

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

PLEA AGREEMENT SUPPLEMENTS

Misc. No. 15- 475 (ADC)

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U.S. DISTRICT COURT
SAN JUAN, P.R.

GENERAL ORDER
RE: PLEA AGREEMENTS AND PLEA SUPPLEMENTS

Years ago, some Plea Agreements were being filed under seal. This event flagged the particular defendant as a cooperator regardless of the reasons for which the Plea Agreement might have been sealed. This exposed the defendant and at times, his relatives, to danger.

Later on, Local Rule 111 of the Local Rules for the District of Puerto Rico was enacted. It provides for the filings of Plea Agreements without a restriction level. It also provided for Plea Supplements to be filed under seal, at all times and regardless of whether the defendant was cooperating with law enforcement authorities or not. *See* Local Rule 111(b). The restriction level was intended to avoid singling out cooperators and subjecting them to undue prejudice or danger. The Court reasoned that since all Plea Supplements would be sealed, no one defendant would be treated differently from the others.

Unfortunately, this restriction has proven inadequate to serve the purposes for which it was instituted. The Court is aware that, particularly in indictments involving large numbers of defendants, it is routine practice at MDC and at institutions at which defendants from this district serve their sentences, that their sentencing documents are demanded of them by other inmates, on threat of violence, for failure to prove that they did not cooperate or comply with the safety valve. The Court is also aware that some defendants demand copies of those documents from their counsel, arguing grave security concerns, and thus obtain copies from counsel in order to comply with the demands of other inmates.

The responses from defense counsel to the type of inquiry from clients or former clients varies.

To ensure the clear objectives of Local Rule 111, the integrity of proceedings and in the best interests of all defendants, from now on, the parties shall proceed as follows:

a) The parties shall ensure that Plea Agreements are sanitized as to any reference as to whether a criminal defendant has agreed to cooperate with the United States, or has complied with safety valve provision under U.S.S.G. §5C1.2. *See* Local Rule 111(b) and (c).

b) Plea Agreement Supplements shall indicate whether the criminal defendant has entered into a cooperation agreement, and if so, outline its terms and conditions.

c) The Plea Agreement Supplement is to be signed and filed in open court. The Clerk of Court will proceed to file all Plea Agreement Supplements under seal.

d) Consistent with the provisions of Local Rule 111(d): "The docket entry noting the filing of the sealed Plea Agreement Supplement shall be publicly available on ECF, but the document itself, shall only be available to the Court".

e) Once filed under seal, all Plea Agreement Supplement(s) may be disclosed to trial or appellate counsel upon good cause shown.

In sum, all Plea Agreement Supplements are to be signed in open court and filed under seal, available to the Court only.

SO ORDERED.

At San Juan, Puerto Rico, on this 6th day of October, 2015.


S/AIDA M. DELGADO-COLÓN
Chief United States District Judge