

Statement of Former Federal Judges and Prosecutors

Submitted to the Subcommittee on Bankruptcy and the Court of the Senate Judiciary Committee for the Hearing "Sequestering Justice: How the Budget Crisis is Undermining Our Courts" July 23, 2013

We, the undersigned, are former federal prosecutors and judges deeply troubled by the devastating budget cuts facing the Federal Defender Services account and the threat these cuts pose to the proper functioning of the federal criminal justice system. These ill-conceived measures undermine not only the Federal Defender system, but the entire federal judiciary, without achieving any real cost savings.

Federal Defenders Play a Vital Role in the U.S. Justice System

Fifty years ago, the U.S. Supreme Court affirmed in *Gideon v. Wainwright* that every person, rich or poor, has a constitutional right to be represented in criminal proceedings by a capable, effective lawyer. Writing for the majority, Justice Hugo Black noted, "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." This right is fundamental to the character of our nation, defining America as a country dedicated to the rule of law above all else. The function that Federal Defenders serve is therefore not a mere policy preference—it is a constitutional mandate. The future of the Federal Defender program is inextricably tied to the constitutional rights of American citizens.

The Federal Defender program is the realization of *Gideon's* promise and a model in providing high-quality, cost-effective indigent defense, serving as an example to underperforming state and local systems. Historically, the Federal Defenders have received adequate funding from Congress, and have, therefore, been able to set the national standard for indigent defense services. The possible budget cuts to the Defender Services account in fiscal year (FY) 2014, on top of the already devastating FY 2013 budget cuts, will undermine the Federal Defender program's ability to maintain the high standard of representation for which it has become known, will have a rippling effect on the efficiency of the larger federal judicial system, and will undermine the Court's constitutional mandate in *Gideon*.

Severe cuts to the Defender Services account have already significantly affected federal public defender offices and their ability to take on cases. Since February 2013 Federal Defender offices have lost nearly 10% of their approved budgets because of sequestration and cuts from within the judiciary. The resulting \$51 million shortfall in FY 2013 for the Defender Services account, while a miniscule portion of the overall federal budget, is devastating for the Federal Defenders, and for the efficient and effective administration of our justice system. Federal Defenders across the country are already being forced to take up to 20 furlough days each before the end of the fiscal year on September 30. Paired with an anticipated 14% cut in FY 2014, which could result in staff reductions of up to 50% in some Federal Defender offices and complete closure of some smaller offices, it becomes clear that we are facing the decimation of the Federal Defender program as we have known it for nearly 50 years.

Cuts to the Federal Defenders Will Undermine the Justice System as a Whole

Cuts to the Federal Defender program will not only affect the Federal Defenders and their clients. Because Federal Defenders are an integral piece of the criminal justice system, these budget cuts will affect the operation of the American justice system as a whole. In our experience, qualified, adequately-

resourced defense counsel are a vital component of the federal criminal justice system. Federal Defenders serve, along with prosecutors and judges, as an essential “leg” of the three-legged criminal justice stool.

Already judges are seeing their dockets affected by the funding cuts. In New York, Federal Defenders were forced to ask the judge to delay the trial of Osama Bin Laden’s son-in-law, due to the burdensome furlough schedule they faced. Here in Washington D.C., the D.C. Superior Court, where Federal Defenders represent criminal defendants, has stopped scheduling criminal matters on alternating Fridays, and ongoing criminal trials will be recessed. The Federal Defender Office in the Central District of California will simply close for three weeks in September. In states like Texas and Rhode Island, where Defenders will be taking extended furloughs, hearings and trials will be delayed.

Cuts to Federal Defenders will also result in increased administrative burdens on district courts. In many districts, the Federal Defender Office administers the district’s trial, appellate, and *habeas* Criminal Justice Act (“CJA”) attorney program and provides support and training to panel attorneys. Additionally Federal Defenders may no longer be able to act as discovery coordinators in multi-defendant cases, further exploding costs by increasing CJA expenses. Furthermore, the administrative burden will increase substantially in districts where the court already administers the CJA panels, due to increased reliance on those panels as a result of Federal Defenders inability to take on additional cases.

Some Federal Defenders will also be forced to limit their roles in other cost saving programs. Federal Defenders may cease participation in re-entry and diversionary courts. Those courts lower recidivism rates, improve public safety, and reduce costs associated with incarceration.

Moreover, continued and chronic delays will inevitably undermine confidence in trial verdicts. Questions will certainly be raised on appeal about whether defendants’ Sixth Amendment rights to a speedy trial have been infringed, due to extended pre-trial detention times. Individuals represented by overworked and underpaid Federal Defenders will likely file more ineffective assistance of counsel claims. This added procedural burden will only increase the cost of justice in the long run. As Supreme Court Justice Stephen Breyer has noted, it is “cheaper to have a decent lawyer in the first place.”

As former prosecutors and judges, we adamantly support providing federal prosecutors the resources they need to maintain public safety. We urge Congress to assure that the Department of Justice has sufficient funding to enable federal prosecutors and law enforcement to continue their work. We are equally adamant, however, in urging that Federal Defenders be adequately staffed, paid and provided the necessary resources to assure effective assistance of counsel for their clients. Permitting the Federal Defender budget shortfall to double to \$102 million in FY 2014 is virtually certain to do serious harm to Defender offices and their ability to provide effective counsel for a substantial number of indigent defendants. It is also virtually certain to make it difficult for federal district courts to handle their criminal caseloads and to assure that public safety and constitutional rights are not victims of the underfunding of Federal Defenders.

Finally, the system will face long-term structural problems as a result of these devastating cuts. Because Federal Defenders will be largely unable to hire new attorneys, the number of qualified attorneys trained and experienced as criminal defenders will decline—leading to a long-term decrease in the quality of federal public defense as a whole. And while offices are unable to hire new attorneys, their brightest and most talented Defenders may be looking elsewhere, to firms or organizations with more stability and a living wage—or any wage at all. In a system where judges and prosecutors rely on defense

counsel to help ensure the fair and efficient functioning of the criminal justice system, this state of affairs is simply untenable.

Federal Defenders Must Be Fully Funded by Congress

The only way to save the Federal Defender program is to ensure that it receives adequate funding in FY 2014. We urge the members of this subcommittee to work with your colleagues, whether through the appropriations process or through a continuing resolution, to ensure that the Federal Defender program is provided with the resources it needs to continue its mission. Failure to provide the necessary funding will have consequences far beyond the Federal Defender program, increasing costs for the federal judicial and penal systems.

As former federal prosecutors and judges, we understand the important role that the Federal Defender program plays in our efforts to achieve a fair and cost-efficient criminal justice system. It is for these reasons that we feel compelled to call for adequate funding for Federal Defenders, and exemption from sequestration, even in these times of budget austerity.

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