requirements of due process as guaranteed by the U.S. Constitution - the 14th Amendment guarantees this today, just as it has done so since the Hurtado ruling in 1884 (five years before Washington became a State).

I would have loved to have a preliminary hearing in where I could have cross-examined State witnesses, especially the failed video recording from my past example. I would have loved to question the State for using a failed recording as evidence to establish probable cause. My guess is that they would never have tried to use it, because there was nothing to use. Plus, the judge and my attorney wouldn't have allowed it. Because, as seen in my case, the State is only allowed to present non-existent evidence when there is no preliminary hearing and no one to hold the prosecutor accountable.

But I am confused. What is the purpose of procedure, or the purpose of stare decisis, or of precedent, if nothing has to be followed? Is Hurtado good law or not? And how can 139 years of binding precedent be so easily ignored? Or at least, why is it ignored when I bring it up in my favor?

The State is ignoring me, or avoiding me, or whatever they are doing; but whatever they are doing, they have gone silent. And as seen in my Writ and lower court filings, their silence is agreement because they haven't contradicted, corrected, or argued against anything I have said, even when they probably should have defended themselves.

Even though everything I said was/is the truth, under normal circumstances the State would have responded. In the past, the State wouldn't shut up, but ever since I starting fighting for Hurtado, they have remained 100% quiet on everything. Not a peep.

Why is everyone avoiding my argument? Unknown denial by the U.S. Supreme Court, time bar denials by the lower courts when time bar has been overcome? The courts may as well go as silent as the State, because everyone seems to be avoiding my argument. It is like they are hiding it under a rug hoping it goes away. I don't need the U.S. Supreme Court to go silent like everyone else.

I believe I have addressed all of the elements needed for this Court to hear my case: (1) Case or controversy - I believe I have shown actual injury and my personal stake in the controversy. (2) Standing - I have a stake in the outcome, my future is on the line and how I'm looked upon in society, and also the upholding of Hurtado in full in case the State tries to charge me in the future because they're vindictive over my win. (3) Mootness - Hurtado no longer requires a ruling because it is well-established. (4) Ripeness - it is time for the U.S. Supreme Court to enforce Hurtado onto the State of Washington - Hurtado in all its fullness and authority.

If I am missing something, please help me, because I believe the Court can see my argument and what I am trying to accomplish.

Please help me. There is this saying that says: "Those who have the ability to take action, have the duty to take action." I am humbly and respectfully asking for your help. Grant my Petition and allow me to go home.

"The United States Supreme Court's determination of a federal question 'is binding upon the state courts, and must be followed, any state law, decision, or rule to the contrary notwithstanding.'... 'Decisions of the United States Supreme Court are binding not only on all of the lower federal courts, but also on state courts when a federal question is involved, such as constitutionality of an ordinance or construction of the federal Constitution or statutes.'" (Bellows).

The Hurtado ruling was the answer to a federal question. An answer that considered due process, the 5TH and 14TH Amendments, and the substitution of the grand jury for the preliminary hearing. And now I am asking this Court questions, one of which is, Is Hurtado good law?

"One of the purposes for holding a preliminary hearing prior to bindover to superior court is to determine whether there is probable cause to belive that the defendant has committed a felony... the preliminary hearing is intended as a discovery tool and to 'serve as a check on the discretion of the prosecution'" (Schapiro). I find hope that my case will win, and I will go home, because these words were written by a Washington State judge.

Violating my rights and U.S. Supreme Court precedent was the only way that the State could file charges against me. If they followed the "law of the land" (i.e. Hurtado) I would not be in prison. Because of what the State did to me, I am an innocent person confined to prison, and I am unable to get out even though the law is on my side. Because of what the State did, I lost my freedoms, my liberties, my property, my family, my career, my reputation, and my standing in the community. Because in the State of Washington, my rights don't matter.

And here we are - the U.S. Supreme Court denying my Writ. And I get it. If I was the U.S. Supreme Court, I would have denied my Writ too. Not because it isn't valid and true, because it is, with 139 years of authority to back it up - obviously this Court knows this. The State hurt me. They stole my life. And they did it to other people.

I would deny my Writ because granting certiorari, with oral arguments, airing it on C-SPAN - was all too big, with citizens of Washington and citizens across the Nation watching. It could be chaos. This way, denying certiorari, but then granting my relief under a Petition for Rehearing, keeps things quiet and small. No oral arguments, no C-SPAN, and no hundreds of possible petitioners. The Court orders my release from prison, I go home, rebuild my life, and no one is the wiser, because individuals get out of prison everyday. This is my day.

Conclusion

The Court should grant my Petition for Rehearing.

Respectfully submitted,

Christopher Allred

Petitioner, Pro Se

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Unit G, Cell GB-19
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

APPENDIX

Louisiana, 391 U.S. 145, 149 n. 14, 88 S.Ct. 1444, 1447 n. 14, 20 L.Ed.2d 491 (1968). Considering that England abolished the **grand jury** system in 1933 and that only half of the states use the system as a regular adjunct of criminal prosecutions, the procedure cannot be said to be a fundamental component of the Anglo-American justice system. *Bowers v. State*, 298 Md. 115, 149, 468 A.2d 101 (1983). Thus, because of the long string of unbroken precedent and the Supreme Court's modern incorporation analysis, we refuse to hold that the federal constitution's **grand jury** provision is binding on the states." *Ng* at 774-775.

Washington does not use a grand jury system. Instead, affidavits of probable cause are reviewed by judicial officers. Sometimes this occurs within 48 hours of arrest or in conjunction with a first appearance while in custody, and sometimes it occurs prior to the mailing of a Summons to a Defendant. If probable cause is found, the prosecuting attorney can elect to file an Information.

Contrary to Mr. Allred's claims that he did not receive a "preliminary hearing", judicial review of probable cause occurred prior to a Summons being mailed to him. The record shows that an affidavit of probable cause was presented to Clark County Superior Court Judge Gregory Gonzales on September 29, 2015. Judge Gonzales made a finding of probable cause as to Rape and Incest and signed a Summons requiring Mr. Allred to appear in court on October 6, 2015. The county prosecutor did not just "rubberstamp" charges as Mr. Allred claims. *Petition for Writ, Page 17*. Rather, a disclosure of sexual abuse in March 2015 was followed up with a forensic interview of AA in June 2015. (*See Affidavit of Probable Cause*). Based on that information, the prosecutor decided in September 2015 to file charges against Mr. Allred if the court found probable cause. Mr. Allred has failed to demonstrate a basis for release from confinement related to violations of the 5th or 14th Amendments to the Constitution of the United States.

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SUPPLEMENT INCIDENT REPORT

CASE NUMBER	SUPPLEMENT NUMBER
15003091	2
CASE TYPE	CAD EVENT NUMBER
INCIDENT (SUPPLEMENT)	
REPORTING OFFICER	REPORT DATE
1465 -	07/09/2015

INCIDENT

LOCATION					DATE	TIME
					07/09/2015	15:11
PREMISE NAME						
PRECINCT	BEAT		SQUAD	JURISDICTION		
				CCSO		

STATUS

WORK FLOW STATUS	APPROVAL	APPROVAL DATE
APPROVED	1271 - KIPP, BARB	07/09/2015

NARRATIVE

On 05/26/2015 I was assigned to follow up on an investigation done by patrol Officers which was documented

On 06/16/2015 at about 0900 hours, [redacted] was forensically interviewed by Kim Christly in room number one and I watched the entire interview from behind a one way window. The interview was recorded with the video equipment inside the CJC interview room, however, the equipment failed and no actual recording was made.

2. Rios's claims, that his convictions are unlawful because he was not charged by grand jury indictment, fail to state a federal constitutional ground for relief

Indictment by grand jury is not part of the due process guarantees of the Fourteenth Amendment that apply to state criminal defendants. *Hurtado v. California*, 110 U.S. 516, 534 (1884); *see also Rose v. Mitchell*, 443 U.S. 545, 557 n.7 (1979).

> [I]n the sense of the constitution, "due process of law" was not meant or intended to include, *ex vi termini*, the institution and procedure of a grand jury in any case. The conclusion is equally irresistible, that when the same phrase was employed in the fourteenth amendment to restrain the action of the states, it was used in the same sense and with no greater extent; and that if in the adoption of that amendment it had been part of its purpose to perpetuate the institution of the grand jury in all the states, it would have embodied, as did the fifth amendment, express declarations to that effect.

Hurtado, 110 U.S. at 534-35. "This rule has been applied to Washington's state practice of prosecution by information." *Jeffries v. Blodgett*, 5 F.3d 1180, 1188 (9th Cir. 1993) (citing *Gaines v. Washington*, 277 U.S. 81 (1928)). Accordingly, a state prisoner's habeas claim alleging the denial of indictment by grand jury fails to state a federal constitutional ground for habeas relief and must be dismissed. *Id.*

All four of Rios's § 2254 claims are premised on the lack of a grand jury indictment in his case. He argues that the State of Washington acted in "willful defiance" of the Constitution by failing to follow the Fifth Amendment's requirement of indictment by a grand jury. Dkt. No. 6, at 6-11 (Grounds One-Four). In claim three, Rios further alleges that the State's "abrogation" of his grand jury entitlement resulted in a violation of his rights under the Thirteenth Amendment because he was not "duly convicted" for purposes of that Amendment. Dkt. No. 6, at 9. Rios's arguments are without merit. *Hurtado* has been the law of the land for over a century. The fact the State of Washington proceeded by charging him in an information rather than by indictment fails to state a constitutional ground for federal habeas relief. The Court may dismiss Rios's petition with prejudice.

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This Court may deny relief on the merits, despite the fact Rios's grand jury claims are unexhausted, because the claims are clearly without merit. *See Ayala v. Chappell*, 829 F.3d 1081, 1096 (9th Cir. 2016) ("[C]ourts are empowered to, and in some cases should, reach the merits of habeas petitions if they are . . . clearly not meritorious despite an asserted procedural bar.") (alteration in original) (quoting *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002)). AEDPA explicitly authorizes district courts to deny relief on the merits of unexhausted claims. *See* 28 U.S.C. § 2254(b)(2) (providing that a petition may be denied on the merits notwithstanding the failure to exhaust state remedies). "[A] federal court may deny an unexhausted petition on the merits only when it is perfectly clear that the applicant does not raise even a colorable federal claim." *Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005); *see also Rose v. Lundy*, 455 U.S. 509, 525 (1982) (Blackman, J., concurring) ("Remitting a habeas petitioner to state court to exhaust a patently frivolous claim before the federal court may consider a serious, exhausted ground for relief hardly demonstrates respect for the state courts."). Even if Rios returns to state court to properly litigate a grand jury claim and succeeds in obtaining review on the merits (thereby exhausting state remedies), the claim would still not be cognizable on habeas review based on *Hurtado* and its progeny. Therefore, Respondent respectfully requests that the Court dismiss Rios's claim on this alternate basis.

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Washington is acting in willful defiance of federally established procedures or processes for the adjudication of crimes, its acts resulting in the willful deprivation of life, liberty, or property can only be resolved through the petition of grievances to the authority providing such inalienable rights."); *id.* at 7 (explaining that "[t]here are no remedies or alternate procedures as long as the State is acting in willful defiance [of] processes and statutes."). But there is no general exception to the exhaustion rule based on the petitioner's assessment of his claims' relative merit. The Supreme Court has not recognized an exhaustion exception for so-called clear constitutional violations. *Duckworth v. Serrano*, 454 U.S. 1, 3-4 (1981) (per curiam). "[O]bvious constitutional errors, no less than obscure transgressions, are subject to the requirements of § 2254(b)." *Id.* at 4. Although Reinbold may believe his grand jury claims are meritorious and entitle him to relief (a position with which Respondent disagrees), he is nevertheless required to exhaust state remedies.

2. Reinbold's claims, that his state custody is unlawful because he was not charged by grand jury indictment, fail to state a federal constitutional ground for relief and violate *Teague* principles

Indictment by grand jury is not part of the due process guarantees of the Fourteenth Amendment that apply to state criminal defendants. *Hurtado v. California*, 110 U.S. 516, 534 (1884); *see also Rose v. Mitchell*, 443 U.S. 545, 557 n. 7 (1979).

> [I]n the sense of the constitution, "due process of law" was not meant or intended to include, *ex vi termini*, the institution and procedure of a grand jury in any case. The conclusion is equally irresistible, that when the same phrase was employed in the fourteenth amendment to restrain the action of the states, it was used in the same sense and with no greater extent; and that if in the adoption of that amendment it had been part of its purpose to perpetuate the institution of the grand jury in all the states, it would have embodied, as did the fifth amendment, express declarations to that effect.

Hurtado, 110 U.S. at 534. "[T]here is no federal constitutional impediment to dispensing entirely with the grand jury in state prosecutions." *Beck v. Washington*, 369 U.S. 541, 545 (1962). *Hurtado* has been applied to the State of Washington's practice of prosecution by information. *Jeffries v. Blodgett*, 5 F.3d 1180, 1188 (9th Cir. 1993) (citing *Gaines v. Washington*, 277 U.S.

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