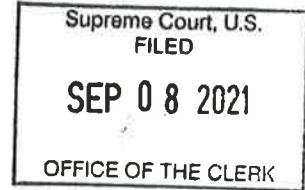


21-5654 ORIGINAL  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES



Michael Ortega — PETITIONER  
(Your Name)

VS.

State of Oregon — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Court of Appeals for Ninth Circuit, Oregon Supreme Court.

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: \_\_\_\_\_, or \_\_\_\_\_

a copy of the order of appointment is appended.

  
(Signature)

**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Michael Ortega, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

<b>Income source</b>	<b>Average monthly amount during the past 12 months</b>		<b>Amount expected next month</b>	
	<b>You</b>	<b>Spouse</b>	<b>You</b>	<b>Spouse</b>
Employment	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Self-employment	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Income from real property (such as rental income)	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Interest and dividends	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Gifts	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Alimony	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Child Support	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Disability (such as social security, insurance payments)	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Unemployment payments	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Public-assistance (such as welfare)	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
Other (specify): _____	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>
<b>Total monthly income:</b>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>	\$ <u>0.0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ 0.0
N/A	N/A	N/A	\$ 0.0
N/A	N/A	N/A	\$ 0.0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ 0.0
N/A	N/A	N/A	\$ 0.0
N/A	N/A	N/A	\$ 0.0

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	\$ 0.0	\$ 0.0
N/A	\$ 0.0	\$ 0.0
N/A	\$ 0.0	\$ 0.0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home  
Value 0.0

Other real estate  
Value 0.0

Motor Vehicle #1  
Year, make & model N/A  
Value 0.0

Motor Vehicle #2  
Year, make & model N/A  
Value 0.0

Other assets  
Description N/A  
Value 0.0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ 0.0	\$ 0.0
N/A	\$ 0.0	\$ 0.0
N/A	\$ 0.0	\$ 0.0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
Michael Stefany Herrera	Daughter	10
Nelson Perez	Son	10
Kimberly Herrera	Daughter	9

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0.0	\$ 0.0
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0.0	\$ 0.0
Home maintenance (repairs and upkeep)	\$ 0.0	\$ 0.0
Food	\$ 0.0	\$ 0.0
Clothing	\$ 0.0	\$ 0.0
Laundry and dry-cleaning	\$ 0.0	\$ 0.0
Medical and dental expenses	\$ 0.0	\$ 0.0

	<b>You</b>	<b>Your spouse</b>
Transportation (not including motor vehicle payments)	\$ 0.0	\$ 0.0
Recreation, entertainment, newspapers, magazines, etc.	\$ 0.0	\$ 0.0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0.0	\$ 0.0
Life	\$ 0.0	\$ 0.0
Health	\$ 0.0	\$ 0.0
Motor Vehicle	\$ 0.0	\$ 0.0
Other: <u>N/A</u>	\$ 0.0	\$ 0.0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	\$ 0.0	\$ 0.0
Installment payments		
Motor Vehicle	\$ 0.0	\$ 0.0
Credit card(s)	\$ 0.0	\$ 0.0
Department store(s)	\$ 0.0	\$ 0.0
Other: <u>N/A</u>	\$ 0.0	\$ 0.0
Alimony, maintenance, and support paid to others	\$ 0.0	\$ 0.0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0.0	\$ 0.0
Other (specify): <u>N/A</u>	\$ 0.0	\$ 0.0
<b>Total monthly expenses:</b>	<b>\$ 0.0</b>	<b>\$ 0.0</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? 0.0

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes  No

If yes, how much? 0.0

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been unlawful imprisoned the last 6 years, because of an unconstitutional Judgment which was reversed and remanded to be dismissed on August 24, 2017, but it was unconstitutionally and unlawfully relitigated again on February 2018. Finally, I have been detained the last 18 months in civil proceeding (immigration) at Northwest Detention Center without any income, I still am detained.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 8, 2021

  
(Signature)

21-5654  
No.

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Michael Ortega aka Salvador Herrera

Petitioner,

Supreme Court, U.S.  
FILED

SEP 08 2021

**OFFICE OF THE CLERK**

Vs.

State of Oregon

### Respondent

## On Petition for a Writ of Certiorari to

the Oregon Supreme Court

**PETITION FOR A WRIT OF CERTIORARI**

Salvador Amílcar Herrera

A 206147530

## Northwest ICE Detention Center

1623 East "J" Street, Suite 5

Pro Se Petitioner

RECEIVED

SEP 13 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## **I. Question Presented**

Should the State of Oregon be permitted to re prosecute a defendant, taking advantage of Doctrines announced in Ashe v. Swenson as Collateral Estoppel and res Judicata and violating his Double Jeopardy Protection rights guaranteed by Fifth and Fourteenth Amendment United States?

## II. Table of Contents

I.	Questions Presented .....	ii
II.	Table of Contents .....	iii
III.	Table of Authorities .....	iv-v
IV.	Petition for Writ of Certiorari .....	1
V.	Opinion below .....	1
VI.	Jurisdiction .....	1
VII.	Constitutional Provision Involved .....	2
VIII.	Statement of the case .....	3-20
	1. First prosecution on trial 2014.....	4-14
	2. First appeal determined by a final and valid judgment.....	14-15
	3. Ortega's release.....	16
	4. Subsequent prosecution on trial 2018 for the same offenses.....	17-19
	5. Second appeal.....	19-20
IX.	Reasons for granting the writ.....	20-23
	A. Because Oregon Court of Appeal has decided important federal questions in a way that conflicts with relevant decisions of this court and this honorable court has the opportunity of citing the long history of the right of double jeopardy prohibition and consensus of federal court authority and state constitution in support.	
X.	CONCLUSION .....	26
XI.	APPENDIX .....	vi

### III. Table of Authorities

#### Cases

Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081(2007).....	1
State v. Ortega, 2021 Ore. App. LEXIS 45 (Or. Ct. App. January 13 2021).....	1
Ashe v. Swenson, 397 U.S. 346, 443 (1970).....	3
Harris v. Washington, 404 U.S. 55, 56 (1971).....	3
Padilla v. Kentucky, 559 U.S. 356, 364(2010).....	3
Holmes v. South Carolina, 547 U.S. 319, 324 (2006).....	6
Sonnier v. Quaterman, 476 F. 3d 349, 357-58(5 <sup>th</sup> Cir. 2007).....	6
Faretta v. California, 422 U.S. 806, 821(1975).....	7
Powell v. Alabama, 287 U.S. 45, 53(1932).....	9
Washington v. Texas, 388 U.S. 14, 17-18(1967).....	9
Francis v. Franklin, 471 U.S. 307, 317(1985).....	13
Arizona v. Fulminante, 499 U.S. 279 (1991).....	21
Rose v. Clark, 478 U.S. 570, 579, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986).....	21
Mckaskle v. Wiggins, 465 U.S. 168, 177-178, n.8 (1984).....	21

Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-05, 201 L. Ed. 2d 376 (2018).....	21
United States v. Davila, 597, 611, 133 S. Ct. 2139, 186 L. Ed. 2d. 139 (2013).....	22
Green v. United States, 141 S. Ct. 2020 (U.S. June 14, 2021).....	22
Benton v. Maryland, 395 U.S. 784.....	22
Crist v. Bretz, 437 U.S. 28, 33, 98 S. Ct. 2156, 57 L. Ed. 2d 24 (1978).....	23

### **Statutes**

28 U.S.C. §1257.....	1
----------------------	---

### **Constitutional Provision**

United States, Amendment V.....	2
United States, Amendment VI .....	2
United States, Amendment XIV .....	2

#### **IV. Petition for Writ of Certiorari**

Michael Ortega aka Salvador Herrera (“defendant” or “Ortega”), a detainee currently detained at Northwest Detention Center in Tacoma, Washington, Pro Se, respectfully petitions this honorable Court, first, that his submissions should be liberally construed. Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081(2007); second, for a Writ of Certiorari to review the Judgment of the Oregon Court of Appeals.

#### **V. Opinion Below**

The decision by the Oregon Court of Appeals denying Mr. Ortega’s direct appeals is reported as State v. Ortega, 2021 Ore. App. LEXIS 45 (Or. Ct. App. January 13 2021). The Oregon Supreme Court denied Mr. Ortega’s petition for review on June 10, 2021. That order a Justice Martha L. Walters’ denial is attached at Appendix (“APP”) at

#### **VI. Jurisdiction**

Mr. Ortega’s petition for review to the Oregon Supreme Court was denied on June 10, 2021. Mr. Herrera invokes this honorable Court’s jurisdiction under 28 U.S.C. §1257, having timely filed this petition for a Writ of Certiorari within ninety days of the Oregon Supreme Court’s Judgment.

## VII. Constitutional Provisions Involved

### **United States Constitution, Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **United States Constitution, Amendment XIV:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside, No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## VII. Statement of the Case.

For over a quarter of a Century, this court held in *Ashe v. Swenson*, that the Double Jeopardy Clause encompasses the Doctrine of Collateral Estoppel, which holds that when an issue of ultimate fact has been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future law suit" 397 U.S. 346, 443 (1970). The Double Jeopardy Clause not only bars a second prosecution on the same charge of which a defendant has been acquitted or convicted, but also it "prevents the government from seeking to prosecute a defendant on an issue that has been determined in the defendant's favor in a prior prosecution, regardless of the particular offense involved in the earlier trial."

The Supreme Court explained that collateral estoppel in the criminal context is "an integral part of the protection against double jeopardy guaranteed by the Fifth and Fourteenth Amendments." *Castillo-Basa*, 483 F.3d 890, 897 (citing *Harris v. Washington*, 404 U.S. 55, 56 (1971)).

This case present the question of whether an issue of ultimate fact that has been determinate by a valid and final judgment can again be litigated between the same parties in a future law suit, taking advantage of Collateral Estoppel and violating defendant's double Jeopardy protections rights guaranteed by Fifth and Fourteenth Amendments United States Constitution.

## 1. FIRST PROSECUTION ON TRIAL 2014

**On February 22, 2014**, Ortega was arrested in his apartment without an arrest warrant or exigent circumstances either and subsequently all evidence introduced in both trials was searched and seized. See APP at 34-38.

**On March 3, 2014** defendant was indicted for Count 1: Assault in the Second Degree, Count 2, 3 and 4: Unlawful Use of a Weapon, Count 5: Coercion, Count 6: Strangulation, Count 7 and 8: Assault in the Fourth Degree without informing him about his charges. see APP at 31-32.

**Mr. Bucher:** ....Mr. Ortega, do you have a copy of the indictment in front of you?

**Defendant:** No, see *T1* at Tr. 3.

And where Counsel made a unknowingly, unintelligently and involuntarily waiver of a formal reading of rights since appellant never had neither seen this lawyer nor spoken about any waiver but even so the trial lawyer stated:

**Mr. Bucher:** ...He'll waive formal reading of rights; enter a plea of not guilty to all the counts, request a case assignment and trial date, see *id.*, at Tr.4.

**On April 17, 2014** defendant was ineffectively assisted by his Attorney who did not avoid him about his speedy trial rights guaranteed by U.S. Constitution and misleading him just to response "YES" about any question that the judge would make to him.

**The Court:** Mr. Ortega, are you prepared to waive your speedy trial rights up to that new date selected of July 16<sup>th</sup>?

**Defendant:** Yes see, *id.*, at Tr. 10. *“Defendant’s waiver was neither knowingly nor intelligently nor voluntarily, therefore invalid.”*

And where the judge did not inform and explain to defendant about the consequences of his speedy trial waiver, saying:

**The Court:** All right. Very good. Thank you. I’m signing the order, resetting then. Thank you, see *id.*, at Tr. 10.

**Between March and July, 2014**, trial attorney Mr. Veverka was learned by defendant about many events, evidences and witnesses that rather than being a effective and crucial strategy to show the true, rebutting the presumption of defendant’s bad behavior and weakening Benita’s reliability and to meaningful prepare defendant’s defense, he was learned as unlawfully and illegally Tigard Police Officer’s had arrested him and subsequently searched and seized his property and taken photos from inside of his apartment and that the accusations against him were false.

But, this Attorney supported police officer’s acts and hid prosecutor’s fraudulent acts takings advantage of defendant’s U.S Law knowledge lack making the following acts: 1) disappearing defendant’s building apartment surveillance which would have shown how the alleged victim’s departure really had been, what time had been done and who had gone to pick her up and as Police Officers had

made the illegal, unlawful and unconstitutional defendant's arrest and subsequently the searches and seizures of all evidences used against defendant both executed without any warrant and no exigent circumstances; 2) ignoring eight potential and fundamental witnesses who never were neither contacted nor subpoenaed; 3) depriving and denying appellant of more than 100 pages from his case's discovery where was the original pictures modified to make alleged victim looks bruises and her medical record stating her no injuries at all see Appendix 2; 4) lying defendant saying that alleged victim had ribs and noise broken and that after 15 days she still was in the hospital when she had left it around 10:30 a.m. of the same day resulting without any injury; 5) threatening appellant in being punished if he did not accept prosecutor's offer of three years in prison and that if he wanted to change or hire another lawyer the judge would deny it.

Those Acts violated and affected appellant's United States constitutional rights, to the full and fair opportunity of meaningful preparing his defense, see *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (Affirming criminal defendant's right to "meaningful opportunity to present a complete defense") and to counsel, when his attorney was ineffective *see Padilla v. Kentucky*, 559 U.S. 356, 364(2010) (*Sixth Amendment right to counsel is right to "effective assistance of competent counsel"*), *Therefore, Veverka's failure to investigate for mitigating evidence, making it unlikely that effective evidence would be uncovered, was unreasonable strategy, see Sonnier v. Quaterman*, 476 F. 3d 349, 357-58(5<sup>th</sup> Cir. 2007).

On July 11, 2014, Defendant was taken to an empty courtroom where only was Veverka and a translator, he offered him a plea guilty by three years imprisonment, but Defendant responded that “he might not go to prison for something that he had not done at all” and that he had promised a period of three years in probation release, and Veverka responded, that they wanted him to go to prison, and if he did not accept that offer, they would give to him seventy months no matter what, saying “think about it twelve white people looking at you, finding guilty”, they don’t care if you did or not, they will find guilty, defendant anguished, asked “WHY”, just for being an emigrant when he did nothing, He was threatened by his own lawyer, but moreover he would lie, saying “one offer of probation had been offered”, T1 at Tr. 278-79.

On July 15, 2014 defendant waived his trial lawyer and triggered his right to self-representation, under both the state and federal constitutions, *see Faretta v. California, 422 U.S. 806, 821(1975)* (“Sixth Amendment right to conduct his own defense in a criminal case”), when he stated:

**Defendant:** I would like to know, your honor, if this moment I can waive the services of the lawyer.

**Defendant:** I don’t want the services of the lawyer. I want to represent myself, *see T1, at Tr. 17*

**Defendant:** I do understand your point of --- the only thing is that I don’t agree to have him as my lawyer, *see id., at Tr. 18.*

**Mr. Veverka:** I think the issue that ... you want to represent yourself, is that correct?

**Defendant:** Yes, see *T1* at **Tr. 18.**

Each one of intents were denied and omitted by the trial court due to that the judge had been involved intimately with Mr. Veverka by 17 years in may drug courts,

**The Court:** well, that's ---it's kind of late to do that. The issue now is the waiver of jury trial....

**The Court:** okay well, that would be extremely difficult for you to do... I've been a judge here for about 17 years. Mr. Veverka was intimately involved with me in drug court when we first started these years ago. I've seen him. I've had many trials with him, **see *id.*, at Tr. 17.**

Mr. Veverka is an excellent lawyer, so I don't know why you would want to have anybody else other that Mr. Veverka as your lawyer, **see *id.*, at Tr. 18.**

And the judge imposed Mr. Veverka as defendant's trial lawyer ignoring appellant's worries and Mr. Veverka's inefficiencies to meaningful prepare appellant's case and contacting and subpoenaing any witness,

**The Court:** Okay. That can't that's not going to happen now. He is your lawyer, he's been appointed to represent you. He's a good lawyer and I'm not

going to appoint anybody else to represent you. And that's not the issue right now **see id., at Tr. 18.**

Shortly after he tried to trigger his right to substitute counsel of his choice guaranteed by Sixth Amendment U.S. Constitution, *see Powell v. Alabama*, 287 U.S. 45, 53(1932) (“*A defendant should be afforded a fair opportunity to secure counsel of his own choice*”).

**Defendant:** I think that you are objecting to a right that I have. I have the right to say who is my lawyer or who's not my lawyer. **See T1 at Tr. 18.**

It was denied by the trial court.

**The Court:** you don't. **See id., at Tr. 18.**

Also Appellant triggered his right to offer testimony of favorable witnesses and to compel them at trial guaranteed by Sixth Amendment U.S. Constitution, *see Washington v. Texas*, 388 U.S. 14, 17-18(1967) (“*The Sixth Amendment provides that “in all criminal prosecution, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor*”, applicable to states through the Fourteenth Amendment”).

**Defendant:** I understand. But the only thing that I am going ---that I want to know is I am going to have witnesses on my behalf.

**Defendant:** I don't understand why my lawyer only has one witness. I have eight **see id., at Tr. 16 and 17.**

**Defendant:** The only thing that I am saying, your honor, is my right to have witnesses is not being validated. He (my trial attorney) has not called my witnesses and I have proof of that **see id., at Tr. 19.**

**Defendant:** that is why I am waiving the services of my lawyer because I feel that it is important to call these people because they can attest to who have I been here, while in this country **see id., at Tr. 21.**

When he was afforded to explain, what important were those witnesses, he gave certain information what relevant they were.

**Defendant:** There are people that know the victim as well as myself. And they have seen how my behavior towards her. There is not one witness that can talk about the events. None, none.

There is only ---there's just the victim, the testimony of the victim and mine regarding the event. So the rest is just circumstantial testimony **see T1 at Tr. 22.**

**Defendant:** I understand your honor. But two of these witnesses were with us, the victim and I, six hours before the event and they have not been contacted ----so one minute before the alleged events happened, they were with us **see id., at Tr. 23.**

And this right was denied by his trial lawyer, due to that no witnesses were subpoenaed.

**Mr. Veverka:** I have one witness subpoenaed, your honor, and I am not sure that I'll call that witness **see *id.*, at Tr. 16.**

**Mr. Veverka:** And then – and – I – and I – well, I'll say this. I misspoke when I said I had one witness under subpoena. I have two. One I asked my investigator to serve regardless of what that – and I will not be calling that witness **see *id.*, at Tr. 19.**

**Mr. Veverka:** So I probably will not any witnesses. And – at this point, I don't know – the – the witnesses that have been provided to me or provided to my investigator we have attempted to contact and we have elected not to contact – call many of them based on my professional judgment. **See *id.*, at Tr. 20.**

Also it subsequently supported by the trial court.

**The court:** Okay. Okay. So that's the decision that's been made by – by your attorney **see T1 at Tr. 16.**

disregarding Appellant's U.S. constitutional rights.

**On July 16, 2014**, defendant through his lawyer triggered again his right to secure counsel of his own choice and to prepare his defense, asking for two months of continuance to hire a lawyer, who may be able to subpoenaed witnesses in his favor and to gather evidence, and suggesting a real trial strategy. Also when defendant's trial lawyer affirmed his inefficiency of not being able to subpoena any

witness as *inter alia*, defendant's wife, Medical expert, coworkers and neighbor with critical testimonies that would rebut alleged victim's false accusations,

**Mr. Veverka:** ... My client was asking me this morning if I was going to call certain witnesses and I was going to call certain witnesses and I was kind of discussing with the process of investigation and some the witnesses that I've chosen not to call .

... And I will say that there is one witness who has a slightly contradictory story to one aspect of what the victim is saying in the police reports that we have been unable to serve **see T1 at Tr. 30-31.**

But disregarding Appellant's rights to obtain witnesses in his favor, self-representation, secure counsel of his own choice, and meaningful opportunity to present a complete defense, the trial court denied those rights and decided to go forward.

**The court:** Okay. Are you ready to go forward, though? I mean, you feel you're adequately – **see T1 at Tr. 31.**

**The court:** That – that request is denied then. So opening statements **see id., at Tr. 32.**

**On July 17, 2014** the trial court relieved the state its burden of presumption which undermined the fact-finder responsibility to find the elements of each crime

beyond a reasonable doubt *as established by U.S. Supreme Court in Francis v. Franklin, 471 U.S. 307, 317(1985)* when:

**The court:** In your opening argument—I **am not necessarily interested in Counts 1, 3, 5, 6 and 7.** What I would like you to do would be to spend time on Count --- Count 2, Count 4 – Count 4 and Count 8. And I think what you can do then is reserve the rest of your --- it's up to you how you'd like to do that, but I think – **see id., at Tr. 255.**

The reasonable doubt is that the alleged victim was found in her house like 30 minutes drive far of appellant's apartment, five hours after the time of the supposed event, with four heavy reasons 1. Recent their relationship's break down due to appellant's decision to come back with his wife **see id., at Tr. 53, 55, 2.** Recent conformity and resentment due to appellant's fortuitous negligence ruining her vehicle when he drove it without engine oil **see id., at Tr. 96, 3.** The fear of appellant's future accusations against her older son and his friend due to that appellant was badly assaulted by them (photos contained in his cell phone withheld by prosecutor) **see id., at Tr. 179-181, 4.** She and her family have an illegal status (Viridiana and Rodolfo Garcia principal beneficiaries of U visa benefits) long time hopping for it **see id., at Tr.39, 77, 91-94, 98, 99** which stimulated and provoked to built a false story and accusations to discrediting appellant's reputation, stigmatizing an appellant's violent behavior to support a claim of having suffered substantial physical or mental abuse as result of having been a victim of criminal activity.

Finally after all United States Constitution violations, the trial court found Mr. Ortega guilty of Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree and acquitted of Count 2 and 4: Unlawful Use of a Weapon, Count 8: Assault in the Fourth Degree. See APP at 27-30

## **2. OREGON COURT OF APPEAL FIRST APPEAL DETERMINED BY A FINAL AND VALID JUDGMENT**

**On August 12, 2014** “While defendant was sent to prison deprived of several of his constitutional rights, locked down 23 hours being an undue and oppressive incarceration prior trial, subject to an intensive anxiety, distress and concern, accompanying of public accusation, he sent Direct Appeal Questionnaire to the Public Defender Office, when he lacking of all law knowledge tried to explain that he had been deprived of several rights as principle rights to obtain witness, to prove any element of crime charged, to choose lawyer, to self-representation, speedy trial , to an impartial judge, to present evidence in his favor, among other.

**On September 14, 2014** defendant’s counsel was appointed and notice of appeal filed with the appellate administrator, so as well was provided information to better understands the direct appeal process to defendant. See APP at 21-22

**On May 4, 2015** eight months later, Ortega finally heard about my appellate lawyer who sent me a copy of my opening brief already filed, but he never contacted me to discuss about any appealable issue before filing it at April 1, 2015 the opening

brief. Appellate Counsel just pleaded the denial of self-representation right, disregarding that Ortega had been deprived of to chose of counsel right among other detailed in the record.

**On November 16, 2015** State filed its answering brief delay of six months when ORAP 5.8(4) establish 49 days after the filing of opening brief, without any

**On March 16, 2016** The Court of Appeals argued and submitted the defendant's case No A157763. See APP at 18-20

**On July 6, 2017** the court of appeals issued its decision ruling in appellant's favor reversing Counts 1: Assault in the Second Degree; 3: Unlawful Use of a Weapon; 5: Coercion; 6: Strangulation; 7: Assault in the Fourth Degree see APP at 18-20, where **this decision would become Final until the appellate judgment was issued.** But the State would have several choices such as:

- 1) To ask the court of appeals to consider its opinion. Under state law ORAP 6.25(2) "a petition for reconsideration shall be filed within 14 days after the decision.
- 2) To ask the Supreme Court to review the court of Appeals' opinion, under ORAP 9.25(2) any party seeking to obtain review of a decision of the court of appeals shall file a petition for review in the Supreme Court within 35 days after the date of the decision of the court of appeals.

**On August 24, 2017**, as the State chose to accept the court of appeals ruling reversing all defendant's convictions and remanding the defendant's case to be

dismissed for constitutional error, “Denial of Self-representation right” a Structural Error, no subject to harmless error review, but automatic reversal. Therefore, Appellate Judgment was issued, **becoming valid and Final Judgment (res judicata)**. See APP 13-17.

### **3. ORTEGA’S RELEASE ORDER.**

**On October 02, 2017**, Oregon Department of Corrections was informed about an Appellate Judgment ruling the release of inmate within 3 days of the date the document was received.

**On October 04, 2017**, Oregon Department of Corrections at Eastern Oregon Correctional Institution in 2500 Westgate, Pendleton OR 9701 executed an order of release, vacating all DOC Convictions and remanding to Washington County, with additional Comments **INMATE WILL NOT RETURN** and with a amplification of comments **WASHINGTON COUNTY RESENTECE DETAINER AND ICE DETAINER**. It clearly confirmed the appellate Judgment’s ruling Appellant would be released as confirmed by an EOCl’s returned grievance form where stated: **Our records show, you were not transported out for purpose of court. You were RELEASED from the Oregon Department of Corrections.** See APP 9-12.

Appellant was booked again and all his property inclusive all his legal stuff remained in EOCl, he was deprived of his release paperwork and kept in custody without a probable cause and with a issued order of his case to be dismissed by the Oregon Court of Appeals.

#### 4. SUBSEQUENT PROSECUTION ON TRIAL 2018 FOR THE SAME OFFENSES

On January 30, 2018 before Andrew R. Erwin, The trial court erred in allowing, disregarding, misleading and violating different Appellant's constitutional rights and issues as the following:

- a) To allow prosecutor take advantage of Collateral Estoppel and disregard Res Judicata Doctrine, both embodied by Double Jeopardy Protection Fifth Amendment United States Constitution.

Mr. Ortega: So in that case, you're falling into double jeopardy.

The Court: Incorrect. I appreciate why you believe double jeopardy applies. It does not when a case is goes up on appeal and is remanded back for the new trial. **See id., at Tr. 99.**

And also, to mislead frivolously the Appellate court remand which was remanded the appellant's case to be dismissed and the type of error committed when the 2014 trial court denied Appellant's self-representation right guaranteed by Sixth Amendment United States Constitution, a Structural Error, no subject to harmless error review, but automatic reversal.

**The Court:**...this comes back for trial from the court of appeals, which reversed and remanded Counts 1, 3, 5, 6, and 7. And so this is the time and place set for trial on those counts.

And as everybody knows, but I'll simply point out for the record, it was reversed on the basis that Judge Kohl did not engage in a final decision with regard to Mr. Ortega's wish to represent himself in this case.

**Mr. Ortega:** Regarding the reversal of the case, I don't understand why this is leading to a new trial.

**The Court:** Okay. And I can understand some of the confusion. so when the Court of Appeals reverses any particular count, okay, so they'll always make a decision on every count that goes up for their review. So in this case, Judge Kohl found you not guilty on three counts, I think. Those counts are gone. They're done.

So Counts 1, 3, 5, 6, and 7 went up for the Court of Appeals to review it. The court of appeals can do a couple things. **One, they can reverse and order that a judgments be entered dismissing those counts.** They do that when there is clear legal error and there's no way to rectify it absolute none. And so it's not very often they do it, because it's not often it's that clear. **So if it's clear, the court of appeals just simply says reverses it and then sends it back for entry of judgment dismissing those counts.** Okay. That's not what they did it this case. **See id., at Tr. 84-85.**

The trial court erred to determine at the end that :"that's not what they (appellate Court) had done in defendant' case, when the Appeal Log/Appellate Judgment clearly showed the Court of Appeals had ruled that was the termination

of the defendant's case and that the remanded is to dismiss defendant's case. See APP at 13-17.

His prosecution violated the Fifth Amendment's Double Jeopardy clause and applied a harmless error analysis from a reversal based on a Structural error, when Ortega was entitled to vacatur of his convictions without any additional showing of prejudice or actual innocence United States v. Davila, 597, 611, 113 S. Ct. 2139, 186 L. Ed. 2d 139(2013)

When the ruling of the court of appeals had been to remand defendant case to be dismissed **see Appendix 8 at 3-6** confirmed on release order executed on October 4, 2017 **see Appendix 4** and detailed in Confirmation of defendant's

**On February 1, 2018** the trial court found Mr. Ortega guilty of Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree, taking advantage of Collateral Estoppel. See APP at 5-8.

Ortega was imprisoned again, he was sent back to EOCl and released until December 20, 2019, after his release ICE took him in custody and held him arguing tha he is danger to community based on Judgment 2018, he still is detained.

## **5. COURT OF APPEAL SECOND APPEAL**

On March 12, 2021, Ortega through his Appeal lawyer timely filed his second appeal, where he had to represent himself due to that his lawyer did not

want to plead “Double Jeopardy” violation which embodies Collateral Estoppel Doctrine.

On January 13, 2021, Oregon Court of Appeal affirmed the judgment issued on February 2, 2018 against Ortega. See APP at 3.

## **6. OREGON SUPREME COURT PETITION FOR REVIEW AND RECONSIDERATION**

On March 23, 2021 Ortega timely filed his petition for review of Court of Appeals Decision and on June 10, 2021 Oregon Supreme Court denied petition for review, see APP at 2. On July 23, 2021 Ortega timely filed his reconsideration for review of the denial of his petition for review and on August 26, 2021 it was denied, see APP at 1.

## **XI. REASONS FOR GRANTING THE WRIT**

A. Because Oregon Court of Appeal has decided important federal questions in a way that conflicts with relevant decisions of this court and this honorable court has the opportunity of citing the long history of the right of the right of double jeopardy prohibition and consensus of federal court authority and state constitution in support.

## **STRUCTURAL ERRORS**

In Arizona v. Fulminante, the majority of this court concedes, there are other [than harmless] constitutional errors that invalidate a conviction even though there may

be no reasonable doubt that the defendant is guilty and would be convicted absent the trial error. 499 U.S. 279.

The search for truth is indeed central to our system of justice, but “certain constitutional rights are not, and should not be, subject to harmless-error analysis because those rights protect important values that are unrelated to the truth-seeking function of the trial” Rose v. Clark, 478 U.S. at 587 (Stevens, J., concurring in judgment) id at 295.

Since this Court’s decision in Chapman, other cases have added to the category of constitutional errors which are not subject to harmless error the following: ....to Self-representation at trial, Mckaskle v. Wiggins, 465 U.S. 168, 177-178, n.8 (1984)... Each of these constitutional deprivations is a similar structural defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. “without these basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair” Rose v. Clark, 478 U.S., at 577-578 (citation omitted), id at 309-310.

Twenty two years later, this honorable court, in Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-05, 201 L. Ed. 2d 376 (2018) this honorable court explained structural error this way:

Structural error are errors that affect the “entire conduct of the [proceeding] from beginning to end” [Arizona v. Fulminante, 299 U.S. 279, 309, 111 S Ct. 1246, 113 L.

Ed. 2d. 302 (1991)]. The “highly exceptional” category of structural errors includes, for example, the “denial of counsel of choice, denial of self-representation, denial of public trial, and failure to convey to a jury that guilt must be proved beyond a reasonable doubt.” United States v. Davila, 597, 611, 133 S. Ct. 2139, 186 L. Ed. 2d. 139 (2013).

Finally, this honorable court has affirmed this standard in Green v. United States, 141 S. Ct. 2020 (U.S. June 14, 2021).

In Ortega’s case he was deprived of his rights to self-representation and to choose his counsel among other in his 2014 proceeding, his Appellate judgment decide to plead just the Denial of self-representation which is a structural error no subject to harmless error analysis, but automatic reversal. See APP 13-17.

## **COLLATERAL ESTOPPEL DOCTRINE**

Also, In Benton v. Maryland, 395 U.S. 784, this honorable court held that the Fifth Amendment guarantee against double Jeopardy is enforceable against the states through the Fourteenth Amendment.

And in Ashe v. Swenson, this honorable court stated:

“The question is no longer whether Collateral Estoppel is a requirement of due process, but whether Collateral Estoppel is a requirement of due process, but whether it is part of Fifth Amendment’s guarantee against double jeopardy. And if Collateral Estoppel is embodied in that

guarantee, then its applicability in particular case is no longer a matter to be left for state court determination within the broad bounds of “fundamental fairness,” but a matter of constitutional fact, it must decide though an examination of the entire record. At 442-43

In Crist v. Bretz, this honorable court stated: ... the relatively simple rule that a defendant has been put in jeopardy only when there has been a conviction or an acquittal – after a complete trial-. A primary purpose by such a rule is akin to that served by the doctrines of res judicata and collateral estoppel to preserve the finality of judgments. 437 U.S. at 33

And “Collateral Estoppel” is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. Although first developed in civil litigation collateral estoppels has been an established rule of federal criminal law at least since this court’s decision more than 50 years ago in United States v. Oppenheimer, 242 U.S. 85. As Justice Holmes put the matter in this case, “it cannot be that the safeguards of the person, so often and so rightly mentioned with solemn reverence, are less than those that protect from a liability in debt’. *id* at 87.

In Ashe, there was a single underlying incident: six men engaged in a poker game in the base men of a home of a home were robbed by three or four masked men armed with a shotgun and pistols. id at 437. Ashe was tried for robbing one of the poker players and acquitted. id at 439. Six weeks later he was tried for robbing another participant in the poker game, and convicted. id at 439-40. This honorable court set aside Ashe's conviction.

In Ortega, there was a single underlying incident: his ex-girlfriend appeared five hours later and around 10 miles far of the place of supposed incident, saying that Ortega had hit her with different items and threatened with harming his children. but a medical record diagnosed "NO INJURIES AT ALL", Ortega's roommate stated: "hear nothing, see nothing" who was in the same apartment, neighbors said "hear nothing abnormal as a fight", supposed victim's pictures were modified to make her to look bruises, all evidence introduced was obtained illegally and unlawfully in violation of Ortega's fourth amendment rights, his attorney was ineffective due to he did not neither subpoena any of eighth potential witnesses nor introduce any evidence in ortega's favor nor file any motion to suppress evidence. Also Ortega was deprived of his right to a reciprocal discovery, choose his counsel and self-representation. However, he was tried and convicted of Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree and acquitted of Count 2 and 4: Unlawful Use of a Weapon, Count 8: Assault in the Fourth Degree. See APP at 27-30. couple days after timely filed his direct appeal, where his Appeal counsel

decided just plead “Denial of self-representation right” a Structural Error, automatic reversal required, Two years later, the Oregon Court of Appeals decided to reverse Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree, see APP at 18-20. Around one year later Oregon court of appeal issued its Appellate Judgment becoming a valid an Final Judgment which “determined an ultimate issue”, it reversed Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree and remanded Ortega’s case to be dismissed, see APP at 13-17. Six months later Ortega was tried and convicted for Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree again, where state used the same illegal and unlawful evidence obtained in violation of Ortega’s Fourth Amendments and the same witnesses. Therefore, this court as in Ashe should set aside Ortega’s convictions.

Under the facts then presented, Ortega’s reversal of all his convictions Count 1: Assault in the Second Degree, Count 3: Unlawful Use of a Weapon; Count 5: Coercion; Count 6: Strangulation; Count 7: Assault in the Fourth Degree from Oregon Court of Appeal see APP at 13-17, based on “Denial of self-representation” a structural error, determined an ultimate issue in the subsequent prosecution.

This case presents this court with the opportunity of citing the long history of the right of double jeopardy prohibition and Structural Error Doctrine, so as well

consensus of federal court authority and state constitution in support. Absent intervention by this court, the Oregon court of appeals' decision will work to undermine the carefully-crafted procedural safeguards that this court has spent the past 50 years developing.

## X. CONCLUSION

For the foregoing, Mr. Ortega respectfully request that this Court issue a writ of certiorari to review the judgment of the Oregon Court of Appeals and as in Ashe this court should put aside Ortega's convictions.

Dated this 8<sup>th</sup> day of September, 2021

Respectfully submitted,



Michael Ortega,

Aka Salvador Amilcar Herrera Flores

A206147530

Document Cover Sheet

Ortega, Michael v. Oregon

Appendix

SCUS|192262|42



## IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,  
Respondent on Review,

v.

MICHAEL ORTEGA, aka Salvador Amitcar Herrero Flores,  
Defendant-Appellant,  
Petitioner on Review.

Court of Appeals  
A167186

S068425

**ORDER DENYING PETITION FOR RECONSIDERATION**

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

  
MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
8/26/2021 10:28 AM

c: Joanna R Hershey  
Michael Ortega

lk

**ORDER DENYING PETITION FOR RECONSIDERATION**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563  
Page 1 of 1

## IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,  
Respondent on Review,

v.

MICHAEL ORTEGA, aka Salvador Amitcar Herrero Flores,  
Defendant-Appellant,  
Petitioner on Review.

Court of Appeals  
A167186

S068425

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
6/10/2021 9:31 AM

c: Joanna R Hershey  
Michael Ortega

ms

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563  
Page 1 of 1

**FILED: January 13, 2021**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

MICHAEL ORTEGA, aka Salvador Amitcar Herrero Flores,  
Defendant-Appellant.

Washington County Circuit Court  
C140476CR

A167186

Andrew Erwin, Judge.

Submitted on December 04, 2020.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

Attorney for Appellant: Michael Ortega *pro se*.

Attorney for Respondent: Joanna Hershey.

**AFFIRMED WITHOUT OPINION**

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

No costs allowed.  
 Costs allowed, payable by

---

FILED  
OREGON JUDICIAL DEPARTMENT  
WASHINGTON COUNTY  
2014 AUG 19 AM 8:22

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,

Plaintiff;

Case No. C140476CR (DA 319679)

vs.

MICHAEL ORTEGA,

Defendant.

**JUDGMENT OF CONVICTION  
AND SENTENCE**

This matter came before Judge Thomas W. Kohl on July 22, 2014 for sentencing. The State of Oregon appeared by Megan Johnson, Senior Deputy District Attorney, and the defendant appeared in person, with court appointed counsel, David M. Veverka, the Court having determined the defendant to be indigent.

It appears to the Court that the defendant has been indicted, arraigned, tried and found guilty by Court verdict of the crimes of Assault in the Second Degree Constituting Domestic Violence (Class B Felony, crime seriousness 9, criminal history I) in Count 1, Unlawful Use of a Weapon Constituting Domestic Violence (Class C Felony, crime seriousness 6, criminal history D) in Count 3, Coercion Constituting Domestic Violence (Class C Felony, crime seriousness 6, criminal history B) in Count 5, Strangulation Constituting Domestic Violence (Class A Misdemeanor) in Count 6, and Assault in the Fourth Degree Constituting Domestic Violence (Class A Misdemeanor) in Count 7. Defendant was found not guilty in Counts 2, 4, and 8.

It further appears to the Court that more than 48 hours have passed since said verdict was rendered, and there appears no good cause why sentence should not now be passed.

1       As to Count 1, it is therefore CONSIDERED, ORDERED AND ADJUDGED by the Court  
2 that, pursuant to ORS 137.700 (Ballot Measure 11), defendant be committed to the legal and  
3 physical custody of the Corrections Department of the State of Oregon for a period of seventy (70)  
4 months. Defendant shall serve the entire seventy (70) months imposed by the Court. Defendant is  
5 not eligible for release on post-prison supervision, early release, or any form of leave or temporary  
6 leave from custody. Defendant is not eligible for any reduction of this sentence for any reason  
7 whatsoever under ORS 421.120, ORS 421.121, or any other statute.

8       As to Count 3, the Court FINDS substantial and compelling reasons to impose a downward  
9 durational departure from defendant's 6-D gridblock (13-14 months prison) sentence.

10      As to Count 5, the Court FINDS substantial and compelling reasons to impose a downward  
11 durational departure from defendant's 6-B gridblock (19-24 months prison) sentence.

12      As to Counts 3 and 5, it is therefore CONSIDERED, ORDERED AND ADJUDGED by the  
13 Court that defendant be committed to the legal and physical custody of the Corrections Department  
14 of the State of Oregon for a period of six (6) months in each count. Said sentences shall be served  
15 concurrently with each other and concurrently with the sentence imposed in Count 1.

16      It is further ORDERED that the term of post-prison supervision shall be for a period of three  
17 (3) years in Count 1 and two (2) years in Counts 3 and 5. Violation of post-prison supervision shall  
18 subject defendant to sanctions or additional imprisonment.

19      Further, the Court recommends the following conditions be made a part of defendant's post-  
20 prison supervision:

- 21      1. The defendant shall have no direct or indirect contact with the victim, Benita Garcia-Alcantara,  
22 without the prior written permission of supervising officer.
- 23      2. Defendant shall submit to an evaluation and become involved in any treatment/counseling  
program(s) which may be recommended by supervising officer (to include anger control and/or  
batterer's specific/domestic violence treatment if deemed appropriate) and shall remain in said

1 programs(s) until successfully completed or given permission to withdraw; defendant shall pay  
2 the costs of any evaluation/treatment.

3 3. Defendant is prohibited from consuming or possessing any alcoholic liquor in any form under  
4 any circumstances; defendant is further prohibited from entering upon the premises of any bars,  
5 taverns, or liquor stores.

6 4. Defendant's person, property, residence or any vehicle defendant may be in are subject to search  
7 at any time by supervising officer having reasonable grounds to believe such search will  
8 disclose evidence of a supervision violation, without prior notice or search warrant, to determine  
9 if defendant is in compliance with conditions of supervision; any refusal to consent to said  
10 search is a violation of supervision.

11 5. Defendant shall submit to random intoxilyzer/body substance testing (at defendant's own  
12 expense) at the request of supervising officer having reasonable grounds to believe such testing  
13 will disclose evidence of a supervision violation to determine if defendant is in compliance with  
14 conditions of supervision; any refusal is a violation of supervision.

15 6. Defendant shall submit to polygraph examination (at defendant's own expense) by a qualified  
16 polygraph examiner designated by the court or supervising officer to determine if defendant is  
17 in compliance with conditions of supervision; any refusal is a violation of supervision.

18 7. Defendant shall submit to field sobriety tests upon request of supervising officer having  
19 reasonable grounds to believe such testing would disclose evidence of a supervision violation to  
20 determine if defendant is in compliance with special conditions of supervision; any refusal is a  
21 violation of supervision.

22 8. Defendant shall submit to an alcohol evaluation and become involved in any  
23 treatment/counseling program(s) relating to alcohol abuse which may be recommended by  
24 supervising officer, and shall remain in said program(s) until successfully completed or given  
25 permission to withdraw; defendant shall pay the costs of any evaluation/treatment.

26 Further, it shall be the sentence of the Court that the defendant submit a blood or buccal sample  
27 at defendant's own expense, unless defendant lacks the ability to pay, to the Oregon State Police for the  
28 purposes of establishing a DNA profile.

29 As to Counts 6 and 7, it is therefore CONSIDERED, ORDERED AND ADJUDGED by the  
30 Court that defendant be sentenced to the custody of the Washington County Jail for a period of six  
31 (6) months in each count. Said sentences shall be served concurrently with each other and  
32 concurrently with the sentence imposed in Count 1.

1           It is further ORDERED that defendant is sentenced to pay to the Clerk of the Court any  
2 financial obligations in the Money Award section which follows and in the manner specified (which  
3 section is hereby made a part of this judgment).

4           It is further ORDERED that the court ordered financial obligations in the Money Award  
5 section be referred to the Oregon Department of Revenue for collection.

6           MONEY AWARD

7           The State of Oregon is the creditor and the defendant, Michael Ortega, is the debtor.

8           1.       \$1,858.00 Court Appointed Attorney Fees (in Count 1).

9           2.       \$800.00 Fine (\$200 in each of Counts 1, 3, and 5; and \$100 in each of Counts 6  
10           and 7).

11           3.       \$116.97 Victim Restitution.

12           Pay to: Criminal Injuries Compensation Account, Attn: CVCP,  
13           Department of Justice, 1162 Court Street NE, Salem, OR 97301 REF:  
14           CV 00846-14

15           TOTAL MONEY AWARD: \$2,774.97

16           All financial obligations specified in the Money Award shall be made payable to the State of  
17           Oregon and shall be disbursed through the Clerk of the Court (150 North First Avenue, First Floor,  
18           Hillsboro, Oregon 97124) as set forth in ORS 137.289.

19           Dated this 18 day of May, 2014.

20           

---

21           Judge Thomas W. Kohl

22           Court Reporter: FTR (304C)  
23           cc: David M. Veverka 8-7-14  
24           Control #: JWAS214240113  
25           sej

FILED

APP-30

MAR - 3 2014

4pm

WASHINGTON COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR WASHINGTON COUNTY

STATE OF OREGON,

Plaintiff,

vs.

MICHAEL ORTEGA,

Defendant.

No. C140476CR

INDICTMENT - Secret

The above named defendant is accused by the Grand Jury of Washington County by this indictment of the crime(s) of

Count 1: ASSAULT IN THE SECOND DEGREE (FSG= 9; B Felony; ORS 163.175\*) ✓  
Count 2: UNLAWFUL USE OF A WEAPON (FSG= 6; C Felony; ORS 166.220(1)(a)) NC  
Count 3: UNLAWFUL USE OF A WEAPON (FSG= 6; C Felony; ORS 166.220(1)(a)) ✓  
Count 4: UNLAWFUL USE OF A WEAPON (FSG= 6; C Felony; ORS 166.220(1)(a)) NC  
Count 5: COERCION (FSG= 6; C Felony; ORS 163.275) ✓  
Count 6: STRANGULATION (FSG= ; A Misdemeanor; ORS 163.187) ✓  
Count 7: ASSAULT IN THE FOURTH DEGREE CONSTITUTING DOMESTIC VIOLENCE (FSG= ; A Misdemeanor; ORS 163.160\*) ✓  
Count 8: ASSAULT IN THE FOURTH DEGREE CONSTITUTING DOMESTIC VIOLENCE (FSG= ; A Misdemeanor; ORS 163.160\*) NC

committed as follows:

COUNT 1

The defendant, on or about February 22, 2014, in Washington County, Oregon, did unlawfully and knowingly cause physical injury to Benita Garcia-Alcantara by means of a dangerous weapon, to wit: a tool box. The State further alleges that the act constitutes domestic violence.

COUNT 2

The defendant, on or about February 22, 2014, in Washington County, Oregon, did possess a dangerous weapon, to wit: an iron, and did carry with intent to use said weapon unlawfully against Benita Garcia-Alcantara.

The State further alleges that the act constitutes domestic violence.

COUNT 3

The defendant, on or about February 22, 2014, in Washington County, Oregon, did possess a dangerous weapon, to wit: a tool box, and did carry with intent to use said weapon unlawfully against Benita Garcia-Alcantara.

The State further alleges that the act constitutes domestic violence.

///

///

///

## COUNT 4

The defendant, on or about February 22, 2014, in Washington County, Oregon, did possess a dangerous weapon, to wit: a coin jar, and did carry with intent to use said weapon unlawfully against Benita Garcia-Alcantara.

The State further alleges that the act constitutes domestic violence.

## COUNT 5

The defendant, on or about February 22, 2014, in Washington County, Oregon, did unlawfully and knowingly compel or induce Benita Garcia-Alcantara to engage in conduct from which Benita Garcia-Alcantara had a legal right to abstain, by means of instilling in Benita Garcia-Alcantara a fear that if Benita Garcia-Alcantara refrained from the conduct compelled or induced, the defendant would unlawfully injure someone and engage in criminal conduct.

The State further alleges that the act constitutes domestic violence.

## COUNT 6

The defendant, on or about February 22, 2014, in Washington County, Oregon, did unlawfully and knowingly impede the normal breathing or blood circulation of Benita Garcia-Alcantara by blocking the nose and mouth of Benita Garcia-Alcantara.

The State further alleges that the act constitutes domestic violence.

## COUNT 7

The defendant, on or about February 22, 2014, in Washington County, Oregon, did unlawfully and recklessly cause physical injury to Benita Garcia-Alcantara with a black and brown belt.

The State further alleges that the act constitutes domestic violence.

///

///

///

///

///

///

///

///

///

///

///



## **CERTIFICATE OF SERVICE**

I Salvador Amilcar Herrera Flores aka Michael Ortega, Pro Se, confined in Northwest Detention Center timely am filing this petition, since it is being deposited in the institution's internal mail system on September 8, 2021 and First-class postage has been prepaid and as required by Rule 29.2, I have served the enclosed petition for writ of certiorari, motion for leave to proceed in forma pauperis and appendixes on each party to the above proceeding to that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with the first-class postage prepaid. The name and address of these served are as follows:

Office of clerk

Washington, DC 20543

Office of attorney

1162 Court Street NE

Salem, OR, 97301

I Salvador Amilcar Herrera Flores aka Michael Ortega, Pro Se, declare under penalty of perjury that the foregoing is true and correct. Executed on September 8, 2021



Michael Ortega,

Aka Salvador Amilcar Herrera Flores

A206147530