ORIGINAL

No. 23-6767

IN THE

SUPREME COURT OF THE UNITED STATES

Micheal Hudson — PETITIONER
(Your Name)

vs.

Melissa Andrewjeski — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Micheal Hudson
(Your Name)

PO Box 769
(Address)

Connell, WA 99326
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does the Fourteenth Amendment of our Constitution, by and through the first clause (which includes the dual-citizenship clause, the privileges and immunities clause, and the due process clause working together), protect those rights of the Constitution and the Bill of Rights against State intrusion, bringing the Hurtado v California ruling into question?

2. Being a right found within the Fifth Amendment of the Bill of Rights, is the grand jury clause to be protected against State intrusion, as prescribed by the Fourteenth Amendment, as the petitioner is both a citizen of the United States and the state of Washington; the Fifth Amendment provides both a privilege and immunity through its enactment within the Constitution by Congress; and the grand jury is one of the first steps in the process to hold a person to answer for an infamous crime?

3. Can vague State law that creates arbitrary and prejudicial application to court rules and process deny the defendant a grand jury before being held to answer for an infamous crime, while other citizens of the State have received a grand jury with no legislated specificity to why, be used to deny an individual his liberties and freedoms?

LIST OF PARTIES

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

RELATED CASES

Hudson v Uttecht, No. 3:19-cv-05422-RJB, US District Court for the Western District of Washington. Judgement entered October 2, 2019.

Hudson v Uttecht, No. 19-35882, US Court of Appeals for the 9th Circuit. Request for COA denied May 7, 2020. Motion for Reconsideration denied June 11, 2020.

State of Washington v Hudson, No. 53280-8-II, Washington State Court of Appeals, Judgement entered April 6, 2021.

State of Washington v Hudson, No. 99869-8, Washington State Supreme Court. Order denying review entered October 6, 2021.

In re Personal Restraint of Micheal Hudson, No. 55580-8-II, Washington State Court of Appeals. Judgement entered June 22, 2021.

In re Personal Restraint of Micheal Hudson, No. 99924-4, Washington State Supreme Court. Judgement entered August 19, 2021.

Hudson v Andrewjeski, No. 3:21-cv-05920, US District Court for the Western District of Washington. Judgement entered February 6, 2023.

Hudson v Andrewjeski, No. 22-36063, US Court of Appeals for the 9th Circuit. COA denied on August 8, 2023.

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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 judgement below.

OPINIONS BELOW

The opinion of the United States district court appears at Appendix A to the petition and is published at 2022 US Dist Lexis 216995.

JURISDICTION

The date on which the US Court of Appeals denied certificate of appealability was August 8, 2023.

The above-entitled petition was postmarked November 3, 2023 and received November 14, 2023. The papers were returned December 13, 2023 by the Court Clerk to allow petitioner to address errors. The petition has been resubmitted under Rule 14.5.

This petition stems from a state criminal conviction in Washington where the petitioner was denied a presentment or indictment by a grand jury. Not only does the Fifth Amendment of our Bill of Rights specifically require such a protection, the Washington state constitution acknowledges the US Constitution as the supreme law of the land. When so many cases have been in front of this Court in just the past few decades in which the Court has specifically upheld the word of our Constitution, or reversed rulings from an era long ago because the Constitution did not prescribe any protection, why is it that this petition is needed to bring to light the failures to

protect the Fifth Amendment's grand jury clause? That is what is being presented to this Court, who has been the shield for the Constitution and its amendments.

This Court has jurisdiction over this petition as a matter of judicial discretion (Rule 10). Petitioner's habeas corpus petition had been denied by both 9th Circuit District Court and Court of Appeals while utilizing prior Supreme Court precedent that does not reflect the views of the Constitution, recent constitutional rulings, or the history of Congressional intent regarding the included argument.

The jurisdiction of this Court is invoked under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USC Article IV, § 2, Cl 1:
The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

USC Fifth 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....

USC Fourteenth Amendment, Cl 1:
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 Article I, § 2:
The Constitution of the United States is the supreme law of the land.

Washington State Constitution Article I, § 26:
No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall order.

Revised Code of Washington RCW 10.27:
RCW 10.27.010. This chapter shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption.
RCW 10.27.030. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney,

corporation counsel or city attorney upon showing of good cause.

RCW 10.27.100. The grand jury shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he or she shall declare such a fact to his or her fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness.

STATEMENT OF THE CASE

In August 2017, Petitioner was held to answer for multiple infamous crimes by information alone in the state of Washington, Clark County. After nineteen months in county jail attempting to defend himself, Petitioner pled guilty and was convicted and sentenced to 365 months in prison. Since that time the petitioner has gone through the appeal process and had limited success, being resentenced to four fewer years. The petitioner, not being trained in law, improperly filed a writ of habeas to the United States District Court of Western Washington to argue the merits found in this petition. Ultimately he was denied without prejudice in order to raise those grounds within the state courts. After doing so, the petitioner once again raised the merits of being held to answer for an infamous crime without the presentment or indictment of a grand jury, allowing the prosecution to weaponize numerous factors against the petitioner that made it all but impossible to defend himself. Those issues aren't presented here as the petitioner feels confident that if the Supreme Court holds the many states to follow the Bill of Rights as it was constructed, specifically the enforcement of the grand jury clause of the Fifth Amendment as it was plainly written, then much of the unethical and malicious practices of prosecutors should decrease. Such a ruling would re-level the scales of Lady Justice to ensure law stays without bias.

Petitioner now humbly submits his request to the highest Court of our land.

REASONS FOR GRANTING THE PETITION

This petition for Writ of Certiorari comes with great need in order to establish our Constitution as the supreme Law of the Land. This petitioner humbly asks this Court to grant this petition to secure those rights given to every United States citizen by and through the Constitution.

These questions have been encountered in the past, and it is not the petitioner's intent to waste anyone's time. The unfortunate fact is, the answers were misguided or skewed, and have created a progeny of rulings that guide our system further and further away from the Constitution. At each level before this one, the courts have held on to the rulings and progeny of *Hurtado* in order to deny petitioner his liberties and freedom. This is why petitioner calls upon the Supreme Court in this most pressing and flagrant constitutional question.

The Fifth Amendment's grand jury clause is as clear as can be written:

> "No person shall be held to answer for a capital, or otherwise infamous crime, without presentment or indictment by a Grand Jury."

Unlike many of the provisions in our Bill of Rights that weren't made specifically clear, such as the Right to Bear Arms, Freedom of Speech, and Right to Due Process, this clause could not be clearer. In those examples, this Court has upheld their protections against State intrusion, clarifying the boundaries of those protections. Why is it that those gain protection, as unspecific as they are written, but the grand jury clause, which cannot be misconstrued one bit, does not?

This question can be found to derail itself in the nineteenth century, starting with the ruling of *Baron v Baltimore* in 1833 where the Court decided that the guaranties of the Bill of Rights did not apply to the states. It derailed again in 1857 with the *Dred Scott v Sandford* case, holding that blacks were not entitled to federal constitutional protection. In 1866, Congressman Bingham addressed Congress during its first session of the 39th Congressional meeting. As this quote indicates, Bingham believed there was an ellipsis implied in the language of Article IV, section 2,

of our Constitution. The reason Congress had not instituted a provision to that point in the Constitution that applied its powers against the States was because Congress, at that time, believed there already was one.

> "It is not because the Constitution of the United States sanctioned any infringement of his rights in that behalf, but because in defiance of the Constitution it very guarantees were disregarded... [I]n view of the fact that many of the States- I might say, in a sense, all the States of the Union- have flagrantly violated the absolute guarantees of the Constitution of the United States to all its citizens, it is time that we take security for the future, so that like occurrences may not again rise to distract our people and finally dismember the Republic.
>
> When you come to weight these words, "equal and exact justice to all good men," go read, if you please, the words of the Constitution itself: "The citizens of each State (being ipso facto citizens of the United States) shall be entitled to all the privileges and immunities of citizens (supplying the ellipsis "of the United States) in the several States."
>
> Bingham, Cong Globe, 39th Cong, 1st sess, 157-58 (1866)

Congressman Bingham would go on to be the author of the Fourteenth Amendment's first clause and a vocal representative of the intended purpose of that provision. The Fourteenth Amendment, in its relevant part to this argument, states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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."

The meaning of this clause has seen much scrutiny and been dissected to suit the needs of previous courts, yet its author was vehement in its meaning in front of Congress before it was passed. It was not a clause to be cut up and used to deny citizens their rights. Congressman Bingham spoke clearly of his intent, stating:

> "The citizens of each State, all the citizens of each State, being citizens of the United States, shall be entitled to "all privileges and immunities of citizens in the several States." Not to the rights and immunities of the several States; not to those constitutional rights and immunities which result exclusively from State authority or State legislation; but to "all privileges and immunities" of citizens of the United States in the several States. There is an ellipses in the language employed in the Constitution, but its meaning is self-evident that it is "the privileges and immunities of citizens of the United States in the several States" that it guaranties."
>
> Bingham, Cong Globe, 35th Cong, 2d sess, *id* at 984.

It was not just Congressman Bingham that understood voting the Fourteenth Amendment would protect those rights of the Bill of Rights against State intrusion, it was the entire Congress itself, as well as the members' constituents.

The history of the Thirteenth and Fourteenth Amendments enactment did not stem around the grand jury clause of the Fifth Amendment. When the fear of Congressmen was that the amendments would give the federal government too much power over the states or that the southern states would ignore the Constitutional provisions and retain slaves, it is easy to miss the intended purpose of Congressman Bingham's clause. That purpose: to incorporate all the rights within the Constitution and the Bill of Rights from state incursion. Beginning in 1868, after the ratification of the Fourteenth Amendment, the focus shifted to the courts.

By 1873 the Supreme Court began dismantling the amendment. In that year it nullified the privileges and immunities clause in the *Slaughter-House Cases*, the first time the Fourteenth Amendment was raised in question. Though the privileges and immunities clause was not directly addressed by the petitioners, the Court opinion utilized language specifically identifying it and removing its effect on the Bill of Rights and its deterrent to prevent state incursion. This can be seen again in the 1876 case of *US v Cruikshank*, where the Court considered the meaning of the

Fourteenth Amendment settled, finding that the right to assemble was merely a limitation against the federal government and not a right granted to the people by the Constitution. This ruling reaffirmed the federal system espoused in the *Slaughter-House Cases*. *Cruikshank*, in effect, went beyond the state action question to free states from the constitutional constraints of the Bill of Rights.

At the root of this argument comes to head in 1884, when Hurtado was tried for first-degree murder by information entered by a prosecutor. In this case, Hurtado appealed to the Supreme Court raising the question under the due process clause of the Fourteenth Amendment, as the Court had already washed away the privileges and immunities clause. Under his petition, Hurtado pointed towards the history of English law, the Magna Carta, and Sir Edward Coke. He even utilized prior precedent by the Supreme Court in *Murray's Lessee v Hoboken Land and Improvement Co.* in which supported the idea that due process should be defined by the procedures set out in the Constitution. Instead, the Court followed different theories, to include whether history was relevant to their decisions or not, and if so, how heavily. They also noted how the Fifth Amendment was written, stating how the grand jury clause and then having the due process clause separate, as if meaning that they were not inclusive to each other. Michael Kent Curtis acknowledges their argument in his book *No State Shall Abridge*, stating "The Court's conclusion was only as true as its premises. Lawyers say everything at least twice. But the Court's canon of construction assumed that the framers of the Constitution, a group that included a large number of lawyers, was incapable of redundancy" (183). He continued his writings regarding the Court's conclusion that supports the argument that the ruling was blinded; "Taken literally, the doctrine of nonsuperfluousness would mean that the due process clause excluded all rights in the Bill of Rights including, as Justice Harlan pointed out, such things as the right of an accused to be informed of

the nature of the accusation against him, to be confronted with witnesses against him, to have the assistance of counsel, and so forth. Furthermore, as Justice Harlan noted, a contrary inference could be drawn from the double protection of certain procedural guaranties- that the framers intended to make the rights in question doubly secure" (183).

The lone dissenter of *Hurtado*, Justice Marshall Harlan, stood alone on the court while dissenting on many civil rights cases. His commitment to liberty surfaced repeatedly in a long line of cases on application of the Bill of Rights to the states. In *Hurtado*, Justice Harlan noted, "Does not the fact that the people of the original states required an amendment to the national Constitution, securing exemption from prosecution, for a capital offense, except upon indictment or presentment by a grand jury prove that, in their judgement such an exception...was a fundamental principle of liberty and justice?" *Id at 546*. He would also be the lone dissenter in a case not too far in the future, a case that should be considered a black eye to all of justice. 1896 marked the age of the Jim Crow laws, after *Plessy v Ferguson* created the separate-but-equal doctrine. The same Court that ruled on *Hurtado*. If that fact alone cannot sway this Court to consider the material of this petition, bringing the powers of our Constitution back to life, then the petitioner feels a battle lost.

To further his argument, and focus on a different battle, this Court in more recent history has shown its mettle to reinstitute the protections of the Constitution, whether through the due process clause or other methods. In the 1932 case of *Powell v Alabama*, the Court reversed a conviction of death, holding that the Fourteenth Amendment due process clause required appointment and effective assistance of counsel in capital cases. Written by Curtis, "The Justices confronted and disposed of the *Hurtado* doctrine of nonsuperfluousness. Justice George Sutherland, writing for the Court, candidly admitted that *Hurtado* "if it stood alone" would have

made it difficult to find a right to counsel under the due process clause of the Fourteenth Amendment. (The original Bill of Rights contained a guaranty of right to counsel *and* of due process of law)" (198).

In 1947, Justice Hugo Black wrote a dissention, arguing that the Fourteenth Amendment was intended to overrule earlier Supreme Court decisions and to make the first eight amendments to the Constitution a limitation on the States. Drawing from the records of the Congressional meetings, as used evident in this argument prior, Justice Black recognized the intent to require the states to obey the Bill of Rights. He argued that the privileges and immunities clause was the primary device used to accomplish this end and that reference to privileges and immunities was a reasonable way to apply the Bill of Rights to the States. Black *also* relied on the due process clause, in tandem. Justice Black's argument for total incorporation was ultimately rejected by the Court, though it continued to find more and more guaranties in the Bill of Rights fundamental and so protected by the due process clause.

A huge win came in the 1960's, where case after case the Court applied guaranties of the Bill of Rights to the states. *Brown v Board of Education* can be regarded as the most recognized, striking down segregation in public schools. In 1968, *Duncan v Louisiana* held that the Sixth Amendment right to trial by jury was applied to the states by the Fourteenth Amendment. Justice Black reiterated in that case the words "'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States' seem to me an eminently reasonable way of expressing the idea that henceforth the Bill of Rights shall apply to the States." Curtis notes in his book that seemed applicable, that "looking at congressional history, Black insisted, one should look at what was said, not at what was not" (202).

Speeding up to more recent history, we can look at the case of *McDonald v Chicago*. Justice Alito delivered the opinion of the Court, and the beginnings of that opinion near mirror the argument presented in this petition. "Primarily, they argue that the right to keep and bear arms is protected by the Privileges and Immunities Clause of the Fourteenth Amendment and that the *Slaughter-House Cases'* narrow interpretation of the Clause should now be rejected. As a secondary argument, they contend that the Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right." *Id at 898.* Petitioner does not claim those as separate arguments, but claims that the first clause of the Fourteenth Amendment is to be applied together in unity, not piecemeal. Justice Alito quoted *Malloy v Hogan*: "The Court also held that Bill of Rights protections must "all...be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Id at 900.* Quoting Malloy again; the Court decades ago abandoned "the notion that the Fourteenth Amendment applies to the States only a watered-down, subjected version of the individual guarantees of the Bill of Rights." *Id at 901.* If the grand jury clause was to be treated as such, with its language as clear and specific as it possibly could, then the process a State court must start with cannot be left to the whim of a prosecutor.

In the case of *McDonald,* the Court evaluated a case on the grounds of the Second Amendment's right to bear arms. The Amendment reads:

> "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

In comparison to the Fifth Amendment's grand jury clause, there is a lot of gray area in this provision, such as what was meant by Arms; was it meant to include pistols and revolvers which were not common in those days? Of course, there are guidelines available to specify those

regulations today, but those guidelines had to be created in order to guide that amendment. I believe the Court got the ruling right in *McDonald*, and in no way is that at issue or in question, but let it be compared to the grand jury clause of the Fifth Amendment that states, with no uncertainty, what is required before a person can be held to answer for or convicted of an infamous crime. There is no wiggle room. It once again falls back to the cases of *Baron, Slaughter-House,* and *Hurtado.*

Petitioner wishes to point towards the writing of Justice Thomas in the *McDonald* opinion, which can draw sharp comparisons to Justice Black's stance so long ago. Petitioner has delved lightly into the intent of Congress in the enactment of the Fourteenth Amendment within this petition, and where he falls short, Justice Thomas fills in the much larger gap. Most notably to petitioner's argument is what Justice Thomas writes here:

> "This Court's substantive due process framework fails to account for both the text of the Fourteenth Amendment and the history that led to its adoption, filling that gap with a jurisprudence devoid of a guiding principle. I believe the original meaning of the Fourteenth Amendment offers a superior alternative, and that a return to that meaning would allow this Court to enforce the rights the Fourteenth Amendment is designed to protect with greater clarity and predictability than the substantive due process framework has so far managed."

I would ask this Court to view Justice Thomas's own research found in this opinion,① *Id. 938-970,* covering far more extensively than the petitioner has covered to this point and allowing this petition to stay somewhat brief. It is covered in detail the petitioner's belief that our history of the Fourteenth Amendment, that of the understanding of Congress at its enactment and that of the people of the time, and the undertone of the time's courts all support this petition to address change and to reunify our Constitution and its protections.

In the case of *Timbs v Indiana*, Justice Gorsuch concurred with the opinion, adding "As an original matter, I acknowledge, the appropriate vehicle for incorporation may well be the

①: Appendix J

Fourteenth Amendment's Privileges and Immunities Clause, rather than, as this Court has long assumed, the Due Process Clause." Justice Thomas also wrote in concurrence to the judgement, originally so, that "I cannot agree with the route the Court takes to reach this conclusion. Instead of reading the Fourteenth Amendments Due Process Clause to encompass a substantive right that has nothing to do with "process," I would hold that the right to be free from excessive fines is one of the "privileges or immunities of citizens of the United States" protected by the Fourteenth Amendment." The Court did rule in favor of the Bill of Rights and the individual protection of the excessive fines clause, but once again it did not address the vehicle it utilized to make that decision, leaving the protection of the grand jury clause alone.

A year later the Court ruled on *Ramos v Louisiana*, requiring a unanimous jury verdict and overturning *Apodaca v Oregon*. That case also raised an argument that the petitioner will need to address and does so now. Stare decisis was expounded on far better by Justice Kavanaugh than the petitioner could attempt. He quotes *Vasquez v Hillery*, in that the doctrine "permits society to presume that the bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Id at 1411*. The Court has shown that the proclivities of individuals can cause stress on the judicial system, such as the ruling in *Roe v Wade* that did not support any portion of the Constitution. Rightly, the Court overturned the ruling because it wished to establish that bedrock principle that the Constitution is the supreme Law of the Land, regardless of the public's response or popularity of the decision. Bluntly put, it showed the misunderstanding (ignorance) from the public of the duties of the judicial branch and specifically of this Court. As in this petition, it is asked that this Court look at the histories that established the Constitution, the Fifth and Fourteenth Amendment, and the rulings in support of the Bill of Rights in order to

reestablish that Law. After Justice Kavanaugh acknowledged the need to overrule erroneous precedents, he listed "some of the Court's most notable and consequential decisions have entailed overruling precedent." It was a lengthy list. See *Id 1411-1412.*

Justice Alito brought to light a point in his dissention to *Ramos.* While noting that not "every provision of the Bill of Rights applies in the same way to the Federal Government and the States," *Id 1435,* he pointed to *Hurtado* as one of those exceptions. "*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." *Id.*

The petitioner calls this case into question. Not because he feels that the Fifth Amendment Grand Jury Clause should indeed fall under the protection of the Fourteenth Amendment's Due Process Clause, but because it falls under the protection of the Fourteenth Amendment as a whole; this includes the dual-citizenship clause, the privileges and immunities clause, and the due process clause working together. In its own way, and to concede the point to the opposition to this argument, *Hurtado*, as narrowly viewed, may be correct. Alone, the due process clause may not provide the adequate vehicle to protect that right. Petitioner disagrees with that, as a "process" is a particular course of action, and a grand jury is a required action in the federal court system in order to hold a person to answer for an infamous or capital crime. For this argument, petitioner asks this Court to reestablish the meaning of the Fourteenth Amendment's first clause, as a whole, to protect those rights found in the Bill of Rights.

Additionally, petitioner asks this Court, if the first argument does not ring truth (questions one and two), to find fault in the State of Washington's due process, failing to provide a grand jury in which its own constitution and state laws claim to have, making them available to some and not

others, with no vehicle to properly prescribe that right to its citizens by creating ambiguity and arbitrary power. The bulk of this argument shows the discrepancies of the State's own laws and how the courts abuse them in order to create a prejudicial system, utilizing vague law to convict and sentence its citizens.

Washington State constitution, §26 of Article I, states "No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order." This concludes that there is a grand jury, but it is the choice of a superior judge to grant. To look at what provision a judge uses to make that decision, we look at the Revised Code of Washington, 10.27.030: "No grand jury will be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause." When looking at the State's definitions to understand what requirements are utilized, such as the definition of "public interest", nothing is found when it comes to describing a vehicle to decide who gets a grand jury and who does not. See RCW 10.27.020.

As these two statutes are in essence against each other, one giving the power to a superior judge and the other demanding a majority decision, petitioner looks to the State's supreme court:

> "Indictment by grand jury is not required by due process of law, whether a defendant shall be charged by indictment or information is a matter entirely within the discretion of the prosecuting attorney." *State v Dunn*

This ruling goes against state law and removes the power from the judge and hands it to the prosecutor arbitrarily. The Court has made a statement in regards to this type of power in *Marinello v US*: "[T]o rely upon prosecutorial discretion to narrow the otherwise wide-ranging scope of a

criminal statute's highly abstract general statutory language places great power in the hands of the prosecutor."

> "Indictments are rarely used in Washington courts because grand juries are impaneled only infrequently." *State v Car*

So, they are rarely used, but without an explanation of why they would be impaneled and who would get them?

> "Grand juries today are used to investigate charges of public corruption." *State v Keyes*

Recalling State law, there is no provision that limits or specifically authorizes a grand jury in that function, and if so, the impression is that public corruption happens only infrequently.

> "Grand juries in Washington are convened only on special occasion and for specific purposes." *Beck v Washington* (A US Supreme Court case)

Yet State law lists no specific purpose or occasion to merit the grand jury. As can be shown by prominent state cases regarding the grand jury, it is clear that the supreme court of the State is as confused on the requirements of impaneling a grand jury as the petitioner is. Each case has its own interpretation to the meanings of law regarding the grand jury in Washington, yet none of them agree.

The purpose of structure to this argument leads to one simple fact; Washington has a grand jury, yet utilizes vague law in order to give the right to some but not others. The petitioner was one of those who was denied that right. To acknowledge those who did receive a grand jury in this State, please refer to ~~Exhibit 9~~ Appendix I for a list of cases that meet no specific requirements for such a jury, yet received one anyway. This would set a precedent that some citizens within the State of Washington are more equal than others, and that the law does not apply equally to all.

The first point to bear is that this Court has held to "squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp." *Johnson v US*. Just because the State has a law in place that *can* allow the right to be had, and somewhere they have allowed it, does not entertain the notion that it is constitutional even though it wasn't offered to the petitioner. At that point, an arbitrary or discriminatory application is applied against the petitioner. In the State case *Padilla*, the court recognized 3 factors to declare a provision unconstitutionally vague: (1) The statute must give the person of ordinary intelligence a reasonable opportunity to know what behavior is prohibited. (2) The law must provide explicit standards to those charged with enforcing the law in order to prevent arbitrary and discriminatory application. (3) Finally, a vague law that encroaches on sensitive areas of basic First Amendment freedoms naturally inhibits the exercise of those freedoms because individuals who are uncertain of the meaning of a statute will steer far wider than necessary in order to ensure compliance. In this argument, it is the judge and prosecutor that should have known what was prohibited. As the judge took an oath to uphold the US Constitution as well as the State constitution, he should have known what was required of him to be compliant within the law. There is no specific standard to this law, in either instance, to determine who gets a grand jury, when they get one, what they get one for, or why they do or do not receive that right. Furthermore, the State claims it is drawn only "where the public interest so demands." Then who is the person deciding what the public demands? It should be considered in jurisprudence that the public demand includes retaining the rights granted by their forefathers and the document that separates our country from so many others, the Constitution. Finally, though not a First Amendment right, it is a right that bears fruit within the Bill of Rights, and in such should be treated with the utmost care.

If the petitioner has done anything in this argument, he hopes it is to relay the point that our Fifth Amendment is just as precious and necessary to the Bill of Rights as the other amendments, and in no terms vague itself. Its requirement is as specific as the document comes.

The State court did not address this concern for vague law once, nor did the 9th Circuit District Court or Court of Appeals. They slammed the door on the argument due to the claim that the Fifth Amendment Grand Jury Clause is not protected by the Fourteenth Amendment and therefore moot. Petitioner humbly asks this Court to consider accepting this petition and bringing to light the protections of the Bill of Rights. With statistics that the Court only accepts one percent of cases presented to it, and the insurmountable odds against it with the majority of the States that do not utilize a grand jury, this petitioner holds on only to hope. Hope that his service to his country stood for the protection of life and liberty. He raised his right hand and swore his oath to defend the Constitution against all enemies, foreign and domestic. With the recent overturning of *Roe*, the odds seemed better, as that ruling affected every state in some shape or form. Will this be another petition that this Court can add to its resume, for upholding the rights of our Constitution, and to reestablish the meaning and weight its parts? This petitioner prays so.

Conclusion

The petitioner asks this Court to accept this writ, reverse petitioner's conviction and sentence, reestablish the protections and definition of our Constitution against State intrusion, and allow this petitioner a chance to retain those freedoms and liberties lost to him.

Petitioner humbly asks this Court to include in its review that the State of Washington recognizes the US Constitution as the supreme law of the land, Article I, §2, yet continues to disparage its citizens the rights of that Constitution due only to outdated case law. Appendix J also includes the relevant case law that Petitioner believes bolsters his argument and provides it to the Court for ease of access.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Micheal Hudson, Petitioner

Date: January 26, 2024