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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IN RE: CONFIDENTIALITY OF
ATTORNEY-CLIENT COMMUNICATIONS
DURING COVID-19 OUTBREAK

Standing Order 2020-10

Because COVID-19 mitigation requirements have resulted in the suspension of in-person meetings between attorneys and individuals incarcerated at detention facilities, incarcerated individuals must instead rely entirely on other means to communicate with attorneys. Pursuant to this Order and consistent with Federal Rule of Evidence 502(d), the attorney-client privilege covering a communication with a person held in a detention facility, using any method of communication, including by person, letter, e-mail, phone, or videoconference, is not waived by the presence of third parties or the existence of monitoring, whether or not the monitoring is disclosed. For attorney-client privilege to be preserved and not waived, the following factors must be satisfied:

1. The communication is otherwise covered by the attorney-client privilege;
2. The communication must be made using a system available at the detention facility; and
3. The speaker must make a statement at the beginning of the electronic communication, indicating that the conversation is protected by the attorney-client privilege, unless the context makes clear that the privilege should apply despite the lack of a statement.

This Order will remain in effect until in-person meetings between attorneys and incarcerated individuals are no longer suspended due to COVID-19 mitigation requirements.

IT IS SO ORDERED.

DATED this 10 day of April, 2020.



Marco A. Hernández
Chief U.S. District Judge