

Case No. 19-35017

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)

**DEFENDANT-APPELLANTS' JOINT MOTION FOR EXTENSION OF
BRIEFING SCHEDULE**

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Appellants Corizon, Inc., Scott
Eliason, Murray Young, and
Catherine Whinnery

Pursuant to Federal Rules of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b) Defendant-Appellants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (the “IDOC Defendants”), and Defendants-Appellants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (“the Corizon Defendants”) hereby respectfully submit this motion for an extension of thirty (30) days to the briefing schedule to file their opening brief in this consolidated appeal.

The Defendant-Appellants’ opening brief is currently due Wednesday, February 6, 2019. Defendant-Appellants intend to file a joint opening brief and counsel for the Defendant-Appellants have been working together over the last several weeks to prepare that opening brief. Good cause exists and an extension is warranted because Counsel of Record for the IDOC Defendants experienced a medical emergency and was taken to the hospital on January 29, 2019. The cause of Counsel’s medical condition is unknown at this time. Until Counsel can be evaluated by medical specialists, the timeline for his return to work is unknown. *See Declaration of Michael W. Moore.*

Counsel for the IDOC Defendants has been instrumental in preparing the joint opening brief, as he has the most familiarity with the facts and the legal issues on appeal as they relate to the IDOC Defendants. Counsel for the Corizon Defendants cannot complete the opening brief without continued participation

from the IDOC Defendants' Counsel. In addition Counsel for the Corizon Defendants does not have sufficient time to prepare a separate opening brief prior to February 6, 2019. Mr. Hall has significant responsibilities as to the joint opening brief that has been getting prepared. Accordingly, Defendant-Appellants have a substantial need for additional time to prepare the joint opening brief, in order to allow IDOC Defendants' counsel to recover and return to work, or, if his return is not possible, allow other counsel to finish the necessary work to prepare the brief in his absence. *See Declaration of Counsel Marisa S. Crecelius in Support of Joint Motion for Extension of Briefing Schedule* (hereinafter, "Crecelius Decl."), ¶¶ 3-7.

Associate counsel for the IDOC Defendants made attempts to confer with Counsel of Record for Plaintiff-Appellee Adree Edmo, but was unable to do so before the timeline expired for filing this motion under Circuit Rule 31-2.2(b). *Crecelius Decl.*, ¶ 8. Defendants-Appellants have exercised diligence and represent that the opening brief will be filed within the time requested. *Crecelius Decl.*, ¶ 9.

For those reasons, Defendant-Appellants propose the following extensions of time:

- a. Defendant-Appellants' Opening Brief will be extended 30 days to March 6, 2019.

- b. The deadline for Plaintiff-Appellee's consolidated answering brief shall be extended 30 days to April 6, 2019, or within 28 days after service of the opening brief, whichever is later.
- c. Defendant-Appellants' optional reply brief is due within 21 days after service of the consolidated answering brief.

The Defendants-Appellants are not aware of any prejudice that will result from the granting of the requested extension. *Crecelius* Decl., ¶ 10.

Dated: 1/29/2019

By: /s/ Marisa S. Crecelius
Marisa S. Crecelius
Attorney for Defendants-Appellants
Idaho Department of Corrections, Henry
Atencio, Jeff Zmuda, Howard Keith Yordy,
Richard Craig, and Rona Siegert

Dated: 1/29/2019

By: /s/ Dylan Eaton
Dylan Eaton
Attorney for Defendants-Appellants
Corizon, Inc., Scott Eliason, Murray Young
and Catherine Whinnery

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**DECLARATION OF MICHAEL W. MOORE IN SUPPORT OF
DEFENDANT-APPELLANTS' MOTION FOR EXTENSION OF BRIEFING
SCHEDULE**

Lawrence G. Wasden,
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Idaho Department of Corrections, Henry
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Richard Craig, and Rona Siegert

I, Michael W. Moore, declare as follows:

1. I am an attorney at law duly licensed to practice law in the state of Idaho and before the Ninth Circuit Court of Appeals. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am a partner at the law firm of Moore Elia Kraft & Hall, LLP. My partner, Brady Hall, represents the Defendants-Appellants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert in consolidated appeal No. 19-35017.

3. This morning, I learned that Mr. Hall experienced a medical emergency and was taken to St. Luke's Regional Medical Center in Boise, Idaho. It is my understanding that Mr. Hall underwent several tests at St. Luke's.

4. It is also my understanding that Mr. Hall's medical condition has not yet been diagnosed and he requires follow-up appointments with specialists to determine what caused his medical emergency.

5. Until Mr. Hall can be evaluated by those specialists, the timeline for his return to work is unknown.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 29th day of January, 2019.

Respectfully submitted,

/s/ Michael W. Moore

Michael W. Moore

Moore Elia Kraft & Hall, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 29, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Marisa S. Crecelius
Marisa S. Crecelius

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(No. 1:17-cv-00151-BLW)

**DECLARATION OF MARISA S. CRECELIUS IN SUPPORT OF
DEFENDANT-APPELLANTS' MOTION FOR EXTENSION OF BRIEFING
SCHEDULE**

Lawrence G. Wasden,
Attorney General State of Idaho
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[*Attorneys for Defendants-Appellants*](#)
*Idaho Department of Corrections, Henry
Atencio, Jeff Zmuda, Howard Keith Yordy,
Richard Craig, and Rona Siegert*

I, Marisa S. Crecelius, declare as follows:

1. I am an attorney at law duly licensed to practice law in the state of Idaho and before the Ninth Circuit Court of Appeals. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am an associate attorney at Moore Elia Kraft & Hall, LLP. My firm represents Defendants-Appellants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (collectively, “the IDOC Defendants”).

3. The IDOC Defendants and Defendant-Appellants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (collectively, “the Corizon Defendants”), are currently scheduled to file their opening brief on February 6, 2019. The Plaintiffs-Appellee’s response brief is due March 6, 2019, or within 28 days from the date of the filing of the opening brief, whichever is later.

3. Counsel for the IDOC Defendants and Counsel for the Corizon Defendants have agreed to file a joint opening brief and are the in process of preparing that joint brief.

4. Brady Hall is the Counsel of Record for the IDOC Defendants in this case and has been instrumental in preparing the joint opening brief. I learned this

morning that Mr. Hall experienced a medical emergency and was taken to the hospital.

5. Mr. Hall was the lead attorney for the IDOC Defendants at the evidentiary hearing on the Plaintiff's Motion for Preliminary Injunction and has the most familiarity with the facts and legal theories of this case as they apply to the IDOC Defendants.

6. I have spoken with Counsel of Record for the Corizon Defendants, Dylan Eaton. It is my understanding from our conversation that Mr. Eaton will not have sufficient time to complete the joint opening brief without Mr. Hall's participation before the opening brief deadline expires on February 6, 2019. Mr. Hall had taken on some significant responsibilities as to preparation of the joint opening brief. It is also my understanding that there is not sufficient time for Mr. Eaton to start over and prepare a separate opening brief before the deadline.

7. Defendant-Appellants have a substantial need for an additional thirty (30) days to file the joint opening brief, in order to allow Mr. Hall to recover and return to work, or, if his return is not possible, allow me and counsel for the Corizon Defendants do the necessary work to finish preparing the joint opening brief in his absence.

8. I made attempts to confer with Lori Rifkin, Counsel of Record for Plaintiff-Appellee Adree Edmo, but I was unable to reach her to discuss her

potential objections before the timeline expired for filing the Motion for Extension of Time pursuant to Circuit Rule 31-2.2(b).

9. The Defendants-Appellants have exercised diligence and represent that the brief will be filed within the time requested.

10. The Defendants-Appellants are unaware of any prejudice that will result from granting the requested extension.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 29th day of January, 2019.

Respectfully submitted,

/s/ Marisa S. Crecelius

Marisa S. Crecelius

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 29, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Marisa S. Crecelius
Marisa S. Crecelius