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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JOSEPH C. MOORE,

12 Plaintiff,

13 v.

14 M. PALMER, Deputy Warden;  
15 D. LEWIS, Associate Warden;  
16 A. TAYLOR; A MEZA; R. CENTENO;  
and CHRISTOPHER DAUB,

17 Defendants.  
18

Case No.: 22-CV-539 JLS (LR)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

(ECF No. 15)

19  
20 Plaintiff Joseph C. Moore (“Plaintiff” or “Moore”), currently incarcerated at R.J.  
21 Donovan Correctional Facility (“RJD”) in San Diego, California, is proceeding with a civil  
22 action pursuant to 42 U.S.C. § 1983. *See* ECF No. 1 (“Compl.”). On October 11, 2022,  
23 Plaintiff filed a Motion for Preliminary Injunction. *See* ECF No. 15 (“PI Mot.”). Plaintiff  
24 requests an injunction directing Defendants, who are prison officials at RJD, to assign her<sup>1</sup>  
25

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27 <sup>1</sup> Plaintiff is a transgender woman and refers to herself using she/her pronouns in her Complaint and other pleadings; the Court will do the same in this Order.

1 to single cell housing. PI Mot. at 10. For the reasons discussed below, the Court **DENIES**  
2 **WITHOUT PREJUDICE** Plaintiff’s PI Motion.

3 **BACKGROUND**

4 Plaintiff, a transgender woman, was transferred to RJD, a “designated hub” for  
5 housing transgender inmates, in February 2018. Compl. at 11. In her Complaint, Moore  
6 alleges that, upon her arrival at RJD, she informed her correctional counselor that she  
7 wanted a single cell to “avoid any future harassment or assault attempts by other inmates.”  
8 *Id.* at 12. At the classification hearing, however, Moore was assigned a double cell. *Id.*

9 Inmate M. was assigned as Moore’s cellmate. *Id.* at 12–13. On March 8, 2018,  
10 Moore alleges “Inmate M. forced her to perform a sexual act on [him] in the middle of the  
11 night.” *Id.* at 13. Moore reported the incident to correctional staff under the Prison Rape  
12 Elimination Act (“PREA”) and was interviewed by the Investigative Services Unit about  
13 the incident. *Id.* Prison officials ultimately found Moore’s PREA claim “unsubstantiated.”  
14 *Id.*

15 Moore again sought single-cell housing “to protect her from any further abuse or  
16 harassment.” *Id.* at 13. During the next two years, Moore alleges she was “forced . . . to  
17 live with numerous . . . inmates who were mentally challenged and had histories of  
18 violence.” *Id.* She alleges that “some of those inmates tried to have sex with [her] or  
19 harassed her by making comments when she undressed or used the restroom.” *Id.* at 13.  
20 Moore alleges this happened “from 2018 through 2020 and once in 2021.” *Id.*

21 In August 2020, Moore again requested a single cell. *Id.* at 14. Defendant Centeno  
22 interviewed Moore; reviewed her file, which included the 2018 PREA allegations; but  
23 ultimately declined to recommend Moore for a single cell. *Id.* Defendant Taylor  
24 “endorsed” Centeno’s decision. *Id.* On September 3, 2020, Defendant Daub, a mental  
25 health supervisor, interviewed Moore, who told Daub that she needed a single cell to  
26 protect her mental health, physical safety, and “serious medical needs.” *Id.* Daub

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1 nonetheless denied her “health care grievance.” *Id.* at 14–15. Subsequent administrative  
2 grievances filed by Moore were also denied. *Id.* at 15.

3 On March 21, 2022, Defendants Palmer and Lewis, RJD Chief Deputy Warden and  
4 Associate Warden, respectively, interviewed Moore. *Id.* at 16. They discussed Moore’s  
5 history and medical needs. Moore told Palmer and Lewis that she needed to be housed in  
6 a single cell due to her serious medical needs and for her safety. *Id.* Palmer ultimately  
7 declined to approve Moore for a single cell. *Id.* at 16–17.

8 On April 15, 2022, Moore commenced the instant civil action pursuant to 42 U.S.C.  
9 § 1983 and also filed motions to proceed *in forma pauperis* (“IFP”) and for a preliminary  
10 injunction (“PI”). *See* ECF Nos. 1–3. In her Complaint, Moore raised Eighth Amendment,  
11 Due Process, and Equal Protections claims. She alleged she has been improperly denied  
12 single-cell housing and, as a result, she has been unable receive adequate medical care for  
13 her gender dysphoria. *Id.* She further alleged that she is unable to pursue hormone  
14 replacement therapy because hormones will cause “her breasts [to] get bigger,” which will,  
15 in turn, “entice cellmates to harass or assault her.” *Id.* at 5. She stated that the “mental  
16 stress of being forced to live with others and undress and bathe in front of them while they  
17 watch her” deprives her of her of “safe living arrangements” and, in turn, “denie[s] her  
18 medical treatment.” *Id.*

19 Moore filed another motion for a PI on August 2, 2022, as well as subsequent  
20 supporting documents and exhibits. *See* ECF Nos. 6–10. On September 22, 2022, the  
21 Court granted Plaintiff’s IFP motion and screened Moore’s Complaint. *See* ECF No. 12.  
22 In its Order, the Court dismissed three Defendants, dismissed Moore’s Equal Protection  
23 and Due Process claims as to all Defendants for failure to state a claim, and ordered U.S.  
24 Marshal service of the remaining six Defendants as to Moore’s Eighth Amendment claims.  
25 *See id.* In the same Order, the Court denied both PI motions. *Id.* A summons was issued  
26 on September 23, 2022, but, as of the date of this Order, no Defendant has been served.  
27 *See* ECF No. 13; *see generally* Docket.

1 **MOTION FOR PRELIMINARY INJUNCTION**

2 In her PI Motion, Moore asks the Court to issue an injunction requiring Defendants  
3 to house her in a single cell. PI Mot. at 10.

4 **I. Legal Standard**

5 As discussed in this Court’s previous Order, a federal district court may issue  
6 emergency injunctive relief only if it has personal jurisdiction over the parties and subject  
7 matter jurisdiction over the lawsuit. *See Murphy Bros., Inc. v. Michetti Pipe Stringing,*  
8 *Inc.*, 526 U.S. 344, 350 (1999) (noting that one “becomes a party officially, and is required  
9 to take action in that capacity, only upon service of summons or other authority-asserting  
10 measure stating the time within which the party served must appear to defend”). A court  
11 may not attempt to determine the rights of persons not before it. *See, e.g., Hitchman Coal*  
12 *& Coke Co. v. Mitchell*, 245 U.S. 229, 234–35 (1916); *Zepeda v. INS*, 753 F.2d 719, 727–  
13 28 (9th Cir. 1983). Under Federal Rule of Civil Procedure 65(d)(2), an injunction binds  
14 only “the parties to the action”; their “officers, agents, servants, employees, and attorneys”;  
15 and “other persons who are in active concert or participation.” Fed. R. Civ. P. 65(d)(2).

16 Substantively, “[a] plaintiff seeking a preliminary injunction must establish that he  
17 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
18 of preliminary relief, that the balance of equities tips in her favor, and that an injunction is  
19 in the public interest.” *Glossip v. Gross*, 576 U.S. 863, 876 (2015) (quoting *Winter v.*  
20 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). “The first factor under  
21 *Winter* is the most important—likely success on the merits.” *Garcia v. Google, Inc.*, 786  
22 F.3d 733, 740 (9th Cir. 2015). In addition, “[u]nder *Winter*, plaintiffs must establish that  
23 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.”  
24 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

25 **II. Discussion**

26 Moore’s PI Motion must be denied because it is premature and because she has failed  
27 to adequately establish immediate, irreparable harm and success on the merits.

1 First, the United States Marshal has yet to effect service upon Defendants on  
2 Plaintiff's behalf. As such, Defendants have no actual notice, *see* Fed. R. Civ. P. 65(a)(1)  
3 (“The court may issue a preliminary injunction only on notice to the adverse party.”), and  
4 the Court has no personal jurisdiction over any Defendant at this time, *see* Fed. R. Civ. P.  
5 65(d)(2) (stating a preliminary injunction binds only “the parties to the action”); *Murphy*  
6 *Bros., Inc.*, 526 U.S. at 350 (stating one becomes a party “only upon service”); *Zepeda*,  
7 753 F.2d at 727–28.

8 Second, even assuming this Court currently had jurisdiction over Defendants, Moore  
9 would not be entitled to a preliminary injunction at this stage of these proceedings because,  
10 as discussed in this Court's previous Order, “[t]he fact that plaintiff has met the pleading  
11 requirement allowing h[er] to proceed with the complaint does not, ipso facto, entitle  
12 h[er] to a preliminary injunction.” *Claiborne v. Blauser*, No. 10-cv-2427-LKK, 2011 WL  
13 3875892, at \*8 (E.D. Cal. Aug. 31, 2011), *report and recommendation adopted*, 2011 WL  
14 4765000 (E.D. Cal. Sept. 29, 2011). Mere “[s]peculative injury does not constitute  
15 irreparable injury sufficient to warrant granting a preliminary injunction.” *Caribbean*  
16 *Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674–75 (9th Cir. 1988). Instead, to  
17 meet the “irreparable harm” requirement, Plaintiff must do more than simply *allege*  
18 imminent harm; she must demonstrate it. *Id.* at 674 (emphasis added). This requires Moore  
19 to present specific facts that show she faces a credible threat of immediate and irreparable  
20 harm unless Defendants are ordered to house her in a single cell while this matter proceeds.  
21 Fed. R. Civ. P. 65(b).

22 Here, Moore alleges that an injunction requiring her to be housed in a single cell is  
23 necessary because of the “possibility that she could be sexually assaulted again,” or the  
24 “possibility [she] would . . . be housed with[,] and assaulted by[,] a person who is HIV  
25 positive.” PI Mot. at 6. She also states that she uses a “C-PAP” machine for sleep apnea  
26 and “if another COVID surge happens she runs the risk of contracting COVID from  
27 transmission of particles going into her C-PAP machine.” *Id.* at 9. These speculative

1 allegations are insufficient to establish “immediate and irreparable harm.” *See* Fed. R. Civ.  
2 P. 65(b); *Caribbean Marine*, 844 F.2d at 674. While Moore alleges in her Complaint that  
3 she was assaulted by a cellmate over four years ago, in 2018, she has failed to allege  
4 specific facts to illustrate a risk of *immediate* and irreparable harm. *See Rigsby v. State*,  
5 No. 11-cv-1696-PHX-DGC, 2013 WL 1283778, at \*5 (D. Ariz. Mar. 28, 2013) (finding  
6 allegation of assault that occurred years prior insufficient to establish an immediate and  
7 irreparable harm). Finally, at this stage of the proceedings, the Court cannot determine the  
8 likelihood of success on the merits of Plaintiff’s Eighth Amendment claims, as such an  
9 assessment requires the submission of evidence rather than simply a determination as to  
10 whether a claim has been plausibly stated. As such, even if the Court had personal  
11 jurisdiction over Defendants at this stage, Plaintiff would not be entitled to a preliminary  
12 injunction.

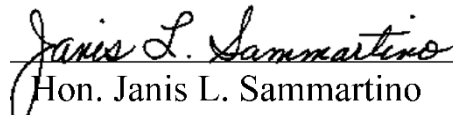
13 Thus, because Defendants have not yet been served, Plaintiff has alleged only  
14 speculative fears of potential future harm, and Plaintiff has not yet shown a likelihood of  
15 success on the merits, the Court **DENIES** Plaintiff’s PI Motion. *See Dymo Indus. v.*  
16 *Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964) (“The grant of a preliminary injunction  
17 is the exercise of a very far reaching power never to be indulged in except in a case clearly  
18 warranting it.”).

19 **CONCLUSION AND ORDER**

20 For the reasons set forth above, the Court hereby **DENIES** Plaintiff’s Motion for  
21 Preliminary Injunction (ECF No. 15) **WITHOUT PREJUDICE**.

22 **IT IS SO ORDERED.**

23 Dated: October 26, 2022

24   
25 Hon. Janis L. Sammartino  
26 United States District Judge  
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