

SUPREME COURT OF THE UNITED STATES

No. 91-7328

LEONEL TORRES HERRERA, PETITIONER v. JAMES A.
COLLINS, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
[January 25, 1993]

JUSTICE WHITE, concurring in the judgment.

In voting to affirm, I assume that a persuasive showing of "actual innocence" made after trial, even though made after the expiration of the time provided by law for the presentation of newly discovered evidence, would render unconstitutional the execution of petitioner in this case. To be entitled to relief, however, petitioner would at the very least be required to show that based on proffered newly discovered evidence and the entire record before the jury that convicted him, "no rational trier of fact could [find] proof of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U. S. 307, 324 (1979). For the reasons stated in the Court's opinion, petitioner's showing falls far short of satisfying even that standard, and I therefore concur in the judgment.