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Brief of Amici Curiae, Fred T. Korematsu Center for Law and Equality, OneAmerica, Northwest Immigrant Rights Project, Asian Counseling & Referral Service, Korean American Bar Association of Washington, Middle Eastern Legal Association of Washington, and Dr. Daryl Fujii in Support of Appellant

Attorneys for Amicus Curiae

Fred T. Korematsu Center for Law and Equality

Supreme Court No. 85422-0

SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington,

Respondent,

v.

Phiengchai Sisouvanh,

Appellant.

BRIEF OF *AMICI CURIAE*
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, ONEAMERICA, NORTHWEST IMMIGRANT RIGHTS PROJECT, ASIAN COUNSELING & REFERRAL SERVICE, KOREAN AMERICAN BAR ASSOCIATION OF WASHINGTON, MIDDLE EASTERN LEGAL ASSOCIATION OF WASHINGTON, and DR. DARYL FUJII IN SUPPORT OF APPELLANT

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I. STATEMENT OF INTEREST

The Fred T. Korematsu Center for Law and Equality ("Korematsu Center") is a non-profit organization based at Seattle University School of Law that works to advance justice through research, advocacy, and education. It has a special interest in promoting fairness in the courts of our country. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

OneAmerica was formed directly after September 11, 2001, in response to the hate crimes and discrimination against immigrant communities. Its mission is to advance the fundamental principles of democracy, justice, and human rights at the local, state and national levels. OneAmerica works with community partners to protect and strengthen fundamental American rights for all people, especially immigrants.

Northwest Immigrant Rights Project ("NWIRP") is the only nonprofit organization providing comprehensive immigration legal services to low-income individuals and families in Washington State, and serves over 9,000 individuals annually. NWIRP, which also advocates on behalf on immigrant and refugee communities, has a deep interest in the subject of this litigation because adjudications in the criminal justice system have a significant impact on decisions made in the immigration context.

Asian Counseling & Referral Service ("ACRS") is a leading 501(c)(3) nonprofit organization founded in 1973 to provide culturally

competent and linguistically accessible services for the Asian Pacific American community, including immigrants, refugees, and American-born. ACRS serves approximately 23,000 clients annually in over 30 dialects and languages with a wide array of behavioral health and human services. ACRS provides nationally recognized mental health services to approximately 2,000 clients a year. ACRS is convinced of the need for culturally competent mental health evaluations to ensure a fair and accurate assessment and equal access to justice for defendants of all cultures and races.

One of the primary missions of the Korean American Bar Association of Washington ("KABA") is to serve the community it represents, including in advocating for the rights of persons with limited means or access to justice.

The Middle Eastern Legal Association of Washington ("MELAW") is a non-profit legal organization for attorneys and law students of Middle Eastern descent, along with their friends and supporters. MELAW seeks to advance the goals of its members, provide a legal voice for the Middle Eastern community in Washington, and address and educate the public on legal and political issues facing Middle Easterners. MELAW has a special interest in advancing the cultural competency and fairness of Washington courts.

Dr. Daryl Fujii is a clinical neuropsychologist with expertise in the neuropsychology of Asian Americans. Dr. Fujii edited the first comprehensive resource for assisting neuropsychologists in providing

culturally competent services to Asian Americans, and actively promotes cultural competence within his profession.

Detailed statements of interest are contained in the accompanying motion for leave to file this amicus brief.

II. INTRODUCTION

The issue before the Court involves the fundamental right of every person in our state, regardless of race, culture, or national origin, to enjoy fair treatment by, and equal access to, our justice system. Due process prohibits the trial or conviction of an incompetent criminal defendant. When competency to stand trial is at issue, court-appointed mental health professionals are called on to evaluate the competency of the defendant, acting as Constitutional gatekeepers who help to determine in the first instance whether an individual may face criminal jeopardy in our courts. This critical gatekeeping function — the evaluation of a defendant's competence to stand trial — must be performed in a culturally competent manner. If it is not, a defendant is deprived of an accurate evaluation and thus denied fair treatment under the law and access to a fair proceeding.

This Court has long recognized that an understanding of the ethnic and cultural diversity of the state's population is essential if equal justice for all is to be realized. In 1990, the Court ordered the creation of a Minority and Justice Commission to "examine all levels of the State judicial system to ensure that judicial needs of people of color are considered and to make recommendations for judicial improvement." Wash. State Sup. Ct. Order No. 25700-A-466 (Oct. 4, 1990), at 1. The

Court has since renewed the Commission four times, most recently observing that "for any system of justice to be responsible, it must be examined continuously to ensure it is meeting the needs of all persons who constitute the diverse populations we serve, with particular concern for the needs of persons of various racial, ethnic, cultural and language groups." Wash. State Sup. Ct. Order No. 25700-B-508 (Sept. 8, 2010), at 1. Accordingly, among the goals of the Minority and Justice Commission created by the Court is "improve[ment of] the cultural and professional competence of judges, court employees and other representatives of the Washington State Justice System."[1]

We live in a deeply and inherently multicultural society. Cultural competence is necessary to ensure not just dignity and respect, but inclusion and fair treatment for all people. This is clearly true in medicine and in mental health, fields where it has been recognized that successful outcomes depend on culturally sensitive practices. Yet despite this broad modern recognition and understanding of the importance of cultural issues in working with persons of diverse backgrounds, the State's position here seems to be that cultural competence is irrelevant to whether an individual may be tried and convicted as a criminal in a Washington court.

We draw from the fields of medicine and mental health to offer an evidence-based approach to understanding the essential role of cultural

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[1] Washington Courts: Minority and Justice Commission, *available at* http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=84 (last visited Apr. 10, 2012).

competence in ensuring that minorities and immigrants have equal access to these fundamental societal services. The evidence demonstrates the existence of substantial disparities in the physical and mental health of diverse individuals. Professionals in these fields have recognized that failure to account for culture has significantly contributed to these disparities, and have furthermore espoused cultural competence as a core part of the solution. Amici urge the Court to establish unequivocally that a person's competence to be tried as a criminal in a Washington court must be determined in the context of, and with a qualified understanding of, that person's cultural background.

III. STATEMENT OF THE CASE

Ms. Sisouvanh, a lowland Lao national, arrived in the United States in 1991, having spent the first few years of her life in the Thai refugee camp where she was born. In 2008, when she was 23 years old, Ms. Sisouvanh was charged with the murder of a pregnant woman (the nearly full-term child survived). Ms. Sisouvanh was found competent to stand trial by a psychologist with no knowledge or understanding of her Lao cultural background, religion, or refugee experience, and who assumed that she had led "a pretty average American life." 3-12-10 RP 29:13–14. Ms. Sisouvanh was found guilty and sentenced to life imprisonment without parole.

IV. ARGUMENT

There is no dispute that the due process clause of the Fourteenth Amendment prohibits the trial or conviction of a criminal defendant while

that individual lacks competence to stand trial. *Drope v. Missouri*, 420 U.S. 162, 171–72, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 861, 16 P.3d 610 (2001). Nor is there any dispute that due process is also denied if procedures adequate to protect this right are not observed. *State v. Heddrick*, 166 Wn.2d 898, 903–04, 215 P.3d 201 (2009). Accordingly, the procedures established in Washington to determine the competency of a criminal defendant — as set forth in Chapter 10.77 of the Revised Code of Washington — "are mandatory and not merely directory." *Id.* at 904. These procedures explicitly require that the mental condition of a defendant whose competency is reasonably in doubt be evaluated by "*qualified* experts or professional persons." RCW 10.77.060(1)(a) (emphasis added).

The crux of the parties' dispute here is what it means for the expert or professional person conducting a competency evaluation to be "qualified." Based on principles of statutory interpretation, Ms. Sisouvanh argues that such an individual cannot be qualified unless culturally competent. (Brief of Appellant at 14–34.) The State's sole argument in response presents a tautology, namely, that an expert or professional person conducting a competency evaluation satisfies the statutory requirement merely by being qualified to perform a competency (or "forensic") evaluation. (Brief of Respondent at 17–18.) Although the legal arguments regarding the meaning of "qualified" are beyond the scope of this brief, amici — as organizations dedicated to promoting the legal rights of minorities and immigrants — are uniquely suited to

comment on the damage that failure to require cultural competence inflicts on these communities.

A. The Fair Provision of Services to an Increasingly Diverse Society Requires Cultural Competence.

The United States is a multicultural society. More than a quarter of the nation's population self-identifies as being of a race other than "white."[2] More than 39 million individuals living in the United States are foreign-born.[3] In 2010 alone, more than 1.7 million individuals became naturalized citizens or legal permanent residents of, or were granted refugee status or asylum in, the United States.[4] Washington has experienced the same demographic trends as the nation as a whole. Non-white individuals make up approximately 22.7 percent of the state's population. Nearly 900,000 foreign-born individuals — 12.7 percent of the state's population — reside here in Washington. More than 17 percent

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[2] U.S. Census Bureau, State & County Quick Facts: USA QuickFacts, *available at* http://quickfacts.census.gov/qfd/states/00000.html (last visited Apr. 2, 2012).

[3] *Id.*; *see also* U.S. Census Bureau, Selected Social Characteristics in the United States: 2010 American Community Survey 1-Year Estimates, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_DP02&prodType=table (default geography = United States) (last visited Apr. 2, 2012).

[4] Office of Immigration Statistics, Dep't of Homeland Security, 2010 Yearbook of Immigration Statistics, Tables 3, 14, 17, and 21, *available at* http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf (last visited Apr. 2, 2012). These statistics do not even include the number of foreign nationals residing in the United States without authorization, estimated as being 10.8 million as of January 2010. Michael Hoefer et al., Dep't of Homeland Security, Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010, *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf (last visited Apr. 2, 2012).

of those living in Washington speak a language other than English at home.[5]

Our societal institutions have realized that, to effectively serve these minority and immigrant groups, they must understand the ethnic and cultural diversity of these groups and how it impacts the provision of services. As recognized by professionals in the fields of medicine and mental health, cultural competence is not a mere luxury, not a mere sign of respect, but a necessity to avoid unfair outcomes for minorities and immigrants — in this case, life imprisonment without the possibility of parole.

1. Cultural Competence Enables Professionals to Work Effectively with Individuals from Different Cultures.

As defined by a pioneering and widely cited publication in this field:

> Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations. The word "culture" is used because it implies the integrated pattern of human behavior that includes thoughts, communications, actions, customs, beliefs, values, and institutions of a racial, ethnic, religious, or social group. The word competence is used because it implies having the capacity to function effectively. A culturally competent system of care acknowledges and incorporates — at all levels — the importance of culture, the assessment of cross-cultural relations, vigilance towards the dynamics that result from cultural differences, the

[5] U.S. Census Bureau, State & County Quick Facts: USA QuickFacts (Washington), *available at* http://quickfacts.census.gov/qfd/states/53000.html (last visited Apr. 2, 2012).

> expansion of cultural knowledge, and the adaptation of services to meet culturally-unique needs.[6]

Cultural competence, therefore, requires more than merely embracing diversity and inclusion — it requires the attitudes, skills, knowledge, and behaviors necessary to recognize, understand, and react properly to cultural issues and differences.

2. Cultural Competence in Medicine Ensures that Members of Diverse Communities Have Meaningful Access to Effective Healthcare.

The medical field has recognized the importance of cultural competence to ensure that diverse communities have meaningful access to effective healthcare. It has been well-established that racial and ethnic minorities generally receive lower levels of healthcare and experience higher rates of certain conditions and diseases than white individuals.[7]

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[6] Terry L. Cross, et al., Towards a Culturally Competent System of Care: A Monograph on Effective Services for Minority Children Who Are Severely Emotionally Disturbed 13 (1989), *available at* http://www.eric.ed.gov/PDFS/ED330171.pdf (last visited Apr. 2, 2012). This definition has been adopted, for example, by the Washington State Department of Health, as well as by various minority groups in Washington advocating for cultural competence in addressing the achievement gap in education. Washington State Dep't of Health, Cultural Competency in Health Services and Care: A Guide for Health Care Providers 6 (2010), *available at* http://www.doh.wa.gov/hsqa/professions/Publications/documents/CulturalComp.pdf (last visited Apr. 2, 2012); Washington State Multi-Ethnic Think Tank, Call to Action: Mandating an Equitable and Culturally Competent Education for All Students in Washington State 11 (2002), *available at* http://www.wce.wwu.edu/Resources/CEP/METT/2006/Multi%20Ethnic%20Think%20Tank%20Position%20Paper.pdf (last visited Apr. 2, 2012).

[7] For example, the rate of infant mortality among Native Americans and African Americans is twice as high as for white babies. More than half of the hepatitis B sufferers nationwide are Asian Americans and Pacific Islanders. Mortality rates from coronary heart disease are significantly higher for American Indians and African Americans than for whites. *See, e.g.*, Governor's Interagency Council on Health Disparities, State Policy Action Plan to Eliminate Health Disparities 6 (2010), *available at* http://healthequity.wa.gov/about/docs/ActionPlan.pdf (last visited Apr. 2, 2012); Washington State Dep't of Health, Cultural Competency in Health Services and Care: A Guide for Health Care Providers, *supra* note 6, at 5.

The crisis is such that the Legislature has created the Governor's Interagency Council on Health Disparities to develop by 2012 an action plan and statewide policy to address health disparities. RCW 43.20.270.

While factors such as genetics and socioeconomic status contribute to health disparities, culture also strongly influences the success of medical intervention in several ways.[8] As observed by the Legislature:

> [W]omen and people of color experience significant disparities from men and the general population in education, employment, healthful living conditions, access to health care, and other social determinants of health. . . . [T]hese circumstances coupled with lower, slower, and *less culturally appropriate* and gender appropriate access to needed medical care result in higher rates of morbidity and mortality for women and persons of color than observed in the general population.

RCW 43.20.270 (emphasis added). For example: Culture influences how an individual perceives a given disease and its possible causes and cures, which may in turn influence how that individual perceives the likely relative efficacy of a traditional healing approach versus Western medicine, and whether that individual will follow through on a physician's prescribed course of treatment. Culture influences an individual's general willingness to seek assistance, and how early or late in the progression of a disease an individual will seek medical intervention. Culture influences how an individual communicates with a physician, not least because of differences in linguistic and non-verbal communication patterns. The

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[8] *See, e.g.*, National Center for Cultural Competence, Policy Brief 1: Rationale for Cultural Competence in Primary Care 1 (2003), *available at* http://nccc.georgetown.edu/documents/Policy_Brief_1_2003.pdf (last visited Apr. 2, 2012); Washington State Dep't of Health, Cultural Competency in Health Services and Care: A Guide for Health Care Providers, *supra* note 6, at 8.

efficacy of public health campaigns may be lower among racial and ethnic minorities, particularly if not culturally appropriate.[9]

Recognizing the roles that culture plays in creating health disparities, the Legislature has declared it "a priority for the state to develop the knowledge, attitudes, and practice skills of health professionals and those working with diverse populations to achieve a greater understanding of the relationship between culture and health." RCW 43.70.615, note. In addition to creating the Governor's Interagency Council on Health Disparities, the Legislature has also tasked the Department of Health with creating an "ongoing multicultural health awareness and education program as an integral part of its health professions regulation." RCW 43.70.615(2). The Department of Health has in turn committed "to creating health equity" as well as "promoting cultural competency among health care providers."[10]

3. Cultural Competence in Mental Health Is Necessary for the Correct Evaluation, Diagnosis, and Treatment of Patients.

For many of the same reasons applicable to medicine generally, the important role of culture is widely recognized in clinical psychology and psychiatry. Cultural issues play an even more prominent role in these professions, however, because of the highly individualized nature of

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[9] *See, e.g.*, Linda Villarosa, *Tailoring a Healthy Message to Blacks*, N.Y. Times, Aug. 18, 1998, *available at* http://www.nytimes.com/1998/08/18/science/tailoring-a-healthy-message-to-blacks.html?pagewanted=all&src=pm (last visited Apr. 2, 2012).

[10] Washington State Department of Health, Cultural Competency in Health Services and Care: A Guide for Health Care Providers, *supra* note 6, at 2.

evaluation, diagnosis, and treatment necessary for the preservation or achievement of mental health.

First, knowledge and appreciation of cultural cues is vital for establishing patient rapport. In the absence of cultural competence, a mental health professional lacks knowledge as to how a particular patient is best approached to establish the trust necessary for open, honest, and comprehensive communication. In the absence of such communication, a mental health professional cannot gather the information needed to accurately assess and evaluate the patient. Second, cultural competence is critical if a mental health professional is to accurately interpret a particular patient's behavior and communication. Third, a mental health professional lacking cultural competence will fail to recognize culturally specific manifestations of mental health conditions such as depression or schizophrenia, or disorders that have no equivalent in Western society.[11] Conversely, such a professional may incorrectly interpret behaviors normal to a particular culture as evidence of psychological distress.

For example, lack of familiarity with Asian cultures may pose challenges such as the following:

- Due to their reservedness, building rapport with individuals from certain Asian cultures may require more time and effort than with non-minority American patients. For Laotians, rapport may be built by encouraging the individual to provide a detailed account of his or her life.[12] On the other hand, many Vietnamese patients are

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[11] Daniel Goleman, *Making Room on the Couch for Culture*, N.Y. Times, Dec. 5, 1995, *available at* http://www.nytimes.com/1995/12/05/science/making-room-on-the-couch-for-culture.html?pagewanted=all&src=pm (last visited Apr. 2, 2012).

[12] Appendix C at 160 (Daryl Fujii, *Neuropsychology of Laotian Americans*, *in* The Neuropsychology of Asian Americans (Daryl E.M. Fujii ed., 2010)).

uncomfortable providing personal information before a trusting relationship is established, thus making medical (as opposed to personal) questions more appropriate for an initial visit.[13]

- Individuals from Southeast Asian countries, such as Vietnam, may say "yes" to indicate merely that they have heard their interlocutor's question or statement — *not* to indicate agreement.[14]

- Certain Asian cultures stress conformity or deference to authority, as a result of which individuals from these cultures may find it difficult to express lack of understanding of, let alone outright disagreement with, their social or professional superiors, including professionals in the medical and mental health fields.[15]

As these three basic examples demonstrate, lack of cultural competence can easily interfere with the effective communication so critical within the mental health professions for proper diagnosis and treatment.

Accordingly, professional groups within the mental health fields have established standards and guidelines that recognize the importance of cultural competence. Of particular relevance, the American Psychological Association ("APA") requires psychologists to either obtain the requisite "training, experience, consultation, or supervision necessary to ensure the competence of their services" — or refer the patient to another professional — where "an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion,

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[13] Appendix D at 192–93 (Dung Ngo, Minh-Thu Le & Phuoc Dinh Le, *Neuropsychology of Vietnamese Americans*, *in* The Neuropsychology of Asian Americans (Daryl E.M. Fujii ed., 2010)).

[14] *Id.* at 193.

[15] *See, e.g.*, Appendix A at 1, 2–3, 6 (Daryl Fujii, *Introduction*, *in* The Neuropsychology of Asian Americans (Daryl E.M. Fujii ed., 2010)); Appendix D at 193 (Dung Ngo, Minh-Thu Le & Phuoc Dinh Le, *Neuropsychology of Vietnamese Americans*, *in* The Neuropsychology of Asian Americans (Daryl E.M. Fujii ed., 2010)); Appendix B at 120–21 (William T. Tsushima, Vincent G. Tsushima & Daryl Fujii, *Neuropsychology of Japanese Americans*, *in* The Neuropsychology of Asian Americans (Daryl E.M. Fujii ed., 2010)).

sexual orientation, disability, language or socioeconomic status is essential for effective implementation of their services."[16] The APA's Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists ("Multicultural Guidelines") in turn stress the importance to the practicing psychologist of "focusing on the client within his or her cultural context, using culturally appropriate assessment tools, and having a broad repertoire of interventions."[17] For example, in evaluating a client, the Multicultural Guidelines indicate that a psychologist should consider, among other factors, the client's generational history, including "number of generations in the country" and "manner of coming to the country"; citizenship or residency status, including "number of years in the country, parental history of migration, refugee flight, or immigration"; English fluency; and "level of stress related to acculturation."[18]

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[16] American Psychological Ass'n, Ethical Principles of Psychologists and Code of Conduct (2010), Standard 2.01(b), *available at* http://www.apa.org/ethics/code/index.aspx (last visited Apr. 2, 2012). Similar language is included in the APA's Specialty Guidelines for Forensic Psychology (2011), Guideline 2.08, *available at* http://www.apa.org/practice/guidelines/forensic-psychology.aspx (last visited Apr. 2, 2012).

[17] American Psychological Ass'n, Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists (hereinafter "Multicultural Guidelines") 45 (2002), *available at* http://www.apa.org/pi/oema/resources/policy/multicultural-guideline.pdf (last visited Apr. 2, 2012); *see also generally* American Psychological Ass'n, Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (1990), *available at* http://www.apa.org/pi/oema/resources/policy/provider-guidelines.aspx (last visited Apr. 2, 2012).

[18] Multicultural Guidelines, *supra* note 17, at 46; *see also* American Psychological Ass'n, Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (1990), Guideline 9, *available at* http://www.apa.org/pi/oema/resources/policy/provider-guidelines.aspx (last visited Apr. 2, 2012).

Only by ensuring that the evaluating mental health professional is well-versed in a patient's culture (or consults with an appropriately knowledgeable professional) can the mental health issues of minorities and immigrants be adequately and effectively addressed.

B. A Defendant Evaluated by a Mental Health Professional Who Is Not Culturally Competent Is Denied Fair Treatment in the Legal System.

In law, as in the fields of medicine and mental health, the promise of equal access has proven elusive in practice. The integrity of our justice system requires that every litigant, criminal defendant, and victim be treated fairly — a worthy and lofty goal, the complexity of which cannot be underestimated. Most commonly, equal access to justice is considered to be a solely socioeconomic problem, requiring that the expense of judicial proceedings and of representation by qualified counsel not be prohibitively expensive. But true equality of access to justice requires so much more: that all individuals in the community served be able to physically access courts as well as to understand and participate in judicial proceedings,[19] that cases be decided by a fair and capable decisionmaker, and that the rule of law be applied fairly and consistently to all members of society.

[19] The legislature, for example, has sought to ensure that language minorities have meaningful access to the courts. *See* RCW 2.43.010 ("It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.").

A requirement for cultural competence in the evaluation of a criminal defendant's competency to stand trial speaks squarely to the fair and consistent application of the rule of law to all members of society. The due process clause of the Fourteenth Amendment prohibits the trial or conviction of a criminal defendant while that individual lacks competence to stand trial, and further requires that procedures adequate to protect this right must be observed. *Heddrick*, 166 Wn.2d at 903–04; *Fleming*, 142 Wn.2d at 861. If a culturally competent evaluator is not required, Washington's procedure for evaluating competence to stand trial effectively creates two different standards for due process, condemning minorities and immigrants to a subpar assessment and placing them at grave risk of misdiagnosis based on the evaluator's inability to effectively communicate with the patient and accurately assess the information gathered from the patient.

That Ms. Sisouvanh was the subject of such a subpar assessment is indisputable. Dr. Strandquist, the examining psychologist, failed to consider any culturally relevant information whatsoever in either approaching or evaluating Ms. Sisouvanh — information such as her family's war-induced flight from Laos, the years of her childhood spent in a Thai refugee camp, her struggles in adapting to life in the United States. Instead, Dr. Strandquist incorrectly assumed that Ms. Sisouvanh had led a "pretty average American life." 3-12-10 RP 29:13–14. By conducting such a culturally *in*competent forensic examination, Dr. Strandquist not only ignored the ethical requirements and practice guidelines of his own

profession, but caused the trial court's eventual denial of Ms. Sisouvanh's due process rights. Amici request that this Court not perpetuate that injustice and that it establish unequivocally that a person's competence to be tried as a criminal in a Washington court must be determined in the context of, and with a qualified understanding of, that person's cultural background.

V. CONCLUSION

As a society, we strive toward equal access to justice for all, including fair and consistent application of the rule of law. For minorities and immigrants, equal access to justice requires that the procedures of the justice system be applied in a culturally competent manner. The necessity of cultural competence has been widely recognized in the fields of medicine and mental health as these professions struggle to address racial and ethnic disparities in performance and treatment outcomes.

Amici urge this Court to require that the competency of a criminal defendant be determined by an expert or professional person who is culturally competent. Anything else will deny minorities and immigrants procedural due process, instead consigning them to a "second class" competency evaluation insufficient to protect their right not to stand trial or be convicted while incompetent. The courts should be leading the charge on cultural competence — not falling behind.

RESPECTFULLY SUBMITTED this 10th day of April 2012.

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