

UNPUBLISHED

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

CHRISTIAN KIMBEMBE, A72 000 411,
Petitioner-Appellee,

v.

U.S. IMMIGRATION & NATURALIZATION
SERVICE; JOHN ASHCROFT,
Respondents-Appellants.

No. 01-8015

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Frederic N. Smalkin, Chief District Judge.
(CA-01-1881-S)

Submitted: May 13, 2002

Decided: September 27, 2002

Before WIDENER, KING, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Robert D. McCallum, Jr., Assistant Attorney General, Emily Anne Radford, Brian G. Slocum, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellants. Walter S. Booth, LAW OFFICES OF WALTER S. BOOTH, Bethesda, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

John Ashcroft, Attorney General of the United States, appeals the decision of the district court granting habeas corpus relief to Christian Kimbembe under 28 U.S.C. § 2241 (2000). The district court held that 8 U.S.C. § 1226(c) (2000), requiring detention without bail of certain categories of aliens during the pendency of removal proceedings, is unconstitutional on its face. The court ordered that Kimbembe receive a bond hearing before an immigration judge. The hearing was held, bond was set, and Kimbembe posted bond and was released from custody. In a recent decision we held that § 1226(c) is not unconstitutional on its face, but that the statute violated due process as applied in that case. *Welch v. Ashcroft*, 293 F.3d 213 (4th Cir. 2002).

Because our decision in *Welch* was based on the particular facts of the case, we conclude that we must remand this case to the district court for further proceedings. After allowing any necessary development of the record, the district court should reconsider its decision under *Welch* and determine whether § 1226(c) is unconstitutional as applied to Kimbembe. We vacate the decision of the district court and remand for further proceedings consistent with this opinion and with our decision in *Welch*. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED