

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OMNISUN AZALI, PETITIONER

v.

THE STATE OF OHIO, RESPONDENT.

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

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A
WRIT OF CERTIORARI**

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To the HONORABLE BRETT M. KAVANAUGH, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Petitioner, Omnisun Azali (“Azali”), respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to the Supreme Court of Ohio for sixty days until and including October 25, 2024. The Supreme Court of Ohio declined discretionary review of the judgment and opinion that Petitioner seeks to appeal on May 28, 2024. *Judgment of the Supreme Court of Ohio filed May 28, 2024, attached at Apx. 0001; Journal Entry of the Ohio Court of Appeals filed January 31, 2024, attached at Apx. 0002-5; Journal Entry and Opinion of the Ohio Court of Appeals filed December 21, 2023, attached at Apx. 0006-56.* Without the requested extension, the time for filing the petition will conclude on August 26, 2024. This application is timely because it has been submitted more than ten days prior to the date on which the time for filing the petition is to expire.

This case presents an important question about the fundamental rights to a trial by jury and due process protected by the Sixth and Fourteenth Amendments to the United States Constitution. Azali asked a panel of the Ohio Court of Appeals, Eighth District, to review the sufficiency of the evidence supporting his convictions for aggravated murder and related crimes, particularly focusing these arguments on whether the State submitted legally sufficient proof that he had not been engaged in lawful self-defense. The panel declined to do so in reliance upon the Supreme Court of Ohio’s recent decision, *State v. Messenger*, 2022-Ohio-4562, instead limiting review to the manifest weight of the evidence. In *Messenger*, the court held that self-defense

is still an affirmative defense, placing the burden of production as to that fact on a criminal defendant, despite changes to Ohio's statutory law. *Apx. 00019-20*. But, after this Court last considered that same issue in *Engle v. Isaac*, 456 U.S. 107, 119-120 (1982), Ohio's General Assembly amended the self-defense statute effective March 28, 2019, directing that a "person is allowed to act in self-defense, defense of another, or defense of that person's residence." *Ohio Rev. Code § 2901.05(B)(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 the State to prove beyond a reasonable doubt that a person accused of a violent crime was not engaged in specifically permitted self-defense? Does the Sixth Amendment standard for determining which facts constitute the elements of a crime apply within an appellate court's Fourteenth-Amendment review for sufficiency of the evidence and thus dictate the factual issues that must be considered? This Court's jurisdiction is derived from 28 U.S.C. § 1257(a).

As justification for the requested extension, counsel for Petitioner Azali have been and will be engaged in time-consuming briefing commitments during the months following issuance of the Supreme Court of Ohio's judgment declining discretionary review of his appeal. Between May 29 and June 10, 2024, Attorney Louis E. Grube worked all day, every day, with the assistance of Attorney Kendra N. Davitt on the opening brief in *State v. Wagner*, Pike County Ohio Case No. 23CA919, an appeal from a 103-day trial that generated a 2,365-page docket, 21,131 pages of hearing transcripts, and two full rooms of admitted and marked-but-not-admitted evidence. During the same period, Ms. Davitt assisted Attorney Paul W. Flowers in

submitting briefing on the merits in two other appeals, *Kerby v. Zerick*, Franklin County Ohio Case No. 24AP-235, and *Favorite v. Cleveland Clinic Foundation*, Cuyahoga County Ohio Case No. CA-24-113642. On June 17, 2024, Mr. Grube submitted post-judgment motions in an appeal, *Barberton v. Woodarski*, Summit County Ohio Case No. 30659. On June 27, 2024, Mr. Grube and Ms. Davitt submitted briefing in two more appeals, *State v. Gibson*, Cuyahoga County Ohio Case No. CA-24-113542, and *Smith v. Mercy Health-Clermont Hospital, LLC*, Clermont County Ohio Case No. CA2024-02-010. On July 1, 2024, the attorneys submitted an opening brief in *Ferrell v. The Ohio State Univ. Med. Ctr.*, Franklin County Ohio Case No. 24AP-84. On July 16, 2024, they submitted another opening brief in *Hrina v. KLS Martin, L.P.*, Cuyahoga County Ohio Case No. CA-24-113963. On July 23, 2024, Mr. Flowers and Ms. Davitt submitted a merit brief to the Supreme Court of Ohio in *Hoskins v. Cleveland*, S. Ct. Ohio No. 2023-1344. And on July 29, 2024, they filed a brief opposing discretionary review before the Supreme Court of Ohio in *Allied Health & Chiropractic, LLC v. State of Ohio*, S. Ct. Ohio No. 2024-945.

In the final weeks before Petitioner Azali's current deadline of August 26, 2024, undersigned counsel have been and will be particularly busy with briefing commitments, including submissions as to the appropriateness of discretionary review before the Supreme Court of Ohio in both *Estate of Crnjak v. Lake Hospital Sys., Inc.*, S. Ct. Ohio No. 2024-0981, and *State v. Shomo sub nom. Smith*, S. Ct. Ohio No. 2024-1118, and a reply brief on the merits in *Laney v. The Ohio State Univ. Wexner Med. Ctr.*, Franklin County Ohio Case No. 24AP-288, all of which were

submitted on August 5, 2024. The attorneys will all be required to devote substantial time and attention to briefing in three merits cases pending before the Supreme Court of Ohio in *Ashmus v. Coughlin*, S. Ct. Ohio No. 2024-264, *Lewis v. MedCentral Health Sys. dba OhioHealth Mansfield Hosp.*, S. Ct. Ohio No. 2024-451, and *State ex rel. Culver v. Indus. Comm.*, S. Ct. Ohio No. 2024-595. During the same period, Mr. Grube and Ms. Davitt will be required to submit opening briefs in two more appeals, *State v. Sanchez*, Cuyahoga County Ohio Case No. CA-24-114011, and *State v. Ragsdale*, Summit County Ohio Case No. 30981, along with one more brief requesting discretionary review by the Supreme Court of Ohio of the decision of the intermediate appellate court in *Moore v. Mercy Med. Ctr.*, Stark County Ohio Case No. 2023-CA-145.

CONCLUSION

For the foregoing reasons, Petitioner Azali respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to the Supreme Court of Ohio for sixty days until and including October 25, 2024.

Respectfully Submitted,

/s/ Louis E. Grube



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