

Case Nos. 19-35552

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ADREE EDMO, AKA MASON EDMO,  
*Plaintiff-Appellee,*

v.

IDAHO DEPARTMENT OF CORRECTION, et al.,  
*Defendants-Appellants*

*and*

CORIZON, INC., et al.,  
*Defendants-Appellants*

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

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**DEFENDANTS-APPELLANTS' JOINT MOTION  
FOR CLARIFICATION**

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Pursuant to Federal Rule of Appellate Procedure 27 Defendants-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 clarification. Defendants request that the Court clarify the briefing schedule in this appeal, if any.

As the Court is likely aware, this appeal is the second of two pending appeals in this case. On December 13, 2018, the District Court granted Plaintiff’s motion for a preliminary injunction. (Dist. Ct. Dkt. 149). Defendants timely appealed, and this Court subsequently stayed the injunction pending resolution of the appeal. (Case No. 19-35017, Dkt. 1, 19). After oral argument, the Court issued a limited remand for the District Court to clarify whether it had renewed the preliminary injunction and whether it had “also granted permanent injunctive relief” when it granted the preliminary injunction. (Case No. 19-35017, Dkt. 90 at 3-4). The Court noted that the injunction would remain stayed pending the limited remand and that the parties did not need to file a new notice of appeal. (*Id.* at 4). Three days later, the District Court’s Order issued an order stating that it had “renewed” the “preliminary mandatory relief” and clarifying “that as part of its ruling on the motion for preliminary injunction, it also granted permanent injunctive relief.” (Case No. 19-35017, Dkt. 91 at 4).

Out of concern they might waive their right to appeal the District Court's new injunction and believing the District Court's Order raised new issues for this Court to resolve, Defendants filed a new Notice of Appeal. (Dist. Ct. Dkt. 203). Defendants requested that the Court stay the expedited briefing schedule that ordinarily applies to preliminary injunction appeals "until it decides whether it will consolidate, dismiss, or allow this appeal to continue." (*Id.* at 2). On July 1, 2019, Defendants second appeal was docketed in this Court. (Dkt. 1-1). In the docketing notice, the Court stated that the "[b]riefing schedule will be set by future court order." (*Id.*). The Court has not yet entered an order setting a briefing schedule.

On July 10, 2019, the Court issued an order, informing the parties that the case had not been selected for the Mediation Program. (Dkt. 5). The order further stated that "[t]he briefing schedule previously established by the court remains in effect." (*Id.*). However, the next day the Court vacated that order and removed the statement that referenced the briefing schedule, (Dkt. 6), presumably in recognition that no briefing scheduled had been ordered. Counsel for the Corizon Defendants recently contacted the Ninth Circuit Court Clerk's office and a filing clerk confirmed that there were no briefing deadlines yet because the Court had not issued a briefing schedule. Accordingly, it is Defendants understanding that there is no ordered briefing schedule and no deadline or opportunity at this time for Defendants to file an opening brief.

Defendants respectfully request that the Court clarify the briefing schedule in this matter, if any. If the Court does not intend to permit briefing in this appeal, Defendants incorporate herein in their entirety all the arguments presented in Defendants' opening and reply briefs in Case No. 19-35017 and the record before the court in said appeal. While those arguments apply with equal force to the District Court's new order, Defendants contend the new order also raises new legal issues that Defendants did not have the opportunity to brief or argue in the first appeal and that the Defendants and Court would benefit from some additional briefing

This 26<sup>th</sup> day of July, 2019.

*s/ Dylan A. Eaton*

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Dylan A. Eaton, ISB #7686

*s/ Brady J. Hall*

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing DEFENDANTS-APPELLANTS’  
JOINT MOTION FOR EXTENSION OF BRIEFING SCHEDULE by electronic  
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