

No. 24-A-____

IN THE SUPREME COURT OF THE UNITED STATES

JESSIE J. BARNES,

Petitioner,

v.

DAVID A. ROCK, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY;
SUED IN INDIVIDUAL CAPACITY, DONALD UHLER, DEPUTY
SUPERINTENDENT OF SECURITY, UPSTATE CORRECTIONAL FACILITY;
SUED IN INDIVIDUAL

(Caption continued on inside cover)

Respondents.

**APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

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Respondents,

BRIAN FISCHER, COMMISSIONER OF DOCCS; SUED IN INDIVIDUAL CAPACITY, JOSEPH BELLINIER, DEPUTY COMMISSIONER OF FACILITIES OPERATIONS; SUED IN INDIVIDUAL CAPACITY, JOHN W. LECLAIR, MAINTENANCE SUPERINTENDENT; UPSTATE C.F.; SUED IN INDIVIDUAL CAPACITY, RICK CARON, ELECTRONIC EQUIPMENT MECHANIC; UPSTATE CORRECTIONAL FACILITY, DAVID MATTOON, ELECTRONIC EQUIPMENT MECHANIC; UPSTATE CORRECTIONAL FACILITY, MATTHEW GERVAIS, GENERAL MECHANIC; UPSTATE CORRECTIONAL FACILITY, RICHARD RAKOCE, SERGEANT; UPSTATE CORRECTIONAL FACILITY, MICHAEL EDDY, SGT.; UPSTATE CORRECTIONAL FACILITY, MICHAEL YADDOW, SGT.; UPSTATE CORRECTIONAL FACILITY, A. SOUTHWORTH, CORRECTIONAL OFFICER; UPSTATE CORRECTIONAL FACILITY, TONY NEPHEW, CORRECTIONAL OFFICER; UPSTATE CORRECTIONAL FACILITY, A. LASHWAY, CORRECTIONAL OFFICER; UPSTATE CORRECTIONAL FACILITY, DARRIN SNYDER, CORRECTIONAL OFFICER; UPSTATE CORRECTIONAL FACILITY, ANDREW STREET, C.O.; UPSTATE C.F., BRIAN FOURNIER, CORRECTIONAL OFFICER; UPSTATE CORRECTIONAL FACILITY, BRYAN BASHAW, CHAPLAIN, UPSTATE CORRECTIONAL FACILITY, C. CAUKLIN, REGISTERED NURSE; UPSTATE C.F., RENEE HOLMES, R.N.; UPSTATE C.F., D. HAMMAL, REGISTERED NURSE; UPSTATE CORRECTIONAL FACILITY, HEATH BAKER, R.N.; UPSTATE CORRECTIONAL FACILITY, ROSANNA LORDI, REGISTERED NURSE; UPSTATE C.F., CHERIE FAIRCHILD, REGISTERED NURSE; UPSTATE CORRECTIONAL FACILITY, ALBERT PRACK, DIRECTOR OF SPECIAL HOUSING UNIT PROGRAMS, WELLINGTON LEWIS, JR., CELL STUDIES TEACHER; UPSTATE C.F., RACHEL ALLEN, CORRECTION COUNSELOR; UPSTATE CORRECTIONAL FACILITY, WILLIE J. TABB, JR., WILLIAM PARMER, PHYSICIAN ASSISTANT; UPSTATE CORRECTIONAL FACILITY, PATTI ROBERTSON, SENIOR RADIOLOGIC TECHNICIAN; UPSTATE CORRECTIONAL FACILITY, PAUL HARGROW, CLARENCE LABARGE, R. SCOTT, J. HYDE, B. THOMPSON,

Respondents.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, as Circuit Justice for the United States Court
of Appeals for the Second Circuit:

Pursuant to this Court’s Rules 13.5 and 22, Applicant Jesse J. Barnes respectfully requests an extension of 45 days in which to file a petition for a writ of certiorari in this case. The U.S. Court of Appeals for the Second Circuit issued its summary order and judgment on June 13, 2024. App.1-6. The court denied the petition for panel rehearing or rehearing *en banc* on July 26, 2024. App.7. Absent an extension of time, the petition for writ of certiorari would be due on October 24, 2024. With the requested extension, the petition would be due on December 9, 2024.

This application is being filed more than 10 days before the petition is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In support of this application, Applicant states:

1. This case is a serious candidate for review. It involves an important and recurring issue crucial to ensuring that parties receive fair trial: when a litigant can be forced to wear shackles throughout trial. For decades, this Court has held that a party could be shackled only if the trial court made on-the-record findings explaining why shackling was justified by “essential state interests” and explained why the form of shackling ordered is the least restrictive means of restraining the party. *See Illinois v. Allen*, 397 U.S. 337, 344 (1970).

2. The decision below parts from this Court’s mandate. Applicant Jesse J. Barnes is an inmate in the Lakeview Shock Incarceration Correctional Facility in

New York State. In 2010 and 2011, corrections officers repeatedly assaulted him, in groups and in isolated, unmonitored areas. Each assault involved extreme physical violence—including the fracturing of Mr. Barnes’s leg and severing of his fingertip—and followed closely on the heels of grievances that Mr. Barnes filed against some of the assaulting officers.

3. In 2013, Mr. Barnes sued those corrections officers involved for, among other claims, the (i) use of excessive force in assaulting Mr. Barnes in several incidents, (ii) retaliation against him for filing grievances, and (iii) violation of his due process rights in a disciplinary hearing. Between 2013 and 2022, Mr. Barnes diligently litigated his case pro se.

4. Mr. Barnes’s case was tried in 2022. At the start of the trial, the District Court ordered that Mr. Barnes wear leg shackles. Instead of holding a hearing to determine what level of restraint, if any, was appropriate, the court simply asked a corrections officer for his “instructions” or “views” on how Mr. Barnes “should be restrained.” App.8. Without any explanation, the officer responded that he thought Mr. Barnes should wear “at least the leg shackles.” *Id.*

5. The court then—despite noting that Mr. Barnes had not “posed any issues” in the courtroom in the past—simply accepted the corrections officer’s recommendation, saying, “That’s what I was thinking.” *Id.* The only other explanation the court gave for the shackles was that “this is a longer process, and there’s going to be the highs and the lows of the trial.” *Id.* The record shows no other explanation, no discussion of relevant factors—such as courtroom security or

escape risk—nor any other factual findings justifying shackling. *See* App.8–15. Once the District Court decided that Mr. Barnes should be shackled, his attorneys tried to mitigate the resulting prejudice as best they could, and the court agreed to seat Mr. Barnes between his lawyers, reposition the table to be farther from the jury, and allowed Mr. Barnes to take the witness stand outside the jury’s presence. App.9–10.

6. The shackling was particularly harmful to Mr. Barnes’s case because his dangerousness and credibility was central to his case. Defendants’ main strategy during the trial was to convince the jury that Mr. Barnes was a violent, erratic individual whose actions justified the force that Defendants used. After a nine-day trial, the jury found for Respondents on all counts.

7. Mr. Barnes appealed to the Second Circuit. One of the grounds for appeal was that the District Court violated Mr. Barnes’s due process rights by requiring him to wear shackles. The Second Circuit affirmed, and then denied a petition for rehearing or rehearing *en banc*.

8. This case concerns the kind of showing necessary to meet the constitutional requirement that the court conduct a particularized determination before resorting to imposing physical restraints on a litigant in a jury trial. This Court has long recognized that “no person should be tried while shackled as gagged except as a last resort.” *Allen*, 397 U.S. at 344; *see Estelle v. Williams*, 425 U.S. 501 (1976); *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Deck v. Missouri*, 544 U.S. 622, 633 (2005). In *Deck*, this Court established the standard for the “exceptional circumstances” in

which the court may resort to shackling: the shackles must be justified by “an essential state interest specific to each trial,” and only used as a “last resort.” 544 U.S. at 633. That determination is left in the judge’s discretion.

9. In practice, however, lower courts are split on the kinds of “essential state interests” that may justify shackling and on the procedural requirements of the “particularized” determination the court must make. They have interpreted the *Deck* standard in such widely divergent ways that there is effectively no uniform rule. For instance, some courts of appeals have found that the nature of criminal charges being tried cannot support the finding of essential state interests that justify shackling. *See e.g. Lakin v. Stine*, 431 F.3d 959, 964 (6th Cir. 2005) (stating that nature of a defendant’s criminal charges could not justify shackling because otherwise all those charged with prison escape or murder would be routinely shackled); *Peaslee v. Maass*, 972 F.2d 1341 (9th Cir. 1992) (unpublished table decision) (stating that the nature of the charges were not sufficiently informative of potential problems with courtroom behavior to justify shackling); *Barbour v. Com.*, 204 S.W.3d 606, 613 (Ky. 2006) (finding an abuse of discretion where the court did not make specific findings on the record). Other courts have held the opposite. *See, e.g., United States v. Baker*, 432 F.3d 1189, 1244 (11th Cir. 2005) (treating the violent nature of criminal charges as a relevant factor in deciding whether to shackle); *State v. Sparks*, 68 So. 3d 435, 481 (La. 2011) (finding no abuse of discretion where the court did not make specific findings because reason for shackling can be inferred from record).

10. The decision below shows the perils of loosely interpreting *Deck*'s constitutional safeguard: the District Court based its decision merely on (i) the officer's unreasoned suggestion, and (ii) the fact that there will be "highs and lows of the trial." Yet the Second Circuit found that sparse record sufficient to guard Mr. Barnes's due process right to appear before a jury without physical restraints. The lack of definiteness in the test has allowed, since the *Deck* decision in 2005, lower courts to repeatedly order litigants to be restrained based on the same kind of cursory reasoning that *Deck* found unconstitutional.

11. This application for a 45-day extension seeks to accommodate Applicant's legitimate needs. Mr. Barnes is incarcerated at Lakeview Shock Incarceration Correctional Facility. Because of the constraints of the correctional facility and limited opportunities to consult with counsel, counsel require an extension to fully consult with, prepare drafts for, and obtain the sign off from Barnes on his petition.

12. The extension also seeks to accommodate counsel's schedule. Counsel is in the midst of preparing multiple briefs and expert reports across several matters, several of which are due this month. In addition, one member of Applicant's legal team is scheduled to go on their honeymoon in the next month. A 45-day extension would provide Applicant's legal team with sufficient time to communicate with Mr. Barnes and prepare the petition.

For these reasons, Applicant requests that the due date for his petition for a writ of certiorari be extended to December 9, 2024.

Dated: October 10, 2024
New York, New York

Respectfully submitted,

FRESHFIELDS US LLP

By: /s/ Scott Eisman

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Counsel for Applicant Jessie J. Barnes

APPENDIX

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**Brian Fischer, Commissioner of DOCCS,
sued in individual capacity, et al.,**

Defendants.

FOR PLAINTIFF- APPELLANT:

SCOTT A. EISMAN, Freshfields
Bruckhaus Deringer US LLP, New
York, NY (Carla Sung Ah Yoon,
Aedan Collins, Freshfields Bruckhaus
Deringer US LLP, New York, NY,
Benjamin Zweifach, Freshfields
Bruckhaus Deringer US LLP,
Washington, DC, *on the brief*).

FOR DEFENDANTS-APPELLEES:

JONATHAN D. HITSOUS (Barbara D.
Underwood, Victor Paladino, *on the
brief*), for Letitia James, Attorney
General, State of New York, Albany,
NY.

Appeal from the April 4, 2023 judgment of the United States District Court
for the Northern District of New York (Daniel J. Stewart, *Magistrate Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED, AND DECREED** that the April 4, 2023 judgment of the District
Court is **AFFIRMED**.

1 Plaintiff-Appellant Jessie J. Barnes commenced a 42 U.S.C. § 1983 action
2 against former and current employees of the New York State Department of
3 Corrections and Community Supervision (“DOCCS”) alleging, *inter alia*, violations
4 of his First and Eighth Amendment rights. Barnes alleges that he sustained serious
5 injury, including a broken leg and a partially amputated finger, and that
6 Defendant Officers Gettmann, B. Clark and Ramsdell—who were among the
7 defendant officers involved in the most egregious incidents—targeted him in
8 retaliation for filing grievances against them.

9 Before jury deliberation, the District Court granted Defendants Gettmann,
10 B. Clark, and Ramsdell judgment as a matter of law on Barnes’s retaliation claims.
11 The Court also declined to issue an adverse-inference instruction against
12 Defendants for a missing video of an altercation between Barnes and Defendants,
13 reasoning that Barnes failed to compel production of this footage during
14 discovery. The Court nonetheless permitted Barnes to make an adverse-inference
15 argument about the video to the jury during closing arguments. Joint Appendix
16 (“JA”) 818-20. The Court also declined to issue an adverse-inference instruction
17 against Defendants for the destruction of the protective hatch that was allegedly
18 involved in the partial amputation of Barnes’s finger. JA 817-18. The Court found

1 that the failure to preserve the hatch did not prejudice Barnes because he was able
2 to introduce a replica hatch and photographs of the original as evidence. JA 817-
3 18. Finally, the Court required that Barnes wear leg shackles during trial. JA 295-
4 96.

5 The jury found for Defendants on all of Barnes's remaining claims, and
6 Barnes timely appealed. We assume the parties' familiarity with the underlying
7 facts, the procedural history, and the issues on appeal, to which we refer only as
8 necessary to explain our decision to affirm.

9 *First*, Barnes challenges the District Court's order granting Defendants
10 Gettmann, B. Clark and Ramsdell judgment as a matter of law on Barnes's
11 retaliation claims. Having carefully reviewed Barnes's arguments *de novo*, see *Legg*
12 *v. Ulster County*, 979 F.3d 101, 116 (2d Cir. 2020), we find no reversible error. The
13 jury verdict that Defendants Gettmann, B. Clark and Ramsdell did not subject
14 Barnes to excessive force precludes a finding that the same, objectively serious
15 conduct was exercised in retaliation for grievances filed against them. See
16 *Baskerville v. Mulvaney*, 411 F.3d 45, 49–50 (2d Cir. 2005) (holding that plaintiff's
17 retaliation claim fails where "evidence before the jury would not support ... a
18 theory of actionable *de minimis* force" and "the jury found ... that the officers' use

1 of force did not violate the Eighth Amendment”).

2 *Second*, Barnes argues that the District Court erred in declining to issue an
3 adverse-inference instruction for the missing video footage and the protective
4 hatch on Barnes’s cell door. We disagree. When “the nature of the alleged breach
5 of a discovery obligation is the non-production of evidence, a district court has
6 broad discretion in fashioning an appropriate sanction.” *Residential Funding Corp.*
7 *v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002). Finding no “abuse of
8 discretion” in the Court’s decisions, we affirm for substantially the reasons given
9 by Magistrate Judge Stewart.

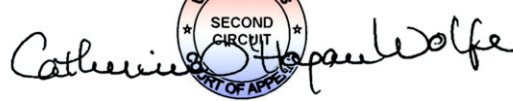

10 *Third*, Barnes argues that the District Court violated his due process rights
11 by requiring him to wear leg shackles throughout the trial. We disagree. The
12 District Court’s decision to restrain a defendant is reviewable for “abuse of
13 discretion,” unless the Court “has deferred entirely to those guarding the
14 prisoner.” *Hameed v. Mann*, 57 F.3d 217, 222 (2d Cir. 1995). The District Court
15 recognized that it “ha[d] to exercise an independent judgment” regarding how
16 Barnes “should be restrained while in the courtroom,” and the correction officer’s
17 recommendation—that only leg shackles, not handcuffs or a waist chain, were
18 necessary—was consented to by Barnes. *See* JA 295-96. Moreover, the Court

1 mitigated possible prejudice resulting from the leg shackles by granting Barnes's
2 request that he sit between his attorneys, "so that his legs are underneath the
3 desk." JA 296. On these facts, the District Court did not err, much less "abuse its
4 discretion," in having Barnes wear leg shackles during trial.

5 * * *

6 We have considered Barnes's remaining arguments and find them to be
7 without merit. Accordingly, we **AFFIRM** the judgment of the District Court.

8
9 FOR THE COURT:
10 Catherine O'Hagan Wolfe, Clerk of Court
11
12

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of July, two thousand twenty-four.

Jessie J. Barnes,

Plaintiff - Appellant,

v.

David A. Rock, Superintendent, Upstate Correctional Facility, et.al.,

Defendants - Appellees,

Brian Fischer, Commissioner of DOCCS; sued in individual capacity, et al.,

Defendants.

ORDER



Docket Nos: 22-2902 (Lead)
22-3152 (Con)
23-729 (Con)

Appellant, Jessie J. Barnes, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

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1 MR. SCOTT: About the same.

2 THE COURT: Okay. So then we may get Mr. Barnes on
3 this afternoon, at least to start.

4 As far as the security issue goes, who is in charge of
5 Mr. Barnes?

6 CORRECTION OFFICER: I am, Your Honor.

7 THE COURT: Just identify yourself for the record.

8 CORRECTION OFFICER: I'm sorry, sir. Officer LaRoque.

9 THE COURT: So Officer, part of my responsibility is
10 to make a determination as to how he should be restrained while
11 in the courtroom. I have to exercise an independent judgment
12 with regard to that, but obviously I am interested in your
13 instructions or your views as how you think he should be
14 restrained.

15 CORRECTION OFFICER: As far as the handcuffs and the
16 waist chain, I would be fine with that not being on, but at
17 least the leg shackles, if that's all right.

18 THE COURT: That's what I was thinking. In the past
19 when Mr. Barnes has been in my courtroom, we've done the leg
20 shackles. He hasn't posed any issues. Obviously, this is a
21 longer process, and there's going to be the highs and the lows
22 of the trial. So that's going to be subject to change if for
23 any reason I see any type of outburst, and I'll talk with him a
24 little bit about that.

25 Let me hear from the defense counsel. I assume that

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1 you're taking the position that the correction officer's taken.

2 Do you want to add anything further?

3 MS. LATINO: No, Your Honor. I think that's fine.

4 THE COURT: If anybody has any concerns, let me know
5 from either side. I actually did a trial one time where I was
6 defending, but the pro bono counsel actually asked the client to
7 be reshackled at some point in time. So we all have a
8 responsibility to maintain safety in the courtroom. We also, of
9 course, want to make sure that we don't deprive him of his right
10 to due process. I think the handcuffs and the belt would be
11 kind of shocking.

12 What about other -- do we have other guards?

13 CORRECTION OFFICER: It's myself and Officer Smalls
14 that will be present, sir.

15 MR. HURTEAU: Your Honor, if I could just ask one
16 thing.

17 THE COURT: Yes.

18 MR. HURTEAU: So we were originally going to put
19 Mr. Barnes on the outside of counsel's table. I would ask he be
20 put in the middle between us so that his legs are underneath the
21 desk so that people can't see that he has leg shackles. Then
22 obviously -- I know this would happen anyway -- when he goes up
23 to testify and comes back down, the jury goes out so they don't
24 see he's in shackles.

25 THE COURT: I think that that's more appropriate.

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1 Now, we were going to have the plaintiff's counsel sit at the
2 table farthest away from the jury. I know that's traditionally
3 not how it's done, but I think in this case, that that's an
4 appropriate situation here. So that, again I'll talk with
5 Mr. Barnes with regard to that.

6 One issue I did want to speak briefly about is just
7 obviously the number of defendants that we have is historic. So
8 how would you like to handle that, either in jury selection or
9 anywhere else? I'm going to instruct the jury that both sides
10 worked together to try to coordinate the trial, make it run as
11 smoothly and quickly as possible; that not all the defendants,
12 even though they're entitled to, will be here every day, and
13 they're not to draw any adverse inference as a result of that.

14 What about jury selection? How do you want to handle
15 that?

16 MR. SCOTT: Just logistically speaking, I don't think
17 we're going to be able to fit the jurors and all defendants in
18 the back of the courtroom just now. Certainly don't have any
19 strong preference in that regard, but it might make sense to --
20 at some point, if they're introduced to the jury one way or the
21 other, maybe do it in halves, somehow break it up, whatever.
22 Obviously you don't want the defendants sitting shoulder to
23 shoulder with the jurors as they're being picked either.

24 THE COURT: That would be my primary concern. I don't
25 ascribe any type of misconduct to any of the defendants, but

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1 exhibit list correspond with the stipulation?

2 MS. LATINO: Yes.

3 THE COURT: Here's your jury forms.

4 THE CLERK: There will be 27 in the box. Then the
5 other 12 will be out in the gallery.

6 THE COURT: We do have attorney rooms available along
7 the way, and I can make arrangements so you don't have to take
8 your stuff. If you want to leave it here, we'll make sure it's
9 secure and Mr. Scott is not looking through it.

10 MR. HURTEAU: Your Honor, when we go out now, you're
11 going to give us time to look at these?

12 THE COURT: Absolutely.

13 MR. SCOTT: We may need a minute to carve up the
14 defendants.

15 THE COURT: Take your time. I have to look through
16 here too as well. Maria, that marks the end of our conference.
17 We can go off the record.

18 (Recess. Open court. Prospective jury not
19 present.)

20 THE CLERK: We are now on the record. Monday,
21 September 19, 2022, 9:57 a.m. The case is Jessie J. Barnes
22 versus David A. Rock and others, case No. 13-CV-164. May we
23 have appearances for the record, please.

24 MR. HURTEAU: Your Honor, for the plaintiff, the law
25 firm of Nixon Peabody. I'm Dan Hurteau with that firm. I'm

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1 also here with Travis Hill with Nixon Peabody.

2 MR. HILL: Good morning.

3 MR. HURTEAU: I'm also here with Chris Stevens from
4 Nixon Peabody.

5 MR. STEVENS: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. HURTEAU: I'm here with Sarah Tufano from Nixon
8 Peabody. We have one other member of our team who is not here
9 today, Vincent Nguyen. I'm here to represent Mr. Barnes, and
10 Mr. Barnes is here with us today.

11 THE COURT: Very good.

12 Why don't we have defense counsel just introduce
13 themselves.

14 MS. LATINO: Yes, Your Honor. Assistant Attorney
15 General Melissa Latino.

16 MR. SCOTT: William Scott also from the Office of the
17 Attorney General, Your Honor.

18 MR. S. NGUYEN: Good morning, Judge. Steve Nguyen for
19 the Office of the Attorney General for defendants.

20 THE COURT: Good morning. So we have the jury pool
21 ready to be brought in. The record can reflect that we did have
22 a conference with counsel before court just to deal with some
23 logistical issues, and those have been completed. I have
24 received extensive submissions on behalf of both sides. I
25 appreciate all the work that's gone into this.

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1 So Mr. Barnes, let me just start with you. Obviously,
2 this is one of the first cases I had when I became a judge.
3 It's been a long time getting here. So now it's really an
4 opportunity for you and for the defendants to present the case.
5 We've got a lot of jurors. We've got two weeks scheduled to get
6 this done.

7 So one, let me just ask you. How are you doing?

8 THE PLAINTIFF: Not good. The same way, they won't
9 move me. They keep me up there. That man, they abusing me out
10 of this world.

11 THE COURT: Well, let me deal with a couple issues up
12 front with you, Mr. Barnes, just so we know. Obviously the only
13 thing that we're doing here in this particular case is what the
14 allegations are, and obviously these are allegations which
15 occurred a long time ago. From your communications with the
16 Court, I understand that you have ongoing issues. Obviously
17 you're familiar with the process to file complaints and
18 everything, and that's perfectly appropriate.

19 What I want to emphasize to you, a couple things is
20 that we've got this trial. It's going to last two weeks. I did
21 trial work for 30 years. You're going to have your opportunity
22 to talk to the jurors. You've got a whole team of counsel here
23 ready to present your interest.

24 There's going to be highs and lows during the course
25 of this trial, just like there is for any trial. I can tell you

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1 that. You've been nothing but respectful to me during the
2 course of all the conferences that we've had, and we've had
3 quite a few in connection with this case. I wouldn't expect
4 anything further. I know it's a stressful situation for you.
5 It's also stressful for the defendants. Obviously now is going
6 to be the time for this jury to make a determination.

7 So if at any point in time, you're getting to the
8 point where you need a break, can you just let your counsel
9 know? We'll try to accommodate you with regard to that.

10 THE PLAINTIFF: Yes.

11 THE COURT: We have made accommodations as far as your
12 hands are not shackled with regard to this so you can take notes
13 or do whatever is appropriate. I'm doing that primarily
14 because, as I said before, you and I have had a number of
15 conferences, and there's never been an issue.

16 THE PLAINTIFF: They going to see the restraints. I
17 got restraints on my legs.

18 THE COURT: Right. So what we're going to do with
19 regard to that is the same thing we've done before. So the jury
20 is not here right now. When you testify, you may be the first
21 witness to testify. I'm going to excuse the jury. I'll have
22 you come sit at the witness stand so they can't see the
23 restraints.

24 I will ask you to introduce yourself to the jurors.
25 You don't have to stand up if you don't wish. You can if you

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1 wish. Obviously they know, at some level, they know you're
2 incarcerated because that's the nature of the claim you have.
3 So it's not going to be a surprise with regard to that.

4 THE PLAINTIFF: You know, that's why I was going to
5 just wear my greens because it's not secret I got life. So I
6 ain't got nothing to hide. I ain't in jail for killing nobody.
7 The judge just wanted to give me life. So that's what I got.

8 THE COURT: No. That, I understand. My goal in this
9 particular case is to make it go as smoothly as possible.
10 You've got an argument that you want to bring to this jury. The
11 defendants and their counsel have an argument. I want them to
12 get the evidence, but we're only going to talk about this case,
13 what's left of this case, nothing else.

14 If you stray into other areas, I'm going to tell you
15 to stop. I'm not doing that because I dislike you in any way.
16 Just we need to have the case proceed in an orderly fashion. Do
17 you understand that?

18 THE PLAINTIFF: Yes, sir. But what I'm saying, I
19 don't even know what's going on. I ain't receive no trial
20 motions. I don't know what's going on. They got all them
21 videotapes, and a lot of the videotapes don't got the proper
22 time. I ain't talk to the lawyer so he can get the logbook. I
23 FOILED some of them, and I know the logs, the videotape, one of
24 them got 29 minutes on the videotape.

25 THE COURT: You're going to have a chance through your