

No. 26-

IN THE
Supreme Court of the United States

JUAN CARLOS ALVAREZ,
Petitioner,
v.

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

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether a defendant is denied the Sixth Amendment right to counsel under the established authority of this Court when the defendant's lawyer sleeps through a critical stage at trial.

PARTIES TO THE PROCEEDING

Petitioner is Juan Carlos Alvarez.

Respondent is Eric Guerrero, Director, Texas Department of Criminal Justice, Correctional Institutions Division.

DIRECTLY RELATED PROCEEDINGS

The following proceedings are related under this Court's Rule 14.1(b)(iii):

- *Alvarez v. Guerrero*, No. 18-70001 (5th Cir. Dec. 23, 2025) (affirming Oct. 25, 2017 district court denial of habeas relief);
- *Alvarez v. Davis*, No. 4:09-CV-3040 (S.D. Tex. Oct. 25, 2017) (denying federal habeas relief);
- *Ex parte Alvarez*, No. WR-62,426-04 (Tex. Ct. Crim. App. Apr. 29, 2015) (dismissing state habeas petition as successive petition);
- *Ex parte Alvarez*, No. WR-62,426-02 (Tex. Ct. Crim. App. Sept. 15, 2010) (dismissing state habeas petition as successive petition);
- *Ex parte Alvarez*, No. WR-62,426-01 (Tex. Ct. Crim. App. Sept. 24, 2008) (denying state habeas petition);
- *Ex parte Alvarez*, No. 787007-A (Tex. Dist. May 23, 2008) (denying state habeas petition);
- *Ex parte Alvarez*, No. WR-62,426-01 (Tex. Crim. App. June 6, 2007) (determining supplemental brief not to be a subsequent application for writ of habeas corpus);
- *Alvarez v. State*, No. 73,648 (Tex. Crim. App. Oct. 30, 2002) (affirming conviction and sentence on direct appeal);
- *Alvarez v. State*, No. 787007 (Tex. Dist. Oct. 7, 1999) (entering judgment of conviction).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
DIRECTLY RELATED PROCEEDINGS.....	iii
TABLE OF AUTHORITIES.....	vii
INTRODUCTION.....	1
OPINIONS BELOW	3
JURISDICTION	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT	5
A. Legal Background.....	5
B. Factual And Procedural Background	6
1. Alvarez is tried and convicted	6
2. Alvarez seeks state post-conviction relief.....	8
3. Alvarez seeks federal post- conviction relief.....	9
REASONS FOR GRANTING THE PETITION	12
I. THE FIFTH CIRCUIT ERRED IN AFFIRMING A STATE-COURT DECISION THAT IS CONTRARY TO, AND AN UNREASONABLE APPLICATION OF, THIS COURT’S INEFFECTIVE ASSISTANCE OF COUNSEL PRECEDENT	12

TABLE OF CONTENTS—Continued

	Page
A. The State-Court Decision Is Contrary To <i>United States v. Cronic</i>	13
B. The State-Court Decision Unreasonably Applied <i>Strickland v.</i> <i>Washington</i>	17
II. THE QUESTION PRESENTED WARRANTS THIS COURT’S REVIEW	21
CONCLUSION	24

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>Anders v. California</i> , 386 U.S. 738 (1967)	18
<i>Andrew v. White</i> , 604 U.S. 86 (2025).....	2, 5, 16
<i>Bell v. Cone</i> , 535 U.S. 685 (2002).....	13, 14
<i>Bieganski v. Shinn</i> , 149 F.4th 1055 (9th Cir. 2025)	23
<i>Brooks v. Tennessee</i> , 406 U.S. 605 (1972)	15
<i>Burdine v. Johnson</i> , 262 F.3d 336 (5th Cir. 2001)	15, 19, 23
<i>Chandler v. Brown</i> , 137 F.4th 525 (6th Cir. 2025)	23
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974).....	2, 14
<i>Ferguson v. Georgia</i> , 365 U.S. 570 (1961)	15
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)	18
<i>Gilmore v. Georgia Department of Corrections</i> , 144 F.4th 1246 (11th Cir. 2025).....	23
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	18
<i>Herring v. New York</i> , 422 U.S. 853 (1975).....	13, 15, 17
<i>Holloway v. Arkansas</i> , 435 U.S. 475 (1978)	13
<i>Javor v. United States</i> , 724 F.2d 831 (9th Cir. 1984)	14, 19
<i>Knowles v. Mirzayance</i> , 556 U.S. 111 (2009).....	20, 21
<i>Lockyer v. Andrade</i> , 538 U.S. 63 (2003)	5
<i>Martinez v. Quick</i> , 134 F.4th 1046 (10th Cir. 2025)	23

TABLE OF AUTHORITIES—Continued

	Page
<i>Muniz v. Smith</i> , 647 F.3d 619 (6th Cir. 2011).....	15
<i>Rompilla v. Beard</i> , 545 U.S. 374 (2005)	3, 12
<i>Penry v. Johnson</i> , 532 U.S. 782 (2001)	5
<i>Porter v. McCollum</i> , 558 U.S. 30 (2009).....	3, 12
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	2, 18, 20
<i>Tippins v. Walker</i> , 77 F.3d 682 (2d Cir. 1996) ...	15, 19, 23
<i>United States v. Cronin</i> , 466 U.S. 648 (1984)	1, 13, 14, 15, 17, 18, 22
<i>United States v. Massimino</i> , 827 F. App'x 176 (3d Cir. 2020)	14
<i>United States v. Ragin</i> , 820 F.3d 609 (4th Cir. 2016)	15, 18, 23
<i>United States v. Roy</i> , 855 F.3d 1133 (11th Cir. 2017)	15
<i>Walker v. Cromwell</i> , 140 F.4th 878 (7th Cir. 2025)	23
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000)	17
<i>Wilson v. Sellers</i> , 584 U.S. 122 (2018)	5
<i>Woods v. Donald</i> , 575 U.S. 312 (2015)	13
<i>Wright v. Van Patten</i> , 552 U.S. 120 (2008)	13, 17

CONSTITUTIONS, STATUTES, AND RULES

U.S. Const. amend. VI	4
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TABLE OF AUTHORITIES—Continued

	Page
28 U.S.C. §1254	4
Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C.	
§§2254 <i>et seq</i>	2
§2254.....	3, 4, 5, 9, 12, 21
Sup. Ct. R. 10.....	12

OTHER AUTHORITIES

Harris County District Courts, <i>Trial Guidelines for Attorneys</i> , https://www.justex.net/section/1493 (visited Aug. 27, 2026).....	7
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INTRODUCTION

“The right to the effective assistance of counsel” is “the right of the accused to require the prosecution’s case to survive the crucible of meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 656 (1984). This petition arises from a capital-murder trial during which petitioner Juan Carlos Alvarez’s lead lawyer, Frumencio Reyes, “repeatedly” fell asleep and so could not, and did not, provide the adversarial testing the Sixth Amendment demands. According to unrebutted juror affidavits, Reyes “would stay out for periods of several minutes,” doing “most of his dozing while the

prosecutors were questioning their witnesses.” Unable to hear the witness testimony, Reyes could not object during direct examination or effectively probe the State’s witnesses on cross-examination, “the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis v. Alaska*, 415 U.S. 308, 315-316 (1974). Although Alvarez had a second lawyer, John L. Denninger, Denninger was barred from stepping in while Reyes slept by a Harris County, Texas, local rule, enforced by the trial court, that prohibits more than one lawyer in a criminal trial from objecting to the testimony of, or cross-examining, a witness. As a result, for the twenty-five witnesses Reyes handled during the guilt and penalty phases of Alvarez’s trial, when Reyes slept, Alvarez was without a lawyer.

Over a strong dissent by Judge Richman, the Fifth Circuit upheld the denial of habeas relief, concluding that the Texas Court of Criminal Appeals did not unreasonably apply this Court’s precedent in holding that Alvarez’s sleeping-lawyer claim failed. But the Fifth Circuit measured Alvarez’s claim against an incorrect and virtually impossible-to-meet standard under the Anti-terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. §§2254 *et seq.* Alone among the federal courts of appeal, the Fifth Circuit required Alvarez to identify a factually identical Supreme Court case to obtain habeas relief rather than considering Alvarez’s claims under the clearly established ineffective assistance of counsel authority in either *United States v. Cronin* or *Strickland v. Washington*, 466 U.S. 668 (1984), which set forth “fundamental” “legal principles [that are] holdings of this Court,” *Andrew v. White*, 604 U.S. 86, 94-95 (2025) (per curiam). Because this Court has not yet considered a sleeping-lawyer claim, the Fifth

Circuit’s invocation of this factual-parity requirement predetermined the result.

The Fifth Circuit’s decision not only misapplies this Court’s precedent but also greenlights a grave miscarriage of justice. As Judge Richman emphasized in her dissent, “[t]here is *unrebutted* evidence that Juan Carlos Alvarez’s lead counsel at trial fell asleep, more than once, during direct examinations of witnesses counsel then cross-examined.” App.33a. The Fifth Circuit’s decision sanctions this “spectacle,” which “robbed” the trial “of the gravity and the respect for the integrity of the process that is required when a person’s life or liberty is in the balance.” App.36a (Richman, J., dissenting).

Review is warranted to rectify the Fifth Circuit’s egregious misapplication of precedent, in a capital case no less. This Court has granted the writ to reverse comparable misapplications of its right-to-counsel precedent in cases subject to 28 U.S.C. §2254. *See, e.g., Porter v. McCollum*, 558 U.S. 30, 44 (2009); *Rompilla v. Beard*, 545 U.S. 374, 379-380 (2005).

The petition for a writ of certiorari should be granted.

OPINIONS BELOW

The Fifth Circuit’s majority opinion (App.1a-32a) and dissent (App.33a-92a) are reported at 162 F.4th 570. The Fifth Circuit’s orders denying panel rehearing and rehearing en banc (App.223a) are unreported. The district court’s unpublished opinion (App.95a-192a) is available at 2017 WL 4844570. The Texas Court of Criminal Appeals’ unpublished opinion denying habeas relief (App.193a-194a) is available at 2008 WL 4357801.

JURISDICTION

The Fifth Circuit entered judgment on December 23, 2025. App.93a-94a. It denied Alvarez’s petitions for rehearing and rehearing en banc on April 30, 2026. App.223a. On July 16, 2026, Justice Alito extended the time to file this petition through August 28, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.

Section 2254(d) of Title 28 of the United States Code provides:

(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; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT

A. Legal Background

Under AEDPA, federal courts may grant habeas relief for state-court claims that were decided on the merits and that are “contrary to, or involve[] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. §2254(d)(1). “[C]learly established Federal law’ ... is the governing legal principle or principles set forth by the Supreme Court at the time the state court renders” the decision under review. *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). “General legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court.” *Andrew*, 604 U.S. at 94. Thus, AEDPA does not limit application of rules set forth in Supreme Court precedent “to [their] facts.” *Id.* “[C]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt.” *Id.* at 95.

Under AEDPA, a “state court decision will be ‘contrary to’ ... clearly established precedent if,” as relevant here, “the state court ... ‘applies a rule that contradicts the governing law set forth in [this Court’s] cases.’” *Penry v. Johnson*, 532 U.S. 782, 792 (2001). “A state court decision will be an ‘unreasonable application of’ ... clearly established precedent if it ‘correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner’s case.’” *Id.*

Federal habeas review is of “the last state court to decide a prisoner’s federal claim” that “explains its decision on the merits in a reasoned opinion.” *Wilson v. Sellers*, 584 U.S. 122, 125 (2018)—here, the Texas Court

of Criminal Appeals' September 24, 2008, decision denying Alvarez habeas relief. App.193a-194a.

B. Factual And Procedural Background

1. Alvarez is tried and convicted

In 1999, Juan Carlos Alvarez was convicted of capital murder and sentenced to death. Alvarez's lead counsel at trial was Frumencio Reyes, a local defense lawyer, who substituted in as lead counsel eleven days before jury selection began and a month before trial commenced. ROA.415. Reyes had no prior connection to the case. ROA.415-416. Alvarez's second, court-appointed lawyer was John L. Denninger. ROA.415.

The State charged Alvarez with the shooting deaths of two individuals under Texas's law of parties, which allowed Alvarez to be convicted of capital murder even if the State could not prove that Alvarez killed them. ROA.6039 n.9. To establish Alvarez's guilt and obtain the death sentence, the State relied on witness testimony, including crime-scene eyewitnesses, police officers who investigated the murders, and gang members purportedly knowledgeable about Alvarez's intent and role in the shootings.

As lead counsel, Reyes assumed responsibility for twenty-five of the State's witnesses: sixteen of the twenty-seven witnesses presented during the trial's guilt phase, and nine of the thirteen witnesses presented during the penalty phase. App.34a.

According to un rebutted, sworn testimony from two jurors, Reyes slept during trial. App.226a, App.230a. His sleeping "was not a one-time occurrence; it happened repeatedly throughout the trial." App.226a. And it was "not just a head nod; he would be out." App.226a. Reyes would "stay out for periods of several minutes, as

long as five minutes or maybe even more on some occasions, two to three minutes or more on others.” App.226a.

Reyes “would do most of his dozing while the prosecutors were questioning their witnesses.” App.226a. He “was clearly asleep and was not hearing what the witnesses were saying.” App.230a. On at least one occasion, the court had to wake Reyes “by repeating his name when it was his turn to question a witness.” App.230a. “[T]he courtroom broke out in laughter, but ... it was mostly nervous laughter at such a spectacle.” App.230a; *accord* App.226a. One juror recognized the obvious problem with Reyes’s sleeping: “Reyes could [not] have done a very good job of questioning those witnesses when he would be sleeping during their testimony.” App.226a-227a.

Reyes’s sleeping “shocked” the jurors. App.230a. As one recounted, the jurors “couldn’t believe that a lawyer like this in a capital case was falling asleep during the trial.” App.230a-231a. “[H]ere you had a young man, a boy really, whose whole life was in front of him, indeed whose life was literally at stake in this trial, and his lawyer didn’t even care enough to stay awake or aggressively fight for him.” App.227a.

While Reyes slept, Denninger was barred from stepping in for his co-counsel. Under a Harris County rule enforced at trial, only one lawyer per side could question a particular witness and object to his or her testimony. As the trial court explained: “only one lawyer from each side has a right to make objections and not double team.” App.272a; *see also* Harris County District Courts, *Trial Guidelines for Attorneys* (“When there is co-counsel, only the attorney examining or cross-examining the witness will be allowed to make objections.”),

<https://www.justex.net/section/1493> (visited Aug. 27, 2026). Thus, for the twenty-five witnesses Reyes handled, Denninger could not object to those witnesses' direct testimony or cross-examine them, even when Reyes had slept during their testimony.

Jurors were left with the “overall impression that the defense did not really do much of a job of defending their client.” App.231a. During deliberations, they “talked about how [they] couldn’t believe that a lawyer like this in a capital case was falling asleep during the trial.” App.230a-231a; *accord* App.227a. They inferred that Reyes “didn’t have his heart in the case.” App.227a. In sworn affidavits, Alvarez’s sister and mother also recounted watching Reyes sleep—and Denninger read a newspaper—during the penalty-phase closing arguments. App. 239a, App.257a. The jury sentenced Alvarez to death. ROA.5026-5027.

2. Alvarez seeks state post-conviction relief

On direct appeal, the Court of Criminal Appeals affirmed Alvarez’s conviction and sentence. *Alvarez v. State*, No. 73,648 (Tex. Crim. App. Oct. 30, 2002).

Alvarez then sought state habeas relief, asserting in relevant part that he had received ineffective assistance of counsel because his lawyer slept at trial. Alvarez supported the claim with sworn affidavits from the two jurors and two family members who described witnessing Reyes’s sleeping. App.225a-257a. The State did not challenge the affidavits’ admissibility or submit evidence rebutting them. Without conducting an evidentiary hearing, the state habeas court found that Alvarez’s “counsel [had] ... vigorously cross-examined witnesses” and “made relevant objections throughout the trial,” App.207a, and it ruled that Alvarez had not established

ineffective assistance of counsel under *Strickland* App.219a-220a.

The Court of Criminal Appeals affirmed on the merits the denial of Alvarez’s habeas petition. App.193a-194a. The court adopted the trial court’s conclusion that Alvarez “was provided all of the statutory and constitutional protections afforded citizens of the United States,” App.203a, but it expressly declined to adopt the trial court’s findings of fact and conclusions of law concerning Alvarez’s ineffective assistance claim, including the finding that “counsel [had] ... vigorously cross-examined witnesses” and “made relevant objections throughout the trial,” App.207a. The court described these unadopted findings as “relate[d] to arguments rather than new claims.” App.194a. The court did not address the juror or family-member affidavits.

Alvarez unsuccessfully sought additional state-court habeas relief after filing his federal habeas petition under 28 U.S.C. §2254. *Ex parte Alvarez*, No. WR-62,426-02, 2010 WL 3572246 (Tex. Crim. App. Sept. 15, 2010); *Ex parte Alvarez*, No. WR-62,426-04, 2015 WL 1955072 (Tex. Crim. App. Apr. 29, 2015).

3. Alvarez seeks federal post-conviction relief

The district court denied Alvarez’s federal habeas petition. App.95a-192a. The court held that Alvarez’s sleeping-lawyer claim failed under both *Cronic* and *Strickland*. App.152a-173a. While acknowledging that the juror affidavits stated Reyes had “nodd[ed] off and sle[pt] during questioning,” the court reasoned that Denninger’s participation at trial satisfied the constitutional minimum. App.171a-173a. The court did not mention, much less reconcile, the trial court’s invocation of the rule prohibiting Denninger from objecting to the

testimony of, or cross-examining, the twenty-five witnesses for whom Reyes was responsible. *See generally* App.152a-173a. The court also denied Alvarez a certificate of appealability. App.191a-192a.

Thereafter, Alvarez moved the Fifth Circuit for a certificate of appealability on his sleeping-lawyer claim, among others, C.A. Dkt. 27 (June 20, 2018), which the Fifth Circuit granted, C.A. Dkt. 80 (June 21, 2021). While the motion was pending, Reyes himself submitted a sworn affidavit conceding that it was “quite likely” he fell asleep during Alvarez’s trial, given his then-medical condition, which required surgery and hospitalization weeks before Alvarez’s trial commenced. Frumencio Reyes Aff. ¶9 (Motion to Suppl. Record, Ex. A), C.A. Dkt. 53. Alvarez requested that the Fifth Circuit consider the affidavit or remand the case for additional fact finding.

In 2025, a divided Fifth Circuit panel affirmed the denial of habeas relief. App.2a. The panel majority held that Alvarez failed to satisfy either *Cronic* or *Strickland* because “there is *no* clearly established Supreme Court law holding that a defendant was subjected to a violation of the Sixth Amendment where one counsel allegedly performed defectively but a second, engaged attorney effectively participated in representing the defendant.” App.13a.

Although recognizing that the Court of Criminal Appeals had expressly declined to adopt the habeas trial court’s effectiveness-of-counsel findings, the panel majority concluded that the Court of Criminal Appeals had “implicit[ly]” found that Alvarez had one counsel who likely performed adequately (Reyes) and a second counsel who “was fully engaged in the case” (Denninger). App.17a-18a. The panel majority acknowledged the

unrebutted juror affidavits, which stated that Reyes had repeatedly slept during witness testimony, but asserted that “[i]t [wa]s merely conjecture” that Reyes could not have “effectively” cross-examined witnesses. App.14a. The panel majority acknowledged in a footnote the Harris County rule that barred Denninger from handling Reyes’s witnesses, but, citing no evidence, dismissed as “only supposition” that Denninger “sat like a bump on a log and never proposed questions for cross on Reyes’s witnesses.” App.19a n.11. Finally, the majority denied Alvarez’s request to remand the case for consideration of Reyes’s 2019 affidavit, in which Reyes conceded that he had likely fallen asleep during trial. App.23a-25a.

Judge Richman dissented. In her view, under clearly established law, Alvarez was deprived of his right to counsel. App.33a-62a. The “unrebutted evidence” that Reyes slept during direct examination of witnesses that only he could cross-examine, Richman explained, was sufficient to warrant AEDPA relief under the two-part *Strickland* test. App.33a-37a. Reyes’s performance was deficient because “[n]o one contends that a lawyer’s conduct is reasonable ... if he sleeps during the testimony of a witness then cross-examines that witness in a capital trial.” App.33a. It was also prejudicial because Reyes “was responsible for cross-examining the lion’s share of the State’s witnesses” and “Reyes could not effectively cross-examine State witnesses during whose testimony he slept because he could not know what their direct examination elicited while he was asleep.” App.34a, App.57a. Judge Richman identified additional prejudice “from the jarring vision of a sleeping lawyer in the midst of a death penalty trial,” which “severely undermines the confidence that Alvarez received a fair trial.” App.57a. The juror affidavits, Judge Richman emphasized, confirmed that the jurors were in

fact affected during their deliberations by Reyes’s sleeping. App.57a-59a.

In response to the Fifth Circuit’s assertion that the Court of Criminal Appeals had “implicit[ly]” found Alvarez received adequate counsel, Judge Richman concluded that “[i]n the face of unrebutted testimony that Reyes slept” and “in light of the [Court of Criminal Appeals’] rejection of the trial court’s finding as to counsel’s effectiveness,” “it is difficult to hypothesize what facts the [Court of Criminal Appeals] could have found that would render denial of the sleeping-lawyer claim reasonable.” App.64a. Judge Richman declined to resolve whether *Cronic* applied because she “conclude[d] there was prejudice” under *Strickland*. App.81a.

Alvarez timely filed petitions for panel rehearing and rehearing en banc, which the Fifth Circuit denied. App.223a.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT ERRED IN AFFIRMING A STATE-COURT DECISION THAT IS CONTRARY TO, AND AN UNREASONABLE APPLICATION OF, THIS COURT’S INEFFECTIVE ASSISTANCE OF COUNSEL PRECEDENT

Review of the petition is warranted because the Fifth Circuit “has decided an important federal question”—whether sleeping counsel is contrary to, or an unreasonable application of, clearly established law—“in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). This Court has granted the writ of certiorari to fix comparable misapplications of its right-to-counsel precedent in cases subject to section 2254. *Porter v. McCollum*, 558 U.S. 30, 44 (2009); *Rompilla v. Beard*, 545 U.S. 374, 379-380 (2005). This Court should grant relief on the same basis here.

**A. The State-Court Decision Is Contrary To
*United States v. Cronic***

1. “In the normal course, defendants claiming ineffective assistance of counsel must satisfy the familiar framework of *Strickland v. Washington* ... which requires a showing that ‘counsel’s performance was deficient’ and ‘that the deficient performance prejudiced the defense.’” *Woods v. Donald*, 575 U.S. 312, 315 (2015) (per curiam). But certain “circumstances ... are so likely to prejudice the accused” that ineffective assistance of counsel can be “properly presumed without inquiry into actual performance at trial.” *United States v. Cronic*, 466 U.S. 648, 658, 661 (1984). The “[f]irst and [m]ost obvious” circumstance warranting a presumption of unconstitutional prejudice is “the ‘complete denial of counsel,’” *Bell v. Cone*, 535 U.S. 685, 695 (2002) (second alteration in original), “when ‘counsel [is] either totally absent, or prevented from assisting the accused during a critical stage of the proceeding,’” *Wright v. Van Patten*, 552 U.S. 120, 125 (2008) (per curiam) (quoting *Cronic*, 466 U.S. at 659 n.25) (alteration in original).

When the Court of Criminal Appeals issued its decision in 2008, it had long been clearly established that “[t]he mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee.” *Holloway v. Arkansas*, 435 U.S. 475, 490 (1978). In addition, it was clearly established that the right to counsel entails the right of counsel “to participate fully and fairly in the adversary factfinding process,” which can be negated by procedural “restrictions upon the function of counsel.” *Herring v. New York*, 422 U.S. 853, 857-858 (1975). This Court had also held by 2008 that “a critical stage” of the proceeding “denote[s] a step of a criminal proceeding ... that held significant consequences for the accused.” *Bell*, 535 U.S. at 695-696.

The circumstances of Alvarez’s capital murder trial amounted to a denial of counsel under clearly established law. While one lawyer slept during the testimony of State witnesses he then cross-examined, the other was prohibited from objecting to the testimony of, or cross-examining, those witnesses.

According to un rebutted juror affidavits, Alvarez’s lead counsel, Reyes, “repeatedly f[ell] asleep during the trial,” App.230a, and “would do most of his dozing while the prosecutors were questioning their witnesses,” App.226a-227a. While he slept, Reyes was effectively absent, unable to hear the testimony of witnesses he then cross-examined. And Reyes was responsible for examining most of the State’s witnesses: sixteen of twenty-seven witnesses during the guilt phase and nine of thirteen during the sentencing phase. App.34a. As Judge Richman concluded in dissent, Alvarez “was effectively without counsel during those parts of the trial” when Reyes slept. App.33a.

Certainly, witness testimony proffered to establish Alvarez’s guilt and to obtain the death penalty necessarily “held significant consequences for” him, *Bell*, 535 U.S. at 695-696, and thus constituted a “critical stage of the proceeding,” *Cronic*, 466 U.S. at 659 n.25. And Reyes’s sleeping during direct witness testimony fundamentally impaired his effectiveness on cross-examination, “the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis*, 415 U.S. at 316.

Every circuit court to consider a sleeping-lawyer claim has concluded that “unconscious or sleeping counsel is equivalent to no counsel at all.” *Javor v. United States*, 724 F.2d 831, 834 (9th Cir. 1984); accord *United States v. Massimino*, 827 F.App’x 176, 179 (3d Cir.

2020); *United States v. Roy*, 855 F.3d 1133, 1164 (11th Cir. 2017) (en banc); *United States v. Ragin*, 820 F.3d 609, 612 (4th Cir. 2016); *Muniz v. Smith*, 647 F.3d 619, 625-626 (6th Cir. 2011); *Burdine v. Johnson*, 262 F.3d 336, 338 (5th Cir. 2001) (en banc), *cert. denied*, 535 U.S. 1120 (2002); *Tippins v. Walker*, 77 F.3d 682, 687 (2d Cir. 1996). Indeed, when confronted with a lawyer who slept during direct examination of witnesses, as here, the Fourth Circuit concluded that “[i]t should go without saying that ... the attorney must be present and attentive in order to make adequate cross-examination.” *Ragin*, 820 F.3d at 619 (quoting *Tippins*, 77 F.3d at 686) (quotation marks omitted). Reyes failed to clear even that low bar.

Nor could Alvarez’s other counsel, Denninger, step in while Reyes slept because he was “prevented from assisting,” *Cronic*, 466 U.S. at 659 n.25, by the trial court’s enforcement of a rule prohibiting more than one lawyer from handling a witness. *See supra* §B(1). That is no different than other procedural rules constraining counsel that this Court identified as presumptively prejudicial under *Cronic*, 466 U.S. at 659 n.25: rules prohibiting summations, *Herring*, 422 U.S. at 865; requiring the defendant to testify first in the defendant’s case, thereby restricting counsel “in the planning of its case,” *Brooks v. Tennessee*, 406 U.S. 605, 612-613 (1972); and preventing defense counsel from eliciting the defendant’s testimony through direct examination, *Ferguson v. Georgia*, 365 U.S. 570, 596 (1961). *Ferguson v. Georgia* also rejected the contention, relevant here, that “requir[ing] counsel to conform to the rules of practice and procedure [cannot constitute] a denial of the benefit and assistance of counsel.” *Id.* at 571-572. Between Reyes’s sleeping and Denninger’s incapacitation by court rule, Alvarez was denied counsel during a critical stage of his

capital-murder trial in violation of clearly established law.

2. The Fifth Circuit’s contrary conclusion rested on the erroneous contention that, under AEDPA, Alvarez had to identify a factually identical Supreme Court decision in order to obtain relief. App.19a-23a. As the Fifth Circuit put it, “there is *no* clearly established Supreme Court law holding that a defendant was subjected to a violation of the Sixth Amendment where one counsel allegedly performed defectively but a second, engaged attorney effectively participated in representing the defendant.” App.13a. Alvarez could not plausibly satisfy this purported requirement where the constitutional violation resulted from a court rule preventing the second lawyer from stepping in. In any event, this Court rejected such a narrow factual-parity requirement just last year in *Andrew v. White*, where it explained that “[g]eneral legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court.” 604 U.S. at 86, 94 (2025) (per curiam). That is because “[c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt.” *Id.* at 95. This Court characterized the lower court as “mistaken” “[t]o the extent that [it] thought itself constrained by AEDPA” to apply the principle applicable there only in cases whose facts matched Court precedent. *Id.* at 94. As the above broad statements make clear, the Fifth Circuit (alone among the circuits) thus erred in construing *Andrew* as limited to the “evidentiary issue presented to the courts.” App.13a.

In *Andrew*, the applicable “fundamental” legal principle was that “the introduction of unduly prejudicial evidence could, in certain cases, violate the Due Process Clause.” 604 U.S. at 93. The principle announced in

Cronic—that a Sixth Amendment violation may occur “without inquiry into the actual conduct of the trial” when “circumstances [exist] that are so likely to prejudice the accused,” 466 U.S. at 658, 660—is no less “fundamental,” because it implicates the “very premise of our adversary system of criminal justice”: “partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free,” *id.* at 655 (quoting *Herring*, 422 U.S. at 862). The *Cronic* principle also encompasses the uncontroverted facts here, where one counsel slept during the testimony of witnesses he then cross-examined, and the other counsel was barred from either objecting to the witnesses’ direct testimony or cross-examining the witnesses. *See supra* §B(1).

The Fifth Circuit also cited *Wright v. Van Patten* for the proposition that *Cronic* does not apply in novel factual contexts. App.20a-22a. But *Van Patten* rejected extending *Cronic* to a lawyer who, unlike Alvarez’s lawyers, *did* fully participate in a plea hearing (by speakerphone). 552 U.S. at 125. *Van Patten* is therefore inapplicable on the facts of this petition.

B. The State-Court Decision Unreasonably Applied *Strickland v. Washington*

1. Even were Alvarez not entitled to relief under *Cronic*, the Court of Criminal Appeals erred in denying Alvarez’s sleeping-lawyer claim under *Strickland*.

“It is past question that the rule set forth in *Strickland* qualifies as ‘clearly established Federal law, as determined by the Supreme Court of the United States.’” *Williams v. Taylor*, 529 U.S. 362, 391 (2000). To establish ineffective assistance of counsel under *Strickland v. Washington*, a defendant must show that (1) counsel’s performance was deficient and (2) there is “a reasonable

probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. 668, 687, 694 (1984). A defendant may obtain relief under AEDPA where a state court unreasonably applies *Strickland*. *Harrington v. Richter*, 562 U.S. 86, 101 (2011).

To the extent the Criminal Court of Appeals concluded that Reyes provided adequate assistance of counsel to Alvarez, that conclusion was unreasonable. Although there are “countless ways to provide effective assistance” of counsel, *Strickland*, 466 U.S. at 689, sleeping is not one of them. A sleeping lawyer cannot fulfill the basic duties of defense counsel: listening and objecting to testimony, assessing witness demeanor, consulting with client and co-counsel, and making informed decisions about confronting the State’s case. *See id.* at 688; *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963). Sleeping, in short, is in no way “sound trial strategy.” *Strickland*, 466 U.S. at 689. And a lawyer who neglects his basic duties by sleeping during direct examination of hostile witnesses, as Reyes did, cannot effectively cross-examine those witnesses because a lawyer “must be present and attentive in order to make adequate cross-examination.” *Ragin*, 820 F.3d at 619 (quotation marks omitted). This reality was not lost on Alvarez’s jury. As one juror remarked, Reyes “could [not] have done a very good job of questioning those witnesses when he would be sleeping during their testimony.” App.226a-227a.

At bottom, the “adversarial process protected by the Sixth Amendment requires that the accused have ‘counsel acting in the role of an advocate.’” *Cronic*, 466 U.S. at 656 (quoting *Anders v. California*, 386 U.S. 738, 743 (1967)). Counsel must subject “the prosecution’s case to ... the crucible of meaningful adversarial testing.” *Id.* But “[s]leeping counsel cannot function as

counsel while asleep.” App.53a (Richman, J., dissenting).

The Court of Criminal Appeals’ conclusion that Alvarez was not prejudiced by Reyes’s sleeping was likewise unreasonable. Any fair-minded jurist would conclude that repeated sleeping during witness testimony prejudices the accused because, as the courts of appeals have repeatedly held, sleeping is inherently prejudicial. Unconscious counsel cannot “confer with the client during trial on a continuous basis.” *Tippins*, 77 F.3d at 686 (quoting *Javor*, 724 F.2d at 834). He cannot “exercise judgment, calculation and instinct.” *Burdine*, 262 F.3d at 349 (quoting *Tippins*, 77 F.3d at 687). And he cannot “adequately test the credibility of witnesses on cross-examination.” *Javor*, 724 F.2d at 834.

Reyes’s sleeping deprived Alvarez of an advocate who could probe witness testimony that was critical to the State’s case. During the guilt phase of trial, for instance, Reyes was responsible for cross-examining a witness who testified to being only a few feet away when a man approached and killed her boyfriend and brother; she identified Alvarez as the shooter, App.265a-270a, despite having previously identified someone else as the shooter in a photo lineup that included Alvarez, ROA.5667-5669. Reyes was also responsible for cross-examining police officers, including an officer who investigated one of the crime scenes, App.262a-263a, and another who testified to recording Alvarez’s confession of the murders, App.276a-278a. Likewise, during the penalty phase, Reyes’ responsibilities included cross-examining witnesses who identified Alvarez as having committed other acts of violence—testimony the State offered to obtain the death penalty. App.281a-283a, App.285a-287a. Denninger, while present at trial during this testimony, could not cure the prejudice caused by

Reyes’s sleeping because he could neither object to the testimony of these witnesses nor cross-examine them.

It is beyond peradventure that Reyes’s sleeping through witness testimony in a capital-murder trial “so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result”—“[t]he benchmark for judging any claim of ineffectiveness.” *Strickland*, 466 U.S. at 686. Reyes’s sleeping turned the proceedings into a “spectacle,” App.230a, which jurors “talked about when [they] were deliberating,” App.227a. “[J]urors ... couldn’t believe that a lawyer like this in a capital case was falling asleep.” App.230a-231a. “The unmistakable message to jurors was that the legal system thought it unimportant that Alvarez have competent counsel when deciding whether he was guilty and, literally, whether he was to live or die.” App.62a (Richman, J., dissenting).

Even under AEDPA’s deferential review, Reyes’s sleeping raises the “reasonable probability that, but for [his] unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

2. In holding that Alvarez did not establish a *Strickland* violation under AEDPA, the Fifth Circuit made two errors. First, the Fifth Circuit was wrong that, to obtain relief, Alvarez had to identify factually identical Supreme Court law. App.13a. This purported AEDPA requirement conflicts with *Andrew*, *see supra* §I(A)(1), as well as *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009), where this Court refuted such a requirement in the context of a *Strickland* claim. When there is no “specific legal rule that has ... been squarely established,” this Court said, relief may still be granted “if the state-court decision unreasonably applied the more general standard for ineffective-assistance-of-counsel

claims established by *Strickland*.” *Id.* The Fifth Circuit erred by failing to apply the general standard and instead demanding that Alvarez find an exact match—a virtually impossible task given the violation here resulted from local practice.

Second, the Fifth Circuit unreasonably applied *Strickland* in light of the uncontroverted, outcome-determinative record evidence: the un rebutted juror affidavits stating that Reyes slept during witness testimony, and the court rule prohibiting Denninger from objecting to the testimony of, or cross-examining, witnesses handled by Reyes. No fair-minded jurist could conclude that Reyes provided competent representation on that record. Denninger’s conduct at other points in trial, emphasized by the Fifth Circuit, App.15a, is irrelevant to whether Alvarez received effective assistance of counsel when Reyes slept during witness testimony and Denninger was barred from stepping in for his co-counsel. The Fifth Circuit should be reversed because it erred in holding that the Court of Criminal Appeals’ decision was not an unreasonable application of *Strickland*.¹

II. THE QUESTION PRESENTED WARRANTS THIS COURT’S REVIEW

The right to effective assistance of counsel is “fundamental” and “the means through which the other

¹ To the extent the Court of Criminal Appeals “implicit[ly]” found that Alvarez received adequate counsel, as the Fifth Circuit purported to find, App.15a-19a, its decision was “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding,” 28 U.S.C. §2254(d)(2). No evidence cited by the Fifth Circuit, including Denninger’s “engage[ment]” at trial, App.18a, rebuts the evidence that Reyes slept during witness testimony and that Denninger could not step in for his co-counsel.

rights of the person on trial are secured.” *Cronic*, 466 U.S. at 653. This petition warrants review because the Court of Criminal Appeals’ decision defies this Court’s clear and longstanding Sixth Amendment jurisprudence. When Alvarez’s lead counsel slept during testimony of hostile witnesses as to whose testimony only he could object and only he could cross-examine, Alvarez was effectively without counsel in a critical stage of his capital-murder trial.

The egregiousness of the conduct here only reinforces the need for review. The basic fairness of the criminal justice system is put at issue by a trial where a jury sentences a man to death while his lawyer sleeps. Judge Richman cut to the heart of the matter in her dissent: “Allowing a death sentence to stand in these circumstances undermines not only confidence in the integrity of the trial itself but the public’s confidence in the judicial system as a whole.” App.36a.

This petition presents an excellent vehicle for the Court to address the sleeping-lawyer claim because the record contains un rebutted evidence supporting Alvarez’s claim: juror affidavits establishing that Reyes slept during witness testimony, and trial transcripts showing that the trial court enforced the Harris County rule that barred Denninger from objecting to, or cross-examining, Reyes’s witnesses. In addition, the petition focuses exclusively on the sleeping-lawyer claim.

Finally, the claim is ripe for the Court’s adjudication. The debate between the Fifth Circuit majority and the dissent has fully crystallized the issues regarding when *Cronic* and *Strickland* apply to sleeping-lawyer claims in the context of AEDPA. The majority opinion unduly constrains AEDPA review by insisting on factual parity between this Court’s precedent and the clear

constitutional violation presented, a requirement that this Court rejected in *Andrew*. The majority’s incorrect reading of *Andrew* as limited to “the evidentiary issue presented to the courts,” App.13a, has not been adopted by any of the other circuits that have construed that decision, *Chandler v. Brown*, 137 F.4th 525, 548 (6th Cir. 2025) (per curiam); *Walker v. Cromwell*, 140 F.4th 878, 886 (7th Cir. 2025); *Bieganski v. Shinn*, 149 F.4th 1055, 1067 (9th Cir. 2025), *cert. denied*, No. 25-690 (U.S. Apr. 20, 2026); *Martinez v. Quick*, 134 F.4th 1046, 1065 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 385 (2025); *Gilmore v. Georgia Dep’t of Corr.*, 144 F.4th 1246, 1272 n.3 (11th Cir. 2025). The majority’s factual-parity requirement also conflicts with decisions of multiple circuits that have granted habeas relief for sleeping-lawyer claims under *Cronic*, rulings that would contravene a factual-parity requirement because *Cronic* itself was not a sleeping-lawyer case. *See Tippins*, 77 F.3d at 687; *Ragin*, 820 F.3d at 612; *Burdine*, 262 F.3d at 338.

This Court’s review is likewise appropriate now because a more particularized circuit split is unlikely to occur, given that the constitutional violation arose under a local rule prohibiting more than one lawyer from objecting to the testimony of, or cross-examining, a witness. Absent a grant here, there will likely never be a Supreme Court decision speaking directly to the application of *Cronic* and *Strickland* in this context—precluding any Sixth Amendment relief in state criminal cases even on the most egregious facts. In all events, the stakes here—a man’s life hangs in the balance—are too high to wait.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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