

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1, JOHN DOE 2, JANE DOE
1, JANE DOE 2, JANE DOE 3, and all
persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, and STEPHEN
SINCLAIR, Secretary of the Department
of Corrections, in his official capacity,

Defendants,

and

BONNEVILLE INTERNATIONAL INC.,
a Utah Corporation d.b.a. KIRO RADIO
97.3 FM; THE MCCLATCHY
COMPANY, LLC, a California Limited
Liability Company d.b.a. THE TACOMA
NEWS TRIBUNE; and ANDREA
KELLY, an individual,

Interested Parties.

NO. 4:21-CV-5059-TOR

ORDER GRANTING MOTION
FOR TEMPORARY
RESTRAINING ORDER

DISCUSSION

A. TRO Standard

Pursuant to Federal Rule of Civil Procedure 65, a district court may grant a TRO in order to prevent “immediate and irreparable injury.” Fed. R. Civ. P. 65(b)(1)(A). The analysis for granting a TRO is “substantially identical” to that for a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). It “is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

To obtain this relief, a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury in the absence of preliminary relief; (3) that a balancing of the hardships weighs in plaintiff’s favor; and (4) that a preliminary injunction will advance the public interest. *Winter*, 555 U.S. at 20; *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). Under the *Winter* test, a plaintiff must satisfy each element for injunctive relief.

Alternatively, the Ninth Circuit also permits a “sliding scale” approach under which an injunction may be issued if there are “serious questions going to the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,” assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of one element may offset a weaker showing of another.”). “[T]he district court ‘is

1 not bound to decide doubtful and difficult questions of law or disputed questions of
2 fact.” *Int’l Molders’ and Allied Workers’ Local Union No. 164 v. Nelson*, 799
3 F.2d 547, 551 (9th Cir. 1986). In the same vein, the court’s factual findings and
4 legal conclusions are “not binding at trial on the merits.” *Univ. of Tex. v.*
5 *Camenisch*, 451 U.S. 390, 395 (1981). The moving party bears the burden of
6 persuasion and must make a clear showing of entitlement to relief. *Winter*, 555
7 U.S. at 22.

8 **B. Likelihood of Success on the Merits**

9 Plaintiffs argue that it is likely to succeed on the merits of the constitutional
10 claims. ECF No. 6 at 3. For purposes of this unopposed motion only, the Court
11 finds that Plaintiffs are likely to succeed on their Eighth and Fourteenth
12 Amendment claims. *See Farmer v. Brennan*, 511 U.S. 825, 833-835 (1976)
13 (setting forth standard for Eighth Amendment violation based on failure to prevent
14 harm); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir. 2014) (setting
15 forth standard for Fourteenth Amendment violation of substantive due process
16 regarding fundamental right). The Court will more thoroughly address the merits
17 on the pending motion for preliminary injunction.

18 **C. Likelihood of Irreparable Injury**

19 Plaintiffs assert that if the records are released “there would be no turning
20 back, and Plaintiffs’ safety and lives would be placed in great peril.” ECF No. 6 at

1 3. “Irreparable harm is traditionally defined as harm for which there is no adequate
2 legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*,
3 757 F.3d 1053, 1068 (9th Cir. 2014). “[I]ntangible injuries, such as damage to
4 recruitment efforts and goodwill, qualify as irreparable harm.” *Rent-A-Car, Inc. v.*
5 *Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).
6 Here, Court finds the release of records regarding confidential information relating
7 to sexual identity and physical health constitutes a substantial irreparable injury.

8 **D. Balance of the Equities**

9 Plaintiffs assert that they will have no remedy at law if the records are
10 released and Defendants will not be prejudiced in any way. ECF No. 6 at 3. The
11 Supreme Court has recognized that courts must “balance the competing claims of
12 injury and must consider the effect on each party of the granting or withholding of
13 the requested relief.” *Amoco Production Co. v. Village of Gambell, AK*, 480 U.S.
14 531, 542 (1987). Courts have found that the maintenance of the “status quo”
15 relevant to balance of the equities, however, it is not the only consideration. *See*
16 *Flex-Plan Servs., Inc. v. Evolution1, Inc.*, No. C13-1986-JCC, 2013 WL 12092543,
17 at *7 (W.D. Wash. Dec. 31, 2013); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316
18 F.2d 804, 809 (9th Cir. 1963) (“We are not to be understood as stating that the
19 [status quo] principles are hard and fast rules, to be rigidly applied to every case
20 regardless of its peculiar facts.”). Here, the Court finds that maintaining the status

1 quo is warranted due to the private nature of the records as well as apparent lack of
2 prejudice to Defendants. As such, the Court finds that the balance of the equities
3 sharply tip in Plaintiffs' favor.

4 **E. Public Interest**

5 Plaintiffs assert that the public has an interest in keeping confidential records
6 confidential. ECF No. 6 at 3. Additionally, Plaintiffs assert that any public
7 interest in the records is vastly outweighed by the irreparable harm to Plaintiffs.
8 *Id.* Thus, Plaintiff has shown that the public interest weighs in favor of keeping the
9 records confidential.

10 Finding all the elements have been met for purposes of this motion, the
11 Court finds that a TRO is warranted.

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 13 1. Plaintiffs' Expedited Unopposed Motion for Temporary Restraining
14 Order to Preserve the Status Quo (ECF No. 6) is **GRANTED**.
- 15 2. Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Temporary
16 Restraining Order ("TRO") is issued on **April 8, 2021 at 3:50 p.m.**
- 17 3. Plaintiffs (and the putative class of similarly situated persons) have
18 demonstrated a privacy interest that will be irreparably injured if
19 confidential records related to their physical and mental health are
20 released to the public. Defendants are **RESTRAINED** from releasing

any records (including names and numbers) concerning or that identify the gender identity, sexual history, sexual orientation, sexual victimization, genital anatomy, mental and physical health, of current and past prisoners, including any records concerning transfer requests, discipline, reassignment surgery,

4. This Order is issued without further notice due to the time-sensitive nature that the records will be released in the absence of this Order.

5. This TRO is to be promptly filed in the Clerk's Office and entered into the record.

6. This TRO expires at **midnight April 22, 2021**, unless the parties demonstrate good cause to extend it for a like period or Defendants consent to a longer extension.

7. Pursuant to Federal Rule of Civil Procedure 65(c), no bond is required.

The District Court Executive is directed to enter this Order and furnish copies to counsel.

DATED April 8, 2021.



Thomas O. Rice
THOMAS O. RICE
United States District Judge