No._____

IN THE SUPREME COURT OF THE UNITED STATES

SERGIO CABALLERO,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the district court violated Petitioner's Fifth Amendment rights by failing to allow evidence of third-party culpability.

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PETITION FOR WRIT OF CERTIORARI
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Petitioner Sergio Caballero respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit affirmed petitioner's convictions for importation of methamphetamine and heroin, in violation of 21 U.S.C. §§ 952, 960, rejecting petitioner's argument that the exclusion of third-party culpability evidence violated the Due Process Clause of the Fifth Amendment. *See United States v. Caballero*, No. 17-50199 (9th Cir. 2018). The Ninth Circuit's memorandum is attached to this petition as Appendix A.

JURISDICTION

On December 10, 2018, the Ninth Circuit filed its memorandum affirming Petitioner's convictions. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISION

The Due Process Clause of the Fifth Amendment provides: "No person shall... be deprived of life, liberty, and property, without due process of law..."

STATEMENT OF THE CASE

This case began with Petitioner's arrest at the Calexico, California, Port of Entry. Petitioner arrived from Mexico driving a silver Toyota Camry. Excerpts of Record ("ER) at 256. Upon reaching the checkpoint, Petitioner encountered Customs and Border Protection Officer Chanda Nichols. *Id.* He advised Officer Nichols that he was heading home to Bakersfield, California and that he had gone to Mexico to visit the dentist. ER 257-258. After Petitioner offered to show Officer Nichols his receipt from the dentist, she referred him to secondary inspection. ER 258.

At secondary inspection, a drug-detection dog alerted to the back-seat area of Petitioner's car. ER 272. Officers removed the back seat and inspected the access point to the gas tank. ER 274. The screws to the gas tank cover "looked new" and the silicone used to seal that area "was fresh... it still smelled and it was really tacky, sticky to the fingertips." *Id.* Upon removing the cover to the tank, officers noticed wrapped packages hidden inside the enclosure. Officers ultimately removed 32 packages from inside the tank—thirty containing methamphetamine and two containing heroin. *Id.* at 148. Petitioner was arrested and charged with importation of heroin and methamphetamine in violation of 21 U.S.C. §§ 952, 960. *See* CR 10, ER 411-412.

Petitioner spoke to agents after his arrest. He explained that he had just visited the dentist in Mexicali and that he had paid a man to park and fill his car with gas while he attended the visit. *See* ER 404-405. Petitioner surmised that this man could have been responsible for hiding the drugs in his car. *Id.* The evidence later confirmed Petitioner's suspicions.

Sometime after Petitioner's arrest, a man named Roberto Diaz-Flores, also known as Rafael Arias-Medina, was arrested near Calexico as he attempted to illegally enter the United States. ER 405. Diaz-Flores was transferred to the GEO Western Region Detention Facility in San Diego, where Petitioner was also housed pending trial in his case. *Id.* Diaz-Flores was the man that had assisted Petitioner outside the dentist's office. *Id.* When Diaz-Flores noticed that Petitioner was also in custody, he admitted to him that he had hidden the drugs in Petitioner's car without his knowledge while he attended the dental appointment. *Id.* Diaz-Flores notified his appointed counsel—Federal Defenders of San Diego—of the situation, and because FDSDI also represented Petitioner, both men received new appointed counsel. *See* Clerk's Record ("CR") at 38.

Petitioner's new counsel received permission from Diaz-Flores's attorney to interview him regarding his disclosures to Petitioner. Accompanied by a Spanish-language interpreter and in the presence of Diaz-Flores's attorney, defense counsel

interviewed Diaz-Flores about the facts of the case. During the interview, Diaz-Flores explained that he worked for a drug-trafficking organization and operated outside the dentist office that Petitioner visited. ER 405. The organization would target young, clean-cut people with presentable cars—people who could cross the border legally and not arouse a lot of suspicion. The organization tricked these people into serving as blind mules. Under the ruse of parking or servicing their cars, they would hide drugs inside and follow the unsuspecting couriers across the border. *Id.* Diaz-Flores confirmed that he did this to four or five people in addition to Petitioner. *Id.* Diaz-Flores also stated that, after following the targets across the border, the traffickers would simply steal the car at the first opportunity, remove the drugs, and break the car down into parts to dispose of it. *Id.* Diaz- Flores said that he believed that the organization would sometimes have keys made to facilitate the theft.

Diaz-Flores further confirmed that on the day of Petitioner's arrest, he took Petitioner's car, secretly loaded it with drugs, and returned it before Petitioner was done at the dentist. *Id.* Diaz-Flores acknowledged that Petitioner did not know about the drugs, because the point was to secretly load the car without his knowledge, and noted that another person kept watch and warned him when Petitioner was finishing at the dentist. *Id.* Yet another person was in charge of following Petitioner back

across the border. Diaz-Flores was told specifically not to reveal the drugs to Petitioner. *Id.* During the interview, Diaz-Flores recognized Petitioner, his car, the gas tank, the drugs, and the dentist's office from discovery photographs, and initialed each photograph to confirm that the translation of his statements was accurate. *See* ER 393-402.

Following this interview, Petitioner made the government aware of the exculpatory information provided by Diaz-Flores, and requested disclosure of "any evidence that the government has or is developing about Mr. Diaz-Flores, his possible involvement in the offense, or any other information that would tend to support the defense in this matter." ER 408. Upon receiving no response to these requests, Petitioner moved for a writ of habeas corpus ad testificandum to compel Diaz-Flores's presence at trial, and asked the district court to appoint him counsel for the proceedings. *See* CR 45, ER 385-390. The district court issued the writ and appointed counsel for Diaz-Flores. *See* CR 49.

Before trial, Petitioner moved to admit Diaz-Flores's statements during his interview with defense counsel as statements against interest under Federal Rule of Evidence 804(b)(3). CR 53, ER 346-353. Petitioner noted that he had advised Diaz-Flores's appointed counsel that he intended to call Diaz-Flores as a defense witness at trial, and that Diaz-Flores's counsel had advised that her client would invoke his

Fifth Amendment privilege against self-incrimination. ER 351. For these reasons, Petitioner moved to introduce Diaz-Flores's statements at the interview through Spanish-language interpreter Silvia Castro, who had been present at the interview. Petitioner reasoned that Diaz-Flores's statements satisfied the requirements of Fed. R. Evid. 804(b)(3), in that he would be unavailable as a witness upon invoking the Fifth Amendment privilege, the statements were truly self-inculpatory, and they were corroborated by other substantial evidence in the case, including the analysis of expert witnesses. *See* ER 359. Further, even if the district court did not admit the statements under the 804(b)(3) exception, Petitioner argued that they should be admitted on fundamental due process grounds. *See* ER 353-354.

The government opposed Petitioner's motion, arguing primarily that Diaz-Flores's statements did not satisfy the 804(b)(3) exception because Diaz-Flores claimed that he was "under duress" when he was working for the drug-trafficking organization, which meant the statements were not truly self-inculpatory. *See* CR 55, ER 306. The government further argued that the statements lacked sufficient corroborating circumstances to be admitted under the hearsay exception, ER 310-313, pointing to the alleged fact that Petitioner and Diaz-Flores had shared a phone while in custody, and further claimed that the exclusion of the statements did not violate due process. *Id.*

At trial, the district court held that it was inclined to exclude the third-party culpability evidence but stated that it would revisit the issue at a later time. ER 158-159. The government proceeded with its case-in-chief, which consisted of three witnesses. Agent Chanda Nichols, the primary inspection officer, testified that she referred Petitioner to secondary because he seemed "fidgety" to her and tried to show her paperwork from his dentist appointment. *See* ER 258. Agent Kelly Marcus, the K-9 officer that inspected the vehicle at secondary inspection, testified that her canine alerted to Petitioner's car, and that the follow-up inspection revealed drugs in the gas tank. *See* ER 269-288. The last witness, Peter Kiesel— the government's drug-value expert—testified that the narcotics found in the gas tank had a retail value of $18,000 to 24,000 for the heroin, and $138,000 to $254,000 for the methamphetamine. *See* ER 291-295. The government rested following these three witnesses, and Petitioner immediately rested as well. *See* ER 298.

The jury began its deliberations the following day, and deliberated for four hours before informing the district court that it could not reach a unanimous verdict. *See* ER 69, 119; CR 64-1. The district court responded with an *Allen* charge, and the jury deliberated for an additional hour before the court attempted to summon the jurors back into the courtroom to declare a mistrial. *See* ER 120-122. The jury

requested five more minutes, after which it returned guilty verdicts against Petitioner on both counts. *See* ER 123.

The matter proceeded to sentencing six months after trial. At the hearing, defense counsel apprised the district court that he had recently received a letter from Diaz-Flores in which he fully accepted responsibility for the crimes that resulted in Petitioner's convictions. Defense counsel stated: "And so then we tried to take the next step of treating [Diaz-Flores] as unavailable and bringing in a statement against interest, and the Court made the call as to whether it fit the criteria under 804, so he has written another letter since then, I can represent to the Court we picked it up over the weekend, this letter. I'm happy to lodge that or even you know, put it over to lodge that." ER 64 (Emphasis provided). The district court continued the sentencing to allow further litigation on the issue. ER 67.

Petitioner moved for a new trial. *See* CR 78, ER 32-46. He presented the district court with the newly-discovered evidence, the letter signed by Diaz-Flores which stated: "I Roberto Diaz-Flores wish to acknowledge my wrongdoing for taking advantage of Mr. Caballero's trust that day as was said when I washed his car and put some packages inside but it wasn't my intention to do harm but I was forced to do what I did I want to accept my wrongdoing and I want to help Mr. Caballero and accept my blame because I am guilty I hope this may be enough to help Mr.

Caballero. I should be the one put on trial." *See* ER 41. Relying on the letter, Petitioner argued: "Mr. Diaz's letter makes clear that there are serious questions about third-party culpability in this case. These are questions that a jury should resolve." ER 37. Petitioner further reasoned that "while [Diaz-Flores] makes a general claim about being 'forced' to hide drugs in Mr. Caballero's car, that issue has nothing to do with Mr. Caballero's knowledge or lack thereof—it is equally exculpatory as far as Mr. Caballero is concerned, and should be admitted under the residual clause and/or Due Process in any event." *Id.* He requested a new trial accordingly.

The district court ultimately denied Petitioner's motion for a new trial. The trial court found that excluding the evidence did not constitute a violation of Petitioner's Due Process rights because the letter did not satisfy the requirements of Fed. R. Evid. 804(b)(3) and would be inadmissible at trial, stating: "It is not a genuine statement against interest and it is utterly unreliable. Moreover, it would do little to mitigate the overwhelming evidence against Defendant introduced at trial. Quite the opposite, the prosecution would have an easy time portraying it as some trick or game concocted by the Defendant and his criminal jail mate and perpetuated by his attorney. The defense was wise to leave it alone at trial, out of sight of the jury. A new trial where this Diaz-Flores story is introduced through hearsay would

likely result in Defendant's second conviction by a skeptical jury." ER 10. The district court ultimately sentenced Petitioner to 72 months in custody.

On appeal, the Ninth Circuit affirmed Petitioner's convictions. The Court found, *inter alia*, that "because Diaz-Flores's statement would be inadmissible as unreliable hearsay, it would not offend due process to exclude such evidence from trial." Appendix A at 3.

This petition follows.

REASON FOR GRANTING THE PETITION

Review is warranted because the district court violated Petitioner's Fifth Amendment rights by failing to allow evidence of third-party culpability.

Defendants have a constitutional right to present relevant evidence in their own defense. *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."). *See also California v. Trombetta*, 467 U.S. 479, 485 (1984). The Supreme Court has indicated that a defendant's right to present a defense stems from both the right to due process provided by the Fourteenth Amendment, *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973), and in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, *Washington v. Texas*, 388 U.S. 14, 23 (1967) (explaining that the right to compulsory process would be meaningless if the defendant lacked the right to use the witnesses whose presence he compelled).

The right to present relevant evidence means that a defendant is entitled to present his version of the facts to a jury—even if the facts are disputed. In *United States v. Evans*, 728 F.3d 953, 960 (9th Cir. 2013), the Ninth Circuit reversed a conviction where the district court excluded documentary evidence under Fed. R. Evid. 104 because it believed it to be fraudulent. The Court held that Fed R. Evid. 104 does not provide general "gate-keeping" authority to the district court, and that questions of credibility were to be resolved by the jury. *Id.* at 961.

When a trial court's evidentiary rulings have the effect of preventing the defendant from providing evidentiary support for an otherwise permissible defense, Due Process requires reversal of the conviction and a new trial. *See e.g. United States v. Christian*, 749 F.3d 806, 813 (9th Cir. 2014) (holding that the trial court erred in excluding the defendant's proposed mental-health expert, and explaining that "the district court's error was not harmless because it prevented the defendant from providing an evidentiary basis for his defense") (*quoting United States v. Saenz*, 179 F.3d 686, 689 (9th Cir. 1999) (internal punctuation omitted)).

Here, as part of their ruling denying Petitioner's motion for a new trial, the district court and Ninth Circuit found that Diaz-Flores's letter would not be admissible in a new trial. *See* CR 84 at 10. That was error.

1. Diaz-Flores's letter was admissible as a statement against interest under the Federal Rules of Evidence.

Diaz-Flores's letter was admissible as a statement against interest under Federal Rule of Evidence 804(b)(3). Federal Rule of Evidence 804(b)(3) provides: "The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness: [...] (3) A statement that: (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability." Under Ninth Circuit precedent, to be admissible under this rule, a statement must be "truly self-inculpatory," and "supported by corroborating circumstances that clearly indicate its trustworthiness." *United States v. Gadson*, 763 F.3d 1189, 1199-1200 (9th Cir. 2014). *See also United States v. Price*, 134 F.3d 340, 348 (6th Cir. 1998) (clear error to exclude inculpatory statement by third-party); *United States v. Torrez-Alvarez*, 44 Fed. Appx. 818, 823 (9th Cir. 2002) (abuse of discretion to exclude statement from third-party taking responsibility for drug transaction and noting that it was "especially worrisome because there was evidence

that the drugs belonged to someone other than [the defendant] the jury was not permitted to hear.") The letter complied with that standard here.

a. Diaz-Flores was an "unavailable" witness.

Federal Rule of Evidence 804(a) defines unavailability for the purposes of the statement-against-interest exception. It states, inter alia, that a "declarant is considered to be unavailable as a witness if the declarant: (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies." Fed. R. Evid. 804(a)(1).

In this regard, the Ninth Circuit has repeatedly held that an assertion by a witness of his or her Fifth Amendment privilege leaves that person "unavailable" under Fed. R. Evid. 804(a). *See United States v. Slaughter*, 891 F.2d 691, 698 (9th Cir. 1989); *see also Gadson*, 763 F.3d at 1200. Here, both Diaz-Flores's pre- and post-trial counsel made it clear to the district court that he would invoke his Fifth Amendment privilege against self-incrimination if called to testify in the case. See ER 156 and ER 27. Thus, he would be unavailable in a new trial for the purpose of Fed. R. Evid. 804(a).

b. Diaz-Flores's letter was truly self-inculpatory.

Diaz-Flores's unavailability would trigger the statement-against-interest exception to the hearsay rule if the statements offered are "truly self-inculpatory,"

and supported by corroborating circumstances. *See Gadson*, 763 F.3d at 1199- 1200. Both requirements are met here. First, Diaz-Flores's letter is inculpatory. In the writing, he admits that "I Roberto Diaz-Flores wish to acknowledge my wrongdoing for taking advantage of Mr. Caballero's trust that day as was said when I washed his car and put some packages inside but it wasn't my intention to do harm but I was forced to do what I did I want to accept my wrongdoing and I want to help Mr. Caballero and accept my blame because I am guilty I hope this may be enough to help Mr. Caballero. I should be the one put on trial." *See* ER 41.

Those admissions, along with his previous statements in the case, expose Diaz-Flores to liability for serious drug-related offenses, all of which carry significant time in custody. No reasonable person would make admissions to that effect unless they believed them to be true. As the district court itself wondered when evaluating the evidence: "To what end? To what end would Mr. Diaz-Flores say this if it wasn't true?" ER 150-151. As such, Diaz-Flores's letter is "truly self inculpatory" under Fed. R. Evid. 804(3)(A), and the district court erred in finding to the contrary.

c. The trustworthiness of the letter was corroborated by the circumstances.

The second element required by the statement-against-interest exception is that the hearsay statements must be supported by corroborating circumstances that

indicate their trustworthiness. In this regard, this Court has held that court should consider the following factors: "(a) the time of the declaration and the party to whom it was made; (b) the existence of corroborating evidence; (c) the extent to which the declaration is really against the declarant's penal interest; and (d) the availability of the declarant as a witness." *United States v. Oropeza*, 564 F.2d 316, 325 (9th Cir. 1977). All these factors supported the trustworthiness of Diaz- Flores's letter in this case.

Diaz-Flores did not send the letter to authorities in hopes of exculpating himself or shifting blame. To the contrary, Diaz-Flores addressed the letter to the Court and wrote it after having previously made other incriminating statements during his interview as part of the defense's investigation into the charges pending against Petitioner. Diaz-Flores was already in custody on unrelated charges, and he knew that letter could only serve to make matters worse for him in his pending case. Further, Diaz-Flores sent the letter at the earliest available opportunity following Petitioner's convictions in the case.

Second, and more importantly, Diaz-Flores's letter was corroborated by other evidence in the case, including his lengthy statement to defense counsel before Petitioner's trial. Months before Diaz-Flores sent the letter, Petitioner had told agents that he had left his car in the care of a parking attendant while he visited the

dentist in Mexicali. Diaz-Flores confirmed that account, acknowledging that Caballero had left him his car for fueling and parking at the lot next to the dentist. Diaz-Flores also explained how he hid the drugs in the gas tank through the back seat of the car, a method that found support in the opinion of the defense's vehicle expert. He described what Petitioner was wearing on the day of his arrest.

Lastly, as explained above, Diaz-Flores's letter was clearly against his penal interest, insofar as it exposes him to liability for serious drug-related offenses, and his unavailability upon invoking his Fifth Amendment privilege is well-settled under this Court's caselaw. For all these reasons, Diaz-Flores's letter qualified as a statement against interest and as such was admissible as an exception to the rule against hearsay. The Ninth Circuit's findings to the contrary were erroneous.

2. Diaz-Flores's letter was admissible under general Fifth Amendment Due Process principles.

Contrary to the district court's and Ninth Circuit's findings, Diaz-Flores's letter was also admissible under longstanding precedent regarding the admissibility of third-party culpability evidence. The Ninth Circuit has held that "[f]undamental standards of relevancy ... require the admission of testimony which tends to prove that a person other than the defendant committed the crime that is charged." *United States v. Crosby*, 75 F.3d 1343, 1347 (9th Cir. 1996). For example, in *United States v. Vallejo*, 237 F.3d 1008, 1022 (9th Cir. 2001), the Ninth Circuit held that the district

court abused its discretion by excluding evidence that the previous owner of the car had been convicted of a similar crime to the charge facing the defendant. The Court found the evidence was highly probative and relevant to the defendant's attempt to establish lack of knowledge about the drugs found in his car. *Id.* Similarly, in *Chia v. Cambra*, 360 F.3d 997, 1005 (9th Cir. 2004), the Court held that it violated a defendant's basic due process rights for a court to exclude a third-party's inculpatory statements on hearsay grounds. The Court noted that "inherent within the Constitution's promise of due process lies the cardinal principle that no criminal defendant will be deprived of his liberty absent a full and fair opportunity to present evidence in his defense." *Id.*

The Ninth Circuit addressed the admissibility of third-party culpability evidence in *United States v. Espinoza*, 880 F.3d 506 (9th Cir. 2018). There, the Court reiterated its longstanding precedent regarding the importance of this evidence as part of a defendant's due process rights: "That the defense's theory may be speculative is not a valid reason to exclude evidence of third-party culpability." *Id.* at 517. The Court emphasized further that if "the evidence [that someone else committed the crime] is in truth calculated to cause the jury to doubt, the court should not attempt to decide for the jury that this doubt is purely speculative and fantastic but should afford the accused every opportunity to create that doubt." *Id., quoting*

United States v. Crosby, 75 F.3d 1343, 1349 (9th Cir. 1996). Indeed, "[i]t is the role of the jury, [and not the district court] to consider the evidence and determine whether it presents all kinds of fantasy possibilities ... or whether it presents legitimate alternative theories for how the crime occurred." *Vallejo*, 237 F.3d at 1023 (internal quotation marks omitted).

So it should have been here. Diaz-Flores's letter made it clear that there were serious questions about third-party culpability in this case. Those are questions that—under this Court and Ninth Circuit precedent—a jury should have resolved. While Diaz-Flores makes a general claim about being "forced" to hide drugs in Caballero's car, that issue has nothing to do with Caballero's knowledge or lack thereof—it is equally exculpatory as far as Caballero is concerned, and should be admitted under the Fifth Amendment. And as previously described, even if this were a Fed. R. Evid. 804 issue only, Diaz-Flores's own letter describes his "wrongdoing," the fact that "I am guilty" and the fact that "I should be the one put on trial." ER 41. Even if Diaz-Flores claims he was "forced" in some way, that is a long way from meeting the legal requirements for duress, and he plainly states that he is guilty and "should be the one on trial." *See United States v. Ibarra-Pino*, 657 F.3d 1000, 1004 (9th Cir. 2011) ("In order to make a prima facie showing for a duress defense or a jury instruction, a defendant must establish: "'(1) an immediate threat of death or

serious bodily injury, (2) a well-grounded fear that the threat will be carried out, and (3) lack of a reasonable opportunity to escape the threatened harm.'") Ultimately, it is Diaz-Flores's perception of whether a statement is against interest that matters—the question is whether he would have had a motive to make the claim if it weren't true. Here the evidence showed that Diaz-Flores clearly believed that the letter and his previous statements were against his penal interest, as he contemplates being put on trial and recognizes his "guilt" and his "wrongdoing." At the very least, this created a question of fact for a jury, and the statements should have been admitted pursuant to the Fifth Amendment. Because that did not happen, reversal should have resulted. The Ninth Circuit erred in finding to the contrary.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Dated: March 8, 2019

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APPENDIX

A

NOT FOR PUBLICATION

FILED

DEC 10 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. SERGIO CABALLERO, Defendant-Appellant.	No. 17-50199 D.C. No. 3:15-cr-02738-BEN-1 MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Argued and Submitted December 4, 2018
Pasadena, California

Before: O'SCANNLAIN and IKUTA, Circuit Judges, and KENNELLY,** District Judge.

Sergio Caballero appeals the district court's denial of his motion for a new trial following his conviction for importation of methamphetamine and heroin into the United States. Because the facts are known to the parties, we repeat them only

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Matthew F. Kennelly, United States District Judge for the Northern District of Illinois, sitting by designation.

as necessary to explain our decision.

I

The district court did not abuse its discretion in denying Caballero's motion for a new trial.

A

First, the district court correctly held that Diaz-Flores's letter did not constitute newly discovered evidence. Even if the letter itself was written after the trial, Caballero was already aware of the substantive information contained therein from his counsel's discussions with Diaz-Flores before trial. *See United States v. Showalter*, 569 F.3d 1150, 1154–55 (9th Cir. 2009) (post-trial witness declarations were not newly discovered evidence because the "witnesses were known to [the defendant] . . . and could have been called to testify for him at trial"); *United States v. Joelson*, 7 F.3d 174, 178–79 (9th Cir. 1993) (witness declaration was not newly discovered evidence because defense attorney had interviewed the witness before trial).

B

Second, even if the letter were considered to be newly discovered evidence, the district court correctly determined that the letter would not probably have resulted in an acquittal, *United States v. King*, 735 F.3d 1098, 1108 (9th Cir. 2013), because it would have been inadmissible at a new trial. The letter is hearsay, and

Caballero did not identify sufficient "corroborating circumstances that clearly indicate its trustworthiness" to qualify for the hearsay exception under Federal Rule of Evidence 804(b)(3). Fed. R. Evid. 804(b)(3)(B). A "reasonable view of the evidence supports the trial court's finding that [Diaz-Flores's] statement is not reliable." *United States v. Rhodes*, 713 F.2d 463, 473 (9th Cir. 1983) (internal quotation marks omitted).

II

Because Diaz-Flores's statement would be inadmissible as unreliable hearsay, it would not offend due process to exclude such evidence from trial. *See United States v. Gadson*, 763 F.3d 1189, 1200 (9th Cir. 2014) ("The Supreme Court has held that a defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions . . . ." (internal quotation marks and alteration omitted)); *Rhoades v. Henry*, 638 F.3d 1027, 1034–36 (9th Cir. 2011) (exclusion of third-party confession under Idaho's Rule 804(b)(3) analogue did not violate due process); *United States v. Fowlie*, 24 F.3d 1059, 1068–69 (9th Cir. 1994) (exclusion of evidence under Rule 804(b)(3) did not violate due process).

AFFIRMED.