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*Affiliations listed for
identification purposes only*

April 29, 2016

The Honorable Ander Crenshaw
Chairman
Subcommittee on Financial Services and
General Government
Committee on Appropriations
H-305 The Capitol
Washington, D.C. 20515

The Honorable José Serrano
Ranking Member
Subcommittee on Financial Services and
General Government
Committee on Appropriations
1016 Longworth HOB
Washington, D.C. 20515

Re: Support of Congressional request for federal indigent defense funding

Dear Chairman Crenshaw and Ranking Member Serrano,

The Constitution Project (TCP) is writing in support of the attached appropriations request led by Representatives John Conyers, Sheila Jackson Lee, and Bobby Scott and signed by 17 Members for increased funding for FY2017 of \$25 million above the President's request and last year's enacted level for federal indigent defense. The additional funding would go toward vital hiring of social workers, information technology, and investigative support. Moreover, the funding would restore the authorized rate level for private attorneys appointed to federal criminal cases under the Criminal Justice Act ("CJA") when the federal defenders are unable to represent those clients due to conflict of interest.

As a former deputy federal public defender, I founded TCP in 1997 to bring together legal and policy experts from across the political spectrum to promote consensus-based solutions to pressing constitutional issues.ⁱ Our work includes reforming the nation's broken criminal justice system and strengthening access to justice. More specifically, TCP has been working for years to fully realize the Sixth Amendment right to counsel, through the reports and policy recommendations of our blue-ribbon National Right to Counsel Committee (Committee). Former Vice President Walter Mondale and former FBI Director and federal judge William S. Sessions serve as honorary Co-Chairs of the Committee, which comprises a politically diverse group of former judges, prosecutors, defenders, scholars, and others with firsthand experience in the system. We are determined to assist governments in realizing the promise of *Gideon v. Wainwright* that any person accused of crime, regardless of his or her ability to afford a lawyer, has the right to effective legal representation under the Sixth Amendment.

To ensure justice, our adversarial system requires that both sides—prosecution and defense—be represented by lawyers who have a sufficient amount of independence, resources, training, and time to devote to the case. Moreover, to ensure a level playing field for poor people accused of crimes, financial support of prosecution and defense must be substantially equal.ⁱⁱ The Supreme Court has stated that, "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."ⁱⁱⁱ

Yet year after year, funding for state and federal public defense services remains precarious. For example, in Fiscal Year 2017, the Office of Justice Programs has

requested \$4.2 billion; however, only 3.3 percent was reserved for indigent defense, which is aimed at *state* indigent defense services.^{iv} At the *federal* level, the 2013 sequestration resulted in deep cuts to the federal public defenders' budget and required significant layoffs, 15-20 day furloughs, and the complete elimination of defender training. That year, TCP and its partners quickly organized to prevent decimation of the federal defender system. The persistent, looming threat of budget cuts to indigent defense systems stands in stark contrast to the consistent allocation of resources and funding for the prosecution.

The effects of the 2013 sequester-related cuts continue to be felt by Federal Public and Community Defenders and court-appointed CJA attorneys nationwide. Attorneys are unable to hire dedicated social workers to ensure federal offenders receive substance abuse, mental health, housing, and employment support they need throughout their cases and during re-entry. They are also unable to invest in information technology and investigators, which provide greater efficiency and more parity and accountability between the prosecution and defense. Finally, CJA panel attorneys—who are appointed to federal cases when federal defenders cannot represent clients due to a conflict of interest—must have their rates restored to the authorized level, before the sequester-related cuts. Restoring the rate to the congressionally-authorized level ensures that experienced counsel remain on the CJA panel attorney list.

TCP's RTC Committee has highlighted its concerns with the dramatic funding disparity between prosecution and indigent defense.^v As Congress creates new or duplicative federal crimes, the need for federal defenders increases; at the same time, funding of indigent defense has failed both to keep pace with this increasing need for defense services, and to grow proportionally to prosecutorial and law enforcement appropriations and spending. Special funding—which incentivizes the use of innovative programming and state-of-the-art equipment—is almost entirely directed at state and local prosecutors' offices and law enforcement agencies.^{vi} Similarly, Congress allocates funding for federal prosecutors and new programming and equipment without a similar and equal allocation for federal defenders.


Moreover, the prosecution has access to the resources of multiple law enforcement agencies, crime labs, and special investigators.^{vii} In contrast, federal public defenders – who have an ethical responsibility to investigate their cases independently – have limited funding to support additional investigative and expert resources, or, as noted, are often denied access to these resources by the court. The ultimate cost is passed onto indigent defendants, who either go without such vital resources, or who must rely on inexperienced and inadequate assistance. The risks of unfair or wrongful convictions and sentences are great in such circumstances, and defendants, victims, and society as a whole suffers.

The right to effective assistance of counsel extends beyond simply the appointment of an attorney to an indigent defendant. To put forth an adequate defense, attorneys must have access to experts, investigators, and translators. The lack of resources has a tremendous consequence on our justice system; we know that representation of the accused by under-resourced, ill-equipped defense counsel is too often a contributing factor to wrongful convictions throughout the country.

By providing an additional \$25 million for federal indigent defense, you will help improve case outcomes and judicial fairness and efficiency, while also reducing risk of recidivism and saving money in the federal criminal justice system for the highest cost offenders. Our criminal justice system and our society demand no less.

Congress has repeatedly shown bipartisan support for criminal justice reform and ensuring due process and fairness in our justice system. Approving the attached funding request would help us meet these goals, and would save money in the long-term. Please do not hesitate to reach out to Madhu Grewal, Senior Counsel, with any questions ((202) 580-6939 or mgrewal@constitutionproject.org). Thank you for your consideration of this critical request.

Sincerely,



Virginia Sloan

ⁱ For a full list of TCP policy and issue committees, visit <http://www.constitutionproject.org/about-us/policy-and-issue-committees/>.

ⁱⁱ THE CONSTITUTION PROJECT NAT'L RIGHT TO COUNSEL COMM., JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 85 (2009) (hereinafter JUSTICE DENIED).

ⁱⁱⁱ *United States v. Cronin*, 466 U.S. 648, 657 (1984) (quoting *United States ex rel. Williams v. Twomey*, 510 F.2d 634, 640 (7th Cir. 1975).

^{iv} See OFFICE OF JUSTICE PROGRAMS, DOJ, FY 2017 BUDGET REQUEST AT A GLANCE, <https://www.justice.gov/jmd/file/822111/download> (showing that of the \$13.8 million set aside for indigent defense \$3 million is set aside for social science research through the National Institute of Justice, \$5.4 million is set aside for the "Answering Gideon's Call" initiative to fund and encourage states to change the culture of state and local courts as it relates to their indigent defense services, and \$5.4 million is reserved for the "Improving Juvenile Indigent Defense Program").

^v JUSTICE DENIED at 61–64.

^{vi} See *id.* at 61–62 (describing special funding as funding for particular programs such as domestic violence prosecution, highway safety, and drug enforcement programs).

^{vii} See *id.* at 61–62 (examining differences of in-kind resources of New Jersey, Texas, New York, Louisiana, Virginia, Missouri, Oklahoma, South Carolina, Tennessee, and Mississippi).

Congress of the United States
Washington, DC 20515

March 17, 2016

The Honorable Ander Crenshaw
Chairman
Subcommittee on Financial Services and General
Government
Committee on Appropriations
H-305 The Capitol
Washington, D.C. 20515

The Honorable José Serrano
Ranking Member
Subcommittee on Financial Services and General
Government
Committee on Appropriations
1016 Longworth HOB
Washington, D.C. 20515

Dear Chairman Crenshaw and Ranking Member Serrano,

We are writing to request increased funding for FY2017 of \$25 million above the President's request and last year's enacted level the President's request for federal indigent defense nationwide for the hiring of shared nationwide social worker, information technology and investigative support, and a restoration to the authorized rate level for private attorneys appointed to federal criminal cases under the Criminal Justice Act ("CJA") when the Defenders are unable to represent those clients due to conflict of interest. This increase will help improve case outcomes and judicial efficiency, while also reducing risk of recidivism and saving money.

As you know, appropriations for the entire Judiciary comprise approximately 0.2 percent of the total budget authority. The Defender Services account, one of five subaccounts within one of eight main judiciary accounts, funds the operations of the federal public defender and community defender organizations, and compensation, reimbursements, and expenses of private practice CJA panel attorneys appointed by federal courts to serve as defense counsel to indigent individuals. The cost of this account is driven primarily by the number and type of prosecutions brought by United States Attorneys—a variable that is beyond the control of the federal defender offices themselves.

Currently, Federal Public and Community Defenders and CJA panel attorneys lack the shared national funding and resources to hire dedicated social workers who can ensure that federal offenders receive the substance abuse, mental health, employment, and housing support they require during the pendency of their cases and during re-entry. Providing these resources on the front-end serves several goals. First, it reduces the likelihood that these offenders will violate their pre-trial release, bond, probation, and/or supervised release, thus reducing the cost of prosecution and associated incarceration in our federal system. Second, investing in social workers ensures that offenders receive the services they need and obtain, or maintain, employment and housing, which reduces crime and saves money. Given that the size and budget of the federal correctional system has increased exponentially, it is painfully evident that every dollar spent on corrections is one that cannot be spent on national security, crime prevention, victims' services, and other public safety initiatives.

Similarly, investing in nationwide information technology and investigators to be shared by Federal Public and Community Defenders and the court-appointed CJA private attorneys will lead to greater accountability, transparency, and judicial efficiency as it will ensure that more federal criminal cases are disposed of by plea or dismissal early on, thereby reducing the number of cases that go to trial—a time-intensive and costly burden on the federal judiciary and the community. This will also result in greater parity and accountability, given the current information imbalance between defendants and prosecutors, which undermines our founding fathers' intention of a robust adversarial system.

Finally, restoring the hourly rate to its authorized levels for private CJA court-appointed attorneys in cases in which the Federal and Community Defenders are barred due to conflict of interest (e.g. due to their representation of the co-defendant) improves judicial efficiency and Constitutional adequacy of representation by ensuring that experienced counsel remain on the CJA panel attorney list.

Congress has repeatedly shown bipartisan support for funding programs to address crime prevention, intervention, reentry, and accountability; funding for social workers and investigators as part of our system of federal public defense, and ensuring adequate pay for CJA counsel would go far towards meeting these goals, while saving money in the long-term. We urge you to provide this much-needed funding and help improve outcomes all around.

Sincerely,



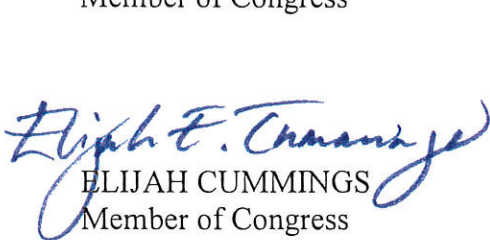
JOHN CONYERS, JR.
Member of Congress



ROBERT C. "BOBBY" SCOTT
Member of Congress



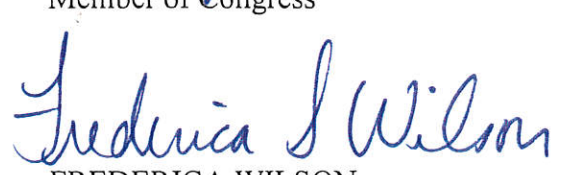
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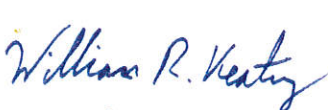
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