

**LAWRENCE G. WASDEN**  
ATTORNEY GENERAL OF IDAHO

**MARK A. KUBINSKI, ISB #5275**  
Lead Deputy Attorney General  
Idaho Department of Correction

**KRISTA L. HOWARD #5987**  
Deputy Attorney General  
Idaho Department of Correction  
1299 North Orchard St., Suite 110  
Boise, Idaho 83706  
Telephone (208) 658-2097  
Facsimile (208) 327-7485  
E-mail: khoward@idoc.idaho.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>THOMAS CREECH et. al.,</b>	)	<b>CASE NO. 12-00173-S-EJL</b>
	)	
Plaintiffs,	)	<b><u>MOTION TO SEAL</u></b>
	)	
	)	<b>DEFENDANTS' MOTION TO SEAL</b>
	)	<b>AFFIDAVIT OF JEFF ZMUDA IN</b>
vs.	)	<b>SUPPORT OF DEFENDANTS'</b>
	)	<b>RESPONSE AND OBJECTION TO</b>
	)	<b>PLAINTIFF LEAVITT'S</b>
<b>BRENT REINKE, et. al.,</b>	)	<b>EMERGENCY MOTION FOR</b>
	)	<b>PRELIMINARY INJUNCTION OR</b>
Defendants.	)	<b>STAY OF EXECUTION [DOCKET NO.</b>
_____	)	<b>16]</b>

COME NOW the Defendants Brent Reinke, Kevin Kempf, Jeff Zmuda, Josh

Tewalt and Randy Blades, by and through undersigned counsel, and pursuant to D. Id. L.

Rule 5.3, and hereby move this Court for its order sealing the Affidavit of Jeff Zmuda in **DEFENDANTS' MOTION TO SEAL AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INUNCTION OR STAY OF EXECUTION[DOCKET NO.16] --1**

Support of Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution [Dkt. No. 16]. Defendants request that the Affidavit of Jeff Zmuda in Support of Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution [Dkt. No. 16] be sealed and viewed *in camera* by the Court and only allow access to the Plaintiff and his counsel, who shall not disclose it or its contents to any third parties.

This motion is supported by the Memorandum in Support of Motion to Seal the Affidavit of Jeff Zmuda in Support of Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution [Dkt. No. 16], filed concurrently herewith.

DATED this 30<sup>th</sup> day of May, 2012.

/s/ Krista L. Howard  
Krista L. Howard  
Deputy Attorney General  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of May, 2012, I caused to be served a true and correct copy of the foregoing DEFENDANTS' MOTION TO SEAL AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INUNCTION OR STAY OF EXECUTION [DOCKET NO.16] with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Oliver W. Loewy, [oliver\\_loewy@fd.org](mailto:oliver_loewy@fd.org)

Teresa Hampton, [Teresa\\_Hampton@fd.org](mailto:Teresa_Hampton@fd.org)

/s/ Krista L. Howard  
KRISTA L. HOWARD

**DEFENDANTS' MOTION TO SEAL AFFIDAVIT OF JEFF ZMUDA IN  
SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF  
LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INUNCTION OR  
STAY OF EXECUTION[DOCKET NO.16] --3**

**LAWRENCE G. WASDEN**  
ATTORNEY GENERAL OF IDAHO

**MARK A. KUBINSKI, ISB #5275**  
Lead Deputy Attorney General  
Idaho Department of Correction

**KRISTA L. HOWARD #5987**  
Deputy Attorney General  
Idaho Department of Correction  
1299 North Orchard St., Suite 110  
Boise, Idaho 83706  
Telephone (208) 658-2097  
Facsimile (208) 327-7485  
E-mail: khoward@idoc.idaho.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>THOMAS CREECH et. al.,</b>	)	<b>CASE NO. 12-00173-S-EJL</b>
	)	
Plaintiffs,	)	<b>DEFENDANTS' MEMORANDUM</b>
	)	<b>IN SUPPORT OF MOTION TO SEAL</b>
	)	<b>AFFIDAVIT OF JEFF ZMUDA IN</b>
vs.	)	<b>SUPPORT OF DEFENDANTS'</b>
	)	<b>RESPONSE AND OBJECTION TO</b>
	)	<b>PLAINTIFF LEAVITT'S</b>
<b>BRENT REINKE, et. al.,</b>	)	<b>EMERGENCY MOTION FOR</b>
	)	<b>PRELIMINARY INJUNCTION OR</b>
Defendants.	)	<b>STAY OF EXECUTION [DOCKET NO.</b>
_____	)	<b>16]</b>

COME NOW the Defendants Brent Reinke, Kevin Kempf, Jeff Zmuda, Josh Tewalt and Randy Blades, and pursuant to D. Id. L. Rule 5.3, by and through undersigned counsel, and hereby file Defendants' Memorandum in Support of Motion to Seal the

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO SEAL  
AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE  
AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR  
PRELIMINARY INUNCTION OR STAY OF EXECUTION [DOCKET NO.16] --1**

Affidavit of Jeff Zmuda in Support of Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction of Stay of Execution [Dkt. No. 16]. The Defendants request an order from the Court sealing said affidavit.

Plaintiff filed a § 1983 action asking the court for injunctive and declaratory relief. On May 23, 2012, Plaintiff Leavitt filed Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution. Defendants response is to be filed May 30, 2012 and any reply by the Plaintiff would be filed June 1, 2012.

In order to respond to the Plaintiff's claims raised in his motion for a preliminary injunction or stay of execution, the Defendants provided through an affidavit the training and experience of the Medical Team members that will be involved in the IDOC execution procedure. In order to maintain the safety, security and confidentiality of those involved in the execution process (see IDAPA 06.01.01.135.06), as well as maintain the safe and orderly operation of the Idaho Maximum Security Institution, no names of individuals are revealed in the Affidavit of Jeff Zmuda. However, because of the sensitive nature of this matter and the need for confidentiality, and the safety and security for the team members, the Defendants have filed this motion to provide the Court with an unredacted version of Jeff Zmuda's affidavit in order for the Court to review the experience and training of the Medical Team members. The Defendants are asking that the unredacted version of the Affidavit of Jeff Zmuda be sealed from the public. The Defendants have no objection to Plaintiff and Plaintiff's counsel viewing the Affidavit of Jeff Zmuda but ask that the Court in its order direct that Plaintiff and Plaintiff's counsel

keep the Affidavit of Jeff Zmuda confidential and not disclose it or its contents to any third parties.

Based on the need to keep team members' identities protected, kept confidential and ensure their safety and security, the Defendants request that the Affidavit of Jeff Zmuda in Support of Defendants' Response and Objection to Plaintiff Leavitt's Emergency Motion for Preliminary Injunction or Stay of Execution [Dkt. No. 16] be sealed and viewed *in camera* by the Court and only allow access to the Plaintiff and his counsel.

DATED this 30<sup>th</sup> day of May, 2012.

/s/ Krista L. Howard  
Krista L. Howard  
Deputy Attorney General  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of May, 2012, I caused to be served a true and correct copy of the foregoing DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO SEAL AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR PRELIMINARY INUNCTION OR STATY OF EXECUTION [DOCKET NO.16] with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Oliver W. Loewy, [oliver\\_loewy@fd.org](mailto:oliver_loewy@fd.org)

Teresa Hampton, [Teresa\\_Hampton@fd.org](mailto:Teresa_Hampton@fd.org)

/s/ Krista L. Howard  
KRISTA L. HOWARD

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO SEAL  
AFFIDAVIT OF JEFF ZMUDA IN SUPPORT OF DEFENDANTS' RESPONSE  
AND OBJECTION TO PLAINTIFF LEAVITT'S EMERGENCY MOTION FOR  
PRELIMINARY INUNCTION OR STAY OF EXECUTION [DOCKET NO.16] --4**