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IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT

IN AND FOR THE COUNTY OF UTAH, STATE OF UTAH

|                                                                                            |                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF UTAH,<br><br>Plaintiff,<br><br>vs.<br><br>TYLER JAMES ROBINSON,<br><br>Defendant. | <b>DEFENDANT’S REPLY TO SHERIFF’S<br/>RESPONSE TO MOTION TO APPEAR<br/>AT ALL IN-PERSON PROCEEDINGS IN<br/>CIVILIAN CLOTHING AND WITHOUT<br/>RESTRAINTS and MEMORANDUM IN<br/>SUPPORT</b><br><br>Case No. 251403576<br><br>Honorable Tony F. Graf, Jr. |
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## INTRODUCTION

Defendant, Tyler James Robinson, by and through undersigned counsel hereby files this Reply to the Sheriff's *Response to Defendant's Motion ("Motion") to Appear at All In-Person Proceedings in Civilian Clothing and Without Restraints ("Resp")*.

This reply addresses four of the legal arguments in the Sheriff's Response: (1) Mr. Robinson's right to be free from restraints applies only at a jury trial; (2) the law prohibiting court appearances in jail clothing also applies only in front of the jury; (3) all non-critical, non-evidentiary hearings should be held remotely; and (4) the law supports the Sheriff's Office position that Mr. Robinson's "hypothesized" concerns that prospective jurors "might" see Mr. Robinson in jail clothing and shackles and could then perceive that he is guilty should be adequately addressed by (a) appearing remotely; and (b) limiting media coverage, or video and photographic coverage, at the least, so that Defendant's physical appearance is no longer the subject of interest.

While each of these legal arguments is addressed in turn, Mr. Robinson begins by addressing the Sheriff's factual assertion that Mr. Robinson's concerns about prejudicial pretrial publicity are merely "hypothesiz(ed)." *Resp*, at 18.<sup>1</sup>

## ARGUMENT

### **I. MR. ROBINSON'S CONCERNS ABOUT PREJUDICIAL PRETRIAL PUBLICITY ARE NOT MERELY "HYPOTHESIZ(ED)."**

Mr. Robinson's concern about the effect of prejudicial pretrial publicity in this extraordinary case is not merely "hypothesiz(ed)." *See Resp*, at 18. "The problem is an ancient

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<sup>1</sup> Two foundational issues of whether the Sheriff has standing to appear in this case and whether its brief violated the Court's October 14, 2025 Interim Order are addressed in Defendant's *Motion to Strike* filed October 21, 2025.

one. Mr. Justice Holmes stated no more than a commonplace when, two generations ago, he noted that “(a)ny judge who has sat with juries knows that, in spite of forms, they are extremely likely to be impregnated by the environing atmosphere.” *Groppe v. Wisconsin*, 400 U.S. 505, 510 (1971) (quoting *Frank v. Mangum*, 237 U.S. 309, 349 (1915) (dissenting opinion)). Nowhere is this statement more true than where television cameras have been allowed into the courtroom at the pretrial stages of a criminal case or where television news crews are turned loose on those eager to obtain fame or fortune concerning a pending criminal case.

The United States Supreme Court long ago declared in *Estes v. Texas* that,

From the moment the trial judge announces that a case will be televised it becomes a cause celebre. The whole community, including prospective jurors, becomes interested in all the morbid details surrounding it. The approaching trial immediately assumes an important status in the public press and the accused is highly publicized along with the offense with which he is charged. Every juror carries with him into the jury box these solemn facts and thus increases the change of prejudice that is present in every criminal case. And we must remember that realistically it is only the notorious trial which will be broadcast . . . The conscious or unconscious effect that this may have on the juror’s judgment cannot be evaluated, but experience indicates that it is not only possible but highly probable that it will have a direct bearing on his vote as to guilt or innocence.

381 U.S. 532, 545 (1965).

In this case, Mr. Robinson appeared for his first court appearance, without the benefit of counsel, on September 16, 2025, on Webex from the Utah County Jail for a full twelve minutes wearing what appeared to be a bullet-proof or suicide vest. See FULL HEARING: Tyler Robinson makes first court appearance after arrest, FOX 13 News Utah, (Sept. 13, 2025), <https://www.youtube.com/watch?v=BsNojXN6iUw> (the description below the video states Mr. Robinson was “[w]earing a green bulletproof vest”) (As of October 22, 2025 this video had received 137,959 views). The media broadcast the entire hearing and thus exposed countless numbers of prospective jurors to the image of him sitting in jail, clothed in prison garb. They

also heard the Court ask whether the jail was ready (*id.* at 0:28) and heard the Court pronounce that Mr. Robinson was being held without bail because he was being charged with a capital offense (*id.* at 2:34). Moreover, since the date of this appearance, clips from that video or another showing close-ups of his booking photograph displaying the same clothing which were released by the Sheriff, have been broadcast thousands of times with subsequent stories about this case.

Even before Mr. Robinson's first court appearance, politicians, federal and state law enforcement officers, and the lead prosecution attorney in this case publicly offered their opinions about Mr. Robinson, the details of the investigation (including an alleged confession), and even specific items of evidence and forensic tests that have not yet been deemed admissible at trial. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1046 (1991) (noting that public statements that are "obvious bases for a finding of prejudice" include mention of a confession or of "evidence from searches or test results."); *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) ("[T]he Court has also pointed out that (l)egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.").

For instance, two days after the shooting and shortly after Mr. Robinson's arrest, President Donald J. Trump appeared on a nationwide television broadcast and announced "with a high degree of certainty, we have him" and stated, "I hope he is going to be found guilty", and "I hope he gets the death penalty." Donald Trump Confirms Charlie Kirk Shooting Suspect Caught by Police, Times News, (Sept. 12, 2025), <https://www.youtube.com/watch?v=KKk4TXK07RQ> at 0:01, 1:13 and 1:18, respectively. On the same date, the Governor of Utah, began his video press conference dramatically with the words, "WE GOT HIM." Breaking: Mugshot of Charlie Kirk's suspected killer released - 'We got him!', GB News (Sept. 12, 2025) <https://www.youtube.com/watch?v=H9QcsrpuTY8> at 0:15. Flanked by Utah County Sheriff

Smith, he and FBI Director Kash Patel then spent 24 minutes detailing all the alleged evidence against Mr. Robinson, including the allegation that he “had confessed” (*id.* at 0:29), and the content of incriminating messages allegedly connected to Mr. Robinson. At the end, the Governor returned to the microphone and announced that “there is one person responsible for what happened here and that person is now in custody and will be charged soon and will be held accountable.” *Id.* at 20:27.<sup>2</sup>

On September 15, 2025, Mr. Patel appeared on national television and announced, “that the DNA hits from the towel that was wrapped around the firearm and ... the screwdriver are positively processed for the suspect in custody.” FBI Director Patel on Charlie Kirk killing, LiveNOW from FOX, (Sept. 15, 2025), <https://www.youtube.com/watch?v=xY1ELLb623k> at 1:40.

Also on September 15, 2025, U.S. Attorney General Pam Bondi appeared on Fox News side-by-side with a blowup of Mr. Robinson’s mugshot in prison garb and announced that “the governor has said that they want to seek the death penalty which is very real in Utah and they still have the firing squad in Utah”, and that “as federal prosecutors we will look to see if we have federal charges as well and of course if we do we will also indict and work hand in hand with the state to ensure that this horrible human being faces the maximum extent of the law.” AG Bondi On Potential Federal Charges for Charlie Kirk’s Alleged Assassin, Fox News, (Sept. 15, 2025), <https://x.com/FoxNews/status/1967773759730815167> at 0:17.

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<sup>2</sup> See American Bar Association, *Fair Trial and Public Discourse* (2013 Fourth Edition), Standard 8-2.2 (Specific Guidelines Regarding Prosecutorial Statements) (prohibiting prosecutorial comment on “the personal opinion of the prosecutor as to the guilt or innocence of the defendant”, “the existence or contents of any confession, admission, or statement given by a defendant”, “the performance or results of any examinations or tests”, or “the nature of physical evidence expected to be presented”); Standard 8-3.1 (same prohibition applies to law enforcement officers and agencies.).

On September 16, 2025, the elected County Attorney who has lead responsibility for the prosecution of this case held a 45 minute live-streamed press conference just prior to Mr. Robinson's first court appearance. Following the lead of the Governor and federal officials, he proceeded to outline all the alleged evidence against Mr. Robinson, including that "DNA consistent with Robinson was found on the rifle's trigger", that "[a]fter shooting Mr. Kirk, Robinson hid the gun, discarded the clothing he wore when he fired the rifle, and told his roommate to delete incriminating text messages and not talk to police." Utah County Attorney Press Conference on Tyler Robinson arrest announced, East Idaho News, (Sept. 16, 2025), <https://www.youtube.com/watch?v=m0QggDLxDls> at 26:07. He later added that "DNA consistent with ...defendant was found on the trigger, other parts of the rifle, the fired cartridge casing, two of the three unfired cartridges, and the towel" (*id.* at 35:09) and that in discussion with his parents Mr. Robinson had "implied that he was the shooter and stated that he couldn't go to jail and just wanted to end it. When asked why he did it, Robinson explained there is too much evil and the guy referring to Charlie Kirk spreads." *Id.* at 38:21.

The County Attorney then read aloud and *verbatim* the complete content of incriminating text messages, claiming they were connected to Mr. Robinson and his roommate. *Id.* at 39:49–44:16. After setting forth in detail all of the alleged evidence against Mr. Robinson, he ended his press conference with the inexplicable statement: "Why are we reluctant to share the details of the investigation itself and comment on the case? Because I want to ensure a fair and impartial trial." *Id.* at 45:18.

Immediately following that press conference, Utah County Sheriff Mike Smith and Under-Sheriff Shaun Bufton, conducted their own joint television interview with News Nation (2.42 million subscribers). Charlie Kirk suspect on 'special watch' in jail: Utah sheriff, News

Nation, (Sept. 16, 2025), <https://www.youtube.com/watch?v=6LJVrxwp9dM>. During this interview, against the backdrop of clips of Mr. Robinson's image from his initial court appearance, both Smith and Bufton offered their opinions and speculations about how strong the evidence was against Mr. Robinson, whether the video of his court appearance indicated he showed emotion or was remorseful, and whether Mr. Robinson is homosexual.



Charlie Kirk suspect on 'special watch' in jail: Utah sheriff | Elizabeth Vargas Reports

Q. Sheriff Smith, you are at that press conference with the DA today. There is a huge amount of evidence against Tyler Robinson, DNA on the towel, the rifle, the cartridges. **Is this beginning to seem like an open and shut case?**

Sheriff Smith: Well, you we would hope they the investigation continues. we're not going to look at it is open and shut. **But you're right. I agree with you 100%. The evidence is piling up and is becoming overwhelming.**

*Id.* at 0:12–0:45 (emphasis added).

Q. Undersheriff [we] are looking at video right now of Tyler Robinson just a short time ago appearing for his first court hearing. I was struck by the fact that he showed absolutely zero emotion and there are reports he is no longer cooperating with the investigation. Can you confirm that?

Undersheriff Bufton: He certainly doesn't seem to be showing any emotion right there.

*Id.* at 0:45–1:12.

Q. What's his demeanor in jail? [I]s he expressing any remorse of any kind?

Undersheriff Bufton: Again, I haven't been down to visit him so. this is the photos that I'm s[ee]ing is the one you're s[ee]ing and doesn't seem to be much emotion there.

*Id.* at 1:17–1:35.

Q. Sheriff Smith, the charging documents and the DA said today that Robinson's family had said that he'd grown more pro-gay and more pro [trans rights] over the past 2 years. does that coincide with the same time that he became romantically involved with his roommate?

Sheriff Smith: Well, from the from the text messages that were that were read today and also things that we know. Yes, it would appear that. those things are all moving in the same direction.

*Id.* at 2:15–2:46.

And finally, on September 22, 2025, President Trump delivered a speech at Mr. Kirk's memorial service, telling thousands that "the depraved assassin who planned and executed Charlie's killing has been arrested and charged with capital murder. God willing, he will receive the full and ultimate punishment for his horrific crime." *Trump calls for death penalty for Charlie Kirk's killer*, (Sept. 22, 2025), <https://www.youtube.com/watch?v=jmMfSRrDBTU> at 0:07.

The foregoing is illustrative, but not exhaustive. There are thousands of similar, and in most instances, much worse items of prejudicial pretrial publicity that have relentlessly focused on Mr. Robinson's demeanor and appearance during his jail-house court appearance and have

polluted the waters of justice in this case.<sup>3</sup> Mr. Robinson agrees with the Sheriff’s characterization of the media coverage: “[t]he public assassination of a popular political commentator that underlies this case has garnered worldwide attention, created a lightning rod for controversy, and provided a platform for pundits and other attention seekers with varying levels of mental stability.” *Resp*, at 9.

Respectfully, however, this statement does not go far enough, and does not justify shackling Mr. Robinson in court. A more apt description from one scholar is that this case has become a “Content Tornado.” See Katie Grace Frisbee, *Caught In The Content Tornado: How To Protect Violent-Crime Trials From The Prejudicial Effects Of Live Streaming*, 74 DUKE LAW J. 1053 (2025). As the author explains:

The content tornado... refers to the whirlwind of fact, fiction, and opinion that emerges when violent-crime trials are live streamed on social media. This concept describes how live streamed trials generate emotional and moralized content that gets amplified by social media algorithms. The emotional nature of violent-crime trials—fueled by anger, grief, and public passion—draws viewers in, and as they engage with the content, they become more likely to produce their own secondary content on the subject. This user-generated secondary content—in the form of videos, comments, and posts—amplifies the tornado and mixes accurate information with misinformation, exaggerations, and public biases.

*Id.* at 1053.

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<sup>3</sup> For example, on October 18, 2025, Agent Truth posted a 17-minute video in which it falsely asserted that at his last court appearance on September 29, 2025, Mr. Robinson personally appeared in court in an orange jumpsuit and handcuffs and requested through his lawyer to have street clothing. This action, according to the video caption, caused the courtroom to “erupt” and raised the issue of whether Mr. Robinson’s alleged request for street clothing was either proof that Mr. Robinson was beginning to admit and understand what he had done or was instead his manipulative attempt to control the narrative. JUST IN: Tyler Robinson Finally SPEAKS — Courtroom ERUPTS as Tyler Robinson Breaks His Silence, Agent Truth, (Oct. 18, 2025), <https://www.youtube.com/watch?v=eoHlHgVSjil>.

Clearly, the prejudicial pretrial publicity in this case has already both confirmed and exceeded defense counsel's merely "'hypothesized' concerns that prospective jurors 'might' see Mr. Robinson in jail clothing and shackles and could then perceive that he is guilty." *Resp*, at 18. These concerns are real, not hypothesized, and there can be no doubt that, as explained in *Estes*, prospective jurors have in fact seen this coverage and will be affected by it.<sup>4</sup> *See also Sheppard v. Maxwell*, 384 U.S. 333, 351–52 (1966) ("Moreover, the burden of showing essential unfairness as a demonstrable reality, need not be undertaken when television has exposed the community repeatedly and in depth to the spectacle of (the accused)... confessing in detail to the crimes with which he was later to be charged.") (cleaned up).

Nor are these concerns merely addressed to the impact of this prejudicial pretrial publicity on the issue of guilt or innocence. As explained in *Deck v. Missouri*, a case that is central to Mr. Robinson's motion but largely unaddressed by the Sheriff,

The appearance of the offender during the penalty phase in shackles, however, almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community—often a statutory aggravator and nearly always a relevant factor in jury decisionmaking, even where the State does not specifically argue the point.... It also almost inevitably affects adversely the jury's perception of the character of the defendant.... And it thereby inevitably undermines the jury's ability to weigh accurately all relevant considerations—considerations that are often unquantifiable and elusive—when it determines whether a defendant deserves death. In these ways, the use of shackles can be a "thumb [on] death's side of the scale."

544 U.S. 622, 633 (2005) (quoting *Sochor v. Florida*, 504 U.S. 527, 532 (1992)).

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<sup>4</sup> In terms of the extent and nature of the prejudicial pretrial publicity, this case bears a strong resemblance to *United States v. McVeigh*, 918 F. Supp. 1467, 1470–71 (W.D. Okla. 1996), where "national media coverage of the explosion was extremely comprehensive", and "[t]he immediate reactions of the President, the Attorney General, and an FBI spokesman were broadcast across the nation." In that case, the district court ruled that because of this prejudicial publicity, the defendants could not get a fair trial anywhere in the entire state of Oklahoma.

## II. MR. ROBINSON’S RIGHT TO BE FREE FROM RESTRAINTS APPLIES BEYOND A JURY TRIAL.

At pages 4–8 of Mr. Robinson’s *Motion* he cites cases from eight different jurisdictions that have squarely held that the right to be free from unwarranted courtroom restraints “applies whether the proceeding is pretrial, trial, or sentencing, with a jury or without.” *United States v. Sanchez-Gomez*, 859 F.3d 649, 661 (9th Cir. 2017) (en banc), *vacated on other grounds*, 584 U.S. 381 (2018). To reiterate, one of Mr. Robinson’s central concerns is that “[i]n the modern age of ubiquitous internet access and unrelenting media attention to high-profile criminal cases, the prejudicial effect of a criminal defendant appearing in shackles, jail attire, and bullet-proof or suicide vests *at any hearing* threatens fundamental fairness”, that “these appearances increase the likelihood that the future jury pool will be exposed to Mr. Robinson in this state”, and that “given the pervasive media coverage in this case, the repeated and ubiquitous display of Mr. Robinson in jail garb, shackles, and a suicide vest will undoubtedly be viewed by prospective jurors will inevitably lead to prospective juror perception that he is guilty and deserving of death.” *Motion* at 13, 15 (emphasis added) (citing publicity from this case and empirical studies to support these arguments).

While conceding that “this case has garnered worldwide attention, created a lightning rod for controversy, and provided a platform for pundits and other attention seekers with varying levels of mental stability” (*Resp*, at 9), and that “Defendant’s appearance in just a few proceedings so far has been the subject of worldwide media scrutiny” (*Resp*, at 15), the Sheriff does not address the actual content of the prejudicial publicity in this case, nor the empirical studies that Mr. Robinson cites. Instead, the Sheriff dismisses this crucial evidence as mere “hypothesizing”. The Sheriff does not address Mr. Robinson’s argument that in the modern age of ubiquitous internet access and unrelenting media attention to high-profile criminal cases, as

demonstrated by the tone and content of the massive pretrial publicity to date, requiring Mr. Robinson to make court appearances on worldwide television in shackles, jail attire, and suicide vests is functionally indistinguishable from parading him in front of the jury in such condition.

The Sheriff's legal analysis is equally unconvincing. The Sheriff principally relies upon *State v. Cravens*, a Utah Court of Appeals case decided five years *before* the United States Supreme Court ruled in *Deck* that there are important constitutional interests at stake, such as the right to consult with counsel and courtroom dignity and decorum, that are jeopardized by courtroom shackling and are separate and distinct from the effect of such a practice on the presumption of innocence. 2000 UT App 344, 15 P. 3d 635. *Cravens* has no constitutional validity in light of *Deck*. The Sheriff is also incorrect in claiming that *Cravens* "explains why a defendant's rights to an impartial jury and due process, as affected by clothing and shackles, applies only when a jury is involved." *Resp.* at 10. *Cravens* is a prison attire case, not a shackling case, and in its two-paragraph discussion of prison attire it says nothing about the unique harm caused by shackling. Most importantly, *Cravens*, like the Sheriff, does not address Mr. Robinson's argument that evidence of his shackling and of his wearing of jail attire is reaching the pool of prospective jurors through worldwide television and internet broadcasting of his court appearances.

The Sheriff argues that Mr. Robinson's reliance on post-*Deck* cases such as *Sanchez-Gomez* is misplaced because "when a case is vacated for any reason, the effect is that the previous ruling has no precedential value" and becomes "meaningless". *Resp.* at 5. This is doctrinally incorrect.<sup>5</sup> *United States v. Sanchez-Gomez*, 859 F.3d 649, 661 (9th Cir. 2017), and

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<sup>5</sup> A Westlaw search of all Utah cases in which Utah courts have relied upon cases that have been "reversed on other grounds" reveals 303 such cases as of October 22, 2025. An identical search

the other seven cases cited by Mr. Robinson are persuasive, represent the greater weight of authority, and should be followed in this case in the absence of any controlling post-*Deck* decision in Utah.

As a backup position, the Sheriff repeatedly invokes “[u]niform pre-trial security practices in Utah courts”, uniform court rules, and an October 16, 2025 Utah Administrative Office of the Courts policy statement (potentially adopted for the purpose of supporting the Sheriff’s position in this case) to argue for a blanket allowance of jail attire and shackling in all “high-profile” cases. Resp, at 18. The Sheriff’s reliance on a uniform policy to justify physical restraints has not been endorsed by any Utah court, and is contrary to the United States Supreme Court’s decision in *Deck*, as well as countless cases construing *Deck*, and, importantly, the Utah Supreme Court’s decision in *State v. Young*, 853 P.2d 327, 350-351 (Utah 1993) (“The trial court should look at the particular facts of the case and the conduct of the proceedings and should balance the need for safety and security in the courtroom against the potential for prejudice.”) *See Motion*, at 6–7 (collecting cases). *See also Deck*, 544 U.S. at 624, 626–28, 633 (restraints must be “justified by an essential state interest ... specific to the defendant on trial” and “any such determination must be case specific; that is to say, it should reflect particular concerns ... related to the defendant on trial.”)<sup>6</sup>

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of all federal cases that have relied upon cases that have been “reversed on other grounds” reveals 10,000 such cases as of October 22, 2025.

<sup>6</sup> *Accord Matter of Clark*, 87 Misc. 3d 1207(A), 2025 WL 2715377 (N.Y. Sup. Ct. 2025) (unpublished decision) (“A criminal court may not keep a defendant restrained in the courtroom unless such court ‘state[s] a particularized reason for doing so on the record’ and that reason is tied to an ‘essential state interest’ amounting to ‘necessity’... This rule applies with equal force to nonjury proceedings.” (citation omitted)); *State v. Rushing*, 573 P.3d 72, 81 (Ariz. 2025) (“Here, the trial court cited Rushing’s prior murder conviction and current capital conviction to justify using visible restraints. The judge may also have deferred to the sheriff’s policy regarding jail garb, though that is unclear. Regardless, neither rationale satisfies the requirements set forth in *Deck*, which mandate case-specific findings—for example, a security or escape risk—beyond

In this case, the Sheriff has offered no case specific “essential state interest ... specific to the defendant on trial” that would justify shackling Mr. Robinson or requiring him to appear in jail garb. *See id.* In addition, the Sheriff has provided no information or evidence specific to Mr. Robinson that would justify its request.

### **III. THE LAW PROHIBITING COURT APPEARANCES IN JAIL CLOTHING APPLIES BEYOND A JURY TRIAL.**

The Sheriff relies solely on *State v. Cravens*, 2000 UT App 344, 15 P. 3d 635, and its uniform policy arguments to address Mr. Robinson’s claim that he should not be forced to wear jail clothing during any court appearance given that his court appearances are being broadcast to the world. *Cravens* is addressed above, as are the sheriff’s uniform policy arguments.

In relation to jail clothing in particular, it must also be pointed out that *Cravens* is inconsistent with the Utah Supreme Court’s decision in *Chess v. Smith*, 617 P.2d 341, 345 (Utah 1980). *Cravens* states that “[t]he grave concern expressed in ...*Chess* is that ‘[t]he prejudicial effect that flows from a defendant’s appearing *before a jury* in identifiable prison garb is not measurable, and it is so potentially prejudicial as to create a substantial risk of fundamental unfairness in a criminal trial.’” 2000 UT App 344, ¶ 16 (emphasis in *Cravens*) (quoting *Chess*,

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a defendant’s criminal history or institutional policy.”); *People v. Dunn*, 572 P.3d 19, 47 (Cal. 2025) (“The court may not, we have emphasized, merely rely on the judgment of law enforcement or court security officers or the unsubstantiated comments of others.”); *State v. Finch*, 975 P.2d 967, 1002 (Wash. 1999) (“[T]he deference given to the correctional officers is error. Courts have specifically found reversible error where the trial court based its decision solely on the judgment of correctional officers who believed that using restraints during trial was necessary to maintain security, while no other justifiable basis existed on the record.”); *People v. Vigliotti*, 203 A.D.2d 898 (N.Y. App. Div. 1994) (“[t]he report of the Sheriff’s Department, standing alone, did not provide a sufficient basis for ...shackling and handcuffing”); *Lemons v. Skidmore*, 985 F.2d 354, 356 (7th Cir. 1993) (“The magistrate judge abused his discretion by relying on the self-serving opinion of fellow penal officers of the defendants and not holding a hearing to determine what, if any, restraints were necessary”).

617 P.2d at 344). However, *Chess* was also grounded in the courtroom decorum and dignity rationale later endorsed by the United States Supreme Court in *Deck*:

It would seem that the occurrence of a defendant, armed with a presumption of innocence, standing trial before a jury in prison clothes should long ago have ceased. A decent respect for basic fairness and the indignity of appearing in a court of law in clothes which mark a defendant, who has not been convicted, as a lawbreaker would suggest as much.

*Chess*, 617 P.2d at 345; *see also Motion*, at 10.

This rationale justifies extending the prohibition against jail garb beyond the jury trial context, and in any event Mr. Robinson's jury trial rights are implicated here because his court appearances are being broadcast to the world.

**IV. THIS COURT SHOULD REJECT THE SHERIFF'S SUGGESTION THAT CONCERNS ABOUT PREJUDICIAL PRETRIAL PUBLICITY CAN BE ADEQUATELY ADDRESSED BY REQUIRING MR. ROBINSON TO FORFEIT HIS CONSTITUTIONAL AND STATUTORY RIGHT TO BE PRESENT AT ALL STAGES OF THIS CAPITAL PROSECUTION.**

The Sheriff maintains that "[t]he Court could alleviate many of Defendant's concerns about the perceived negative publicity of appearing in inmate apparel and in shackles at this pre-trial stage by limiting in-person appearances in this matter to case-critical and evidentiary hearings only." *Resp*, at 2, 18. According to the Sheriff, "[a]ppearing remotely provides the option to appear with no video and thus satisfy some of Defendant's concerns of mounting public prejudice." *Id.* at 15. There are a number of problems with this argument.<sup>7</sup>

Under the Due Process Clause of the Fourteenth Amendment, "an accused has [the] right to be present at all stages of the trial where his absence might frustrate the fairness of the

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<sup>7</sup> In an abundance of caution, Mr. Robinson addresses the request for affirmative relief made in the Sheriff's Response under Utah Rule of Criminal Procedure 17.5 herein to emphasize the constitutional concerns. Mr. Robinson maintains that the request should have been addressed in a separate pleading and filed by the appropriate participant. *See* Doc 115. Mr. Robinson does not seek "two bites at the apple," rather, attempts to address the unorthodox nature of the State's request appropriately.

proceedings.” *Faretta v. California*, 422 U.S. 806, 819, n. 15 (1975). This federal constitutional right extends beyond the right to be present at the trial. *See, e.g., State v. Maestas*, 2012 UT 46, ¶ 56, 299 P.3d 892 (under the Fourteenth Amendment, “the defendant is entitled to appear ‘whenever his presence has a relation, reasonably substantial, to the ful[l]ness of his opportunity to defend against the charge’ or where his ‘presence would contribute to the fairness of the procedure.’” (quoting *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987))).

Similarly, article I, section 12 of the Utah Constitution broadly provides that “[i]n criminal prosecutions the accused shall have the right to appear and defend in person and by counsel...” The Utah Supreme Court has declared that “[t]here is no doubt but that the constitutional right to appear and defend in person and by counsel is a sacred right of one accused of crime which may not be infringed or frittered away, and is one which may not be denied by a court or be waived by counsel.” *State v. Aikers*, 51 P.2d 1052, 1055 (Utah 1935). “Where a defendant is in custody, and therefore not a free agent, the duty is on the court to see that he is personally present at every stage of the trial”, and “[p]roceedings had in the absence of a defendant, without his fault and without his knowledge or consent, is ground for reversal.” *Id.* at 1066. *See also* Utah Code § 77-1-6(1)(a) (“In criminal prosecutions the defendant is entitled to...appear in person and defend in person or by counsel.”) Thus, “constitutionally and statutorily and case-wide defendant has a right to be present at all stages of the trial, and a duty as well[.]” *State v. Lee*, 585 P.2d 58, 58 (Utah 1978).

A defendant may waive his or her right to be present at any proceeding, but that waiver must be knowing, voluntary and intelligent. *See State v. Wanosik*, 2003 UT 46, ¶ 12, 79 P.3d 937. A waiver is not knowing, voluntary, or intelligent if a defendant is forced to give up one constitutional right in order to assert another. *See Simmons v. United States*, 390 U.S. 377, 394

(1968) (“[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another.”). Similarly, here it would be intolerable to hold that Mr. Robinson’s “right to be present at all stages of the criminal proceedings against (him)” must be surrendered in order to protect his constitutional right to freedom from shackles and jail garb.

Adopting the Sheriff’s suggestion that the Court should simply issue a blanket order barring Mr. Robinson from appearing in person at any court appearance except those that the Sheriff vaguely describes as “evidentiary and critical-stage hearings” would not be a voluntary waiver of the right to be present at all stages of the criminal proceedings. And such an order would “frustrate the fairness of the proceedings” and would also violate other important constitutional rights. That is true for several reasons. First, this is a capital case and under the Eighth Amendment and its Utah constitutional counterpart, “[w]hen a defendant’s life is at stake, the Court has been particularly sensitive to ensure that every safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). One such safeguard is the constitutional right to appear and defend in person, which has been described by the Utah Supreme Court as a “sacred right.” *Aikers*, 51 P.2d at 1053.

Second, excluding Mr. Robinson, but not the rest of the world, from personally attending any court proceedings in a case in which the State is seeking to end *his* life, because it would be costly and inconvenient, smacks of fundamental unfairness and is an affront to the dignity and decorum of the courtroom. A courtroom “is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers[.]” *Estes* 381 U.S. at 561 (1965) (Warren, C.J., concurring). The courtroom setting provides “a dignity essential” to the process of criminal adjudication. *Id.* “Isolating a defendant from that setting during what may be the most decisive moment of his or her life clashes with the judge’s duty to acknowledge the

humanity of even a convicted felon.” *People v. Heller*, 891 N.W.2d 541, 544 (Mich. Ct. App. 2016) (when the defendant “speaks through a microphone from a remote location,” his absence from [a] sentencing hearing nullifie[s] the dignity of the proceeding and its participants, rendering it fundamentally unfair.”) (collecting other cases on this point).

Third, requiring Mr. Robinson to make court appearances from a jail located far from his lawyers in the courtroom “implicates [his] right to confer with counsel” because it would “require[e] him to communicate to others in the courtroom with a corrections officer standing near him, which [would] discourage[e] him from discussing confidential matters relevant to his case with his counsel.” *State v. Ferguson*, 568 P.3d 314, 321 (Wash. Ct. App. 2025). *Accord*, *Heller*, 891 N.W.2d at 318 (“Undoubtedly, two-way interactive video technology saves courts money and time, and it dramatically lessens security concerns. But ... [s]entencing by video dehumanizes the defendant who participates from a jail location, unable to privately communicate with his or her counsel and likely unable to visualize all the participants in the courtroom.”).

Fourth, in this particular and unique capital case, disallowing Mr. Robinson’s appearance at all of the court proceedings he wishes to attend would frustrate the fairness of the proceedings. State and federal law enforcement officers, including the Utah County Sheriff and the County Attorney have already engaged in conduct which prejudices Mr. Robinson’s fundamental constitutional right to a fair trial by an impartial jury. Mr. Robinson must be accorded a corresponding and absolutely necessary right to rebut that prejudice by the *lawful*, easily achievable, and minimally intrusive means of allowing him to be physically present in the courtroom, in street clothes, and without shackles, so that he can be treated as, and perceived to be, the human being that he is, and not a chained animal.

As the Supreme Court explained in *Turner v. Murray*, 476 U.S. 28, 35–36 (1986), “[t]he risk of ... prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence.” Here as in *Turner*, this Court should find that the risk that prejudice may “infec[t] [Mr. Robinson’s trial and] capital sentencing [procedure] is unacceptable in light of the” ease with which that risk could be minimized. *See also Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979) (“To safeguard the due process rights of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity. And because of the Constitution’s pervasive concern for these due process rights, a trial judge may surely take protective measures even when they are not strictly and inescapably necessary”).

Finally, the Sheriff’s proposal incorrectly assumes that there are no constitutional restraints on the Court’s power to order Mr. Robinson to make his court appearances from jail, and that the only relevant inquiry is whether a blanket order for such appearances can be made under Utah R. Crim. P. 17.5(b). While no Utah case has yet addressed the issue, the Washington Supreme Court recently held that criminal defendants are constitutionally entitled to an individualized inquiry before they can be required to appear from an in-court holding cell. *See State v. Luthi*, 549 P.3d 712, 718-20 (Wash. 2024) (en banc).

**V. MR. ROBINSON AGREES WITH THE SHERIFF THAT THIS COURT SHOULD LIMIT VIDEO AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS, SO THAT HIS PHYSICAL APPEARANCE IS NO LONGER THE SUBJECT OF INTEREST AND HIS RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY IS FULLY PROTECTED.**

For reasons outlined in Point I, *supra*, and because of the extraordinary nature of this capital case and the need to ensure a fair and impartial jury that may ultimately decide whether he lives or dies, Mr. Robinson agrees with the Sheriff that the Court should limit media

coverage, or video and photographic coverage, at the least, so defendant's physical appearance is no longer the subject of interest and he has some chance of securing a fair and impartial jury.<sup>8</sup>

The United States Supreme Court has stated that while the First and Sixth Amendments guarantee the right of the press to attend a trial and report on what they have observed, the Fourteenth Amendment Due Process Clause assures each defendant the fundamental right to a fair trial. *Chandler v. Florida*, 449 U.S. 560, 569, 571 (1981). There is no *per se* prohibition or allowance of electronic media coverage during judicial proceedings. *Id.* at 569; *Estes*, 381 U.S. at 532.

Federal courts have universally found that restrictions on videotaping and cameras do not implicate the First Amendment guarantee of public access. *See, e.g., Rice v. Kempker*, 374 F.3d 675, 678–79 (8th Cir. 2004) (collecting numerous cases so holding). *See also Sheppard v. Maxwell*, 384 U.S. at 358 (“As we stressed in *Estes*, the presence of the press at judicial proceedings must be limited when it is apparent that the accused might otherwise be prejudiced or disadvantaged. Bearing in mind the massive pretrial publicity, the judge should have adopted stricter rules governing the use of the courtroom by newsmen, as Sheppard’s counsel requested.”)

The Utah Supreme Court has stated that “the media has a right of access to criminal proceedings, but this right is not absolute and is subject to exceptions. *State v. Archuleta*, 857 P.2d 234, 237 (Utah 1993); *Kearns–Tribune Corp. v. Lewis*, 685 P.2d 515, 522 (Utah 1984). The

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<sup>88</sup> The Sheriff suggests that the Court is already heading down that path because it has prohibited video coverage of the October 30, 2025, court appearance. *Resp.* at 18-19. The Sheriff is in error as on September 29, 2025, the Court signed an order allowing the televising of the October 30, 2025 court appearance. Doc 66. In light of this order, the State should be required forthwith to respond to the Court’s October 14, 2025, order that the state (not the Sheriff) address defendant’s request for an interim order allowing him to appear in civilian clothes and without shackles at the October 30, 2025 hearing pending the final determination of Mr. Robinson’s present motion.

right of access “must be weighed against other considerations, including the accused’s Sixth Amendment right to a fair trial.” *Archuleta*, 857 P.2d at 237. A court may restrict “access altogether where necessary to assure that the defendant receives a fair trial[.]” *Kearns–Tribune*, 685 P.2d at 522.” *State v. Arguelles*, 2003 UT 1, ¶¶ 95-102, 63 P.3d 731.

The Court thus has ample authority to restrict the media in this case and should prohibit any further still camera, photography, or video coverage of any proceedings “[t]o safeguard the due process rights of the accused”, and to discharge its “affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” *Gannett*, 443 U.S. at 378.

### **CONCLUSION**

Based upon the foregoing, the Court should order relief consistent with Mr. Robinson’s motion.

DATED this 22nd day of October, 2025.

Respectfully submitted,

/s/ Kathryn N. Nester

Kathryn N. Nester

/s/ Michael N. Burt

Michael N. Burt

/s/ Richard G. Novak

Richard G. Novak

/s/ Staci Visser

Staci Visser

*Attorneys for Defendant, Tyler James Robinson*

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served via the Court's electronic filing system on the 22nd day of October, 2025, which served all attorneys of record.

/s/ Staci Visser