

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 05–11304

LAROYCE LATHAIR SMITH, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF TEXAS

[April 25, 2007]

JUSTICE SOUTER, concurring.

I join the Court’s opinion. In some later case, we may be required to consider whether harmless error review is ever appropriate in a case with error as described in *Penry v. Lynaugh*, 492 U. S. 302 (1989). We do not and need not address that question here.