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November 19, 2023

Paul A. Riley, Esquire
Assistant United States Attorney
36 South Charles Street, 4th Floor
Baltimore, Maryland 21201

Re: *United States of America v. Ayza Qureshi*
In the U.S. District Court for the District of MD
Criminal No. RDB-22-0330

Dear Mr. Riley,

As you know, Ayaz Qureshi is a 54-year-old (DOB 6/11/1969), twice-married, Pakistani immigrant who pleaded guilty to one count of wire fraud conspiracy. He later filed a motion to withdraw his guilty plea. You asked me to review the records below and report my opinions regarding the defendant's claim that he was unable to understand the nature of the charge against him or the plea agreement into which he entered, along with my opinions regarding the psychological assessment and conclusions expressed by defense expert Michael Mintz, PsyD. Based on my review, I formed the opinions enumerated at the end of this report to a reasonable neuropsychological certainty.

Records reviewed:

1. USAO-000001 - Baltimore County Police Department Report of Confidential Investigation by Detective Eric Heyman (5/13/2022)
2. Charging Document in re: *United States v. Ayaz Qureshi* (dated 6/27/2022; filed 9/19/2022)
3. Plea Agreement in re: *United States v. Ayaz Qureshi* (signed 9/14/2022)
4. Court transcript of Guilty Plea Hearing in above-captioned case (held on 10/14/2022)
5. Defendant's Motion to Withdraw Guilty Plea in re: *United States v. Ayaz Qureshi*, through counsel Jonathan Y. Ai (filed 8/29/2023)
6. Government's Response in Opposition to Defendant's Motion to Withdraw Guilty Plea and Government's Motion to Find Defendant in Breach of the Plea Agreement (filed 9/19/2023)
7. Report of Competency Evaluation, Michael Mintz, PsyD (2/23/2023) plus copy of raw test data obtained from in-person evaluation on 2/2/2023 but no handwritten notes or other record of follow-up telehealth interview via Zoom (undated)
8. Curriculum Vita of Michael Mintz, PsyD
9. Wechsler Adult Intelligence Scale (WAIS-IV) test manual

Case synopsis:

According to charging documents from United States Attorney for the District of Maryland, Mr. Ayaz Qureshi was charged with one count of wire fraud conspiracy, 18. U.S.C. § 139 and notified that the government would seek forfeiture as part of any sentence in accordance with 18 U.S.C. §§

924(d), 981(a)(1)(C), and 982(a)(2)(A), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c) as a result of his conviction of Count One.

On 9/16/2022, Mr. Qureshi signed a plea agreement stating that he had reviewed every part of it carefully with his attorney, understood it, and voluntarily agreed to its terms. His attorney, Thomas Maronick, Jr., Esquire, also stated that he had reviewed the agreement with Mr. Qureshi, who understood and accepted its terms, and whose entry into the agreement was informed and voluntary. Attached to the plea agreement was a brief (~1½ page) stipulation of facts that both men signed. The stipulation of facts states that the defendant and co-conspirator A.S. conspired to and engaged in a scheme to defraud a bank in order to obtain a fraudulent loan for Yazee, Inc., Mr. Qureshi's purported business, under the Paycheck Protection Program (PPP) of the Coronavirus Aid Relief and Economic Security Act. Mr. Qureshi fraudulently received \$250,723 through this scheme.

In brief, the stipulation of facts states that on 3/14/2021, co-conspirator A.S., with help from Mr. Qureshi, submitted a fraudulent PPP loan application to Bank 1 for Yazee, Inc. but that Yazee, Inc. actually had no employees and was not operating in any legitimate capacity. The loan application contained multiple misrepresentations. These included the claim that Yazee had 16 employees and an average monthly payroll of \$100,289. The application included a false IRS Form 940 stating that payments to all Yazee, Inc. employees totaled \$1,203,471.52 for 2019. In fact, Yazee, Inc. did not pay wages to any employee in 2019. Based on the false representations made on behalf of Qureshi as the owner of Yazee, Inc., a PPP loan for \$250,753 was funded and distributed by Bank 1 on 3/22/2021 to a Wells Fargo bank account in the name of Yazee, Inc. that Qureshi controlled. The stipulation of facts further states that Mr. Qureshi agreed to pay A.S. a kickback for his work on submitting the false application. After Mr. Qureshi received the loan funds, he provided A.S. with eight checks totaling \$75,000, or approximately 30% of the loan. On each check, Mr. Qureshi left the payee blank, which A.S. and others filled in to successfully deposit the checks.

Proceeds from a PPP loan were required to be used only for certain allowed business expenses, including payroll costs, mortgage interest, rent, and utilities. Accordingly, in an attempt to make it appear that PPP loan funds were being used for legitimate purposes, on 6/22/2021, Mr. Qureshi signed an agreement with a payroll processor to provide services to Yazee, Inc. Thereafter, at the direction of Mr. Qureshi, the payroll processor withdrew money from the Wells Fargo Yazee, Inc. bank account and made sham payments totaling \$144,647.21 from the PPP funds to Mr. Qureshi, his wife, and other associates. Mr. Qureshi communicated with employees the payroll processor concerning purported Yazee, Inc. employees to be added and removed from the payroll. Mr. Qureshi made no payments to the for the PPP loan, which was ultimately forgiven.

At a hearing in the U.S. District Court for the District of Maryland before the Honorable Richard D. Bennett on 10/14/2022, Assistant United States Attorney (ASUA) Paul Riley read aloud the entire stipulation of facts, and the Court gave Mr. Qureshi a written copy to follow along. After Mr. Riley finished reading it, the Court asked Mr. Qureshi if it accurately summarized the facts of the case. Mr. Qureshi replied, "Yes, your honor." The Court next asked Mr. Qureshi if he committed the crime as read by Mr. Riley, and Mr. Qureshi again replied, "Yes, your honor." The Court then asked Mr. Qureshi how he wanted to plead to the one-count criminal charge against him, and Mr. Qureshi replied, "Guilty." Throughout the hearing, in response to direct questions by the Court, Mr. Qureshi repeatedly confirmed that he spoke and understood English well enough to understand the charges against him, follow and participate in the proceedings, and communicate with his attorney. Mr. Qureshi told the Court that he had not been threatened or forced to coerced to plead guilty to the

charge against him. The Court ultimately found Mr. Qureshi competent and capable of entering an informed plea, competent and capable of understanding English, and aware of the nature of the charge against him and the consequences of pleading guilty.

Nearly four months after this hearing, at the behest of his attorney, Jonathan Ai, Esq., Mr. Qureshi went to Michael Mintz, PsyD for a “psychological evaluation to assess his cognitive functioning as it pertains to the crimes of which he has been accused” and whether Mr. Qureshi had the “cognitive or reading skills to comprehensively understand the arrangements of his plea bargain.” After several hours of cognitive testing on 2/1/2023, Dr. Mintz saw Mr. Qureshi a second time on 2/6/2023 via Zoom. Neither the assessment procedures nor any handwritten notes of this second encounter were found for review. Mr. Qureshi’s attorney provided a copy of the raw data from Dr. Mintz’s testing for review, meaning that Dr. Mintz sent the raw data directly to the attorney who hired him.

On his examination, Dr. Mintz described Mr. Qureshi as well-oriented to person, place, and time, friendly, and cooperative. His mood was neutral/normal, and his affect matched his mood. He spoke with normal pitch, rate, and volume. He displayed no signs of disordered thinking. Dr. Mintz stated that Mr. Qureshi answered questions in an open and forthcoming, though occasionally tangential, manner. He noted that Mr. Qureshi had trouble understanding some interview questions and giving concrete details about his educational history and the dates or ages when he experienced various events. Dr. Mintz stated that Mr. Qureshi was born and raised as the youngest of eight siblings in Lahore, Pakistan mainly by his mother because his father lived elsewhere for work. Dr. Mintz stated that Mr. Qureshi’s first language is Urdu, but he did not document any attempt to assess Mr. Qureshi’s literacy/proficiency in Urdu or determine when and how proficiently he learned English. This oversight reflects a striking lack of culturally competent clinical neuropsychological practice.

Mr. Qureshi apparently told Dr. Mintz that he was physically abused by his mother, had learning problems, and only attended school inconsistently for “a few years” before he “dropped out” to begin working for his brother-in-law around age 14 or 15. A year or two later, his brother and brother-in-law reportedly helped Mr. Qureshi start his own business. Dr. Mintz wrote that Mr. Qureshi came to the United States with his first wife, who was a U.S. citizen. After their marriage ended in divorce, Mr. Qureshi returned to Pakistan in 2004, where he met and then married his current wife, Sarwat Naheed, a few days later. Theirs was an arranged marriage. Mr. Qureshi then returned to the United States. His wife remained in Pakistan until 2008, when she also immigrated to the U.S. with their two oldest children, joining him in Pasadena, Maryland. The couple had a third child in 2013. Ms. Naheed told Dr. Mintz that their second child, a girl, has autism spectrum disorder and attention-deficit/hyperactivity disorder. Ms. Naheed thinks Mr. Qureshi “has the same thing.” She also said that “everything changed” for him after his brother was murdered in 2006. According to Dr. Mintz, she thinks that the defendant was “pressured into” signing documents for the PPP loan application, that he is overly trusting of others, and that he will “believe anything.”

On testing, Dr. Mintz reported that Mr. Qureshi scored 46/50 on the first trial of the Test of Memory Malinger (TOMM). This is above the cutoff (<41/50) that is typically interpreted as showing feigned impairment. Dr. Mintz concluded that it meant Mr. Qureshi very likely “put forth his best effort on all testing measures he attempted.” This is like saying that if a driver did not crash, then he very likely drove to the best of his ability all along the way. Dr. Mintz also claimed that the tests he administered were normed in the United States using samples that include adults from South Asia (including Pakistan) in numbers that approximate their proportion of the U.S. population. Dr. Mintz was unsure if the normative sample included people who spoke Urdu as their primary language. In

fact, *only* persons who spoke English as their primary language were included in the normative sample for the Wechsler Adult Intelligence Scale (WAIS-IV).¹ On the WAIS-IV, Mr. Qureshi produced a Full Scale IQ of 75, which is borderline. He showed much better nonverbal (PRI = 96; average) than verbal (VCI = 72, borderline) intelligence, low average working memory (WMI = 86), and abnormal processing and psychomotor speed (PSI = 59). Dr. Mintz concluded the Mr. Qureshi is a man of “borderline intelligence,” at least in terms of his verbal intellect. Dr. Mintz opined that the defendant likely would have done better if he were tested in Urdu, but he offered no estimate of *how much* better he might have done. Dr. Mintz also tested Mr. Qureshi’s written and oral language skills and his mastery of basic academic skills, such as reading, spelling, and writing—all in English. Dr. Mintz compared Mr. Qureshi’s performance to native-English-speaking American adults and reported that many of his language and academic skills are equivalent to those of 6- to 8-year-old American children. In the Summary and Impressions section of his report, Dr. Mintz repeatedly described Mr. Qureshi’s lowest test scores as signifying “impairments” or “deficits.” Dr. Mintz repeated equated abnormal and borderline test performance with brain and cognitive dysfunction, without ever noting that Mr. Qureshi’s worst test performances could have been due to being tested in a foreign language, perhaps combined with other factors. Dr. Mintz did not make any formal diagnosis. He remarked, “Mr. Qureshi “may meet diagnostic criteria for *attention-deficit/hyperactivity disorder* (ADHD) (though further testing would be necessary to confirm the diagnosis).” The mostly widely used questionnaires used to assess this take than 15 minutes to complete and can be completed by the examinee, a knowledgeable informant, or both.

While Dr. Mintz highlighted Mr. Qureshi’s worst cognitive test scores, he did not mention any of the test items the defendant passed. Despite being tested in English, Mr. Qureshi repeated up to six digits forward (6-1-9-4-7-3). While his overall score on the WAIS-IV Information subtest was at the low end of average, Mr. Qureshi correctly stated the temperature at which water boils and who Mahatma Gandhi was. He mistakenly thought that George Washington was president of the United States during our Civil War and did not know who wrote *Hamlet* or who Sacagawea was. Despite his wife’s report that Mr. Qureshi’s working memory is worse than 99.9% of men his age, he solved several mental arithmetic word problems promptly and accurately. One such question is as follows: “There are 25 pieces of chewing gum in one pack. How many pieces are there in eight packs?” He gave the correct answer in less than 30 seconds. On many tests, Mr. Qureshi missed easier items while passing more difficult ones. In my experience, this is typical of persons who acquire English as a second language, especially those who acquire it after childhood. Thus, Mr. Qureshi misspelled the word “saw” as “sow,” but he correctly spelled “manager” and “electric.” Many of his misspelled words were phonetically correct, another hallmark of acquiring English as a second language. Dr. Mintz administered three WAIS-IV subtests that assess nonverbal intelligence. Mr. Qureshi scored in the borderline range on one, but he *outperformed* 84% of English-speaking American adults his age on another and 50% of healthy age peers on the third. Notably, Dr. Mintz discontinued the last of these subtests prematurely, thus preventing Mr. Qureshi from attaining a higher score.

While Dr. Mintz did not administer any symptom questionnaires to Mr. Qureshi, he had Ms. Nadeem rate her husband’s everyday executive functioning using the Behavioral Rating Inventory of Executive Function (BRIEF-A). She rated his everyday executive functioning as aberrant in every respect except emotional control, on which she rated him as normal. Otherwise, her responses suggest that her husband shows abnormal impulse control, self-monitoring (social comportment), shifting between tasks and circumstances, task initiation, working memory, planning/organization (management of current and future demands), task-monitoring, and organization. Overall, she described her husband as having severe problems with behavior regulation and metacognition.

Based on his assessment, Dr. Mintz concluded that it is “highly unlikely that Mr. Qureshi would have the verbal or executive functioning skills to manage the complex documentation required to navigate a complex, multi-step process on his own. He further opined that the defendant’s “verbal deficits are likely to directly interfere with, and compromise his understanding of, complex legal proceedings. It is highly unlikely that he would be able to understand legal documentation in written or spoken form.” Finally, Dr. Mintz added, “Mr. Qureshi’s verbal deficits and executive functioning deficits may also impair his ability to assist his legal counsel in respect to any legal proceedings.” Notably absent from his report is any attempt to reconcile these opinions with Mr. Qureshi’s repeated assertions in court that he understood the nature of the charge of wire fraud conspiracy, his repeated affirmation that he understood components of the offense to which he pleaded guilty, his statement that he reviewed the terms of his plea agreement with his attorney, and his reports of being able to understand the proceedings as they unfolded during the hearing. Dr. Mintz did not draw any linkage between his general opinions and specific elements of any test for competency. Nor did he state what prevented Mr. Qureshi from asking for an Urdu interpreter if he had difficulty following court proceedings of which findings precluded him from assisting in his own defense or rendered him incapable of making an informed and voluntary decision to plead guilty. Finally, Dr. Mintz did not attempt to reconcile the fact that Mr. Qureshi has lived and worked in the United States since 2000, is a US citizen, and has supported his family here since 2008 with his opinion that the defendant’s English language skills are no better than those of 6- to 8-year-old children.

On 8/29/2023, more than ten months after Mr. Qureshi pled guilty to wire fraud conspiracy pursuant to a plea agreement, the defendant filed a motion to withdraw his guilty plea with representation by his third attorney, Jonathan Ai, Esquire. In that motion, based on Dr. Mintz’s report, his attorney argued that Mr. Qureshi has a developmental disability and “deficits” of verbal and executive functioning that impair his ability to understand complex legal proceedings, assist in his own defense, and understand the nature of both the conspiracy charge against him and his own plea agreement. Mr. Ai cited the *Dusky v. United States* standard of competency, namely that a defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational and factual understanding of the proceedings against him. He also argued that Mr. Qureshi suffered prejudice because he was never provided an Urdu interpreter when he pled guilty and his former attorney failed to advocate for having one appointed. Mr. Ai further argued that Mr. Qureshi’s former attorney provided ineffective assistance during the guilty plea phase of court proceedings by threatening him, coercing him to plead guilty, and failing to explain to him the contents of the plea agreement. Finally, Mr. Ai asserted that Mr. Qureshi is innocent of the charge against him because he lacked the *mens rea* to commit the crime and did not knowingly produce any of the documents that were submitted when he applied for the PPP loan.

On 9/19/2023, the Government filed a response opposing Mr. Qureshi’s motion to withdraw his guilty plea. In its opposition, ASUA Paul Riley noted that during the guilty plea proceeding on 10/14/2022, the Court confirmed that Mr. Qureshi was a US citizen and possessed the ability to speak and understand English. Mr. Riley further noted that the Court repeatedly read the entire text of the one count criminal information aloud to Mr. Qureshi. According to the guilty plea proceeding transcript, the Court stopped 20 times (transcript pp. 10–28) to ask Mr. Qureshi if he understood or had any confusion about specific details of the criminal information. Just one time when the Court asked, “Is there something you didn’t understand about that just then, sir?” Mr. Qureshi replied, “Yes.” The Court then reiterated, “You’re accused of committing fraud in connection with the PPP program in the fact of COVID-19. Do you understand that?” to which Mr. Qureshi replied, “Yes, Your Honor.” The Court asked, “Is there anything I just read to you that you don’t understand?”

Mr. Qureshi replied, “No, I understand all you read.” The other 19 times that the Court asked Mr. Qureshi if he understood or had any confusion about what was read aloud to him, he consistently stated that he understood and had no confusion about it. Mr. Riley noted that the Court conducted a thorough colloquy under Rule 11 of the Federal Rules of Criminal Procedure, during which Mr. Qureshi repeatedly indicated that his guilty plea was knowing and voluntary with a factual basis. Mr. Riley also cited the fact that Mr. Qureshi denied being threatened or forced to plead guilty by anyone, including his attorney. In his opposition to Mr. Qureshi’s motion to withdraw his guilty plea, Mr. Riley also cited the fact that after he read the factual stipulation associated with Mr. Qureshi’s guilty plea, the Court asked if the stipulation was an accurate summary of the case, to which Mr. Qureshi replied that it was. Mr. Qureshi stated that he actually committed the crime to which he was pleading guilty, and affirmed that he wished to plead guilty.

Mr. Riley further argued that the defendant had produced no evidence that his plea was not knowing or voluntary. He noted that Mr. Qureshi did not raise any concern about his attorney or the advice he received about pleading guilty, nor did he report any difficulty understanding the proceedings against him, the language in which they were conducted, or the stipulation of facts. He did not request an interpreter, nor did he pause or equivocate when he was asked whether he was in fact guilty of the offense as charged. Mr. Riley argued that Mr. Qureshi offered no credible evidence of his actual innocence and that the delay of 10 months between Mr. Qureshi’s guilty plea and his motion to withdraw it belied any claim that he made his initial decision to plead guilty hastily, with unsure heart or confused mind. Mr. Riley further argued Mr. Qureshi’s own testimony belied his claim of ineffective counsel insofar as he reported believing that his attorney was “doing well” for him and had done everything Mr. Qureshi had asked him to do. Mr. Riley argued that Mr. Qureshi’s claim of having a “developmental disability” lacked merit because neither he nor Dr. Mintz ever identified one or any diagnosis at all. Mr. Riley further noted that Mr. Ai misquoted Dr. Mintz and that Dr. Mintz never opined that the defendant suffered from a mental disease or defect that rendered him mentally incompetent due to an inability to understand the nature or consequences of the proceedings against him or to assist in his own defense. Finally, Mr. Riley argued that Dr. Mintz’s use of psychological tests that were developed and normed on the U.S. population sample and administered in English undermines the reliability and validity of his conclusions.

Formulation & opinions:

Based on my review of the records outlined above and my professional training and experience, I reached the following diagnostic formulation and opinions to a reasonable neuropsychological probability.

1. Despite Mr. Qureshi’s and his wife’s report that he did poorly in school, neither is an unbiased historian, and I found no convincing evidence that the defendant has any learning or attention disorder. Absent clear contextual information about the educational prospects, expectations, and quality of available schools where Mr. Qureshi was raised in Lahore and among students of comparable sociodemographic background, I find it impossible for anyone to conclude that he had more or less academic aptitude than was typical of his peers. If it is true that Mr. Qureshi began working with his brother-in-law at age 14 or 15, and then started his own business two years later, this could even indicate that he was an unusually intelligent apprentice.
2. We do not know exactly how or when Mr. Qureshi began learning English. If he has had little formal training in English before or since he came to the U.S. at age 31, then his performance on cognitive testing could be due to poor mastery of English. This does not mean he has a

verbal deficit, impairment, or borderline intelligence. It means that his knowledge of English has holes that depress his performance, especially on verbal tests. In the same way, even an intellectually gifted native English speaker would likely demonstrate borderline or abnormal performance on a Chinese IQ test due to acquiring Chinese as a second language. The effects of being tested in a nonprimary language are magnified when the languages are very dissimilar, as is true of Urdu and English. While Urdu uses Arabic letters and reads from right to left, English uses Latin letters and reads from left to right. In neuropsychology, an “impairment” or “deficit” refers to the cognitive effect of an acquired or developmental brain abnormality. Showing borderline or even abnormal performance on a cognitive test does not necessarily mean that the person has brain dysfunction or a cognitive deficit. Mr. Qureshi’s incomplete mastery of English likely depressed his test performance, especially on tasks that (1) impose a time limit on correct responses, (2) do not allow the examiner to repeat questions, or (3) define correct answers precisely when a less precise choice might enable a person to communicate quite effectively despite their imperfect word choice. In fact, many of Mr. Qureshi’s spelling errors were phonetically correct and easily understood. Thus, the defendant’s acquisition of English as a second language and being reared outside the US greatly undermine Dr. Mintz’s opinion that he is “impaired.” Just as persons with mild aphasia can often understand and convey the gist of a communication despite problems with word recognition or retrieval, so persons with imperfect mastery of a foreign language can often communicate more effectively than their low scores on language tests might lead one to expect.

3. The linkage between abnormal test performance and the presence of brain dysfunction also can be uncoupled by factors other than being tested in a second language. The most obvious of these is motivation. Being tested in the context of a strong external incentive to perform poorly, such as when one claims to be too “impaired” to assist counsel, understand the nature or object of legal proceedings against one, or enter into a binding plea agreement, can easily lead an examinee to sabotage his or her test performance by simply giving wrong answers. When this is carried to the extreme, performance validity tests (PVTs) like the Test of Memory Malingering or TOMM can sometimes detect such feigning. While most board-certified neuropsychologists administer an average of 5 or 6 PVTs, Dr. Mintz gave just one, the TOMM, *and he administered it incorrectly.*² The TOMM and other PVTs are designed to look more difficult than they actually are. As a result, even persons of modest intellectual endowment or mild brain dysfunction typically perform normally on them if they want to do so. In this sense, PVTs require little cognitive “effort” for success and are insensitive to poor cognitive effort.^{3,4} However, another strategy to perform beneath one’s actual ability is to just not try very hard, and this might suffice to lower one’s performance while keeping it within broad normal limits. Either way, deliberate feigning and simply not trying to do well can uncouple the linkage between cognitive performance and the presence/absence of brain-related cognitive dysfunction. In the present case, Mr. Qureshi’s poor cognitive performance may be due to both being tested in a second language and being strongly motivated not to do well on testing.
4. Another reason why I respectfully disagree with Dr. Mintz’s opinions is that he administered testing incorrectly. He discontinued tests before Mr. Qureshi reached the ceiling, failed to record many of Mr. Qureshi’s responses, and recorded many responses so illegibly that it is impossible to decipher what Mr. Qureshi actually said or did. For many cognitive tests, items are arranged in hierarchical order of difficulty. In order to minimize burden on examinees, the examiner works backward to establish a “baseline” of consecutively passed items (skipping items the person would almost certainly pass) and a “ceiling” of consecutively failed items (skipping items the person would almost certainly fail). Dr. Mintz discontinued several tests

before Mr. Qureshi reached the “ceiling,” *thereby preventing him from achieving a higher score*. This invalidates many of the test results he obtained and calls the reliability and validity of other results into question. Dr. Mintz discontinued the WAIS-IV Block Design subtest after Mr. Qureshi failed a single item, rather than after he failed three consecutive times. Likewise, the TOL Picture Vocabulary subtest requires the examiner to continue testing until a person fails 6 consecutive items. On this subtest, Mr. Qureshi failed 5 consecutive items (#s 34–38), but then passed the next item (#39) by correctly identifying a pendulum. At that point, Dr. Mintz should have administered *at least* six items (and more than that if Mr. Qureshi passed any of them), but he did not administer a single item after #39. He also discontinued the TOL Segmentation subtest after 5 rather than 6 consecutive failures. In short, Dr. Mintz prematurely discontinued the TOMM, Block Design, Picture Vocabulary, and Segmentation tests. We cannot know how much higher Mr. Qureshi’s scores would have been had Dr. Mintz administered the tests correctly.

5. In addition to these test administration errors, Dr. Mintz also scored nearly every measure derived from the WCST of executive functioning incorrectly. Dr. Mintz said of Mr. Qureshi: “His scores were particularly poor in respect to Perseverative Responses (4th percentile), indicating a lack of flexibility in thinking when problem-solving and a relative inability to incorporate error messages into his problem-solving approach. Dr. Mintz clearly deemed this important to his opinion that “it is highly unlikely that Mr. Qureshi would have the verbal or executive functioning skills to manage the complex documentation required to navigate a complex, multi-step process on his own.” He further opined that Mr. Qureshi’s “executive function deficits may also impair his ability to assist his legal counsel.” However, while Dr. Mintz stated that Mr. Qureshi gave 57 perseverative responses on this test, when I rescored it using the test author’s computerized scoring program, it showed that Mr. Qureshi actually gave just 31 perseverative responses, which is low average and corresponds to the 21st percentile. The WCST is particularly difficult to score by hand, but Dr. Mintz scored 8 of 8 error metrics incorrectly. Notably, Mr. Qureshi also showed two failures to maintain set (FMS), and almost showed a third FMS by making an error after four consecutive correct responses, rather than five. This may be important because >1 FMS is suggestive of feigned impairment.⁵
6. A fourth reason why I disagree with Dr. Mintz’s conclusions is that he based them on a factual misunderstanding of the development, standardization, and norming of the very tests he administered. On page 4 of his report, Dr. Mintz asserted that while the tests he gave were normed in the United States sample, the normative sample included persons from south Asia in proportion to their representation in the US population, even though they “may not include individual who speak Urdu as their primary language.” In fact, the technical manual for the WAIS-IV provides no evidence that even a single person from Pakistan was included in the normative sample. It also states clearly that *no* persons whose primary language was anything other than English was included from the normative sample.¹ These limitations essentially render this test invalid for use with persons of Mr. Qureshi’s background. I am leading a project to translate and norm a battery of neuropsychological tests in as many languages and countries as possible through a nonprofit organization called Global Neuropsychology, Inc. (<https://gninc.org/>) in an effort to rectify this very problem. Dr. Mintz’s interpretation of Mr. Qureshi’s test results represents a lack of cultural competence in clinical neuropsychology. Developing such competence has become a major focus of dialog and continuing education among the leadership and members of every major neuropsychological organization. Perhaps accounting for Dr. Mintz’s apparent unawareness of this is the fact that he does not belong to any of these organizations and is not board-certified in neuropsychology or any other specialty.

7. For all the reasons enumerated above, I believe that Dr. Mintz's neuropsychological test results do not show that Mr. Qureshi has *any* cognitive deficit or impairment, borderline intelligence, or developmental disability. In fact, I think it is more likely than not that Mr. Qureshi is a man of at least average intelligence. While the defendant did poorly on several verbal and nonverbal tests, I believe that this likely was due to a combination of being tested in the context of a strong external incentive to perform poorly and "holes" in his mastery of English. However, like most persons with less than full proficiency in a language, I believe that Mr. Qureshi's functional communication skills exceed what one might expect based on his lowest test scores, as many of these were timed and/or required specific words and spellings when less precise alternatives would communicate adequately. Indeed, many native English speaking Americans have limited vocabularies and frequently evince agrammatisms when speaking or writing yet nonetheless can grasp even fairly complex oral and written communications based on the vocabulary they do recognize and contextual cues.
8. Finally, I found no evidence in his report that Dr. Mintz adequately assessed Mr. Qureshi's actual competence to stand trial or enter into a plea agreement. That is, it appears that he did not interview defense counsel or carefully question Mr. Qureshi regarding his understanding of the nature and object of the proceedings against him, his understanding of what the Court and Mr. Riley read aloud to him during his guilty plea hearing on 10/14/2022, why he repeatedly testified under oath that he understood and had no confusion about what was said during the proceeding, or why he repeatedly told the Court that he had conferred with defense counsel, understood his advice, affirmed that his attorney had done what he asked of him, and freely and knowingly chose to plead guilty because he was guilty of committing wire fraud conspiracy. Absent careful elucidation of Mr. Qureshi's understanding of and reasoning about these questions, I believe that Dr. Mintz's reliance on his cognitive test results and claims that he did not understand the wrongfulness or criminality of his behavior at the time of his offense, the terms of his plea agreement, or how to assist in his own defense provides nothing more than a specious basis for his opinions. Nor did Dr. Mintz assess Mr. Qureshi's ability to assist in his own defense when he decided to file a motion to withdraw his guilty plea and potentially increase the severity of his sentence.

Respectfully submitted,



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