

ORAL ARGUMENT NOT YET SCHEDULED
No. 23-1294

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE: ENCEP NURJAMAN,

Petitioner.

ON PETITION FOR REVIEW FROM A DECISION OF
THE U.S. COURT OF MILITARY COMMISSION REVIEW

**BRIEF OF BROCK CHISHOLM, SONDRAS CROSBY,
BEATRICE PATSALIDES HOFMANN,
DAVID LUBAN AND STEPHEN N. XENAKIS
AS AMICI CURIAE IN SUPPORT OF PETITIONER**

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), undersigned counsel for amici curiae certify as follows:

A. Parties and Amici. All parties, intervenors, and amici appearing before this Court and the trial court are listed in the Brief for Petitioner, except for the following:

a. Beatrice Patsalides Hofmann.

B. Rulings Under Review. An accurate statement of references to the rulings under review in this appeal appear in the Brief for Petitioner.

C. Related Cases. An accurate statement of related cases appears in the Brief for Petitioner.

**CERTIFICATION PURSUANT TO CIRCUIT RULE 29(d) AND
STATEMENT REGARDING CONSENT TO FILE**

Pursuant to Circuit Rule 29(d), amici and their counsel certify that a separate brief is necessary to provide the perspective of individuals who are experts on the medical, psychological, and systemic harms caused by torture—and who seek to prevent the use of torture worldwide.

All parties consent to the filing of this brief.

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INTEREST OF AMICI AND STATEMENT OF AUTHORSHIP

Amici are medical doctors, psychologists, and professors with deep expertise on the treatment of torture victims and the impacts of torture. They file this Brief to assist the Court to better understand the unique harms caused by torture, including its effect on the legal system:¹

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¹ Pursuant to Circuit Rule 29(a)(4)(E), no counsel for a party authored the brief in whole or in part. No party or a party's counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Torture is expressly prohibited under domestic and international law.² Domestic law also expressly prohibits the use of information obtained by torture in adjudicative proceedings.³ Torture, which includes the intentional infliction of pain on another person, has devastating and long-lasting impacts on victims' physical and psychological well-being.

Fundamentally, the imposition of torture irreversibly undermines the adversary system by interfering with victims' ability to participate in the judicial process. Among other things, torture victims suffer severe physical and psychological impairments that may hamper their ability to provide reliable information, prevent them from meaningfully understanding the proceedings against them, and impair their ability to communicate with their counsel. Thus, torture undermines a victim's ability to participate fully as a party, and it prevents the victim from obtaining effective representation by counsel. The use of torture-derived information – in part because it is so plainly and demonstrably wrong – has *distorted* the

² United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, [1989] ATS 21, UN Doc. A/RES/39/46 (Dec. 10, 1984), signed on Apr. 18, 1988 and ratified by the U.S. on Oct. 21, 1994.

³ 10 U.S.C. § 948r(a).

adversarial process. The government has used torture-derived evidence in secret *ex parte* proceedings without the presentation of adversarial evidence or disclosure to defendants. And torture is contrary to basic conceptions of ethics, humanity, decency, and ordered liberty, particularly when it is state-sponsored, like the torture of Petitioner here.

Torture-derived information is thus never “harmless” and its use cannot be regarded as “harmless error.” State torture like that imposed on Petitioner is a vicious act causing unique, irreversible injury, and its damage cannot be laundered by the harmless-error doctrine. Allowing any torture-derived information to seep into any aspect of a judicial proceeding causes our justice system – and our society as a whole – to irretrievably suffer.⁴

Accordingly, Amici support Petitioner’s signal argument that the CMCR’s order should be reversed because it found the Convening Authority’s consideration of torture-derived information harmless error.

⁴ See David Luban, TORTURE, POWER, AND LAW, 44 (2014) (torture is “incompatible with American values.... Americans and our government have historically condemned states that torture; we have granted asylum or refuge to those who fear it.”); Jeremy Waldron, *Torture & Positive Law: Jurisprudence for the White House*, 105 Colum. L. Rev. 1681, 1719 (2005) (“[I]n the heritage of Anglo-American law, there is a long tradition of rejecting torture and of regarding it as alien to our jurisprudence.”).

II. ARGUMENT

A. TORTURE IS INTENDED TO DEGRADE A VICTIM AND ITS USE RESULTS IN UNIQUE PHYSICAL, PSYCHOLOGICAL, AND SYSTEMIC HARMS

Petitioner endured the CIA's interrogational torture techniques "almost immediately" upon his transfer to CIA custody.⁵ Interrogational torture "involves a protracted process of inflicting or threatening pain in a context of helplessness and dependence, so as to make its victim provide information, confessions, denunciations, and the like."⁶ Unlike other forms of abuse, torture "aims to manipulate its victims through their own responses, as agents, to the felt experience of their affects and emotions in a context of dependence, vulnerability, and disorientation."⁷ Deliberately, "the victim is led to hope (however falsely or unreasonably) that there might be something he could do to appease or mollify his tormentor."⁸

⁵ Report of the Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, S. Rep. 113-288 at 311 (Dec. 9, 2014) [hereinafter, *Senate Torture Report*], <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>.

⁶ David Sussman, *What's Wrong With Torture?*, Philosophy & Public Affairs, Vol. 33, 1, 4 (2005).

⁷ *Id.* at 8.

⁸ *Id.* at 23.

Through torture, “people can be made to behave like slaves (or more precisely, become slaves), driven to comply with any command, including saying anything they believe their masters want to hear.”⁹ That includes self-incrimination. Torture victims, for example, often unintentionally provide false or unreliable information, including false confessions by which even a victim falsely comes to believe he has done something wrong.¹⁰

One of the central aims of torture is to reduce an individual to a position of extreme powerlessness and distress. The torturer’s goal is to break the victim. This treatment results in an irreversible deterioration of cognitive, emotional, and behavioral functions. It has pervasive and pernicious impacts on our justice system and moral and ethical constitution.

⁹ Maria Hartwig & Mark Fallon, *The Manipulation of Minds: Reckoning with the Legacy of the American Post 9/11 Torture Program*, *Torture: Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Vol. 32(3), 75 (2022); David Luban & Katherine S. Newell, *Personality Disruption as Mental Torture: The CIA, Interrogational Abuse, and the U.S. Torture Act*, 108 Geo. L.J. 333, 365 (2019).

¹⁰ See generally, e.g., Gisli H. Gudjonsson, *The Science-Based Pathways to Understanding False Confessions and Wrongful Convictions*, *Frontiers in Psychology*, Vol. 12(202) (2021); see also *infra* nn.35-36 & accompanying text.

B. TORTURE CAUSES UNIQUE PHYSICAL HARMS

“Physical torture is often highly brutal and comprises severe physical damage or even the death of the victim, but frequently torturers want to avoid visible body marks and use corresponding techniques.”¹¹

U.S. detainees, including Petitioner, were subjected to extensive physical abuse by their captors, including “walling [in which a detainee’s head is repeatedly banged against a wall], sleep deprivation, beating and shackling, waterboarding [suffocation], hooding, isolation, and white noise.”¹² Others were denied toilet facilities and forced to relieve themselves in their cramped cells.¹³ They were confined in small boxes and (like Petitioner here) forced to stand in painful “stress positions” for long durations to maximize pain.¹⁴

¹¹ Lillia Hárdi & Adrienn Kroó, *The Trauma of Torture and the Rehabilitation of Torture Survivors*, Journal of Psychology, Vol. 219(2), 133-42, 134 (2011).

¹² Morton H. Halperin & Brig. Gen. (Ret.) Stephen N. Xenakis, MD, *Rehabilitation for Torture at Guantanamo Is a Moral and Legal Imperative*, Just Security (Mar. 8, 2023), <https://www.justsecurity.org/85389/rehabilitation-for-torture-at-guantanamo-is-a-moral-and-legal-imperative>.

¹³ Sussman, *supra* n.6 at 22-23.

¹⁴ See Carol Rosenberg, *What the C.I.A.’s Torture Program Looked Like to the Tortured*, N.Y. Times (Nov. 6, 2021), <https://www.nytimes.com/2019/12/04/us/politics/cia-torture-drawings.html/>.

The Senate Torture Report details the CIA's torture tactics, including "sensory dislocation" such as continuously exposing detainees to loud music in white rooms with white lights, keeping them unclothed and subjected to life-threatening cold temperatures (sometimes while sprayed with water), all while shackling them "hand and foot with arms outstretched over [their] head (with [their] feet firmly on the floor and not allowed to support [their] weight with [their] arms)." ¹⁵ Detainees were also subjected to "near constant interrogations, as well as continued sensory deprivation, a liquid diet, and sleep deprivation . . . attention grasp, walling, the facial hold, the facial slap . . . the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation beyond 72 hours, and the waterboard, as appropriate." ¹⁶

Petitioner's treatment was so brutal that one of his interrogators told him he could never go to court because "we can never let the world know what I have done to you." ¹⁷

¹⁵ *Senate Torture Report*, at 54-55, 77.

¹⁶ *Id.* at 77.

¹⁷ *Id.* at xiii; xxvii, n.8

The abuse extended to include “pitting the victim against himself, making him an active participant in his own abuse.”¹⁸ Some detainees were sexually abused and humiliated, including being forced to stand naked for long periods or masturbate before their captors;¹⁹ others were raped.²⁰ This horrific treatment and captivity “becomes part of the victim’s inner life and continues to engross her attention after release.”²¹ It accomplishes its “chief purpose” – the complete subjugation and humiliation of the victim.²²

Torture victims exhibit the cumulative effects of their physical injuries. Many suffer traumatic brain injuries, including those caused by long-term chronic stress, which impairs a victim’s working memory and attention regulation.²³ Many survivors also suffer chronic conditions such

¹⁸ Sussman, *supra* n.6 at 22-23.

¹⁹ *Id.*

²⁰ Halperin & Xenakis, *supra* n.12.

²¹ Sussman, *supra* n.6 at 26 (noting incidents where victims voluntarily became “friends, comrades, and in one case even the lover of their former torturers”).

²² Hartwig & Fallon, *supra* n.9 at 79.

²³ Amy F.T. Arnsten, *Stress Signalling Pathways That Impair Prefrontal Cortex Structure and Function*, Nat’l. Rev. Neurosci., Vol. 10(6): 410–422 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2907136/pdf/nihms197465.pdf>. See Belinda J. Liddell, et al., *Torture Exposure and the Functional Brain: Investigating Disruptions to Intrinsic Network Connectivity Using Resting State fMRI*, Transl. Psychology, Vol. 12(37), 7 (2022) (“torture exposure affect[s] functional connectivity within and between core intrinsic brain networks”); Michael Seyffert & Adrienne

as post-traumatic stress disorder and comorbidities like sleep disorders, chronic pain, anxiety, depression, and cognitive impairment.²⁴ Chronic pain has a high prevalence in torture victims; it is reported to occur in 80% of survivors, is difficult to treat, and is often disabling.²⁵ Taken together, these symptoms create an altered state of mental and physical health. Many detainees suffer from these progressive impairments and disabilities for the rest of their lives.²⁶

Berofsky-Seffert, *Waking Up to the Forensic and Ethics Risks of Systematic Sleep Deprivation*, J. Am. Acad. Psychiatry Law, Vol. 43(2), 132-6, 133 (2015) (prolonged sleep deprivation “causes sustained brain damage in regions of the prefrontal cortex (PFC), amygdala, and hippocampus that are responsible for memory retrieval and narration of an autobiographical self and further impairs the emotional and social decision-making that guides moral judgments”).

²⁴ Halperin & Xenakis, *supra* n.12.

²⁵ International Association for the Study of Pain, *Chronic Pain as a Consequence of Torture: Assessment* (Jul. 9, 2021), <https://www.iasp-pain.org/resources/fact-sheets/chronic-pain-as-a-consequence-of-torture-assessment/> (“Torture can involve disruption of nervous, immune and endocrine systems, all of which can affect pain physiology and subjective experience. . . . Physical and psychological sequelae worsen each other.”).

²⁶ *Id.*; see also John C. Kluznik, et al., *Forty-Year Follow-Up of United States Prisoners of War*, Am. J. Psychiatry, Vol. 143(11), 1443-45 (1986), (finding that 67% of surveyed veterans suffered from post-traumatic stress disorder, of which over 70% still suffered at least minor symptoms forty years after captivity).

C. TORTURE CAUSES UNIQUE PSYCHOLOGICAL HARMS

Torture also causes a particularly severe form of psychological trauma that has devastating effects on the mental functioning of its victims.²⁷

First, torture's imposition of chronic, extreme stress degrades the victim's mental capacity and functioning. "Stress" is the "heightened excitability or arousal in the brain and body, a perception that present or future events will be very unpleasant, combined with a lack of control[] over these events."²⁸ For example, experimental studies show that sleep deprivation – one of the techniques used on Petitioner – degrades memory and cognition in direct proportion to the duration of the sleep deprivation.²⁹

Second, the effects of torture endure long after the immediate imposition of pain ends. Those symptoms can include pain, depression, re-experiencing previous torture as if it were happening again, and behavioral changes such as withdrawal from social contact, aggression, and avoidance

²⁷ See S. O'Mara, *The Captive Brain: Torture and the Neuroscience of Humane Interrogation*, QJM: An International Journal of Medicine, Vol. 111(2), 74 (2018).

²⁸ *Id.* (quoting Kim et al., *The Stressed Hippocampus, Synaptic Plasticity and Lost Memories*, Nat. Rev. Neuroscience, Vol. 3, 453-62 (2002)).

²⁹ *Id.* at 76.

of reminders – which is particularly problematic for a defendant’s preparation of a defense with counsel – as well as multiple forms of severe cognitive impairment such as confusion, dissociation, and memory defects.³⁰

Among the most common and well-known results of a traumatic event is post-traumatic stress disorder (“PTSD”). Though the majority of people who experience traumatic events do not develop PTSD, researchers estimate that approximately 50% of torture survivors – and perhaps many more – develop PTSD or a more severe condition known as Complex PTSD (“C-PTSD”).³¹ Persons with PTSD and C-PTSD generally exhibit common symptoms, such as flashbacks, hypervigilance, and the avoidance of

³⁰ Basoglu & Mineka, *The Role of Uncontrollable and Unpredictable Stress in Post-Traumatic Stress Responses in Torture Survivors*, *Torture and Its Consequences: Current Treatment Approaches* (Cambridge Univ. Press, 1992), at 183-84.

³¹ See Hiba Abu Suhaiban, et al., *Mental Health of Refugees and Torture Survivors: A Critical Review of Prevalence, Predictors, and Integrated Care*, *Int’l J. Environ. Res. Public Health*, Vol. 16(13) (2019), 2309 (PTSD rate documented at 88.3%), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6651013/pdf/ijerph-16-02309.pdf>; Hearn, A., et al., *ICD-11 PTSD and CPTSD: Implications for the Rehabilitation of Survivors of Torture Seeking International Protection*, *Torture Journal*, Vol. 31(3), 96–112 (2011) (36% in study met criteria for C-PTSD).

distressing reminders of the prior trauma.³² C-PTSD includes the core PTSD symptoms plus disturbances in self-organization, affective dysregulation, negative self-concept, and disturbances in relationships.³³ These symptoms can impede a victim's ability to trust people or maintain social relationships including with their own legal representatives. Torture causing these symptoms actually alters the victims' brain.³⁴

Third, torture degrades a victim's capacity to provide truthful and accurate information. It is commonly assumed that torture is an extreme but effective means of extracting information. That is a myth, and not evidence-based. Multiple recent studies show the opposite: torture decreases an individual's capacity to provide reliable information.³⁵ Even

³² *CPTSD (Complex PTSD)*, Cleveland Clinic (2023), <https://my.clevelandclinic.org/health/diseases/24881-cptsd-complex-ptsd>.

³³ Karatzias et al., *Evidence of Distinct Profiles of Posttraumatic Stress Disorder (PTSD) and Complex Posttraumatic Stress Disorder (CPTSD) based on the new ICD-11 Trauma Questionnaire (ICD-TQ)*, *Journal of Affective Disorders*, Vol. 207, 181–187 (2017).

³⁴ See Elbert et al., *The Tortured Brain: Imaging Neural Representations of Traumatic Stress Experiences Using RSVP With Affective Pictorial Stimuli*, *Journal of Psychology*, Vol. 219(3), 167-74 (2011).

³⁵ See, e.g., A. Vrij et al., "Psychological Perspectives on Interrogation," *Perspectives on Psychological Science*, Ass'n for Psychological Science (2017), at 4; Shane O'Mara, *On the Imposition of Torture, an Extreme Stressor State, to Extract Information From Memory: A Baleful Consequence of Folk Cognitive Neurobiology*, *Journal*

torture victims' statements in non-coercive conditions, long after they were tortured, may be questionable because of the long-lasting impact of torture.³⁶ Thus the evidence demonstrates that torture acts directly contrary to its objective of obtaining reliable information.³⁷

D. TORTURE CAUSES UNIQUE SYSTEMIC AND MORAL HARMS

At base, torture breaks the “fundamental commitment of law not to rule through brutality or savagery.”³⁸ As Chief Justice Charles Evans

of Psychology, Vol. 219(3), 159-66 (2011); *see also* Peter Kageleiry, Jr., *Psychological Police Interrogation Methods: Pseudoscience in the Interrogation Room Obscures Justice in the Courtroom*, 193 Military L. Rev. 1 (2007).

³⁶ *See* Gregory S. McNeal, *A Cup of Coffee After the Waterboard: Seemingly Voluntary Post-Abuse Statements*, 59 DePaul L. Rev. 943 (2010).

³⁷ To be clear, amicus do not contend that those who have been tortured are unreliable witnesses. Instead, the torture of witnesses by the CIA, Department of Defense (in Guantánamo) and in foreign jurisdictions where victims were rendered has made *the fact finding in the Convening Authority proceedings substantially more unreliable*. Additionally, the torture explains why witnesses may not be able to remember some specific facts concerning their torture, such as who tortured them, when they were tortured, and the techniques used against them. Properly viewed, therefore, this fuller understanding of the psychological and physical impact of torture actually bolsters the witnesses' testimony as it explains why they may not recall facts that other witnesses – who were not tortured – may be able to recall and cannot be discredited for their failure to recall such facts.

³⁸ Luban, *supra* n.4 at 111; *see also* Waldron, *supra* n.4 at 1726-27.

Hughes explained a century ago, the use of torture in a criminal proceeding is “a wrong so fundamental that it made the whole proceeding a mere pretense of a trial.”³⁹ Torture-obtained information is an intrinsic harm to our system; torture is *malum in se*. Nothing in the intervening 100 years since Chief Justice Hughes’ Opinion has erased that; not World War II or our nation’s many other wars, and not the United States’ decades of efforts to make the legal system more fair, accurate, and just.

As Brigadier General John G. Baker, USMC,⁴⁰ testified before the Senate Judiciary Committee, “[t]orture impacts and undermines every aspect of these [terrorism] prosecutions.”⁴¹ The use of torture-obtained information in any proceeding thus calls into doubt the fundamental principles of our justice system. It also corrodes the legal system because

³⁹ *Brown v. Mississippi*, 297 U.S. 278, 285-86 (1936); *Rochin v. California*, 342 U.S. 165, 173-74 (1952) (“Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society” than “to afford brutality the cloak of law.”).

⁴⁰ Brig. Gen. Baker served for more than five years as Chief Defense Counsel of the Military Commissions Defense Organization.

⁴¹ Testimony of John G. Baker, Brig. Gen., USMC, Before the Senate Judiciary Committee (Dec. 7, 2021) [hereinafter, Testimony of Gen. Baker], <https://www.judiciary.senate.gov/imo/media/doc/Baker%20Testimony2.pdf>.

the use of such information rewards the government for obtaining evidence through torture, inciting further torture.

The government's use of torture causes the following additional harms.

Torture impairs the ability of a victim from participating as a party.

A criminal defendant must have “a rational as well as factual understanding of the proceedings against him.”⁴² Many torture victims’ ability to participate, however, is substantially impaired because of the lasting, severe physical and psychological impact of their torture. *See supra* Parts II.A, II.B. Cognitive impairment, confusion, memory loss, false memories, inability to concentrate, withdrawal from social contact, avoidance of reminders of trauma, and a litany of other conditions can render them unable to participate meaningfully in their defense.

Torture interferes with a victim's ability to obtain effective representation by counsel. Unlike a client who has not been the victim of torture, the torture exacted on a victim can deprive him of “sufficient present ability to consult with [their] lawyer with a reasonable degree of

⁴² *Indiana v. Edwards*, 554 U.S. 164, 170 (2008) (alteration in original) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) (*per curiam*)).

rational understanding.”⁴³ That is an enormous burden that a client who has not been tortured does not face, because the torture can so substantially interfere with the victim’s capacity to engage effectively in analysis and discussion of evidence in advance of trial. It can also explain why many victims of torture cannot reliably recall past events because victims of torture tend to avoid stimuli associated with prior trauma. Torture also often impairs the victim’s ability to understand evidence (even unrelated to his torture). For example, the CMCR’s harmless error analysis turned on the fact that the Convening Authority considered information other than information obtained by torture. But if a defendant is unable to meaningfully confer with his own counsel as to even untainted evidence, the harmless error standard cannot wash out the impacts of torture on the victim because of its irrevocable effect on the attorney-client relationship. Some victims of torture may also be more likely to distrust others, including their counsel, or have diminished social skills, further eroding the attorney-client relationship. *See supra* pp. 11-12.

⁴³ *Edwards*, 554 U.S. at 170; *see also Drope v. Missouri*, 420 U.S. 162, 171-72 (1975) (it is “fundamental to an adversary system of justice” that a defendant who cannot “consult with counsel, and to assist in preparing his defense may not be subjected to trial”).

Torture interferes with the workings of criminal justice system. As General Baker testified, “the government’s fear that the truth [of the government’s use of torture] will become public . . . most undermined the commission processes.”⁴⁴ As a consequence, the government prosecuted matters *ex parte*, suppressed evidence from defense counsel, and eavesdropped on defendants’ communications with counsel.⁴⁵

Torture is contrary to basic conceptions of ethics, humanity, decency, and ordered liberty. The use of torture-obtained information further “compels us to put other central values into play as well . . . even minimum modern conceptions of human equality, human dignity, liberal government, and even simple decency.”⁴⁶ The very act of torture is designed to destroy human dignity, and its use debases our shared moral and ethical values.

For example, notwithstanding the American Medical Association’s ethical requirement that medical professionals provide “competent medical care, with compassion and respect for human dignity and rights” and to

⁴⁴ See Testimony of Gen. Baker, *supra* n.41.

⁴⁵ *Id.*

⁴⁶ Luban, *supra* n.4 at 135. See also Waldron, *supra* n.4 at 1737 (a legal system that sponsors torture is “compromised or corrupted”).

“regard responsibility to the patient as paramount,”⁴⁷ medical professionals at Guantánamo Bay failed to report detainees’ obvious physical and psychological injuries.⁴⁸ Ignoring signs of medical harm is a clear abdication of ethical duties and a most profound violation of the Hippocratic oath.

The use of torture also creates an ethical cloud over lawyers whose advice led to the government’s use of coercive interrogation techniques. Those lawyers are obligated to ensure that their advocacy does not harm the system, particularly where it may escape judicial review.⁴⁹

The above harms of torture are all the worse because torture is imposed by the government. The prohibition on torture is a pillar of the American justice system from which many protections are derived, including the Eighth Amendment prohibition on cruel and unusual punishment, the Fifth and Fourteenth Amendment guarantees of due process, and statutory prohibitions on the use of information obtained by

⁴⁷ American Medical Association Principles of Medical Ethics (2001), available at <https://code-medical-ethics.ama-assn.org/principles>.

⁴⁸ See Vincent Iacopino & Stephen N. Xenakis, *Neglect of Medical Evidence of Torture in Guantánamo Bay, A Case Series*, PLoS Med., Vol. 8(4) (2011).

⁴⁹ See Richard B. Bilder, Detlev F. Vagts, *Speaking Law to Power: Lawyers and Torture*, 98 Am. J. Int’l L. 689, 691-93 (2004).

torture.⁵⁰ The government's use of torture transforms what should be the victim's "rescuer" to the "perpetrator" or coconspirator in these unthinkable acts.⁵¹ Torture shatters all assumptions that the world is a moral place, that the government exists to ensure justice, and that the victim's existence is itself valuable.⁵²

III. CONCLUSION

For the foregoing reasons, the Court should reverse the June 23, 2023 decision of U.S. Court of Military Commission Review insofar as it found that it was harmless error for certain evidence obtained by torture to be reviewed by the Convening Authority.

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Respectfully submitted,

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⁵⁰ See Waldron, *supra* n.4 at 1728-34; see also *Ingraham v. Wright*, 430 U.S. 651, 665 (1977); *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990) (due process protections were "designed primarily to prevent 'a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality'" (quoting *Ullmann v. United States*, 350 U.S. 422, 428 (1956))); 10 U.S.C. § 948r(a).

⁵¹ Luban, *supra* n.4 at 118. See also Sussman, *supra* n.6 at 7.

⁵² Luban, *supra* n.4, at 118 n.15.

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 21(d) and 29(a)(5), because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 3,864 words.

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CERTIFICATE OF SERVICE

I, John S. Summers, hereby certify that on October 31, 2023, I caused a true and correct copy of the foregoing Brief of Brock Chisholm, Sondra Crosby, Beatrice Patsalides Hofmann, David Luban, and Stephen N. Xenakis as Amicus Curiae in Support of Petitioner to be served on counsel of record by electronic filing on the Court's ECF system:

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