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July 23, 2013

Honorable Tom Udall  
Chairman  
Senate Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

Honorable Mike Johanns  
Ranking Member  
Senate Committee on Appropriations  
Subcommittee on Financial Services and  
General Government

**Re: Defenders Services budget**

Dear Chairman Udall and Senator Johanns:

The undersigned organizations are deeply concerned about the devastating impact of sequestration on the federal indigent defense system. Our federal criminal justice system cannot be sustained unless all components – prosecution, judiciary and defense – receive adequate and stable funding. Already this year, deep cuts to the federal public defenders’ budget have required significant layoffs, 15-20 day furloughs, and the complete elimination of defender training. Further cuts will necessitate massive layoffs that will almost certainly decimate the federal defender system, degrade the overall quality of federal indigent defense, and undermine the administration of justice. To avert the crisis, Congress must restore funding to the Defenders Services account. First, Congress must pass a supplemental budget to alleviate the immediate crisis. To preserve the program going forward, assuming no appropriations agreement is reached for FY 2014, Congress must approve an anomaly to any continuing resolution that appropriates \$1,068,623,000.

While sequester theoretically applies to all agencies and facets of the federal government, the actual impact on federal defenders has been uniquely demonstrable and severe. These offices were already operating quite leanly, having responded to an initial 5 percent cut through various measure including travel restrictions and cutting back on costs for experts, interpreters and transcripts. Sequestration and cuts from within the Judiciary resulted in a \$51 million shortfall in FY 2013 for the Defender Services account. In effect, since February 2013 federal defender organizations have lost nearly 10% of their approved budgets.

In FY 2014 federal defenders could suffer a further 14% budget cut. Unlike the Department of Justice or the Judiciary, federal defender budgets are allocated almost entirely to personnel, rent and case-related expenses. After cutting costs as much as possible through various measures, such as negotiating with vendors and eliminating training, no other options remain but layoffs, furloughs and office closures. Without immediate relief, the Federal Defenders will begin laying off between 30% and 50% of their staff and closing branch offices.

Given that an estimated 90 percent of federal defendants qualify for a federal defender or court-appointed counsel, the impact of these cuts will be felt throughout the federal criminal justice system. Trials have already been delayed in some jurisdictions based on the initial sequester cuts. Delays and other administrative problems will only worsen with time, as the drastic reduction in federal defenders will not staunch the flow of indigent defendants requiring appointed counsel. Federal indigent defense was already under-resourced as compared to the Department of Justice, which has largely avoided the worst effects of the sequester. Federal defenders already carry much heavier caseloads than prosecutors: in New York, for example, the ratio of prosecutors to defenders is 280 to 38 or more than 7 to 1.

As Federal Defenders are required to turn down cases, indigent defense costs will simply be transferred to pay for court-appointed counsel. No savings will be achieved, and in fact some costs will inevitably increase. Every federal defendant without resources to hire an attorney is entitled to government-paid counsel, therefore, the notion that savings can be achieved by reducing the federal public defender budget is specious. The judiciary predicts delays and postponements, which will increase the time that defendants spend in expensive pretrial detention facilities. In addition, many federal defender offices that manage the local panel of court-appointed attorneys will be forced to abdicate that responsibility to the judiciary, resulting in increased administrative costs and diminished efficiency.

As we mark the 50<sup>th</sup> anniversary of *Gideon v. Wainwright*, it is shameful that the system that has served as a model for 40 years is being weakened and dismantled. Testifying in support of the Criminal Justice Act, 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.” Fifty years later, the future of that system rests in the hands of this Congress. We urge you to work with your colleagues to fully restore funding for our federal indigent defense system and ensure that, in federal court, the scales of justice “measure truth, not legal fees.”

Sincerely,

National Association of Criminal Defense Lawyers

Constitution Project

American Civil Liberties Union

National Legal Aid and Defender Association

American Council of Chief Defenders

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cc: Members of the Senate Subcommittee on Financial Services and General Government