



**CLA**

**COMMONWEALTH LAWYERS ASSOCIATION**

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**PRESS RELEASE**

**ON THE JUDGMENT OF THE UNITED STATES SUPREME COURT IN  
*BOUMEDIENE ET AL V UNITED STATES OF AMERICA ET AL***

**COMMONWEALTH LAWYERS' ASSOCIATION AND ENGLISH BAR PLAY PART  
IN BUSH ADMINISTRATION DEFEAT**

On Thursday 12<sup>th</sup> June 2008 the United States Supreme Court gave judgment in the third case to reach the Court relating to the policies of the Bush Administration in the "War on Terror". Like *Rasul et al v George W Bush et al* and *Hamdan v Rumseld* before it the case concerned the legality of the detentions at Guantanamo Bay Cuba, and the availability of the ancient writ of habeas corpus to the individuals held there.

In allowing the appeal brought by a lead group of detainees the Court eliminated any doubt as to the constitutional protections available to the detainees. The Court held that detainees at Guantanamo Bay had a Constitutional, and not merely a statutory, right to a habeas corpus hearing before the Federal Courts, that the Military Commissions Act 2006 which purported to remove such a right was unconstitutional and in breach of the Suspension Clause of the Constitution, and that the procedures established by Combatant Status Review Tribunals were inadequate as a substitute for habeas review. Justice Kennedy writing for the majority said the following:

*"We hold that the petitioners may invoke the fundamental procedural protections of habeas corpus. The laws and Constitution are designed to survive, and remain in force in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the law. The Framers decided that habeas corpus, a right of first importance, must be part of that framework, a part of that law."*

The Administration's defeat is now expected to lead to a final round of factual hearings in the individual cases at which the Federal Courts will have the power to order the release of the detainees and undermines what has been a central plank of Administration policy since 2001.

The Commonwealth Lawyers' Association – of which most Bar Associations and Law Societies throughout the 53 Commonwealth States are institutional members – had intervened in the case as amicus curiae in support of the petitioners. Extensive extracts from the CLA brief were cited in the majority judgment.

The CLA was represented by Sir Sydney Kentridge QC (of Brick Court Chambers), Colin Nicholls QC (of 3 Raymond Buildings), Timothy Otty QC (of 20 Essex Street), Adam Zellick (of Fountain Court) and John Rich and Stephen Pollak (of Washington DC firm Goodwin Proctor).

11 June 2008