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7

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

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

CV-22-00561-TUC-RCC

**DEFENDANTS’ RESPONSE TO  
PLAINTIFF’S MOTION FOR  
PRELIMINARY INJUNCTION**

16 Defendants Garland, Peters, Gutierrez and Ulrich,<sup>1</sup> acting in their official capacities  
17 by and through undersigned counsel, hereby respond to Plaintiff’s Motion for Preliminary  
18 Injunction (Doc. 3). For the reasons discussed below, Defendants request that the Court  
19 deny the Motion.

20 **I. Factual Background**

21 **A. Plaintiff Keith Raniere**

22 A jury convicted Plaintiff Keith Raniere of Racketeering, Racketeering Conspiracy,  
23 Forced Labor Conspiracy, Wire Fraud Conspiracy, Sex Trafficking, Attempted Sex  
24 Trafficking and Sex Trafficking Conspiracy, and he was sentenced to 120 years in prison.  
25 (Ex. A, Flores Decl., ¶ 4, Att. 1, SENTRY Public Information, pp. 2-4; Att. 2, Judgment, pp.  
26 1-4.) Plaintiff’s sentencing judge specifically ordered that Plaintiff “shall not associate in  
27 person, through mail, electronic mail or telephone with any individual *with an affiliation to*

28 <sup>1</sup> Acting Special Investigative Agent Ulrich, in his official capacity, is substituted  
for LT. Gallion pursuant to Rule 25, Fed. R. Civ. P.

1 Executive Success Programs, Nxivm, DOS or any other Nxivm-affiliated organizations.”  
2 (Ex. A, ¶ 5, Att. 2, p. 9.) (Emphasis added.) Currently, Plaintiff is a federal inmate at the  
3 United States Penitentiary (USP Tucson) in Tucson, Arizona. (Ex. B, *Raniere v. Garland*,<sup>2</sup>  
4 No. 22-CV-00212-RCC, Dkt. 14-2, Flores Declaration, p. 3.) He is projected to be released  
5 from custody on June 27, 2120. (*Id.*)

#### 6 **B. Plaintiff’s Banned Visitors**

7 Nicki Clyne is a former associate of NXIVM who has been banned from  
8 communicating with Plaintiff. (Ex. C, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt.  
9 31-2, Mitchell Declaration, pp. 3, 10.) Ms. Clyne is an unindicted co-conspirator. (*Id.* pp.  
10 3, 16.) Plaintiff circumvented mail monitoring by communicating with Ms. Clyne through  
11 another inmate and by using her to communicate with Clare Bronfman, another associate of  
12 NXIVM and co-defendant of Plaintiff who currently is serving time in federal prison. (*Id.*  
13 pp. 3, 12-17.)

14 Danielle Roberts is a former associate of NXIVM who has been removed from  
15 Plaintiff’s visiting list due to her extensive involvement with NXIVM. (*Id.* pp. 3, 9.) She  
16 was removed “for safety and security of institution.” (*Id.*) In January 2022, Ms. Robert’s  
17 attorney contacted the Bureau of Prisons (Bureau) and was informed that Plaintiff could file  
18 a request through the Administrative Remedy Program regarding her removal. (*Id.* pp. 3,  
19 19.) Plaintiff has provided no evidence that he has done so. (Docs. 1, 3.)

20 Suneel Chakravorty is a former associate of NXIVM who has been banned from  
21 communicating with Plaintiff at two institutions for misconduct during Plaintiff’s  
22 incarceration. Plaintiff and Mr. Chakravorty’s improper actions are detailed as follows:

#### 23 **1. Sentencing Memorandum as to Mr. Chakravorty**

24 \_\_\_\_\_  
25 <sup>2</sup> Plaintiff previously brought an action against the same Defendants raising many of  
26 the same issues in *Raniere v. Garland*, No. 22-CV-00212-RCC (D. Ariz.) In that action,  
27 he unsuccessfully brought four motions for preliminary injunction and/or temporary  
28 restraining order seeking the relief he seeks in his current motion. Defendants provided  
evidence refuting each of Plaintiff’s allegations in that case. For the Court’s convenience,  
Defendants are providing as exhibits the relevant evidence produced and Orders entered in  
that case. Mr. Flores’s latest Declaration only addresses Plaintiff’s new allegations and  
brings the Court current as to the legal calls and legal visits that have occurred since the  
last declaration produced in that case.

1           Between the jury’s verdict and the court’s sentence, Plaintiff continued regularly  
2 contacting people affiliated with NXIVM, including Mr. Chakravorty, and the government so  
3 informed the judge. *United States v. Raniere*, Case No. 1:18-cr-00204-NGG-VMS, Dkt. 914  
4 (E.D. N.Y. August 27, 2020). The government noted that “in a March 12, 2020 call with  
5 Suneel Chakravorty, one of Raniere’s supporters, [Plaintiff] addressed his conduct with  
6 respect to [a victim], stating that she ‘would have to go back to Mexico or she had to explain  
7 to people how she was going to stop from all the stealing and the other things that she was  
8 doing. She also had to finish a book report. She had a number of different book reports she  
9 was supposed to do and she was seen as being very prideful about it and no matter what, she  
10 would do anything, you know, say anything, but never just sit down and simply finish the  
11 book report.’ [Dkt. 914-3 at 22.] [Ex. D, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt.  
12 14-4, Ex. D to Sentencing Memorandum, p. 22.] [Plaintiff] described [the victim] as  
13 engaging him a ‘battle of wills’ and who ‘threw, like, uh, what would be a massive sort of  
14 tantrum.’ [Dkt. 914-3 at 23.] [Ex. D, p. 23.]” Dkt. 914 at 52-53. (Ex. E, *Raniere v.*  
15 *Garland*, No. 22-CV-00212-RCC, Dkt. 14-3, Sentencing Memorandum, pp. 53-54.)

16           The government also informed the court that “[i]n addition, [Plaintiff] has  
17 demonstrated a disregard for the law and for the system of justice. In many phone calls with  
18 Mr. Chakravorty, [Plaintiff] expresses contempt for the prosecution and the Court. For  
19 instance, during an April 8, 2020 phone call with Mr. Chakravorty, [Plaintiff] stated that ‘the  
20 major witnesses all lied’ and expressed his view that ‘this judge’ – referring to the Court –  
21 was corrupt. [Dkt. 914-3 at 44.] [Ex. D, p. 44.] [Plaintiff] further stated that they had to ‘get  
22 scrutiny on this judge, get some pundit who is willing to speak out about what this judge is  
23 saying, which is crazy, and the judge needs to know he’s being watched . . . .’ [Dkt. 914-3 at  
24 53.] [Ex. D, p. 53.]” Dkt. 914 at 53-54. (Ex. E, pp. 54-55.)

25           The Bureau suspended calls between Plaintiff and Mr. Chakravorty in July 2020,  
26 and, thereafter, Plaintiff “entered an individual [to his contact list] under the name ‘Issac  
27 Edwards.’ The address provided by [Plaintiff] for ‘Issac Edwards’ is fabricated and the  
28 phone number provided by [Plaintiff] for ‘Issac Edwards’ belongs to a burner phone.

1 Subsequent calls between [Plaintiff] and ‘Issac Edwards’ reflect that ‘Issac Edwards’ is Mr.  
2 Chakravorty.” Dkt. 914 at 56 n. 14. (Ex. E, p. 57.)

3 Plaintiff “also directed his supporters to develop a podcast and to set up a ‘contest’  
4 in which members of the public would be invited to find purported errors in [his] prosecution  
5 and trial in exchange for a cash prize. In many phone calls, Mr. Chakravorty describes his  
6 efforts to find ‘judges’ – i.e., members of the public – to evaluate submissions for the contest  
7 and ‘check[] the prosecutor’s homework.’” [Dkt. 914-3 at 50.] [Ex. D, p. 50.]; see, e.g., [Dkt.  
8 914-3 at 25, 43.] [Ex. D, p. 25, 43.]” Dkt. 914 at 54. (Ex. E, p. 55.) Also, “[i]n subsequent  
9 calls, [Plaintiff] offers lengthy diatribes on the criminal justice system for Mr. Chakravorty to  
10 record, similar to the ‘verbal downloads’ that were described at [his] trial.” Dkt. 914 at 54.  
11 (Ex. E, p. 55.)

12 Plaintiff recognized that Mr. Chakravorty’s communications with Plaintiff’s attorney  
13 were not protected by the attorney client privilege. On April 24, 2020, Plaintiff stated to Mr.  
14 Chakravorty: “Right. We have 10 seconds. You may want to somehow become his client, so  
15 you’ll have attorney client privilege. But I mentioned that in an email to him just a few  
16 minutes ago.” Dkt. 914-3 at 64. (Ex. D, p. 65.)

## 17 **2. Bureau Records on Mr. Chakravorty from New York**

18 As early as July 16, 2020, the Bureau recognized that Plaintiff and Mr. Chakravorty  
19 were engaging in behavior that compromised the security of the facility in which Plaintiff  
20 was held. (Ex. F, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt. 14-5, Gallion  
21 Declaration, pp. 2, 10-13.) Specifically, Plaintiff and Mr. Chakravorty were recording  
22 prison-initiated telephone calls to use in podcasts and “interviews [Plaintiff] is pursuing to  
23 use in HBO, Netflix and Showtime.” (*Id.*) Additionally, they were endangering the security  
24 of the facility and the public by organizing “a group of women to show up regularly and  
25 dance provocatively for inmates to view through their cell windows.” (*Id.*) Plaintiff  
26 “directed Suneel [Chakravorty] to contact more women” to “danc[e] erotically” which led to  
27 a request for Plaintiff to be moved to another housing unit. (*Id.*) Plaintiff also informed Mr.  
28 Chakravorty about “the staff work schedules and indicated his protesters should wait outside

1 for the staff and offer donuts and coffee as they exit the facility.” (*Id.*) (internal quotation  
2 marks omitted).

3 The Counter Terrorism Unit (CTU) concluded, “[Plaintiff’s] manipulative behavior  
4 continues to manifest from behind the prison through the help of Suneel Chakravorty.  
5 [Plaintiff’s] actions would place the safety and security of staff and the public at risk.” (*Id.*,  
6 p. 12.) The CTU recommended that Mr. Chakravorty be removed as one of Plaintiff’s  
7 approved contacts. (*Id.*) The Warden concurred, and Mr. Chakravorty was removed from  
8 Plaintiff’s approved contact list. (Ex. F, pp. 2-3, 15.)

### 9 3. Mr. Chakravorty’s Representations to the New York District Court

10 On October 30, 2021, Mr. Chakravorty wrote to the district court judge presiding  
11 over *Edmonson v. Raniere*, Case 1:20-cv-00485-EK-CLP (E.D. N.Y.), a civil action brought  
12 by some of Plaintiff’s victims. (Ex. G, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt.  
13 14-7, Letter dated October 30, 2021, from S. Chakravorty to the Court.) He identified  
14 himself as “not a party to this case, nor am I an attorney. I am defendant Keith Raniere’s  
15 power of attorney.” He further indicated that “as Mr. Raniere’s power of attorney, [he had]  
16 referred cyber forensics experts to his criminal counsel.” (*Id.*) The letter is not on an  
17 attorney’s letterhead. (*Id.*)

18 On November 28, 2021, Mr. Chakravorty again wrote to the court in that case.  
19 Again, Mr. Chakravorty clearly identified himself as holding Plaintiff’s power of attorney,  
20 not as a paralegal *working for* Plaintiff’s attorneys. (Ex. H, *Raniere v. Garland*, No. 22-CV-  
21 00212-RCC, Dkt. 14-7, Letter dated November 28, 2021, from S. Chakravorty to the Court.)  
22 He indicated that he would “request a transcript of the hearing and have Mr. Raniere’s  
23 criminal attorney send it to him.” (*Id.*) Again, the letter is not on an attorney’s letterhead.  
24 (*Id.*)

### 25 4. Restrictions on Mr. Chakravorty at USP Tucson

26 On May 2, 2021, Mr. Chakravorty’s visiting privileges at USP Tucson were denied  
27 as the “prospective visitor/applicant did not have an established relationship with [Plaintiff]  
28 prior to [his] incarceration.” (Ex. F, pp. 3, 18.) In October 2020, Mr. Chakravorty had

1 admitted to the New York District Court that his “first conversation with Keith Raniere was  
2 in prison, after his trial. At this time, he and I were complete strangers.” (Ex. F, pp. 3, 20.)  
3 Mr. Chakravorty also detailed his involvement with NXIVM, as a coach for Executive  
4 Success Programs (ESP) and NXIVM, and his decision to “stay involved even during an  
5 international media storm. To me, ESP did not seem like a sinister organization[,]” and “that  
6 is why I chose to continue as a coach up u[n]til the companies closed in May 2018.” (*Id.*)

7 In early May 2022, the SIS Department at USP Tucson was monitoring telephone  
8 calls between Plaintiff and Mr. Chakravorty. (Ex. F, p. 4.) They spoke to each other about  
9 being “at war” with the federal government that would be “no holds barred.” (*Id.*) Even  
10 more concerning than this language of being “at war,” Plaintiff asked about the quality of the  
11 recordings and stated that he has many recordings. (*Id.*) As indicated above, Mr.  
12 Chakravorty previously recorded telephone conversations with Plaintiff while he was  
13 incarcerated in New York. (*Id.*) The CTU recommended that the USP Tucson SIS  
14 Department remove all of Plaintiff’s current contacts and review all future contact requests.  
15 (*Id.*) The SIS Department may determine whether any requested individuals are affiliated  
16 with NXIVM, ESP, DOS or any other NXIVM-affiliated organizations, as prohibited by the  
17 special conditions of supervised release in the Judgment. (Ex. F, pp. 5, 33.) If it is  
18 dangerous for Plaintiff to have access to particular individuals once released, it is also a  
19 security risk to allow Plaintiff to have access to these same individuals while incarcerated.  
20 (Ex. F, p. 5.)

21 On May 3, 2022, as a result of the findings of the SIS Department and in  
22 consultation with the CTU, the USP Tucson Warden imposed limitations on Plaintiff’s  
23 contact list. (Ex. F, pp. 4-5, 41.) Plaintiff was limited to a maximum of ten active contacts,  
24 not including counsel. (*Id.*) His then current contacts were removed, except Marianna  
25 Fernandez and nine verified attorneys. (*Id.*, pp. 5, 43-45.) In the future, if Plaintiff wants to  
26 add more contacts to his approved TRULINCS list, the SIS Department will review the  
27 individuals as part of the approval process. (*Id.*, p. 5.)

28 The limitations on Plaintiff’s contact list do not impede Plaintiff’s access to his

1 attorneys via legal mail, legal calls and legal visits. (*Id.*) Plaintiff still may access his  
 2 attorneys through these confidential lines of communication. (*Id.*) In addition to the  
 3 numerous legal calls, Plaintiff has had frequent legal visits. (Ex. A, ¶¶ 24-25; Ex. B, p. 7;  
 4 Ex. C, pp. 5-6; Ex. K, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt. 17-1, Second  
 5 Declaration of Daniel Flores, pp. 2-3.)

6 When the restrictions were imposed, Acting SIA Gallion was not aware of  
 7 Plaintiff’s litigation regarding his New York conviction and sentence. All recommendations  
 8 and determinations made, as reflected above, were made for the safety, security and good  
 9 order of the institution and not in any way to hinder Plaintiff’s legal efforts. (Ex. F, p. 5.)

### 10 C. Prior District Court Action

11 In May 2022, Plaintiff filed an action against Defendants in Arizona District Court,  
 12 *Raniere v. Garland*, No. 22-CV-00212-RCC (D. Ariz.), alleging First and Sixth Amendment  
 13 violations. He filed a Motion for Preliminary Injunction, seeking reinstatement of  
 14 communications with Mr. Chakravorty. (Dkt. 7.) The Court denied the motion because  
 15 “Plaintiff has not provided any evidence that Mr. Chakravorty is a paralegal or agent of any  
 16 kind *employed by* Plaintiff’s attorney(s).”<sup>3</sup> (Ex. I, *Raniere v. Garland*, No. 22-CV-00212-  
 17 RCC, Dkt. 18, Order entered June 18, 2022, p. 14.) (Emphasis added.) Plaintiff also had  
 18 failed to introduce “evidence before the Court that Plaintiff has been unable to communicate  
 19 with his attorneys or their agents who have been cleared by the institution to have  
 20 confidential communications with Plaintiff.” (*Id.*, p. 15.)

21 The Court rejected Plaintiff’s “circular argument” that “he ‘is likely to suffer  
 22 irreparable harm because, absent injunctive relief, he will be deprived of the most basic  
 23 constitutional protections under the First and Sixth Amendments.”<sup>4</sup> (*Id.*, quoting Dkt. 7 at

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24  
 25 <sup>3</sup> The Court flatly rejected Plaintiff’s argument: “Plaintiff argues that Mr.  
 26 Chakravorty ‘serves ‘precisely this role on behalf of the attorneys of Tully & Weiss,’  
 27 ‘played an essential role in interpreting computer data for the attorneys,’ and before Tully &  
 28 Weiss were retained, Mr. Chakravorty and Plaintiff ‘spent months discussing, analyzing and  
 theorizing about how this metadata contained in computer files affects Plaintiff’s legal  
 case.’” (Ex. I, p. 14.) Plaintiff makes the identical argument here. (Compare Dkt. 7 at 8-9  
 with Doc. 3 at 7-8.)

<sup>4</sup> Again, Plaintiff uses identical language here. (Doc. 3 at 11.)

1 11.) First, the court noted Plaintiff’s “argument fails to support that Plaintiff is at risk of  
2 losing a ‘nonfrivolous’ or ‘arguable’ underlying claim as needed to support a First  
3 Amendment claim or that his ‘right to privately confer with counsel has been chilled’ as  
4 needed to support a Sixth Amendment claim.” (Ex. I, p. 16.) The Court concluded that “[a]t  
5 best, Plaintiff’s risk of injury is speculative, and speculative injury is not irreparable injury  
6 sufficient for a preliminary injunction. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d  
7 668, 674 (9th Cir. 1988).” (*Id.*)

8 Plaintiff filed a Motion for Temporary Restraining Order seeking the same relief.  
9 (Dkt. 13.) The Court denied the motion as moot. (Ex. I, pp. 15-16.)

10 Plaintiff then filed a second Motion for Temporary Restraining Order or,  
11 Alternatively, for Preliminary Injunctive Relief, seeking immediate release from the SHU.  
12 (Dkt. 34.) The Court denied the motion because Plaintiff failed to allege irreparable harm.  
13 (Ex. J, *Raniero v. Garland*, No. 22-CV-00212-RCC, Dkt. 45.) Specifically, the Court  
14 recognized “[i]n the section of his Motion discussing irreparable injury, Plaintiff merely cites  
15 the legal standards and states in a conclusory fashion that he ‘is likely to suffer irreparable  
16 harm because, absent injunctive relief, he will be deprived of the most basic constitutional  
17 protections under the First Amendment.’”<sup>5</sup> (Ex. J, pp. 5-6, quoting Dkt. 34 at 10.) Further,  
18 the Court noted that “Plaintiff speculates that he is still in the SHU in some effort to silence  
19 him, but Plaintiff has not presented any evidence showing that he has been silenced.” (*Id.*, p.  
20 6.) Also, the Court noted that “Plaintiff also speculates his cellmate in SHU may falsely  
21 charge Plaintiff with sexual misconduct based on the cellmate’s past behavior, but such  
22 speculative injury is not irreparable injury sufficient for a preliminary injunction.” (*Id.*)  
23 Finally, the Court held that “Plaintiff’s Motion, as it relates to his access to the courts, fails  
24 because Plaintiff has not presented any evidence supporting that his ability to litigate has  
25 been hindered by prison officials, and Plaintiff has not alleged an actual injury such as  
26 inability to meet a filing deadline or to present a claim.” (Ex. J, p. 7.)

27 Plaintiff filed a third Motion for Temporary Restraining Order, seeking “an **urgent**

28 <sup>5</sup> Plaintiff makes the identical argument here. (Doc. 3 at 11.)



1 injunction preventing his impending transfer away from USP Tucson.” *Raniere v. Garland*,  
2 No. 22-CV-00212-RCC, Dkt. 44 at 1. That motion was denied as moot when the Court  
3 dismissed the case for insufficient service of process.<sup>6</sup> *Raniere v. Garland*, No. 22-CV-  
4 00212-RCC, Dkt. 52 at 8.

#### 5 **D. Plaintiff’s Legal Calls**

6 One of a Correctional Counselor’s regular duties is to set up legal calls. (Ex. B, p.  
7 3.) When an attorney requests a legal call, the inmate’s counselor ensures the attorney is  
8 licensed and in good standing. (*Id.*, p. 4) Inmate legal calls are prioritized by institutional  
9 safety and security, staffing, facility availability, demand among the inmate population and  
10 current conditions within the institution (e.g., COVID-19 measures, security threats,  
11 lockdown, etc.). (*Id.*) When legal calls occur in the housing unit, the inmate reports to the  
12 counselor’s office at the appointed time, and the counselor facilitates the call. (*Id.*) Inmate  
13 legal calls are not audio-recorded or monitored. (*Id.*) Instead, when a legal call takes place  
14 in a staff office,<sup>7</sup> the staff member places the call and remains in the office until the  
15 connection is made with the inmate’s attorney or appropriate staff. (*Id.*) Once the attorney  
16 or staff member is on the line, the counselor leaves the room and visually monitors the  
17 inmate from outside the room. (*Id.*) Once outside the room, the counselor cannot hear the  
18 content of the legal telephone call. (*Id.*) Plaintiff’s legal calls have been and will continue to  
19 be coordinated within the institution’s normal procedures. (*Id.*) He has not been targeted for  
20 any restrictions on his ability to have legal telephone calls. (*Id.*)

21 Additionally, Plaintiff’s counselor keeps a log of his legal calls. (Ex. A, ¶ 23; Ex. B,  
22 p. 4-7; Ex. C, pp. 4-5; Ex. K, p. 2.) Plaintiff has had many legal calls while housed at USP  
23 Tucson. (*Id.*) Most calls lasted one hour, some an hour and many two hours. (*Id.*) The log  
24 includes a call on May 4, 2022, between Joseph Tully and Plaintiff, which lasted an hour.  
25 (Ex. B, p. 5.) The call was not disconnected. (*Id.*, p. 7.) When a call is disconnected,

26 <sup>6</sup> Inexplicably, having already had a case against the same Defendants dismissed for  
27 insufficient service of process, Plaintiff has, once again, failed to complete service of process  
28 in the instant proceeding. (Docs. 9, 10.) *See* Rule 4(i), Fed. R. Civ. P.

<sup>7</sup> Legal calls in the SHU follow the same procedure, but they occur in an assigned  
room instead of a staff office. (Ex. A, ¶ 23.)

1 Plaintiff's counselor attempts to reestablish the call. (*Id.*)

2 Others have facilitated legal calls for Plaintiff as well. On May 6, 2022, Case  
3 Manager Watson facilitated a call between Plaintiff and Mr. Daugherty. (Ex. L, *Raniere v.*  
4 *Garland*, No. 22-CV-00212-RCC, Dkt. 14-9, p. 2.) During the legal call, the connection was  
5 lost. (*Id.*) Case Manager Watson called Mr. Daugherty back, and the legal call resumed  
6 without further incident. (*Id.*) Plaintiff has never produced any evidence of anything  
7 nefarious regarding his legal calls.

8 **E. Plaintiff's Placement in the SHU**

9 On July 26, 2022, Plaintiff was involved in a physical altercation in Food Service.  
10 (Ex. M, *Raniere v. Garland*, No. 22-CV-00212-RCC, Dkt. 39-1, Ulrich Declaration, pp. 5,  
11 10.) When two inmates are involved in a physical altercation, each inmate is written an  
12 incident report that will be investigated and is subject to a final decision by a disciplinary  
13 hearing officer. (*Id.*, p. 5.) As a result of receiving the incident report, Plaintiff was placed  
14 on administrative detention status in the SHU pending an investigation. (*Id.*, pp. 5, 14.) The  
15 incident report was expunged following the investigation and disciplinary hearing. (*Id.*, pp.  
16 5, 12.)

17 Currently, Plaintiff remains in the SHU while the Special Investigative Services  
18 (SIS) Department is investigating safety and security issues pertaining to Plaintiff at USP  
19 Tucson.<sup>8</sup> (*Id.*, p. 5.) While Plaintiff has been housed in the SHU, he has been reviewed  
20 periodically by the Segregation Review Official (SRO) as required by policy. (*Id.*, pp. 3, 5,  
21 16-21.) Plaintiff may express concerns about cell assignments, cellmates and other issues  
22 while housed in the SHU. (*Id.*, pp. 3-5.) Plaintiff has introduced no evidence that he  
23 expressed concerns about his current housing status or cellmate during any of the SRO  
24 reviews, through cop-outs or through the Administrative Remedy Program. (Doc. 1, 3.)  
25 There are no safety or security concerns with Plaintiff's current housing assignment,  
26

27 \_\_\_\_\_  
28 <sup>8</sup> If the Court requires more detailed information regarding the investigation and the  
safety and security issues pertaining to Plaintiff at USP Tucson, Defendants will provide it  
in camera to the Court.

1 including his current cellmate.<sup>9</sup> (Ex. M, p. 5.)

## 2 **F. Current Complaint**

3 In December 2022, Plaintiff brought his second action against the same Defendants.  
4 (Doc. 1.) Plaintiff again asserts First and Sixth Amendment claims based on two allegedly  
5 dropped legal calls with attorneys in May 2022, allegations of retaliatory conduct and the  
6 banning of three of Plaintiff’s NXIVM affiliated people – two of whom have violated  
7 Bureau rules, including by being added to Plaintiff’s contact list under a false name after  
8 having been banned and for transmitting messages to Plaintiff’s co-defendant who is serving  
9 time in federal prison. (*Id.*) Notably, each of the claimed retaliatory events in the  
10 Complaint is alleged “on information and belief” except the purely speculative claim that  
11 “[t]he short time between” Plaintiff’s attorneys filing a Rule 33 and the Bureau scrubbing  
12 his contact list of non-lawyers “raises a substantial likelihood that Defendants actions were  
13 retaliatory.”<sup>10</sup> (*Id.* at 35.)

14 The Complaint sought an injunction restraining Defendants and their agents from  
15 interfering with Plaintiff’s telephonic communication with his attorneys and their employees  
16 and agents or Plaintiff’s visiting with his attorneys, “subject only to modest limitations that  
17 are reasonably related to legitimate penological interests of Defendants.”<sup>11</sup> (Doc. 1 at 36.)

## 18 **G. Current Motion for Preliminary Injunction**

19  
20 <sup>9</sup> Plaintiff has made allegations regarding his cellmate and speculates that the Bureau  
21 placed them together “intentionally” “as a way to harm him indirectly.” (Doc. 1 at 27.)  
22 Again, the speculations are “on information and belief” and lack evidence. (*Id.*) Due to  
23 Plaintiff’s cellmate’s privacy rights, Defendants will not discuss the allegations except to note  
24 that there are no safety or security concerns regarding housing Plaintiff with his cellmate.  
(Ex. M, p. 5.) The Court already determined “such speculative injury is not irreparable injury  
sufficient for a preliminary injunction.” (Ex. J, p. 6.)

24 <sup>10</sup> The docket in Plaintiff’s criminal case belies his claim that he is being denied access  
25 to the court. Plaintiff’s criminal attorneys filed a Rule 33 motion, and Plaintiff filed one as  
well. *United States v. Raniere*, Case No. 1:18-cr-00204-NGG-VMS, Dkt. 1169, 1178.

26 <sup>11</sup> Plaintiff also requests an injunction restraining Defendants from “[e]ngaging in  
27 other behavior that amounts to a non-frivolous frustration or interference with his First  
28 Amendment right to access the courts for the purpose of collaterally attacking his conviction  
and sentence.” (Doc. 1 at 36.) The request is too vague to determine what, if any, behavior  
Plaintiff is requesting to have restrained, possibly because Defendants have not engaged in  
any behavior which interferes with Plaintiff’s access to courts or his collateral attack on his  
conviction, which is ongoing in New York District Court.

1 Citing only the Complaint for “background” and providing no evidence, Plaintiff  
2 filed the instant motion, seeking four injunctions, that:

- 3 1. Plaintiff receive all legal calls and visits with attorneys that are requested by  
the Attorney;
- 4 2. Plaintiff’s power-of-attorney, Suneel Chakravorty be recognized as a legal  
5 professional for the purposes of communicating confidentially with Plaintiff;
- 6 3. Plaintiff be released from SHU and returned to his original unit, or, if  
Plaintiff has to stay in the SHU, that he get a single cell for safety; and
- 7 4. Plaintiff not be transferred to another prison.

8 (Doc. 3 at 12-13.)

## 9 **II. Bureau Policies and Standards**

### 10 **A. Policies on Visitation and Telephone Privileges**

11 As to inmate friends and associates, “[t]he visiting privilege ordinarily will be  
12 extended to friends and associates having an established relationship with the inmate prior to  
13 confinement, *unless such visits could reasonably create a threat to the security and good  
14 order of the institution.* Exceptions to the prior relationship rule may be made, particularly  
15 for inmates without other visitors, *when it is shown that the proposed visitor is reliable and  
16 poses no threat to the security or good order of the institution.*” 28 C.F.R. § 540.44(c).

17 (Emphasis added.) “Regardless of the institution’s security level, the inmate must have  
18 known the proposed visitor(s) prior to incarceration.<sup>12</sup> The Warden must approve any  
19 exception to this requirement.” P.S. 5267.09, *Visiting Regulations*, p. 6.<sup>13</sup> (Ex. F, p. 3.)

20 “Use of TRULINCS is a privilege; therefore, the Warden may limit or deny the  
21 privilege of a particular inmate.” P.S. 4500.12, *Trust Fund/Deposit Fund Manual*, p. 126.<sup>14</sup>

22 \_\_\_\_\_  
23 <sup>12</sup> The Supreme Court approved a similar regulation in *Pell v. Procunier*, 417 U.S. 817,  
827 (1974), because “[i]n the judgment of the state corrections officials, this visitation policy  
24 will permit inmates to have personal contact with those persons who will aid in their  
rehabilitation, while keeping visitations at a manageable level that will not compromise  
25 institutional security. Such considerations are peculiarly within the province and  
professional expertise of corrections officials, and, in the absence of substantial evidence in  
26 the record to indicate that the officials have exaggerated their response to these  
considerations, courts should ordinarily defer to their expert judgment in such matters.”

27 <sup>13</sup> Available at [https://www.bop.gov/policy/progstat/5267\\_09.pdf](https://www.bop.gov/policy/progstat/5267_09.pdf) (last visited on  
January 6, 2023).

28 <sup>14</sup> Available at <https://www.bop.gov/policy/progstat/4500.12.pdf> (last visited on  
January 6, 2023).

1 (Ex. F, p. 4.) “Inmates may be subject to telephone restrictions imposed by the Warden to  
2 protect the safety, security, and good order of the institution, as well as to protect the public.”  
3 P.S. 5264.08, Inmate Telephone Regulations, p. 14.<sup>15</sup> (*Id.*)

4 “The Bureau of Prisons recognizes the use of assistants by attorneys to perform legal  
5 tasks and, with proper controls and exceptions enumerated . . . accords such assistants the  
6 same status as attorneys with respect to visiting and correspondence.” 28 C.F.R. § 543.16(a).  
7 “The special visiting/correspondence status accorded to paralegals, clerks, and legal  
8 assistants depends on an ongoing, supervisory relationship with an attorney on an approved  
9 visiting/correspondence list. Absent any current supervisory relationship, such persons may  
10 only receive social visiting or general correspondence privileges.” P.S. 1315.07, *Inmate*  
11 *Legal Activities*, p. 19.<sup>16</sup> (Ex. B, p. 2.)

12 “The attorney who employs an assistant and who wishes the assistant to visit or  
13 correspond with an inmate on legal matters shall provide the Warden with a signed statement  
14 including: (1) Certification of the assistant’s ability to perform in this role and awareness of  
15 the responsibility of this position; (2) A pledge to supervise the assistant’s activities; and (3)  
16 Acceptance of personal and professional responsibility for all acts of the assistant which may  
17 affect the institution, its inmates, and staff. The Warden may require each assistant to fill out  
18 and sign a personal history statement and a pledge to abide by Bureau regulations and  
19 institution guidelines. *If necessary to maintain security and good order in the institution, the*  
20 *Warden may prohibit a legal assistant from visiting or corresponding with an inmate.”* 28  
21 C.F.R. § 543.16(b)(1)-(3) (Emphasis added). “The Warden may require each paralegal,  
22 clerk, or legal assistant to complete a BP-S243.013” Application to Enter Institution as  
23 Representative form<sup>17</sup> as well as the BP-S242.013 Paralegal or Legal Assistant Agreement  
24

25 \_\_\_\_\_  
26 <sup>15</sup> Available at [https://www.bop.gov/policy/progstat/5264\\_008.pdf](https://www.bop.gov/policy/progstat/5264_008.pdf) (last visited on  
January 6, 2023).

27 <sup>16</sup> Available at [https://www.bop.gov/policy/progstat/1315\\_007.pdf](https://www.bop.gov/policy/progstat/1315_007.pdf) (last visited on  
January 6, 2023).

28 <sup>17</sup> Available at [https://www.bop.gov/policy/forms/BP\\_A0243.pdf](https://www.bop.gov/policy/forms/BP_A0243.pdf) (last visited on  
January 6, 2023)

1 form.<sup>18</sup> P.S. 1315.07, *Inmate Legal Activities*, pp. 18-19.<sup>19</sup> (Ex. B, p. 3.)

## 2 **B. SHU Policies and Procedures**

3 There are two types of status in the SHU: (1) administrative detention status and (2)  
4 disciplinary segregation. (Ex. M, p. 2.) Administrative detention is a non-punitive status  
5 which removes the inmate from the general population when necessary to ensure the safety,  
6 security, and orderly operation of correctional facilities, or to protect the public. *See* 28  
7 C.F.R. § 541.22(a). An inmate may be placed in administrative detention status for  
8 investigation into or while awaiting a hearing “for possibly violating a Bureau regulation or  
9 criminal law.” *See* 28 C.F.R. § 541.23(c)(1). Bureau officials, not the inmate, determine  
10 whether an inmate is placed in the SHU on administrative detention status. (Ex. M, p. 2.)

11 Conversely, an inmate is placed on disciplinary segregation status “as a disciplinary  
12 sanction.” *See* 28 C.F.R. § 541.24. In disciplinary segregation status, an inmate’s “personal  
13 property will be impounded, with the exception of limited reading/writing materials, and  
14 religious articles. Also, [an inmate’s] commissary privileges may be limited.” *See* 28  
15 C.F.R. § 541.31(h)(1). An inmate may be released from disciplinary segregation status  
16 “after satisfying the sanction imposed by the DHO. The SRO may release [the inmate]  
17 earlier if it is determined [that he] no longer require[s] disciplinary segregation status.” *See*  
18 28 C.F.R. 541.33(b). (Ex. M, pp. 2-3.)

19 Regardless of the status of the inmate in the SHU, standardized conditions of  
20 confinement are afforded each inmate in the SHU. *See* 28 C.F.R. § 541.31(a)-(o) (“Your  
21 living conditions in the SHU will meet or exceed standards for healthy and humane  
22 treatment.”). Likewise, “You will receive personal items necessary to maintain an  
23 acceptable level of personal hygiene, for example, toilet tissue, soap, toothbrush and  
24 cleanser, shaving utensils, etc. You will ordinarily have an opportunity to shower and shave  
25 at least three times per week.” 28 C.F.R. § 541.31(f). Federal regulations outline the

26 \_\_\_\_\_  
27 <sup>18</sup> Available at [https://www.bop.gov/policy/forms/BP\\_A0242.pdf](https://www.bop.gov/policy/forms/BP_A0242.pdf) (last visited on  
January 6, 2023).

28 <sup>19</sup> Available at [https://www.bop.gov/policy/progstat/1315\\_007.pdf](https://www.bop.gov/policy/progstat/1315_007.pdf) (last visited on  
January 6, 2023).

1 specific conditions of confinement in the following categories: (a) Environment; (b) Cell  
2 Occupancy; (c) Clothing; (d) Bedding; (e) Food; (f) Personal Hygiene; (g) Exercise; (h)  
3 Personal Property; (i) Correspondence; (j) Telephone; (k) Visiting; (l) Legal Activities; (m)  
4 Staff Monitoring; (n) Programming Activities; and (o) Administrative Remedy Program. *Id.*  
5 Medical and mental health care are mandated as well. *See* 28 C.F.R. § 541.32(a)-(b) (“After  
6 every 30 calendar days of continuous placement in . . . administrative detention . . . status,  
7 mental health staff will examine you, including a personal interview. Emergency mental  
8 health care is always available.”). (Ex. M, p. 3.)

9         The SRO reviews an inmate’s placement in the SHU periodically. *See* 28 C.F.R.  
10 § 541.26. “Within three work days of your placement in administrative detention status, not  
11 counting the day you were admitted, weekends, and holidays, the SRO will review the  
12 supporting records.” 28 C.F.R. § 541.26(a). There is also a formal review within “seven  
13 continuous calendar days of your placement in . . . administrative detention . . . status . . . at  
14 a hearing you can attend.” 28 C.F.R. § 541.26(b). “After every 30 calendar days of  
15 continuous placement in . . . administrative detention . . . status, the SRO will formally  
16 review your status at a hearing you can attend.” 28 C.F.R. § 541.26(c). “You can submit a  
17 formal grievance challenging your placement in the SHU through the Administrative  
18 Remedy Program[.]” 28 C.F.R. § 541.26(d). (Ex. M, p. 3.)

19         While in the SHU, inmates have access to informal grievance forms (BP-8) and  
20 formal grievance forms (BP-9, BP-10, BP-11), as well as Cop-Outs, to make requests to  
21 staff. Cop-Outs can include any type of request, including if an inmate believes his Unit  
22 Team is not providing him with forms, and may be made to any staff member, including  
23 Associate Wardens and the Warden. (Ex. M, pp. 3-4.) SHU inmates are monitored by  
24 program and unit team staff. Qualified health personnel and one or more responsible  
25 officers the Warden designates visit each inmate daily, and a Lieutenant visits the SHU  
26 during each shift. (*Id.*, p. 4.) Either the Unit Manager or a Case Manager/Correctional  
27 Counselor makes daily visits to inmates housed in the SHU. The Unit Manager visits at  
28 least weekly. (*Id.*) If an inmate has an issue he wants to bring to the attention of staff, he

1 can do so via a Cop-Out at any time or during the in person rounds with multiple Unit Team  
2 and other staff. (*Id.*, pp. 4-5.)

### 3 C. Constitutionality of SHU Placement

4 The Fifth Amendment prohibits deprivation of a protected life, liberty or property  
5 interest without due process. U.S. Const. amend. V. However, inmates who have been  
6 convicted of crimes do not have a liberty interest in being housed in the general population  
7 because placement in segregated housing for nonpunitive reasons is “within the terms of  
8 confinement ordinarily contemplated by a prison sentence.” *Toussaint v. McCarthy*, 801  
9 F.2d 1080, 1091 (9th Cir. 1986) (citing *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)). While  
10 a State may create liberty interests protected by the Due Process Clause, “these interests will  
11 be generally limited to freedom from restraint which, while not exceeding the sentence in  
12 such an unexpected manner as to give rise to protection by the Due Process Clause of its  
13 own force . . . nonetheless imposes atypical and significant hardship on the inmate in  
14 relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483-84  
15 (1995). The *Sandin* Court recognized that placement in segregated housing does not  
16 “present the type of atypical, significant deprivation” in which a liberty interest might exist  
17 within the prison context. *Id.* at 486; *see also Hewitt*, 459 U.S. at 468 (“It is plain that the  
18 transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons  
19 is well within the terms of confinement ordinarily contemplated by a prison sentence...  
20 [A]dministrative segregation is the sort of confinement that inmates should reasonably  
21 anticipate receiving at some point in their incarceration.”) Further,

22 Prison officials must be free to take appropriate action to  
23 ensure the safety of inmates and corrections personnel...[T]he  
24 problems that arise in the day-to-day operation of a  
25 corrections facility are not susceptible of easy solutions.  
26 Prison administrators therefore should be accorded wide-  
27 ranging deference in the adoption and execution of policies  
28 and practices that in their judgment are needed to preserve  
internal order and discipline and to maintain institutional  
security. Such considerations are peculiarly within the  
province and professional expertise of corrections officials,  
and, in the absence of substantial evidence in the record to  
indicate that the officials have exaggerated their response to  
these considerations, courts should ordinarily defer to their  
expert judgment in such matters.



1 *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (internal citations omitted).

#### 2 **D. Designation of Inmates**

3 Congress delegated to the Bureau the duty to manage and regulate all federal penal  
4 and correctional institutions. 18 U.S.C. § 4042(a)(1). Title 18 U.S.C. § 3621 governs  
5 imprisonment of persons convicted of federal crimes and delegates to the Bureau the  
6 authority to designate the institution where a prisoner will serve his sentence. *See* 18 U.S.C.  
7 § 3621(b); *Rodriguez v. Smith*, 541 F.3d 1180, 1184–86 (9th Cir. 2008) (recognizing  
8 discretionary authority of Bureau under 18 U.S.C. § 3621(b) to make placement or transfer  
9 decisions); *United States v. Ceballos*, 671 F.3d 852, 855 (9th Cir. 2011) (“Authority to  
10 determine place of confinement resides in the executive branch of government and is  
11 delegated to the Bureau of Prisons.”) (internal citation omitted); *United States v. Dragna*,  
12 746 F.2d 457, 458 (9th Cir. 1984) (same). The place of incarceration can be “maintained by  
13 the Federal Government or otherwise,” and the Bureau “may at any time ... direct the  
14 transfer of a prisoner from one penal or correctional facility to another.” 18 U.S.C.  
15 § 3621(b). The statute unambiguously states that “a designation of a place of imprisonment  
16 ... is not reviewable by any court.” 18 U.S.C. § 3621(b); accord *Ceballos*, 671 F.3d at 855  
17 (holding courts have “no jurisdiction to select the place where the sentence will be served”).

### 18 **III. Legal Standards**

#### 19 **A. Standards for a Preliminary Injunction**

20 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should  
21 not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.’”  
22 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520  
23 U.S. 968, 972 (1997) (per curiam)) (emphasis added); *see also Winter v. NRDC, Inc.*, 555  
24 U.S. 7, 24 (2008) (citation omitted) (“[A] preliminary injunction is an extraordinary remedy  
25 never awarded as of right.”). Whether for a temporary restraining order or a preliminary  
26 injunction, the test is the same. *White v. Lindermen*, No. CV 11-8152-PCT-RCB (ECV),  
27 2012 WL 5040850, at \*1 (D. Ariz. Oct. 18, 2012) (citations omitted).

28 A plaintiff seeking preliminary injunctive relief must show (1) he is likely to succeed

1 on the merits, (2) he is likely to suffer irreparable harm without an injunction, (3) the balance  
2 of equities tips in his favor, and (4) the requested injunction is in the public interest. *Fuller*  
3 *v. Granville*, No. CV 14-0020-PHX-DGC, 2014WL4541122, at \*6 (D. Ariz. Sept. 12, 2014)  
4 (citing *Winter*, 555 U.S. at 20). Alternatively, the plaintiff may establish “serious questions  
5 going to the merits” – something less than a likelihood of success on the merits – but only if  
6 the plaintiff also establishes that the “balance of hardships tips sharply in the plaintiff’s  
7 favor” and the other two elements of the *Winter* test are met. *All. For The Wild Rockies v.*  
8 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Under the “serious questions” test, the  
9 plaintiff must make a stronger showing of one element to offset a weaker showing of  
10 another. *Id.* Whichever formulation of the standard is applied, the movant has the burden of  
11 proof on each element of the test. *Env’l Council of Sacramento v. Slater*, 184 F. Supp. 2d  
12 1016, 1027 (E.D. Cal. 2000).

13 Further, a preliminary injunction is “merely to preserve the relative positions of the  
14 parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395  
15 (1981). Thus, “there is a heightened burden where a plaintiff seeks a mandatory preliminary  
16 injunction (one that would alter the status quo), which should not be granted ‘unless the facts  
17 and law clearly favor the plaintiff.’” *White*, 2012 WL 5040850, at \*1 (quoting *Comm. of*  
18 *Cent. Am. Refugees v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1441 (9th Cir.  
19 1986)).

20 The Prison Litigation Reform Act (PLRA) imposes further requirements on a  
21 prisoner who seeks injunctive relief. The PLRA requires that any injunctive relief be  
22 *narrowly drawn* and the *least intrusive means* necessary to correct the harm. 18 U.S.C.  
23 § 3626(a)(2); *Gilmore v. Cal.*, 220 F.3d 987, 999 (9th Cir. 2000). Under the PLRA, “[t]he  
24 court shall give substantial weight to any adverse impact on public safety or the operation of  
25 a criminal justice system caused by the relief.” 18 U.S.C. § 3626(a)(2). Courts recognize  
26 that “because the problems of prisons in America are complex and intractable, and because  
27 courts are particularly ill equipped to deal with these problems, [courts] generally have  
28 deferred to the judgments of prison officials.” *Shaw v. Murphy*, 532 U.S. 223, 229 (2001)

1 (internal quote marks and citation omitted).

2 **B. Standards Regarding Bureau Policies and Correctional Judgment**

3 The Supreme Court has made it clear that “a prison regulation [that] impinges on  
4 inmates’ constitutional rights ... is valid if it is reasonably related to legitimate penological  
5 interests. In our view, such a standard is necessary if ‘prison administrators ..., and not the  
6 courts, [are] to make the difficult judgments concerning institutional operations.’” *Turner v.*  
7 *Safley*, 482 U.S. 78, 89 (1987). First, the regulation cannot be “arbitrary or irrational,” and  
8 the “governmental objective must be a legitimate and neutral one.” *Id.* at 90. Second, if  
9 “there are alternative means of exercising the right that remain open to prison inmates,” then  
10 “courts should be particularly conscious of the ‘measure of judicial deference owed to  
11 corrections officials ... in gauging the validity of the regulation.’” *Id.* (quoting *Procunier*,  
12 417 U.S. at 827). Third, the court considers the impact accommodation would have on the  
13 allocation of prison resources, guards and other inmates. *Id.* “When accommodation of an  
14 asserted right will have a significant ‘ripple effect’ on fellow inmates or on prison staff,  
15 courts should be *particularly deferential to the informed discretion of corrections officials.*”  
16 *Id.* (Emphasis added.) Finally, the court considers whether there is a ready alternative or the  
17 regulation is an “‘exaggerated response’ to prison concerns.” *Id.* Thus, “if an inmate  
18 claimant can point to an alternative that fully accommodates the prisoner’s rights at *de*  
19 *minimis* cost to valid penological interests, a court may consider that as evidence that the  
20 regulation does not satisfy the reasonable relationship standard.” *Id.*

21 As to the First Amendment, “a prison inmate retains those First Amendment rights  
22 that are not inconsistent with his status as a prisoner or with the legitimate penological  
23 objectives of the corrections system. Thus, challenges to prison restrictions that are asserted  
24 to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and  
25 goals of the corrections system, to whose custody and care the prisoner has been committed  
26 in accordance with due process of law.” *Procunier*, 417 U.S. at 822. Also, “central to all  
27 other corrections goals is the institutional consideration of internal security within the  
28 corrections facilities themselves.” *Id.*

1 In the Ninth Circuit, if the Sixth Amendment right to counsel is implicated, the  
2 courts also consider whether “the government deliberately interferes with the confidential  
3 relationship between a criminal defendant and defense counsel,” and, if so, whether the  
4 interference “substantially prejudices the criminal defendant.” *Nordstrom v. Ryan*, 762 F.3d  
5 903, 910 (9th Cir. 2014). In an action seeking to enjoin “the continuation of an  
6 unconstitutional practice,” substantial prejudice would be “that his right to privately confer  
7 with counsel has been chilled.” *Id.* at 911.

#### 8 **IV. Legal Discussion**

##### 9 **A. The motion is outside the scope of the instant proceeding.**

10 “A court’s equitable power lies only over the merits of the case or controversy  
11 before it.” *Pac. Radiation Oncology, L.L.C. v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th  
12 Cir. 2015). If, instead, “a plaintiff seeks injunctive relief based on claims not pled in the  
13 complaint, the court does not have the authority to issue an injunction.” *Id.* “[T]here must  
14 be a relationship between the injury claimed in the motion for injunctive relief and the  
15 conduct asserted in the underlying complaint.” *Id.* at 636. A “sufficiently strong” nexus  
16 between the injunction and the complaint can be found “where the preliminary injunction  
17 would grant ‘relief of the same character as that which may be granted finally.’” *Id.*  
18 (quoting *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945)); *see also*  
19 *Saddiq v. Ryan*, 703 F. App’x 570, 572 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1335 (2018)  
20 (denying request for preliminary injunctive relief regarding alleged retaliation because  
21 Saddiq failed to establish nexus between the retaliation claim and the claims in the  
22 complaint); *Pearson v. GEO Grp. Inc.*, No. CV-16-03094-PHX-DGC (BSB), 2018 WL  
23 1382526, at \*2 (D. Ariz. Mar. 19, 2018) (denying motion for injunctive relief regarding  
24 nipple rings in proceeding involving mail); *Brisken v. Griego*, No. CV 16-02434-PHX-JJT  
25 (ESW), 2017 WL 8792538, at \*4 (D. Ariz. Dec. 8, 2017) (denying injunction to be taken to  
26 eye doctor when only medical allegations in complaint related to broken hand); *Valenzuela*  
27 *v. Ryan*, No. CV-15-00158-PHX-NVW (MHB), 2016 WL 8193623, at \*1 (D. Ariz. Nov. 14,  
28 2016) (denying request for preliminary injunction regarding rapes alleged to be retaliation

1 for current lawsuit because plaintiff was required to file new lawsuit to allege new claims).

2 Here, Plaintiff seeks four injunctions requiring that

- 3 ➤ Plaintiff receive all legal calls and visits with attorneys that are requested by the attorney;
- 4 ➤ Defendants recognize Plaintiff's *power-of-attorney*, Suneel Chakravorty, a non-attorney, as a legal professional for the purposes of communicating confidentially with Plaintiff;
- 5 ➤ Defendants release Plaintiff from SHU and return him to his original unit or provide him a single cell in the SHU; and
- 6 ➤ Defendants release Plaintiff from SHU and return him to his original unit or provide him a single cell in the SHU; and
- 7 ➤ Defendants designate Plaintiff to USP Tucson for the remainder of his 120-year prison sentence.
- 8

9 (Doc. 3 at 12-13.) The requested injunctions are not related to or greatly exceed the relief  
 10 requested in the suit. (Compare Doc. 3 at 12-13 with Doc. 1 at 36-37.) The Complaint itself  
 11 sought an injunction restraining Defendants and their agents from interfering with Plaintiff's  
 12 telephonic communication with his attorneys and their employees and agents or Plaintiff's  
 13 visiting with his attorneys, "subject only to modest limitations that are reasonably related to  
 14 legitimate penological interests of Defendants." (Doc. 1 at 36.) Thus, an injunction  
 15 requiring that the Bureau provide Plaintiff *all* legal calls and visits requested by *any* of his  
 16 many attorneys, not subject "to modest limitations that are reasonably related to legitimate  
 17 penological interests" greatly exceeds the relief requested in the Complaint. The request  
 18 that Plaintiff's "power-of-attorney," an admitted non-lawyer, be considered a legal  
 19 professional for purposes of confidential communications is not included in or related to the  
 20 relief requested in the Complaint. (*See* Doc. 1.) Nor is the request for an injunction  
 21 requiring that Plaintiff be released from the SHU or housed singly while in the SHU or an  
 22 injunction requiring Defendants to designate Plaintiff to USP Tucson indefinitely. (*Id.*)

23 Plaintiff's motion for a preliminary injunction must be denied because the requested  
 24 injunctions are outside the scope of and exceed the relief requested in the instant  
 25 proceeding.

26 **B. Plaintiff Has Not Established the *Winter* Factors.**

27 Plaintiff seeks extraordinary affirmative injunctive relief. Far from the required  
 28 "clear showing" and heightened standard for such affirmative relief altering the status quo,

1 Plaintiff fails to establish the *Winter* factors as to any of his requested injunctions.

2 **1. Plaintiff has not established a likelihood of success on the merits  
3 as to access to counsel or Mr. Chakravorty.**

4 Just as with Plaintiff's first Motion for Preliminary Injunction in his first action  
5 against Defendants, Plaintiff has not established a likelihood of success or that serious  
6 questions go to the merits as to access to counsel or to Mr. Chakravorty. Once again,  
7 Plaintiff has failed to introduce "evidence . . . that Plaintiff has been unable to communicate  
8 with his attorneys or their agents who have been cleared by the institution to have  
9 confidential communications with Plaintiff," and "Plaintiff has not provided any evidence  
10 that Mr. Chakravorty is a paralegal or agent of any kind *employed by* Plaintiff's attorney(s)."  
(Ex. I, pp. 14-15.) (Emphasis added.)

11 The record is clear that Plaintiff has had robust access to his counsel, including legal  
12 calls, legal visits and legal mail. (Ex. A, ¶¶ 23-26; Ex. B, pp. 4-8, 36-37, 39-40; Ex. C, pp. 4-  
13 6; Ex. K, pp. 1-3, 6-7, 11-12.). Plaintiff's criminal attorney has recognized as much: "Thank  
14 you for assisting me and my firm with the many calls over the last year or so. I know it isn't  
15 easy to arrange this many calls and visits. I understand that you have limited resources and  
16 other calls and visits to manage in addition to Mr. Raniere's numerous requests. Overall, you  
17 have been able to arrange most calls and most visits with Mr. Raniere. These calls are  
18 extremely helpful and important in our representation of Mr. Raniere." (Ex. A, ¶ 22, Att. 3,  
19 Email from criminal attorney.) Plaintiff attempts to manufacture a claim for lack of access to  
20 counsel by noting the legal visit that was cancelled when an inmate at FCC Tucson attempted  
21 to shoot a visitor and the Warden's refusal to allow Mr. de la Garza<sup>20</sup> a legal visit when he  
22 has not established that he is a licensed attorney in good standing. (Doc. 1 at 20-22, 31.)  
23 The Bureau has facilitated Plaintiff's meeting with his attorneys, both via numerous  
24 confidential legal calls and frequent legal visits. No evidence supports the bald allegations

25 <sup>20</sup> Plaintiff alleges that Mr. de la Garza has been "banned." (Doc. 3 at 3.) The  
26 evidence shows that he has not yet been granted legal visitation because he has not taken the  
27 necessary steps. (Ex. A, ¶¶ 9-21.) Plaintiff also alleges that attorneys Stoltz and Scheff  
28 "have been banned from in-person legal visits with Plaintiff for the foreseeable future."  
(Doc. 3 at 3.) Again, the evidence flatly contradicts the allegation: Both Stoltz and Scheff  
had legal visits with Plaintiff on January 9, 2023, and January 31, 2023, clearly dates within  
the "foreseeable future" from December 19, 2022. (Ex. A, ¶ 25.)

1 that the Bureau has interfered with any legal calls. The one legal call that was dropped was  
2 promptly reconnected, which Plaintiff neglected to mention in the Complaint. (Doc. 1.)  
3 Plaintiff produced no evidence that any Bureau employee hindered a single legal call or legal  
4 visit between Plaintiff and his attorneys.

5 As to Mr. Chakravorty, the great weight of the evidence shows that he is Plaintiff's  
6 agent who was affiliated with ESP and NXIVM, not a "paralegal" *employed by* his attorney,  
7 has engaged in conduct that threatened the safety and security of the institutions and the  
8 public in both New York and Arizona, and is one of the people with whom Plaintiff was  
9 banned by his sentencing judge from associating.

10 Plaintiff has not cited a single case that shows that a defendant has a Sixth  
11 Amendment right to meet with someone who has a "power of attorney," rather than a  
12 paralegal employed and supervised by an attorney. Instead, Plaintiff's cited cases assert that  
13 the "attorney-client privilege" applies to communications with a paralegal *employed by* an  
14 attorney.<sup>21</sup> See *United States v. Sanmina Corp. & Subsidiaries*, 968 F.3d 1107, 1116 (9th  
15 Cir. 2020) ("The attorney-client privilege may extend to communications with third parties  
16 *who have been engaged* to assist the attorney in providing legal advice." (Emphasis added.));  
17 *United States v. Mikhel*, 552 F.3d 961, 963-65 (9th Cir. 2009) (holding "[t]he inmate's  
18 attorney's *pre-cleared* paralegal(s) and *pre-cleared* investigators *in the regular full-time*  
19 *employment of the attorney* may meet with the inmate without the necessity of the inmate's  
20 attorney being present" and recognizing that the government's security interests were

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21  
22 <sup>21</sup> Plaintiff's reliance on *United States v. Rowe*, 96 F.3d 1294 (9th Cir. 1996), is  
23 problematic at best. While the Ninth Circuit did recognize that "fact-finding which pertains  
24 to legal advice counts as 'professional legal services,'" no paralegals were involved. *Id.* at  
25 1297. Instead, the senior attorney "asked lawyers – not secretaries, paralegals, librarians or  
26 other of the firm's employees – to conduct the investigation. And, having chosen to hand the  
27 job over to lawyers, he is justified in expecting that communications with these lawyers will  
28 be privileged." *Id.* Similarly, in *Jenkins*, 487 F.3d at 491, the court does not indicate  
"outside experts engaged 'to assist the attorney in providing legal services to the client'"  
"often prove indispensable to the attorney because they 'transmit[] or interpret[] client  
communications to the attorney'" as stated at Doc. 3 at 7. To the contrary, the court included  
in the list of people covered by the attorney client privilege "*members of the office staff*  
responsible for transmitting messages between the attorney and client." (Emphasis added.)  
*Benjamin v. Fraser*, 264 F.3d 175, 186 (2d Cir. 2001), cited at Doc. 3 at 10, did not involve  
paralegals and does not include the purported quotation.

1 satisfied by a translator submitting to a background check and being “cleared by the FBI and  
2 USA/CDCA.”)

3 Nor is Plaintiff’s belief that his Sixth Amendment rights trump all other  
4 considerations supported by his cited cases. In *Luis v. United States*,<sup>22</sup> 578 U.S. 5, 11-12  
5 (2016), the Supreme Court explained that “[a] defendant has no right, for example, *to an*  
6 *attorney who is not a member of the bar.*” (Emphasis added.) In *Geders v. United States*,  
7 425 U.S. 80, 87 (1976), the court noted that “[t]o the extent that conflict remains between the  
8 defendant’s right to consult with his attorney during a long overnight recess in the trial, and  
9 the prosecutor’s desire to cross-examine the defendant without the intervention of counsel,  
10 with the risk of improper ‘coaching,’ the conflict must, under the Sixth Amendment, be  
11 resolved in favor of the right to the assistance and guidance of counsel.” However, here, the  
12 conflict is not with a prosecutor’s desire to avoid counsel’s coaching the witness, it is with  
13 the Bureau’s “legitimate penological interests” and “the institutional consideration of internal  
14 security within the corrections facilities themselves.” See *Turner*, 482 U.S. at 89, *Procunier*,  
15 417 U.S. at 822. Plaintiff has not shown that the Bureau has deliberately interfered with the  
16 confidential relationship between him and his counsel or chilled his right to privately confer  
17 with counsel. See *Nordstrom*, 762 F.3d at 910. He cannot do so because the evidence shows  
18 that the Bureau has facilitated his numerous confidential legal calls and frequent legal visits  
19 with his counsel.

20 Plaintiff has introduced no credible evidence<sup>23</sup> that he has been denied access to his  
21 counsel or that his ardent supporter, with whom he had been engaging in monitored social  
22 calls, is a “paralegal.” The evidence is clear that Mr. Chakravorty is *Plaintiff’s* agent. Once  
23 again, Plaintiff has failed to show a lack of access to counsel and the courts. (See Ex. I, pp.

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25 <sup>22</sup> Plaintiff erroneously states that *Luis* is about “the government’s interest in  
26 ‘freezing’ potentially ill-gotten proceeds.” (Doc 3 at 10.) The Supreme Court said the  
27 opposite in holding “the pretrial restraint of *legitimate, untainted assets* needed to retain  
28 counsel of choice violates the Sixth Amendment. The nature and importance of the  
constitutional right *taken together with the nature of the assets* lead us to this conclusion.”  
*Luis*, 578 U.S. at 10. (Emphasis added.)

<sup>23</sup> Plaintiff has introduced no evidence at all, instead relying upon the allegations in  
his Complaint, many of which are based “on information and belief.” (Doc. 1.)



1 14-15.) Plaintiff has not established a likelihood of success on the merits as to access to  
2 counsel or Mr. Chakravorty.

3 **2. Plaintiff has not established a likelihood of success on the merits as**  
4 **to his allegations regarding retaliation.**

5 Plaintiff has not established a likelihood of success or that serious questions go to  
6 the merits as to his allegations of retaliation. The evidence contradicts Plaintiff's bald  
7 assertions. As demonstrated above, Plaintiff has had and continues to have robust access to  
8 his attorneys, and Plaintiff's "friends and supporters" have been banned for legitimate  
9 reasons because they broke Bureau rules and endangered the safety and security of Bureau  
10 institutions. That leaves Plaintiff's claimed "adverse action" as "keeping Plaintiff in the  
11 SHU with a mentally unstable cellmate." (Doc. 3 at 8.) This Court already rejected  
12 Plaintiff's speculative allegations regarding his cellmate. (*See* Ex. J, p. 6.) The only  
13 *evidence* in the record is that Plaintiff is being held in the SHU while the SIS Department is  
14 investigating safety and security issues pertaining to Plaintiff at USP Tucson. (Ex. M, p. 5.)

15 The Bureau has "legitimate penological interests" and a central correctional goal  
16 "of internal security within the corrections facilities themselves." *See Turner*, 482 U.S. at  
17 89; *Procunier*, 417 U.S. at 823. Plaintiff has not provided any evidence that the Bureau  
18 deliberately interfered with the confidential relationship between him and his counsel or  
19 chilled his right to confer privately with counsel. *See Nordstrom*, 762 F.3d at 910. He  
20 cannot do so because the evidence shows that the Bureau has facilitated his numerous  
21 confidential legal calls and frequent legal visits with his multiple counsel – which legal calls  
22 and legal visits continue even while he currently is housed in the SHU. (Ex. A, ¶¶ 23-26;  
23 Ex. B, pp. 4-8, 36-37, 39-40; Ex. C, pp. 4-6; Ex. K, pp. 1-3, 6-7, 11-12.) Similarly, Plaintiff  
24 has not shown that his SHU placement interferes with his access to courts. Access to courts  
25 and counsel form the basis of the Complaint and Motion. (Docs. 1, 3.)

26 **3. Plaintiff has not established a likelihood of success on the merits as**  
27 **to a purported transfer.**

28 Not having provided a scintilla of support for his request to avoid a transfer, Plaintiff  
fails to establish a likelihood of success on the merits as to a transfer. First, the Complaint  
does not seek to avoid a transfer or even mention a transfer. (Doc. 1.) Second, the motion

1 does not mention a transfer – except to request that this Court enter an injunction preventing  
 2 a transfer. (Doc. 3 at 1, 13.) Plaintiff has not established a likelihood of success on the  
 3 merits as to a purported transfer.

4 **4. Plaintiff has not established irreparable harm as to any of his  
 requested injunctions.**

5 Plaintiff has not shown irreparable harm. A plaintiff “must demonstrate that there  
 6 exists a significant threat of irreparable injury.” *Oakland Tribune, Inc. v. Chron. Publ’g Co.*,  
 7 762 F.2d 1374, 1376 (9th Cir. 1985). The irreparable injury must be both likely and  
 8 immediate. *Winter*, 555 U.S. at 24. Mere “[s]peculative injury does not constitute  
 9 irreparable injury to warrant granting a preliminary injunction.” *Caribbean Marine*, 844  
 10 F.2d at 674.

11 Plaintiff erroneously<sup>24</sup> stated that an Arizona District Court found that “a prisoner  
 12 who suffered a First Amendment violation enjoys a presumption of irreparable harm.” (Doc.  
 13 3 at 11.) Again, the case says the opposite: “Therefore, based on the filings, the oral  
 14 argument, the evidence presented, and the case law, the Court finds that the Plaintiff has  
 15 demonstrated the possibility of irreparable harm, if not the probability of harm.” *Luckette v.*  
 16 *Lewis*, 883 F. Supp. 471, 483 (D. Ariz. 1995). Here, Plaintiff has had and continues to have  
 17 confidential communication with his counsel by frequent legal visits, legal mail and legal  
 18 calls.<sup>25</sup> (Ex. A, ¶¶ 23-26; Ex. B, pp. 4-8, 36-37, 39-40; Ex. C, pp. 4-6; Ex. K, pp. 1-3, 6-7,  
 19 11-12.) This Court already has rejected Plaintiff’s allegations regarding his cellmate as too  
 20 speculative to constitute irreparable harm. (Ex. J, p. 6.)

21 In Plaintiff’s prior action, the Court recognized “[i]n the section of his Motion  
 22 discussing irreparable injury, Plaintiff merely cites the legal standards and states in a

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23 <sup>24</sup> Many of Plaintiff’s cited cases simply do not support his claims. In *United States v.*  
 24 *Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006), after the lower court refused to allow the  
 25 defendant’s chosen counsel to appear pro hac vice, the Supreme Court noted that “[t]he right  
 26 to select counsel of one’s choice, by contrast, has never been derived from the Sixth  
 27 Amendment’s purpose of ensuring a fair trial. It has been regarded as the root meaning of  
 the constitutional guarantee,” not as Plaintiff claims “Courts have held that access-to-counsel  
 claims based on the government’s wrongful interference strike at the ‘root . . . of the  
 constitutional guarantee.’” (See Doc. 3 at 10-11.)

28 <sup>25</sup> Not having mentioned a purportedly imminent transfer in the motion (Doc. 3),  
 Plaintiff has not shown irreparable injury by denying his injunctive requests regarding his  
 housing.

1 conclusory fashion that he ‘is likely to suffer irreparable harm because, absent injunctive  
2 relief, he will be deprived of the most basic constitutional protections under the First  
3 Amendment.’<sup>26</sup> (Ex. J, pp. 5-6.) In that case, the Court held that “Plaintiff’s Motion, as it  
4 relates to his access to the courts, fails because Plaintiff has not presented any evidence  
5 supporting that his ability to litigate has been hindered by prison officials, and Plaintiff has  
6 not alleged an actual injury such as inability to meet a filing deadline or to present a claim.”  
7 (Ex. J, p. 7.) The same applies equally here.

8 **5. The equities and public policy favor upholding Bureau policies  
and correctional decisions.**

9 The equities and public policy favor upholding the Bureau’s correctional decisions.  
10 The evidence establishes no grounds for the extraordinary measure of overriding the  
11 professional judgment of the Bureau: first, in preventing the security risk inherent in  
12 allowing contact between an inmate and a person the sentencing court banned, particularly  
13 when the person already has violated Bureau policies and put the safety and security of the  
14 institutions and the public at risk in two states; second, in holding an inmate in non-punitive  
15 administrative detention status while the SIS Department is investigating safety and security  
16 issues pertaining to him at his current institution; and third, in fulfilling its statutorily  
17 mandated duty to designate Plaintiff.

18 The Court should reject Plaintiff’s effort to override those decisions and choose his  
19 place and manner of incarceration.

20 **IV. Request for Hearing**

21 It is Plaintiff’s burden to establish entitlement to injunctive relief, which he has  
22 failed to do. However, in the event further evidence or information are needed for the denial  
23 of Plaintiff’s motion, Defendants request an evidentiary hearing.

24 **V. Conclusion**

25 For the foregoing reasons, Defendants Garland, Peters, Gutierrez and Ulrich request  
26 that the Court deny the Motion for Preliminary Injunction (Doc. 3).

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<sup>26</sup> Plaintiff makes the identical argument here. (Doc. 3 at 11.)

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RESPECTFULLY SUBMITTED: February 7, 2023.

GARY M. RESTAINO  
United States Attorney  
District of Arizona

*s/ Denise Ann Faulk*  
\_\_\_\_\_  
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\_\_\_\_\_  
*/ Resp to MPI - First*