

HOUSE OF DELEGATES RESOLUTION
ADOPTED JUNE 21, 2008

WHEREAS, the writ of habeas corpus plays a time-honored role as an indispensable guardian against arbitrary and unlawful executive detention;

WHEREAS, the United States Supreme Court recently held in *Boumediene v. Bush* that the Suspension Clause has full effect at the Guantanamo Naval Base at Guantanamo Bay, Cuba and aliens designated as “enemy combatants” and detained at Guantanamo have the constitutional privilege of habeas corpus to challenge the legality of their detention;

WHEREAS, *Boumediene* further held that the Combatant Status Review Tribunal’s designation of Guantanamo detainees as “enemy combatants” and the Detainee Treatment Act of 2005’s procedures for review of that designation are not an adequate and effective substitute for habeas corpus;

WHEREAS, *Boumediene* held that the habeas-stripping provisions of Section 7 of the Military Commissions Act of 2006 operate as an unconstitutional suspension of the writ;

NOW, THEREFORE, IT IS

RESOLVED, that the New York State Bar Association supports the *Boumediene* decision and the principles underlying that decision; and it is further

RESOLVED, that the New York State Bar Association accepts, with thanks, the Report of the Committee on Civil Rights entitled “Executive Detention, Habeas Corpus and the Military Commissions Act of 2006,” as amended, which addresses important issues including the applicability of habeas corpus to detainees in Guantanamo and other extra-territorial detention centers under the de facto control of the United States; and it is further

RESOLVED, that in light of the *Boumediene* decision issued after submission of the Report by the Committee, the New York State Bar Association defers adopting the recommendations in the Report; and it is further

RESOLVED, that the New York State Bar Association recognizes and adopts the Report’s principle that Guantanamo detainees are entitled to certain fundamental due process protections discussed in the report; and it is further

RESOLVED, that the New York State Bar Association recognizes that the *Boumediene* decision did not determine the following important issues:

- a) The standards applicable to the habeas proceedings concerning Guantanamo detainees that will follow the *Boumediene* decision;
- b) The specific rights that must be afforded to the Guantanamo detainees in the proceedings against them; and

- c) The specific rights of non-citizens detained as “enemy combatants” in other extra-territorial locations under the de facto control of the United States; and it is further

RESOLVED, that the New York State Bar Association directs the Committee on Civil Rights to further consider the issues enumerated above and to prepare a revised report and recommendations as soon as possible; and it is further

RESOLVED, that the New York State Bar Association authorizes the Executive Committee to adopt the Committee on Civil Rights’ revised report and recommendations consistent with the *Boumediene* decision.