

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

STANDING ORDER REGARDING
SEALING DOCUMENTS FILED IN
CRIMINAL MATTERS

This order addresses procedures for sealing documents regarding requests for downward departure under 18 U.S.C. § 3553(e), United States Sentencing Guidelines § 5K1.1, or reduction of sentence under Fed. R. Crim. P. 35, as well as *pro se* filings seeking sentence reductions based on cooperation.

Filings by Government or Defense Counsel. Motions or memoranda filed by the Government or defense counsel relating to a request for downward departure under 18 U.S.C. § 3553(e), United States Sentencing Guidelines § 5K 1.1, or reduction of sentence under Fed. R. Crim. P. 35 based on cooperation may be filed under seal without compliance with Local Crim. Rule 49.01(B) (D.S.C.).¹

Filings by Pro Se Defendants. This order serves as prior authorization under Local Crim. Rule 49.01(A)(1) (D.S.C.) for the Clerk of Court to file, under seal, documents received from *pro se* defendants seeking reduction of sentence based on cooperation. The court finds that the nature

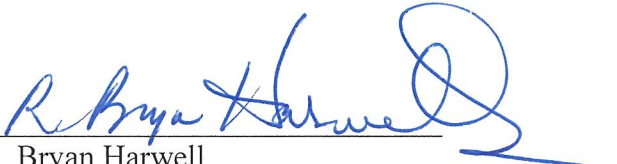
¹ The Fourth Circuit has acknowledged that protection of cooperators is a compelling interest under the First Amendment. In *United States v. Doe*, 962 F.3d 139 (4th Cir. 2020), the Fourth Circuit found that “harm to cooperators does not only affect those individuals,” but that it also “threatens public safety’ and ‘interferes with the gathering of evidence, the presentation of witnesses, and the sentencing and incarceration of cooperating defendants, . . . pos[ing] a substantial threat to the underpinnings of the criminal justice system as a whole.’” *Id.* at 148. The court concluded that sealing an order that referred to a defendant’s cooperation was the narrowest means of protecting the compelling interest in protecting the defendant. *Id.*

of a *pro se* request for reduction of sentence based on cooperation warrants sealing for the following reasons: (1) such a request may place the moving defendant at risk of physical harm; (2) absent sealing, the information will be easily available to the public through the Public Access to Court Electronic Records ("PACER") system; and (3) *pro se* defendants are unlikely to be aware of or have the capacity to satisfy requirements for filing a motion to seal under Local Crim. Rule 49.01(B) (D.S.C.).

Future Challenge to Sealing. Sealing pursuant to this order may be challenged by any person at any time. Any motion seeking to unseal documents shall address the factors governing sealing reflected in controlling case law.

IT IS SO ORDERED.

April 30, 2024
Florence, South Carolina


R. Bryan Harwell
Chief United States District Judge