

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 05–83

WASHINGTON, PETITIONER *v.* ARTURO R.
RECUENCO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
WASHINGTON

[June 26, 2006]

JUSTICE STEVENS, dissenting.

Like *Brigham City v. Stuart*, 547 U. S. ____ (2006), and *Kansas v. Marsh*, 548 U. S. ____ (2006), this is a case in which the Court has granted review in order to make sure that a State’s highest court has not granted its citizens any greater protection than the bare minimum required by the Federal Constitution. Ironically, the issue in this case is not whether respondent’s federal constitutional rights were violated—that is admitted—it is whether the Washington Supreme Court’s chosen remedy for the violation is mandated by federal law. As the discussion in Part II of the Court’s opinion demonstrates, whether we even have jurisdiction to decide that question is not entirely clear. But even if our expansionist post-*Michigan v. Long* jurisprudence supports our jurisdiction to review the decision below, see 463 U. S. 1032 (1983), there was surely no need to reach out to decide this case. The Washington Supreme Court can, of course, reinstate the same judgment on remand, either for the reasons discussed in Part II of the Court’s opinion, see *ante*, at 4, and n. 1, or because that court chooses, as a matter of state law, to adhere to its view that the proper remedy for *Blakely* errors, see *Blakely v. Washington*, 542 U. S. 296 (2004), is automatic reversal of the unconstitutional portion of a defendant’s sentence. Moreover, because the Court does not

STEVENS, J., dissenting

address the strongest argument in respondent's favor—namely, that *Blakely* errors are structural because they deprive criminal defendants of sufficient notice regarding the charges they must defend against, see *ante*, at 7, n. 3—this decision will have a limited impact on other cases.

As I did in *Brigham City* and *Marsh*, I voted to deny certiorari in this case. Given the Court's decision to reach the merits, however, I would affirm for the reasons stated in JUSTICE GINSBURG's opinion, which I join.