

CAPITAL CASE

No. 26A78

IN THE
Supreme Court of the United States

JUAN CARLOS ALVAREZ,

Applicant,

v.

ERIC GUERRERO, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

**SECOND APPLICATION FOR A 30-DAY EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

TO THE HONORABLE SAMUEL A. ALITO, JR., JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Juan Carlos Alvarez respectfully requests a second 30-day extension of time, to and including September 28, 2026, to file a petition for a writ of certiorari.

1. The Fifth Circuit issued its published opinion (App. A) and entered judgment (App. B) in this matter on December 23, 2025. It denied Alvarez's petition for rehearing and rehearing en banc on April 30, 2026. App. C. On July 13, 2026, Alvarez applied for a 30-day extension of time to file a petition for a writ of certiorari, which Justice Alito granted on July 16, 2026. Absent an extension, Alvarez's petition for certiorari would be due on August 28, 2026. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. As explained at greater length in Alvarez's original application, among other issues, this case presents the question whether the Sixth Amendment right to counsel is violated under clearly established federal law where a defendant's lead counsel sleeps during a critical stage of a capital murder trial. According to unrebutted evidence, at Alvarez's capital-murder trial in Texas state court, Alvarez's lead counsel repeatedly fell asleep during the State's direct examination of witnesses whom the counsel then cross-examined. And under Texas procedural rules that were enforced at trial, Alvarez's other counsel was prohibited from cross-examining or making objections to the testimony of the witnesses that were assigned to lead counsel.

3. The Fifth Circuit affirmed the denial of Alvarez's sleeping-lawyer claim. The Fifth Circuit's decision conflicts with *United States v. Cronin*, because it is clearly established that a trial is presumptively unfair where a defendant is denied the presence of counsel at "a critical stage," 466 U.S. 648, 658-659 (1984), a circumstance that necessarily encompasses a lead lawyer sleeping during the direct examination of witnesses he then cross-examines where co-counsel is prohibited by court rule from conducting cross-examination or objecting to the witnesses' testimony. It also conflicts with *Strickland v. Washington*, because it is clearly established that deficient performance and prejudice results in a Sixth Amendment violation, 466 U.S. 668, 687-688 (1984), and here, even under the deferential review afforded *Strickland* claims under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Alvarez has satisfied both *Strickland* prongs.

4. This second extension of time is warranted to accommodate Alvarez's legitimate needs. Undersigned counsel was retained less than two months ago and has

been diligently working on the case. The record in this petition is voluminous, spanning 31 volumes of trial transcripts and more than 7000 pages in the Record on Appeal. In addition, undersigned counsel has several other litigation commitments in the weeks leading up to and shortly following the current filing deadline here. These include a pretrial hearing in *Henry v. Brown University* (N.D. Ill. No. 1:22-cv-00125) on August 5, 2026; an opening merits brief in *Kian v. Florida* (Sup. Ct. No. 25-6623) due August 6, 2026; an amicus brief in *Jackson v. Florida* (Sup. Ct. No. 26-76) and *Hunt v. Florida* (Sup. Ct. No. 26-78) due August 13, 2026; and a motion for summary judgment in *Storch v. Hegseth* (D.D.C. No. 1:25-cv-00415) due on an August 2026 date to be set.

5. Alvarez thus requests that the time for filing a petition for a writ of certiorari in this case be extended to and including September 28, 2026.

Respectfully submitted.

/s/ Seth P. Waxman

SETH P. WAXMAN

Counsel of Record

WILMER CUTLER PICKERING

HALE AND DORR LLP

2100 Pennsylvania Avenue NW

Washington, DC 20037

(202) 663-6000

seth.waxman@wilmerhale.com

Counsel for Juan Carlos Alvarez

August 5, 2026

CERTIFICATE OF SERVICE

I, Seth P. Waxman, a member of the bar of the Court, certify that on August 5, 2026, counsel for all parties required to be served have been served copies of the foregoing application via first-class U.S. mail and electronic mail at the address below:

STEPHEN M. HOFFMAN
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548
Austin, TX 78711
(512) 936-1400
stephen.hoffman@oag.texas.gov

/s/ Seth P. Waxman

SETH P. WAXMAN