

URGENT MOTION UNDER CIRCUIT RULE 27-3(b)

Case Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, AKA MASON EDMO,
Plaintiff-Appellee,

v.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants

and

CORIZON, INC., et al.,
Defendants-Appellants

On Appeal from Orders of the United States District Court
For the District of Idaho
(No. 1:17-cv-00151-BLW)

**DEFENDANTS-APPELLANTS' JOINT RESPONSE TO PLAINTIFF-
APPELLEE'S OBJECTION TO DEFENDANTS' JOINT URGENT
MOTION TO VACATE DISTRICT COURT'S ORDER**

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On April 3, 2019, Defendants-Appellants Idaho Department of Correction (IDOC), Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert (collectively, the IDOC Defendants) and Defendants-Appellants Corizon, Inc. (Corizon), Dr. Scott Eliason, Dr. Murray Young, and Dr. Catherine Whinnery (collectively, the Corizon Defendants) filed a Joint Urgent Motion to Vacate the District Court's Order (ER 45) (Dkt. 31). On April 4, 2019, Plaintiff-Appellee Adree Edmo filed an objection to the designation of the Defendants' Motion to Vacate as Urgent. (Dkt. 34).

Defendants acknowledge that, had the Joint Motion to Vacate been filed without the Urgent designation, briefing on their Joint Motion to Vacate may have been completed before April 25, 2019 pursuant to Federal Rule of Appellate Procedure 27(a)(3)(A). However, Defendants designated their Joint Motion as Urgent in order to have it heard and decided by this Court prior to the parties, the Court, and its staff expending significant time and effort preparing for oral argument, which is set to take place on May 16, 2019. Indeed, Circuit Rule 27-3 allows for such an expedited procedure when “action is needed by a specific date or event but not within 21 days ...” Cir. Rule 27-3(b) (emphasis added). *See also* Cir. Adv. Comm. Note 27-3(3) (“The provisions of Circuit Rule 27-3 are intended to be employed in instances where the absence of a response from the Court by a

date certain would result in irreparable or significant harm to a party...”). (emphasis added).¹

Once the district court’s Order expired on March 13, 2019, Defendants took careful consideration of the language of the Prison Litigation Reform Act (“PLRA”), relevant case law addressing the vacatur of injunctions like the one in this case, and the potential consequences of filing a Motion that could result in the dismissal of this appeal.² After careful deliberation, Defendants chose to designate the instant Motion as Urgent so that this important jurisdictional issue could be decided by this Court as soon as possible.

If granted, the Motion potentially has the effect of mooting the Defendants’ entire appeal, rendering further briefing, oral argument, and preparation of a written decision unnecessary. Furthermore, this Court may also remand this case to the district court, which could further delay these appellate proceedings.³ In light of

¹ In support of her contention that Defendants’ Motion was improperly designated as “urgent,” Plaintiff relies on two cases from the Ninth Circuit regarding motions seeking “emergency” relief under Cir. Rule 27-3. Defendants did not designate their Joint Motion to Vacate as an “emergency” motion under Cir. Rule 27-3(a). An emergent motion requires quicker attention than an urgent motion, which Defendants took into consideration.

² To the contrary, Plaintiff never raised this important jurisdictional issue for this Court’s (or the district court’s) consideration.

³ In her Answering Brief, Plaintiff seeks remand of this issue to the district court for the limited purpose of allowing the district court to make findings consistent with the PLRA. (Dkt. 32-1, pp. 59-60). Notably, Plaintiff recently filed a related

those potential outcomes and due to the already expedited nature of this appeal, Defendants designated their Joint Motion to Vacate as Urgent in order to have it heard as soon as possible so as to prevent significant harm to all of the parties and to this Court.

Defendants' Urgent Joint Motion to Vacate is not a procedural motion, such as a motion for extension of time. Rather, the Motion brings to this Court's attention an important jurisdictional issue, which has the effect of terminating the underlying Order and mooting the instant appeal. Indeed, this Court recently heard Defendants' Joint Urgent Motion to Stay the district court's Order on an expedited basis. Similarly, Defendants' Joint Urgent Motion to Vacate the district court's Order involves substantive issues of law concerning the district court's Order and must be heard as soon as possible to avoid an unnecessary waste of judicial resources and significant harm to the parties.

In light of the expedited nature of this consolidated appeal, the type of relief ordered by the district court below (an irreversible gender confirmation surgery to take place by June 13, 2019), and the potential termination of this appeal should

Motion for Indicative Ruling with the district court on an emergent basis, which made similar arguments as Defendants make in the Motion to Vacate as to why it should be addressed on an expedited basis. In any event, the district court's failure to make the requisite PLRA findings is the basis of Defendant's Joint Motion to Vacate filed with this Court. Defendants do not agree that limited remand is appropriate; however, the Plaintiff's request for a remand further illustrates the need for this Court to take action on Defendants' Joint Motion to Vacate as soon as possible.

the Court grant the Defendants' motion, Defendants certify that, in order to avoid significant harm, action by this Court is needed on the Defendants' Urgent Joint Motion to Vacate as soon as possible, or by April 25, 2019, which is 21 days before oral argument is set to take place. That timeframe preserves judicial economy, provides the parties with sufficient time to prepare for oral argument should the Court deny the Motion, and prevents the parties from incurring significant cost and expense should the Court grant the Motion at oral argument or thereafter.

This 5th day of April, 2019.

s/ Dylan A. Eaton

Dylan A. Eaton, ISB #7686

s/ Brady J. Hall

Brady J. Hall, ISB #7873

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Defendants-Appellants' Joint Urgent Motion to Vacate District Court's Order by electronic filing on the date stated below to:

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