

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-00076-RM-KLM

ALLIANCE OF NUCLEAR WORKERS ADVOCACY GROUPS;
ROCKY FLATS DOWNWINDERS;
CANDELAS GLOWS/ROCKY FLATS GLOWS;
ENVIRONMENTAL INFORMATION NETWORK (EIN) INC.;
ROCKY FLATS NEIGHBORHOOD ASSOCIATION;
ROCKY FLATS RIGHT TO KNOW; AND
ROCKY MOUNTAIN PEACE & JUSTICE CENTER

Petitioners,

v.

UNITED STATES OF AMERICA,

Defendant

**MOTION FOR WRIT OF MANDAMUS PURSUANT TO 28 USCA § 1361
TO LOCATE ROCKY FLATS GRAND JURY DOCUMENTS**

Petitioners, by and through their attorney, Patricia A. Mellen of Pat Mellen Law, LLC., hereby respectfully motion the United States District Court for the District of Colorado for a Writ of Mandamus pursuant to 28 USCA § 1361 ordering appropriate United States Department of Justice (“DOJ”) personnel to locate by a date certain the business records reviewed by the Rocky Flats Special Federal Grand Jury 89-2. As grounds for such Petitioners state as follows:

A. CONFERRAL

Undersigned counsel conferred with counsel for the Defendant on July 24 and July 29, 2019. The Defendant objects to this Motion and the relief requested herein.

B. RELEVANT PROCEDURAL BACKGROUND

1. On January 10, 2019, Petitioners filed their Petition for Disclosure of Certain Documents Provided to Special Grand Jury 89-2.
2. On April 2, 2019, the Defendant filed its Motion to Dismiss for Failure to State a Claim.
3. On April 23, 2019, the Petitioners filed their Response to Defendant's Motion to Dismiss.
4. On May 7, 2019, the Defendant filed its Reply to Petitioner's Response.
5. At the May 15, 2019, Status Conference held before Magistrate Kristen L. Mix Counsel for the Defendant volunteered that in the four (4) months since the filing of this suit the Defendant has not been able to locate the records at issue.
6. On July 24, 2019, having heard nothing from Defendant since the May status Conference, Undersigned Counsel reached out to Counsel for the Defendant for a status update.
7. Counsel for the Defendants confirmed that now more than six (6) months after this matter was filed DOJ personnel cannot locate the stored Special Federal Grand Jury 89-2 documents that Petitioners' suit seeks to have disclosed. (Exh. 1)
8. As of this date, DOJ counsel and records custodians are unable to report the current location of these vital historical records.

C. STATUTORY STANDARD

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C.A. § 1361

D. ARGUMENT: This Court has jurisdiction to order the DOJ to commit the resources necessary to confirm by a date certain the location and/or disposition of the records sought by the Petitioners.

This Court has jurisdiction to consider this motion and to “compel an officer or employee of the United States or any agency thereof” to perform a duty owed to a plaintiff. 29 U.S.C.A. § 1361. Although the issuance of a mandamus order is considered drastic and reserved for extraordinary situations, a standard exists:

To grant mandamus relief, the court must find: (1) a clear right in the plaintiff to the relief sought; (2) a plainly defined and preemptory duty on the part of the defendant to do the action in question; and (3) no other adequate remedy is available.

Wilder v. Prokop, 846 F.2d 613, 620 (10th Cir. 1988) *citing Hadley Memorial*, 689 F. 905, 912 (10th Cir.1982) (other internal citations omitted).

Here, the circumstances are indeed extraordinary. Petitioners have sought the disclosure of business records provided to and considered by the Rocky Flats Special Federal Grand Jury 89-2. These records have been the subject of great controversy for now thirty (30) years since the impanelment of this Special Grand Jury on August 1, 1989. The records are a unique resource documenting the history of environmental crimes at Rocky Flats. The public has a clear right to expect that the DOJ fulfill its duty to secure and maintain grand jury records. DOJ personnel have a plainly defined duty as sole custodians of these records to ensure that they can at a minimum state the location of records associated with grand jury cases. Petitioner has respectfully asked twice, and after six (6) months DOJ remains unable to confirm the records’ location(s). No other administrative means or procedures exist for Petitioners to require DOJ fulfill its duty of safeguarding and maintaining these records. No other remedy is available than for this Court to require that DOJ commit the resources necessary to locate the records sought.

E. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioners respectfully request this Court order that the DOJ commit the sufficient resources and investigation methods necessary to report back to this Court and Petitioners within thirty (30) days the location of the business records provided to the Rocky Flats Special Federal Grand Jury 89-2.

DATED this 31th day of July, 2019.

Respectfully submitted,

/s/ Patricia A. Mellen

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Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notifications to all attorneys of record on this case, including:

Kyle W. Breton
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/s/Patricia A. Mellen
Patricia A. Mellen
Attorney for Petitioners