

KENNEDY, J., concurring in part

SUPREME COURT OF THE UNITED STATES

No. 03–44

BASIM OMAR SABRI, PETITIONER *v.*
UNITED STATES

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

[May 17, 2004]

JUSTICE KENNEDY, with whom JUSTICE SCALIA joins,
concurring in part.

I join all but Part III of the Court’s opinion. I do not join Part III but do make this comment with reference to it. The Court in Part III does not specifically question the practice we have followed in cases such as *United States v. Lopez*, 514 U. S. 549 (1995) and *United States v. Morrison*, 529 U. S. 598 (2000). In those instances the Court did resolve the basic question whether Congress, in enacting the statutes challenged there, had exceeded its legislative power under the Constitution.