

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS

and

DEPARTMENT OF JUSTICE,

Defendants.

No. 18-cv-2399-KBJ

FIFTH JOINT STATUS REPORT

Per the Court's order, Plaintiff National Association of Criminal Defense Lawyers ("NACDL") and Defendants Federal Bureau of Prisons ("BOP") and Department of Justice ("DOJ") respectfully submit this Fifth Joint Status Report. *See* Minute Order, May 30, 2019 ("May 30 Order").

Overview

1. The background of this case has been set forth in more detail in the parties' previous Joint Status Reports. *See* Joint Status Report, ECF No. 20; Joint Status Report, ECF No. 22; 3d Joint Status Report, ECF No. 23; 4th Joint Status Report, ECF No. 24.

2. Of relevance to this Joint Status Report, on August 2, 2018, NACDL filed a Freedom of Information Act ("FOIA") request with DOJ's Office of Information Policy, Office of Legal Counsel, and Criminal Division seeking, among other things, policies and guidance regarding the

circumstances under which prosecutors may access emails between inmates and their attorneys. *See* Ex. B to Am. Compl., ECF No. 9-3.

3. On May 30, 2019, the Court ordered the parties to “promptly confer in good faith regarding the issues identified in their [Fourth] Joint Status report regarding the Criminal Division’s search for and production of responsive records, and file a further joint status report on those matters on or before 6/13/2019.” May 30 Order.

Recent Developments Related to the Criminal Division

4. On May 31, 2019, the Criminal Division provided NACDL with information about its initial search, including the search terms used and the initial results. The resulting records have not been reviewed for responsiveness or to determine if any records are duplicative.

5. In the days following that initial discussion, the parties have worked in good faith to narrow the scope of the dispute, but have not reached a resolution.

6. The parties have a telephone call scheduled for the morning of June 24, 2019, to continue exchanging information and attempt to narrow the issues further.

The Parties’ Proposed Next Steps

7. The parties propose providing the Court with a more comprehensive summary of where negotiations stand as part of their Sixth Joint Status Report on June 28, 2019. *See* May 30 Order.

8. In that Joint Status Report, the parties will provide the Court with:

- a. A summary of the productions made by the Defendants to date;
- b. A summary of the parties’ negotiations regarding the Criminal Division’s search;
- c. A proposed schedule for litigation related to the Criminal Division’s processing and production of responsive records, and summary of the parties’ positions, if necessary;

- d. A summary of potential future litigation (e.g., challenges to search adequacy and/or withholdings), and corresponding estimates regarding when those motions will be ready for briefing.

DATED: June 12, 2019

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