

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

FILED

NOV 23 2004

LARRY W. PROPPS, CLERK
CHARLESTON, SC

Jose Padilla,

Petitioner,

vs.

Commander C. T. Hanft, USN Commander,
Consolidated Naval Brig.

Respondent

C/A No. 2:04-2221-26AJ

**PETITIONER'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL APPENDIX**

Petitioner Jose Padilla, by and through his undersigned attorneys, respectfully moves for permission to file a supplemental appendix to the Memorandum in Support of Motion for Summary Judgment filed with this Court on October 20, 2004. In support of this Motion, Petitioner states the following:

Brief Summary of the Nature of the Case:

1. Jose Padilla is an American citizen who was seized from his civilian prison cell in Manhattan and has been imprisoned without charge in a military brig in Charleston, South Carolina for over two years. Following the U.S. Supreme Court's dismissal without prejudice of his original petition for the writ of habeas corpus, *see Rumsfeld v. Padilla*, 124 S.Ct. 2711 (2004), Petitioner on July 2, 2004 filed with this Court a new petition seeking immediate release from military custody. On October 20, 2004, Petitioner moved for summary judgment on counts one and two of his petition.

3. The attached appendix to the memorandum filed in support of the motion for summary judgment did not include a copy of *Darnel's Case*, III How. St. Tr. 2 (1627), which was cited in the memorandum. It should have. See Local Civ. R. 7.05(A)(4) (requiring attachment of out-of-region court decisions). Petitioner thus requests leave to file this supplemental appendix to provide this Court with a copy of *Darnel's Case*.

4. For the convenience of the Court, Petitioner also seeks leave to provide copies of three other secondary sources cited in the memorandum, two of which are not available on Lexis/Nexis or Westlaw and so would be more difficult to locate. The three authorities are: Jennifer K. Elsea, *Presidential Authority to Detain "Enemy Combatants,"* 33 Presidential Studies Q. 568 (Sept, 2003); A.W.B. Simpson, *In the Highest Degree Odious: Detention Without Trial in Wartime Britain* 391 (1992); and Christopher Bryant and Carl Tobias, *Youngstown Revisited*, 29 Hastings Const. L.Q. 373 (2002).

5. Petitioner believes that a supplemental appendix would assist this Court in deciding the Motion for Summary Judgment expeditiously.

6. Pursuant to South Carolina District Court Local Civil Rule 7.02, counsel for Petitioner has notified Respondent Commander C. T. Hanft's counsel of its intention to file this Motion. Counsel for Respondent has ~~[not]~~ consented to this motion. **[check]**

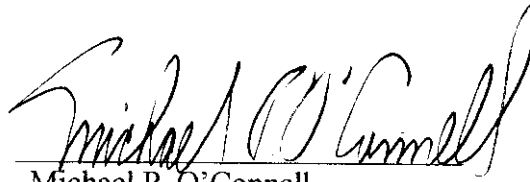
Relief Sought:

WHEREFORE, Petitioner respectfully asks this Court to grant this Motion for Leave to File a Supplemental Appendix. As required by U.S. District Court, District of South Carolina Local Civil Rule 6.01, a supporting Affidavit of Counsel is attached hereto.

Respectfully submitted,

Of Counsel:

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ATTORNEYS FOR PETITIONER

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

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**AFFIDAVIT OF
MICHAEL P. O'CONNELL IN
SUPPORT OF MOTION FOR
LEAVE TO FILE A
SUPPLEMENTAL APPENDIX**

MICHAEL P. O'CONNELL, makes the following statements under penalty of Perjury:

1. I am over eighteen years of age and understand the meaning and obligations of an oath. I am a partner at Stirling & O'Connell and am involved in the firm's work as Local Counsel on behalf of Petitioner Jose Padilla. Pursuant to District of South Carolina Local Civil Rule 6.01, I make this affidavit in support of Jose Padilla's Motion for Leave to file a Supplemental Appendix to the Memorandum of Law in Support of Motion for Summary Judgment filed in the South Carolina District Court on October 20, 2004.

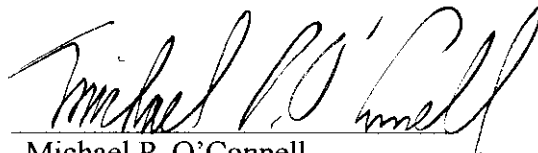
2. The attached appendix to the memorandum filed in support of the motion for summary judgment did not include a copy of *Darnel's Case*, III How. St. Tr. 2 (1627), which was cited in the memorandum. It should have. See Local Civ. R. 7.05(A)(4) (requiring attachment of out-of-region court decisions). Petitioner thus requests leave to file this supplemental appendix to provide this Court with a copy of *Darnel's Case*.

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4. On November ____, 2004, pursuant to South Carolina District Court Local Civil Rule 7.02, I notified Respondent Commander C. T. Hanft's counsel of Petitioner's intention to file this Motion. Counsel for Respondent has **[not] consented** to this motion. **[check]**

WHEREFORE, I respectfully submit this affidavit in support of Petitioner's Motion for Leave to file a Supplemental Appendix.

Respectfully submitted,



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Subscribed and sworn to before me this ____ day of November, 2004.

Notary Public
My Commission Expires:

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CERTIFICATION OF
CONSULTATION
LOCAL CIVIL RULE 7.02

____ Prior to filing this Motion, I conferred with opposing counsel who has indicated the following position as to this Motion:

____ will likely oppose;

X does not intend to oppose

____ Prior to filing this Motion, I attempted to confer with opposing counsel but was unable to do so for the following reason(s):

Respectfully submitted,


Michael P. O'Connell

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**UNITED STATES DISTRICT COURT
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ORDER

Upon consideration of the foregoing Motion for Leave to File Supplemental Appendix,

IT IS ORDERED THAT:

Petitioner's Motion for Leave to File Supplemental Appendix

_____ Be granted.

Be denied.

Date _____

Robert S. Carr
United States Magistrate Judge

CERTIFICATION OF SERVICE

This is to certify that on this 23 day of November, 2004, a copy of the foregoing was

*and Supplemental
Appendix*

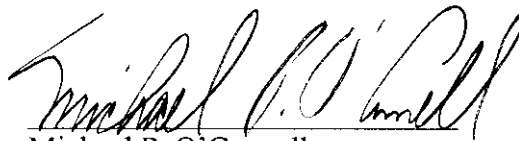
mailed, postage prepaid, to:

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