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1

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 05A639 (05–8639)

CLARENCE R. ALLEN *v.* STEVEN W. ORNOSKI,
ACTING WARDEN

ON APPLICATION FOR STAY AND ON PETITION FOR WRIT OF
CERTIORARI

[January 16, 2006]

The application for stay of execution of sentence of death presented to Justice O'Connor and by her referred to the Court is denied. The petition for a writ of certiorari is denied.

JUSTICE BREYER dissenting.

Petitioner is 76 years old, blind, suffers from diabetes, is confined to a wheelchair, and has been on death row for 23 years. I believe that in the circumstances he raises a significant question as to whether his execution would constitute “cruel and unusual punishment.” U. S. Const., Amdt. 8. See *Knight v. Florida*, 528 U. S. 990, 993 (1999) (Breyer, J., dissenting from denial of certiorari); *Elledge v. Florida*, 525 U. S. 944 (1998) (Breyer, J., dissenting from denial of certiorari); *Lackey v. Texas*, 514 U. S. 1045 (1995) (Stevens, J., respecting denial of certiorari). I would grant the application for stay of execution.