

O'CONNOR, J., concurring

**SUPREME COURT OF THE UNITED STATES**

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No. 02–1684

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MICHAEL YARBOROUGH, WARDEN, PETITIONER *v.*  
MICHAEL ALVARADO

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

[June 1, 2004]

JUSTICE O'CONNOR, concurring.

I join the opinion of the Court, but write separately to express an additional reason for reversal. There may be cases in which a suspect's age will be relevant to the *Miranda* "custody" inquiry. In this case, however, Alvarado was almost 18 years old at the time of his interview. It is difficult to expect police to recognize that a suspect is a juvenile when he is so close to the age of majority. Even when police do know a suspect's age, it may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave. That is especially true here; 17½-year-olds vary widely in their reactions to police questioning, and many can be expected to behave as adults. Given these difficulties, I agree that the state court's decision in this case cannot be called an unreasonable application of federal law simply because it failed explicitly to mention Alvarado's age.