

No. _____

In the
Supreme Court of the United States

IN RE DUANE EDWARD BUCK,

Petitioner,

**ON PETITION FOR WRIT OF HABEAS CORPUS TO RICK THALER,
DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION**

CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2011, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*, PETITION FOR A WRIT OF HABEAS CORPUS, and MOTION FOR STAY OF EXECUTION PENDING CONSIDERATION AND DISPOSITION OF PETITION FOR WRIT OF HABEAS CORPUS on Georgette Oden, Assistant Attorney General of Texas, Office of the Texas Attorney General, Post Office Box 12548, Austin, Texas 78711, via email (georgette.odden@oag.state.tx.us) and through the United States Postal Service by first-class mail in accordance with Sup. Ct. R. 29(3). All parties required to be served have been served. I am a member of the Bar of this Court.

s/ Gregory W. Wiercioch

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**MOTION FOR STAY OF EXECUTION PENDING CONSIDERATION
AND DISPOSITION OF PETITION FOR WRIT OF HABEAS CORPUS**

Mr. Buck requests that this Court grant him a stay of execution pending the Court's consideration and disposition of his petition for writ of habeas corpus.

Petitioner Duane Buck respectfully requests that this Court grant him a stay of execution. 28 U.S.C. § 2251(a)(1) provides that: "A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding."

Texas is scheduled to execute Mr. Buck by lethal injection on Thursday, September 15, 2011. It is poised to execute him even though that state's highest legal official had identified Mr. Buck's death sentence as one obtained in violation of

the United States Constitution. The government relied on Mr. Buck's race as a basis for proving dangerousness during capital sentencing, but the Attorney General of the State of Texas promised that the State would remedy the violation by conceding error in federal court. Instead, the State of Texas successfully persuaded the district court and the Court of Appeals for the Fifth Circuit to uphold Mr. Buck's death sentence, employing material misrepresentations and omissions to distinguish it from other cases in which the Attorney General had confessed error.

In his Petition for writ of habeas corpus in this Court, Mr. Buck has presented meritorious claims for relief that, because of arbitrary treatment by Texas, have not been redressed by the federal courts. To date, no federal court has passed on the merits of whether Mr. Buck's death sentence was obtained in violation of equal protection. If the Court does not act on Mr. Buck's forthcoming petition for writ of certiorari, this petition for writ of habeas corpus represents the only means by which Mr. Buck may obtain substantive review and relief from his unconstitutional death sentence.

Careful inquiry into the allegations Mr. Buck has raised in his petition is necessary to ensure that Mr. Buck has not been treated disparately or arbitrarily by the State of Texas. The Court should accordingly grant a stay of execution pending its consideration and decision on Mr. Buck's petition for writ of habeas corpus.

CONCLUSION

For the foregoing reasons, a stay of execution should be granted.

s/ Gregory W. Wiercioch

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