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December 20, 2023

Hon. Patty Murray  
Chair  
Senate Committee on Appropriations

Hon. Susan Collins  
Vice Chair  
Senate Committee on Appropriations

Hon. Chris Van Hollen  
Chair  
Senate Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

Hon. Bill Hagerty  
Ranking Member  
Senate Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

Hon. Kay Granger  
Chair  
House Committee on Appropriations

Hon. Rosa DeLauro  
Ranking Member  
House Committee on Appropriations

Hon. Steve Womack  
Chair  
House Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

Hon. Steny Hoyer  
Ranking Member  
House Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

Re: Defender Services budget

Dear Chair Murray, Vice Chair Collins, Chairman Van Hollen, Ranking Member Hagerty, Chair Granger, Ranking Member DeLauro, Chairman Womack and Ranking Member Hoyer:

The undersigned organizations are deeply concerned about the hugely destructive impact of proposed cuts to the federal indigent defense system. To avert the crisis, we are asking that you ensure that the Defenders Services account is fully funded at the requested amount.

When the House and Senate marks for Defender Services were first made public this summer, they were each over one hundred million dollars less than what the defender program needed simply to maintain current operations and ensure timely payment to CJA panel lawyers. Since that time, the federal defender program has implemented a range of emergency cost-saving measures. These measures, which include a hard hiring freeze, have reduced the gap between the current marks and what the program needs, but they have also inflicted damage on the

program. Even after implementing these emergency measures, the program faces a devastating shortfall: the House mark is \$80.6 million less than the bare minimum of what the program needs, and the Senate mark is \$109 million short.

Unless corrected, these cuts risk loss of federal defender staff, unpaid furloughs, and lengthy deferments of CJA panel attorney payments. These cascading consequences would disrupt the federal criminal legal system, compound the burden on private counsel (mostly small business owners), and cost more in the long run than any expected short-term savings. Simply put, insufficient funding will undermine the administration of justice, harming the public, witnesses and victims, and countless federal defendants.

Our federal criminal legal system cannot be sustained unless all components – prosecution, judiciary, and defense – receive adequate and stable funding. Federal defender offices were already operating quite leanly; indeed, the judiciary recently [found](#) that the defender program needs to add hundreds of positions to continue doing its job effectively.

Underfunding federal defenders will not staunch the flow of indigent defendants requiring appointed counsel in the federal criminal legal system. On the contrary, that need is predicted to increase, as the Department of Justice has indicated its [intent to prosecute up to 1,200 additional January 6 felony cases](#) and assume a greater role in the prosecution of crimes committed on certain Native American lands. And these extraordinarily resource-intensive prosecutions come on top of an ongoing, nationwide [increase in the rate and complexity](#) of federal criminal cases, as reflected by the [push](#) to add [hundreds](#) of federal prosecutors to the Department of Justice's ranks in 2023. Federal indigent defense was already under-resourced as compared to the Department of Justice, and the low appropriation marks set by the House and Senate [would push the system over the brink](#).

Given that [roughly 90 percent](#) of people charged with federal crimes are too poor to hire an attorney and, thus, have a constitutional right to a federal defender or court-appointed counsel, these proposed budget cuts will simply create chaos. Federal defender offices will be forced to turn down cases that they would ordinarily accept, forcing CJA panel attorneys—most of whom maintain busy practices alongside their court-appointed work—to make up the difference. Even if CJA panel attorneys were fully able to satisfy this demand for legal representation consistent with their other professional obligations, they would have little incentive due to the projected delays in payment. Such unreliable compensation will prevent many panel attorneys, who are already paid well below the market rate, from taking on federal indigent clients. The result will be an unacceptable shortage of criminal defense attorneys available to represent federal defendants. The human and administrative impacts of this shortfall would be severe, resulting in delays and postponements that will impede case resolution and significantly increase the time spent in expensive pretrial detention facilities.

As we mark the 60th anniversary of *Gideon v. Wainwright* this year, the federal indigent defense system must be protected from these devastating cuts. Testifying in support of the Criminal

Justice Act in 1963, Attorney General Robert Kennedy [extolled](#) the planned system as “the most comprehensive, yet flexible solution ever devised to meet the representation problem in the federal system.” Sixty years later, the future of that system rests in the hands of this Congress. We urge you to work with your colleagues to provide full funding for our federal indigent defense system and ensure that, in federal courts, the scales of justice “measure truth, not legal fees.”

Sincerely,

National Association of Criminal Defense Lawyers

American Civil Liberties Union

Americans for Prosperity

Brennan Center for Justice at NYU School of Law

Center for Integrity in Forensic Sciences

Church of Scientology National Affairs Office

CURE (Citizens United for Rehabilitation of Errants)

Drug Policy Alliance

Due Process Institute

Fair and Just Prosecution

FAMM

FreedomWorks

Friends Committee on National Legislation

FWD.us

Gideon’s Promise

The Innocence Project

International Community Justice Association

The Leadership Conference on Civil and Human Rights

Just Future Project

Justice Action Network

JustLeadershipUSA

JustUS Coordinating Council

NAACP Legal Defense & Educational Fund, Inc

National Association for Public Defense

National Council for Incarcerated and Formerly Incarcerated Women and Girls

National Council of Churches

National Immigrant Justice Center

National Legal Aid and Defender Association

NETWORK Lobby for Catholic Social Justice

The Sentencing Project

Tzedek Association

### **State Organizations**

#### **Alabama**

Alabama Criminal Defense  
Lawyers Association

#### **Alaska**

Alaska Association of  
Criminal Defense Lawyers  
Alaska Innocence Project

#### **Arizona**

Arizona Attorneys for  
Criminal Justice  
Arizona Justice Project

#### **California**

California Attorneys for  
Criminal Justice  
Los Angeles Innocence  
Project  
Northern California  
Innocence Project  
Ella Baker Center for  
Human Rights

After Innocence

Loyola's Project for the  
Innocent

Represent Justice

#### **Colorado**

Colorado Criminal Defense  
Bar

#### **Connecticut**

Connecticut Criminal  
Defense Lawyers  
Association

#### **Delaware**

Innocence Project  
Delaware

#### **District of Columbia**

Mid-Atlantic Innocence  
Project  
Coalition on Human Needs

#### **Florida**

Florida Association of  
Criminal Defense Lawyers  
Innocence Project of  
Florida  
Miami Law Innocence  
Clinic

#### **Georgia**

Georgia Association of  
Criminal Defense Lawyers

#### **Hawaii**

Hawaii Innocence Project

#### **Idaho**

Idaho Association of  
Criminal Defense Lawyers

#### **Illinois**

Illinois Association of  
Criminal Defense Lawyers  
Illinois Innocence Project

Center on Wrongful  
Convictions

The Exoneration Project

Illinois Prison Project

Restore Justice

### **Indiana**

Notre Dame Exoneration  
Justice Clinic

### **Kansas**

Kansas Association of  
Criminal Defense Lawyers

### **Kentucky**

Kentucky Association of  
Criminal Defense Lawyers

### **Louisiana**

Louisiana Association of  
Criminal Defense Lawyers

Innocence Project New  
Orleans

### **Maine**

Maine Association of  
Criminal Defense Lawyers

### **Maryland**

Maryland Criminal  
Defense Attorneys'  
Association

University of Baltimore  
Innocence Project Clinic

### **Massachusetts**

Massachusetts Association  
of Criminal Defense  
Lawyers

Boston College Innocence  
Program

New England Innocence  
Project

### **Michigan**

Criminal Defense  
Attorneys of Michigan

### **Minnesota**

Great North Innocence  
Project (Minnesota, North  
Dakota, and South Dakota)

### **Missouri**

Missouri Association of  
Criminal Defense Lawyers

Midwest Innocence  
Project (Missouri, Kansas,  
Nebraska, Iowa, and  
Arkansas)

### **Montana**

Montana Innocence  
Project

### **Nebraska**

Nebraska Criminal Defense  
Attorneys Association

### **Nevada**

Nevada Attorneys for  
Criminal Justice

### **New Hampshire**

New Hampshire  
Association of Criminal  
Defense Lawyers

### **New Jersey**

Association of Criminal  
Defense Lawyers of New  
Jersey

New Jersey Innocence  
Project at Rutgers  
University

### **New Mexico**

New Mexico Criminal  
Defense Lawyers  
Association

### **New York**

New York State Association  
of Criminal Defense  
Lawyers

The Exoneration Initiative

Center for Employment  
Opportunities

Legal Aid Society of New  
York

### **North Carolina**

North Carolina Advocates  
for Justice

Center for Criminal Justice  
and Professional  
Responsibility (Duke  
University School of Law)

Wake Forest Innocence &  
Justice Clinic

Southern Coalition for  
Social Justice

Just Sentencing Project  
(Duke University School of  
Law)

**Ohio**

Ohio Association of  
Criminal Defense Lawyers

Ohio Innocence Project

**Oklahoma**

Oklahoma Innocence  
Project

**Oregon**

Oregon Criminal Defense  
Lawyers Association

**Pennsylvania**

Pennsylvania Association  
of Criminal Defense  
Lawyers

Pennsylvania Innocence  
Project

**Puerto Rico**

Proyecto Inocencia de  
Puerto Rico

**South Carolina**

South Carolina Association  
of Criminal Defense  
Lawyers

**Tennessee**

Tennessee Association of  
Criminal Defense Lawyers

**Texas**

Texas Criminal Defense  
Lawyers Association

Lubbock Criminal Defense  
Lawyers Association

Innocence Project of Texas

**Utah**

Rocky Mountain  
Innocence Center

**Vermont**

Vermont Association of  
Criminal Defense Lawyers

**Virginia**

Virginia Association of  
Criminal Defense Lawyers

Innocence Project at UVA  
School of Law

**Washington**

Washington Association of  
Criminal Defense Lawyers

Washington Innocence  
Project

**Wisconsin**

Wisconsin Association of  
Criminal Defense Lawyers

Wisconsin Innocence  
Project