

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 01-1074

SABRIJA RADONCIC, UNITED STATES EX REL.

v.

CHARLES ZEMSKI

Charles Zemski, Acting District Director
Immigration and Naturalization Service,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 00-cv-04394)
District Judge: Hon. Bruce W. Kauffman

Argued September 20, 2001

Decided January 4, 2002

On Remand from the United States
Supreme Court May 5, 2003

Submitted Under Third Circuit LAR 34.1(a)
July 28, 2003

Before: SLOVITER, NYGAARD and McKEE, Circuit Judges

(Filed: August 25, 2003)

OPINION OF THE COURT

SLOVITER, Circuit Judge.

This court filed a not precedential opinion in the above case on January 4, 2002 affirming the decision of the District Court granting Sabrija Radoncic's petition for a writ of habeas corpus and ordering that he be released from custody unless the Government commenced an individualized examination within thirty days to determine if detention was necessary. The Government filed a petition for a writ of certiorari to the United States Supreme Court.

On May 5, 2003, the Supreme Court granted a writ of certiorari, vacated our opinion and judgment and remanded the case to us for further consideration in light of Demore v. Kim, 123 S. Ct. 1708 (2003). In Demore, the Court majority rejected the criminal alien's challenge to 8 U.S.C. § 1226(c) and concluded that "[d]etention during removal proceedings is a constitutionally permissible part of the process." We then asked counsel to provide us with their suggested dispositions in light of the above.

Counsel for the Government argued that we should vacate our decision and remand the case to the District Court with instructions to dismiss the case. Counsel for Radoncic also suggested that we remand the case to the District Court for further consideration "because some of the facts deemed critical in Demore v. Kim are absent from this case and this case has facts and circumstances not considered by the Supreme Court in Demore v. Kim." We believe the arguments of the parties should be addressed by the District Court in the first instance. We will therefore vacate our prior opinion and

judgment and remand this case to the District Court for its reconsideration.

For the reasons set forth above, we will vacate our prior opinion and judgment and remand this case to the District Court.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Dolores K. Sloviter

Circuit Judge