

EXHIBIT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

Plaintiff,

v.

AMERICAN BATTLE MONUMENTS
COMMISSION, et al.,

Defendants.

No. SA-12-CV-01002-FB

DECLARATION OF GREGORY BERG

I, Dr. Gregory Berg, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am currently a Laboratory Manager for the Scientific Analysis Directorate, Defense POW/MIA Accounting Agency (DPAA). I have served in that position for DPAA or its predecessor organization, the Joint POW/MIA Accounting Command (JPAC) since 2008. I am a forensic anthropologist and am responsible for case management/progression, histological analysis, isotope analyses, and all other functional areas when other managers are out.
2. The statements contained in this declaration are based on my personal knowledge and Department of Defense records and information made available to me in my official capacity.
3. I previously gave two (2) Declarations dated April 18, 2019 and June 5, 2019 in the case of *Patterson et. al. v. Defense POW/MIA Accounting Agency, et. al.*, No. 5:17-CV-00467, in the United States District Court, Western District of Texas, San Antonio Division. I have reviewed those declaration and they are still true and correct.
4. Since my declarations in the Patterson case, all four (4) of the remaining servicemembers previously identified from Cabanutuan Common Grave 717 (“CG 717”) were disinterred from graves in the United States.
5. DNA testing of these remains show they were commingled and misidentified, as multiple people were in each grave, and at least one skeletal element from Pvt. Kelder was in those remains.

6. DNA testing of all the known remains from CG 717 has shown they consist of at least eighteen (18) separate mtDNA sequences, of which six (6) are unassigned to a casualty. From these, DPAA has made twelve (12) identifications, including Pvt. Kelder.

7. All known, identified remains of Pvt. Kelder were released by the DPAA Laboratory to a mortuary, to be then sent to Douglas A. Kelder on July 14, 2015 and July 19, 2019.

8. Ex. A to this declaration is a copy of the chain of custody and disposition/notification forms for the remains of Pvt. Kelder.

9. The diagram on Page 29 of my Second Declaration dated June 5, 2019 in the *Patterson* case shows in red the bones that have been identified from Pvt. Kelder and released to Douglas Kelder. Another copy of the diagram is attached as Ex. B to this declaration.

10. The last testing of the remains from CG 717 was performed in 2022, using nuclear and Y-STR testing for remains unrelated to Pvt. Kelder. Most of the rest of the remains do not lend themselves to any further DNA testing.

11. The remains associated with CG 717 that the DPAA Laboratory still has in its possession can be described as follows: (1) remains associated with particular DNA sequences that exclude Pvt. Kelder, but for which the appropriate servicemember has not been identified, (2) remains designated CIL 2014-129 for which only teeth have yielded useable DNA despite repeated sampling and testing (the DNA sequenced materials have been identified), (3) remains from all 14 caskets that could not be matched to identified or sequenced remains using current scientific techniques, or for which DNA testing is not practical or has yielded a sequence.

12. DPAA still needs at least six (6) Family Reference Samples (“FRS”) to match the unknown remains from CG 717 to make the final identifications. The DPAA Laboratory continues its efforts to secure DNA results from all of the sets of remains as technology or newly required FRS permits.

13. A copy of DoD Directive 5110.10 is attached as Ex. C to this declaration. As more fully stated in paragraph 1.2, the mission of DPAA is to lead the national effort to account for

unaccounted for DoD personnel from past, or other designated conflicts, and provide the primary next of kin available information. As more fully stated in paragraph G.2. Definitions, a person is accounted for when remains, *regardless of quantity*, are individually identified or the person is included in a known group remains determination (emphasis added).

14. From DPAA's perspective, Pvt. Kelder has been accounted for, his identified remains have been released, and all available information has been provided to his primary next of kin.

15. It is not DPAA's mandate to identify each and every possible skeletal element that may belong to a human being. There are 206 bones in a human body. Once an identification is made, there is no mandate to continue testing for additional remains. However, additional remains may be encountered in the process of trying to identify others in a commingled assemblage from a specific incident that has not yet been fully identified. It is possible that additional portions of Pvt. Kelder's remains could be identified through these efforts, and/or a group identification of the existing remains of CG 717. In that event, Mr. Kelder will be notified.

16. I have also reviewed the following photograph attached as Ex. 3 to Plaintiff's Motion to Vacate judgement and Resume Discovery:



17. This is a picture of the contents from each of the ten (10) caskets of unknowns that were associated with CG 717 directly after they were disinterred in Manila, Republic of the Philippines ("R.O.P."). Each table has the remains from one (1) casket. It is important to understand these are not skeletons from single humans, but in fact are just representations of skeletons that were constructed by the Army Graves Registration Service ("AGRS") back in the

1940's/1950's. None of these are the skeleton of any one individual, or of Pvt. Kelder. They are a conglomeration of at least between three (3) and nine (9) different people (to the best of our scientific testing). The remains previously thought to be Pvt. Kelder, are in fact the remains of at least seven (7) different servicemembers, including Pvt. Kelder. The identified remains of Pvt. Kelder actually came from four (4) of these tables (and as noted *supra*, another disinterred grave in the United States).

18. The identified remains from CG 717 have been returned to family members, as they have directed. The remains still in possession of the DPAA Laboratory are all tracked by accession numbers associated to each exhumed casket disinterred from both the R.O.P. and the United States.


19. The DPAA Laboratory has no additional remains in its possession for which it can be said they are likely those of Pvt. Kelder, over any other servicemember associated to CG 717.

20. The identified remains of Pvt. Kelder have been returned to Douglas A. Kelder, his primary next of kin.

21. The DPAA Laboratory has not "concealed" any remains from CG 717 as a CIL Portion, nor have any CIL Portion reports been written for CG 717 to date.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

 Digitally signed by
Gregory E Berg
Date: 2024.11.06
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Gregory Berg, PhD, D-ABFA
Laboratory Manager
Scientific Analysis Directorate
Defense POW/MIA Accounting Agency