

Case No. 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)

**STIPULATED EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO
CONDOLIDATE APPEALS**

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CIRCUIT RULE 27-3 CERTIFICATE

1. Contact Information for Counsel

Plaintiff-Appellee Adree Edmo is represented by Lori Rifkin, Hadsell Stormer & Renick, LLP, 415-685-3591, lrifkin@hadsellstormer.com. Ms. Rifkin's office address is: 4300 Horton Street, #15; Emeryville, CA; 94608.

Ms. Edmo is also represented by Dan Stormer and Shaleen Shanbhag, Hadsell Stormer & Renick, LLP, 626-585-9600, dstormer@hadsellstormer.com, sshanbhag@hadsellstormer.com. Mr. Stormer and Ms. Shanbhag's office address is 128 N. Fair Oaks Avenue; Pasadena, CA; 91103.

Ms. Edmo is also represented by Craig Durham and Deborah Ferguson, Ferguson Durham, PLLC, 208-345-5183, chd@fergusondurham.com, daf@fergusondurham.com. Mr. Durham and Ms. Ferguson's office address is 223 N. 6th Street, Suite 325; Boise, ID; 83702.

Ms. Edmo is also represented by Amy Whelan and Julie Wilensky, National Center for Lesbian Rights, 415-365-1338, AWhelan@NCLRights.org; jwilensky@NCLRights.org. Ms. Whelan and Ms. Wilensky's office address is 870 Market Street, Suite 370; San Francisco, CA; 94102.

Ms. Edmo is the Plaintiff-Appellee in the instant case and in Case No. 19-35017. She is represented by Ms. Rifkin, Mr. Stormer, Ms. Shanbhag, Mr. Durham, Ms. Ferguson, Ms. Whelan, and Ms. Wilensky in both matters.

Defendants-Appellants Idaho Department of Correction, Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig and Rona Siegert (the “IDOC Appellants”) are represented by Brady J. Hall and Marisa S. Crecelius, Moore Elia Kraft & Hall, LLP, 208-336-9600, brady@melawfirm.net, marisa@melawfirm.net. Mr. Hall and Ms. Crecelius’ office address is 702 W. Idaho Street, Suite 800; Boise, ID; 83702. The IDOC Appellants are the Defendants-Appellants in this instant matter.

Defendants-Appellants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery (“the Corizon Appellants”) are represented by Dylan A. Eaton, Parsons Behle & Latimer, 208-562-4900, Deaton@parsonsbehle.com. Mr. Eaton’s office address is 800 W. Main Street, Suite 1300; Boise, ID; 83702. The Corizon Appellants are the Defendants-Appellants in Case No. 19-35017.

2. Facts establishing the existence and nature of the emergency.

On December 13, 2018, the district court granted Ms. Edmo’s motion for a preliminary injunction, ordering the IDOC Appellants and the Corizon Appellants to provide Ms. Edmo with gender confirmation surgery as promptly as possible, but no later than six months from the date of the Order. On January 9, 2019, the IDOC Appellants and the Corizon Appellants each separately filed Notices of Appeal from the district court’s Order granting the injunction. Accordingly, those appeals are now proceeding separately before this Court.

This Court has set briefing schedules in both matters, ordering the Appellants in each case to file opening briefs by February 6, 2019. In the interest of judicial economy and to avoid two simultaneous appeals from the same Order, the parties seek consolidation of the instant case and Case No. 19-35017. In order to avoid irreparable harm, the parties seek consolidation of the cases on an emergency basis, to ensure that consolidation can occur as soon as possible and before the deadline for filing opening briefs, which will expire less than 21 days from the date of this motion.

3. When and how counsel for the other parties were notified and whether they have been served with the motion.

Counsel for the IDOC Appellants contacted Ms. Edmo's counsel and counsel for the Corizon Appellants on January 15, 2019, to propose the filing of a stipulated motion to consolidate the two appeals, and provided a draft of the proposed motion to Ms. Edmo's counsel on January 18, 2019. Counsel for Ms. Edmo and the IDOC Appellants are signatories to this Motion. The IDOC Appellants will also provide a copy to the Corizon Appellants' counsel via email once the motion is filed.

4. The parties have not requested relief in the lower court because this motion presents a procedural issue for the Ninth Circuit to decide.

5. The IDOC Appellants notified the Ninth Circuit court staff via email about the filing of this emergency motion.

MOTION

Pursuant to Rule 3 of the Federal Rules of Appellate Procedure, the parties to the above-referenced appeal hereby move this Court for an order consolidating the instant appeal with the appeal in *Adree Edmo v. Corizon, Inc., et al*, Case No. 19-35017. Both appeals stem from the district court's December 13, 2018 Order granting Plaintiff-Appellee Adree Edmo's Motion for Preliminary Injunction. The district court has ordered the Defendants-Appellants in the instant appeal and the Defendants-Appellants in Case No. 19-35017 to take all actions reasonably necessary to provide Ms. Edmo with gender confirmation surgery as soon as possible and no later than six months from the date of the district court's Order.

Defendants-Appellants in this case filed a Notice of Appeal from the district court's decision on January 9, 2019. On that same date, the Defendants-Appellants in Case No. 19-35017 also filed a Notice of Appeal from the same Order. Each appeal was given a separate case number in the Ninth Circuit.

Because both appeals are from an Order granting a preliminary injunction, this Court set a briefing schedule pursuant to Ninth Circuit Rule 3-3. While both appeals are currently proceeding separately, the briefing schedule for the parties' opening and answering briefs are the same in each case, with opening briefs due

by February 6, 2019, and the answering briefs for Ms. Edmo due by March 6, 2019, or within 28 days after service of the opening brief, whichever is earlier.

Judicial economy necessitates the consolidation of these appeals for several reasons. First, the issues on appeal for Defendants-Appellants in both cases are substantially the same and it is very likely that the briefing from the parties in each appeal will contain overlapping arguments. Second, the court system and the parties will benefit from a briefing and hearing schedule before one panel of judges in one case. Consolidation will prevent any inconsistent or irreconcilable decisions being issued from two separate panels of judges regarding the same Order.

For those reasons, the parties respectfully request that this Court consolidate the instant appeal and Case No. 19-35017.

Dated: 1/22/2019

By: /s/ Lori Rifkin
Lori Rifkin
Attorney for Plaintiff-Appellee

Dated: 1/22/2019

By: /s/ Brady J. Hall
Brady J. Hall
Attorney for Defendants-Appellants