

No. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

**October Term, 2007**

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**HELIBERTO CHI,**  
**Petitioner**

**V.**

**THE STATE OF TEXAS,**  
**Respondent.**

**MOTION FOR STAY OF EXECUTION**

**THIS IS A DEATH PENALTY CASE.**

**MR. CHI IS SCHEDULED TO BE EXECUTED TODAY,  
AUGUST 7, 2008 at 6:00 P.M..**

Mr. Chi respectfully requests that this Court stay his execution currently scheduled for today, August 7, 2008 at 6:00 p.m. Mr. Chi's accompanying Petition for Writ of Certiorari to the Texas Court of Criminal Appeals raises an important issue of first impression: Would the execution of Heliberto Chi violate the United States' mandatory obligations under the Treaty of Friendship, Commerce and Consular Rights, Dec. 7, 1927, U.S.-Hond., 45 Stat 2618, 1928 WL 26688, ("Consular Rights Treaty") made binding on the State of Texas under the Supremacy Clause of the United States Constitution? An unbroken line of this Court's cases, from the earliest days of the Republic to the present, demonstrates that the unequivocal answer to this question is "yes." Accordingly, to vindicate the United States' plainly compelling interest in

complying with its binding treaty obligations, this Court should stay Mr. Chi's execution scheduled for August 7, 2008.

The standard for determining whether this Court should grant a stay of execution is articulated in *Barefoot v. Estelle*:

[T]here must be a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood [of] irreparable harm.

463 U.S. 880, 895 (1983); *see also* Robert L. Stern et al., *Supreme Court Practice* § 17.20 (1993).

Mr. Chi presented several claims to the Texas Court of Criminal Appeals based upon asserted treaty violations. Mr. Chi alleged that his rights pursuant to the Vienna Convention on Consular Relations were violated when authorities failed to provide consular notification of his detainment.<sup>1</sup> Mr. Chi also raised an independent claim based upon the bilateral Treaty of Friendship, Commerce and Consular Rights between Honduras and the United States—a claim enabled by this Court's recent legal analysis in *Medellin v. Texas*, 522 U.S. \_\_\_ (March 25, 2008). Despite the clarifying guidance of this Court's recent treaty construction cases and without any discussion of or reference to the actual text of the treaty itself, the Texas Court of Criminal Appeals rotely dismissed Mr. Chi's claim pursuant to the state statute governing subsequent habeas applications.

This Court has never before interpreted Articles I and XX of the Treaty of Friendship, Commerce and Consular Rights between Honduras and the United States. Mr. Chi has alleged that, based on this Court's prior precedent, that treaty is self-executing, confers justiciable rights on individuals, and contains a "clear and express statement" that the rights ensured by the treaty

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<sup>1</sup> In light of the Court's recent denial of certiorari review in *Medellin v. Texas*, \_\_\_ U.S. \_\_\_ (August 5, 2008), Mr. Chi explicitly abandons his claims grounded upon the Vienna Convention.

are paramount to state statute. There can be little doubt that this issue—the proper construction of treaty provisions—is sufficiently meritorious to warrant review by this Court.

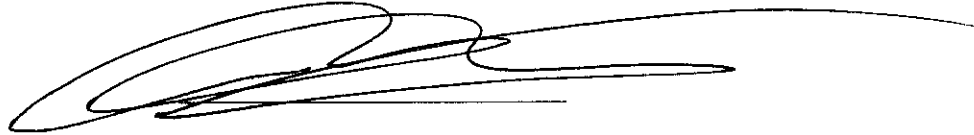
On a previous occasion, this Court recognized the relevance of another provision of the same bilateral treaty with Honduras in resolving an important federal question. *See McCulloch v. Sociedad Nacional*, 372 U.S. 10, 20-21 (1963) (finding “no basis for a construction” of the National Labor Relations Act “which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag...contrary to the recognition long afforded them by...the Congress” [i.e., through Congressional consent to ratification of Article X of the Treaty of Friendship, Commerce and Consular Rights between Honduras and the United States, *id.* n. 12]). If ascertaining the scope and meaning of the bilateral treaty is relevant to the proper construction of federal legislation, then its correct interpretation must have compelling relevance when the federal question is instead the asserted repugnance of a state law to the same treaty’s other requirements.

The Texas Court of Criminal Appeals has issued a ruling that misinterprets the Treaty of Friendship and enforces a state statute repugnant to a treaty of the United States. Because of the Court of Criminal Appeals erroneous ruling, there is a significant possibility of reversal and a stay of execution is appropriate in this case.

In light of the strength and serious nature of Mr. Chi’s claims, his scheduled execution should be stayed so that this Court’s interpretation of the Honduran Treaty of Friendship, Commerce, and Consular Rights may be carefully considered outside the shadow of Mr. Chi’s execution. In addition, Mr. Chi’s execution should be stayed so this Court can consider the views of the Solicitor General and the Republic of Honduras prior to deciding this issue of first impression. *See, e.g., Breard v. Greene*, 523 U.S. 1068 (1998) (inviting “views of the United States” in case addressing rights under multilateral consular treaty); *Air France v. Saks*, 470 U.S. 392, 404 (1985) (recognizing that, when construing a treaty, the interpretations of its terms by its other parties must be accorded “considerable weight.”); *see also Olympic Airlines v. Husain*,

540 U.S. 644 (2004) (Scalia, J., dissenting) (“Foreign constructions are evidence of the original shared understanding of the contracting [treaty] parties.”).

Respectfully submitted

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## CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of August, 2008, a true and correct copy of the foregoing Motion for Stay of Execution was served upon opposing counsel by electronic mail to:

W. Erich Dryden  
Assistant Attorney General  
Postconviction Litigation Division  
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Morris H. Moon  
Counsel of Record