

United States Senate

WASHINGTON, DC 20510

October 6, 2023

The Honorable Patty Murray
Chair
Senate Appropriations Committee
Washington, D.C. 20510

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

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

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

Dear Chair Murray, Vice Chair Collins, Chair Van Hollen, and Ranking Member Hagerty:

Federal Public and Community Defenders are fundamental to the function of federal courts across the country. To preserve the operation of our justice system, we urge you to pass funding for Defender Services that is *at a minimum* \$108 million higher than the House mark and \$136 million more than the Senate mark in the Financial Services and General Government (FSGG) appropriations bill for Fiscal Year (FY) 2024. This funding level of \$1.519 billion is necessary to simply maintain current operations by the Federal Defenders and would still result in the program foregoing necessary training and information technology (IT) improvements. Congress should also consider FY24 funding for Defender Services at a level that avoids even these non-personnel cost-cutting measures.

Notably, both the Senate and House FSGG bills, as currently proposed, rely on the FY23 enacted funding level for Defender Services. This enacted level, however, does not consider that Defender Services had a significant and unusual carryforward of \$110 million from FY22, a result of unobligated funds from COVID-19 related closures during that period of time. These funds were properly reported to Congress and carried into the following year; this resulted in a reduction in the Federal Defenders' FY23 appropriation. Any funding legislation Congress passes for FY24 should adequately compensate for this carryforward and address inflationary cost pressures to avoid cuts to personnel and non-personnel functions.

Without addressing this gap in funding, Federal Defenders have estimated that funding at the current House or Senate marks would, conservatively, result in a 9-12% reduction in their current workforce. Federal Defenders are already approximately 100 full-time equivalent (FTE) positions below FY23 authorized staffing and approximately 400 FTEs below the level recommended by the Administrative Office of the U.S. Courts' most recent work management study. An overwhelming majority of the Federal Defender budget is dedicated to personnel and

space. Cuts to federal funding will directly impact employees, leading to a reduction in the number of paralegals, investigators, and attorneys.


Nearly 9 in 10 individuals charged with a federal crime cannot afford legal representation and thus are constitutionally entitled to appointed counsel. Preserving the public defender workforce is essential to our justice system. Because the Constitution requires the court to appoint counsel for individuals who cannot afford a lawyer, if there are fewer public defenders available, the court must refer more cases to private attorneys on the Criminal Justice Act panel. Although panel attorneys are dedicated to the public defense function, sending excess cases to the panel often incurs higher costs.

Consequently, decreasing the Federal Defender budget may in fact increase costs on the federal judiciary, paradoxically costing the federal government more. Furthermore, panel attorneys are overwhelmingly small business owners—solo practitioners and small-firm attorneys—who cannot afford the potential deferment in Criminal Justice Act payments that Defender Services may be forced to implement under the current FY24 appropriations marks.

Instead, Congress should follow through on its Constitutional responsibility to adequately fund federal public defense. We urge you to provide adequate funding for Defender Services in both chambers' FSGG legislation or through supplemental appropriations legislation Congress may consider. Correcting the potential shortfall by providing at least \$108 million more than the House bill and \$136 million more than the Senate bill to Defender Services will, at a bare minimum, maintain the right to counsel in federal court and continue the bipartisan support this program has historically received.

Thank you for the strong support Federal Defenders have received in the past. We appreciate your attention to this matter and look forward to working together to safeguard our Federal Defenders' resources.

Sincerely,



Peter Welch
United States Senator



Jon Ossoff
United States Senator



Cory A. Booker
United States Senator



Richard J. Durbin
United States Senator



Mazie K. Hirono
United States Senator



Richard Blumenthal
United States Senator



Michael F. Bennet
United States Senator



Tina Smith
United States Senator



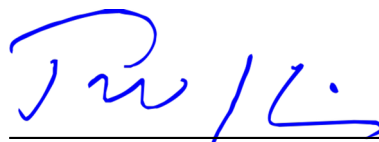
Alex Padilla
United States Senator



Raphael Warnock
United States Senator



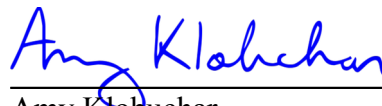
Sheldon Whitehouse
United States Senator



Tim Kaine
United States Senator



Christopher A. Coons
United States Senator



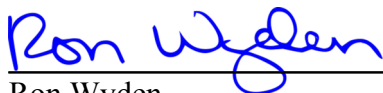
Amy Klobuchar
United States Senator



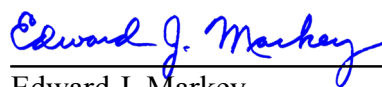
Bernard Sanders
United States Senator



Tammy Baldwin
United States Senator



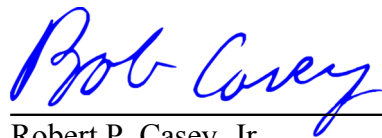
Ron Wyden
United States Senator



Edward J. Markey
United States Senator



Benjamin L. Cardin
United States Senator



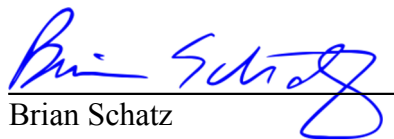
Robert P. Casey, Jr.
United States Senator



Tammy Duckworth
United States Senator



Elizabeth Warren
United States Senator


Brian Schatz
United States Senator