

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 MOTION FOR LEAVE TO FILE
JOINT REPLY BRIEF EXCEEDING WORD LIMITATION**

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April 18, 2019

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**MOTION FOR LEAVE TO FILE A JOINT REPLY BRIEF EXCEEDING
THE WORD LIMITATION IN CIRCUIT RULES 32-1 AND 32-2(b)**

Circuit Advisory Comment Note to Rule 32-2 provides that “[a] litigant responding to the opposing party’s brief as well as an amicus curiae brief filed under FRAP 29(a) is also eligible to file a longer brief automatically.” Defendants-Appellants, pursuant to Ninth Circuit Rule 32-2(a), hereby respectfully move this Court for leave to file its Joint Reply Brief with an additional 874 words in order to address the arguments raised by the five amici briefs in addition to those raised in the Plaintiff’s Answering Brief.¹ (Dkt. 40, 41, 43, 48, and 49). Defendants have a substantial need to fully respond to the five amici briefs in order to address the arguments and issues raised therein.

Accordingly, good cause supports granting this limited request as it will afford the Defendants the opportunity to address the amici arguments in a single brief. Notwithstanding, given the expedited nature of this appeal and that Defendants only recently received the amici briefs, Defendants reserve the right to further address the amici briefs at oral argument. A Declaration of Counsel stating in detail the reasons for the motion and a copy of the brief have been filed with this motion pursuant to Circuit Rule 32-2.

¹ Defendants prepared a Joint Reply Brief and are therefore allowed an extra 1,400 words, pursuant to Cir. Rule 32-2(b). This 32-2(a) Motion seeks an extension of that 8,400 word-limit to respond to the amici briefing in this case.

This 18th day of April, 2019.

s/ Dylan A. Eaton

Dylan A. Eaton, ISB #7686

s/ Brady J. Hall

Brady J. Hall, ISB #7873

SUPPORTING DECLARATION OF COUNSEL

We, Brady J. Hall and Dylan Eaton, declare as follows:

1. We are counsel of record for the Defendants-Appellants and make this declaration pursuant to Circuit Rule 32-2. We are competent to testify as set forth below and have personal knowledge of the matters herein.

2. On April 3, 2019, Plaintiff-Appellee Adree Edmo filed her Answering Brief. (Dkt. 32-1).

3. Pursuant to this Court's March 29, 2019 Order (Dkt. 30), Defendants-Appellants' reply brief was ordered to be filed on April 17, 2019, 14 days after Ms. Edmo's Answering Brief.

4. Defendants-Appellants' quickly and diligently began working on their joint reply brief after receiving Ms. Edmo's Answering Brief on April 3, 2019 and have been able to address Ms. Edmo's arguments within the 8,400 word count limitation set forth in Circuit Rules 32-1 (7,000 words) and 32-2(b) (affording an extra 1,400 words for a joint brief).

5. However, on April 10, 2019, five motions to file amici briefs were filed on behalf of various legal scholars, former correctional officers, medical groups, civil rights groups, and a university professor. (Dkt. 40, 41, 43, 48, and 49). The total word count of the five amici briefs amounted to 25,462 words.

6. On Friday, April 12, 2019 (five days before Defendants-Appellants' reply brief was due), this Court granted the motions to file the amici briefs. (Dkt. 58). This Court also granted one amici's motion to file an oversized brief. (Dkt. 59).

7. The Defendants-Appellants have found it difficult to also address the arguments raised by the amici briefs within the same word count limitations applying to the reply brief to Plaintiff's Answering Brief, especially given the short amount of time Defendants-Appellants have been afforded to respond to both the Plaintiffs' Answering Brief and the amici briefs. Thus, Defendants have a substantial need for additional space to fully respond to the amici briefing.

8. Granting the limited additional briefing will enable the Defendants-Appellants an opportunity to jointly address both Plaintiff's response arguments and the additional issues raised in the amici briefs in the same reply brief. Granting the motion will also allow Defendants-Appellants' the ability to fully respond to Plaintiff's arguments in light of the expedited nature in which the amici briefs were filed. Defendants-Appellants are not aware of any prejudice that would befall Plaintiff if this Court grants this motion. Defendants-Appellants have also not previously requested to exceed the page limitations.

9. On April 17, 2019, we prepared the attached Joint Motion for Leave to File a Joint Reply Brief Exceeding the Word Limitation in Cir. Rules 32-1 and 32-2(b).

10. Prior to filing our Joint Reply Brief, Mr. Hall's legal assistant spoke with a Clerk at the Ninth Circuit. We mistakenly interpreted that conversation with the Clerk to mean that a 32-2(a) Motion was not needed to respond to amici briefing, because the extension was "automatic" as stated in the comment to Cir. Rule 32-2.

11. After filing our Joint Reply Brief, we received an email from the Clerk's office on April 18, 2019, indicating that a Cir. Rule 32-2(a) Motion is required to file a brief that exceeds the word limits of Cir. Rules 32-1 and 32-2(b).

12. The attached 32-2(a) Motion seeks that relief for the good cause described herein.

13. Counsel for Defendants Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert spoke with Plaintiff's counsel by telephone on April 18, 2019 to obtain counsel's position on the attached Motion. It is our understanding that Plaintiff's counsel does not oppose the Motion.

We hereby certify under penalty of perjury that the foregoing is true and correct.

This 18th 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 Motion for Leave to File a Joint Reply Brief Exceeding the Word Limitation in Cir. Rules 32-1 and 32-2(b) of Defendants-Appellants Corizon Inc., Scott Eliason, Murray Young, Catherine Whinnery, Idaho Department of Corrections, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert by electronic filing on the date stated below and counsel for all registered CM/ECF will be served by the appellate CM/ECF system.

DATED: April 18, 2019.

s/ Dylan A. Eaton

J. Kevin West, ISB #3337

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