarial" proceeding. CSRT Procedures, Encl. 1 § B. They prohibit the detainee from obtaining aid of counsel (or even of a non-lawyer "advocate"), CSRT Procedures, Encl. 1 § F(5) & (8), *id.*, Encl. 3 § D, prohibit the detainee from seeing the evidence against him, Petition at ¶¶ 191-196, and prohibit the detainee any meaningful access to

witnesses, *id.* at ¶ 114. They also effectively force a prisoner to testify against himself. Petition at ¶ 118. The accuracy and completeness of the CSRT evidentiary record depends primarily on a single military officer, the Recorder, and on his or her pre-hearing conduct.

The Recorder is a military officer who acts simultaneously as investigator, prosecutor and clerk of the Tribunal. Under the CSRT Procedures, the Recorder's first duty is to collect the "Government Information," that is all "reasonably available" information in the government's possession "bearing on" a detainee's status, including evidence that supports the government's charge that the detainee is an enemy combatant, and information demonstrating that the detainee has been wrongfully detained. CSRT Procedures, Encl. 2 § C(1) (Recorder's duty to obtain and examine Government Information); *id.*, Encl. 1 § E(3) (defining "Government Information").[9] *See also* CSRT Order § g(7) (Tribunal accesses information through Recorder).

Once he or she has obtained the "reasonably available" Government Information, the Recorder was then required to prepare an unclassified summary of evidence for the detainee's review,[10] "ensure appropriate coordination" with

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[9] The only definition of "reasonably available information" in the CSRT Procedures is the exclusion of "[c]lassified information for which the originating agency declines to authorize for use in the CSRT process." CSRT Procedures, Encl. 1 § D(2). An originating agency may decline to release information for use in the CSRT—including exculpatory information—and instead "provide either an acceptable substitute for the information requested or a certification to the Tribunal that none of the withheld information would support a determination that the detainee is not an enemy combatant." Id., Encl. 1 § E(3)(a). There is no procedure to challenge the originating agency's determination or to question the sufficiency of the substituted information.

[10] In practice, the "unclassified summary of evidence" did not refer to any evidence at all. Instead, each summary was nothing more than a series of allegations. It included no references or citations to actual evidence, the source(s) of any actual evidence, or to any witness(es) who may have offered a statement against the Petitioner. To the evident confusion of several Petitioners, as well as several Tribunals, many of the allegations did not describe conduct that was in any way wrongful. *See generally* Petition at ¶¶ 103-105, 115-123 and 191-196; Mark Denbeaux *et al.*, *The Guantanamo Detainees: the Government's Story* at 12 (2006), *available at* http://law.shu.edu/news/guantanamo_report_

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government agencies providing classified information that was used to prepare the unclassified summary, and to provide the prisoner's "personal representative" with both the unclassified summary of evidenced and with access to the Government Evidence. *Id.* § C(2)-(5). The Recorder was the sole source of all evidence presented to the Tribunal, other than whatever evidence the prisoner himself was able to present.[11] CSRT Procedures, Encl. 2(C)(1), 1(E)(3).

After the hearing, the Recorder has a duty to compile the record of the hearing, provide it to the detainee's Personal Representative for review, submit the completed record to the President of the Tribunal for signature, and to ensure proper preservation of the record. CSRT Procedures, Encl. 2 §C(8)-(11). The record is then forwarded "to the Staff Judge Advocate for the Convening Authority, who shall review the record for legal sufficiency."[12] CSRT Order § h.

The CSRT record is a record of the hearing only. It includes no information that would allow the Court to determine whether the Recorder (or any other member of the CSRT) complied with his or her pre-hearing and post-hearing duties. CSRT Order § g(e) (the CSRT record consists of "the documentary evidence presented to the Tribunal, the Recorder's summary of all witness testimony, a written report of the Tribunal's decision, and a recording of the

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final_2_08_06.pdf (noting that the "unclassified evidence" supporting the allegation that one of the Uighurs had "participated in military operations against the United States" was that (1) "detainee fled, along with others, when the United States bombed their camp" and (2) "the detainee was captured in Pakistan along with other Uighur fighters"). Petitioners were reduced to simply denying these vague allegations without any way to rebut the government's secret evidence.

[11] The CSRT procedures made it impossible for Petitioners, or any other prisoners, to effectively present evidence to the Tribunal, largely because the Prisoner was prevented seeing or hearing the evidence against him. *See supra* n.6.

[12] Neither the CSRT Order nor the CSRT Implementing Procedures specify the standards for "legal sufficiency" to be applied by the Staff Judge Advocate.

proceedings (except proceedings involving deliberation and voting by the members), which shall be preserved"). Under the express language of the DTA, all of the CSRT procedures—including the pre-hearing, hearing and post-hearing procedures—are all subject to review. It would be impossible for this Court to determine from the limited CSRT record alone whether the CSRTs' classification of Petitioners as "enemy combatants" "was consistent with the [CSRT] standards and procedures." DTA § 1005(e)(2)(C)(i). Respondents' suggestion that this Court conduct a cramped review must be rejected.

IV. CONCLUSION

Nothing in the law suggests, much less requires, that the Court break this case into seven separate cases. To do so would be inefficient and waste scarce judicial resources. Petitioners therefore respectfully urge the Court to deny Respondent's motion.

Dated: January 3, 2007

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Erika S. Tillery, hereby certify that on January 3, 2007, **the Petitioners' Opposition to Respondents' Motion to Assign Separate Docket Numbers and Treat Filing as Seven Separate Petitions for Review**, was served by hand delivery upon the following individuals:

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