IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR
MIAMI-DADE COUNTY

JUVENILE DIVISION

CASE NO. J_____

STATE OF FLORIDA,

Petitioner,

vs.

_____, a Child,

Respondent.
_____/

MOTION FOR CHILD TO APPEAR FREE FROM DEGRADING AND UNLAWFUL RESTRAINTS

The Respondent, _____, moves this Court to permit the Respondent to stand before the Court free of shackles, handcuffs, or chains. In support of this motion, the Respondent states:

INTRODUCTION

1. The Court requires that all detained juveniles appear in court wearing handcuffs and shackles. This is a blanket policy applied automatically to all detained children brought before the Juvenile Division, regardless of age, size, gender, alleged offense, or the lack of likelihood of misbehavior or escape.

2. The degrading practice of bringing children before the Court in chains

is unlawful and must cease. The use of exceptional restraint measures without an individualized showing of necessity is contrary to chapter 985 and the very purposes of the juvenile justice system. The practice violates children's right to due process and interferes with the right to counsel and to participate in the defense of the case, in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 9 and 16 of the Florida Constitution. The Court's practice also stands in clear violation of international law. Just as importantly, the handcuffing and shackling of children can cause them serious mental and emotional harm, and undermine the Court's very objectives in preventing delinquency or rehabilitating a delinquent child.

3. The shackling of children as a matter of policy must stop, and the use of exceptional restraints must be reserved for the rare case where the Court makes an individualized determination in the exercise of its discretion that unusual facts warrant such an extreme measure.

STATEMENT OF FACTS

4. The Respondent, _____, is a ____-year-old child who is presently in detention. There has been no determination that _____ presents any risk of escape or violence. Pursuant to this Court's shackling policy, _____ is required to appear before the Court in handcuffs and leg irons for all proceedings other than an adjudicatory hearing.

The Court's Uniform Policy of Shackling All Detained Children

5. The uniform practice and policy of the courts of the Juvenile Division is to require that all detained children be produced before it in handcuffs and shackles. The Court makes no individual determination that mechanical restraints are necessary due to allegations that a child is somehow dangerous or a poses a risk of escape. Nor does the Court consider the child's age, size, gender, alleged delinquent act, background, history or vulnerability to harm from the shackling.

6. In compliance with this policy, children are brought to court bound hand and foot. The Department of Juvenile Justice (DJJ) uses metal handcuffs to secure each child's wrists together. (Appendix A, pp. 1-2.) The child's legs are shackled with metal leg-irons connected by an approximately 16" chain. (Appendix A, pp. 1-2.) This short length of chain makes normal walking impossible, and forces the child to shuffle.

7. Thus chained, children await their court hearings in the locked, staff-supervised holding area behind the courtrooms. The waiting time varies with the type of proceeding, the length of the calendar, and the child's position on it. It is possible for a child to remain shackled for as long as four hours while waiting.

8. The Office of the Public Defender has opposed the Court's shackling policy. Marie Osborne, Chief of the Juvenile Division of the Office of the Public Defender, detailed the objections to this practice in a memorandum to Associate

Administrative Judge Lester Langer, dated May 17, 2006. (Appendix B).

9. In response to Ms. Osborne's memorandum, on June 21, 2006, the judges of the Juvenile Division agreed to remove the handcuffs and shackles during adjudicatory hearings, but otherwise refused to alter the shackling policy.

Physical Security At The Juvenile Justice Center

10. Unlike many other jurisdictions, where children must be transported by vehicle to court, in Miami-Dade County the Juvenile Division's courtrooms are located at the juvenile detention center. Children are brought directly from secure detention via an elevator to the locked and secure holding area behind the courtrooms.

11. Consequently there is no necessity for what the Supreme Court of Florida has referred to as the "disgraceful problem[]" of parading children in shackles.[1]

12. Detained children are typically brought into the courtroom singly. In each courtroom, the door to the locked holding area is on the opposite side of the

[1] *Amendment To Florida Rule Of Juvenile Procedure 8.100(a)*, 796 So. 2d 470, 474 (Fla. 2001), *quoting with approval Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 753 So. 2d 541, 546 (Fla. 1999) (Lewis, J., dissenting). Indeed, absent this Court's shackling policy, it is unclear that DJJ policies would authorize the routine shackling of detained Miami-Dade children for court dates at all. *See* FDJJ-1508-03 (authorizing mechanical restraints "outside of any secure area of operations"); FDOJ-5000 (directing use of mechanical restraints during transportation by vehicle).

room from the courtroom entrance. (Appendix A, ¶ 3).

13. The courtrooms are small, and normally there are many obstacles between the detained child and the exit. Each courtroom has a bailiff. Each judge has a "panic button" under the bench. The courtroom doors open into a vestibule, which in turn opens into a large waiting room area. Typically there are police officers in this area, as well as in other areas of the Juvenile Justice complex. (Appendix A, ¶ 3).

14. To exit the waiting room area, one must pass the Miami-Dade Police mini-station. Past this point, the sole exit from the courtroom and waiting room area opens onto the second story above a courtyard. To exit the building, one must go down two flights of stairs. (Appendix A, ¶ 3).

15. The building exits are guarded by security guards and can be sealed by remote-controlled gates. (Appendix A., ¶ 3).

16. Members of the public entering the courthouse complex must pass through a weapon detector, and their belongings are X-rayed. (Appendix A, ¶ 3).

<u>The Harm Caused By The Shackling Policy</u>

17. The shackling of all detained children for court appearances is anti-therapeutic and antithetical to the purposes of the juvenile justice system, according to Bruce Winick, Professor of both law and psychiatry at the University of Miami, and Bernard P. Perlmutter, Assistant Professor and Director of the

Children & Youth Law Clinic at the University of Miami School of Law. Affidavit of Professors Bruce J. Winick and Bernard P. Perlmutter ("Winick/Perlmutter Affidavit," Appendix C). Professor Winick co-founded the field of "therapeutic jurisprudence," a school of social inquiry which studies the consequences of legal rules, legal practices and legal actors upon litigants for therapeutic effect. Therapeutic jurisprudence is a particularly fruitful approach to the juvenile justice system, with its avowed goal of rehabilitation. Research has shown that when children experience legal rules and practices as fair and respectful, they are more amenable to rehabilitation. But to the degree that children feel abused or humiliated by the legal system, they are more likely to develop behaviors "that are inconsistent with rehabilitation." Winick/Perlmutter Affidavit, ¶ 6.

18. The Florida Supreme Court has expressly relied upon therapeutic jurisprudence in both analyzing and adopting rules for judicial treatment of children. *M.W. v. Davis*, 756 So.2d 90, 107 (Fla. 2001); *Amendment to the Rules of Juvenile Procedure, Fla. R. Juv. P. 8.350*, 894 So. 2d 1206, 1210-11 (Fla. 2001). *See also* Hon. Barbara J. Pariente, Introduction, Symposium Issue: Therapeutic Jurisprudence in Legal Education, 17 *St. Thomas L. Rev.* 403 (200) ("By approaching legal problems in a problem-solving, holistic and conflict resolution mode this [therapeutic jurisprudence] approach works to resolve conflicts more

humanely, to minimize harm to the litigants and to prevent recidivism.").

19. The indiscriminate shackling practice "brands and stigmatizes" the children in ways that affect both how the judge behaves towards them and how they regard themselves, "further perpetuating the self-fulfilling prophecy of 'bad kid,'" and "transforming [their] identity in ways that subsequently cause [them] to act in accordance with the stigmatizing label." Winick/Perlmutter Affidavit, ¶¶ 7-9. While conceding there may be "rare instances" where "short-term" shackling is "necessary for public safety," Professors Winick and Perlmutter conclude that the indiscriminate shackling of all children for in-court appearances is "gratuitously punitive," "counter-therapeutic," and "psychologically harmful." Winick/Perlmutter Affidavit, ¶¶ 11-12.

20. Dr. Marty Beyer expands on the psychological harm inflicted by the indiscriminate shackling policy. Dr. Beyer, a national consultant on juvenile justice issues, whose area of expertise is the interplay between adolescent development, trauma and features of the rehabilitative experience, has assisted the federal Department of Justice in investigating juvenile detention facilities, and provides training on adolescent development to juvenile court judges. Affidavit of Dr. Mr. Beyer ("Beyer Affidavit," Appendix D), ¶ 2. Dr. Beyer's research was cited by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005), which abolished the juvenile death penalty. Beyer Affidavit, ¶¶ 2-3.

21. Dr. Beyer's opinion is that indiscriminately and routinely shackling children in court impairs the development of their identity and morality, and ruptures their trust in authority. Being shackled in handcuffs and leg irons in public, before family and strangers alike, is humiliating to anyone. But a child's sense of identity is fragile; being chained like a dangerous beast may cause the child to feel like one. The damage from shackling to the fledgling sense of self is even more severe in children of color, who may associate the practice with racism. Beyer Affidavit, ¶¶ 9-13.

22. In addition, it is during adolescence that children develop a moral identity. They become extremely sensitive to unfairness. Being shackled in court, prior to trial, in the absence of any need for restraint makes children doubt that the system presumes them innocent, doubt that the system aims to help them. They cannot trust that the very people who now control their lives are fair or honest or benign. The apparent conflict between what the adults say and what they do is damaging to this phase of a child's development. Beyer Affidavit, ¶¶. 14-17

23. Finally, Dr. Beyer is concerned about the traumatic impact of shackling on children who have previously been traumatized. As she observes, many children in the system have been victimized by physical and sexual abuse, loss, neglect and abandonment. They suffer from depression, attention and conduct disorders, and substance abuse. Linda Teplin, et al., "Psychiatric

Disorders of Youth in Detention, Juvenile Justice Bulletin, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (April 2006). Shackling exacerbates trauma, reviving feelings of powerlessness, betrayal and self-blame. Beyer Affidavit, ¶¶ 18-19. Shackling a victim of physical or sexual abuse, where restraint was a part of the abuse, can trigger a flashback. Wanda K. Mohr, et al., "Adverse Effects Associated With Physical Restraint," http://www.cpa-apc.org/Publicatons/Archieves/CJP/2003/june/mohr.asp.

24. As a practical matter, Dr. Beyer observes that, throughout the country, children "are seldom handcuffed or shackled in juvenile or family courts," but only in those "rare situations" when the child "poses an imminent threat" to safety. Beyer Affidavit, ¶¶ 6, 7. The injury from routinely and indiscriminately shackling children in court thus appears to be wanton and gratuitous.

25. Dr. Gwen Wurm agrees with the conclusions of Dr. Beyer and Professors Winick and Perlmutter that the routine and indiscriminate shackling of children in court is harmful to them. A board-certified developmental-behavioral and general pediatrician, Dr. Wurm teaches at the University of Miami School of Medicine and is the medical director of Jackson Memorial Hospital's Medical Foster Care Program. Affidavit of Gwen Wurm, ¶¶ 1-3 (Appendix F). "Adolescence is a critical time for cognitive development and learning," Wurm points out. The ability to "move from concrete to abstract and symbolic thinking"

depends "on experience, especially stressful ones." Wurm Affidavit, ¶ 8. As the adolescent consolidates his experiences into "a sense of personal identity," he is profoundly influenced by how others respond to him. *Id*. Being shackled conveys that others see him as "a contained beast," an image that "becomes integrated in his own identity formation, possibly influencing his behavior and responses in the future." *Id*.

26. Dr. Wurm notes that the indiscriminate shackling policy "goes against the basic tenets of developmental pediatric practice" that, because children are going through stages of cognitive development, therapeutic approaches must be "individualized in order [to] achieve the best possible outcomes." Wurm Affidavit,¶ 7. Utilizing the "least restrictive settings" is consistent with that tenet and, because of the "identity formation" issues, is critical to the children's well-being. Wurm Affidavit, ¶¶ 7, 11.

27. Finally, like Dr. Beyer, Dr. Wurm warns that shackling can cause physical as well as emotional and mental harm. As depicted in Appendix A, the shackles can abrade and tear the tender flesh inside the wrist. Furthermore, children with "previous nerve or vessel damage" to an extremity are vulnerable to re-injury. Wurm Affidavit, ¶ 12. Dr. Wurm concludes that, given the damage to children from shackling them hand and foot, a parent or guardian who resorts to this method of restraint may be committing child abuse, as defined in Chapter 39,

Fla.Stats. Wurm Affidavit, ¶ 6. As Dr. Beyer points out, physical abuse by a parent or guardian can lead to depression and suicide, or to inappropriate aggression. Shackling by adults in authority "could have similar harms." Beyer Affidavit, ¶ 21.

ARGUMENT

I. THE SHACKLING POLICY IS CONTRARY TO CHAPTER 985 AND THE PRINCIPLES OF FLORIDA'S JUVENILE JUSTICE SYSTEM.

28. The Court's shackling policy is inimical to the goals and purpose of chapter 985, Florida Statutes, and Florida's juvenile delinquency system. The practice of shackling all detained children without any showing of need is directly contrary to the key principles of individual assessment, respect for the dignity and well-being of the child, and the goal of rehabilitation.

29. Florida's juvenile system differs fundamentally from the criminal justice system. Its principal focus is the rehabilitation of the child. *See State v. T.M.B.*, 716 So. 2d 269, 270 (Fla. 1998); *P.W.G. v. State*, 702 So. 2d 488, 491 (Fla. 1997).

30. In setting forth the purposes and intent of chapter 985, the Legislature stated:

(1) The purposes of this chapter are:

(a) To provide judicial and other procedures to assure due process

through which **children** and other interested parties **are assured fair hearings by a respectful and respected court** or other tribunal **and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected**.

(b) **To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care.**

(c) To ensure the protection of society, by providing for a **comprehensive standardized assessment of the child's needs** so that the **most appropriate control, discipline, punishment, and treatment can be administered** consistent with the seriousness of the act committed, the community's long-term need for public safety, the prior record of the child, and the specific rehabilitation needs of the child, while also providing whenever possible restitution to the victim of the offense.

31. § 985.01, Fla. Stat. (2005) (emphases supplied). Section 985.02, "Legislative Intent For The Juvenile Justice System," further provides:

(1) General protections for children. – It is a purpose of the Legislature that the children of this state be provided with the following protections:

… (c) A safe and nurturing environment which will **preserve a sense of personal dignity and integrity.**

*** * ***

(3) Juvenile justice and delinquency prevention. – It is the policy of the state with respect to juvenile justice and delinquency prevention to first protect the public from acts of delinquency. In addition, it is the policy of the state to:

> … The Legislature intends that detention care, in addition to providing secure and safe custody, will promote the health and well-being of the children committed thereto and provide an environment that fosters their social, emotional, intellectual, and physical development.

§ 985.02, Fla. Stat. (2005) (emphases supplied).

32. The Court's blanket shackling policy is directly contrary to the legislative intent that "the most appropriate control" be determined based on comprehensive "assessment of the child's needs." § 985.01(1)(c), Fla. Stat. (2006). By adopting a routine practice of shackling all detained children, the Court has necessarily rejected any individualized assessment of the appropriateness of shackling as a form of control.

33. The Supreme Court of Florida has rejected procedures that eliminate individualized decision-making in juvenile delinquency matters. In repealing a rule that established video detention hearings, the court observed: "In essence, it was predetermined that a child's absence was always in the child's best interests and judicial discretion totally eliminated." *Amendment To Florida Rule Of Juvenile Procedure 8.100(a)*, 796 So. 2d 470, 472 (Fla. 2001). Writing for the court, Justice Lewis explained:

> The issue here is not the integrity of individual judges for it is the compulsory approach advanced by the proponents that belies and negates the integrity and judgment of individual judges. The repealed rule forced the implementation of a predetermined policy representing a mechanistic and robotic approach to matters that require

> individualized care and attention. There is no judicious reason for perpetuating an unacceptable model and further subjecting children to mandatory procedures deemed inappropriate by many directly involved in the juvenile system. In our view, our children deserve more.

796 So. 2d at 475.

34. The shackling policy is contrary to the legislative intent of "fair hearings by a respectful and respected court," ensuring the "dignity of the courts," and the preservation of "a sense of personal dignity and integrity." §§ 985.01(1)(a), 985.02(1)(c), Fla. Stat. (2005).

35. The routine shackling of children is, at a minimum, an affront to the dignity of the children and the courtroom proceedings. *See, e.g., Deck v. Missouri*, 544 U.S. 622, 631 (2005) (stating that shackling at trial "'affront[s]' the 'dignity and decorum of judicial proceedings that the judge is seeking to uphold.'");[2] *see* Argument II, *infra*. It is also a direct attack on their dignity and personal integrity. Affidavit of Dr. Marty Beyer, ¶¶ 9-13, 17. Forcing a child to stand in chains before strangers and family subjects the child to humiliation and may undermine the development of a positive identity. Beyer Affidavit, ¶ 9-11.

36. Routine shackling is also contrary to the juvenile justice system's

[2] "[S]ee also *Trial of Christopher Layer,* 16 How. St. Tr., at 99 (statement of Mr. Hungerford) ('[T]o have a man plead for his life' in shackles before 'a court of justice, the highest in the kingdom for criminal matters, where the king himself is supposed to be personally present' undermines the 'dignity of the Court.')" *Deck*, 544 U.S. 631-32.

focus on rehabilitation. § 985.02(1)(c); *T.M.B.*, 716 So. 2d at 270; *P.W.G.*, 702 So. 2d at 491. In the juvenile delinquency system, the emphasis is on "rehabilitation as the principal means by which to achieve the goal of preventing delinquent children from becoming adult offenders." *P.W.G.*, 702 So. 2d at 491, *quoting with approval P.W.G. v. State*, 682 So.2d 1203 (Fla. 1st DCA 1996).

37. The Court's shackling policy is a direct impediment to the goal of rehabilitation. Beyer Affidavit, ¶¶ 16-17. Dr. Marty Beyer is a clinical psychologist whose area of expertise is: "[H]ow a young person's cognitive, moral and identity development, trauma and disabilities affected the offense and should be the basis for designing rehabilitative services." Beyer Affidavit, ¶ 2. Dr. Beyer states:

> … When the judge, who is an important authority figure, condones unfair, demeaning treatment in the form of handcuffs or shackles, how could the young person believe the judge is concerned about or wants to help him/her?
>
> In the midst of their identity and moral development, demeaning treatment by adults may solidify adolescents' alienation, send mixed messages about the purpose of the justice system, and confirm their belief that they are bad, all of which undermine the rehabilitative goal of court intervention.

Beyer Affidavit, ¶¶ 16-17. See also Winick/Perlmutter Affidavit, ¶ 10 (harm from indiscriminate shackling practice "is antithetical to the rehabilitative underpinnings of the juvenile justice system.").

38. As set forth above, the mass shackling of children is incompatible with three key principles that undergird the juvenile justice system: individualized assessment, respect for the dignity of the child and of the court, and the goal of rehabilitation. Any one of these contradictions should be enough to end the Court's shackling policy.

39. In repealing the rule authorizing video hearings, the Supreme Court of Florida echoed these same concerns:

> In sum, "Florida's oft-repeated pledge that 'our children come first' cannot ring hollow in – of all places – our halls of justice."
>
> * * *
>
> The juveniles that become involved in this process have, at some point, allegedly failed to make the right decision and we must not compound the problem by subjecting them to a system that has lost its humanity and become an emotional wasteland. In our view, solutions to many of the troubling issues in our criminal justice system may be found in proper, early, individualized intervention in a young life and not in the mechanical and robotic processing of numbers. Respect for the individual begets respect while we fear coldness and sterility may breed contempt.

796 So. 2d 475-76 (internal citation omitted).

II. The Court's Policy Of Shackling All Detained Children Violates The Constitutional Right To A Fair Hearing And The Assistance Of Counsel.

40. Our constitutions preserve the ancient right under the common law to "be brought to the bar without irons, or any manner of shackles or bonds; unless

there be evident danger of an escape." 4 W. Blackstone, Commentaries on the Laws of England 317 (1769); *see Deck v. Missouri*, 544 U.S. 622 (2005) (shackling in penalty phase of capital trial violates due process). The right to appear before the court unfettered protects a number of underlying principles, including: the presumption of innocence, the right to secure a meaningful defense, the right to communicate with counsel without interference, the right to participate in one's own defense while not confused or embarrassed, and the need to maintain "[t]he courtroom's formal dignity, which includes the respectful treatment of defendants …" *Deck*, 544 U.S. 630-31; U.S. Const. Amends. V, VI, VIV; Art. I, §§ 9, 16, Fla. Const.

41. Consequently the uniform rule is that it is inherently prejudicial for a defendant to appear in shackles before a jury. *See Holbrook v. Flynn*, 475 U.S. 560, 568 (1986); *Bello v. State*, 547 So. 2d 914 (Fla. 1989). The use of shackles is only permitted where justified by "an essential state interest specific to each trial." *Holbrook*, 475 U.S. at 568-69.

42. The principles underlying the right to appear without shackles are not limited to prejudice in the eyes of the jury, however. The presumption of innocence is not limited to jury proceedings. The need for the accused to communicate effectively with counsel is unchanged. The concern that shackling "tends to confuse and embarrass [the accused's] mental faculties," remains.

People v. Harrington, 42 Cal. 165, 168 (Cal. 1871), *quoted in Deck*, 544 U.S at 631. And of course, the absence of a jury can only ameliorate the affront to the dignity of the proceedings to the extent that somewhat fewer people see the accused paraded in chains. As one court recently summarized:

> Thus, even when there is no jury, any unnecessary restraint is impermissible because it hinders the defendant's ability to assist his counsel, runs afoul of the presumption of innocence, and demeans both the defendant and the proceedings.

People v. Allen, ____ N.E.2d ____, 2006 WL 1512248 (Ill. Jun. 2, 2006) (disapproving use of stun belts absent individualized showing of need).

43. Consequently, courts have not hesitated to enforce the right to appear in court free of restraints in proceedings where no jury was present, including juvenile non-jury trials. *See State v. Millican*, 906 P.2d 857 (Or. Ct. App. 1995) (delinquency hearing); *In re Staley*, 364 N.E.2d 72 (Ill. 1977) (adjudicatory hearing on petition alleging delinquency); *see also People v. Nguyen*, 2005 WL 2789459 (Cal. App. 4 Dist. Oct. 26, 2005) (unpublished opinion) (bench trial).

44. Nor is there any reason to limit an accused person's right to appear free from chains to jury trials, bench trials, or juvenile delinquency proceedings. The presumption of innocence, the accused's need to confer with counsel and think clearly, and the premium on maintaining the dignity of the defendant and the proceedings, all require protection even in pretrial proceedings.

45. Thus, in *People v. Fierro*, 821 P.2d 1302 (Cal. 1992), the court held that it was error to shackle a defendant at a preliminary hearing absent a showing of evident necessity. The court explained:

> [The] rule of "evident necessity" serves not merely to insulate the jury from prejudice, but to maintain the composure and dignity of the individual accused, and to preserve respect for the judicial system as a whole; these are paramount values to be preserved irrespective of whether a jury is present during the proceeding. Moreover, the unjustified use of restraints could, in a real sense, impair the ability of the defendant to communicate effectively with counsel or influence witnesses at the preliminary hearing. Accordingly, we hold that, as at trial, shackling should not be employed at a preliminary hearing absent some showing of necessity for their use.

821 So. 2d at 1322 (internal citation omitted); *accord Solomon v. Superior Court*, 122 Cal.App.3d 532, 177 Cal.Rptr. 1 (Cal. App. 1981).

46. The same principles require that children be permitted to appear unshackled before the Juvenile Division of the Circuit Court. While the Court has agreed to unfetter children during their trials, the need for children to confer with their attorneys and parents exists at every stage of the proceedings before the court. Likewise, the child who is confused or embarrassed by his or her restraints will be at a disadvantage whether at a detention hearing, deciding whether to engage in plea-bargaining or proceed to trial, at a pretrial evidentiary hearing, or at disposition.

47. The damage to the dignity of the court, and the child, is also the same

whether the child appears shackled at a detention hearing, plea, adjudicatory hearing, disposition, or other hearing. Nor is this damage speculative. According to psychologist Dr. Marty Beyer, the public courtroom shackling of children causes them shame and humiliation, causing them to think less of themselves. (Affidavit of Dr. Marty Beyer, ¶¶ 9-10). "For youth of color, being degraded in public may be experienced as racism (even if the practice is universal) which is extremely harmful to the development of positive identity." (Dr. Beyer Affidavit, ¶ 12). Professors Winick and Perlmutter add that the harm from indiscriminate shackling to the development of positive identity can conduce to recidivism. Winick/Perlmutter Affidavit, ¶ 7.

48. Shackling at detention hearings also impairs the court's own ability to conduct a proper detention hearing. In criticizing the effect of video detention hearings, the Supreme Court of Florida explained:

> The detention hearing is a critical stage in the juvenile process which requires an honest judicial assessment of an individual and family in close temporal proximity to an alleged deviant event. At a time such as this, a great deal of information is exchanged by not only the spoken word, but also by personal contact and observations inherent in the personal interaction generated by a personal appearance, qualities missing when an event is perceived only through the limitations of the lens of a camera or television monitor. Most assuredly, the impact of the detention hearing has far reaching tentacles for all concerned, the individual youth, the family, and the public in general. The decision with regard to detention should be made in person, not by long distance.

Amendment To Florida Rule Of Juvenile Procedure 8.100(a), 796 So. 2d 470, 473-74 (Fla. 2001), *quoting with approval Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 753 So. 2d 541, 546 (Fla. 1999) (Lewis, J., dissenting). Shackles have a distorting effect similar to that caused by television monitors. Instead of being able to assess the child and family as they are, the Court sees them responding to an artificial condition of stress and degradation imposed by the Court itself.

49. The absence of a jury is itself a reason why this Court must act to end the shackling of children. The constitutions permit juvenile proceedings to be conducted without juries precisely because the children are not to be treated – or stigmatized – as criminals. *See McKeiver v. Pennsyvlania*, 403 U.S. 528 (1971) (plurality opinion). In *McKeiver*, the plurality noted that jury proceedings might put an end to "the idealistic prospect of an intimate, informal protective proceeding," and relied on the "aspect[s] of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates." 403 U.S. at 545. Thus, children are deprived the right to a jury trial in exchange for more intimate, informal, protective, concerned, sympathetic and paternal attention from the Court. When the Court brings these children before it in chains, it is not living up to its side of the bargain.

50. While the effect of shackling before a jury is inherently prejudicial,

s*ee Holbrook*, 475 U.S. at 568, jurors also represent "the conscience of the community." *Beckwith v. State*, 386 So. 2d 836, 841 (Fla. 1980). In this role, the jury can act to ameliorate the conduct of judges. No juror ever enters the Juvenile Justice Center. Few other members of the general public do unless summoned. Thus the "conscience of the community" has not been exposed to the spectacle of children brought before the Court in chains. If it had, it would revile the practice. The Court, acting in the community's stead, must end the shackling of children now.

51. The Court's blanket policy of shackling all detained children cannot be moral or constitutional. It is true that the decision to impose physical restraints is a discretionary one for the court. *See, e.g., Deck*, 544 U.S. at 633; *England v. State*, 31 Fla. L. Weekly S351, S355 (Fla. May 25 2006). Such determinations, however, must be case specific. *Deck*, 544 U.S. at 633; *England*, 31 Fla. L. Weekly at S355. "Routine shackling" or blanket polices are unacceptable. *Id.*; *Czubak v. State*, 644 So. 2d 93, 94 (Fla. 2d DCA 1994) (routine policy of shackling all murder defendants improper).

52. The court's shackling policy cannot be justified by deference to the recommendations, policies or desires of DJJ. In the first instance, the Court has already demonstrated its independence in this regard when it changed its policy to unfetter children during adjudicatory hearings. It would, moreover, be error to

abdicate judicial discretion to the custodial authority. "The court may not blindly defer to security measures established by the sheriff or other official performing security functions." *Jackson v. State*, 698 So. 2d 1299 (Fla. 4th DCA 1997); *see also Bello v. State*, 547 So. 2d 914, 918 (Fla. 1989); *McCoy v. State*, 503 So. 2d 371 (Fla. 5th DCA 1987). This is especially true in light of the physical security measures in place throughout the Juvenile Justice Center.

53. *S.Y.v. McMillan*, 563 So. 2d 807 (Fla. 1st DCA 1990) does not support the Court's shackling policy. *S.Y.* involved a challenge to a policy of shackling all detained children at court appearances. The First District Court of Appeal denied a petition for writ of certiorari. This decision, however, says more about the extremely deferential nature of certiorari review, than anything else. Indeed, the district court was critical of the blanket policy:

> Although we question the propriety of the issuance of a blanket order in the manner in which it was done in this case, we nevertheless find insufficient grounds for intervention by this court by means of the discretionary writ of certiorari.

S.Y., 563 So. 2d at 808. On the merits, the district court noted that S.Y., unlike the Respondent here, relied solely on decisions involving the jury trials of adult criminal defendants. The court expressly noted that the denial of certiorari was without prejudice to a challenge to shackling on appeal or through another remedy. 563 So. 2d at 809.

III. The Shackling Practice Violates the Due Process Provisions of the State and Federal Constitutions.

54. The Fourteenth Amendment to the United States provides, in pertinent part, that a State cannot deprive "any person of life, liberty, or property, without due process of law. . ." U.S.Const., Amdt. 14, Section 1. "Liberty from bodily restraint" has always been "the core of the liberty protected by the Due Process Clause. . ." *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 18 (1979) (*Powell, J., concurring in part and dissenting in part*). This liberty interest survives incarceration and involuntary commitment. *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982).

55. In *Youngberg*, the U.S. Supreme Court held, *inter alia*, that an involuntarily committed mentally retarded person has a substantive due process right to freedom from unreasonable restraint upon his physical movement. In determining whether a restraint violates due process, courts must balance the individual's interest in liberty "against the State's asserted reasons for restraining individual liberty." *Youngberg*, 457 U.S. at 320. To avoid offending the due process clause, "this balancing cannot be left to the unguided discretion of a judge. . ." *Id.*, at 321. Noting that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish," the Court

concluded that due process forbade physical restraint "except when and to the extent professional judgment deems this necessary. . ." *Id*. at 324.

56. Like the plaintiff in *Youngberg*, detained children who have not been adjudicated "have a due process interest in freedom from unnecessary bodily restraint which entitles them to closer scrutiny of their conditions of confinement than that accorded convicted criminals." *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1982); *see also Youngberg*, 457 U.S. at 320; *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

57. Because the government acquires the right to punish only after trial and conviction, *Jones v. United States*, 463 U.S. 354 (1983), it has no legitimate interest in punishing unadjudicated juvenile detainees. Its only legitimate interest in restraining a child's physical movement, under these circumstances, is rehabilitation, safety, or internal security. *Youngberg*, 457 U.S. at 320; *Santana*, 714 F.2d at 1180.

58. To the extent the physical restriction serves no therapeutic purpose and is unnecessary to prevent escape or harm, it violates the child's due process rights to liberty. *Santana*, 714 F.2d at 1181 (use of isolation in facility for unadjudicated juveniles must be scrutinized for: (1) whether it should be time-limited, (2) whether it required close supervision by qualified expert with period review of continuing need for isolation, and (3) "whether minimal additional

individual attention might reduce" need by, *e.g.*, "distinguishing between and attempting to address the sources rather than the effects of the residents' behavior problems."). *See also Pena v. New York State Division for Youth*, 419 F.Supp. 203, 206-207 (S.D.N.Y. 1976) (to the extent that use of isolation and hand and feet restraints were antitherapeutic and punitive, they violated children's due process rights); *Milonas v. Williams*, 691 F.2d 931 (10th Cir. 1982) (restraint on children's movements within state institution unconstitutional where unnecessary to achieve legitimate interest in therapeutic and safe environment).

59. A restriction on physical liberty which is damaging to the child and is not reasonably necessary to meet legitimate government interests violates the child's substantive due process rights.[3] Before the government can impose such a restraint on a child, it must make an individualized determination, based on the exercise of professional judgment, that the curtailment is necessary to meet a

[3] Indeed, to the degree that a physical restraint on an unadjudicated juvenile is unnecessary to meet legitimate goals, a "court may permissibly infer that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees qua detainees." *Bell*, 441 U.S. at 539. Deprivation of liberty and conditions of confinement of both unadjudicated juveniles and involuntarily confined mentally ill people may be sufficiently analogous to criminal punishment to warrant the protection of the Eighth Amendment's proscription against cruel and unusual punishments. *See Ingraham v. Wright*, 430 U.S. 651, 669 n. 37 (1977). Where an unadjudicated detainee asserts a constitutional claim concerning the conditions of incarceration, the claim arises under the Due Process Clause of the Fourteenth Amendment, not the Eighth Amendment. *Tittle v. Jefferson County Comm'n*, 10 F.3d 1535, 1539 n.3 (11th Cir. 1994) (*en banc*); *H.C. v. Jarrard*, 786 F.2d 1080, 1085 (11th Cir. 1986).)

legitimate objective. *See Santana v. Collazo*, 714 F.2d at 1180-81l; *Milonas v. Williams*, 691 F.2d at 942.

60. Shackling pre-trial juvenile detainees for the purpose of court appearances is damaging and unnecessary to meet any legitimate governmental interest. Being herded in chains before family and strangers, "treated like a dangerous animal," they feel ashamed and humiliated, as if something about them personally "accounts for this demeaning treatment." Beyer Affidavit, ¶¶ 9-11. Because children internalize humiliating stigma, the shackling practice "perpetuat[es] the self-fulfilling prophecy of 'bad kid.'" Winick/Perlmutter Affidavit, ¶¶ 8-9. This humiliation damages children more than adults, whose self-concept is relatively stable. Beyer Affidavit, ¶ 9; *Schall v. Martin*, 104 S.Ct. 2403, 2411 & n.15 (1984) ("[M]inority 'is a time and condition of life when a person may be most susceptible to influence and to psychological damage.'").

61. The trauma from shackling is even more damaging to children of color, given their legacy of discrimination, Beyer, ¶ 12; to survivors of physical and sexual abuse, who may re-experience earlier episodes of powerlessness and pain; and to children with mental illness or conduct disorders, who are already struggling with low self-esteem. Beyer Affidavit, ¶¶ 18-19; Wurm Affidavit, ¶ 9. The majority of juveniles in detention in this county are children of color; many of them have suffered physical and sexual abuse, Wurm Affidavit, ¶ 9; as many as

two-thirds of the boys and three-quarters of the girls in detention meet the diagnostic criteria for one or more psychiatric disorders. Linda A. Teplin, et al., "Psychiatric Disorders of Youth in Detention," Juvenile Justice Bulletin, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (April 2006). Thus, a significant majority of children in detention are particularly susceptible to being traumatized by shackling.

62. Furthermore, shackling children who are presumed innocent and present no risk of escape or harm conveys a message that is damaging to their developing sense of morality: that "the system" is arbitrary, unfair, and insensitive to their well-being. Beyer Affidavit, ¶¶ 14-17. When, however, "children believe that the legal system has treated them with fairness, respect and dignity, they are more amenable to treatment and rehabilitation." Winick/Perlmutter Affidavit, ¶ 6.

63. Finally, shackling can be physically uncomfortable or even painful, abrading the tender flesh at the child's wrists and ankles, see Appendix A, or causing harm to a child with a pre-existing physical condition, such as nerve or vessel damage to the extremities, or cerebral palsy. Wurm Affidavit, ¶ 12.

64. Against these harms to the children must be weighed the government's interest in the wholesale shackling of children for all court appearances but trial. First, it is worth noting that, throughout much of the country, children in detention "are seldom handcuffed or shackled in juvenile or

family courts." Beyer Affidavit, ¶ 6. Second, the juvenile courthouse has a comprehensive and historically effective security system, consisting of numerous security personnel both inside and outside each courtroom, electronic devices at courthouse entrances and exits, and "panic" buttons under each judge's bench. Osborne Memo. Third, a risk assessment for each shackled child is available to inform the decision whether restraints are necessary in an individual case to prevent escape or harm. Fourth, a child's risk of escape or harm will be greatest during the trial itself – he or she has more opportunity to act out and potentially less to lose; yet the child is not then restrained.

65. Thus, the government is restraining the physical liberty of presumptively innocent children without reason and to their detriment. In the absence of any individualized determination through the exercise of professional judgment that the child presents a risk of escape or harm that cannot be met by a less restrictive alternative, this practice violates the due process clauses of the Florida and United States Constitutions. U.S. Const. Amend. XIV; Art. I, § 9, Fla. Const; *see Buckley v. Rogerson*, 133 F.3d 1125, 1130-31 (8th Cir. 1998); *Santana v. Collazo*, 714 F.2d at 1180-82; *Milonas v. Williams*, 691 F.2d at 942; *People v. Fierro*, 3 Cal.Rptr.2d at 446.

IV. The Shackling Policy Violates International Law

66. The Court's shackling policy is inconsistent with the United States'

obligations under international human rights law.

67. The courts of this country, consistent with the Supremacy Clause to the United States Constitution, Art. VI cl.2, have long looked to principles of international law for assistance in delineating various rights and obligations under our constitution and other sources of domestic law. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). This practice has been particularly noteworthy in recent years, resulting in the expansion of basic individual freedoms to achieve consistency with the practices of the large majority of nations. *Roper v. Simmons*, 543 U.S. 551, 575 (2005) (in abolishing juvenile death penalty, court "referred to the laws of other countries and to international authorities as instructive for its interpretation of the eighth Amendment's prohibition of "cruel and unusual punishments."); *Atkins v. Virginia*, 536 U.S. 304, 317 n. 21 (2002) (acknowledging that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved"); *Trop v. Dulles*, 356 U.S. 86, 102-103 (1958) (plurality opinion) ("The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime"). Thus, in deciding the rights of children to be free from constraints on their physical liberty, courts should look to relevant principles of international law for guidance.

68. Relevant principles of international law require that: (1) all people

under detention be accorded humanity and respect for their dignity, and be protected from degrading treatment; and (2) children under detention receive various additional protections due to their status as juveniles. These two obligations have been interpreted to preclude the shackling of child detainees in the absence of an individualized determination that the child poses a risk of flight or harm that can be dealt with only through shackling, and then only to the extent strictly necessary. See affidavit of Professor Stephen Schnably (Schnably Affidavit, Appendix E), ¶ 6.

69. The first principle – to treat all detainees with humanity and respect for their dignity – is embodied in two treaties to which the United States is a party: Article 5 of the Universal Declaration of Human Rights, and Article 7 of the International Covenant on Civil and Political Rights (ICCPR); and in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), art. 16. Schnably Affidavit, ¶¶ 8, 9.

70. The second principle – to provide children with the protection required by their status as children – "entails the adoption of special measures to protect children." Human Rights Committee, General Comment 17, Rights of the Child (Art. 24), ¶ 1 (Thirty-fifth session, 1989). Schnably Affidavit, ¶ 11. This special solicitude toward children derives from international customary law, and is evidenced in a variety of multilateral human rights treaties. *Id*. The Convention

on the Rights of the Child (CRC), which the United States, having signed but not ratified,[4] is nevertheless obliged to honor, provides that "the best interests of the child" should guide all "courts of law" in any matters concerning children. CRC art. 3(1). In particular, all child detainees must be treated "in a manner which takes into account the needs of persons of his or her age." CRC, art. 37(c).

71. These two international customary law norms have been construed, through other international law bodies, to prohibit the routine shackling of children. For example, the Standard Minimum Rules for the Treatment of Prisoners (SMR), cited in *Estelle v. Gamble*, 429 U.S. 97, 103 n.8 (1976), expressly prohibit the use of restraints such as handcuffs and leg irons before a judicial authority, or elsewhere "for any longer time than is strictly necessary." SMR, ¶¶ 33, 34; Schnably Affidavit, ¶ 13. In addition, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990), ¶¶ 63-66, prohibit the use of restraints in all but "exceptional cases," and only then "for the shortest possible period of time," in such a way as to avoid causing "humiliation or degradation," and upon consultation with "medical and other relevant personnel. . ." *Id*. In interpreting these rules, the European Court of Human Rights has noted that "treatment [of a detainee] may be considered degrading if it is such as to

[4] As the United States Supreme Court has observed, "every country in the world has ratified [the CRC] save for the United States and Somalia." *Roper v. Simmons*, 543 U.S. at 576.)

arouse in its victims feelings of fear, anguish and inferiority. . .Moreover, it is sufficient if the victim is humiliated in his or her own eyes." *D.G. v. Ireland*, [2002] ECHR 39474/98 (2002).

72. Shackling children in court is degrading to them, particularly to children of color, and damages their developing sense of identity. Beyer Affidavit, ¶¶ 9, 10; Winick/Perlmutter Affidavit, ¶¶ 8-9. The humiliating and degrading policy of shackling all child detainees in court, without an individualized determination of risk, without medical consultation, and for long periods of time, clearly constitutes a violation of international customary law.

V. The Shackling Policy Constitutes Child Abuse

73. The Florida Legislature has defined child abuse to consist of "any willful act or threatened act that results in any physical, mental or sexual injury or harm that causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired." Section 39.01(2), Fla. Stats. (2006).

74. Shackling a child in handcuffs and leg irons, regardless of risk of harm or escape, for hours at a time, for the purpose of appearing in court, "causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired," within the meaning of the statute.

75. This practice can cut, abrade and bruise the child's flesh, Wurm Affidavit, ¶ 12, which is especially tender at the wrists and ankles. A child with

cerebral palsy, or with "previous nerve or vessel damage" to the extremities is especially vulnerable to physical harm from the practice. Wurm Affidavit, ¶ 12. The physical harm is not merely theoretical: Appendix A plainly depicts the gashes and abrasions to the wrists of a shackled child.

76. The indiscriminate shackling of child detainees causes mental harm as well, conveying an image of "a contained beast," which becomes "integrated into the child's "own identity formation," potentially giving rise to inappropriate aggression or violence in the future. Wurm Affidavit, ¶ 8; Beyer Affidavit, ¶ 10.

77. In addition, adolescents are at a cognitive stage during which they "tend to be moralistic, insisting on what should be and intolerant of anything that seems unfair." A child who has not been adjudicated and presents no risk of harm experiences shackling as unfair and derives the profoundly alienating message that the judicial system is insensitive to their well-being. Beyer Affidavit, at ¶¶ 14-17.

78. Finally, the indiscriminate shackling of children in court damages them emotionally. They are humiliated and ashamed at being paraded before the public in handcuffs and leg irons. They think less of themselves, an effect that is more likely to be "lasting" than it would be for an adult. *Id*. at 10. Furthermore, children who suffer from depression, anxiety disorders, attention disorders or conduct disorders – *i.e.* children who already suffer from low self-esteem – are particularly susceptible to the damaging feelings of self-blame that arise from

shackling. Wurm Affidavit, ¶ 10. Those children who have been victimized by physical or sexual abuse are also especially vulnerable to emotional damage from shackling. The forcible physical restraint of such a child puts her at risk of re-living the abuse, and jeopardizes recovery. Wurm Affidavit, ¶ 9. As Dr. Beyer explains it, "For any traumatized youth, being handcuffed or shackled could make them feel once again that they cannot control hurtful things that happen to them. . .Any abuse of power by an adult can provoke in a traumatized young person a combination of self-blame and sense of betrayal that can lead to self-destructiveness or aggression." Beyer Affidavit, ¶ 18.

79. As a practicing pediatrician, Dr. Wurm is required by law to report via the "child abuse hotline" instances of child abuse that come to her attention. Given the physical, mental and emotional damage to children from being shackled or restrained by the hands and feet, Dr. Wurm would be constrained to report a parent or guardian who engaged in such a practice to the hotline. Wurm Affidavit, ¶ 6.

REQUEST FOR EVIDENTIARY HEARING

80. The Respondent submits that the Court's policy of shackling all detained children is unlawful on its face and must cease immediately. If the Court does not end the shackling policy, the Respondent requests an evidentiary hearing at which counsel will present evidence in support of this motion.

WHEREFORE, the Respondent moves that the Court permit the Respondent to appear free from handcuffs or shackles at all proceedings.

I hereby certify that a true and correct copy of the foregoing was delivered by hand to the Office of the State Attorney, _____, Miami, FL 33131, this ____ day of ____, 2006.

Respectfully submitted,

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