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**From:** Zornberg, Lisa (USANYS)

EOUSA RIP

**Sent:** Friday, October 06, 2017 10:38 AM

**To:** EOUSA b6, b7C EOUSA b6, b7C

**Cc:** EOUSA b6, b7C ; Richard Sullivan EOUSA b6, b7C >

**Subject:** RE: TRULINCS Email Filter

Thanks EOUSA b6, b7C. 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.

Lisa

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**Fro** EOUSA b6, b7C EOUSA b6, b7C

EOUSA RIP

**Sent:** Friday, October 06, 2017 8:10 AM

**To:** Zornberg, Lisa (USANYS) EOUSA b6, b7C >

**Cc:** Adam Johnson EOUSA b6, b7C ; Richard Sullivan <EOUSA b6, b7C>

**Subject:** Re: TRULINCS Email Filter

Thank you, Lisa. 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, Zornberg, Lisa (USANYS) EOUSA b6, b7C > wrote:

David, 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

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.

Lisa

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**From:** [REDACTED]  
**Sent:** Monday, October 2, 2017 2:53 PM  
**To:** Zornberg, Lisa (USANYS) [REDACTED]  
**Cc:** [REDACTED]; Richard Sullivan  
[REDACTED]  
**Subject:** RE: TRULINCS Email Filter

Thanks, Lisa. 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.

Adam, is the screening system in place?

Thanks,

[REDACTED]

[REDACTED]  
*Executive Director*  
*Federal Defenders of New York*  
*52 Duane Street, 10th Fl.*  
*New York, NY 10007*  
*Tel: 212-417-[REDACTED]*  
*Fax: 212-571-0392*

<image001.gif>"Zornberg, Lisa (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:** "Zornberg, [REDACTED]" [REDACTED]  
**To:** [REDACTED]; Richard Sullivan [REDACTED]  
**Cc:** [REDACTED]  
**Date:** 09/27/2017 10:18 AM  
**Subject:** RE: TRULINCS Email Filter

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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

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.

Lisa

Lisa Zornberg  
Chief, Criminal Division  
U.S. Attorney's Office, SDNY  
1 Saint Andrew's Plaza  
New York, NY 10007

EOUSA b5, b6, b7C

EOUSA b6, b7C



**b. Prisoner Emails**

BOP inmates will commonly have access to the BOP's Trust Fund Limited Inmate Computer System (TRULINCS) - Electronic Messaging service. Inmates and their correspondents must consent to monitoring of all such emails. This applies to emails with attorneys. We can obtain copies of an inmate's TRULINCS emails on request to the BOP. Although, strictly speaking, any privilege that might otherwise apply to communications between an inmate and his or her attorney has been waived, it has been our general practice to avoid looking at emails between inmates and their attorneys. We have often used a "wall" AUSA to look through a BOP TRULINCS production to cull out attorney emails, but that is quite burdensome. Starting in the spring of 2016, BOP became able to cull out emails based on email address, as long as we specify the email address(es) in our original request. In order to comply with our policy of generally avoiding review of attorney-inmate emails, and to avoid burdening a wall AUSA with email review, you should attempt to identify an inmate's attorney(s) prior to making the request to the BOP and ask BOP to cull those from its production to you. (If you believe there is a strong reason we should be reviewing attorney-inmate emails in a given case, you must discuss with the Criminal Chief.)

**From:** [Zornberg, Lisa \(USANYS\)](#)  
**To:** [USANYS-CRIMINAL AUSAS](#); [USANYS-CRIMINAL PARALEGALS](#); [USANYS-INVESTIGATORS](#)  
**Subject:** Important: New Office Practice When Requesting Inmate Email Accounts  
**Date:** Friday, October 6, 2017 7:17:00 AM

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All -- Effective immediately, the Office has adopted a new general practice of asking BOP staff to **filter out** emails between an inmate and his/her counsel-of-record when producing inmate emails to us. It is important that you take a minute to read this entire email to ensure you follow the directions:

1. **The General Practice Rule.** In your letter or email to the prison requesting inmate emails, include a sentence that provides the full name and email address of defense counsel-of-record and specifically requests that BOP staff filter out emails exchanged between that counsel-of-record and the inmate. ("**Please filter out emails exchanged between the inmate and [NAME OF ATTORNEY], Email Address: [FILL IN EMAIL ADDRESS].**")

Note: Should defense counsel provide you with the names and email addresses of **additional** attorneys or paralegals from his/her law firm and request you to have those communications likewise filtered out, that's fine. You should honor that defense request so long as the additional names/email addresses given to you belong to bona fide lawyers or paralegals at the defense law firm.

2. **Possible Exceptions to the General Practice.** There may be rare and special situations when, with unit chief approval, you may request counsel-inmate emails -- for example, in a crime fraud situation; or in acting upon safety concerns or threats; or in case of an inmate's disappearance. You must consult your unit chief before requesting counsel-inmate emails from the BOP.

3. **Rationale for this New Practice.** To be clear, our new practice is not a waiver of the Government's legal argument that the communications are not privileged. Rather, our Office has adopted this practice as an accommodation to the defense bar -- following meetings in which our Office participated with the court, BOP, and the Federal Defenders. The BOP recently implemented software at MDC and MCC that allows BOP staff at those facilities to filter counsel-inmate emails upon specific request by our Office. (Note: It is our understanding that only the MDC and MCC have this filtering-out capability currently, but other BOP facilities may acquire that same capability in the future.)

4. **Have questions or concerns?** Please come talk to me or John McEnany.