No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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KWOK CHEUNG CHOW,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

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

_____

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals decided an important federal question in a way that conflicts with relevant decisions of this Court when it decided that trial counsel were effective in having a totally inexperienced counsel prepare a complicated RICO conspiracy murder case for trial; in not impeaching government witnesses; in not interviewing essential defense witnesses; in not calling vital witnesses to testify; in not agreeing to a continuance when three murders were added to the charges days before trial; in not moving to exclude murder charges having nothing to do with the defendant; and in promising to present key evidence in the opening statement and then not producing the evidence at trial. *Strickland v. Washington,* 466 U.S. 668 (1984); Sup. CT. R 10(c).

PARTIES

The parties to the proceeding before the United States Court of Appeals for the Ninth Circuit were Kwok Cheung Chow (appellant below), and the United States of America (appellee below).

RELATED CASES

United States v. Chow, Case No. 3:14-cr-00196-CRB, United States District Court for the Northern District of California. Judgment entered on August 4, 2016.

United States v. Chow, Case No. 24-4225, United States Court of Appeals for the Ninth Circuit. Memorandum entered on May 26, 2026.

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On Petition for Writ of *Certiorari* to the
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PETITION FOR WRIT OF CERTIORARI

Petitioner, KWOK CHEUNG CHOW, respectfully prays that a writ of certiorari issue to review the opinion of the Court of Appeals for the Ninth Circuit denying his 28 U.S.C. §2255 motion to vacate convictions. *United States v. Chow*, Ninth Circuit Case No. 24-4225.

OPINIONS BELOW

On May 26, 2026, the Court of Appeals affirmed the district court's denial of the motion to vacate. Appendix A. On June 15, 2026, the Court denied rehearing. Appendix B.

On September 11, 2026, Justice Elena Kagan granted an extension of time to file the petition for writ of certiorari to and including November 12, 2026. *Kwok Cheung Chow, v. United States*, Application No. 26A327.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §2255. The Court of Appeals had jurisdiction under 28 U.S.C. §1291 and §2253(a). This Court has jurisdiction under 28 U.S.C. §1254(1).

PROVISIONS OF LAW

The Sixth Amendment to the United States Constitution reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." U.S. Con., Amend VI.

28 U.S.C. §2255 provides in relevant part:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or

correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

STATEMENT OF THE CASE

Trial

On January 29, 2015, the grand jury returned a Second Indictment against Mr. Chow and several co-defendants. On October 15, 2015, the grand jury returned a Third Indictment alleging 162 counts in a complex RICO conspiracy murder case.

Count 1 alleged that by 2005, and continuing through 2014, Chow and his co-defendants conspired to operate the affairs of the Chee Kung Tong enterprise through a pattern of racketeering activity. 18 U.S.C. § 1961(1). The alleged activity included dealing in controlled substances, the extortionate collection of unlawful debt, money laundering, the interstate sale and receipt of stolen property, dealing

in contraband cigarettes, and murder for hire and murder. Count 2 alleged the murder in aid of racketeering of Allen Leung. 18 U.S.C. § 1959(a)(1). Count 3 alleged the murder in aid of racketeering of Jim Tat Kong. 18 U.S.C. § 1959(a)(5). Counts 4 through 133 and 139 through 162 alleged money laundering. 18 U.S.C. § 1956(a)(3)(A) and (B). Counts 134 and 135 alleged conspiracies concerning stolen alcohol. 18 U.S.C. § 371. Counts 136 through 138 alleged conspiracies concerning contraband cigarettes. 18 U.S.C. § 371.

On January 8, 2016, the jury convicted Chow of all counts. On August 4, 2016, Chow was sentenced to life in prison.

On May 15, 2019, the court of appeals affirmed the convictions and sentence. On August 19, 2019, the court denied the petitions for rehearing.

On January 13, 2020, this Court denied certiorari. *Chow v. United States*, 589 U.S. 1160 (2020).

Motion to Vacate

On December 13, 2020, Chow submitted a *pro se* motion to vacate his conviction under 28 U.S.C. § 2255. On July 14, 2022, a first amended motion was filed. On May 28, 2024, the district court denied the motion and a certificate of appealability.

On June 17, 2024, Chow filed a motion for reconsideration and a request for a certificate of appealability. On July 2, 2024, the court denied the motion and granted the certificate. On July 4, 2024, Chow filed a notice of appeal.

On December 3, 2025, the case was argued and submitted. On May 26, 2026, the court issued it's memorandum affirming the denial of the motion. Appendix A. On June 15, 2026, the court denied rehearing. Appendix B.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO SETTLE THE IMPORTANT QUESTION OF WHETHER THE COURT APPEALS ERRED IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT WHEN—WITHOUT ORDERING AN EVIDENTIARY HEARING—IT FOUND THAT TRIAL COUNSEL WERE EFFECTIVE.

A. Trial Counsels' Admission of Ineffective Representation Are Telling.

Mr. Chow was charged with a variety of offenses. The government's case was subject to challenge. But only with effective counsel. The trial was marred by counsels' representation. *Strickland v. Washington*, 466 U.S. 668, 685-87 (1984). As a result, Chow was unfairly convicted of all counts and sentenced to life in prison.

In April 2014, Tony Serra, Curtis Briggs, and Gregory Bentley appeared on behalf of Chow. Doc #118. Serra "had very little to do with anything other than the trial of this case. [He] was not involved in pretrial litigation, discovery and other preparation." 2-ER-140, ¶ 4. Bentley suffered a personal crisis that eventually led to his removal and, ultimately, his disbarment.[1] 6-ER-1144, ¶¶ 11-12. Bentley's departure was significant.

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[1] A Notice of Disciplinary Charges was filed against Bentley in State Bar Court on December 7, 2015—in the middle of Chow's trial. 2-ER-323. He was disbarred in November 2016. 2-ER-143.

> [Mr. Bentley's] contribution to the defense team on this case was greatly missed. I believe that Mr. Bentley would have prevented many of the mistakes that we ultimately made in this case had he played the role that he was expected to play on the defense team, especially given his unique abilities to research, analyze, and apply the law.

6-ER-1145, ¶ 13.

Tyler Smith joined the defense in December 2014. He had been an attorney for little more than a year. Chow's case was "his first criminal case ever." 6-ER-986. Matt Farrer reviewed discovery beginning in September 2015. 6-ER-1148. Farrer had earlier resigned from the California State Bar with disciplinary charges pending. *See* https://apps.calbar.ca.gov/ attorney/Licensee/Detail/203544 (last visited November 3, 2026).

Briggs became the primary attorney on the case until trial began. 6-ER-1145, ¶ 14. He was responsible for litigating pretrial motions, reviewing discovery and communicating with Chow. *Id.* Briggs had been a lawyer for less than two years. He candidly admitted:

> In retrospect, there was too much responsibility and deference given to me in light of my level of experience at the time. I had never previously represented a client in a federal criminal case. I had never participated in a federal criminal trial—not even as an intern. I had completed one jury trial in state court in a driving under the influence case. . . . I had never been exposed to a complex case with large volumes of e-discovery such as in Mr. Chow's case. Ultimately, the task of preparing and trying this case became overwhelming for me in every way.

Id., ¶ 15.

In short, trial counsel had no clue what they were doing. Briggs admitted:

> At the time we came on the case, I was not aware of the existence of the CJA. I had never heard of it. I was not aware of the benefits of CJA representation in terms of funding for the substantial costs required to prepare a complex federal case for trial. I was so inexperienced that I was not familiar with the concept of appointed counsel even in state courts. I was not aware of the large volume of discovery produced in such cases and how to process and organize discovery on the scale of a case like this one.

6-ER-1146, ¶ 17. Briggs took on other cases to fund his expenses, which only made matters worse.

> As I took low paying cases throughout California, my case load expanded in an effort to finance the Chow case, but my personal finances were depleted and this created financial emergencies. . . . The financial hardships were substantial. It was difficult to pay my office rent and keep my cell phone on. Mr. Serra would assist by occasionally giving me a case referral, but this would only compound my workload which created more compounding time conflicts.

Id. at 1147, ¶¶ 20.

Trial counsel did not subject the government's case to the kind of "adversarial testing" required to protect Chow's right to a fair trial. Counsel failed to investigate the case. Counsel failed to litigate meaningful issues. Counsel failed to challenge the government's case. Counsel failed to present the defense case. *Strickland*, 466 U.S. at 685-87.

The district court "recognize[d] that trial counsel's performance fell short at many times throughout the case." 1-ER-43. Nevertheless, the court found that "Chow has failed to show how the deficient performance was so prejudicial as to alter the outcome of the trial." *Id.* Without holding a requested evidentiary hearing, the court said that the outcome "would have been the same even without

any of the alleged errors."[2] 1-ER-45. The court could not do so under a proper application of *Strickland*.

The outcome of the trial would have been much different had counsel been effective. Chow would not have testified. He would not have been impeached with his debriefing statements. The Kong and Chen murders would have been investigated. Wing Mo Ma—the real killer—would have been exposed to the jury. The multitude of defense witnesses noticed by defense counsel would have been called to testify. Other witnesses unknown to counsel would have been called to the stand upon investigation. Counsel would not have promised the jury what he did not introduce in evidence. Counsel "fell short" from beginning to end. Chow suffered greatly as a result. The trial was rendered unfair and the verdict rendered suspect.

In fairness, one cannot say that the case would not have been different had, for example, the three murders not been introduced. Without hearing the evidence that would have been admitted and weighing it against the evidence that would have been excluded, the court's determination of prejudice had no foundation. Without a hearing, it was, as Justice Marshall wrote, "very difficult to tell whether a defendant convicted after a trial in which he was ineffectively represented would have fared better if his lawyer had been competent. Seemingly impregnable cases can sometimes be dismantled by good defense counsel. On the basis of a cold

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[2] The court denied Chow's request for an evidentiary hearing. 1-ER-16.

record, it may be impossible for a reviewing court confidently to ascertain how the government's evidence and arguments would have stood up against rebuttal and cross-examination by a shrewd, well-prepared lawyer. The difficulties of estimating prejudice after the fact are exacerbated by the possibility that evidence of injury to the defendant may be missing from the record precisely because of the incompetence of defense counsel." *Strickland*, 466 U.S. at 710 (Marshall, J., dissenting). As Justice Marshall explained: "To afford attorneys more latitude, by "strongly presuming" that their behavior will fall within the zone of reasonableness, is covertly to legitimate convictions and sentences obtained on the basis of incompetent conduct by defense counsel." *Id.* at 713.

In denying the numerous issues centering on trial counsels' ineffective assistance, the district court and the court of appeals erred in an way that conflicts with relevant decisions of this Court. The accumulation of the errors is too great a weight for the Sixth Amendment to bear. Had the case been properly prepared, the trial would have made a difference to the 12 jurors who listened to the evidence, asked multiple questions, requested testimony readbacks of key witnesses and who spent 3 days deliberating the case.

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B. The Court of Appeals Opinion Conflicts With Relevant Right to Counsel Decisions of this Court.

1. The Principles of Effective Assistance Review.

This Court developed the standard for evaluating ineffective assistance of counsel claims in *Strickland* and further defined it in a series of cases. The court found that "[t]o succeed on a claim of ineffective assistance of counsel, a defendant need only show that (1) counsel's performance was deficient, and (2) had counsel performed adequately, there is a reasonable probability that the result of the proceeding would have been different." *Strickland,* 466 U.S. at 687-88, 696. A "reasonable probability" of a different result is simply a probability sufficient to undermine confidence in the outcome. *Kyles v. Whitley*, 514 U.S. 419, 434-35 (1995); *Strickland*, 466 U.S. at 693, 695. It is less than the preponderance more-likely-than-not standard. *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011). The court need only determine whether counsel's deficient performance "so upset the adversarial balance between the defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." *Nix v. Whiteside*, 465 U.S. 157, 175 (1986); *Lockhart v. Fretwell,* 506 U.S. 564, 572 (1993). And, while this Court requires a defendant to "affirmatively prove prejudice", he need merely show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694.

2. Trial Counsels' Experience Did Not Counter their Ineffectiveness.

Initially, the court misconstrued and improperly narrowed Chow's ineffective assistance claims. In doing so, the court gave the claims short shrift.[3] Chow did not simply argue that he should prevail because "his counsel was inexperienced . . .." Memorandum at 2. His claims run far deeper. Serra's reputation and "vast, vast experience" did not trump the failings. *Id.* Serra's representation did not save the day.[4] Serra relied on vastly inexperienced counsel to conduct the investigation and to prepare the case for trial. His "effectiveness" was cabined by other counsel's woefully below par work.

Moreover, Chow did not claim that "the mere fact that some of [his] other attorneys lacked substantial federal-criminal-trial experience . . . on its own, establish[ed] deficient performance." Memorandum at 2-3. Chow did not have to meet "his burden to demonstrate IAC simply because some members of his team were inexperienced." *Id.* at 3. He never made such a claim. The court overlooked or misconstrued the claim entirely. And, in doing so, the court decided the important Sixth Amendment question in a way that conflicts with *Strickland* and subsequent cases.

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[3] The briefing by both parties is 197 pages in length, the combined excerpts of record are 6,857 pages in length, and oral argument exceeded the allotted time. The majority memorandum is 4 pages in length.

[4] A fresh paint job only covers the rot; it does not remove it.

3. A Trial Continuance Should Have Been Agreed to By Counsel As There Was No Strategic Reason Not to Do So.

In the same way, Chow did not simply argue that he should prevail because counsel did not seek a continuance of the trial. The court overlooked or misapprehended the law and facts in finding that Chow "failed to establish IAC based on counsel's decision not to agree to a continuance of the trial date." Memorandum at 3. The court again improperly narrowed the claim in conflict with the principles *Strickland*. It was not a discrete claim; it was part and parcel of the overall ineffectiveness.

Contrary to the court's opinion, the "decision to decline and oppose a continuance was [not] a reasonable, tactical attempt to force the government to present its case without additional time for preparation and to frustrate the government's efforts to seek the death penalty against Chow." Memorandum at 3. Trial counsel were deficient in "declining the continuance." *Id.* Counsel were in no way ready to proceed to trial.

The third indictment added the Leung and Kong murders.[5] The murders completely changed the case. There was no strategic choice in pushing forward because not continuing the case did not prevent the government from preparing. As the trial shows, the government was ready, the defense not close. The government and the court recognized the need for a continuance. 3-SER-856. Yet counsel said: No.

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[5] And, as a result, it allowed for the introduction of the Chen murder.

The decision to press for trial was made by an attorney who had never tried a federal criminal case. 6-ER-1145, 1148-1149, ¶¶ 15, 25, 27. Briggs did not have the experience to advise Chow of the consequences of going to trial, and Serra said nothing. 6-ER-1148-1149, ¶¶ 25, 27. As Briggs conceded, the decision not to seek a continuance was an egregious mistake, not a tactical decision. 5-ER-777; 6-ER-1148-1149, ¶¶ 25-27 ("Because I had never experienced a case such as this, I deferred to his desire to move the case forward, which was not fully informed. This was a serious mistake on my part.") ("We should have sought a continuance.") The government recognized the mistake at the time. 4-ER-466 (Prosecutor commented that he "had never seen 'anyone with a straight face' state in a sworn declaration that they would be ineffective by proceeding to trial, but that they nonetheless wanted to do so").

As to the failure to seek a continuance, the court held that "the Government's substantial evidence of Chow's involvement in the added charges would have come to light even with a continuance, and so their failure to seek a continuance was not prejudicial." 1-ER-25. The court held that Chow "fails to explain how not seeking a continuance "so upset the adversarial balance" so as to render the trial unfair and the verdict suspect." 1-ER-26. Not so.

Chow made a substantial showing of how a properly prepared case would have been presented at trial. Had a continuance been sought and granted, witnesses would have been identified, contacted and interviewed. All witnesses would have testified. Counsel would have successfully defended the charge that

Chow had Leung murdered. Counsel would have had the evidence of Kong and Chen's murders excluded or been prepared to counter it at trial. In short, the trial would have been much different had counsel been prepared.

Importantly, if there was any question about the evidence offered demonstrating prejudice, the court should have remanded the case to the district court for an evidentiary hearing. At that hearing, the evidence would have been fully available for the court to consider. Cutting the case short—by merely declaring there was no prejudice—without testing the evidence—produced an unjust result. As in *Fontaine*, "[o]n this record, we cannot conclude . . . that under no circumstances could the petitioner establish facts warranting relief under s 2255, ..." *Fontaine v. United States*, 411 U.S. 213 (1973); *see also Townsend v. Sain*, 372 U.S. 293, 313 (1963).

Contrary to the opinion, Chow did "establish prejudice." Memorandum at 4. He would not just have filed "more pretrial motions, performed further investigation, and objected to the government's proposed jury instructions." *Id.* He would have readied the case for trial. His "actions would have altered the ultimate outcome of the trial." *Id.* Briggs admitted that not seeking a continuance was an egregious mistake. 5-ER-777; 6-ER-1148-1149, ¶¶ 25-27. Counsel conceded that with a continuance, the trial would have been different. 6-ER-1157-1158, ¶59.

Chow did "heed [this] Court's instruction that 'every effort [must] be made to eliminate the distorting effects of hindsight.'" Concurring Memorandum at 2 (*citing Strickland,* 466 U.S. at 669). The court overlooked the facts and law in finding that

"it is clear that the strategic gamble that counsel made was well 'within the wide range of reasonable professional assistance.'" *Id.* Counsel were not prepared to defend the charges. Sound decisions do not entail gambling with the Sixth Amendment.

Nor did Chow's "opposition to seeking a continuance place[] the Government in a difficult position vis-à-vis seeking the death penalty, ..." Concurring Memorandum at 3. The district court ruled that it would sever any capital charge "and proceed with the remaining trial."[6] *Id.* Counsel could not prevent the government from seeking death by proceeding to trial. The defense received no benefit from going forward. And, while the concurring opinion raises the rule against "hindsight", the fact remains that "the judgment not to seek a continuance nonetheless proved as an overall matter to be unwise, because Chow needed additional time to prepare more than the Government did and because the Government might not have pursued the death penalty in any event." *Id.* Chow more than demonstrated "that counsel's decision not to seek a continuance amounted to deficient performance." *Id.*

What was needed was effective counsel prepared to challenge the evidence presented. Not seeking a continuance was not a rational, effective choice on the part of counsel. It was an ill informed rash decision without a modicum of strategy.

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[6] As the concurring opinion noted, the government declined to pursue a capital charge "only 11 days after the district court stated that it would sever any capital charge." Concurring Memorandum at 3.

4. The Kong and Chen Murders Were Not Part of the Defense Case.

At the time of Chow's trial, Wing Wo Ma was in federal custody on suspicion of killing Kong and his girlfriend, Cindy Chen. Indeed, at Ma's trial in 2019, the government explicitly stated that there was no evidence that Chow or his associates were involved in the murders "in any way." But, at Chow's trial, the jury was led to believe that Chow was responsible for killing Kong and Chen when they knew it was Ma, as they later proved beyond a reasonable doubt at Ma's trial. 2-ER-136-137.

Adding graphic evidence of three gory murders assuredly harmed Chow's defense. The government introduced—without any defense challenge— detailed testimony from multiple law enforcement officers, a crime scene investigator, and a medical examiner about the three murders. The government introduced gruesome photographs of the homicide scenes and autopsy. The admission of the evidence allowed the prosecutor, in closing, to sharply contrast counsel's comment in his opening about the "beatific" image of Chow with the images of Leung, Kong and Chen. 5-ER-784. Had the evidence been excluded, the graphic argument could not have been made.

Contrary to the court's conclusion, the Kong and Chen murders did not go "straight to the core of the defense strategy with respect to the murder-conspiracy charge. Memorandum at 4. Nor did Serra emphasize the details of the murders in an attempt to show "'reasonable doubt'—that the Kong and Chen murders were

'marijuana-related' and 'ha[d] nothing to do with [Chow].'" *Id.* It was not counsel's job to spray the courtroom with gruesome photos and testimony concerning two murders that had nothing to do with the charges. It was not "a reasonable strategy for distancing Chow from the murder conspiracy." *Id.* It was a last-ditch effort to concoct a defense. It failed miserably, and one does not need hindsight to know the misery.

Indeed, the concurring opinion notes that "among the most troubling alleged deficiencies of counsel were three asserted errors all relating to the charge of conspiracy to murder Jim Kat Kong (a murder which Chow and his co-conspirator, Andy Li, were never shown to have actually carried out)." Concurring Memorandum at 4. The court noted the specific deficiencies: "(1) the failure to object to the inclusion of this conspiracy charge as being eligible for a theory of liability under *Pinkerton v. United States*, 328 U.S. 640 (1946), based on the overarching RICO conspiracy charge; (2) the failure to attempt to narrow the extent of the inflammatory evidence introduced concerning the subsequent murder of Kong and his partner by other persons for other reasons; and (3) the failure to object to the prosecution's potentially misleading comments, in opening statements, that could be misread as suggesting that Chow was responsible for the actual subsequent murder." Concurring Memorandum at 4-5. The concurring opinion acknowledged that "the amount of evidence concerning the subsequent actual murders was probably excessive, ..." *Id.* at 5. But, the court erred in concluding "that Chow has failed to make a sufficient affirmative showing that these errors

were collectively prejudicial." *Id.*

The concurring opinion did "not agree with the majority's premise that allowing the details of the Kong murder to come in was 'a reasonable strategy for distancing Chow from the murder conspiracy.' *See* Memo. Dispo. at 4." Concurring Memorandum at 6, fn 2. The concurring opinion properly points out that trial counsel's concession in closing argument "is obviously correct under the law, and the point makes it all the more inexplicable why defense counsel never sought to exclude all the detail that was admitted about the actual Kong [and Chen] murder[s]." *Id.* Indeed, it is plainly inexplicable.

After the government rested, counsel filed a motion to strike the Leung and Kong murder evidence. 1-SER-48. Counsel conceded that their failure to object earlier was the result of inadequate preparation, lack of time, and failure to review discovery. 1-SER-50-51 ("Sacrifices were made by defense counsel and some corners were cut."). Counsel should have pursued the motion to exclude the "murder" evidence much earlier. 1-SER-48.

Arguing the details of Kong's actual murder to suggest that Kong had many enemies who may have been responsible for any prior conspiracy to murder was not tactical. Arguing some point after the evidence is admitted is not effective; it is simply trying to make the best of a bad situation and a situation created by counsel. Trying to explain it is far less effective than not having to address it. Effective counsel would have moved to exclude it early on.

Moreover, had counsel followed the Ma prosecution, they could have rebutted the government's presentation to the jury suggesting that Chow was responsible for the murders. By introducing the Kong and Chen murders and by not fully explaining Chow's lack of involvement (until argument), the government did suggest that Chow "was responsible for the murders." Otherwise, why introduce the evidence? The panel did not answer that question either.

Had counsel investigated Ma's case, they could have presented evidence that Ma was involved in Kong and Chen's murders in connection with a marijuana conspiracy in Mendocino County. 3-ER-336. This evidence would have fully rebutted the government's suggestion that Chow was responsible for the murders. Without it, Serra could only say in closing, "We don't know who killed Kong. It may have been marijuana farmers." 5-ER-839. Counsel's statement did not stop the jury from believing that Chow was responsible for the murders of Kong and Chen.

The jury was fed this theory because trial counsel failed to litigate the murders and Ma's responsibility for them. There was no causal link between the conspiracy with which Chow was charged and Kong's and Chen's actual murders. The prosecutor admitted so. 3-FER-570-571. The government was allowed to present evidence of Chen's murder despite never alleging that Chow was involved in her murder or that he conspired to kill her. The evidence of Kong's murder would only have been relevant if the purported conspiracy to murder Kong actually led to Kong's murder. Without a link between the conspiracy with which Chow was charged and Kong's actual murder, the evidence should have been excluded.

In sum, beginning with the opening statement, the government improperly led the jury to believe that Chow was responsible for the murders of Kong and Chen. 4-ER-483-488. However, Chow had nothing to do with the murders. 2-ER-136-137; 3-ER-335-349. Counsel should have objected to the statements. There was no strategic reason for not doing so. 6-ER-1155, ¶ 47. By not saying that Chow had nothing to do with the killings and not explaining that he withdrew from the earlier conspiracy, the jury was left with nothing other than he must have been involved in the actual killings somehow.

5. The Leung Murder Was Not Challenged or Exposed As Counsel Promised the Jury.

The court's opinion runs afoul of *Strickland* because it does not mention the Leung murder or any of the issues raised by its introduction. Only Wong connected Chow to the actual murder. 4-ER-565-574. The government relied heavily on Wong's testimony. 5-ER-780, 784, 797, 800-801, 803-804, 828-833. The jury requested a read-back of his testimony. 1-FER-002.

Wong testified that Chu was present at a number of events. 2-ER-114. Yet counsel failed to call Chu to testify. Chu would have impeached Wong's testimony and contradicted key evidence about Leung's murder. *Id.* Counsel failed in not calling him to the stand.

Regarding counsel's failure to present evidence that Lee killed Leung, Serra pointed to Lee as a suspect in his opening statement. 4-ER-489-491. He explained that Lee was with Leung when Leung was shot by a masked gunman. *Id.* at 489-

490. Lee fled to Hong Kong and never returned. *Id.* Serra promised that the defense would show that others had motives to kill Leung and Chow was not involved at all. *Id.* at 491. Despite these promises, the defense did not introduce any substantial evidence to establish Lee's possible motive to murder Leung. The only evidence elicited came from Jenny Leung when she testified that immediately after Leung was shot, Lee "grabbed everything on Allen's desk," fled the store, and then fled the country. 6-ER-1025.

When Serra asked her about a dispute between Leung and Lee regarding a lease for the Golden Dragon Restaurant, she testified, "I personally don't know anything about it." 4-ER-579. But Mrs. Leung told investigators the opposite. 4-FER-723. Serra did not ask Mrs. Leung a single question about her interview. As a result, the jury never heard the evidence that Lee had a motive to kill Leung—or indeed any evidence to support this defense theory. Because counsel failed to impeach Mrs. Leung, the prosecutor argued in closing that Mrs. Leung noted that her husband had "concerns" prior to his death, but "she didn't know what it was about." 18-SER-4998.

According to Mrs. Leung's interview, Leung was in Hong Kong until a week prior to his murder. Cam's timeline did not match up. Briggs did not ask Cam about his interview. As a result, the jury never heard evidence contradicting Cam's account and calling into question his testimony about the purported conspiracy to kill Leung.

Counsel failed to impeach several other key witnesses. Chanthavong wasn't impeached with any of the statements he made in his proffer sessions. Agent Wu wasn't impeached when he testified that Leung didn't want to wear a body wire because Chow would kill him if he found out. Clifton Leung wasn't questioned at all – so the evidence about the Golden Dragon Lease never came out. Pasava wasn't asked about the SFPD investigation of Lee as a suspect and their development of a motive to kill Leung.

In the end, counsel failed to present the evidence he promised. The prosecutor highlighted this failure. In closing, he called the notion that Lee was involved in Leung's murder "a vast amount of speculation" and a "crazy theory" because counsel presented no evidence to support it. 5-ER-848; 6-ER-1031. It was not a crazy theory. But because counsel failed, the jury never heard the evidence that supported it. 6-ER-1031.

C. The Court of Appeals Improperly Applied *Strickland* and it's Progeny.

In addition to establishing the basic principles of deficient performance and prejudice, this Court determined that the Sixth Amendment envisions counsel "playing a role that is critical to the ability of the adversarial system to produce just results. . . . the role necessary to ensure that the trial is fair." *Strickland*, 466 U.S. at 685. The goal is for the trial to have "produced a just result." *Id.*

Here, counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Strickland*, 466 U.S. at 687. Those "errors were so serious as to deprive [Chow] of a fair trial, a trial whose result is

reliable." *Id.* And, it was due to "counsel's representation [falling] below an objective standard of reasonableness." *Id.* at 687-688.

This Court held that counsel "has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland*, 466 U.S. at 688 (*citing Powell v. Alabama,* 287 U.S. at 68–69). The Court further held: "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. "A particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* The Court found that a defendant must show that the errors of counsel "actually had an adverse effect on the defense." *Id.* at 693. Or, is there "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. The Court warned that the reviewing "court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." *Id.* at 696.

But that is not what occurred here. Trial counsels' errors were numerous and serious. Individually, each of the deficiencies in their performance establishes prejudice within the meaning of *Strickland*, 466 U.S. at 696. And, the cumulative impact of the errors assuredly warrants it.

Counsel failed to effectively challenge the government's case for all the

reasons set out above. The errors were prejudicial. Had trial counsel acted as diligent advocates, harmful testimony and evidence would have been excluded or stricken. They would have undermined the credibility of government witnesses and cast significant doubt about Chow's alleged criminal activity. They would have elicited available and favorable evidence, providing key support for Chow's defense. As a result, there is a reasonable probability the trial outcome would have been different.

CONCLUSION

The court of appeals denied Chow's challenge to the unconstitutional conviction imposed in his case. The court "decided an important federal question in a way that is in conflict with relevant decisions of this Court." Rule 10(c). For the foregoing reasons, the petition for writ of certiorari should be granted, and the judgment of the Court of Appeals should be reversed.

Dated: November 6, 2026

Respectfully submitted,



By: _____
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Attorney for Petitioner
KWOK CHEUNG CHOW
*Attorney of Record

CERTIFICATE OF COMPLIANCE
PURSUANT TO USSC RULE 33

Case No. - _____

I certify that the foregoing petitioner's petition for writ of certiorari is:

X___ Proportionally spaced, has a typeface of 12 points, is in Century font, is double-spaced, and has 5,866 words.



JAMES S. THOMSON