

O’CONNOR, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 00–10666

WILLIAM JOSEPH HARRIS, PETITIONER *v.*
UNITED STATES

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

[June 24, 2002]

JUSTICE O’CONNOR, concurring.

Petitioner bases his statutory argument that brandishing must be interpreted as an offense element on *Jones v. United States*, 526 U. S. 227 (1999). He bases his constitutional argument that regardless of how the statute is interpreted, brandishing must be charged in the indictment and found by the jury beyond a reasonable doubt on *Apprendi v. New Jersey*, 530 U. S. 466 (2000). As I dissented in *Jones* and *Apprendi* and still believe both were wrongly decided, I find it easy to reject petitioner’s arguments. Even assuming the validity of *Jones* and *Apprendi*, however, I agree that petitioner’s arguments that brandishing must be charged in the indictment and found by the jury beyond a reasonable doubt are unavailing. I therefore join JUSTICE KENNEDY’s opinion in its entirety.