

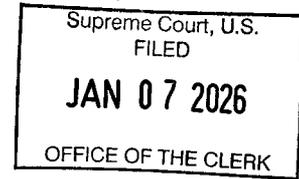
**25 - 6866**

No.

**ORIGINAL**

In the Supreme Court of the United States

Malik Allah-U-Akbar, Petitioner,

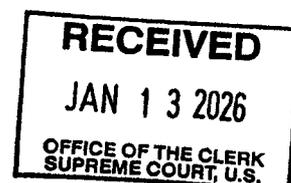


v.

David A. Schroeder, Respondent.

On Petition for a Writ of Certiorari to the Ohio Supreme Court

Malik Allah-U-Akbar  
Ashtabula County Jail  
25 W. Jefferson Street  
Jefferson, Ohio 44047  
Petitioner, Pro Se



## QUESTIONS PRESENTED

1. Whether, consistent with *Hewitt v. United States*, 145 S. Ct. 2165 (2025), a vacated conviction is void ab initio and wholly nullified, such that courts may not continue to give prospective legal effect thereto under the Due Process, Privileges and Immunities, Suspension and Supremacy Clauses of the United States Constitution.
2. Whether a state court lacks jurisdiction over the subject matter of a statute after the legislature's repeal of said statute, repealed prior to alleged offense, contrary to the Separation of Powers Doctrine, Due Process and Supremacy Clauses of the United States Constitution.
3. Whether dismissal of a predicate offense (aggravated robbery), which is an essential element of the alleged greater offense, deprives a trial court of jurisdiction to impose a conviction and sentence dependent on that offense, and whether reliance on the dismissed offense violates the Double Jeopardy Clause, Due Process and Cruel and Unusual Punishment Prohibitions of the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.
4. Whether a trial court lacks jurisdiction to "increase the prescribed range of penalties" based on "facts" not found by a jury, including a dismissed offense non-statutory aggravating circumstances in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the Ohio Supreme Court. In light of *Hewitt v. United States*, 145 S. Ct. 2165, 2173-74 (2025), Petitioner requests that the Court grant certiorari, vacate the judgment below, and remand for reconsideration.

## TABLE OF CONTENTS

Motion for Leave to Proceed In Forma Pauperis .....	i
Affidavit of Indigence .....	ii
Questions Presented .....	1
Petition for Writ of Certiorari.....	2
Table of Contents .....	3-4
Parties to the Proceeding .....	5
Table of Authorities .....	6-9
Opinions Below .....	10
Jurisdiction .....	11
Statement of the Case .....	12
Summary of Argument .....	13-14
Reasons for Granting the Petition .....	15-25
Conclusion .....	26
APPENDIX A: Ohio Supreme Court Opinion, November 5, 2025 .....	A-1
APPENDIX B: Eleventh District Court of Appeals Opinion, December 31, 2024 .	B-1
APPENDIX C: "Trial Court" Entries, June 12, 2024 .....	C-1
APPENDIX D: State Court Vacation of Judgment of Conviction, May 29, 2024 ...	D-1

APPENDIX E: State Court Judgment of Conviction, June 9, 1998 ..... E-1

APPENDIX F: Request for Warrant to Arrest on Indictment, March 5, 2024 ..... F-1

APPENDIX G: Indictment Attached to "Warrant" ..... G-1

APPENDIX H: Repeal of R.C. 2929.04..... H-1

APPENDIX I: Dismissal of Aggravated Robbery Charges Discovered 2003 ..... I-1

Certificate of Service

Proof of Service

Affidavit of Timely Filing

**PARTIES TO THE PROCEEDING**

**Petitioner:** Malik Allah-U-Akbar

**Respondent:** David A. Schroeder, Judge

## TABLE OF AUTHORITIES

### Cases

<i>[Allah-U-Akbar] v. Bradshaw</i> , 2024 U.S. Dist. LEXIS 35794 (N.D. Ohio Feb. 29, 2024) .....	13
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 490 (2000) .....	23
<i>Alleyne v. United States</i> , 570 U.S. 99, 103 (2013) .....	23
<i>Ashe v. Swenson</i> , 397 U.S. 436, 453, 454 (1970) .....	19
<i>Bell v. Maryland</i> , 378 U.S. 226, 230-231 (1964) .....	17
<i>Betterman v. Montana</i> , 578 U.S. 437 (2016) .....	14
<i>Crist v. Bretz</i> , 437 U.S. 28, 32 (1978) .....	19
<i>Evans v. Michigan</i> , 568 U.S. 313, 318 (2013) .....	20
<i>Hendrix v. United States</i> , 219 U.S. 79, 81 (1911) .....	13, 17
<i>Hewitt v. United States</i> , 145 S. Ct. 2165, 2173-74 (2025) .....	1, 2, 12, 14
<i>Johnson v. Mississippi</i> , 486 U.S. 578, 585 (1988) .....	13, 21
<i>Johnson v. United States</i> , 544 U.S. 295, 302, 307 (2005) .....	14
<i>Montgomery v. Louisiana</i> , 577 U.S. 190, 203 (2016) .....	18

<i>Nelson v. Colorado</i> , 581 U.S. 128, 129, 130 (2017) .....	21
<i>Norris v. Crocker</i> , 54 U.S. 429, 440 (1852) .....	13, 17
<i>State v. Bryski</i> , 2012-Ohio-3518, P. 5 (11 <sup>th</sup> dist.) .....	20, 21
<i>State ex rel. Douglas v. Burlaw</i> , <u>2005-Ohio-4382, P. 14</u> (2005) .....	20, 22
<i>State v. Jackson</i> , <u>2017-Ohio-7469</u> , P. 10 (2017) .....	20
<i>State v. Ketterer</i> , 2010-Ohio-3831, P. 17, 18 (Ohio 2010) .....	15
<i>United States v. Chambers</i> , 291 U.S. 217, 222-223 (1934) .....	17
<i>United States v. Haymond</i> , 588 U.S. 634, 642, 647 (2019) .....	13, 18, 23
<i>United States v. Tynen</i> , 78 U.S. 88, 95 (1870) .....	17
<i>Yeaton v. United States</i> , 9 U.S. 281, 283 (1809) .....	17
<b>Statutes</b>	
28 U.S.C. § 2254 (a), (b)(1), (d), (e)(1) .....	16
1997 Sub.H.B. No. 151 .....	16
R.C. 2929.04(A)(6) .....	11,12, 16, 24
<b>Constitutional Provisions</b>	
Sixth Amendment to the U.S. Constitution .....	13, 23, 25

Fourteenth Amendment to the U.S. Constitution ..... 17, 18, 24

Supremacy Clause, Art. VI, cl. 2 ..... 2, 12, 15, 17, 18

Suspension Clause, Art. I, sec. 9 ..... 13, 15

## OPINIONS BELOW

The opinion of the Supreme Court of Ohio appears at *State ex rel. Allah-U-Akbar v. Schroeder*, 2025-Ohio-5003. The opinion of the Eleventh District Court of Appeals appears at *State ex rel. Allah-U-Akbar v. Schroeder*, 2024-Ohio-6118

## **JURISDICTION**

The judgment of the Supreme Court of Ohio was entered on November 5, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

## STATEMENT OF THE CASE

August 22, 2022, the Sixth Circuit granted a conditional writ of habeas corpus, reversing the judgment. When Ohio failed to timely cure the error, a request for an extension to comply was denied November 14, 2023, the mandate expired, November 22, 2023, and the federal district court issued an unconditional writ of habeas corpus on February 29, 2024, ordering Petitioner's unconditional release. Petitioner was purportedly "arrested" on a "warrant on indictment," March 5, 2024 and transferred to the county jail, Ex. Z. On May 29, 2024, the Ashtabula County Court of Common Pleas vacated the judgment of conviction, Ex. 1(B); APPENDIX D.

Despite the purported "arrest on indictment" from 1997, and vacatur, the lower courts claim Petitioner is "convicted" and are operating under the terms of the conditional writ. He sought writs of prohibition and mandamus in the Eleventh District, arguing lack of jurisdiction based on (1) repeal of R.C. 2929.04(A)(6), (2) dismissal of aggravated robbery charges, and (3) the attempt to conduct proceedings, impose sentence based on facts not found by a jury. The Eleventh District dismissed, and the Ohio Supreme Court affirmed, holding Petitioner had adequate remedies by appeal and that jurisdiction was not patently lacking.

Petitioner filed motions to strike and for reconsideration, emphasizing judicial admissions, estoppel, and for judicial notice of the controlling effect of *Hewitt v. United States* (2025), which held vacatur wholly nullifies a conviction, which the court purported to grant and failed to apply *Hewitt*. The other motions were denied.

## SUMMARY OF ARGUMENT

The decision of the Supreme Court of Ohio in *State ex rel. Allah-U-Akbar v. Schroeder*, 2025-Ohio-5003, presents fundamental conflicts with this Court's precedents and raises questions of exceptional importance.

First, this Court's ruling in *Hewitt v. United States*, 145 S. Ct. 2165, 2173-74 (2025), makes clear that vacatur wholly nullifies a conviction, rendering it void ab initio and restoring Petitioner to the position of one accused, not convicted. Yet the lower courts and Ohio Supreme Court are treating the vacated judgment of conviction as having prospective legal effect. This direct conflict with *Hewitt* warrants review to reaffirm the supremacy of federal law and ensure uniform application of habeas corpus and vacatur's legal effect.

Second, neither jurisdiction, nor probable cause, can rest on repealed statutes. The alleged indictment includes death-penalty specifications, under R.C. 2929.04(A)(6), that had been repealed prior to indictment. Under *Norris v. Crocker*, 54 U.S. 429 (1852) and *Hendrix v. United States*, 219 U.S. 79, 81 (1911), judgments based on repealed statutes are void. The Ohio Court's refusal to recognize repeal as jurisdictional contradicts controlling precedent and otherwise violates the separation of powers and Supremacy Clause.

Third, neither jurisdiction, nor probable cause, exists for a dismissed predicate offense, to sustain any detention, proceedings after *Apprendi* and its progeny. The aggravated robbery charges were dismissed in 1998, yet Ohio courts continue to rely

on them to support detention. This violates Double Jeopardy Clause and the presumption of innocence recognized in *Johnson v. Mississippi*. Judicial admissions and estoppel bar the state from relying dismissed charges, yet the Ohio Supreme Court disregarded these principles.

Fourth, absent jury findings of essential elements, the Petitioner was denied a Trial by Jury. Under *Apprendi*, *Alleyne*, and *Haymond*, judicial fact-finding cannot substitute for jury determinations. The Ohio Supreme Court's decision disregards this Court's Sixth Amendment jurisprudence and permits sentencing without lawful jury findings.

Finally, Ohio's failure to comply with the unconditional writ, [*Allah-U-Akbar*] *v. Bradshaw*, 2024 U.S. Dist. LEXIS 35794. Pgs. 31-32 (N.D. Ohio Feb. 29, 2024), violates the Suspension Clause and the expiration of speedy trial rights require dismissal. Under *Betterman v. Montana*, the sole remedy for speedy trial violations is dismissal, not appeal. The Ohio Supreme Court's reliance on "adequate remedy by appeal" violates substantive constitutional guarantees.

This case presents recurring issues of national importance: the supremacy of federal habeas law, the legal effect of vacatur, the limits of state jurisdiction under repealed statutes and dismissed charges, and the constitutional requirement of jury findings for conviction and sentence. Certiorari is warranted to resolve these conflicts, enforce constitutional protections, and prevent states from circumventing federal law and this Court's precedents.

## REASONS FOR GRANTING THE PETITION

### I. The Ohio Supreme Court's Decision is a Failure to Apply Clearly Established Federal Law of *Hewitt v. United States* (2025) on the Legal Effect of Vacatur.

This Court in *Hewitt v. United States*, 145 S. Ct. 2165, 2173-74 (2025), held that vacated convictions are void *ab initio*, wholly nullified, and leave defendants "as if no trial had ever taken place." Vacatur "wipes the slate clean" and restores the presumption of innocence.

Vacation of judgment of conviction is a matter of Fact. *Johnson v. United States*, 544 U.S. 295, 307-308 (2005). Failure to Accept vacation of the judgment of conviction is an unreasonable determination of fact. The court also unreasonably fails to follow its own precedent: "A judgment of conviction does not exist without a sentence." *State v. Gwen*, 2012-Ohio-5046, P. 12 (2012).

The Ohio Supreme Court's decision in *State ex rel. Allah-U-Akbar v. Schroeder*, 2025-Ohio-5003, unreasonably fails to apply *Hewitt*. Despite the February 29, 2024 unconditional, unconditional release order and May 29, 2024 vacatur of the June 9, 1998 judgment of conviction, APPENDIX D, the Sixth Circuit and Ohio courts are claiming Petitioner is convicted and subject to "resentencing." This approach denies the controlling federal principle that vacatur "wholly nullifie[s]" the judgment.

After vacatur, however, the court gives it no legal effect. And, the Ohio Supreme Court claims to have taken judicial notice of *Hewitt*, yet failed to apply it and its own precedent *State v. Ketterer*, 2010-Ohio-3831, P. 17, 18 (Ohio 2010), which defines the vacated June 9, 1998 judgment as the judgment of conviction.

The state and federal courts' refusal to apply clearly established federal law warrants certiorari to reaffirm the supremacy of federal law, including the Suspension Clause, Privileges and Immunities Clause, *Hewitt*, Equal Protection of the laws and uniform application of vacatur's legal effect.

28 U.S.C.S. 2254 (a), (b)(1), (d), (e)(1) refer only to "a person in custody pursuant to the judgment of a State court." The judgment is indivisible. "A person cannot be held in custody "pursuant to" a sentence, but only pursuant to "the" (e.g., one) judgment, which includes both the conviction and sentence." *Magwood v. Patterson*, 561 U.S. 320, 357 (2010) (J., Kennedy, dissenting).

The Sixth Circuit order to vacate the "death sentence" was incorrect and the consequences have resulted in Suspension of the writ. Neither federal or state courts have jurisdiction to act contrary to the plain language of the statute. Const. Amend. XIV. Supremacy Clause Art. IV. Cl. 2.

## II. The Ohio Supreme Court's Decision Regarding Repeal is Contrary to Clearly Established Federal Law.

Petitioner's alleged indictment attempted to charge repealed death-penalty specifications under R.C. 2929.04(A)(6) requiring proof the decedent was a "peace officer as defined in section 2935.01 of the Revised Code." That version of the statute was repealed, effective September 16, 1997, two months before the November 26, 1997 alleged indictment. 1997 Sub.H.B. No. 151; APPENDIX H.

R.C. 2929.04(A)(6), Eff. September 16, 1997, required the elements: "*The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code,*" [alleged Defendant had] "*reasonable cause to know or knew to be a law enforcement officer as so defined,*" [and alleged Defendant had] "*specific purpose to kill a law enforcement officer as so defined.*" 1997 Sub.H.B. No. 151. These elements were not charged, submitted to the jury, nor found beyond a reasonable doubt. APPENDIX G.

The Court has held: It has long been settled, on general Principles, that after the expiration or repeal of a law, no penalty can be enforced nor punishment inflicted and a case must be dismissed. When an act of the legislature is repealed, it must be considered as if it never existed... No judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted. *Yeaton v. United States*, 9 U.S. 281, 283 (1809); Repeal deprives the court of jurisdiction over the subject matter. *Norris v. Crocker*, 54 U.S. 429, 440 (1852); There can be no legal conviction,

nor any valid judgment pronounced upon conviction, unless the law creating the offence be at the time in existence. By the repeal the legislative will is expressed that no further proceedings be had under the act repealed. *United States v. Tynen*, 78 U.S. 88, 95 (1870); "Repeal of the statute takes away the jurisdiction." *Hendrix v. United States*, 219 U.S. 79, 81 (1911); In a case where a statute was repealed or rendered inoperative, no further proceedings could be had to enforce it. *United States v. Chambers*, 291 U.S. 217, 222-223 (1934); When the legislature repeals a criminal statute... this action requires the dismissal of a pending criminal proceeding and if the law be repealed the judgment will be reversed. *Bell v. Maryland*, 378 U.S. 226, 230-231 (1964).

The court also unreasonably failed to apply its own precedent, denying Akbar due process and equal protection of the law. *Calkins v. State*, 14 Ohio St. 222, P. 2 of syllabus (1863).

By repeal, the law became unconstitutional, per the separation of powers, Fourteenth Amendment, and Supremacy Clause, Art. IV, Cl. 2.

This Court has held: A conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment... if the laws are unconstitutional and void, the [ ] Court acquired no jurisdiction of the causes." *Montgomery v. Louisiana*, 577 U.S. 190, 203 (2016). A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. *Id.*

This Court's intervention is necessary to reiterate that "repeal deprives courts of subject matter jurisdiction," "no proceedings could be had after repeal," by repeal the law became unconstitutional and void and any imprisonment based thereon has been illegal, consistent with *Chiaverini v. City of Napoleon*, 602 U.S. 556, 562-563 (2024), and resulting judgments have been void.

Petitioner requests this Court to formally hold that what it has stated, in *Haymond v. United States*, 588 U.S. 634, 642 (2019), "In the early Republic, if an indictment or "accusation . . . lack[ed] any particular fact which the laws ma[d]e essential to the punishment," it was treated as "no accusation" at all," applies to the states. Such announcement would help prevent the kind of miscarriages of justice that have occurred in this case and others in Ohio due to its chronic failure to apply any law to defective indictments in the most serious cases.

Petitioner also requests this Court announce / reiterate that Constitutional guarantees, commands, prohibitions and interpretations thereof by this Court are jurisdictional and deprive every state actor of jurisdiction to act contrary thereto, consistent with the Fourteenth Amendment and Supremacy Clause, Art. IV., Cl. 2., *Cooper v. Aaron*, 358 U.S. 1, 16-20 (1958), which Ohio courts consistently, unreasonably refuse to apply in appellate, habeas corpus, mandamus and prohibition actions.

### III. The Ohio Supreme Court's Decision is Contrary to Clearly Established Federal Law Regarding Double Jeopardy, Due Process, and Equal Protection.

On June 9, 1998, aggravated robbery charges in Case No. 1997-CR-220 were dismissed by nolle prosequi. APPENDIX I. Yet the aggravated murder theory and Specification 1 in Case No. 1997-CR-221 depended on the same exact aggravated robbery as the predicate offense.

- a. The two "indictments" violated Akbar's valued Right to have a "trial completed by the particular tribunal selected for that purpose." *Crist v. Bretz*, 437 U.S. 28, 32 (1978). The Double Jeopardy Clause requires the prosecution to join at one trial all charges. *Ashe v. Swenson*, 397 U.S. 436, 453, 454 (1970).
- b. A state may not prosecute an [aggravated] murder and the predicate felony separately because the predicate is an element of the greater offense. *Illinois v. Vitale*, 447 U.S. 410, 420-421 (1980).
- c. Dismissal of aggravated robbery, Ex. 38, is a final judgment. *State v. Jackson*, 2017-Ohio-7469, P. 10 (2017).
- d. Dismissal of aggravated robbery resolves some elements of aggravated murder, rendering it an acquittal, barring post-acquittal fact-findings. *Evans v. Michigan*, 568 U.S. 313, 318 (2013). Ex. 38.

- e. "When a trial court unconditionally dismisses a case or a case has been properly voluntarily dismissed \* \* \*, the trial court patently and unambiguously lacks jurisdiction to proceed." *State ex rel. Douglas v. Burlaw*, 2005-Ohio-4382, P. 14 (2005).
- f. Regarding aggravated robbery and any "case" based upon it, "a present and justiciable controversy does not exist because the case was "over" when the trial court granted the state's motion to dismiss." *State v. Bryski*, 2012-Ohio-3518, P. 8 (11<sup>th</sup> Dist.) Ex. 38; APPENDIX I.
- g. "[W]e have held that a writ of prohibition will prevent the exercise of jurisdiction when an entire case has been dismissed." (Emphasis deleted.) *State ex rel. Douglas v. Burlaw*, 106 Ohio St. 3d 180, 2005-Ohio-4382, ¶ 14, 833 N.E.2d 293. "When a criminal case is dismissed, it is over—except in the case where the dismissal is appealed." *Id.* at ¶ 13, quoting *State ex rel. Flynt v. Dinkelacker*, 156 Ohio App. 3d 595, 2004-Ohio-1695, ¶ 20, 807 N.E.2d 967. *State ex rel. Conomy v. Rohrer*, 2025-Ohio-5296, P. 33 (December 2, 2025).
- h. Dismissal deprived the court of jurisdiction over aggravated robbery and over Petitioner's Person for that offense.

Therefore, dismissal *nolle prosequi* is an acquittal of the predicate and greater offense because it is a "ruling that the prosecution's proof is insufficient to establish criminal liability for [the predicate and, thus, the greater] offense." *Evans v. Michigan*, 568 U. S., 313, 318 (2013).

As this Court held in *Johnson v. Mississippi*, 486 U.S. 578, 585 (1988), vacated convictions cannot serve as predicates for enhancing punishment and absent conviction of aggravated robbery, Petitioner "must be presumed innocent." *Nelson v. Colorado*, 581 U.S. 128, 130 (2017).

Petitioner's Motion to Strike emphasized estoppel: the state admitted it had not found Akbar guilty of aggravated robbery by its motion to dismiss nolle prosequi and is bound by that admission. Judicial admissions are conclusive. *Std. Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013). The Ohio Supreme Court ignored this binding effect, allowing proceedings based on a dismissed offense.

Regarding aggravated robbery and any "case" based upon it, "a present and justiciable controversy does not exist because the case was "over" when the trial court granted the state's motion to dismiss." *State v. Bryski*, 2012-Ohio-3518, P. 8 (11<sup>th</sup> Dist.) Ex. 38; APPENDIX I.

This Court should grant certiorari to clarify that dismissed charges cannot sustain probable cause, jurisdiction or conviction, and that reliance on them violates fundamental Double Jeopardy, Due Process and Jury Trial guarantees.

Dismissal deprived the court of subject matter jurisdiction over aggravated robbery and over Akbar's Person, rendering the court's June 11, 1998 judgment void ab initio. The court unreasonably failed to follow federal law and its own precedent, in *Burlew*, denying Akbar due process and equal protection of the law.

Conviction upon a charge not made would be sheer denial of due process. *DeJonge v. Oregon*, 299 U.S. 353, 362 (1937); It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made. *Cole v. Arkansas*, 333 U.S. 196, 201 (1948); A court cannot permit a defendant to be tried on charges that are not made in the indictment against him. *Stirone v. United States*, 361 U.S. 212, 217 (1960); It is ancient doctrine of both the common law and of our Constitution that a defendant cannot be held to answer a charge not contained in the indictment brought against him. *Schmuck v. United States*, 489 U.S. 705, 717 (1989).

#### **IV. The Ohio Supreme Court's Decision is Contrary to Clearly Established Federal Law of *Apprendi* and its Progeny.**

Consistent with the Sixth Amendment's promise of a trial by jury, this Court has held that "[o]nly a jury may find 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'" *Erlinger v. United States*, 602 U.S. 821, 833, 144 S. Ct. 1840, 219 L. Ed. 2d 451 (2024) (quoting *Apprendi v. New Jersey*, 530 U. S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000):

"It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt." *Apprendi*, 490.

The Sixth Amendment requires that when additional elements increase the degree of an offense, the jury must find those elements. Otherwise, there is no jury verdict, Petitioner is denied a trial by jury, which is structural error under *Sullivan v. Louisiana*, 508 U.S. 275, 277-278 (1993).

This Court's Sixth Amendment jurisprudence reinforces that judicial fact-finding cannot substitute for jury determinations. *Apprendi v. New Jersey*, 530 U.S. 466 (2000), held that any fact increasing punishment must be submitted to the jury. *Alleyne v. United States*, 570 U.S. 99, 103 (2013), extended this to mandatory minimums. *Haymond v. United States*, 588 U.S. 634, 647 (2019), reaffirmed that sentencing facts are elements requiring jury findings.

By permitting "conviction," and sentencing based on judicial findings rather than jury verdicts, the Ohio Supreme Court disregarded these precedents. Without jury findings of aggravated robbery, and other statutory elements, under R.C. 2929.04(A)(6), the court lacks jurisdiction to convict, impose any sentence.

Certiorari is warranted to enforce clearly established Fourth, Fifth, Sixth and Fourteenth Amendment rulings and prevent the state from circumventing Petitioner's unreasonable seizure, Double Jeopardy, Jury Trial, and Due Process rights.

## CONCLUSION

The Ohio Supreme Court's decision conflicts with controlling federal precedent, disregards the legal effect of vacatur, sustains jurisdiction under repealed statutes and dismissed charges, and violates Sixth Amendment jury trial rights. These errors implicate fundamental constitutional protections and warrant this Court's review.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'MALIK ALLAH-U-AKBAR', written over a circular stamp or seal that is mostly obscured by the ink.