

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

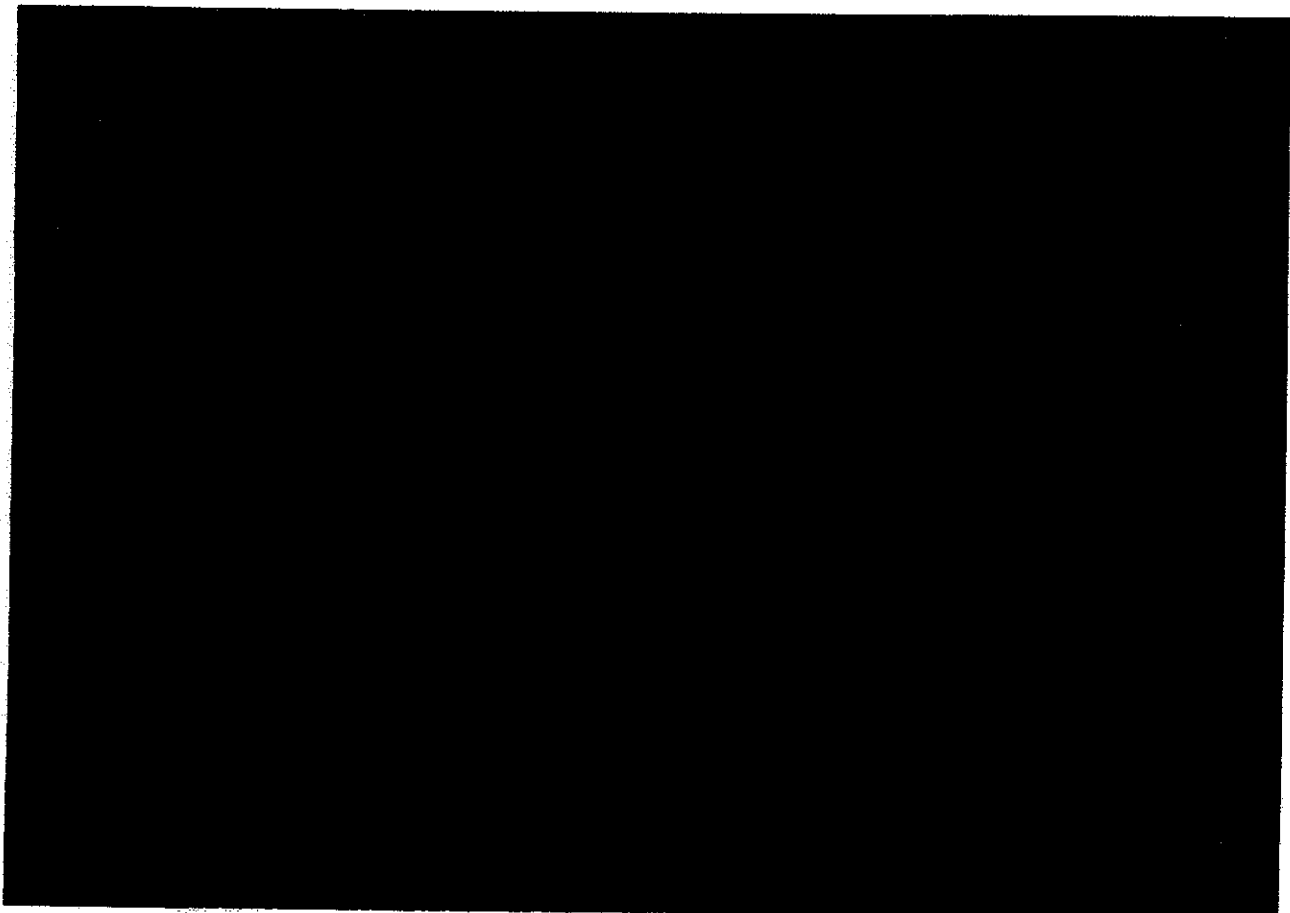
D-029

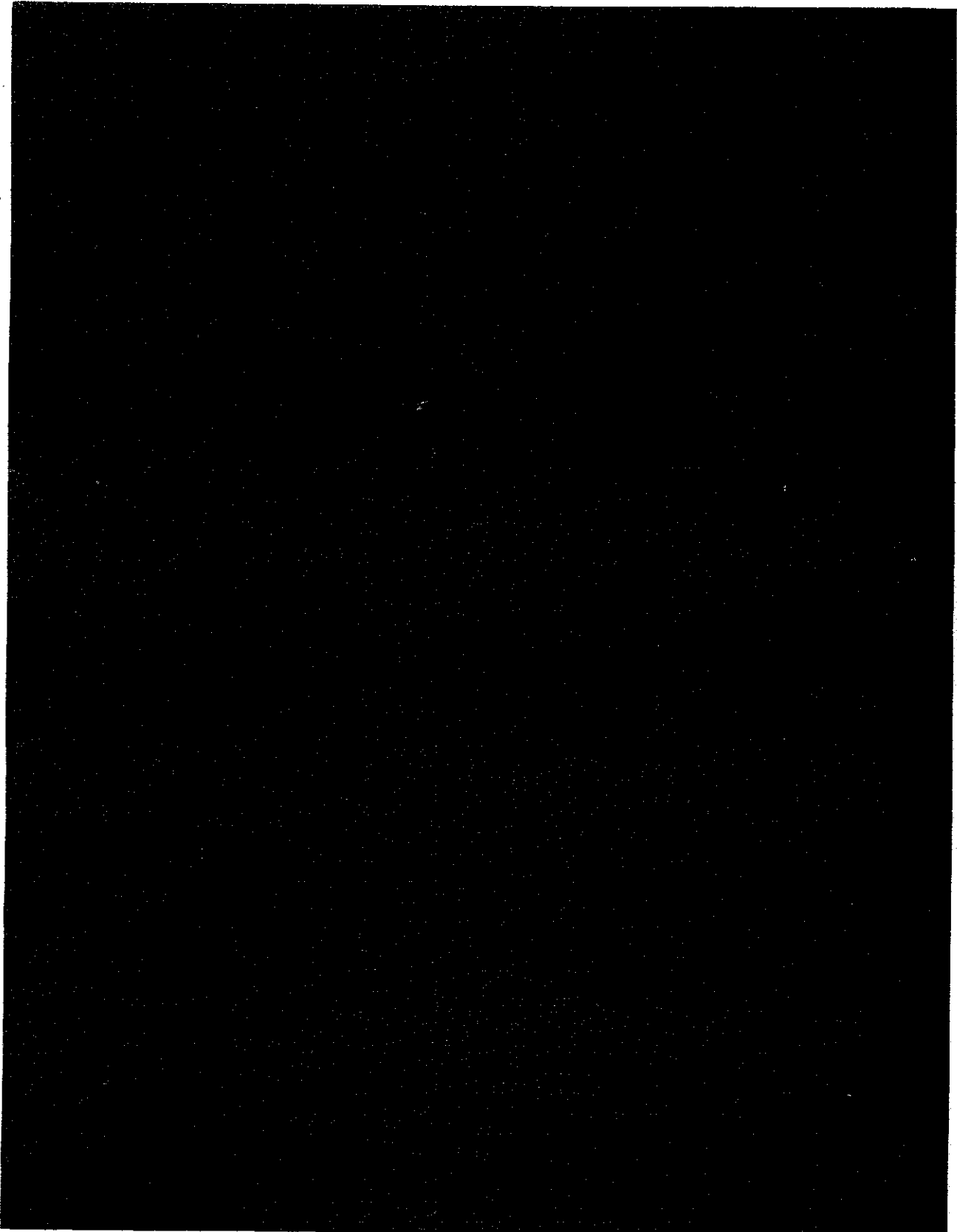
**RULING ON MOTION
TO SUPPRESS STATEMENTS BASED ON
COERCIVE INTERROGATION PRACTICES
(Statement of 17 May 2003)**

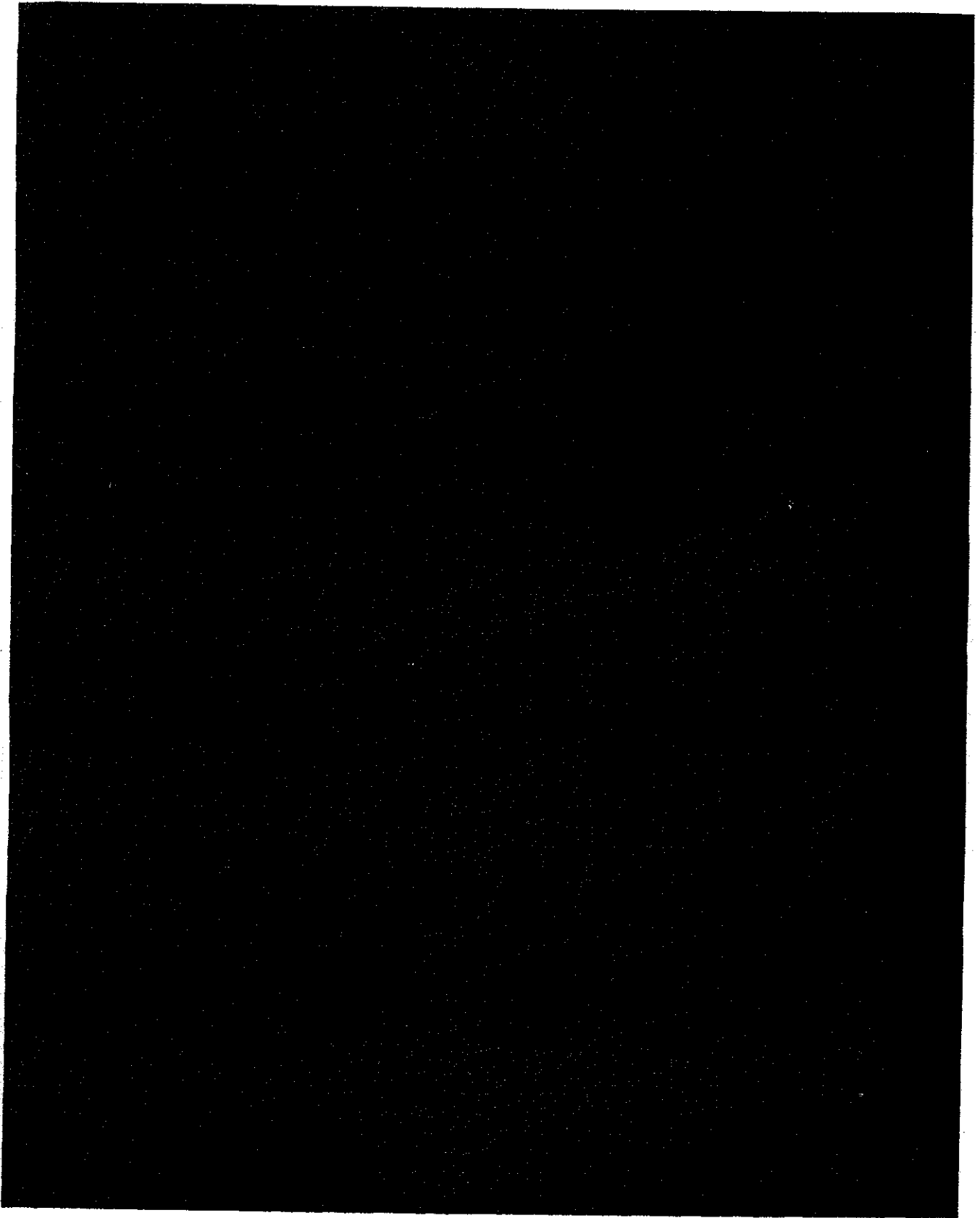
31 July 2008

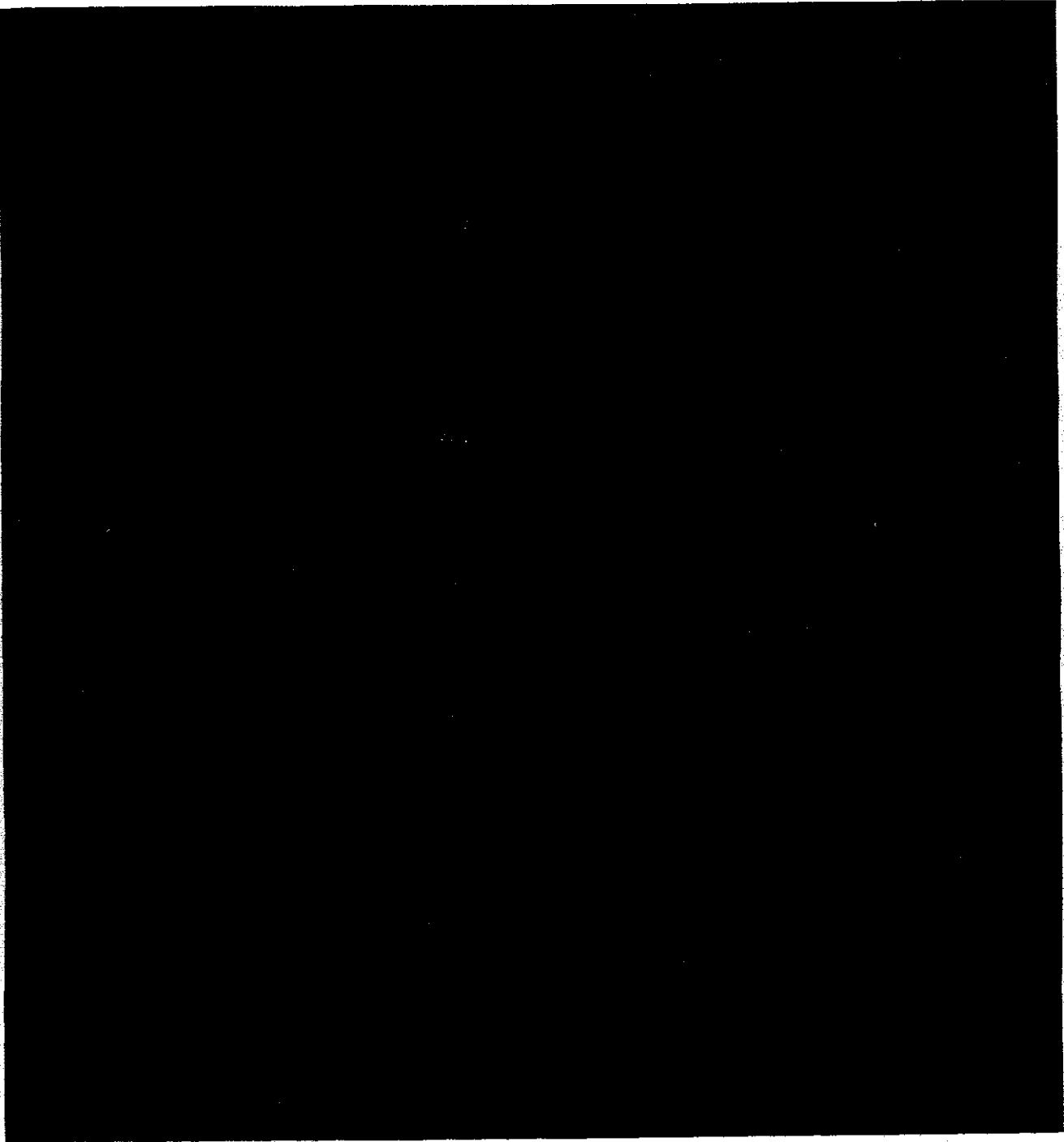
The Commission has sanctioned the Government for providing 1200 pages of discovery within the last week prior to trial, and entered a rebuttable presumption that the 17 May 2003 statement was obtained under coercive conditions. The government may rebut the presumption by clear and convincing evidence that the statement is admissible under MCRE 304. On 31 July 2008 a hearing was held at which the Government called additional witnesses and presented additional documentary evidence. Both sides argued their positions.

FINDINGS OF FACT









CONCLUSIONS OF LAW

1. There is clear and convincing evidence that Hamdan's 17 May statement to agents Soufan and McFadden was not influenced by a sleep deprivation program or [REDACTED]. The record does not reflect his participation in that operation until 10 June, nearly a month later.


[REDACTED]

2. There is clear and convincing evidence that Hamdan's 17 May statement to agents Soufan and McFadden was not influenced by any physical coercion. Hamdan did not report any such coercion or abuse to the Agents that morning, in spite of the warm and collegial atmosphere between them that day. Neither agent perceived that Hamdan had been subject to any such treatment or that he was anything but willing to speak to them. When Hamdan spoke to an intelligence collector on 26 March, his only complaint was about a lack of mail from his family.

3. There is clear and convincing evidence that Hamdan was not denied medical treatment in the months preceding this interview as a means of encouraging his participation in the interview. There is no mention of Intel involvement or interrogator presence at either visit for which the parties have produced medical records; both visits provide appropriate treatment and both indicate the need for follow up. One reflects an intention to discuss more recreation for Hamdan as a means of improving his sciatica. Hamdan himself does not complain about the withholding of medical care in the months before this statement was taken.

4. While Hamdan was transferred to [REDACTED] the night before the interview without apparent explanation, there is no evidence that this amounted to coercion, or that [REDACTED] was a punishment block. [REDACTED]

5. Being detained in Guantanamo Bay is undoubtedly an unpleasant, highly regimented experience, with instant rewards or loss of privileges for infractions. Camp authorities reasonably want to maintain discipline and encourage compliance with camp rules, including cooperation with intelligence collectors and other investigators. Mr. Hamdan was exposed to this regimen in the first several months of 2003, but these factors and circumstances did not amount to coercion with respect to the making of the 17 May statement, which by all accounts was the most friendly, least threatening, and most cordial of all the statements he made. The Defense Motion to Suppress this statement is DENIED.


Keith J. Allred
Captain, JAGC, USN
Military Judge