

From: [Timothy Rodrigues](#)
To: [Wheat, Michael \(USACAS\)](#)
Subject: BOP inmate phone and email policies
Date: Monday, August 26, 2019 5:48:43 PM
Attachments: [BOP national phone policy.pdf](#)
[Arciero decision.pdf](#)
[FDC Hon local email policy.pdf](#)

Hi Michael,

In short - inmates waive all privilege and actively consent to full monitoring, including with counsel, when they communicate via phone and email while in custody. The only exception are legal calls requested in advance through the unit team and made on an unmonitored line. No such calls would ever be provided to the USAO since they are not recorded or retained in any way.

I've attached BOP's national inmate telephone policy. Inmates add contacts themselves and identify the individuals on their own. BOP does not verify the identity of the parties. "Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that such calls are subject to monitoring." pp. 7. Monitoring is generally permitted via 28 CFR 540.102. pp. 10, which specifically discusses arrangements for unmonitored legal calls. **All inmates sign a consent to phone and mail monitoring form upon intake.** I can request Kealoha's, if you need it - let me know. The consent form specifically states: "A properly placed call to an attorney is not monitored. You must contact your unit team to request an unmonitored attorney call." We would have records of any such request.

Also attached is the local FDC Honolulu policy for inmate email. "Inmates must consent to have all incoming and outgoing electronic messages monitored, read, and retained by Bureau staff." pp. 6. "Inmates may place their attorney or other legal representative on their electronic message contact list, with the understanding that electronic message exchanges with such individuals will not be treated as privileged communications, and will be subject to monitoring." pp. 7. As to how they consent, I've attached a decision out of the District of Hawaii containing the exact language that appears on the screen for both parties. See pp. 2-4 of Arciero decision. In Arciero, Judge Kobayashi found no attorney-client privilege applied to emails sent on the BOP inmate email system. Kealoha, in particular, couldn't argue she didn't understand the zero expectation of privacy language. The Ninth Circuit upheld Arciero and other district courts around the country have reached the same conclusion.

Let me know if this does the job.

Thanks,
Tim

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