

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’ RESPONSE TO PLAINTIFF’S MOTION TO VACATE APPOINTMENT  
OF PRO BONO COUNSEL**

Defendants American Battle Monuments Commission, *et al.*, respectfully file this Response to Plaintiff’s Motion to Vacate Appointment of Pro Bono Counsel. Defendants take no position on Plaintiff’s Motion as applied to current counsel, but note that plaintiff cannot proceed *pro se* in this matter.

Plaintiff is seeking to represent the interests of his cousin, Douglas Kelder. Plaintiff bases his interest on a “power of attorney” executed by Douglas Kelder. 28 U.S.C. 1654, however, bars *pro se* plaintiffs from asserting the claims of others in this Court. *Id.* (“[i]n all courts of the United States the parties may plead and conduct *their own cases* personally or by counsel”) (emphasis added). This provision has been interpreted uniformly to prohibit *pro se* litigants from pursuing claims on behalf of others, even where such representation is permitted before an agency. See Simon v. Hatford Life, Inc., 546 F.3d 661, 664-65 (9<sup>th</sup> Cir. 2008) (“well-established that the privilege to represent oneself *pro se* provided by § 1654 is personal to the litigant and does not extend to other parties or entities. . . . Consequently, in an action brought by

a *pro se* litigant, the real party in interest must be the person who ‘by substantive law has the right to be enforced’”) (*quoting C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9<sup>th</sup> Cir. 1987) and citing cases; *Iannaccone v. Law*, 142 F.3d 553 (2d Cir. 1998) (discussing history of *pro se* representation and denying estate administrator’s attempt to represent estate *pro se*). Here, the putative rights that plaintiff seeks to assert are those of the next of kin, and he is barred from asserting those claims *pro se*.<sup>1</sup>

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<sup>1</sup> Defendants reiterate that, with or without counsel, plaintiff has no standing because, among other reasons, injury to a third party cannot be the basis of Article III standing, nor does Article III permit standing to be “assigned” through a power of attorney. See Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint, or, in the Alternative, for Summary Judgment (ECF 47) at 27-32; Defendants’ Reply to Plaintiff’s Response in Opposition to Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint or, in the Alternative, for Summary Judgment (ECF 54) at 2-4. Moreover, Douglas Kelder would himself lack standing, for the reason that standing cannot exist without a cause of action. ECF 47 at 29 n. 10, 30, n. 11 and 31, citing *Claybrook v. Slater*, 111 F.3d 904, 907 (D.C. Cir. 1997) (“[I]f the plaintiff’s claim has no foundation in law, he has no legally protected interest and thus no standing to sue.”); *Perales v. Casillas*, 903 F.2d 1043, 1047 (5th Cir. 1990) (stressing that the lack of legislative standards meant that the alleged injury was not legally cognizable); *Arjay Assocs. v. Bush*, 891 F.2d 894, 898 (Fed. Cir. 1989) (holding that appellants “lack standing because the injury they assert is to a nonexistent right”).

Here, there is no statutory cause of action *for anyone*, and a due process claim fails because, in the alternative: 1) there is no property or liberty interest at stake; 2) defendants have not deprived plaintiff of any constitutional interest or entitlement but rather have established a voluntary program; 3) defendants’ actions met any applicable standard of due process; and 4) the matter is moot as defendants have agreed to grant the requested relief.

Respectfully submitted,

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United States Attorney

*/s/ Susan Strawn*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July, 2014, 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:

Jefferson Moore  
Counsel for Plaintiff

*/s/ Susan Strawn*  
**SUSAN STRAWN**  
Assistant United States Attorney