government, including the financial, administrative, and other burdens that would be incurred were additional safeguards to be provided. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

The Supreme Court applied a Mathews v. Eldridge analysis in Hamdi v. Rumsfeld, ___ U.S. ___, 124 S. Ct. 2633 (2004), a decision issued the same day as Rasul which considered an American citizen's due process challenge to the U.S. military's designation of him as an "enemy combatant." Although none of the detainees in the cases before this Court is an American citizen, the facts under Hamdi are otherwise identical in all material respects to those in Rasul. Accordingly, Hamdi forms both the starting point and core of this Court's consideration of what process is due to the Guantanamo detainees in these cases.

In addressing the detainee's private interest in Hamdi for purposes of the Mathews v. Eldridge analysis, the plurality opinion called it "the most elemental of liberty interests – the interest in being free from physical detention by one's own government." 124 S. Ct. at 2646. Although the detainees in the cases before this Court are aliens and are therefore not being detained by their own governments, that fact does not lessen the significance of their interests in freedom from incarceration and from being held virtually incommunicado from the outside world. There is no practical difference between incarceration at the hands of one's own government and incarceration at the hands of a foreign government; significant liberty is deprived in both situations regardless of the jailer's nationality.

As was the case in Hamdi, the potential length of incarceration is highly relevant to the weighing of the individual interests at stake here. The government asserts the right to detain an "enemy combatant" until the war on terrorism has concluded or until the Executive, in its sole

discretion, has determined that the individual no longer poses a threat to national security. The government, however, has been unable to inform the Court how long it believes the war on terrorism will last. See December 1, 2004 Transcript of Motion to Dismiss (hereinafter "Transcript") at 22-23. Indeed, the government cannot even articulate at this moment how it will determine when the war on terrorism has ended. Id. at 24. At a minimum, the government has conceded that the war could last several generations, thereby making it possible, if not likely, that "enemy combatants" will be subject to terms of life imprisonment at Guantanamo Bay. Id. at 21; Hamdi, 124 S. Ct. at 2641. Short of the death penalty, life imprisonment is the ultimate deprivation of liberty, and the uncertainty of whether the war on terror – and thus the period of incarceration – will last a lifetime may be even worse than if the detainees had been tried, convicted, and definitively sentenced to a fixed term.

It must be added that the liberty interests of the detainees cannot be minimized for purposes of applying the Mathews v. Eldridge balancing test by the government's allegations that they are in fact terrorists or are affiliated with terrorist organizations. The purpose of imposing a due process requirement is to prevent mistaken characterizations and erroneous detentions, and the government is not entitled to short circuit this inquiry by claiming ab initio that the individuals are alleged to have committed bad acts. See Hamdi, 124 S. Ct. at 2647 ("our starting point for the Mathews v. Eldridge analysis is unaltered by the allegations surrounding the particular detainee or the organizations with which he is alleged to have associated"). Moreover, all petitioners in these cases have asserted that they are not terrorists and have not been involved in terrorist activities, and under the standards provided by the applicable rules of procedure, those

allegations must be accepted as true for purposes of resolving the government's motion to dismiss.

On the other side of the Mathews v. Eldridge analysis is the government's significant interest in safeguarding national security. Having served as the Chief Judge of the United States Foreign Intelligence Surveillance Court (also known as "the FISA Court"), the focus of which involves national security and international terrorism,[29] this Judge is keenly aware of the determined efforts of terrorist groups and others to attack this country and to harm American citizens both at home and abroad. Utmost vigilance is crucial for the protection of the United States of America. Of course, one of the government's most important obligations is to safeguard this country and its citizens by ensuring that those who have brought harm upon U.S. interests are not permitted to do so again. Congress itself expressly recognized this when it enacted the AUMF authorizing the President to use all necessary and appropriate force against those responsible for the September 11 attacks. The Supreme Court also gave significant weight to this governmental concern and responsibility in Hamdi when it addressed the "interests in ensuring that those who have in fact fought with the enemy during a war do not return to battle against the United States." 124 S. Ct. at 2647. The plurality warned against naivete regarding the dangers posed to the United States by terrorists and noted that the legislative and executive branches were in the best positions to deal with those dangers. As articulated by the plurality, "[T]he law of war and the realities of combat may render . . . detentions both necessary and appropriate, and our due process analysis need not blink at those realities. Without doubt, our

[29] See 50 U.S.C. § 1803 (2003).

Constitution recognizes that core strategic matters of warmaking belong in the hands of those who are best positioned and most politically accountable for making them." Id. Indeed, a majority of the Court affirmed the Executive's authority to seize and detain Taliban fighters as long as the conflict in Afghanistan continues, regardless of how indefinite the length of that war may be. See the plurality opinion, id. at 2641-42, and the dissenting opinion of Justice Thomas, id. at 2674.

Given the existence of competing, highly significant interests on both sides of the equation – the liberty of individuals asserting complete innocence of any terrorist activity versus the obligation of the government to protect this country against terrorist attacks – the question becomes what procedures will help ensure that innocents are not indefinitely held as "enemy combatants" without imposing undue burdens on the military to ensure the security of this nation and its citizens. The four member Hamdi plurality answered this question in some detail, and although the two concurring members of the Court, Justice Souter and Justice Ginsburg, emphasized a different basis for ruling in favor of Mr. Hamdi, they indicated their agreement that, at a minimum, he was entitled to the procedural protections set forth by the plurality. Id. at 2660.

According to the plurality in Hamdi, an individual detained by the government on the ground that he is an "enemy combatant" "must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." Id. at 2648. Noting the potential burden these requirements might cause the government at a time of ongoing military conflict, the plurality stated that it would not violate

due process for the decision maker to consider hearsay as the most reliable available evidence. Id. at 2649. In addition, the plurality declared it permissible to adopt a presumption in favor of "enemy combatant" status, "so long as that presumption remained a rebuttable one and fair opportunity for rebuttal were provided." Id. For that presumption to apply and for the onus to shift to the detainee, however, the plurality clarified that the government first would have to "put[] forth credible evidence that the [detainee] meets the enemy-combatant criteria." Id.[30]

After setting forth these standards, the plurality suggested the "possibility" that constitutional requirements of due process could be met by an "appropriately authorized and properly constituted military tribunal" and referenced the military tribunals used to determine whether an individual is entitled to prisoner of war status under the Geneva Convention. Id. at 2651 (citing Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, Army Regulation 190-8, § 1-6 (1997)). In the absence of a tribunal following constitutionally mandated procedures, however, the plurality declared that it was the District Court's obligation to provide those procedural rights to the detainee in a habeas action. Again recognizing the enormous significance of the interests of both detainees and the government, the plurality affirmed the proper role of the judiciary in these matters, stating "We have no reason to doubt that courts faced with these sensitive matters will pay proper heed both to the matters of national security that might arise in an individual case and to the constitutional limitations

[30] Justice Souter, whose opinion was joined by Justice Ginsburg, indicated he did not believe that such a presumption was constitutionally permissible when he wrote, "I do not mean to imply agreement that the Government could claim an evidentiary presumption casting the burden of rebuttal on [the detainee]." Id. at 2660.

safeguarding essential liberties that remain vibrant even in times of security concerns." Id. at 2652. The plurality concluded by affirming that the detainee "unquestionably [had] the right to access to counsel in connection with the proceedings on remand." Id.

Hamdi was decided before the creation of the Combatant Status Review Tribunal, and the respondents contend in their motion to dismiss that were this Court to conclude that the detainees are entitled to due process under the Fifth Amendment, the CSRT proceedings would fully comply with all constitutional requirements. More specifically, the respondents claim that the CSRT regulations were modeled after Army Regulation 190-8 governing the determination of prisoner of war status, referenced in Hamdi, and actually exceed the requirements set forth by the Hamdi plurality. For example, respondents cite the facts that under CSRT rules, tribunal members must certify that they have not been involved in the "apprehension, detention, interrogation, or previous determination of status of the detainee[s]," that detainees are provided a "Personal Representative" to assist in the preparation of their cases, that the "Recorder" – that is, the person who presents evidence in support of "enemy combatant" status – must search for exculpatory evidence, that the detainee is entitled to an unclassified summary of the evidence against him, and that the tribunal's decisions are reviewed by a higher authority. Motion to Dismiss at 34-35. Notwithstanding the procedures cited by the respondents, the Court finds that the procedures provided in the CSRT regulations fail to satisfy constitutional due process requirements in several respects.

C. SPECIFIC CONSTITUTIONAL DEFECTS IN THE CSRT PROCESS AS WRITTEN IN THE REGULATIONS AND AS APPLIED TO THE DETAINEES

The constitutional defects in the CSRT procedures can be separated into two categories. The first category consists of defects which apply across the board to all detainees in the cases before this Judge. Specifically, those deficiencies are the CSRT's failure to provide the detainees with access to material evidence upon which the tribunal affirmed their "enemy combatant" status and the failure to permit the assistance of counsel to compensate for the government's refusal to disclose classified information directly to the detainees. The second category of defects involves those which are detainee specific and may or may not apply to every petitioner in this litigation. Those defects include the manner in which the CSRT handled accusations of torture and the vague and potentially overbroad definition of "enemy combatant" in the CSRT regulations. While additional specific defects may or may not exist, further inquiry is unnecessary at this stage of the litigation given the fundamental deficiencies detailed below.

1. General Defects Existing in All Cases Before the Court: Failure to Provide Detainees Access to Material Evidence Upon Which the CSRT Affirmed "Enemy Combatant" Status and Failure to Permit the Assistance of Counsel

The CSRT reviewed classified information when considering whether each detainee presently before this Court should be considered an "enemy combatant," and it appears that all of the CSRT's decisions substantially relied upon classified evidence. No detainee, however, was ever permitted access to any classified information nor was any detainee permitted to have an advocate review and challenge the classified evidence on his behalf. Accordingly, the CSRT

failed to provide any detainee with sufficient notice of the factual basis for which he is being detained and with a fair opportunity to rebut the government's evidence supporting the determination that he is an "enemy combatant."

The inherent lack of fairness of the CSRT's consideration of classified information not disclosed to the detainees is perhaps most vividly illustrated in the following unclassified colloquy, which, though taken from a case not presently before this Judge, exemplifies the practical and severe disadvantages faced by all Guantanamo prisoners. In reading a list of allegations forming the basis for the detention of Mustafa Ait Idr,[31] a petitioner in Boumediene v. Bush, 04-CV-1166 (RJL), the Recorder of the CSRT asserted, "While living in Bosnia, the Detainee associated with a known Al Qaida operative." In response, the following exchange occurred:

Detainee: Give me his name.

Tribunal President: I do not know.

Detainee: How can I respond to this?

Tribunal President: Did you know of anybody that was a member of Al Qaida?

Detainee: No, no.

Tribunal President: I'm sorry, what was your response?

Detainee: No.

Tribunal President: No?

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[31] Although the petition for writ of habeas corpus filed on behalf of this detainee and related documents refer to him as "Mustafa Ait Idir," the proper spelling of his name appears to be "Mustafa Ait Idr."

> Detainee: No. This is something the interrogators told me a long while ago. I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if this person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team. But I do not know if this person is Bosnian, Indian or whatever. If you tell me the name, then I can respond and defend myself against this accusation.
>
> Tribunal President: We are asking you the questions and we need you to respond to what is on the unclassified summary.

Respondents' Factual Return to Petition for Writ of Habeas Corpus by Petitioner Mustafa Ait Idir, filed October 27, 2004, Enclosure (3) at 13. Subsequently, after the Recorder read the allegation that the detainee was arrested because of his alleged involvement in a plan to attack the U.S. Embassy in Sarajevo, the detainee expressly asked in the following colloquy to see the evidence upon which the government's assertion relied:

> Detainee: . . . The only thing I can tell you is I did not plan or even think of [attacking the Embassy]. Did you find any explosives with me? Any weapons? Did you find me in front of the embassy? Did you find me in contact with the Americans? Did I threaten anyone? I am prepared now to tell you, if you have anything or any evidence, even if it is just very little, that proves I went to the embassy and looked like that [Detainee made a gesture with his head and neck as if he were looking into a building or a window] at the embassy, then I am ready to be punished. I can just tell you that I did not plan anything. Point by point, when we get to the point that I am associated with Al Qaida, but we already did that one.
>
> Recorder: It was [the] statement that preceded the first point.
>
> Detainee: If it is the same point, but I do not want to repeat myself. These accusations, my answer to all of them is I did not do these things. But I do not have anything to prove this. The only thing is the citizenship. I can tell you where I was and I had the papers to prove so. But to tell me I planned to bomb, I can only tell you that I did not plan.
>
> Tribunal President: Mustafa, does that conclude your statement?

> Detainee: That is it, but I was hoping you had evidence that you can give me. If I was in your place – and I apologize in advance for these words – but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them. Sorry about that.
>
> [Everyone in the Tribunal room laughs.]
>
> Tribunal President: We had to laugh, but it is okay.
>
> Detainee: Why? Because these are accusations that I can't even answer. I am not able to answer them. You tell me I am from Al Qaida, but I am not an Al Qaida. I don't have any proof to give you except to ask you to catch Bin Laden and ask him if I am a part of Al Qaida. To tell me that I thought, I'll just tell you that I did not. I don't have proof regarding this. What should be done is you should give me evidence regarding these accusations because I am not able to give you any evidence. I can just tell you no, and that is it.

Id. at 14-15. The laughter reflected in the transcript is understandable, and this exchange might have been truly humorous had the consequences of the detainee's "enemy combatant" status not been so terribly serious and had the detainee's criticism of the process not been so piercingly accurate.[32]

Another illustration of the fundamental unfairness of the CSRT's reliance on classified information not disclosed to the detainees arises in the government's classified factual return to the petition filed by Murat Kurnaz in Kurnaz v. Bush, 04-CV-1135 (ESH). Mr. Kurnaz is a Turkish citizen and permanent resident of Germany who was arrested by police in Pakistan and turned over to American authorities. The CSRT concluded that he was a member of al Qaeda

[32] This is not to say whether or not the government was able to present any inculpatory evidence during the CSRT proceeding against the detainee. The primary purpose of the Memorandum Opinion's reference to the transcript at this stage of the litigation is to illustrate the detainees' lack of any reasonable opportunity to confront the government's evidence against them and not to resolve whether or not this particular detainee did in fact plan to attack the U.S. Embassy.

and stated that this determination was based on unclassified evidence and on one classified document, attached to the factual return as Exhibit R19. Respondents' Factual Return to Petition for Writ of Habeas Corpus by Petitioner Murat Kurnaz (hereinafter "Kurnaz Factual Return"), filed October 18, 2004, Enclosure (2).[33]

The Court does not find that the unclassified evidence alone is sufficiently convincing in supporting the CSRT's conclusion that he is a member of al Qaeda.[34] That evidence establishes that Mr. Kurnaz attended a mosque in Bremen, Germany which the CSRT found to be moderate in its views but also to have housed a branch of Jama'at-Al-Tabliq (hereinafter "JT"), a missionary organization alleged to have supported terrorist organizations. Kurnaz Factual Return, Enclosure (1) at 2. The unclassified evidence also establishes that Mr. Kurnaz had been friends with an individual named Selcuk Belgin, who is alleged to have been a suicide bomber, and that the detainee traveled to Pakistan to attend a JT school. Id. at 2-3. Nowhere does the CSRT express any finding based on unclassified evidence that the detainee planned to be a suicide bomber himself, took up arms against the United States, or otherwise intended to attack American interests. Thus, the most reasonable interpretation of the record is that the classified document formed the most important basis for the CSRT's ultimate determination. That

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[33] Although the tribunal makes several references to its reliance on Exhibit R12, those references were typographical errors and the document actually relied upon was Exhibit R19, as recognized by the tribunal's Legal Advisor. See October 14, 2004 Memorandum from James R. Crisfield Jr. to the Director, Combatant Status Review Tribunal, attached to the Kurnaz Factual Return.

[34] In fact, for reasons stated later in this opinion, even if all of the unclassified evidence were accepted as true, it alone would not form a constitutionally permissible basis for the indefinite detention of the petitioner. See infra section II.C.2.b.

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document, however, was never provided to the detainee, and had he received it, he would have had the opportunity to challenge its credibility and significance. Not only is the document rife with hearsay and lacking in detailed support for its conclusions, but it is also in direct conflict with classified exculpatory documents also not disclosed to the detainee.

Exhibit R19 is [redacted] While these allegations may very well be true, due process requires that the detainee have some ability to inquire as to the sources of the [redacted] and to have the opportunity to address whether he ever traveled to [redacted] and whether he even knows, let alone had contact with, [redacted] The importance of such an opportunity is highlighted by the fact that Exhibit R19 is contradicted by other classified information ignored or discounted by the CSRT without even a hint of an explanation.

For example, [redacted]

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[redacted] Kurnaz Factual Return, Exhibit R16 at 1-2.

In addition, a [redacted] Kurnaz Factual Return, Exhibit R17. Yet another document the detainee was not permitted to examine and use to contest his "enemy combatant" designation is a [redacted] Kurnaz Factual Return, Exhibit R18.

These three classified documents call into serious question the nature and thoroughness of the prior "multiple levels of review" of "enemy combatant" status referenced in Deputy Secretary of Defense Paul Wolfowitz's July 7, 2004 Order establishing the CSRT system. At a minimum, the documents raise the question of what specific information could have been discovered between the [redacted] stating that [redacted], and the

[redacted] concluding that [redacted]. Certainly, the CSRT record lacks sufficient explanation or identification of [redacted], and had the detainee received information regarding the existence and contents of the exculpatory documents, he could have challenged the tribunal to investigate these matters more carefully than it did. Interpreted in a light most favorable to the petitioners, the CSRT's decision to deem Exhibit R19 the most credible evidence without a sufficient explanation for its rejection of conflicting exculpatory evidence in at least three separate documents supports the petitioners' allegation that the "CSRTs do not involve an impartial decisionmaker." Al Odah Petitioners' Reply to the Government's "Response to Petitions for Writ of Habeas Corpus and Motion to Dismiss," filed in Al Odah v. United States, 02-CV-0828 (CKK), on October 20, 2004, at 23-24. But however the record in Kumaz is interpreted, it definitively establishes that the detainee was not provided with a fair opportunity to contest the material allegations against him.

The Court fully appreciates the strong governmental interest in not disclosing classified evidence to individuals believed to be terrorists intent on causing great harm to the United States. Indeed, this Court's protective order prohibits the disclosure of any classified information to any of the petitioners in these habeas cases. Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, 344 F. Supp.2d 174 (D.D.C. 2004) at ¶ 30. To compensate for the resulting hardship to the petitioners and to ensure due process in the litigation of these cases, however, the protective order requires the disclosure of all relevant classified information to the petitioners' counsel who have the

appropriate security clearances. Id. at ¶¶ 17-34. Although counsel are not permitted to share any classified information with their clients, they at least have the opportunity to examine all evidence relied upon by the government in making an "enemy combatant" status determination and to investigate and ensure the accuracy, reliability and relevance of that evidence. Thus, the governmental and private interests have been fairly balanced in a manner satisfying constitutional due process requirements. In a similar fashion, the rules regulating the military commission proceedings for aliens – rules which the government so vigorously defended in Hamdan v. Rumsfeld – expressly provide that although classified evidence may be withheld from the defendant, it may not be withheld from defense counsel. Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism, 32 C.F.R. § 9.6(b)(3) ("A decision to close a proceeding or portion thereof may include a decision to exclude the Accused, Civilian Defense Counsel, or any other person, but Detailed Defense Counsel may not be excluded from any trial proceeding or portion thereof."). In contrast, the CSRT regulations do not properly balance the detainees' need for access to material evidence considered by the tribunal against the government's interest in protecting classified information.

The CSRT regulations do acknowledge to some extent the detainees' need for assistance during the tribunal process, but they fall far short of the procedural protections that would have existed had counsel been permitted to participate. The implementing regulations create the position of "Personal Representative" for the purpose of "assist[ing] the detainee in reviewing all relevant unclassified information, in preparing and presenting information, and in questioning witnesses at the CSRT." July 29, 2004 Implementing Regulations at Enclosure (1), ¶ C. (3). But

notwithstanding the fact that the Personal Representative may review classified information considered by the tribunal, that person is neither a lawyer nor an advocate and thus cannot be considered an effective surrogate to compensate for a detainee's inability to personally review and contest classified evidence against him. Id. at Enclosure (3), ¶ D. Additionally, there is no confidential relationship between the detainee and the Personal Representative, and the Personal Representative is obligated to disclose to the tribunal any relevant inculpatory information he obtains from the detainee. Id. Consequently, there is inherent risk and little corresponding benefit should the detainee decide to use the services of the Personal Representative.

The lack of any significant advantage to working with the Personal Representative is illustrated by the record of Kurnaz. Despite the existence of [redacted] the Personal Representative made no request for further inquiry regarding [redacted] Kurnaz Factual Return, Enclosure (5). Clearly, the presence of counsel for the detainee, even one who could not disclose classified evidence to his client, would have ensured a fairer process in the matter by highlighting weaknesses in evidence considered by the tribunal and helping to ensure that erroneous decisions were not made regarding the detainee's "enemy combatant" status. The CSRT rules, however, prohibited that opportunity.

In sum, the CSRT's extensive reliance on classified information in its resolution of "enemy combatant" status, the detainees' inability to review that information, and the prohibition of assistance by counsel jointly deprive the detainees of sufficient notice of the factual bases for

their detention and deny them a fair opportunity to challenge their incarceration. These grounds alone are sufficient to find a violation of due process rights and to require the denial of the respondents' motion to dismiss these cases.

2. Specific Defects That May Exist in Individual Cases: Reliance on Statements Possibly Obtained Through Torture or Other Coercion and a Vague and Overly Broad Definition of "Enemy Combatant"

Additional defects in the CSRT procedures support the denial of the respondents' motion to dismiss at least some of the petitions, though these grounds may or may not exist in every case before the Court and though the respondents might ultimately prevail on these issues once the petitioners have been given an opportunity to litigate them fully in the habeas proceedings.

a. Reliance on Statements Possibly Obtained Through Torture or Other Coercion

The first of these specific grounds involves the CSRT's reliance on statements allegedly obtained through torture or otherwise alleged to have been provided by some detainees involuntarily. The Supreme Court has long held that due process prohibits the government's use of involuntary statements obtained through torture or other mistreatment. In the landmark case of Jackson v. Denno, 378 U.S. 368 (1964), the Court gave two rationales for this rule: first, "because of the probable unreliability of confessions that are obtained in a manner deemed coercive," and second "because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction,

wrings a confession out of an accused against his will.'" 378 U.S. at 386 (quoting Blackburn v. Alabama, 361 U.S. 199 (1960)). See also Lam v. Kelchner, 304 F.3d 256, 264 (3rd Cir. 2002) ("The voluntariness standard is intended to ensure the reliability of incriminating statements and to deter improper police conduct."). Arguably, the second rationale may not be as relevant to these habeas cases as it is to criminal prosecutions in U.S. courts, given that the judiciary clearly does not have the supervisory powers over the U.S. military as it does over prosecutors, who are officers of the court. Cf. United States v. Toscanino, 500 F.2d 267, 276 (2d Cir. 1974) (the supervisory power of the district courts "may legitimately be used to prevent [them] from themselves becoming 'accomplices in willful disobedience of law'") (quoting McNabb v. United States, 318 U.S. 332, 345 (1943)). At a minimum, however, due process requires a thorough inquiry into the accuracy and reliability of statements alleged to have been obtained through torture. See Clanton v. Cooper, 129 F.3d 1147, 1157-58 (10th Cir. 1997) ("[B]ecause the evidence is unreliable and its use offends the Constitution, a person may challenge the government's use against him or her of a coerced confession given by another person."); Buckley v. Fitzsimmons, 20 F.3d 789, 795 (7th Cir. 1994) ("Confessions wrung out of their makers may be less reliable than voluntary confessions, so that using one person's coerced confession at another's trial violates his rights under the due process clause.").

Interpreting the evidence in a light most favorable to the petitioners as the Court must when considering the respondents' motion to dismiss, it can be reasonably inferred that the CSRT did not sufficiently consider whether the evidence upon which the tribunal relied in making its "enemy combatant" determinations was coerced from the detainees. The allegations