

In the Supreme Court of the United States

CHANEL WILEY,

Applicant,

v.

UNITED STATES OF AMERICA

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

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Chanel Wiley respectfully requests a 60-day extension of time, to and including March 2, 2025, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Ninth Circuit issued a published opinion and unpublished opinion on May 29, 2024. A copy of the published opinion is attached as Exhibit A and a copy of the unpublished opinion is attached as Exhibit B. The Ninth Circuit denied a timely petition for rehearing en banc on October 3, 2024. A copy of that Order is attached as Exhibit C. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on January 1, 2025. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case presents an issue of vital importance affecting the fair-trial rights of criminal defendants in federal courts. From the ancient trial practices of England—as recognized by Blackstone, Coke, and Hale—through cases like *Deck v. Missouri*, 544 U.S. 622 (2005), *Holbrook v. Flynn*, 475 U.S. 560 (1986), and *Estelle v. Williams*, 425 U.S. 501 (1976), a common-law throughline has recognized that visible symbols of criminality must be removed from defendants so as not to influence a jury. But in this case, two judges of the Ninth Circuit concluded that perceptible, government-imposed ankle monitors—audible and apparent to a jury—do not offend the right to a fair trial. That decision cannot be squared with the Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States, or this Court’s precedent.

4. Chanel Wiley was ordered to wear an electronic ankle monitor following her arrest. On the first day of her trial, Ms. Wiley’s ankle monitor began beeping shortly before jury selection began. Defense counsel informed the district court judge and expressed concern that Ms. Wiley would be prejudiced by the ankle monitor’s beeping before the jury. The judge acknowledged hearing the beeping and directed a present federal agent to fix it. Jury selection began. Jurors soon expressed difficulty hearing the judge. Defense counsel informed the judge that the ankle monitor continued to beep and every prospective juror on his side of the courtroom could hear it and see defense counsel attempting to silence it. After the ankle monitor continued to sound, and prospective jurors continued to have

difficulty hearing the judge, the federal agent cut the monitor off Ms. Wiley's ankle during a recess. The jury was selected, and trial began. The jury convicted Ms. Wiley of conspiracy to distribute methamphetamine and acquitted her of a distribution charge.

5. A fractured Ninth Circuit panel affirmed Ms. Wiley's conviction. In an extraordinary majority opinion, two judges departed from this Court's inherent prejudice framework to craft a new constitutional rule for criminal defendants in the Ninth Circuit. According to the majority, while shackles, prison clothes, and increased courtroom security are all indicia of guilt supporting an inherent-prejudice rule, a beeping ankle monitor was "very different," and required a showing of actual prejudice. Ex. B at 9. The majority reasoned that an ankle monitor did not "physically bind" and was "relatively unobtrusive." *Id.* at 11-13. It acknowledged that an ankle monitor "may impact the jury's perception of the defendant's innocence," *id.* at 14, but apparently not to such an extent that it "impermissibly suggest[s] guilt," *id.* at 18. Having crafted this ankle-monitor-specific rule, the majority concluded Ms. Wiley could not show actual prejudice. It reached that conclusion by (1) musing that the removal of the perceptible monitor during trial "might well have had a favorable reaction with the jury" because it "decreased the government's control over [Ms.] Wiley," and (2) assuming the jury's acquittal of Ms. Wiley on one count "suggests that the ankle monitor did not color the jury's perception of [Ms. Wiley] to such an extent that they were unable to consider impartially the evidence of her guilt." *Id.* at 22.

6. In a separate opinion, Judge Mendoza rightly explained why a perceptible ankle monitor is inherently prejudicial and should be subject to the same inherent-prejudice inquiry performed for other government-imposed badges of guilt. Judge Mendoza

explained that a beeping ankle monitor, like the one here, is “a distinctive and stigmatizing device that brands the defendant as an especially dangerous or culpable person” and which therefore “undermines the presumption of innocence and erodes the fairness of the fact-finding process.” *Id.* at 25. The Ninth Circuit panel denied a petition for rehearing en banc, though Judge Mendoza voted to grant the petition.

7. After centuries of common-law development concluding that a fair trial depends on the defendant’s ability to stand before a jury unmarked by government opprobrium, two judges have crafted a new rule in this country’s largest and most populous circuit: Somehow, somehow, ankle monitors are “different” and, as long as the defendant suffers just the right amount of prejudice, the fair-trial right has been preserved. The Constitution does not abide rule by ineffable intuition. And this Court should not indulge this departure from its precedent. The hazards posed by the Ninth Circuit’s new constitutional rule are all the more grievous as ankle monitors become a ubiquitous form of ensuring compliance from criminal defendants. *Id.* at 24-37.

8. Applicant respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel of record sufficient time to fully examine the Ninth Circuit’s decision’s consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel’s ability to file the petition on or before January 1, 2025.

Wherefore, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including March 2, 2025.

Dated: December 6, 2024

Respectfully submitted,



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