

*United States Department of Justice*

*United States Attorney  
Southern District of West Virginia*

TERESA L. DEPPNER, CLERK  
U.S. District Court  
Southern District of West Virginia

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Charleston, WV 25301  
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Charleston, WV 25326  
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October 9, 2013

Joseph M. Farrell, Jr., Esq.  
Farrell, White & Legg PLLC  
914 Fifth Avenue  
Huntington, WV 25772

Re: United States v. Dallas L. Toler

Dear Mr. Farrell:

This will confirm our conversations with regard to your client Dallas L. Toler (hereinafter "Mr. Toler"). As a result of these conversations, it is agreed by and between the United States and Mr. Toler as follows:

1. **CHARGING AGREEMENT.** Mr. Toler agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as Plea Agreement Exhibit A.

2. **RESOLUTION OF CHARGES.** Mr. Toler will plead guilty to a violation of 42 U.S.C. § 1973gg-10 (procuring a false voter registration application) as charged in the Information attached hereto as Plea Agreement Exhibit A.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Toler will be exposed by virtue of this guilty plea is as follows:

- (a) Imprisonment for a period of five years;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;

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- (c) A term of supervised release of three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Toler will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Toler will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Toler fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Toler.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Toler agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Toler further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

6. **RESIGNATION FROM OFFICE.** Mr. Toler agrees that, on or before October 10, 2013, he will resign his office as a Magistrate of Mingo County, West Virginia. Moreover, Mr. Toler agrees that he will not seek or serve in any public office at any time after his resignation from office pursuant to this agreement.

7. **COOPERATION.** Mr. Toler will be forthright, truthful,

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and cooperative with this office and other law enforcement agencies with regard to all inquiries and requests made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Toler may have counsel present except when appearing before a grand jury. Further, Mr. Toler agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in other indictments or informations.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Toler, and except as expressly provided for herein, nothing contained in any statement or testimony provided by Mr. Toler pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Toler, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Toler for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Toler for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Toler stipulate and agree that the facts comprising the offense of conviction and relevant conduct include the facts outlined in the Stipulation of Facts, a copy of which is attached hereto as Plea Agreement Exhibit B.

Mr. Toler agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Toler, and Mr. Toler is subsequently tried, the United States may use and introduce the Stipulation of Facts in the United States' case-in-chief, in cross-examination of Mr. Toler or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Toler or on his behalf. Mr. Toler knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of

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the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Toler understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

**11. AGREEMENT ON SENTENCING GUIDELINES.** Based on the Stipulation of Facts attached hereto as Plea Agreement Exhibit B, the United States and Mr. Toler agree that the following provisions of the United States Sentencing Guidelines apply to this case.

USSG § 2H2.1

Base offense level

6

The United States and Mr. Toler have no agreement as to the applicability of any other provisions of the United States Sentencing Guidelines.

The United States and Mr. Toler acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

**12. WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Toler knowingly and voluntarily waives the right to seek appellate review of his conviction and of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 6. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 6.

Mr. Toler also knowingly and voluntarily waives the right

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to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Toler knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Toler;
- (f) Advise the Court concerning the nature and extent of Mr. Toler's cooperation; and
- (g) Address the Court regarding the issue of Mr. Toler's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Mr. Toler violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

16. **ENTIRETY OF AGREEMENT.** This written agreement

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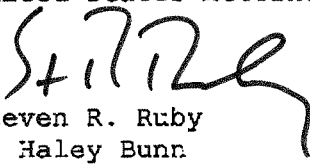
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constitutes the entire agreement between the United States and Mr. Toler in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Toler in any Court other than the United States District Court for the Southern District of West Virginia.


Acknowledged and agreed to on behalf of the United States:

R. BOOTH GOODWIN II  
United States Attorney


By:

  
Steven R. Ruby  
C. Haley Bunn  
Assistant United States Attorneys

I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this six-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

  
\_\_\_\_\_  
Dallas L. Toler  
Defendant

10-9-13  
Date Signed

  
\_\_\_\_\_  
Joseph M. Farrell, Jr.  
Counsel for Defendant

10/9/2013  
Date Signed

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON**

**UNITED STATES OF AMERICA**

v.

**CRIMINAL NO.** \_\_\_\_\_

**42 U.S.C. § 1973gg-10  
18 U.S.C. § 2**

**DALLAS L. TOLER**

**I N F O R M A T I O N**

The United States Attorney charges:

In or about April 2012, in Mingo County, West Virginia, within the Southern District of West Virginia, in an election for Federal office, defendant DALLAS L. TOLER ("TOLER") knowingly and willfully deprived and defrauded and attempted to deprive and defraud the residents of the State of West Virginia of a fair and impartially conducted election process by the procurement and submission of a voter registration application that he knew to be materially false, fictitious, and fraudulent under the laws of the State of West Virginia, in that he procured and submitted, and caused to be procured and submitted, a voter registration application in the name of a person known to the United States Attorney (the "Known Person"), which voter registration application stated that the Known Person was not under conviction, probation, or parole for a felony, when in truth and fact, as TOLER then well knew, the Known Person was on probation for a felony at the time the voter registration application was completed and submitted.

In violation of Title 42, United States Code, Section 1973gg-10, and Title 18, United States Code, Section 2.

**UNITED STATES OF AMERICA  
R. BOOTH GOODWIN II  
United States Attorney**

By:

\_\_\_\_\_  
**STEVEN R. RUBY  
C. HALEY BUNN  
Assistant United States Attorneys**

**PLEA AGREEMENT EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON**

**UNITED STATES OF AMERICA**

**v.**

**CRIMINAL NO. \_\_\_\_\_**

**DALLAS L. TOLER**

**STIPULATION OF FACTS**

The United States and Dallas L. Toler ("Mr. Toler") stipulate and agree that the facts comprising the offenses of conviction in the Information in the Southern District of West Virginia, Criminal No. \_\_\_\_\_, include the following:

In or about April 2012, Mr. Toler was a magistrate for Mingo County, West Virginia, in the Southern District of West Virginia, having been appointed to that position in or about January 2012, and was a candidate in an election to retain the office of magistrate. Mr. Toler was a member of a group of candidates for various county offices in Mingo County who dubbed themselves "Team Mingo" for purposes of campaigning and fundraising. Mr. Toler and other members of Team Mingo expected that certain members of Team Mingo would face close races in the 2012 primary election, which was set to be held in May 2012. Consequently, Mr. Toler and other members of Team Mingo mounted a drive to identify potential voters who were expected to support Team Mingo's candidates and to register and persuade as many of those people as possible to vote in the 2012 primary election.

At all relevant times, Mr. Toler was the landlord of several rental properties in and around Mingo County, West Virginia. In or about April 2012, Mr. Toler visited one of his rental properties to collect rent. During this visit, Mr. Toler encountered a person, whose identity is known to Mr. Toler and the United States Attorney (the "Known Person"), who was temporarily staying with one of Mr. Toler's tenants. During this visit, Mr. Toler learned that the Known Person was on probation for a felony. Subsequently, and also in or about April 2012, Mr. Toler encountered the Known Person in or around the Mingo County courthouse. During this encounter, Mr. Toler learned that the Known Person was on his way to provide a urine sample for drug testing as a condition of his probation. Mr. Toler knew that because the Known Person was on probation for a felony, he was ineligible to vote under the laws of the State of West Virginia. Despite his knowledge that the Known Person was on probation for a felony and thus ineligible to vote, Mr. Toler advised the Known Person, during this encounter in or around the courthouse, that Mr. Toler would arrange for the Known Person to be registered to vote in the 2012 primary election.

Mr. Toler then procured the completion and submission of a voter registration application in the name of the Known Person (the "Application"). Mr. Toler caused the Application to be completed and caused it to include a false statement that the Known Person was not on probation for a felony. Mr. Toler knew that this false statement was material under the laws of the State of West Virginia, in that a person on probation for a felony was ineligible to vote under those laws.

**PLEA AGREEMENT EXHIBIT B**



Mr. Toler thus knowingly and willfully procured and caused to be submitted a voter registration application that was materially false, fictitious, and fraudulent under the laws of the State of West Virginia, thereby knowingly and willfully depriving and defrauding, and attempting to deprive and defraud, the residents of West Virginia of a fair and impartially conducted election process.

The 2012 primary election in Mingo County included races for Federal offices, including races for President of the United States, United States Senate, and United States House of Representatives.

On or about April 23, 2012, after receiving a voter registration card as the result of Mr. Toler's actions, the Known Person unlawfully voted in the 2012 primary election in Mingo County.

All these events occurred in Mingo County, West Virginia, and within the Southern District of West Virginia, in or about ~~February and March~~ <sup>April</sup> 2012.

This Stipulation of Facts does not contain each and every fact known to Mr. Toler and to the United States concerning Mr. Toler's involvement in the charges set forth in the Information, and is set forth for the limited purpose of establishing a factual basis for the defendant's guilty plea.

SR 12/2/13  
JF 12/2/13  
DT 10/2/13

Stipulated and agreed to:

Dallas L. Toler  
DALLAS L. TOLER  
Defendant

10-9-13  
Date

Joseph M. Farrell, Jr.  
JOSEPH M. FARRELL, JR.  
Counsel for Defendant

10/9/2013  
Date

Steven R. Ruby  
STEVEN R. RUBY  
C. HALEY BUNN  
Assistant United States Attorneys

10/9/13  
Date