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**FILED**  
CLERK, U.S. DISTRICT COURT  
  
November 26, 2018  
  
CENTRAL DISTRICT OF CALIFORNIA  
BY: CSI DEPUTY

**NOTE CHANGES MADE  
BY THE COURT**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARCÓ ANTONIO VILLAGRAN,  
  
Petitioner,  
  
v.  
  
ROBERT FOX, Warden,  
  
Respondent.

Case No. ED CV 16-2251-GW (SS)

**JOINT STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

1 Pursuant to *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (en banc) and  
2 *Lambright v. Ryan*, 698 F.3d 808, 818-19 (9th Cir. 2012), Petitioner and Respondent,  
3 through their respective counsel, hereby stipulate, agree and request that this Court  
4 enter the following protective order regarding: (1) petitioner’s implied waiver of  
5 attorney-client privilege; (2) documents from trial counsel’s files provided to  
6 Respondent during this habeas action; (3) related testimony provided at the evidentiary  
7 hearing or depositions in this matter; and (4) any reference to such documents or  
8 testimony in the parties’ briefing submitted to the Court.

9 1. Because Petitioner has alleged that his trial counsel provided ineffective  
10 assistance of counsel, he has impliedly waived his attorney-client privilege. This waiver  
11 is narrow and does not extend beyond the adjudication of the ineffectiveness claim in  
12 this federal habeas proceeding.

13 2. All privileged documents<sup>1</sup> and testimony produced to Respondent or  
14 presented in this action may be used only for purposes of litigating this habeas corpus  
15 proceeding by: (a) Petitioner and the members of his legal team (*i.e.*, lawyers,  
16 paralegals, investigators, and support staff, assigned to *Villagran v. Fox* by the Office  
17 of the Federal Public Defender, and persons retained by Petitioner’s counsel to litigate  
18 this matter, including, but not limited to, outside investigators, consultants and expert  
19 witnesses); and (b) Respondent and the members of his legal team (*i.e.*, lawyers,  
20 paralegals, investigators, and support staff, assigned to *Villagran v. Fox* by the  
21 California Department of Justice, Attorney General’s Office, and persons retained by  
22 Respondent’s counsel to litigate this matter, including, but not limited to, outside  
23 investigators, consultants and expert witnesses). This Protective Order extends to  
24 members of the legal teams and all persons retained by the parties to litigate this matter.  
25 All such individuals shall be provided with a copy of this Protective Order.

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27 \_\_\_\_\_  
28 <sup>1</sup> As used in this joint stipulation, the word “privileged” encompasses both the attorney-  
client privilege and materials subject to the attorney work product doctrine.

1           3.       Except for disclosure to the persons and agencies described in Paragraph  
2 2, disclosure of the contents of the documents and testimony and the documents and  
3 testimony themselves shall not be made to any other persons or agencies, including, but  
4 not limited to, prosecutorial agencies and law enforcement personnel, without the  
5 Court's order.

6           4.       Privileged documents and testimony shall be clearly designated as such by  
7 labeling the documents or testimony in a manner that does not prevent reading the text  
8 of the document. Before the evidentiary hearing, Petitioner shall file a copy of trial  
9 counsel's entire file as an exhibit. Documents from trial counsel's file shall be subject  
10 to this Protective Order and shall remain confidential and sealed.

11          5.       In addition, within 7 days of receiving the evidentiary hearing transcript,  
12 Petitioner shall designate the portions of testimony subject to *Bittaker* protection. These  
13 portions of testimony shall remain confidential and sealed.

14          6.       All privileged documents and testimony submitted to this Court shall be  
15 submitted under seal **pursuant to CR 79** in a manner reflecting their confidential  
16 nature and designed to ensure that the privileged material will not become part of the  
17 public record. Privileged testimony from the evidentiary hearing shall be clearly  
18 designated as such by marking the transcripts of the proceeding. Any pleading or other  
19 papers served on opposing counsel or filed or lodged with the Court that contains or  
20 reveals the substantive content of the privileged matter shall be filed under seal.

21          7.       The parties shall tailor their documents to limit, as much as practicable, the  
22 quantity of material that is to be filed under seal. When a pleading or document  
23 contains only a limited amount of privileged content, a party may file a complete copy  
24 under seal and simultaneously file a redacted version for the public record, blocking out  
25 the limited matter comprising the confidential information.

26          8.       Petitioner's disclosure of documents from trial counsel's file in this action,  
27 and related testimony by Petitioner or members of Petitioner's trial team at the  
28 evidentiary hearing in this case, does not constitute a waiver of Petitioner's rights under

1 the Fifth and Sixth Amendments to the United States Constitution or analogous  
2 provisions of the California Constitution in the event of any retrial.

3 9. This order shall continue in effect after the conclusion of this habeas  
4 corpus action. Any modification or vacation of this order shall be made only after  
5 notice to and an opportunity to be heard from both parties.

6 Respectfully submitted,

7  
8 HILARY POTASHNER  
9 Federal Public Defender

10 DATED: November 16, 2018

By /s/ Michael Parente

11 MICHAEL PARENTE  
12 MARK R. DROZDOWSKI  
13 Deputy Federal Public Defenders  
14 Attorneys for Petitioner  
15 MARCÓ ANTONIO VILLAGRAN

16  
17 XAVIER BECERRA  
18 Attorney General of California

19 DATED: November 16, 2018

By /s/

20 JENNIFER A. JADOVITZ  
21 MEREDITH S. WHITE  
22 Deputy Attorney General  
23 Attorneys for Respondent  
24 ROBERT FOX

25 IT IS SO ORDERED:

26 **For good cause shown, under seal filings must comply with Local Rule 79.**

27 DATED: November 26, 2018

/ S /

28 HON. SUZANNE H. SEGAL  
United States Magistrate Judge

Presented by:

/s/ Michael Parente

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MARK R. DROZDOWSKI

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2 Attorneys for Petitioner  
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