

URGENT MOTION UNDER CIRCUIT RULE 27-3(b)

Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO (a/k/a MASON EDMO),
Plaintiff-Appellee,

vs.

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
Case No. 1:17-cv-00151-BLW

**PLAINTIFF-APPELLEE'S OBJECTION TO DEFENDANTS-
APPELLANTS' JOINT URGENT MOTION TO VACATE
DISTRICT COURT'S ORDER
ACTION IS NECESSARY BEFORE APRIL 25, 2019**

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Plaintiff-Appellee (“Plaintiff”) objects to Defendants-Appellants’ (“Defendants”) designation of the motion they filed at 4:08 p.m. on April 3, 2019 as “urgent” under Ninth Circuit Rule 27-3(b).¹ Dkt. 31.

Defendants certified that action on their motion is needed before April 25, 2019, 22 days from the date of their filing. Dkt. 31 at ECF pages 2-3. There are no deadlines or other calendared or relevant dates in this case on April 25, 2019, or that otherwise require a decision on their motion prior to April 25. Defendants’ reply brief in their consolidated appeal on the merits is due on April 17, 2019, and this Court has set oral argument on May 16, 2019. Defendants offered no explanation for their selection of April 25, which falls just outside the 21-day timeframe for an emergency motion, allowing them to select the “urgent” procedure without having to certify an actual emergency. Nor do Defendants offer any explanation for why they did not bring this “urgent” motion on or near March 13, 2019, when they contend the District Court’s underlying preliminary injunction order expired. As Defendants note in their motion, it has now been 21 days since they assert that order expired. Dkt. 31 at ECF page 6.

¹ By filing this objection, Plaintiff does not intend to waive her ability to file a substantive opposition to Defendants’ motion. Plaintiff limits this objection to Defendants’ designation of their motion as “urgent,” and does not otherwise address the merits of Defendants’ motion.

There is no reason that this motion should not be considered under the regular motion schedule set forth in Federal Rule of Appellate Procedure 27(a)(3)(A), under which briefing would be completed by April 22, 2019. Defendants certified that action is necessary before April 25, 2019 “in order to avoid irreparable harm to the parties and to this Court and its staff. In other words, Defendants’ Motion to Vacate should be heard as soon as possible in order to avoid the additional cost, time, and expense incurred by the parties and this Court in preparing for Oral Argument for an appeal that may be mooted by an expired Order.” Dkt. 31 at ECF page 3.

Defendants having to prepare for oral argument is not the type of “irreparable or significant harm” contemplated by Circuit Rule 27-3. The Circuit Advisory Committee Note to Rule 27-3 states that its provisions “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, e.g., a motion to reinstate an immigration petition where petitioner faces imminent removal or to stay enforcement of a district court order. The provisions of the rule are not intended for application to requests for procedural relief, e.g., a motion for an extension of time to file a brief.” *See, e.g., West v. Brewer*, 652 F.3d 1060 (9th Cir. 2011) (allowing use of Circuit Rule 27-3 for a motion for stay of execution); *Parretti v. U.S.*, 143 F.3d 508, 510 (9th Cir. 1998) (issuing emergency ruling under

Circuit Rule 27-3 to plaintiff who alleged he was unconstitutionally arrested and imprisoned). Reservation of the Rule 27-3 procedures for circumstances of actual harm of the types provided as examples by the Circuit Advisory Committee respects the resources and procedures of this Court, as well as the needs of parties who would be irreparably and significantly prejudiced if urgent action were not taken.

This is the second time within the past 30 days that Defendants have filed an “urgent” motion under Rule 27-3 in which they self-select a date that does not correlate to any deadlines or calendared dates in this case, but for which they nevertheless “certify” urgent action is necessary. *See* Dkt. 17 at ECF page 22 n.4. This Court should reject Defendants’ abuse of Rule 27-3, which is intended to be employed to avoid serious “irreparable or significant harm to a party.”

DATED: April 4, 2019

Respectfully submitted,
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