

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIATALAL AL-ZAHRANI, *et al.*,

Plaintiffs,

v.

DONALD RUMSFELD, *et al.*

and

UNITED STATES,

Defendants.

Case No. 09-cv-00028 (ESH)

**MOTION FOR LEAVE TO AMEND IN LIGHT OF
NEWLY-DISCOVERED EVIDENCE**

Plaintiffs Talal Al-Zahrani and Ali Abdullah Ahmed Al-Salami, in their individual capacities and as representatives of their deceased sons Yasser Al-Zahrani and Salah Al-Salami, by and through their counsel, respectfully submit this request for leave to amend their Amended Complaint pursuant to Fed. R. Civ. Proc. 15(a)(2). In support of their request, Plaintiffs state the following:

1. On January 18, 2010, Harper's Magazine published an article with the accounts of four former soldiers who were stationed at the U.S. Naval Base at Guantanamo Bay at the time of the deaths of Yasser Al-Zahrani, Salah Al-Salami and a third prisoner on or about June 9, 2010. *See* Scott Horton, *The Guantánamo "Suicides": A Camp Delta sergeant blows the whistle*, Harper's, Jan. 18, 2010 (Ex. A). Their accounts of the events that transpired at the time are dramatically at odds with the conclusions of the military's Naval Criminal Investigative Service ("NCIS"), which until the publication of this article was

virtually the only available information about the deaths, and upon which Plaintiffs relied in preparing their Complaint and Amended Complaint.

2. According to the eye-witness accounts of the soldiers, including a decorated Army officer, Defendants to this action initiated a cover-up within hours of the deaths, ordering guards and other potential witnesses not to speak out or contradict the official narrative that the three deaths were suicides by hanging. The soldiers' accounts also strongly indicate that the three men had been transported from their cells to an unofficial, undisclosed "black site" at Guantanamo on the night of their deaths, and died at that facility or from events transpiring there – not by hanging themselves in their cells.

3. The publication of the article was the first time Plaintiffs became aware of this information. Plaintiffs were preparing to seek leave to amend their Amended Complaint as well as a status conference just prior to the Court's dismissal of this action on February 16, 2010.

4. Plaintiffs now seek to correct the false record on the basis of which their action has been proceeding, and plead new allegations and claims they have been prevented from presenting to the Court because of Defendants' obstruction. "The court should freely give leave when justice so requires." Fed. R. Civ. Proc. 15(a)(2). Their motion is for the purpose of seeking adjudication of urgent and substantial issues on the basis of newly-discovered evidence that, Plaintiffs submit, has been hidden by the government for years.

5. Plaintiffs have not previously requested leave to amend their Complaint.

6. Plaintiffs' proposed amendments are included in their proposed Second Amended Complaint attached hereto (Ex. B).

7. Plaintiffs have conferred with Defendants about this request to incorporate into their pleading the newly-discovered evidence of a cover-up of Plaintiffs' likely homicides at Guantanamo. The government objects to this motion.

For the foregoing reasons, Plaintiffs' motion for leave to amend in light of newly-discovered evidence should be granted.

Dated: March 16, 2010

Respectfully submitted,

/s/ Pardiss Kebriaei

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[PROPOSED] ORDER

Upon consideration of Plaintiffs' Motion for Leave to Amend in Light of Newly-Discovered Evidence, it is hereby ORDERED that the motion is GRANTED.

SO ORDERED, this _____ day of _____ 2010.

Hon. Ellen S. Huvelle
United States District Judge