

(ORDER LIST: 546 U.S.)

WEDNESDAY, JANUARY 4, 2006

ORDER IN PENDING CASE

05A578 HANFT, C.T. V. PADILLA, JOSE

Jose Padilla has filed a petition for certiorari, seeking review of the Fourth Circuit's judgment upholding his detention by military authorities. See *Padilla v. Hanft*, No. 05-533 (filed Oct. 25, 2005). On November 22, 2005, the Government filed a motion before the Fourth Circuit, seeking approval to transfer Padilla from military custody to the custody of the warden of a federal detention center in Florida, to face criminal charges contained in an indictment filed November 17, 2005. See Supreme Court Rule 36.1 ("Pending review in this Court of a decision in a habeas corpus proceeding. . . the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule."). Padilla agreed that the transfer should be approved. The Fourth Circuit denied the request, citing a concern that transfer might affect this Court's consideration of the pending petition for certiorari and concluding that the "decision should be made not by this court but, rather, by the Supreme Court of the United States." Order at 3, *Padilla v. Hanft*, No. 05-6396 (CA4 Dec. 21, 2005).

The Solicitor General has now filed with this Court an Application Respecting the Custody and Transfer of Jose Padilla, seeking the same authorization previously sought from the Court of Appeals. Padilla has filed a response, arguing instead that the Court should delay his release from military custody and consider his release along with his petition for certiorari. The Government's application presented to the Chief Justice and by him referred to the Court is granted. The Court will consider the pending petition for certiorari in due course.

