IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

TAYLOR S. BLANCHARD, Plaintiff, vs. WYOMING DEPARTMENT OF CORRECTIONS DIRECTOR, WYOMING WOMENS CENTER WARDEN, Defendants.	Case No. 17-CV-0124

ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiff's Motion for Preliminary Injunction. (ECF No. 31.) Defendants filed an opposition to the motion (ECF No. 39) and the Court took the matter under advisement during a hearing on a motion to dismiss. (ECF No. 41.) Plaintiff has since filed a reply brief. (ECF No. 48.) Having considered the briefs and evidence, and being otherwise fully advised, the Court finds and concludes a preliminary injunction should be denied.

BACKGROUND

This case arises out of an equal protection claim for Defendants alleged failure to give Ms. Blanchard "the same opportunity to participate in Wyoming's Youthful Offender or boot camp program as provided to male prisoners in the custody of the WDOC." (ECF No. 48 at 2) (*citing* ECF No. 1 at 10 and ECF No. 40 at 12.) The

preliminary injunction requests Ms. Blanchard be granted prompt relief to prevent further harm. (ECF No. 32 at 3.)

Plaintiff, Taylor S. Blanchard, was originally charged in Wyoming state court with a conspiracy to commit a controlled substance offense in January, 2016. (Pl.'s Amend. Comp. Ex. 1) (ECF No. 43 at 31). Blanchard was sentenced to a term of incarceration for six to ten years, but her sentence was suspended and she was placed on probation. (*Id.*)

On April 11, 2017, Ms. Blanchard, appeared before a Wyoming State District Court Judge, the Honorable Marv Tyler. (*Id.* at 17.) At the hearing, Blanchard admitted to violating the terms of her probation. (*Id.*) On May 8, 2017, Ms. Blanchard appeared before Judge Tyler for sentencing. (*Id.* at 15.) Blanchard's counsel requested she be given an opportunity to participate in a boot camp program. (*Id.* at 19.) Defense Counsel noted it is likely the first time that such a request had been made for a female defendant. (*Id.*)

> "And so in a way if the Court, and I'm trying to say this nicely, if the Court doesn't give a recommendation of Youthful Offender/Boot Camp then is the Court violating my client's rights under the equal protection clause and the due process clause of the Wyoming Constitution or the United States Constitution or is it violating the statute when the statute is just – when combined with the gender neutral statute says he."

(*Id.* at 20.) Judge Tyler gave the Department of Corrections his "recommendation [she be] admitted into a Boot Camp or Youthful Offender Program." (*Id.* at 32.)

On July 18, Blanchard filed a "Complaint for Declaratory and Injunctive Relief" (ECF No. 1) and has since filed an "Amended Complaint for Declaratory and Injunctive Relief" (ECF No. 43). Blanchard alleges "[b]ecause WDOC does not have a Youthful

Offender program for women, the women in the custody of the WDOC are denied the opportunities provided to men in their WDOC boot camp program." (*Id.* at 8.)

Blanchard requests declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure 23, 28 USC §§2201, 2202 and 42 USC §1983. (*Id.* at 12.) In particular, "enjoining Defendants...from refusing to give women prisoners the same opportunity to participate in Wyoming's Youthful Offender or boot camp program as provided to male prisoners in the custody of the WDOC." (*Id.*) Blanchard requests this Court order Defendants, "among other things, to provide women with the same opportunity to participate in and complete Wyoming's Youthful Offender program as men prisoners, and to send women to an out-of-state program only if men are sent to out-of-state programs on a comparable and equitable basis, that is, such out-of-state placement should not be based on gender but rather gender-neutral principles." (*Id.*)

On June 14, 2017, WDOC became aware that Ms. Blanchard had received a boot camp recommendation. (ECF No. 16 at 5.) WDOC then began contacting states looking for a female boot camp program. (*Id.*) On August 1, 2017, WDOC sent Blanchard's "packets" to three states for a final decision of her eligibility. (*Id.*) On August 8, 2017, Florida Department of Corrections responded and accepted Blanchard's transfer. (*Id.*) Blanchard was transferred to the Florida Department of Corrections to join the upcoming cycle of its boot camp program. (*Id.*)

On October 3, 2017, Ms. Blanchard filed a Motion for a Preliminary Injunction (ECF No. 31). Blanchard argues in her brief that her transfer to the Florida Department of Corrections boot camp program violated the Equal Protection Clause of the Fourteenth

Amendment in two respects. (ECF No. 32 at 2.) First, unlike men who participate in Wyoming's boot camp program, women are sent out-of-state. (*Id.*) Second, the Florida boot camp program is inferior to the Wyoming program. (*Id.*) Ms. Blanchard requests transfer from the Florida boot camp program into the Wyoming boot camp program. (*Id.* at 19.) Blanchard also requests the Court give her "credit for time spent in the Florida program." (*Id.*) Finally, Blanchard requests defendants be required to submit a proposed remedial plan, subject to approval by the Court. (*Id.*)

LEGAL ANALYSIS

A. Preliminary Injunction Standard

A preliminary injunction is an extraordinary equitable remedy. *Westar Energy, Inc. v. Lake*, 552 F.3d 1215, 1224 (10th Cir. 2009). As such, "the right to relief must be clear and unequivocal." *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1098 (10th Cir. 1991). The purpose of a preliminary injunction is to "preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 101 S. Ct. 1830, 68 L.Ed.2d 175 (1981). Ordinarily, for a preliminary injunction to issue, the moving party must establish four elements:

> (1) a substantial likelihood that [she] will ultimately succeed on the merits of its suit; (2) [she] is likely to be irreparably injured without an injunction; (3) this threatened harm outweighs the harm a preliminary injunction may pose to the opposing party; and, (4) the injunction, if issued, will not adversely affect the public interest.

Flood v. ClearOne Commc'ns, Inc., 618 F.3d 1110, 1117 (10th Cir. 2010) (*citing Gen. Motors Corp. v. Urban Gorilla, LLC*, 500 F.3d 1222, 1226 (10th Cir. 2007)).

Where the motion for preliminary injunction is a "disfavored injunction," the standard is subjected to a heightened scrutiny. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1002 (10th Cir.2004) aff'd and remanded sub nom. *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 126 S. Ct. 1211, 163 L.Ed.2d 1017 (2006). There are three types of disfavored preliminary injunctions that require heightened scrutiny:

> (1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits. When a preliminary injunction falls into one of these categories, it must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course. A district court may not grant a preliminary injunction unless the moving party makes a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.

Awad v. Ziriax, 670 F.3d 1111, 1125 (10th Cir. 2012) (internal cites omitted).

Additionally, federal courts must move with caution when called upon to deal with even serious violations of the law by local prison officials. The Supreme Court observed in *Missouri v. Jenkins*, 110 S. Ct. 1651, 1663, 109 L.Ed.2d 31 (1990), "one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions." Prison management is fundamentally governed by legislative and executive branches of government. The Supreme Court noted,

> [T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are

> ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism.

Rhodes v. Chapman, 101 S. Ct. 2392, 2401 n. 16, 69 L.Ed.2d 59 (1981) (*quoting Procunier v. Martinez*, 94 S. Ct. 1800, 1807, 40 L.Ed.2d 224 (1974)). *See also Bell v. Wolfish*, 99 S. Ct. 1861, 1879, 60 L.Ed.2d 447 (1979) ("the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial"); *Preiser v. Rodriguez*, 93 S. Ct. 1827, 1837, 36 L.Ed.2d 439 (1973) ("It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.").

B. Equal Protection Standard

In assessing Plaintiff's likelihood of success on the merits, the Court must determine the appropriate standard to assess Plaintiff's equal protection claim. Ms. Blanchard contends the standard for equal protection claims based on gender is heightened scrutiny. (ECF No. 32 at 12.) Defendants argue the appropriate standard in prisoner cases is whether the regulation at issue is reasonably related to legitimate penological interests. (ECF No. 32 at 9.)

The Equal Protection Clause is violated when the government discriminates between similarly-situated individuals. *Meek v. Jordan*, 534 F. App'x 762, 764 (10th Cir. 2013) (*citing Penrod v. Zavaras*, 94 F.3d 1399, 1406 (10th Cir.1996)). Parties seeking to defend gender-based government action must demonstrate an "exceedingly persuasive justification" for that action. *United States v. Virginia*, 116 S. Ct. 2264, 2274, 135 L. Ed.

2d 735 (1996); *see also Concrete Works of Colorado, Inc. v. City & Cty. of Denver*, 321 F.3d 950, 959 (10th Cir. 2003) (applying intermediate scrutiny to gender-based policy measures).

However, the level of scrutiny as well as the burden of persuasion changes when a prisoner brings an equal protection claim. *See Overton v. Bazzetta*, 123 S. Ct. 2162, 2167, 156 L. Ed. 2d 162 (2003) ("Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner."). When a prisoner makes a constitutional claim, the initial question should be whether the prisoner possesses the right at issue at all, or whether instead the prisoner has been divested of the right as a condition of his conviction and confinement. *See Id.* at 2162; *Coffin v. Reichard*, 143 F.2d 443, 445 (C.A.6 1944). "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64 (1987). The Supreme Court explains "prison administrators ..., and not the courts, [are] to make the difficult judgments concerning institutional operations." *Turner*, 107 S. Ct. at 2261-2262 (*citing Jones*, 97 S. Ct. at 2539). Moreover, the burden is not on the State to prove the validity of prison regulations but on the prisoner to disprove it. *Overton*, 123 S. Ct. at 2168 (*citing Jones*, 97 S. Ct. at 2532). Consequently, the standard in *United States v. Virginia* is necessarily juxtaposed with the standard outlined in *Turner*.

Under *Turner*, the Supreme Court provided several relevant factors to determine reasonableness of a prison regulation. First, there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to

justify it. *Turner*, 107 S. Ct. at 2262 (*citing Block v. Rutherford*, 104 S. Ct. 3228, 3232, 82 L. Ed. 2d 438 (1984)). Second, the court should determine whether there are alternative means of exercising the right that remain open to prison inmates granting a "measure of judicial deference owed to corrections officials ... in gauging the validity of the regulation." *Turner*, 107 S. Ct. at 2262 (*citing Pell v. Procunier*, 94 S. Ct. 2800, 2806, 41 L. Ed. 2d 495 (1974)). Third, the court should consider the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison's limited resources generally. *Turner*, 107 S. Ct. at 2262. Finally, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but an "exaggerated response" to prison concerns. *Id.*

The Tenth Circuit has applied the *Turner* factors in determining various questions of prisoners' constitutional rights. *See Searles v. Dechant,* 393 F.3d 1126, 1131 (10th Cir. 2004) (applying *Turner's* reasonableness standard in assessing plaintiff's claim prison officials violated his right to free exercise of religion); *Frazier v. Dubois*, 922 F.2d 560, 562 (10th Cir. 1990) (*citing Jackson v. Cain*, 864 F.2d 1235, 1248 (5th Cir.1989)) ("Although *Turner* addresses prison rules and regulations, we see no reason why the *Turner* principle should not apply to other prison actions, such as the transfer here."); *and Doe v. Heil*, 533 F. App'x 831, 839 (10th Cir. 2013) (applying *Turner* standard in Fifth Amendment right against self-incrimination claim, and Fourteenth Amendment substantive due process claim for a violation of a "cognizable liberty interest"). The Tenth Circuit also applied *Turner* in a Fourteenth Amendment Equal Protection gender discrimination claim. *See Dunn v. McCotter*, 25 F.3d 1056 (10th Cir. 1994) (prison

officials were not required to enforce the same grooming policy that applied to males and not female inmates under *Turner*). Additionally, the *Turner* analysis has been used to determine the appropriateness of a preliminary injunction. *See Beerheide v. Suthers*, 286 F.3d 1179, 1185 (10th Cir. 2002) ("[*Turner*] requires courts, on a case-by-case basis, to look closely at the facts of a particular case and the specific regulations and interests of the prison system in determining whether prisoner's constitutional rights may be curtailed.").

DISCUSSION

Plaintiff is seeking a preliminary injunction that alters the status quo, is mandatory in nature, and affords her all the relief that she could recover at the conclusion of a full trial on the merits. *See Awad*, 670 F.3d at 1125. Consequently, the Court may only grant a preliminary injunction if the plaintiff makes a strong showing with regard to the likelihood of success on the merits. At this time, the Court identifies the issue Plaintiff must show a substantial likelihood of success on the merits to be whether sending Ms. Blanchard to an out of state boot camp program is a violation of her equal protection rights where Wyoming operates a men's boot camp but not a women's, thus necessitating her out of state transfer.

The Court believes this case should ultimately be examined under the *Turner* reasonableness standard. The Tenth Circuit has applied *Turner* in both prisoner transfer and gender equal protection cases. However, even under Plaintiff's heightened scrutiny analysis, the Court would find the same result. Plaintiff has not met her elevated burden

of making a strong showing with regard to likelihood of success on the merits, nor has she shown a likelihood of irreparable injury if a preliminary injunction is not granted.

A. Substantial Likelihood of Success on the Merits

It should be noted at the outset that participation in the Wyoming boot camp program is not a liberty interest prisoners are entitled to. *See Ellett v. State*, 883 P.2d 940, 941 (Wyo. 1994) (holding appellant's denial for participation the Youthful Offender Program due to a medical injury does not violate the equal protection clause of the Wyoming and United States Constitutions); *see also United States v. Gaskin*, 145 F.3d 1347 (10th Cir. 1998) (affirming lower courts holding that plaintiff was not 'entitled to placement in a boot camp' even though he was originally placed in a boot camp with the possibility of a sentence reduction upon successful completion); *see also United States v. Morgan*, No. CRIM. A. 94-10097-01, 1996 WL 473858, at *1 (D. Kan. June 26, 1996) (holding a judge's recommendation for placement in a boot camp program does not undercut Bureau of Prisons exclusive authority regarding inmate placement).

However, Ms. Blanchard claims she has been subjected to different treatment with regard to boot camp placement because of her suspect class. Namely, because she is a woman she has been sent to an inferior boot camp program. (ECF No. 40 at 2.) Plaintiff provides the Court three arguments why she is likely to succeed on the merits,

> (1) for the past thirty years, WDOC has actively facilitated and promoted the entry of men into the boot camp program – even constructing a facility exclusively for men – while doing nothing to facilitate or promote the entry of women; (2) when Taylor Blanchard entered the program, Defendants sent her out-of-state, a disability no man ever suffers; and (3) the program in which Ms. Blanchard was placed is inferior to Wyoming's program for men.

(ECF No. 32 at 11-12.)

Plaintiff's motion relies on a district court case *West v. Virginia Dep't of Corr.* where the court held a female plaintiff's denial of participation in the state Boot Camp Incarceration Program because of her gender violated equal protection. (ECF 48 at 5-6) *West v. Virginia Dep't of Corr.*, 847 F. Supp. 402, 408 (W.D. Va. 1994). The Virginia boot camp statute set out eligibility requirements that did not require plaintiff to be a male. *West*, 847 F. Supp. at 404. However, plaintiff was denied admission into the boot camp program because of her gender. *Id.* The court ultimately granted summary judgment for plaintiff, holding "defendants acted unconstitutionally in providing a favorable sentencing option for male prisoners, where none was available for female prisoners." *Id.* at 408.

However, this case is distinguishable from Ms. Blanchard both procedurally and factually. The case is procedurally different, because the court was ruling on cross motions for summary judgment after parties stipulated the material facts were undisputed and the matter was ready to be decided on the merits. *Id.* at 404. At this preliminary injunction stage, the Court does not have undisputed material facts. Instead the Court has a complaint, an amended complaint, several motions, and has yet to receive Defendants' answer. Nevertheless, this Court is asked to grant a highly disfavored motion for preliminary injunction.

Factually the cases are different because the plaintiff in *West* was denied **any** ability to participate **in any** boot camp program (in Virginia or elsewhere) and receive a potential sentence reduction. The *West* "court agrees that whether this grant of

discretionary authority could permit the DOC to establish a boot camp-type program for men and not for women presents a close question. However, when an extremely favorable sentencing alternative is provided to one class of inmates and not another, and when that classification is based solely on the inmates' gender, the line is crossed." *West*, 847 F. Supp. at 408. The close question identified in the *West* case is significantly narrower here. Ms. Blanchard has already received a boot camp placement and has the potential to receive a sentence reduction. (*See* ECF Nos. 16, 24, 30, 32, 34, 37, 39.) Therefore, the decision in *West* is materially distinguishable to this case. Ms. Blanchard has not been barred from an extremely favorable sentencing alternative based solely on her gender.

Plaintiff's reply brief asserts "the only question this Court must resolve is whether these women have been afforded a comparable opportunity to participate in and benefit from Wyoming's BCP. *The answer to that question will become manifestly clear at trial.*" (ECF No. 40 at 5) (emphasis added). However, Plaintiff cannot base her motion for a preliminary injunction, on evidence she plans to make manifestly clear at trial. The evidence must be clear now. *See SCFC ILC, Inc.*, 936 F.2d at 1098 (10th Cir.1991) ("As a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.") The Supreme Court has observed "that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997) (per curiam) (quotation omitted).

Ms. Blanchard does present arguments that disparities exists between the boot camp programs' length of time, location, and programming. These allegations are predominately supported by Ms. Blanchard's declarations. Although the Court does not believe Ms. Blanchard's allegations have risen to the clear showing required for a preliminary injunction, it will briefly address each allegation in turn.

First, Plaintiff argues the difference in length of time violates her equal protection right. (ECF No. 32 at 5.) The Court finds a shorter boot camp term does not, on its face, violate equal protection. Plaintiff has not alleged any actual harm from a shorter program. To the contrary, a shorter program would appear to aid the Plaintiff in receiving a quicker sentence modification. Sentence modifications can be awarded at the judge's discretion for a successful completion of the boot camp program. Therefore, if anything, a shorter boot camp term could increase the likelihood of successful completion and allow for the possibility of a quicker sentence reduction. Plaintiff has failed to allege a factual basis for why a shorter program, outside of being shorter, violates her equal protection.

Second, Plaintiff argues the boot camp location violates equal protection because men are not sent out of state. (ECF No. 32 at 15.) Again, the Court finds that prisoner placement does not, on its face, violate equal protection. Plaintiff acknowledges that prisons have authority to place individuals in out-of-state facilities. (*Id.* at 5.) However, she argues the placement cannot be based solely on gender grounds. (*Id.*) Interestingly, Plaintiff's initial complaint sought relief by being placed in a boot camp in "another state." (ECF No. 1 at 10.) Plaintiff's amended complaint continues to seek placement in an out of state program, albeit only if men also are sent. (ECF No. 40 at 13.) However,

these placement decisions are the very decisions made by prison administrators. *See Meachum v. Fano*, 96 S. Ct. 2532, 2538, 49 L. Ed. 2d 451 (1976). Furthermore, separation of men and women in prison is constitutional. *Women Prisoners of D.C. Dep't of Corr. v. D.C.*, 93 F.3d 910, 926 (D.C. Cir. 1996) (*citing Pitts v. Thornburgh*, 866 F.2d 1450 (D.C.Cir.1989)) ("As an initial matter, we note that the segregation of inmates by sex is unquestionably constitutional.").

Third, Plaintiff argues the disparate programing at each boot camp violates her equal protection. (ECF No. 32 at 5.) However, when Defendants argue identical programming is not required under the equal protection clause, Plaintiff attempts to shift the focus away from programs and back to placement. Plaintiff's reply states she is not challenging the number and type of programs offered, but rather opportunity to attend boot camp. (ECF No. 48 at 5.) However, this appears to be contradictory to what Ms. Blanchard alleges in her motion for preliminary injunction. Blanchard argues her motion should be granted because "she was placed into an inferior program" (ECF No. 32 at 2), and "men in Wyoming's program receive more training and programming – up to three times as much—as Ms. Blanchard will receive" (*Id.* at 5), and finally "Ms. Blanchard is suffering irreparable harm because ... she was placed into a program inferior to Wyoming's program for men." (*Id.* at 11.) Although, some of this information will likely become clearer as discovery proceeds, it is unclear at this time. This Court cannot grant a disfavored preliminary injunction that interferes with the administration of prison facilities, without clearer evidence of disparate treatment based on gender.

B. Irreparable Injury

Plaintiff argues a constitutional violation presumptively results in irreparable harm. Ms. Blanchard claims her Fourteenth Amendment right is being violated because of her transfer to the Florida boot camp program. (ECF No. 32 at 14.) The Court does not disagree that generally a violation of constitutional rights presumptively results in irreparable harm. *See Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir.2001) (*quoting* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed.1995)). However, Plaintiff has yet to present a strong showing of a violation of her constitutional rights. *See Guzzo v. Mead,* No. 14-CV-200-SWS, 2014 WL 5317797, at *5 (D. Wyo. Oct. 17, 2014). Additionally, Ms. Blanchard has failed to show her constitutional right to relief is clear and unequivocal. *See SCFC ILC, Inc.*, 936 F.2d at 1098.

While Ms. Blanchard's denial of admission into a Wyoming (located) boot camp program solely because of gender could constitute a harm, at this point in time that harm is speculative. *See Sassman v. Brown*, 73 F. Supp. 3d 1241, 1251 (E.D. Cal. 2014) (despite Plaintiff's likelihood to succeed on merits of equal protection claim any alleged harm merely speculative). Ms. Blanchard has been placed in a boot camp program and, if completed, will have the same opportunity for sentence reduction as a Wyoming male participant. Although Ms. Blanchard's current placement in the Florida program may prove to be inferior to the Wyoming boot camp program that has yet to be established. Nonetheless, Ms. Blanchard can seek a sentence reduction if she successful completes the program.

Plaintiff contends in her motion for preliminary injunction she is suffering other injuries due to Defendants' discriminatory administration of the boot camp program. (ECF 40 at 14.) Plaintiff alleges she was harmed by being transported in shackles over a series of days to Florida. (*Id.*) Ms. Blanchard states she was "scared and anxious and felt helpless" and "lonely and distressed being so far from home." (*Id.*) Additionally she was upset and disgusted about being forced to leave Wyoming. (*Id.*)

However, these alleged irreparable injuries are not unique to Plaintiff and alleged gender discrimination. Not surprisingly, the Supreme Court recognizes, prisoners do not retain many of the liberties and privileges enjoyed by other citizens. *See Overton*, 123 S. Ct. at 2167. This must necessarily encompass certain feelings of anxiousness and distress. All prisoners will face certain uncomfortableness with incarceration, which can include being constrained by shackles during transportation. *See Covalt v. Inmate Servs. Corp.*, No. 15-CV-685-LTB, 2015 WL 2207700, at *5 (D. Colo. May 8, 2015), aff'd, 658 F. App'x 367 (10th Cir. 2016) ("While no doubt uncomfortable, the requirement that prisoners travel in shackles protects not only the guards but the other prisoners as well.") Moreover, if the Court granted Plaintiff's motion she would again be subject to transportation back to Wyoming.

CONCLUSION

Plaintiff has not met the heightened scrutiny required to receive a disfavored preliminary injunction. Ms. Blanchard has not made a strong showing with regard to the likelihood of success on the merits nor has she clearly shown an irreparable injury.

Noting the absence of these two factors, the Court declines to address the remaining factors for a preliminary injunction. It is hereby

ORDERED Plaintiff's *Motion for a Preliminary Injunction* (ECF No. 31) is Denied.

Dated this 9th day of November, 2017.

Scott W. Skavdahl
United States District Judge