

1 enhancements. (ECF No. 1 at 1, 7.) The first three claims in the Petition were dismissed
2 on Respondent’s motion to dismiss (ECF No. 15), and the remaining claims allege a
3 violation of federal due process arising from the imposition of consecutive sentences on
4 the two rape counts (claim four), the cumulative effect of the alleged trial court errors
5 (claim five), and denial of access in state court to the victim’s sealed immigration records,
6 which the state trial and appellate courts reviewed in camera, and which includes a request
7 for this Court to review those sealed documents (claim six). (ECF No. 1 at 32-43.)

8 United States Magistrate Judge Bernard G. Skomal has filed a Report and
9 Recommendation (“R&R”) which recommends the Petition be denied: (1) as to claim four
10 because Petitioner has not identified a federal basis to challenge the order to run his
11 sentences consecutively; (2) as to claim five because the cumulative effect of the alleged
12 errors did not render his trial fundamentally unfair; and (3) as to claim six because: (a) the
13 adjudication of the claim by the state court could be neither contrary to, nor involve an
14 unreasonable application of, clearly established federal law, because the United States
15 Supreme Court has not extended the federal due process right to a meaningful appellate
16 review to this situation, (b) even if Petitioner could establish a federal due process right
17 implicated by the state court’s refusal to unseal the victim’s immigration records, relief
18 would be barred by Teague v. Lane, 489 U.S. 288 (1989), and (c) even if relief were not
19 barred by Teague the claim would fail on the merits because his federal due process rights
20 were adequately protected by the in camera review of the records in state court. (R&R
21 [ECF No. 20] at 13-23.) Petitioner has not filed Objections to the R&R.

22 The Court has reviewed the R&R pursuant to 28 U.S.C. § 636(b)(1), which provides
23 that: “A judge of the court shall make a de novo determination of those portions of the
24 report or specified proposed findings or recommendations to which objection is made. A
25 judge of the court may accept, reject, or modify, in whole or in part, the findings or
26 recommendations made by the magistrate judge. The judge may also receive further
27 evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C.
28 § 636(b)(1). Having conducted a de novo review of the entirety of the Magistrate Judge’s

1 findings and conclusions irrespective of the absence of objections, the Court **ADOPTS** the
2 Magistrate Judge's findings and conclusions in full and **DENIES** habeas relief for the
3 reasons set forth in the R&R. In addition, the Court addresses Petitioner's request that this
4 Court conduct a review of the sealed documents.

5 The victim testified she had returned to the United States illegally several times after
6 being deported, and had not received any benefits from the prosecution for testifying.
7 (R&R at 6.) She testified that around the time of the crime in 2004, the police provided
8 her with immigration paperwork to request permission to stay in the country in order to
9 assist with the prosecution, and that in 2012 an investigating officer made an appointment
10 for her at the Casa Cornelia Law Center to assist her with a U-visa application, which
11 allows otherwise deportable crime victims to remain in the country to assist in the
12 prosecution of the crime, but they were unable to help her, and she had an upcoming
13 appointment with a similar organization to assist her with her immigration status. (Id.)
14 The defense moved for a mistrial on the basis that although the prosecution had disclosed
15 they assisted the victim with a visa application around the time of the preliminary hearing
16 in 2011-12, the prosecution had not disclosed the police had assisted the victim with a U-
17 visa application in 2004. (Id.) The trial judge denied the motion, noting that the victim
18 may have confused the dates. The judge did conduct an in camera review of attorney-client
19 privileged documents contained in her Casa Cornelia Law Center file, after which the trial
20 judge determined the defense was already in possession of the majority of the documents
21 in that file, and the remainder were collateral and would not provide assistance to the
22 defense, particularly with respect to whether the victim had received a benefit from law
23 enforcement involving her attempt to obtain a U-visa. (Id. at 6-7.)

24 In his Petition, Petitioner requests this Court conduct an independent review of those
25 sealed documents, arguing that the victim was in the United States illegally at the time of
26 the crime, that her repeated illegal reentries indicate she was desperate to remain in the
27 United States, and that the sealed documents could be exculpatory if they show she falsely
28 accused Petitioner of criminal conduct in order to remain in the United States on a U-visa

1 as a crime victim. (ECF No. 1 at 40-43.) Magistrate Judge Skomal correctly found that
2 although clearly established United States Supreme Court precedent protects a state
3 prisoner's right to meaningful appellate review, Petitioner failed to show that the United
4 States Supreme Court has applied those protections to his situation, where attorney-client
5 privileged documents were reviewed in camera by the trial court, sealed for appellate
6 review, reviewed by the appellate court, and never disclosed to the defense. (R&R at 20.)
7 The Magistrate Judge also correctly noted that the United States Supreme Court has in fact
8 held that in camera review of sealed material in state court can protect a defendant's federal
9 constitutional right to due process, and that the procedure used by the state court in this
10 case adequately protected Petitioner's rights in that regard. (*Id.* at 21, 23.) Although those
11 findings imply there is no need for this Court to independently review the sealed materials,
12 the Magistrate Judge did not explicitly address Petitioner's request for this Court to
13 independently review the materials, other than to find, in connection to Respondent's
14 motion to dismiss, that a mere request for in camera review of state court discovery
15 proceedings is not cognizable on federal habeas review. (ECF No. 12 at 7.)

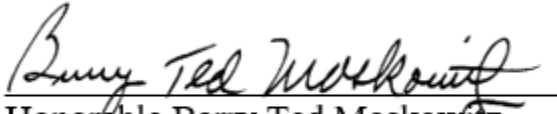
16 Petitioner's request for this Court to review the sealed documents is **DENIED**. As
17 set forth in the R&R, claim six can be decided on the merits without such a review.
18 Although Rule 7 of the Rules following 28 U.S.C. § 2254 provides for expansion of the
19 record, such expansion is left to the discretion of the district court. McDonald v. Johnson,
20 139 F.3d 1056, 1060 (9th Cir. 1998) ("The district court had sufficient facts before it to
21 make an informed decision on the merits of McDonald's claim and, accordingly, did not
22 abuse its discretion [under 28 U.S.C. § 2254(e)(2)] in refusing to hold an evidentiary
23 hearing."); Cooper-Smith v. Palmateer, 397 F.3d 1236, 1241 (9th Cir. 2004) (holding that
24 the provisions of 28 U.S.C. § 2254(e)(2) which apply to evidentiary hearings also apply to
25 expansion of the record under Rule 7 of the habeas rules), overruled on other grounds by
26 Daire v. Lattimore, 812 F.3d 766 (9th Cir. 2016) (en banc). In addition, Petitioner merely
27 speculates that the documents might have assisted the defense, a finding rejected by the
28 trial judge and the appellate court after review of the documents. See Pennsylvania v.

1 Ritchie, 480 U.S. 39, 58 n.15 (1987) (holding that a defendant must establish “a basis for
2 his claim that [the child protective service file] contains material evidence.”); United States
3 v. Michaels, 796 F.2d 1112, 1116 (9th Cir. 1986) (“[M]ere speculation about materials in
4 the government’s file (does not require) the district court or this court under Brady to make
5 the materials available for (the appellant’s) inspection.”); Harrison v. Lockyer, 316 F.3d
6 1063, 1066 (9th Cir. 2003) (noting that the California procedure of declining to release to
7 the defense citizen complaints about police officers after in camera review without a
8 showing by the defense they contain material evidence “faithfully follows” United States
9 Supreme Court precedent), citing Ritchie, 480 U.S. at 58 n.15 and Brady v. Maryland, 373
10 U.S. 83, 87-88 (1963).

11 **CONCLUSION AND ORDER**

12 The Court **ADOPTS** the findings and conclusions of the Magistrate Judge in full.
13 The Petition for a Writ of Habeas Corpus is **DENIED** for the reasons set forth in the R&R.
14 Petitioner’s request for this Court to review the sealed state court documents is **DENIED**.
15 The Court **ISSUES** a Certificate of Appealability limited to claim six only.

16 Dated: June 10, 2019

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18 Honorable Barry Ted Moskowitz
19 United States District Judge
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