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6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

8
9 United States of America,

10 Plaintiff,

11 vs.

12 1. Mustaf Adan Arale,

13 Defendant.

No.: CR 18-1584-TUC-RM (BGM)

SENTENCING MEMORANDUM

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

16 The defendant, Mustaf Arale, through his attorney, Jon Young, hereby submits his
17 sentencing memorandum in this matter.

18 **Mr. Arale is Not Even Remotely Al-Shabaab**

19 Appendix 127 is a Facebook photo, posted July 19, 2016, of Mr. Arale's American
20 born son dressed for his first Fourth of July. Appendix 128 is a Facebook post of a
21

1 political cartoon by Amin Arts, posted May 1, 2016, depicting Al-Shabaab, among other
2 actors, reaching in to set fire to the house of Somalia. Appendix 129 is a Facebook post,
3 posted August 17, 2015, of Muhammed's Commands in Wars: Don't kill a child; Don't
4 kill a woman; Don't kill old people; Don't kill a monk or a priest; Don't enforce Islam;
5 Don't destroy a temple or a church; Don't destroy a building. Appendix 130 is a post of
6 the Somali flag posted September 23, 2015. Al-Shabaab will kill anyone who flies the
7 Somali flag; Al-Shabaab will kill anyone who even possesses a Somali Government
8 issued identification. Any of these posts would get Mr. Arale and his family killed in
9 Somalia if Al-Shabaab ever became aware of them.

10 At Appendix 131, Mr. Arale is a Facebook follower of the Deen Squad, a Muslim
11 hip-hop duo. At Appendix pp.132, Mr. Arale likes the Deen Squad. It is very safe to say
12 that Muslim hip-hop is entirely Al-Shabaab unapproved.

13 At Appendix 133, Mr. Arale is a Facebook follower of Hassan Sheikh Mohamud,
14 the eighth president of Somalia (from September 16, 2012 to February 16, 2017).
15 Hassan Sheikh Mohamud is the cofounder and chairman of the Peace and Development
16 Party. On September 12, 2012, two Al-Shabaab suicide bombers plus gunmen tried to
17 kill Hassan Sheikh Mohamud in a meeting in Mogadishu. On September 3, 2013, an Al-
18 Shabaab roadside bomb targeted Hassan Sheikh Mohamud's convoy in Merca, on the
19 coast near Mogadishu. On October 7, 2015, Al-Shabaab gunmen killed Hassan Sheikh
20 Mohamud's nephew, Dr. Liban Osman, in Mogadishu. Time Magazine named Hassan
21 Sheikh Mohamud one of the 100 most influential people in the world in April 2013.

1 Hassan Sheikh Mohamud worked in education at the Lafole Technical Secondary School,
2 at the Somali National University Technical Teacher’s College where he was the
3 department head, as a UNICEF education officer and as Dean of the Somali Institute of
4 Management and Administration.

5 At Appendix 134, Mr. Arale is a Facebook follower and a fan of Amin Arts News
6 and Amin Amir page-ka Ra’iga, the political cartoonist who depicted Al-Shabaab setting
7 fire to the house of Somalia. Mr. Arale has liked, shared or reposted at least ten of Amin
8 Arts political cartoons. Appendix 135-144. At Appendix 145, on May 16, 2016, Mr.
9 Arale reposted an Amin Arts poster of tribalism (war) versus nation building (peace)
10 along the Somali national road. When followers of Amin Arts named Somaliland
11 journalist Cabdimalik Muse Coldoon person of the year, on December 22, 2015, Mr.
12 Arale was so excited that he reposted it three times in the same day at Appendix 146-148.
13 Mr. Arale is an enormous fan of Cabdimaalik Muuse Coldoon and has liked, shared or
14 reposted links to Cabdimaalik Muuse Coldoon on at least 39 occasions. Appendix
15 149-187. At Appendix 188, on December 24, 2015, Mr. Arale posted a photo of
16 Cabdimaalik Muuse Coldoon, with the enormous selfie-stick he uses to film his video
17 reports, with the Somali language caption “Ethiopia wants us to fail. Somaliland blames
18 me for supporting Mogadishu.”

19 Mr. Arale is also an enormous fan of Somali arts, literature and music. At
20 Appendix 189, Mr. Arale’s profile picture on December 12, 2015, is Photo of Somali
21 Poet/Songwriter/Playwright Maxamed “Hadrawi” Ibraahim Warsame, Somalia’s greatest

1 living poet, likened to Shakespeare, a former teacher at Lafoole University and Director
2 of Arts at the Somalia Academy of Science, Arts and Literature. At Appendix 190-191,
3 on January 31, 2015, while Mr. Arale was still living in China recovering from his cornea
4 transplant, he sent a Facebook friend request to HiboNuura, a popular Somali singer, and
5 he is now Facebook friends with her. At Appendix 192, Mr. Arale liked a Facebook post
6 by HiboNuura. Al-Shabaab hates all forms of music and any non-religious entertainment
7 and kills people for it.

8 Mr. Arale Facebook follows many moderate Islamic scholars and routinely likes,
9 shares or reposts their posts and recommends specific of their sermons to his younger
10 brothers. At Appendix 193, Mr. Arale links to a photo of Sheik Albani captioned
11 “Wisdom & Grace is the way to God.” Sheik Albani is a well known moderate,
12 particularly known for his teaching that one can pray in a Mosque with shoes on. Sheik
13 Albani is also well known for preaching that women do not need to cover their face,
14 which caused an uproar in Saudi Arabia, where he was living at the time. More
15 importantly, Sheik Albani is known for preaching against literalism and extremism and
16 for advocating for obedience to governments and for advocating for a quiet life in what is
17 known as the “quietism” movement. [https://en.wikipedia.org/wiki/
18 Muhammad_Nasiruddin_al-Albani](https://en.wikipedia.org/wiki/Muhammad_Nasiruddin_al-Albani).

19 At Appendix 131, Mr. Arale’s Facebook connections include Sheik Mohamed Idris
20 (Ahmed), a very well known moderate now living in Columbus, Ohio, who is hated by
21 Al-Shabaab for speaking out against Al-Shabaab and for encouraging immigrants to

1 embrace their new homeland. Sheik Idris has an Al-Shabaab fatwa on his own head. Al-
2 Shabaab recently killed Sheik Idris's close friend, Somali Islamic scholar, Sheikh
3 Abdiqadir "Ga'amey" Nur Farah, while he was praying in a mosque in Garowe, in
4 Puntland, Somalia. <https://www.refworld.org/docid/51277c452.html>.

5 At Appendix 133, Mr. Arale's Facebook connections include Sheik Maxamed
6 Cabdi Umal, a very anti-Al-Shabaab scholar with a bright pink beard who lives in
7 Nairobi, Kenya, where the Kenyan Government provides him a security detail because,
8 without it, Al-Shabaab will murder him.

9 At Disclosure pp.1160, Appendix 207, Mustaf tells his brother, Bukari, on August
10 10, 2014, to "listen to preaching of Sheikh Mustafe Haji." Sheikh Mustafe Haji is a
11 famous Somali teacher and moderate speaker who encourages young people to become
12 educated and stay in Somalia to help build Somalia and to be a good Muslim. In a story
13 similar to Mr. Arale's, Sheikh Mustafe Haji lost his wife and baby because Al-Shabaab
14 prohibited them from receiving medical care from an African Union AMISOM clinic:

15 Speaking for the residents Sheikh Mustafa Haji, said 'we are very grateful
16 to the KDF [Kenyan Defense Forces] for their services' and urged the
residents to continue supporting the troops.

17 Mustafa lost his unborn baby and his second wife after al shabaab
18 prohibited him from accessing a clinic that was set up by the troops.

19 'The traditional midwife sent for me after it had taken a while for the baby
20 to come out, and when I put my wife on a cart to rush her to the clinic a
group of armed militants beat me up and that's how I lost my wife and my
child'.

21

1 <https://www.kbc.co.ke/kdf-troops-offer-free-medical-care-somalia/>. In the same
2 Facebook conversation, at Disclosure p.1158, Appendix 206, on August 10, 2014, Mustaf
3 counsels his brother, “Do not open your heart to a person or anyone who is not mother or
4 father.”

5 Non-religious education is high on the list of the many things that Al-Shabaab
6 hates. On December 3, 2009, Al-Shabaab murdered an entire medical school graduating
7 class, the medical school staff and visiting dignitaries, parents and journalists. To Mr.
8 Arale, by contrast, education is enormously important. Mr. Arale is proud to inform the
9 court, for instance, that his daughter is in the gifted program at her elementary school
10 here in Tucson with aspirations to be a doctor.

11 The disclosure in the case reflects Mr. Arale’s overwhelming support of education.
12 At Disclosure p.1154, Appendix 203, on August 10, 2014, Mr. Arale asks Facebook user
13 Ahmed Abdi Rahman,¹ “How is studying going.” At Disclosure p.1155, Appendix 204,
14 on August 10, 2014, Facebook user Ahmed Abdi Rahman tells Mr. Arale, “The education
15 is going.” At Disclosure p.1155, Appendix 204, on August 10, 2014, Facebook user
16 Ahmed Abdi Rahman tells Mr. Arale, “I am still studying.” At Disclosure p.1156,
17 Appendix 205, on August 10, 2014, Mr. Arale asks Facebook user Ahmed Abdi Rahman,
18 “Did you start attending school.”

19 _____
20 ¹ Mr. Arale’s brother, Ahmed, is the owner of that account. Another of Mr. Arale’s
21 brothers, Hamud (aka Bukhari), was a frequent user of that account until Ahmed changed
the password in 2015.

1 At Disclosure p.1165, Appendix 208, on January 19, 2015, Mr. Arale responds to
2 Facebook user Ahmed Abdi Rahman, “I am well, brother, how is studying?” Facebook
3 user Ahmed Abdi Rahman answers to Mr. Arale, “I am pursuing learning” on January 19,
4 2015.

5 At Disclosure p.1167, Appendix 209, on July 30, 2015, Mr. Arale asks Facebook
6 user Ahmed Abdi Rahman, “Brother, does Bukhari get his 8th grade diploma?” At
7 Disclosure p.1168, Appendix 210, he follows up by asking, “Is diploma time reached
8 yet?”

9 At Disclosure p.1500, Appendix 237, Mr. Arale asks his younger brother Hassan
10 on Facebook, on August 7, 2014, “Do you get education?” At Disclosure p.1501,
11 Appendix 238, still on August 7, 2014, Mr. Arale follows up with, “Do the kids younger
12 than you get education?”

13 At Disclosure p.1547, Appendix 240, On December 18, 2014, Mr. Arale asks his
14 cousin, Abwan Hamza Ahmad, if he has finished the university. At Disclosure p.1548,
15 Appendix 241, Mr. Arale tells his cousin, Abwan Hamza Ahmad, that he is in Arizona
16 and has started the University (Pima College). At Disclosure p.1549, Appendix 242, Mr.
17 Arale, still on December 18, 2014, tells his cousin Abwan Hamza Ahmad that he wants to
18 move back when he finishes the university.

19 At Disclosure p.1568, on May 5, 2015, Appendix 243, Mr. Arale counsels his
20 younger brother Hamza to increase his education. At Disclosure p.1576, Appendix 244,
21 Mr. Arale, on January 23, 2015, tells his cousin Abdisalan Afmishar Ahmed that his

1 brother, Bukari, is going to university soon. At Disclosure p.1702, Appendix 245, on
2 January 3, 2015, Mr. Arale tells his cousin Sam Abdi to take advantage of the chance in
3 Sweden to get an education on January 3, 2015. At Disclosure p.1760, Appendix 249, on
4 August 14, 2015, Mr. Arale tells his cousin Abd-al-Fattah Sham Sham that he is studying
5 marketing.

6 At Disclosure p.1798, Appendix 251, on September 18, 2016, Mr. Arale, using
7 wife Zeinab's account to talk to cousin Hassan Abdirahman Hassan recommends the
8 newly created public library in Borama, Somaliland, to Hassan, which Hassan says he did
9 not know about. At Disclosure p.2074, Appendix 252, on June 11, 2015, Mr. Arale asks
10 his brother, Ahmed, for a Level 10 PDF Math Book.

11 Mr. Arale has always been quick to denounce ISIS and Al-Shabaab. At Disclosure
12 p.228, Appendix 195, on August 21, 2013, in China, in his I-590 Registration for
13 Classification as Refugee, Mr. Arales states that, "Al-Shabaab is the enemy of the Somali
14 people." At Disclosure pp.325 and 437, Appendix 196 and 197, during his adjustment of
15 status interview on March 9, 2017, Mr. Arale twice described Al-Shabaab as terrorist. At
16 Disclosure pp.809-810, Appendix 198-199, in his June 27, 2017, interview with Agents
17 Ben Trentlage and Ian Cruikshank, Mr. Arale describes ISIS as evil and killing more
18 Muslims than anyone else. At Disclosure p.811, Appendix 200, Mr. Arale states that the
19 same thing goes for Al-Shabaab as for ISIS.

20 The local Somali community is quick to point out numerous other factors from
21 which they can quickly deduce and know that Mr. Arale is no kind of ISIS or Al-Shabaab

1 or any other kind of literalist extremist religious belief. Mr. Arale's wife works two jobs
2 outside of the house. Mr. Arale's wife owns two vehicles both titled in her name. Mr.
3 Arale's wife drives those vehicles, usually unaccompanied by her husband. Mr. Arale's
4 wife attended Pima Community College to study English as a Second Language. Mr.
5 Arale's wife owns a smart phone. Mr. Arale's wife is in chat groups about improving
6 Somali welfare, some of which chat groups include men. When the FBI searched Mr.
7 Arale's wife's cell phone, they found nothing of interest except that undersigned counsel
8 notices that Mr. Arale's wife downloaded and is a frequent player of "Candy Crush."
9 None of this is at all Al-Shabaab. In fact, Al-Shabaab routinely murders civilians for any
10 of these infractions, including simply possessing a smartphone.

11 The Somali community is also quick to point out that it is highly unlikely that Mr.
12 Arale could have been recruited by Al-Shabaab while in high school in Jigjiga because
13 Al-Shabaab did not yet exist as such. By 2005 Al-Shabaab was a small network of only
14 33 members. Stig Jarle Hansen, *Al-Shabaab in Somalia – The History and Ideology of a*
15 *Militant Islamist Group*, 2016, p.33. Mr. Arale graduated high school in Mogadishu in
16 2006. Disclosure 1393-1394, Appendix 229-230. Al-Shabaab was not even designated a
17 terrorist organization by the U.S. Department of State until 2008. Appendix 123-126.

18

19 **Mr. Arale is Somali, not Ethiopian**

20 This should not even be an issue. Ethiopia has never claimed Mr. Arale and Mr.
21 Arale has never claimed Ethiopia. Appendix 194, from Mr. Arale's Facebook feed, is Mr.

1 Arale’s profile picture of a proud blue Somali lion standing on an Ethiopian flag – not
2 something an Ethiopian would post. Mr. Arale is, by birth, at least a 23rd generation
3 Somali on both sides of his birth family. Mr. Arale’s full childhood name, given to him
4 by his birth father, is **Mohamed Abdirahman Osman Adan Dhidar Guuleed Cigaal**
5 **Dadar Ibrahim Farax Nur Yoonis Makaaliil Makadoor Siciid Irbadle Samaroon**
6 **(Gadabuursi) Suubane Subayar Diini Direed.**

7 Somalia is a tribal country and the naming conventions reflect that. Each child
8 receives a new first name that is appended onto the beginning of their father’s full name
9 so that each child’s full name reflects their paternal lineage.² In this way, each child’s
10 name identifies them by major tribe, tribe, sub-tribe, clan, sub-clan, and family.
11 Such identification by tribe, clan and family also serves to identify a person
12 geographically, almost like a zip-code, by the Somali state in which that tribe is primarily
13 located, by the region in which that clan lives and by the town in which that particular
14 family lives. Mr. Arale’s childhood name identifies his major tribe as Dir, which is a
15 major tribe populating northwest Somalia and Djibouti. His name also identifies him as a
16 member of the Samaroon tribe (also called Gadabuursi) which populates the northern
17 Somali state of Awdal.

18 _____
19 ² Mr. Arale’s full childhood name is confirmed, in part, at Disclosure pp.1519 and 1766,
20 Appendix 239 and 250, when Mr. Arale’s brother, Khalid, out of frustration, uses 11
21 generations of his own name to pressure Mustaf to answer a Facebook message on
August 7, 2014, when Mr. Arale was apparently away from his computer but had left his
browser open to his Facebook page so that it appeared to Khalid that Mr. Arale was
ignoring him. Mr. Arale eventually responds, “How’s mom?”

1 Some of the ancestors in Mr. Arale’s name turn out to be famous. Sheik Nuur is
2 one of Mr. Arale’s famous ancestors and the descendants of that tribe still make an annual
3 pilgrimage to his grave. Mr. Arale made that pilgrimage when he was six-years-old.
4 Sheik Nuur’s grave is near the village of Dilla, Somalia, where Mr. Arale lived with his
5 maternal grandparents. Mr. Arale’s paternal grandfather, Osman, came from neighboring
6 Dacwally for the pilgrimage and took Mr. Arale, on the back of a camel, to the gravesite
7 where another camel was slaughtered and a feast was held.

8 Sheik Nuur’s tribe, known as the Reer Nur Yonis, splits into the Farah Nur and the
9 Mohamud Nur, named for Sheik Nuur’s children, Farah and Mohamud. Mr. Arale’s birth
10 mother’s family comes from the Mohamud Nur tribe, at which point her lineage
11 intersects and joins with Mr. Arale’s birth father’s lineage. Whether Somali citizenship
12 also descends on the maternal side is currently being debated in Somalia. The Somali
13 constitution seems to say that yes, Somali citizenship descends from the maternal side as
14 well. But Somali law has not caught up yet. In any case, Mr. Arale’s mother is just as
15 solidly Somali as his father.

16 Mr. Arale’s paternal great-grandfather, Adan, is known for having started a farm in
17 the Dacwally³ area where he built a dam for a pond. Dacwally is about a 30-minute walk
18 from Dilla and the pond and surrounding earthen structures and rock corrals are readily

19 _____
20 ³ At Disclosure pp.1755-1757, Appendix 246-248, on August 9, 2015, after asking his
21 cousin, Abd-al-Fattah Sham Sham, about various family members, Mr. Arale asks for any
information about Da’awaley and discusses plans to grow watermelons there with his
cousin, who has recently completed an agricultural degree.

1 visible on Google Maps satellite view. Mr. Arale's birth mother's brother, Dayib, still
2 lives on Adan's farm.

3 Appendix 1 is the Somali passport of Mr. Arale's father, Abdirahman Osman
4 Aden. Appendix 27 is the Somali passport of Mr. Arale's paternal grandfather, Osman
5 Aden Dahir. Appendix 49 is the Somali passport of Mr. Arale's mother, Fihima Hassan
6 Sh Ahmed. Appendix 73 is the Somali passport of Mr. Arale's paternal grandmother,
7 Kaha Ibrahim Zibar. Appendix 97-109 is Mr. Arale's father's drivers license. Both sides
8 of Mr. Arale's family are documented Somali citizens.

9 One detail in each of these passports that would not be immediately obvious
10 without explanation is that each of these passports has a Saudi Arabian visa during the
11 annual hajj pilgrimage to Mecca. A Somali citizen immediately knows, from looking at
12 these passports, that their holder has no claim at all to Ethiopian citizenship as no one
13 who could travel to Mecca on an Ethiopian passport would do so on a Somali passport.
14 Somalis are used to being discriminated against when it comes to travel and the annual
15 hajj is no exception. Somalis have no, or very limited, government to advocate for them
16 and to protect their interests or to provide assistance. Somalis pay much higher hajj fees
17 than Ethiopians, but get much less consideration from the Saudi government. They pay
18 double in taxes and travel expenses, but are relegated to living in tents next to the sewers.
19 The holders of these Somali passports had no claim to an Ethiopian passport as they
20 would have traveled on it instead.

21

1 Somali citizenship is by descent, not by birthright, so Mr. Arale's birthplace does
2 not really matter. Still, he was born, in accordance with Somali tradition, in the house of
3 his mother's parents in Dilla, Somalia, on the Somali side of the administrative line
4 between Somalia and Ethiopia. Appendix 110 is a photo of the house. The Government
5 has never disclosed it because it would interfere with its Jigjiga narrative, but the
6 Government well knows the location where Mr. Arale was born and raised. It is hard for
7 a Caucasian coalition to show up in small Somali villages like Dilla and Dacwally and
8 ask where Mr. Arale's house is without word getting back to Mr. Arale while they are still
9 there.

10 Mr. Arale was raised in Dacwally and Dilla. When Somaliland separated from the
11 rest of Somalia and fighting broke out between the north and the south in the 1990's, the
12 dam in Dacwally, Mr. Arale's father's market in Dilla and his grandparents' house in Dilla
13 were all partially or completely destroyed. The family moved to the Aw Barre Refugee
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21

1 Camp near Jigjiga (Ethiopia)⁴ and Dilla (Somalia) for a time as refugees registered with
2 the United Nations High Commissioner on Refugees. Appendix 111 is the family's
3 UNHCR voluntary repatriation form. If Mr. Arale's family were Ethiopian, they would
4 not have had to register as refugees to live in Ethiopia. Mr. Arale lived in Dilla with his
5 grandparents at an early age and attended elementary school there. Appendix 112. Mr.
6 Arale's father maintained four different houses in four different cities with two different
7 wives⁵ while he ran market, trucking and farming businesses.

8 Mr. Arale moved to Jigjiga to begin high school. Mr. Arale completed high school
9 in Mogadishu, where he was adopted into the tribe of one of his mother's relatives. Mr.
10 Arale worked in his step-father's shop in Mogadishu. He was married in Mogadishu and

11 _____
12 ⁴ Jigjiga is a complicated issue. When the British gave the massive (and oil-rich) Ogaden
13 region to Ethiopia in the 1950's, the British violated three treaties with Somalia. Then
14 Ethiopia violated its own treaty with the British by not leaving the Ogaden autonomous.
A series of wars ensued with Ethiopia backed by Russia. "The result is an Ethiopian-
Somali boundary that Somalia does not recognize." [https://www.cia.gov/library/
readingroom/docs/CIA-RDP97S00289R000100190006-3.pdf](https://www.cia.gov/library/readingroom/docs/CIA-RDP97S00289R000100190006-3.pdf).

15 Somalia's current constitution is committed to the peaceful reunification of the
16 Somali territories, including Djibouti, parts of Kenya, the Ogaden region and, now, the
breakaway Somaliland region in northern Somalia. Somalia does not, however,
17 recognize Ethiopia's claim to the Ogaden region, including Jigjiga. Even the Ethiopian-
Somali boundary is referred to on maps as an "administrative line" rather than as a
18 "border." And even that administrative line is poorly defined as Italy never clearly
defined its colonial territory in Somalia with the British. *Supra*.

19 Somalia's perspective on Jigjiga, neatly explained to undersigned counsel at the
Nur Market here in Tucson, is that, as far as Somalia is concerned, "Somalia owns
20 Jigjiga, but Ethiopia claims it."

21 ⁵ Men are allowed up to four wives in Somalia.

1 he was injured in his step-father's shop in Mogadishu by a stray unexploded ordinance
2 during fighting between Al-Shabaab and Government forces. Mr. Arale's step-father was
3 killed in the explosion.

4 Even if Somalia⁶ or Ethiopia⁷ had birthright citizenship, which they do not, Mr.
5 Arale was born on the Somali side of the line. Even if Mr. Arale was born on the
6 Ethiopian side of the line, which he was not, Somalia does not recognize the line. And
7 even if Mr. Arale was born in a distant country, which he was not, he is a member of the
8 Dir tribe and is, therefore, a Somali citizen by descent, which is how Somali citizenship
9 vests.

10
Mr. Arale's Correct Adult Name is Mustaf Adan Arale

11 Mr. Arale graduated high school under the name Mustaf Adan Arale. The
12 Government knows this because it seized Mr. Arale's high school diploma when it
13 searched his apartment. Disclosure pp.1393-1394, Appendix 229-230. Mr. Arale was
14 married under the name Mustaf Arale. Appendix 113-114. The Somali, Chinese and
15 United States birth certificates of all five of Mr. Arale's children carry the name Mustaf
16 Adan Arale both as their father and as part of their Somali tribal names. Appendix
17 115-120. Mr. Arale's biometric Somali passport is in the name Mustaf Adan Arale.

18 _____
19 ⁶ The Somali Constitution, Article 8, The People and the Citizenship, Section (1), states
20 that "The people of the Federal Republic of Somalia are one, indivisible and comprise all
the citizens."

21 ⁷ The Ethiopian Constitution, Article 6, Section (1) states that "Any person of either sex
shall be an Ethiopian national where both or either parent is Ethiopian."

1 Disclosure pp.1372-1389, Appendix 211-228. A biometric passport is 128-bit encrypted
2 and impossible to forge. Mr. Arale’s biometric Somali passport has been verified as
3 authentic by three different Homeland Security and FBI crime labs. Disclosure
4 pp.1116-1117, 1438-1439, 1442-1445, Appendix 201-202, 231-236.

5 When Mr. Arale moved to Mogadishu, he was adopted into the family of his
6 mother’s cousin, Adan Arale Omar. Mr. Arale and his new stepfather appeared before
7 clan and tribal elders. His new family, clan and tribe accepted him as one of them,
8 extended him their protection and accepted responsibility for Mr. Arale and Mr. Arale
9 took his new name from his new stepfather in accordance with Somali tradition and
10 Somali law.

11 The affidavit of Somali Attorney Ahmed Hussein, at Appendix 121-122, explains
12 Somali tradition and Somali law in greater detail and with more authority. The short
13 version is that, as a member of his stepfather’s family, clan and tribe, Mr. Arale enjoys the
14 protection of that family, clan and tribe. As part of that protection, the family, clan and
15 tribe assume responsibility for their new member and liability for any negligent or
16 criminal acts committed by their new member. To keep the peace and to prevent feuds or
17 outright hostilities from developing, Somali families compensate the families of victims,
18 Somali clans compensate the clans of victims and Somali tribes compensate the tribes of
19 victims by paying “dia” for any injuries caused. In this manner, everyone in Somalia is
20 insured although no one carries insurance. Everyone is incentivized to avoid injuring
21 others because no one is truly “judgment proof.” And everyone is also incentivized to

1 monitor and curb the behavior of the members of their own families, clans and tribes.
2 People who prove to be repeatedly unable to conform their conduct and who continually
3 injure others and incur liability for their family and clan are likely to be, quite literally,
4 chained by the ankle to their own front porch in an elegant legal solution in a country of
5 limited resources.

6 The Government might notice that, at Disclosure pp.2369-2370, Appendix 253,
7 during her May 4, 2017, interview, Mr. Arale's wife, Zeinab Abdirahman Mohamed
8 identified, as her cousin, Ibrahim Abdirahman Mohamed. Her cousin carries Zeinab's
9 father's and Zeinab's grandfather's names because he was raised in her household as part
10 of Zeinab's family and Zeinab's clan. In fact, although it was not transcribed, in
11 Disclosure Bates Disk 852, at 19:30, during the March 2, 2018, interview of Mr. Arale's
12 wife, the Government's own interpreter tells the Government agents present that he
13 agrees that most Somalis have changed their names.

14 In addition to the practical impossibility of a young man moving into Mogadishu
15 without the protection of family, clan and tribe, and without the acceptance of the
16 community in which he intends to reside, there are other important reasons for fitting as
17 completely as possible into his new community. The north and the south had recently
18 fought a bitter war when Somaliland, in the north, separated from Somalia in the south.
19 Animosity remains for things like the destruction of Mr. Arale's family's farm in
20 Dacwally and his father's market and his grandparents' house in Dilla. Other, older,
21 tribal feuds go back for generations. There are property disputes and issues of grazing

1 In *Maslenjak v. United States*, 137 S. Ct. 1918 (2017), the defendant was charged
2 with lying, stating that her husband spent the war years secreted away in Serbia when, in
3 fact, she knew that he had been serving as an officer in the Bosnian Serb Army. The
4 Court elaborated on the test for materiality:

5 “We hold that the Government must establish that an illegal act by the
6 defendant played some role in her acquisition of citizenship. When the
7 illegal act is a false statement, that means demonstrating that the defendant
8 lied about facts that would have mattered to an immigration official,
9 because they would have justified denying naturalization or would
10 predictably have led to other facts warranting that result.”

11 *Maslenjak v. United States*, 137 S. Ct. 1918, 1923 (2017).

12 “The Government’s contrary view—that §1425(a) requires only a
13 ‘violation[] of law in the course of procuring naturalization’—falters on the
14 way language naturally works.”

15 *Maslenjak v. United States*, 137 S. Ct. 1918, 1925 (2017).

16 “The Government could thus take away on one day what it was required to
17 give the day before.”

18 *Maslenjak v. United States*, 137 S. Ct. 1918, 1927 (2017).

19 “To decide whether a defendant acquired citizenship by means of a lie, a
20 jury must evaluate how knowledge of the real facts would have affected a
21 reasonable government official properly applying naturalization law.”

“As an initial matter, the Government has to prove that the misrepresented
fact was sufficiently relevant to one or another naturalization criterion that
it would have prompted reasonable officials, ‘seeking only evidence
concerning citizenship qualifications,’ to undertake further investigation.
Id., at 774, n. 9, 108 S. Ct. 1537, 99 L. Ed. 2d 839. If that much is true, the
inquiry turns to the prospect that such an investigation would have borne
disqualifying fruit. As to that second link in the causal chain, the
Government need not show definitively that its investigation would have

1 unearthed a disqualifying fact (though, of course, it may). Rather, the
2 Government need only establish that the investigation ‘would predictably
have disclosed’ some legal disqualification.”

3 *Maslenjak v. United States*, 137 S. Ct. 1918, 1928-1929 (2017).

4 “We have never read a statute to strip citizenship from someone who met
5 the legal criteria for acquiring it. See, e.g., *Fedorenko v. United States*, 449
6 U.S. 490, 505-507, 101 S. Ct. 737, 66 L. Ed. 2d 686 (1981); *Costello v.*
7 *United States*, 365 U.S. 265, 269-272, 81 S. Ct. 534, 5 L. Ed. 2d 551
8 (1961); *Schneiderman v. United States*, 320 U.S. 118, 122-123, 63 S. Ct.
1333, 87 L. Ed. 1796 (1943). We will not start now. Whatever the
Government shows with respect to a thwarted investigation, qualification
for citizenship is a complete defense to a prosecution brought under
§1425(a).”

9 *Maslenjak v. United States*, 137 S. Ct. 1918, 1931 (2017).

10 In *Chaunt v. United States*, 364 U.S. 350 (1960), the defendant denied any
11 criminal history when, in fact, he had three misdemeanor arrests. The Court there
12 imposed the same test for the materiality of the misstatements, concluding that the
13 misdemeanor arrests would not have warranted denial of citizenship and that they the
14 further investigation that their discovery led to also would not have warranted denial of
15 citizenship. Notably, the Court rejected the dissent’s position that any misstatement at all
16 would be disqualifying. The Court rejected that argument again, below, in *Kungys*, 485
17 U.S. at 775, and then again, above, in *Maslenjak*, 137 S. Ct. at 1925.

18 In *Kungys v. United States*, 485 U.S. 759 (1987), a German immigrant
19 misrepresented his date and place of birth and his wartime residence and wartime
20
21

1 occupation. The Court there elaborated on the materiality test, noting that the test for
2 materiality is the same in criminal and denaturalization proceedings:

3 “The federal courts have long displayed a quite uniform understanding of
4 the ‘materiality’ concept as embodied in such statutes. [Citations omitted.]
5 The most common formulation of that understanding is that a concealment
6 or misrepresentation is material if it ‘has a natural tendency to influence, or
7 was capable of influencing, the decision of’ the decision making body to
8 which it was addressed. [Citations omitted.] While we have before us here a
9 statute revoking citizenship rather than imposing criminal fine or
10 imprisonment, neither the evident objective sought to be achieved by the
11 materiality requirement, nor the gravity of the consequences that follow
12 from its being met, is so different as to justify adoption of a different
13 standard.

9 *Kungys v. United States*, 485 U.S. 759, 770 (1987). The Court noted that the test was
10 whether the misrepresentation had a tendency to influence the decision of the INS and
11 noted also that the question of materiality was a question of law for the courts to
12 determine:

13 “We think it safer in the naturalization context, as elsewhere, to fix as our
14 guide the central object of the inquiry: whether the misrepresentation or
15 concealment was predictably capable of affecting, i. e., had a natural
16 tendency to affect, the official decision. The official decision in question, of
17 course, is whether the applicant meets the requirements for citizenship, so
18 that the test more specifically is whether the misrepresentation or
19 concealment had a natural tendency to produce the conclusion that the
20 applicant was qualified.

18 “We hold, therefore, that the test of whether Kungys' concealments or
19 misrepresentations were material is whether they had a natural tendency to
20 influence the decisions of the Immigration and Naturalization Service. To
21 determine the effect of this holding upon our disposition of the present case,
we must first consider whether materiality under § 1451(a) is an issue of
law, which we may decide for ourselves, or one of fact, which must be

1 decided by the trial court. Here again we see no reason not to follow what
2 has been done with the materiality requirement under other statutes dealing
3 with misrepresentations to public officers. ‘The materiality of what is
4 falsely sworn, when an element in the crime of perjury, is one for the court.’
5 *Sinclair v. United States*, 279 U.S. 263, 298 (1929).”

6 *Kungys v. United States*, 485 U.S. 759, 771-772 (1987). The Court noted that there was
7 not even a suggestion that misrepresentations were relevant to the immigrant’s
8 qualifications and noted that there had been no showing that they would have predictably
9 led to other facts more relevant:

10 “There has been no suggestion that those facts were themselves relevant to
11 his qualifications for citizenship. Even though they were not, the
12 misrepresentation of them would have a natural tendency to influence the
13 citizenship determination, and thus be a misrepresentation of material facts,
14 if the true date and place of birth would predictably have disclosed other
15 facts relevant to his qualifications. But not even that has been found here.”

16 *Kungys v. United States*, 485 U.S. 759, 774 (1987). The Court also, again, rejected a
17 bootstrap argument that official knowledge of the inconsistency would have, itself,
18 affected the decision of INS:

19 “Thus, for purposes of determining the natural tendency of a
20 misrepresentation to affect a decision under § 1451(a), what is relevant is
21 what would have ensued from official knowledge of the misrepresented fact
(in this case, Kungys' true date and place of birth), not what would have
ensued from official knowledge of inconsistency between a posited
assertion of the truth and an earlier assertion of falsehood.”

Kungys v. United States, 485 U.S. 759, 775 (1987).

Before *Chaunt*, and before *Kungys*, a German-Jewish immigrant in *In re Field*,
159 F. Supp. 144 (SDNY 1958), omitted Russia as a place of residence in making

1 application for an immigration visa because she was afraid that the fact of her previous
2 residence in Russia might lead some authorities to believe that she had been a
3 Communist. The Court noted both that the true facts would not have resulted in a refusal
4 of a visa and also that a subsequent investigation would not have revealed any such facts
5 because, well, subsequent investigation had not revealed any such facts:

6 “The most that can be said is that a statement to that effect might have
7 resulted in further investigation by the Department. However, the
8 Immigration and Naturalization Service has had several years to make such
9 further investigation after it had knowledge of this residence in Russia and
10 nothing further has been advanced by the Service to indicate that any such
11 investigation would have resulted in the refusal of a visa.”

12 *In re Field*, 159 F. Supp. 144, 146 (SDNY 1958).

13 In *United States v. Rossi*, 299 F.2d 650 (9th Cir. 1962), an Italian immigrant had
14 assumed his brother’s name while living abroad in Chile. The Court there, following
15 *Chaunt*, stated:

16 “The materiality of his misrepresentation may be determined by the bearing
17 it had upon his right to enter this country; if permission rested upon the
18 truth of the fact represented and he could not have secured a visa as Cesare
19 Rossi, a native of Italy, then the fact was material -- otherwise it was
20 irrelevant. Stated another way, 'a fact suppressed or misstated is not
21 material to an alien's entry, unless it is one which, if known, would have
justified a refusal to issue the visa.' *United States ex rel. Fink v. Reimer*, 96
F.2d 217 (2d Cir. 1938).”

22 *United States v. Rossi*, 299 F.2d 652-653 (9th Cir. 1962).

23 In *United States ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (1938), a Latvian
immigrant had assumed his brother’s name to avoid serving in the Latvian Army. The

1 court there noted that the impersonation was not for the purpose of entering this country
2 and stated:

3 “We reach the conclusion, under the circumstances presented, that no fraud
4 was intended, and, as a matter of fact, none was perpetrated on this
5 government by appellee in obtaining his immigration visa. Whether the use
6 of such name and age enabled him to escape military service in some other
7 country, we are not directly concerned. He was within the quota provision,
8 could have obtained his visa by stating his correct name and age, and
9 otherwise met the prescribed requirements to enable him to effect a legal
10 entry. Therefore, the misrepresentations complained of were irrelevant and
11 do not constitute grounds for deportation.”

12 *United States ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263, 265-266 (1938).

13 Dated April 20, 2020

14 *s/S. Jonathan Young*

15 S. JONATHAN YOUNG

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18 Copies of the foregoing
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