

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

JOHN EAKIN)
9865 Tower View Road)
Helotes, Texas 78023)

Plaintiff,)

SA-12-CA-1002 FB (HJB)

v.)

AMERICAN BATTLE MONUMENTS)
COMMISSION; MAX CLELAND,)
in his official capacity as Secretary of)
the American Battle Monuments Commission;)
U.S. DEPARTMENT OF DEFENSE;)
CHUCK HAGEL, in his official)
capacity as Secretary of Defense;)
W. MONTAGUE WINFIELD, in his official)
capacity as Deputy Assistant Secretary of)
Defense for POW/Missing Personnel Affairs;)
and JOHNIE E. WEBB, in his official capacity)
as Deputy to the Commander for External)
Relations and Legislative Affairs,)
Joint POW/MIA Accounting Command,)

Defendants)

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT,
MANDAMUS
AND INJUNCTIVE RELIEF**

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. § 2201, and Mandamus Act, 28 U.S.C. § 1361 in response to the unlawful withholding of agency action and due process in fully and correctly accounting for a deceased WWII era Army servicemember and others whose remains were not identified by the U.S. Government and buried as unknowns. Subsequent to World War II the U.S. Army Graves

Registration Service identified some, but not all, of the remains recovered from a POW camp cemetery at Cabanatuan, Nueva Ecija Province, Philippine Islands. The remains of Private Arthur H. Kelder were known to be one of fourteen interred in Grave number 717 of this cemetery. The U.S. Army Graves Registration Service failed to identify the remains of Private Kelder and his family was told that his remains were “non-recoverable.” Ultimately, they were interred in the Fort McKinley Military Cemetery near Manila as an unknown. All records pertaining to these remains were classified and restricted from public access until recently. Through related litigation in this Court and other research, Plaintiff obtained the records necessary to conclusively identify the remains of his family member. Defendants have arbitrarily and capriciously refused to consider this new evidence or conduct DNA sequencing to identify the remains. Defendants have concealed documents, filed superseded and misleading documents with this Court, and systematically denied Plaintiff’s right to due process. Accordingly, Plaintiff seeks injunctive relief, mandamus, and other appropriate relief acknowledging that the remains identified as Unknown X-816 Manila #2 (“X-816”) are those of Private Arthur H. “Bud” Kelder and that his survivors have the right to possess such remains for burial as they may direct.

I.
PARTIES

2. Douglas Arthur Kelder, Nephew of Arthur H. Kelder is the person designated by the Department of Defense to direct disposition of the remains of Arthur H. Kelder. Due to medical disability, Douglas Kelder has designated his cousin, John Eakin, as his Attorney in Fact for all purposes regarding the disposition of the remains of Arthur H. Kelder. Ex. 26 (Power of Attorney to John Eakin) as provided for by 10 U.S.C. §

1501(d). Plaintiff, as the designated Primary Next of Kin (PNOK) is “suffering legal wrong because of agency action” and is “adversely affected or aggrieved by agency action within the meaning” of 10 U.S.C. § 1509, Army Regulation 638-2 and agency directives which require the Department of Defense to aggressively seek out the remains of missing service personnel and return them to their families for burial. Plaintiff is thus a proper plaintiff under the respective statutes and the United States Constitution.

3. Defendants are the American Battle Monuments Commission; Max Cleland, in his official capacity as Secretary of the American Battle Monuments Commission; U.S. Department of Defense; Chuck Hagel, in his official capacity as Secretary of Defense; W. Montague Winfield, in his official capacity as Deputy Assistant Secretary of Defense for POW/Missing Personnel Affairs; Johnnie E. Webb, in his official Capacity as Deputy to the Commander for External Relations and Legislative Affairs, Joint POW/MIA Accounting Command. Each Defendant is either an agency of the United States or an officer or employee of an agency of the United States

II. **JURISDICTION AND VENUE**

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331 and 2201. This Court has authority to order declaratory relief under 28 U.S.C. §§ 2201 *et seq* because there is a live controversy between Plaintiff and Defendants. This Court has authority to issue a Writ of Mandamus under 18 U.S.C. § 1361 because Plaintiff seeks a writ requiring Defendants to comply with their duties as specified at 10 U.S.C. §§ 1501-1513, Army Regulation 638-2 and agency policies.

5. Plaintiff resides in Helotes, Bexar County, Texas, therefore venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(3) and 5 U.S.C. § 703.

III. RELATED LITIGATION

6. On September 28, 2010, Plaintiff filed a related complaint in this court, Eakin v. U.S. Department of Defense, SA10CA0748-FB, seeking records under the Freedom of Information Act. Records obtained during and subsequent to that litigation form the basis for this complaint.

IV. FACTS

A. Unidentified remains X-816 are those of Arthur H. Kelder

7. More than 950 deceased American servicemembers originally interred in the Cabanatuan POW Camp Cemetery are currently classified as non-recoverable and are buried in the Manila American Cemetery as unknowns. Ex. 2 (Eakin Affidavit)

8. In 1946, U.S. Army Graves Registration Personnel disinterred the remains of fourteen (14) deceased U.S. military personnel from what they identified as Grave 717 of the Cabanatuan POW Cemetery, Nueva Ecija province, Philippine Islands. Ex. 15A thru 15J.

9. Only one set of remains could be identified at the time (BAIN). The other remains were designated with "X" numbers starting with X-812 through X-824. Eventually, these were further designated as "X-812 through X-824 Manila #2" after the Army moved the remains from Cabanatuan to various cemeteries in the Manila area. Ex. 15A thru 15J

10. The original reports of interment stated that X-812 through X-824 Manila #2 could be any of the following personnel: **KELDER**, YORK, HANSCOM, RUARK, COLLINS, SIMMONS, GUTIERREZ, LOBDELL, NICHOLS, WAID, KOVACH, HIRSCHI, or OVERBY. Ex. 15A thru 15J, Ex. 16A thru 16N. The US Army continued to process the remains and made the following findings that eliminated three more unknowns:

11. X-813 Manila #2 was later identified as HANSCOM on the basis of the Cemetery burial record and ante-mortem military dental records. These remains were buried in the continental United States as directed by the next-of-kin. Ex. 16D

12. X-817 Manila #2 was later identified as GUTIERREZ on the basis of the Cemetery burial record and ante-mortem military dental records. These remains were buried in the continental United States as directed by the next-of-kin. Ex. 16C

13. X-819 Manila #2 was later identified as NICHOLS on the basis of the Cemetery burial record and ante-mortem military dental records. These remains were buried in the continental United States as directed by the next-of-kin. Ex. 16I

14. The four identified remains of BAIN, HANSCOM, GUTIERREZ and NICHOLS were based on two factors: the "Cabanatuan burial roster" and at least one individually identifying feature such as an identification tag (dog tag) or a tooth chart comparison using ante-mortem military dental records. Ex. 16A, 16D, 16C, 16I, Ex. 4.

15. The Cabanatuan burial roster has a grim history. The Cabanatuan POW camp experienced enormous amounts of death of US Soldiers on a daily basis. The Japanese Imperial Army had the POWs dig mass graves each day and dumped the bodies haphazardly into these unmarked graves. The US Soldiers who dug the graves and

placed the bodies of their comrades into them kept a roster of who died on a particular day. The Army used post-war recollections of the surviving POWs to determine the locations of the unmarked mass graves. Using the Cabanatuan burial roster and the recollections of the locations, the Army began to have an idea of who was buried where. The complete Cabanatuan Burial Report was a significant factor in the identification of more than 1,500 remains recovered from the Cabanatuan Cemetery. Ex. 4 (ID memo)

16. The accuracy of the Cabanatuan burial report and its correlation with Grave 717 is shown by the identifications of BAIN, HANSCOM, GUTIERREZ and NICHOLS. Ex. 4, 16A, 16D, 16C, C16I.

17. The Cabanatuan Burial Report indicates that Arthur H. Kelder was one of fourteen (14) men interred in Cabanatuan Grave 717. Ex. 3 (Burial Roster)

18. The Cabanatuan Burial Report has been authenticated and admitted in multiple judicial proceedings. Ex. 4 (ID memo)

19. The US Army continued to process remains from Cabanatuan. Unidentified remains X-815 Manila #2 (later designated X-4857 Manila Mausoleum after these remains were moved from Manila #2) was recommended for identification as OVERBY. This recommendation was disapproved and these remains were buried in the US Military Cemetery, Ft McKinley as an unknown. Ex. 16J, Ex. 15C

20. Unknowns X-812, X-814, X-816, X-818, X-820 thru X-824 (all Manila #2) were recommended for group identification as **KELDER**, COLLINS, RUARK, SIMMONS, KOVACH, LOBDELL, HIRSCHI, WAID, YORK. This recommendation was disapproved and these remains were individually buried in the US Military Cemetery, Ft McKinley as unknowns. Ex. 15A thru 15J, Ex. 16A thru 16N

21. Decades later, the ability to identify remains improved with DNA technology. The US Army began a program of comparing the DNA of the unknown remains with the DNA of family members of the unknowns.

22. The US Army Human Resources Command, Past Conflicts Repatriation Branch (Army Casualty Office) has obtained Family Reference Samples (DNA) from the families of each of the Service members known to have been recovered from Cabanatuan Grave 717 to include a family reference sample for Arthur H. Kelder. Ex. 2 (Eakin Affidavit), Ex. 14 (DNA collection Press Release).

23. Army Regulation 638-2, ¶ 8-9, requires that multiple remains from a single incident will be processed for identification simultaneously.

24. In accordance with this regulation, the Chief of the Army Casualty Office has recommended that all ten Cabanatuan Grave 717 remaining unknowns be disinterred for identification if any of them are disinterred. Ex. 2 (Eakin Affidavit)

25. Comingling of remains is a concern that DNA samples may be contaminated, but there is no evidence or indication of comingling contained in X-files X-812 thru X-824. Ex. 15A thru 15J.

26. Yet, even without DNA tests, tooth charts comparison identifies X-816 as Arthur H. Kelder. The Army has used tooth chart comparisons for identifying other remains from Grave 717. Tooth charts (or identification/dog tags) were the second factor (in addition to the Cabanatuan burial roster) used to identify the remains of BAIN, HANSCOM, GUTIERREZ and NICHOLS Ex. 16A, 16D, 16C, 16I, Ex. 4.

27. Out of the unknowns from Grave 717, there are only two tooth charts that match the tooth pattern of Arthur H. Kelder. These are X-816 and X-819 Manila #2. Ex. 15A thru 15J, Ex. 16A thru 16N

28. Arthur H. Kelder was known to have gold dental inlays. Ex. 6A/B (Kelder Statements). The tooth charts of X-816 indicate the presence of gold dental inlays when disinterred from Grave 717. Ex. 15E. (Note: the tooth charts contained in the Individual Deceased Personnel File for X-816 (Ex. 15D) indicate that the gold dental inlays originally present for X-816 were removed or disappeared following disinterment. It is not known if the gold was stolen or misplaced.)

29. The other remains' tooth chart that matched the tooth pattern for Arthur H. Kelder was X-819; however, the remains for X-819 do not indicate it had gold inlays thus eliminating it as the remains of Arthur H. Kelder.

30. In addition, the tooth charts contained in X-files X-812, X-814, X-815, X-818, X-820 thru X-824 Manila #2 do not indicate the presence of any gold dental inlays thereby eliminating these remains as Arthur H. Kelder's as well. Ex. 15A, 15B, 15C, 15E, 15F thru 15J

31. Dr. David R. Senn, DDS, DABFO, an employee of the University of Texas Health Science Center at San Antonio, a recognized expert in the field of identification of skeletal remains, has opined that, there is "a very strong possibility that the remains characterized as X816 (Manila #2 Cemetery) are the remains of Pvt. Arthur H. Kelder." And, "following exhumation, comprehensive examination and testing of the remains from that Cabanatuan grave could very likely result in the positive identification of some of those remains including those of Pvt. Kelder." Ex. 1 (Senn Report)

32. Dr. Richard R. Souviron, DDS, an employee of the Miami-Dade County Medical Examiner and recognized expert in the field of identification of skeletal remains, has opined that based on dental records unidentified remains X-816 are likely those of Arthur H. Kelder. Ex. 23 (Souviron Report)

33. Rick Stone, former JPAC Deputy Chief of WWII Investigations, a twenty-five year veteran law enforcement officer with two appointments as the Chief of Police in major cities, investigated the case of X-816 while an employee of JPAC and determined that Arthur H. Kelder is a most likely match to unidentified remains X-816 and could be positively identified through matching DNA from the remains to that of a family reference sample. Ex. 22 (Stone Decl)

34. Unidentified remains X-816 Manila #2 are those of Arthur H. Kelder based on historical records, dental records, and expert reports.

B. Next-of-kin have a common law right to possess the remains of deceased family members for the purpose of burial.

35. Arthur H. Kelder was a resident of the State of Illinois, entered military service from the State of Illinois, and intended to return to the State of Illinois upon completion of his military service. Ex. 25 (Kelder Letter expressing intention to return to Illinois)

36. The Common Law of the State of Illinois recognizes a right arising out of the duty of the nearest relatives of the deceased to bury their dead, which authorizes and requires them to take possession and control of the dead body for the purpose of giving it a decent burial. *Courtney v. St. Joseph Hospital*, 149 Ill. App.3d 397 (1986) 500 N.E. 2d

37. Agencies of Defendant Department of Defense have recognized Douglas Arthur Kelder as the Primary Next of Kin of Arthur H. Kelder, and the person authorized to direct the disposition of the remains of Arthur H. Kelder.

38. Douglas Arthur Kelder has appointed Plaintiff as his Attorney-in-Fact for all purposes related to the disposition of the remains of Arthur H. Kelder, as authorized by 10 U.S. Code § 1501(d) and Army Regulation 638-2, paragraph 4-6. Ex. 26 (Power of Attorney)

39. Plaintiff has the right to act for the Person Designated to Direct Disposition (PADD) of the remains of Arthur H. Kelder, Douglas Arthur Kelder

40. The rights of family members to possess the remains of their deceased family members for burial is acknowledged by the following federal statutes and Department of Defense regulations, *Inter alia*.

- 10 USC § 1481
- 10 USC §§ 1501-1513
- Department of Defense Directive Number 1300.22, May 25, 2011 Subject: Mortuary Affairs Policy
- Department of Defense Directive Number 2310.07E November 10, 2003 Subject: Personnel Accounting -- Losses Due to Hostile Acts
- Department of Defense Instruction Number 1300.18 January 8, 2008 Subject: Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures
- (CJCS) Joint Publication 4-06, Mortuary Affairs 12 October 2011, ¶2
- U.S. Army Regulation 638-2
- U.S. Department of the Army Pamphlet 638-2

C. Defendants are obligated to make all reasonable efforts to identify remains in their custody.

41. Defendants have a duty to timely account for or identify missing service personnel under the Missing Service Personnel Act, 10 U.S.C. §§ 1501-1513; Army Regulation 638-2; and/or, Under Secretary of Defense Walter B. Slocombe

memorandum, dated May 13, 1999, subject: Disinterment Policy for the Purpose of Identification. (Supp AR page 3).

42. Defendants' obligation to identify the remains of missing service members is supported by the following Department of Defense regulations, *Inter alia*:

- Department of Defense Directive Number 1300.22, May 25, 2011 Subject: Mortuary Affairs Policy
- Department of Defense Directive Number 2310.07E November 10, 2003 Subject: Personnel Accounting -- Losses Due to Hostile Acts, ¶ 4.1
- (CJCS) Joint Publication 4-06 Mortuary Affairs 12 October 2011, ¶ 2
- U.S. Army Regulation 638-2, ¶¶ 2-17, 8-1, 8-2, 8-9, 8-10
- U.S. Army Field Manual FM 4-20-65 (FM 10-286), Identification of Deceased Personnel, ¶¶ 1-1, 1-8

43. Defendants duty to account for missing service personnel is non-discretionary.

D. U.S. Army Graves Registration Service Personnel failed to properly identify Kelder's remains

44. There is no evidence in the records of **KELDER**, RUARK, COLLINS, SIMMONS, LOBDELL, YORK, KOVACH, HIRSCHI, or OVERBY that the U.S. Army at any time attempted to obtain civilian ante-mortem dental records for these persons. Ex. 16B, 16E thru 16H, 16J thru N

45. The remains of **KELDER**, RUARK, COLLINS, SIMMONS, LOBDELL, LOBDELL, WAID, KOVACH, HIRSCHI, and OVERBY were determined to be non-recoverable because remains believed to be theirs and recovered from Cabanatuan Grave 717 could not be individually identified. Ex. 16B, 16E thru 16H, 16J thru N

46. The Individual Deceased Personnel Files and X-files pertaining to Cabanatuan Grave 717 were classified and restricted from public access until approximately 2009. Ex. 15A thru 15J, 16A thru 16N

47. The family of Arthur H. Kelder was not informed that the U.S. Army had recovered his remains. Ex. 16F

48. The family of Arthur H. Kelder was told that his remains were non-recoverable. Ex. 16F

49. The US Army never requested the family of Arthur H. Kelder to provide ante-mortem dental records.

50. Defendants are aware that the identification of a number of WWII remains were incorrect.

51. Defendants are aware that a number of WWII remains were returned to the wrong families for burial.

52. Defendants currently possess circumstantial, anatomical and scientific evidence which provide a high probability of positive identification of unidentified remains X-816 as Arthur H. Kelder.

53. There are more than nine-hundred-fifty (950) unidentified remains recovered from Cabanatuan POW camp cemetery currently interred as unknowns. Ex. 2 (Eakin Affidavit)

54. Many of the unidentified remains recovered from the Cabanatuan POW camp cemetery could likely be identified through use of currently available forensic technology such as DNA sequencing.

55. Defendants now possess information regarding Arthur H. Kelder and unidentified remains X-816 which equals or exceeds the evidence which Defendants used to identify BAIN, HANSCOM, GUTIERREZ and NICHOLS.

58. Defendants have routinely used DNA matching to identify human remains for more than fifteen years. Ex. 14

59. DNA technology was responsible for positive identification and removal from Arlington National Cemetery of the Viet Nam Unknown in 1998. Ex. 14

60. Defendants routinely employ DNA sequencing in the identification of WWII era remains.

E. Defendants have refused to act to identify the remains of Arthur H. Kelder

61. Defendants have made no effort to account for Arthur H. Kelder since January 25, 1951. Ex. 16F

62. On February 26, 2012, DPMO conducted a family briefing in Addison, Texas. In advance of this family briefing, Plaintiff contacted the Past Conflicts Repatriation Branch of Army Human Resources Command (Army Casualty Office) and requested that a meeting be arranged during this family briefing with personnel in a position to order or deny further investigation of the case of Arthur H. Kelder. In response to this request, Plaintiff met with Defendant Johnie E. Webb, Deputy to the Commander for External Relations and Legislative Affairs, Joint POW/MIA Accounting Command; Charles Henley, Director of External Affairs, DPMO; and, Greg Gardner, Chief, Past Conflicts Repatriations Branch, Casualty and Mortuary Affairs Operations Center, U.S. Army Human Resources Command (Army Casualty Office). Each of these persons affirmed that they were the “decision makers” for their respective agencies and that they had authority to act for their agency with regard to the identification of Arthur H. Kelder. Ex. 2 (Eakin Affidavit)

63. In the course of the meeting attended by Plaintiff on February 26, 2012, Defendant Johnie E. Webb asserted that it was within his authority to order further consideration of the new evidence that unknown X-816 was the remains of Arthur H. Kelder. Ex. 2 (Eakin Affidavit)

64. In the course of the meeting attended by Plaintiff on February 26, 2012, Defendant Johnie E. Webb asserted that there was no evidence to support further investigation and that his agency would not further investigate the identity of unidentified remains X-816 Manila #2. Ex. 2 (Eakin Affidavit)

65. On February 22, 2012, Defendant Johnie E. Webb directed Rick Stone to prepare investigative reports on JPAC Incident 425. These investigative reports were delivered to Defendant Webb on or about April 25, 2012.

66. There are approximately 8,637 WWII unknowns.

67. There are approximately 841 Korean War unknowns.

68. Defendants average approximately 69 annual identifications of deceased American Servicemembers from all wars.

69. Defendants have a congressionally mandated goal to identify the remains of at least 200 American Servicemembers by 2015.

70. Defendants do not expect to accomplish the congressionally mandated goal of 200 identifications per year by 2015.

71. Defendants have concluded that mass disinterment for identification of all WWII unknowns is feasible.

72. Defendants have designated a "Disinterment Working Group" to plan for disinterments from cemeteries operated by the U.S. Government.

73. Defendants have disinterred more than fifty WWII and Korean War unknowns from cemeteries operated by the U.S. Government.

F. The individual Defendants have acted to deprive Plaintiff of his right to due process.

74. On or about February 21, 2012 and prior to his meeting with Plaintiff, Defendant Webb ordered an investigation concerning the identification of the remains of Arthur H. Kelder and subsequently received JPAC investigative reports indicating that disinterment for the purpose of identification was warranted. Ex. 22 (Stone Decl)

75. Defendant Webb, on or about February 26, 2012, informed Plaintiff that further investigation was not warranted and that no further appellate process or hearing was available to him. Ex 2 (Eakin Decl)

76. On February 1, 2013, Defendants filed an administrative record containing an investigative memo dated January 14, 2011, subject: Philippines JPAC Incident 425 – Cabanatuan Grave 717. (AR page 199, CM/ECF document 23-1) This J2 Memo had been superseded by later investigative reports prepared by Rick Stone which were omitted from the Administrative Record filed with the Court and not otherwise acknowledged to this Court or Plaintiff. (Ex. 21, CM/ECF document 23-1)

77. On January 28, 2013, Thomas Holland, Central Identification Laboratory Scientific Director, signed a memorandum for the JPAC Commander concerning the identification of unidentified remains X816 as those of Arthur H. Kelder. This memorandum contains conclusions and recommendations not supported by the most current investigative reports. (Supp AR page 2)

78. On January 30, 2013, Kelly McKeague, JPAC Commander, signed a memorandum for the Deputy Assistant Secretary of Defense for POW/Missing Personnel

Office, subject: Philippines Joint POW/MIA Accounting Command Incident 425. This memorandum forwarded the memorandum of Thomas Holland and contained conclusions and recommendations not supported by the most current investigative reports. (Supp AR page 1)

79. The memorandum issued by Walter B. Slocombe, subject: Disinterment Policy for the Purpose of Identification, dated May 13, 1999, directs that CILHI (a JPAC predecessor) select appropriate cases for disinterment for identification.

80. The memorandum issued by Walter B. Slocombe, subject: Disinterment Policy for the Purpose of Identification, dated May 13, 1999, directs that disagreements with a CILHI (a JPAC predecessor) decision to prioritize or disinter remains for identification may be appealed to the Deputy Assistant Secretary of Defense for POW/MIA affairs.

81. The Deputy Assistant Secretary of Defense for POW/MIA affairs has not acted on nor rejected the recommendation of the January 30, 2013 memorandum, subject: Philippines Joint POW/MIA Accounting Command Incident 425.

82. The Central Identification Laboratory (CIL) component of JPAC has rejected or refused to consider multiple case files recommending further action to account for a MIA servicemember based on non-substantive defects such as formatting or punctuation and without consideration of the factual contents of the file.

83. The Central Identification Laboratory refused consideration or further action on JPAC incident 425 without consideration of the factual issues involved.

84. Defendants' policies and practices concerning accounting for the remains of "unknowns" do not allow for appeal of Department of Defense decisions nor alternative means of recovery of remains by family members.

85. No statute or regulation expressly allows family members means to identify and recover the remains of a family member interred as an unknown in a cemetery operated by Defendant ABMC.

86. No statute or regulation expressly allows family members to appeal or otherwise dispute a government agency's refusal to identify or return remains interred as an unknown in a cemetery operated by Defendant ABMC.

87. Defendants' policies and actions deprive family members of due process in claiming the bodies of deceased family members buried in overseas cemeteries operated by Defendant ABMC.

88. The following regulations pertain to exhumations from cemeteries operated by the U.S. Government:

- Arlington National Cemetery – 32 CFR § 553.19 & Army Regulation 290-5, ¶ 2-10
- Army Post Cemeteries – Army Regulation 210-190, ¶ 2-14
- Department of the Interior, National Cemetery - 36 CFR § 12.6
- Department of Veterans Affairs, National Cemeteries – 38 CFR § 38.621

89. No statute or regulation published in the Code of Federal Regulations prescribes a process for family members to request an exhumation from a cemetery operated by Defendant ABMC.

90. No statute or regulation published in the Code of Federal Regulations prescribes a process for family members to petition for identification of unidentified remains.

91. No statute or regulation published in the Code of Federal Regulations prescribes a process for family members to petition for consideration of new evidence concerning the identification of the remains of deceased American Servicemembers.

92. Defendants have failed to timely comply with Plaintiff's Freedom of Information requests for X files and Individual Deceased Personnel Files (IDPFs).

93. Defendants do not routinely employ nuclear or "y" DNA in identification of remains.

94. Defendants do not routinely collect nuclear or "y" DNA reference samples.

G. The agency Defendants have issued policies pertaining to unknowns which have not been properly adopted, are applied inconsistently, illegally discriminate against certain classes of missing personnel and deny due process guaranteed by the United States Constitution.

95. Defendants have issued a policy memorandum dated December 16, 2010 which provides that identifying the remains of unknowns already recovered and buried with honor in U.S. national cemeteries at home and abroad must take a lower priority than the recovery of other unknowns. Ex. 7 (Prioritization Memo)

96. Defendants' December 16, 2010 policy on prioritization of remains recovery places the highest priority on recovery of remains that have not received an honorable burial. Ex. 7 (Prioritization Memo)

97. There is no evidence to indicate that unidentified remains X-816 received an honorable burial as defined by DoD regulations. Ex. 15D

98. Defendants' policy on prioritization of remains recovery virtually precludes accounting for unknowns interred in U.S. Military Cemeteries.

99. Defendants' policy on prioritization of remains recovery discriminates against the families of deceased military personnel whose remains have been recovered, but not identified.

100. Unidentified remains X-816 were moved from Ft. McKinley Military Cemetery grave N-11-101 to grave A-12-195 on February 11, 1952 to fill a grave formerly occupied by unidentified remains X-2063 Manila #2 who was disinterred and shipped to the zone of the interior as part of a group burial. This disinterment and reburial was for the convenience of the government and was authorized by administrative decision. Ex. 15D

101. Graves in the Manila American Cemetery operated by Defendant ABMC were opened and the remains therein were relocated to other nearby gravesites simply for the purpose of presenting a uniform appearance of the cemetery.

102. Only unidentified remains were selected to fill vacated graves in the Ft. McKinley Military Cemetery.

103. Unidentified remains X-816 have been subjected to repeated disinterment and movement for the convenience of the government. Ex. 15D

104. Unidentified remains designated X-816 did not receive the ceremony or honors considered an honorable burial under regulations issued by Defendants. Ex. 15D

105. Under Secretary of Defense Walter B. Slocombe issued a memorandum, dated May 13, 1999, subject: Disinterment Policy for the Purpose of Identification. (Supp AR page 3) This policy was reported in the 1999 Annual Report issued by the Defense POW / Missing Personnel Office. Ex. 8 (DPMO 1999 Annual Report). This policy remains in effect and charged the Department of Defense with making the fullest

possible accounting of personnel missing in action and stated that, “Advances in forensic sciences, specifically the use of mitochondrial DNA (mtDNA), now make it possible to identify certain remains previously interred yet unidentified.”

106. The memorandum issued by Under Secretary of Defense Walter B. Slocombe memorandum, dated May 13, 1999, subject: Disinterment Policy for the Purpose of Identification, (Supp AR page 3) designates The Central Identification Laboratory-Hawaii (CILHI) (now part of JPAC) with the responsibility of evaluating cases which would lead to a high probability of positive identification.

H. Plaintiff has exhausted all administrative remedies

107. On June 21, 2011, Plaintiff, with power of attorney of the primary next-of-kin of Arthur H. Kelder, Douglas Arthur Kelder, petitioned the Department of the Army, Human Resources Command under Army Regulation 638-2 to consider new, not previously considered, evidence which identifies unidentified remains X-816 as those of Arthur H. Kelder. Plaintiff submitted follow-up letters on September 12, 2011 and November 3, 2011. Ex. 9 (Army Petition)

108. On November 4, 2011, Army Human Resources Command responded that they no longer had jurisdiction under Army Regulation 638-2 to consider the case of Arthur H. Kelder and that under new legislation only the Department of Defense, Defense Prisoner of War/Missing Persons Office (DPMO) had such authority. Army Human Resources Command further stated that they had provided Plaintiff’s petition and newly submitted evidence of the identity of unknown X-816 to both the DPMO and the Joint Prisoner of War/Missing in Action Accounting Command. Ex. 10 (Army Response)

109. U.S. Army Regulation 638-2, *Care and Disposition of Remains and Disposition of Personal Effects*, is dated 22 December 2000 and effective 22 January 2001. This edition superseded Army Regulation 638-2, dated 9 February 1996. This regulation remains current without published change. Ex. 11 (AR 638-2)

110. On November 23, 2011, Plaintiff submitted additional evidence, not previously considered, of the identity of unknown X-816 to Defendant DPMO. Ex. 12 (DPMO Petition)

111. Plaintiff has received no response to his November 23, 2011 correspondence submitted to DPMO. Ex. 2 (Eakin Affidavit)

112. Plaintiff has exhausted all administrative remedies concerning identification of unknown X-816 as the remains of Arthur H. Kelder.

113. No further administrative process is available to Plaintiff to recover the remains of his family member.

I. Defendants are responsible for operation of the Manila American Cemetery and for accounting for missing military personnel

114. Unidentified remains X-816 are currently interred in the Manila American Cemetery, Grave A-12-195, a World War II United States Military Cemetery constructed by the U.S. Army and located at the former Ft. McKinley near Manila, Philippine Islands. Ex. 15D

115. Operation and control of the Manila American Cemetery and Memorial, including the cemetery records, was transferred from the U.S. Army to Defendant American Battle Monuments Commission by Public Law 368, 80th Congress and Executive Order 10057 of May 14, 1949. Defendant ABMC is responsible for all functions of administration pertaining to this cemetery. Ex. 13 (Executive Order)

116. Defendant ABMC is tasked with operation of the Manila American Cemetery which includes an obligation to properly memorialize all graves. 36 U.S.C. §§ 2105, 2106 & Ex. 13 (Executive Order)

117. The U.S. Army, a subordinate command of Defendant U.S. Department of Defense, has the right to re-enter the Manila American Cemetery and Memorial for the purpose of making exhumations or reinterments as necessary. Ex. 13 (Executive Order)

V.
CAUSES OF ACTION

A. Count One: Declaratory Judgment – Families have absolute right to possession of remains

118. Paragraphs 1-117 are incorporated by reference herein.

119. Under the Declaratory Judgment Act, the court “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

120. An actual case and controversy exists between the parties that may be adjudicated by this Court consistent with U.S. Constitution, Art. III, § 2, cl. 1.

121. Under the Declaratory Judgment Act, broad injunctive relief directed against a defendant government agency or official to remedy an ongoing violation of federal law even in the absence of a certified class is not overbroad. An injunction issued to correct a defendant’s policy or practice which is unlawful, not only as to the named plaintiff but also as to others is reasonable. *See, Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996); *Bresgal v. Brock*, 843 F.2d 1163, 1770 (9th Cir. 1988); *Soto-Lopez v. N.Y. City Civil Serv. Comm’n*, 840 F.2d 162, 168 (2d Cir.

1988); *Doe v. Gallinot*, 657 F.2d 1017, 1025 (9th Cir. 1981); *Galvin v. Levine*, 490 F.2d 1255, 1261 (2d Cir.), *cert. denied*, 417 U.S. 936 (1974).

122. The remains of more than 9,400 deceased American servicemembers remain unidentified after more than half a century. Many of these personnel can be identified simply through examination of existing records. Other remains can be identified by comparison with Defendants' existing DNA database.

123. Defendants have a clear nondiscretionary duty to recover, identify and return to their families the remains of deceased WWII military personnel. Yet, Defendants have made little progress in identifying those buried as "unknowns" despite the passage of up to sixty (60) years; advanced forensic technology; and, even additional evidence provided by family members and others.

124. Surviving family members of deceased American service personnel have an absolute right to possess the remains of their family members for burial according to common law of the respective States and the Fourth and Fifth Amendments to the U.S. Constitution.

125. The rights of family members to possess the remains of their family members for burial is acknowledged by the following federal statutes and Department of Defense regulations, *Inter alia*.

- 10 USC § 1481
- 10 USC §§ 1501-1513
- Department of Defense Directive Number 1300.22, May 25, 2011 Subject: Mortuary Affairs Policy

- Department of Defense Directive Number 2310.07E November 10, 2003 Subject: Personnel Accounting -- Losses Due to Hostile Acts
- Department of Defense Instruction Number 1300.18 January 8, 2008 Subject: Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures
- (CJCS) Joint Publication 4-06, Mortuary Affairs 12 October 2011, ¶2
- U.S. Army Regulation 638-2
- U.S. Army Pamphlet 638-2

126. Plaintiff is entitled to a declaratory judgment confirming the rights of family members of missing service personnel to possess such remains for burial as they may direct and that Defendants have exhibited a lack of diligence in identification of unidentified remains recovered from the battlefield.

B. Count Two: Mandamus Act – Identification and Return of Remains

127. Paragraphs 1-117 are incorporated by reference herein.

128. The Mandamus Act, 28 USC § 1361, provides for United States district court jurisdiction to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff when no other adequate legal remedy is available. The power of a district court to compel official action by mandatory order is limited to the enforcement of nondiscretionary, plainly defined, and purely ministerial duties.

129. Defendants have a self-acknowledged common law duty to return the remains of deceased service members to their families for burial. There is no alternative

statutory or administrative process to allow family members to retrieve the remains or challenge the actions, or inactions, of Defendants.

130. Defendants non-discretionary obligation to identify the remains of missing service members is acknowledged by the following Department of Defense regulations,

Inter alia:

- Department of Defense Directive Number 1300.22, May 25, 2011 Subject: Mortuary Affairs Policy
- Department of Defense Directive Number 2310.07E November 10, 2003 Subject: Personnel Accounting -- Losses Due to Hostile Acts, ¶ 4.1
- (CJCS) Joint Publication 4-06 Mortuary Affairs 12 October 2011, ¶¶ 1-2d, 2
- U.S. Army Regulation 638-2, ¶¶ 2-17, 8-1, 8-2, 8-4, 8-9, 8-10
- U.S. Army Field Manual FM 4-20-65 (FM 10-286), Identification of Deceased Personnel, ¶¶ 1-1, 1-8

131. The remains of more than 9,400 deceased American servicemembers remain unidentified after more than half a century. Many of these personnel can be identified simply through examination of existing records. Other remains can be identified by comparison with Defendants' existing DNA database.

132. Defendants have refused to fully employ modern forensic techniques to identify remains reasonably believed to be those of missing American Servicemembers despite regulations to the contrary:

a. DoD Directive 1300.22E, Paragraph 4(a), "It is DoD policy that...[t]he remains of deceased DoD-affiliated or covered person, consistent with applicable law and regulation, who die in military operations...shall be recovered, identified, and returned to families as expeditiously as possible..."

b. DoD Directive 2310.07E, paragraph 4.1, "It is DoD policy that...[a]ccounting for personnel lost as a result of hostile acts is of the highest national priority."

c. Joint Publication 4-06 supports and implements DoD Directive 1300.22E. Chapter 1, paragraph 2d, requires, "[e]very reasonable effort will be made to identify human remains and fully account for unrecovered human remains of US military personnel...who die in military operations..." Chapter 2 of this publication is dedicated to an entire scheme to recover remains and requires throughout that the geographic combatant commanders conduct "tentative identification."

d. Army Regulation 638-2, Paragraph 2-17a states, "*Recovery*. The Army will search for, recover, segregate, and identify remains of eligible decedents (see chap 8)."

e. Army Regulation 638-2, Paragraph 8-1, states, "Responsible commanders (see para 8-3) will take appropriate action to search for, recover, and identify remains of eligible deceased personnel. The Joint Pub 4-06, Joint Tactics, Techniques, and Procedures for Mortuary Affairs in Joint Operations provides procedures for search and recovery of remains."

f. Army Regulation 638-2, Paragraph 8-2 states in pertinent part, "No specific limitations exist on the amount that can be spent to search for, recover, and identify eligible deceased personnel cited in table 2-1..."

g. Army Regulation 638-2, Paragraph 8-4 states in pertinent part, "[Commander Personnel Command renamed as Human Resources Command] will provide technical assistance when identification of remains cannot be established by the responsible commander. This does not, however, relieve the commander of responsibilities for taking all steps possible to identify remains."

h. Army Regulation 638-2, Paragraph 8-9a, states, "Deceased personnel must be identified as quickly as possible by employing all well-known means and scientific resources."

i. Army Regulation 638-2, Paragraph 8-10 refers to Mitochondrial DNA (mtDNA) as a means of identification. Subparagraph a(1) states, "mtDNA comparison will be used as a means to identify or exclude remains when other identification techniques are impracticable."

133. Defendants have refused to consider new evidence not previously considered of the identity of unidentified remains.

134. Defendants have a clear nondiscretionary duty to recover, identify and return to their families the remains of deceased WWII military personnel. Yet, Defendants have made little progress in identifying those buried as "unknowns" despite the passage of up to sixty (60) years; advanced forensic technology; and, even additional evidence provided by family members and others.

135. Defendants owe Plaintiff and others similarly situated a clear nondiscretionary duty to consider all available evidence and employ all reasonable forensic techniques to identify the remains of deceased American Servicemembers and return their remains to their families for burial as they may direct. As a direct and proximate result of Defendants' failure to consider all evidence of identity and to act accordingly, Plaintiff and others have been irreparably harmed and continue to suffer ongoing irreparable harm. Because Plaintiff and others have "a clear right to the relief sought," Defendants have "a clear duty to do the particular act requested by the [Plaintiff]," and "no other adequate remedy is available," mandamus relief is warranted. *See In re First Federal Sav. And Loan Ass'n of Durham*, 860 F.2d 135, 138 (4th Cir. 1988) (finding writ of mandamus appropriate to order Secretary of Treasury to pay refund to taxpayer); *see also Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (holding that "common-law writ of mandamus, as codified in 28 U.S.C. § 1361," is appropriate where plaintiff "has exhausted all other avenues of relief" and "the defendant owes him a clear nondiscretionary duty.").

136. Further, Plaintiff and others similarly situated are entitled to clear and unambiguous policies and procedures, timely applied and enforced, under which they can seek the identification and return of their deceased family members. When reasonable evidence exists of the identity of either an individual or group of unidentified remains and suitable family reference samples are available for comparison, said remains should be timely disinterred for identification and all reasonable forensic means of identification employed. Upon any such showing that individual or group remains are associated with a specific identity or identities and that appropriate family reference samples can be

obtained, Defendants should immediately appoint missing person's counsel in accordance with 10 U.S.C. §§ 1503(f), 1505(c)(2) to represent the interests of the missing persons.

C. Count Three: Declaratory Judgment – Identification of Unidentified Remains X-816 as those of Arthur H. Kelder

137. Paragraphs 1-117 are incorporated by reference herein.

138. Under the Declaratory Judgment Act, the court “may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

139. Under the Declaratory Judgment Act, broad injunctive relief directed against a defendant government agency or official to remedy an ongoing violation of federal law even in the absence of a certified class is not overbroad. An injunction issued to correct a defendant's policy or practice which is unlawful, not only as to the named plaintiff but also as to others is reasonable. *See, Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996); *Bresgal v. Brock*, 843 F.2d 1163, 1770 (9th Cir. 1988); *Soto-Lopez v. N.Y. City Civil Serv. Comm'n*, 840 F.2d 162, 168 (2d Cir. 1988); *Doe v. Gallinot*, 657 F.2d 1017, 1025 (9th Cir. 1981); *Galvin v. Levine*, 490 F.2d 1255, 1261 (2d Cir.), *cert. denied*, 417 U.S. 936 (1974).

140. Arthur H. Kelder was at all times a resident of the State of Illinois. Under the common law of Illinois, family members have a right to possession of the remains of family members for burial. *Courtney v. St. Joseph Hospital*, 500 N.E. 2d 703, 149 Ill. App.3d 397 (1986); *Mensing v. O'Hara*, 189 Ill. App. 48 (1914).

141. Having shown clear and compelling evidence of the identity of unidentified remains X-816 (Manila #2), Plaintiff is entitled to a declaratory judgment confirming said remains as those of Arthur H. Kelder.

D. Count Four: Injunctive Relief – Due Process

142. Paragraphs 1-117 are incorporated by reference herein.

143. On December 16, 2010, Defendants issued a policy memorandum, subject: Policy Guidance on Prioritizing Remains Recovery and Identifications. This policy memorandum conflicts with Defendant's statutory and common law obligation to recover, identify and return to family members the remains of deceased American Servicemembers. This policy memorandum used the term "received an honorable burial" as an euphemism for unidentified remains of American Servicemembers and directed that such unidentified remains would be considered as a lower priority for recovery and identification. Not only did this policy effectively proscribe the recovery and identification of unidentified remains, but it was also used to justify Defendant's refusal to recover and identify unidentified remains of American Servicemembers who had not received an honorable burial as defined by Defendant's own regulations.

144. On June 21, 2011, Plaintiff petitioned the U.S. Army Human Resources Command to convene a board of officers under the provisions of Army Regulation 638-2, ¶ 8-16 to review new evidence, not previously considered, of the identification of remains X816 as those of Private Arthur H. Kelder. On November 4, 2011, Defendants responded that under Public Law 111-84, (123 STAT. 2296, National Defense Authorization Act for Fiscal Year 2009, Subsection 541) the U.S. Army no longer was

authorized to convene a board of officers under Army Regulation 638-2, ¶ 8-16 and that the [Department of] Defense Prisoner of War/Missing Personnel Office had become responsible for such actions. The Army forwarded the Plaintiff's request to the Defense Prisoner of War/Missing Personnel Office. However, Public Law 111-84 did not address identification boards or consideration of new evidence of identity of unidentified remains, nor did it delete the Army's authorization to convene boards under its regulations. Army Regulation 638-2 continues in full effect without change. Defendants to date have not considered Plaintiff's petition for consideration of new evidence.

145. On February 21, 2012, Defendant Webb directed a subordinate to further investigate the identity of unidentified remains X816. On February 26, 2012, Defendant Webb meet with Plaintiff and asserted that he had the authority to direct his agency to further investigate and/or pursue the case of Arthur H. Kelder and it was his decision not to do so. Defendant Webb went on to further itemize specific reasons the case should not be further investigated. All of these reasons for denial of further investigation were without basis in fact. In April 2012, the original investigator reported to Defendant Webb that his investigation had found grounds for further investigation.

146. On February 1, 2013, Defendants filed with this Court a Certified Administrative Record. Included in this Certified Administrative Record was document number 14, Joint PoW/MIA Accounting Command Memorandum dated January 14, 2011, subject: "Philippines JPAC Incident 425 – Cabanatuan Grave 717". This memorandum concurred with earlier recommendations which did not support further investigation. The Certified Administrative Record filed with this Court did not include the later reports of the investigation conducted February to April 2012 nor any explanation for this material omission.

147. On February 15, 2013, Defendants filed with this Court a Supplemental Certified Administrative Record. Included in this Supplemental Certified Administrative Record was document number 1, Joint PoW/MIA Accounting Command memorandum, dated January 30, 2013, subject: Philippines JPAC Incident 425. This document consisted of two memoranda. The first memo was signed by Dr. Thomas D. Holland, Scientific Director of the Central Identification Laboratory. This memo concerned the identification of the remains of Arthur H. Kelder and concluded, contrary to the most recent JPAC investigation, that, “No definitive individual associations could be established based on the available documentation.” This statement had no basis in fact. The second memo in this document was signed by Major General Kelly K. McKeague, Commander, JPAC. This second memo supported and forwarded the Holland memo and falsely asserted that, “[T]his case does not meet current Department of Defense policy for the disinterment of Unknown Remains in that no reasonable association of the Unknown Remains to a specific individual can be established with a high degree of certainty prior to approval for disinterment.” These two memoranda attempted to transfer the case to DPMO, but at the same time, DPMO is the appellate authority and not the decision making authority. Without a decision from JPAC the Plaintiff cannot appeal.

148. Defendants have systematically and deliberately infringed the due process rights of Plaintiff and others by their refusal to consider new evidence and also the presentation of incomplete and false documents to this Court.

149. Defendants have established multiple, sometimes contradictory, processes and procedures for those seeking the return of the remains of their family members.

Requests are denied based upon unpublished and arbitrary conditions known to only selected agency personnel.

150. Under the Declaratory Judgment Act, broad injunctive relief directed against a defendant government agency or official to remedy an ongoing violation of federal law even in the absence of a certified class is not overbroad. An injunction issued to correct a defendant's policy or practice which is unlawful, not only as to the named plaintiff but also as to others is reasonable. *See, Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996); *Bresgal v. Brock*, 843 F.2d 1163, 1770 (9th Cir. 1988); *Soto-Lopez v. N.Y. City Civil Serv. Comm'n*, 840 F.2d 162, 168 (2d Cir. 1988); *Doe v. Gallinot*, 657 F.2d 1017, 1025 (9th Cir. 1981); *Galvin v. Levine*, 490 F.2d 1255, 1261 (2d Cir.), *cert. denied*, 417 U.S. 936 (1974).

151. Plaintiffs and others are entitled to injunctive relief declaring their rights to due process in seeking the return of family members who died in defense of the United States. These rights include clear, unambiguous, standards for disinterment, identification, appeal and reasonable limits on the time to perform each as well as the right to be treated honestly and forthrightly by officials of the U.S. Government.

VI. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against the Defendants and award Plaintiff the following relief:

a. An order, declaring that family members have an absolute right to possess for burial the remains of members of their family who perished during military service;

b. An order, declaring that Defendants are timely required to identify the previously unidentified remains of deceased American Servicemembers when it becomes reasonably feasible to do so using any available forensic technology;

c. An order, that Defendants shall promptly act to consider new evidence of the identity of unidentified remains when such evidence becomes available from any source;

d. An order, that Defendants shall promptly act to identify the remains of all deceased Servicemembers whose remains were determined to be non-recoverable when advances in forensic technology provide reasonable belief that such remains might be identified using technology not previously available;

e. An order, that Defendants shall promptly disinter for identification all unidentified remains upon a showing of a probability of their identification;

f. An order, holding that the human remains designated as X-816 and currently interred in the Manila ABMC Cemetery grave A-12-195 are those of Arthur H. Kelder and all U.S. Government records, markers and actions shall reflect such identity;

g. Permanent injunctive relief pursuant to Fed. R. Civ. P. 65 enjoining Defendants and their officers, employees and agents from discriminatory or inconsistent policies in accounting for missing personnel;

h. Permanent injunctive relief pursuant to Fed. R. Civ. P. 65 ordering Defendants and their officers, employees and agents to immediately and fully provide due process to all persons seeking the return of the remains of family members currently interred as unknowns in cemeteries operated by the U.S. Government.

i. An award of any further relief to Plaintiff that this Court deems just, proper, and equitable.

Respectfully submitted,

S/ _____

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Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 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
601 NW Loop 410, Ste 600
San Antonio, TX 78216
Sstrawn@usa.doj.gov

S/ _____
Jefferson Moore

CONSOLIDATED PLAINTIFF'S EXHIBIT LIST¹

JOHN EAKIN v. AMERICAN BATTLE MONUMENTS COMMISSION, et al

All Exhibits have already been filed with the original complaint and the Motions as Indicated:

Ex. 1 Report of Dr. David Senn, DDS, DABFO
Ex. 2 Declaration of John Eakin

¹ Digital copies available at <http://bataanmissing.com/EakinVABMC/files.htm>

- Ex. 3 Extract from Cabanatuan POW Camp Cemetery burial roster grave 717
- Ex. 4 Identification Memorandum, dated 12 Dec 46 & transcript
- Ex. 5 Identification Board Proceedings – Cabanatuan Grave 717
- Ex. 6A Statement of Ron Kelder
- Ex. 6B Statement of Doug Kelder
- Ex. 7 Policy Memo on Prioritization of Remains Recovery and Identifications
- Ex. 8 DPMO 1999 Annual Report – Policy on Disinterment for Identification
- Ex. 9 Petition to US Army for Consideration of New Evidence of Identity, Unknown X816
- Ex. 10 US Army Response to Exhibit 9
- Ex. 11 Extract from Army Regulation 638-2
- Ex. 12 Petition to DPMO for Consideration of New Evidence of Identity, Unknown X816
- Ex. 13 Executive Order 10057
- Ex. 14 Press releases and web pages concerning DNA collection for use in identification of the remains of deceased servicemembers
- Ex. 15A IDPF Unidentified Remains X-812_Manila2
- Ex. 15B IDPF Unidentified Remains X-814_Manila2
- Ex. 15C IDPF Unidentified Remains X-815_Manila2
- Ex. 15D IDPF Unidentified Remains X-816_Manila2
- Ex. 15E IDPF Unidentified Remains X-818_Manila2
- Ex. 15F IDPF Unidentified Remains X-820_Manila2
- Ex. 15G IDPF Unidentified Remains X-821_Manila2
- Ex. 15H IDPF Unidentified Remains X-822_Manila2
- Ex. 15I IDPF Unidentified Remains X-823_Manila2
- Ex. 15J IDPF Unidentified Remains X-824_Manila2
- Ex. 16A IDPF Bain_33035131
- Ex. 16B IDPF Collins_6578818
- Ex. 16C IDPF Gutierrez_20843125
- Ex. 16D IDPF Hanscom_6137280
- Ex. 16E IDPF Hirschi_19038407
- Ex. 16F IDPF Kelder_36016623
- Ex. 16G IDPF Kovach_20500764
- Ex. 16H IDPF Lobdell_20645267
- Ex. 16I IDPF Nichols_7009171
- Ex. 16J IDPF Overbey_13035026
- Ex. 16K IDPF Ruark_278681
- Ex. 16L IDPF Simmons_19019886
- Ex. 16M IDPF Waid_19049058
- Ex. 16N IDPF York_Civilian

EXHIBITS ADDED WITH PLAINTIFF MOTION FOR DISCOVERY

- Ex. 17 Whitehouse order to withhold information of atrocities
- Ex. 18 Decl of Chambers
- Ex. 19 DPMO website – Xfiles to be digitized

Ex. 20 DPMO 2013 budget

EXHIBITS ADDED WITH PLAINTIFF REPLY TO MOTION TO COMPLETE DISCOVERY

Ex. 21 Memorandum for Record – JPAC Incident 425

Ex. 22 Declaration of Rick Stone

EXHIBITS ADDED WITH PLAINTIFF MOTION FOR DECLARATORY JUDGMENT

Ex. 23 Report of Dr. Richard R. Souviron, DDS, DABFO

Ex. 24 Multiple Burial Reports Cabanatuan Grave 717

EXHIBITS ADDED WITH PLAINTIFF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Ex. 25 Arthur Kelder Letter – expected to return to Illinois

Ex. 26 Douglas Arthur Kelder Power of Attorney to John Eakin