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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 Keith Ranieri,  
11 Plaintiff,  
12 vs.  
13 Merrick Garland, et al.,  
14 Defendants.  
15

CV-22-00212-TUC-RM  
**DEFENDANTS' RESPONSE TO  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

16 Defendants Garland, Carvajal and Colbert, acting in their official capacity by and  
17 through undersigned counsel, respond to Plaintiff's Motion for Temporary Restraining  
18 Order (Doc. 13). Defendants hereby incorporate Defendants' Response to Motion for  
19 Preliminary Injunction (Doc. 14) in its entirety. For the reasons set forth in that response  
20 and the additional reasons discussed below, Defendants request that the Court deny the  
21 Motion.

22 **I. Background: Plaintiff's Access to Counsel at USP Tucson**

23 Defendants provided evidence that the Bureau of Prisons (Bureau) has facilitated  
24 numerous legal calls and frequent legal visits between Plaintiff and his attorneys. (Doc. 14-  
25 2 at 5-8, 37-38, 40-41.) Counselor Flores facilitated at least 32 legal calls between Plaintiff  
26 and various attorneys between October 2021 and May 2022. (*Id.* at 5-7, 37-38.) Counselor  
27 Ashworth facilitated an additional 16 legal calls between January and May 2022. (*Id.* at 7-8,  
28 40-41.) So far in June, Bureau employees have facilitated an additional five legal calls

1 between Plaintiff and his attorneys, including calls on June 1, 2022, June 7, 2022, June 8,  
2 2022, and June 10, 2022. (Ex. A, Flores Decl. II, ¶¶ 2-3, Att. 1, Legal Call Log I, Att. 2,  
3 Legal Call Log II.)

4 Bureau employees also have continued to facilitate Plaintiff's legal visits with his  
5 attorneys. Since May 19, 2022, Plaintiff has had six legal visits with his attorneys, and he  
6 has three more scheduled this week. (*Id.* ¶¶ 4-5.) No attorney has requested that the Bureau  
7 grant Mr. Chakravorty paralegal privileges, nor has any attorney sponsored him as a  
8 paralegal. (*Id.* ¶ 1.) Therefore, Mr. Chakravorty is not afforded legal visitation, legal call or  
9 legal correspondence privileges with Plaintiff. (*Id.*)

## 10 **II. Legal Discussion**

### 11 **A. Standards for a Motion for Temporary Restraining Order Without Notice**

12 Rule 65(b)(1), Fed.R.Civ.P., provides

13 The court may issue a temporary restraining order  
14 without written or oral notice to the adverse party or its  
attorney only if:

15 (A) *specific facts in an affidavit or a*  
16 *verified complaint* clearly show that immediate  
and irreparable injury, loss, or damage will result  
17 to the movant before the adverse party can be  
heard in opposition; and

18 (B) *the movant's attorney certifies in*  
19 *writing any efforts made to give notice* and the  
reasons why it should not be required.

20 (Emphasis added.) Additionally, Rule 65(b)(2), Fed.R.Civ.P., provides

21 Every temporary restraining order issued without notice  
22 must state the date and hour it was issued; describe the injury  
and state why it is irreparable; state why the order was issued  
23 without notice; and be promptly filed in the clerk's office and  
entered in the record. The order expires at the time after  
24 entry—not to exceed 14 days—that the court sets, unless  
before that time the court, for good cause, extends it for a like  
25 period or the adverse party consents to a longer extension. The  
reasons for an extension must be entered in the record.

### 26 **B. Plaintiff has not met the Standards for a Temporary Restraining Order** 27 **Without Notice**

28 Plaintiff asserts that he has met the required standards because Defendants have

1 actual notice of the First Amended Complaint (FAC) and the Motion for Preliminary  
2 Injunction and that “[a]dditional notice should not be required because it is apparent that  
3 Defendants intend to delay their response until the harm has been done, and the F.R.Crim.P.  
4 Rule 33 deadline has passed.” (Doc. 13 at 3.) First, counsel was required to certify in  
5 writing any efforts made to give notice of the motion for a temporary restraining order, not  
6 of the underlying action. *See* Rule 65(b)(1)(b), Fed.R.Civ.P. Second, Plaintiff introduces  
7 no evidence to support the spurious claim that Defendants were delaying responding to the  
8 Motion for Preliminary Injunction. Plaintiff did not even serve the Motion for Preliminary  
9 Injunction, which was docketed on May 26, 2022, until June 1, 2022, the day *after* the Court  
10 ordered him to do so immediately. (Docs. 9 at 2, 10-12.) On June 1, 2022, undersigned  
11 counsel was selected as a juror for a week-long jury trial in state court. During the same  
12 week, agency counsel was out of state in training for two days.

13         Additionally, this Court indicated that it would order an expedited response from  
14 Defendants after Plaintiff served them. (Doc. 9 at 2.) To date, the Court has not ordered the  
15 response date, yet Defendants filed their Response as soon as possible after counsel finished  
16 jury duty.

17         Moreover, after Plaintiff filed the Motion for Preliminary Injunction, this Court  
18 noted: “Plaintiff does not seek a temporary restraining order and to the extent Plaintiff is  
19 requesting relief without notice to Defendants, Plaintiff has not met the standard for such  
20 relief under Federal Rule of Civil Procedure 65(b)(1).” (Doc. 9 at 2.) Plaintiff still has not  
21 met the standard. Plaintiff did not include any “*specific facts in an affidavit or a verified*  
22 *complaint* [that] clearly show that immediate and irreparable injury, loss, or damage will  
23 result to the movant before the adverse party can be heard in opposition.” *See* Rule  
24 65(b)(1)(b), Fed.R.Civ.P. Instead, Plaintiff included conclusory allegations about Mr. Tully  
25 needing Mr. Chakravorty’s assistance in drafting additional Rule 33 motions, which were  
26 not referenced in the FAC. (Doc. 3, generally.) Mr. Tully has not requested that the Bureau  
27 allow Mr. Chakravorty access to Plaintiff to assist in the motions. Instead, Mr. Tully asked  
28 that the Bureau accommodate legal visits with Mr. Stoltz, an attorney who acts as his “eyes

1 and ears.” (Ex. A, ¶ 5, n. 2, Att. 3, Email from Mr. Tully to Counselor Flores and others.)

2 As demonstrated above, the Bureau has facilitated numerous legal calls and legal  
3 visits between Plaintiff and his attorneys, with three additional legal visits scheduled for this  
4 week. As demonstrated in the Response to the Motion for Preliminary Injunction (Doc. 14),  
5 Plaintiff has not established that Mr. Chakravorty is a paralegal employed by Mr. Tully,  
6 rather than merely an ardent supporter, who was affiliated with NXIVM and is not permitted  
7 contact with Plaintiff because he poses a security threat to the institution and the public.

8 **III. Request for Hearing**

9 It is Plaintiff’s burden to establish entitlement to a Temporary Restraining Order,  
10 which he has failed to do. However, in the event further evidence or information are needed  
11 for the denial of Plaintiff’s motion, Defendants request an evidentiary hearing.

12 **IV. Conclusion**

13 For all of the foregoing reasons, Defendants Garland, Carvajal and Colbert request  
14 that the Court deny the Motion for Temporary Restraining Order.

15 RESPECTFULLY SUBMITTED: June 14, 2022.

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18 District of Arizona

19 s/ Denise Ann Faulk  
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21 Copy of the foregoing served via EM/ECF to

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