

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

LUKE WENKE,

Defendant.

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**22-CR-35-JLS**

**NOTICE OF MOTION**

**MOTION BY:**

Frank R. Passafiume, Assistant Federal Public  
Defender, Attorney for Luke Wenke.

**DATE, TIME & PLACE:**

Before the Honorable John L. Sinatra  
United States District Judge, Robert H. Jackson  
United States Courthouse, 2 Niagara Square,  
Buffalo, New York 14202, **on date and time to be  
set by the Court.**

**SUPPORTING PAPERS:**

Affirmation of Assistant Federal Public Defender  
Frank R. Passafiume, dated July 25, 2024.

**RELIEF REQUESTED:**

Order for psychiatric examination to determine  
competency pursuant to 18 U.S.C. § 4241.

**DATED:**

July 25, 2024, Buffalo, New York.

Respectfully submitted,

**/s/Frank R. Passafiume**

Frank R. Passafiume  
Assistant Federal Public Defender  
Federal Public Defender's Office  
300 Pearl Street, Suite 200  
Buffalo, New York 14202  
(716) 551-3341; 551-3346 (fax)  
frank\_passafiume@fd.org  
*Attorney for Luke Wenke*

**TO:** Michael DiGiacomo  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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**22-CR-35-JLS**

**AFFIRMATION**

**FRANK R. PASSAFIUME, ESQ.**, affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Luke Wenke, in the instant matter.

2. As the Court is aware, the defense retained an expert psychiatric examiner in anticipation of the October 17, 2024, hearing. The Court thereafter directed the defense file a status report by July 26, 2024.

3. Based on consultations with the expert psychiatric examiner, my investigation of the case, and my observations of Mr. Wenke, I request that a psychiatric examination of Mr. Wenke be conducted pursuant to 18 U.S.C. §§ 4241(a) and 4247(b) as there is reasonable cause to believe that Mr. Wenke is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense.

4. A proposed Order will be submitted separately to the Court.

**DATED:** July 25, 2024  
Buffalo, New York

Respectfully submitted,

**/s/Frank R. Passafiume**

Frank R. Passafiume  
Assistant Federal Public Defender  
Federal Public Defender's Office  
300 Pearl Street, Suite 200  
Buffalo, New York 14202  
(716) 551-3341; 551-3346 (fax)  
frank\_passafiume@fd.org  
*Attorney for Luke Wenke*

**TO:** Michael DiGiacomo  
Assistant United States Attorney



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

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**22-CR-35 (JLS)**

**ORDER**

On July 25, 2024, the defense filed a motion requesting that a psychiatric examination of Defendant be conducted pursuant to 18 U.S.C. §§ 4241(a) and 4247(b). *See* Dkt. 140. On July 30, 2024, a status conference was held to address the defense's motion. *See* Dkt. 143.

Based on the proffers from the defense and government at the status conference, and for the reasons set forth in the defense's motion, the Court finds there is reasonable cause to believe that Defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense pursuant to 18 U.S.C. § 4241(a).

Accordingly, it is hereby

**ORDERED** that, pursuant to 18 U.S.C. § 4241(b) and 18 U.S.C. § 4247(b), Defendant undergo a psychiatric examination to determine whether he is presently suffering from a mental disease or defect rendering him mentally incompetent to

the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense; and it is further

**ORDERED** that, pursuant to 18 U.S.C. § 4247(b), Defendant is committed to the custody of the Attorney General, for placement at a suitable facility closest to the Court, for the purposes of the psychiatric examination; and it is further

**ORDERED** that, pursuant to 18 U.S.C. § 4247(b), Defendant is committed to the custody of the Attorney General for a reasonable period, not to exceed 30 days, with one reasonable extension of 15 days upon a showing of good cause that the additional time is necessary to observe and evaluate Defendant in order to accomplish the psychiatric examination; and it is further

**ORDERED** that, pursuant to 18 U.S.C. § 4247(c), a psychiatric report be prepared by the examiner and filed with the Court, with copies provided to counsel for Defendant and the government and that this report shall include:

1. Defendant's history and present symptoms;
2. a description of the psychiatric, psychological, and medical tests that were employed and their results;
3. the name of the examiner(s) and his/her/their qualifications and their findings as to competency to proceed;
4. the examiner's opinions as to diagnosis, prognosis, and whether Defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and the consequences of the proceedings against him or to assist properly in his defense; and,
5. any recommendation the examiner may have as to how the mental condition of Defendant should affect the sentence; and it is further

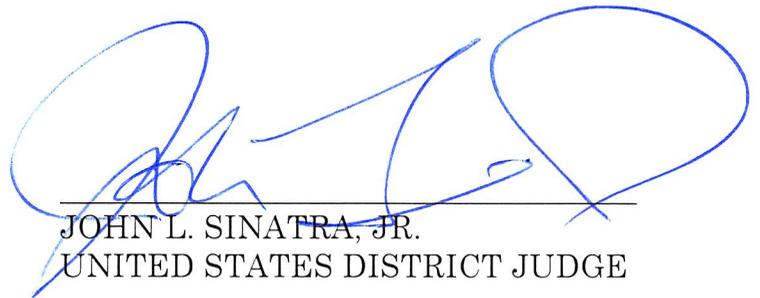
**ORDERED** that United States Probation is authorized to disclose all materials related to this case, including but not limited to, any and all prior psychiatric reports; and it is further

**ORDERED** that the United States Marshals deliver Defendant to the suitable facility, to be determined by the Attorney General, as promptly and expeditiously as possible so as to minimize the period during which Defendant must travel; and it is further

**ORDERED** that sentencing in this case is stayed pending the resolution of Defendant's competency.

SO ORDERED.

Dated: August 6, 2024  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

22-CR-35 (JLS)

v.

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**AMENDED ORDER**

On July 25, 2024, the defense filed a motion requesting that a psychiatric examination of Defendant be conducted pursuant to 18 U.S.C. §§ 4241(a) and 4247(b). *See* Dkt. 140. On July 30, 2024, a status conference was held to address the defense's motion. *See* Dkt. 143.

Based on the proffers from the defense and government at the status conference, and for the reasons set forth in the defense's motion, the Court finds there is reasonable cause to believe that Defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense pursuant to 18 U.S.C. § 4241(a).

Accordingly, it is hereby

**ORDERED** that, pursuant to 18 U.S.C. § 4241(b) and 18 U.S.C. § 4247(b), Defendant undergo a psychiatric examination to determine whether he is presently suffering from a mental disease or defect rendering him mentally incompetent to

the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense; and it is further

**ORDERED** that, pursuant to 18 U.S.C. § 4247(b), Defendant is committed to the custody of the Attorney General, for placement at a suitable facility closest to the Court, for the purposes of the psychiatric examination; and it is further

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**ORDERED** that, pursuant to 18 U.S.C. § 4247(c), a psychiatric report be prepared by the examiner and filed with the Court, with copies provided to counsel for Defendant and the government and that this report shall include:

1. Defendant's history and present symptoms;
2. a description of the psychiatric, psychological, and medical tests that were employed and their results;
3. the name of the examiner(s) and his/her/their qualifications and their findings as to competency to proceed; and
4. the examiner's opinions as to diagnosis, prognosis, and whether Defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and the consequences of the proceedings against him or to assist properly in his defense; and it is further

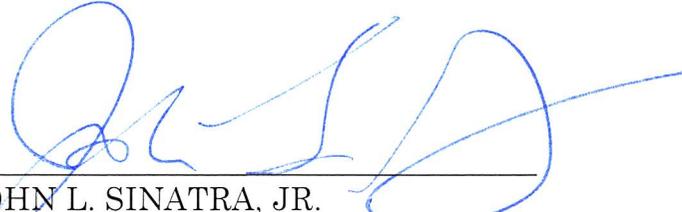
**ORDERED** that the United States Probation is authorized to disclose all materials related to this case, including but not limited to, any and all prior psychiatric reports; and it is further

**ORDERED** that the United States Marshals deliver Defendant to the suitable facility, to be determined by the Attorney General, as promptly and expeditiously as possible so as to minimize the period during which Defendant must travel; and it is further

**ORDERED** that sentencing in this case is stayed pending the resolution of Defendant's competency.

SO ORDERED.

Dated: September 18, 2024  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE



**U.S. Department of Justice**  
Federal Bureau of Prisons  
Metropolitan Correctional Center  
71 W. Van Buren Street  
Chicago, Illinois 60605

*Office of the Warden*

September 17, 2024

**The Honorable John L. Sinatra, Jr.**  
United States District Judge  
Robert H. Jackson United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202

RE: Name: WENKE, Luke  
Docket No.: 22-CR-35  
Reg. No.: 83837-509

Dear Judge Sinatra:

This letter is in response to your court order dated August 6, 2024, which committed Mr. Wenke for an examination pursuant to Title 18, United States Code, § 4241. Mr. Wenke was designated to the Metropolitan Correctional Center (MCC) Chicago, Illinois, on August 14, 2024, and he arrived at the institution on September 4, 2024.

The statute allows our psychology staff 30 days to complete the evaluation, plus a 15-day extension with good cause. In order to allow adequate time for a thorough and conclusive evaluation, an extension of time to complete the evaluation is requested. Should you grant this request, the evaluation will be complete by October 21, 2024, with the report routed to the court by November 12, 2024.

If you should have any questions regarding the evaluation, please contact Dr. Kaitlyn Nelson at (312) 322-0567 Ext. 1464, or Dr. Robin Watkins at (312) 322-0567 Ext. 1469. For any other questions, please contact me at (312) 322-0567, Ext. 1500.

Sincerely,

A handwritten signature in blue ink that reads "D. Baysore". The signature is fluid and cursive.

D. Baysore  
Warden