

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 06–7949

BRIAN MICHAEL GALL, PETITIONER *v.*
UNITED STATES

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

[December 10, 2007]

JUSTICE SOUTER, concurring.

I join the Court’s opinion here, as I do in today’s companion case of *Kimbrough v. United States*, *post*, p. ____, which follow *United States v. Booker*, 543 U. S. 220 (2005), and *Rita v. United States*, 551 U. S. ____ (2007). My disagreements with holdings in those earlier cases are not the stuff of formally perpetual dissent, but I see their objectionable points hexing our judgments today, see *id.*, at ____ (SOUTER, J., dissenting), and *Booker*, *supra*, at 272 (STEVENS, J., dissenting in part). After *Booker*’s remedial holding, I continue to think that the best resolution of the tension between substantial consistency throughout the system and the right of jury trial would be a new Act of Congress: reestablishing a statutory system of mandatory sentencing guidelines (though not identical to the original in all points of detail), but providing for jury findings of all facts necessary to set the upper range of sentencing discretion. See *Rita*, *supra*, at ____ (slip op., at 9).