



U.S. SUPREME COURT

## Justice Department discloses 'several significant errors' in information provided for SCOTUS case

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The U.S. Justice Department has disclosed it underestimated the time that some immigrants spend in detention in information provided to the U.S. Supreme Court for a 2003 case.

In a letter (<http://online.wsj.com/public/resources/documents/Demore.pdf>) (PDF) on Friday to the U.S. Supreme Court, the Justice Department said it made “several significant errors” in information provided in *Demore v. Kim*, the Wall Street Journal

([http://www.wsj.com/article\\_email/justice-department-gave-supreme-court-incorrect-data-in-immigration-case-1472569756-IMyQjAxMTA2NDM4MDkzOTAxWj](http://www.wsj.com/article_email/justice-department-gave-supreme-court-incorrect-data-in-immigration-case-1472569756-IMyQjAxMTA2NDM4MDkzOTAxWj)) (sub. req.) reports.

The Supreme Court decision ([https://scholar.google.com/scholar\\_case?case=6530717710454372385&q=Demore+v.+Kim&hl=en&as\\_sdt=400006&as\\_vis=1](https://scholar.google.com/scholar_case?case=6530717710454372385&q=Demore+v.+Kim&hl=en&as_sdt=400006&as_vis=1)) in *Demore* upheld a

blanket denial of bail to immigrants with criminal records who are detained while appealing deportation orders. The court referred to government data on the “very limited time of detention at stake” in holding there is no constitutional violation.

The Executive Office for Immigration Review, which provided the statistics, has reviewed them again for an upcoming case. The office concluded that the average total time spent in detention in appealed cases was more than a year, rather than the five months cited in the Supreme Court opinion in *Demore*.

At issue in the upcoming case, *Jennings v. Rodriguez*, is whether aliens are entitled to bond hearings after at least six months of decision. (The SCOTUSblog case page is here (<http://www.scotusblog.com/case-files/cases/jennings-v-rodriguez/>).)

The Justice Department originally told the *Demore* court that, in 85 percent of the cases in which there was no appeal, the average time to complete removal proceedings was 47 days. The average time to resolve an appeal was about four months, the department originally said.

The Supreme Court in *Demore* had added the statistics together to conclude that the average time in detention in appealed cases was about five months. The actual average should have been 382 days, the letter said.

The Supreme Court's calculation was wrong, the letter said, because cases took longer at the immigration judge stage in cases later appealed. In addition, the original statistics provided to the court calculated detention time based on case completions that counted a change of venue or case transfer as a completion. The standard, developed to assess judicial workload, calculated how long an individual judge was working on a case rather than how long an individual was detained while in removal proceedings.

The letter advises the Supreme Court that it "may wish to amend" its *Demore* opinion to delete the reference to an average of five months of detention in appealed cases.

Nancy Morawetz, co-director of the Immigrant Rights Clinic at the New York University School of Law, told the Wall Street Journal that the problem occurred because the U.S. Solicitor General is allowed to submit new information to the U.S. Supreme Court outside of the adversary process.

Morawetz called the letter "outrageous" in her comments to the Wall Street Journal. "They say excise this sentence that relied on the wrong data but they're not saying look at the result you got from it," she said.

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