IN RE:	:	
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PROCEDURES REGARDING GUILTY PLEAS AND SENTENCING	:	**STANDING ORDER**
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1. There is a manifest public interest in promoting cooperation with law enforcement, including by criminal offenders who may provide information about criminal activity in exchange for leniency for their own conduct. This interest is reflected in the action of Congress to allow sentences below a statutory mandatory minimum term where a defendant has provided "substantial assistance in the investigation or prosecution of another person who has committed an offense," 18 U.S.C. § 3553(e), and in its directive to the Sentencing Commission to "assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense," 28 U.S.C. § 994(n) (a directive the Commission executed by adopting U.S.S.G. § 5K1.1).

2. There is a concomitant and equally compelling public interest in protecting the safety of those who cooperate with law enforcement, and their family members, both to safeguard those who provide cooperation and to assure that offenders in the future will not be discouraged from providing assistance to authorities.

3. Based on these interests, this Court has long followed a practice in which guilty plea agreements and sentencing documents reflecting a defendant's cooperation have been filed under seal.

4. This procedure, however, is not sufficient to maintain the confidentiality of a defendant's cooperation and thereby protect them and their family members from danger and retribution. The Court understands that, particularly in correctional institutions where defendants are housed together, offenders attempt to expose cooperators, and do so by demanding that inmates produce their court pleadings, from which it may be inferred whether the defendant is a cooperator or not. That is because, for instance, guilty plea agreements in this district have varied substantially depending on whether the agreement includes cooperation provisions or not.

5. To rectify this problem, and following consultation with the United States Attorney and the Chief Federal Defender for this district, the Court directs as follows:

a. The text of every guilty plea agreement will not refer to cooperation. Rather, every guilty plea agreement will be accompanied by a supplement, which will be filed under seal. The sealed supplement will reveal that the defendant is not cooperating as of that time, or if he or she is cooperating, will present the agreement of the parties with regard to the terms of cooperation.

b. The text of every sentencing memorandum filed by the government will not refer to cooperation or include a motion or request for a downward departure based on substantial assistance. In addition, every such sentencing memorandum filed by the government will be accompanied by a supplement, which will be filed under seal. The sealed supplement will reveal that the government is not moving to permit a downward departure based on cooperation; or it will present the government's motion for a

downward departure from the guideline range and/or a statutory mandatory minimum sentence, along with a proposed order granting such relief.

6. Every supplement described in paragraph 5 to a guilty plea agreement or government sentencing memorandum will be maintained under seal, and no copy shall be provided to an inmate in a correctional institution. The Bureau of Prisons shall make accommodations for an inmate who is proceeding pro se to review such a document as necessary without maintaining a copy of it.

7. The Court finds that sealing of the supplements described here to guilty plea agreements and to government sentencing memoranda are necessary to further the compelling interest of promoting and protecting cooperation with law enforcement. The Court further finds that any discussion of these supplements at a hearing shall occur outside the hearing of non-parties in the case, and the transcript of that portion of the hearing shall be maintained under seal. All other portions of the hearing shall remain open to the public unless otherwise ordered by the presiding judge.

There is a public right of access to judicial documents in a criminal case, both under the First Amendment, *see, e.g.*, *United States v. Thomas*, 905 F.3d 276, 282 (3d Cir. 2018) (plea documents); *In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts*, 913 F.2d 89, 95 (3d Cir. 1990) (transcripts of chambers and sidebar conferences); *United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985) (indictments, informations, and bills of particulars), and under the common law, *see, e.g.*, *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig*., 924 F.3d 662, 672 (3d Cir. 2019) ("judicial proceedings and records"); *United States v. Smith*, 776 F.2d 1104, 1110 (3d Cir. 1985)

("The common law right of access is not limited to evidence, but rather encompasses all 'judicial records and documents' . . . . It includes 'transcripts, evidence, pleadings, and other materials submitted by litigants'") (citations omitted); *United States v. Criden*, 648 F.2d 814 (3d Cir. 1981) (videotapes submitted in evidence).

"A 'judicial record" is a document that 'has been filed with the court . . . or otherwise somehow incorporated or integrated into a district court's adjudicatory proceedings.' . . . Once a document becomes a judicial record, a presumption of access attaches." *In re Avandia Mktg*., 924 F.3d at 672 (quoting *In re Cendant Corp*., 260 F.3d 183, 192 (3d Cir. 2001)).

To justify sealing of a document under either standard, a similar rule applies. Under the First Amendment, strict scrutiny applies, requiring the Court to find a compelling interest that would be substantially impaired by public access. *Thomas*, 905 F.3d at 282 (quoting *United States v. Antar*, 38 F.3d 1348, 1359 (3d Cir. 1994)).

Likewise, to overcome the common law right and presumption of access, a party moving to seal a judicial document must show "that the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." *Miller v. Ind. Hosp*., 16 F.3d 549, 551 (3d Cir. 1994) (internal quotation marks omitted). To overcome that strong presumption, the Court must articulate the compelling interest to be protected and make specific findings on the record concerning the effects of disclosure. *In re Avandia Mktg.*, 924 F.3d at 672-73 (citing *In re Cendant Corp*., 260 F.3d at 194).

Application of these standards warrants the sealing of the documents described here. Public disclosure of a defendant's cooperation presents a substantial risk of harm to the defendant, and perhaps to others related to or associated with him or her. For this reason, there is a compelling interest in maintaining confidentiality regarding a defendant's cooperation, that is substantially impaired by any exposure.

Courts customarily seal the type of pleadings at issue here, given the government's compelling interest to encourage cooperation in law enforcement investigations and to protect the safety of cooperators and witnesses. *See, e.g.*, *United States v. Thomas*, 905 F.3d 276, 282–83 (3d Cir. 2018) (authorizing sealing of a plea document to protect the safety of individuals in a national security matter); *United States v. Doe*, 962 F.3d 139, 147 (4th Cir. 2020) (stating that "as a general rule, the need to protect the well-being of" a defendant "is even more elevated if judicial records suggest that the defendant may have cooperated with law enforcement"); *United States v. Doe*, 870 F.3d 991, 999 (9th Cir. 2017) ("[d]irect threats are not 'a strict condition precedent to a district court's granting of a closure motion.'"); *United States v. Doe*, 63 F.3d 121, 130 (2d Cir. 1995) ("The problem of retaliatory acts against those producing adverse testimony is especially acute in the context of criminal organizations"); *United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985) (permitting sealing of a portion of a bill of particulars, finding that the naming of persons in the bill as unindicted co-conspirators carried such a risk of harm to uncharged persons).

Here, the sealing aims to protect the physical well-being of each defendant and others associated with him or her. The government has a profound interest in protecting

the security of cooperating defendants, in preventing retaliation against witnesses, and in assuring that future, potential cooperators are not deterred from providing vital assistance by any perceived inability of the government to protect them and their loved ones.

The remedy ordered here is narrowly tailored. The government in each case will file a guilty plea agreement and a sentencing memorandum which sets forth all pertinent information about the conviction and the sentencing proceeding, while effectively masking whether a defendant is cooperating.

8. For these reasons, in every criminal case, the Court will accept for filing under seal a supplement to every guilty plea agreement, and a supplement to every government sentencing memorandum, that addresses whether or not a defendant is providing substantial assistance in the investigation or prosecution of others.

9. Further, for the reasons previously described, it is the policy of the United States District Court for the Eastern District of Pennsylvania that at every guilty plea hearing and sentencing hearing any discussion concerning the supplements and whether or not the defendant is cooperating shall occur outside the hearing of non-parties in the case, and the transcript of that portion of the hearing shall be maintained under seal. All other portions of the hearing shall remain open to the public unless otherwise ordered by the presiding judge.

IT IS SO ORDERED.

/s/ Wendy Beetlestone
Wendy Beetlestone
Chief Judge

Date: September 29, 2025.