

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3**

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Nos. 19-35017 and 19-35019

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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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.

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

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**PLAINTIFF-APPELLEE'S REPLY IN SUPPORT OF EMERGENCY  
MOTION TO MODIFY THE STAY ORDER PENDING APPEAL  
ACTION IS NECESSARY BEFORE APRIL 8, 2019**

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On March 20, 2019, this Court stayed the District Court's Order granting Plaintiff-Appellee's motion for preliminary injunction pending appeal. The Court also expedited Defendant-Appellants' underlying appeal and directed the Clerk to place these consolidated cases on the May 2019 oral argument calendar. Plaintiff-Appellee Adree Edmo, filed this emergency motion to modify the stay order on March 22, 2019, which Defendants opposed on March 25, 2019.<sup>1</sup>

Ms. Edmo's emergency motion to modify the stay is extremely narrow—it seeks to exclude from the stay a single medical appointment that Defendants represented they were unable to schedule until four months into the six-month deadline to provide surgery. If this appointment is cancelled and this Court affirms the District Court on appeal, there will be virtually no chance the District Court will be able to enforce its order requiring Defendants to provide surgery to Ms. Edmo within six months.

This Court has inherent jurisdiction to modify its own orders where there is a change to factual circumstances after the order, or where the Court has overlooked or misunderstood a point of fact when issuing the original order. Cir. R. 27-10 &

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<sup>1</sup> As certified in Plaintiff's emergency motion, Plaintiff's counsel notified defense counsel by phone the morning of Friday, March 20, 2019, that Plaintiff would be moving for a narrow modification to the stay order to exempt Ms. Edmo's already scheduled pre-surgical appointment and provided a draft of the actual motion before noon that same day. Plaintiff's counsel also unsuccessfully attempted to resolve this issue without court intervention both before filing the emergency motion on March 20, 2019, and again on March 25, 2019.

Circuit Advisory Committee Note. This Court could not consider the pre-surgical appointment as part of its stay order because Defendants did not disclose facts about that appointment in their motion for a stay, and, at the time Plaintiff filed her opposition to Defendants' motion, she was unaware of the date and facts relating to this pre-surgical appointment.

Plaintiffs' counsel did not learn until March 15, 2019, after the deadline for filing her opposition to Defendants' stay motion, that the pre-surgical appointment had even been scheduled. That information came from the surgeon himself. Defendants did not inform Plaintiffs' counsel or the District Court about this appointment until March 19, 2019. Further, it was not until March 21, 2019, that Defendants informed Plaintiff's counsel during a prescheduled status conference in the District Court that they intended to cancel the appointment because of the stay. Accordingly, there are significant factual circumstances that have changed or were "overlooked" by this Court when it issued the stay that now warrant a narrow modification to protect Ms. Edmo from additional, significant delays in obtaining surgery if the District Court's order is upheld on appeal.

Defendants' objections to this narrow modification do not satisfy their irreparable harm or balance of hardships burden for a stay. Defendants argue, for instance, that this initial consultation with the surgeon could somehow moot their appeal. Dkt. 24 at 4-5. A preliminary appointment with a surgeon, that does not

involve any medical procedures, cannot moot any of Defendants' arguments on appeal, nor do Defendants explain how such mooting would occur. Defendants also contend that keeping the appointment will impose significant and unwarranted costs should they prevail on the appeal and will unnecessarily uproot Ms. Edmo's housing. Dkt. 24 at 3-4. Any such financial costs fail to constitute irreparable harm in the context of a stay. A change in Ms. Edmo's housing for one or even two nights to have this appointment also fails to constitute irreparable harm to Defendants. Indeed, there is nothing unusual about sending a prisoner for an outside medical appointment, or even a court appearance, in a different part of the state. Defendants transport prisoners all the time, including for appointments that span multiple days and that require interim housing in different locations.

In contrast, Ms. Edmo will suffer irreparable harm in the absence of this modification. Between December 13, 2019, the date of the preliminary injunction, and March 20, 2019, Defendants were under a federal court order 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." Despite that order, Defendants failed to obtain even an initial consultation appointment with a surgeon until four months into the District Court's six-month timeline. This appointment is a necessary pre-requisite for surgery and, according to Defendants, the surgeon requires it to take place weeks or months before a scheduled 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 cancelled and this Court affirms the District Court's order, Ms. Edmo will almost certainly suffer additional dangerous delays in necessary treatment. The District Court has already found that Ms. Edmo suffers "serious psychological harm" each day that surgery is withheld and is at "serious risk of life-threatening self-harm" including "self-castration and suicide in the absence of gender confirmation surgery." Dkt. 17 (Exh. A) at 69, ¶¶ 49-50. Ms. Edmo also suffers ongoing physical injury, including cutting herself to avoid self-castration. *Id.* at 55, ¶ 63.

Accordingly, to preserve Ms. Edmo's right to necessary and adequate medical treatment while the appeal is pending, Plaintiff requests that the April pre-surgical appointment be exempted from the stay.

DATED: March 26, 2019

Respectfully submitted,  
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