

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: Robert M. Gates, Secretary of Defense U.S. Department of Defense 4000 Defense Pentagon Washington, DC			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Ali Abdulla Ali Al Mabra Al Huban Taiz, YEMEN Pardiss Kebriaei, Esq. 666 Broadway, 7th Floor New York, NY 10012 USA		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH See attached claim.	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT See attached claim.	7. TIME (A.M. OR P.M.) See attached claim.	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) See attached claim.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). N/A					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.) See attached claim.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. See attached claim.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse.) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE \$5,000.00	12b. PERSONAL INJURY	12c. WRONGFUL DEATH \$5,000,000.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$5,005,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>Pardiss Kebriaei Counsel to Claimant</i>			13b. Phone number of person signing form (212) 614-6452	14. DATE OF SIGNATURE 06/10/08	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

95-109

NSN 7540-00-634-4046

STANDARD FORM 95
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2Exhibit B
1:09-CV-00028 ESH

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No
 Not applicable.

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? <input type="checkbox"/> Yes <input type="checkbox"/> No Not applicable.	17. If deductible, state amount. Not applicable.
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18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)
 Not applicable.

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No
 Not applicable.

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.
 A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
 C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
 D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

INTRODUCTION

Ali Abdulla Ali, a Yemeni citizen, hereby provides notice of a tort claim against the Department of Defense (“DoD”) for damages he suffered as a result of the unlawful and tortious conduct of employees or agents of the DoD resulting in the death of his son, Salah Al-Salami. Salah Al-Salami was, at the time of his death, a detainee at the U.S. Naval Station at Guantánamo Bay, Cuba and, as such, was under the exclusive control of employees or agents of the DoD. His Internment Serial Number (ISN) was 693. According to the DoD, Salah Al-Salami died on June 10, 2006, along with two other Guantánamo prisoners, Mani Al-Utaybi (ISN 588) and Yasser Al-Zahrani (ISN 93).¹

Government spokespersons described the three deaths as suicides immediately after they were reported and have continued to characterize them as such.² No evidence confirming these representations has been released by the DoD, notwithstanding that an investigation by the Naval Criminal Investigative Service (“NCIS”) into the deaths reportedly commenced on or about June 10, 2006, and that employees or agents of the DoD conducted autopsies immediately. To date, the DoD has failed to release any information that explains the cause and circumstances surrounding Salah Al-Salami’s death or the deaths of the other two prisoners.

Ali Abdulla Ali has suffered severe emotional distress as a result of the death of his son in the hands of the U.S. government at Guantánamo. He has doubly suffered as a result of the callous behavior of the government following his son’s death. He has also suffered loss and damage to his property, namely his business, in losing his son as an essential employee.

As a result of the failure of the U.S. government to disclose any, or any adequate, information pertaining to either the cause of Salah Al-Salami’s death or the circumstances in which it occurred, Ali Abdulla Ali is not able to particularize his claim. He reserves the right to amend this claim when the DoD has provided full disclosure. In particular, he reserves the right to claim for an award of damages that reflects any pain and suffering suffered by Salah Al-Salami prior to his death.

¹ A total of five prisoners have died in U.S. custody at Guantánamo to date.

² U.S. Department of State Daily Press Briefing, Sean McCormack, June 12, 2006 at ¶ 1 (“QUESTION: Could you talk about the response by the official in Public Diplomacy calling the suicides at Guantanamo a—basically a PR gambit? MR. MCCORMACK: Well... we have serious concern anytime anybody takes their own life. The—what happened over the weekend at Guantanamo is being fully investigated by the Department of Defense...”). In a White House Press Briefing by Tony Snow, June 29, 2006 at ¶ 8, a reference was made to the efforts to strengthen procedures at Guantánamo “in the wake of the recent suicides”.

DESCRIPTION OF CLAIM

Salah Al-Salami was born on March 9, 1969 in Ibb, Yemen. Prior to his capture, he was married and living with his wife in the city of Taiz. In early 2002, he was captured in Pakistan while buying produce to bring back to Yemen to sell in his father's business, and transferred to Guantánamo. Prior to his death, he had been detained at Guantánamo for more than four years. During that period, he participated in hunger-strikes and was subjected to force-feeding.

Salah Al-Salami was never charged with a criminal offence during his years at Guantánamo. He was held solely on the basis of vague allegations for which the government has never shown any evidence, and which he never had a meaningful opportunity to challenge. Yet a government press release after his death claimed that he was "a mid- to high-level al Qaeda operative with links to principal al Qaeda facilitators and senior membership".³ No further government communications or documents contained anything more than these broad and unsubstantiated allegations against him.

On December 22, 2005, Salah Al-Salami's attorneys filed a *habeas corpus* petition on his behalf in district court,⁴ but because of delays resulting from the government's failure to confirm his identity,⁵ his attorneys were unable to schedule their first meeting with him until August 2006.⁶ In preparation for the meeting, Ali Abdulla Ali prepared a video for his son explaining his efforts to secure legal representation for him, which his attorneys intended to show during their first visit.

On June 10, 2006, just two months before the scheduled meeting, Salah Al-Salami was found dead in his cell, as were Mani Al-Utaybi and Yasser Al-Zahrani. Salah Al-Salami died not knowing that he was represented by counsel or that his attorneys were soon to visit him in prison.⁷ He never saw the videotape prepared for him by his father, informing him that he had

³ Sgt. Sara Wood, *DoD Identifies Guantánamo Detainee Suicides*, Am. Forces Info. Serv. (June 12, 2006) available at http://www.defenselink.mil/news/Jun2006/20060612_5387.html.

⁴ Pet. for Writ of Habeas Corpus, *Al Salami, et al. v. Bush, et al.*, No. 1:05-cv-02452-PLF (D.D.C. filed Dec. 22, 2005); First Amended Pet. of Habeas Corpus, *Al Salami, et al. v. Bush, et al.*, No. 1:05-cv-02452-PLF (D.D.C. filed Dec. 28, 2005).

⁵ E-mail from Preeya Noronha, U.S. Dept. of Justice, to John C. Snodgrass, Dickstein Shapiro Morin & Oshinsky LLP (Feb. 27, 2006). As a result of this delay, the district court did not enter a protective order in the case until April. Order, *Al Salami, et al. v. Bush, et al.*, No. 1:05-cv-02452-PLF (D.D.C. Apr. 13, 2006).

⁶ E-mail from Andrew Warden, U.S. Dept. of Justice, to John C. Snodgrass, Dickstein Shapiro Morin & Oshinsky LLP (May 16, 2006). Letter from John C. Snodgrass, Dickstein Shapiro Morin & Oshinsky LLP, to Andrew I. Warden, U.S. Dept. of Justice (May 12, 2006); e-mail from Andrew I. Warden, U.S. Dept. of Justice, to John C. Snodgrass, Dickstein Shapiro Morin & Oshinsky LLP (May 16, 2006).

⁷ Carol Rosenberg, *Detainees Unaware of Lawyers*, MIAMI HERALD, June 16, 2006.

obtained legal representation for him and that he had been in direct contact with his lawyers in the United States.

In describing the cause of death of the three detainees, the DoD stated that each was found with a wad of cloth in his mouth and hanging from a noose made of bed-sheets that was woven through the men's mesh cell walls. Colonel Mike Bumgarner, former commander of the Joint Detention Group at Camp Delta at Guantánamo, stated that the three detainees appeared to have slowly choked to death.⁸ Yet, almost two years after the deaths, the U.S. government has failed to substantiate these comments and confirm the cause of Salah Al-Salami's death and the circumstances in which it occurred. Indeed, the DoD has failed to provide his family with any pertinent information regarding his death. In particular:

1. On or about June 10, 2006, the U.S. government announced that the NCIS would commence an investigation into the deaths of Salah Al-Salami, Mani Al-Utaybi and Yasser Al-Zahrani. Almost two years later, the NCIS has yet to issue any findings.
2. Immediately after his death, an autopsy was conducted on Salah Al-Salami by employees or agents of the DoD, but the autopsy report has not been released (to Ali Abdulla Ali or at all).
3. The U.S. government has refused to provide Salah Al-Salami's family with copies of his medical records.
4. The U.S. government has failed to answer questions posed by an independent physician who conducted a second autopsy on Salah Al-Salami after his remains were repatriated to Yemen. Without these responses, the second autopsy is inconclusive.
5. The Department of Justice opposed a motion filed on June 20, 2006 by Salah Al-Salami's attorneys in the U.S. District Court for the District of Columbia to require that the U.S. government preserve all alleged suicide notes, autopsy reports, videotapes of his last movements and any other information related to his detention or death.
6. The Inter-American Commission on Human Rights requested that the U.S. government provide information about the deaths of Salah Al-Salami, Mani Al-Utaybi and Yasser Al-Zahrani within ten days of being reported. Four months later, the government submitted to the Commission only a packet of press releases,

⁸ Clive Stafford Smith, *Suicides at Guantánamo I*, Reprieve, June 13, 2006, available at <http://reprieve.org.uk/documents/06.06.13ReprieveInterimSuicideReport.pdf> at page6.

briefings and interviews that did nothing to illuminate the circumstances of the deaths.

The failure of the DoD to confirm the cause of death and provide information as to the circumstances in which it occurred lead to particular concerns in light of the condition of Salah Al-Salami's body upon its return to his family. Ali Abdulla Ali stated that his son's body was badly bruised and that it appeared to have chemical burns or marks on it. The DoD has provided no explanation for this.

Exacerbating the lack of transparency outlined above has been the callous behavior of the DoD, namely:

1. That although Islamic law requires that bodies be buried within 24 hours of death where possible, Salah Al-Salami's body was not returned to Yemen until June 15, 2006, five days after his death. His family was not allowed to view his body until June 18, 2006, and he was not buried until June 20, 2006, some ten days after his death.
2. The DoD performed an autopsy on Salah Al-Salami without the consent of his family. Further, when his remains were returned to Yemen, several of his organs were missing. Islamic law generally prohibits the performance of an autopsy and requires a dead body to be "returned to God" as it was given.
3. Government spokespersons and military officials made a number of derisive comments about Salah Al-Salami, Mani Al-Utaybi and Yasser Al-Zahrani following their deaths. A Pentagon official stated that the deaths were "not an act of desperation, but an act of asymmetric warfare aimed at us here in Guantánamo."⁹ Another official referred to the deaths as "a good PR move to draw attention."¹⁰ In a press conference following the deaths, the Deputy Assistant Secretary of Defense Cully Stimson repeatedly compared all Guantánamo detainees to Nazis during World War II and made multiple unfounded statements that such detainees are all terrorists.¹¹ Col. Mike Bumgarner stated in reaction to the deaths, "They [Guantánamo detainees] have shown time and time again that we can't trust them any farther than we can throw them. There is not a trustworthy son of a ... in the entire bunch."

⁹ See Sgt. Sara Wood, *Three Guantánamo Bay Detainees Die of Apparent Suicide*, AMERICAN FORCES INFORMATION SERVICE, June 10, 2006 (citing Navy Rear Adm. Harry B. Harris).

¹⁰ Michael Rowland, *US Official Calls Guantánamo Suicides a PR Tactic*, ABC (Australia), June 13, 2006.

¹¹ U.S. Department of State Daily Press Briefing, June 12, 2006 at page 2.

CLAIM FOR RELIEF

Ali Abdulla Ali has suffered emotional distress as a result of the death of his son in the custody of the U.S. government at Guantánamo. He has also suffered emotional distress as a result of the callous behavior of the government following his son's death. Due to the emotional distress suffered, he seeks damages in the amount of \$5,000,000.00. He has also suffered loss to his property, namely his business, as a result of the death of his son, who was an essential employee. He seeks compensation for damage to property in the amount of \$5,000.00.