

03-7434 BENITEZ v. WALLIS

Ruling below: CA 11, 337 F.3d 1289

QUESTIONS PRESENTED

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), this Court interpreted 8 U.S.C. § 1231(a)(6) to authorize the detention of an alien subject to a removal order, but only for a reasonable period of time until it can be determined whether there is a country to which the alien can be removed. Although § 1231(a)(6) applies to both admitted and non-admitted aliens, the Court emphasized that the aliens at issue in *Zadvydas* had been lawfully admitted and that non-admitted aliens "would present a very different question." This case raises two, independent questions about the applicability of § 1231(a)(6) to non-admitted aliens:

- I. Whether the same language in § 1231(a)(6), which does not distinguish in its application between admitted and non-admitted aliens, may be interpreted differently for non-admitted aliens than for admitted aliens;

and, if not,

- II. Whether interpreting § 1231(a)(6) to authorize the indefinite detention of a non-admitted alien would raise a constitutional question sufficient to warrant interpreting the statute to avoid the question.

CERT. GRANTED: 1/16/04
Expedited briefing schedule.