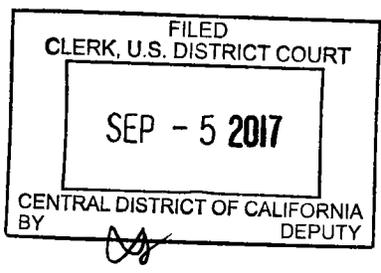


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7 **UNITED STATES DISTRICT COURT**
 8 **CENTRAL DISTRICT OF CALIFORNIA**
 9 **WESTERN DIVISION**

11 SERGIO A. CADAVID,
 12
 13 Petitioner,
 14 v.
 15 WILLIAM SULLIVAN, Warden
 16 Respondent.
 17

Case No.: CV 04-00289-BRO
 (AJW)

~~PROPOSED~~ ORDER
 GRANTING STIPULATED
 PROTECTIVE ORDER

Judge: Honorable Andrew J.
 Wistrich

18 GOOD CAUSE HAVING BEEN SHOWN, the stipulated protective order
 19 submitted by the parties is hereby GRANTED.

20 1. All information that is subject by law to the attorney-client, work-product
 21 privileges and/or Fifth Amendment privilege against self-incrimination, which may
 22 include but is not limited to: (a) testimony, and any and all statements (sworn or
 23 unsworn), regarding conversations and meetings between Petitioner and his trial
 24 counsel Brenda A. Vargas (hereafter "trial counsel"), and other defense team members
 25 and experts, relating to the case of *The People of the State of California v. Sergio*
 26 *Alberto Cadavid*, Superior Court Case No. VA056279 (such as statements about the
 27 nature of the charges, potential defenses, defense strategy, any consequences of
 28 conviction, and willingness to plead to any offense); (b) declarations from trial counsel

1 and defense team members, produced in this matter, or filed with, or otherwise
2 submitted, to this Court; and (c) testimony at the evidentiary hearing by Petitioner, trial
3 counsel, and any trial defense team member, shall be subject to the following
4 protection:

5 a. Said materials may be used by Respondent for the sole purpose of
6 litigating the instant federal habeas corpus case, and may not be used against Petitioner
7 for any other purpose, including any criminal retrial or sentencing that might occur; and

8 b. Respondent shall not disclose any of the materials or their contents to any
9 person or entity outside of the California Department of Justice, excluding any expert
10 consultants/witnesses retained by a party for the express purpose of assisting in the
11 resolution and adjudication of the claim or claims, the assertion of which compelled the
12 limited waiver in the first place. Any such retained expert consultants or witnesses
13 shall agree in writing to the terms of the protective order and shall be bound by it.
14 Respondent shall not disclose any protected materials or their contents to any other
15 person or entity, including law enforcement personnel not employed by the California
16 Department of Justice, or criminal prosecutors not employed by the California
17 Department of Justice, without the express written permission of counsel for the
18 petitioner or an order from this Court.

19 2. Under *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (en banc) and
20 *Lambright v. Ryan*, 698 F.3d 808 (9th Cir. 2012), disclosure of privileged documents
21 from trial counsel's files and the files of other defense team members, as well as
22 privileged testimony and statements provided by trial counsel, any trial defense team
23 member, and Petitioner, at a prehearing investigation, deposition, motion hearing, or
24 evidentiary hearing, does not constitute a waiver of Petitioner's rights under the Fifth
25 and Sixth Amendments for any other purpose, including a possible retrial or
26 resentencing.

27 3. Should the actual use of materials covered by the protective order occur
28 during the course of the instant litigation, so that the protected materials would

1 normally become part of the public record, the court will balance the Petitioner's right
2 to confidentiality against principles of open courts, public trials, and judicial
3 accountability, in determining what, if any, additional protective measures are
4 warranted.

5 4. If the information to be used in this case could be used to Petitioner's
6 detriment in another case, including any criminal retrial, then the court will consider
7 further protective measures, such as sealing orders, closed courtroom proceedings,
8 redaction or other such measures that would be necessary to adequately protect the
9 petitioner's rights. If the information is technically privileged, but the prospect of
10 prejudice to the petitioner outside of this case is nevertheless unapparent, then no such
11 further protective measures will be employed, as the important interests in public
12 judicial proceedings will outweigh the need for additional protective measures. The
13 evidence used shall be admitted in the normal course of the proceedings, and shall be
14 made part of the public record. It shall be the burden of the party asserting the
15 privilege to demonstrate that inclusion of technically protected information in the
16 public record would be prejudicial.

17 5. Petitioner's limited waiver of the attorney-client and/or work product
18 privilege is not enlarged or negated by the inclusion of protected materials in the public
19 record. "The attorney-client privilege is a rule of evidence." *Wharton v. Calderon*, 127
20 F.3d 1201, 1205 (9th Cir. 1997). Thus, the primary protection afforded by this
21 evidentiary privilege is to prevent the use of the evidence against the privilege holder
22 in a judicial proceeding, not to preclude the mere disclosure of the material. Petitioner
23 shall still have the right to enforce and assert his privilege should there be an attempt
24 to use said materials to his detriment outside the confines of this specific case. This
25 rule is consistent with the current state of the law in California, where similar
26 information disclosed in the context of state collateral review proceedings is deemed
27 inadmissible in a criminal retrial. *People v. Ledesma*, 39 Cal. 4th 641 (2006).

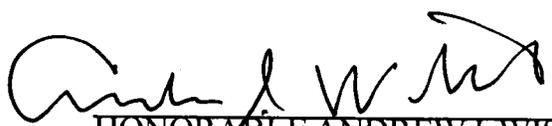
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6. This order shall remain in effect after the conclusion of the habeas corpus proceedings, and shall apply in the event of a retrial of all or any portion of Petitioner's criminal case. Any modification or vacation of this order shall only be made upon notice to and an opportunity to be heard from both parties.

IT IS SO ORDERED.

DATED: 9.5.2017



HONORABLE ANDREW J. WISTRICH
United States Magistrate Judge