UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:21−cr−00141−RBD−EJK
	)	
EMMET BOWENS,	)	
	)	
Defendant.	)	
	)	

DEFENDANT EMMET BOWENS'
MOTION TO SUPPRESS/PRECLUDE STATEMENTS

The Defendant, Emmet Bowens ("Mr. Bowens"), by and through the undersigned counsel, hereby moves to suppress statements allegedly made to a U.S. Customs and Border Protection ("CBP") officer and a Federal Bureau of Investigation ("FBI") agent on December 1, 2022, as said statements were obtained in violation of the Fifth Amendment of the United States Constitution and *Miranda v. Arizona*, 384 U.S. 436 (1966). In the alternative, Mr. Bowens seeks to preclude the introduction of the statements he allegedly made on December 1, 2022 under the Federal Rules of Evidence. In support thereof, Mr. Bowens states as follows:

STATEMENT OF FACTS

Relevant Procedural History

1. On November 10, 2021, a federal grand jury in the Middle District of Florida returned an indictment charging Mr. Bowens with two counts of wire fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two), and four counts of money laundering, in violation of 18 U.S.C. § 1957 (Counts Three through Six). Doc. 1.

2. On November 12, 2021, the Court issued a warrant authorizing Mr. Bowens' arrest in connection with this case. Doc. 9.

The December 1, 2021 Airport Arrest

3. On December 1, 2021, Mr. Bowens was arrested in this case. The details concerning Mr. Bowens' arrest are memorialized in an FBI 302 report which the government provided to Mr. Bowens as part of the government's discovery production in this case. A copy of this FBI 302 report is attached hereto as *Exhibit A*. According to the FBI 302 report, Mr. Bowens was arrested at the Atlanta Hartsfield International Airport after returning to the United States from an international trip. *Exhibit A*. He was held by CBP officers and then turned over to FBI agents. *Id.* The report further alleges that at some point before Mr. Bowens was transferred from CBP custody to FBI custody, he made statements to a CBP officer that he was "from Mississippi and that he was coming back from Rwanda

and was looking to start a business in Rwanda." *Id.* The report further states that after he was transferred to FBI custody, Mr. Bowens told an FBI agent that he was "visiting a friend in Rwanda," and that this friend "has a business than [sic] have been a restaurant." *Id.* The FBI 302 report does not indicate that Mr. Bowens was administered his *Miranda* warnings prior to making the foregoing statements. Mr. Bowens further asserts that he was not given *Miranda* warnings at any point after he was taken into custody by the CBP at the airport.

4. Based on the foregoing, Mr. Bowens hereby moves to suppress any and all statements allegedly made by him to law enforcement officials on December 1, 2022, as detailed in the FBI 302 report attached hereto as *Exhibit A*. These statements were allegedly made by Mr. Bowens without him having been advised of his rights under the Fifth Amendment to the U.S. Constitution and *Miranda*. Therefore, the Court must suppress all such statements. In the alternative, the Court should preclude the admission of the alleged statements made by Mr. Bowens as such statements are irrelevant to the material issues in dispute in this case, and because the "probative value" of such statements are "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay. . . ." *See* Fed. R. Evid. 401, 402, 403.

MEMORANDUM OF LAW

Legal Standards

As this Court is well-aware, *Miranda* safeguards are triggered "whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291 (1980). Custody for purposes of *Miranda* encompasses not only formal arrest, but any restraint on freedom of movement of the degree associated with formal arrest. *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006) (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). Whether a defendant is "in custody" for *Miranda* purposes "depends on whether under the totality of the circumstances, a reasonable man in his position would feel a restraint on his freedom of movement to such extent that he would not feel free to leave." *United States v. McDowell*, 250 F.3d 1354, 1362 (11th Cir. 2001) (quotation marks and alterations omitted). This is an objective test; the actual, subjective beliefs of the defendant and the interviewing officer regarding whether the defendant was free to leave are irrelevant. *United States v. Moya*, 74 F.3d 1117, 1119 (11th Cir. 1996). "The right to *Miranda* warnings attaches when custodial interrogation begins." *United States v. Crews*, No. 3:13-cr-230-J-34MCR, 2014 WL 5690448, at *5 (M.D. Fla. Nov. 4, 2014) (citing *United States v. Acosta*, 363 F.3d 1141, 1148 (11th Cir. 2004)).

"[A]lmost any information obtained from a suspect, however innocuous it appears on its face, may prove to be incriminating ..." *United States ex rel. Hines v. LaVallee*, 521 F.2d 1109, 1112 (2d Cir. 1975). The Supreme Court has cautioned that the "interrogation environment" is not to be construed so narrowly as to defeat *Miranda's* purpose: various "techniques of persuasion, no less than express questioning" can amount to interrogation. *Innis*, 446 U.S. at 299 (internal citation omitted). "Interrogation therefore includes engagement short of a formal interview." *United States v. Familetti*, 878 F.3d 58 (2d Cir. 2017).

The Eleventh Circuit has stated that certain "events which might be enough often to signal 'custody' away from the border will not be enough to establish 'custody' in the context of entry into the country." *United States v. Moya*, 74 F.3d 1117, 1120 (11th Cir. 1996). However, interrogations at the border that rise to a "distinctly accusatory level" can still constitute a custodial interrogation that require the administration of *Miranda* warnings. *Id.* at 1120. Factors that must be considered by the Court to determine under what circumstances border interrogation rise to an accusatory level include whether the suspect was: physically moved or restrained by officers during the interview, handcuffed or had guns drawn on him, booked or told of formal accusations, or told that he was under arrest. *See Moya*, 74 F.3d at 1119; *see also McDowell*, 250 F.3d at 1362.

Mr. Bowens Was In Custody At the Time He Made the Statements

It appears from the FBI 302 report attached hereto, that Mr. Bowens was arrested pursuant to a federal arrest warrant after his re-entry to the United States at the Atlanta international airport on December 1, 2021. *Exhibit A*. Under these circumstances, a reasonable man would feel a restraint on his freedom of movement to such extent that he would not feel free to leave. Thus, Mr. Bowens asserts that he was in-custody at the time he made the statements described in the report.

Mr. Bowens Was Subjected to Custodial Interrogation

The FBI 302 report further suggests that Mr. Bowens made statements in response to questioning by a CBP officer, and subsequent statements in response to questioning by an FBI agent. *Exhibit A*. Mr. Bowens asserts that he was in-custody when he was subjected to this questioning and not given his *Miranda* warnings. Mr. Bowens further asserts that the CBP officer's questioning of him took place under a "distinctly accusatory" setting. Specifically, Mr. Bowens was detained and arrested in connection with a federal indictment and warrant. Moreover, the FBI 302 report indicates that Mr. Bowens was "transferred" from one federal law enforcement agency to another. Presumably, Mr. Bowens' statements to the FBI agent were made away from the airport re-entry point and therefore not subject to the *Moya* "distinctly accusatory" standard, which is

reserved only for events that occur at the border. Based on the foregoing, Mr. Bowens moves to suppress the statements he allegedly made to law enforcement on the date of his arrest. At a minimum, this Court should conduct a hearing to determine whether the statements Mr. Bowens made were in violation of his Fifth Amendment rights and his rights under *Miranda*.

Mr. Bowens Statements Are Inadmissible Under The Federal Rules of Evidence

A defendant's statements not requiring suppression are admissible only if they are relevant—that is, if they constitute evidence tending to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *See* Fed. R. Evid. 401, 402. Rule 402 requires the exclusion of irrelevant evidence in order to ensure a fair and efficient adjudication. Fed. R. Evid. 402. Evidence may also be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

Here, Mr. Bowens statements concerning his trip to Rwanda and his plan to start a business there are irrelevant under Rules 401 and 402 of the Federal Rules of Evidence. These statements do not tend to prove up any fact that is of consequence in this case, which has to do with whether or not Mr. Bowens

submitted a fraudulent Paycheck Protection Program loan application. Moreover, what little "probative value" these statements have is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." *See* Fed. R. Evid. 403. Accordingly, even if this Court finds that Mr. Bowens statements to law enforcement should not be suppressed, the Court should still preclude the introduction of the statements under the Federal Rules of Evidence.

CERTIFICATION OF CONFERRING WITH OPPOSING COUNSEL

Pursuant to the Court's Criminal Scheduling Order (Doc. 16), the undersigned certifies: (1) that the undersigned counsel conferred with opposing counsel; (2) that counsel have been unable to resolve the instant motion by agreement; and (3) that the motion concerns matters not covered by the scheduling order.

CONCLUSION

WHEREFORE, the Defendant, Emmet Bowens, moves this Honorable Court to enter an Order: (a) suppressing the statements he made to a U.S. Customs and Border Protection ("CBP") officer and a Federal Bureau of Investigation ("FBI") agent on December 1, 2022, as said statements were obtained in violation of the Fifth Amendment of the United States Constitution and *Miranda*, or, in the alternative, precluding the government from introducing these statements, pursuant to Fed. R. Evid. 401, 402, and 403.

Respectfully submitted on this 5th day of May, 2022.

s/Andrew C. Searle
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on May 5, 2022, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system. I further certify that all parties to this case are equipped to receive service of documents via that system.

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