proceedings—here, Combatant Status Review Tribunals or (CSRTs)—rather than proceedings before a court of law.[282] The Court also expressed concern that the detentions had, in some cases, lasted as long as six years without significant judicial oversight.[283] The Court further noted the limitations at the CSRT stage on a detainee's ability to find and present evidence to challenge the government's case, the unavailability of assistance of counsel, the inability of a detainee to access certain classified government records which could contain critical allegations against him, and the admission of hearsay evidence. While reserving judgment as to whether the CSRT process itself comports with due process, the Court found that the appeals process for these decisions, assigned to the United States Court of Appeals for the District of Columbia, did not contain the means necessary to correct errors occurring in the CSRT process.[284]

Habeas Corpus: The Process of the Writ.—A petition for a writ of *habeas corpus* is filed by or on behalf of a person in "custody," a concept which has been expanded so much that it is no longer restricted to actual physical detention in jail or prison.[285] The writ acts upon the custodian, not the prisoner, so the issue under the jurisdictional statute is whether the custodian is within the district court's jurisdiction.[286] Traditionally, the proceeding could not be used to secure an adjudication of a question which if determined in the petitioner's favor would not result in his immediate

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[282] Under the Detainee Treatment Act, Pub. L. 109–148, Title X, Congress granted only a limited appeal right to determination made by the Executive Branch as to "(I) whether the status determination of [a] Combatant Status Review Tribunal . . . was consistent with the standards and procedures specified by the Secretary of Defense . . . and (ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States." § 1005(e)(2)(C).

[283] 128 S. Ct. at 2263, 2275.

[284] The Court focused in particular on the inability of the reviewing court to admit and consider relevant exculpatory evidence that was not introduced in the prior proceeding. The Court also listed other potential constitutional infirmities in the review process, including the absence of provisions empowering the D.C. Circuit to order release from detention, and not permitting petitioners to challenge the President's authority to detain them indefinitely.

[285] 28 U.S.C. §§ 2241(c), 2254(a). "Custody" does not mean one must be confined; a person on parole or probation is in custody. Jones v. Cunningham, 371 U.S. 236 (1963). A person on bail or on his own recognizance is in custody, Justices of Boston Mun. Court v. Lydon, 466 U.S. 294, 300–301 (1984); Lefkowitz v. Newsome, 420 U.S. 283, 291 n.8 (1975); Hensley v. Municipal Court, 411 U.S. 345 (1973), and Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973), held that an inmate of an Alabama prison was also sufficiently in the custody of Kentucky authorities who had lodged a detainer with Alabama to obtain the prisoner upon his release.

[286] Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494–95 (1973) (issue is whether "the custodian can be reached by service of process"). *See also* Rasul v. Bush, 542 U.S. 466 (2004) (federal district court for District of Columbia had jurisdiction of habeas petitions from prisoners held at U.S. Naval base at Guantanamo Bay, Cuba);