

STEVENS, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

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

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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 STEVENS, dissenting.

Earlier this Term, in *Medellín v. Texas*, 552 U. S. \_\_\_\_ (2008), we concluded that neither the President nor the International Court of Justice (ICJ) has the authority to require Texas to determine whether its violation of the Vienna Convention prejudiced petitioner. Although I agreed with the Court’s judgment, I wrote separately to make clear my view that Texas retained the authority—and, indeed, the duty as a matter of international law—to remedy the potentially significant breach of the United States’ treaty obligations identified in the President’s Memorandum to the Attorney General. Because it ap-

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pears that Texas has not taken action to address the serious national security and foreign policy implications of this suit, I believe we should request the views of the Solicitor General, who argued on behalf of the Executive Branch in earlier proceedings in the suit, before allowing Texas to proceed with the execution.

As I explained in my separate opinion in March, the cost to Texas of complying with the ICJ judgment “would be minimal, particularly given the remote likelihood that the violation of the Vienna Convention actually prejudiced” this petitioner. 552 U. S., at \_\_\_ (slip op., at 5) (STEVENS, J., concurring in judgment). “On the other hand, the costs of refusing to respect the ICJ’s judgment are significant. The entire Court and the President agree that breach will jeopardize the United States’ ‘plainly compelling’ interests in ‘ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law.’” *Ibid.* Given these stakes, and given that petitioner has been under a death sentence for 14 years, waiting a short time to guarantee that the views of the Executive have been given respectful consideration is only prudent. Balancing the honor of the Nation against the modest burden of a short delay to ensure that the breach is unavoidable convinces me that the application for a stay should be granted.

Accordingly, I respectfully dissent.