No. 24-478

In the Supreme Court of the United States

OMNISUN AZALI,
Petitioner,

v.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF CUYAHOGA COUNTY PUBLIC DEFENDER AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

CULLEN SWEENEY
Chief Public Defender
THOMAS T. LAMPMAN
Assistant Public Defender
COUNSEL OF RECORD

OFFICE OF THE CUYAHOGA COUNTY PUBLIC DEFENDER
310 W. Lakeside Ave.
Suite 200
Cleveland, OH 44113
tlampman@cuyahogacounty.us
Tel.: (216) 443-7583

MELISSA A. GHRIST

MILTON AND CHARLOTTE KRAMER LAW CLINIC

CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

11075 East Boulevard
Cleveland, OH 44106
Tel.: (216) 368-2766

December 2, 2024

I

QUESTIONS PRESENTED

Amicus defers to the questions presented as formulated in the Petition, to wit:

1) Does express statutory permission to act in self-defense call down the protections of the Sixth and Fourteenth Amendments to the United States Constitution, thus requiring a state's prosecutors to prove beyond a reasonable doubt that a person accused of a violent crime was not engaged in specifically permitted self-defense?

2) Do the Sixth and Fourteenth Amendment standards for determining which facts constitute the elements of a crime apply within an appellate court's Fourteenth-Amendment review for sufficient evidence of guilt, thus dictating which factual issues must be considered?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

TABLE OF AUTHORITIES
(*continued*)

Page(s)

OTHER AUTHORITIES

INTERESTS OF *AMICUS CURIAE*

The Cuyahoga County Public Defender[1] represents a plurality of the criminal defendants in Cuyahoga County, Ohio. The Public Defender represents approximately one-third of all indigent defendants in criminal felony cases, almost all indigent misdemeanor defendants in the Cleveland Municipal Court, and a large number of juveniles alleged to have committed crimes in the Juvenile Court. The Cuyahoga County Public Defender also represents a large number of indigent clients at the appellate court level, both in Ohio's Eighth District Court of Appeals, the Supreme Court of Ohio, and this Court.

Accordingly, *amicus* is very familiar with the status of self-defense law in Ohio, and is well-positioned to illustrate the impact and import of the decision below.

---

[1] Pursuant to Supreme Court Rule 37.2, counsel for the Public Defender notified all parties of its intention to file this brief by email on November 19, 2024. Pursuant to Rule 37.6, counsel for the parties did not author any part of this brief, and no monetary contributions were given to fund the preparation of this Brief.

SUMMARY OF ARGUMENT

There is a growing need for this Court to clarify the constitutional distinction, if any, between statutes excluding otherwise-criminal conduct from the definition of a crime and statutes blessing that conduct as lawful in itself. Azali's Petition presents an opportunity to resolve those issues in the context of statutes authorizing the use of force in self-defense, and this Court should seize it.

In addition to the reasons for taking this case set forth in Azali's Petition, this Court should act for two reasons. *First*, because there is a trend in States granting citizens broad permission to use force in self-defense—in contrast to statutes which criminalize uses of force and then craft exemptions for instances of self-defense. The decision below, along with the Supreme Court of Ohio decision it rests on, further complicates the already-unsettled Sixth and Fourteenth Amendment standards applicable to such prosecutions.

Second, because by their very nature self-defense statutes like Ohio's implicate some of the most prevalent and serious crimes adjudicated in a state justice system. Thus, the uncertainty and errors of law in this area are all but guaranteed to have widespread and significant consequences.

ARGUMENT

In *State* v. *Messenger*, the Supreme Court of Ohio broke from other state high courts on unsettled issues of Sixth and Fourteenth Amendment jurisprudence. *See* 2022-Ohio-4562. This Court's holdings suggest—but do not squarely hold—that if a statute expressly blesses conduct as lawful, then criminal convictions

based on such conduct must rest on conclusions made by a jury beyond a reasonable doubt. *See*, *e.g.*, *State* v. *McCullum*, 656 P.2d 1064, 1071 (Wash. 1983) (citing *Mullaney* v. *Wilbur*, 421 U.S. 684 (1975)). State courts outside Ohio have also held similar due process protections arise from that premise, such as the right to challenge the sufficiency of the evidence underlying the jury's conclusions on appeal.

These issues have been percolating in the courts, but the addition of a new and likely incorrect decision from another State sours the brew. That change will spread quickly, and in doing so will undermine thousands of high-stakes criminal proceedings drawing from this well. Thus, the scope and weight of these issues warrant this Court's intervention now.

I. The Constitutional Uncertainty Compounded By *Messenger* Needs To Be Resolved, Because It Implicates Freestanding Laws Permitting Forceful Self-Defense In Many Other States.

In 2019, the Ohio General Assembly added a sweeping permission to the statute delineating self-defense. "**A person is allowed to act in self-defense**, defense of another, or defense of that person's residence." Oh. Rev. Code § 2901.05(B)(1) (emphasis added). Once a defendant invokes self-defense, the statute requires the prosecution to disprove that claim beyond a reasonable doubt. *Id.* But at least as a statutory matter, the defendant still has the burden of introducing the issue. *Id.*

Thus, in Ohio, acting in "self-defense" is not confined to a narrow exception from generally applicable laws. Rather, generally appliable laws

deem the use of force lawful conduct in the first instance.

Other States use a formulation very similar to Ohio's. For example, Washington's self-defense statute provides that using force on another person is "**not unlawful**" when "preventing . . . an offense against [one's] person" or "other malicious interference." Wash. Crim. Code § 9A.16.020(3) (emphasis added). Lest there be any doubt, Washington law goes further to provide that no one "shall be placed in legal jeopardy" for "protecting . . . himself or herself, his or her family, or his or her real or personal property" "by any reasonable means necessary." Wash. Crim. Code § 9A.16.110. Similarly, Vermont law provides that anyone who "kills or wounds another" in self-defense "**shall be guiltless**." 13 V.S.A. § 2305.

Many other States take a combined approach—including "self-defense" among justifications and other exceptions to the elements of crimes, but also enacting statutes clarifying that the use of force in self-defense is lawful conduct in and of itself. Alabama is one such State. As a general matter, Alabama law provides that a "justification or excuse" for otherwise-criminal conduct is a "defense" that must be raised by the defendant. Ala. Code § 13A-3-21. Alabama Code Section 13A-3-23 then delineates when a person "is justified in using physical force upon another person in order to defend himself or herself," thereby establishing elements of a defense. But Alabama law does not stop there. More than simply creating another defense, Alabama's self-defense statute offers a blanket legal protection: "A person who uses force . . . as justified and permitted in this section is

immune from criminal prosecution and civil action for the use of such force."[2] Ala. Code § 13A-3-23(d)(1) (emphasis added).

At least 12 other States take this combined approach, in effect treating self-defense as both an affirmative defense and inherently lawful conduct. *See* Colo. Rev. Stat. § 18-1-704.5(3); Fla. Stat. § 776.032; Ga. Code § 16-3-24.2; Idaho Code § 19-202a(1); Iowa Code § 704.13; Kan. Stat. § 21-5231; Ky. Rev. Stat. § 503.085; Mich. Comp. Laws §780.961(1); N.C. Gen. Stat. § 14-51.3; Okla. Stat. Tit. 21 § 1289.25(f); S.C. Code § 16-11-450; S.D. Codified Laws § 22-18-4.8; Utah Code § 76-2-309.

In short, more States are elevating the legal status of acts done in self-defense—sometimes to the point of making the act lawful conduct as a first-order matter rather than a second-order exception to a definition of criminal conduct. Nonetheless, variations within this trend have led different state courts to different conclusions about the constitutional implications of such broad authorizations. *See* Pet. Br. pp 18-22. Some of this variation is unsurprising and even expected. After all, this Court has established that the manner in which a State's legislature defines a particular crime "may, at least in part" shape the prosecutor's resulting "constitutional duty to negate

---

[2] The statute contains a caveat, that this immunity does not apply if "the force" at issue was itself "determined to be unlawful." Ala. Code § 13A-3-23(d)(1). Georgia's largely identical statute clarifies that this caveat applies to someone who "utilizes a weapon the carrying or possession of which is unlawful" in the course of defending themselves. Ga. Code § 16-3-24.2. In other words, it does not create a logical feedback loop whereby the use of force is lawful so long as it is not unlawful. Rather, the force used is evaluated separately from the decision to use force.

affirmative defenses" at trial. *Engle* v. *Isaac*, 456 U.S. 107, 120 (1982). And even States that share the broad approach to self-defense vary in defining the contours of the rule—to say nothing of defining the underlying crimes themselves.

But following *Messenger*, this trend arcs through a thicker atmosphere of uncertainty about how such generalized authorizations impact constitutional standards of proof—both at trial and on appeal. This Court should act to clarify the issues, particularly given the scale and stakes involved.

II. Constitutional Uncertainty And Error In Self-Defense Law Will Harm Many Defendants Facing The Gravest Criminal Cases.

The Sixth and Fourteenth Amendment questions at issue are weighty in their own right, but become all the more serious by playing out in the self-defense context. First and foremost, self-defense claims only arise in response to alleged crimes of violence, which often carry severe sentences. So each case is significant, but how many cases are there?

It is not readily apparent how common self-defense claims are in Ohio, complicating any effort to quantify the impact of these issues. But observations about the criminal justice system as a whole cast enough light on the problem to measure its silhouette.

1. At least in Ohio, every case involving allegations of violence is impacted by these issues to some degree. Ohio's self-defense statute, like that of most States, is not confined to any specific crime or crimes. It merely blesses the "use of force," Ohio Rev. Code § 2901.05(B)(1), and thus bears on any allegation of violence—whether assault, manslaughter, or murder.

Therefore, at a minimum there is a Sixth and Fourteenth Amendment question at the heart of every indictment for violent crime in Ohio: Is the State obligated to disprove self-defense in order to prove a crime of violence occurred?

These issues will also prevent defendants from challenging the sufficiency of the evidence used to convict them. To be sure, not every defendant will experience the full impact of that decision. There are certainly some violent cases that do not involve serious litigation of self-defense claims, and thus are unlikely to see the evidence on that point challenged on appeal. But many cases do raise self-defense, even now when the State is not required to disprove it in every case.

Thus, for the large number of defendants that do raise self-defense, the decision below hurts twice: First at trial, when the defendant must clear a burden of production before invoking the statute which (at least arguably) blessed his conduct as lawful; second, and more egregiously, on appeal when he is deprived of the opportunity to challenge the sufficiency of the State's evidence on that same question.

These issues are significant, as they frame the terms of engagement for deciding a defendant's innocence or guilt on serious charges. And that significance is widespread, because self-defense and crimes of violence are widespread.

2. Although Ohio's violent crime rate has fallen in recent years, cases involving violent crime are among the most common.

In 2022, Ohioans reported 28,566 instances of violent crimes. LEG. SERV. COMM'N, OHIO'S VIOLENT AND PROPERTY CRIME RATES 2 (accessed Nov. 27, 2024), *available at* https://perma.cc/4HKE-TXP.

Excluding crimes beyond the scope of self-defense—*i.e.*, rapes and robberies—still leaves over 17,300 cases. *Id.* If even half of these reports ultimately led to an indictment, then it would amount to over 8,600 criminal cases proceeding on unclear constitutional footing in just one year.

The same picture emerges looking backwards from the end of the criminal justice process. As of January 2024, the Ohio Department of Rehabilitation and Corrections was holding 20,492 inmates whose most serious offense involved "crimes against persons" other than sex offenses. BUREAU RESEARCH & EVALUATION, JANUARY 2024 CENSUS OF ODRC INSTITUTIONAL POPULATION 1 (Jan. 2024), *available at* https://perma.cc/4RM8-CK8D. In other words, just over 45.5% of Ohio's current prison population is primarily serving time for violent offenses. *Id.* As this statistic excludes inmates who committed violent crimes but are also serving time for "more serious" offenses in other categories—not to mention any defendants who were charged and acquitted—the true number of violent crime indictments is no doubt higher still. *Id.*

Taken together, these figures suggest close to half of criminal defendants in Ohio will at least cross the shaky footing left by *Messenger*, with some percentage of them eventually running into its barriers to appellate review. This Court should act now to resolve the issue—for Ohio, for States like Ohio, and anyone in those States facing criminal charges for defending themselves.

CONCLUSION

For the foregoing reasons, the Court should grant Azali's Petition, review this case, and reverse the judgment below.

Respectfully submitted.

CULLEN SWEENEY
Chief Public Defender

THOMAS T. LAMPMAN
Assistant Public Defender
COUNSEL OF RECORD

OFFICE OF THE CUYAHOGA COUNTY PUBLIC DEFENDER

310 W. Lakeside Ave
Suite 200
Cleveland, OH 44113
tlampman@cuyahogacounty.us
(216) 443-7583

MELISSA A. GHRIST
Adjunct Professor

MILTON AND CHARLOTTE KRAMER LAW CLINIC
CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

11075 East Boulevard
Cleveland, Ohio 44106
Tel.: (216) 368-2766
Fax: (216) 368-5137
Email: mghrist-lawclinic@case.edu

Counsel for the Cuyahoga County Public Defender as Amicus Curiae

December 2, 2024

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]