No.

IN THE SUPREME COURT OF THE UNITED STATES

NAPOLEON BEAZLEY,
Petitioner

v.

GARY L. JOHNSON,
Respondent

On Petition for Writ of Certiorari
To the Fifth Circuit Court of Appeals

MOTION FOR STAY OF EXECUTION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Petitioner Napoleon Beazley, an indigent, respectfully moves this Court to stay his execution, presently scheduled to occur shortly after 6:00 P.M. on August 15, 2001. Under *Barefoot v. Estelle*, 463 U.S. 880, 895-896 (1983), a stay should be granted only if there is a "reasonable probability that four Members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari . . . .; there must be a significant possibility of reversal of the lower court's decision; and there must be a likelihood that irreparable harm will result if that decision is not stayed." The underlying decision is *Beazley v. Johnson*, 242 F.3d 248 (5th Cir. 2001) (attached as **Appendix A**).

Clearly, irreparable harm will result if the execution is not stayed. The petition for writ

of certiorari filed by Mr. Beazley on June 13, 2001, presents issues of nationwide, and indeed global, significance. Mr. Beazley asserts that the issues in the petition are so meritorious that it is likely that, following review, this Court will reverse the underlying decision of the Court of Appeals for the Fifth Circuit.

Justice Antonin Scalia authored the lead plurality opinion for the most recent case in which this Court has considered the international ban on the execution of child offenders. *Stanford v. Kentucky*, 492 U.S. 361 (1989). This Court held in *Stanford* that the Eighth Amendment was not offended by the execution of persons who were 16 and 17 years old at the time of their offense. Justice Stevens and three other Justices dissented. *Stanford*, 492 U.S. at 382 (1989) (Brennan, J., joined by Marshall, Blackmun, and Stevens, J.J.). The dissenters found that "to take the life of a person as punishment for a crime committed when below the age of 18 is cruel and unusual and hence is prohibited by the Eighth Amendment." The *Stanford* decision was more than a decade ago, and in the intervening time, the *very few states* (6) within the United States that actually *conduct such executions* have become completely isolated in relation to the rest of the world. In 1997, even the Chinese authorities amended their criminal law to abolish the death penalty for offenders under 18 years old at the time of the crime. AMNESTY INTERNATIONAL, ON THE WRONG SIDE OF HISTORY: CHILDREN AND THE DEATH PENALTY IN THE USA, AMR 51/058/1998, Oct. 1, 1998;[1] *see also* Craig S. Smith, *China Justice: Swift Passage to Execution*, NEW YORK TIMES, June 19, 2001, at A1 (portraying the general brutality of the Chinese death penalty). As is noted in Beazley's petition, essentially every formerly offending

[1] China, in fact, changed its law in response to a finding by the United Nations Committee on the Rights of the Child that China's practice was "incompatible with the provisions of the" Convention on the Rights of the Child, which China had ratified in 1992. ON THE WRONG SIDE OF HISTORY, *supra*. The United Nations Human Rights Committee has made the comparable finding that the United States' reservation to Article 6, Paragraph 5, of the International Covenant on Civil and Political Rights violates the object and purpose of the Covenant and should be withdrawn. *Id*. Yet the United States has not complied, and states within the United States have continued to execute child offenders, a practice the Human Rights Committee has said it "deplores."

national government now has either officially abandoned the practice of executing child offenders or, at least, has represented to the United Nations that it is ceasing to carry it out. Every organized government in the world, except the United States, has ratified the United Nations Convention on the Rights of the Child, which forbids execution of child offenders. The United Nations Sub-Commission on the Promotion and Protection of Human Rights reiterated in August 2000 that the execution of child offenders violates customary international law and "*[c]ondemn[ed] unequivocally* the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence." AMNESTY INTERNATIONAL, CHILDREN AND THE DEATH PENALTY, EXECUTIONS WORLDWIDE SINCE 1990, ACT 50/010/2000, December 14, 2000 (Appendix: Resolution 2000/17, adopted on 17 August 2000 by the UN Sub-Commission on the Promotion and Protection of Human Rights) (emphasis in original). The Sub-Commission called upon retentionist states to change their laws as soon as possible and "to remind their judges that the imposition of the death penalty against such offenders is in violation of international law." *Id.*

The federal government and twenty-seven states (including abolitionist states) currently bar the execution of child offenders. Testimony on Behalf of the American Bar Association on the Elimination of the Juvenile Death Penalty, before the [Texas] House Committee on Criminal Jurisprudence, House Bill 2048, April 17, 2001 [hereinafter "ABA Testimony"]. Although the ratio of states prohibiting and allowing child executions has not changed dramatically since *Stanford*, **only three states** have actually carried out such executions since 1993. AMNESTY INTERNATIONAL, CHILDREN AND THE DEATH PENALTY: EXECUTIONS WORLDWIDE SINCE 1990, ACT 50/010/2000, December 14, 2000 (citing Louisiana (1990), Texas (1992, 1993-2, 1998-2, 2000-2), Missouri (1993), Georgia (1993), Virginia (1998, 2000-2), and Oklahoma (1999)). Texas has accounted for half of the United States' total. Texas executions of child offenders, in fact, account for one quarter of **all** documented executions of child offenders worldwide since 1990. Meanwhile, legislation was introduced in the 2000-2001 legislative season to end the juvenile death penalty in Arkansas, Indiana, Kentucky, Pennsylvania, Mississippi, Nevada, South

Carolina, South Dakota, and Texas. ABA Testimony, *supra*.

The trends toward changing the law in the United States, compliance by the federal government with the international standard, and the complete isolation of **TEXAS** as the world's most prolific executioner of child offenders provide strong grounds for the Justices of this Court to join Justice Stevens in his finding that the execution of child offenders is no longer tolerable under the Eighth Amendment. Another strong indicator that at least four Justices would consider this issue worthy of certiorari review is found in this Court's recent acceptance of review in *McCarver v. North Carolina*, 121 S. Ct. 1401 (March 26, 2001) (Mem.), which treats the similar question of whether executing persons with mental retardation may be tolerated under the Eighth Amendment. The evidence of international consensus against the execution of child offenders is markedly stronger than that against execution of persons with mental retardation. *See* Brief Amicus Curiae of the American Bar Association in Support of Petitioner, *McCarver v. North Carolina*, 2001 WL 630269, at *24 (noting that "at least 100 countries now bar, by treaty or legislation, the execution of persons with mental retardation" whereas every organized government in the world, other than the United States, has barred by treaty the execution of child offenders). Roughly the same number of states (15 in total) have specific legislation barring the death penalty for juvenile offenders as states barring execution of offenders with mental retardation (14 in total, plus the recent signing into law of a statute in Florida). *Id.*

Justice Ginsberg has called for a moratorium on all executions. http://www.tdcaa.com/dynam_iprosecresults.asp?srch=all (website: Texas District and County Attorneys Association) ("SCT Justice Ginsberg Urges End to Death Penalty"). Presumably her position is commensurate with the American Bar Association's Recommendation in 1997 for a moratorium on the death penalty until every jurisdiction were to implement policies and procedures to prevent execution of persons who were under the age of 18 at the time of their offenses. INDIVIDUAL RIGHTS AND RESPONSIBILITIES SECTION, AMERICAN BAR ASSOCIATION, REPORT WITH RECOMMENDATIONS NO. 107 (ABA Midyear Meeting 1997).

Justice Breyer would have granted a stay in *Breard v. Greene*, 523 U.S. 371, 380 (1998)

(Breyer, J., dissenting), where the defendant could have raised a colorable claim to overcoming the procedural bar to merits review of his issue, violation by the State of Virginia of the Vienna Convention on the Law of Consular Relations. Justice Breyer noted that the defendant could have raised the issue that "the nature of his claim, were [the Court] to accept it, is such as to create a `watershed rule of criminal procedure'" under *Teague v. Lane*, 489 U.S. 288, 311 (1989). *Id*. Beazley repeatedly has urged that his ineligibility for the death sentence, if his Covenant or Eighth Amendment claims were accepted by the Court, would provide him with an exception to the procedural default found by the district court for failure to exhaust those claims in the state courts. *See Sawyer v. Whitley*, 505 U.S. 333, 350 (1992) (noting that "[s]ensible meaning is given to the term `innocence of the death penalty' by allowing a showing . . . that there was no aggravating circumstance or that some other condition of eligibility had not been met"). The Fifth Circuit appeared to agree that the "actual innocence of the death penalty" exception would apply if Beazley were to prevail on the merits. *Beazley v. Johnson*, 242 F.3d 248, 265-66, 268-69 (5th Cir. 2001). Respondent has not contested that Beazley's Covenant and Eighth Amendment issues would be exempt from the "new rule" prohibition of *Teague*, recognizing that a favorable finding on the merits would "deprive[] the State of the power to impose" the death penalty on Beazley. *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989). In addition to the simple point that the Eighth Amendment and International Covenant void Section 8.07(d) of the Texas Penal Code (1994), eliminating Beazley's eligibility for the death sentence, the parallel between the *Teague* exception and death penalty "actual innocence" exception compels the conclusion that Beazley can overcome procedural default. *McKenzie v. Day*, 57 F.3d 1461, 1470, 1479 (9th Cir. 1995) (Norris, C.J., dissenting from panel decision); *Prihoda v. McCaughtry*, 910 F.2d 1379, 1385-86 (7th Cir. 1990); *Sawyer v. Butler*, 881 F.2d 1273, 1293-94 (5th Cir. 1989) (en banc), *aff'd*, 497 U.S. 227 (1990).

Justice Breyer also has written on subjects relevant to Beazley's arguments that, although the Senate declared that Articles 1-27 of the International Covenant did not establish, by themselves, a private right of action, such a right could be found in 28 U.S.C. § 2254(a). An

important law review article cites Justice Breyer's work in support of the argument that "[t]here are numerous statutes that would authorize particular remedies in particular contexts for treaty violations. For example, a writ of habeas corpus may be granted to persons `in custody in violation of the Constitution or laws or treaties of the United States.'" Carlos Manuel Vazquez, *Treaty-Based Rights and Remedies of Individuals*, 92 COLUM. L. REV. 1082, n.279 (1992) (quoting 28 U.S.C. § 2241 (1988) and citing STEPHEN G. BREYER & RICHARD B. STEWART, ADMINISTRATIVE LAW AND REGULATORY POLICY 969-74 (1992) (discussing certiorari, mandamus, and other writs)); *see also* David Sloss, *Ex parte Young and Federal Remedies for Human Rights Treaty Violations*, 75 WASH. L. REV. 1103 (2000) (arguing that Supremacy Clause creates implied private right of action for claims based on non-self-executing treaties); Jordan Paust, *Customary International Law and Human Rights Treaties are Law of the United States*, 20 MICH. J. INT'L L. 301, 326-27 (1999) (finding that 28 U.S.C. § 2254(a) may provide a private right of action to bring a Covenant claim); Vazquez, *Treaty-Based Rights and Remedies of Individuals*, *supra*, at 1143 (affirming that a right based upon a treaty declared not to create a private right of action may be enforced as a defense, through common law forms of action, or through "statutory bases for rights of action").

Justice O'Connor has recognized the importance of looking to international sources to resolve disputes involving questions of international law that have not been determined by our courts:

> As our domestic courts are increasingly asked to resolve disputes that involve questions of foreign and international law about which we have no special competence, I think there is great potential for our Court to learn from the experience and logic of foreign courts and international tribunals -- just as we have offered these courts some helpful approaches from our own legal traditions.

Justice Sandra Day O'Connor, *Federalism of Free Nations*, in INTERNATIONAL LAW DECISIONS IN NATIONAL COURTS 13, 18 (Thomas M. Franck & Gregory H. Fox eds., 1996). Her comments go to the heart of what the Fifth Circuit failed to do in Beazley's case. The Court failed to interpret the Human Rights Committee's rejection of the United States' reservation to Article 6,

Paragraph 5, of the International Covenant in light of the HRC's own jurisprudence and the only court jurisprudence directly on the issue, which has been produced over a lengthy period by European Courts interpreting the disposition of invalid reservations under the European Convention on Human Rights, the first human rights treaty, completed in 1950.

The Fifth Circuit, instead, created from whole cloth an interpretation of the Covenant that cannot stand in light of the Human Rights Committee's own comments ("deplor[ing]" the ongoing execution of child offenders among the states in the United States) and which is at odds with most jurists and commentators, including United Nations officials. Report of the Human Rights Committee, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40*, U.N. Doc. A/50/40 (October 3, 1995), para. 281; *see* REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, MISSION TO THE UNITED STATES OF AMERICA, Jan. 22, 1998, E/CN.4/1998/68/Add.3, paras. 140, 156(k) (reservation is "null and void" since incompatible with object and purpose of Article 6); Erica Templeton, Note, *Killing Kids: The Impact of Domingues v. Nevada on the Juvenile Death Penalty as a Violation of International Law*, 41 BOSTON COLL. L. REV. 1175 (2000); Connie de la Vega and Jennifer Fiore, *The Supreme Court of the United States has been Called upon to Determine the Legality of the Juvenile Death Penalty in Michael Domingues v. State of Nevada*, 21 WHITTIER L. REV. 215, 217-18 (1999); Cathleen E. Hull, *"Enlightened by a Humane Justice": An International Law Argument against the Juvenile Death Penalty*, 47 KAN. L. REV. 1079, 1090 (1999); Warren Allmand et al., *Human Rights and Human Wrongs: Is the United States Death Penalty System Consistent with International Human Rights Law?*, 67 FORDHAM L. REV. 2793, 2812 (1999); William A. Schabas, *International Law and Abolition of the Death Penalty*, 55 WASH. & LEE L. REV. 797, 814 (1998); Connie de la Vega, *Can a United States Treaty Reservation Provide a Sanctuary for the Juvenile Death Penalty?*, 32 U.S.F. L. REV. 735, 754 (1998); Sanford J. Fox, *Beyond the American Legal System for the Protection of Children's Rights*, 31 FAM. L. Q. 237, 263 (1997); Sherri Jackson, Note, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 391, 410 (1996); William A. Schabas, *Invalid Reservations to the International Covenant on Civil and*

Political Rights: Is the United States Still a Party?, 21 BROOKLYN J. INT'L LAW 277, 324 (1995); William A. Schabas, *International Law and the Death Penalty*, 22 AM. J. CRIM. L. 250, 253 (1994); Ved P. Nanda, *The United States Reservation to the Ban on the Death Penalty for Juvenile Offenders: An Appraisal Under the International Covenant on Civil and Political Rights*, 42 DEPAUL L. REV. 1311, 1331 (1993); *see also* Kha Q. Nguyen, Note, *In Defense of the Child: A Jus Cogens Approach to the Capital Punishment of Juveniles in the United States*, 28 GEO. WASH. J. INT'L L. & ECON. 401, 443 (1995) (finding jus cogens norm informing this Court's Eighth Amendment determination of what constitutes cruel and unusual punishment); *see also* WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 125 (Cambridge 1997) (finding that the United States is the "principal, if not the sole, offender of the prohibition on juvenile executions" found in Article 6(5) of the International Covenant).

Justices Stevens and O'Connor have urged respect for customary international law principles in a case in which the majority of this Court opted instead for results, running roughshod over an extradition treaty between the United States and Mexico. *United States v. Alvarez-Machain*, 504 U.S. 657, 686 (1992) (Stevens, J., joined by Blackmun, J., and O'Connor, J., dissenting). Drug Enforcement Administration agents were involved in the forcible kidnapping of Alvarez-Machain from his office in Guadalajara, Mexico, to El Paso, Texas, where he was arrested and formally charged with the kidnapping and murder of a DEA agent and pilot in Mexico. *Id*. at 657. Machain argued that his forcible abduction violated the extradition treaty between the nations. The federal district court agreed and the Ninth Circuit upheld that decision on the ground that, although the treaty did not expressly prohibit such abductions, the forcible abduction violated the purpose of the treaty. *Id*. at 658. This Court's majority disagreed, holding that it would not imply in the treaty general international law prohibitions against forcible abduction and exercise of the police power by one country in the territory of another. *Id*. at 668-670.

In dissent, Justices O'Connor and Stevens objected that, "[i]n the international legal order, treaties are concluded by states against a background of customary international law. Norms of

customary international law specify the circumstances in which the failure of one party to fulfill its treaty obligations will permit the other to rescind the treaty, retaliate, or take other steps. *Id*. at 682 n.27 (citing Vazquez, *Treaty-Based Rights and Remedies of Individuals*, *supra*, at 1157).[2] As Beazley has argued, the norms of customary international law (indeed jus cogens) inform the prohibition on the juvenile death penalty found in Article 6 of the International Covenant, and they also define the United States' treaty obligations, both under the Covenant and the Convention on the Rights of the Child, which the United States has signed without any reservation to its article barring the death penalty for child offenders. The United States is bound by the Vienna Convention on the Law of Treaties not to violate the object and purpose of the Child Convention, because the Vienna Convention is deemed customary international law. Also, the background of international jurisprudence on the severance of an invalid reservation in a multilateral human rights treaty demands respect that it has not received from the district court or the Court of Appeals below.

Like this Court's majority decision in *Machain*, the lower courts in Beazley's case have produced decisions that could be criticized as result-oriented -- the district court by providing no analysis whatsoever responding to Beazley's arguments and authorities and the Fifth Circuit by undertaking creative license with the law. The *Machain* majority took the fastest route to redress the brutal murder of an American law enforcement agent. *Id*. at 686. Another brutal offense underlies the Fifth Circuit's result-oriented *Beazley* decision, but this Court must not allow the offense to excuse the jurisprudence. Justice Stevens' and Justice O'Connor's words bear repeating as to the reason why:

> [The interest in punishing the defendant] provides no justification for disregarding the Rule of Law that this Court has a duty to uphold. That the Executive may wish to reinterpret the Treaty to allow for an action that the Treaty in no way authorizes should not influence this Court's interpretation. Indeed, the desire for revenge exerts a "kind of hydraulic pressure . . . before which even well settled principles of law will bend" [citation omitted], but it is precisely at such moments that we should remember and be guided by our duty "to render judgment evenly

[2] Vazquez may be found in the underlying Record approximately at 4 R. 992 ff.

> and dispassionately according to law, as each is given understanding to ascertain and apply it." [citation omitted] **The way that we perform that duty in a case of this kind sets an example that other tribunals in other countries are sure to emulate.**

Id. at 686-87 (emphasis added). Justices Stevens and O'Connor found the *Machain* majority opinion "monstrous" in part because of the effect it would have on every other nation with an interest in preserving the Rule of Law. The Fifth Circuit opinion in Beazley's case is equally monstrous, because it undertakes by novel interpretation to avoid the requirement of the international rule of law against the execution of child offenders. The United States is so isolated on the issue that it is doubtful that the *Beazley* opinion would influence other nations to disrespect the specific rule. However, the opinion does project disdain for the Rule of Law and cynicism that generally will corrode our own and other nations' respect for international human rights norms.

Undersigned counsel have made essentially every conceivable attempt to help the Texas system adopt the international norm. Letters were written to Ex-Governor George W. Bush and the Hon. John Cornyn, Attorney General and counsel for Respondent, suggesting that the Attorney General issue an opinion on the effect of the International Covenant and other sources of international law on Texas Penal Code 8.07 (c) (2001). Undersigned counsel assisted the authors of House Bill 2048 during the recent Texas legislative session. House Bill 2048 would have amended Section 8.07(c) to raise the eligibility age for the death sentence to 18. Counsel helped to organize a hearing on the bill before the Texas House Committee on Criminal Jurisprudence, which occurred on April 17, 2001. Representatives of Human Rights Watch, the American Bar Association, and the American Academy of Child and Adolescent Psychiatry brought statements authorized by those national organizations to be delivered to the legislative committee. Additional supporting groups were the NAACP, the ACLU, the United Methodist Church, Pax Christi Texas, the Friends Meeting of Austin, Texas Network of Youth Services, the Texas Catholic Conference, the Gray Panthers, Common Cause Texas, and the Texas Conference of Churches. Three survivors of capital offenses committed by 16- and 17-year-olds

spoke in support of the bill. No one testified or signed up in opposition to the bill, which subsequently was passed by the committee on a 5 to 3 vote with one member abstaining. The bill ultimately passed the House and was poised to be offered on the Senate floor as an amendment to an omnibus juvenile justice bill, when the Governor's office made known that it would veto any bill to which House Bill 2048 was attached. The Governor's office also hinted at that time that the Governor would veto the bill exempting persons with mental retardation from the death penalty, which he now has done. Jim Yardley, *2 Groups Help Sway Texas Governor on Veto*, NEW YORK TIMES, June 19, 2001, at A18.

The Senate and former Bush Administration exempted Article 50 of the Covenant from the non-self-execution declaration for the purpose of demonstrating this country's commitment to provide the Covenant's protections to all its citizens. The Administration asserted:

> A reservation is not necessary with respect to Article 50 since the intent is not to modify or limit U.S. undertakings under the Covenant. . . . [An understanding on federalism that was attached to ratification was] intended to signal to our treaty partners that the U.S. will implement its obligations under the Covenant by appropriate legislative, executive and judicial means, federal or state as appropriate, and that the Federal Government will remove any federal inhibition to the states' abilities to meet their obligations.

Executive Explanation, S. REP. NO. 102-23, 102d Cong., 2d Sess., Explanation of Proposed Reservations, Understandings and Declarations, at 13-14, *reprinted in* 31 I.L.M. 645, 657 (1992). Article 50 reads, "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." The non-self-execution declaration does not limit the responsibility of the United States and (in accord with Article 50) Texas governments to provide remedies for violations of Covenant rights. The Governor's intervention to stop passage of House Bill 2048 violated Texas' duty under the Covenant "to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the . . . Covenant." ICCPR ART. 2 (2). The United States and Texas are bound by Article 2 of the Covenant to ensure that any person claiming a remedy for violation of his or her Covenant rights "shall have his right thereto determined by competent judicial, administrative, or legislative authorities."

ICCPR ART. 3 (b). Although not required, Beazley has exhausted all administrative and legislative remedies. This Court should consider, under such circumstances, its own responsibilities in regard to Article 2 of the Covenant.

There is a reasonable probability that four members of this Court should grant certiorari review on the Eighth Amendment and/or Covenant issues. And, given the nature of the lower court's analysis in contrast to the well-developed jurisprudence of the United Nations Human Rights Committee and international courts, there is a significant possibility that this Court will reverse its decision.

In addition to the aforementioned issues, Beazley has also challenged his death sentence as violating the rule in *Lockett v. Ohio*, 438 U.S. 586, 604, 608 (1978), that the sentencer not be precluded from considering, as a mitigating factor, any aspect of the defendant's character or record. The jury was prevented by its instructions from reaching, as mitigating, the good character evidence regarding Beazley that was presented by numerous witnesses at his punishment phase trial.

Justice O'Connor's recent opinion in *Penry II* (*Penry v. Johnson*, 2001 WL 589086 (2001)) enhances the reasonable probability that this Court will grant certiorari on Beazley's *Lockett* issue. The *Penry II* majority, composed of six Justices, vacated Penry's death sentence upon finding that his jury was blocked by its instructions from being able to give mitigating effect to his evidence of mental retardation. Although Beazley's new statutorily based sentencing instructions were different than Penry's interim instructions, the *Penry II* opinion nevertheless provides a window into how this Court should interpret the new Texas instructions. The Fifth Circuit's opinion is inconsistent with *Penry II*, because it tolerates a situation in which the Texas jury would have to ignore its statutory instruction, under Section 2(f) of Article 37.071, in order to consider (as mitigating) Beazley's voluminous evidence of prior good character. *See Penry II*, 2001 WL 589086, at *13 (finding "false answer" required by Penry's instructions). The Fifth Circuit opinion also finds acceptable a completely confusing situation caused by the statutory instructions, as interpreted by the Texas Court of Criminal Appeals: the

presentation of **two** competing "definitions" of mitigating circumstances. *Beazley*, 242 F.3d at 260 (citations omitted). The *Penry II* majority rejects such confusing instructions as constitutionally unacceptable. *Penry II*, 2001 WL 589086, at *11. Furthermore, the Texas Court of Criminal Appeals' application of the wrong rule (its own interpretation of *Penry* as opposed to *Lockett*) to reach an unreasonable result (denial that Section 2(f) precluded consideration of good character evidence in light of the inevitable interaction of the definitional instruction with the rest of the sentencing instructions) clearly supports the conclusions that Beazley: (1) has complied with the requirements of 28 U.S.C. § 2254(d) (1); and (2) has presented a meritorious, exhausted claim that cannot be *Teague*-barred. *Johnson v. Texas*, 509 U.S. 350, 366 (1993).

There is a reasonable probability that four members of this Court also should grant certiorari review on the *Lockett* issue. And, given the unreasonable decision rendered by the courts below, there is a significant possibility that this Court will reverse the Fifth Circuit's decision.

PREMISES CONSIDERED, Petitioner Beazley respectfully moves that this Court grant him a stay of his execution, presently scheduled for August 15, 2001, and grant COA and certiorari review on the three issues presented in his petition for writ of certiorari.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this the 19th day of June 2001, three copies of the above and foregoing motion for stay were mailed via United States Mail, first class postage prepaid, to counsel of record for Respondent, the Honorable John Cornyn, Attorney General of Texas, at

P.O. Box 12548, Austin, Texas, 78711-2548.

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DAVID L. BOTSFORD