

January 22, 2024

The Honorable Patty Murray  
Chair  
Committee on Appropriations  
United States Senate  
Washington D.C. 20510

The Honorable Susan Collins  
Vice Chair  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

The Honorable Chris Van Hollen  
Chairman  
Committee on Appropriations  
Subcommittee on Financial Services and  
General Government  
United States Senate  
Washington, D.C. 20510

The Honorable Bill Hagerty  
Ranking Member  
Committee on Appropriations  
Subcommittee on Financial Services and  
General Government  
United States Senate  
Washington, D.C. 20510

The Honorable Kay Granger  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Rosa DeLauro  
Ranking Member  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Steve Womack  
Chairman  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Steny Hoyer  
Ranking Member  
Subcommittee on Financial Services and  
General Government  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Federal Public Defender Budget for Fiscal Year 2024

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

On behalf of the American Bar Association, the largest voluntary association of lawyers and legal professionals in the world, I write to urge you to provide full funding for the federal public defender program for Fiscal Year 2024. Unlike other line items in the federal budget, federal public defense is not a discretionary program, and cuts to the program envisioned by House and Senate appropriators to date *will only produce increased costs, not savings*. Therefore, we urge you to reject these draconian reductions to an office already operating at minimum staffing and

instead ask that you fully fund the office commensurate with the federal indigent defense mandate articulated by the Supreme Court more than 80 years ago.<sup>1</sup>

We recognize these are difficult budget years and that you are looking to cut costs wherever possible. But there is no excess funding to trim in the federal defender budget. Reductions to this line item would only reduce the number of attorneys available to accept federal indigent defense cases and thus produce costly delays for all involved. Under the Sixth Amendment, eligible defendants must be provided with legal representation, for which the federal system relies on federal public defenders and volunteer “panel attorneys” willing to accept limited, below-market compensation to represent indigent clients in federal court. But reducing funding for the federal public defender program would not only reduce the number of defenders available; it would also mean delays in compensation for private panel attorneys, thus reducing the number of attorneys willing to take these cases.

The brunt of these delays would, of course, be shouldered by the 90 percent of people who are unable to afford an attorney for their federal criminal case. These men and women are presumed innocent but would be held behind bars for increasingly longer periods of time in expensive pretrial detention facilities, which in turn will place their jobs, housing, and family relationships at increasing and unnecessary risk. These delays would also inflict costs on everyone else affected by the federal criminal system, including overburdening court dockets, preventing timely filing of new prosecutions, and delaying finality for survivors of crime, witnesses, and the public.

Cuts to the federal defenders’ budget are also poorly timed. A workforce study in 2022 showed that the defenders are already understaffed by 250 positions. In addition, when the current House and Senate marks were published earlier this summer, the defender program voluntarily carried out emergency cost-cutting measures, including the elimination of necessary training<sup>2</sup> and placing a freeze on new hires. Meanwhile, the Department of Justice contemplates increasing the number of prosecutions for various serious offenses to reduce crime and protect law and order nationwide, including increased jurisdiction over matters on Native American land. Federal defenders will also be needed to represent the additional 800-1,200 persons expected to be charged for their involvement in the events at the U.S. Capitol on January 6, 2021. Therefore, this is not the time for House and Senate appropriators to *cut* the federal defender program by hundreds of positions relative to what it needs to do its job<sup>3</sup> and thus undermine this constitutionally critical program.

We agree that Congress has an appropriate oversight role with respect to the federal indigent defense system<sup>4</sup> and that closer study of that system may reveal cost-saving innovations. But given the gravity of the liberty issues at stake, such changes to the system should only come after thoughtful examination, hearings, and consultation with the Defense Services Advisory Group.

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<sup>1</sup> *Johnson v. Zerbst*, 304 U.S. 458 (1938).

<sup>2</sup> Public defense providers must ensure that defense attorneys and other staff have the necessary training, skills, knowledge, and awareness to effectively represent their clients. See Principle 7 (Experience, Training and Supervision) of the [ABA Ten Principles of a Public Defense Delivery System](#). Therefore, adequate training is essential, not merely a convenience.

<sup>3</sup> See Principle 2 (Funding, Structure, and Oversight) of the ABA Ten Principles concerning parity in prosecution and defense spending.

<sup>4</sup> See generally the Criminal Justice Act of 1964.

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The American Bar Association would be pleased to assist you and your staff in exploring such measures in the future.

Thank you for your consideration of our views. If you have questions or would like additional information, please contact Kenneth Goldsmith in our Governmental Affairs Office at [kenneth.goldsmith@americanbar.org](mailto:kenneth.goldsmith@americanbar.org).

Sincerely,

A handwritten signature in cursive script that reads "Mary Smith".

Mary Smith  
President, American Bar Association

Cc: Members of the Senate Committee on Appropriations  
Members of the House Committee on Appropriations