

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 16, 2009

RECOMMENDATION

RESOLVED, That consistent with the Supreme Court's directive in *Boumediene v. Bush* and President Obama's January 22, 2009 Executive Order on "Review and Disposition Of Individuals Detained At The Guantanamo Bay Naval Base and Closure of Detention Facilities," the American Bar Association urges the U.S. Government to ensure that:

- (a) All individuals who have been or are expected to be charged with violations of criminal law should be prosecuted in Article III federal courts, unless the Attorney General certifies, in cases involving recognized war crimes, that prosecution cannot take place before such courts and can be held in other regularly constituted courts in a manner that comports with fundamental notions of due process, traditional principles of the laws of war, the Geneva Conventions and the Uniform Code of Military Justice;
- (b) All individuals currently detained at Guantanamo who, upon review, are determined to have been improperly classified as or no longer considered to be "enemy combatants" should be promptly released or resettled; and
- (c) All remaining individuals currently detained as enemy combatants at Guantanamo are granted a prompt habeas corpus hearing with full due process rights and provided access to counsel and the right to review and confront the evidence against them, including potential exculpatory evidence within the government's possession, whether or not used, or intended to be used at trial, subject to appropriate conditions as may be set by the court to accommodate the needs of the detainee and the requirements of national security; and
- (d) No individual should be detained as an "enemy combatant" except pursuant to an act of Congress defining this term.