No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD A. LEAVITT,

Petitioner,

v.

ARVON J. ARAVE, Warden,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPLICATION FOR A STAY OF EXECUTION

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Richard A. Leavitt requests that this Court grant a stay of his execution which is scheduled for June 12, 2012, at 10:00 a.m. Mountain Daylight Time, pending this Court's determination of his Petition for Writ of Certiorari which is being filed simultaneously with this Motion. Petitioner requested a stay from both the district court and the circuit court in this matter. Both courts denied the stay, but have now ruled on the merits of his case.

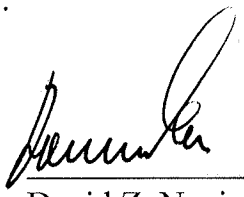
Leavitt's petition to this Court presents a likelihood of success given his claims based upon this Court's ruling in *Martinez v. Ryan*, ____ U.S. ____, 132 S.Ct 1309 (2012), and the significant Sixth Amendment violations which occurred in the state court proceedings at trial and on post-conviction. Leavitt filed his first and only habeas petition in 1993. His ineffective assistance of trial counsel claim was procedurally defaulted in 1996 and he was therefore prevented from fully developing the record on this claim at that time.

After this Court's decision in *Martinez*, Leavitt filed a Rule 60(b) motion and sought discovery and time to develop his claims in the district court. One week later, the State in ex parte unrecorded proceedings obtain a death warrant setting Leavitt's execution for June 12, 2012, forcing all consideration of his Rule 60(b) on an expedited basis. Under state law, the Idaho Attorney General was not mandated to seek the warrant within any time limit; but chose to seek the warrant knowing that Leavitt had a significant motion still pending in federal court.

Unless this Court issues a stay while his petition for certiorari is being considered, Leavitt will suffer irreparable harm in that his execution will proceed without his ever having the opportunity to fully appeal his first federal habeas petition.

For these reasons, Leavitt respectfully asks this Court to stay his execution pending consideration of his Petition for Certiorari and to continue that stay should his petition be granted by this Court.

Dated this 10th day of June, 2012.



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