



May 7, 2020

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jim Jordan  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

### **Re: Public Defenders' Response to Coronavirus**

Responding to the public health emergency and ensuring the safety of the American people is rightly the primary focus of the federal government at this moment. We write to highlight the urgent need to protect the population that is among those at greatest risk from the pandemic: individuals who are or have been inside prisons and jails – as well as the communities to which they return. We also write to request that Congress provide funding for state and local public defense providers, who are the only system actors whose primary responsibility is the protection of the rights of low-income people in the criminal justice system.

As of April 29, almost 15,000 coronavirus cases had been reported inside prisons and jails, and the rate of infection inside facilities appears to be increasing. More than 200 prisoners had already died from COVID-19. Social distancing in these settings can be impossible and people routinely lack access to basic hygiene products, as well as personal protective equipment. The most effective way to protect the health and safety of incarcerated individuals and facility staff is to reduce the prison and jail populations through release and by limiting new admissions. Legal advocacy provided by defense counsel can achieve both of these objectives.

Approximately four in every five criminal defendants cannot afford to pay for a lawyer. Providing constitutionally mandated representation thus falls to the nation's public defense providers. During the current crisis this network of institutional defenders, solo practitioners, small firms, their support staff and social workers have helped secure bail reductions for those in pretrial detention, revised sentences and furloughs for high risk jail and prison inmates serving sentences, and negotiated pleas and case resolutions, and developed safe release plans for countless others. Their efforts to meaningfully reduce detention populations help protect the health and wellbeing of correctional staff and our communities, including communities of color who have been disproportionately affected by the pandemic.

As the country continues to experience the immediate effects of the novel coronavirus, defenders continue to be called upon to provide representation to those accused of criminal offenses, working to find new ways to ensure zealous and effective advocacy. Out-dated equipment and insufficient technology infrastructure pose challenges for defenders attempting to participate in

virtual court proceedings, while a lack of funds inhibits the ability to retrofit offices or purchase needed personal protective equipment to ensure the health and safety of attorneys and their staff.

And as the country starts to move forward, the consequences of these protective measures are creating quickly growing cracks in the American public defense system. Existing inequities in public defense funding, resources and staffing will leave defender systems struggling to manage the staffing needs of the growing backlog of cases. Moreover, pressures on state and local government budgets caused by increased expenses and lost revenues, will have a ripple effect decimating already strapped public defense budgets. This will all occur under the anticipated weight of increased caseloads as more and more Americans are unemployed, and thus will be turning to the public defense system for representation.

We respectfully request that Congress prevent the deepening of the health crisis in our prisons and jails by providing sufficient funding for personnel, equipment and related resources necessary to respond to the coronavirus in a manner that will enable public defense systems to protect the health and safety of their clients and communities while continuing to uphold the Sixth Amendment.

Sincerely,

**American Council of Chief Defenders**

**Gideon's Promise**

**National Association for Public Defense**

**National Association of Criminal Defense Lawyers**

**National Legal Aid & Defender Association**