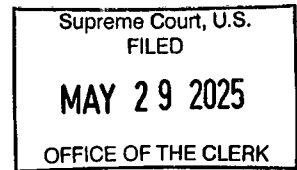


26 - 5599 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



FRANK ROMERO – PETITIONER

vs.

ERIN REYES – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

FRANK ROMERO
SID# 10024348
2605 State Street
Salem, OR 97310

QUESTIONS PRESENTED

FIRST QUESTION:

Does a State violate the Constitutional Rights of an American citizen under the Sixth and Fourteenth Amendments that guarantees a fair and impartial jury trial when the United States Constitution guarantees a Defendant to be tried by an impartial and disinterested non-biased judge?

SECOND QUESTION:

Was Petitioner denied the right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution when it was discovered that the District Attorney handling the case was the judge's son and the judge failed to recuse himself as required under Oregon law, failed to abide by Oregon's Code of Judicial Conduct pursuant to Rule 3.10 mandating disqualification, and trial counsel failed to object to the judge failing to recuse himself, which affected the outcome of the trial?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW	5
JURISDICTION	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	10

INDEX TO APPENDICES

APPENDIX A	Decision of the Oregon Trial Court
APPENDIX B	Decision of the Oregon Court of Appeals
APPENDIX C	Decision of the Oregon Supreme Court Denying Review
APPENDIX D	Order of the Oregon Supreme Court Denying Rehearing
APPENDIX E	Decision of the U.S. District Court of the District of Oregon
APPENDIX F	Decision of the U.S. Ninth Circuit Court of Appeals

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. <i>Arizona v. Fulminate</i> , 499 U.S. 279 (1991).....	7
2. <i>Turney v. Ohio</i> , 273 U.S. 510 (1927).....	7
3. <i>Fetterly v. Paskett</i> , 997 F.2d 1295, 1300 (9th Cir. 1993).....	7
4. <i>Hewitt v. Helms</i> , 459 U.S. 460, 471-72 (1983).....	7
5. <i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	7
6. <i>Tamolini v. Stewart</i> , 249 F.3d 895 (9th Cir. 2001).....	6
7. <i>Cullen v. Pinholster</i> , 563 U.S. 1701, 131 S.Ct. 1388, 179 L.Ed.2d 557.....	7

STATUTES AND RULES

Oregon Code of Judicial Conduct Rule 3.10.....	6
28 U.S.C.A. § 455.....	6

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix E to the petition and is reported at *Romero v. Reyes*, March 11, 2025, 2025 WL 2948623.

The opinion of the United States district court appears at Appendix D to the petition and is reported at *Romero v. Reyes*, August 13, 2024, 2024 WL 4190093 and *Romero v. Reyes*, September 12, 2024, 2024 WL 4187097.

JURISDICTION

For cases from **federal courts**:

The date on which the United State Court of Appeals decided my case was March 11, 2025.

The judgment from the United States District Court: September 12, 2024.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fifth Amendment to the United States Constitution.
2. Sixth Amendment to the United States Constitution.
3. Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Petitioner filed a Petition for Post-Conviction Relief (PCR) pursuant to Oregon Revised Statutes (ORS) 138.510-138.680 in 2017 in the Umatilla County Circuit Court, Umatilla, Oregon, Case No. 16CV38733, raising the claim of Ineffective Assistance of Counsel that is the subject of this Petition. The PCR court did not reach the merits of this claim, denying Petitioner his right to due process guaranteed by the Fourteenth Amendment to the United States Constitution.

Petitioner filed a Petition for Writ of Habeas Corpus Pursuant to § 2254 on May 6, 2022. On August 13, 2024 United States District Court Judge Jolie A. Russo issued findings and recommendations that the Petition should be denied. Petitioner filed an objection to the findings and recommendations dismissing the petition. *Romero v. Reyes*, Case No. 2:22 CV 00675 JR

On September 12, 2024 United States District Court Judge Karin J. Immergut issued an order adopting the findings and recommendations dismissing the Petition and declined to issue a certificate of appealability. Petitioner filed a Motion in the Ninth Circuit Court of Appeals on October 15, 2024. On March 11, 2025, the Court of Appeals issued an order denying a certificate of Appealability. Petitioner moved the Court for an order for reconsideration, and/or in the alternative, issue a certificate of appealability, which was denied.

REASONS FOR GRANTING THE PETITION

Petitioner believes that his rights were violated under the Sixth and Fourteenth Amendments that guarantee him a fair trial, mandating that the trial judge be impartial and disinterested. The trial judge failed to adjudicate the trial as a non-biased judge when it was discovered that the District Attorney prosecuting the case was the judge's son. *Tamolini v. Stewart*, 249 F.3d 895 (9th Cir. 2001). The judge failed to recuse himself as required under Oregon law, failing to abide by Oregon's Code of Judicial Conduct Rule 3.10 mandating disqualification:

(A) A judge shall disqualify himself or herself in any proceeding in which a reasonable person would question the judge's impartiality, including but not limited to the following circumstances:

* * *

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

* * *

This State Rule is the functional equivalent of 28 U.S.C.A. § 455, the Federal Law governing such circumstances:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

* * *

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

* * *

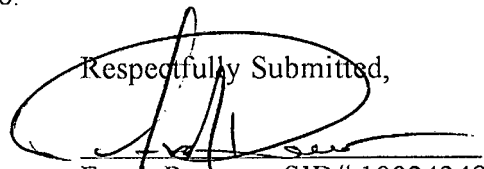
In *Arizona v. Fulminate*, 499 U.S. 279 (1991) and *Turney v. Ohio*, 273 U.S. 510 (1927) this Court has determined that a defendant is guaranteed a fair trial, and reversal of a conviction is required when a judge violates the defendant's right under the due process clause of the Fourteenth Amendment to the U.S. Constitution to an impartial and disinterested tribunal. The mandatory language of these laws implicates a liberty interest protected by the Fourteenth Amendment to the U.S. Constitution. See *Fetterly v. Paskett*, 997 F.2d 1295, at 1300 (9th Cir. 1993) ("the failure of a state to abide by its own statutory commands may implicate a liberty interest protected by the Fourteenth Amendment against arbitrary deprivation by a state,"); see also, *Hewitt v. Helms*, 459 U.S. 460, 471-72 (1983).

Petitioner's right under the Sixth and Fourteenth Amendments to effective assistance of

counsel was violated when trial counsel failed to object to the judge being the father of the District Attorney who was prosecuting the case. That deficient performance of trial counsel fell below the professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is sufficient to undermine confidence in the outcome, which requires substantial, not just conceivable, likelihood of a different result. *Cullen v. Pinholster*, 563 U.S. 170, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011). Counsel's performance was deficient, and that deficiency prejudiced the defense to such a degree that there cannot be confidence that Petitioner received the fair trial he is entitled to under the Constitution of the United States.

Dated this 4 day of August, 2026.

Respectfully Submitted,



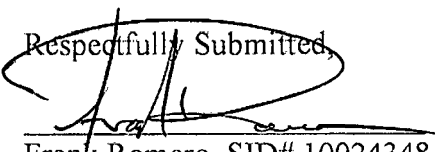
Frank Romero, SID# 10024348
2605 State Street
Salem, OR 97310

CONCLUSION

For the foregoing reasons this Honorable Court should grant the Petition for Writ of Certiorari, because it is supported by existing law and a nonfrivolous argument for modifying, or reversing existing law as these questions have not been asked to be examined by this Court on the constitutionality of such issues as they have been presented here.

Dated this 4 day of August, 2026.

Respectfully Submitted,


Frank Romero, SID# 10024348
2605 State Street
Salem, OR 97310