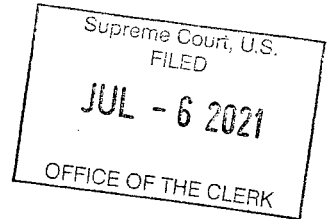


21-5117
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Christopher Allred — PETITIONER
(Your Name)

vs.

State of Washington — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Allred, DOC # 392466
(Your Name) Unit G, Cell GB-19
Coyote Ridge Corrections Center
P.O. Box 769

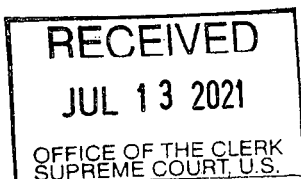
(Address)

Connell, WA 99326

(City, State, Zip Code)

n/a

(Phone Number)



QUESTION(S) PRESENTED

1. Does the U.S. Constitution allow for Grand Juries in state criminal cases?
2. Per the Hurtado v. California ruling, can states, if they so choose, substitute a preliminary hearing for a Grand Jury, in determining whether prosecution against the accused can move forward?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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- Article I, Section 25 xii, ~~xv~~, 17, 39
- Article I, Section 26 xiii, 4, 6
- Court Rules - CrRLJ - Rule 3.2.1 (g)(1) xiii, 32, 33
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- Black's Law Dictionary, 11th Edition (2019) xiii, 22
- Interview - "Firing Line" with Margaret Hoover 18
- Merriam-Webster's Dictionary of Law (2016), xiv, 17
pg. 538, 539
- washingtonpost.com reporting on Timbs v. Indiana 21

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[x]

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 19, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 21, 2021, and a copy of the order denying rehearing appears at Appendix B (Also see: Appendix E, F, G).

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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[xi]

Constitutional and Statutory Provisions Involved

U.S. Constitution

• Article VI: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

• 5th Amendment: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury... nor be deprived of life, liberty, or property, without due process of law."

• 14th Amendment: "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."

Washington State Constitution, statutes, rules, or laws

• Article I, Section 25: "Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."

Constitutional and Statutory Provisions Involved (cont.)

• Article I, Section 26: "No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order."

• Court Rules - CrRLJ - Rule 3.2.1 (g)(1): "When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing."

• Court Rules - CrRLJ - Rule 3.2.1 (g)(4): "A preliminary hearing shall be conducted as follows:

(i) the defendant may as a matter of right be present at such hearing;

(ii) the court shall inform the defendant of the charge unless the defendant waives such reading;

(iii) witnesses shall be examined under oath and may be cross-examined;

(iv) the defendant may testify and call witnesses in the defendant's behalf."

Other

• Black's Law Dictionary, 11th Edition (2019) - Due Process Clause: "There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to the federal government, and one in the 14th Amendment applying to the states (although the 5th Amendment Due Process Clause also applies to the states under the incorporation doctrine)."

Constitutional and Statutory Provisions Involved (cont.)

- Merriam-Webster's Dictionary of Law (2016), pp. 538, 539: "States also have constitutions, which are often more detailed than the U.S. Constitution. When a court is interpreting a state constitution, it may find correctly that the state constitution gives people within that state more rights than the same language contained in the U.S. Constitution. Because of the supremacy clause of the U.S. Constitution, however, no state can give its people 'fewer' rights than those in the U.S. Constitution" (pg. 538)... "Because of the supremacy clause in the Constitution, federal law must comply only with the federal Constitution, but the laws of any state must comply with provisions of both the state constitution and the federal Constitution. In a conflict between a federal and a state law, the federal law preempts the state law" (pg. 539).

- State v. Beck: "In considering appellant's motion to quash the indictment, we must bear in mind that appellant was indicted by a grand jury impaneled in the State of Washington and not by a Federal grand jury or a grand jury of a state whose statutes differ from ours."

- Hurtado v. California (headnotes 2c) "The Constitution of California authorizes prosecutions for felonies by information, "after" examination and commitment by a magistrate, without indictment by a grand jury... the State makes provision for an examination by a magistrate, in the presence of the accused, who is entitled to the aid of counsel and the right of cross-examination of witnesses... and upon a certificate thereon by the magistrate, that a described offense has been committed and that there

Constitutional and Statutory Provisions Involved (cont.)

is sufficient cause to believe the accused guilty thereof, and an order holding him to answer thereto, requires an information to be filed against the accused in the superior court of the county in which the offense is triable, in the form of an indictment for the same offense" (Headnotes by Supreme Court Justice Matthews) (emphasis added).

Supplemental Notes

• ① Article I, Section 25 of the Washington State Constitution allows for a Grand Jury or a preliminary hearing. When interpreting § 25, it could read, if expanded upon:

offenses heretofore required to be prosecuted by indictment may be prosecuted by information after a preliminary hearing, or by indictment after a grand jury hearing, as shall be prescribed by law.

These additional words do not change the meaning or function of Article I, Section 25, because the State can still fall back on this, as originally written, to use either an information or an indictment. They just have to do it after an investigative body finds reason to move the case forward.

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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 A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C&D to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

1.

(1)

Statement of the Case

The lower Courts, state and federal, have decided an important question of law that has not been, but should be, settled by this Court, because the lower courts have not addressed the underlying claims, which are that the Grand Jury must be used in all cases of capital or infamous crimes regardless if they are tried in state or federal court, and that the Grand Jury is applicable to State criminal defendants in Washington State. The decisions of the courts to deny my petition stem from Hurtado v. California. And though, the 9th Circuit's denial states Slack v. McDaniel as a reason, where a jurist of reason would find my claims debatable; the District Court stated in their denial that, "This Court will not be overturning Hurtado, which has been cited repeatedly in the Ninth Circuit to dismiss the arguments raised by Mr. Allred" (SEE ATTACHED: Appendix D, lines 10-11). I have taken

that statement to mean that the court(s) have taken a prejudice
stance against me or against my petition, and that I was not given
an unbiased review of my claims.

I have exhausted all state remedies. I have presented my claims
to each level of the courts. I have claims that are Constitutional.

My claims involve a State. As a Pro Se Petitioner, I organized and
formatted my Writ of Certiorari per my best understanding of the
rules. My petition should be able to be heard by this U.S. Supreme
Court.

Hurtado v. California is an 1884 U.S. Supreme Court ruling still
being cited today, and since that case is a focal part of my petition,
and of my denials, the U.S. Supreme Court is the only Court capable
of hearing and deciding my petition; as no other court can, or is

1 willing to, rule on the merits of my petition while Hurtado is being used
2
3 as a reason, or as a policy, on why the Grand Jury Clause of the 5TH
4
5 Amendment does not apply to me, and why the 14TH Amendment does not
6
7 protect me. And because the laws of Washington State, which kept
8
9 me from having a Grand Jury, are supported, or upheld, by Hurtado,
10
11 have kept me from finding relief; that even if I can show that
12
13 Article I, Section 26 of the Washington State Constitution is
14
15 unconstitutional because it contradicts the U.S. Constitution; Hurtado
16
17 still trumps both the State and Federal Constitutions. Because,
18
19 according to the Attorney General for the State of Washington, as
20
21 found in Rios v. Utterdahl (SEE: Appendix H, lines 14-16), "Even if Rios
22
23 returns to state court to properly litigate a grand jury claim and
24
25 succeeds in obtaining review on the merits (thereby exhausting state
26
27 remedies), the claim would still not be cognizable on habeas review
28
29

1 based on Hurtado and its progeny."

2
3
4 In the alternative, Washington State has violated my right to a
5
6 preliminary hearing as a substitution for the Grand Jury, which
7
8 according to the Hurtado precedent, I should have received when
9
10 not given a Grand Jury. This is recognized by the U.S. Supreme Court,
11
12 per the rulings in Hurtado v. California, and in Ramos v. Louisiana
13
14 (dissent). Yet, the State has removed both of these protective
15
16 barriers between the accused and the prosecutor, when they chose to
17
18 not follow either of these rules. This Court should grant my Writ
19
20 of Certiorari, because I have presented valid and compelling reasons
21
22 to do so.

23
24
25 Respectfully submitted,

26 C. Allred

27 Christopher Allred

28 Petitioner, Pro Se

Christopher Allred, DOC # 392466

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29 [5]

Reasons for Granting the Petition

Under Washington State law, Article I, Section 26 of the State's Constitution, "No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order." I was charged by an information, went to trial, and was found guilty. At that time, I was unaware that if I was tried in a federal court, I would have received a Grand Jury. However, the 5TH Amendment does not make a distinction between state and federal crimes. Only that, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on the presentment or indictment of a grand jury."

When I learned that I would have been given a Grand Jury if I was tried in a federal court, I fought my case, because I was not given a complete and fair hearing. My Due Process of Law was violated. My Privileges or Immunities were abridged. My Equal Protection

of the Laws were taken away. And when I fought it, I was denied.
Denied because the laws of Washington allow the use of an information,
instead of indictment by a Grand Jury. Which, to me, looked like a
conflict between the Washington State Constitution and the U.S.
Constitution. But when I fought that, I was denied because of
Hurtado v. California; a U.S. Supreme Court ruling that removes the
protective nature of the 14TH Amendment, as it applies to the Grand Jury
Clause of the 5TH Amendment, to the extent that Due Process of Law
no longer applies to state criminal defendants, which of course I am.
I disagree with the State. I disagree with the Hurtado ruling, and
in how it is applied, and how it is being used. Because I believe,
per the 14TH Amendment, that Citizens of Washington State are still
Citizens of the United States, and as U.S. Citizens, the entire Bill
of Rights and the 14TH Amendment apply to all of us Equally.

1 Washington State did not provide me with a Grand Jury prior to
2
3 charging me. Because of Hurtado, indictment by a Grand Jury did
4
5 not apply to me. In the alternative, I was not provided with a
6
7 preliminary hearing, as a substitution, as provided by Hurtado.

8
9 Per Ramos, "In Hurtado v. California, the Court held that... the
10
11 States... may substitute preliminary hearings..." These violations of
12
13 rights were due to the laws of Washington, which create a loophole
14
15 in where prosecutors may charge anyone they choose, with no, or
16
17 limited, oversight.

18
19 "While overruling precedent must be rare, this Court should not
20
21 shy away from correcting errors where the right to avoid imprisonment
22
23 pursuant to unconstitutional procedures hangs in the balance." And,
24
25 "The doctrine of stare decisis does not mean, of course, that the
26
27 Court should never overrule erroneous precedents. All Justices now
28

1 on this Court agree that it is sometimes appropriate for the Court
2
3 to overrule erroneous decisions... 'Nobody on the Court believes in
4
5 absolute stare decisis'" (Ramos).

6
7
8 "To state the point in simple terms: Why stick by an erroneous
9
10 precedent that is egregiously wrong as a matter of constitutional
11
12 law, that allows convictions of some who would not be convicted
13
14 under the proper constitutional rule?" (Ramos). In my case, I
15
16 was never arrested prior to going to court. The first time I
17
18 entered the courthouse was to answer a summons, which was
19
20 mailed to me. I appeared as directed, and pled "not guilty"
21
22 to the charges that had already been filed. During that appearance,
23
24 Judge Collier released me on my own recognizance, and I returned
25
26 home with my wife, who drove to the courthouse with me, and sat
27
28 in the courtroom supporting me. There was no notice to the charges.

1 There was no way for me to address the accusations prior to being
2
3 charged. My rights were taken from me before I was summoned.
4
5 Before I seen the inside of the courtroom.
6
7

8 But the question at this point is not whether the Constitution
9
10 allows Grand Juries in State criminal cases. It does. Rather,
11
12 the disputed question here is whether to overrule an erroneous
13
14 Constitutional precedent that prohibits Grand Juries in State
15
16 criminal cases within Washington. Where the State's power to
17
18 imprison those like me, rests on erroneous interpretation of the
19
20 right to a Grand Jury, the Court should not hesitate to
21
22 reconsider its precedent.
23
24

25 Hurtado can be overruled, and the wording found in Ramos can
26
27 help do that. Ramos speaks about unanimous juries, which protects
28
29

1 Citizens from improper convictions. My petition speaks about Grand

2
3 Juries (and in the alternative, preliminary hearings), which protects

4
5 Citizens from unfounded accusations that lead to improper convictions.

6
7 The same thought processes and reasonings used to decide Ramos, can

8
9 be used to decide my petition. Because, "Every judge must learn to

10
11 live with the fact he or she will make some mistakes, it comes

12
13 with the territory. But it is something else entirely to perpetuate

14
15 something we all know to be wrong only because we fear the

16
17 consequences of being right" (Ramos).

18
19
20 The 14th Amendment to the U.S. Constitution states, "No state

21
22 shall make or enforce any law which shall abridge the privileges or

23
24 immunities of citizens of the United States." I am a Citizen of the

25
26 United States. Which means, the State of Washington did abridge

27
28 the Privileges or Immunities of a Citizen of the United States, by

1 not giving me my fundamental right to a Grand Jury when I was
2
3 held to answer for an infamous crime.
4
5

6 Respondent will argue, "that there is no denial of Federal Constitutional
7
8 rights involved in the substitution of the prosecuting attorney's
9
10 criminal information for a grand jury indictment." No where in the
11
12 Federal Constitution does it state, or even hint at, that an information
13
14 can be used in place of an indictment, the wording is not even
15
16 close enough to be misinterpreted as such. "Close enough is for
17
18 horseshoes and hand grenades, not Constitutional interpretations" (Ramos).
19

20 But are we comparing "apples to apples" here? The Hurtado precedent
21
22 is unconstitutional. With that stated, I believe what the precedent
23
24 is saying is that an "information" may be substituted for an
25
26 "indictment" (which is comparing "apples to apples"), and a "preliminary
27
28 hearing" may be substituted for a "Grand Jury" (which again is
29

1 comparing "apples to apples"). Because Hurtado states, and Ramos

2
3 agrees, that a person can be charged with an information "after"

4
5 a preliminary hearing by a judge, similar to how a person can be

6
7 indicted "after" the Grand Jury finds reason to do so.

8
9
10 Hurtado v. California has been used as a policy to remove

11
12 Constitutional rights of people who are accused in the State, of

13
14 capital or infamous crimes, but the bigger and scarier part is

15
16 that these rights are being taken away before the person is charged.

17
18 "An indictment comes before the charge." In Washington, a person

19
20 goes from being accused to being charged, with no investigative body

21
22 to protect the accused from unfounded accusations or malicious

23
24 prosecution; nor are preliminary hearings, as a substitution, allowed

25
26 in the State, to replace the missing Grand Jury. Even Hurtado recognizes

27
28 that one of these investigative bodies (Grand Jury or preliminary hearing) needs to be used.

1 Legally, how are people losing their Constitutional rights when they are
2
3 still free and presumed innocent? I understand losing one's rights
4
5 after being found guilty in a court of law, or even the restriction
6
7 of certain rights once a person has been charged through a fair,
8
9 legal, or equal process, but I am confused on how it happens
10
11 before then.

12
13
14 Indictment by a Grand Jury is a Privilege of citizenship, and has
15
16 to be available to all on Equal terms. "Thus, if the jury trial
17
18 requires a unanimous verdict in federal court, it requires no less
19
20 in state court" (Ramos). The same thought process must apply to
21
22 the Grand Jury, if it is required in federal courts, it is also
23
24 required in state courts, because if it meant anything else, it
25
26 would not have been written down by the framers of the
27
28 Constitution.

1 "As an original matter, I acknowledge the appropriate vehicle
2
3 for incorporation may well be the 14th Amendment's Privilege and
4
5 Immunity Clause... Documenting evidence that the privileges or
6
7 immunities of citizens of the U.S. include, at minimum, the
8
9 individual rights enumerated in the Bill of Rights" (Timbs v. Indiana).

10
11 The Grand Jury is an individual right, and is enumerated in the
12
13 Bill of Rights, and thus, per the Timbs ruling, "at minimum" that
14
15 right must apply to me and my case, where I must now be granted
16
17 immediate relief from confinement since that right was not afforded
18
19 to me.

20
21
22 "If a man were to commit a capital offense in the face of all
23 the judges of England, their united authority could not put him
24 upon his trial; they could file no complaint against him, even
25 upon the records of the supreme criminal court, but could only
26 commit him for safe custody, which is equally competent to
27 every common justice of the peace. The grand jury alone
28 could arraign him, and in their discretion might likewise

1 finally discharge him, by throwing out the bill, with the names of all
2 your lordships as witnesses on the back of it" (Hurtado - dissent).

3
4
5 Do the costs of these proceedings play a factor, in where, the state
6
7 sacrifices our liberties to save money? "The grand jury is... a valuable
8
9 but expensive weapon (hence, used sparingly)" (State v. Beck, 56 Wn. 2d

10
11 474, 349 P.2d 387 (1960)). (Interestingly enough, Beck did receive a

12
13 Grand Jury in his state criminal case, well after the establishment of

14
15 Hurtado, SEE: "State v. Beck" on pg. xiv). And, according to Jefferson:

16
17 "prior to the preliminary hearing, the prosecuting attorney's decision
18 to file an information in superior court is a beneficial prerogative.
19 Such action serves to clear the justice court docket of an unnecessary
20 proceeding, saves time on the part of all concerned and avoids delay,
21 and serves to eliminate duplicate expenditure of public resources"
22 (State v. Jefferson, et al., 79 Wn. 2d 345, 485 P.2d 80 (1971)).

23
24 "When the people chose to enshrine that right in the Constitution, they weren't
25
26 suggesting fruitful topics for future cost-benefit analysis" (Ramos).

27
28 The right to a preliminary hearing is found nowhere in the U.S. Constitution,

1 but the Grand Jury is. Did cost play a part in my case, where I was
2
3 not afforded a Grand Jury, or in the alternative, a preliminary hearing?
4
5

6 "Does not the fact that the people of the original states required an
7 amendment of the national constitution, securing exemption from prosecution
8 for a capital offense, except upon the indictment or presentment of a
9 grand jury, prove that, in their judgement, such an exemption was
10 essential to protection against accusation and unfounded prosecution,
11 and therefore was a fundamental principle in liberty and justice?"
12 (Hurtado - dissent).
13

14
15 The prosecutor's right to substitute an information for an indictment is found
16
17 nowhere in the text of the Constitution. Even if the Respondent responds with
18
19 that Article I, Section 25 of the State's Constitution allows them to use an
20
21 information, it does not change the fact that it is found nowhere in the
22
23 text of the U.S. Constitution. Per the Supremacy Clause, states can
24
25 give more rights than what is found in the U.S. Constitution, but states
26
27 cannot take away rights found in the U.S. Constitution.
28

1 In a December 18, 2020 interview ("Firing Line" with Margaret
2
3 Hoover), Justice Gorsuch stated, in part:

4
5 "Your liberty, your rights should be denied only if you had fair
6 notice. And fair notice means the words on the page, not what's
7 in the heart of the legislature and not what the hopes of the
8 judge may be. So, I mean, that's the contrarian view, right?
9 That judges must and should consult their own moral convictions
10 when resolving hard cases. Let me tell you what happens when we
11 have judges evaluating the Constitution. The first time this court
12 radically departed from the original meaning of the Constitution
13 was in Dred Scott, recognizing a right to own another person.
14 And they read that into the Due Process, Due Process Clause
15 of the Constitution, ~~a~~ substantive right to own a slave. It
16 isn't there, nowhere in the text. This is exactly what happens
17 when judges become legislators. They're bad at it. Okay? Dred
18 Scott remains one of the darkest stains on the history of the
19 United States Supreme Court. So, do I trust my moral compass,
20 or should I trust the compass of the Constitution? You tell me.
21 Justice Scalia said, "If you're going to be a good and faithful
22 judge, you have to resign yourself to the fact that you are not
23 always going to like the conclusions you reach. If you like them
24 all the time, you're probably doing something wrong." You're doing
25 something wrong. The question asked of me is, What does the law
26 say? And can I apply it fairly here? And that is the
27 obligation I owe parties before me..."
28

1 In Hurtado, similar to Dred Scott, the Court read something
2
3 into Due Process that is not there, "nowhere in the text." Please "trust
4
5 the compass of the Constitution." What does the Constitution say?
6
7 Unlike Dred Scott, where owning another person is found "nowhere
8
9 in the text" of the Constitution, the Grand Jury Clause "is"
10
11 found in the text. Not an obscure passage that needs to be
12
13 interpreted, or hidden away and recently found. Because, according
14
15 to Reno, "the doctrine is 'at its weakest when we interpret the
16
17 Constitution' because a mistaken judicial interpretation of that
18
19 supreme law is often 'practically impossible' to correct through other
20
21 means." Again, there is no need to interpret the Grand Jury Clause,
22
23 it is clearly written within the Constitution. And, "Even if we
24
25 accepted the premise that Apodaca established a precedent, no one on
26
27 the Court today is prepared to say it was rightly decided, and stare
28
29

1 decision isn't supposed to be the art of methodically ignoring
2
3 what everyone knows to be true" (Ramos). The same thing should
4
5 be said about Hurtado.
6

7
8 I admit, and recognize, that my case is one of those "hard cases"
9
10 and "resolving" it has the potential for a large ripple effect. And
11
12 that is why my petition has a number of options on how the Court
13
14 can rule in my favor, which allows me to go home. Because, "Whether
15
16 that slice turns out to be large or small, it cannot outweigh the
17
18 interest we all share in the preservation of our constitutionally
19
20 promised liberties" (Ramos). Ignoring it is easier. Denying it is easier.

21
22 But is that the right thing to do? "If you're going to be a good
23
24 and faithful judge, you have to resign yourself to the fact that you
25
26 are not always going to like the conclusions you reach. If you
27
28 like them all the time, you're probably doing something wrong."
29

1 Because, "Every judge must learn to live with the fact he or she will
2
3 make some mistakes, it comes with the territory. But it is something
4
5 else entirely to perpetuate something we all know to be wrong only
6
7 because we fear the consequences of being right" (Ramos). "Opinions
8
9 that force change in a state's criminal procedure typically impose such
10
11 costs. And were this Court to take the dissent's approach - defending
12
13 criminal procedure opinions as wrong as Apodaca simply to avoid
14
15 burdening criminal justice systems - it would never correct its
16
17 criminal jurisprudence at all" (Ramos). The same thought process applies
18
19 to Hurtado and my petition before this Court. This is a "constitutional
20
21 no-brainer. 'Here we are in 2018 still litigating incorporation of the
22
23 Bill of Rights,' said Justice Neil M. Gorsuch, referring to the judicial
24
25 process of ensuring fundamental rights are protected against actions
26
27 of the states... 'Really? Come on General,' he said" (Washingtonpost.com
28
29

reporting on Timbs v. Indiana). According to Ramos, "The Constitution demands more than the continued use of flawed criminal procedures - all because the Court fears the consequences of changing course."

Hurtado states, "Indictments by a grand jury is not part of the due process guarantees of the Fourteenth Amendment that apply to state criminal defendants." Then let Hurtado stand, as long as I can claim my right to a Grand Jury under the Due Process guarantees of the 5TH Amendment, which does apply to state criminal defendants.

"There are two Due Process Clauses in the U.S. Constitution, one in the 5TH Amendment applying to the federal government, and one in the 14TH Amendment applying to the states (although the 5TH Amendment Due Process Clause also applies to the states under the incorporation doctrine)." (Black's Law Dictionary, 11TH Edition (2019), under Due Process Clause).

1 Therefore, the Grand Jury Clause should legally be able to fall
2
3 under the the Due Process Clause of the 5TH Amendment; which in turn
4
5 falls under the protection of the 14TH Amendment. This way, Hurtado
6
7 stands as-is, and the Grand Jury is applicable to the State of
8
9 Washington, which allows the Court to grant me relief from
10
11 incarceration since I did not receive that right.
12

13
14 However, if the Court deems that Due Process of the 5TH Amendment
15
16 does not apply to the Grand Jury for State criminal defendants, then
17
18 Hurtado must "not" stand, as it has already been called into question
19
20 by Ramos. In Ramos, part of the dissent stated that:

21
22 "A notable exception is the Grand Jury Clause of the 5TH Amendment,
23 a provision that, like the Sixth Amendment jury-trial right, reflects
24 the importance that the founding generation attached to juries as
25 safeguards against oppression. In Hurtado v. California, the Court
26 held that the Grand Jury Clause does not bind the States... That
27 decision was based on reasoning that is not easy to distinguish from
28 Justice Powell's in Apodaca. Hurtado remains good law and is

critically important to the 28 states that allow a defendant to be prosecuted for a felony without a grand jury indictment. If we took the same approach to the Hurtado question that the majority takes in this case, the holding in that case could be called into question."

Ramos v. Louisiana overruled Apodaca v. Oregon, similarly to how Allred v. Washington, the petition before the Court, should overrule Hurtado v. California. Because "overruling precedent ~~here~~ is not only warranted, but compelled" (Ramos). Hurtado warrants the same fate as Apodaca.

In Ramos, the Court stated, "the dissent suggests our precedent requires us to rule for the State anyway." The Respondent in my case wants the same thing, because Hurtado's, and its progeny, have been the law of the land for over a century, and so they feel the Court must follow the set precedent and rule against me.

The Respondent will insist that the Court must affirm my conviction because the doctrine of stare decisis supposedly commands it, because it has been long settled that because of Hurtado, "Indictment by grand jury is not part of the due process guarantees of the Fourteenth Amendment that apply to state criminal defendants." The Respondent may also claim that Due Process of law was not meant or intended to include the institution and procedure of a Grand Jury in any case, because that if in the adoption of the 14th Amendment, had it been part of its purpose to perpetuate the institution of the Grand Jury in all states, it would have embodied it as the 5th Amendment did.

Which, is a terrible argument, because most of the Bill of Rights, of those which are protected and enforced on the states by the 14th Amendment, do not contain the same language in the 14th Amendment
[25.]

as they do in the first ten Amendments. Example: Freedom of religion, where is that found in the text of the 14TH Amendment?

Or, unreasonable search and seizure, where is that found in the text

of the 14TH Amendment? The point being, just because a right is not

written word-for-word in the text of the 14TH Amendment, does

not mean that the 14TH Amendment does not protect that right.

Hurtado, which includes its progeny, should be reconsidered. I ask

the Court to not repeat the error today, by simply replacing Hurtado's

functionalist assessment with the Court's own updated version of

Alfred v. Washington. Because updating or upholding Hurtado overlooks

the fact, at the time of the 5TH Amendment's adoption, the right of

indictment by a Grand Jury was a promise to all people. They had a

right to the protection of their liberties by the use of the Grand Jury.

"When the American people chose to enshrine that right in the

1 Constitution, they weren't suggesting fruitful topics for future cost-

2
3 benefit analysis. They were seeking to ensure their children's children
4
5 would enjoy the same hard-won liberty they enjoyed" (Ramos).
6

7 Those same American people, fought for, and enshrined, the Grand Jury
8
9 Clause in the 5th Amendment, to apply to all, for generations to come.
10
11

12 Why did the dissent in Ramos feel the need to bring up Hurtado,
13
14 because doing so, pointed out that Hurtado could be called into question.
15

16 Was it because the dissent recognized that the majority in Ramos, in their
17
18 opinion, quoted Blackstone, which resembled that of the Blackstone quote
19

20 found in the dissent of Hurtado? In Ramos, "As Blackstone explained,
21

22 no person could be found guilty of a serious crime unless 'the truth
23

24 of every accusation... should... be confirmed by the unanimous
25

26 suffrage of twelve of his equals and neighbors, indifferently chosen,
27

28 and superior to all suspicion," (underlined emphasis added).
29

The Blackstone quote in Hurtado states, in part:

"no man shall be called to answer the king for any capital crime, unless upon the preemptory accusation of twelve or more of his fellow subjects, the grand jury; and that the truth of every accusation... should... be confirmed by the unanimous suffrage of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion" (underline emphasis added to highlight comparison between the two quotes).

The critical comparison between the Blackstone quote, in how it is used in Ramos, versus how it is used in Hurtado, is that Blackstone is specifically speaking of the Grand Jury. And if the Blackstone quote in Ramos was expanded, similar to how it was in Hurtado, we would see that I recognize, like how the dissent recognized, that Ramos can easily be adapted to overrule Hurtado, and that is why I have used, in my petition before this Court, language pulled directly from the U.S. Supreme Court's ruling in Ramos v. Louisiana.

As found in Ramos, "Imagine a constitution that allowed a jury trial
[28]

1 to mean nothing but a single person rubberstamping convictions without
2
3 hearing any evidence." Is that not similar to how a prosecutor uses an
4
5 information in Washington, where there is no Grand Jury or preliminary
6
7 hearing, but where a single prosecutor has the authority to
8
9 "rubberstamp" charges?
10
11

12 The Court should use my case, to hold for the first time, that
13
14 indictments by Grand Jury are permissible in state and federal courts
15
16 for capital or infamous crimes.
17
18

19 In Ramos, the Court stated, "As judges, it is not our role to
20
21 reassess whether the right to a unanimous jury is important enough to
22
23 retain. With humility, we must accept that this right may serve
24
25 purposes evading our current notice. We are entrusted to preserve
26
27 and protect that liberty, not balance it away aided by no more
28
29

1 than social statistics." This Court could replace "unanimous jury"
2
3 with "grand jury" and the statement would still be true.
4

5
6 I was accused, charged, tried, and convicted of crimes I did not
7
8 do. An innocent person is in prison. I do not know how to prove my
9
10 innocence. Just as I do not know how to prove my Constitutional rights
11
12 were violated by the State of Washington. All I know is the truth.
13

14 I was not given a Grand Jury (fact). I was not indicted, but
15
16 rather charged by an information without a preliminary hearing (fact).
17

18 No one can question these facts. I have claimed that the State has
19
20 abridged my Constitutional rights, which they did; and unfortunately,
21
22 for me, my liberties were unjustly taken.
23

24
25 In the alternative, I am also claiming that the State of
26
27 Washington has violated Hurtado, and so, Hurtado does not apply, as it is
28

1 being used, in Washington State, at least according to set precedent.

2
3 In Ramos (dissent), "In Hurtado v. California, the Court held that the

4
5 Grand Jury Clause does not bind the States and that they may

6
7 substitute preliminary hearings at which the decision to allow

8
9 a prosecution to go forward is made by a judge rather than a

10
11 defendant's peers." (Also see: Hurtado - headnote 2 - pg. xiv).

12
13
14 I did not receive a preliminary hearing (SEE: Court Rules -

15
16 CrRLJ - Rule 3.2.1(g)(4) on page xiii of this petition). Again,

17
18 the first time I entered the courthouse was to answer a summons,

19
20 which was mailed to me; I appeared, pled "not guilty," and went home

21
22 the same day.

23
24
25 Yet, according to the Ramos dissent, "they [the States] may

26
27 substitute preliminary hearings at which the decision to allow prosecution

to go forward is made by a judge." However, in Washington State,
according to Court Rules:

Washington State Courts - Court Rules - CrRLJ - Rule 3.2.1 (g)(1):

When a felony complaint is filed, the court may conduct a preliminary hearing to determine whether there is probable cause to believe that the accused has committed a felony unless an information or indictment is filed in superior court prior to the time set for the preliminary hearing.

Hurtado states, and Ramos agrees, that States can use an indictment by a Grand Jury, "or" they may substitute that for a preliminary

hearing by a judge, and if the judge finds cause to move the case

forward, then an information can be filed. Still unconstitutional, but a far

greater protection than I was given. But Washington State has

taken it a step further by only taking a piece of the Hurtado ruling

to deny Due Process in state criminal proceedings, but not following

the other part of Hurtado of replacing the missing Grand Jury with

1 a preliminary hearing. "The court 'may' conduct a preliminary hearing
2
3 ... 'unless' an information or indictment is filed in superior court
4
5 "prior" to the time set for the preliminary hearing" (emphasize added).
6

7 The laws of Washington says that as long as the prosecutor files an
8
9 information before the preliminary hearing date, then no preliminary
10
11 hearing will be granted. As found in my case. Which begs the question,
12
13 Why would a prosecutor ever allow a Grand Jury or preliminary hearing,
14
15 when there is a rule giving them permission to "rubberstamp" charges?
16
17

18 This part of my petition alone, grants me relief from incarceration,
19
20 and keeps the Court's ruling, if decided in my favor, within the borders of
21
22 Washington State. Because the State has abridged the U.S. Constitution,
23
24 as found in my entire petition, and they have done so, in part, under
25
26 the disguise of Hurtado. When in fact they were not even following
27
28 Hurtado, at least according to set precedent, which should be considered
29

1 fraud, because they claim they do follow Hurtado, and they deny
2
3 rights by citing Hurtado, but the State of Washington has no intention
4
5 of providing a Grand Jury as stated by the U.S. Constitution, or
6
7 providing a preliminary hearing as provided by Hurtado.
8
9

10 I believe Hurtado should be overruled. There is legal and just cause
11
12 to do so. But there is an alternative, where the Court still grants my
13
14 immediate relief from incarceration, but keeps the possible ripple effect to
15
16 a minimum. Out of the "28 States" that find Hurtado "critically
17
18 important," how many of them are violating the 5th and 14th Amendments,
19
20 "and" violating Hurtado at the same time? By keeping the violations
21
22 together under one ruling, as an alternative, keeps the Court's
23
24 decision within the borders of Washington, and still grants my
25
26 freedom. Unfortunately, it also allows for Hurtado to stay as-is
27
28 for the other 27 States.
29

1 Or, in another alternative, keep Hurtado as "good law" (which it is not)
2
3 in all "~~28~~ States," and instead force the State of Washington to do
4
5 what they claim they have been doing, which is following Hurtado.
6
7 Make the State keep their word, and follow their word, because they
8
9 claim to be doing it, when they have not. Washington has the
10
11 infrastructure built into their laws to allow a Grand Jury or a
12
13 preliminary hearing in every State criminal case involving a capital
14
15 or infamous crime. It just needs to be enforced.
16
17

18 The Hurtado ruling is five years older than the "State of
19
20 Washington," which means these "safeguards against oppression" that
21
22 stand as a buffer between the prosecutor and the accused, to
23
24 provide either a Grand Jury (per the 5th Amendment) "or" a preliminary
25
26 hearing (per Hurtado) in State criminal cases, have been there since
27
28 before Washington was a State. And regardless if the State
29

1 agrees, does not mean they can ignore it. Because the U.S. Supreme
2
3 Court recognized, that the precedent set by Hurtado (as specified in
4
5 Hurtado and Ramos), that **States**, including Washington, must comply
6
7 with either providing a Grand Jury or a preliminary hearing in
8
9 state criminal cases. Washington denies both of these. Give criminal
10
11 defendants one or the other, ideally a Grand Jury, but in the
12
13 alternative, a preliminary hearing. People deserve a fighting chance,
14
15 because unfounded accusations and/or malicious or unfounded
16
17 prosecutions, can ruin lives. My life for example. A ruling against
18
19 the State of Washington in this manner, keeps Hurtado in good
20
21 standing, keeps the possible ripple effect of collateral attacks
22
23 within the State, and grants my freedom since I did not receive
24
25 a preliminary hearing or a Grand Jury.
26
27

28 The "charge" comes: "after" the Grand Jury finds reason to indict,
29

1 or "after" the judge finds probable cause during a preliminary hearing. The
2
3 charge comes after, not before these proceedings, even though the State has
4
5 created "legal loopholes" in where they never have to provide either of
6
7 these protective barriers. Thus, the information used to file charges against
8
9 me is based on rules, favoring the State, that violate my liberties. "It
10
11 makes sense to scrutinize government action more closely when the state
12
13 stands to benefit" (Timbs). (SEE: Hurtado v. California (heednotes), pg. xiv-xv).

14
15
16 The 5TH Amendment promises that I should have received a Grand Jury.
17
18 The 14TH Amendment should have guaranteed that promise. But the State of
19
20 Washington gets around that, because Hurtado allows a State to substitute
21
22 an information for an indictment. I believe Hurtado is unconstitutional
23
24 and must be overruled; however, with that said, I agree that Hurtado
25
26 allows for that substitution. The Courts obviously agree too. But that is only
27
28 part of what Hurtado says, which is the part the State wants you to focus on.

1 Hurtado does not simply give the power and investigative nature of the Grand

2
3 Jury over to a prosecutor in a hope they will reach the same conclusions. No.

4
5 Even though, the State wants you to focus on that; that a prosecutor's information
6
7 may be substituted for a Grand Jury's indictment, it's all "smoke and mirrors."

8
9 Yes, according to Hurtado, an indictment and an information are interchangeable.

10
11 But, that is as far as it goes. A "prosecutor" is "not" a substitution for

12
13 a Grand Jury. According to Hurtado, a substitution for a Grand Jury

14
15 is a preliminary hearing, which substitutes one investigative body for another

16
17 investigative body, both of which stand between the accused and the

18
19 prosecutor. Yes, the prosecutor is the one who files an information,

20
21 but only after the judge, who is presiding over the preliminary hearing,

22
23 finds reasonable cause to move the case forward; then and only then,

24
25 after the judge's ruling, can a prosecutor file an information. But the

26
27 State of Washington does not want you to know this. They want you to

1 focus on the individual words: "prosecutor," "information," "substitute,"
2
3 "indictment," "Grand Jury," but not the meaning of the words. The State
4
5 has taken Hurtado out of context to remove rights that should not have
6
7 been removed. If the State of Washington wants to claim Hurtado,
8
9 then let them, but where was my preliminary hearing? Either way,
10
11 Grand Jury or preliminary hearing, the State violated my liberties
12
13 and my rights. For this alone, I should be granted immediate relief
14
15 from incarceration. (SEE: ① on pg. xv).

16
17
18 For these reasons, and/or for all, or some, of the reasons found in my
19
20 entire petition, I must be granted immediate relief from confinement.

21
22
23 Respectfully submitted,

24 C. Allred

25 Christopher Allred

26 Petitioner, Pro Se

27 Christopher Allred, DOC #392466

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: July 4, 2021

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