**SUPERIOR COURT FOR THE STATE OF WASHINGTON**

**COUNTY OF --------**

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| STATE OF WASHINGTON, Plaintiff,vs.XXXX, Defendant. |  | No. -----------------------DECLARATION OF ANNIE BENSON **REDACTED** |

1. I, ANNIE BENSON, swear under penalty of perjury that the following facts are true and accurate:
2. I am a licensed attorney in the State of Washington. I am over the age of 18 and I am competent to testify to the matters set forth herein. I have practiced immigration law for more than 30 years. For the past 25 years my expertise has focused on the immigration consequences of crimes. In 1999, Washington Defender Association established its Immigration Project (WDA’s Immigration Project). I have been WDA’s Immigration Project Directing Attorney since its inception.
3. Through funding authorized by the Washington Legislature, WDA’s Immigration Project staff provides support to defense counsel in fulfilling their constitutional obligations to noncitizen clients. Specifically, we assist criminal defenders to identify the immigration consequences of criminal charges and convictions (e.g., deportation); provide alternatives that avoid or mitigate these consequences; and assist noncitizen clients to make informed choices about resolving charges in light of them.
4. Any criminal defense attorney may contact Immigration Project staff for assistance. Case consultations take, on average, 20 minutes of defense counsel’s time. There is no cost to the defendant or defense counsel. Since 1999, we have consulted in more than 30,000 cases. This system was well established in -------- County in 2006 when Mr. XXXX plead guilty.
5. Washington defense attorneys also have free access to Immigration Project practice advisories and materials on WDA’s website ([www.defensenet.org](http://www.defensenet.org)), which was operational in 2006. Additionally, WDA’s Immigration Project staff have conducted over 175 trainings throughout Washington, including regular trainings in -------- County between 1999 and 2006, focused on immigration consequences and other specific issues in representing noncitizens.
6. I have reviewed the relevant documents regarding Mr. XXXX’s criminal and immigration cases provided to me by his attorney, Braden Penhoet. The analysis herein is based upon information contained in Appendix A of Defendant’s Motion To Vacate. Although born in a refugee camp in Thailand, Mr. XXXX is a citizen of Cambodia. He has been a lawful permanent resident of the US since arriving as a refugee in 1984. His wife and four children are US citizens. He has never been to Cambodia.
7. On July 21, 2006, on advice from counsel, Mr. XXXX pled guilty to a violation of RCW 9.41.040(2)(a)(i) - Unlawful Possession of A Firearm Second Degree (UPFA-2).
8. On January 31, 2008, the immigration judge terminated Mr. XXXX’s lawful permanent resident status and ordered him removed to Cambodia. The sole basis for the order was his UPFA-2 conviction, a violation of the deportation ground at 8 USC 1227(a)(2)(C). A diplomatic impasse prevented immigration authorities from immediately executing his removal. The impasse has since been resolved and immigration authorities have been removing Cambodians at an unprecedented rate since 2017, most of whom, like Mr. XXXX came as children from Thai refugee camps and have never been to Cambodia. Because his conviction is classified as an aggravated felony under immigration law, Mr. XXXX remains in the top removal priority category under the interim enforcement guidelines issued on February 18, 2021.
9. As the U.S. and Washington Supreme Courts have made clear, Mr. XXXX’s defense counsel , John Attorney X, had a Sixth Amendment duty to identify that his client was not a US citizen, affirmatively provide Mr. XXXX with accurate information regarding the immigration consequences of accepting a plea offer, and attempt to negotiate a resolution that would avoid or mitigate immigration consequences. See, *Padilla v. Kentucky,* 130 S.Ct. 1476 (2010) (Sixth Amendment duty requires affirmative, accurate advice regarding immigration consequences of accepting a guilty plea); *Lafler v. Cooper*, 132 S.Ct. 1376 (2012) (Relying on Padilla, holding effective assistance extends to plea negotiations); *State v. Sandoval*, 171 Wn. 2d 163 (2011) (Facing deportation constitutes prejudice under *Strickland v. Washington*, 104 S.Ct. 2052 (1984)) (104 S. Ct. 2052 (1984); *In Re Tsai*, 183 Wn. 2d (2015) (*Padilla v. Kentucky* is retroactive; RCW 10.40.200 does not satisfy defense counsel’s constitutional duties under *Padilla*).
10. Despite widespread knowledge that criminal convictions can trigger severe consequences such as deportation, and readily available expert resources, there is no indication that Mr. Attorney X’s representation practices included identifying noncitizen clients, ascertaining the immigration consequences of the charges they faced or plea deals they were offered, or providing them with accurate advice upon which to make informed decision regarding consequences that could be far more severe than the criminal penalties.
11. Had Mr. Attorney X contacted WDA’s Immigration Project for assistance we would have informed him that: 1. A conviction for UPFA-2 charge would trigger the firearms deportation ground at 8 USC 1227(a)(2). 2. Despite being in the U.S. as a lawful permanent resident for over 20 years, his client was still subject to deportation; and 3. It was paramount to make every effort to negotiate a plea that would not trigger deportation.,
12. We then would have worked with him to determine alternative offenses that Mr. XXXX could plead to that would not trigger deportation. For over 30 years, our efforts to provide defenders with alternative plea options to inform their negotiations with -------- County Prosecutors has regularly resulted in the parties reaching resolutions that serve the interests of justice while also avoiding the devastating consequences of deportation.
13. WDA’s Immigration Project staff would have advised Mr. Attorney X to pursue the resolution now being jointly put forward by Mr. XXXX and the -------- County Prosecutor: a plea to Assault Third Degree pursuant to RCW 9A.36.031(d). It was well-established at the time of Mr. XXXX’s plea, and continues to be so, that a conviction for this felony offense would not trigger any grounds of deportation (regardless of the sentence imposed). See *Matter of Perez-Contreras,* 20 I&N Dec. 615 (BIA 2992). (RCW 9.41.040 does not trigger deportation as a crime of moral turpitude or a firearms offense); *Leocal v. Ashcroft*, 125 S.Ct.177 (2004). (Crimes of negligence do not trigger deportation as “crimes of violence”.)
14. Had the prosecution been unwilling to negotiate a plea that avoided triggering deportation grounds, we would have impressed upon Mr. Attorney X the importance of advising his client that entering a plea to UPFA-2 would trigger his deportation and encouraged him to help his client make an informed decision about whether to exercise his right to trial. As the Washington Supreme Court has recognized, faced with the severe consequences of deportation, going to trial and risking a significantly higher sentence is a reasonable choice. *Sandoval* at 174-6. It is not uncommon for defendants such as Mr. XXXX, when facing permanent loss of family, community and home, to make this choice.

Signed this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20--, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Washington.



Senior Directing Attorney

WSBA #43781