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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE DISTRICT OF ARIZONA

17 United States of America,  
18 Plaintiff,

19 vs.

20 Samuel Rappylee Bateman,  
21 Defendant.

No. CR-22-08092-001-PCT-DGC

**UNITED STATES' RESPONSE TO  
MOTION TO PRECLUDE PRETRIAL  
PUNISHMENT**

22 Defendant Bateman is charged with seven felonies, all of which he committed using  
23 detention facility telephone and video systems. During the 77 days Bateman spent in  
24 federal pre-trial detention before his communications were restricted, he participated in the  
25 kidnapping or escape of eight children; had explicit sexual conversations with children;  
26 violated a Coconino County Superior Court no-contact order; directed others to intimidate  
27 a government witness; sought to influence potential testimony; and repeatedly misused  
28 detention facility communications systems in violation of policy.

The United States has accordingly restricted Bateman's communications access for  
the legitimate purposes of protecting children, preventing criminal conduct, and  
safeguarding an ongoing investigation. Bateman's motion to reinstate non-legal  
communications access should be denied.

1 **I. FACTUAL BACKGROUND**

2 Bateman is a self-proclaimed Prophet of the Fundamentalist Church of Jesus Christ  
3 of Latter-Day Saints (FLDS), a subset of the fundamentalist Mormon denominations whose  
4 members practice polygamy. He has approximately 50 followers and over 20 wives, nine  
5 of whom are minors currently between the ages of 12 and 16. Bateman allegedly has  
6 “impressions of Heavenly Father’s will” to encourage his followers, including the minor  
7 children, to engage in sexual acts and relies on that submission to do his own will. Bateman  
8 is a subject in a federal investigation into the transportation of minors in interstate  
9 commerce to engage in criminal sexual activity, and travel in interstate commerce to  
10 engage in illicit sexual conduct with minors, beginning around May 2020.

11 **A. Bateman used Coconino County Jail’s telephone system to obstruct justice.**

12 On August 28, 2022, Bateman was arrested by Arizona Department of Public Safety  
13 for child endangerment. Bateman was pulled over because he was towing a box trailer with  
14 at least three minor females riding unsecured in the trailer. Bateman was temporarily  
15 detained, and on August 28 made phone calls from the Coconino County Jail directing his  
16 followers to “delete my Signal account now, the whole thing, delete every message, right  
17 now.” (Discovery 1, -08-28-22\_1826.mp3 at 0:45-1:15.)

18 On September 1, 2022, a Coconino County grand jury returned an indictment  
19 charging Bateman with three counts of child abuse arising from the August 28 traffic stop.  
20 (Exhibit 1, Filed Under Seal.) On October 7, 2022, the Coconino County Superior Court  
21 entered an order prohibiting Bateman from “any contact whatsoever” with any of the  
22 named child victims. (Exhibit 2 at 2, Filed Under Seal.)

23 On September 6, 2022, a federal grand jury returned an indictment charging  
24 Bateman with Counts 1-3 in the present case, all of which relate to his phone calls from the  
25 Coconino County jail directing others to delete Signal data to obstruct a federal  
26 investigation and foreseeable criminal proceeding. (Doc. 3.) Bateman was arrested and  
27 detained on September 13, 2022.

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1           **B. Bateman used CAFCC’s communications systems to kidnap children and**  
2           **obstruct justice.**

3           After Bateman’s federal arrest, nine minor girls, all believed to be wives of  
4 Bateman, were taken into Arizona Department of Child Services (DCS) custody on  
5 September 14, 2022. Bateman—using communications systems at the Core Civic/Central  
6 Arizona Florence Correctional Complex (CAFCC)—then conspired with others to remove  
7 the girls from DCS custody. And on November 27, at least three of Bateman’s adult wives  
8 succeeded in removing eight of the nine children from their DCS placements. Law  
9 enforcement found the girls in Spokane, Washington, on December 1, 2022.

10           On December 14, 2022, the federal grand jury returned a superseding indictment  
11 charging Bateman and three of his wives with Counts 4-7, including tampering with an  
12 official proceeding; conspiracy to tamper with an official proceeding; kidnapping; and  
13 conspiracy to kidnap. (Doc. 23.) The kidnapping charges pertain to Jane Doe 4 (currently  
14 13 years old), Jane Doe 8 (currently 12 years old), and Jane Doe 9 (currently 13 years old).

15           As set forth in the Superseding Indictment, Bateman used the recorded and  
16 monitored CAFCC video call system to participate in the kidnapping. (Doc. 23.) For  
17 example, on the morning of November 28, 2022, Bateman made a video call from CAFCC  
18 to co-defendant Bistline, who appeared to be in a hotel room. Bistline told Bateman that  
19 one of the girls was not with them, and Bateman told them they needed to get her. The  
20 video panned to all eight minors taken from DCS custody.<sup>1</sup> (Discovery 111,  
21 -13713982.mp4.)

22           **C. Bateman used CAFCC’s communications systems to engage in sexual**  
23           **discussions with children, in violation of a court order.**

24           Despite Bateman’s knowledge that his non-legal communications are monitored, he  
25 brazenly engaged in explicit sexual conversations with children, including with 13-year-

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27           <sup>1</sup> Counsel and investigators for the United States have not reviewed all of Bateman’s  
28 jail communications and the communications discussed herein are non-exhaustive.

1 old Jane Doe 4. On November 26, 2022, Bateman spoke to Jane Doe 4, then in DCS  
2 custody, who was on another phone line during a video call with some of Bateman's adult  
3 wives. Bateman referred to Jane Doe 4 as his "sexy darling" and made statements  
4 including, "Is this [Jane Doe 4] Rappylee Bateman? . . . I just want to rip off your bra and  
5 suck on your titties and fuck you" and, "You have such beautiful titties. I just want to fondle  
6 them . . . Don't you remember all those sacred times we spent together?" (Discovery 110,  
7 -13764022.mp4 at 10:10-14:02.) On the same day, Bateman spoke to 16-year-old Jane  
8 Doe 11, then in DCS custody, saying "I love you . . . [Jane Doe 11] Rappylee Bateman"  
9 and "I just want to suck on your beautiful titties and fuck you." (Discovery 110,  
10 -13764062.mp4 at 0:10-0:35.) And the next day, on November 27, 2022, Bateman made  
11 similar statements to 16-year old "[Jane Doe 10] Rappylee Bateman." (Discovery 111,  
12 -13714402.mp4 at 1:00-1:30.)

13 At the time of these calls, Bateman was prohibited from all contact with Jane Doe  
14 4, who is a victim in the Coconino County child abuse case and covered by the Superior  
15 Court's no-contact Order. (Exhibit 2.)

16 **D. Bateman used CAFCC's communications systems to direct witness**  
17 **intimidation and influence potential testimony.**

18 On the same day Bateman made sexual comments to Jane Doe 4 and Jane Doe 11,  
19 he also directed some of his wives to send intimidating messages to government witness  
20 CM, who is not a FLDS member or follower of Bateman but had previously gained  
21 Bateman's trust as someone who tried to help the members of their community. Using the  
22 CAFCC video call system, Bateman asked one of his wives to send CM a verse of scripture  
23 from Doctrine and Covenants Section 121, which states in part: "Wo unto all those that  
24 discomfort my people, and drive, and murder, and testify against them, saith the Lord of  
25 Hosts; a generation of vipers shall not escape the damnation of hell." Bateman instructed  
26 the woman to use a blocked phone number to "tell [CM] that I gave you the message to  
27 send this to her and tell her that she picked the wrong religion to hate. K? . . . You should  
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1 also tell her that I can guarantee that her and Little Froggy have cancer already forming in  
2 their bodies.” (Discovery 110, -13762332.mp4 at 4:55-6:20.)

3 Bateman’s video calls further show attempts to influence the testimony of his  
4 followers, including statements like, “They are going to try breaking our testimony and we  
5 will not give in.” (Discovery 110, -13764012.mp4.)

6 **E. Bateman violated CAFCC communications policies.**

7 The United States is also aware that Bateman disregarded CAFCC communications  
8 rules by having video communications with individuals, who then brought third parties into  
9 the calls using separate electronic devices. Bateman was admonished for this conduct and  
10 had privileges removed by CAFCC, but he continued to participate in three-way calling.

11 **F. Bateman’s CAFCC communications were suspended.**

12 On November 29, 2023—two days after Bateman’s child wives were taken from  
13 DCS custody and while they were still missing—Government counsel requested that  
14 CAFCC suspend Bateman’s communication privileges, except for communications with  
15 his counsel. Bateman’s counsel was notified of the request the same day. CAFCC honored  
16 the request and Bateman’s communications remain restricted.

17 Even after the restrictions were imposed, Bateman continued to violate the rules and  
18 attempted to find ways to circumvent those restrictions. On at least one occasion on  
19 November 30, 2022, Bateman used the identifying PIN number of another detainee to  
20 attempt to make a call. Bateman continues to try to call blocked phone numbers nearly  
21 every day.

22 While Bateman’s adult wives are aware of the communication restrictions, they too  
23 continue to try to circumvent the rules by changing email addresses and phone numbers to  
24 frustrate CAFCC’s efforts. Most recently, on March 3, 2023—the date of this filing—a  
25 new email address in the name of “Elaine Bateman” (a known code name for one of  
26 Bateman’s adult wives) was created and Bateman received approximately 33 messages  
27 before the new email address was blocked.

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## 1 II. LEGAL STANDARD

2 When a pre-trial detainee challenges an aspect of his pretrial detention that is not  
3 alleged to violate any express guarantee of the Constitution, at issue is the detainee's right  
4 to be free from punishment. *See Bell v. Wolfish*, 441 U.S. 520, 534 (1979). Such challenges  
5 arise under the Fourteenth Amendment Due Process Clause. *Id.* at 535. The Due Process  
6 Clause protects pretrial detainees from punishment. *Id.* at 537; *see also United States v.*  
7 *Salerno*, 481 U.S. 739, 746 (1987) (pretrial detainees have a substantive due process right  
8 against restrictions that amount to punishment). This substantive due process right is  
9 violated if restrictions are "imposed for the purpose of punishment." *Valdez v. Rosenbaum*,  
10 302 F.3d 1039, 1045 (9th Cir. 2002) (citing *Bell*, 441 U.S. at 535). There is no  
11 constitutional infringement, however, if the restrictions are "but an incident of some other  
12 legitimate government purpose." *Id.* (citing *Bell*, 441 U.S. at 535). In that case,  
13 "governmental restrictions are permissible." *Id.*

14 In distinguishing between a permissible restriction and impermissible punishment,  
15 the first determination is "whether the restriction is based upon an express intent to inflict  
16 punishment." *Valdez*, 302 F.3d at 1045. Absent an express intent to inflict punishment, the  
17 court turns to "whether punitive intent can be inferred from the nature of the restriction."  
18 *Id.* Moreover, courts afford significant deference to prison officials' discretion to manage  
19 their prisons. *See Bell*, 441 U.S. at 548; *Michenfelder v. Sumner*, 860 F.2d 328, 331 (9th  
20 Cir. 1988). As the Ninth Circuit has stated, prison and jail officials should be accorded  
21 "wide-ranging deference in the adoption of policies and practices that in their judgment are  
22 needed to preserve internal order and discipline and to maintain institutional security."  
23 *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998) (quoting *Bell*, 441 U.S. at 540).

24 Relatedly, a prison regulation that impinges on an inmate's alleged constitutional  
25 right "is valid if it is reasonably related to legitimate penological interests." *Valdez*, 302  
26 F.3d at 1048 (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). *See also Bell*, 441 U.S. at  
27 533 ("[E]ven when an institutional restriction infringes a specific constitutional guarantee,  
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1 the practice must be evaluated in the light of the central objective of prison administration,  
2 safeguarding institutional security.”). Courts consider the following in making that  
3 reasonableness determination:

4  
5 (1) whether there is a valid, rational connection between the restriction and  
6 the legitimate governmental interest put forward to justify it; (2) whether  
7 there are alternative means of exercising the right; (3) whether  
8 accommodating the asserted constitutional right will have a significant  
9 negative impact on prison guards and other inmates, and on the allocation of  
10 prison resources generally; and (4) whether there are obvious, easy  
11 alternatives to the restriction showing that it is an exaggerated response to  
12 prison concerns.

13 *Valdez*, 302 F.3d at 1049. An inmate “has no First Amendment right of access to a  
14 telephone.” *Hayat v. Garber*, No. CV 13-1381-PHX-DGC, 2013 WL 5913790, at \*2 (D.  
15 Ariz. Nov. 1, 2013). References in Ninth Circuit cases to right of access to a telephone  
16 “were *dicta*, and no opinion has identified the source of such a right.” *Id.* The Ninth Circuit  
17 does identify a First Amendment right to “communicate with persons outside prison walls.  
18 Use of a telephone provides a *means* of exercising this right.” *Id.* (*citing Valdez*, 302 F.3d  
19 at 1048) (emphasis in original).

### 18 III. ARGUMENT

19 The United States acted in compliance with the Constitution when it suspended  
20 Bateman’s communications privileges for legitimate governmental purposes, and those  
21 purposes remain valid today. Bateman cannot show a due process violation nor a First  
22 Amendment violation and his motion should be denied.

#### 23 A. Bateman’s communication restrictions do not violate due process because 24 they were not imposed for the purpose of punishment.

25 The United States suspended Bateman’s communication privileges because he used  
26 communications systems in numerous illegal and improper ways, not to illegally punish  
27 him. There is no government intent—whether express or implied—to inflict punishment  
28 upon Bateman. He had the same communications access as every other pretrial detainee

1 for more than two months, until it became apparent he had violated CAFCC policy by  
2 three-way calling, violated the Coconino County no-contact order, sought to influence  
3 victims and/or witnesses, and played a significant role in the removal and kidnapping of  
4 minors from DCS custody. Only after Bateman conspired in the kidnapping of three young  
5 girls did the United States take action to suspend his communications out of concern  
6 Bateman would continue to endanger minor victims and interfere with legitimate  
7 investigative efforts.

8 This restriction is related to legitimate, ongoing governmental purposes including  
9 protecting children, preventing new criminal conduct, and maintaining the integrity of the  
10 ongoing sex trafficking investigation. *Haraszewski v. Brannan*, No. 10CV0546-LAB PCL,  
11 2013 WL 4516776, at \*9 (S.D. Cal. Aug. 21, 2013) (“Protecting people inside or outside  
12 the detention facility qualifies as a security concern, and not punishment, and this is an  
13 appropriate motive for state officials both inside and outside a jail.”); *United States v. Vega-*  
14 *Soto*, No. 06CR1242 DMS, 2007 WL 9655860, at \*3 (S.D. Cal. Apr. 4, 2007) (ruling that  
15 a social communication restriction furthered facility’s “efforts to prevent defendants from  
16 using the phone to facilitate illegal activities”). The United States has an interest in the  
17 safety and wellbeing of the minors in DCS custody, all of whom are potential or likely  
18 victims or witnesses, and some of whom are named victims in the Coconino County or  
19 federal indictments. Further, Bateman has already directed others to delete likely evidence,  
20 in particular Signal messaging data, and asked one of his followers to send an intimidating  
21 message to CM.

22 The communications suspension is reasonably related to these high-priority  
23 interests and is not an exaggerated response. When Bateman had communications access,  
24 he committed obstruction of justice, made sexual statements to his child wives, participated  
25 in the escape and kidnap of minors, and sought to influence potential victims and witnesses  
26 not to cooperate with the federal investigation. Suspension of Bateman’s communication  
27 was—and continues to be—a rational, proportional response to prevent Bateman from  
28



1 endangering minors, committing new crimes, and continuing to tamper with evidence and  
2 witnesses. *Lewis v. King Cnty. Jail*, No. C15-1633-JLR-JPD, 2016 WL 8193689, at \*3  
3 (W.D. Wash. Oct. 24, 2016), *report and recommendation adopted*, No. C15-1633-JLR,  
4 2017 WL 464440 (W.D. Wash. Feb. 2, 2017) (finding no due process violation where  
5 pretrial detainee was placed on “phone deadlock” after using “jail phone system to  
6 repeatedly violate a no-contact order and to tamper with a victim/material witness in his  
7 pending criminal cases”). And a total prohibition on non-legal communications is justified  
8 because Bateman could engage in improper communication in-person or through mail,  
9 electronic messaging, telephone, video, or other means.

10 Because Bateman’s communications have been suspended for legitimate reasons,  
11 his due process rights have not been violated.

12 **B. Bateman’s communication restrictions do not violate the First Amendment**  
13 **because they are reasonably related to legitimate penological interests.**

14 Bateman has also not shown a First Amendment entitlement to jail communications.  
15 The Ninth Circuit has recognized that detainees have some First Amendment right to  
16 communicate with people outside detention facilities, but the right is not absolute. *Valdez*,  
17 302 F.3d at 1048.

18 Here, there is no constitutional violation because the communications restriction is  
19 reasonably related to legitimate governmental interests for the reasons stated in Section  
20 III.A., *supra*. Further, Bateman can still exercise his First Amendment rights by  
21 communicating with his legal team in any way and with whatever frequency he wishes.

22 And, as in *Valdez*, allowing Bateman communications access would require  
23 CAFCC “to allocate additional resources to monitor his [communications]” to mitigate the  
24 valid concerns raised by his conduct. 302 F.3d at 1049. Bateman communicated through  
25 video and phone calls, during in-person visits, and using electronic messaging. It would be  
26 unduly burdensome for the Government to monitor any or all these means of  
27 communications in real time, particularly because his communications are extensive.  
28

1 Bateman suggests his communications could be reviewed after he makes them, but he was  
2 not deterred from illegal and inappropriate behavior despite knowing his communications  
3 are monitored and succeeded in committing crimes despite such monitoring.

4 Finally, there are no obvious, easy alternatives to the communication suspension.  
5 Bateman has suggested he be permitted to communicate with three of his wives, but this is  
6 unlikely to provide a meaningful limitation on his communications. In past telephonic and  
7 video communications, Bateman commonly called one phone number to speak with  
8 multiple people (including children) who were either together in one location or who  
9 participated on a third device in contravention of CAFCC policy. As a practical matter, it  
10 will be very difficult for the CAFCC staff to ensure Bateman is communicating with only  
11 certain individuals if the Court were to allow his communications to resume.

12 For all these reasons, the United States' limitation on Bateman's First Amendment  
13 rights is reasonable and constitutionally valid.<sup>2</sup>

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25 <sup>2</sup> As an attempted compromise, the United States offered to allow Bateman access  
26 to communicate with his three biological sons, who are not believed to be participants in  
27 the sex trafficking of children. While Bateman would like contact with his sons, he also  
28 seeks contact with his wives. The United States has ongoing concerns that some of  
Bateman's wives have been involved in sex crimes and/or are interfering with DCS custody  
of the minors.

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**IV. CONCLUSION**

Bateman abused communications systems in the Coconino County Jail and CAFCC to commit crimes, engage in sexual communications with children, violate a court order, seek to influence potential victims or witnesses, and evade CAFCC communications policies. The United States has complied with the Constitution in restricting his communications, and his motion to reinstate his communications privileges should be denied.

Respectfully submitted this 3rd day of March, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrant: Marc Victor, Jose Saldivar, Sandra Hamilton, and Steve Wallin, *Attorneys for Defendants Bateman, Bistline, Barlow, and Johnson*

*s/ Jillian Besancon*  
U.S. Attorney's Office