No.

In the Supreme Court of the United States

CHANEL WILEY, PETITIONER,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

For over fifty years, this Court's precedent has provided that physical restraints are inherently prejudicial. They present an unacceptable risk of improperly influencing a juror's decision on guilt or innocence. *See Illinois v. Allen*, 397 U.S. 337 (1970); *Estelle v. Williams*, 425 U.S. 501 (1976); *Riggins v. Nevada*, 504 U.S. 127 (1992); *Deck v. Missouri*, 544 U.S. 622 (2005). In the decision below, the United States Court of Appeals for the Ninth Circuit rejected those precedents, crafted a new prejudice framework, and held that, under that new framework, ankle monitors are not inherently prejudicial.

The question presented is:

Whether a criminal defendant whose government-imposed restraint is perceptible to a jury must show actual prejudice, as the decision below held, or whether prejudice inheres, as this Court has held.

RELATED PROCEEDINGS

U.S. District Court for the Central District of California:

United States v. Chanel Wiley, et al.,
No. 2:20-cr-00298-JAK-2 (Oct. 6, 2022) (judgment and commitment)

U.S. Court of Appeals for the Ninth Circuit:

United States v. Chanel Wiley,
No. 22-50235 (May 29, 2024) (published decision affirming and upholding conviction)

United States v. Chanel Wiley,
No. 22-50235 (October 3, 2024) (order denying petition for rehearing en banc)

Supreme Court of the United States:

Chanel Wiley v. United States,
No. 24A570 (December 11, 2024) (application for extension of time to file a petition for certiorari granted by Justice Kagan)

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PETITION FOR A WRIT OF CERTIORARI

Chanel Wiley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Ninth Circuit (App. 1a-36a) is reported at 103 F.4th 565 (9th Cir. 2024). A separate memorandum order affirming petitioner's conviction was entered contemporaneously and unpublished. (App. 37a-40a). The Ninth Circuit's order denying rehearing and rehearing *en banc* (App. 41a) is unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered May 29, 2024. The Ninth Circuit denied the petition for rehearing on October 3, 2024. Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including March 2, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant constitutional provisions are reproduced in the petition appendix at App. 56a-59a.

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be … deprived of life, liberty, or property without due process of law.

The Sixth Amendment to the United States Constitution provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A. Background

In *Deck v. Missouri*, 544 U.S. 622 (2005), this Court held that the Constitution prohibits the government from trying a criminal defendant in physical restraints visible to the jury absent a trial court determination that they are justified by a state interest specific to a particular trial. More important, the Court held that such a practice is "inherently prejudicial." The Court reasoned that the prejudice from any such violation "cannot be shown from a trial transcript." *Id.* at 635 (citing *Riggins v. Nevada*, 504 U.S. 127, 137 (1992)). In three earlier cases the Court applied the inherent prejudice rule where defendants were forced to stand trial while medicated, in prison clothing, and while bound and gagged. *Riggins v. Nevada*, 504 U.S. 127, 137 (1992) (trial while medicated); *Estelle v. Williams*, 425 U.S. 501, 504-05 (1976) (trial in prison clothing); *Illinois v. Allen*, 397 U.S. 337, 344 (1970) (trial while bound and gagged). In all the physical restraint cases the Court has considered, it has never once applied a standard different than inherent prejudice.

In this case, petitioner was forced to stand trial while fitted with an ankle monitor. Before and during jury selection, defense counsel told the district judge that the monitor was beeping in the presence of the jury and he feared it would prejudice petitioner. After persistent beeping, the district judge eventually ordered the ankle monitor be cut off. Jury selection resumed, and trial began. The jury convicted petitioner of one of two crimes charged.

A divided court of appeals affirmed. The panel majority refused to apply the inherent prejudice rule required by this Court's precedent. Instead, the majority held that defendants tried in ankle monitors, unlike defendants tried in all other types of physical restraints, must show *actual* prejudice from the jury's observation of

the monitor. As the concurrence recognized, that conclusion cannot be squared with this Court's repeated adherence to the longstanding rule that trial in physical restraints is inherently prejudicial. This Court has repeatedly rejected the Ninth Circuit's actual prejudice rule, explaining that "[e]fforts to prove or disprove actual prejudice" are "futile," amounting to "guesses" that would be "purely speculative." *Riggins*, 504 U.S. at 137.

Under this Court's precedent, ankle monitors, like all other physical restraints, are subject to the inherent prejudice rule. The Ninth Circuit intentionally disregarded that longstanding rule to craft its own prejudice framework. The Court should grant certiorari and reverse.

B. Factual and Procedural History

1. Petitioner Chanel Wiley was charged with conspiracy to distribute a small amount of methamphetamine and distribution of the same. App. 4a. After her arrest and before trial, petitioner was released on bond but struggled with pretrial supervision and was arrested again. *Id.* Rather than forfeit the bond, which would have cost her surety their family home, the magistrate judge ordered petitioner to wear an electronic ankle monitor "to make sure [she] show[ed] up for court." *Id.* The monitor, which the judge described as the "size of a cell phone," tracked her location at all times. *Id.* Petitioner wore the monitor as prescribed, including when she attended court hearings and at trial. *Id.*

Shortly before jury selection began on the first day of her trial, petitioner's ankle monitor began beeping periodically. App. 4a-5a. Defense counsel informed the district judge of the "audible alerts" and expressed concern they "would be prejudicial to the jury." *Id.* The judge acknowledged hearing the beeping and asked whether the ankle monitor could be muted. App. 5a. He then directed the assigned Federal Bureau of

Investigation ("FBI") agent to ask the Pretrial Services Office for assistance. App. 5a.

Jury selection began. Right away, a prospective juror told the judge that "some of them were having difficulty hearing" him. *Id.* About an hour into jury selection, defense counsel asked for a sidebar, during which he told the judge the "ankle monitor keeps alerting," and again expressed his concern about prejudice as "every juror on this side [of the courtroom] is hearing it and seeing I have to fiddle with it." *Id.* Again, the judge acknowledged hearing the alerts—and agreed the jury panel could hear them as well—but stated that he did not "think anyone really knows what that sound is." *Id.* The FBI agent, who attended the sidebar, reported that he expected the ankle monitor to stop beeping because Pretrial Services turned it off, but offered to cut if off if the beeping continued. *Id.* The judge instructed the FBI agent to cut off the ankle monitor during the next break, unless it beeped again, in which case he would order a recess to have it removed immediately. *Id.*

Unsurprisingly, the monitor beeped again. *Id.*; App. 21a. A few minutes later, another prospective juror stated that he could not hear the judge. App. 5a. The judge told the jurors that the court would take a "short break" to "address this technical issue." *Id.* The jury vacated the courtroom. *Id.* During the recess, the FBI agent finally cut off petitioner's ankle monitor and removed it from the courtroom. *Id.*

Jury selection resumed, a jury was impaneled, and trial began. *Id.* After trial, the jury acquitted petitioner of distribution of methamphetamine and convicted her of conspiracy to distribute the same. *Id.* She was sentenced to sixteen months' imprisonment. App. 6a. Petitioner timely appealed. *Id.*

2. A fractured panel of the court of appeals affirmed petitioner's conviction. App. 1a-3a. The majority

recognized that this Court "has deemed some government restraints [inherently] prejudicial." App. 8a. The majority recognized, too, that "[t]he leading case on visible shackling is [*Deck*], in which the Court held that 'the Fifth and Fourteenth Amendments prohibit the use of physical restrains visible to the jury.'" *Id.* (quoting *Deck*, 544 U.S. at 629). And the majority conceded that, while "the English common law rule may have 'primarily … reflected concern for the suffering … that very painful chains could cause,'" this Court had clearly "extended the common law rule to less painful and less cumbersome modern shackles based on 'three fundamental legal principles.'" App. 10a. Indeed, the majority recognized what this Court has long held: Physical restraints are inherently prejudicial because they "undermine[] the presumption of innocence," "diminish[] the right to counsel" by impairing an effective relationship between client and attorney, and "affront[] the dignity and decorum of judicial proceedings." *Id.*

Still, the majority held that a perceptible ankle monitor "is not inherently prejudicial" as a matter of law. App. 4a. The majority stated that it was "mindful" of this Court's precedent, but nonetheless concluded that ankle monitors and shackles are somehow "very different things." App. 8a-9a. Rather than applying the principles laid out in *Deck*, the court crafted its own test, reasoning that ankle monitors are not inherently prejudicial because they do not (1) fall within the definition of "'shackle' or 'bond' in the literal sense," App. 11a, (2) "physically bind an individual's 'body or limbs' or tie her to 'the floor or wall,'" *id.*, or (3) "cause[] pain or interfere[] with a defendant's ability to represent herself," App. 11a-12a. The majority further attempted to distinguish *Deck* by asserting that ankle monitors, unlike shackles, "are relatively unobtrusive" and do not "create the appearance of the defendant's dangerousness." App. 13a. It conceded

that "the awareness that a defendant is wearing an ankle monitor may impact the jury's perception of that defendant's innocence," App. 14a—a key consideration in this Court's inherent prejudice jurisprudence—but concluded that it does not "impermissibly suggest guilt," App. 17a, because other government restraints like shackles and prison clothes "are more prejudicial than an ankle monitor," App. 14a; App. 19a.

Having created a new prejudice framework, the majority next concluded that petitioner had not shown actual prejudice. App. 20a-23a. It reached that conclusion by suggesting that the monitor's removal during jury selection "might well have had a *favorable* reaction with the jury rather than an adverse one" because it "decreased the government's control over Wiley during trial." App. 23a (emphasis added). Moreover, the majority suggested without explanation that petitioner's acquittal of one of the two charges is evidence that she was not prejudiced. App. 22a.

The concurrence strongly disagreed with the majority's rejection of this Court's precedent. App. 23a-36a. It criticized the majority for "invok[ing] *Holbrook* [*v. Flynn*, 475 U.S. 560 (1986)] only to ignore its reasoning." App. 30a. "Rather than meaningfully engage in a comparative analysis like the *Holbrook* Court, the majority makes the conclusory assertion that ankle monitors are 'not in the same galaxy as prison clothes or shackles.'" *Id.* It explained that "there are many similarities among shackles, prison attire, and ankle monitors," *id.*, and stated that "a straightforward comparative analysis leads to the conclusion that, like shackles and prison attire, perceptible ankle monitors are inherently prejudicial." *Id.* The concurrence accused the majority of being "blind to th[e] reality" that an ankle monitor is "a state imposed restraint that conveys a potent and injurious message about the person wearing

it." App. 31a (cleaned up). It further accused the majority of "confus[ing] disruption and prejudice," and noted that even "relatively discrete restraints are prejudicial." App. 32a-33a.

3. Petitioner filed a timely petition for rehearing and rehearing *en banc*. App. 41a. The Ninth Circuit denied the petition on October 3, 2024, though the concurring judge indicated he would have reheard the case *en banc*. *Id.*

REASONS FOR GRANTING THE PETITION

In a series of cases going back fifty years, this Court announced a clear, bright-line rule: all physical restraints imposed on a defendant are inherently prejudicial. *See Illinois v. Allen*, 397 U.S. 337 (1970); *Estelle v. Williams*, 425 U.S. 501 (1976); *Riggins v. Nevada*, 504 U.S. 127 (1992); *Deck v. Missouri*, 544 U.S. 622 (2005). This Court has never made an exception to that rule for any form of restraint imposed on a defendant's person. Ankle monitors are physical restraints that fall squarely under that rule. But the Ninth Circuit refused to follow that clear rule under the mistaken impression that this Court's decision in *Holbrook* overruled it *sub silencio*. *See Holbrook v. Flynn*, 475 U.S. 560 (1986). *Holbrook*, though, is a case about whether courtroom practices that do *not* involve restraints should receive the same inherent prejudice analysis as restraints. *See id.* at 569. It does not say that physical restraints should be analyzed under a different standard unless they are literally shackles. *Id.*

This Court has applied an inherent prejudice rule to each and every physical restraint brought before it. Applying *Allen*, *Estelle*, *Riggins*, and *Deck*, this is an easy case. Petitioner was inherently prejudiced when her ankle monitor repeatedly alerted during *voir dire* and when the jurors present were seated to pass on her guilt or innocence.

Undeterred, the Ninth Circuit defied that precedent and instead did a two-step: First, it said that this Court's decision in *Holbrook* governs even in physical restraint cases as long as the physical restraint is not a classic shackle. Second, it held that ankle monitors are not sufficiently like shackles to warrant an inherent prejudice analysis under *Holbrook*. Both conclusions are wrong. Neither *Holbrook*'s facts nor holding have any applicability here. *Holbrook* does not disturb the conclusion required by this Court's precedent that ankle monitors, like other physical restraints, are inherently prejudicial. None of the Court's physical restraint cases purport to limit the inherent prejudice rule to literal shackles. Rather, they repeatedly use the term "physical restraints" to describe what falls within the scope of the rule. *See, e.g.*, *Deck*, 544 U.S. at 627 (describing *Allen* as addressing "physical restraints"); *id.* at 629 ("[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints."); *id.* at 630 ("[N]ot all modern physical restraints are painful."); *Estelle*, 425 U.S. at 505 (describing *Allen* as addressing "physical restraints").

The lower court decision contravenes decades of this Court's precedent and spurns centuries of common law. It dilutes and diminishes the due process rights of defendants in the Nation's largest Circuit. To reaffirm the centrality of the fair trial, the presumptions attendant to that right, and the continuing vitality of a workable inherent prejudice framework, the Court should grant the petition and resolve this important issue.

I. THE NINTH CIRCUIT OVERTURNED DECADES OF THIS COURT'S PRECEDENT ON PREJUDICIAL COURTROOM PRACTICES

A. Physical Restraints Are Inherently Prejudicial

In an unbroken line of cases, the Court has reaffirmed its adherence to the longstanding rule that restraints worn on the body so undermine the right to a fair trial as

to be inherently prejudicial. *See Illinois v. Allen*, 397 U.S. 337 (1970); *Estelle v. Williams*, 425 U.S. 501 (1976); *Riggins v. Nevada*, 504 U.S. 127 (1992); *Deck v. Missouri*, 544 U.S. 622 (2005). This Court has yet to encounter a physical restraint that it did not deem inherently prejudicial.

In *Allen*, 397 U.S. at 344, this Court held that shackling is inherently prejudicial. That conclusion was motivated by the due process concern that the practice "might have a significant effect on the jury's feelings about the defendant." *Id.* The Court later applied that principle to prison clothes in *Estelle*, 425 U.S. at 512, to antipsychotic medication in *Riggins*, 504 U.S. at 137, and to "modern physical restraints" at the penalty phase of capital cases in *Deck*, 544 U.S. at 630, 633.

In *Estelle*, the Court explained that prison clothes serve as a "constant reminder of the accused's [restrained] condition" and that "such distinctive, identifiable attire may affect a juror's judgment." 425 U.S. at 504-05. It thus concluded that the practice presents "an unacceptable risk" of "impermissible factors coming into play." *Id.* at 505. The prejudice is inherent. *Id.*

In *Riggins*, the Court held that forcing antipsychotic drugs on a defendant during trial is inherently prejudicial because it is possible that the drug's side effects could affect "not just [the defendant's] outward appearance, but also the content of his testimony on direct or cross examination, his ability to follow the proceedings, or the substance of his communications with counsel." 504 U.S. at 137.

In *Deck*, the Court held that all physical restraints are inherently prejudicial as a matter of law. 544 U.S. at 632; *id.* at 629; *see also Stephenson v. Wilson*, 619 F.3d 664, 668 (7th Cir. 2010) (Posner, J.) (stating that *Deck* addressed "any kind of visible restraint"). It explained that "[c]ourts and commentators share close to a

consensus that … a criminal defendant has a right to remain free of physical restraints that are visible to the jury" and "that the right has a constitutional dimension." *Deck*, 544 U.S. at 628 (collecting cases). In light of that consensus, the Court recognized that its precedent "gave voice to a principle deeply embedded in the law." *Id.* at 629. Recognizing that principle, it thus held that the Constitution prohibits "the use of physical restraints visible to the jury absent a trial court determination … that they are justified by a state interest specific to a particular trial." *Id.* In reaching that conclusion, the Court reiterated its holding in *Allen*, explaining that physical restraints undermine the presumption of innocence because they "suggest[] to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'" *Id.* at 630.

In each case, the Court has made a point to explain why physical restraints warrant an inherent prejudice rule. The "actual impact of a particular practice on the judgment of jurors cannot be fully determined." *Estelle*, 425 U.S. at 504. Their "precise consequences" simply "cannot be shown from a trial transcript." *Riggins*, 504 U.S. at 137 (citing *Estelle*, 425 U.S. at 504-05; *Allen*, 397 U.S. at 344). "Efforts to prove or disprove actual prejudice" of such practices would thus be "futile." *Id.* "[G]uesses whether the outcome of the trial might have been different" absent the restraint or practice—or whether, *e.g.*, the defendant may have been convicted of neither or both of the charged offenses, instead of just one—"would be purely speculative." *Id.* Time and again, the Court has reaffirmed this mandate: physical restraints are inherently prejudicial—a defendant subjected to such practices need not show actual prejudice. *See Allen*, 397 U.S. at 344; *Estelle*, 425 U.S. at 502-05; *Riggins*, 504 U.S. at 137; *Deck*, 544 U.S. at 628-29.

B. The Decision Below Purposefully Defied This Court's Precedent

Undaunted, the court below deliberately neglected those five decades of precedent. The court of appeals first sought to dismiss *Deck* by categorizing its ruling as merely "identif[ying]" a "common law rule" limited to literal shackles. App. 10a. The court asserted that that "common law rule" "does not apply to ankle monitors" because "[a]n ankle monitor is not a 'shackle' or 'bond' in the literal sense." App. 11a; App. 28a (Mendoza, J., concurring) (stating that the majority decision "establishes that *Deck*'s rule against visible shackling does not extend to ankle monitors"). It then renounced *Deck* by stating that "the prohibition on visible shackling" does not apply to ankle monitors because ankle monitors do not cause physical pain. App. 11a. The majority focused on *Deck*'s dictum that shackles "compromise a defendant's ability to defend himself" because of the "suffering that very painful chains could cause." App. 9a (cleaned up). Finding that concern inapplicable to ankle monitors, the majority concluded that ankle monitors are "very different" than shackles. *Id.*

That interpretation flies in the face of *Deck*'s holding. *Deck* is not limited to literal shackles and bonds, nor does it require evidence of physical pain. *See Stephenson*, 619 F.3d at 668. Rather, the Court solidified its already-existing framework applicable to all government-imposed restraints, including "modern physical restraints." *Deck* 544 U.S. at 630. It repeatedly used the term "physical restraints." *E.g.*, 544 U.S. at 627. It noted that "[j]udicial hostility to shackling may once primarily have reflected concern for the suffering . . . that 'very painful' chains could cause." *Id.* at 630. But it stated that its opinions "have not stressed the need to prevent physical suffering" because "not all modern physical restraints are painful." *Id.*; *see also Stephenson*, 619 F.3d at 668. To be sure, no

one has suggested that petitioner was tortured or hauled to the pillory in a ball and chains. But, again, *Deck* explicitly disavowed the common law justification on which the court of appeals relied—a disavowal *the majority itself acknowledged* before seeming to forget a few sentences later. App. 10a.

Deck plainly announced a framework applicable to *all* physical restraints, including "modern physical restraints." 544 U.S. at 630. The court below ignored not only that holding, but the broader context of the Court's teaching in *Deck*, which followed from decades of this Court's precedent and centuries of common law. Determined to establish its own rule, the majority declared that the Court's precedents "indicate that restraints that are short of in-courtroom shackles—including, as we conclude, ankle monitors—need not be 'interpreted as a sign that [the defendant] is particularly dangerous or culpable.'" App. 18a (quoting *Holbrook*, 475 U.S. at 569).

The Ninth Circuit sidestepped the Court's physical restraint cases by treating this case as a *Holbrook* case. App. 19a; App. 28a (Mendoza, J., concurring) ("The majority's inherent-prejudice analysis rests primarily on *Holbrook*."). But the majority misread each and every relevant case—including *Holbrook* itself. *See* App. 30a (Mendoza, J., concurring) ("[T]he majority invokes *Holbrook* only to ignore its reasoning."). *Holbrook* is a case about practices that are *not* imposed on the body (*i.e.*, practices that fall outside the scope of the bright-line rule that restraints are inherently prejudicial). *Holbrook* is also about a set of circumstances that could yield equivocal inferences—*i.e.*, inferences that may not prejudice the defendant.

In *Holbrook*, the Court considered the constitutionality of forcing a defendant to stand trial with conspicuous security presence—namely, four uniformed

state troopers sitting in the front row of the spectator's section. 475 U.S. at 562. The Court held that the officers' presence is not inherently prejudicial. *Id.* at 569. It explained that the "chief feature that distinguishes the use of identifiable security officers from courtroom practices we might find inherently prejudicial is the wider range of inferences that a juror might reasonably draw from the officers' presence." *Id.* at 569. Impermissible inferences, the Court explained, indicate "the need to separate a defendant from the community at large" or signal that "'the defendant is dangerous or untrustworthy.'" *Id.* The Court explained that security officers do not necessarily entail such inferences. *Id.* Although "it is possible that the sight of a security force within the courtroom might under certain conditions" present a risk of impermissible inferences, "[j]urors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence." *Id.* Further, because security personnel are a consistent feature of American courtrooms, a jury may not "infer anything at all from the presence of the guards." *Id.*

Nothing in *Holbrook* limits the inherent prejudice rule applied to physical restraints that the Court recognized in *Allen* and *Estelle* and, later, in *Riggins* and *Deck*. In reading *Holbrook* as it did, the Ninth Circuit read it to constrict rather than expand. *Holbrook* is a case that *expands* the universe of potentially prejudicial courtroom practices beyond inherently prejudicial physical restraints. The Court should intervene to make clear that when it "relies on a legal rule or principle to decide a case, that principle is a 'holding'" that may not be ignored quite so freely by lower courts. *See Andrew v. White*, 145 S. Ct. 75, 81 (2025).

C. The Prejudice of Ankle Monitors Is Indistinguishable From That of Other Restraints

Beyond the fact that ankle monitors literally are restraints, ankle monitors are also like other restraints in the degree to which they prejudice defendants. The Ninth Circuit's contrary conclusion is plainly wrong. An ankle monitor "is a state-imposed restraint that conveys a potent and injurious message about the person wearing it." App. 31a (Mendoza, J., concurring). "That message perverts the jurors' impressions of the defendant" and, in doing so, "impermissibly undermines the presumption of innocence and the defendant's right to a fair trial." *Id.*

The Court has made clear that what makes a restraint inherently prejudicial is its tendency to stigmatize the defendant—"tend[ing] to brand" him "with an unmistakable mark of guilt." *Holbrook*, 475 U.S. at 571 (quoting *Estelle*, 425 U.S. at 518) (Brennan, J., dissenting)); *see also Stewart v. Corbin*, 850 F.2d 492, 497 (9th Cir. 1988) ("'Basic to American jurisprudence'" is the principle that the accused is entitled to stand trial free from restraints "'so as not to mark him as an obviously bad man or to suggest that the fact of his guilt is a foregone conclusion.'") (quoting *United States v. Samuel*, 431 F.2d 610, 614-15 (4th Cir. 1970), *cert. denied*, 401 U.S. 946 (1971)). Badges of criminality that serve as traditional hallmarks of guilt, official suspicion, or continued custody present an impermissible risk that the jury will determine a defendant's guilt or innocence on grounds other than the evidence introduced at trial. *See Taylor v. Kentucky*, 436 U.S. 478, 485 (1978). They therefore undermine the presumption of innocence and threaten a defendant's fair trial rights. *See Estelle*, 425 U.S. at 503; *Coffin v. United States*, 156 U.S. 432, 453 (1895).

There is no difference of constitutional import between the ankle monitor in this case and the restraints in the Court's precedents. The concerns animating the

inherent prejudice analysis of *Allen*, *Estelle*, *Riggins*, and *Deck* are implicated by ankle monitors. As the concurrence below explained, there are many similarities among ankle monitors and other restraints and a "straightforward comparative analysis leads to the conclusion that" they are "inherently prejudicial." App. 30a (Mendoza, J., concurring).

First, an ankle monitor is "distinctive." *Estelle*, 425 U.S. at 504. As the concurrence explained, "[m]ost everyday people do not wear ankle monitors by choice, especially to court." App. 30a (Mendoza, J., concurring). They are "neither particularly fashionable nor useful to the wearer, like a watch might be." *Id.* "Thus, when a defendant wears an ankle monitor to court, it distinguishes her from everybody else in the courtroom." *Id.* "She stands out because of the unique and conspicuous accessory strapped to her ankle, which she did not pick out at Claire's." *Id.* An ankle monitor "is not some everyday accessory like a Fitbit or an Apple Watch." App. 31a.

Second, ankle monitors are "identifiable" for their association with the criminal justice system. *Estelle*, 425 U.S. at 504. They are a quintessential "state-sponsored courtroom practice[]." *See Carey v. Musladin*, 549 U.S. 70, 76 (2006). In the federal system, a court may require a defendant to wear an ankle monitor as a condition of pretrial release—as the court did here. As the concurrence explained, "[e]veryday people understand that and, therefore, readily associate the device with the criminal justice system." App. 30a (Mendoza, J. concurring).

Third, an ankle monitor does more than merely single out the defendant as someone involved in the justice system; "it marks her as a 'particularly dangerous or culpable person.'" App. 31a (Mendoza, J., concurring (quoting *Holbrook*, 475 U.S. at 569)). "When a juror sees

a defendant in an ankle monitor, she understands that it is no accident." App. 31a. "She recognizes that the court has made the defendant wear the ankle monitor for a reason." *Id.* "She will know that the monitor does not reflect positively on the defendant, and she will infer that the defendant is wearing the ankle monitor because the defendant is 'dangerous or untrustworthy.'" *Id.* Observers tend to lump all people who wear ankle monitors into one category of "dangerous criminal[s]." *See* Lauren Kilgour, *The Ethics of Aesthetics: Stigma, Information, and the Politics of Electronic Ankle Monitor Design*, Info. Soc'y 131, 139 (2020).

Consider the impact on a criminal defendant forced to sit in front of a jury wearing a beeping ankle monitor. Every beep signals to, and reminds, the jury that she is a bad person. Perhaps the defendant is a flight risk? Or maybe she requires government supervision from a prior offense? Possibly there's something dangerous about this defendant—or something in her criminal past that the judge knows and the jury is left to guess? It would be reasonable for a juror to infer, for example, that the judge has made a determination that this defendant requires careful and constant monitoring—a determination the juror may conclude must be adopted as their own. Each potential inference undercuts a defendant's fair-trial rights. None, certainly, would lead any reasonable juror to think the defendant might be *innocent*, *contra* the Ninth Circuit's hypotheses. These concerns were raised by defense counsel during *voir dire* and acknowledged by the district court, which then directed the removal of the monitor. App. 4a-5a. But by then the damage was done. The entire venire heard the monitor go off repeatedly, had seen defense counsel's attempts to silence it by feverishly fidgeting near the defendant's ankle, and had put two and two together: the defendant had done something bad before and was likely to have done something bad again.

"[B]lind to that reality," the lower court held that ankle monitors are not at all prejudicial. *See* App. 32a (Mendoza, J., concurring). It recognized that "the awareness that a defendant is wearing an ankle monitor may impact the jury's perception of that defendant's innocence," App. 14a, but concluded that ankle monitors do not "*impermissibly* suggest guilt." App. 17a (emphasis added).

The court's primary basis for distinguishing ankle monitors from other inherently prejudicial restraints was the contention that ankle monitors do not go to the issue of dangerousness. *See* App. 13a-15a. It reasoned that all of the restraints previously held inherently prejudicial—even "prison clothes"—indicate dangerousness, while "an ankle monitor merely indicates custody status." App. 14a. But this Court did not ground its holdings that physical restraints are inherently prejudicial only in dangerousness. *Estelle* grounded its holding in concern that prison clothes are a "constant reminder of the accused's condition" as an incarcerated person. 425 U.S. at 504-05. *Riggins* grounded its holding in concern for medication's effect on the defendant's "outward appearance." 504 U.S. at 137. And among the reasons *Deck* held physical restraints impermissible was the concern that they suggest to the jury a "need to separate a defendant from the community at large." 544 U.S. at 630. None of those cases made dangerousness the lynchpin of the analysis. In any event, ankle monitors do signal dangerousness, so the Ninth Circuit was wrong on its own terms. As the concurrence rightly recognized, like physical restraints and prison clothes, "an ankle monitor is a distinctive and stigmatizing device that brands the defendant as an especially dangerous or culpable person." App. 24a (Mendoza, J., concurring).

The Ninth Circuit's efforts to distinguish ankle monitors as less prejudicial than other restraints are

deeply unpersuasive. Contrary to the Ninth Circuit's claim that ankle monitors do no more to prejudice a person than does her status of being "*the defendant*," App. 18a, as explained above, ankle monitors are unique and unusual among criminal defendants. The Ninth Circuit's other claim that ankle monitors are "less intrusive" than other physical restraints, and therefore less prejudicial, is not grounded in this Court's precedent. This Court's precedents do not treat "intrusive[ness]" as relevant to prejudice. *See Deck*, 544 U.S. at 631. Not one case refers to "intrusive[ness]."

At bottom, the Ninth Circuit failed to recognize that a defendant marked with a sanction of the state is inherently prejudiced. The decision below not only contravened this Court's precedent on physical restraints, it supplanted decades of precedent on inherently prejudicial courtroom practices more broadly. The panel majority resisted the teachings of this Court. To abide the Ninth Circuit's reading, one would have to believe that *Deck*, *Allen*, *Estelle*, *Riggins*, and even *Holbrook*, for that matter, simply do not mean what their words say.

II. THE QUESTION PRESENTED IS IMPORTANT AND WARRANTS REVIEW IN THIS CASE

1. The question presented in this case is undoubtedly important. The decision below conflicts with a centuries-old common law rule effected in the decisions of this Court. Its baseless novelty will also affect the constitutional rights of an increasing number of defendants from this day on.

The Court should intervene now and put an end to the uncertainty about the scope of the inherent prejudice rule—a rule that protects one of the most fundamental constitutional rights for criminal defendants. If the trial judge had applied the correct analysis, there can be no doubt that the judge would have had to declare a mistrial. The stakes of adopting an actual prejudice rule are

immense because the standard is impossible to meet. The prejudicial effect of physical restraints can rarely be shown from a trial transcript. *See Riggins*, 504 U.S. at 137. A holding that physical restraints do not trigger inherent prejudice all but eliminates the right to be tried free from restraints. Unless this Court intervenes, circuit courts will increasingly unilaterally reject this Court's rule and manufacture more stringent tests which create and exacerbate constitutional deprivations.

Clarity about this important question is critical, not least because ankle monitors have become more ubiquitous. The government's use of electronic monitoring has risen dramatically in the last decade.[1] From 2005 to 2015, the number of active electronic monitors in use rose by 140 percent—from 53,000 in 2005 to more than 125,000 in 2015.[2] As the concurrence explained, "[e]lectronic monitoring has become an increasingly common aspect of pretrial supervision, both in the state and federal systems." App. 34a (citing Crystal S. Yang, *Toward an Optimal Bail System*, 92 N.Y.U. L. Rev. 1399, 1477 (2017)). The public is acutely aware of them and their relationship with the criminal justice system—they go viral on social media, App. 34a-35a, and are reported as newsworthy, especially when worn by those in the public eye, *id.*

2. This case is the ideal vehicle to resolve this important constitutional question. The record established

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[1] *See* American Civil Liberties Union, *Rethinking Electronic Monitoring: A Harm Reduction Guide* 4 (2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

[2] PEW Charitable Trusts, *Use of Electronic Offender-Tracking Devices Expands Sharply* 3 (2016), https://www.pewtrusts.org/-/media/assets/2016/10/use_of_electronic_offender_tracking_devices_expands_sharply.pdf (analyzing data on the increasing use of electronic monitoring).

that jurors perceived petitioner's ankle monitor and recognized it as such. At no point did the district judge consider whether—let alone find that—wearing an ankle monitor during trial was justified by a state interest specific to petitioner. Both the panel majority and the district judge understood as much. Were there any doubt, though, petitioner would be prepared, on remand, to prove that jurors perceived her ankle monitor during the trial. *See* Ex. 1 to Pet. for Reh'g (C.A. Doc. 53-4) (proffer of additional evidence that would be deduced on remand).

The court of appeals' decision effectively overturns this Court's longstanding precedent on prejudicial courtroom practices. The new rule it pronounced cannot be squared with the dictate of the Fifth Amendment nor the teachings of this Court. Such a departure, on an important question of constitutional law implicating the fundamental rights of criminal defendants, warrants the Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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