

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**

1. In the Spring and summer of 2003, Hamdan was assigned to Camp Delta, one of the camps of the detention facility at Guantanamo Bay. Effective 28 March 2003, Camp Delta had an extensive Standard Operating Procedure that prescribes procedures for all aspects of camp operation. It establishes a "Detainee Classification System," which consists of a five level "system of rewards based on the premise that a detainee's behavior determines the privileges they are allowed. As the detainee adapts to the rules of the camp, his conduct will earn him more privileges." The SOP identifies "basic issue items" and "comfort items" accorded to each detainee depending on his level of compliance with camp rules, and prescribes the conditions under which failure to comply with camp rules may result in loss of privileges, comfort items, or placement in a less favorable level within the camp.
2. Level 1 is the most favorable level, and includes the largest array of privileges. It is for detainees who have spent 30 days "incident free" at level 2.
3. Level 2 is the next most favorable level, and requires 30 days "incident free" at level 3.
4. Level 3 is the level at which all detainees enter the system, following an initial period of segregation. This level includes detainees who are on disciplinary measures not including MSU.
5. Level 4 normally refers to detainees located in MSU, but "also includes detainees who have completed MSU time, but have not yet moved to level 3." Detainees in this status will have their classification reevaluated by the Detention Services Branch daily.
6. Level 5 is also referred to as the Intel level. It consists of JIG directed segregation for intelligence gathering purposes. These detainees are housed separate from other detainees,

located in MSU block for intel purposes, but “receive reward level 1-4 privileges as recommended by Intel.”

7. Delta block is the mental health facility for the housing of detainees requiring a higher level of clinical care and monitoring

8. Offenses are characterized as category III, IV and V offenses, with category III offenses being the least serious. These offenses “expire” after 30, 45, and 60 days respectively.

9. A detainee will change levels based on his behavior or meeting other criteria at a particular level. “Detainees who do not meet the program based on behavior may still participate in the program based on JIG directed requests, but will be housed in a separate block designated as the ‘intel block.’ JIG will determine higher-level privileges on this block”

10. An Order of Merit List (OML) has been created as a waiting list for qualifying detainees to get into either a level 1 or level 2 block. Detainees will be chosen from the OML for movement to a higher level block. If sufficient detainees are on the OML, camp authorities can convert a block to the higher level status most in demand.

11. Detainees who show exceptional cooperation with guards and compliance with camp rules can have their 30 day waiting periods for advancement to the next level reduced in 5 day increments. This entire program is referred to as the Positive Behavior Reward Program. For detainees whose behavior merits the greatest privileges, Camp Four provides open bay living with many hours of daily outdoor recreation and other privileges.

## HAMDAN’S RECORD

12. On 4 September 2002, Hamdan spat on a guard, and refused to comply with the guard’s instructions. As a result, he was placed in maximum security for 15 days and lost recreation privileges for three days. This was Hamdan’s second offense during confinement.

13. On March 14, 2003, Hamdan was in the recreation area and asked for a soccer ball. When this was denied because his level did not entitle him to that privilege, he broke out in an aggressive rage and demanded the ball. Support was called, and Hamdan refused to leave the recreation area. He called the block Sergeant a donkey, stupid, crazy and other derogatory terms. He finally settled down and returned to his room. This was a level IV offense. On the same day, he was written up for this offense, and was ordered to MSU for 3 days, with loss of recreation for three days. This was Hamdan’s seventh offense during confinement.

14. On the same day, Hamdan’s cell was searched and contraband was found (an apple, two toothbrushes, and extra cup and excessive number of MRE’s. He was reported for this Level IV offense, and received MSU for 5 days and loss of recreation for 3 days.

15. On 16 March, 2003, Hamdan was seen by medical. He complained of continued sciatica and leg pain, and reported that previously prescribed medications were not helping. He was “sleeping on floor when seen” at 1431. He declined a change in medications offered by the

physician, who planned to follow up the following week.

16. On 21 March, Hamdan was interrogated by a female intelligence collector who was meeting him for the first time. She attempted to build rapport, he responded unfavorably. She characterized him as an “extremely smug, self-assured, disrespectful towards women and a general pain in the butt.” She realized that he “does not like to be touched by a woman and responded very harshly when [she] did so.” He was leaning back on his chair, she told him to sit his chair down on all four legs, he refused, and she then “pushed his leg down.” He reacted very angrily and told her never to touch him again. She was attempting to collect intelligence about use of legal and illegal immigration by terrorist groups, one topic on a long list of intelligence collection topics he was to be asked about.

17. On 24 March, the physician followed up on Hamdan’s sciatica. Hamdan had no relief with Celebrex and was encouraged to go outside for recreation more, because P/T has benefited him in the past. Hamdan was lying on the floor asleep when seen at 1433. Physician indicated plan to “inquire about P/T and increasing rec time” and to “speak to dental today.”

18. On 24 March, Hamdan was “changed from level 2 to level 3 per intel.” On the same date, the “detainee behavioral tracking” log reflects a loss of [illegible] privilege until 29 March.

19. On 25 March, the “detainee behavioral tracking” log reflects a loss of recreation privileges until 29 March without further information. This may be the same action reflected above.

20. On 26 March, a male intelligence collector interviewed Hamdan and received a much warmer reception that his female colleague received on the 21<sup>st</sup>. On this occasion, the collector asked Hamdan generally about his situation in camp. Hamdan “commented that he had gotten no mail from his family.” The collector knew this to be untrue, and understood it to mean he had received no recent mail from his family. Hamdan made no other complaints.

21. This collector characterized his meeting with Hamdan by noting that Hamdan was willing to answer questions and was cooperative with the male analyst.

22. On 5 April, Hamdan committed a violation of the camp rules. No further information is available. (AE-307 p. 16)

23. On 16 April, SECDEF authorized enhanced interrogation techniques that included sleep deprivation.

24. 16 May, Hamdan was changed from Block R8 to T9 at 2235 by G-1.

25. On 17 May 2003, Arabic-speaking FBI Agents Robert McFadden and Ali Soufan arrived at Camp Delta to interview Mr. Hamdan. They had no knowledge of the previous night’s change in Hamdan’s block, and had not requested it. Anything that upsets a detainee interferes with their ability to build rapport, and they were opposed to such things. They were escorted to a carpeted, air-conditioned interview room in a double wide trailer at Camp Delta. Hamdan left his block at 0924, entered the interview room at 0935, and the two Arabic-speaking agents engaged him in

warm, extended greetings. The agents asked various questions designed to ensure that Hamdan was well and wanted to participate in the interview, and found no indication or report to the contrary. Hamdan felt tired that day, but did not know why. The interview lasted until 1855, at which time the Agents had to leave because camp rules prevented their continuing.

26. The interview was among three Arabic speakers, and was a casual, very friendly meeting. The three participants alternated between sitting on the floor, reclining on the floor, and sitting close together, consistent with Yemeni culture and tradition. The Agents had a very close and friendly rapport with Hamdan, who wanted the interview to continue beyond 1855, because he enjoyed the company of the Agents. Throughout the day, the Agents offered tea, cookies, sandwiches, prayer and bathroom breaks, and other accommodations, and Hamdan accepted some of these and declined others.

27. During the entire day, Hamdan did not complain of any abusive or coercive treatment. He did not mention or complain of sleep deprivation, inappropriate touching by a female interrogator, or the circumstances of his housing arrangements, including the previous night's transfer. Had Hamdan complained of any abuse or mistreatment, the Agents would have noted it, reported it, and investigated it because of its adverse impact on their rapport with the accused and the success of their investigation.

28. On 18 May, Hamdan was rewarded with three color photos of his family. The reward was authorized or approved by the Joint Intelligence Group.

29. A document printed on 16 July 2003 reflects that Hamdan's detainee number is associated with "Operation Sandman" from 11 June to 30 Jul 2003, without further details.

30. Hamdan's next recorded discipline event was 13 August (provoking words and gestures) for which he lost his comfort items for three days, books privileges for 5 days, and he remained in level 3. This is a category I offense.

31. On 23 August, Hamdan had a similar offense, and was awarded segregation for 15 days and loss of comfort items for 10 days. This was a category IV offense.

32. A May 2008 DOJ Inspector General Report into the FBI's involvement in Detainee Interrogations at Guantanamo Bay and elsewhere described "Operation Sandman" as a program involving sleep interruption and frequent cell relocations. The purpose was not to enhance detainee participation in interrogations, but to keep Saudi detainees "from exerting too much influence over the other detainees and encouraging them not to cooperate with U.S. officials." The program was "to keep some of the Saudi detainees mentally off balance, to isolate them either linguistically or culturally, and to induce them to cooperate."

## 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 Operation Sandman. The record does not reflect his participation in that operation until 10 June, nearly a month later.

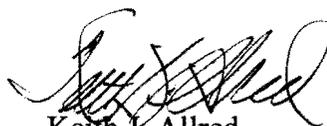
Records regarding the Operation indicate that it was intended to control Saudi influence in the camps, rather than to coerce compliance with interrogators. Although Hamdan may have been tired on the day of the interview, the agents did not perceive any fatigue, he himself did not know why he was tired, and he did not tell the agents that he had been deprived of sleep prior to that time. Medical Officers who saw him on 16 and 24 March found him sleeping on the floor when they arrived to examine him during the middle of the day, both visits occurring at least a month before SECDEF authorized sleep deprivation as an enhanced interrogation technique.

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 Tango block the night before the interview without apparent explanation, there is no evidence that this amounted to coercion, or that Tango block was a punishment block. Three other detainees were transferred at the same time he was, and yet another four were transferred five minutes earlier. It appears from the incomplete records provided that groups of 4 detainees had been transferring between levels at various time intervals throughout the day. Each of these transfers is reflected in camp documents as a "level change." The difference between level 2 and level 3, for example, is the loss of one extra blanket (2 to 1); 3 pieces of mail kept in his cell (15 to 12); 2 magazines kept in the cell (4 to 2); and 1 salt packet kept in the cell (4 to 3). This is not coercive treatment.

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