

THOMAS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 01–6978

GARY ALBERT EWING, PETITIONER *v.* CALIFORNIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA, SECOND APPELLATE DISTRICT

[March 5, 2003]

JUSTICE THOMAS, concurring in the judgment.

I agree with JUSTICE SCALIA’s view that the proportionality test announced in *Solem v. Helm*, 463 U. S. 277 (1983), is incapable of judicial application. Even were *Solem*’s test perfectly clear, however, I would not feel compelled by *stare decisis* to apply it. In my view, the Cruel and Unusual Punishments Clause of the Eighth Amendment contains no proportionality principle. See *Harmelin v. Michigan*, 501 U. S. 957, 967–985 (1991) (opinion of SCALIA, J.).

Because the plurality concludes that petitioner’s sentence does not violate the Eighth Amendment’s prohibition on cruel and unusual punishments, I concur in the judgment.