

August 13, 2013

Distribution List:

We write to you as Chief Judges of 87 federal district courts to express our grave concern over the impact the flat funding of the last few years, followed by sequestration, is having on the Judiciary's ability to carry out its constitutional and statutory responsibilities. As the boots on the ground in our nation's federal trial courts, we have experienced firsthand the effect of those constraints and funding reductions. They have forced us to slash our operations to the bone, and we believe that our constitutional duties, public safety, and the quality of the justice system will be profoundly compromised by any further cuts.

Under Article III of the Constitution, the Federal Judiciary is responsible for fairly and effectively adjudicating many of the most significant criminal and civil controversies of our times. Over the years, with the support of Congress, the Judiciary has been able to forge and maintain one of the most respected justice systems in the world.

Flat funding followed by the sequestration cuts that took effect March 1, 2013, have had a devastating impact on court operations nationwide. Final enacted appropriations for fiscal year 2013 were reduced nearly \$350 million for the Judiciary. Emergency measures were implemented throughout the federal court system to address the drastically reduced funding levels, but the federal courts do not have the flexibility to absorb such a large cut on top of previous flat funding. These emergency actions represented a conscientious effort by the Judiciary to mitigate the adverse impact of sequestration on court operations in an attempt to ensure continued access to justice for the citizens of this country. However, the cuts have created an unprecedented financial crisis that is adversely affecting all facets of court operations.

As a result of sequestration, funding allocations sent out to court units were cut 10 percent below the fiscal year 2012 level. Clerks of court and probation and pretrial services offices will downsize by as many as 1,000 staff during fiscal year 2013 due to this reduction in funding. Staffing in these same offices has been reduced by nearly 2,100 staff between July 2011 and July 2013, representing a 10 percent staffing loss to the Judiciary over this two-year period. Our current staffing level is the lowest it has been since 1999 despite significant workload growth during this same period of time. In addition to downsizing, the courts have already incurred 4,500 furlough days as of June 2013, and an additional 4,100 furlough days are projected by the end of the fiscal year. These staffing losses are resulting in slower processing of civil and bankruptcy cases which impacts individuals and businesses seeking to resolve disputes in the federal courts. For example, in the bankruptcy court in New York, venue for many mega-cases involving thousands of jobs and companies with a vast impact on commerce and finance, staffing losses require that court proceedings end at 5:00 p.m. instead of continuing to conclusion as they have in the past – often late into the night.

Funding cuts to the Judiciary have also put public safety at risk. The Judiciary employs nearly 6,000 law enforcement officers—probation and pretrial services officers—to supervise individuals in the community after they have been convicted of a crime and subsequently released from prison, as well as defendants awaiting trial. The number of convicted offenders

under the supervision of federal probation officers hit a record 187,311 in 2012 and is on pace to reach 191,000 by 2014. At a time when the workload in our probation and pretrial offices continues to grow, budget cuts have reduced funding allocations to these offices by 10 percent. Staffing in probation and pretrial services offices is down nearly 600 (7 percent) since 2011. These offices are tasked with ensuring public safety by monitoring criminal defendants through, among other things, in-person meetings, drug testing, drug, mental health and sex offender treatment, and GPS-tracking. Additionally, probation offices facilitate the safe re-integration of these defendants into the community by performing premises searches for items such as illegal weapons, illegal drugs, and child pornography. Cuts to officer staffing levels have forced cutbacks in these activities to crisis levels, meaning less deterrence, detection, and response to possible criminal activity by federal defendants in the community and more illegal weapons, drugs, and other contraband left in the community. Particularly troublesome is the 20 percent cut that had to be made to the law enforcement allotments that fund drug, mental health, and sex offender treatment and testing services for offenders, searches, and electronic and GPS monitoring.

Security at courthouses has suffered as well. Sequestration resulted in a 30 percent cut in funding for court security systems and equipment, and court security officers are being required to work reduced hours, creating security vulnerabilities throughout the federal court system. Further cuts threaten the ability of the Judiciary to maintain needed security at courthouses, including those where terrorism and other sensitive cases are resolved. Also as a result of budget cuts, we fear we will run short of funding for grand and petit jurors and have to make additional cuts elsewhere or risk delaying indictments and civil jury trials.

But the most significant impact of budget cuts and sequestration thus far has been the reduction in funding for Defender Services. These organizations, which have always run on modest budgets while providing high quality legal services, fulfill the mandate of the Sixth Amendment and the Criminal Justice Act for the appointment of counsel for criminal defendants who lack the financial resources to hire an attorney. Because we must provide counsel for indigent defendants, the only options for absorbing the more than \$50 million cut to the Defender Services account are reducing federal defender organization (FDO) staffing levels (through layoffs or furloughs) and/or deferring or reducing payments to private panel attorneys. Reducing FDO staff (who work on salary) results in appointments being shifted to CJA panel attorneys (who charge hourly), thus increasing costs rather than reducing them and deferring more panel attorney payments into the next fiscal year. This is an untenable approach, both because it increases costs overall and because adding to appropriations requirements in the coming fiscal year compounds the shortfall of funding in the overall account.

The emergency measures taken by the Judiciary as a result of sequestration will require a suspension of payments to private panel attorneys for the last three weeks of the fiscal year, while the FDOs are making staff reductions and furloughing employees for an average of 15 days over the last half of the fiscal year. Between October 2012 and June 2013, FDOs downsized by about 160 staff, representing a 6 percent decline. Since March 2013, their remaining employees were furloughed for over 12,500 furlough days. We can already see the impact of FDO staffing reductions in our courts. The federal defender office in New York recently asked to postpone the trial of alleged terrorist Sulaiman Abu Ghaith, Osama bin Laden's

son-in-law, because of staff cutbacks. Our courts in the District of New Mexico, the Western District of Texas, and the Western District of New York have stopped scheduling criminal matters on alternating Fridays because of FDO staffing shortages.

Exacerbating the problem in the defenders account is the fact that the Judiciary has no control over the number and nature of cases in which court-appointed counsel must provide a defense. The caseload is driven entirely by the prosecutorial policies of the Department of Justice and its 93 United States Attorneys. The Department of Justice is not furloughing staff. The pace at which criminal cases require court-appointed counsel has continued unabated, while resources in the Defender Services program are diminishing. As chief district judges, we are deeply concerned that the cuts in federal defender offices will severely undermine and weaken a program that has taken years to build. Meanwhile, deferrals of panel attorney payments could jeopardize the Judiciary's ability to convince well-qualified counsel to accept panel appointments.

Reductions in court budgets reduce the overall volume of work that the Judiciary is able to perform and communicate timely to the public in a variety of ways, again undermining our core constitutional responsibilities. Reductions in the hours and number of administrative and judicial staff reduce our output. Our inability to maintain our information technology infrastructure both reduces our output and delays the communication of that output to the public. This undermines the public confidence in our system as litigants wait longer for relief. When cases lag, the Judiciary is seen as inefficient, or worse, unsympathetic to litigants ranging from pro se litigants (who represent themselves) to individuals and companies seeking bankruptcy relief or the resolution of civil disputes to the government and defendants in criminal cases.

We commend the House and Senate Appropriations Committees for their attention to our concerns, both in the past and at present. The Senate Appropriations Committee recently approved S. 1371, which would provide the Judiciary with a \$496 million increase in funding for FY 2014. This is roughly 7 percent more than the FY 2013 post-sequestration funding that the Judiciary received, and it is sufficient to fund fully the Judiciary's FY 2014 re-estimated budget request. The House Appropriations Committee recently approved H.R. 2786, which would provide the Judiciary with a \$363 million increase in funding for FY 2014, representing a roughly 5 percent increase over the FY 2013 post-sequestration funding received by the Judiciary. Increases in funding of this nature are absolutely essential to our ability to fulfill our constitutional mandate and to ameliorate the concerns we have expressed above. We commend those in Congress who understand our needs as well as our dedication to being good stewards of taxpayer funds. Still, we remain deeply concerned about the effects on our mission in the event a Continuing Resolution (CR) is enacted for the full year. A second year under sequestration will have a devastating, and long lasting, impact on the administration of justice in this country. We urge you to include an anomaly for the Judiciary, at the Senate bill level, if it appears we will be operating under a full-year CR.

The work of the Federal Judiciary derives from functions assigned to us by the United States Constitution and the statutes enacted by Congress. We do not have projects or programs to cut; we only have people. We must adjudicate all civil and criminal cases that are filed with the courts, we must protect the community by supervising defendants awaiting trial and criminals

on post-conviction release, we must provide qualified defense counsel for defendants who cannot afford representation, we must pay jurors for costs associated with performing their civic duty, and we must ensure the safety and security of judges, court staff, litigants, and the public in federal court facilities. Our workload does not diminish because of budget shortfalls. Deep funding cuts simply mean that the Judiciary cannot adequately perform its responsibilities.

In closing, we understand that the economic climate across the nation is difficult, and we appreciate Congress's consideration. In response to reductions resulting from sequestration, we have cut as much as possible while striving to uphold our core mission. Another round of cuts would be devastating. As the folks on the front lines, interacting with and serving the public on a daily basis, we conclude by emphasizing that any further cuts to the Judiciary would directly affect our ability to carry out our constitutional and statutory duties. We look to the Congress to recognize the uncontrollable nature of our workload and to provide the resources necessary for the Judiciary to perform its essential functions.

Thank you for your consideration.