

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOHN EAKIN

Plaintiff,

v.

AMERICAN BATTLE MONUMENTS  
COMMISSION, et al.

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

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

**DEFENDANTS’ UNOPPOSED MOTION FOR AN EXTENSION OF TIME  
TO FILE ANSWER OR OTHERWISE RESPOND**

Defendants American Battle Monuments Commission, et al., and the United States Department of Defense, et al., by and through Robert Pitman, United States Attorney for the Western District of Texas, hereby move for an extension of time to file their answer or otherwise respond. The defendants’ answer is currently due on December 17, 2012. The defendants request an extension until February 15, 2013. Plaintiff does not oppose this extension. The parties have also agreed that Defendants will file the certified copy of the administrative record by February 1, 2013.

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. Private Kelder was one of 2,763 currently confirmed casualties

who perished in Cabanatuan and were buried originally in the camp cemetery. After the war, a series of exhumations and examinations failed to identify the remains of some 950 of these men, and they were ultimately buried as “unknowns” in Manila American Cemetery. Plaintiff also seeks additional relief, including a declaratory judgment that a particular set of remains are those of Private Kelder.

Defendants respectfully request additional time to assemble the administrative record and to answer or otherwise respond. Plaintiff’s claims potentially are associated with records dating to 1942 and in the possession of numerous components of the military in addition to the named defendants. Additional time is required to assemble the records and also to consult with the numerous components of the Department of Defense and the Army who are concerned with the matters raised here. The upcoming holidays make it more difficult to bring together necessary personnel. For these reasons, we ask the Court to extend the time to answer or otherwise respond until February 15, 2013. A proposed order is attached.

Respectfully submitted,

ROBERT PITMAN  
United States Attorney

/s/ Susan Strawn  
SUSAN STRAWN  
MITCHELL L. WEIDENBACH  
Assistant United States Attorneys  
601 NW Loop 410, Ste 600  
San Antonio, TX 78216

Attorneys for Defendant  
United States of America  
Tel. (210) 384-7388  
Fax (210)384-7312

[SStrawn@usa.doj.gov](mailto:SStrawn@usa.doj.gov)  
[mitch.weidenbach@usdoj.gov](mailto:mitch.weidenbach@usdoj.gov)

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of December, 2012, 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:

John Eakin, Plaintiff pro se  
9865 Tower View  
Helotes, TX 78023  
[jeakin@airsafety.com](mailto:jeakin@airsafety.com)

A copy has also been sent to Plaintiff at the above address via first-class United States Mail.

/s/ Susan Strawn  
SUSAN STRAWN  
Assistant United States Attorney