For every 10 Americans charged with a crime in federal court, nine are unable to afford an attorney. The Constitution requires that the government appoint lawyers for those defendants who cannot afford them, and federal public defenders are the lawyers principally responsible for ensuring that these individuals receive competent representation. They help ensure that every person accused of a federal crime, no matter their economic circumstances, receives professional counsel.

Alarmingly, the federal public defender program is facing a crisis that may have a devastating impact on the ability of these lawyers to do their jobs, and on the fates of the people they represent.

Severe budget cuts, including those caused by sequestration, threaten to devastate federal defender offices across the country. The cuts to the federal defenders program have already forced these offices to furlough attorneys for up to 20 days this year. If Congress fails to provide adequate funding for 2014, a new round of budget cuts could force some offices to dismiss half their staff and force some offices to close.

As former federal prosecutors, we know that our criminal justice system can only produce just results when defendants have competent counsel representing them. It is for this reason that we recently joined with more than 40 other former federal prosecutors and judges to call on Congress to avert this looming disaster and adequately fund the federal defender program.

Last month, the Senate Committee on Appropriations approved a bill increasing funding to U.S. attorneys' offices for the coming fiscal year. We applaud the committee for providing federal prosecutors the resources needed to keep Americans safe. The committee also approved a level of funding that will prevent the worst of the cuts that had been proposed for federal public defenders next year. Because of the critical role played by federal defenders, Senate appropriators must work with their colleagues in the Senate and House to ensure that the final funding bill for next year contains not just this minimum level of funding, but the amount needed so that federal defenders have adequate resources to do their jobs. Substantial resource cuts to federal defenders threaten to deprive defendants of their constitutional right to the assistance of counsel and to undermine the fairness of our system.

Congress has the vital responsibility of adequately funding the federal defenders, which is all the more necessary given the steady growth in the number of federal crimes over the past decade. The Senate Appropriations bill would allow federal prosecutors to bring an additional 300 cases next year for crimes such as mortgage fraud, financial crimes, health care fraud and other regulatory offenses. Unless federal defenders are provided a comparable increase in resources, defendants face the prospect of spending more time in costly pretrial detention and going to trial with defense counsel who is unable to adequately investigate the case against his client, pursue evidence in support of valid legal defenses or hire expert witnesses.

In addition, cutting funds for federal defenders makes the work of prosecutors more difficult. Our experience has shown us that having competent and adequately resourced defense counsel helps prosecutors to achieve their goal of fair and just outcomes in criminal cases. The goal of ethical prosecutors is not to win convictions, but to make sure that justice is done. In the absence of...
sufficient defense resources, our adversarial system will suffer.

Just as disturbing, the criminal dockets in our federal courts will become chaotic and unmanageable as federal defenders are forced to withdraw from cases because they are unable to continue to represent their clients. This resource-driven chaos has already begun to appear in various federal district courts across the country, particularly in complex, resource-intensive cases. For example, the trial of Osama bin Laden's son-in-law in New York was recently delayed because his attorneys — federal defenders — were furloughed. These delays may hamper prosecutions, slow resolution of open cases, and cause some cases to be dismissed altogether if a defendant's right to speedy trial is violated. This could prove to be a threat not only to justice, but to public safety.

As it works to reach agreement on spending for next year, Congress must recognize that steep cuts to our nation's federal defenders are not just bad fiscal policy, but bad public policy. The House and Senate must work together to prevent sequestration and other budget cuts from crippling the federal defender system. If that system fails, the quality of justice our system is capable of delivering is degraded to levels that should be unacceptable to us all.

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