

From: [REDACTED] (USANYS) EOUSA RIP
Sent: Friday, October 06, 2017 10:38 AM
To: [REDACTED]@fd.org
Cc: [REDACTED] <[REDACTED]@bop.gov>; Richard Sullivan <Richard_Sullivan@[REDACTED]>
Subject: RE: TRULINCS Email Filter

Thanks [REDACTED]. Just to be clear, my email earlier this morning was not a 'revision,' but more of a response to some of your comments during the call. It is consistent with what I had said in the email previously. As to your first question, we don't have a strong view on how you may want to communicate this to the CJA panel but an email from you with the substance of my emails seems fine. As to your second question re: process, you are correct.

[REDACTED]

From: [REDACTED]@fd.org
Sent: Friday, October 06, 2017 8:10 AM
To: [REDACTED]@usa.doj.gov
Cc: [REDACTED]@bop.gov; Richard Sullivan <[REDACTED]@nysd.uscourts.gov>
Subject: Re: TRULINCS Email Filter

Thank you, [REDACTED]. I appreciate the revision. I think this provides better guidance. Do you mind if I send out the substance of your email to the CJA Panel? Also, to clarify the process, absent an attorney requesting a different address that is acceptable to you, the AUSA will request that BOP screen out the attorney's ECF email address?

On Oct 6, 2017, at 7:23 AM, [REDACTED] (USANYS) <[REDACTED]@usdoj.gov> wrote:

[REDACTED] to follow up, and as you and I discussed yesterday, our Office has now instructed our criminal AUSAs, as a matter of practice, to request that the MCC and MDC filter out attorney-inmate emails in the TRULINCS system for counsel of record when we obtain an inmate's emails, so that those attorney-inmate emails will not be provided to us. There may be very rare exceptions to that general practice – for example, in a crime fraud situation; in acting upon safety concerns or threats; in case of an inmate's disappearance; or where our Office represents the Bureau of Prisons in litigation matters and our AUSAs (either in the Criminal or Civil Division) might need to review all TRULINCS content as part of that representation. Therefore, despite our implementation of this new general practice, we cannot provide you or the defense bar with absolute assurances that attorney-inmate communications sent through the TRULINCS system will never be reviewed. In that regard, the Bureau has been clear that its TRULINCS system is not a vehicle for confidential and privileged communications, and we have been clear that our new practice is not a waiver of

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the legal argument that the communications are not privileged. What we have represented to you and have already implemented is a general practice of AUSAs asking the MDC and MCC to filter out communications between inmates and counsel of record, so that our AUSAs will not get or see those in the ordinary course.

EOUSA b6

From: [redacted] EOUSA b6 [redacted]@fd.org]
Sent: Monday, October 2, 2017 2:53 PM
To: [redacted] EOUSA b6 (USANYS) <[redacted]@usa.doj.gov>
Cc: [redacted] EOUSA b6 [redacted]@bop.gov; Richard Sullivan <Richard_Sullivan@[redacted] EOUSA b6 [redacted]>
Subject: RE: TRULINCs Email Filter

Thanks [redacted] EOUSA b6 I'm concerned that the policy set forth below doesn't really solve the problem we set out to solve. If the USAO can review attorney/client emails for any reason whatsoever, we're back at square one. When we all met, my understanding was that you were reserving the right to review attorney/client emails if you believed there was a basis under the crime/fraud exception to privilege. I understand your not wanting to concede that the emails are in fact privileged, but I don't think the guidance below will give attorneys much confidence in the confidentiality of the email system -- which was the point of developing a screening system.

EOUSA b6 [redacted] is the screening system in place?

Thanks,
EOUSA b6 [redacted]

EOUSA b6 [redacted]
*Executive Director
Federal Defenders of New York
52 Duane Street, 10th Fl.
New York, NY 10007
Tel: 212- [redacted] EOUSA b6 [redacted]
Fax: 212-571-0392*

<image001.gif> [redacted] EOUSA b6 (USANYS)" ---09/27/2017 10:18:13 AM---Gentlemen, this will confirm that, once MCC and MDC give the green light confirming that they are r

From: [redacted] EOUSA b6 (USANYS)" [redacted] EOUSA b6 [redacted]@usdoj.gov
To: [redacted] EOUSA b6 [redacted]@fd.org; Richard Sullivan <Richard_Sullivan@[redacted] EOUSA b6 [redacted]>
Cc: [redacted] EOUSA b6 [redacted]@bop.gov
Date: 09/27/2017 10:18 AM
Subject: RE: TRULINCs Email Filter

Gentlemen, this will confirm that, once MCC and MDC give the green light confirming that they are ready to implement their TRULINCS screening system, the U.S. Attorney for the Southern District of New York (SDNY) intends to direct our AUSAs to request that MDC and MCC filter out emails between an inmate and his/her attorney-of-record, as a general practice. Please note that SDNY, in adopting this practice, is not taking any position, or waiving any argument it could assert in litigation, that attorney-client emails in the TRULINCS system are not privileged. Further, our general practice of requesting filtering out of such emails

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will not necessarily apply when, in our view, circumstances warrant obtaining emails between an inmate and attorney, such as, by way of non-exhaustive example, when we believe a crime fraud is occurring. It is also our understanding that emails sent by an inmate to multiple parties including both attorney and non-attorney contacts will not be filtered out, but rather will be produced to us in the normal course.

EOUSA b6

EOUSA b6

Chief, Criminal Division
U.S. Attorney's Office, SDNY
1 Saint Andrew's Plaza
New York, NY 10007
(212) EOUSA b6

From: EOUSA b6 @fd.org]
Sent: Monday, July 10, 2017 9:24 AM
To: Richard Sullivan <Richard_Sullivan@EOUSA b6>
Cc: EOUSA b6 (USANYS) EOUSA b6 @usa.doj.gov> EOUSA b6 @bop.gov>
Subject: RE: TRULINCS Email Filter

While it's fresh in my mind, here's a draft of how I will relate the new USAO email procedure when it's ready to go. I'll start with basic background on the issue and explain and attach EOUSA b6 letter to Judge Sullivan. And then I'll say this about the USAO:

When it requests a defendant's emails from the TRULINCS system, the U.S. Attorney's Office has agreed to request filtering from the MCC and MDC of the email addresses of all counsel of record as shown on ECF. If you want the USAO to request filtering for a different or additional attorney email address, you must specifically request that from the AUSA on your case. Please note that the USAO has not changed its position that attorney/client emails in the TRULINCS system are not privileged. In addition, the USAO states that it reserves the right to seek attorney/client emails in the TRULINCS system when it believes the crime/fraud exception to the attorney/client privilege applies.

I'd love any thoughts. Thanks,

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Non responsive

Nonresponsive

Nonresponsive

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8:30 is fine for me.

-----Original Message-----

From: Richard_Sullivan@nysc [mailto:Richard_Sullivan@nysc]

Sent: Wednesday, July 05, 2017 4:42 PM
To: (USANYS)
Cc: @bop.gov; @fd.org
Subject: RE: TRULINCS Email Filter

I hope you all had a great Fourth of July. We're scheduled for a short meeting on the BOP's new email filter on Monday, July 10th at 9:00 am, but I'm wondering if we can start a little earlier -- say 8:30 -- to accommodate a civil trial that I have wrapping up that same day. It turns out that one of the lawyers has an appellate argument in the afternoon, so the parties have requested that we start earlier than usual. Let me know if 8:30 would work; and sorry for the confusion and inconvenience caused by moving things around.

Thanks.

EOUSA b6

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