

O’CONNOR, J., concurring

**SUPREME COURT OF THE UNITED STATES**

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Nos. 03–878 and 03–7434

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A. NEIL CLARK, FIELD OFFICE DIRECTOR,  
SEATTLE, WASHINGTON, IMMIGRATION  
AND CUSTOMS ENFORCEMENT, ET AL.,  
PETITIONERS

03–878

*v.*

SERGIO SUAREZ MARTINEZ

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

DANIEL BENITEZ, PETITIONER

03–7434

*v.*

MICHAEL ROZOS, FIELD OFFICE DIRECTOR, MIAMI,  
FLORIDA, IMMIGRATION AND CUSTOMS  
ENFORCEMENT

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

[January 12, 2005]

JUSTICE O’CONNOR, concurring.

I join the Court’s opinion. I write separately to emphasize that, even under the current statutory scheme, it is possible for the Government to detain inadmissible aliens for more than six months after they have been ordered removed. For one thing, the 6-month presumption we described in *Zadvydas v. Davis*, 533 U. S. 678 (2001), is just that—a presumption. The Court notes that the Government has not suggested here any reason why it takes longer to effect removal of inadmissible aliens than it does to effect removal of other aliens. It is conceivable, however, that a longer period *is* “reasonably necessary,” *id.*, at 689, to effect removal of inadmissible aliens as a class. If

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the Government shows that to be true, then detention beyond six months will be lawful within the meaning we ascribed to 8 U. S. C. §1231(a)(6) in *Zadvydas*.

Moreover, the Government has other statutory means for detaining aliens whose removal is not foreseeable and whose presence poses security risks. Upon certifying that he has “reasonable grounds to believe” an alien has engaged in certain terrorist or other dangerous activity specified by statute, 8 U. S. C. §1226a(a)(3) (2000 ed., Supp. II), the Secretary of Homeland Security may detain that alien for successive six-month periods “if the release of the alien will threaten the national security of the United States or the safety of the community or any person,” §1226a(a)(6).

Finally, any alien released as a result of today’s holding remains subject to the conditions of supervised release. See 8 U. S. C. §1231(a)(3); 8 CFR §241.5 (2004). And, if he fails to comply with the conditions of release, he will be subject to criminal penalties—including further detention. See 8 U. S. C. §1253(b); *Zadvydas*, *supra*, at 695 (“We nowhere deny the right of Congress . . . to subject [aliens] to supervision within conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions”).