



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 29th day of May, two thousand and three.

PRESENT:

HON. GUIDO CALABRESI,
HON. BARRINGTON D. PARKER, JR.,
HON. REENA RAGGI,
Circuit Judges.

ANA ZGOMBIC, a/k/a ANA REYNOLDS,
Petitioner-Appellee,

v.

SUMMARY ORDER
No. 00-6165

STEVEN J. FARQUHARSON, District Director & JANET
RENO, Attorney General, USA,
Respondents-Appellants.

43 For Appellants: HUGH MULLANE, Senior Litigation Counsel, United States Department
44 of Justice, Robert D. McCallum, Jr., Assistant Attorney General, David J.
45 Kline, Principal Deputy Director, John A. A. Danaher III, United States

1 Attorney for the District of Connecticut (Deborah R. Slater, Assistant
2 United States Attorney, *of counsel*).

3
4 For Appellee: CHRISTOPHER J. MEADE, Wilmer, Cutler & Pickering, JUDY
5 RABINOVITZ, American Civil Liberties Union Foundation (Paul A.
6 Engelmayer, Wilmer, Cutler & Pickering, Jonathan E. Avirom, Avirom &
7 Associates LLP; *on the brief*); New York, NY.

8
9
10
11 Appeal from the United States District Court for the District of Connecticut (Underhill,
12 *J.*).

13
14
15
16 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND
17 DECREED the judgment of the district court is hereby VACATED and REMANDED to the
18 district court for further proceedings.

19
20
21
22 In June 1996, Petitioner-Appellee, Ana Zgombic, a lawful permanent resident alien, was
23 detained at the United States border upon returning from a nine-month trip abroad. She was
24 paroled into the United States by the INS for the purpose of criminal prosecution for bank fraud.
25 Zgombic pleaded guilty to several charges in 1998. She was sentenced to 15 months'
26 imprisonment and was ordered to pay \$800,000 in restitution. While serving her sentence, the
27 INS terminated Zgombic's parole status and charged that she was inadmissible under 8 U.S.C. §
28 1182(a)(2)A(i). After her release from federal prison, Zgombic was detained by the INS and was
29 ordered removed. Zgombic sought and received a writ of habeas corpus in the district court
30 (Underhill, *J.*) directing that she be afforded an individualized bail hearing and that she be
31 considered for discretionary relief from removal under former 8 U.S.C. § 1182(c). The
32 government appealed.

1 When this case arose, the questions of (a) the retroactivity of the congressional repeal of §
2 1182(c) relief to situations in which an alien committed the deportable offense before that repeal
3 but pleaded guilty to the offense after the repeal and (b) the constitutionality, as applied to lawful
4 permanent resident aliens, of 8 U.S.C. § 1226(c), which mandates the detention during removal
5 proceedings of aliens who have been convicted of aggravated felonies, were both open.

6 Intervening decisions have altered matters significantly. The § 1182(c) argument
7 accepted by the district court has been precluded in this circuit by *Rankine v. Reno*, 319 F.3d 93
8 (2d Cir. 2003). And the § 1226(c) argument is now governed by *Demore v. Kim*, 538 U.S. __, 123
9 S. Ct. 1708 (2003). See *Aikens v. Reno*, __ F.3d __ (2d Cir. 2003) (*per curiam*). In that case, the
10 Supreme Court held that “[d]etention during removal proceedings is a constitutionally
11 permissible part of [the removal] process” and that, in particular, a lawful permanent resident
12 alien may be detained during the “limited period of his removal proceedings” without an
13 individualized determination of the risk the alien poses of flight or the danger he might pose to
14 the community. *Kim*, 123 S. Ct. at 1721-22. Because the district court has not had occasion to
15 consider whether the facts of this case fall into the potential exceptions noted in the concurring
16 opinion of Justice Kennedy in *Kim*, *id.* at 1722 (Kennedy, *J.*, concurring) (explicating his
17 understanding that the majority opinion may allow a challenge to detention when, for example,
18 there has been unreasonable delay by the INS), we remand the case to the district court for
19 consideration of the facts of this case in the light of that opinion. In doing so, we in no way
20 imply that the facts in this case fit into those possible exceptions.

