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5 **DISTRICT COURT FOR THE UNITED STATES**
6 **DISTRICT OF ARIZONA**

7 Keith Raniere,

8 Plaintiff,

9 v.

10 Merrick Garland, US Attorney General;
11 Michael Carvajal, Director Federal Bureau
12 of Prisons; Barbara VonBlankensee,
Warden USP Tucson, Anthony Gallion (all
in their official capacities),

13 Defendants

Case No.: 4:21-cv-00179-RM

FIRST AMENDED COMPLAINT
(Prospective relief only)
(Hearing requested)

- 14 **1.** This is an action for narrow injunctive and declaratory relief for Plaintiff Keith
15 Raniere, a prisoner in the U.S. Penitentiary in Tucson Arizona (“USP Tucson”).
16 Plaintiff seeks an order enjoining prison officials from retaliating, and from
17 actively frustrating and impeding his First and Sixth Amendment rights to access
18 to the courts and counsel.

19 **JURISDICTION AND VENUE**

- 20
21 **2.** This Court has subject-matter jurisdiction under the First and Sixth Amendments
22 to the United States Constitution, and 28 U.S.C. § 1331 (federal question
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jurisdiction), as Plaintiff seeks to enjoin practices that amount to violations of the First and Sixth Amendments to the U.S. Constitution.

3. This Court has jurisdiction under 28 U.S.C. § 2201 to declare the rights of the respective parties.
4. This Court has jurisdiction under 5 U.S.C. §702, 28 U.S.C. § 2202, and Rule 65 of the Federal Rules of Civil Procedure to grant preliminary injunctive relief for the constitutional violations alleged herein.
5. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to this action occurred in the District of Arizona.

PARTIES

6. The Plaintiff Keith Raniere is and was at all relevant times, a federal inmate at USP Tucson.
7. Defendant Merrick Garland is the Attorney General of the United States and the head of the United States Department of Justice. BOP is an agency of the United States Department of Justice. As such, Defendant Garland has ultimate authority over BOP decisions, including policy decisions regarding USP Tucson, and the promulgation of BOP regulations. See 18 U.S.C. § 4042. Garland has affirmatively maintained the policy of allowing Wardens to retaliate against individual prisoners based on personal animus and not supported by any legitimate penological purpose. Defendant Garland's place of work is located in Washington, DC. Defendant Garland is sued in his official capacity.

8. Defendant Carvajal is, and has been at all times relevant to this case, Director of the BOP. Defendant Carvajal exercises authority over all BOP determinations. Defendant Carvajal has affirmatively carried out the policy of allowing Wardens to retaliate against individual prisoners based on personal animus and not supported by any legitimate penological purpose. See 18 U.S.C. §§ 4041, 4042. Defendant Carvajal's place of work is located in Washington, DC. Defendant Carvajal is sued in his official capacity.

9. Defendant VonBlankensee is the Warden of USP Tucson. Defendant VonBlankensee made the affirmative decision to interfere with Plaintiff's First and Sixth Amendment rights by causing an active attorney/client phone call with his criminal defense attorney, Joseph M. Tully to be terminated, and removing Plaintiff's power-of-attorney, and paralegal for Plaintiff's criminal defense attorney Joseph Tully, Suneel Chakravorty, from his approved list of people who he can call and receive as visitors in violation of the First and Sixth Amendments to the U.S. Constitution. Defendant VonBlankensee is sued in her official capacity.

10. Defendant Anthony Gallion is a Lieutenant at USP Tucson. Defendant Gallion made the affirmative decision to “scrub” Plaintiff’s approved callers and visitors list, to include attorneys and their agents.

FACTS

11. Plaintiff is incarcerated at USP Tucson, serving a sentence of 120 years for, among other things, possession of child pornography and sexual exploitation of a child,

1 and for purportedly taking twenty-two contraband photographs in 2005. *U.S. v.*
2 *Ranieri*, US District Court, Eastern District of New York, 1:18-cr-00204-NGG-
3 VMS.

4 **12.** The criminal case has been the subject of significant main-stream and social media
5 attention.

6 **13.** On May 2, 2021, during visitation with Plaintiff, Plaintiff's power-of-attorney
7 Suneel Chakravorty had his visit abruptly terminated and his visitation privileges
8 permanently revoked by the Warden of USP Tucson.

9 **14.** For about five months prior to April 28, 2022, Plaintiff's attorneys have had
10 weekly calls with Plaintiff, with no interference.

11 **15.** On April 28, 2022, Plaintiff's criminal defense attorney Joseph M. Tully filed a
12 motion to stay the appeal pending with the 2nd Circuit, on the basis that he intended
13 to file for a new trial in the District court based on newly discovered evidence in
14 the form of three experts' reports concluding that the FBI had falsified and
15 tampered with evidence, and that federal agents had committed perjury relevant to
16 the conviction of possession of child pornography and sexual exploitation of a
17 child.

18 **16.** On the same day, actress Nicki Clyne tweeted about the newly discovered
19 evidence, and it has received approximately two million impressions.

20 **17.** On May 3, 2022, Plaintiff's criminal defense attorney Joseph M. Tully filed the
21 motion pursuant to F.R.Crim.P. 33, requesting relief from the criminal conviction
22 on the grounds of the newly discovered evidence. *U.S. v. Ranieri*, Doc. 1169.
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1 **18.** On May 4, 2022, Plaintiff was on a privileged legal call with attorney Tully, when
2 the call was apparently terminated prematurely, and without warning.

3 **19.** Mr. Tully anticipates that the Eastern District of New York will hold a hearing on
4 the Rule 33 petition, and he needs to consult with Plaintiff in order to prepare for
5 that hearing. Mr. Tully anticipates that Plaintiff – who possesses first-hand
6 knowledge of the criminal allegations against him – is the individual best poised to
7 assist Mr. Tully in the legal representation, namely, Mr. Tully’s preparation for the
8 upcoming Rule 33 hearing.
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10 **20.** Shortly after the May 4 legal call was interrupted, Plaintiff’s counsellor pulled
11 Plaintiff out and instructed Plaintiff to go to an administrative ’s office.

12 **21.** Within the federal prison system, a counsellor is the prison official who has
13 routine, daily contact with federal prisoners. As such, a counsellor follows orders
14 from supervisory and management personnel at the prison.

15 **22.** Plaintiff complied with the counsellor’s instruction to visit the administrative
16 office.

17 **23.** When he arrived at the administrative office, Defendant Anthony Gallion was
18 present, and proceeded to ask Plaintiff about certain people on his list of approved
19 people that he could call and receive as visitors. Many of them were attorneys or
20 attorney’s agents like Mr. Chakravorty.
21

22 **24.** On information and belief, Gallion is with the Special Investigative Services
23 (“SIS”) of the Federal Bureau of Prisons.
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1 **25.** Defendant Gallion then told Plaintiff that his list was being “scrubbed”, that
2 Plaintiff would have to apply to the Unit Manager to have anyone re-approved,
3 and that Mr. Chakravorty was not likely to be re-approved.

4 **26.** The only way that Mr. Chakravorty can communicate with Plaintiff is if Mr.
5 Chakravorty is on Plaintiff’s approved list of callers. These calls are recorded and
6 monitored by prison personnel, and are not treated as confidential even though Mr.
7 Chakravorty is an agent of Plaintiff’s criminal defense attorney Joseph Tully.

8 **27.** Plaintiff asked Gallion why this was being done.

9 **28.** Gallion refused to answer beyond an assertion that there was an investigation.

10 **29.** On May 6, 2022, at 9AM, attorney Joseph Daugherty had a confidential legal call
11 with Plaintiff. Upon information and belief, Defendants interfered and frustrated
12 that legal call by, among other things, causing the phone call to be cut off before
13 Plaintiff and Mr. Dougherty had concluded their conversation.

14 **30.** On information and belief, Defendant VonBlankensee, or whoever the Warden
15 was at the relevant time, was the main moving force behind the actions of Gallion
16 both on May 4, 2022, May 6, 2022, and previously when Mr. Chakravorty was
17 denied visitation with Plaintiff.

18 **31.** On information and belief, Defendant Carvajal, or whoever the Director of the
19 BOP was at the relevant time, was aware that federal prison wardens retaliate
20 against individual prisoners based on personal animus and not supported by any
21 legitimate penological purpose but failed to take action to prevent it, and
22 perpetuated the policy and practice.
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COUNT I

Unlawful Frustration and Interference with First Amendment Access to the Courts

32. Plaintiff is neither a lawyer nor trained in the law. The First Amendment right of access to the courts includes with it a reasonable opportunity to communicate in a contemporaneous manner with his lawyers.

33. As described above, on May 4, 2022, Defendants, in a non-frivolous manner, frustrated and interfered with Plaintiff's First Amendment right to communicate with his attorneys. By doing so, Defendants frustrated and interfered with Plaintiff's First Amendment right of access to the courts.

34. Similarly, on May 4, 2022, Defendants threatened to continue to frustrate and interfere with Plaintiff's First Amendment right of access to the courts by effectively cutting off Plaintiff's ability to communicate by phone with his attorneys and their agents.

35. Under this Count, Plaintiff seeks reasonable access to communicate with his attorneys and their agents, both in person and using contemporaneous telephonic methods, subject only to modest limitations that have a reasonable relationship to legitimate penological interests.

36. Absent court action, Plaintiff will suffer irreparable harm.

37. Granting Plaintiff's requested equitable relief will not impose an undue hardship on Defendants, who are required by the Constitution to grant reasonable access to the courts to all prisoners on a daily basis.

38. The equities tip sharply in Plaintiff's favor.

44. Plaintiff is entitled to declaratory relief and injunctive relief under this Count. The injunctive relief that Plaintiff seeks is merely to maintain the status quo ante, pending administrative exhaustion. For the same reasons explained in Count I, above, Plaintiff is in imminent risk of suffering irreparable harm in the event that injunctive relief is not granted.

COUNT III – SIXTH AMENDMENT

45. Plaintiff is a criminal defendant.

46. Defendants have deliberately interfered with the confidential relationship between Plaintiff and his criminal defense counsel.

47. The interference substantially prejudices the Plaintiff by denying Plaintiff the ability to prepare his counsel for the upcoming Rule 33 hearing, and denying the ability of counsel to prepare and therefore to provide effective assistance of counsel for the hearing.

48. On information and belief, this interference was not isolated, but rather part of a pattern and practice of interference intended to deprive Plaintiff of effective assistance of counsel.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

A. Issue a preliminary injunction to preserve the status quo pending administrative exhaustion, to include restraining Defendants, their employees, successors, and agents, from:

1 1. Prohibiting, preventing, restricting, impeding, and/or obstructing Plaintiff from
2 communicating with his attorneys using contemporaneous telephonic
3 communications technologies, subject only to modest limitations that are
4 reasonably related to legitimate penological interests of Defendants;

5 2. Prohibiting, preventing, restricting, impeding, and/or obstructing Plaintiff from
6 visiting in-person with his attorneys at the federal prison facility where he is
7 currently housed, subject only to modest limitations that are reasonably related to
8 legitimate penological interests of Defendants;

9 3. Prohibiting, preventing, restricting, impeding, and/or obstructing Plaintiff from
10 communicating with the employees and agents of his attorneys using
11 contemporaneous telephonic communications technologies, subject only to modest
12 limitations that are reasonably related to legitimate penological interests of
13 Defendants;

14 4. Engaging in other behavior that amounts to a non-frivolous frustration or
15 interference with his First Amendment right to access the courts for the purpose of
16 collaterally attacking his conviction and sentence;

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18 B. Enter a judgment declaring that:

19 1. This court retains equitable powers to issue injunctions intended to maintain the
20 status quo pending administrative exhaustion, regardless of the requirements
21 imposed by 42 U.S.C. 1997e;

22 2. Defendants have violated Plaintiff's rights under the First Amendment;
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1 3. Plaintiff is entitled under the First Amendment to communicate with his
2 attorneys and his attorneys' employees, both in-person and using contemporaneous
3 telephonic communications, for the purpose of discussing legal matters aimed at
4 attacking his criminal sentence, and subject only to limited restrictions that are
5 reasonably related to penological interests.
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7 C. Attorneys' fees and costs accrued in bringing this action;

8 D. Such other relief as this court deems just and proper.

9 DATED this 6th day of May, 2022 by
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11 /s/Stacy Scheff
12 STACY SCHEFF
Attorney for Plaintiff
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