

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

JUDGE LYDON'S STANDING ORDER
REGARDING RULE 11(c)(2), FEDERAL
RULES OF CRIMINAL PROCEDURE

1. Rule 11(c)(2) provides terms of a Plea Agreement may be disclosed to the court *in camera* for good cause shown: “The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.”¹

2. 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.*

¹ Rule 11(c)(2) was added in 1975. Advisory Committee Notes indicate the Committee added language in subdivisions (e)(2) [now (c)(2)] and (e)(4) to permit a plea agreement to be disclosed to the court, or rejected by it, in camera. The language does not address itself to whether the showing of good cause may be made in open court or in camera. That issue is left for the courts to resolve on a case-by-case basis. These changes in subdivisions (e)(2) [now (c)(2)] and (e)(4) will permit a fair trial when there is substantial media interest in a case and the court is rejecting a plea agreement.

3. In cases involving cooperation before Judge Lydon, the following procedures shall be used:

A. Two documents shall be prepared: a Plea Agreement and an In Camera Addendum.

i. The Plea Agreement shall not contain cooperation provisions but shall contain the following language in the integration clause:

The parties hereby agree that this Plea Agreement, together with any written provisions disclosed during the Rule 11 plea hearing in accordance with Fed. R. Crim. P. 11(c)(2), contain the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction in this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

ii. The In Camera Addendum shall contain all provisions relevant to cooperation and shall, together with the Plea Agreement, constitute the entire agreement of the parties.

B. Only the Plea Agreement shall be filed with the court prior to the Rule 11 hearing. The Government shall notify the court the Rule 11 hearing should be scheduled separately from PreTrial Conferences of other defendants.

C. At the Rule 11 hearing, counsel shall request that matters regarding the In Camera Addendum be disclosed *in camera* and address the good cause basis for doing so.

D. If the court finds good cause, the court reporter shall label that portion of the transcript "*in camera.*"

E. The In Camera Addendum shall be retained by counsel until sentencing.

F. No later than two (2) days prior to sentencing, counsel shall disclose to opposing counsel and submit via email to lydon_ecf@scd.uscourts.gov copies of any motions related to the In Camera Addendum as well as any other documents for which *in camera* status, in whole or in part, is

requested. This includes confidential documents such as juvenile court and/or juvenile detention records, medical records, psychiatric or psychological records, family court records, and other documents that may relate to mental health, physical health, or personal safety of individuals.²

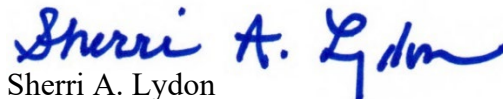
G. At sentencing, the In Camera Addendum, together with related motions and other documents for which good cause for *in camera* treatment is found by the court, shall be received by the Clerk and filed under seal.

H. No *in camera* sealed documents shall be disclosed to any person without an order of the court finding there is no longer good cause for sealed *in camera* treatment.

I. Notwithstanding the restriction in paragraph H above, the United States Attorney need not seek further leave of the court to disclose *in camera* the documents to the defense where necessary to comply with discovery obligations. Such disclosure shall be made subject to the terms of the Standing Order Governing Discovery entered in all criminal cases and any other discovery order entered in a case.

IT IS SO ORDERED.

May 17, 2024
Columbia, South Carolina


Sherri A. Lydon
United States District Judge

² The Fourth Circuit has recognized that “an interest in protecting the physical and psychological well-being of individuals related to litigation . . . may justify restricting access” to such documents. *United States v. Harris*, 890 F.3d 480 (4th Cir. 2018).