No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2007

HELIBERTO CHI,
Petitioner

V.

THE STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

THIS IS A DEATH PENALTY CASE.

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

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QUESTIONS PRESENTED

THIS IS A CAPITAL CASE

The United States and Honduras are the sole parties to a bilateral Treaty of Friendship, Commerce and Consular Rights ("Consular Rights Treaty"), made binding on the State of Texas under the Supremacy Clause of the United States Constitution. This Court recently recognized that a number of such "'Friendship, Commerce, and Navigation' Treaties. . . are self-executing – based on 'the language of the[se] Treat[ies],'" *Medellin v. Texas*, 128 S.Ct. 1346, 1366 (2008), and announced the principles that "the terms of a treaty control the outcome of a case" and that "the terms of a treaty govern its enforcement." *Id.* at 1364 & n.11.

This case presents the following questions:

1. As indicated in *Medellin v. Texas*, is the bilateral Consular Rights Treaty "self-executing," and does it confer justiciable rights on individuals?

2. Do the provisions of Article I of the Consular Rights Treaty conferring an individual right of "access to the courts . . . for the defense of their rights . . . [to] that degree of protection required under international law" constitute a "clear and express statement" of intent that would prevail over "the procedural rules of the forum State," as announced in *Breard v. Greene*?

3. Does the decision of the court below conflict with the finding of *Sanchez-Llamas v. Oregon* that "where a treaty provides for a particular judicial remedy. . . courts must apply the remedy as a requirement of federal law"?

4. Would Petitioner's execution – without first providing him access to the Texas courts to assert and vindicate his bilateral treaty rights – violate the Supremacy Clause and the Fourteenth Amendment to the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

Petitioner Heliberto Chi asks the Court to grant a writ of *certiorari* to review the decision of the Texas Court of Criminal Appeals ("CCA") dismissing his application for writ of habeas corpus based on the violation of his individual and justiciable rights under the bilateral Treaty of Friendship, Commerce and Consular Rights, in force between the United States and the Republic of Honduras.

OPINION BELOW

The unpublished opinion of the CCA, *Ex parte Chi*, Writ No. 61,600-04 (Tex. Crim. App. Aug. 6, 2008), is attached as Appendix A.

JURISDICTION

On August 6, 2008, the CCA held that Mr. Chi's application for writ of habeas corpus did not meet the statutory exceptions to the bar against subsequent petitions. App. A at 3. This Court has jurisdiction to review the CCA's decision pursuant to 28 U.S.C. § 1257. Section 1257(a) states that the Court may review by writ of *certiorari* a final judgment or decree "rendered by the highest court of a State in which a decision could be had . . . where the validity of a treaty . . . of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to . . . treaties . . . of the United States." A state "statute," for purposes of such review, includes a constitutional provision, a municipal ordinance, and a judicial or an administrative order of "legislative" character. *See* Hart and Wechsler, The Federal Courts and the Federal System 641 (2d ed. 1973); *see also* Part

I(F), *infra* (explaining that CCA's application of state procedural rule does not bar this Court's consideration of merits).

CONSTITUTIONAL AND TREATY PROVISIONS INVOLVED

This case involves the application of the Supremacy Clause of the United States Constitution, which provides, in pertinent part, that: "[A]ll Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land[.]" U.S. Const., art. VI, cl. 2.

This case also involves Articles I and XX of the Treaty of Friendship, Commerce and Consular Rights ("Consular Rights Treaty"), Dec. 7, 1927, U.S.-Hond., 45 Stat 2618, 1928 WL 26688. These treaty provisions are set out in Appendix B.

STATEMENT OF THE CASE

Mr. Chi is a Honduran national within the borders of the United States. Consequently, he is guaranteed the protections and individual rights granted to him by the Treaty of Friendship, Commerce and Consular Rights, a bilateral treaty ratified by Honduras and the United States. Mr. Chi seeks certiorari review from this Court based upon a cascading series of three separate violations of his individual and justiciable rights under the Consular Rights Treaty and the failure of the court below to recognize or vindicate those rights.

The initial violation of the Consular Rights Treaty occurred following Mr. Chi's arrest, when the arresting authorities failed to advise him of his right to consular notification under Article 36 of the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 100-

101, T.I.A.S. No. 6820. This failure to afford him access to timely consular protection in turn triggered a violation of Article I of the Consular Rights Treaty, which guarantees the "most constant protection and security" of Mr. Chi's person "to that degree required by international law." That failure by the arresting authorities to honor their treaty obligations breached not only his protective rights of consular notification as "required by international law" under Article I, but also his entitlement to seek consular protection in the form specified under bilateral Article XX of the Consular Rights Treaty, namely, consular representations to the local prosecutorial and judicial authorities for the "purposes of protecting the nationals. . .in the enjoyment of their rights accruing by treaty or otherwise."

The third violation of the Consular Rights Treaty occurred just yesterday, when the Texas Court of Criminal Appeals ("CCA") dismissed Petitioner's subsequent application for a writ of habeas corpus in which he sought, *inter alia*, to assert and vindicate his justiciable rights under the Consular Rights Treaty. Petitioner asserted that the terms of Articles I and XX of the Consular Rights Treaty are self-executing and confer private rights, the violation of which he could raise and seek to remedy in the Texas courts by means of a subsequent habeas petition. Rather than construe the terms of the bilateral Consular Rights Treaty and consider the merits of his claims arising under its requirments, the CCA altogether ignored Petitioner's arguments concerning the scope and effect of the bilateral treaty provisions.

Without any substantive discussion of the bilateral treaty, the CCA held that his petition "did not meet the dictates" of the Texas habeas statute and "should be dismissed." In so ruling, the CCA conflated Petitioner's claims of violations of his individual rights under the Consular

Rights Treaty with the separate and distinct claims he raised pertaining to the violation of the Vienna Convention in his case.[1]

The CCA decision also failed to recognize or address Petitioner's argument that the recent decisions of this Court in *Medellin v. Texas*, 128 S.Ct. 1346 (2008) and *Sanchez-Llamas v. Oregon*, 126 S.Ct. 2669 (2006) provided clarification and guidance on the construction of individual rights conferred under the Consular Rights Treaty, thus satisfying the previously-unavailable law requirement for a subsequent petition under the Texas habeas statute.

Finally, the CCA ignored Petitioner's argument that the terms of Article I of the bilateral treaty provided a sufficiently "clear and express statement" of intent that state procedural bars could *not* be applied to prevent consideration of the asserted bilateral treaty violations, under this Court's decision in *Breard v. Greene*, 523 U.S. 371, 375 (1998).

PROCEDURAL HISTORY

Mr. Chi is confined pursuant to a conviction for capital murder and sentence of death returned on November 14, 2002.

The CCA affirmed the conviction and sentence on May 26, 2004, in an unpublished decision. A petition for a writ of *certiorari* was denied by this Court on November 15, 2004. *Chi v. Texas*, 504 U.S. 499 (2004). Habeas counsel filed a state application for writ of habeas

[1] As outlined in the Statement of the Case in his subsequent petition, apart from the separate and distinct claims he raised under the bilateral treaty, Mr. Chi urged the court to grant him a stay based on the prospects of Congressional implementation of a legislative remedy of "review and reconsideration" for the Vienna Convention violation in his case. Recognizing that this claim is now foreclosed by this Court's recent decision in *Jose Ernesto Medellin v. Texas*, he does not reassert any of his Vienna Convention arguments and relies instead solely on the claims arising under the bilateral Consular Rights Treaty as the basis for review in this Court.

corpus, which was denied in an unpublished decision by the CCA on April 27, 2005. *Ex Parte Chi*, Writ No. 61,600-01 (Tex. Crim. App. 2005).

Mr. Chi filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas. On May 21, 2006, the District Court denied Mr. Chi's writ of habeas corpus in an unpublished memorandum opinion and order. *Chi v. Quarterman*, 2006 WL 1710343 (N.D. Tex. 2006).

Mr. Chi filed a request for certificate of appealability in the United States Court of Appeals for the Fifth Circuit. On March 30, 2007, the Court of Appeals denied Mr. Chi's request for a certificate of appealability and dismissed the writ of habeas corpus in an unpublished opinion. *Chi v. Quarterman*, 223 Fed. Appx. 435 (5th Cir. 2007). Mr. Chi then filed a petition for Writ of *Certiorari* in this Court. The Court declined to review the case on September 25, 2007. *Chi v. Quarterman*, 128 S.Ct. 34 (2007).

Mr. Chi was scheduled to be executed on October 3, 2007. He filed a subsequent application for writ of habeas corpus with the CCA. Shortly before the scheduled execution, the CCA granted a stay in order to decide issues surrounding pending challenges to Texas' lethal injection protocol. On June 9, 2008, the CCA dismissed Mr. Chi's subsequent application, without considering his claims for relief. The trial court scheduled a new execution date for August 7, 2008.

On August 5, 2008, Mr. Chi filed a subsequent application for writ of habeas corpus and motion for stay of execution with the CCA. He alleged that the State violated his rights under the Consular Rights Treaty by denying him access to timely consular protection that would have

allowed him to mount an effective trial defense. On August 6, 2008, the CCA dismissed the application as abusive. App. A.

REASONS FOR GRANTING *CERTIORARI*

THIS COURT SHOULD GRANT *CERTIORARI* TO DETERMINE IMPORTANT AND UNRESOLVED FEDERAL LAW QUESTIONS.

This case raises novel and significant questions of federal law that lie at the intersection between the United States' binding obligations under a bilateral treaty with Honduras, the application of this Court's recent holdings and rules of construction for the proper interpretation of the individual rights conferred by that treaty, and the compatibility of state law with those treaty rights under the Supremacy Clause. Reduced to their essence in the context of this case, these important federal questions ask whether the execution of Honduran national Heliberto Chi tonight–without first affording him the opportunity to vindicate his bilateral treaty rights–would 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") (attached as Appendix B), 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."

REASONS FOR GRANTING THE WRIT OF CERTIORARI

As a Honduran national, Petitioner is guaranteed the rights and protections granted by the Consular Rights Treaty, a bilateral treaty entered into agreed upon by Honduras and the United

States. Entirely unlike the treaty rights claims addressed in *Medellin v. Texas*, __ U.S. __ (2008), the Consular Rights Treaty supporting Mr. Chi's claims is undoubtedly self-executing, plainly confers individual rights and incorporates the requirements of international law into enforceable domestic law for the purposes of protecting those individual rights. Nonetheless, he faces execution in a matter of hours without any court having addressed the merits of his interpretation of the status of the Consular Rights Treaty, the scope and significance of its rights-conferring provisions or the remedies that should ensue for their violation.

In addition, Petitioner maintains that the CCA erred by failing to apply this Court's recent instructions and clarifications on construing individual treaty rights as newly-available law, and by failing to follow this Court's holding that a clear and express statement of intent in a self-executing and justiciable treaty provision trumps any conflicting procedural rules of the forum state.

Thus, in this case "a state court. . . has decided an important question of federal law that has not been, but should be, settled by this Court [and] has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). The petition for writ of certiorari should therefore be granted, to permit full briefing and argument on these significant questions.

A. The Court Should Grant the Writ of Certiorari to Determine the Self-Executing and Justiciable Nature of the Bilateral Consular Rights Treaty.

Two centuries of this Court's precedents establish that two factors must be present before the domestic courts can review and remedy a treaty violation asserted by an individual claimant. First, the treaty at issue must be self-executing, meaning that it "has automatic domestic effect as federal law upon ratification." *Medellin v. Texas*, 128 S.Ct. 1346, 1356 n. 1 (2008); *Foster v. Neilson*, 2 Pet. 253, 315 (1829) (a treaty is "equivalent to an act of the legislature," and hence self-executing, when it "operates of itself without the aid of any legislative provision"). Second, the terms of the treaty must confer rights on individuals that are capable of enforcement in the domestic courts. A treaty "is a law of the land as an act of congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined." *Edye v. Robertson (Head Money Cases)*, 112 U.S. 580, 598-99 (1884). When such private rights "are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute." *Id.* at 599. Where both factors are met, any conflicting state law or rule of procedure must yield to the superior force of the treaty's requirements. As this Court recently clarified:

> Of course, it is well established that a self-executing treaty binds the States pursuant to the Supremacy Clause, and that the States therefore must recognize the force of the treaty in the course of adjudicating the rights of litigants. *See, e.g.*, *Hauenstein v. Lynham*, 100 U.S. 483, 25 L.Ed. 628 (1880). And *where a treaty provides for a particular judicial remedy*, there is no issue of intruding on the constitutional prerogatives of the States or the other federal branches. *Courts must apply the remedy as a requirement of federal law.*

Sanchez-Llamas v. Oregon, 126 S.Ct. 2669, 2680 (2006) (emphases added); *cf. Hopkirk v. Bell*, 7 U.S. 454, 458 (1806) (state statutes of limitations must yield before a conflicting treaty provision); *Neilsen v. Johnson* 279 U.S. 47, 52*Ware v. Hylton*, 3 Dall. 199 (1796) (construing "the meaning of treaty provisions. . . is not restricted by any necessity of avoiding possible

conflict with state legislation and when so ascertained must prevail over inconsistent state enactments.")

It is apparent that the bilateral Consular Rights Treaty meets all of these requirements on its face. First, this treaty is plainly self-executing. "Provisions in treaties of friendship, commerce, and navigation, or other agreements conferring rights on foreign nationals, especially in matters ordinarily governed by State law, have been given effect without any implementing legislation, their self-executing character assumed without discussion." Restatement (Third) of Foreign Relations Law of the United States, § 111(g) (1987), *International Law and Agreements as Law of the United States*; *see also Asakura v. Seattle*, 265 U.S. 332, 340, 343-344, (1924) (construing treaty of friendship and commerce with Japan and overturning conflicting local ordinance); *Medellin*, 128 S.Ct. at 1392-93 (Breyer, J., dissenting) (listing numerous bilateral treaties of friendship, commerce and consular rights found considered by the Court to be self-executing (*e.g.*, treaties numbered 7, 8, 11, 12 and 13 on the list)).

Second, this treaty confers justiciable rights on individual Honduran citizens, including Petitioner Mr. Chi. Article I plainly states that:

> The nationals of each High Contracting Party shall enjoy *freedom of access to the courts* of justice of the other on conforming to the local laws, as well for the prosecution as *for the defense of their rights*, and in all degrees of jurisdiction established by law.
>
> The nationals of each High Contracting Party *shall receive* within the territories of the other. . . *the most constant protection and security for their persons* and property, and *shall enjoy* in this respect *that degree of protection that is required by international law.*

Article XX of the treaty further recognizes the right of Honduran nationals to receive consular protection and assistance:

> *Consular officers* of either High Contracting Party may, within their respective consular districts, *address the authorities*, National, State, Provincial or Municipal, *for the purpose of protecting the nationals of the State* by which they are appointed *in the enjoyment of their rights accruing by treaty or otherwise.* Complaint may be made for the infraction of those rights.

See also Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 186-87 & n.16 (1982) (expressly confirming that the 1927 bilateral treaty with Honduras confers "legal status and access to foreign courts" on corporate entities); *Clark v. Allen*, 331 U.S. 503, 508 (1947) (confirming that 1923 Treaty of Friendship, Commerce and Consular Rights with Germany confers individual rights, so that if the provisions of the treaty "have not been superseded or abrogated they prevail over any requirements of California law which conflict with them").[2]

The language of the Consular Rights Treaty could hardly be more explicit: Mr. Chi has a right of "access to the courts" of the United States for the defense of his treaty rights, to the degree that is "required by international law." It would thus be "particularly inappropriate for a court to sanction a deviation from the clear import of a solemn treaty . . . when, as here, there is no indication that application of the words of the treaty according to their obvious meaning

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[2] Articles I and XXI of the consular rights treaty with Germany are identical to articles I and XX of the consular rights treaty with Honduras. For the full text of the treaty with Germany, *see* U.S. Diplomatic Mission to Germany, Treaty of Friendship, Commerce and Consular Rights, *at* http://usa.usembassy.de/etexts/friendtreaty0139.htm (last visited Aug. 3, 2008).

effects a result inconsistent with the intent or expectations of its signatories." *Maximov v. United States*, 373 U.S. 49, 54 (1963).[3]

B. The Court Should Grant the Writ to Determine the Extent to which the Treaty Incorporates the International Requirements of Consular Protection into Domestic Law.

As this Court has long held, international law "is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 700 (1900); *see also Colorado v. Kansas*, 206 U.S. 46, 97 (1907) ("International law is no alien in this tribunal. . . . Sitting, as it were, as an international, as well as a domestic, tribunal, we apply Federal law, state law, and international law, as the exigencies of the particular case may demand."); Restatement (Third), *supra* at § 111, cmt. (d) ("As law of the United States, international law is also the law of every State, is a basis for the exercise of judicial authority by State courts, and is cognizable in cases in State courts, in the same way as other United States law."). Where, as here, a treaty confers a justiciable right on foreign nationals to receive "the most constant protection of their persons" to the degree "that is required

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[3] If this Court sees a need for additional information before deciding on has any doubts regarding the self-executing nature of the bilateral treaty with Honduras or the scope of the justiciable rights that it confers, it should grant Mr. Chi's motion for a stay of execution and obtain an interpretation of the treaty from the U.S. Department of State, which "while not conclusive upon a court called upon to construe such a treaty in a matter involving personal rights, is nevertheless of much weight." *Charlton v. Kelly*, 229 U.S. 447, 468 (1913). *See also U.S. v. Li*, 206 F.3d 56, 63 (1st Cir. 2000) (obtaining and consulting State Department interpretation of bilateral consular treaty with China); *Breard v. Greene*, 523 U.S. 1068 (1998) (inviting "views of the United States" in case addressing rights under multilateral consular treaty).

by international law," courts must look to the contemporary contours of relevant international law when construing the treaty obligation.

The parties to this treaty expressly intended to incorporate the requirements of international law into domestic law for the purposes of enforcing the individual rights conferred. Thus, the intent of the signatories "is manifest from the language of the document itself." *United States v. Stuart*, 489 U.S. 353, 370 (1989) (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 371 (Scalia, J., concurring in the judgment) ("[g]iven that the Treaty's language resolves the issue presented, there is no necessity of looking further" to discover the intent of the parties). Any other interpretation would run afoul of the entrenched canon of treaty construction that a treaty "should generally be 'construed . . . liberally to give effect to the purpose which animates it'" and that "even where a provision of a treaty fairly admits of two constructions, one restricting, the other enlarging, rights which may be claimed under it, the more liberal interpretation is to be preferred. . . ". *Stuart*, 489 U.S. at 368; *accord DeGeoffrey v. Riggs*, 133 U.S. 258, 271 (1890); *Shanks v. Dupont*, 28 U.S. 242, 249 (1830). It remains only for the Court to determine the relevant elements of contemporary international law that animate the purpose of the Consular Rights Treaty.

International law clearly recognizes an individual right to seek consular protection in all cases in which a foreign national faces prosecution abroad. Numerous treaties enshrine that right, most notably the Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 100-101, T.I.A.S. No. 6820, ("VCCR"), Article 36 of which expressly requires consular notification and communication "without delay" in all cases of detained foreign nationals—an obligation adopted unreservedly by some 170 nations. Moreover, at least ten multilateral treaties

adopted subsequently to the VCCR contain provisions facilitating consular assistance when foreigners are detained. Each enshrines the individual right of detainees to obtain consular contact, often by incorporating the language of VCCR Article 36 verbatim.[4] Thus, the individual right to "protection of their persons" to the degree "that is required by international law" under the bilateral Consular Rights Treaty must encompass the internationally-recognized right of access to consular protection conferred on Honduran nationals detained in the United States.

For the purposes of construing individual rights under the bilateral Consular Rights Treaty, it is immaterial that violations of the separate provisions of the VCCR may be subject to domestic rules of procedural default; what matters instead is that the "protection of their persons . . .required by international law" under Article I includes the universal right of access to consular protection. Article XX of the Consular Rights Treaty further recognizes a right to obtain consular representations addressed to "the authorities" of the receiving State, for the express purpose of "protecting the nationals of the State by which they are appointed in the enjoyment of their rights accruing by treaty. . . ". Read in conjunction with Article I, it seems certain that the individual rights accruing under this treaty which are subject to consular representations to the local authorities when violated include the international legal requirement of access to timely consular assistance. Moreover, representations to *judicial* authorities such as a trial court must be included in that comprehensive language. *See Consulate General of Mexico*

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[4] *See, e.g.*, Convention on the Safety of United Nations and Associated Personnel, 10 Feb. 1997, art. 17(2), 2051 UNTS 363; Convention for the Suppression of Terrorist Bombing, 12 Jan. 1998, art. 7(4), 2149 UNTS 286; Convention on the prevention and punishment of crimes against internationally protected persons, 14 Dec. 1973, art. 6(2), 1035 UNTS 167; Migrant Workers Convention, art. 7, G.A. res. 45/158 (1990); OAU Convention on the Prevention and Combating of Terrorism, art. 7(4), OAU Doc. AHG/Dec. 132 (XXXV) 1999.

v. Phillips, 17 F. Supp.2d 1318 (S.D. Fla. 1998) (construing identical language in Article VI of the bilateral Consular Convention with Mexico, 57 Stat. 800 (1942), and finding that "the Bilateral Convention [with Mexico] is self-executing....There is no indication that the signatory parties intended to exclude judicial authorities from the term "authorities.")

D. The Writ Should Be Granted to Establish if the Treaty Implements the International Legal Obligation to Remedy Its Violation by Cessation and Reparation in Adequate Form.

Article I of the Consular Rights Treaty establishes that Mr. Chi is entitled to "the most constant protection and security" of his person to the "degree of protection that is required by international law." Through this plainly stated language, Article I implements in the forum state of Texas the protective international legal principles mandating an effective and proportionate remedy for a treaty violation. Foremost amongst those principles are the requirements of cessation and reparation: the offending state must first terminate the breach of international law and subsequently make suitable restitution in a form that will eradicate the consequences of the illegal act. "The essential principle of international law is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed." Restatement (Third), *supra* at §901 R.N. 3; *accord.* Factory at Chorzów, Merits, 1928 P.C.I.J., Series A, No. 17, pg. 47. "Ordinarily, emphasis is on forms of redress that will undo the effect of the violation, such as restoration of the *status quo ante*, restitution, or specific performance of an undertaking."

Restatement (Third) at §901 cmt. d. Finally, the obligation of a state "to terminate a violation of international law may include discontinuance, revocation, or cancellation of the act (whether legislative, administrative or judicial) that caused the violation." *Id.* cmt. C. Furthermore, these remedial mechanisms are not confined to violations of the treaty parties' rights, since a state is also "responsible under international law for injury to a national of another state caused by an official act or omission that violates. . .a personal right that, under international law, a state is obligated to respect of individuals of foreign nationality". *Id.* § 711 (b).

This Court has consistently recognized and applied principles of cessation and reparation to violations of individual rights conferred under bilateral treaties. For example, it has upheld the supremacy of the treaty rights of foreign creditors over state statutes of limitation. *See Hopkirk v. Bell,* 7 U.S. 454, 458 (1806). It has overturned a municipal ordinance restricting the commercial activities of foreign nationals. *See Asakura v. Seattle, supra.* It has struck down state law abrogating the right of non-resident aliens to inherit property. *See Kolovrat v. Oregon,* 366 U.S. 187 (1961). It has quashed criminal prosecutions that violated bilateral extradition treaties. *See, e.g., United States v. Rauscher,* 119 U.S. 407 (1886). In each instance, the purpose and effect of the remedy was the immediate cessation of the treaty breach, as well as the restoration of the *status quo ante*: the state of affairs that prevailed prior to its violation. In each cited case, the Court remedied the breach of bilateral treaty obligations through judicial nullification of the offending state statutes or the judicial decisions of the courts below.

In Petitioner's case, the "cessation" requirement is met first by halting his execution and then by restoring his right of "access to courts." One viable option to meet the "reparation" requirement would be a state court evidentiary hearing to determine what the consequences of

the treaty violation were on the proceedings in this case, so that reparation in adequate form can be provided. Of course, this determination cannot be made by reviewing an empty record.

The rationale for applying the international legal principles of cessation and reparation is compelling in a case where the treaty in question directly incorporates the requirements of international law into its rights-conferring language. This is just such a case. At a minimum, this Court should recognize that the interim remedy required here is "cancellation" of the judicial act of Mr. Chi's execution date, in order to "terminate a violation of international law." Restatement (Third), *supra* at §901.

In sum, the proper construction and application of the rights-conferring language in Articles I and XX remains an open and important legal question, one that Petitioner respectfully suggests this Court can best address after full briefing on the merits, submissions from the respective parties to the treaty and oral argument. Whatever the correct construction of these provisions may be, however, two things are certain. *First*, this Court has cautioned that "rules of international law should not be left to divergent and perhaps parochial state interpretations." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964). *Second*, whatever phrases such as "access to the courts" or "the most constant protection of their persons" to the degree "that is required by international law" may mean in this context, they cannot possibly mean nothing at all. *See, e.g., De Geofroy v. Riggs*, 133 U.S. 258, 271-272 (1890) (the rule in construing treaties is "to give a sensible meaning to all their provisions, if that be practicable. . . . as understood in the public law of nations, and not in any artificial or special sense impressed upon them by local law, unless such restricted sense is clearly intended.") By refusing outright to perform its duty to construe Petitioner's rights under the bilateral treaty, the CCA rendered all

of those rights null and void. Because of that action, the "possibility of international discord cannot therefore be gainsaid." *McCulloch v. Sociedad Nacional*, 372 U.S. 10, 21 (1963).

Moreover, the CCA's utter disregard for what are, after all, reciprocal rights threatens to undermine the selfsame protections of the persons, property and legal rights of U.S. nationals in Honduras. *See Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674, 675 n. 2 (Tex.1990) (recognizing that identical language in a bilateral treaty with Costa Rica satisfies state law requirement of "equal treaty rights" of access to the foreign court by U.S. citizens, for the purposes of foreigners bringing wrongful death suits in the Texas courts); *accord Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 74 (Tex. 2000). The implications of leaving these vital questions unanswered are profound, particularly when life itself hangs in the balance.

E. The Court Should Grant the Writ to Correct the Failure of the Lower Court to Apply the Guiding Principles of Treaty Construction announced in *Medellin and Sanchez-Llamas.*

As he did in the court below, Petitioner asserts that *Sanchez-Llamas v. Oregon* and *Medellin v. Texas* announced or clarified principles of treaty construction directly applicable to the interpretation of his rights under the bilateral Consular Rights Treaty, thus meeting the test of a previously-unavailable legal claim required under the state habeas statute for bringing a subsequent petition.[5] It was only after these recent decisions that a Texas court could determine with certainty the legal principles to apply when construing individual rights conferred under the

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[5]Section 5(d) of Article 11.071 states in pertinent part:

a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court...on or before that date.

Consular Rights Treaty. At the outset, for example, when addressing the Consular Rights Treaty, a lower court should now be guided by the *Medellin* Court's acknowledgement "that a number of the 'Friendship, Commerce, and Navigation' Treaties. . . are self-executing--based on 'the language of the[se] Treat[ies].'" *Medellin*, 128 S.Ct. at 1365. The court should then apply the *Medellin* principles that "the terms of a treaty control the outcome of a case" and that "the terms of a treaty govern its enforcement." *Id.* at 1364 & n. 11; *see also id.* at 1369 (emphasis added)("If the Executive determines that a treaty should have domestic effect of its own force, that determination may be implemented 'in mak[ing]' the treaty, *by ensuring that it contains language plainly providing for domestic enforceability.*") Furthermore, in determining the compatibility of state procedural bars with the requirements of the Consular Rights Treaty, a court should now follow the precept that "where a treaty provides for a *particular judicial remedy*. . . . Courts must apply the remedy as a requirement of federal law." *Sanchez-Llamas v. Oregon*, 126 S.Ct. at 2680 (emphasis added).[6]

To an unparalleled degree, the terms of the Treaty of Friendship, Commerce and Consular Rights between the United States and Honduras fully meet all of these requirements of the *Medellin* and *Sanchez-Llamas* decisions. Article I confers an individual right of "freedom of access to the courts. . .for the defense of their rights, and in all degrees of jurisdiction established by law." Those defensible rights include any violation of the obligation to provide "the most

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[6] Petitioner is aware of no decision prior to *Sanchez-Llamas* in which this Court required a "particular judicial remedy" to be "expressly or implicitly" stated in a treaty as a requirement for the judicial enforcement of private rights conferred by its provisions. Indeed, the *Sanchez-Llamas* Court cited *United States v. Giordano,* 416 U.S. 504, 524-525 (1974) in support of this holding; notably, *Giordano* is not a treaty construction case, suggesting that *Sanchez-Llamas* announced a previously-unavailable rule of treaty construction.

constant protection and security for their persons" to the "degree of protection that is required by international law." As confirmed by Article XX, among those protections under international law is the right to seek consular representations made to the authorities "for the purpose of protecting the nationals of the State by which they are appointed in the enjoyment of their rights accruing by treaty. . .". Finally, the specific judicial remedy incorporated in the treaty for the protection of these individual rights is that "required by international law," namely, the international legal remedy of cessation and appropriate reparation.

Petitioner's subsequent habeas petition "conform[ed] to the local laws" under Article I by relying on a body of rules recently provided by this Court for the determination of individual rights under precisely this category of treaty. By failing to acknowledge–let alone apply–these clarifying and defining rules of construction to Petitioner's claims under the bilateral treaty, the court below decided an important federal question in a way that conflicts with relevant decisions of this Court. The petition for a writ of certiorari should be granted to correct this error.

F. The Writ Should Issue Court Because the Lower Court Erroneously Applied a State Procedural Rule to Bar Review, Contrary to the Treaty's Language.

This Court has declared that "absent a *clear and express statement to the contrary*, the procedural rules of the forum State govern the implementation of the treaty in that State." *Breard*, 523 U.S. at 375 (emphasis added). The Consular Rights Treaty arguably provides just such a clear and express statement, and any conflicting rule of procedure that would now block Mr. Chi's "access to the courts" in order to vindicate his bilateral treaty rights must yield under the Supremacy Clause.

The requirement that a valid treaty provision trumps any conflicting elements of state law is implicit in the language of the Supremacy Clause itself and has been applied repeatedly by this Court. *See, e.g. Hopkirk v. Bell*, 7 U.S. 454, 457 (1806); (under the Supremacy Clause, state statute of limitations "must yield to the treaty"); *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (no state law can "can add to or take from the force" of a treaty protecting foreign nationals); *see also Baldwin v. Franks*, 120 U.S. 678 (1887) (treaties in force "are part of the supreme law of the land, and that they are as binding within the territorial limits of the states as they are elsewhere throughout the dominion of the United States.") As Professor Laurence H. Tribe, the pre-eminent living scholar of United States constitutional law, stated in the 2000 edition of his treatise, "[u]nder the supremacy clause, it is indisputable that a valid treaty overrides any conflicting state law, even on matters within state control. Indeed, the treaty controls whether it is ratified before or after the enactment of the conflicting state law." Laurence H. Tribe, 1 AMERICAN CONSTITUTIONAL LAW 645, §4-4 (3d ed. 2000).

Indeed, Texas law fully recognizes these constitutional requirements. *See, e.g., In re Vernor*, 94 S.W.3d 201 (Tex. App.-Austin 2002) (Convention on the Civil Aspects of International Child Abduction confers rights on individual applicants; Convention's provisions for obtaining relief take precedence over comparable state law requirement in Tex. Fam. Code Ann. §§ 152.001-.317); *Flores v. Contreras*, 981 S.W.2d 246,248 (Tex. App.--San Antonio 1998, pet. denied) (same). Moreover, the Texas Court of Criminal Appeals has itself long recognized that treaty obligations represent the supreme law of the land, binding upon state courts "and available to persons having rights secured or recognized thereby, and may be set up

as a defense to a criminal prosecution established in disregard thereof." *Dominguez v. State*, 90 Tex.Crim. 92, 99, 234 S.W. 79, 83 (1921).

Yet another entrenched principle of international law is implicated in the proper construction of the individual rights conferred under the Consular Rights Treaty – namely that Texas "cannot adduce its constitution or its laws as a defense for failure to carry out its international obligation." Restatement (Third), § 115, cmt. b; *see also id.* at § 321 cmt. a. That principle is also enshrined in Article 27 of the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 332, 8 I.L.M. 679): "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[7]

It is thus no answer for Texas to say that Mr. Chi's claim arising under the bilateral Consular Rights Treaty is procedurally barred under Texas law because he failed to raise it sooner. Domestic canons of treaty construction and the requirements of the Supremacy Clause support Mr. Chi's interpretation. Furthermore, the treaty incorporates the requirements of international law as the baseline for the individual rights that it protects, and under international law no such justification can be allowed. In addition, it is patently obvious that trial counsel's failure to invoke his client's rights under the bilateral treaty would have resulted in the

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[7] While the United States has not yet ratified the Vienna Convention on the Law of Treaties ("VCLT"), several courts have stated that they look to it "as an authoritative guide to the customary international law of treaties." *See, e.g., Ehrlich v. Am. Airlines, Inc.*, 360 F.3d 366, 373 n.5 (2d Cir. 2004); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir.1992); *see also Weinberger v. Rossi*, 456 U.S. 25, 29 n. 5 (looking to VCLT in construing the meaning of the word "treaty"). Moreover, "the U.S. Department of State long has taken the position that 'the Convention is . . . the authoritative guide to current treaty law and practice,'" *United States v. Yousef*, 327 F.3d 56 (2d Cir. 2003) at n. 28 (quoting statement of Secretary of State William P. Rogers, S. Exec. Doc. L. at 1) (1971) (Letter of Submittal from the Secretary of State to the President)).

application of the Texas contemporaneous objection rule on appeal, just as it did for Mr. Chi's VCCR claim.

Under these circumstances, a court must interpret the plain language of the treaty to mean precisely what it says and apply it exactly as the parties intended, irrespective of any and all state rules of procedure that are repugnant to its requirements. *See Hauenstein v. Lynham*, 100 U.S. 483, 490 (1879) ("We have no doubt that this treaty is within the treaty-making power conferred by the Constitution. And it is our duty to give it full effect. We forbear to pursue the topic further.") The Supremacy Clause demands nothing less.

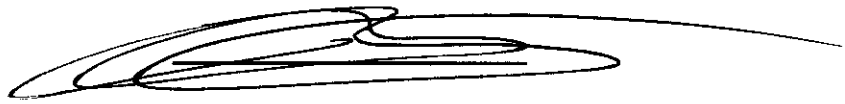
As a final matter, the Court may well wish to consider the broader due process and equal protection implications of denying any legal effect to the reciprocal treaty rights to a foreign national in peril of imminent execution. *See Yick Wo* v. *Hopkins*, 118 U.S. 356, 367-368 (1886) (due process and equal protection rights of petitioners "are not less because they are aliens and subjects" of a foreign country, citing bilateral treaty requirements); *Chew Heong* v. *United States*, 112 U.S. 536 (1884) (granting habeas relief to a foreign national detained in violation of a bilateral treaty with China).

Unavoidably, this case comes before the Court at a late hour, but the longstanding promise first made to the world in *Yick Wo* that "the equal protection of the laws is a pledge of the protection of equal laws" is no less binding on that account. Petitioner today asks this Court to reaffirm that promise by staying his execution, so that an orderly, fair and comprehensive review of his bilateral treaty claims may then occur.

CONCLUSION

Mr. Chi asks this Court to grant his petition for a writ of *certiorari* and stay his execution scheduled for August 7, 2008.

Respectfully Submitted,



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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2007

HELIBERTO CHI,
Petitioner

V.

THE STATE OF TEXAS,
Respondent.

CERTIFICATE OF SERVICE

I, Morris H. Moon, hereby certify that a true and correct electronic version of Mr. Chi's Petition for Writ of Certiorari was served on opposing counsel on August 7, 2008, via e-mail to:

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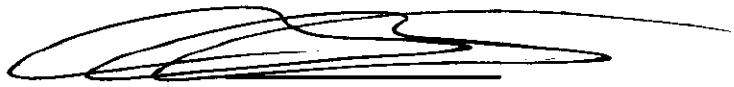

Morris H. Moon

Counsel of Record

APPENDIX A

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-61,600-04

EX PARTE HELIBERTO CHI, Applicant

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND MOTION FOR STAY OF EXECUTION FROM CAUSE NO. 0805594 IN THE CRIMINAL DISTRICT COURT NUMBER THREE HARRIS COUNTY

Per Curiam. **PRICE, J., filed a concurring statement. WOMACK, J., not participating.**

ORDER

We have before us a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5, and a motion for stay of execution.

In November 2002, a jury found applicant guilty of the offense of capital murder. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This

Court affirmed applicant's conviction and sentence on direct appeal. *Chi v. State*, No. AP-74,492 (Tex. Crim. App. May 26, 2004) (not designated for publication). Pursuant to Article 11.071, § 4A, applicant filed in the convicting court his initial post-conviction application for writ of habeas corpus in which he raised seven claims, including a claim alleging the violation of his rights under Article 36 of the Vienna Convention. The convicting court recommended that we deny his claims. We adopted the trial court's findings of fact and conclusions of law and denied habeas relief. *Ex parte Chi*, No. WR-61,600-01 (Tex Crim. App. Apr. 27, 2005)(not designated for publication).

Applicant later filed a subsequent application pursuant to Article 11.071, § 5, and a writ of prohibition, in which he challenged the constitutionality of the drug protocol used to carry out executions. After filing and setting both cases, this Court dismissed the subsequent application and denied the writ of prohibition. *Ex parte Chi*, ____ S.W.3d ____, Nos. AP-75,930 and 931 (Tex. Crim. App. June 9, 2008).

In this newly filed subsequent application, applicant asserts that he is entitled to a stay of execution and a judicial review and consideration of whether the violation of his rights under Article 36 of the Vienna Convention prejudiced him. He asserts that this review is mandated by the *Avena* judgment of the International Court of Justice, the Bilateral Treaty of Friendship, Commerce, and Consular Rights with Honduras, and the United States Supreme Court's opinion in *Medellin v. Texas*, 552 U.S. ___ (2008).

We have reviewed applicant's subsequent application and find that it does not meet the dictates of Article 11.071, § 5, and should be dismissed. Art. 11.071, § 5(a). Applicant's motion for stay of execution is denied.

IT IS SO ORDERED THIS THE 6TH DAY OF AUGUST, 2008.

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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-61,600-04

EX PARTE HELIBERTO CHI, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS IN CAUSE NO. 0805594A FROM THE CRIMINAL DISTRICT COURT NO. 3 OF TARRANT COUNTY

PRICE, J., filed a concurring statement.

CONCURRING STATEMENT

The applicant is a Honduran national. In this, his second subsequent post-conviction application for writ of habeas corpus, the applicant alleges for the first time that he cannot be executed without violating mandatory obligations mutually undertaken between the United States and Honduras under the Bilateral Treaty of Friendship, Commerce and Consular Rights with Honduras.[1] He argues that this particular treaty, unlike the treaties at

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[1] 45 Stat 2618, 1928 WL 26688 (U.S. Treaty)

issue in *Medellin v. Texas*,[2] are self-executing. He also argues that they confer individual rights. He argues that, under the Supremacy Clause,[3] the treaty obligations undertaken by the United States in the Treaty of Friendship, Commerce and Consular Rights with Honduras are binding upon and enforceable in our domestic courts, and should trump any contrary state law. Among those treaty obligations is the obligation to afford Honduran nationals in this country "that degree of protection that is required by international law." This, he asserts, incorporates the protection of the Vienna Convention on Consular Relations,[4] which includes the interpretation of Section 36 of the Vienna Convention which was issued by the International Court of Justice in the *Avena* decision.[5]

Assuming that the treaty that the applicant now invokes is indeed self-executing, and that it actually confers individually enforceable rights upon Honduran nationals in the United States, the applicant still faces an insurmountable burden in raising this claim for the first time in a subsequent writ application. Under the Supreme Court's opinion in *Sanchez-*

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2 ___ U.S. __, 128 S.Ct. 1346 (2008).

3 U.S. CONST. art. II, § 2, cl. 2.

4 Apr. 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820.

5 *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. No. 128 (Judgment of Mar. 31).

Llamas v. Oregon,[6] unless the treaty in question contains "a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State."[7] Thus, notwithstanding the applicant's Supremacy Clause argument, we are bound by Article 11.071, Section 5's restrictions on subsequent post-conviction habeas corpus applications absent "a clear and express statement" in the Treaty of Friendship, Commerce and Consular Rights with Honduras to the contrary.[8] The applicant does not direct us to any statement in the treaty that I would regard as a "clear and express" indication that our abuse-of-the-writ provisions (or any other state doctrine of procedural default) should not apply.

In the alternative, the applicant argues that he satisfies Section 5 of Article 11.071 because of language in *Medellin v. Texas* suggesting that the Treaty of Friendship, Commerce and Consular Relations between the United States and Honduras is, in fact, self-executing and that, as such, it is enforceable in our domestic courts.[9] He contends that this observation in *Medellin* constitutes a newly available legal basis for decision under Article 11.071, Section 5(d). But that part of the *Medellin* opinion to which the applicant alludes

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[6] 548 U.S. 331 (2006).

[7] *Id.* at 351, *quoting Breard v. Greene*, 523 U.S. 371, 375 (1998).

[8] TEX. CODE CRIM. PROC. art. 11.071, § 5.

[9] 128 S.Ct. at 1365-66.

does not seem to announce a new legal doctrine that was "not recognized by or could not have been reasonably formulated from a final decision of" any of our domestic appellate courts. Indeed, it seems apparent from the case law cited by the Supreme Court at this point in its opinion that the law before *Medellin* was sufficiently clear that we may very well have regarded the treaty that the applicant now invokes as self-executing, and (assuming we also found that it confers an individually enforceable right) thus, enforceable in the courts of Texas *had he raised the claim timely at the first available opportunity*. But he did not, and we are therefore constrained by the statutory abuse-of-the-writ doctrine.

With these additional observations, I join the Court's order.

Filed: August 6, 2008
Do Not Publish

APPENDIX B

45 Stat 2618, 1928 WL 26688 (U.S. Treaty)

UNITED STATES OF AMERICA
Honduras

Treaty between the United States and Honduras of friendship, commerce, and consular rights.

Signed at Tegucigalpa, December 7, 1927;

Ratification advised by the Senate, May 25, 1928;

Ratified by the President, June 9, 1928;

Ratified by Honduras, June 15, 1928;

Ratifications exchanged at Tegucigalpa, July 19, 1928;

Proclaimed, July 23, 1928.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

ARTICLE I.

ARTICLE II.

ARTICLE III.

ARTICLE IV.

ARTICLE V.

ARTICLE VI.

ARTICLE VII.

ARTICLE VIII.

ARTICLE IX.

ARTICLE X.

ARTICLE XI.

ARTICLE XII.

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ARTICLE XIV.

ARTICLE XV.

ARTICLE XVI.

ARTICLE XVII.

ARTICLE XVIII.

ARTICLE XIX.

ARTICLE XX.

ARTICLE XXI.

ARTICLE XXII.

ARTICLE XXIII.

ARTICLE XXIV.

ARTICLE XXV.

ARTICLE XXVI.

ARTICLE XXVII.

ARTICLE XXVIII.

ARTICLE XXIX.

ARTICLE XXX.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

***1** WHEREAS a **Treaty** of **Friendship**, Commerce and Consular Rights between the United States of America and the Republic of **Honduras** was concluded and signed by their respective Plenipotentiaries at Tegucigalpa on the seventh day of December, one thousand nine hundred and twenty-seven, the original of which Treaty, being in the English and Spanish languages, is word for word as follows:

The United States of America and the Republic of **Honduras** desirous of strengthening the bond of peace which happily prevails between them, by arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial

aspirations of the peoples thereof, have resolved to conclude a **Treaty** of **Friendship**, Commerce and Consular Rights and for that purpose have appointed as their plenipotentiaries:

The President of the United States of America, George T. Summerlin, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, and

The President of the Republic of Honduras, Doctor Fausto Dávila, Minister for Foreign Affairs of the Republic of Honduras,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

ARTICLE I.

The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

***2** Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to the immigration of aliens or the right of either of the High Contracting Parties to enact such statutes.

ARTICLE II.

With respect to that form of protection granted by National, State or Provincial laws establishing civil liability for injuries or for death, and giving to relatives or heirs or dependents of an injured party a right of action or a pecuniary benefit, such relatives or heirs or dependents of the injured party, himself a national of either of the High Contracting Parties and within any of the territories of the other, shall regardless of their alienage or residence outside of the territory where the injury occurred, enjoy the same rights and privileges as are or may be granted to nationals, and under like conditions.

ARTICLE III.

The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto appertaining of the nationals of each of the High Contracting Parties in the territories of the other, used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances and regulations for nationals.

ARTICLE IV.

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

ARTICLE V.

*3 The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they may also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained for the purpose, subject to the reasonable mortuary and sanitary laws and regulations of the place of burial.

ARTICLE VI.

In the event of war between either High Contracting Party and a third State, such Party may draft for compulsory military service nationals of the other having a permanent residence within its territories and who have formally, according to its laws, declared an intention to adopt its nationality by naturalization, unless such individuals depart from the territories of said belligerent Party within sixty days after a declaration of war.

ARTICLE VII.

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation. Nothing in this Treaty shall be construed to restrict the right of either High Contracting Party to impose, on such terms as it may see fit, prohibitions or restrictions of a sanitary character designed to protect human, animal, or plant life, or regulations for the enforcement of police or revenue laws.

Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce of manufacture of any other foreign country.

Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other High Contracting Party than are imposed on goods exported to any other foreign country.

Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensa-

tion, be extended to the like article the growth, produce or manufacture of the other High Contracting Party.

*4 All articles which are or may be legally imported from foreign countries into ports of the United States or are or may be legally exported therefrom in vessels of the United States may likewise be imported into those ports or exported therefrom in Honduran vessels without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in vessels of the United States; and, reciprocally, all articles which are or may be legally imported from foreign countries into the ports of Honduras or are or may be legally exported therefrom in Honduran vessels may likewise be imported into these ports or exported therefrom in vessels of the United States without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in Honduran vessels.

In the same manner there shall be perfect reciprocal equality in relation to the flags of the two countries with regard to bounties, drawbacks, and other privileges of this nature of whatever denomination which may be allowed in the territories of each of the Contracting Parties, on goods imported or exported in national vessels so that such bounties, drawbacks and other privileges shall also and in like manner be allowed on goods imported or exported in vessels of the other country.

With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State, whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege or immunity which shall hereafter be granted the nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals and vessels.

The stipulations of this Article do not extend to the treatment which is accorded by the United States to the commerce of Cuba under the provisions of the Commercial Convention concluded by the United States and Cuba on December 11, 1902, or any other commercial convention which hereafter may be concluded by the United States with Cuba, or to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws, or to the treatment which Honduras accords, or may hereafter accord, to the commerce of Costa Rica, Guatemala, Nicaragua, Panama, and/or Salvador, so long as any special treatment accorded to the commerce of those countries or any of them by Honduras is not accorded to any other country.

ARTICLE VIII.

The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties.

ARTICLE IX.

***5** No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels. Such equality of treatment shall apply reciprocally to the vessels of the two countries respectively from whatever place they may arrive and whatever may be their place of destination.

ARTICLE X.

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

ARTICLE XI.

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that the nationals of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade the most favored nation treatment, excepting that special treatment with respect to the coasting trade of Honduras may be granted by Honduras on condition of reciprocity to vessels of Costa Rica, Guatemala, Nicaragua, Panama, and/or Salvador, so long as such special treatment is not accorded to vessels of any other country.

ARTICLE XII.

Commercial travelers representing manufacturers, merchants and traders domiciled in the territories of either High Contracting Party shall on their entry into and sojourn in the territories of the other Party and on their departure therefrom be accorded the most favored nation treatment in respect of customs and other privileges and of all charges and taxes of whatever denomination applicable to them or to their samples.

If either High Contracting Party require the presentation of an authentic document establishing the identity and authority of a commercial traveler, a signed statement by the concern or concerns represented, certified by a consular officer of the country of destination shall be accepted as satisfactory.

ARTICLE XIII.

*6 Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of such corporations and associations of either High Contracting Party so recognized by the other to establish themselves within its territories, establish branch offices and fulfill their functions therein shall depend upon, and be governed solely by, the consent of such Party as expressed in its National, State, or Provincial laws. If such consent be given on the condition of reciprocity, the condition shall be deemed to relate to the provisions of the laws, National, State, or Provincial, under which the foreign corporation or association desiring to exercise such rights is organized.

ARTICLE XIV.

The nationals of either High Contracting Party shall enjoy within the territories of the other reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no condition less favorable than those which have been or may hereafter be imposed upon the nationals of the

most favored nation. The rights of any of such corporations or associations as may be organized or controlled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, National, State or Provincial, which are in force or may hereafter be established within the territories of the Party wherein they propose to engage in business.

The nationals of either High Contracting Party shall, moreover, enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain of the other.

ARTICLE XV.

***7** There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from or going through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law. Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, and shall be given national treatment as regards charges, facilities, and all other matters.

Goods in transit must be entered at the proper custom house, but they shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

ARTICLE XVI.

Each of the High Contracting Parties agrees to receive from the other, consular officers in those of its ports, places and cities, where it may be convenient and which are open to consular representatives of any foreign country.

Consular officers of each of the High Contracting Parties shall after entering upon their duties, enjoy reciprocally in the territories of the other all the rights, privileges, exemptions and immunities which are enjoyed by officers of the same grade of the most favored nation. As official agents, such officers shall be entitled to the high consideration of all officials, national or local, with whom they have official intercourse in the State which receives them.

The Government of each of the High Contracting Parties shall furnish free of charge the necessary exequatur of such consular officers of the other as present a

regular commission signed by the chief executive of the appointing State and under its great seal; and it shall issue to a subordinate or substitute consular officer duly appointed by an accepted superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function. On the exhibition of an exequatur, or other document issued in lieu thereof to such subordinate, such consular officer shall be permitted to enter upon his duties and to enjoy the rights, privileges and immunities granted by this Treaty.

ARTICLE XVII.

Consular officers, nationals of the State by which they are appointed, shall be exempt from arrest except when charged with the commission of offenses locally designated as crimes other than misdemeanors and subjecting the individual guilty thereof to punishment. Such officers shall be exempt from military billetings, and from service of any military or naval, administrative or police character whatsoever.

***8** In criminal cases the attendance at the trial by a consular officer as a witness may be demanded by the prosecution or defense. The demand shall be made with all possible regard for the consular dignity and the duties of the office; and there shall be compliance on the part of the consular officer.

Consular officers shall be subject to the jurisdiction of the courts in the State which receives them in civil cases, subject to the proviso, however, that when the officer is a national of the State which appoints him and is engaged in no private occupation for gain, his testimony shall be taken orally or in writing at his residence or office and with due regard for his convenience. The officer should, however, voluntarily give his testimony at the trial whenever it is possible to do so without serious interference with his official duties.

ARTICLE XVIII.

Consular officers, including employees in a consulate, nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services.

Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and

which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

ARTICLE XIX.

Consular officers may place over the outer door of their respective offices the arms of their State with an appropriate inscription designating the official office. Such officers may also hoist the flag of their country on their offices including those situated in the capitals of the two countries. They may likewise hoist such flag over any boat or vessel employed in the exercise of the consular function.

The consular offices and archives shall at all times be inviolable. They shall under no circumstances be subjected to invasion by any authorities of any character within the country where such offices are located. Nor shall the authorities under any pretext make any examination or seizure of papers or other property deposited within a consular office. Consular offices shall not be used as places of asylum. No consular officers shall be required to produce official archives in court or testify as to their contents.

***9** Upon the death, incapacity or absence of a consular officer having no subordinate consular officer at his most secretaries of chancellors, whose official character may have previously been made known to the Government of the State where the consular function was exercised, may temporarily exercise the consular function of the deceased or incapacitated or absent consular officer; and while so acting shall enjoy all the rights, prerogatives and immunities granted to the incumbent.

ARTICLE XX.

Consular officers of either High Contracting Party may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting the nationals of the State by which they are appointed in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general or the consular officer stationed at the capital may apply directly to the Government of the country.

ARTICLE XXI.

Consular officers may, in pursuance of the laws of their own country, take, at any appropriate place within their respective districts, the depositions of any occupants of vessels of their own country, or of any national of, or of any person having permanent residence within the territories of, their own country. Such of-

ficers may draw up, attest, certify and authenticate unilateral acts, deeds, and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party. They may draw up, attest, certify and authenticate written instruments of any kind purporting to express or embody the conveyance or encumbrance of property of any kind within the territory of the State by which such officers are appointed, and unilateral acts, deeds, testamentary dispositions and contracts relating to property situated, or business to be transacted within, the territories of the State by which they are appointed, embracing unilateral acts, deeds, testamentary dispositions or agreements executed solely by nationals of the State within which such officers exercise their functions.

Instruments and documents, thus executed and copies and translations thereof, when duly authenticated under his official seal by the consular officer shall be received as evidence in the territories of the High Contracting Parties as original documents or authenticated copies, as the case may be, and shall have the same force and effect as if drawn by and executed before a notary or other public officer duly authorized in the country by which the consular officer was appointed; provided, always that such documents shall have been drawn and executed in conformity to the laws and regulations of the country where they are designed to take effect.

ARTICLE XXII.

***10** A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit.

When an act committed on board of a private vessel under the flag of the State by which the consular officer has been appointed and within the territorial waters of the State to which he has been appointed constitutes a crime according to the laws of that State, subjecting the person guilty thereof to punishment as a criminal, the consular officer shall not exercise jurisdiction except in so far as he is permitted to do so by the local law.

A consular officer may freely invoke the assistance of the local police authorities in any matter pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.

A consular officer may appear with the officers and crews of vessels under the

flag of his country before the judicial authorities of the State to which he is appointed to render assistance as an interpreter or agent.

ARTICLE XXIII.

In case of the death of a national of either High Contracting Party in the territory of the other without having in the territory of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the State of which the deceased was a national of the fact of his death, in order that necessary information may be forwarded to the parties interested.

In case of the death of a national of either of the High Contracting Parties without will or testament, in the territory of the other High Contracting Party, the consular officer of the State of which the deceased was a national and within whose district the deceased made his home at the time of death, shall, so far as the laws of the country permit and pending the appointment of an administrator and until letters of administration have been granted, be deemed qualified to take charge of the property left by the decedent for the preservation and protection of the same. Such consular officer shall have the right to be appointed as administrator within the discretion of a tribunal or other agency controlling the administration of estates provided the laws of the place where the estate is administered so permit.

Whenever a consular officer accepts the office of administrator of the estate of a deceased countryman, he subjects himself as such to the jurisdiction of the tribunal or other agency making the appointment for all necessary purposes to the same extent as a national of the country where he was appointed.

ARTICLE XXIV.

***11** A consular officer of either High Contracting Party may in behalf of his nonresident countrymen receipt for their distributive shares derived from estates in process of probate or accruing under the provisions of so-called Workmen's Compensation Laws or other like statutes provided he remit any funds so received through the appropriate agencies of his Government to the proper distributees, and provided further that he furnish to the authority or agency making distribution through him reasonable evidence of such remission.

ARTICLE XXV.

A consular officer of either High Contracting Party shall have the right to inspect within the ports of the other High Contracting Party within his consular district, the private vessels of any flag destined or about to clear for ports of the country appointing him in order to observe the sanitary conditions and measures taken on board such vessels, and to be enabled thereby to execute intelligently bills of health and other documents required by the laws of his country,

and to inform his Government concerning the extent to which its sanitary regulations have been observed at ports of departure by vessels destined to its ports, with a view to facilitating entry of such vessels therein.

ARTICLE XXVI.

Each of the High Contracting Parties agrees to permit the entry free of all duty and without examination of any kind, of all furniture, equipment and supplies intended for official use in the consular offices of the other, and to extend to such consular officers of the other and their families and suites as are its nationals, the privilege of entry free of duty of their baggage and all other personal property, whether accompanying the officer to his post or imported at any time during his incumbency thereof; provided, nevertheless, that no article, the importation of which is prohibited by the law of either of the High Contracting Parties, may be brought into its territories.

It is understood, however, that this privilege shall not be extended to consular officers who are engaged in any private occupation for gain in the countries to which they are accredited, save with respect to governmental supplies.

ARTICLE XXVII.

All proceedings relative to the salvage of vessels of either High Contracting Party wrecked upon the coasts of the other shall be directed by the consular officer of the country to which the vessel belongs and within whose district the wreck may have occurred. Pending the arrival of such officer, who shall be immediately informed of the occurrence, the local authorities shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any custom house charges, unless it be intended for consumption in the country where the wreck may have taken place.

***12** The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

ARTICLE XXVIII.

Subject to any limitation or exception hereinabove set forth, or hereafter to be agreed upon the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land, water, and air over which the Parties respectively claim and exercise dominion as sovereign thereof, except the Panama Canal Zone.

ARTICLE XXIX.

Except as provided in the third paragraph of this Article the present Treaty shall remain in full force for the term of ten years from the date of the exchange of ratifications, on which date it shall begin to take effect in all of its provisions.

If within one year before the expiration of the aforesaid period of ten years neither High Contracting Party notifies to the other an intention of modifying by change or omission, any of the provisions of any of the articles in this Treaty or of terminating it upon the expiration of the aforesaid period, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the Treaty.

The fifth and sixth paragraphs of Article VII and Articles IX and XI shall remain in force for twelve months from the date of exchange of ratifications, and if not then terminated on ninety days' previous notice shall remain in force until either of the High Contracting Parties shall enact legislation inconsistent therewith when the same shall automatically lapse at the end of sixty days from such enactment, and on such lapse each High Contracting Party shall enjoy all the rights which it would have possessed had such paragraphs or articles not been embraced in the Treaty.

The present Treaty shall, from the date of the exchange of ratifications, be deemed to supplant, terminate and annul the **Treaty** of **Friendship**, Commerce and Navigation, concluded by the United States and **Honduras** on July 4, 1864.

ARTICLE XXX.

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Tegucigalpa as soon as possible.

In witness whereof the respective plenipotentiaries have signed the same and have affixed their seals thereto.

Done in duplicate, in the English and Spanish languages at Tegucigalpa, this seventh day of December, nineteen hundred and twenty-seven.

GEORGE T. SUMMERLIN.
[SEAL]

F. DÁVILA
[SEAL]

AND WHEREAS, the said Treaty has been duly ratified on both parts, and the ratifications of the two Governments were exchanged at Tegucigalpa on the nineteenth day of July, one thousand nine hundred and twenty-eight;

NOW, THEREFORE, be it known that I, Calvin Coolidge, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the city of Washington this twenty-third day of July in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the United States of America the one hundred and fifty-third.

CALVIN COOLIDGE
[SEAL]
By the President:

FRANK B KELLOGG
Secretary of State.

45 Stat 2618, 1928 WL 26688 (U.S. Treaty)
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