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August 11, 2005

VIA ECF and FEDERAL EXPRESS

Honorable Joanna Seybert
United States District Judge
United States District Court for the
Eastern District of New York
P.O. Box 9014
100 Federal Plaza
Central Islip, New York 11722-4438

Re: United States v. Nassau County, et al.
Civil Action No. 77 CV 1881

Dear Judge Seybert:

This office represents defendant Nassau County (the "County") in the above referenced action.

For the reasons more fully set forth below, including public safety concerns, the County seeks a modification of the Order of Your Honor, dated August 13, 2004, (the "Order") that held, *inter alia*, that the Nassau County Police Department may continue to use the current list of officers eligible for promotion to the rank of Sergeant until August 17, 2005 (the "Current List"). Specifically, the County seeks to modify the Order by briefly extending the time within which the County may use the Current List by four months until December 16, 2005. Due to the exigent circumstances, it is further requested that in the event the County's application is not granted or heard by the Court before August 16, 2005, the date on which the Current List will expire, that the Current List be extended to and including the date on which the County's application is granted or scheduled to be heard.

Notice of the County's intention to make this application has been given to the United States Department of Justice, the Nassau County Superior Officers' Association, the Nassau County Detective Association, Inc., and the Police Benevolent Association of Nassau County, Inc. (the "PBA"), and counsel for each of these parties has been provided with a copy of the papers that are being presented to the Court.

Plaintiff United States of America has authorized me to inform the Court that the United States does not oppose the requested extension. The Superior Officers' Association has authorized me to inform the Court that it does not oppose the requested extension. The Detectives Association has authorized me to inform the Court that it takes no position on this application. The PBA was given notice of the County's intention to

make this application on August 8, 2005, and has since informed the County that it opposes this application.

Based upon the Order, as the Court is aware, a promotional examination was administered on April 9, 2005. Unforeseeably, AON (the company the County has contracted with to create the promotional exam and to analyze the results) took longer than projected in its process of reviewing and analyzing the results of the examination. Accordingly, the results of the examination and AON's report were not in the County's possession until this morning at which time the results were sent via email and the report was sent via Federal Express to the Department of Justice. Since a new list of eligible officers for promotion to the rank of sergeant cannot be generated until the Department of Justice has reviewed the results and authorized the County to certify a list of officers to be promoted, a process that we anticipate will take several months, the County requests a four month extension of the Current List.

If the Current List is allowed to expire on August 16, 2005, where the County will be unable to put a new list in its place, it will be impossible for the County to promote officers to the rank of sergeant should the need arise. The Department anticipates that based upon the settlement of the terms of the contract between the County and the Superior Officers' Association, it is possible that changes may encourage members to retire prior to the contract's termination payment calculation- effective January 1, 2006. Presently, 418 department members are in the supervisory ranks, four less than the "budgeted strength," and 244 are eligible to retire. Accordingly, the Department faces a public safety crisis if the Current List expires and the Department is barred from promoting additional officers to the rank of sergeant.

Moreover, there are currently approximately 140 recruits in the Police Academy who are expected to graduate in mid-October. Since the Department is in the process of rebuilding its sworn headcount, October would traditionally be when the supervisory ranks are increased. Therefore, if the Department was forced to promote officers now in anticipation of both the retirements expected at the end of the year, and the graduation of the officers from the Academy, we would effectively be taking officers off patrol who could not be replaced until after the graduation of the new recruits from the Academy. Additionally, based upon the space and resources of the Academy, it would be best to have the sergeant training at the Police Academy following the graduation.

In light of all of these factors, it is of great importance to the operation of the Department that an active sergeant's list be in place until the Department of Justice's certification of the new List. We respectfully submit that the Court should place significant weight on the decision of the United States not to oppose this application, given that this action was brought by the United States, and the 1999 Exam, which generated the Current List, was approved by the United States. We also submit that the PBA, which is the only party opposing the extension, can identify no legal basis for its opposition.

Finally, pursuant to the Order, the Court was periodically apprised by the County regarding the steps expeditiously taken to implement the new examination. This application was not made earlier because we felt it was only appropriate to present the application to the Court once the results of the examination were sent to the Department of Justice. I have been in regular contact with the attorneys for the Department of Justice and they anticipated the receipt of the examination results and AON's report.

In sum, given all of the foregoing, and the potential impact on public safety, the County respectfully asks the Court to grant this application to extend the Current List to the earlier of either December 16, 2005, or the establishment of a new eligible list of candidates for promotion to the rank of sergeant in the Department. It is further requested that in the event the County's application is not granted or heard by the Court before August 16, 2005, the date on which the Current List will expire, that the Current List be extended to and including the

time of the conference on the County's application.

The Court's time and attention to this matter is greatly appreciated.

Respectfully submitted,

Tatum J. Fox (TF 5905)
Deputy County Attorney

cc: VIA FACSIMILE and FEDERAL EXPRESS

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Based on the County's representations, this Court finds that no threat to public safety exists. The expiration date of the Current List is extended until September 30, 2005. No further extensions will be granted.

SO ORDERED:
/s/ JOANNA SEYBERT
Joanna Seybert, USDJ
Dated: AUGUST 5, 2005
Central Islip, NY

C/ECF

COUNSEL IS DIRECTED TO IMMEDIATELY NOTIFY
ALL PARTIES OF THIS ORDER