




**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

To: District Court and Magistrate Judges, Federal Public Defender, U.S. Attorney, CJA Panel, U.S. Probation and Pretrial Services, U.S. Marshals Service

From: Chief Judge Timothy M. Burgess 

Date: September 29, 2017

Re: New District of Alaska Policy for Restraint of In-Custody Criminal Defendants in the Courtroom

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The Ninth Circuit's recent *en banc* opinion in *United States v. Sanchez-Gomez*<sup>1</sup> held that an in-custody criminal defendant has a presumptive right under the Fifth Amendment to be free of restraints during court proceedings to ensure the dignity and decorum of the judicial process in the courtroom. This presumption expressly applies "whether the proceeding is pretrial, trial, and sentencing, with a jury or without."<sup>2</sup> The opinion determined that courts cannot have a blanket policy that all in-custody defendants must be restrained during court proceedings, nor can a judge simply defer to the U.S. Marshals Service to determine what level of restraints are necessary.<sup>3</sup>

The decision in *Sanchez-Gomez*, however, does not appear to apply to probation revocation or supervised release revocation hearings, as the Ninth Circuit clearly specified only "pretrial, trial, and sentencing," in its opinion. Inmates will continue to be restrained while they are transported from the holding cell to the courtroom.

Although the Ninth Circuit stayed the issuance of a mandate in *Sanchez-Gomez* while the petition for certiorari is pending before the U.S. Supreme Court, at least one Ninth Circuit panel has instructed the District of Arizona to comply with the opinion from *Sanchez-Gomez* while the

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<sup>1</sup> 859 F.3d 649 (9th Cir. 2017) (en banc).

<sup>2</sup> *Id.* at 661.

<sup>3</sup> *Id.* at 661, 666.

appeal is pending.<sup>4</sup> Accordingly, the District of Alaska has developed a revised restraint policy for in-custody defendants with the input and assistance of the District Court and Magistrate Judges, U.S. Marshals, the Federal Public Defender, the U.S. Attorney's Office, and U.S. Probation and Pretrial Services. This revised policy is designed to comply with the Ninth Circuit's guidance from *Sanchez-Gomez* by providing for the judicial determination of the least restrictive means of maintaining order and security in the courtroom.

As of October 1, 2017, the following policy will apply to all in-custody criminal defendants appearing in the District of Alaska:

The presiding judge must make an initial determination as to whether a criminal defendant shall be restrained to maintain security and order in the courtroom. The first restraint order issued in a case will apply to that particular defendant for all other pre-trial, trial,<sup>5</sup> and sentencing proceedings in the case unless there is a change in circumstances or a different presiding judge enters a different order. In many circumstances, this determination will be made by the Magistrate Judge prior to an inmate's initial appearance. The *Sanchez-Gomez* opinion does not require the court to endanger the public or courtroom professionals by bringing a potentially dangerous defendant into a courtroom without shackles before the court makes its decision.

The presiding judge making this restraint determination will be aided by a form prepared by the U.S. Marshals Service in consultation with U.S. Probation and Pretrial Services. For each criminal defendant, the form identifies the current charges, the defendant's criminal history, as well as any instances of past disruptive courtroom behavior, attempted escapes, assaultive behavior while in custody, or defiant behavior toward corrections officials or judicial authorities. Based on the individual defendant's history, the U.S. Marshals Service may recommend a certain level of restraint for courtroom proceedings to include full restraints (hands and legs), legs only, or no restraints.

As noted in *Sanchez-Gomez*, a judge cannot simply defer to the U.S. Marshal's recommendation. The presiding judge must make an individualized finding that a specific level of restraint (either full, legs only, or none) is the least restrictive means for maintaining security and order in the courtroom.

Once the presiding judge makes a restraint finding, the court must allow the defendant an opportunity to place objections on the record; however, the *Sanchez-Gomez* opinion does not require the court to hold a hearing if the defendant objects to the judge's determination that he or she be restrained during court proceedings.

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<sup>4</sup> *In re Zermeno-Gomez*, 2017 WL 3678174 (9th Cir. Aug. 25, 2017).

<sup>5</sup> This policy is of course subject to the well-established principle that under normal circumstances, defendants shall not be restrained in the presence of the jury during trial. *See Holbrook v. Flynn*, 475 U.S. 560, 568 (1986); *Stewart v. Corbin*, 850 F.2d 492, 497 (9th Cir. 1988) ("In the presence of the jury, [the defendant] is ordinarily entitled to be relieved of handcuffs, or other unusual 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 *Brewster v. Bordenkircher*, 745 F.2d 913, 915 (4th Cir. 1984))).

## **Removal of Restraints**

The language of the *Sanchez-Gomez* opinion suggests that where the court determines that restraints are unnecessary, an in-custody criminal defendant has a right to enter the courtroom unrestrained. To the extent practicable, the U.S. Marshals Service will remove an in-custody defendant's restraints before they enter the courtroom. However, some courtrooms in the Alaska District pose a unique challenge because in-custody defendants enter the courtroom via hallways that are used by court personnel or the public, and in some instances are mere feet from the entrance to chambers. After consultation with the various stakeholders, it was agreed that removing an inmate's restraints in the hallways utilized by court personnel or the public poses an unacceptable security risk. Accordingly, in circumstances where a presiding judge has determined that handcuffs and leg restraints are unnecessary during the hearing and there is no location to remove restraints other than a shared corridor, the Marshals Service will remove the defendant's restraints immediately upon entrance to the courtroom as soon as the defendant is out of the shared hallway. Once the defendant's restraints are removed, the Marshals will escort the defendant to the defense table.

If you have any questions, please contact Lesley K. Allen, District Court Executive & Clerk of Court at 907-677-6100 or by email at [Lesley\\_Allen@akd.uscourts.gov](mailto:Lesley_Allen@akd.uscourts.gov).