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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

8 ROBERT D. THORSON,

9 Petitioner,

10 v.

11 UNITED STATES OF AMERICA,

12 Respondent.  
13

CASE NO. C18-136RSM

ORDER GRANTING IN PART THE  
GOVERNMENT'S MOTION RE:  
WAIVER OF ATTORNEY-CLIENT  
PRIVILEGE

14 This matter is before the Court on the Government's Motion re: Waiver of Attorney-  
15 Client Privilege and to Amend § 2255 Motion Briefing Schedule. Dkt. #28.

16 "It has long been the rule in the federal courts that, where a habeas petitioner raises a  
17 claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all  
18 communications with his allegedly ineffective lawyer." *Bittaker v. Woodford*, 331 F.3d 715, 716  
19 (9th Cir. 2003) (citations omitted).  
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21 The Government argues that Petitioner Thorson implicitly waived the attorney-client  
22 privilege by bringing an ineffective assistance of counsel claim, and that more time is needed to  
23 speak with Stephan Illa, Mr. Thorson's former attorney. Dkt. #28. However, in his Response  
24 Mr. Thorson explicitly states that he "has not implicitly waived any constitutional rights either  
25 knowingly or intentionally," and that the Government "may treat Mr. Illa as any other witness  
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1 without trampling upon the Petitioner’s constitutional rights.” Dkt. #30 at 1. On Reply, the  
2 Government suggests that the Court can “[a]ccept Thorson’s specific contention that he is  
3 declining to waive any constitutional rights (specifically including the attorney client privilege  
4 with his former attorney) and strike Ground for Relief Four from Thorson’s 2255 motion in its  
5 entirety...” Dkt. #31 at 2. The Government suggests in the alternative that the Court find,  
6 “despite his protestation to the contrary,” that Mr. Thorson has implicitly waived he attorney-  
7 client privilege and permit the Government to speak with his former attorney about issues raised  
8 in Ground for Relief Four. *Id.*

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10 The Court accepts Mr. Thorson’s explicit statement that he has not waived the attorney-  
11 client privilege, with explicit reference to Mr. Illa. However, it is clear that he cannot continue  
12 with an ineffective assistance of counsel claim and refuse to waive the attorney-client privilege  
13 with the allegedly ineffective counsel in question. Accordingly, having considered the relevant  
14 briefing and the remainder of the record, the Court finds and ORDERS that the Government’s  
15 Motion re: Waiver of Attorney-Client Privilege, Dkt. #28, is GRANTED IN PART. Mr.  
16 Thorson’s Ground for Relief Four is DISMISSED. The Government’s answer to the remainder  
17 of the pending 2255 motion is due Friday, May 10, 2019.

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19 The Clerk of the Court is directed to mail a copy of this Order to Robert D. Thorson, No.  
20 48042-086, FCI-Sheridan, Federal Correctional Institution, P.O. Box 5000, Sheridan, OR 97378.

21 DATED this 6<sup>th</sup> day of May 2019.

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24 RICARDO S. MARTINEZ  
25 CHIEF UNITED STATES DISTRICT JUDGE  
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