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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS VINCENT GIRARDI,

Defendant.

Case No. 2:23-cr-00047-JLS-1

**REPLY IN SUPPORT OF *EX PARTE*
APPLICATION FOR ORDER FOR
MENTAL COMPETENCY
EVALUATION**

The parties' dispute about the scope of the mental competency evaluation has narrowed to just two issues: (1) whether the evaluator may administer personality tests; and (2) whether time limits may be imposed on the examination. Both provisions are reasonable measures intended to protect an 83-year-old man with documented dementia.

The Government first contends that its expert, Dr. Diana Goldstein, should be allowed to administer personality testing, specifically the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), because changes in personality can be the first sign

1 of certain neurodegenerative disorders and frequently co-occur with cognitive decline
2 and behavioral changes. (Gov't Opp. at 4:12-17.) The government provides no citation
3 for either of these propositions and no citation for using personality tests to measure
4 changes in personality. In fact, the defense is not aware of prior personality test results
5 from which the government's expert could compare subsequent test results to identify
6 "changes in [Mr. Girardi's] personality." At best, the government provides a quote
7 from a single article that says "personality measures can be useful in establishing the
8 existence of a mental illness." But dementia is not a mental illness. The government
9 does not contend that personality testing is proper to assess competency or cognitive
10 functioning. Nor could it. Personality testing is intended to illuminate aspects of
11 personality and the existence of components of psychopathology.

12 Next the government claims that the MMPI-2 should be administered because of
13 its internal validity measures, i.e., its ability to identify malingering. (Gov't Opp. at
14 5:1-4). But the primary purpose of the MMPI-2 is not to detect malingering. And, as
15 discussed above, it has no proper application in this case, since Mr. Girardi is not
16 believed to be suffering from a mental illness or a personality disorder. It would be odd
17 to permit the evaluator to administer a test that has no applicability for the sole purpose
18 of identifying malingering.

19 More importantly, personality tests can be lengthy and onerous. The MMPI-2,
20 for example, consists of 567 questions. This could pose a significant hardship on Mr.
21 Girardi and his care at the assisted living facility. On balance, given the limited utility
22 of personality testing in this case, compared to the hardship such testing could pose on
23 an elderly man living in assisted care, the government's expert should be precluded
24 from administering personality tests.

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1 With regard to the proposed time limitations, the Government insists that the
 2 time frame must be left to the sole discretion of Dr. Goldstein.¹ Again, this ignores
 3 Mr. Girardi's age and condition. Long hours of testing would have a significant impact
 4 on the health of any person, let alone an 83-year-old living in assisted living. A
 5 reasonable time limit every day will minimize the disruption on Mr. Girardi's care.
 6 Under the government's proposal, the defense and/or Mr. Girardi's care providers
 7 would be powerless to stop the examination no matter how grueling so long as
 8 Dr. Goldstein deems it suitable. The government offers no explanation for why Dr.
 9 Goldstein cannot restrict her daily session to a four-hour time frame (the defense expert
 10 will certainly do so). To be sure, the defense in no way seeks to impose overall time
 11 restrictions for her evaluation. Indeed, Dr. Goldstein is free to meet with Mr. Girardi as
 12 often as she would like. The defense merely seeks reasonable restrictions on the
 13 amount of time for each session.

14 Because the defense proposal is reasonable and proper, the defense requests that
 15 the Court issue the proposed order as presented.

16
 17 Respectfully submitted,

18 CUAUHTEMOC ORTEGA
 19 Federal Public Defender

20 DATED: March 20, 2023

21 By /s/ Craig A. Harbaugh

22 CRAIG A. HARBAUGH
 23 Deputy Federal Public Defender
 24 Attorney for THOMAS VINCENT GIRARDI
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 27 ¹ While the government states that the defense is not challenging Dr. Goldstein's
 28 qualifications, experience, or professionalism, this stage of the proceedings is not the
 appropriate time to do so. The defense reserves its right to challenge Dr. Goldstein's
 methodology and conclusions at the appropriate time.