IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

MANOHAR RAJU, PUBLIC DEFENDER OF SAN FRANCISCO, Petitioner v. THE SUPERIOR COURT OF SAN FRANCISCO, CITY AND COUNTY, Respondent	No. A176141 Superior Court No. 2600546, WRT10138
PEOPLE OF THE STATE OF CALIFORNIA, SAN FRANCISCO COUNTY, Real Party In Interest	

The Honorable Judge Harry Dorfman, Presiding

AMICUS CURIAE APPLICATION AND BRIEF OF THE CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE & NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF THE PETITION FOR WRIT OF MANDAMUS

BRIAN C. McCOMAS
California SBN 273161
The Law Office of B.C. McComas, LLP
PMB 1605, 77 Van Ness Ave., Ste. 101
San Francisco, CA 94102
Telephone: (415) 814-2465
Facsimile: (415) 520-2310
mccomas.b.c@mccomasllp.com

John T. Philipsborn
SBN No. 83944
Civic Center Building
507 Polk Street, Ste. 350
San Francisco, CA 94102
(415) 771-3801
Jphilipsbo@aol.com

Attorneys for *Amici Curiae* NACDL & CACJ

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TO: THE HONORABLE PRESIDING JUSTICE AND TO THE ASSOCIATE JUSTICES OF DIVISION FIVE OF THE FIRST DISTRICT COURT OF APPEAL:

REQUEST FOR PERMISSION TO FILE AMICI CURIAE BRIEF OF THE CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

This application for permission to file the associated amici curiae brief is submitted to the Court by California Attorneys for Criminal Justice (hereafter, "CACJ") and by the National Association of Criminal Defense Lawyers (hereafter, "NACDL") pursuant to the California Rules of Court, rule 8.487(e). The application and brief are filed in support of Petitioner MANOHAR RAJU (hereafter, "Petitioner") in the above-captioned matter. Proposed amici curiae

respectfully submit as follows:

INTERESTS OF CACJ AND NACDL IN THIS MATTER

The California Attorneys for Criminal Justice (CACJ) is a non-profit statewide organization of criminal defense lawyers and associated professionals that is one of California's largest organizations of criminal defense lawyers, and California's affiliate of the National Association of Criminal Defense Lawyers (NACDL), the largest organization of criminal defense lawyers in the United States. CACJ's present membership consists of approximately 1,100 members from around California and elsewhere. According to Article IV of its bylaws, CACJ was formed to achieve certain objectives including "to defend the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of California and other applicable law. Since its founding 50 years ago, CACJ has often appeared before this Court as an amicus curiae in matters of importance to its membership.

On several occasions, CACJ has appeared in California's courts to address issues raised by judicial or administrative directives, or orders, bearing on the implementation of the rights of poor persons to have adequate, conflict-free, counsel provided by a given county. The issues involved have included: litigation over the denial of necessary ancillary funding to a contractor defending a potential capital case in a county with a contractor alternate defender system; inherent conflicts raised by the structure and contents of indigent defense office contracts; unwarranted removal of a public defender from the defense of a case; the failure to provide a second lawyer in a capital case headed to trial. CACJ's members include both public defenders

and privately employed counsel. CACJ has clearly demonstrated interest in the subject matter of this case.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. Founded in 1958, NACDL has thousands of direct members and tens of thousands more with its network of affiliate organizations. Its members practice in state, local, federal, tribal, and military courts all across the country and include attorneys in private practice at large firms, small and solo practitioners, public defenders, law professors, and judges.

NACDL is committed to preserving fairness and promoting a rational and humane criminal legal system. Each year NACDL files numerous amicus briefs in the U.S. Supreme Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to defendants, defense lawyers, and the criminal legal system as a whole.

NACDL has a particular interest in this appeal because NACDL has a longstanding commitment to ensuring that all accused persons have timely and meaningful access to qualified counsel at every stage of a criminal proceeding. NACDL has filed numerous amicus briefs in cases involving issues like those raised by this appeal, including in **Arkansas** (*Farella v. Anglin* (8th Cir. 2026) 24-2914), **Idaho** (*Tucker v. State* (Idaho 2020) 466 P.3d 1120 and Tucker v. State (Idaho Supreme Court) No. 51631-2024), **Maryland** (*DeWolfe v. Richmond* (Md. 2013) 76 A.3d 1019), **Michigan** (*Duncan v. State* (Mich. 2011) 795 N.W.2d 820), **New York** (*Hurrell-Harring v. State* (N.Y. 2010)

930 N.E.2d 217), **Washington** (*In re M.E.*(Wash. 2026) 586 P.3d 580) **Wisconsin** (*State v. Lee* (Wisc. 2021) 955 N.W.2d 424) and *State v. Grandberry* (Wisc. 2026) 2025AP1507-CR), and **West Virginia** (*State ex rel. Abraham M. Ashton v. Larry Thompson* (WV Supreme Court of Appeals, 2026) No. 25-863).

Additionally, NACDL has worked to promote reforms of federal, state, and local public defense systems including reports and filings

in Florida,[1] Indiana,[2] Louisiana,[3] South Carolina,[4] Tennessee,[5] Texas,[6] and Wisconsin;[7] our examination of defender workloads in Rhode

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[1] NACDL, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts and Three Minute Justice: Haste and Waste in Florida's Misdemeanor Courts* (2009).

[2] Sixth Amendment Center, *The Right to Counsel in Indiana: Evaluation of Trial Level Indigent Defense Services* (2016), available at: https://www.nacdl.org/Document/RighttoCounselinIN Evaluationof TrialLevelPDServices (last accessed June 4, 2026); and NACDL, *Letter to Indiana Task Force on Public Defense* (June 18, 2018), available at: https://www.nacdl.org/getattachment/a1118c40-510c-4b61-8641-9c72ff5fd478/task-force-memorandum.pdf (last accessed June 5, 2026).

[3] NACDL, *State of Crisis: Chronic Neglect and Underfunding of Louisiana's Public Defense System* (2017), available at: https://www.nacdl.org/Document/StateofCrisisChronicNeglectUnderfunding LouisianaPD (last accessed June 4, 2026).

[4] NACDL, *Rush to Judgement: How South Carolina's Summary Courts Fail to Protect Constitutional Rights* (2017), available at: https://www.nacdl.org/Document/RushtoJudgmentSCSummaryCourts DontProtectConstRight (last accessed June 4, 2026); and NACDL, *Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts* (2016), available at: https://www.nacdl.org/Document/SummaryInjusticeConstitDeficienciesSCSummaryCourts (last accessed June 4, 2026).

[5] NACDL, *Letter in Support of Assigned Counsel Rate Increase* (2018), available at: https://www.nacdl.org/Document/NACDLAssigned CounselRateFilingTN (last accessed June 4, 2026).

[6] NACDL, *Evaluating Investigator Use in Texas by Defense Counsel* (2023), available at: https://www.nacdl.org/Document/Evaluating InvestigatorUsebyDefenseCounselinTexas (last accessed June 4, 2026).

[7] NACDL, *Letter in Support of Rules Petition 17-06* (2018), available at: https://www.nacdl.org/getattachment/de000401-e410-4222-b4ef-423479ea3702/nacdl-public-comment-on-assigned-counsel-rates-in-

Island;[8] our study of defender independence in the Federal Public Defense system;[9] and our work supporting early access to counsel in Colorado,[10] New Jersey,[11] Texas,[12] Virginia,[13] and Wisconsin.[14]

CACJ and NACDL write to ensure that review of the

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wisconsin-05022018.pdf (last accessed June 4, 2026).

[8] NACDL, *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards* (2017), available at: https://www.nacdl.org/Document/TheRhodeIslandProject StudyofRIPDSystemandWorkloads (last accessed June 4, 2026).

[9] NACDL, *Federal Independence 2015: The Independence Imperative* (2015), available at: https://www.nacdl.org/Document/ Federal IndigentDefense2015IndependenceImperative (last accessed June 4, 2026).

[10] NACDL, *Colorado Bail Book* (2015), available at: https://www.nacdl.org/Document/ColoradoPretrialAdvocacy (last accessed June 4, 2026).

[11] NACDL, *New Jersey Bail Manual* (2016), available at: https://www.nacdl.org/Document/ NewJerseyPretrialAdvocacy (last accessed June 4, 2026).

[12] NACDL, *Harris County Bail Manual* (2018), available at: https://www.nacdl.org/Document/HarrisCountyPretrial (last accessed June 4, 2026); NACDL, *Advocacy and Texas Bail Manual* (2020), available at: https://www.nacdl.org/Document/Texas-Bail-Manual (last accessed June 4, 2026).

[13] NACDL, *Virginia Early Release Manual* (2025), available at: https://www.nacdl.org/Document/VirginiaEarlyRepresentationManual (last accessed June 4, 2026); NACDL, *Pretrial Justice in Virginia: What Light Can the New Pretrial Data Project Microdata Shed* (2024), available at: https://www.nacdl.org/Document/Pretrial-Justice-in-VA-Report-2024 (last accessed June 4, 2026).

[14] NACDL, *Wisconsin Bail Manual* (2018), available at: https://www.nacdl.org/Document/WisconsinPretrialAdvocacy (last accessed June 4, 2026).

proceedings against petitioner is undertaken against the backdrop of the State's obligations to provide due process and effective assistance of counsel in criminal cases. CACJ and NACDL also write to support their members, the defenders who work the frontlines, in their wellness and ethical obligations. The Associations encourage the Court to avoid any outcome that discourages lawyers working within State, County and local agencies from engaging in the criminal justice system due to threat of contempt and overloaded cases. Amici also urge the Court to consider how a ruling upholding the contempt order, and the arguments being used to justify it, would chill indigent defense across the State of California and nationally.

DATED: June 10, 2026

Respectfully Submitted,
/s/ John T. Philipsborn

JOHN T. PHILIPSBORN
Amicus Chair for CACJ

/s/ B.C. McComas

BRIAN C. McCOMAS
Amicus Vice Chair For CACJ

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AMICI CURIAE BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF THE PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

The trial court's contempt finding against the San Francisco Public Defender's Office rests on a legal error of the first order: the substitution of the court's administrative judgment for the professional and ethical judgment of counsel. When the Public Defender declared that its attorneys had reached the limits of their capacity and could not accept additional appointments without violating their ethical obligations, the trial court refused to defer to that determination, compelled new appointments anyway, and held

the Office in contempt for declining them. That sequence of events inverts the constitutional relationship between courts and defense counsel. The decision whether an attorney can ethically accept an additional client belongs to the attorney—not to the court that appoints counsel and certainly not to the court that will sit in judgment over the resulting cases.

Three principles guide this brief and compel reversal. First, a court's authority to appoint counsel does not carry with it authority to override counsel's good-faith determination that additional appointments would breach professional obligations. Second, forcing defenders to accept cases beyond their capacity inflicts serious, well-documented harms on clients, on the legal system, and on the public defense function itself. Third, courts play a vital role in ensuring that every defendant receives constitutionally adequate representation. But the authority to enforce that constitutional minimum does not carry with it the authority to compel defenders to shoulder workloads that they have determined will undermine their duties. The role of the courts is to protect the floor of effective representation, not to condemn defense lawyers to rise no higher. Respondent court's order conflates these functions and must be reversed.

While the issue here is raised by developments that occurred in the City and County of San Francisco, the underlying issues that were essentially ignored by the Respondent Superior Court have been known for some time. Since California's codification of the prerogative for each County's Board of Supervisors to establish and maintain a public defender office, California's public defense system has evolved into a balkanized amalgamation of services delivery

systems. For reasons that are further discussed here, administrators of county-based defender offices must balance their goals of providing legal services according to the legal and ethical guidelines applicable to the defense function against the realities of local public budgets—with unpredictable and uneven financial support from the State. As recognized by various California reviewing courts, and discussed below, however a given public defender office may be structured and funded, it remains the duty of the appointed, elected, or contracted defender-administrator to ensure that the office and its employee or contractor lawyers adhere to legally required obligations while avoiding the conflicts of interest and breaches of professional duties caused by excessive workloads and inadequate resources.

This case arises at a point at which alarms about systemic problems within California's institutional defender system are sounding. The Court should issue a ruling that provides the Petitioner relief while instructing the lower court that imposing a chilling and debilitating sanction on a Public Defender for taking steps necessary to avoid delivering inadequate representation is not a permissible remedy in this situation. For the reasons explained, joint amici urge the Court not only to grant relief to San Francisco's Public Defender, but also to offer robust direction to California's courts to support the defense function by ensuring that those facing criminal charges are represented by lawyers in a position to do so effectively, and according to prevailing norms of professional practice.

ARGUMENT

The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.

Herring v. New York (1975) 422 U.S. 853, 862

I. THE TRIAL COURT LACKED AUTHORITY TO HOLD THE PUBLIC DEFENDER IN CONTEMPT FOR DECLINING APPOINTMENTS IT HAD DETERMINED IT COULD NOT ETHICALLY ACCEPT.

A. The Power to Appoint Counsel Does Not Include the Power to Override Counsel's Professional Judgment About Capacity.

Courts have long held authority to appoint counsel for defendants who cannot afford to retain their own. That authority, however, has never been understood to transform appointed attorneys into instruments of the court's docket management. As the Supreme Court has made clear, "it is the State's constitutional obligation to respect the professional independence of the public defenders whom it engages." (*Polk County v. Dodson* (1981) 454 U.S. 312, 321-22.) That independence is not a courtesy extended to defense lawyers at the court's discretion; it is a constitutional requirement rooted in the adversarial structure of criminal justice itself. The record in this case demonstrates the importance of that independence. In rejecting the San Francisco Public Defender's declaration of unavailability, the trial court rejected the only objective workload assessments before it, yet the court identified no competing workload methodology and articulated no objective standard by

which it determined additional appointments must ethically be accepted.

"The right to effective assistance of counsel, secured by the Sixth Amendment to the federal Constitution, and article I, section 15 of the California Constitution, includes the right to representation that is free from conflicts of interest." (*People v. Cox* (2003) 30 Cal.4th 916, 948.) Conflicts of interest may arise in various factual settings, including systemic breakdowns in the defender system. "Broadly, they 'embrace all situations in which an attorney's loyalty to, or efforts on behalf of, a client are *threatened by his responsibilities to another client* or a third person or by his own interests.'" (*People v. Hardy* (1992) 2 Cal.4th 86, 135, citation omitted and emphasis added.)

The California Supreme Court recognized some time ago that the individuals who are employed by a public entity to provide services as a criminal defense lawyer to individual clients must "'not only in fact properly discharge their responsibilities but also that such officials avoid, as much as possible, the *appearance* of impropriety. [citation omitted.]'" (*People v. Barboza* (1981) 29 Cal.3d 375, 380, italics in original.) The *Barboza* ruling was entered into a case in which the Public Defender of Madera County, California, improperly failed to declare a conflict in a co-defendant case in part, as noted by the Court, because of the loss of income caused to the Public Defender under the contract when a conflict was declared. Citing one of its earlier rulings, in *Barboza* the California Supreme Court explained in the context of that case that as a public official, a Public Defender has an obligation to act in a way that maintains the

public's confidence in the integrity of the criminal justice system. (*Id.* at pp. 378-380.) Since that ruling, there have continued to be litigations in California, mainly at the trial level, addressing indigent defense funding and contract schemes that undermine the accused's right to an individualized defense provided by a lawyer unencumbered by conflicts. In the current case, San Francisco's Public Defender was not only attempting to ensure his lawyers' compliance with their legal and ethical obligations but also was seeking, as a public official, to maintain public confidence in his office. Contempt for his professional and ethical decision-making was an extreme sanction, not endorsed in other contexts where attorneys are lacking.

For instance, California's death sentenced inmates currently number 573. (CDCR, *Condemned Inmate list* (May 18, 2026), available at: https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/ [last accessed May 25, 2026].) Hundreds of inmates do not have either appellate or habeas attorneys, or both, despite their right to automatic appeal and post-conviction proceedings. (Sharon Bernstein, *Hundreds of death row inmates sit in California prisons. Why must they wait?* (2024), available at: https://www.sacbee.com/news/local/article295391939.html #storylink=cpy [last accessed June 4, 2026].) Yet, there has been no discussion of holding the statewide public defense offices or individual attorneys in contempt who do not take on these cases or otherwise ordering other attorneys to complete mandatory training under threat of contempt. (Death Penalty Information Center, *Lack of Qualified Attorneys in California Delays Death Penalty Cases*

(2025), available at: https://deathpenaltyinfo.org/lack-of-qualified-attorneys-in-california-delays-death-penalty-cases [last accessed June 5, 2026].)

The issues presented in this case are not unique to California. The consequences of ignoring the principles at stake here are illustrated directly by *State v. Jones* (Ohio App. 2008) 2008 WL 5428009, in which an appellate court reversed a contempt finding against a public defender who refused to proceed to trial after the trial court denied his motion for a continuance. The reviewing court found that the trial judge had "improperly placed an administrative objective of controlling the court's docket above its supervisory imperative of facilitating effective, prepared representation at trial." The same error has been committed here. Faced with the Public Defender's declaration of unavailability, the trial court insisted on its obligation to appoint counsel empowered it to override the Defender's declaration – it placed the court's efforts to administer cases ahead of its obligation to ensure justice. Contempt cannot be the remedy for a defender's good-faith assertion that it cannot ethically absorb additional work.

Unlike the San Francisco Public Defender, who relied on objective workload assessments, staffing analyses, and ethical obligations governing attorney competence, the trial court did not point to a measurable standard that would demonstrate that additional appointments could be accepted without compromising effective representation. Although courts may consider other ways to assess capacity, they cannot replace evidence with unsupported assumptions about attorney capacity.

Thus, a court's legitimate role in the appointment process is to ensure that representation meets the constitutional minimum—not to dictate to defense counsel how many clients they must serve. Judges do not instruct prosecutors to charge more cases or allocate their attorneys differently. The constitutional independence that protects the prosecution from such intrusion extends, with equal force, to the defense function. When a court compels a defender to take on more clients than he or she determines they can ethically and effectively provide representation to, the lawyer becomes little more than window dressing—meant to give the veneer of justice, providing thin covering over the hollowed-out shell of our constitution. This should not be endorsed or tolerated by this Court.

Moreover, there is a context in which this issue is being raised that cannot be ignored. The Office of the California State Public Defender commissioned a study of the public defender system throughout California that was published in 2025. Known under its title *California Public Defense Workloads and Staffing*, the report (hereafter "*Workloads and Staffing Report*") contained the results of research conducted through the Deason Criminal Justice Reform Center at Southern Methodist University. It was paid for through funding authorized by the California Legislature.

The funding in question was provided specifically for the purpose of studying appropriate public defender workloads. Given the fact that California had the first recognized public defender office in the nation, and is acknowledged as "an early leader on the right to counsel" (*Workloads and Staffing Report*, *supra*, at p.1), it bears emphasizing that the *Report* found that: "**[a]t their current**

workload and staffing levels, public defense attorneys [in California] simply cannot do all their job requires." (*Id.* at p. 3, emphasis added.) The *Report* also finds that California's county public defenders often cannot provide their clients "with constitutionally adequate representation." (*Id.* at p. 3, emphasis omitted.)

The context in which the Respondent Court entered its contempt order was well known to California's state and county governments for years. In September of 2022 the Legislative Analyst's Office issued a report noting that (a) California lacks information about indigent defense service levels (thus explaining the need for the above referenced 2025 *Workloads and Staffing Report*), and (b) that based on the limited data available in 2022, questions were raised about the effective delivery of services for public defense. This was based, among other things, on information that in 2018 and 2019, "spending on district attorney offices was 82% higher than on indigent defense." (See www.lao.ca./Publications/Report/4623, referencing the Legislative Analyst's Report, September 22, 2022, "Assessing the Provision of Indigent Defense Services", Executive Summary.)

The 2025 *Workloads and Staffing Report* also references relatively recent litigations in which California counties were challenged for providing inadequate public defender services as a result of inadequate funding for the indigent function, and/or indigent defense related policies or contracts that undermined the ability of individual public defenders to provide constitutionally effective assistance of counsel. (See *Workloads and Staffing Report*, *supra*,

at fn. 10.) These facts formed part of the background against which the Public Defender's request was made and respondent court's order was rendered. They were well known to the parties and the court and cannot be divorced from the caseload concerns at issue here.

B. Attorneys—Not Courts—Are in the Best Position to Assess Their Capacity to Accept Additional Cases.

Courts are poorly positioned to assess whether a defense attorney has the capacity to accept additional cases, most of the work that effective representation requires occurs beyond judicial observation. What a judge observes in the courtroom—motions filed, hearings held, trials conducted—represents only a small fraction of the work effective representation requires. The judge will have little to no knowledge of the extensive investigations undertaken that produced no result; the hours of legal research confirming that a motion, though explored, has no viable basis; the time spent building a relationship of trust with a skeptical or traumatized client before that client could speak candidly; or the days spent reviewing body-worn camera footage, digital records, and evolving forensic science to pursue defense theories that may never appear in a pleading. These activities are not peripheral to representation—they *are* representation. As the Supreme Court recognized, many events happen prior to trial that "might well settle the accused's fate and reduce the trial itself to a mere formality."[15] Many more occur in a defender's office that never make their way into any courtroom at all.

Requiring counsel to accept appointment despite crushing

[15] *United States v. Wade* (1967) 388 U.S. 218, 224.

caseloads also risks later reversal by requiring counsel "to render assistance under circumstances where competent counsel very likely could not" do so. (*Bell v. Cone* (2002) 535 U.S. 685, 695-696, citing *United States v. Cronic* (1984) 466 U.S. 648.) The appointment of counsel who know they are conflicted due to an unmanageable caseload could "contaminate the entire proceeding." (*United States v. Roy* (11th Cir. 2017) 855 F.3d 1133, 1144.) The remedy should permit counsel to "decline to go forward until the taint has been removed or, if it cannot be removed, to decline to go forward at all." (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1607.)

The trial court's determination that the SF PDO attorneys were not "overwhelmed, unprepared, or in any way performing at an incompetent level due to caseloads"[16] demonstrates their current ability to provide effective representation but says nothing about whether they could maintain that current level of representation if they were tasked with handling additional cases. Adding even a few cases on top of a full load asks defenders to do the impossible: somehow create more hours in a day. The result is not continued defender excellence, but erosion. Attorneys will be forced to cut corners: skimming discovery rather than mastering it, foregoing investigations that time will not allow, rushing through client meetings rather than ensuring that clients fully understand their choices, and ultimately, a diminished ability to provide the effective representation the Constitution demands. Courts have no mechanism to detect these invisible failures until the damage has been done. By

[16] People v. Donald Harper (San Francisco Superior Court No. 26000546) (4-ROA-640).

the time the excessive workload becomes visible through missed deadlines, ineffective assistance of counsel claims, appellate reversal, or wrongful conviction, the constitutional shortfall has already occurred. The suggestion that appointments should continue until there is "actual, visible failure"[17] does not protect defendants. It invites harm and waits for it to arrive at a time when California's caseloads are only increasing. In 1977, there were 54,653 felony cases filed in superior court. In fiscal year 2023-2024, 179,821 felony cases were filed – an increase of 229%. (See Nat. Center for State Courts, *State Court Caseload Statistics: Annual Report 1977* (1982), at p. 148; Judicial Council of Cal., *2025 Court Statistics Report: Statewide Caseload Trends* (2025), at p. 3.)

The increase in the number of filings is just one aspect of the growth. Over this period the complexity of public defense work has also dramatically increased. **Collateral consequences** of criminal convictions have gone from a few civic impacts (like disenfranchisement) to a catalogue of more than 40,000 consequences at the state and federal level, including over 1,600 in California (*National Inventory of Collateral Consequences of Conviction,* https://niccc.nationalreentryresourcecenter.org/ [last accessed June 4, 2026.) The use of **forensic science**, once reserved for only the most serious of cases, is becoming both routine and routinely challenged. (See, e.g., President's Council of Advisors on Science and Technology, *Forensic Science in Criminal Courts: Ensuring the Scientific Validity of Feature Comparison Methods* (2016).) Defenders must

[17] People v. Donald Harper, *supra*, note 16.

review mountains of **digital data, body worn camera footage**, and other **video evidence** that are being produced routinely in discovery. A marked increase in the potential sentences and **mandatory minimums** as well as the increased pursuit of **immigration consequences** have increased the stakes for almost every case and client. And the loss of social safety nets have, despite reform efforts, have made the criminal legal system the country's largest **mental health** facility. "[T]here are 10 times more mentally ill persons in prison or jail in this nation than there are in all of our mental hospitals."[18] (*People v. O'Hearn* (2020) 57 Cal.App.5th 280, 299.) "Our criminal justice system should not countenance this state of affairs." (*Id.* at p. 300.) But countenance will be required if defenders are not adequately funded and given lack of time to prepare cases requiring mental health defense and treatment.

As noted above, as of 2022, the Legislative Analyst's Office in California issued a report based on a finding that there was inadequate data gathering in California to demonstrate the performance of most of the State's indigent defense offices. San Francisco's Public Defender had, as the record below demonstrates,

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[18] "Over the past decade, California's overall prison population has decreased by approximately 40,000 inmates, or 25 percent." (Stanford Justice Advocacy Project, *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise* (2017), at p. 3, available at: https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf [last accessed June 5, 2026].) "The severity of inmates' mental illness is also on the rise. Since 2012, the number of prisoners referred for intensive psychiatric treatment as part of CDCR's Enhanced Outpatient Services (EOP) has increased by 60 percent." (*Id.* at p. 4.)

paid more attention to data gathering and data analysis than many of the other major defender offices in the State—but as discussed in the 2025 *Workloads and Staffing Report*—ongoing changes in California laws have exponentially increased caseloads.

This is particularly clear in counties like San Francisco that have specialty courts, including resentencing courts, various mental health court calendars, and where the defense bar is well aware of Racial Justice Act litigation (California Penal Code section 745, referenced hereafter as the "RJA").[19] California Supreme Court Justice Joshua P. Groban recently summarized the many changes in the law concerning collaborative courts that defenders have had to grapple with over the last few years:

> "[T]here has been a marked increase in '[p]roblem-solving courts (or collaborative justice courts) includ[ing] specialized drug courts, domestic violence courts, community courts, family treatment courts, DUI courts, mental health courts, peer/youth courts and homeless courts,' which 'seek to use the authority of courts to improve outcomes for victims, communities and defendants.' California now 'has more than 400 collaborative courts in all but three small jurisdictions, with many jurisdictions having four or more types of collaborative courts . . . [and n]ewer courts such as girls' courts and CSEC courts for commercially sexually exploited children are also growing.'"

(*J.O. v. Superior Court* (May 28, 2026) Case No. S287285, 2026 Cal. LEXIS 2766, Slip Opinion, at pp. *19-20, internal citations omitted.)

As Justice Groban went on to catalog, there have also been countless changes in the law that have placed additional demands on

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[19] Further undesignated statutory references are to the Penal Code.

the court system, including on defenders:

- **Community Assistance, Recovery, and Empowerment Act**: (CARE) (Stats. 2022, ch. 319) established a new program "to connect a person in crisis with a court-ordered CARE plan or agreement for up to 12 months" (California Health and Human Services Agency, CARE Act Overview (Aug. 2023) p. 1 <https://sf.courts.ca.gov/system/files/general/care_overview.pdf> [as of May 28, 2026])

- **Proposition 36**: Recently enacted Proposition 36 (Prop. 36, § 7, eff. Dec. 18, 2024), requires courts to establish "detailed treatment program[s]" for certain qualifying drug offenders. (Health & Saf. Code, § 11395, subd. (d)(1)(A).)

- **Pretrial Diversion Programs**: Pretrial diversion programs, which require ongoing court supervision, have been expanded to include primary caregiver diversion (§ 1001.83), drug diversion (§ 1000), mental health diversion (§ 1001.36), military diversion (§ 1001.80), and misdemeanor diversion (§ 1001.95).

- **Safe Neighborhoods and Schools Act of 2014:** reclassified certain nonviolent offenses from felonies to misdemeanors and permitted individuals to petition the court to re-designate their conviction and reduce their punishment. (See § 1170.18.)

- **Criminal Justice Realignment Act of 2011:** which made substantial changes to the punishment for certain felony convictions. (*People v. Scott* (2014) 58 Cal.4th 1415, 1418.)

- **Three Strikes Reform Act of 2012:** permitted certain individuals to petition the court for resentencing (See § 1170.126.)

- **California Racial Justice Act of 2020:** (Stats. 2020, ch.

317, § 1) brought about significant changes to redress the far reaching effects of racial discrimination (Stats. 2020, ch. 317, § 2, subd. (b).)

- **Racial Justice Act ("RJA"):** permits individuals, including those with serious charges, to seek relief in the superior courts if race played a role in their charging, conviction, or sentencing. (See § 745; Stats. 2022, ch. 739, § 1d. (a)(3), 189, subd. (e), as amended by Stats. 2018, ch. 1015, §§ 2, 3 and § 1172.6. The provision was enacted with full understanding of the "potentially-major" impact this would have on courts "likely to receive an influx of petitions." (Sen. Com. On Appropriations, Rep. on Sen. Bill No. 775 (2021–2022 Reg. Sess.)

(*J.O.*, *supra*, at pp. *21-23, bullet points and rephrasing added here.)

Notably, the RJA creates additional obligations for defense counsel as it provides a basis for both discovery litigation, and then litigation for remedies, based on defined classes of evidence of discriminatory or biased practices. RJA issues can be raised in a number of contexts. And as this Court is aware, given the large number of RJA-related actions that have been before it, the RJA is a statutory scheme the reach of which is still being defined, adding ongoing weight to defender caseloads throughout California.

Defense counsel and their supervisors are the only actors in the system with full visibility into the actual demands on attorney time. They know the skill and experience of each attorney, the complexity of each pending matter, and the obligations—to current clients and to the profession—that constrain the ability to take on more. Deference to that judgment is not merely appropriate; it is compelled by the constitutional structure of adversarial representation.

C. The Suggestion That Defenders Should Accept Appointments and Then Seek Relief by Motion Is Unworkable and Harms Clients.

The trial court's position—that defenders should accept each new appointment and then seek withdrawal case-by-case—imposes substantial costs on attorneys, clients, and the court system, while producing none of the benefits of a functioning appointment process.

For a defender's office, this approach compounds the very problem it purports to solve. Attorneys who have already declared that they lack capacity for additional work would be required to open case files, enter data into case management systems, draft and file withdrawal motions, notify newly assigned clients that they are seeking to be relieved, appear at hearings on those motions, and close the files. Each of those steps consumes attorney time taken directly from clients the attorney already represents, increasing the risk of delay and error in pending matters.

For clients, the harm is immediate and concrete. A defendant newly charged with a serious offense is eager to meet with a lawyer, understand the charges, and begin building a defense. Under this approach, that person is instead told to return to court for reassignment—a process that further delays having counsel engaged. While the case remains stagnant, the evidence does not. "Each day's delay in the investigation . . . and preserving of evidence accrues to the defendant's detriment."[20] Witnesses' memories fade, surveillance

[20] *David v. Missouri*, Cole County Cir. Ct., Order of Feb. 18, 2021, at p. 1; see also ABA Standard 4-3.7, *Prompt and Thorough Actions to Protect the Client*.

footage is purged on routine retention schedules, and physical evidence deteriorates. The appoint and withdraw approach is not a solution; it merely shifts the consequences of excessive workloads onto clients while creating the risk of delay and prejudice.

The better course—the only workable course—is the one the Public Defender adopted: Proactive monitoring of attorney workloads by defenders and their supervisors, with timely declarations of unavailability as capacity limits are reached. The ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads* recognize this approach as not merely permissible but required.[21] Holding a defender in contempt for following that guidance inverts the ethical framework that governs the practice of law.

This point is magnified and emphasized by the *Workloads and Staffing Report* that provides a palpable basis for the Petitioner's concerns about avoiding excessive caseloads. As the *Report* notes, in 2021, the San Francisco Public Defender along with others filed an action challenging delays in getting cases to trial. Post-Pandemic, as cases started getting sent out trial to diminish the backlog, it became more evident to many defender offices, including San Francisco's, that funding and staffing increases were needed. In San Francisco, the issues were particularly urgent because of changes in local law enforcement policies resulting from increasingly strict enforcement of controlled substances laws resulted in an increased number (in 2025) of drug crime arrests and prosecutions. (*Workloads and Staffing*

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[21] American Bar Association, *Eight guidelines of public defense related to excessive workloads* (2009) ABA Division for Legal Services Standing Committee on Legal Aid & Indigent Defense.

Report, *supra*, at p. 127.) Here again, the Public Defender—not respondent court—was in the best position to gauge the impact of that change on his Office's ability to provide effective representation.

II. PUBLIC DEFENSE IS THE FOUNDATION OF THE RIGHT TO COUNSEL, AND ITS INDEPENDENCE IS CONSTITUTIONALLY REQUIRED.

A. Public Defense Is the Backbone of the Criminal Justice System.

"[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth." (*Gideon v. Wainwright* (1963) 372 U.S. 335, 344.) More than sixty years later, that truth is carried into practice principally by public defense attorneys. More than 80% of those facing criminal charges rely on the services of a public defense lawyer.[22] The promise of *Gideon* is, in practice, a promise kept or broken by the public defense system.

California's commitment to the right to counsel begins nearly a century before *Gideon*. Beginning in 1872, California provided a right to counsel and through the efforts of Clara Shortridge Foltz spearheaded the creation of law offices to represent the poor in criminal cases. (PPIC, *California's Leading Role in Providing Criminal Defense to the Poor* (March 16, 2023).) In 1913, fifty years before the U.S. Supreme Court made clear that states must provide counsel to those facing criminal charges, California had already

[22] See U.S. Dep't of Just., Bur. of Just. Stat., *Defense Counsel in Criminal Cases* 1 (2000).

created the first county-wide public defender office and, in 1921, provided for a statewide county-created public defender system. (Gov. Code, § 27700.)

Public defense plays a critical role in preserving our constitutional rights and serving as a check on government overreach and abuse of power.

- In 1989, deputy public defenders and private counsel uncovered a group of jailhouse informants in Los Angeles, many of whom fabricated information against a list of 225 persons – including some convicted of murder or capital offenses. (Reinhold et al, *California Shaken Over An Informer* (Feb. 17, 1989) NY Times, referencing the notorious Leslie White). Shortly thereafter, in adjoining Orange County, a public defender spent years unraveling a decades-long illegal jailhouse informant program.[23]

- Maryland public defenders discovered body camera footage showing narcotics officers planting drugs.[24]

- Attorneys from the D.C. Public Defender Service uncovered systematic errors that had excluded eligible African American jurors from Washington D.C.'s jury rolls.[25]

These results were possible because defenders had the capacity to look beyond the surface of the cases assigned to them and

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[23] Gustavo Arellano, *O.C. public defender who exposed jailhouse snitch scandal is retiring, but not done* (Apr. 3, 2025) Los Angeles Times.

[24] Bill Chappel, *Baltimore Police Caught Planting Drugs In Body-Cam Footage, Public Defender Says* (July 20, 2017) NPR.

[25] *United States v. Powell* (D.C. Super. Ct. 2008) 36 Daily Wash. L. Rptr. 2149, 2150.

the independence to act on what they were finding. That does not exist when attorneys are buried under caseloads that permit nothing more than processing matters toward a plea.

So critical is independence to the functioning of public defense that it stands as the first of the ABA's *Ten Principles of a Public Defense Delivery System*: "Public defense providers and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers."[26] The trial court's contempt order violates this principle directly. It subjects the Public Defender's professional judgment about workload capacity to a form of judicial override that would never be applied to a prosecutor's office making equivalent resource-based decisions.

B. The Private Bar Is an Essential and Interdependent Partner in Public Defense Delivery.

A functioning public defense system is not built on institutional defenders alone. Every jurisdiction in the United States relies on private attorneys who accept court appointments to cover cases the public defender's office cannot take—whether because of conflicts, capacity limits, or the absence of an institutional defender altogether.[27] Institutional public defenders and court-appointed private counsel are not parallel and independent tracks; they are

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[26] American Bar Association, *ABA Ten Principles of a Public Defense Delivery System: Principle 1: Independence* (Aug. 2023).

[27] See *ABA Ten Principles of a Public Defense Delivery System*, *supra*, *Principle 2*.

interdependent parts of a single system, and what affects one directly shapes the other.

Institutional public defenders offer significant structural advantages: they centralize knowledge and experience, share investigative and support resources, develop attorney specialization, and provide structured training and supervision.[28] But no jurisdiction has filled the gap with institutional defenders alone—private appointed counsel remains essential everywhere.[29] The vitality of that private bar—the willingness of experienced private attorneys to accept appointments—depends in significant part on confidence that courts will respect their professional judgment. The implications of the trial court's order for that confidence are addressed in Section IV below.

"Criminal defense lawyers are not fungible. The attorney-client relationship '. . . involves not just the casual assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty.'" (*Boulas v. Superior Court* (1986) 188 Cal.App.3d 422, 430.) Unfortunately, these rights were treated as fungible by Respondent Court. Upholding the contempt order risks a "breakdown in the adversarial process that our system counts on to produce just results." (*Strickland v.*

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[28] See, e.g., Yotem Shem-Tov, *Are Public Defenders Better at Indigent Defense than Court-Appointed Attorneys*? (2018) Cal Policy Lab.

[29] Eve B. Primus, *The Problematic Structure of Indigent Defense Delivery* (2023) 122 Mich. L. Rev. 205 at pp. 213-14.

Washington (1984) 466 U.S. 668, 696.)

C. The San Francisco Public Defenders Office Serves its Clients and Community While Weathering Challenging Circumstances.

As explained in the *Workloads and Staffing Report*, California has a wide array of indigent defense systems in operation in the state. At this point, most large California counties have a County funded public defender office that functions under the dictates of section 987.2. The funds that are provided to pay for appointed counsel are provided by the county with some possible opportunity for the State to reimburse the county for the expenditures involved in providing counsel to the poor. (The references are to sections 987.2 and 987.6.) Unlike some larger California counties that have county funded and county-employed civil service Public Defender and Alternate Defender Offices as well as Conflict Counsel Offices, San Francisco happens to have California's only *elected* Public Defender. In San Francisco, criminal defense services for those unable to afford a lawyer are either appointed a lawyer from the Public Defender's Office or are appointed lawyers from a panel managed by San Francisco's Bar Association.

Founded in 1921, the San Francisco Public Defender's Office has grown over the years to its current staffing level of about 200 persons. They serve a highly diverse population in a densely populated county. The Office was an early adopter of holistic defense services. Now considered best practices in the field (see Principle 9 of the *ABA's Ten Principles of a Public Defense Delivery System*), holistic defense provides wrap around services and supports with an

eye towards more fully addressing the challenges and needs of clients to improve their case and life outcomes. Beginning in 2010, the office added social workers and sentencing specialists, as well as access to immigration lawyers, community-based offices, and other office support staff to provide wrap around services to their clients.

The San Francisco Public Defender has also offered initiatives that include services to help clear an individual's criminal record where and when possible. In fiscal year 2024-2025, the Public Defender Office reported an annual budget of just under $56 million, 92% of which reportedly went to salaries and benefits. (San Francisco Public Defender's Office, *Fiscal Year 2024-2025 Annual Report*, available at: https://sfpublicdefender.org/wp-content/uploads/sites/16/2026/01/FY24-25-PDR-Annual-Report-.pdf [last accessed June 8, 2026]). They also secured a $15 million grant to help fund staffing for their holistic services, supporting the hiring of mental health professionals, social workers, and housing specialist. While the Office celebrates its achievements, it is set against the backdrop of ongoing monitoring of its caseloads, which threaten to undermine their provision of high-quality representation. "Excessive workloads inevitably force attorneys to triage, deciding which matters receive necessary attention while others move forward without appropriate diligence." (*FY 2024-2025 Annual Report*, *supra*, at p. 3.) Notably, on June 1, 2026, the San Francisco Mayor's Office announced a proposed budget for FY 2026-2027. Consistent with representations during the discussions in Respondent Court, the Mayor's Office announced the City and County face cuts to funding from the Federal government. In addition, there is an existing $642 million deficit that the 2026-2027

budget aims to reduce by about 50%. (www.sf.gov/new-mayor-lurie-presents-responisble-budget [last accessed June 4, 2026].)

As a result, the San Francisco Public Defender Office is planning to provide services without significant budget increases and potentially faces an actual decrease in funding. As an elected official, the San Francisco Public Defender must operate within this budget situation. This is part of the context in which the Respondent Court's order arises. Also, pertinent California law informs a California Public Defender that "a conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing [citation omitted]." (*In re Edward S*. (2009) 173 Cal.App.4th 387, 414-415 and fn. 10, referencing both the Standards for the Defense of the National Legal Aid and Defender Association, and a report of the Office of Justice Programs, *Keeping Defender Workloads Manageable*.) The *Edwards* Court also referenced its prior ruling in *Ligda v. Superior Court* (1970) 5 Cal.App.3d 811, 827-828, a case in which the Court noted that the public defender who "reels under a staggering workload" can ask to be relieved.

While the reforms to California's criminal legal system are welcomed improvements to the delivery of more equitable justice, they have caused cases to whiplash between the appellate and superior courts, adding to defender workloads in the process. For instance, until recently, the law required the trial courts to impose sentence "under the provision that provides for the longest potential term of imprisonment." (Former § 654, subd. (a).) In 2021, however, the Legislature enacted Assembly Bill No. 518, which removes the

requirement to impose the longest prison term. "As the preamble to the bill explains, it allows 'an act or omission that is punishable in different ways by different laws to be punished under either of those provisions.'" (*People v. Sek* (2022) 74 Cal.App.5th 657, 673, citation omitted.) The ameliorative change in the law must be applied retroactively before judgment is final. (See *In re Estrada* (1965) 63 Cal.2d 740, 745.) Generally, the result has been remand for resentencing pursuant to *People v. Salazar* (2023) 15 Cal.5th 416, and *People v. Lynch* (2024) 16 Cal.5th 730.[30]

The Legislature has also redefined offenses like the substantial amendments to the STEP Act in AB 333.[31] (*People v. Clark* (2024) 15 Cal.5th 743, 752.) Those amendments narrowed the application of the "criminal street gang" offense and enhancement. For cases not final on appeal, or those reopened via resentencing, the change in law has required retrials and new sentencing hearings. (See *People v. Monroe* (2022) 85 Cal.App.5th 393, 402 ["By its plain terms, section

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[30] Additionally, SB 81 amended section 1385 to provide that a trial court could dismiss sentencing enhancements in furtherance of justice. (Former § 1385, subd. (a).) SB 81 also added language to section 1385 (sometimes rather confusingly referred to as a "savings clause") that expressly limits application of the amendments made by the legislation to only those sentencings occurring after January 1, 2022. (§ 1385, subd. (c)(7).) (*People v. Flowers* (2022) 81 Cal.App.5th 680, 686.) Nevertheless, these ameliorative changes in the law have also required remand in numerous cases involving firearm allegations, prior serious felony enhancements, and myriad other situations.

[31] Similarly, substantial changes in the law have also impacted juvenile cases, requiring numerous remands. (See generally, *In re S.S.* (2023) 89 Cal.App.5th 1277.)

1172.75 requires a full resentencing, not merely that the trial court strike the newly 'invalid' enhancements"].)

Finally, the RJA has created a system of staggered retroactivity dates based on the date the judgment became final. This process, as created by the Legislature, spreads out the burden placed on courts, prosecutors, and defense counsel over time. (See Sen. Com. on Appropriations, Analysis Addendum of Assem. Bill No. 256 (Reg. Sess. 2021-2022), Aug. 11, 2022, p. 1 [summarizing the increased workload costs to the superior courts estimated by the Judicial Council to be added by expanding the RJA to incorporate past violations].) The Chief Justice of the Supreme Court, the Honorable Patricia Guerrero, has said that the RJA is making it difficult to manage caseloads. (Malcolm MacLachlan, *Chief Justice Guerrero warns of court challenges, calls for reforms* (2025) Daily Journal, available at: https://www.dailyjournal.com/article/384390-chief-justice-guerrero-warns-of-court-challenges-calls-for-reforms [last accessed June 8, 2026].) Defenders are at the forefront of the implementation of the law, even when funding has not always been forthcoming.[32] In sum, when the totality of circumstances creating

[32] In December 2024, the Los Angeles County Public Defender's Office filed a test claim with the Commission on State Mandates. They argued that the retroactive expansion of the RJA (under AB 256) and the new legal processes it required created a reimbursable state mandate under the California Constitution. Commission Findings: In mid-2025, the Commission released a draft analysis stating that the expanded RJA requirements were indeed new and mandatory for counties, thus qualifying as an unfunded state mandate eligible for reimbursement. (Malcolm MacLachlan, *Expansion of Racial Justice Act stalls over cost concerns* (2025) Daily Journal, available at: https://www.dailyjournal.com/article/387193-expansion-of-racial-

conflicts of interest for California Public Defenders and their lawyers and clients, they is fully must seek relief by, among other things, refusing to take on further cases the weight of which would further undermine the rights of the accused.

III. THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ADVOCACY, WHICH REQUIRES TIME.

A. The Constitution Guarantees Meaningful Representation, Not Mere Formal Appointment.

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have." (*Cronic*, *supra*, 466 U.S. at p. 654.) That right is not satisfied by the bare presence of a lawyer at counsel table to conduct a trial or enter a plea. "The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment"—to hold otherwise "could convert the appointment of counsel into a sham." (*Id.* at p. 655, quoting *Avery v. Alabama* (1940) 308 U.S. 444, 446.)

"An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." (*Strickland*, *supra*, 466 U.S. at pp. 685-686; see also *Lafler v. Cooper* (2012) 566 U.S. 156, 162.) The Constitution does not distinguish between retained and appointed counsel in setting this

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justice-act-stalls-over-cost-concerns [last accessed June 4, 2026].) These types of funding issues have necessarily impacted defenders in implementing the new laws.

standard.[33] The professional norms that give meaning to the right to effective assistance apply with equal force to all attorneys, regardless of how they came to represent their clients.

B. Effective Advocacy Requires Prompt and Continuous Engagement That Cannot Be Compressed.

The work of a defense attorney begins at the moment of appointment and extends through every stage of the case. There are "myriad responsibilities that counsel may be required to undertake that must be completed long before trial if the defendant is to benefit meaningfully from his right to counsel." (*Lavallee v. Justices in Hampden Superior Ct.* (Mass. 2004) 812 N.E.2d 895, 903-04.) Many of the most consequential tasks depend on immediate action. When a lawyer is promptly engaged the defense can

- Document bruises and other injuries before they heal, helping to corroborate a self-defense claim.
- Capture critical but transient features like a dimmed streetlamp or overgrown shrub that may undermine an eyewitness' identification.
- Locate and interview key fact witnesses before their memories fade.
- Preserve social media posts, text messages, and other digital content from a complaining witness before they are deleted.

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[33] American Bar Association, *ABA Criminal Justice Standards for the Defense Function*, 4th ed. (2017), Std. 4-1.1 ("As used in these Standards, 'defense counsel' means any attorney – including privately retained, assigned by the court, acting pro bono or serving indigent defendants in a legal aid or public defender's office – who acts as an attorney on behalf of a client being investigated or prosecuted for alleged criminal conduct").

- Negotiate cooperation agreements with a prosecutor in time for a defendant's assistance to be effective.

- Identify a lack of organized thinking and delusional beliefs that support a mental health-based defense while minimizing the risk of more significant deterioration that can lead to lengthy competency restoration efforts.

- Recover video surveillance footage from stores and home security systems to support an alibi before retention policies call for their erasure.[34]

These are not aspirational tasks. They are constitutionally required components of effective representation that depend entirely on the attorney having sufficient time and capacity at the outset of the engagement.

Consider the case of Joseph Allen. In the fall of 2015, Allen was arrested and charged with seventeen counts of attempted murder arising from a gang-involved shooting in New Orleans. Identified by

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[34] Because of volume, businesses regularly purge surveillance video content. This is especially true for cameras which record 24/7. (See, e.g., *How Much Video Surveillance Storage Does My Business Need?* (Mar. 10, 2021) Business News Daily [recommending most small and mid-size businesses retain video footage for 30 days], available at: https://www.businessnewsdaily.com/16024-video-surveillance-storage.html#:~:text=It%20depends%20on%20the%20amount,for%20three%20months%20or%20more [last accessed June 4, 2026].) Similarly, state laws or local police polices may require regular destruction of footage from red light cameras and automated license plate readers believed to be of no known evidentiary value. (See, e.g., National Conference of State Legislatures Automated License Plate Reader Statutes, *State Statutes Related to Privacy and Data Retention*, available at: https://www.ncsl.org/research/telecommunications-and-information-technology/state-statutes-regulating-the-use-of-automated-license-plate-readers-alpr-or-alpr-data.aspx [last accessed June 4, 2026].)

an eyewitness who picked him out of a lineup, Allen had a substantial criminal history and was a known member of one of the gangs alleged to have participated in the shooting. Fortunately for Mr. Allen, his family was able to hire a lawyer who acted immediately: He met with Allen, gathered detailed information about his whereabouts, and within days secured video surveillance footage from three Houston-area stores showing, unequivocally, that Allen and his girlfriend were shopping more than three hundred miles away from the scene at the time of the shooting. The charges were dropped.[35] Had Allen instead been one of many newly assigned clients competing for the same inadequate hours—the footage would likely have been purged before it was found, the alibi would have been unverifiable, and Allen would have faced trial with the only witnesses to testify about his alibi being his girlfriend and himself.

When defenders have adequate representation with capacity, outcomes like Allen's are possible. When they do not, the system produces the opposite: evidence goes unchallenged, defenses go unexplored, and the innocent are convicted. The costs of overload are not theoretical.

C. The Harms of Excessive Caseloads Are Well-Documented, Foreseeable, But Largely Invisible to Courts.

System failures in which few motions are filed, few cases are

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[35] Richard Webster, *Man pleads guilty for falsely accusing Joseph Allen in Bunny Park shooting* (December 8, 2015), available at: https://www.nola.com/news/crime_police/man-pleads-guilty-for-falsely-accusing-joseph-allen-in-bunny-park-shooting/article_0d9f5191-f73d-5570-ade0-57c76fdb216e.html (last accessed June 8, 2026).

tried, and attorneys have little substantive contact with clients are the "natural, foreseeable, and expected result of [excessive] caseloads." (*Wilbur v. City of Mount Vernon* (W.D. Wash. 2013) 989 F. Supp. 2d 1122, 1124.) In such systems, providing counsel becomes "little more than a formality, a stepping stone on the way to a case closure or plea bargain having almost nothing to do with the individual indigent defendant." As explained above, Petitioner made this point in writing the Report for Fiscal Year 2024-2025. He explained in a publicly available document his concern about the 'triage' that becomes necessary with excessive caseloads—caseloads of the sort he had been complaining about for some time.

Each corner cut is invisible to the court. There is no pleading that records the motion not filed, no docket entry reflecting the client call not returned, no transcript capturing the investigation abandoned for lack of time. Courts have no mechanism to detect these failures until they surface through wrongful conviction, excessive sentence, or appellate reversal—long after the harm has been done.

D. Effective Representation Requires a Relationship of Trust That Compelled Appointments Undermine.

Defense attorneys serve not only as legal technicians but as confidants, counselors, and advisors for clients making the most consequential decisions of their lives: whether to accept a plea or go to trial; whether to testify; how to weigh the risks of conviction against the costs of fighting.

For any attorney, building a relationship of trust and confidence is challenging, but for those providing public defense services, it can be especially difficult. Drawing from media portrayals

of public defenders as underpaid and overloaded clients will often be skeptical of their attorney's ability to provide an effective defense; and skeptical of their commitment to serve the needs of their client over the interests of the court and government that appoints and funds them.[36]

The trial court's orders appointing the San Francisco Public Defender's Office to cases without dismissed their expression of unavailability and then holding them in contempt when they failed to accept the appointment embodies many of the reasons that public defense struggles to be viewed as effective and legitimate. A defendant aware that counsel is simultaneously litigating whether existing workloads already exceed ethical limits may reasonably question whether counsel can devote sufficient attention to their case. It would be hard not to wonder whether that means your lawyer, in the eyes of the judge, is not working hard enough or that your lawyer is overwhelmed and cannot give your case much of their time and attention.

E. Public Defense Representation Must Meet The Same High Bar For Ethical, Meaningful Representation As Is Expected Of All Lawyers.

In California, as with every other state across the country, the rules of professional conduct apply with equal force to appointed and

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[36] In addition, public defense lawyers are more likely to represent individuals with intellectual or developmental disabilities, language barriers, lower levels of education, and mental illness. These factors add to the time and attention needed to gather relevant case information, explain processes and procedures, discuss options, and ensure understanding so the client can be a meaningful participant in their case.

retained counsel alike. Every attorney is required to provide competent representation, act with reasonable diligence, communicate meaningfully with clients, and control their workload to ensure that each matter can be handled competently. As the ABA's *Criminal Justice Standards for the Defense Function* make plain: "Defense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client's interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations."[37]

A cautionary example can be found in the disciplinary case brought against Karl William Hinkebein.[38] A client asserted that Hinkebein, a 20-year veteran of the Missouri Public Defender's Office, had failed to keep him informed about the state of his post-conviction case and had failed to file certain motions. An investigation into the initial complaint by the Bar identified five other clients assigned to Hinkebein who were similarly under-represented.

Hinkebein admitted he had missed the deadlines, citing both ongoing medical issues and his excessive caseload as factors that were "outside of [his] control."[39] As to his workload, he explained that absent a conflict of interest, he did not have the option to reject case

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[37] *ABA Criminal Justice Standards for the Defense Function*, *supra*, Std. 4-1.8.

[38] Order, *In re Karl William Hinkebein* (Mo. Sept. 12, 2017) No. SC96089.

[39] Respondent's Brief at 8, *In re Karl William Hinkebein* (Mo. Sept. 12, 2017) No. SC96089, 2017 WL 3195811, at p. *8.

assignments.[40]

The Missouri Supreme Court found that Hinkebein violated the Rules of Professional Responsibility and suspended his license indefinitely but stayed the suspension, placing him on a year of probation.[41]

During oral argument, it was made clear that the Court was skeptical that attorneys could claim their excessive caseload be considered in mitigation of an ethics violation, as one judge stated, "I see a big problem . . . if we allow attorneys to say my boss made me do it because when they take the oath to follow the Rules . . . , sometimes that means not taking a case, and sometimes that means taking a different job."[42]

The lesson of *Hinkebein* is clear and directly applicable here: when attorneys are compelled to accept more work than they can ethically manage, the consequences fall on them personally, on their clients, and on the profession. The *Hinkebein* Court was clear—"the judge made me do it" is no defense to an ethics violation. Yet the contempt order currently before the court places the San Francisco Public Defender's attorneys in precisely the untenable position

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[40] *Id.* at p. 10 ("Respondent does not have the option to reject assignments, unless he has a conflict of interest.").

[41] Order, *In re Karl William Hinkebein* (Mo. Sept. 12, 2017) No. SC96089, available at: https://www.courts.mo.gov/page.jsp?id=117575 (last accessed June 4, 2026.)

[42] Oral Argument at 18:35–55, *In re Karl William Hinkebein* (Mo. Sept. 12, 2017) No. SC96089, https://www.courts.mo.gov/file.jsp?id=117413. Note, the Court's Order did not express whether it considered Hinkebein's caseload as a mitigating factor in its decision.

Hinkebein describes: Held in contempt for honoring their ethical obligations or required to accept appointments that risk those same obligations and, with them, their licenses to practice law.

IV. THE CONTEMPT RULING WILL ACCELERATE THE VERY CRISIS IN PUBLIC DEFENSE IT PURPORTS TO REMEDY.

A. The National Public Defense Crisis Makes the Stakes of This Ruling Particularly High.

Across the country, public defense systems are being stretched to, and in many cases beyond, their limits. Although crime rates have remained flat or declined in most cities,[43] the demands on defenders have grown substantially. The proliferation of body-worn cameras and digital evidence requires defenders to review vast quantities of material per case. The criminalization of poverty and erosion of social safety nets have increased the proportion of clients with complex mental health, substance use, and disability needs. Mandatory sentencing schemes raise the stakes on every matter. And the expansion of collateral consequences, including immigration consequences that can permanently alter a client's life and family, means that even cases once considered minor now demand extensive knowledge and creative advocacy.

Finally, the issues raised by the contempt order warrant consideration of attorney wellness, which is stressed by the State Bar. (Cal. State Bar (2021) *Formal Opinion No. 2021-206*.) Courts have found that defense counsel's strategies were severely impaired

[43] Ernesto Lopez and Bobby Boxerman, *Crime Trends in U.S. Cities: Year End 2025 Update* (Jan. 2026) Council on Criminal Justice.

by mental impairments, sometimes due to crushing caseloads and sometimes because the system did not provide sufficient monitoring. (See *State v. Lopez* (Wash. 2018) 190 Wash.2d 104, 119; see also *Pilchak v. Camper* (W.D. Mo. 1990) 741 F.Supp. 782, 797; *Moore v. Beard* (M.D. Pa. 2014) 42 F.Supp.3d 624, 634; *United States v. Washington* (3d Cir. 2017) 869 F.3d 193, 204; and *In re Personal Restraint of Brett* (Wash. 2001) 142 Wn.2d 868, 16 P.3d 601, 609 (conc. opn. of Talmadge, J.).) Enforcing a contempt order that never took into account the pressures that lead to attorney unwellness will only lead to further problems in the criminal justice system. (See generally, Stephanos Bibas, *The Psychology of Hindsight and After-the-Fact Review of Ineffective Assistance of Counsel* (2004) 2004 UTAH L. REV. 1, 1.)

Together the pressures in our criminal justice system have produced a compounding crisis. Experienced defenders, unable to provide the level of advocacy that drew them to the work, experience burn out and leave the field. Their departure shifts their caseloads onto those who remain, adding to the burdens of colleagues and accelerating their own eventual departure. New lawyers, observing these conditions, are deterred from entering public defense at all. States and localities from Maine to Oregon to Wisconsin are now embroiled in litigation over their failure to timely provide counsel.[44] The trial court's contempt ruling will not solve this crisis. It will

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[44] See, e.g., *Minnesota Board of Public Defense 2024-25 Biennial Budget*, at pp. 14-15, available at: https://mn.gov/mmb-stat/documents/budget/2024-25-biennial-budget-books/base-budget-november/public-defense-board.pdf (last accessed June 8, 2026).

deepen it.

V. COURTS HAVE AN OBLIGATION TO ENSURE EFFECTIVE REPRESENTATION—NOT TO MANAGE THE DEFENSE FUNCTION.

Nothing in this brief suggests that courts lack a role in the quality of public defense. They have a critical one. Courts are the guardians of the constitutional floor of effective representation, and their protection of that floor is especially important in appointed cases, where defendants who receive inadequate representation cannot simply take their business elsewhere. Courts must ensure that appointed counsel meets with clients, functions as a meaningful adversary to the government, files appropriate motions, prepares for hearings and trial, and timely pursues appellate remedies. Trial court judges must ensure defenders don't carry too many cases, such that they are unable to fulfill their role as a robust, engaged attorney. Where representation falls below the constitutional minimum, courts have both the authority and the obligation to act.

But the authority to protect the constitutional floor does not extend to managing the defense function by creating a ceiling. While the court protects a defendant from constitutionally inadequate representation, that responsibility does not empower it to also override defense counsel's good-faith determination that additional appointments would compromise their ability to provide effective and ethical representation. Ensuring a level playing field by protecting the floor of representation is appropriate oversight; deciding how many more cases a defender can handle despite their representation they are at capacity, is overreach.

Judges do not instruct prosecutors how to allocate their attorneys or how many cases to file. The separation of executive and judicial functions protects the prosecution from such intrusion, and the same logic—reinforced by the constitutional requirements of adversarial independence recognized in *Polk County v. Dodson*, *supra*, 454 U.S. at pp. 321-22, protects the defense. When a court compels a public defender to accept appointments that the defender has determined cannot ethically be honored, it is not enforcing the constitutional right to counsel. It is generating the appearance of representation while ensuring that genuine representation will be harder to deliver.

CONCLUSION

The trial court's contempt order rests on a fundamental misunderstanding of the respective roles of courts and defense counsel in the criminal justice system. Courts appoint counsel; they do not manage counsel. Courts have the authority to protect the constitutional minimum required by the Sixth Amendment; they do not have the authority to require defenders to take on workloads that threaten that minimum. In fact, compelling defenders to accept additional cases despite capacity concerns risks creating the very constitutional violations courts are charged with preventing. And courts do not override, through threat of contempt, a defender's good-faith professional judgment that additional appointments would breach the ethical obligations each attorney bears from the moment of appointment.

The consequences of affirming the contempt ruling extend far beyond this case and this office. They reach every public defense

attorney in California who now understands that professional judgment about capacity is subject to judicial compulsion. They reach every private attorney who weighs whether accepting any court appointment creates exposure to demands for more. And they reach every defendant—present and future—who will be assigned counsel that has been forced into service beyond the limits of what can ethically and effectively be done.

When courts compel defenders to accept more cases than the defenders say they can ethically and effectively handle, the result is not a stronger protection of the right to counsel. It is a system that prioritizes the appearance of representation over the reality of effective advocacy. This Court should reverse the contempt finding and hold that a public defender's good-faith declaration of unavailability based on ethical capacity limits cannot serve as the basis for contempt sanctions.

DATED: June 10, 2026

Respectfully submitted,
/s/ John T. Philipsborn

JOHN T. PHILIPSBORN
Amicus Chair for CACJ

Respectfully submitted,
/s/ B.C. McComas

BRIAN C. McCOMAS
Amicus Vice Chair For CACJ

On Behalf of:

Sarah Sanger
CACJ Amicus Curiae Committee Member
Lisa Romo
CACJ Amicus Curiae Committee Member
Joseph Doyle
CACJ Amicus Curiae Committee Member
Thomas Hartnett
CACJ Amicus Curiae Committee Member
Marc Zilversmidt
CACJ Amicus Curiae Committee Member

Robin E. Wechkin
Vice Chair, Amicus Committee
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
SIDLEY AUSTIN LLP
8426 316th Pl SE
Issaquah, WA 98027-8767
Phone: (415) 439-1799
rwechkin@sidley.com

CERTIFICATE OF COMPLIANCE

Pursuant to the California Rules of Court, Rules 8.486, subdivision (a)(6), and 8.204, subdivision (c), I hereby certify that the attached amici curiae brief is written in Century725 BT in 13 point font and contains 9,871 words.

DATED: June 10, 2026

Respectfully Submitted,
/s/ B.C. McComas
_____
BRIAN C. McCOMAS

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

No other person or entity has a financial interest or other interest in the outcome of this proceeding.

DATED: June 10, 2026

Respectfully Submitted,
/s/ B.C. McComas
_____
BRIAN C. McCOMAS

PROOF OF SERVICE

I, Brian C. McComas, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the above referenced action. My place of employment and business address is PMB 1605, 77 Van Ness Ave., Ste. 101, San Francisco, CA 94102.

On June 10, 2026, I served the attached **AMICUS CURIAE APPLICATION AND BRIEF OF THE CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE & NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF THE PETITION FOR WRIT OF MANDAMUS** by placing a true copy thereof in an envelope addressed to the person named below at the address shown, and by sealing and depositing said envelope in the United States Mail in San Francisco, California, with postage thereon fully prepaid, or by otherwise serving via Truefiling or email:

DUANE MORRIS LLP Michael L. Fox (SBN 173355) MLFox@DuaneMorris.com One Market Plaza, Suite 2200 San Francisco, CA 94105-1127 (415) 957-3000 | (415) 957 3001 (Attorney for respondent) DUANE MORRIS LLP Benjamin G. Shatz (SBN 160229) BGShatz@DuaneMorris.com 865 S. Figueroa Street, Suite 3100 Los Angeles, CA 90017-5450 (213) 689 7400 | (213) 689 7401 (Attorney for respondent)	BRAUNHAGEY & BORDEN LLP Matthew Borden (No. 214323) borden@braunhagey.com Kory DeClark (No. 310571) declark@braunhagey.com Hadley Rood (No. 348168) hrood@braunhagey.com 747 Front Street, 4th Floor San Francisco, CA 94111 Nicholas Fallah nfallah@braunhagey.com 200 Madison Ave., 23rd Floor New York, NY 10016 (Attorneys for petitioner) The Superior Court of San Francisco 850 Bryant St. Rm. 101 Hall of Justice San Francisco, CA 94103 department22@sftc.org (Also Served via USPS)

I declare under penalty of perjury that the foregoing is true and correct. Signed on June 10, 2026, at San Francisco, California.

/s/ B.C. McComas

BRIAN C. McCOMAS