

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN

Plaintiff,

v.

AMERICAN BATTLE MONUMENTS
COMMISSION, et al.

Defendants.

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Civ. A. No. SA:12-cv-1002-FB-HJB

DEFENDANTS’ UNOPPOSED MOTION FOR LEAVE TO EXTEND PAGE LIMITS

Defendants American Battle Monuments Commission, et al., and the United States Department of Defense, *et al.* (“DoD”), by and through Robert Pitman, United States Attorney for the Western District of Texas, hereby move for leave to file their dispositive motion in excess of the page limits set by Rule CV-7(d)(3). Plaintiff, *pro se*, has indicated that he does not oppose this motion.

Plaintiff’s Complaint, filed *pro se*, is an action filed under the Administrative Procedure Act, 5 U.S.C. §§ 701, et seq., alleging, *inter alia*, that the defendants violated the provisions of the Missing Service Personnel Act, 10 U.S.C. §§ 1501-1513. Plaintiff alleges that the defendants have refused to consider allegedly new evidence that he contends would identify the remains of his relative, Private Arthur H. Kelder, who died while a prisoner of war at the Cabanatuan Prison Camp in the Philippines in 1942. Plaintiff also seeks additional relief, including a declaratory judgment that a particular set of remains are those of Private Kelder and mandamus relief.

Defendants respectfully request leave to file the attached dispositive motion in excess of page limits. Plaintiff’s claims fall under a complex statutory scheme requiring the defendants to

address legislative history, numerous amendments, and regulatory implementation. Plaintiff makes several statutory interpretation claims, as well as substantive and procedural claims under the APA. In addition, the case involves numerous components of DoD as well as the American Battle Monuments Commission, a factual record dating to 1941, and sensitive programmatic issues. Additional pages are required to address fully the matters raised by plaintiff.

Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgment, is attached as Exhibit 1 to this Motion. The Motion to Dismiss also contains Exhibit A, Declaration of Cynthia A. Chambers. A proposed order is also attached.

Respectfully submitted,

ROBERT PITMAN
United States Attorney

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ORDER

This matter comes before the Court on the Defendants’ Motion for Leave to Exceed Page Limits with respect to Defendants’ Motion to Dismiss, or, in the Alternative, for Summary Judgment, attached as Exhibit 1. For the reasons set forth in the Motion, and there being no opposition, the Court hereby GRANTS the Motion and ORDERS that Exhibit 1 shall be filed.

IT IS SO ORDERED, this ____ day of _____, 2013.

HENRY J. BEMPORAD
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ Susan Strawn
SUSAN STRAWN
Assistant United States Attorney