United States Department of Justice

United States Attorney
Southern District of West Virginia

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January 24, 2023

David R. Bungard
Assistant Federal Public Defender
3400 Robert C. Byrd U.S. Courthouse
300 Virginia Street, East
Charleston, West Virginia 25301

Re: United States v. Calvin Butler
Criminal No. 2:22-cr-00161 (USDC SDWV)

Dear Mr. Bungard:

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

1. **PENDING CHARGES.** Mr. Butler is charged in a two-count indictment as follows:

(a) Count One charges Mr. Butler with a violation of 18 U.S.C. § 1343 (wire fraud); and

(b) Count Two charges Mr. Butler with a violation of 18 U.S.C. § 1343 (wire fraud)).

2. **RESOLUTION OF CHARGES.** Mr. Butler will plead guilty to Count Two of said indictment, which charges him with a violation of 18 U.S.C. § 1343 (wire fraud). Following final disposition, the United States will move the Court to dismiss Count One in Criminal No. 2:22-cr-00161.

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

(a) Imprisonment for a period of 20 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;

(c) A term of supervised release of 3 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. Butler 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. Butler 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. Butler 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. Butler.

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5. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Butler agrees that he owes restitution in the amount of $18,540 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Butler further agrees as follows:

(a) Mr. Butler agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.

(b) Mr. Butler will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.

(c) Mr. Butler agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest, including:

(d) Mr. Butler agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.

(e) Mr. Butler agrees not to appeal any order of the District Court imposing restitution unless the amount of restitution imposed exceeds the amount set forth in this plea agreement. However, nothing in this provision is

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intended to preclude the Court from ordering Mr. Butler to pay a greater or lesser sum of restitution in accordance with law.

6. **FORFEITURE.** Mr. Butler hereby agrees as follows:

(a) To forfeit to the United States any and all property in Mr. Butler's possession or under his control which constitutes proceeds of or is derived from the proceeds of the offense to which Mr. Butler is agreeing to plead guilty, and is set forth in this information, namely a violation of 18 U.S.C. § 1343. Mr. Butler further agrees not to contest a forfeiture money judgment in the amount of $16,040, which amount constitutes the proceeds of the violation set forth in the attached information;

(b) To assist the United States and its agents in identifying all such property, regardless of its location and the manner in which it is titled. Any such identified property deemed forfeitable by the United States will then be forfeited, pursuant to 18 U.S.C. §§ 981, 982 or 28 U.S.C. § 2461, in either an administrative or judicial forfeiture action;

(c) To fully complete and execute, under oath, a Financial Affidavit in a form supplied by the United States and to return to counsel for the United States the completed Affidavit within seven calendar days from the date of signing this plea agreement;

(d) To provide sworn testimony and to execute any documents deemed necessary by the United States to effectuate the forfeiture and to transfer title to the said property to the United States; and

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(e) To waive any defenses to this criminal action, or to any related administrative or judicial forfeiture action, based in whole or in part on the Excessive Fines Clause of the Eighth Amendment to the Constitution, or the holding or principles set forth in United States v. Alexander, 509 U.S. 544 (1993); United States v. Bajakajian, 524 U.S. 321 (1998); United States v. Austin, 509 U.S. 602 (1993); and their progeny.

7. **PAYMENT OF MONETARY PENALTIES.** Mr. Butler authorizes the Financial Litigation Program in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess his financial condition for sentencing purposes. Mr. Butler 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. Butler 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.

Mr. Butler authorizes the United States, through the Financial Litigation Program, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In addition to any payment ordered by the Court, Mr. Butler shall pay all monies received from any source other than earned income, including but not limited to, lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds, toward the court ordered restitution or fine.

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Mr. Butler agrees that if he retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, he shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Program, 300 Virginia Street E., Suite 4000, Charleston, West Virginia 25301, in writing and shall instruct his attorney to notify FLP immediately of his representation.

8. **COOPERATION.** Mr. Butler will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries 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. Butler may have counsel present except when appearing before a grand jury.

9. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Butler, and except as expressly provided for in paragraph 11 below, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

10. **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. Butler for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Butler for perjury or false statement if such a situation should occur pursuant to this agreement.

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

Mr. Butler agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and Mr. Butler is subsequently tried for his conduct alleged in the Indictment and other relevant conduct, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Butler or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Mr. Butler 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 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. Butler 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.

12. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Butler agree that the following provisions of the United States Sentencing Guidelines apply to this case.

Description	Guideline Section	Offense Level
Base Offense Level	§2B1.1(a)(1)	7
Loss Greater Than $15,000	§2B1.1(b)(1)(C)	+ 4
Adjusted Offense Level		11

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The United States and Mr. Butler 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.

13. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Butler knowingly and voluntarily waives the right to seek appellate review of his conviction and of any sentence of imprisonment, fine or term of supervised release 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, fine or term of supervised release is below or within the Sentencing Guideline range corresponding to offense level 11, regardless of criminal history category. Mr. Butler also knowingly and voluntarily waives any right to seek appellate review of any claim or argument that (1) the statute of conviction in 18 U.S.C. § 1343 is unconstitutional, and (2) Mr. Butler's conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit A) does not fall within the scope of 18 U.S.C. § 1343.

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 9, regardless of criminal history category.

Mr. Butler also knowingly and voluntarily waives the right 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.

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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.

14. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Butler 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.

15. **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. Butler;

(f) Advise the Court concerning the nature and extent of Mr. Butler's cooperation; and

(g) Address the Court regarding the issue of Mr. Butler's

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acceptance of responsibility.

16. **VOIDING OF AGREEMENT.** If either the United States or Mr. Butler 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.

17. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Butler in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Butler 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:

WILLIAM S. THOMPSON
United States Attorney

By: M.R.B.

M. RYAN BLACKWELL
Assistant United States Attorney

MRB/tlm

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 11-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

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this matter.

Calvin Butler 1/31/23

Calvin Butler
Defendant

Date Signed

David R Bungard 1/31/23

David Bungard
Counsel for Defendant

Date Signed

M. Ryan Blackwell 2/21/23

M. Ryan Blackwell
Assistant United States Attorney

Date Signed

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:22-cr-00161**

CALVIN BUTLER

STIPULATION OF FACTS

The United States and Calvin Butler (hereinafter, "defendant" or "I" or "my") stipulate and agree that the facts comprising the offense of conviction in Count Two of the two count Indictment filed in the Southern District of West Virginia (Criminal No. 2:22-cr-00161), and the relevant conduct for that offense include the following:

From mid-April 2021, to June 9, 2021, I knowingly participated in a scheme to defraud and obtain money from a lender and the Small Business Administration through the Paycheck Protection Program ("PPP"). I maintained an account on Instagram, a social media platform on the Internet. I had previously seen posts from other users which talked about getting PPP loans and then getting them forgiven. Through Instagram, I met another person whose username was "4dripzz" who told me that if I provided him with required personal information, he could prepare the necessary paperwork for the loan application and submit the same on my behalf. I was told by "4dripzz" that I would need to pay $2,000 to him from the proceeds of any PPP loan that I received. I knew that I was not eligible to receive a PPP loan because I did not own a business and was not previously self-employed. I decided to proceed with this scheme, knowing that it was wrong, because I needed money to pay my bills.

I proceeded to provide "4dripzz" with all of my personal information, such as address, my interest in becoming a barber, my social security number, my phone number, my iCloud email address, the password to access and use that iCloud email account on my behalf, my account number of my checking account with Huntington National Bank, the password to access that checking account over the Internet, a photo of my driver's license, and a recent photo of myself. It is my understanding that "4dripzz" took all of that personal information and submitted an application for a PPP loan on my behalf. I am now aware that the application which was submitted by "4dripzz" on April 25, 2021, falsely represented that in 2020, I operated a barbershop and received $77,000 in gross income during that year.

A PPP lender approved the fraudulent application which "4dripzz" had submitted on my behalf. On June 7, 2021, $16,040 was deposited into my checking account with Huntington National Bank as the result of an ACH transfer from a financial institution in Tennessee. I knew that this deposit was the result of the PPP application which "4dripzz" submitted on my behalf. Starting on June 7, 2021, I withdrew $15,000 of this deposit in three increments of $5,000 and did not spend the money on any legitimate business expenditures. I made each of the $5,000 withdraws at a Huntington National Bank branch located in South Charleston, Kanawha County, West Virginia.

I agree that I received $16,040 in PPP funds which I was not entitled to receive as the result of the scheme to defraud which I entered into with "4dripzz." I also agree that Huntington National Bank has a branch located in South Charleston, Kanawha County, West Virginia, which is within the Southern District of West Virginia.

This Stipulation of Facts does not contain every fact known to Mr. Butler and to the United States concerning his involvement in the charge set forth in Count Two of the Indictment as well as his relevant conduct.

Stipulated and agreed to:

Calvin Butler — 1/31/23
Calvin Butler
Defendant
Date

David R. Bungard — 1/3/23
David R. Bungard
Counsel for Defendant
Date

M. Ryan Blackwell — 2/21/23
M. Ryan Blackwell
Assistant U.S. Attorney
Date