

FILED

OCT 20 2004

LARRY W. PROPPES, CLERK
CHARLESTON, SC

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

Jose Padilla,

Petitioner,

vs.

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

Respondent

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

**PETITIONER'S
NUNC PRO TUNC
MOTION FOR ENLARGEMENT
OF TIME**

Petitioner Jose Padilla, by and through his undersigned attorneys, respectfully moves for good cause, for a Nunc Pro Tunc Enlargement of Time of two days to file his Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment (together, "Summary Judgment Motion"). In support of this Motion, Petitioner states the following:

1. Motions for extension of time are allowed under U.S. District Court, District of South Carolina Local Civil Rule 6.01.
2. Petitioner's Summary Judgment Motion was due on October 18, 2004, per this Court's scheduling order of September 27, 2004.
3. This is Petitioner's first request for an extension of time to file the Summary Judgment Motion and the deadline has not been previously extended.
4. Petitioner requests a two day extension of time to file his Summary Judgment Motion, to and including October 20, 2004.

5. This extension request will not affect the scheduling order of September 27, 2004.

4. Petitioner seeks the present extension due to an unforeseen family emergency of petitioner's counsel in South Carolina, Michael P. O'Connell. As Mr. O'Connell informed the Court and opposing counsel by letter on October 15, 2004, his mother's illness required him to travel to Maryland on Friday October 15, 2004 in order to be with her in her final days. In accord with Mr. O'Connell's letter of October 15, 2004, Petitioner provided this Court and opposing counsel on October 18, 2004 with an unsigned copy of the Summary Judgment Motion,¹ and today is serving and filing the signed Summary Judgment Motion. Petitioner thus files this Nunc Pro Tunc Motion for Enlargement of Time.

5. This Motion is not being filed to cause delay or obstruction.

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 consented to this motion.

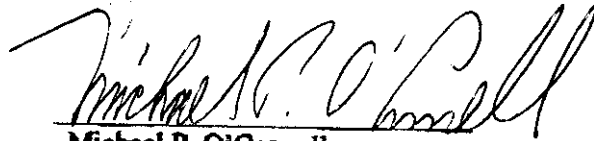
WHEREFORE, it is respectfully submitted that this Nunc Pro Tunc Motion for Enlargement of Time to file the Summary Judgment Motion be granted. As required by Local Civil Rule 6.01, a supporting Affidavit of Counsel is attached hereto.

Respectfully submitted,

¹ The Summary Judgment Motion was provided by to U.S. District Court Judge Henry F. Floyd and to opposing counsel via emailed Adobe Acrobat documents, and was provided to U.S. Magistrate Judge Robert S. Carr via hand-delivered hard copy. As Attorney Jonathan M. Freiman's cover letter to those provisions indicated, the precise text of the signed Summary Judgment Motion filed herewith does not deviate by one word from the unsigned version provided on October 18, 2004.

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CERTIFICATION OF
CONSULTATION
LOCAL CIVIL RULE 7.02

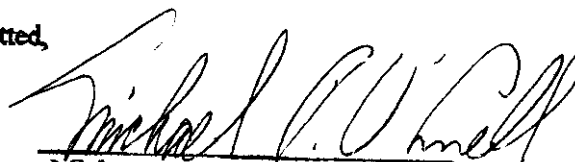
____ Prior to filing this Motion, I conferred with opposing counsel who has indicated the following position as to this Motion:

____ 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,



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