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Pro Hac Vice  
Attorneys for Defendant Warren Jeffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,	)	NO. CR-2005-847
	)	
	)	<b>MOTION TO PERMIT</b>
Plaintiff,	)	<b>DEFENDANT TO APPEAR</b>
	)	<b>IN CIVILIAN CLOTHING</b>
vs.	)	
	)	
WARREN STEED JEFFS,	)	
	)	
Defendant.	)	[Hon. Steven F. Conn]
	)	

Defendant, Warren Jeffs, by and through his undersigned attorney, requests this Court to issue its order permitting the Defendant to appear with Counsel and wear civilian clothing at his arraignment, at all pre-trial proceedings and at the trial in this matter. This motion is based on the legal reasoning and authority set forth in the attached Memorandum of Points and Authorities.



1 RESPECTFULLY SUBMITTED this 19th day of February, 2008.

2 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

3 By  for

4 By 

5 Richard A. Wright  
6 Attorney for Warren Jeffs

7 Michael L. Piccarreta  
8 Jefferson Keenan  
9 Attorneys for Warren Jeffs

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. STATEMENT OF FACTS**

12 As the Court may be aware, previous proceedings in the State of Utah  
13 involving Mr. Jeffs garnered an extraordinary amount of media attention. The  
14 Judge in that case recognized the prejudice to Mr. Jeffs resulting from the  
15 appearing in prison clothing and having those images widely disseminated among  
16 potential jurors. Accordingly, he ordered that Mr. Jeffs be permitted to appear at  
17 all pre-trial proceedings in civilian clothing. The Court's order is attached hereto.  
18 There is little doubt in the present case that every court appearance by Mr. Jeffs  
19 will also be extensively covered in the media. It is the Defendant's position that,  
20 due to the massive amounts of unfavorable media coverage that has already been  
21 generated, Mr. Jeffs will not be able to get a fair trial in Mohave County, and he  
22 will be moving for a change of venue on that basis. Any additional photos and  
23 images of Mr. Jeffs in prison garb at this time will simply add to that prejudice.  
24 Accordingly, Mr. Jeffs requests that this Court issue its order permitting him to  
25 appear at all pre-trial proceedings and at trial in civilian clothing.  
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1       **II.     ARGUMENT**

2           It is well settled that a prisoner's appearance indicative of his status as an  
3 inmate serves as a "constant reminder of the accused's condition" that "may affect  
4 a juror's judgment" and constitutes such a "continuing influence that an  
5 unacceptable risk is presented of impermissible factors coming into play". *Estelle*  
6 *v. Williams*, 425 U.S. 501, 504-05 (1976). This type of prejudice implicates a  
7 defendant's constitutional right to a fair trial, and a defendant cannot "be  
8 compelled by the state to appear before a jury in prison attire". *State v. Garcia-*  
9 *Contreras*, 191 Ariz. 144, 146, 953, P.2d 536, 538 (1998) [citing *Estelle*].  
10 Moreover, "compelling an accused to wear jail clothing where there is no essential  
11 state policy". *Estelle*, 425 U.S. at 505.

12           In a case involving widely disseminated pre-trial images of the Defendant,  
13 these factors apply equally to potential jurors who may be exposed to these  
14 prejudicial images. The media surrounding Mr. Jeffs has clearly been  
15 extraordinary and will require careful diligence on the part of the Court to protect  
16 the defendant's rights. Although this precise issue has apparently not been  
17 addressed by Arizona courts, the Montana Supreme Court has expressly addressed  
18 these concerns:

19           [W]e remind the trial courts that they have a duty to avoid potential  
20 prejudice caused by the appearance of a defendant at trial or during  
21 preliminary appearances. We have opened up the courts to the news  
22 media, including picture taking and television cameraman. With this  
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1 goes the chance that pretrial publicity, including pictures of a  
2 defendant in jail or prison clothes and handcuffed, can affect his right  
3 to a fair trial. The defendant is presumed innocent and it is  
4 demeaning to haul him into court in jail clothes and handcuffed.  
5 Surely other arrangements can be made when defendants who are  
6 still in custody must appear in court. This Court has seen pictures of  
7 defendants in jail clothes and in handcuffs displayed on the front  
8 pages of major newspapers in this state. We have given the news  
9 media the right to take pictures, but we have not given trial courts the  
10 right to require the defendant to appear in jail clothes and  
11 handcuffed. We urge the trial courts to stop this practice and to order  
12 the custodial officials to bring defendants into court dressed in their  
13 own clothes and not handcuffed. The inconveniences to the custodial  
14 official cannot override the defendants right to fair treatment when  
15 appearing in court.

16 *State v Rodriguez*, 192 Mont 411, 419-20, 628 P 2d 280, 285 (1981).

17 The court ultimately found no prejudice to the defendant in that case  
18 because his claim of prejudice was based on "an undocumented claim that  
19 television cameramen had been present at the preliminary hearing and that pictures  
20 of the defendant in handcuffed and in jail clothing had been televised in the  
21 Billings area that night." *Id.*, at 419, 628 P.2d at 284. In contrast, due to the  
22 particular circumstances of the present case, it will be well documented that every  
23 appearance of the defendant will be extensively disseminated throughout the  
24 media. For all of the reasons set forth in *Rodriguez* and *Estelle*, this Court can  
25 eliminate this prejudice by simply not allowing it to occur.

26 In addition to the concerns raised in *Rodriguez*, there is also the due process  
27 problem discussed in *Estelle* Regarding the wearing of jail clothing to trial, the  
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1 United States Supreme Court noted that “[p]ersons who can secure release are not  
2 subjected to this condition.” *Estelle*, 425 U.S. at 505. This is clearly equally true  
3 of defendants during pre-trial stages as well. Certainly, those who are released  
4 pending trial make all pretrial appearances in civilian clothing. “To impose the  
5 condition on [only] one category of defendants, over objection, would be  
6 repugnant to the concept of equal justice embodied in the Fourteenth  
7 Amendment.” *Id.*, 425 U.S. at 505-06 [citing *Griffin v Illinois*, 351 U.S. 12  
8 (1956)]. To require Mr. Jeffs to make pretrial appearances in jail attire would  
9 violate his due process rights. Again, because “compelling an accused to wear jail  
10 clothing furthers no essential state policy,” *id.*, the State has little or nothing to  
11 gain, while the defendant has much to lose, when considering whether he should  
12 be allowed to wear civilian clothing for his pre-trial appearances.  
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17 Finally, Mr. Jeffs asserts that the risk of tainting of his jury pool with  
18 prejudicial images of pretrial appearances in jail clothing cannot be effectively  
19 cured through the process of *voir dire*. As Justice Brennan observed in his dissent  
20 to *Estelle*:

21  
22 Identifiable prison garb robs an accused of the respect and dignity  
23 accorded to other participants in a trial and constitutionally due the  
24 accused as an element of the presumption of innocence, and surely  
25 tends to brand him in the eyes of the jurors with an unmistakable  
26 mark of guilt.

27 The prejudice may only be subtle and jurors may not even be  
28 conscious of its deadly impact, but in a system in which every person

1 is presumed innocent until proved guilty beyond a reasonable doubt,  
2 the Due Process Clause forbids toleration of the risk. Jurors required  
3 by the presumption of innocence to accept the accused as a peer, an  
4 individual like themselves who is innocent until proved guilty, may  
5 well see an accused garbed in prison attire an obviously guilty person  
6 to be recommitted by them to the place where his clothes clearly  
7 shows he belongs. It is difficult to conceive of any other situation  
8 more fraught with risk to the presumption of innocence and the  
9 standard of reasonable doubt.

10 *Estelle*, 425 U.S. at 518-19 [Brennan, J. dissenting] [emphasis added]

11 Jurors, who may not even be conscious of their own prejudice from viewing  
12 an accused in prison attire, surely will not be able to be questioned satisfactorily  
13 about the matter in the *voir dire* process. Rather than attempting to use *voir dire* to  
14 eradicate the prejudice created by prison attire, the defendant submits that the  
15 problem can be eliminated all together by permitting Mr. Jeffs to make all of his  
16 pretrial appearances in civilian clothing.

### 17 **III. CONCLUSION**

18 There can be little doubt that the media coverage of the proceedings  
19 involving Mr. Jeffs, as in the Utah proceedings, will be extraordinary. Given the  
20 wide dissemination of media coverage of proceedings involving Mr. Jeffs, the  
21 subtle yet dangerous prejudicial effect of pretrial appearances in jail attire cannot  
22 likely be avoided by *voir dire*. The defendant clearly cannot be compelled to  
23 wear jail attire during the trial, and the defendant contends that the risks associated  
24 with appearing at trial in such attire, both to the presumption of innocence and to  
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1 Due Process, extend also to pretrial appearances. The obvious and undeniable risk  
2 to the pool of potential jurors is especially acute in a case with extensive media  
3 coverage. Even if *voir dire* could offer some semblance of protection against the  
4 risk, the gain to the State by denying the defendant's request to appear in civilian  
5 clothing would be minimal or nonexistent. For the foregoing reasons, Mr. Jeffs,  
6 by and through his undersigned attorney, respectfully requests the Court to allow  
7 him to wear civilian clothing during all appearances, both before and during his  
8 trial.  
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11  
12 RESPECTFULLY SUBMITTED this 19th day of February, 2008.

13 WRIGHT STANISH & WINCKLER

14 By 

15 Richard A. Wright  
16 Attorney for Warren Jeffs

PICCARRETA DAVIS PC

By 

15 Michael L. Piccarreta  
16 Jefferson Keenan  
Attorneys for Warren Jeffs

17 Copy of the foregoing mailed this  
18 19th day of February, 2008, to:

19 Clerk of Court  
20 Mohave County Superior Court  
21 401 East Spring Street  
22 Kingman AZ 86401

23 Copy of the foregoing mailed & faxed  
24 this 19th day of February, 2008, to:

25 Hon. Steven F. Conn  
26 Mohave County Superior Court  
27 401 East Spring Street  
28 Kingman AZ 86401

Copy of the foregoing mailed & emailed  
this 19th day of February 2008 to:

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SEP 27 2006

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Attorneys for Defendant

**IN THE FIFTH DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH**

---

STATE OF UTAH,  
Plaintiff,  
vs.  
WARREN STEED JEFFS,  
Defendant.

**ORDER TO PERMIT DEFENDANT TO  
APPEAR IN OPEN COURT AND TO  
WEAR CIVILIAN CLOTHING**

**Case No. 061500526**

**Judge James L. Shumate**

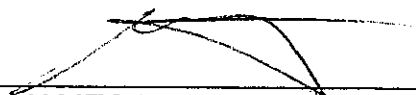
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Pursuant to the Motion of Defendant and good cause appearing, IT IS HEREBY ORDERED that Mr. Jeffs be transported to the courthouse to appear with counsel on September 27, 2006 at 8:30 a.m. and at all future pre-trial hearings.

IT IS FURTHER ORDERED that Mr. Jeffs be permitted to wear civilian clothing at all court proceedings.

DATED this 22 day of September, 2006.

BY THE COURT:

  
\_\_\_\_\_  
HON. JAMES L. SHUMATE

2006-09-22 10:00 AM

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that, on the \_\_\_\_ day of September, 2006, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap  
Washington County Attorney  
178 North 200 East  
St George, UT 84770

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