GOOD FOR THE NATION, GOOD FOR THE ADMINISTRATION: WHY THE COURTS SHOULD HEAR THE GUANTANAMO BAY DETAINEE CASES AND HOW IT WILL HAVE POSITIVE EFFECTS

I. INTRODUCTION

The United States’ actions surrounding the Guantanamo Bay detainees have been a constant topic of criticism and scrutiny, both domestically and internationally. The arbitrary classification of detainees as enemy combatants has led the United States courts to intervene by way of the detainees’ habeas corpus petitions. Historically, the United States military rarely classified people as enemy combatants.1

The United States is a member of the United Nations and is a contracting party to the Geneva Conventions (Conventions).2 The United States is bound by the Conventions and should abide by them. The Bush administration has abandoned the United States’ obligations under international law, specifically the Geneva Conventions Relative to the Treatment of Prisoners of War.3 It is important now, and in the future, for the United States to be on positive terms in the international community.

By conforming to the Conventions, the United States’ legitimacy would increase in the international community, the Bush administration’s actions would gain support, and it would be aligned with the United States’ looking internationally for guidance in recent decisions. The recent decisions in the Guantanamo Bay cases have stated that the Conventions do not apply, and therefore, the cases cannot be heard under the Conventions in the federal courts.4

Despite the Court’s decisions, there are options under which the detainees can have a legitimate hearing without the adjudication of their cases stepping on the government’s toes or interfering with national security. First, in the current United States court system, the Classified Information Procedures Act5 can be utilized to hear a case through to completion. A different option is to have a separate court authorized, either domestically or internationally through the United Nations, to specifically hear the Guantanamo Bay detainee cases.

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1. See infra § II B

* J.D. candidate, 2008, Whittier Law School; Member, Whittier Law Review; B.S. in Business Administration, University of California, Riverside, 2002. “Naturally, the common people don’t want war, but after all, it is the leaders of a country who determine the policy, and it is always a simple matter to drag the people along, whether it is a democracy or a fascist dictatorship, or a parliament, or a communist dictatorship. Voice or no voice, the people can always be brought to the bidding of the of the leaders. This is easy. All you have to do is tell them they are being attacked, and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same in every country.” –Herman Goering, German Reichsmarshal, Second in Command to Hitler, speaking at the Nuremburg Trials after WWII.