

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS E. CREECH, JAMES H.
HAIRSTON, RICHARD LEAVITT, and
GENE STUART,

Plaintiffs,

v.

BRENT REINKE, in his official capacity
as Direct, Idaho Department of
Correction; KEVIN KEMPF, in his
official capacity as Chief, Operations
Division, Idaho Department of
Correction; JEFF ZMUDA, in his
official capacity as Deputy Chief, Bureau
of Prisons, Idaho Department of
Correction; JOSH TEWALT, in his
official capacity as Deputy Chief, Bureau
of Prisons, Idaho Department of
Correction; and RANDY BLADES, in
his official capacity as Warden, Idaho
Maximum Security Institution;

Defendants.

Case No. 1:12-cv-00173-EJL

**JUDGMENT RE: PLAINTIFF
RICHARD LEAVITT**

In this Court's Memorandum Decision and Order filed on June 4, 2012, the Court granted Defendants' 12(b) Motion to Dismiss Plaintiff Richard Leavitt's claims based on his failure to exhaust administrative remedies before joining this lawsuit, and the Court alternatively denied Leavitt's Emergency Motion for Preliminary Injunction or Stay of

Execution. (Dkt. 36.)

Under Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that because Plaintiff Leavitt's claims have been dismissed for lack of exhaustion, and because his execution date is scheduled for June 12, 2012, there is no just reason to delay entering Judgment against Leavitt for purposes of appellate review.

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff Leavitt's claims against Defendants are **DISMISSED** without prejudice. This Judgment does not terminate the case or affect the claims or rights of the remaining Plaintiffs.



DATED: **June 5, 2012**

A handwritten signature in black ink, appearing to read "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge