IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES SPRINGER,

Plaintiff,

v.

Case 1:23-cv-00499-MIS-JMR

SEVENTH JUDICIAL
DISTRICT COURT,
MERCEDES MURPHY,
SHANNON MURDOCK-POFF,
JASON JONES, AND
SUSAN ROSSIGNOL,

Defendants.

ORDER DENYING OPPOSED MOTION FOR STAY AND INJUNCTION PENDING APPEAL

THIS MATTER is before the Court on Plaintiff James Springer's Opposed Motion for Stay and Injunction Pending Appeal, filed September 29, 2023. ECF No. 42. Defendants filed a Response on October 13, 2023, ECF No. 50, to which Plaintiff filed a Reply on October 26, 2023, ECF No. 56. Having review the Parties' submissions, the record, and the relevant law, the Court **DENIES** the Motion.

I. Relevant Background[1]

"Plaintiff is an independent investigative journalist who produces content intended to expose to the general public cases of government fraud, waste, and abuse." ECF No. 1 ¶ 8(2).[2] Plaintiff displays content on a YouTube channel he operates called "James Freeman," which has

[1] The events giving rise to the Complaint are set out more fully in the Court's Amended Order Denying Plaintiff's Request for a Temporary Restraining Order/Preliminary Injunction. ECF No. 38 at 2-7.

[2] The Complaint contains two paragraphs numbered "8." The Court's citation to paragraph 8(2) refers to the second paragraph 8, sequentially.

approximately 444,000 subscribers. Id. ¶¶ 11-12. "The content Plaintiff posts on his YouTube channel and on other social media platforms often receives tens of thousands of views and frequently sparks robust debate about matters of public interest related to constitutional rights, the workings of government and other related matters." Id. ¶ 13.

On June 9, 2023, Plaintiff filed a Complaint for Declaratory and Injunctive Relief, alleging violations of his rights under the First and Fourteenth Amendments to the United States Constitution, ECF No. 1 ¶¶ 29-41, and Article II, Sections 17, 18, and 23 of the New Mexico Constitution, id. ¶¶ 42-45. Plaintiff's claims arise out of interactions between Plaintiff and personnel at New Mexico's Seventh Judicial District Court which resulted in an Amended Administrative Order barring Plaintiff from entering courthouses within the Seventh Judicial District "unless appearing for a hearing or having specific Court business, in which cases [Plaintiff] shall be escorted and accompanied by the law enforcement, while in any of the buildings." ECF No. 1-3.

Plaintiff incorporated into his Complaint a Request for a Temporary Restraining Order ("TRO"). Id. at 11-15. Defendants filed a Response to the Request, ECF No. 29, to which Plaintiff filed a Reply, ECF No. 33.

On September 22, 2023, the Court entered an Amended Order construing the Request as one for a preliminary injunction and denying the Request, finding that Plaintiff failed to satisfy his burden of establishing a substantial likelihood of success on the merits of his claims. ECF No. 34 at 11. Specifically:

> Plaintiff's Motion wholly failed to identify the elements of his causes of action, much less demonstrate a substantial likelihood that the facts of this case satisfy those elements. Nor did he cite any legal authority supporting his claims, which is grounds alone for denying the Motion. D.N.M.LR-Civ. 7.3(a) ("A motion, response or reply must cite authority in support of the legal positions advanced.");

Quarrie v. Wells, Civ. No. 17-350 MV/GBW, 2020 WL 2526629, at *4 (D.N.M. May 18, 2020) (denying motion for failure to cite any supporting authority in violation of Local Rule 7.3(a)); JL v. N.M. Dep't of Health, 165 F. Supp. 3d 1048, 1069 (D.N.M. Feb. 24, 2016) (same). And at least one court addressing similar facts has determined that restricting an individual's access to a courthouse due to disruptive behavior did not constitute a violation of the individual's First and Fourteenth Amendment rights. See Mead v. Gordon, 583 F. Supp. 2d 1231, 1238-43 (D. Or. 2008). See also Huminski v. Corsones, 396 F.3d 53, 86-87 (2d Cir. 2005) ("[C]ourt administrative, judicial, and other officials must at least have the ability to close the courtroom door to any person whom they reasonably think may pose a threat to person, property, or decorum. A potential spectator may be excluded from a courtroom on a simple issue of propriety: reasonably unacceptable dress, unruly behavior, efforts inappropriately to communicate views in the courtroom, possession of personal property banned from the court (e.g., cell phones, cameras, or recording devices), and the like.").

In his Reply brief, Plaintiff argues—for the first time—that Defendants' actions constitute a "prior restraint" on the freedom of speech,[3] and he is substantially likely to succeed on the merits of his claims because "'[a]ny system of prior restraints of expression comes to th[e] Court bearing a heavy presumption against its constitutional validity.'" ECF No. 33 at 5 (quoting Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963)). However, assuming arguendo that this argument is properly before the Court, see Reedy v. Werholtz, 660 F.3d 1270, 1274 (10th Cir. 2011) ("[A] party waives issues and arguments raised for the first time in a reply brief"), Plaintiff cites no authority supporting his argument that the Defendants' actions in this case constitute a prior restraint on speech or expression. Neither the Administrative Order, the Amended Administrative Order, the Order Excluding Presence, Chief Judge Murphy's act of excluding Plaintiff from the video teleconference hearing, nor Ms. Rossignol's alleged [act] of refusing to serve Plaintiff in the Clerk's Office actually restrain Plaintiff's speech or expression. Rather, they restrain his access to court hearings and files. Plaintiff has cited no authority—binding or persuasive—holding that restricting an individual's access to court hearings and documents constitutes a prior restraint on speech or expression in violation of the First Amendment. See Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 399 (1979) (Powell, J., concurring) (finding that an order excluding the press from a courtroom "differs substantially" from a "gag order" prohibiting the press from publishing information already in their possession, which is "a classic prior restraint"); Resnick v. Patton, 258 F. App'x 789, 792 (6th Cir. 2007) (finding that a judge's refusal to permit the press to access a case file while the case was pending did not constitute a prior restraint on speech) (citing Application of NBC, Inc., 828 F.2d 340, 343 (6th Cir. 1987) ("This is not a prior restraint case. NBC is not restrained by the district court's order from

[3] Neither the Complaint nor the Motion characterize Defendants' actions as a "prior restraint" on speech.

> publishing or broadcasting documents or information in its possession. Rather, the case concerns the right of the public and representatives of 'the media' to have access to documents filed in a district court at the preliminary stages of a criminal prosecution.")); United States v. Cianfrani, 573 F.2d 835, 861 (3d Cir. 1978) (finding that limiting the media's access to a pretrial suppression hearing did not constitute a prior restraint on speech and did not violate the First Amendment).
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> For these reasons, Plaintiff has failed to carry his burden of establishing a substantial likelihood of success on the merits of his claims. See Van Dyke v. Retzlaff, Civil Action No. 4:18-CV-247, 2020 WL 1693023, at *3 (E.D. Tex. Apr. 7, 2020) (finding that the plaintiff failed to show a substantial likelihood of success on the merits where he offered only conclusory allegations and cited no case law in support of his claims); White v. Alcon Film Fund, LLC, 955 F. Supp. 2d 1381, 1383 (N.D. Ga. 2013) (finding that the plaintiff's conclusory statement that he had shown a substantial likelihood of success on the merits, "bereft of any legal support, is plainly insufficient to carry [his] burden of showing a substantial likelihood of success on the merits of his claims").
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> Because Plaintiff failed to establish a substantial likelihood of success on the merits, the Court must deny his Motion. See Vill. of Logan, 577 F. App'x at 766 ("[A] plaintiff's failure to prove any one of the four preliminary injunction factors renders its request for injunctive relief unwarranted."); Sierra Club, 539 F. App'x at 888 ("A party seeking a preliminary injunction must prove that all four of the equitable factors weigh in its favor . . . .").

Id. at 11-14 (footnote in original). Plaintiff has appealed the Court's Amended Order. See ECF No. 39.

On September 29, 2023, Plaintiff filed the instant Motion for Stay and Injunction Pending Appeal. ECF No. 42. Defendants filed a Response, ECF No. 50, to which Plaintiff filed a Reply, ECF No. 56.

II. Discussion

Plaintiff moves pursuant to Federal Rule of Appellate Procedure 8(a) for a stay and injunction pending his appeal of the Court's Amended Order denying his Request for a TRO/Preliminary Injunction. ECF No. 42 ¶¶ 1-2. Defendants argue that a stay and injunction pending appeal are unwarranted under Federal Rule of Civil Procedure 62(c). ECF No. 50 at 3-7.

Federal Rule of Appellate Procedure 8(a) governs motions for stays and injunctions in the United States Courts of Appeal, while Federal Rule of Civil Procedure 62(c) governs motions for stays and injunctions in the United States District Courts.[4] Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

> Under both Rules, however, the factors regulating the issuance of a stay [and injunction] are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. (citations omitted). See also Roman Catholic Diocese of Brooklyn v. Cuomo, __ U.S. __, 141 S. Ct. 63, 66-68 (2020).

> The movant bears the burden of proving these four factors. Wildmon v. Berwick Universal Pictures, 983 F.2d 21, 23 (5th Cir. 1992); Securities Investor Protection, 962 F.2d at 968; see Coastal Corp. v. Texas Eastern Corp., 703 F. Supp. 36, 37 (S.D. Tex. 1989) ("the burden of production and persuasion" is with the movant). "'[I]t is the movant's obligation to justify the court's exercise of such an extraordinary remedy.'" McGregor Printing Corp. v. Kemp, 811 F. Supp. 10, 12 (D.D.C. 1993) (quoting Cuomo v. United States Nuclear Regulatory Com'n, 772 F.2d 972, 978 (D.C. Cir. 1985)), rev'd on other grounds, 20 F.3d 1188 (D.C. Cir.1994); 11 Federal Practice and Procedure, § 2904 at 503–05 ("Because the burden of meeting this standard is a heavy one, more commonly stay requests will not meet this standard and will be denied.") "[T]he movant must address each factor, regardless of its relative strength, providing specific facts and affidavits supporting assertions that these factors exist." Michigan Coalition v. Griepentrog, 945 F.2d 150, 154 (6th Cir. 1991) (citation omitted).

First Sav. Bank, F.S.B. v. First Bank Sys., Inc., 163 F.R.D. 612, 614-15 (D. Kan. 1995). See also Nken v. Holder, 556 U.S. 418, 433-34 (2009) ("The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion."); cf. Homans v. City of

[4] Rule 62(c) provides, in relevant part: "Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken: **(1)** an interlocutory . . . judgment in an action for an injunction . . . ."

Albuquerque, 264 F.3d 1240, 1243 (10th Cir. 2001) (stating that Tenth Circuit Rule 8.1 "requires the applicant to address" these factors).

Plaintiff's Motion wholly fails to identify these factors, much less apply them to the facts of this case (or otherwise address, analyze, or prove them). Indeed, Plaintiff's Motion—which is brief—is entirely devoid of legal or factual analysis. As such, it is subject to summary denial.[5] PTG, Inc. v. Reptilian Nation Expo, No. 2:23-cv-00840-DAD-JDP, 2023 WL 3582131, at *3 (E.D. Cal. May 22, 2023) ("Because plaintiff's arguments are devoid of the factual and legal analysis necessary to establish its likelihood of success on the merits, plaintiff has clearly not met its burden."); Elide Fire USA, Corp. v. Auto Fire Guard, LLC, Civil Action No. 21-cv-0943-WJM-KLM, 2022 WL 18777076, at *3 (D. Colo. Nov. 17, 2022) (denying motion because, inter alia, "it did not include any substantive legal argument"); Bates v. Leon Cnty. Sheriff, Case No. 4:22-cv-32-MW/MJF, 2022 WL 1721218, at *2 (N.D. Fla. Apr. 28, 2022) (recommending that the district court deny an emergency motion for a TRO which was less than one page long and "is utterly devoid of an analysis of [the relevant] factors"), report and recommendation adopted, 2022 WL 1720464 (N.D. Fla. May 27, 2022); Makeen Inv. Grp., LLC as Tr. for Makeen Family Childs. Tr. v. Colorado, Civil Action No. 17-cv-2759-RM-STV, 2018 WL 6168063, at *2 (D. Colo. Nov. 26, 2018) (denying motion as "conclusory and devoid of any legal or factual analysis"), aff'd, 825 F. App'x 565 (10th Cir. 2020).

[5] Plaintiff cites the factors for the first time in his Reply brief, ECF No. 56 at 1, and argues that because the Court denied his Request for a Preliminary Injunction based primarily on is failure to establish a substantial likelihood of success on the merits (and not on his failure to establish the other three factors), the Court should grant the stay and injunction pending appeal, id. at 2. However, "'a party waives issues and arguments raised for the first time in a reply brief.'" Gutierrez v. Cobos, 841 F.3d 895, 902 (10th Cir. 2016) (quoting Reedy v. Werholtz, 660 F.3d 1270, 1274 (10th Cir. 2011)).

The Motion is also subject to denial because it—like Plaintiff's Request for a TRO/Preliminary Injunction—cites no supporting authority. See D.N.M.LR-Civ. 7.3(a) ("A motion, response or reply must cite authority in support of the legal positions advanced"); Quarrie, 2020 WL 2526629, at *4 (denying motion for failure to cite any supporting authority in violation of Local Rule 7.3(a)); JL, 165 F. Supp. 3d at 1069 (same). Plaintiff's failure to cite authority supporting his position "suggests either that there is no authority to sustain [his] position or that it expects the court to do [his] research." Rapid Transit Lines, Inc. v. Wichita Developers, Inc., 435 F.2d 850, 852 (10th Cir. 1970). The Court declines the invitation. See id.

III. Conclusion

Therefore, it is **HEREBY ORDERED** that Plaintiff's Opposed Motion for Stay and Injunction Pending Appeal, ECF No. 42, is **DENIED**.

Margaret Strickland

MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE