

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

**OCT 22 2007**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

GLORIA BARAJAS,

Petitioner - Appellee,

v.

KAREN WISE, Parole Agent,

Respondent - Appellant.

No. 06-15494

D.C. No. CV-02-06202-DLB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Dennis L. Beck, Magistrate Judge, Presiding

Argued and Submitted December 7, 2006  
San Francisco, California

Before: BRIGHT,\*\* D.W. NELSON, and BERZON, Circuit Judges.

Before the panel is the State of California's petition for rehearing of this court's decision in Barajas v. Wise, 481 F.3d 734 (9th Cir. 2007), in which we

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

affirmed the federal district court's grant of habeas relief under 28 U.S.C. § 2254(d)(1). In addition, the State filed a petition for rehearing en banc. Upon consideration of the record and the evidence before the magistrate judge, this panel hereby grants the State's petition for rehearing. In doing so, we vacate our prior opinion filed on March 23, 2007 and published at 481 F.3d 734. This disposition reversing the district court is substituted.

In determining whether, in this case, the federal magistrate judge (deciding the case on referral from the federal district court) erred in granting habeas relief, we evaluate whether the state prosecutor's reasons given to the California trial court for preventing disclosure of a confidential informant's current and former addresses were sufficient. We originally held that the prosecutor's reasons were conjectural and therefore insufficient. However, upon careful review of the record before the California trial court, we conclude that the prosecutor's reasons for non-disclosure were not conjectural and indeed were sufficient to justify withholding, as a matter of discretion, the informant's addresses.

First, not only did the prosecutor argue to the California trial court judge that disclosing the informant's addresses would compromise the pending investigation, but the prosecutor also submitted a sworn affidavit that the informant was currently investigating other narcotics cases and was working with several government

agencies at the time. Second, the record shows that the witness worked as an anonymous informant for twenty years, participated in 100 cases that resulted in arrests, and testified in thirty cases, twenty of which involved heroin. Finally, the record indicates that the witness moved several times, working different jobs in San Diego, San Francisco, and other cities in California.

It is clear that disclosure of this informant's former address or addresses could very well lead to her current address, thereby exposing her to danger. Furthermore, an informant with a history of twenty years of cooperation with several law enforcement agencies and whose cooperation was active at the time of trial is certainly in grave danger should her addresses be revealed, especially an informant with as fruitful a history as the witness in this case—her participation in narcotics investigations over the past twenty years led to 100 arrests.

Therefore, we determine on the record before us that the California trial court did not violate defendant Barajas' constitutional right of confrontation of the witness against him by denying disclosure of the witness's current and former addresses as a matter of discretion. Our decision in Barajas v. Wise, 481 F.3d 734 (9th Cir. 2007), is withdrawn and the district court is instructed to enter an order denying habeas relief, leaving in place Barajas's conviction and sentence.

**REVERSED.**