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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 United States of America,)
12) Case No.: CR 18-1584-TUC-RM (BGM)
13 Plaintiff,)
14 vs.) MOTION TO SUPPRESS
15) INVOLUNTARY STATEMENT
16)
17 1. Mustaf Adan Arale,)
18)
19 Defendant.)

20 It is expected that excludable delay under Title 18 U.S.C. §3161(h)(1)(F) will
21 occur as a result of this motion or of an order based thereon.

22 The defendant, Mustaf Arale, through his attorney, Jon Young, hereby moves to
23 suppress his June 27, 2017, interview as involuntary, having been based on promises that
24 this was an opportunity for a bigger win, that Mr. Arale could trust them, that they would
25 talk to the prosecutors and see what they could do, what they could work out, that an
immigration investigator has a lot of influence and can make recommendations, that
honesty is well regarded in the U.S. legal system and that honest people have different
outcomes, that they would like to see Mr. Arale and his wife and children stay here and
go to school here and continue to work, but it would have to start from a place of Mr.

1 Arale talking, and that Mr. Arale would only help himself by talking to them and by
2 continuing to talk to them.

3 **FACTS:**

4
5 Prior to talking to HSI special agent Ian Cruikshank (IC) and FBI special agent
6 Ben Trentlage (BT), Mr. Arale questioned why he would talk to them, given his
7 understanding, from the Miranda warnings that were previously read to him when his
8 home was searched, that what he said would be used against him. Their response was a
9 threat to deport Mr. Arale and his family if he did not talk to them and a promise to use
10 their influence on his behalf if he did talk to them. They told Mr. Arale that the
11 prosecutor had personally said that a lot depended upon this particular interview. And
12 they promised Mr. Arale repeatedly that he could trust them and that he would only be
13 helping himself.
14

15 MA: Not right now. But, you are preparing so, I—last time I remember
16 when they— when you were searching my home—

17 IC: Yes.

18 MA: —they took me in the car and they asking me to sign a [UI], uh, to
19 sign.

20 IC: The—that was called a—a Miranda Rights Advisement. So, at that
21 point, because of all of the police that was here—that were here and
22 that you were taken out of your apartment and put into one of our
23 vehicles, they wanted to talk with you as— as we do right now. But
24 they just, uh, wanted to—b-because you probably didn't feel like
25 you were free to leave or free to end the discussion they, uh, they felt
that it was necessary to advise you o-of your rights to an attorney
and your rights to not speak to us, which certainly applies. You don't
have to talk to us right now, you can certainly talk to a lawyer first.

MA: Yes, b-but, uh, the things that, uh—uh, hit me was like, we—and
when you sign you gonna use, your words, against you so—

1 IC: Oh, [OV] I see.

2 MA: [OV] You know what I mean? If I tell you something today—

3 IC: Mhmm.

4 MA: —you gonna use against me. So, why would I talk? Uh, [UI] [OV]—

5 IC: Well—

6 MA: —how I say [UI]?

7 IC: —what—what we—

8 MA: Like—like if I—so, let me—gonna put me behind bars. There's no way I'm gonna, uh, increase my penalty or how I say—

9 IC: Well there—

10 BT: [UI].

11 IC: —there are two—two considerations that you need to have.

12 There's—there's your immigration status, right? Your—your—you and your family being in the United States. And then there's, uh, the criminal side which is what led to the actual search warrant, okay?

13 The search warrant we got because we went in front of a judge and we said, we believe that, uh, this individual has made some false statements and there are some criminal charges that apply for that.

14 So—but you have not been charged, um, but we believe that there are certain things that—that you've said and done, that lead to that.

15 But, no decision has been made yet as to what we're going to do. So, what we want to do today, is give you the opportunity to tell us what we—we hope to know. Because as—as we mentioned on—on

16 Thursday when we were here, what we hope to achieve is the—the bigger win for the United States, okay? And what we believe the bigger win would be, is talking to you, finding out what you—what

17 you know and telling us some of the things that we believe you know. And things that we already know, uh, we think the— the—

18 that is more important than taking away your immigration status and sending you back to Africa.

19 MA: [OV] I understand.

20 IC: Okay?

21 MA: I—the—the things I want is you can see me actually, I am [UI] disable—

22 IC: Mhmm.

1 MA: This [UI] really in this life for me. Because I have nothing, but to do,
except my children.

2 BT: Yeah.

3 MA: And so, eh, okay. You say that it's not [UI] you can—I can trust
4 you—you, but I don't know if the—the goal you want to achieve,
you—you say this big goal.

5 IC: Mhmm.

6 MA: But, if I help you that goal, I'm sure these charges you going to do it,
7 this—it— won't stop so, that's the problem. If I can—if—if this
charge I know, you guys I'm not, like Somali—the Somali [UI] so,
8 you are, uh, always obeyed the U.S. Constitution.

9 IC: Mhmm.

BT: Mhmm, yeah.

10 MA: And even if I do, uh, how you say that—long term, you—if I help
11 you long— even in the long term, these charges are going on the—
they're go—[UI].

12 IC: Well that's—that's [OV]—

13 MA: It is [UI]—

14 IC: Okay.

15 BT: Well, you never know. So, here's the thing we, um, as long as we
start from a foundation of honesty and truth, um, we can talk to
prosecutors. We can talk to the courts. We can try and work
something out, you know. We can't—we can't promise you that we
16 can make the charges go away, we can't promise you anything like
17 that today. But, if we talk today and—and you're honest with us,
18 um, and we'll be honest with you. Um, what—we could see what—
what we can do, you know?

19 IC: [OV] Yeah.

20 BT: We could see what we could work out.

21 IC: Th-there—there is a prosecutor assigned and I have spoken to here
and, uh, she said that a lot depends on this interview today, on—on
how things are going to move forward.

22 BT: So, [OV] I—I mean—

23 IC: So, it's—

24 BT: —it's kind of up to you.

25 IC: Yeah.

BT: You know, and it's like, do you—would you like to start from a—
from a place of honesty with each other? You know, from a place of
just talking about everything that—I mean, we already know a lot,

1 you know it'd just be talking about it. You know? Putting everything
2 out in the open. What do you think?

3 MA: Uh, okay. Actually, it can't take, because it is very difficult for me if
4 you cannot promise and I tell you plenty of information. Just use all
5 this against me. This very—very—I know what you know and I can
6 [UI] because, I have a—I know what you know. I—I think I can
7 guess 85 percent, what you have.

8 BT: Mhmm.

9 MA: So, I'm afraid, like, what you have. It become a, like, uh, how to say,
10 uh, uh, tip of the ice— you say, like, tip of the iceberg.

11 BT: Mhmm.

12 IC: Mhmm.

13 MA: So, on that, let me really very serious decision. Because if any—if
14 you c-cannot, ah, guarantee no matter what I did for the interest of
15 this country—

16 IC: Mhmm.

17 MA: —it will get me, uh, then actually, this very hard meeting.

18 IC: Okay. Here's what I can guarantee, if you—if you sit with us and
19 you speak with us and you—you give us the full story and you
20 answer our questions honestly, then we will talk to the prosecutor
21 and we will say listen, he—he gave us the full story, we believe that
22 what he has to offer us is more important than moving forward with
23 this charge. If that, you know, that's not a guarantee, that it won't
24 happen, I—I realize that. But, what we have to say is very [OV]
25 important to the prosecutor.

MA: [OV] It's not—can—can you say that again?

IC: Okay, so, what—what I—what I promise you is that if we have an
26 honest discussion today, I will—I will talk to the prosecutor and I
27 will say what he had to say and what he has to offer us, and being
28 eh—eh—you know the truthful information that he gave to us, is
29 more important than moving forward with the criminal charge. I will
30 say that, okay? I will—I will promise that. Because, we think what
31 you know and what you can tell us is more important than that. Th-
32 this is much larger than just charging you with lying to immigration,
33 okay? We believe that there are things that you can tell us that are
34 much more important than that.

MA: Okay.

1 IC: —and the criminal case. So, there is the—the prosecutor that we’re
2 working with that we generated the search warrant with and went in
3 front of the judge with and then there’s the immigration side and—
4 and I’m an immigration investigator, okay? So, uh, that’s—that’s
5 also something that, uh, we can’t make any solid guarantees on. But,
6 I have a lot of influence and I can make recommendations.

7 BT: —you know, if—maybe if we can form a relationship of trust with
8 each other that we could talk about some of that stuff—

9 IC: Yeah.

10 BT: —you know?

11 IC: That is more—

12 BT: [OV] And if you can—if you can help us with that kinda stuff, then
13 maybe we can help you here, you know, and you know, maybe we
14 can help. We could—you know, if this conversation goes well today,
15 maybe we could, uh, schedule something where we all sit down with
16 the prosecutor or something, you know what I mean, or something
17 like that. I don’t know. What do you think?

18 IC: Here’s—here’s where you need to have, uh, the little bit of trust
19 and—and we’re asking you and I—I understand and I appreciate that
20 you don’t really have reason to trust us. But, if you don’t talk to us,
21 then we’re going to move forward with everything that, uh, that
22 you’re afraid of.

23 BT: Basically, like, we—we keep—we keep working you know, whether
24 you wanna talk to us or not, we have to keep doing our job. Our job
25 is to find out the truth, right?

IC: Mhmm.

BT: We already know most of the truth, right? Like you said, you could
probably guess 85 percent of what we know already, you know? I—
you could probably guess more than that. You could probably guess
it all if you thought about it enough, you know? But, um, I think just
the most important thing to understand in situations like this, is that,
um, in the U.S legal system, um, honesty is well regarded. You
know what I mean? Like, judges, prosecutors, investigators like us,
um, look at people differently who have been honest and who have
you know, been straight forward and come clean and said, okay,
here’s—here’s everything. Here’s what really happened, you know,
here’s—here’s the truth, and just lay it out there. Um, people like
that have different outcomes usually, you know? You—people—the
same person who’s, done the same thing, if they’re honest about it i-
is usually at a much better place afterwards than, you know,
somebody who tries to conceal and hide everything.

1 IC: Here's what I would like to see as the outcome. I would like to see
2 you, your wife and your children stay here, your children go to
3 school here, your wife continue to work, you can continue to work
4 and you know, make some money. And y-you—

5 BT: Go to school.

6 IC: Yeah, you're going to school, your—your, you know—

7 MA: That's possible?

8 BT: Yeah, I mean—

9 IC: That's possible.

10 BT: What—

11 IC: That's what I would like to see but, unless we have the conversation
12 that we wanna have, that is not likely at all, okay? But it's a
13 possibility. You don't wanna—you don't wanna throw that away.

14 BT: Possibility—it just starts from a place of us talking, you know? And
15 you don't have to feel like—you don't have to tell us everything,
16 right? You don't have today. You know, we can—we can do this
17 slowly, we could start from just the base level, right? We can get to
18 know each other, we can talk a little today—

19 IC: Yeah.

20 BT: —we can talk a little in a few days, you know?

21 IC: Yeah, we can build that trust—

22 BT: Yeah.

23 IC: —to where you—we can prove to you that we're being honest with
24 you.

25 BT: You know?

IC: And that way you can continue to—we—we would rather have a
relationship with you—

BT: Yeah.

IC: —where we continue to talk to you. That is i-it's a big part of what
we do, is—is talking to people that have, uh, initially been people
that we've looked at for cases, because they've got information
that's more important to us than whatever charge we were looking
at, at the beginning.

BT: A lot of people try—

MA: Okay, this charge is—it is for me or all for all of my family?

IC: You. But, your wife also is—has been supporting it. So, but right
now it—it's just you.

BT: But, you understand, the situation can—

IC: Yeah.

BT: —affect your entire family. So, you know, like what happens can
affect everybody. So, what—what would be the—what would be the

1 best outcome in your mind? Like, what—what would you like to
2 happen? What would you like to be the end result of all this?

3 MA: So, I want to be here and raise my children in this country. And live
4 peacefully so, but, that's what I wanted to see.

5 BT: Yeah.

6 IC: That is possible. You know, and that's what I would like to see
7 happen too.

8 (Disclosure pp.765-774.)

9 IC: Okay? Um, and you—you're not going—you—you'll only help
10 yourself by—by talking with us, 'kay?

11 MA: What's that?

12 IC: You—you will only help yourself by—by continuing to talk with us,
13 okay? So, like we talked about earlier, there—there are bigger things
14 that we're concerned about, that we, you know, we have you have
15 information on. So, thank you ver- very much for talking with us
16 [OV] about some of those things.

17 IC: So, you can—you can call us, you can ask us question, uh, if there's
18 something else that you'd like to talk about, we—we will be happy
19 to sit down and talk with you. We want to talk to you again. Um,
20 and, uh, this—this afternoon—tomorrow I will go ahead and talk
21 with, uh, with the attorney and we'll—we'll have a—a better idea of
22 what we can tell you about how things are moving forward, uh, the
23 next time we speak, okay? But, you helped yourself today.

24 MA: But when would I see this help? You know, when I will see—

25 (Disclosure pp.842-843.)

LAW:

Voluntariness

The voluntariness of a statement is subject to a well-established totality of the
circumstances test:

1 “In short, the true test of admissibility is that the confession is made freely,
2 voluntarily and without compulsion or inducement of any sort.” (Emphasis
added.)

3 *Bram v. United States*, 168 U.S. 532 (1897). See also, *United States v. Coutchavavlis*,
4 260 F.3d 1149, 1158 (9th Cir. 2001)(“The test is whether, considering the totality of the
5 circumstances, the government obtained the statement by physical or psychological
6 coercion or by improper inducement so that the suspect's will was overborne. A statement
7 is involuntary if it is "extracted by any sort of threats or violence,[or] obtained by any
8 direct or implied promises, however slight, [or] by the exertion of any improper
9 influence.”) (Emphasis added.) quoting *United States v. Guerrero*, 847 F.2d 1363, 1366
10 (9th Cir. 1988) quoting in turn *Hutto v. Ross*, 429 U.S. 28, 30 (1976) and *Bram v. United*
11 *States*, 168 U.S. 532, 542-43 (1897).

12
13 *Bram* also carried forward as part of the totality the “direct or implied promises,
14 however slight” language which was already well established by the 19th century:
15

16 “But a confession, in order to be admissible, must be free and voluntary:
17 that is, must not be extracted by any sort of threats or violence, nor obtained
18 by any direct or implied promises, however slight, nor by the exertion of
19 any improper influence. A confession can never be received in evidence
20 where the prisoner has been influenced by any threat or promise; for the
law cannot measure the force of the influence used, or decide upon its
effect upon the mind of the prisoner, and therefore excludes the declaration
if any degree of influence has been exerted.”

21 “The human mind under the pressure of calamity, is easily seduced; and is
22 liable, in the alarm of danger, to acknowledge indiscriminately a falsehood
23 or a truth, as different agitations may prevail. A confession, therefore,
24 whether made upon an official examination or in discourse with private
25 persons, which is obtained from a defendant, either by the flattery of hope,
or by the impressions of fear, however slightly the emotions may be
implanted, is not admissible evidence; for the law will not suffer a prisoner

1 to be made the deluded instrument of his own conviction.” (Emphasis
added.) (Emphasis added.)

2 *Bram v. United States*, 168 U.S. at 542-547. The implied promise in *Bram* which
3 rendered his confession inadmissible was simply a suggestion that the defendant not
4 shoulder the blame alone:
5

6 “some of us here think you could not have done all that crime alone. If you
7 had an accomplice, you should say so, and not have the blame of this
horrible crime on your own shoulders.”

8 *Bram* at 564. The court there felt that this statement implied that some benefit could be
9 had from spreading the blame to other shoulders as well:
10

11 “But how could the weight of the whole crime be removed from the
12 shoulders of the prisoner as a consequence of his speaking, unless benefit
as to the crime and its punishment was to arise from his speaking? . . .
13 [T]he weight to be removed by speaking naturally imported a suggestion of
14 some benefit as to the crime and its punishment as arising from making a
statement.”

15 *Bram* at 564. In suppressing the defendant’s statement in *Bram*, the court cited with
16 approval a long list of similar cases with similar holdings: *Reg. v. Drew*, (1837) 8 Car. &
17 P. 140, and *Reg. v. Harris*, (1844) 1 Cox C.C. 106 (the statement that what the prisoner
18 said would be taken down, and "would" be used for or against him at his trial held to be
19 equivalent to saying that what the prisoner chose to say might be used in his favor at the
20 trial, and was a direct inducement to make a confession, rendering the statement
21 incompetent as evidence); *In Rex v. Thompson*, (1783) 1 Leach, (4th ed.) 291 (statement
22 that unless suspect gave a more satisfactory account of his connection with a stolen bank
23 note his interrogator would take him before a magistrate); *Cass' case*, (1784) 1 Leach,
24 293 (statement of the prosecutor to the accused, “I am in great distress about my irons; if
25

1 you will tell me where they are, I will be favorable to you”); *Rex v. Griffin*, (1809) &
2 Russ. & Ry. 151 (telling the prisoner that it would be better for him to confess); *Rex v.*
3 *Kingston*, (1830) 4 Car. & P. 387 (“you are under suspicion of this, and you had better
4 tell all you know”); *Reg. v. Garner*, (1848) 1 Den. C.C. 329 (“It will be better for you to
5 speak out”); *Reg. v. Cheverton*, (1862) 2 F. & F. 833 (“you had better tell all about it, it
6 will save you trouble”); *In Reg. v. Fennell*, (1881) 7 Q.B.D. 147 (“you had better tell the
7 truth, it may be better for you”); *Kelly v. State*, (1882) 72 Alabama, 244 (“the best thing
8 you can do is to tell all about it”); *People v. Barrie*, 49 California, 342 (“it will be better
9 for you to make a full disclosure”); *People v. Thompson*, (1890) 84 California, 598 (“It
10 will be better for you to come out and tell all you know about it”); *Beery v. United States*,
11 (1893) 2 Colorado, 186 (“it will be better for you to confess”); *State v. Bostick*, (1845) 4
12 Harr. (Del.) 563 (“you had as well tell all about it, the prosecution will be no greater, I
13 don't expect to do anything with you; I am going to send you home to your mother”);
14 *Green v. State*, (1891) 88 Georgia, 516 (“if you know anything, it may be best for you to
15 tell it”); *Rector v. Commonwealth*, (1882) 83 Kentucky, 468 (“if you will tell me where it
16 is, I will not prosecute you hard”); *Biscoe v. State*, (1887) 67 Maryland, 6 (“it will be
17 better for you to tell the truth and have no more trouble about it”); *People v. Wolcott*,
18 (1883) 51 Michigan, 612 (“it will be better for you to confess”); *People v. Phillips*,
19 (1870) 42 N.Y. 200 (“the best you can do is to own up; it will be better for you”); *State v.*
20 *Drake*, (1893) 113 N.C. 624 (“it might be easier for you”).

21
22
23
24 *In Shotwell Manufacturing Co. et al. v. United States*, 317 U.S. 341 (1963), a
25 corporation gave false statements in a bid for tax amnesty. The Supreme Court cited

1 Bram and the “direct or implied, however slight” language in *Bram* with approval but
2 declined to extend *Bram* to these circumstances.

3 In *Brady v. United States*, 397 U.S. 742 (1970), the defendant assisted by counsel
4 pled guilty to avoid the death penalty. The Supreme Court cited *Bram* and the “direct or
5 implied, however slight” language in *Bram*, again with approval, but declined to hold that
6 the possibility of a more serious sentence rendered his plea involuntary.

7
8 In *Hutto v. Ross*, 429 U.S. 28 (1976), the court again cited *Bram* and the “direct or
9 implied, however slight” language in *Bram* with approval and gave no indication that it
10 was changing its mind about the cases it had cited in *Bram*. The defendant in *Hutto* lost
11 because he had given a confession, with his attorney present, after they had been told that
12 they could have the plea bargain regardless of whether he confessed or not. There was no
13 benefit offered to him to get him to confess. Never has the Supreme Court repudiated
14 *Bram* or its “direct or implied, however slight” language nor has the Supreme Court ever
15 withdrawn its approval of the various examples of American and English common law
16 cases it cited in *Bram*.

17
18 The express promises and underlying implications that this was an opportunity,
19 that Mr. Arale’s information was more important than the case against him, that
20 immigration investigators have a lot of influence and that they have already talked to the
21 prosecutor who has told them that it all depends on how things go today, that they want to
22 see Mr. Arale and his wife and his children stay here and go to school here, that they
23 would tell the prosecutor that Mr. Arale’s information was more important than
24 prosecuting him and that Mr. Arale would only help himself by talking to them was all
25

1 far more blatant than the implied promises disapproved in *Bram*. The implication that
2 Mr. Arale would “help himself” or that he would be able to “raise his children in this
3 country” or that “I have a lot of influence and I can make recommendations” or that
4 “there is a prosecutor assigned . . . she said that a lot depends on this interview today”
5 is exactly the “be better for you” or “be used for or against you” language cited in *Bram*
6 as impermissible.
7

8 Dated December 31, 2018

9 s/S. Jonathan Young
10 S. JONATHAN YOUNG
11 LAW OFFICES OF WILLIAMSON & YOUNG, P.C.
12 Attorney for Defendant

13 Copies of the foregoing
14 served electronically or by other
15 means on December 31, 2018, to:

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17 Assistant United States Attorney
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