



1 *Valdez* panel did not address whether the prosecutor had authority to unilaterally  
2 impose a restriction on a pretrial detainee.

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4 In *Valdez*, the federal prosecutor requested the U.S. Marshal to restrict Valdez  
5 from using the phone until his confederates were arrested on an anticipated  
6 superseding indictment to prevent Valdez from tipping them off about the arrest  
7 warrants and thereby endangering law enforcement. As a result, Valdez was placed in  
8 administrative segregation. After a few months, the federal prosecutor requested the  
9 U.S. Marshal lift the restriction after one of the co-conspirators was released on bail  
10 and the restriction was lifted. *Valdez*, 302 Fed. 3d at 1042-1043.

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13 The district court granted summary judgment for the defendants finding  
14 although Valdez's constitutional rights had been violated, the defendants were entitled  
15 to qualified immunity. *Valdez*, 302 F.3d at 1043. However, on appeal, the panel found  
16 Valdez' constitutional rights had not been violated. *Valdez*, 302 F.3d at 1044. Even  
17 though, the federal prosecutor initiated the restriction, the panel viewed the issue as a  
18 "prison regulation" and found it was reasonably related to the government's legitimate  
19 interest. Based upon the limited duration of the restriction, the panel found the  
20 defendants acted without punitive intent. *Valdez*, 302 at 1046.

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23 In *Lewis v. King Cnty. Jail*, No. C15-1633-JLR-JPD, 2016 WL 8193689, at \*1  
24 (W.D. Wash. Oct. 24, 2016), report and recommendation adopted, No. C15-1633-JLR,  
25 2017 WL 464440 (W.D. Wash. Feb. 2, 2017), a pretrial detainee brought a § 1983  
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1 action against the jail and the state prosecutor because at the prosecutor's request, the  
2 jail had placed the pretrial detainee on "phone deadlock." Prior to the federal lawsuit,  
3 the pretrial detainee moved the state court to remove him from "phone deadlock," and  
4 two state court judges denied his motions. *Lewis*, at \*1 and \*2. Lewis' attempted to  
5 call a witness more than 400 times and during the completed calls he was extremely  
6 abusive to the witness and attempted to dissuade her from cooperating with the  
7 prosecution in violation of a no-contact order. *Lewis*, \*2. The district court granted  
8 the defendants' summary judgment motion and dismissed the pretrial detainee's  
9 amended complaint. *Lewis*, \*5.

13 Lewis was only denied phone access. Mr. Bateman has been completely cut off  
14 from the outside world. Undersigned counsel has been informed Mr. Bateman is  
15 unable to receive any visits, send or receive letters or email with anyone except  
16 counsel.

18 In *Haraszewski v. Brannan*, No. 10CV0546-LAB PCL, 2013 WL 4516776, at  
19 \*9 (S.D. Cal. Aug. 21, 2013), while the prosecutor initiated the restriction on the  
20 pretrial detainee's communications with the outside world, the state court judge  
21 determined the pretrial detainee had written letters to the molestation victims and that  
22 the minor victims needed to be protected from his communications.

25 In this case, there is no evidence Haraszewski broke any jail rules, or that  
26 anyone thought he did. **The rule was a court order intended** to protect  
minors who were victims of molestation, and also to prevent witness

1 tampering. Although Haraszewski alleges the placement was approved by  
2 a jail officer, Lt. Hillen, it was done at the request of John Morgans, a  
3 District Attorney's office investigator. Defendants dispute this, and present  
4 un rebutted evidence the decision-makers were others, non-Defendants. But  
5 no one has suggested the moving force was a jail official. Rather, it seems  
6 to be agreed that the segregation request came from someone connected  
7 with prosecutors.

8 *Id.*

9 Unlike the defendant in *Haraszewski*, the allegations against Mr. Bateman in the  
10 Response are entirely different. Mr. Haraszewski was charged with molesting four  
11 minors. *Haraszewski*, at \* 1. Mr. Bateman is charged with Destruction of Records in  
12 an Official Proceeding and Aiding and Abet; Tampering with an Official Proceeding;  
13 Conspiracy; Destruction of Records in a Federal Investigation and Aid and Abet; and  
14 Kidnapping. (Doc. 23).

15 In granting summary judgement for the defendants in *Haraszewski*, the district  
16 court characterized his letters to the victims as attempting to shape or influence their  
17 testimony at trial. *Haraszewski*, at \* 1. While the Response claims Mr. Bateman  
18 “direct others to intimidate a government witness and sought to influence potential  
19 testimony,” Response, p. 1: 22-23, the details of the allegations do not support this  
20 conclusion. See Response, p. 4: 1-7.

21 The Response claims Mr. Bateman “violated a Coconino County Superior Court  
22 no-contact order.” Response, p. 1: 22. The Response claims Mr. Bateman’s call to  
23 Jane Doe 4, violated this order. Response, p. 4: 13-15. This is inaccurate. The  
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1 Superior Court ordered Mr. Bateman to not have contact with “named victims” if he is  
2 able to post the bond set by the Coconino County Superior Court. Response, Exhibit  
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4 2. Mr. Bateman has not posted this bond and thus, this conditional restriction is not in  
5 force.

6 The Response claims Mr. Bateman directed “some of his wives to send  
7 intimidating messages to government witness CM.” Response pp. 4: 19-20 and 8: 20-  
8 21. The Responses alleges the messages were to share a verse of scripture, tell the  
9 witness she picked the wrong religion to hate; and tell her he guaranteed “her and  
10 Little Froggy” have cancer already forming in their bodies. Response, pp. 4-5. Mr.  
11 Bateman’s comments were simply venting as the messages were not intimidating and  
12 Mr. Bateman has no control over cancer.

13 The other authorities cited in the Response either did not involve the prosecuting  
14 attorney unilaterally imposing restrictions on a pretrial detainee or did not involve  
15 pretrial detainees.

16 In *Bell v. Wolfish*, 441 U.S. 520, 523(1979), the lawsuit “challenge[d] numerous  
17 conditions of confinement and practices at the Metropolitan Correctional Center  
18 (MCC), a federally operated short-term custodial facility in New York City designed  
19 primarily to house pretrial detainees.” The Supreme Court wrote, “[p]rison  
20 administrators therefore should be accorded wide-ranging deference in the adoption  
21 and execution of policies and practices that in their judgment are needed to preserve  
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1 internal order and discipline and to maintain institutional security.” *Id.* 441 U.S. at  
2 547. *See also Frost v. Agnos*, 152 F.3d 1124 (9th Cir. 1998) (Pretrial detainee brought  
3 § 1983 suit against sheriff, corrections officers, and other defendants, alleging  
4 unconstitutional conditions of pretrial confinement in light of detainee's disability.) and  
5 *United States v. Vega-Soto*, No. 06CR1242 DMS, 2007 WL 9655860, at \*1 (S.D. Cal.  
6 Apr. 4, 2007) (Pretrial detainee moved moves to compel MCC to modify his pre-trial  
7 conditions of confinement.)<sup>1</sup>

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10 The United States Attorney is not a prison administrator. The Assistant United  
11 States Attorney is an advocate seeking to convict Mr. Bateman of serious crimes.  
12 While the Assistant United States Attorney is certainly justified in bringing any alleged  
13 issues to the attention of the detention officials, it is the facility administrators who are  
14 empowered to administer the facility’s rules within Constitutional limits.  
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17 Other authorities relied upon in the Response involved prison authorities  
18 imposing regulations on prisoners serving sentences, not pretrial detainees.  
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22 <sup>1</sup> In *United States v. Salerno*, 481 U.S. 739 (1987) involved pretrial detainees and the  
23 Supreme Court held that: (1) Bail Reform Act authorization of pretrial detention on  
24 basis of future dangerousness constituted permissible regulation that did not violate  
25 substantive due process, and was not impermissible punishment before trial; (2) due  
26 process clause did not categorically prohibit pretrial detention imposed as regulatory  
measure on ground of community danger, without regard to duration of detention; and  
(3) Bail Reform Act authorization of pretrial detention on ground of future  
dangerousness was not facially unconstitutional as violative of Eighth Amendment.

1 *Michenfelder v. Sumner*, 860 F.2d 328 (9th Cir. 1988) (Prisoner, not a pretrial detainee,  
2 housed in maximum security unit of state prison brought civil rights action challenging  
3 routine strip searches and prison guards' use of “taser guns.”) and *Hayat v. Garber*, No.  
4 CV 13-1381-PHX-DGC, 2013 WL 5913790, at \*1 (D. Ariz. Nov. 1, 2013) (Petitioner  
5 was serving a 288-month prison sentence and alleged his privileges were rescinded by  
6 prison administrators without due process.)  
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9       Throughout the Response there are unsupported allegations against Mr.  
10 Bateman. Response, pp. 1-6 and 11. Instead of attaching affidavits to support the  
11 allegations, more allegations (a Indictment and a Minute Entry) were attached as  
12 Exhibits 1 and 2. Mr. Bateman’s Constitutional rights should not be unilaterally  
13 limited by the Assistant United States Attorney based on mere unsupported allegations.  
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16       In the event this Court determines it is proper for the Assistant United States  
17 Attorney to unilaterally limit Mr. Bateman’s Constitutional rights, this Court should  
18 find that the current restrictions are entirely overbroad. Mr. Bateman is currently  
19 prohibited from contacting all humans outside the facility whether by telephone, email,  
20 letter, or even personal visitation other than his attorneys. Surely, this Court can  
21 fashion a more narrowly tailored order allowing Mr. Bateman to have contact with  
22 people who are neither co-defendants nor alleged victims in a manner that is not too  
23 burdensome for employees of the facility to monitor.  
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1           Indeed, as with all detainees in the facility, any letter Mr. Bateman would write,  
2 and any phone call Mr. Bateman would make is already subject to recording or  
3 screening by the facility. Mr. Bateman should be allowed to have some reasonable  
4 means of communication available to him during his detention especially considering  
5 he remains presumed innocent of all charges.  
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7 **Conclusion:**  
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9           Mr. Bateman requests this Court issue an order permitting him the same access  
10 other inmates have to communicating with people outside CoreCivic. In the  
11 alternative, he requests a more narrowly tailored order or an evidentiary hearing to  
12 determine whether the Government's allegations are supported by evidence and  
13 whether the restrictions are punitive or reasonably related to a legitimate government  
14 interest and no broader than necessary.  
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17           Respectfully submitted March 4, 2023.  
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20   ATTORNEYS FOR FREEDOM LAW FIRM

21   /s/ Marc J. Victor  
22   Attorney for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2023, I filed the Original with the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/CEF registrants:

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By: /s/ Carmen Garcia