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DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BINGHAM COUNTY, IDAHO  
2012 MAY 18 AM 7:57  
SARA STAUB CLERK  
BY \_\_\_\_\_ DEPUTY

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IN THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, COUNTY OF BINGHAM

STATE OF IDAHO,	)	Case No. CR1985-4110 AND
	)	CV2008-857
Plaintiff-Respondent,	)	
	)	<b>AFFIDAVIT IN SUPPORT OF</b>
v.	)	<b>MOTION TO RECONSIDER</b>
	)	<b>ORDER DENYING DEMAND FOR</b>
RICHARD A. LEAVITT,	)	<b>OPPORTUNITY TO BE HEARD</b>
	)	<b>REGARDING ISSUANCE OF</b>
Defendant-Petitioner.	)	<b>DEATH WARRANT</b>
_____	)	

David Z. Nevin, being first duly sworn, deposes and says that:

1. I am an attorney, duly licensed to practice law in the State of Idaho. I am one of the attorneys of record for the Defendant Richard A. Leavitt. I make the statements contained in this affidavit based on my own personal observations.

2. My co-counsel Andrew Parnes and I have reviewed the record of this case in Idaho state and federal courts and find that, through and including the time when this Court issued the death warrant today, May 17, 2012, that there was no "stay of execution," as that phrase is used

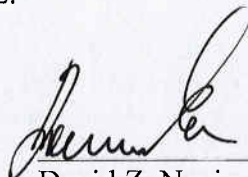
in I.C. § 19-2715(6), in place in this case. Instead, it is my understanding that Mr. Leavitt “has not been executed,” *id.*, I.C. § 19-2715(4) because of the Judgment of the United States District Court for the District of Idaho, dated September 28, 2007. A true and accurate copy of this Judgment is attached as Exhibit A to this Affidavit.

3. This Judgment is not a “stay of execution” because it is not “a temporary postponement of an execution,” but rather by its terms a permanent injunction against carrying out a death sentence against Mr. Leavitt unless a new sentencing proceeding is instituted.

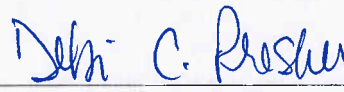
4. As a result, when the state applied for a new death warrant today, the Court should have proceeded under I.C. § 19-2715(4), under which it “may inquire into the facts.” Accordingly, the Court misunderstood the basis for the exercise of its discretion, and as a result the present motion to reconsider should be granted.

This ends my Affidavit.

DATED this 17<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
David Z. Nevin

SUBSCRIBED AND SWORN TO before me this 17<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
Notary Public for Idaho  
My commission expires: 11-8-13



CERTIFICATE OF SERVICE

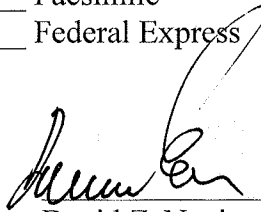
I HEREBY CERTIFY that on the 17<sup>th</sup> day of May, 2012, I served the foregoing document on all interested parties as follows:

L. LaMont Anderson  
Deputy Attorney General  
Chief, Capital Litigation Unit  
Statehouse Mail, Room 10  
PO Box 83720  
Boise ID 83720-0010  
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J. Scott Andrew  
Bingham County Prosecuting Attorney  
501 North Maple, #302  
Blackfoot, ID 83221-1700  
Facsimile: 208-785-5199

U.S. Mail  
 Hand delivery  
 Facsimile  
 Federal Express



\_\_\_\_\_  
David Z. Nevin

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

RICHARD A. LEAVITT )

Petitioner, )

v. )

A.J. ARAVE, )

Respondent. )

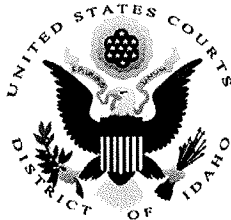
Case No. CV-93-24-S-BLW

**CAPITAL CASE**

**JUDGMENT**

Based upon the Court's Findings of Fact and Conclusions of Law filed herewith, IT IS HEREBY ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus shall be conditionally GRANTED in part. The Writ shall issue and the State of Idaho shall be enjoined from carrying out a death sentence against Petitioner unless it initiates a new sentencing proceeding within 120 days of the date of this Judgment.

DATED: September 28, 2007



*B. Lynn Winmill*  
Honorable B. Lynn Winmill  
Chief U. S. District Judge

JUDGMENT - 1

EXHIBIT A