No. 69453-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent

V.

VINAY BHARADWAJ,

Appellant.

BRIEF OF AMICUS CURIAE OF THE WASHINGTON DEFENDER ASSOCIATION

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I. INTEREST OF AMICUS CURIAE

The interests of amici are described in the amicus motion.

II. STATEMENT OF ISSUES/SUMMARY OF ARGUMENT

Because of ineffective assistance of counsel, appellant Vinay Bharadwaj will be deported. Defense counsel representing a noncitizen defendant has a duty to access readily available resources to determine the risk of deportation—particularly when avoiding deportation is the client's paramount goal. Bharadwaj was charged with an offense that would trigger automatic deportation. The State offered a resolution that would have avoided deportation. Because of defense counsel's constitutionally deficient performance at the pre-trial stage, Bharadwaj was misinformed about the plea offer and chose instead to go to trial and now faces deportation. This result could easily have been avoided had his attorney met his constitutional obligations. The Trial Court erred by failing to find deficient performance at the pre-trial stage and by failing to find prejudice.

In determining that noncitizen defendants have a Sixth amendment right to be affirmatively and accurately advised regarding the immigration consequences of their criminal charges and plea offers, the U.S. Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 1484 (2010), recognized that "[t]here can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely

aware of the immigration consequences of their convictions." *Padilla*, 130 S. Ct. at 1481-82. This observation was particularly true in the case at bar. Bharadwaj, a lawful permanent resident (LPR) with significant ties to the U.S., was acutely aware of the risk of deportation and made it abundantly clear that avoiding deportation was his highest priority in resolving the criminal charges against him. *See* 7.8(b) Motion at 5-6. However, despite his full awareness of his client's primary priority and contrary to his *Padilla* duties, defense counsel failed to consult readily available resources to affirmatively and accurately determine the immigration consequences with regard to the criminal charges and plea offers. Had he done so, he would have been informed that Assault third degree with sexual motivation, regardless of whether the record was "sanitized", was undoubtedly the clearest and safest option to avoid deportation. Moreover, convictions pursuant to any of the other options would, in fact, classify Bharadwaj as an aggravated felon under immigration law and subject him to automatic deportation.

Instead, defense counsel botched plea negotiations and ineffectively advised his client, leading Bharadwaj to incorrectly believe that the only option for avoiding deportation was to risk acquittal at trial. Such was his desperation to avoid deportation that Bharadwaj, believing he had no other viable alternative, elected to go to trial with disastrous

results. On August 14, 2012, he was convicted of two counts of Child Molestation second degree and sentenced to 57 months. As a result, he now faces automatic deportation to India upon release.

The Trial Court's determination that Bharadwaj failed to establish the requisite prejudice was manifestly unreasonable. In *State v. Sandoval*, 171 Wash.2d 163, 249 P.3d 1015 (2011), the Washington Supreme Court made clear that a noncitizen defendant meets his burden to establish the requisite prejudice under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), where he demonstrates that defense counsel's ineffective assistance forecloses the consideration of options that would avoid the severe penalty of deportation. *Sandoval*, 171 Wash. 2d at 175. Defense counsel's deficient performance did just that. Consequently, there was a reasonable probability that but for counsel's ineffective assistance the outcome of this case would have been different.

III. ARGUMENT

A. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND THAT DEFENSE COUNSEL'S PRE-TRIAL PERFORMANCE WAS CONSTITUTIONALLY DEFICIENT UNDER *PADILLA* AND *LAFLER*.

The outcome of Bharadwaj's case was determined by defense attorney John Henry Browne's *pre-trial* performance. The Trial Court abused its discretion by failing to adequately consider this critical juncture of Browne's representation. Despite the fact that avoiding deportation was

his client's ultimate goal, defense counsel failed to satisfy his *Padilla* obligations. Browne failed to consult readily available immigration resources, as *Padilla* requires. *Padilla*, 130 S. Ct. at 1484. He was thus unable to affirmatively and accurately advise his client regarding the clear immigration consequences of the plea offers made by the State, as *Padilla* also requires. *Id.* at 1483. Because of his deficient performance, he failed to effectively engage in plea negotiations with the State, and thus his representation fell below the reasonable standard of performance under *Lafler v. Cooper,* _U.S._, 132 S. Ct. 1376 (2012). Had the Trial Court properly exercised its discretion it would have determined that Browne's failure to meet these two standards clearly satisfies the first prong of *Strickland.*

1. Defense Counsel's Performance Was Deficient Under *Padilla.*

The first prong of the *Strickland* test requires a court to determine whether counsel's performance "fell below an objective standard of reasonableness." *Strickland*, 104 S. Ct. at 2064. In *Padilla*, the Supreme Court recognized that "[t]he weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation." 130 S. Ct. at 1482. Further, the Court found that "[i]t is quintessentially the duty of counsel to provide her client with *available advice* about an issue like deportation and the failure to do so clearly

satisfies the first prong of the *Strickland* analysis." *Id.* at 1484 (internal citations omitted; emphasis added).

The *Padilla* decision elucidated numerous steps an attorney must take to satisfy his duties under its holding. To identify whether a particular plea carries risks of deportation, an attorney should "read[] the text of the statute," and "follow the advice of numerous practice guides," and most importantly, should access even "rudimentary advice on deportation . . . when it is readily available." *Id.* at 1483-84. The Court noted, "when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear." *Id.* at 1483.

There is no record that Defense counsel consulted the immigration statute or caselaw or made any attempt to access the extensive resources available to Washington defenders. Thus, he failed to comply with his *Padilla* duties. Defense counsel did not consult with Washington Defender Association's (WDA) Immigration Project legal experts to obtain free and immediate advice. Nor did he access the readily available "numerous practice guides" on Washington-specific crimes available on the WDA website. See § III.A.2, *infra*. Indeed, there is no evidence that he even looked at the immigration statute. In fact it was the State who finally sought advice from WDA's Immigration Project after the plea had been

entered and the 7.8(b) motion had been filed.[1] His immigration-related communications with his client were random, confusing and unresponsive. *See*, 7.8(b) Motion at Exh. E-H. As such, his performance was akin to doing nothing.

Browne's incompetence forced Bharadwaj to consult with an out-of-state immigration attorney who was unfamiliar with Washington criminal law. *See*, 7.8(b) Motion at Exh. H. This unnecessary expenditure of resources demonstrated Bharadwaj's desperation to determine the immigration consequences of the options before him. But defense counsel failed to communicate with the immigration attorney, or to provide Bharadwaj with information necessary to make the consultation useful. *Id.*

Had he satisfied his *Padilla* duties, Browne would have known that the deportation consequences for Child Molestation second degree and Communicating with a Minor for Immoral Purposes (CMIP) clearly resulted in deportation, while Assault third degree clearly did not. Defense counsel failed to comply with his *Padilla* duties and as a result, failed to

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[1] It was at this juncture that Deputy King County Prosecutor Hugh Barber contacted WDA's Immigration Project requesting information regarding the immigration consequences of the crimes at issue, including Assault third with a sexual motivation enhancement. *See* Decl. Hugh Barber, CP 1365. He was advised that, as a general matter, Assault third should have a sanitized record of conviction in order to ensure that it would avoid all immigration consequences. *Id.* While this was, and remains, best practice, not doing so would not have jeopardized this particular client's ability to avoid deportation. *See infra*, § III.A.3.

effectively advise his client of the immigration consequences he faced and undermined plea negotiations with the State.

2. The Information Necessary To Comply With Counsel's Padilla Duties Was Readily Available.

Long before *Padilla*, defense attorneys in Washington recognized the importance of providing advice to noncitizen defendants regarding immigration consequences in the scope of their representation. *See*, WDA's Standards for Public Defense Services, at 17 (2007) ("[l]awyers must be aware of their clients' immigration status, research the implications of it for their cases, and advise their clients of the consequences of a conviction."); *see also*, WSBA's Performance Guidelines for Criminal Defense Representation, §2.2(b)(2)(b) (2011) ("when the client is not a citizen the lawyer should obtain information that will permit counsel to determine the immigration consequences of the conviction and sentence.").

Accessing readily available resources to navigate the complexities of immigration law is, as the *Padilla* Court recognized, a crucial step to discerning the clarity needed to accurately advise a defendant of immigration consequences. To ensure that defenders could meet these obligations, the Washington Defender Association established the Immigration Project in 1999. WDA's Immigration Project has ensured that

defenders get individualized, accurate, concise analysis of the immigration consequences of possible pleas and convictions and provided strategies to mitigate or avoid these consequences. These strategies include best practices in light of current case law and pending litigation to ensure that defendants receive the benefit of their plea bargains and avoid deportation. *Sanchez-Avelos v. Holder*, 693 F.3d 1011, 1018 (9th Cir. 2012). Since its inception, the Washington legislature has provided dedicated funding to ensure and expand the availability of these resources to defenders.[2]

In no other state have defenders had such ready access to the necessary immigration law expertise needed to effectively represent noncitizen clients. WDA's Immigration Project offers free immigration consultations to public and private defenders who seek it. In addition to over 20,000 case consultations, WDA's Immigration Project has provided over 150 trainings, reaching more than 5,000 participants—including prosecutors, defenders and judges—on the immigration consequences of crimes.[3] Immigration Project staff are available daily by phone and email to assist defenders in negotiating cases and advising noncitizen defendants. On average, individual case assistance consultations take less than 30 minutes and are responded to within 48 hours, sooner if needed.

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[2] Documentation on file with Amicus Curiae, Washington Defender Association.
[3] Statistics on file with Amicus Curiae, Washington Defender Association.

Additionally, any attorney may obtain, at any time, current advisories about the immigration consequences of specific Washington criminal offenses on WDA's website[4], which also include strategies for effectively negotiating cases to mitigate these consequences.

Both defense counsel and the Trial Court had at least constructive knowledge of the availability of WDA's Immigration Project resources. Browne's failure to access them constituted ineffective assistance; the Trial Court's failure to recognize this constituted an abuse of discretion. Upholding the Trial Court decision would not only sanction defense counsel's deficient performance, but also undermine the Legislature's investment and render hollow the right enshrined in *Padilla*.

3. Accessing Relevant Analysis Regarding Immigration Would Have Satisfied Counsel's *Padilla* Obligations.

Had Browne contacted WDA's Immigration Project, he would have been provided with the following immigration analysis regarding the crimes at issue. He would have known that Assault third degree was clearly the best alternative for his client to avoid deportation.[5]

Child Molestation 2nd Degree (CM2) = Automatic Deportation.

[4] *See* the WDA website at www.defensenet.org/immigrationproject.

[5] WDA's Immigration Project regularly consults with defenders who have clients who, like Bharadwaj, are permanent residents facing charges of Child Molestation where the state is willing to negotiate to Assault third with sexual motivation. This was the standard advice provided to similarly situated defenders in 2012.

- **Automatic Deportation as an Aggravated felony:** CM2 is classified as a "sexual abuse of a minor" aggravated felony under 8 USC § 1101(a)(43)(A) and, as such triggers deportation under 8 USC § 1227(a)(2)(A)(iii). *Matter of Rodriguez-Rodriguez*, 22 I. & N. Dec. 991, 995 (BIA 1999) (defining "sexual abuse of a minor" to include child molestation). Convictions classified as aggravated felonies render lawful permanent residents ineligible for the primary waiver of deportation known as "cancellation of removal" and ineligible to seek asylum. 8 USC § 1229b(a)(3); 8 USC § 1158(b)(2)(B)(i). Thus, an aggravated felony would result in automatic deportation and should be avoided at all costs.
- **Triggers Deportation As a Crime of Child Abuse (COCA):** 8 USC § 1227(a)(2)(E)(i). *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512 (BIA 2008) (defining COCA defined to include "direct acts of sexual contact" with a minor).
- **Triggers Deportation As A Crime Involving Moral Turpitude (CIMT):** Since there were two counts for conduct that occurred on two separate dates, it would trigger the multiple CIMT ground of deportation under 8 USC § 1227(a)(2)(A)(ii). *Matter of Silva-Trevino*, 24 I. & N. Dec. 687, 705 (A.G. 2008) (abrogated on other grounds). A felony CIMT, would also trigger the CIMT ground of

inadmissibility under 8 USC § 1182(a)(2)(A)(i) which would bar any future re-entry back into the U.S. and preclude obtaining U.S. citizenship. 8 USC § 1255(a)(2).

Communicating with a Minor for Immoral Purposes (CMIP) = Automatic Deportation.

- **Automatic Deportation As An Aggravated Felony:** Without a completely "sanitized" record[6], CMIP is classified as a "sexual abuse of a minor" aggravated felony under 8 USC § 1101(a)(43)(A). *See, Parilla v. Gonzalez*, 414 F.3d 1038, 1044 (9th Cir. 2005) (holding that a CMIP conviction is a sexual abuse of a minor aggravated felony where conviction record showed "communication" involved child molestation). Where the State is unwilling to sanitize the record, a CIMP conviction would, like CM2, result in automatic deportation and should be avoided.
- **Triggers Deportation as COCA:** 8 USC § 1227(a)(2)(E)(i); *Matter of Velazquez-Herrera, supra.*
- **Classified as a CIMT:** *Morales v. Gonzalez*, 478 F.3d 972, 978 (9th Cir. 2007).

[6] A "sanitized" record involves removing from the judicially-reviewable record of conviction (charging document, plea, judgment & sentence) facts that can serve to establish that the state crime is a sufficient match to the deportation ground at issue.

<u>Assault 3 Under the (f) Negligence Prong, with Sexual Motivation (Assault third) = Best Resolution For This Client.</u>

- **Is Not An Aggravated Felony.**
- **Does Not Trigger Deportation as COCA.**
- **Is Not Classified as a CIMT.**
- Under [then-] current caselaw (July 2012), because Assault third is an age-neutral statute (lacking a minor victim as an element of the offense), it will not be classified as either a sexual abuse of a minor aggravated felony or a COCA. *See*, *United States v. Aguila-Montes De Oca*, 655 F.3d 915, 936 (9th Cir. 2011). Additionally, because the offense has a negligent mens rea, it cannot be classified as a CIMT offense. *See*, *Matter of Silva-Trevino, supra.*
- This is clearly the safest course of action for your client to avoid deportation. However, there is on-going litigation regarding the legal framework for determining when a State crime triggers a deportation ground. Therefore, if your client agrees to an Assault third plea, the best practice to insulate him from any risk of deportation, would be to "sanitize" the record by eliminating reference to the victim's minor status in the charging document, plea or judgment & sentence. However, obtaining a sanitized

record is not a "deal-breaker" to your client accepting an Assault third plea as it is clearly the safest alternative to avoid deportation.

Thus, had defense counsel accessed the readily available advice he would have been able to accurately advise his client and effectively conduct plea negotiations to facilitate a plea to Assault third.

4. Both the State and the Trial Court Operated Under An Erroneous Belief That Assault Third Without A Sanitized Record Would Have Resulted In Deportation.

Sanitizing an Assault third record to remove any indicia that the victim was a minor was the best practice at the time of Bharadwaj's plea. However, the State's unwillingness to do so would not be grounds to reject a plea in these circumstances since Assault third with an unsanitized record clearly remained the safest alternative to resolve the charges in a way that accomplished his client's primary goal, avoiding deportation.

The recommendation for a sanitized record at the time of Bharadwaj's plea negotiations was due to the fact that the legal framework for analyzing whether a state conviction triggers a deportation ground—the categorical approach set forth in *Taylor v. United States*, 495 U.S. 575, 110 S. Ct. 2143 (1990) and *Shepard v. United States*, 544 U.S. 13, 125 S. Ct. 1254 (2004)—was being litigated. Sanitizing Bharadwaj's record would have insulated a plea to Assault third from triggering his

deportation regardless of the outcome of the litigation involving the categorical approach framework.

In recent years, Board of Immigration Appeals (BIA) and Ninth Circuit decisions had significantly compromised the integrity of the categorical approach framework. These decisions attempted to transform a strictly elements-based test for determining when a conviction matched a deportation ground into a facts-based test. Under this facts-based test, the immigration judge was permitted to review the record of conviction to determine the facts related to the conviction. *See*, e.g., *Aguila-Montes De Oca*, *supra* (permitting the immigration judge to consult the criminal record whenever the criminal statute is "broader" than the deportation ground.); *Matter of Lanferman*, 25 I. & N. Dec. 721 (BIA 2012) (permitting the immigration judge to review the criminal record when, "some but not all violations" of the criminal statute" would trigger a deportation ground.).

In 2013, the U.S. Supreme Court overruled the facts-based test in *Descamps v. United States*, _U.S._, 133 S. Ct. 2276 (2013); *see also*, *Moncrieffe v. Holder*, _U.S._, 133 S. Ct. 1678 (2013). *Descamps* resolved the on-going litigation regarding the categorical approach framework by re-establishing that it is governed by an elements-based test. In other words, a criminal conviction will only trigger a deportation ground where

the elements of the offense, not the facts related to the conviction, are a sufficient match. *Descamps*, 133 S. Ct. at 2293.

However, even in light of the on-going litigation at the time of Bharadwaj's plea negotiations, however, the risk of Assault third resulting in Bharadwaj's deportation was low. *Aguila* maintained important limits on the Ninth Circuit's fact-based approach. Specifically, the Ninth Circuit stated that "[t]he modified categorical approach[7] simply asks, in the course of finding that the defendant violated the statute of conviction, was the factfinder actually required to find the facts satisfying the elements of the [deportation ground at issue]?" *Aguila*, 655 F.3d at 936. A month after Browne's failed pre-trial negotiations, the Ninth Circuit decided *Sanchez-Avalos*, *supra*, a decision that had been withdrawn and was pending during plea negotiations. The Circuit confirmed this interpretation. Relying on *Aguila*, the Circuit held that the facts in the record of conviction can be reviewed only to identify facts "*necessary*" to a conviction. *Sanchez-Avalos*, 693 F.3d at 1019.

This important limitation on the categorical approach from *Aguila* establishes that a conviction for Assault third would not have triggered any grounds of deportation because it lacked a minor victim as an element of the offense, unlike a conviction for CM2 and CMIP. Therefore,

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[7] The "modified" categorical approach is the step in the categorical approach framework that permits a court to consult the record of conviction. *Taylor*, 110 S. Ct. at 2160.

regardless of whether the record was sanitized, it could not have been reviewed by an immigration judge because the victim's minor status was not a fact "necessary" to an Assault third conviction. Accordingly, it would not trigger deportation as a sexual abuse of a minor aggravated felony nor as a COCA.[8]

The Supreme Court's 2013 decision in *Descamps, supra,* settled the application of the categorical approach, ensuring that Assault third with an unsanitized record would not result in deportation. Had Bharadwaj accepted this plea, upon release from jail he would have retained his LPR status and avoided deportation.[9] These decisions made clear that the categorical approach is an elements-based, not a fact-based test, and held that review of the criminal record is strictly circumscribed for the limited purpose of identifying the crime of conviction when the statute lists multiple offenses (e.g., which of RCW 9A.36.031's nine prongs was the one defendant was convicted of violating). *Descamps*, 133 S.Ct. at 2286.

Thus, had Browne complied with his *Padilla* obligations he would have known that a "sanitized" Assault third plea was not required in order to accept the State's offer to the resolution his client needed.

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[8] Again, as *Descamps* makes clear, because the government continued to contest the application of the categorical approach framework, sanitizing the record was recommended as a best practice to insulate a client from the risk of deportation.
[9] ICE does not initiate removal proceedings against a noncitizen until they are released from jail, which in Bharadwaj's case would have been months after the decisions in *Moncrieffe* and *Descamps*.

5. The Trial Court abused its discretion by not finding that defense counsel had failed to effectively engage in plea negotiations under *Lafler*.

Defense counsel's pre-trial negotiations were also constitutionally deficient since they did not meet the standard of reasonable performance outlined in *Lafler*. The current case is analogous to *Lafler* where a "favorable plea offer was reported to the client but, on [ineffective] advice of counsel, was rejected." *Id.* at 1383. The Court noted, "[i]f a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." *Id.* at 1387.

Here, Bharadwaj was denied effective assistance of counsel. *Padilla* established that, to be effective in representing a noncitizen, an attorney had a duty to determine the immigration consequences of the two plea offers put forward by the State. One of those offers clearly avoided deportation. Under *Lafler*, Browne had a duty to accurately communicate the favorable plea deal and assist his client in considering whether to accept it. Defense counsel failed to do so. There are no circumstances where counsel's failure to communicate an offer that avoids deportation—for a client whose goal is exactly that—can be termed effective. The Trial Court abused its discretion by not finding that Browne's performance was constitutionally deficient under *Lafler,* as well as *Padilla*.

B. THE TRIAL COURT WAS MANIFESTLY UNREASONABLE IN NOT FINDING PREDJUDICE GIVEN

THAT THE STATE'S OFFER WOULD HAVE ACCOMPLISHED DEFENDANT'S PRIMARY GOAL OF AVOIDING DEPORTATION.

The Trial Court's finding that Bharadwaj failed to establish the requisite *Strickland* prejudice is directly contrary to the Washington Supreme Court's holding in *State v. Sandoval, supra.* The *Sandoval* Court ruled that, given the severity of the deportation consequence at stake, a noncitizen defendant meets his burden to establish prejudice where counsel's ineffective assistance forecloses consideration of options that would avoid deportation. Indeed, the *Sandoval* Court found that there was a reasonable probability that a noncitizen who pleaded to third degree rape with a six month sentence, would have risked a prison term of 78-102 months at trial, since acquittal was his only chance of avoiding certain deportation. *Sandoval*, 171 Wash.2d at 176. By contrast, Bharadwaj was offered a plea that would have avoided deportation. Therefore, seeking acquittal was not his only, or even best, chance of avoiding deportation.

The *Sandoval* Court was required to engage in informed speculation that the defendant would have risked more than eight years in prison to avoid deportation by going to trial. In so doing, the Court found this possibility reasonable in light of the severity of deportation for Sandoval, a longtime LPR, who stood to lose "all that makes life worth living." *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 1449 (1945).

Here, no such speculation was even necessary. Due to counsel's ineffectiveness, Bharadwaj actually had to, and did, make this choice.

Given the undisputed fact that avoiding deportation was Bharadwaj's highest priority, it was manifestly unreasonable for the Trial Court to conclude that he would not have made a different choice to accept a plea offer to Assault third—a deal that would have both avoided deportation and resulted in a lower sentence.

To the contrary, but for Browne's inaccurate and unreasonable advice, there is clearly a reasonable probability that Bharadwaj, as well as the Trial Court, would have accepted the plea offer to Assault third suggested by the State. While there is evidence that neither the State nor the Judge would have accepted a sanitized plea, an unsanitized plea to Assault third would still clearly have been in the best interest of all of the parties. *See* Report of Proceedings, 1/28/13, p. 12-13.

C. THE COURT'S POWER TO CRAFT A REMEDY INCLUDES ORDERING THE STATE TO REOPEN PLEA NEGOTIATIONS AND REOFFER ASSAULT THIRD.

In *Lafler*, the Supreme Court provided a clear remedy for Sixth Amendment violations such as those here, explaining that "[t]he correct remedy in these circumstances . . . is to order the State to reoffer the plea agreement." 132 S. Ct. at 1391. Such a remedy is tailored to the injury suffered by the defendant and is necessary to "neutralize the taint of a

constitutional violation." *Id.* at 1388 (internal citations omitted). As *Lafler* dictates, the defendant here has shown that "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court." *Id.* at 1385. As *Lafler* mandates, vacating Bharadwaj's conviction at trial and ordering the State to reoffer the Assault third plea is the appropriate remedy in this case.

IV. CONCLUSION

Because of defense counsel's constitutionally deficient performance under *Padilla* and *Lafler*, Appellant rejected a favorable plea offer which would have avoided deportation, his highest priority. The Trial Court abused its discretion in failing to adequately review counsel's pre-trial performance and by refusing to acknowledge that, but for his ineffective assistance, there is a reasonable probability that Bharadwaj would not now be facing automatic deportation. Rather, he would have accepted a plea that would have avoided this outcome. This Court should vacate his conviction and order the State to reoffer the Assault third plea.

DATED this 19th day of June, 2014.

Respectfully Submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. VINAY BHARADWAJ, Appellant.	)	NO. 69453-7-I

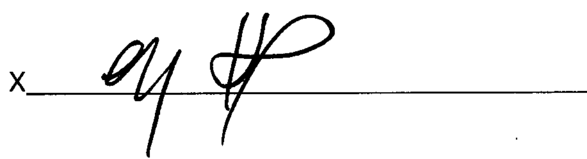
DECLARATION OF DOCUMENT FILING AND SERVICE

I, Enoka Herat, STATE THAT ON THE 19th DAY OF JUNE, 2014, I CAUSED THE ORIGINAL **BRIEF OF AMICUS CURIAE** AND **MOTION TO FILE AMICUS BRIEF** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN 19 PM 2:37

[X] ANDREA VITALICH SENIOR DEPUTY PROSECUTING ATTORNEY KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY __________
[X] DAVID KOCH NIELSEN BROMAN & KOCH PLLC 1908 E. MADISON STREET SEATTLE, WA 98122	( ) (X) ( )	U.S. MAIL HAND DELIVERY __________

SIGNED IN SEATTLE, WASHINGTON THIS 19TH DAY OF JUNE, 2014.

X

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