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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Patrick Wade Bearup,
10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,
13 Respondents.
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No. CV-16-03357-PHX-SPL

ORDER

DEATH PENALTY CASE

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16 Pending before the Court is Petitioner Patrick Bearup's Motion to Contact Victim's
17 Family Members. (Doc. 80). Bearup seeks an order authorizing his counsel to contact
18 relatives of the murder victim in this case in search of evidence supporting his habeas
19 claims. (*Id.*) Respondents oppose the motion. (Doc. 83.)

20 **DISCUSSION**

21 Bearup was convicted of one count of kidnapping and one count of first-degree
22 murder and sentenced to death for the murder of Mark Mathes. Mathes lived in a house
23 with his brother Bruce, Bruce's wife Marie, and their sons Joseph and Scott Mathes. Marie,
24 Joseph, and Bruce testified at Bearup's trial. For the purposes of this order, Bruce and
25 Marie are "victims."¹
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¹ Respondents concede that Joseph and Scott, Mark Mathes's nephews, are not victims as defined by ARS 13-4401(19).

1 The Court previously granted Respondents’ motion for an order precluding victim
2 contact. (Doc. 18.) The Court found that the provisions of the Arizona Victims’ Bill of
3 Rights, A.R.S. § 13-4433(B), further the purposes of the Crime Victims’ Rights Act
4 (CVRA), 18 U.S.C. § 3771(a)(8), which applies to federal habeas proceedings. (*Id.* at 2.)
5 The Court’s order prohibited members of Bearup’s legal team from directly contacting the
6 victims in this case and mandating that any such contact be initiated through counsel for
7 Respondents. (*Id.*) The order further provided that if a victim did not consent to such
8 contact, Bearup could file a motion explaining why contact was necessary. (*Id.*)

9 Pursuant to the Court’s order, Bearup’s counsel requested consent from
10 Respondents’ counsel to contact Bruce, Marie, Joseph, and Scott. (*See* Doc. 80 at 3.) After
11 Respondents informed Bearup’s counsel that the victims declined the request (*id.*), Bearup
12 filed the pending motion.

13 The CVRA establishes “the right to be treated with fairness and with respect for the
14 victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8). The CVRA further provides that the
15 Court “shall ensure” victims’ rights are protected in this habeas proceeding. 18 U.S.C. §
16 3771(b)(2)(A). Courts have emphasized that the CVRA should be construed liberally, “in
17 favor of interpretations that promote victims’ interests in fairness, respect, and dignity.”
18 *United States v. Turner*, 367 F. Supp. 2d 319, 335 (E.D. N.Y 2005); *see United States v.*
19 *Heaton*, 458 F. Supp. 1271, 1272 (D. Utah 2006) (explaining that the intent of the CVRA
20 is to “give victims broad rights to fair treatment”).

21 The Court will deny Bearup’s motion for two reasons. First, the right to “dignity
22 and privacy” would arguably be violated by contact with a victim who already has
23 expressed a desire not be contacted. Second, Bearup fails to establish that the necessity of
24 the proposed contact. Bearup argues that contact with Bruce and Marie Mathes is necessary
25 to discuss whether, contrary to their trial testimony, they received plea agreements or
26 promises of leniency, and to determine their views on Bearup’s death sentence. Neither of
27 these reasons justifies contact with victims who have already declined to be contacted by
28 Bearup’s team. The victims’ opinion about Bearup’s sentence is not relevant to his claims
of ineffective assistance of counsel, and the potential existence of a cooperation agreement

1 between the victims and the state does not appear relevant to any of Bearup's habeas
2 claims.

3 Accordingly,

4 **IT IS ORDERED** denying Bearup's Motion to Contact Victim's Family Members
5 (Doc. 80).

6 Dated this 12th day of February, 2019.

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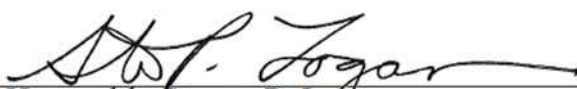
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Honorable Steven P. Logan
United States District Judge