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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

RICHARD A. LEAVITT,	)	
	)	
	)	<b>NO. 12-35450</b>
	)	
Petitioner-Appellant,	)	<b>DISTRICT COURT NO.</b>
	)	<b>CV-93-24-BLW</b>
vs.	)	
	)	<b>MOTION TO</b>
A.J. ARAVE,	)	<b>SUPPLEMENT</b>
	)	<b>THE RECORD</b>
Respondent-Appellee.	)	
_____	)	

Pursuant to F.R.App.P. 10(e)(2)(C) or 10(e)(3), and/or to this Court's equitable power, the Petitioner-Appellant moves the Court for its Order supplementing the record on appeal to include the declaration of Marc Scott Taylor. Mr. Taylor's declaration and vita are attached to the declaration of David Z. Nevin, counsel for Mr. Leavitt, contemporaneously filed.

This motion is made because this is a capital case, in which Mr. Leavitt's execution is set to occur in less than 5 days – on Tuesday, June 12, 2012 at 10:00 a.m. Discussion among the Court and counsel at today's oral argument focused on counsel's failure to place in the record the declaration of an expert witness on the subject whether scientific testing could potentially resolve an important question on Mr. Leavitt's Rule 60(b) motion: whether testing in the mid-1980's could reveal whether a sample containing the blood of two persons was mixed or deposited at two separate times, and if so, the amount of time elapsing between the two depositions.

Mr. Taylor's declaration speaks to this question, and we respectfully request that the Court consider its contents in ruling on the present appeal.

This motion is based on the record in the case, and on the Declaration of David Z. Nevin, contemporaneously filed.

DATED this 7<sup>th</sup> day of June, 2012.

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/s/  
David Z. Nevin  
Andrew Parnes

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 7<sup>th</sup> day of June, 2012, I caused a true and correct copy of the foregoing reply brief to be served on LaMont Anderson, Deputy Attorney General, State of Idaho, by electronic court filing.

\_\_\_\_\_  
/s/  
David Z. Nevin