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and factual return of Mamdouh Habib, a petitioner in Habib v. Bush, 02-CV-1130 (CKK) are illustrative in this regard. Mr. Habib has alleged that after his capture by allied forces in Pakistan, he was sent to Egypt for interrogation and was subjected to torture there, including routine beatings to the point of unconsciousness. Petitioner's Memorandum of Points and Authorities in Support of His Application for Injunctive Relief, filed with the Court Security Officer on November 23, 2004 and on the public record on January 5, 2005. Additionally, the petitioner contends that he was locked in a room that would gradually be filled with water to a level just below his chin as he stood for hours on the tips of his toes. Id. He further claims that he was suspended from a wall with his feet resting on the side of a large electrified cylindrical drum, which forced him either to suffer pain from hanging from his arms or pain from electric shocks to his feet. Id. The petitioner asserts that as a result of this treatment, he made numerous "confessions" that can be proven false. Id. at n.3. According to the classified factual return for Mr. Habib, [redacted] Classified Summary of Basis for Tribunal Decision, attached to Respondents' In Camera Factual Return to Petition for Writ of Habeas Corpus by Petitioner Mamdouh Habib (hereinafter "Habib Factual Return"), filed December 17, 2004, Enclosure (2) at 3. The petitioner told [redacted] and the CSRT found the allegations of torture serious enough to refer the matter on September 22, 2004 to the Criminal Investigation Task Force. Id., Enclosure (1) at

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3. That same day, however, the CSRT relied on the very same evidence – at least in part – to conclude that the detainee was properly classified as an "enemy combatant." Examined in the light most favorable to the petitioner, this reliance cannot be viewed to have satisfied the requirements of due process.

Mr. Habib is not the only detainee before this Court to have alleged making confessions to interrogators as a result of torture. See, e.g., Petitioner Begg's First Supplement to His Original Petition, filed with the Court Security Officer in Begg v. Bush, 04-CV-1137 (RMC), on December 10, 2004. Notwithstanding the inability of counsel for petitioners to take formal discovery beyond interviewing their clients at Guantanamo Bay, they have introduced evidence into the public record indicating that abuse of detainees occurred during interrogations not only in foreign countries but at Guantanamo Bay itself. One illustration of alleged mistreatment during interrogation by U.S. authorities is Exhibit D to the petitioners' Motion for Leave to Take Discovery and for Preservation Order, filed in several of these cases with the Court Security Officer on January 6, 2005 and filed on the public record on January 10, 2005. In that document, dated August 2, 2004, the author, apparently affiliated with the Federal Bureau of Investigation but whose identity has been redacted, summarized his or her observations of interrogation activities at Guantanamo Bay as follows:

> On a couple of occassions [sic], I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food, or water. Most times they had urinated or defacated [sic] on themselves, and had been left there for 18-24 hours or more. On one occassion [sic], the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. When I asked the MP's what was going on, I was told that interrogators from the day prior had ordered this treatment, and the detainee was not to be moved. On another occassion [sic], the

> A/C had been turned off, making the temperature in the unventilated room probably well over 100 degrees. The detainee was almost unconcious [sic] on the floor, with a pile of hair next to him. He had apparently been literally pulling his own hair out throughout the night. On another occassion [sic], not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

The identities of the detainees referenced in this document are unknown to the Court and therefore, it is not certain whether they are even petitioners in any of these cases and, if so, whether the results of the above-described interrogations were used against them in CSRT proceedings. Of course, the veracity of Exhibit D itself must be investigated before it can be definitively relied upon. Indeed, at this stage of the litigation it is premature to make any final determination as to whether any information acquired during interrogations of any petitioner in these cases and relied upon by the CSRT was in fact the result of torture or other mistreatment. What this Court needs to resolve at this juncture, however, is whether the petitioners have made sufficient allegations to allow their claims to survive the respondents' motion to dismiss. On that count, the Court concludes that the petitioners have done so.

b. Vague and Overly Broad Definition of "Enemy Combatant"

Although the government has been detaining individuals as "enemy combatants" since the issuance of the AUMF in 2001, it apparently did not formally define the term until the July 7, 2004 Order creating the CSRT. The lack of a formal definition seemed to have troubled at least the plurality of the Supreme Court in Hamdi, but for purposes of resolving the issues in that case, the plurality considered the government's definition to be an individual who was "'part of or

supporting forces hostile to the United States or coalition partners' in Afghanistan and who 'engaged in an armed conflict against the United States' there." 124 S. Ct. 2633, 2639 (quoting Brief for the Respondents) (emphasis added). The Court agreed with the government that the AUMF authorizes the Executive to detain individuals falling within that limited definition, id., with the plurality explaining that "[b]ecause detention to prevent a combatant's return to the battlefield is a fundamental incident of waging war, in permitting the use of 'necessary and appropriate force,' Congress has clearly and unmistakably authorized detention in the narrow circumstances considered here." Id. at 2641. The plurality cautioned, however, "that indefinite detention for the purpose of interrogation is not authorized" by the AUMF, and added that a congressional grant of authority to the President to use "necessary and appropriate force" might not be properly interpreted to include the authority to detain individuals for the duration of a particular conflict if that conflict does not take a form that is based on "longstanding law-of-war principles." Id.

The definition of "enemy combatant" contained in the Order creating the CSRT is significantly broader than the definition considered in Hamdi. According to the definition currently applied by the government, an "enemy combatant" "shall mean an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces." July 7, 2004 Order at 1 (emphasis added). Use of the word "includes" indicates that the government interprets the AUMF to permit the indefinite detention of individuals who never

committed a belligerent act or who never directly supported hostilities against the U.S. or its allies. This Court explored the government's position on the matter by posing a series of hypothetical questions to counsel at the December 1, 2004 hearing on the motion to dismiss. In response to the hypotheticals, counsel for the respondents argued that the Executive has the authority to detain the following individuals until the conclusion of the war on terrorism: "[a] little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but [what] really is a front to finance al-Qaeda activities," Transcript at 25, a person who teaches English to the son of an al Qaeda member, id. at 27, and a journalist who knows the location of Osama Bin Laden but refuses to disclose it to protect her source. Id. at 29.

The Court can unequivocally report that no factual return submitted by the government in this litigation reveals the detention of a Swiss philanthropist, an English teacher, or a journalist. The Court can also acknowledge the existence of specific factual returns containing evidence indicating that certain detainees fit the narrower definition of "enemy combatant" approved by the Supreme Court in Hamdi. The petitioners have argued in opposition to the respondents' motion to dismiss, however, that at least with respect to some detainees, the expansive definition of "enemy combatant" currently in use in the CSRT proceedings violates long standing principles of due process by permitting the detention of individuals based solely on their membership in anti-American organizations rather than on actual activities supporting the use of violence or harm against the United States. Al Odah Petitioners' Reply to the Government's "Response to Petitions for Writ of Habeas Corpus and Motion to Dismiss" at 25-26 (citing Scales v. United

States, 367 U.S. 203, 224-225 (1961); Carlson v. Landon, 342 U.S. 524, 541 (1952)).

Whether the detention of each individual petitioner is authorized by the AUMF and satisfies the mandates of due process must ultimately be determined on a detainee by detainee basis. At this stage of the litigation, however, sufficient allegations have been made by at least some of the petitioners and certain evidence exists in some CSRT factual returns to warrant the denial of the respondents' motion to dismiss on the ground that the respondents have employed an overly broad definition of "enemy combatant." Examples of cases where this issue is readily apparent are Kurnaz v. Bush, 04-CV-1135 (ESH), and El-Banna v. Bush, 04-CV-1144 (RWR).

As already discussed above, the unclassified evidence upon which the CSRT relied in determining Murat Kurnaz's "enemy combatant" status consisted of findings that he was "associated" with an Islamic missionary group named Jama'at-Al-Tabliq, that he was an "associate" of and planned to travel to Pakistan with an individual who later engaged in a suicide bombing, and that he accepted free food, lodging, and schooling in Pakistan from an organization known to support terrorist acts. Kurnaz Factual Return, Enclosure (1) at 1. While these facts may be probative and could be used to bolster the credibility of other evidence, if any, establishing actual activities undertaken to harm American interests, by themselves they fall short of establishing that the detainee took any action or provided any direct support for terrorist actions against the U.S. or its allies. Nowhere does any unclassified evidence reveal that the detainee even had knowledge of his associate's planned suicide bombing, let alone establish that the detainee assisted in the bombing in any way. In fact, the detainee expressly denied knowledge of a bombing plan when he was informed of it by the American authorities. Id.,

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Enclosure (3) at 1. In addition, although the detainee admits [redacted], there is no unclassified evidence to establish that [redacted][35]

The dearth of evidence establishing actual activities undertaken by the detainee in furtherance of terrorism is illustrated by classified Exhibit R23 attached to the factual return. In that document, [redacted]. Absent other evidence,[36] it

[35] In fact, [redacted] Id., Exhibit R18 at 1.

[36] It is true that Exhibit R19 to the Kurnaz Factual Return does assert that [redacted], and the respondents urge this Court to uphold the detention of any petitioner, including Mr. Kurnaz, as long as "some evidence" exists to support a conclusion that he actively participated in terrorist activities. Motion to Dismiss at 47-51. Hamdi, however, holds that the "some evidence" standard cannot be applied where the detainee was not given an opportunity to challenge the evidence in an administrative proceeding, 124 S. Ct at 2651, and Mr. Kurnaz was never provided access to Exhibit R19. Additionally, in resolving a motion to dismiss, the Court must accept as true the petitioner's allegations and must interpret the evidence in the record in the light most favorable to the nonmoving party. Because Exhibit R19 fails to provide any significant details to support its conclusory allegations, does not reveal the sources for its information, and is contradicted by other evidence in the record, the Court cannot at this stage of the litigation give the document the weight the CSRT afforded it.

would appear that the government is indefinitely holding the detainee – possibly for life – solely because of his contacts with individuals or organizations tied to terrorism and not because of any terrorist activities that the detainee aided, abetted, or undertook himself. Such detention, even if found to be authorized by the AUMF, would be a violation of due process. Accordingly, the detainee is entitled to fully litigate the factual basis for his detention in these habeas proceedings and to have a fair opportunity to prove that he is being detained on improper grounds.

Similar defects might also exist with respect to the detention of Jamil El-Banna, a petitioner in El-Banna v. Bush, 04-CV-1144 (RWR). At the CSRT proceedings, the tribunal concluded that the detainee was an "enemy combatant" on the ground that he was "part of or supporting Al Qaida forces." Respondents' In Camera Factual Return to Petition for Writ of Habeas Corpus by Petitioner Jamil El-Banna (hereinafter "El-Banna Factual Return"), filed December 17, 2004, Enclosure (1) at 5. The CSRT reached this conclusion notwithstanding the Personal Representative's position that it was unsupported by the record before the tribunal. See October 16, 2004 Memorandum of James R. Crisfield Jr., attached to the El-Banna Factual Return. During the CSRT proceedings, the tribunal rejected two grounds cited by the Recorder in support of the detainee's "enemy combatant" status. First, although the detainee was alleged to have been indicted by a Spanish National High Court Judge for membership in a terrorist organization, id., Enclosure (3) at 2, the tribunal did not find any evidence relating to that indictment "helpful in establishing the detainee's association with Al Qaida." Id., Enclosure (1) at 4. [redacted]

Second, although the detainee was alleged to have attempted "to board an airplane with equipment that resembled a homemade electronic device," id., Enclosure (3) at 3, [redacted] Even accepting these factual conclusions as true, a serious legal question exists as to whether such activities would be sufficient to detain the petitioner at Guantanamo Bay indefinitely without formally charging him with a crime. See Hamdi, 124 S. Ct. at 2640 ("The purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again.") and at 2642 ("If the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, that understanding [that the AUMF allows indefinite detention] may unravel."). In any event,

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however, final resolution of that question must be left for another day because at this stage of the proceedings, the Court must interpret the facts in the light most favorable to the party opposing a motion to dismiss. Under that approach, evidence in the record can be fairly interpreted to conclude that the petitioner is being detained indefinitely not because he himself committed any acts in furtherance of terrorism but rather simply because he possesses knowledge of the activities of others.

[redacted]

El-Banna Factual Return, Exhibit R12 at 2. In addition, [redacted] Id., Exhibit R5 at 1-2. The evidence definitively establishes that the detainee knew [redacted], but the record can be reasonably interpreted to conclude that [redacted]

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[redacted] Id., Exhibit R6 at 2.

It may well turn out that after the detainee is given a fair opportunity to challenge his detention in a habeas proceeding, the legality of his detention as an "enemy combatant" will be upheld and he will continue to be held at Guantanamo Bay until the end of the war on terrorism or until the government determines he no longer poses a threat to U.S. security. It is also possible, however, that once given a fair opportunity to litigate his case, the detainee will establish that he is being indefinitely detained not because of anything he has done and not to prevent his return to any "battlefield," metaphorical or otherwise, but simply because of the information he possesses. Hamdi holds that such detention is not permissible, 124 S. Ct. at 2641, and the respondents' motion to dismiss must therefore be denied.

This concludes the Court's analysis of the due process issues arising from the respondents' motion to dismiss. Nothing written above should be interpreted to require the immediate release of any detainee, nor should the conclusions reached be considered to have fully resolved whether or not sufficient evidence exists to support the continued detention of any petitioner. The respondents' motion to dismiss asserted that no evidence exists and that the petitioners could make no factual allegations which, if taken as true, would permit the litigation of these habeas cases to proceed further. For the reasons stated above, the Court has concluded otherwise. The Court, however, has not addressed all arguments made by the petitioners in opposition to the respondents' motion to dismiss, and it may be that the CSRT procedures violate

due process requirements for additional reasons not addressed in this Memorandum Opinion. In any event, and as Hamdi acknowledged, in the absence of military tribunal proceedings that comport with constitutional due process requirements, it is the obligation of the court receiving a habeas petition to provide the petitioner with a fair opportunity to challenge the government's factual basis for his detention. Id. at 2651-52. Accordingly, the accompanying Order requests input from counsel regarding how these cases should proceed in light of this Memorandum Opinion.

D. CLAIMS BASED ON THE GENEVA CONVENTIONS

The petitioners in all of the above captioned cases except Al Odah v. United States, 02-CV-0828, have also asserted claims based on the Geneva Conventions, which regulate the treatment of certain prisoners of war and civilians. The respondents contend that all Geneva Convention claims filed by the petitioners must be dismissed because Congress has not enacted any separate legislation specifically granting individuals the right to file private lawsuits based on the Conventions and because the Conventions are not "self-executing," meaning they do not by themselves create such a private right of action. Motion to Dismiss at 68-71. In the alternative, the respondents argue that even if the Geneva Conventions are self-executing, they do not apply to members of al Qaeda because that international terrorist organization is not a state party to the Conventions. Id. at 70 n.80. Finally, although respondents concede that Afghanistan is a state party to the Conventions and admit that the Geneva Conventions apply to Taliban detainees, they emphasize that President Bush has determined that Taliban fighters are not entitled to prisoner of

war status under the Third Geneva Convention and contend that this decision is the final word on the matter. Id.

The Constitution provides that "all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Unless Congress enacts authorizing legislation, however, an individual may seek to enforce a treaty provision only if the treaty expressly or impliedly grants such a right. See Head Money Cases, 112 U.S. 580, 598-99 (1884). If a treaty does not create an express right of private enforcement, an implied right might be found by examining the treaty as a whole. See Diggs v. Richardson, 555 F.2d 848, 851 (D.C. Cir. 1976).

The Third and Fourth Geneva Conventions do not expressly grant private rights of action, and whether they impliedly create such rights has never been definitively resolved by the D.C. Circuit.[37] The Court of Appeals is currently reviewing the matter in the appeal of Hamdan v. Rumsfeld, 344 F. Supp.2d 152 (D.D.C. 2004), but until that court issues a definitive ruling,[38] this Court must make its own determination. After reviewing Hamdan and the briefs filed by

[37] The closest the Court of Appeals came to ruling on the issue was the case of Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984), a suit brought by victims of a brutal attack in Israel by the Palestinian Liberation Organization. The main issue on appeal was whether the District Court correctly ruled that there was no subject-matter jurisdiction to hear the case, and although the three-judge panel ultimately affirmed the lower court's decision, each judge relied on a separate rationale and no judge joined any other judge's opinion. In reaching his own conclusion, Judge Robert Bork determined that the Third Geneva Convention was not self-executing. Id. at 808-09. The other two judges on the panel did not address the issue, however, and the matter remains unsettled as of this date.

[38] Oral argument on the respondents' appeal in Hamdan is currently scheduled for March 8, 2005.

petitioners and respondents in the instant cases, the Court concludes that the Conventions are self-executing and adopts the following reasoning provided by Judge Robertson:

> Because the Geneva Conventions were written to protect individuals, because the Executive Branch of our government has implemented the Geneva Conventions for fifty years without questioning the absence of implementing legislation, because Congress clearly understood that the Conventions did not require implementing legislation except in a few specific areas, and because nothing in the Third Geneva Convention itself manifests the contracting parties' intention that it not become effective as domestic law without the enactment of implementing legislation, I conclude that, insofar as it is pertinent here, the Third Geneva Convention is a self-executing treaty.

Id. at 165.

Although the Court rejects the primary basis argued by the respondents for dismissal of claims based on the Geneva Conventions, it does accept one of the alternative grounds put forth in their motion, namely that the Geneva Conventions do not apply to al Qaeda. Article 2 of the Third and Fourth Geneva Conventions provides, "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them." Clearly, al Qaeda is not a "High Contracting Party" to the Conventions, and thus individuals detained on the ground that they are members of that terrorist organization are not entitled to the protections of the treaties.

This does not end the analysis for purposes of resolving the respondents' motion to dismiss, however, because some of the petitioners in the above-captioned cases are being detained either solely because they were Taliban fighters or because they were associated with both the Taliban and al Qaeda. Significantly, the respondents concede that the Geneva

Conventions apply to the Taliban detainees in light of the fact that Afghanistan is a High Contracting Party to the Conventions. Motion to Dismiss at 70-71 n.80 (citing White House Fact Sheet (Feb. 7, 2002), available at http://www.whitehouse.gov/news/releases/2002/02/20020207-13.html). They argue in their motion to dismiss, however, that notwithstanding the application of the Third Geneva Convention to Taliban detainees, the treaty does not protect Taliban detainees because the President has declared that no Taliban fighter is a "prisoner of war" as defined by the Convention. Id. The respondents' argument in this regard must be rejected, however, for the Third Geneva Convention does not permit the determination of prisoner of war status in such a conclusory fashion.

Article 4 of the Third Geneva Convention defines who is considered a "prisoner of war" under the treaty. Paragraph (1) provides that the term "prisoners of war" includes "[m]embers of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces." As provided in Paragraph (2), the definition of "prisoners of war" also includes "[m]embers of other militias and members of other volunteer corps, including those of organized resistance movements," but only if they fulfill the following conditions: "(a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war." If there is any doubt as to whether individuals satisfy the Article 4 prerequisites, Article 5 entitles them to be treated as prisoners of war "until such time as their status has been determined by a competent tribunal." Army Regulation 190-8 created the rules for the "competent tribunal" referenced in

Article 5 of the Third Geneva Convention, and the CSRT was established in accordance with that provision. See Army Regulation 190-8 § 1-1.b, Motion to Dismiss at 32.

Nothing in the Convention itself or in Army Regulation 190-8 authorizes the President of the United States to rule by fiat that an entire group of fighters covered by the Third Geneva Convention falls outside of the Article 4 definitions of "prisoners of war." To the contrary, and as Judge Robertson ruled in Hamdan, the President's broad characterization of how the Taliban generally fought the war in Afghanistan cannot substitute for an Article 5 tribunal's determination on an individualized basis of whether a particular fighter complied with the laws of war or otherwise falls within an exception denying him prisoner of war status. 344 F. Supp.2d at 161-62. Clearly, had an appropriate determination been properly made by an Article 5 tribunal that a petitioner was not a prisoner of war, that petitioner's claims based on the Third Geneva Convention could not survive the respondents' motion to dismiss. But although numerous petitioners in the above-captioned cases were found by the CSRT to have been Taliban fighters, nowhere do the CSRT records for many of those petitioners reveal specific findings that they committed some particular act or failed to satisfy some defined prerequisite entitling the respondents to deprive them of prisoner of war status.[39] Accordingly, the Court denies that

[39] See, e.g., [redacted] This list provides only examples of petitioners for whom the CSRT did not make a full Article 5 type inquiry

portion of the respondents' motion to dismiss addressing the Geneva Convention claims of those petitioners who were found to be Taliban fighters but who were not specifically determined to be excluded from prisoner of war status by a competent Article 5 tribunal.

E. DISMISSAL OF REMAINING CLAIMS

Upon review of the remaining causes of action asserted by the various petitioners in these cases, the Court concludes that the respondents are entitled to dismissal of the claims not addressed in the preceding sections of this Memorandum Opinion. The Court agrees with the respondents that claims based on the Sixth, Eighth, and Fourteenth Amendments to the Constitution are not sustainable because the Sixth Amendment applies only to criminal proceedings, because the Eighth Amendment applies only after an individual is convicted of a crime, and because the Fourteenth Amendment applies only to the states and not to the federal government. In addition, any claims based on the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, must be dismissed because the habeas jurisdiction of this court has not been suspended. Except as discussed in part II.D above regarding the Geneva Conventions, the Court agrees that the remaining treaty-based claims and the claim based on Army Regulation 190-8 asserted by the petitioners should be dismissed primarily for the reasons stated by the respondents in their motion to dismiss. See Motion to Dismiss at 71-72. The Court also agrees with the reasoning of

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regarding prisoner of war status. There may be additional petitioners who fought for the Taliban and who were not given individualized determinations as to their prisoner of war status. Absence from this list should not be interpreted to imply that a petitioner can no longer assert his Geneva Convention claims in this habeas litigation.

Judge Kollar-Kotelly in her original Rasul decision and with Judge Randolph's concurrence in the Al Odah appeal that the doctrine of sovereign immunity bars claims based on the Alien Tort Claims Act and that the general waiver of sovereign immunity contained in the Administrative Procedure Act is inapplicable because of the "military authority" exception in 5 U.S.C. § 701(b)(1)(G). Al Odah, 321 F.3d at 1149-50 (Randolph, J. concurring); Rasul, 215 F. Supp.2d at 64 n.11. Finally, having found that all detainees possess Fifth Amendment due process rights and that some detainees possibly possess rights under the Geneva Conventions, it is unnecessary to look to customary international law to resolve the petitioners' claims. See The Paquete Habana, 175 U.S. 677, 699 (1900) ("where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations").

III. CONCLUSION

For the reasons provided above, the Court holds that the petitioners have stated valid claims under the Fifth Amendment and that the CSRT procedures are unconstitutional for failing to comport with the requirements of due process. Additionally, the Court holds that Taliban fighters who have not been specifically determined to be excluded from prisoner of war status by a competent Article 5 tribunal have also stated valid claims under the Third Geneva Convention. Finally, the Court concludes that the remaining claims of the petitioners must be denied. Accordingly, this Memorandum Opinion is accompanied by a separate Order denying in part and granting in part the respondents' Motion to Dismiss or for Judgment as a Matter of Law.

This Judge began her participation as the coordinator of these cases on August 17, 2004, and her involvement will soon be ending. These cases have always remained before the original Judges assigned to them and only particular issues or motions were referred to this Judge for resolution. Therefore, there will be no need to transfer the cases back to those Judges. In the interest of the effective management of this litigation, however, the accompanying Order requests briefing from counsel on an expedited basis regarding their views as to how these cases should proceed in light of this Memorandum Opinion and this Judge's imminent departure.

January 31, 2005

JOYCE HENS GREEN
United States District Judge