SUPREME COURT OF THE UNITED STATES

No. 00–1519

UNITED STATES, PETITIONER *v.* RALPH ARVIZU

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 15, 2002]

JUSTICE SCALIA, concurring.

I join the opinion of the Court, because I believe it accords with our opinion in *Ornelas* v. *United States*, 517 U. S. 690, 699 (1996), requiring *de novo* review which nonetheless gives "due weight to inferences drawn from [the] facts by resident judges . . . ." As I said in my dissent in *Ornelas*, however, I do not see how deferring to the District Court's factual inferences (as opposed to its findings of fact) is compatible with *de novo* review. *Id.,* at 705.

The Court today says that "due weight" should have been given to the District Court's determinations that the children's waving was "'methodical,' 'mechanical,' 'abnormal,' and 'certainly . . . a fact that is odd and would lead a reasonable officer to wonder why they are doing this.'" *Ante*, at 10. "Methodical," "mechanical," and perhaps even "abnormal" and "odd," are findings of fact that deserve respect. But the inference that this "would lead a reasonable officer to wonder why they are doing this," amounts to the conclusion that their action was suspicious, which I would have thought (if *de novo* review is the standard) is the prerogative of the Court of Appeals. So we have here a peculiar sort of *de novo* review.

I may add that, even holding the Ninth Circuit to no more than the traditional methodology of *de novo* review, its judgment here would have to be reversed.