

No. 21-5117

In the
Supreme Court of the United States

Christopher Allred, Petitioner

v.

State of Washington, Respondent

Writ of Certiorari
Petition for Rehearing on the Merits

Christopher Allred, DOC #392466

Unit G, Cell GB-19

Coyote Ridge Corrections Center

P.O. Box 769

Connell, WA 99326

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Petition for Rehearing on the Merits

U.S. Court of Appeals for the Ninth Circuit

(Name of the court that last ruled on the merits of your case)

Petition for Rehearing on the Merits

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Constitutional and Statutory Provisions Involved

U.S. Constitution

- 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."

Case

- Hurtado v. California (headnotes 2): "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 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

Constitutional and Statutory Provisions Involved (cont.)

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).

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[X]

Reasons for Granting Petition

Pursuant to Rule 44 of this Court, I, Christopher Allred,

Petitioner Pro Se, hereby respectfully petitions for Rehearing of this

case before this Court. This case involves no challenges by the Respondent.

This Rehearing on the merits of the case, as in, the substance

of the case apart from matters of jurisdiction, procedure, or form;

even though I did exhaust state remedies, and followed all of the

rules to the best of my understanding. And in recognizing that

Hurtado — a case which is a perfect example of dual-track

incorporation — is binding upon the lower courts, and must be

followed; I still have hope that my petition will be accepted,

even though this Court routinely rejects cases of this nature,

because this Court is the only court that can resolve my case.

I pray that your hearts are softened in the review of my petition(s).

1 Ordinarily, it is exceedingly rare for this Court to grant a
2
3 rehearing, "but" rehearsings have been granted in the past,
4
5 especially when the petition for Rehearing is based on the merits
6
7 of the case, and the merits of the case have a chance of
8
9 being successful. My argument is both for and against the
10
11 Hurtado ruling - either get rid of it or fully uphold it. I am
12
13 asking this Court for a definitive ruling.
14
15

16 But is Hurtado v. California too big to overrule? On one hand,
17
18 it is in concern of a Constitutional provision - the Grand Jury
19
20 Clause of the 5TH Amendment, which does not distinguish between
21
22 state and federal crimes, only that "No person shall be..."
23
24 So with that in mind, it is "not" too big, especially since today's
25
26 Court upholds the Constitution above all else, and has been
27
28

1 righting the wrongs of the past.

2
3
4 On the other hand, it can affect the entire Nation. Even
5
6 though, other decisions (e.g. Dred Scott, Plessy v. Ferguson) in
7
8 that "same era" of bad decisions have been overruled. And it
9
10 can be safely stated, that this Court likes to hear cases of
11
12 significance, which my case has. But is Hurtado too big to
13
14 overrule? In the past, even up to earlier this year, the
15
16 answer could be Yes, even though the Privileges and Immunities
17
18 found in the Bill of Rights were created equal by nature. But
19
20 since the Edwards v. Vannoy (2021) ruling, a favorable Court
21
22 decision in my favor, would only grant freedom to me, and
23
24 no one else, which I am okay with, because I just want to
25
26 go home. So "No," Hurtado is not too big to overrule. It
27
28

1 can't be, because if it is, then it is no longer about the Constitution,

2
3 or rights, or freedoms, or liberties - it becomes about fear. The

4
5 fear of possibly releasing inmates. The fear of change. The fear of

6
7 what others may say. The fear of possibly overwhelming the courts.

8
9 Fear is a feeling - a nonconstitutional emotional decision. What

10
11 does the Constitution say? To say that Hurtado is too big, is

12
13 to say that it is okay to create classes of people, where some

14
15 citizens in a state get a grand jury and other's don't (federal

16
17 v. state defendants) (dual-track incorporation), or where citizens

18
19 in some states get a grand jury and citizens in other states

20
21 don't (geographical discrimination). States can add to, but not

22
23 take away from, the federal Constitution, which means every

24
25 person or citizen in the U.S. has the right to a grand jury

26
27 if they are accused of a capital or infamous crime.

1 In all cases of capital or infamous crimes, a grand jury is
2
3 to be used, or as a substitution, a preliminary hearing may be
4
5 used, as found in Hurtado. Does the State of Washington
6
7 believe that Hurtado is the wrong type of precedent in
8
9 where stare decisis only applies part of the ruling as enforceable?
10
11 In where the other part, not favorable to the State, is
12
13 ignored? The State could argue that a jurist of reason
14
15 would disagree with me. But could the Justices of the U.S.
16
17 Supreme Court be considered the highest of all of the jurists
18
19 of reason? And so, if a Justice states in Ramos, and other
20
21 Justices agree with the dissenting opinion, that Hurtado
22
23 can be called into question, and that Hurtado allows for
24
25 "either" a grand jury "or" a preliminary hearing, because it has
26
27 to be one or the other, it is safe to assume that jurists of
28

1 reason, from the highest Court in the United States, agrees
2
3 with me, and that either a grand jury or a preliminary
4
5 hearing must be used in state courts for cases of capital
6
7 or infamous crimes.

8
9
10 Hurtado is enforced, but in name only, because in reality,
11
12 because it is not fully enforced, it is a way to deny rights.

13
14 The State will cite pieces of Hurtado - pieces of which favor
15
16 the State, or they will cite cases that are the progeny of

17
18 Hurtado. But failing to cite the other pieces of Hurtado,
19
20 not favoring the State, which highlights the fact that a grand
21
22 jury or a preliminary hearing must be used, and that an
23
24 information can only be filed after a preliminary hearing.

25
26 These valuable and needed proceedings are used to determine
27

1 if there is enough evidence to charge the accused. These
2
3 proceedings (grand jury or preliminary hearing) are in place so
4
5 that the prosecutor "must" show that enough evidence exists
6
7 to charge the person accused of a crime, and to establish
8
9 probable cause that a crime occurred. Because at this point,
10
11 citizens are still presumed innocent.
12
13

14 Let the record show that, Mr. Joseph Hurtado himself,
15
16 received a preliminary hearing, in where a judge examined
17
18 all of the evidence. And only after Mr. Hurtado was
19
20 examined and committed by the judge, was an information
21
22 allowed to be filed by the prosecutor in superior court charging
23
24 Mr. Hurtado.
25
26

27 The Hurtado question was never about whether the Court
28 [7]

1 should remove the investigative body, or buffer, between the accused
2
3 and the prosecutor. That was never the question, because the
4
5 Court recognized that they needed that in place. The Hurtado
6
7 question was, which investigative body, the grand jury or the
8
9 preliminary hearing, should, or may, be used? Again, Mr.
10
11 Hurtado himself received a preliminary hearing, and after
12
13 probable cause was found by a judge during that hearing to
14
15 move the case forward, was the prosecutor allowed to file an
16
17 information. Mr. Hurtado fought against this unconstitutional
18
19 practice, by fighting for his 5TH Amendment right to a grand
20
21 jury. The Hurtado ruling came down to a choice between
22
23 which process, the grand jury or the preliminary hearing, was
24
25 to be used in determining whether charges could be filed.
26

27 It was then left up to the states to decide on whether

1 to file an indictment after a grand jury found cause to do so,
2
3 or to file an information after a judge during a preliminary
4
5 hearing found cause to do so. That investigative process to
6
7 determine if charges may be filed was never intended to be
8
9 removed. The prosecutor never replaced the grand jury.
10
11

12 The dissent in Ramos stated that, "Even now, our cases do
13
14 not hold that every provision of the Bill of Rights applies in
15
16 the same way to the Federal Government and the States. A
17
18 notable exception is the Grand Jury Clause of the Fifth
19
20 Amendment... That decision was based on reasoning that is not
21
22 easy to distinguish from Justice Powell's in Apodaca... While
23
24 the majority worries that Apodaca is inconsistent with our
25
26 cases on incorporation..." Is Hurtado also inconsistent with
27
28

1 this Court's view of incorporation? The majority in Ramos
2
3 points out that, Justice Powell "argued the Fourteenth
4
5 Amendment does not render this guarantee against the federal
6
7 government fully applicable against the States. In this way,
8
9 Justice Powell doubled down on his belief in 'dual-track'
10
11 incorporation — the idea that a single right can mean two
12
13 different things depending on whether it is being invoked
14
15 against the federal or a state government."
16

17
18 Justice Powell's belief in dual-track incorporation is obviously
19
20 wrong, as it was brought to light in both the majority and dissenting
21
22 opinions in the Ramos ruling, and since Ramos overruled Apodaca,
23
24 this Court's decision must have included overruling dual-track
25
26 incorporation. According to the Respondent, the 14th Amendment
27

1 does not enforce the Grand Jury Clause onto the states, and so
2
3 state criminal defendants do not have that right - only federal
4
5 criminal defendants do. With that reasoning, the Grand Jury
6
7 Clause would fall under dual-track incorporation, because the
8
9 Grand Jury Clause does apply to federal cases, but not to
10
11 state cases. Washington uses Hurtado as a policy to allow
12
13 for this, and since Hurtado "was based on reasoning that is not
14
15 easy to distinguish from Justice Powell's in Apodaca," it is
16
17 therefore reasonable to assume, based on the Ramos ruling,
18
19 that the Grand Jury Clause is applicable to both the federal
20
21 and state courts since Ramos has removed dual-track
22
23 incorporation. Per Ramos, "Justice Powell reached a different
24
25 result only by relying on a dual-track theory of incorporation
26
27 that a majority of the Court has already rejected (and
28 [11]

continues to reject).⁴ Hurtado is now the leading example of dual-track incorporation and must be overruled.

As found in the dissent of Ramos:

See Timbs v. Indiana, 586 U.S. —, —, n.1, 139 S.Ct. 682, 687, n.1, 203 L.Ed. 2d 11 (2019) (Apodaca held 'that the Sixth Amendment requires jury unanimity in federal, but not state, criminal proceedings'); McDonald v. Chicago, 561 U.S. 742, 766 n.14, 130 S.Ct. 3020, 177 L.Ed. 2d 894 (2010) (Sixth Amendment 'does not require a unanimous jury verdict in state criminal trials'). ... Consistent with these statements of the governing law, whenever defendants convicted by non-unanimous verdicts sought review in this Court and asked that Apodaca be overruled, the Court denied those requests - without a single registered dissent.

But then the Court did overrule Apodaca, and Hurtado deserves

the same fate, even though the Court in the past has denied

review or denied the requests to overrule Hurtado. Apodaca

and Hurtado, even though they concern different Constitutional

1 Amendments, share a similar history of the Court denying review
2
3 or denying to overrule. Then it all changed and Apodaca was
4
5 finally overruled. And, with that similar history, it is Hurtado's
6
7 turn to be overruled too.

8
9
10 I am respectfully asking this Court to overrule Hurtado v.
11
12 California. There is reason to do so. The entire Bill of Rights
13
14 must apply to every person or citizen, regardless of what state
15
16 they live in or travel to. It is one of the privileges of being a
17
18 U.S. citizen. Geographical discrimination cannot be allowed. The
19
20 Grand Jury Clause of the 5th Amendment is found in the Bill of
21
22 Rights, and this Court should make a ruling enforcing that right
23
24 onto the states, including the State of Washington, through the
25
26 14th Amendment.

1 In the alternative, if this Court does not overrule Hurtado,
2
3 then I respectfully ask this Court to fully enforce the Hurtado
4
5 precedent, which is binding, onto the State of Washington, allowing
6
7 for "either" a grand jury "or" a preliminary hearing in all state
8
9 cases of capital or infamous crimes, because, at least then, there
10
11 will be an investigative body, or buffer, between the accused and
12
13 the prosecution.

14
15
16 This Court, in their own words from recent and relevant
17
18 Constitutional decisions, which are found throughout my Writ,
19
20 have given me what I need for a successful petition. And since
21
22 this Court cannot deny itself without calling rulings such as
23
24 Remus, Timbs, and McDonald into question; I am therefore using
25
26 the same or similar language and thought processes of the
27

1 Justices of the U.S. Supreme Court, because I believe they are
2
3 right. I am applying the Justice's logic and words to my own
4
5 case, because their thought processes fit so well and are relevant
6
7 to my case. And since this Court's recent decisions (Ramos, Timbs,
8
9 and McDonald) are correct, I too have a valid and just claim
10
11 before this Court. I am asking for the opportunity to be heard.
12
13 For the chance of going home. And with the Edwards ruling in
14
15 place, a win in my favor, leaves little or no room for dozens
16
17 of inmates to be released.

20 Conclusion

21 For the foregoing reasons, this Petition for Rehearing
22
23 should be granted.

24 Chad

25
26 Christopher Allred
27 Petitioner, Pro Se

28 Date: October 12, 2021 [15]

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