

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
22-SO-1

**FILED**

SEP 22 2022

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY  CLK

IN RE: )

GUILTY PLEAS IN CRIMINAL )  
FELONY CASES )

**STANDING ORDER**

In order to protect the safety of criminal Defendants, the Court hereby orders that in criminal felony cases where a guilty plea is entered pursuant to a plea agreement: (1) each plea agreement shall be filed with a separately docketed supplement addressing the Defendant's cooperation status; (2) every transcript of a hearing at which a plea of guilty is entered or sentencing hearing will contain a confidential section or reference thereto; and (3) the Office of the United States Attorney must file a sealed statement prior to sentencing addressing whether the Defendant provided substantial assistance. Each plea agreement supplement, confidential transcript section, and statement regarding substantial assistance shall be filed under seal, without the need for a motion and order to seal. The Court finds that the public's right of access to these documents is outweighed by the need to protect the safety of cooperating Defendants, and that there is no less drastic alternative to sealing the documents.

The public has a common law right of access to judicial records. *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978). This right of access is not absolute, but requires a weighing of competing interests. *Id.* A court may seal court documents "if the public's right of access is outweighed by competing interests." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). "Accordingly, before a district court may seal any court documents, . . . it must: (1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific

reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” *Id.* (citing *In re Knight Publ’g Co.*, 743 F.2d 231, 235–36 (4th Cir. 1984) and *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 181 (4th Cir. 1988)).

The Court previously determined that there is a need to protect the identities of cooperating Defendants to prevent violence and retaliation. *See* Standing Order 09-SO-02. Based on those findings, the Court issued Standing Order 09-SO-02, ordering that: (1) all motions for substantial assistance be sealed without the need for a separate motion to seal, and (2) plea agreements be accessible only at the public terminal in the Clerk’s office. *Id.* The Court hereby incorporates the findings in Standing Order 09-SO-02 herein.

The Court also has received additional information since issuing Standing Order 09-SO-02. First, the Court has determined that when a plea agreement is filed in a multi-defendant case, co-defendants and their defense attorneys have full access to the entire plea agreement via PACER. As a result, co-defendants can immediately determine which co-defendants will be cooperating with the Government.

Second, the Court has learned that in Bureau of Prisons facilities, inmates often demand to see documents from other inmates’ cases, including copies of filed plea agreements, transcripts of plea hearings and sentencing hearings, docket sheets, and presentence investigation reports, to determine whether another inmate cooperated with the Government. Often, inmates who refuse to provide the requested documents are labeled as cooperators by other inmates. Cooperators and other inmates face increased risks of violence or retaliation as detailed in Standing Order 09-SO-02. Inmates suspected of cooperating face these same risks.

Third, the Court has received information that Defendants and others frequently request from defense attorneys and/or the Clerk of Court copies of transcripts of plea hearings and

sentencing hearings to determine whether a Defendant cooperated or, as described above, for a Defendant to prove to other inmates that a Defendant is not a cooperator. Defendants and others also review dockets to determine whether a Defendant cooperated or to prove lack of cooperation. When a substantial assistance motion is docketed in this district, a docket entry number is assigned to the motion; however, the motion does not appear on the publicly available docket, resulting in an apparent gap in the docket entry numbers. Defendants and others, including other inmates, review the docket to determine whether there are any omitted docket numbers in advance of sentencing, which might indicate that a sealed motion for substantial assistance was filed.

Based on this additional information, the Court finds that there is a compelling interest in establishing additional measures to protect cooperating Defendants and other inmates from violence or retaliation, and that this interest outweighs the public's right of access. The Court also finds that less drastic alternatives are not appropriate because there is no alternative, short of sealing, that will protect cooperating Defendants from identification.

The Court has considered alternatives to the blanket sealing of plea agreement supplements, confidential portions of transcripts of plea hearings and sentencing hearings, and statements regarding substantial assistance, such as entertaining motions to seal on a case-by-case basis, but has found these alternatives inadequate to preserve the "higher value," *In re Washington Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986), of preventing interference with the due administration of justice that results from reprisals against witnesses. Plea agreement supplements, transcripts of plea hearings and sentencing hearings, and the statements regarding substantial assistance, as well as dockets with omitted docket numbers, can be used to identify cooperating Defendants, and those cooperating Defendants can then be targeted for violence and retaliation. When incarcerated, cooperating Defendants are targeted for violence and retaliation, there is an increased risk that

other inmates also will be endangered by prison violence. Case-by-case review would not adequately address this risk, because one of the dangers identified by the Court is the use of court filings to identify cooperators and non-cooperators, and to encourage generalized reprisals against all cooperators. The Court believes this procedure is “narrowly tailored,” *id.*, to address the problem because: (1) plea agreements will remain available to the public pursuant to the terms of Standing Order 09-SO-02, (2) plea hearings and sentencing hearings will remain open to the public unless otherwise ordered in an individual case, and (3) litigants may seek, and courts may grant, immediate access to sealed documents by litigants who have a case-related need for copies of these documents.

The Court therefore orders that beginning 30 days from the date of this Order, all criminal felony plea agreements shall be filed with a supplement that either: (1) includes the terms of the Defendant’s agreement to cooperate, or (2) states that no cooperation agreement exists. The Court orders that these supplements shall be filed under seal by the Clerk and shall remain sealed unless otherwise ordered by the Court. The plea agreement supplements will be available only to the Court, the Government, and counsel for the Defendant. Supplements will not be available to counsel for co-defendants or to the public through PACER or through the public access terminal in each Clerk’s office.

Defense counsel may maintain a file copy of the plea agreement supplement and review the supplement with the Defendant. However, a Defendant shall not be provided a copy of a sealed supplement to a plea agreement unless the Court grants a motion to unseal the supplement based upon a finding that the Defendant has a case-related need for a copy of the document.

Plea agreements filed with the Court in felony cases must not identify whether or not a Defendant has agreed to cooperate. Plea agreements will continue to be accessible at public access

terminals, as described in SO-09-02. Every felony plea agreement shall contain clear language stating that a plea agreement supplement is filed in every case, whether or not the Defendant has agreed to cooperate with the Government.

Additionally, in felony cases in which a guilty plea is entered pursuant to a plea agreement, every transcript of a hearing at which a plea of guilty is entered or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

a. The restricted transcript will include the confidential section. Only the Government and counsel for the Defendant will have access to restricted transcripts. Defense counsel may maintain a file copy of the restricted transcript and review the restricted transcript with the Defendant. A Defendant shall not be provided a copy of a restricted transcript unless the Court grants a motion to unseal the transcript based upon a finding that the Defendant has a case-related need for a copy of the transcript.


b. The public transcript will include the following reference: Pursuant to Standing Order 22-SO-1, portions of all guilty plea and sentencing transcripts are restricted.

Finally, prior to sentencing, the Office of the United States Attorney must file a sealed statement regarding substantial assistance in all felony criminal cases in which the Defendant entered a guilty plea pursuant to a plea agreement that will either (a) contain a motion for downward departure based on the Defendant's substantial assistance, (b) explain the terms of that Defendant's cooperation not amounting to substantial assistance, or (c) state that the Defendant did not cooperate with the Government. The Office of the United States Attorney shall not separately file a substantial assistance motion. The public docket will reflect that a sealed statement

regarding substantial assistance has been filed; however, the sealed statement regarding substantial assistance will be available only to the Court, the Government, and counsel for the Defendant. Sealed statements regarding substantial assistance will not be available to counsel for co-defendants or to the public through PACER or through the public access terminal in each Clerk's office. Defense counsel may maintain a file copy of the sealed statement and review the sealed statement with the Defendant. A Defendant shall not be provided a copy of a sealed statement unless the Court grants a motion to unseal the statement based upon a finding that the Defendant has a case-related need for a copy of the statement.

If the Office of the United States Attorney for this district determines that disclosure of any document restricted by operation of this order is necessary to fulfill case-related disclosure obligations under the U.S. Constitution, or applicable statutes and court rules, that office may provide copies of such document to counsel for Defendants who are deemed entitled to such disclosure without seeking a court order. When any of the documents restricted by this Standing Order are produced in discovery, defense counsel receiving such production shall be bound by the restrictions of this Order. Defense counsel may maintain a file copy of the restricted documents, review the restricted document with the Defendant, and use the restricted documents for trial preparation, trial, or any other permissible purpose. A Defendant shall not be provided a copy of any of such restricted documents unless the Court grants a motion to unseal the restricted documents based upon a finding that the Defendant has a case-related need for a copy of such documents.

SO ORDERED this 22<sup>d</sup> day of September, 2022.

  
RICHARD E. MYERS II  
Chief United States District Judge