

EOUSA RIP

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

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MEMORANDUM - Sent via Electronic Mail

DATE: May 4, 2009

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL CIVIL CHIEFS

FROM: */s/*
H. Marshall Jarrett
Director

SUBJECT: Prisoner E-Mail Accounts

ACTION REQUIRED: Use voluntary requests, not subpoenas, when seeking BOP prisoner email communications.

CONTACT PERSONS:

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The Bureau of Prisons (BOP) has begun to offer prisoners at some institutions access to email accounts. Your offices will, on occasion, need to see the contents of such prisoner email communications to successfully prosecute your cases. This memorandum provides notice that the best method of obtaining the content of BOP prisoner email accounts is simply to write to the warden at the prison or detention center in question, asking BOP to voluntarily provide the contents of the emails. This procedure is unlike what you may be using to obtain prisoner telephone records or letters, which typically are, and will continue to be, obtained via legal

process. However, using a subpoena to obtain prisoner email communications may, in some circumstances, cause a prisoner to file an unwarranted civil action against the United States or an individual Assistant United States Attorney (AUSA).

Under 18 U.S.C. § 2703(b), the Stored Communications Act, when a government entity requires the disclosure of the contents of an email communication, notice must be given to the email customer, i.e., the prisoner, in certain circumstances. Thus, were an AUSA to send the BOP a grand jury subpoena seeking these records, and were a BOP employee to produce the information without notifying the prisoner, such conduct could in some circumstances subject the AUSA to a prisoner lawsuit under 18 U.S.C. § 2707. That section provides a civil cause of action against persons who violate the terms of the Stored Communications Act. Although a variety of strong defenses would be available to defend such an action, you should avoid the risk of any such lawsuit by simply asking BOP to voluntarily produce prisoner emails.

According to its own policy, the BOP does not require a subpoena to provide you with the contents of prisoner email communications. BOP's policy on the prisoner email system is attached. Page eight of the policy authorizes BOP to provide copies of the emails without a subpoena. The BOP does not provide notice to the prisoner of your request for the production of email communications. A suggested form letter to use when requesting prisoner email communications is attached. Although BOP policy requires that BOP retain prisoner email communications for six months, current BOP practice is to retain them for a longer period of time. In addition, upon specific request, the BOP will retain specific emails indefinitely.

Currently, the following BOP prisons and detention centers have operational prisoner email accounts systems: Alderson, Allenwood Complex, Bryan, Carswell, Coleman, Camp and Low, Cumberland, Danbury, Devens, Fairton, Hazelton, Herlong, Honolulu, Jesup, Marion, Marianna, Miami FCI, Montgomery, Morgantown, Otisville, Pensacola, Philadelphia, SeaTac, Sheridan, Terre Haute - CMU only, Terminal Island, Texarkana, Three Rivers, and Victorville Complex. BOP indicates that by December 2010, it expects that all sites in the BOP system will have operational email accounts available.

Please also note that page three of the attached BOP policy discusses the criteria by which certain prisoners are excluded from having access to the BOP email account system.

Questions about the practical aspects of obtaining prisoner emails may be directed to [REDACTED] at the contact information above. Questions regarding the Stored Communications Act may be directed to AUSA [REDACTED] at the contact information above, or to [REDACTED] Associate Director, Office of Enforcement Operations, at (202) [REDACTED] or the Computer Crime and Intellectual Property Section, at (202) [REDACTED]

cc: ALL UNITED STATES ATTORNEY'S SECRETARIES
Attachments