No. 20-____

IN THE

Supreme Court of the United States

DEMETREUS KEAHEY,

Petitioner,

v.

DAVE MARQUIS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

AUTUMN HAMIT PATTERSON
Counsel of Record
JONES DAY
2727 N. Harwood St.
Dallas, TX 75201
(214) 220-3939

CHARLOTTE H. TAYLOR
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001

Counsel for Petitioner

QUESTION PRESENTED

At trial for attempted murder and related counts, the heart of Petitioner's defense was that he acted in self-defense: he testified that he intentionally shot the alleged victim who unexpectedly charged at him with a knife. But the trial court refused to give any self-defense instruction to the jury and prevented the jury from finding whether Petitioner was not guilty because he acted in self-defense. The state appellate court rejected Petitioner's arguments that the trial court's ruling deprived him of his jury trial and due process rights under the Sixth and Fourteenth Amendments, and the federal district court denied Petitioner's habeas petition.

On appeal, the Sixth Circuit held—creating a split with two circuits—that a refusal to give a self-defense jury instruction cannot contradict, or be an unreasonable application of, this Court's precedents regarding a defendant's right to present a complete defense to a jury and to have a jury decide whether that defense is valid or the defendant is guilty. Despite the Second and Sixth Amendments, history and tradition, and this Court's cases, the Sixth Circuit concluded that there is no constitutional right to present self-defense as a defense to a prosecution and to have a jury decide that issue.

The question presented is: Whether the failure to give a self-defense jury instruction contradicts, or is an unreasonable application of, clearly established federal law regarding a defendant's due process and jury trial rights when self-defense was the crux of the defendant's case and the defendant introduced evidence to support the defense?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Demetreus Keahey and Respondent Dave Marquis, warden of Richland Correctional Institution, are the parties to the proceeding before this Court, and they were the parties before the Sixth Circuit. During the proceeding before the district court, a previous warden of Richland Correctional Institution, Margaret Bradshaw, was the respondent. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

State of Ohio v. Demetreus A. Keahey, No. 2011-CR-275, Common Pleas Court of Erie County. Judgment entered Dec. 17, 2012.

State of Ohio v. Demetreus A. Keahey, No. E-13-009, Court of Appeals of Ohio for the Sixth Appellate District. Judgment entered Oct. 24, 2014.

State of Ohio v. Demetreus A. Keahey, No. E-13-055, Court of Appeals of Ohio for the Sixth Appellate District. Judgment entered Nov. 7, 2014.

State of Ohio v. Demetreus A. Keahey, No. 2014-1995, Supreme Court of Ohio. Order entered Apr. 8, 2015.

State of Ohio v. Demetreus A. Keahey, No. 2015-0478, Supreme Court of Ohio. Order entered June 3, 2015.

State of Ohio v. Demetreus A. Keahey, No. 2015-2133, Supreme Court of Ohio. Order entered June 3, 2015.

Demetreus A. Keahey v. Ohio, No. 14-9902, Supreme Court of the United States. Order entered Oct. 5, 2015.

Demetreus A. Keahey v. Margaret Bradshaw, No. 3:16-CV-1131, U.S. District Court for the Northern District of Ohio. Judgment entered Oct. 4, 2018.

Demetreus A. Keahey v. Dave Marquis, No. 18-4106, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Oct. 20, 2020.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL & STATUTORY AUTHORITIES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

INTRODUCTION

This case presents a circuit split on an important question with significant implications. The issue that has divided circuits is whether a failure to instruct the jury on self-defense can contradict, or be an unreasonable application of, clearly established federal law. The Second and Ninth Circuit said yes; the Sixth Circuit said no. This divergence stems from a fundamental disagreement regarding the scope of this Court's opinions about due process and jury trial rights, along with a disagreement about the proper application of AEDPA's deferential standards. Uniformity in this area is vitally important. A petitioner's ability to obtain habeas relief should not turn on the circuit in which he happens to find himself, nor should a state court receive a different level of deference based on which circuit reviews its decision.

What is more, the Sixth Circuit's decision is wrong on a crucial issue. This Court's cases regarding the Sixth and Fourteenth Amendments, along with its Second Amendment jurisprudence, establish that a right to assert self-defense as a defense to a prosecution and to have a jury decide the merits of that defense is a fundamental right safeguarded by the Constitution. Indeed, the founding generation considered self-defense and trial by one's peers to be fundamental to a free government. And they are no less important today.

OPINIONS BELOW

The opinion of the Northern District of Ohio is unreported. *Keahey v. Bradshaw*, No. 3:16CV1131, 2018 WL 4851017 (N.D. Ohio Oct. 5, 2018). Pet.App.

E. The opinion of the Sixth Circuit is reported as *Keahey v. Marquis*, 978 F.3d 474 (6th Cir. 2020). Pet.App. B.

JURISDICTION

The Sixth Circuit issued its opinion on October 20, 2020. Pet.App. B. Under the Court's March 19, 2020 Order, the deadline to file a petition for a writ of certiorari was "extended to 150 days from the date of the lower court judgment," making March 19, 2021 the deadline to file this Petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: "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." U.S. Const. amend. II.

The Sixth Amendment provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State . . . ." U.S. Const. amend. VI.

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) provides, in relevant part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground

> that he is in custody in violation of the Constitution or laws or treaties of the United States. . . .
>
> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States . . . .

28 U.S.C. § 2254.

STATEMENT OF THE CASE

At his trial for attempted murder, the heart of Petitioner Demetreus Keahey's defense was that he shot the alleged victim in self-defense. The state court recognized that Keahey introduced evidence to support self-defense, but it refused to give a self-defense jury instruction and submit that issue to the jury. Instead, the state court made credibility determinations, weighed the evidence for itself, and concluded that Keahey did not act in self-defense. This ruling stripped Keahey of his defense and guaranteed his conviction in violation of his due process and jury trial rights. The state appellate court repeated the trial court's mistakes and concluded the court's factual findings did not usurp the jury's constitutionally ordained role.

Despite the clear constitutional violation, the Sixth Circuit misconceived this Court's precedents and wrongly denied Keahey habeas relief. The Sixth Circuit rendered constitutional guarantees a nullity by holding that AEDPA precluded Keahey from vindicating his constitutional right to have a jury decide whether he was not guilty because he acted in self-defense. It held that he could not rely on this Court's cases guaranteeing criminal defendants "a meaningful opportunity to present a complete defense," a trial that "comport[s] with prevailing notions of fundamental fairness," *California v. Trombetta*, 467 U.S. 479, 485 (1984), and a jury instruction that does not "so infect[] the entire trial that the resulting conviction violates due process," *Cupp v. Naughten*, 414 U.S. 141, 147 (1973). It likewise repudiated Keahey's reliance on cases establishing defendants' right to "an opportunity to be heard," *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), and to have an impartial jury—not a judge—assess the merits of the defense in deciding whether to issue a guilty verdict, *see Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993) (explaining the right to a jury trial "includes, of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of 'guilty'").

This case thus presents the question of whether clearly established federal law regarding due process and jury trial rights can be contradicted, or unreasonably applied, when a defendant is precluded from having a jury decide his guilt or innocence on the basis of self-defense. The Second Circuit and Ninth Circuit have said yes. They have held that state courts' denial of a self-defense instruction

unreasonably applied this Court's precedents. The Sixth Circuit said no, because this Court's decisions did not address an identical situation involving the denial of a self-defense instruction. It ignored history and this Court's precedents—which confirm the fundamental nature of the right to use self-defense, assert it as a defense to a prosecution, and have a jury decide that issue—to conclude there is no well-established constitutional right to present self-defense to a jury. Accordingly, this Court's disposition of this question would resolve a circuit split on an important issue that the Sixth Circuit got wrong. And it would safeguard the constitutional right to have a jury decide whether a criminal defendant is not guilty because he acted in self-defense.

A. State Court Proceedings

1.a. Under Ohio law, a defendant is entitled to a self-defense jury instruction if he meets a "burden of production" when the self-defense evidence is viewed "in a light most favorable to the defendant." *State v. Belanger*, 941 N.E.2d 1265, 1269 (Ohio Ct. App. 2010). "The question of credibility is not to be considered," but is "an issue for the jury to determine." *Id.* Thus, a defendant can satisfy his production burden as long as "his testimony, if believed, would raise the question of self-defense in the mind of a reasonable juror." *Id.*

A defendant must meet this burden of production for three elements of self-defense under Ohio law. First, a defendant must introduce evidence that he did not "creat[e] the situation giving rise to the affray." *State v. Melchior*, 381 N.E.2d 195, 199 (Ohio 1978) (citations omitted); *see State v. Gillespie*, 874

N.E.2d 870, 874 (Ohio Ct. App. 2007) (explaining the first element "requires a defendant to show that he was not 'at fault' in creating the situation; that is, that he had not engaged in such wrongful conduct toward his assailant that the assailant was provoked to attack the defendant"); *Belanger*, 941 N.E.2d at 1269 (concluding defendant's testimony that "the victim was the aggressor, i.e., that she struck him first, and that he was in fear of being struck again" was sufficient). Second, a defendant must proffer evidence that "he had reasonable grounds to believe and an honest belief that he was in imminent danger of bodily harm" that required the use of force. *State v. Stephens*, 59 N.E.3d 612, 616 (Ohio Ct. App. 2016). Third, the defendant must offer evidence that "a reasonable means of retreat" was unavailable. *State v. Williford*, 551 N.E.2d 1279, 1282 (Ohio 1990).

1.b. At Keahey's trial for attempted murder and related counts, the main issue was whether Keahey acted in self-defense when he shot the alleged victim.

Keahey testified that he went to Joyce McGill's house to pick up his girlfriend and daughter for his daughter's doctor appointment. Pet.App. 216a–18a. Although Keahey was originally going to meet them at the doctor's office, he changed his mind because his girlfriend was under doctor's orders not to drive following a surgery, and McGill's house was on his way. Pet.App. 146a–47a, 216a–18a. When Keahey arrived, his girlfriend and daughter were not yet ready, and McGill got upset with him for walking across the carpet without taking his shoes off. Pet.App. 134a, 137a–39a, 217a–19a. Keahey decided to wait outside to avoid an argument. Pet.App. 218a–19a, 243a. As he headed down the driveway, Prince

Hampton drove into the driveway and nearly pinned Keahey against the garage door. Pet.App. 219a, 244a. Hampton then hopped out of the car and charged at Keahey with a knife. Pet.App. 219a–20a, 244a, 268a, 271a.

Keahey panicked, and with good reason. Pet.App. 219a–20a, 269a. About a month earlier, Hampton, who previously dated Keahey's girlfriend, had attacked Keahey with a knife when Keahey tried to walk away to deescalate an argument. Pet.App. 208a–11a. Keahey ended up in the ICU for several days with a collapsed lung. Pet.App. 148a–49a, 211a. While there, family and friends warned Keahey that Hampton and his Black Point Mafia friends would retaliate against him if he reported Hampton to the police. Pet.App. 213a–15a. Accordingly, Keahey did not report Hampton to the police, but he remained concerned about his safety—so he began to carry a gun. Pet.App. 275a.

Keahey was therefore understandably fearful that Hampton was going to kill him when he almost hit Keahey with the car and advanced towards Keahey with a knife. Pet.App. 275a–76a, 219a–20a. Keahey was also surprised, because he did not know that Hampton was going to be there. Pet.App. 243a. (Indeed, Keahey's girlfriend testified that Hampton was not supposed to be at the house at that time. Pet.App. 138a.) As Hampton approached with the knife, Keahey backed up, but he was cornered. Pet.App. 219a–20a, 268a. Not seeing a way to escape, Keahey pulled out his gun and fired. Pet.App. 219a–20a, 271a. Keahey then scrambled down the driveway to escape to his car, which was parked across the street. Pet.App. 219a–20a.

But before Keahey could even reach the sidewalk, he heard a gunshot. Pet.App. 219a–20a. He turned and saw Hampton coming down the driveway with a gun. Pet.App. 220a. Worried that Hampton would shoot him in the back if he continued to run towards his car, Keahey turned and fired additional shots. Pet.App. 220a–22a, 255a–56a. At one point, Keahey briefly ran at Hampton to prevent Hampton from getting a good shot at him. Pet.App. 220a–22a, 252a. Then when Hampton stopped shooting and seemed to be truly running away, Keahey retreated to his car. Pet.App. 222a, 258a, 279a.

Fearful that Hampton or his friends would attack him again, Keahey left the state. Pet.App. 224a–25a. He then turned himself in when he heard that the police were looking for him. Pet.App. 225a–26a, 247a–48a.

1.c. The prosecution disputed Keahey's account. Its theory of the case was that Keahey planned to attack Hampton that day in retaliation for the stabbing and that Keahey started the affray. Pet.App. 271a, 273a. The prosecution, however, introduced no testimony from Hampton to support that theory. Hampton refused to cooperate for the trial and could not be found. Pet.App. 180a, 185a–86a. Nor did the prosecution even have police reports with testimony supporting its theory, because Hampton was evasive immediately after the shooting and gave no information about the shooting. Instead, the prosecution based its theory on an inscrutable text message exchange between Keahey and his girlfriend, which the prosecution suggested showed Keahey wanted to retaliate against Hampton for the stabbing. Pet.App. 142a–45a. But Keahey's girlfriend

testified the texts were not about Keahey wanting to retaliate but rather about what someone told Keahey that she had said. Pet.App. 145a.

The prosecution also relied on the testimony of Joyce McGill, the mother of Keahey's girlfriend. Pet.App. 122a–24a. She initially testified that she went outside and saw Keahey shoot at Hampton as Hampton exited the car and that she did not see a gun or knife in Hampton's hands. Pet.App. 124a–26a. McGill also said that she saw Hampton run down the street with Keahey behind him before she went inside to call the police. Pet.App. 127a.

McGill's testimony that she witnessed the first shots was controverted by her daughter, who testified her mother was in the kitchen on the other side of the house when the first shots were fired, not outside. Pet.App. 139a–40a, 147a. Her daughter further testified that her mother liked Hampton, had protected Hampton in the past, and would lie for Hampton. Pet.App. 150a–51a, 153a–55a. Moreover, McGill testified later that she was actually inside the house near the door when the shooting started, not outside. Pet.App. 131a–32a. McGill also said that she did not "have any idea" whether Hampton was aggressive towards Keahey. Pet.App. 126a.

The prosecution also offered testimony from neighbors, but most of them only heard gunfire and did not see shots being fired. The only neighbor who saw a shot being fired witnessed the very end of the affray; he testified that he "didn't really see the gun," but thinks he saw one man fire a shot before getting in his car and driving away. Pet.App. 158a–60a.

The prosecution then turned to the evidence found at the scene. The focus was primarily on a knife found in the driveway and bullet fragments and casings. No gun was recovered. Pet.App. 190a. Recognizing the knife corroborated Keahey's testimony, a police officer emphasized that the knife was found closed. Pet.App. 169a–70a. But an officer also testified that someone could have closed the knife before the police arrived and McGill had already admitted that she had tampered with the scene before the police arrived, including moving Hampton's flip-flop sandals. Pet.App. 133a, 173a, 176a. Regarding the bullet fragments and casings, a state forensic expert testified only that some recovered casings were fired from the same gun. Pet.App. 195a. He could not conclusively say bullet fragments were from the same gun; instead, he testified that it was possible that the bullet fragments came from another gun. Pet.App. 196a–98a.

1.d. After closing arguments, the prosecution objected to Keahey's request for a self-defense instruction, arguing that Keahey failed to introduce evidence to support the defense. Specifically, the prosecution argued that Keahey started the affray and that Keahey violated his duty to retreat because his "self-serving" testimony that Hampton had a gun should be ignored. Pet.App. 288a–89a.

In ruling on the instruction, the court "look[ed] at the facts of the case, and these are just a few that the Court found": (1) Keahey was at fault for "creating the situation" based on the text messages and because he carried a gun and he went to McGill's house when he could have met his girlfriend and

daughter at the doctor's office; and (2) Keahey could have retreated because Hampton did not have a gun. Pet.App. 292a–93a. The court accordingly refused to instruct the jury on self-defense. Pet.App. 294a. And after hearing Keahey's testimony that he intentionally shot Hampton and being deprived of the option to conclude he acted in self-defense, the jury found Keahey guilty of attempted murder and related counts.

1.e. Keahey timely appealed his conviction, arguing that the trial court violated state law and his constitutional rights by refusing to instruct the jury on self-defense. He argued the trial court erroneously assessed credibility and disregarded record evidence supporting his self-defense claim. He further argued that the trial court violated his fair-trial rights and his Sixth Amendment rights by refusing to instruct the jury on self-defense based on facts that the Court found.

The Ohio court of appeals rejected Keahey's arguments and affirmed his conviction. Pet.App. 121a. When considering whether the trial court violated state law, the appellate court acknowledged there was evidence that Keahey did not know Hampton would be at McGill's house, Keahey had an innocent explanation for going to the house, Hampton charged at Keahey with a knife, Keahey pulled out a gun and shot at Hampton because he was afraid Hampton was going to stab him, and Keahey was afraid if he retreated to his car he would be shot in the back. Pet.App. 57a–59a. But the appellate court concluded that the trial court could consider other potential "motives" that Keahey had for going to McGill's house with a gun and that Keahey did not

testify why he did not retreat by a method other than attempting to run to his car. Pet.App. 58a–59a. Based on the conflicting evidence, the appellate court concluded the trial court did not err by ruling that Keahey failed to offer sufficient evidence of self-defense to have that issue decided by the jury. Pet.App. 58a–59a.

The appellate court then rejected Keahey's Sixth Amendment argument, concluding the trial court did not usurp the jury's role by making factual findings regarding Keahey's motives and ability to retreat but only "discharg[ed] its duty to make preliminary determinations" regarding whether the issue of self-defense would go to the jury. Pet.App. 117a–18a. It also rejected Keahey's due process arguments, reasoning the trial court did not commit any errors and thus did not deprive Keahey of his fair-trial right. Pet.App. 120a.

Keahey appealed his conviction to the Ohio Supreme Court, once again arguing the trial court's refusal to instruct the jury on self-defense violated his right to a fair jury trial under the Sixth and Fourteenth Amendments. But the Ohio Supreme Court declined discretionary review. Pet.App. 94a.

B. Federal Habeas Proceedings

After exhausting state court procedures, Keahey timely filed a pro se petition for a writ of habeas corpus. In his habeas brief, Keahey argued, in relevant part, the state court violated his Sixth and Fourteenth Amendment rights by refusing to instruct the jury on self-defense. He argued this refusal deprived him of the opportunity to present a complete defense to a jury. He further contended that the state

court undermined the role of the jury by improperly making credibility and factual determinations. The district court denied Keahey's petition and refused to issue a certificate of appealability ("COA"). Pet.App. 35a.

The Sixth Circuit, however, granted a COA on the claim that the state court violated clearly established federal law by refusing to instruct the jury on self-defense. Pet.App. 28a. But, at the merits stage, the Sixth Circuit reasoned there was no clearly established law involving a self-defense instruction so the state appellate court's decision could not have contradicted or unreasonably applied this Court's precedent. Pet.App. 10a.

Regarding the right to have a meaningful opportunity to present a complete defense, the Sixth Circuit noted that this Court had addressed claims "based on inconsistent jury instructions, a capital defendant's right to a lesser included offense instruction, the exclusion of evidence, access to evidence, and the testimony of defense witnesses." Pet.App. 7a (internal citations omitted). It concluded, however, that this Court had not applied that right to establish "a federal right to a self-defense instruction," preventing Keahey from showing that the state appellate court unreasonably applied Supreme Court precedent or that its decision was otherwise "'contrary to' clearly established Supreme Court precedent." Pet.App. 7a. Likewise the Sixth Circuit repudiated Keahey's reliance on the *Cupp* line of cases, which establish "a narrow category of state jury-instruction mistakes that violate the clearly established right to 'fundamental fairness.'" Pet.App. 7a (quoting *Dowling v. United States*, 493 U.S. 342,

352 (1990)). It concluded these cases also could not help Keahey, because this Court "has never invoked this principle in granting relief for the failure to give a self-defense instruction." Pet.App. 8a.

Finally, the Sixth Circuit ignored Keahey's reliance on history and this Court's early cases confirming that there is a federal constitutional right to present self-defense to a jury. It instead concluded that Keahey presented only a state-law error and that the Constitution does not safeguard the right to assert self-defense as a defense to a criminal prosecution. Pet.App. 8a–9a. Accordingly, the Sixth Circuit affirmed the denial of Keahey's habeas petition.

REASONS FOR GRANTING THE WRIT

The Sixth Circuit created a circuit split on a question of substantial importance: whether clearly established federal law guarantees a defendant the right to a self-defense jury instruction when he presents evidence he acted in self-defense. The Sixth Circuit held that this Court's cases delineating a criminal defendant's right to present a complete defense and have a jury decide his guilt do not clearly establish the right to a self-defense jury instruction. That was error. The Sixth Circuit's holding could render the Second Amendment's right to self-defense meaningless whenever a citizen actually exercises that right to protect himself. This flouts the Second and Sixth Amendments, this Court's precedent, and history which all confirm the right to exercise self-defense and then assert it as a defense to a criminal prosecution is safeguarded by the Constitution. The Court should grant this petition to clarify that

defendants have a clearly established federal constitutional right to assert self-defense to a jury.

I. THE SIXTH CIRCUIT'S DECISION CREATES A CIRCUIT SPLIT.

The Sixth Circuit's decision in this case conflicts with decisions of at least two circuits that have held that a failure to give a self-defense jury instruction could be—and was—an unreasonable application of clearly established law.

The Sixth Circuit concluded that the state court decision did not contradict or unreasonably apply this Court's precedents regarding the right to present a complete defense and to have a fundamentally fair trial, because this Court has "never invoked th[ese] principle[s] to 'squarely establish[]' a federal right to a self-defense instruction," "grant[ed] relief for the failure to give a self-defense instruction," or "clearly established . . . [a] constitutional right to a self-defense instruction." Pet.App. 6a–9a (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009)). It further reasoned that Keahey had "no basis for habeas relief," because "[d]eclining to grant a request to 'present a state-created, not federally required, defense is, as a first approximation anyway, at worst merely to make an error of state law; and if there is one fixed star in the confusing jurisprudence of constitutional criminal procedure, it is that a violation of state law does not violate the Constitution.'" Pet.App. 9a. (quoting *Eaglin v. Welborn*, 57 F.3d 496, 501 (7th Cir. 1995) (en banc)).

In contrast, both the Second Circuit and Ninth Circuit have held, under AEDPA's deferential standards, that a failure to give a self-defense jury

instruction contradicted, or was an unreasonable application of, this Court's precedent and granted the habeas petitioners relief. The Ninth Circuit expressly held that a "refusal to instruct [the] jury on the law of self-defense was an unreasonable application of clearly-established Supreme Court precedent." *Lockridge v. Scribner*, 190 F. App'x 550, 551 (9th Cir. 2006); *cf. Bradley v. Duncan*, 315 F.3d 1091, 1098, 1100–01 (9th Cir. 2002) (concluding that a failure to instruct a jury on an entrapment defense deprived a petitioner "of his due process right to present a full defense" and that the state appellate court's decision was "objectively unreasonable" entitling petitioner to habeas relief even if he did "not produce a 'spotted calf' on the precise issue at hand to warrant habeas relief"). And on facts that were closely analogous to this case, the Second Circuit likewise concluded that the state appellate court "unreasonably rejected [petitioner's] due process challenge" where the petitioner was denied a self-defense jury instruction. *Davis v. Strack*, 270 F.3d 111, 132–33 (2d Cir. 2001). Like the Sixth Circuit, the Second Circuit noted that habeas relief is not available for a mere violation of state law, rather "a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Id.* at 123 (quoting *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991)). But, unlike the Sixth Circuit, the Second Circuit concluded that the failure to provide a self-defense instruction violated the petitioner's due process rights, because it "seriously infected 'the entire trial,'" preventing the result from be "considered fair" under the "*Cupp* standard." *Id.* at 132.

II. THE SIXTH CIRCUIT IS ON THE WRONG SIDE OF AN IMPORTANT ISSUE.

The Sixth Circuit erred when it concluded that this Court's precedents do not clearly establish a right to assert self-defense as a defense to prosecution and to have a jury assess self-defense evidence in deciding whether a defendant is guilty. Although this Court has framed its precedents regarding due process and jury trial rights at a high level of generality, those precedents can still be contradicted and unreasonably applied by state courts. And they were here. History, tradition, and this Court's cases confirm the right to present a self-defense claim to a jury is safeguarded by the Constitution. Keahey's federal constitutional rights were therefore violated when he was denied a self-defense instruction and the jury was precluded from deciding whether he was not guilty because he acted in self-defense.

A. Clearly Established Federal Law Mandates that Defendants Be Allowed to Present a Complete Defense to a Jury.

The Sixth Circuit wrongly concluded that no clearly established law applied to Keahey's claim. The Sixth Circuit's overly narrow interpretation of this Court's precedent flouts this Court's repeated clarification that "'a general standard' from this Court's cases can supply [clearly established federal] law," *Marshall v. Rodgers*, 569 U.S. 58, 62 (2013) (per curiam) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)); *see Lockyer v. Andrade*, 538 U.S. 63, 71 (2003) ("In other words, 'clearly established Federal law' under § 2254(d)(1) is the governing legal

principle or principles set forth by the Supreme Court."). Indeed, "AEDPA does not 'require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied.'" *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (quoting *Carey v. Musladin*, 549 U.S. 70, 81 (2006) (Kennedy, J., concurring in the judgment)).

To be sure, in applying AEDPA, lower courts must attend carefully to the scope of clearly established constitutional rights as set forth by this Court. But this Court can, and sometimes does, frame rights at a high level of generality and in broad terms. *See, e.g.*, *id.* at 956–57 (recognizing clearly established law under AEDPA in the Eighth Amendment context notwithstanding the "discuss[ion of] the substantive standard at a high level of generality"). State courts simply have "more leeway" in reaching reasonable outcomes under 28 U.S.C. § 2254(d)(1) if the rule is "more general." *Yarborough*, 541 U.S. at 664. But that leeway has limits; "even a general standard may be applied in an unreasonable manner." *Panetti*, 551 U.S. at 953.

Here, the Court has recognized a general but robust rule and applied it time and time again. Under this Court's precedent, clearly established federal law guarantees criminal defendants "a meaningful opportunity to present a complete defense." *Trombetta*, 467 U.S. at 485. And the Court has repeatedly applied that rule—from a case involving the failure to preserve blood alcohol evidence—to a variety of situations. For example, the Court concluded a state court could not prohibit a defendant from introducing evidence relating to the circumstances of his confession, because "the

Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane*, 476 U.S. at 690 (quoting *Trombetta*, 467 U.S. at 485). The Court reasoned that the right "would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence" and that a confession's probative weight is "a matter that is exclusively for the jury to assess." *Id.* at 688, 690.

The Court also applied this clearly established law to a situation where a state rule allowed a trial court to exclude a defendant's evidence of third-party guilt based on its assessment of the strength of the prosecution's case. *Holmes v. South Carolina*, 547 U.S. 319, 321 (2006). The Court reasoned that such a rule would require the trial court to make "the sort of factual findings that have traditionally been reserved for the trier of fact"—the jury—and concluded the rule "violates a criminal defendant's right to have 'a meaningful opportunity to present a complete defense.'" *Id.* at 330–31 (quoting *Crane*, 476 U.S. at 690). Thus, these cases establish a general rule with teeth; they demonstrate that the right to present a meaningful defense safeguards "an essential component of procedural fairness": "an opportunity to be heard" by the jury. *Crane*, 476 U.S. at 688–90.

Because this general rule safeguards procedural fairness and a jury's role, it is grounded in both the Due Process Clause and the Sixth Amendment. *See id.* at 690 (recognizing the right to have "a meaningful opportunity to present a complete defense" could be "rooted directly" in either amendment and noting "[t]he Constitution

guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment" (quoting *Trombetta*, 467 U.S. at 485, and *Strickland v. Washington*, 466 U.S. 668, 684–85 (1984))); *see also Cupp*, 414 U.S. at 146–47 (explaining that a jury instruction violates a defendant's due process rights when "it violated some right which was guaranteed to the defendant by the Fourteenth Amendment" and "so infected the entire trial that the resulting conviction violates due process").[1] Thus, although the right is frequently discussed as a due process right, the Court's jurisprudence regarding the right to a jury trial likewise establishes a defendant's right to present a complete defense to a jury and have a jury decide its merits.

This Court's cases make clear that the Sixth Amendment secures a defendant's right to have a jury determine his guilt or innocence. *See Sullivan*, 508 U.S. at 277. That is why a trial court cannot "direct a verdict for the State, no matter how overwhelming the evidence." *Id.* It is well-established that it is "the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam). Indeed, the right to have jurors weigh the evidence and credibility of the

---

[1] *See also State v. Edwards*, 661 A.2d 1037, 1041 (Conn. 1995) (agreeing that a defendant "adduced sufficient evidence at trial to raise a plausible claim of self-defense and, consequently, that the trial court's failure to instruct the jury on self-defense violated his federal constitutional right to due process of law").

witnesses has a long history: "The Anglo-Saxon tradition of criminal justice, embodied in the United States Constitution and in federal statutes, makes jurors the judges of the credibility of testimony offered by witnesses." *United States v. Bailey*, 444 U.S. 394, 414 (1980). And that is the case even if the testimony seems incredible to a court; it remains for the jury "to say that a particular witness spoke the truth or fabricated a cock-and-bull story." *Id.* at 415; *cf. Mathews v. United States*, 485 U.S. 58, 63 (1988) ("As a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor."). After all, the Sixth Amendment guarantees that "[i]f the defendant prefer[s] the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he [is] to have it." *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968).

Thus, regardless of the source, the same fundamental principle runs through these precedents: a criminal defendant has the right to present a complete defense to a jury and to have the jury—not the judge—weigh the evidence supporting that defense to decide whether he is guilty. And it is that same principle that is at issue here, because Keahey was denied the right to present a complete defense to the jury when the trial court made factual findings that belonged to the jury and refused to give a self-defense instruction. Accordingly, the Sixth Circuit was wrong to conclude that Keahey could not appeal to this clearly established law because these cases did not involve self-defense.

B. The Right to Assert Self-Defense to a Jury is a Fundamental Right Safeguarded by the Constitution.

If ever there were a case that demonstrated how "even a general standard may be applied in an unreasonable manner," *Panetti*, 551 U.S. at 953, it is this one. History, tradition, and this Court's cases establish a constitutional right to assert self-defense as a defense to a prosecution and to have a jury assess the merits of that defense. And depriving a defendant of that right flouts this Court's general but clearly established principles regarding the scope of due process and jury trial rights. The Sixth Circuit erred when it reached the opposite conclusion.

The Due Process Clause prohibits trial procedures that "violate 'fundamental fairness.'" *Dowling*, 493 U.S. at 352. And in determining whether a trial is fundamentally unfair, the guide is, "of course, historical practice." *Montana v. Egelhoff*, 518 U.S. 37, 43 (1996) (plurality opinion). A trial cannot "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Kahler v. Kansas*, 140 S. Ct. 1021, 1027 (2020) (quoting *Leland v. Oregon*, 343 U.S. 790, 798 (1952)). In assessing whether something ranks as fundamental, courts take special note of "eminent common-law authorities (Blackstone, Coke, Hale, and the like), as well as to early English and American judicial decisions." *Id.* The historical record and early case law confirm that self-defense and having a jury weigh the merits of that defense rank as fundamental.

As an initial matter, a constitutional amendment demonstrates the fundamental nature of the right to act in self-defense. "Self-defense is a basic right, recognized by many legal systems from ancient times to the present day," and "individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)). And part of that right is the right to assert self-defense as a defense to a prosecution. *See id.* at 767 n.15 (describing how the self-defense right historically included the right to a "total acquitt[al]" if "the slayer is in no kind of fault" (quoting 4 W. Blackstone, Commentaries on the Laws of England 182 (1769))); *id.* at 888 (Stevens, J., dissenting) ("And it is true that if a State were . . . to deny persons any ability to assert self-defense in response to criminal prosecution, that might pose a significant constitutional problem.").[2]

---

[2] *See also Egelhoff*, 518 U.S. at 56 (recognizing that "the historical record" may show "that the right to have a jury consider self-defense evidence (unlike the right to have a jury consider evidence of voluntary intoxication) is fundamental"); David C. Williams, *Death to Tyrants:* District of Columbia v. Heller *and the Uses of Guns*, 69 OHIO ST. L.J. 641 (2008) ("And if the Constitution protects the right to use a gun for self-defense, then it follows that the Constitution must also protect the underlying right to self-defense itself. . . . After *Heller*, the states may not eliminate the right of self-defense, and the Court may even limit their ability to trim it back."); Alan Brownstein, *The Constitutionalization of Self-Defense in Tort and Criminal Law, Grammatically-Correct Originalism, and Other Second Amendment Musings*, 60 HASTINGS L.J. 1205, 1231 (2009) ("Surely, it would make no sense to hold that Americans have the right to possess handguns in their homes for self-defense purposes, but that they could be subject to severe criminal and

History and legal tradition confirm that the self-defense right encompasses the right to assert self-defense as a defense to a prosecution and to have a jury assess the self-defense claim. It thus makes sense that the Framers constitutionalized these preexisting rights. *See* Eugene Volokh, *State*

---

civil penalties if they ever employed those firearms in defense of their persons or property. It would seem that the Second Amendment must protect some use of firearms in self-defense to avoid being an empty and meaningless right of no use to those who exercise it."); David B. Kopel, *The Natural Right of Self-Defense:* Heller*'s Lesson for the World*, 59 SYRACUSE L. REV. 235, 248 (2008) ("*Heller* moves self-defense . . . into the bright uplands of the Second Amendment. It is now beyond dispute in an American court that self-defense is an inherent right, and that it is protected by the United States Constitution."); *Griffin v. Martin*, 785 F.2d 1172, 1186 n.37 (4th Cir. 1986) (Murnaghan, J.) ("It is difficult to the point of impossibility to imagine a right in any state to abolish self defense altogether, thereby leaving one a Hobson's choice of almost certain death through violent attack now or statutorily mandated death through trial and conviction of murder later."), *aff'd by an equally divided court and op. withdrawn,* 795 F.2d 22 (1986) (en banc); *Rowe v. DeBruyn*, 17 F.3d 1047, 1054–55 (7th Cir. 1994) (Ripple, J., dissenting) (same); *Isaac v. Engle*, 646 F.2d 1129, 1140 (6th Cir. 1980) (en banc) (Merritt, J., dissenting) ("I believe that the Constitution prohibits a state from eliminating the justification of self-defense from its criminal law . . . ."); *but see Rowe*, 17 F.3d at 1052 (rejecting inmate's argument that "the right to self-defense is a fundamental constitutional right within the Due Process Clause itself" in the context of disciplinary proceedings); *Fields v. Harris*, 675 F.2d 219, 220 (8th Cir. 1982) (per curiam) (noting, when addressing a claim asserting wrongful termination from federal employment, that "[s]elf-defense is an important common-law principle, but not a substantive right conferred directly by the federal Constitution").

Constitutional Rights of Self-Defense and Defense of Property, 11 TEX. REV. L. & POL. 399, 412 (2007) ("Self-defense and defense of property are long-recognized legal doctrines, traditionally protected by the common law. It thus makes sense to read a constitutional provision securing such rights as constitutionalizing these preexisting legal doctrines." (internal footnote omitted)).

The colonies recognized the fundamental right to use self-defense and assert it as a defense in a criminal prosecution even before the United States won its independence. On March 5, 1770, British soldiers killed several colonists at what came to be known as the Boston Massacre. James Adams defended the British soldiers and, in their defense, he reminded the jury of a soldier's right to "preserve his own life at the expence of another's." John Adams, Adams' Argument for the Defense: (Dec. 3–4, 1770), *in* 3 LEGAL PAPERS OF JOHN ADAMS 242, 242–270 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965), available at https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016. He urged the jurors not to abandon this foundational principle:

> We talk of liberty and property, but, if we cut up the law of self-defence, we cut up the foundation of both, and if we give up this, the rest is of very little value, and therefore, this principle must be strictly attended to, for whatsoever the law pronounces in the case of these eight soldiers will be the law, to other persons and after ages, all the persons that have slain mankind in this country, from the beginning to this day, had better have

> been acquitted, than that a wrong rule and precedent should be established.

Id. Despite the patriotic fervor in Boston, the jurors heeded Adams' admonishment. Accordingly, "after a fair and legal trial," the British soldiers "were acquitted of premediated or wilful murder, by a jury of the county of Suffolk."[3] 1 Mercy Otis Warren, HISTORY OF THE RISE, PROGRESS AND TERMINATION OF THE AMERICAN REVOLUTION 54 (Lester H. Cohen ed., Liberty Fund, Inc., 1994) (1805).

The colonies' esteem for the right of self-defense stemmed from the English legal tradition. William Blackstone, "whose works constituted the preeminent authority on English law for the founding generation," *Alden v. Maine*, 527 U.S. 706, 715 (1999), venerated self-defense as being "justly called the primary law of nature," 3 William Blackstone, COMMENTARIES *4. And, as "the primary law of nature," Blackstone believed self-defense could not be "in fact, taken away by the law of society." *Id.* He further observed that when a person justifiably exercised the right to self-defense or defense of another then "the slayer is in no kind of fault whatsoever, not even in the minutest degree; and is therefore to be totally acquitted and discharged, with commendation rather than blame." 4 William

---

[3] The jury found six soldiers not guilty and two soldiers guilty of manslaughter, not murder. John Hodgson, *The Trial of William Wemms, James Hartegan, William M'Cauley, Hugh White, Matthew Killroy, William Warren, John Carrol, and Hugh Montgomery* (1770), *reprinted in* 3 THE ANNOTATED NEWSPAPERS OF HARBOTTLE DORR, JR. 785, 992–94 (1771), https://www.masshist.org/dorr/volume/3/sequence/828.

Blackstone, COMMENTARIES *182; *see id.* at *180–81 (describing homicide as justifiable when "committed for the prevention of any forcible and atrocious crime," including rape).

The founding generation agreed with him. They echoed his description of the right of self-defense as "the first law of nature." 1 BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE, TO THE CONSTITUTION AND LAWS, OF THE FEDERAL GOVERNMENT OF THE UNITED STATES; AND OF THE COMMONWEALTH OF VIRGINIA, app. 300 (St. George Tucker ed., 1803), available at https://babel.hathitrust.org/cgi/pt?id=mdp.35112203968351&view=1up&seq=7; *see id.* (describing the right to keep and bear arms "as the true palladium of liberty"). The founding generation likewise believed that this "law of nature" could not be nullified by positive law. *See* 2 James Wilson, THE WORKS OF JAMES WILSON 335 (James DeWitt Andrews ed., 1896), available at https://babel.hathitrust.org/cgi/pt?id=hvd.32044031683808&view=1up&seq=7 ("The defence of one's self, justly called the primary law of nature, is not, nor can it be abrogated by any regulation of municipal law."); 2 James Kent, COMMENTARIES ON AMERICAN LAW 12 (1827), available at https://babel.hathitrust.org/cgi/pt?id=nyp.33433008580510&view=1up&seq=7 ("The right of self-defence . . . is founded in the law of nature, and is not, and cannot be superseded by the law of society."); *see also* The Federalist No. 28, at 176 (Alexander Hamilton) (Charles R. Kesler ed., 1961) ("that original right of self-defense . . . is paramount to all positive forms of government"). Moreover, they agreed with Blackstone

that, in instances "of justifiable homicide," such as defending oneself from assault or a wife or daughter from rape, "the person who has done it is to be acquitted and discharged, with commendation rather than censure." Wilson, *supra*, at 405.

Not only did the Framers view the right to use self-defense and assert it as a defense in a prosecution as essential to liberty, but they similarly viewed the right to a jury trial as "a valuable safeguard to liberty" and "the very palladium of free government." *See* The Federalist No. 83, at 499 (Alexander Hamilton) (Charles R. Kesler ed., 1961) (explaining how both "friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury"). The Framers understood "that judges, like other government officers, could not always be trusted to safeguard the rights of the people; the likes of the dread Lord Jeffreys were not yet too distant a memory." *Crawford v. Washington*, 541 U.S. 36, 67 (2004). Accordingly, "[t]hey were loath to leave too much discretion in judicial hands," *id.*, which is likely why "[t]he right to trial by jury in criminal cases was the only guarantee common to the 12 state constitutions that predated the Constitutional Convention," *Neder v. United States*, 527 U.S. 1, 31 (1999) (Scalia, J., concurring in part). The fundamental right to use self-defense and assert it as a defense to a jury was thus enshrined in the Bill of Rights.

Nineteenth century cases also demonstrate that the right to assert self-defense to a jury is a fundamental principle of justice that courts cannot violate. Time and time again, the Supreme Court

protected a criminal defendant's right to have a jury properly instructed on self-defense. *See, e.g.*, *Allison v. United States*, 160 U.S. 203, 216–17 (1895) (directing a new trial where the judge improperly instructed the jury on self-defense); *Allen v. United States*, 157 U.S. 675, 681 (1895) (directing a new trial where "the instruction was erroneous in withdrawing from the jury the question of self-defense, and likewise in telling them that the intentional arming himself with a pistol by the defendant, even if with a view to self-defense, would make a case of murder"); *Thompson v. United States*, 155 U.S. 271, 278 (1894) (concluding "the fact that the defendant, in view of the threats that had been made against him, armed himself," did not justify a jury instruction suggesting that he did so for "the purpose of attacking the deceased, and not of defending himself").

Similarly, the Supreme Court repeatedly reminded lower courts that juries, not judges, are to make credibility determinations about the validity of a defendant's assertion of self-defense. *See, e.g.*, *Allison*, 160 U.S. at 207 (admonishing that "it was for the jury to test the credibility of the defendant as a witness, giving his testimony such weight, under all the circumstances, as they thought it entitled to," regarding whether self-defense "would excuse the killing"); *id.* at 209 ("Defendant had testified to the facts upon which he based his belief that he was in peril, and it was for the jury to say from the evidence whether the facts as he stated them actually or apparently existed . . . ."); *Allen*, 157 U.S. at 680 (concluding the jury "should have been left free to say" if the defendant believed himself "in danger of life or limb" when he was attacked with sticks);

Stevenson v. United States, 162 U.S. 313, 315 (1896) ("The evidence might appear to the court to be simply overwhelming to show that the killing was in fact murder, and not manslaughter, or an act performed in self-defense, and yet, so long as there was some evidence relevant to the issue of manslaughter, the credibility and force of such evidence must be for the jury, and cannot be matter of law for the decision of the court.").

Therefore, history and tradition, along with this Court's precedents, confirm that a defendant's right to present a self-defense claim to a jury is a fundamental right safeguarded by the Constitution. So too does the fact that self-defense is a defense to prosecution in all 50 states. *See Leland*, 343 U.S. at 798 ("The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934))); *McDonald*, 561 U.S. at 888 n.32 (Stevens, J., dissenting) ("All 50 States already recognize self-defense as a defense to criminal prosecution . . . ." (internal citation omitted)). Accordingly, history and tradition make this a case where "a general standard" regarding a defendant's right to present a complete defense to a jury and have the jury weigh the evidence and determine one's guilt supplies clearly established law that can be "applied in an unreasonable manner." *See Panetti*, 551 U.S. at 953. The Sixth Circuit was wrong to wholly ignore history when it concluded that

Keahey had no well-established constitutional right to assert self-defense and have a jury decide whether he was not guilty because he acted in self-defense.

C. The State-Court Adjudication Was Contrary to, or an Unreasonable Application of, Clearly Established Law.

The Sixth Circuit similarly turned a blind eye to the state appellate court's actual reasoning. Without any discussion of the state appellate court's reasoning, the Sixth Circuit concluded that decision did not contradict or unreasonably apply this Court's precedents. *See* Pet.App. 8a–9a.[4] That conclusion is wrong. The "particular reasons" the Ohio appellate court rejected Keahey's constitutional claims were objectively unreasonable and contradicted this Court's opinions. *Wilson v. Sellers*, 138 S. Ct. 1188, 1191–92 (2018); *see Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam) ("A state-court decision is 'contrary to' our clearly established precedents if it 'applies a rule that contradicts the governing law set forth in our cases . . . .'" (quoting *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000))); *Penry v. Johnson*, 532 U.S. 782, 793 (2001) (explaining that, under the unreasonable prong, "relief is appropriate only if that application is also objectively unreasonable").

Although the state appellate court recognized that Keahey introduced evidence to support the elements

[4] Because the Ohio Supreme Court declined to "explain[] its decision on the merits in a reasoned opinion," it is necessary to "'look through' the unexplained decision to" the intermediate appellate court's decision and "presume that the unexplained decision adopted the same reasoning." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

of self-defense under state law, it did not end its analysis there and conclude that Keahey was entitled to a self-defense jury instruction as was required under federal and state law. Instead, it looked to conflicting evidence, such as the prosecution's evidence regarding Keahey's potential motive for going to McGill's house that day, and concluded Keahey failed to introduce sufficient evidence to have self-defense go to the jury. This analysis cannot be squared with the Court's precedent.

As already discussed, this Court's precedent clearly establishes that weighing evidence and making credibility determinations is the jury's role when there is conflicting evidence. *See, e.g.*, *Holmes*, 547 U.S. at 330 ("[W]here the credibility of the prosecution's witnesses or the reliability of its evidence is not conceded, the strength of the prosecution's case cannot be assessed without making the sort of factual findings that have traditionally been reserved for the trier of fact"); *Bailey*, 444 U.S. at 414 ("The Anglo-Saxon tradition of criminal justice, embodied in the United States Constitution . . . makes jurors the judges of the credibility of testimony offered by witnesses."). Even if the evidence was "simply overwhelming" that Keahey did not act in self-defense—which it was not—because Keahey introduced "some evidence" to support each element, the weight of that evidence "must be for the jury." *Stevenson*, 162 U.S. at 315; *see Sullivan*, 508 U.S. at 277 (prohibiting a judge from "direct[ing] a verdict for the State, no matter how overwhelming the evidence"); *Bailey*, 444 U.S. at 414–15 (explaining it is for the jury "not for appellate courts, to say that a particular witness spoke the truth or fabricated a

cock-and-bull story"); *id.* at 415 (explaining the defendant's testimony must meet a "minimum standard as to each element of the defense so that, if a jury finds it to be true, it would support an affirmative defense"). The state court's assessment of the witnesses' credibility and usurpation of the jury's role thus contradicts this clearly established law and is objectively unreasonable. *See Williams*, 529 U.S. at 405–06 (explaining a state-court decision is "diametrically different" and "contrary to" clearly established precedent when it imposes a higher evidentiary burden); *Penry*, 532 U.S. at 797–801, 804 (concluding the state court's approval of the jury instructions was "objectively unreasonable" when jurors could not "give effect to [defendant's] mitigating evidence in deciding his sentence" and follow the jury instructions).

The Sixth Circuit's conclusion that the state court's decision was reasonable was wrong. Although AEDPA's standards require federal courts to defer to state courts and to hew closely to this Court's holdings, AEDPA does not require lower courts to bless egregious violations of constitutional rights when this Court's cases clearly speak to the relevant issue.

* * *

This Court should therefore grant this petition to provide uniformity regarding the existence and application of clearly established federal law that guarantees a defendant the right to have a jury—not a judge—decide whether he is not guilty because he acted in self-defense. The question of whether the Constitution safeguards the right to assert self-

defense to a jury is an important one. As explained above, the founding generation viewed it as a fundamental principle of justice that was necessary to safeguard liberty from governmental overreach. It is no less important today.

By granting this petition, this Court will both provide much-needed guidance to lower courts and enforce defendants' fundamental right to assert self-defense as a defense to prosecution to a jury.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

AUTUMN HAMIT PATTERSON
Counsel of Record
JONES DAY
2727 N. Harwood St.
Dallas, TX 75201
(214) 220-3939

CHARLOTTE H. TAYLOR
JONES DAY
51 Louisiana Avenue NW
Washington, DC 20001

Counsel for Petitioner

March 16, 2021