

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN EAKIN

Plaintiff,

AMERICAN BATTLE MONUMENTS
COMMISSION, et al

Defendants

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CASE NUMBER: SA-12-CA-1002-FB-HJB

**PLAINTIFFS’ MOTION FOR DECLARATORY JUDGMENT,
OR, IN THE ALTERNATIVE, TO COMPEL PRODUCTION**

Plaintiff, pro se, John Eakin respectfully requests that this Court declare the unidentified human remains known as Manila #2 X816 are actually those of Private Arthur H. Kelder. Alternatively, plaintiff requests an order of this Court that unidentified remains Manila #2 X816 be produced for inspection and a DNA sample be obtained.

Plaintiff has not conferred with defendants’ Counsel concerning this motion since either action by this Court would be dispositive of this litigation.

Respectfully submitted,

/s/ John Eakin
John Eakin, Plaintiff pro se
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 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:

Susan Strawn, Assistant United States Attorney
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/s/ John Eakin
John Eakin, Plaintiff pro se

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DECLARATORY JUDGMENT

On this day, came on for consideration Plaintiff's Motion for a Declaratory Judgment confirming the identity of the unidentified remains known as Manila #2 X816 to be those of Private Arthur H. Kelder. The Court having reviewed the evidence, finds that the Motion should be, and hereby is, GRANTED.

Signed this the _____ day of _____, 2013.

HENRY J. BEMPORAD
MAGISTRATE JUDGE

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ORDER

On this day, came on for consideration Plaintiff’s Motion for Declaratory Judgment, or, in the alternative, to Compel Production of the unidentified remains known as Manila #2 X816. The Court having reviewed the evidence, finds a substantial probability that unidentified remains X816 are those of Private Arthur H. Kelder and orders that they be produced for examination and testing. Therefore, Plaintiff’s alternate motion is hereby GRANTED.

Plaintiff will within fourteen (14) days submit for the Court’s approval a proposed protocol for disinterment and testing.

Signed this the _____ day of _____, 2013.

HENRY J. BEMPORAD
MAGISTRATE JUDGE