

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

vs.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellees.
and
CORIZON, INC., et al.,
Defendants-Appellees.

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 EMERGENCY MOTION TO MODIFY THE
STAY ORDER PENDING APPEAL
ACTION IS NECESSARY BEFORE APRIL 8, 2019**

Lori Rifkin, Esq. [S.B. #244081]
Hadsell Stormer & Renick LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Email: lrifkin@hadsellstormer.com

Dan Stormer, Esq. [S.B. #101967]
Shaleen Shanbhag, Esq. [S.B. #301047]
Hadsell Stormer & Renick LLP
128 North Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079
Emails: dstormer@hadsellstormer.com
sshahbhag@hadsellstormer.com

(Counsel continued on next page)

Attorneys for Plaintiff-Appellant, ADREE EDMO

Counsel continued from previous page:

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Facsimile: 208-908-8663
Emails: chd@fergusondurham.com
daf@fergusondurham.com

Amy Whelan, Esq. (CA # 215675)
Julie Wilensky, Esq. (CA # 271765)
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Facsimile: 415-392-8442
Email: awhelan@NCLRights.org
jwilensky@NCLRights.org

Attorneys for Plaintiff-Appellant, ADREE EDMO

RULE 27-3(a) CERTIFICATION

On December 13, 2018, the District Court issued a preliminary injunction ordering Defendants to “take all actions reasonably necessary to provide Ms. Edmo gender confirmation surgery as promptly as possible and no later than six months from the date of this order.” *Id.* The Court’s Order thus set the deadline for surgery as June 13, 2019. However, Defendants represented to the District Court prior to this Court’s entry of a stay pending appeal that they were unable to obtain an initial pre-surgical consultation for Ms. Edmo with their selected surgeon sooner than mid-April 2019, four months after the Court’s Order. This appointment is a necessary pre-requisite for surgery and Defendants have indicated that the surgeon requires it to take place weeks or months prior to the surgery. The surgeon has an average waiting list of six to eight months for surgeries and is typically fully booked for all other appointments, including the type of appointment currently scheduled for Ms. Edmo. If the mid-April appointment is not kept, Ms. Edmo will be at risk of significant delays in necessary treatment should this Court affirm the District Court’s order requiring provision of gender confirmation surgery to Ms. Edmo. Therefore, maintaining this appointment is essential to preserving Ms. Edmo’s right to timely and necessary medical treatment while Defendants’ appeal is pending.

Plaintiff also certifies that on March 22, 2019, Plaintiff’s counsel notified counsel for Defendants by phone and email that Plaintiff intended to file the instant

Motion and served counsel with the Motion.

The telephone numbers, addresses, and email addresses of attorneys for the parties are as follows:

Lawrence G. Wasden, Attorney General State of Idaho
Brady J. Hall, Special Deputy Attorney General
Marisa S. Crecelius
Moore Elia Kraft & Hall, LLP
P.O. Box 6756
Boise, ID 83707
(208) 336-6900
brady@melawfirm.net
marisa@melawfirm.net

Attorneys for Defendants-Appellants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert

Dylan Eaton
J. Kevin West
Parsons Behle & Latimer
800 West Main Street
Suite 1300
Boise, ID 83702
(208) 562-4900
Deaton@parsonsbehle.com
KWest@parsonsbehle.com

Attorney for Defendants-Appellants Corizon, Inc., Scott Eliason, Murray Young, and Catherine Whinnery

Lori Rifkin, Esq.
Hadsell Stormer & Renick LLP
4300 Horton Street, #15
Emeryville, CA 94608
Telephone: (626) 585-9600
lrifkin@hadsellstormer.com

Attorney for Plaintiff-Appellee Adree Edmo

Dan Stormer, Esq.
Shaleen Shanbhag, Esq.
Hadsell Stormer & Renick LLP
128 North Fair Oaks Avenue
Pasadena, California 91103
Telephone: (626) 585-9600
Emails: dstormer@hadsellstormer.com
 sshahbhag@hadsellstormer.com

Attorneys for Plaintiff-Appellee Adree Edmo

Craig Durham (ISB # 6428)
Deborah Ferguson (ISB # 5333)
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702
Telephone: 208-345-5183
Emails: chd@fergusondurham.com
 daf@fergusondurham.com

Attorney for Plaintiff-Appellee Adree Edmo

Amy Whelan, Esq.
Julie Wilensky, Esq.
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415-365-1338
Email: awhelan@NCLRights.org
 jwilensky@NCLRights.org

Attorney for Plaintiff-Appellee Adree Edmo

EMERGENCY MOTION

Pursuant to Circuit Rules 27-10 and 27-2, Plaintiff Adree Edmo files this emergency motion to request that this Court narrowly modify the Stay Order issued on March 20, 2019, Dkt. 19, to exempt the initial, pre-surgical appointment Defendants scheduled between their preferred surgeon and Ms. Edmo for mid-April 2019. The pre-surgical appointment consists only of the surgeon's examination and interview of Ms. Edmo so that he can gather information necessary to determine the surgical approach appropriate for Ms. Edmo, what procedures or treatments she will require before surgery, and how long those procedures and treatments are expected to take. Maintaining this appointment is essential to preserving Ms. Edmo's right to timely and necessary medical treatment while Defendants' appeal is pending and to ensure there is not a dangerous delay in provision of such medical care if the District Court's preliminary injunction is affirmed by this Court. Further, this narrow modification to the Stay Order will not render any issues contained in Defendants' appeal on the merits moot, nor otherwise irreparably harm Defendants in any way.

On December 13, 2018, the District Court issued a preliminary injunction ordering Defendants to "take all actions reasonably necessary to provide Ms. Edmo gender confirmation surgery as promptly as possible and no later than six months from the date of this order." *Id.* The Court's Order thus set the deadline for surgery as June 13, 2019. However, Defendants represented to the District Court prior to

entry of this Court's Stay that they were unable to obtain an initial, pre-surgical consultation for Ms. Edmo with their selected surgeon sooner than mid-April 2019, four months after the District Court's Order. This appointment is a necessary prerequisite for surgery and Defendants have indicated that the surgeon requires it to take place weeks or months prior to the surgery. The surgeon has an average waiting list of six to eight months for surgeries and is typically fully booked for all other appointments, including the type of appointment currently scheduled for Ms. Edmo. Thus, even under the expedited hearing schedule the Court of Appeals has granted in consideration of the gravity of Ms. Edmo's medical concerns, if the mid-April appointment is not kept, Ms. Edmo will be at risk of significant delays in necessary treatment should this Court affirm the District Court's order requiring provision of gender confirmation surgery to Ms. Edmo.

To preserve Ms. Edmo's right to critically necessary care the District Court has ruled is urgently needed, and to protect Ms. Edmo from dangerous delays in the provision of such care should the appeal be resolved in her favor,

///

///

///

Plaintiff respectfully requests this narrow modification of the Stay Order to clarify that Ms. Edmo's currently scheduled mid-April appointment with the surgeon shall proceed pursuant to the District Court's order.

DATED: March 22, 2019

Respectfully submitted,
NATIONAL CENTER FOR
LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: s/ Lori Rifkin
Dan Stormer
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiff-Appellant