

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 03–1395

GEORGE J. TENET, INDIVIDUALLY, PORTER J.
GOSS, DIRECTOR OF CENTRAL INTELLI-
GENCE AND DIRECTOR OF THE CEN-
TRAL INTELLIGENCE AGENCY, AND
UNITED STATES, PETITIONERS *v.*
JOHN DOE ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 2, 2005]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins,
concurring.

In *Totten v. United States*, 92 U. S. 105 (1876), the Court held that an alleged oral agreement between a deceased spy and President Lincoln was unenforceable. There may be situations in which the national interest would be well served by a rule that permitted similar commitments made by less senior officers to be enforced in court, subject to procedures designed to protect sensitive information. If that be so, Congress can modify the federal common-law rule announced in *Totten*. For the purposes of today's decision, which I join, the doctrine of *stare decisis* provides a sufficient justification for concluding that the complaint is without merit. The Court wisely decides that the absence of an enforceable agreement requires that respondents' constitutional and other claims be dismissed without first answering an arguably antecedent jurisdictional question. See *ante*, at 5, n. 4; see also *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 117–123 (1998) (STEVENS, J., concurring in judgment).