

SOUTER, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 06–984 (08A98), 08–5573 (08A99), and 08–5574 (08A99)

JOSE ERNESTO MEDELLIN
06–984 (08A98) *v.*
TEXAS

ON APPLICATION TO RECALL AND STAY MANDATE AND FOR
STAY

JOSE ERNESTO MEDELLIN
08–5573 (08A99) *v.*
TEXAS

ON APPLICATION FOR STAY AND PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF
TEXAS

IN RE JOSE ERNESTO MEDELLIN
08–5574 (08A99)

ON APPLICATION FOR STAY AND ON PETITION FOR A WRIT OF
HABEAS CORPUS

[August 5, 2008]

JUSTICE SOUTER, dissenting.

I joined the dissent in *Medellín v. Texas*, 552 U. S. —, — (2008) (BREYER, J., dissenting), and invoke the rule that it is reasonable to adhere to a dissenting position throughout the Term of Court in which it was announced. See *North Carolina v. Pearce*, 395 U. S. 711, 744 (1969) (Harlan, J., concurring in part and dissenting in part). The only chance to apply the treaty provisions the dissent would have held presently enforceable is now through action by the other branches of the Government. A bill on the subject has been introduced in the Congress, Avena Case Implementation Act of 2008, H. R. 6481, 110th Cong., 2d

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Sess. (2008), and the Government has represented to the International Court of Justice it will take further steps to give effect to that court's judgment pertinent to Medellín's conviction, among others, *Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mex. v. U. S.)*, 2008 I. C. J. No. 139, ¶ 37 (Order of July 16). I would therefore enter the requested stay of execution for as long as the remainder of the 2007 Term, to allow for a current statement of the views of the Solicitor General and for any congressional action that could affect the disposition of petitioner's filings. I would defer action on the petition for a writ of certiorari to the Court of Criminal Appeals of Texas, the petition for an original writ of habeas corpus, and the motion to recall and stay the mandate in *Medellín v. Texas*, *supra*.