

NO. _____
AM. _____
COPY
JUN 17 2015

Jason D. Williamson
**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**
jwilliamson@aclu.org
125 Broad Street
New York, New York 10004
(212) 284-7340
(212) 549-2654 (fax)
Pro hac vice application pending

Richard Eppink
**AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION**
reppink@acluidaho.org
P.O. Box 1897
Boise, Idaho 83701
(208) 344-9750, ext. 1202
(208) 344-7201 (fax)
Idaho State Bar no. 7503

Attorneys for Plaintiffs

Andrew C. Lillie
HOGAN LOVELLS US LLP
andrew.lillie@hoganlovells.com
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202
303-899-7300
303-899-7333 (fax)

Kathryn M. Ali
HOGAN LOVELLS US LLP
kathryn.ali@hoganlovells.com
555 Thirteenth Street NW
Washington, D.C. 20004
(202) 637-5600
(202) 637-5910 (fax)

Bret H. Ladine
HOGAN LOVELLS US LLP
bret.ladine@hoganlovells.com
3 Embarcadero Center #1500
San Francisco, CA 94111
(415) 374-2300
(415) 374-2499 (fax)

Jenny Q. Shen
HOGAN LOVELLS US LLP
jenny.shen@hoganlovells.com
4085 Campbell Ave., Suite 100
Menlo Park, CA 94025
650-463-4000
650-463-4199 (fax)
Pro hac vice applications pending

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TRACY TUCKER, JASON SHARP, NAOMI
MORLEY, and JEREMY PAYNE, on behalf
of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF IDAHO; C.L. "BUTCH" OTTER,
in his official capacity as Governor of Idaho;

CV OC 1510240

Case No. _____

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

HON. MOLLY HUSKEY, in her official capacity as a member of the Idaho State Public Defense Commission; DARRELL G. BOLZ, in his official capacity as a member of the Idaho State Public Defense Commission; SARA B. THOMAS, in her official capacity as a member of the Idaho State Public Defense Commission; WILLIAM H. WELLMAN, in his official capacity as a member of the Idaho State Public Defense Commission; KIMBER RICKS, in his official capacity as a member of the Idaho State Public Defense Commission; SEN. CHUCK WINDER, in his official capacity as a member of the Idaho State Public Defense Commission; and REP. CHRISTY PERRY, in her official capacity as a member of the Idaho State Public Defense Commission,

Defendants.

INTRODUCTION

1. More than five years ago, the State of Idaho asked the National Legal Aid and Defender Association (“NLADA”) for a report on its public-defense system. That report found, unequivocally, that “none of the public defender systems in the sample counties are constitutionally adequate.” Specifically, the report identified a number of specific areas of concern with respect to trial-level indigent-defense delivery in Idaho. These include the widespread use of fixed-fee contracts; extraordinarily high attorney caseloads and workloads; lack of consistent, effective, and confidential communication with indigent clients; inadequate, and often nonexistent, investigation of cases; lack of structural safeguards to protect the independence of defenders; lack of adequate representation of children in juvenile and criminal court; lack of sufficient supervision; lack of performance-based standards; lack of ongoing training and professional development; and lack of any meaningful funding from the State.

2. Five years later, the State has failed to fix this unconstitutional system. The Governor's Commission passed the buck by recommending that the Legislature create a special study committee. That legislative committee then passed the buck by establishing yet another commission to make recommendations to the legislature. In January 2015, the Governor acknowledged in his State of the State address that "the courts have made it clear that our current method of providing legal counsel for indigent criminal defendants does not pass constitutional muster." Astoundingly, the State failed yet again in the recently concluded 2015 legislative session to fund or improve its public-defense system. Because the executive and legislative branches refuse to take the necessary actions to fix Idaho's public-defense system, it falls on this Court to ensure that "[c]onstitutional rights, as well as this Court's duty to faithfully interpret our constitution and the federal constitution, do not wane before united efforts of the legislature and the governor."¹

3. Plaintiffs Tracy Tucker, Jason Sharp, Naomi Morley, and Jeremy Payne bring this civil-rights class-action lawsuit pursuant to 42 U.S.C. § 1983 on behalf of themselves and all those similarly situated. They seek declaratory and injunctive relief for defendants haled before state courts throughout Idaho from the ongoing injuries and harm caused by the continuing failure of Defendants (the "State") to provide effective legal representation to indigent criminal defendants across the State of Idaho, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, of Article 1, Section 13, of the Idaho Constitution, and Idaho statutes and regulations.

[REDACTED]

[REDACTED]

¹ *Miles v. Idaho Power Co.*, 116 Idaho 635, 640 (1989).

[REDACTED]

8. Sadly, the circumstances surrounding the named Plaintiffs' representations are not unique to them. Rather, they exemplify the experiences of thousands of indigent defendants across the State, who have been denied their right to effective counsel as a result of the State's failure to provide the necessary resources, robust oversight, and specialized training required to ensure that all public defenders can handle all of their cases effectively and in compliance with state and federal law.

9. Despite amendments to Idaho's public-defender statutes that were passed in 2014 through a bill enacted as the "Idaho Public Defense Act," the current, patchwork public-defense arrangement in Idaho remains riddled with constitutional deficiencies and fails, at all stages of the prosecution and adjudication processes, to ensure adequate representation for indigent

defendants in both criminal and juvenile proceedings in Idaho. Although the State has been keenly aware of this failure to provide for the basic rights of indigent criminal defendants for years, without a guiding state-wide scheme, the majority of Idaho counties have failed to implement standards and requirements that satisfy either statutory or constitutional mandates. This has created a flawed system that forces many inexperienced and inadequately trained attorneys to juggle too many cases without enough resources. The result is constitutionally deficient representation of indigent defendants across the state.

10. Certainly, if public-defense attorneys in Idaho had their way, they would be well equipped with the resources and training necessary to do their jobs effectively at all stages of the proceedings against their clients. But, due to the State's pervasive and persistent constitutional and statutory failures—including, but not limited to, the State's failure to provide adequate funding or relevant state-wide directives—public defenders are not able to provide the zealous representation constitutionally required of them in all of their cases.

11. Indigent defendants in most Idaho counties, including the named Plaintiffs, are not represented by counsel at their initial appearances, during which a number of critical events often occur, including bail determinations, setting of pretrial release conditions, waivers of rights, entry of pleas, sentencing, and off-the-record discussions between the prosecutor and the defendant—and sometimes the presiding judge—regarding the defendant's case.

12. Because public defenders in most instances do not have the staff or resources to be present at initial appearances, indigent defendants are most often left to fend for themselves during these critical proceedings, without the assistance of counsel. Counsel at this stage is especially important to, among other things, presenting reasoned legal arguments to reduce bail (including, but not limited to, arguments related to the strength of the State's case, as well as the

defendant's income, ability to pay, and ties to the community), advising their clients about how to plead, and negotiating with prosecutors regarding potential plea agreements and pretrial-release terms. Further, the absence of counsel at initial appearances causes or contributes to the unnecessary detention of indigent defendants—sometimes for extended periods of time—who may otherwise have been released while they await resolution of their cases; limited ability of indigent defendants to interact with their lawyers, provide and review case materials, and assist in the evaluation of their cases and preparation of their defenses; significant impact to indigent defendants' work and family lives; insincere, uninformed, or uneducated pleas entered, partly or entirely, in order to obtain immediate release; and other adverse impacts, many times with lifelong consequences.

13. Even after counsel has been appointed, indigent defendants in many counties, including defendants not in custody, lack sufficient access to the public defenders assigned to their cases. For example, defendants frequently do not have the opportunity to meet with their public defenders for purposes of receiving and reviewing the discovery materials related to their cases. Under such conditions, it is nearly impossible for defendants to assist in their own defenses or to understand and remain abreast of developments in their own cases.

14. Moreover, in many Idaho counties, there are disincentives for public defenders to engage experts or investigators because such costs may not be covered by public-defender contracts. Accordingly, public defenders routinely forgo the use of investigators and experts to carry out basic tasks, such as identifying and interviewing witnesses, and reviewing and analyzing evidence. In most instances, defense counsel must request additional resources from the court to hire an investigator or an expert, and, upon information and belief, such requests are rarely made,

in part because some public defenders believe that the available resources are so limited that the requests should be reserved only for extraordinary situations.

15. These disincentives are caused, in large part, by the fixed-fee contract structure used in a number of Idaho counties, under which contracting attorneys are paid a flat fee in exchange for their representation of indigent defendants, irrespective of the number of clients the attorney may be assigned during the term of the contract, or the nature of those clients' criminal charges. A recent county-by-county survey revealed that at least 19 Idaho counties continue to use a fixed-fee contract system to secure legal representation for indigent defendants, even though the Idaho Code expressly prohibits it. Such a system creates significant conflicts of interest by creating powerful incentives for the contracting attorney to spend as little time and money as possible on any given case—to the obvious detriment of indigent clients.

16. In addition, public-defender caseloads in counties across the state are significantly higher than the national standards, making it difficult, if not impossible, for attorneys to provide their clients with the zealous representation to which they are entitled. According to a December 2014 analysis conducted by Idaho's Legislative Services Office ("LSO"), in at least six Idaho counties, individual public defenders are responsible for handling more than twice the work that one attorney should ever take on. Individual public defenders in an additional 19 Idaho counties are responsible for handling the work of more than one attorney (but fewer than two).²

17. On information and belief, the current caseloads carried by public defenders in most Idaho counties are only slightly better, if not worse, than those highlighted in the National Legal Aid and Defender Association 2010 report ("NLADA Report") on Idaho's public-defense system. For instance, in Kootenai County, identified in the NLADA Report as one of the few

² Idaho Legislative Services Office - Report on 2013 Caseloads, *available at* <http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028 Iso.pdf>.

bright spots with respect to public-defense services in Idaho, public defenders continue to work under crushing caseloads. In 2014, four of the office's 15 attorneys handled well over 400 cases each, the bulk of which were felonies and misdemeanors. Another four defenders handled over 300 cases in 2014, including a mixture of felonies, misdemeanors, juvenile cases, and other proceedings for which the Public Defender's Office is responsible. Such caseloads are well above national standards and impossible for one person to handle effectively.

18. The issues associated with the overwhelming caseloads of Idaho public defenders are made worse by the fact that at least 26 Idaho counties permit contract public defenders to maintain a private practice, often without tracking the number of private cases being handled by the contracting attorney at any given time. Most of those counties (22 of them) also rely on fixed-fee contracts. This creates an even greater economic incentive for public defenders to deprioritize their indigent clients in favor of their paying clients.

19. Further, many Idaho counties do not have the resources or expertise to provide the kind of specialized training or supervision to ensure that representation of indigent defendants is consistent with the State's constitutional mandates. According to a recent state-wide assessment by the Idaho State Public Defense Commission ("PDC"), "a significant number of indigent defense attorneys in the State are not receiving adequate training hours in areas directly relevant to the representation of their indigent clients."³

20. These deficiencies are further exacerbated by the lack of true independence afforded to public defenders across the state. Under the current supervisory structure, public defenders report to their respective county commissioners, many of whom are not attorneys or are otherwise unqualified to oversee a legal practice—let alone one requiring specialized knowledge

³ Idaho State Public Defense Commission, 2015 Report to the Legislature, 9.

of criminal law. For example, in Bonner County, the commissioners hold degrees in History/Business Systems Management, Aeronautics, and Education, respectively. None has any formal legal training or practice experience. The same is true in Bingham County, where it appears that only two of the three commissioners attended college, and none has a background in the law. Yet in some counties, commissioners have extensive authority related to criminal-law matters, including the authority to approve or reject requests for additional resources, and to terminate or choose not to renew the public defender's contract, leaving the defenders beholden to the often-uninformed whims of their supervisors.

21. All of these deficiencies have combined to create a constitutional crisis with respect to indigent defense delivery in Idaho—a crisis that federal and state law require the State to address in a meaningful, expedient, and substantive way.

BACKGROUND

22. The State of Idaho has a long history of recognizing the right to counsel for those criminal defendants who are unable to afford an attorney. As early as 1864, Idaho law required that a defendant “be informed by the court that it is his right to have counsel before being arraigned,” and that he “be asked if he desires the aid of counsel.”⁴

23. In 1887, the Idaho legislature went a step further, passing a law requiring trial courts to advise defendants of the right to counsel during arraignments on criminal charges, and to appoint counsel if the defendant requested an attorney but was unable to afford one.⁵

⁴ Cr. Prac. 1864 § 267.

⁵ See R.S., R.C., & C.L. § 7721 (1887); I.C. § 19-1512 (1967).

35. The NLADA Report further asserts that, in direct contravention of the *Ten Principles*, the State has failed to ensure adequate training and supervision for public defenders, making it nearly impossible to assess whether public defenders are meeting the standards established by *Gideon* and its progeny.¹⁸

36. The State has foisted this essential function on each of its 44 counties without providing any monetary or supervisory support to the counties for trial-level public defense, aside from the limited funds allocated by the Public Defense Commission in 2014 to create additional, non-mandatory training opportunities for individual defenders who choose to take advantage of them. As the NLADA found, “[b]y delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency of the services rendered.”¹⁹ The 2014 amendments to the public-defense statutes failed to remedy this deficiency.

37. The NLADA identified a number of specific areas of concern with respect to trial-level indigent-defense services delivery in Idaho, many of which are still of concern today. These include the widespread use of fixed-fee contracts; extraordinarily high attorney caseloads and workloads; inadequate, and often nonexistent, investigation of cases; lack of structural safeguards to protect the independence of defenders; lack of adequate representation of children in juvenile and criminal court; lack of sufficient supervision; lack of performance-based

¹⁸ *Id.* at 67–73.

¹⁹ *Id.* at 2.

standards; lack of ongoing training and professional development; and lack of any meaningful funding from the State.²⁰

Recent Amendments to Idaho's Public-Defense Statutes

38. In March 2014, despite several years of research and study by the Idaho Criminal Justice Commission and a legislative study committee, and in recognition of the need for reform, Idaho enacted only meager amendments to its public-defense statutes, found mainly at sections 19-848 through 19-866 of the Idaho Code.

39. The 2014 amendments (1) establish a public-defense commission, along with its powers and duties;²¹ (2) clarify the duties of law-enforcement officers and/or the courts to notify criminal defendants of their right to counsel;²² (3) identify the various methods by which counties are permitted to provide indigent-defense services;²³ and (4) encourage parity in compensation between public defenders and county prosecutors.²⁴

40. Under the amended statutes, counties may provide indigent-defense services by either (1) establishing and maintaining an office of public defender; (2) joining with the board of county commissioners of one or more counties within the same judicial district to establish and maintain a joint office of public defender; (3) contracting with an existing office of public defender; or (4) contracting with a defending attorney, provided that the terms of the contract do not include any

²⁰ *Id.* at iii-viii; 3–9.

²¹ I.C. §§ 19-849 (2014) and 19-850 (2014).

²² I.C. § 19-853 (2014).

²³ I.C. § 19-859 (2014).

²⁴ I.C. § 19-860 (2014).

pricing structures that charge or pay a single fixed fee for the services and expenses of the attorney.²⁵

41. Of Idaho's 44 counties, seven have established an office of public defender,²⁶ while just two have partnered to form a joint office of public defender.²⁷ One county neither maintains a public-defender office nor a contract for the provision of indigent-defense services, choosing instead to have the court appoint attorneys on an ad hoc basis, even though the 2014 amendments eliminated such a system from the list of acceptable options.²⁸ The remaining 34 counties provide indigent-defense services pursuant to a contractual agreement with a defending attorney or law firm, 19 of which operate under fixed-fee contracts.²⁹

42. Under the amended statutes, a county must “annually appropriate enough money to administer the program of representation that it has elected under section 19-859, Idaho Code[.]” but the State is still not required to contribute any funding toward the provision of trial-level indigent-defense services.³⁰

43. The PDC, established in 2014, is responsible for promulgating rules related to training and data-reporting requirements for defense attorneys across the state.³¹

²⁵ See I.C. § 19-859 (1)–(4).

²⁶ These are Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai, and Twin Falls Counties.

²⁷ These are Minidoka and Cassia Counties.

²⁸ This is Washington County.

²⁹ See Idaho State Public Defense Commission, 2015 Report to the Legislature, 5–7.

³⁰ I.C. § 19-862(1) (2014).

³¹ I.C. § 19-850(1)(b).

44. The PDC is further responsible for making recommendations to the Idaho legislature, including an initial round of recommendations that was due by January 20, 2015, regarding a number of issues, including core requirements for indigent-defense contracts, qualifications and experience standards for defending attorneys, enforcement mechanisms, and funding.³² Yet, as of the date of this Complaint, the PDC has failed to make any such recommendations.

45. Despite the State's acknowledgement that significant reform is necessary in this arena—by, among other things, the creation of various virtually powerless committees, including the establishment in 2010 of a public-defense subcommittee of the Criminal Justice Commission, the establishment in 2013 of a special committee of the legislature to recommend legislative reforms to the public-defense system, and the 2014 statutory amendments and formation of the PDC—the State has done little to meaningfully address the myriad problems plaguing Idaho's indigent-defense system.

46. Critically, the State still does not provide any funding or supervision to any of the counties with respect to the delivery of indigent-defense services at the trial level.

47. Each county is still currently responsible for providing indigent-defense services to all criminal defendants within the county who are charged with misdemeanor or felony offenses and who are unable to afford an attorney. Yet, counties must do so without any meaningful funding, oversight, or training from the State.

48. Despite the PDC's responsibility to promulgate rules related to training and data-reporting requirements for defense attorneys across the state, no such rules have been promulgated to date.

³² *Id.*

49. Despite the PDC's responsibility to make recommendations to the Idaho legislature regarding the core requirements for indigent-defense contracts, qualifications, and experience standards for defense attorneys, enforcement mechanisms, and funding, no such recommendations have been made to date.

50. Moreover, even if the PDC had promulgated certain rules or made specific recommendations, it has no authority to reprimand or sanction counties or individuals that do not abide by such rules or recommendations.

51. For instance, upon information and belief, at least 19 of the 34 Idaho counties that use a contract system currently operate under a fixed-fee pricing structure, despite express statutory prohibition against such contracts.

Defendants' Ongoing Failure to Provide Indigent Defendants with Constitutionally Adequate Legal Representation

52. In addition to the State's failure to meet the minimal requirements of the public-defense statutes, it has also failed to sufficiently address the many state and federal constitutional issues identified in the NLADA Report.

53. According to a recent study conducted by the Pre-Trial Justice subcommittee of the Criminal Justice Commission, **only five of Idaho's 44 counties provide counsel to indigent defendants at their initial appearance before a judicial officer, in violation of Idaho law.** Only one of the named Plaintiffs had counsel present at her initial appearance—and that counsel ultimately had a conflict of interest preventing counsel from representing her.

54. As a result of the State's failure to create and enforce a constitutionally consistent scheme that ensures representation for indigent defendants at initial appearances, many defendants, including the named Plaintiffs, are unable to effectively seek bond reduction or release from custody. As such, many defendants unnecessarily spend prolonged periods of time in pretrial

detention or feel coerced to plead guilty to charges against which they have a valid and potentially effective defense, merely to get out of jail and avoid losing a job or meaningful contact with their children and families.

55. Public-defender caseloads in counties across the state continue to exceed national standards, in some cases by more than double.³³

56. As a result of their crushing caseloads and lack of support, Idaho public defenders do not have the time or resources to communicate with all of their clients consistently and effectively.

57. The State's failure to commit sufficient resources to indigent defense has also made it impossible for public defenders to investigate and otherwise prepare all of their cases thoroughly and effectively.

58. Moreover, the State does not provide public defenders with the specialized training and ongoing supervision necessary to ensure zealous and effective representation for indigent defendants.

59. In failing to remedy these deficiencies, the State has caused harm to the Plaintiffs, and those similarly situated, by constructively denying them their Sixth Amendment right to competent counsel and their Fourteenth Amendment right to due process.³⁴

60. Pursuant to federal and state law, Plaintiffs, on behalf of themselves and a class of similarly situated individuals, seek declaratory and injunctive relief against Defendants to

³³ Idaho Legislative Services Office - Report on 2013 Caseloads, *available at* http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_lso.pdf.

³⁴ *See United States v. Cronin*, 466 U.S. 648, 659 (1984).

[REDACTED]

B. Defendants

85. Defendant STATE OF IDAHO has violated and continues to violate the Idaho and federal constitutions, which require it to ensure that adequate indigent-defense services are provided to Idaho’s poorest citizens. The State Capital and center of State government is in Ada County.

86. Defendant C.L. “BUTCH” OTTER is the Governor of the state of Idaho and is subject to this lawsuit in his official capacity as to all claims herein. As the chief executive of the state, Governor Otter bears ultimate responsibility for the provision of constitutionally mandated services to the people of Idaho. In 2005, the CJC was created by Executive Order and tasked with addressing “important criminal justice issues and challenges.” Governor Otter maintains supervisory authority over the CJC.

87. Defendants Hon. Molly Huskey, Darrell G. Bolz, Sara B. Thomas, William H. Wellman, Kimber Ricks, Sen. Chuck Winder, and Rep. Christy Perry are all of the members Idaho’s Public Defense Commission. They are subject to this lawsuit in their official capacities as members of the Commission. The Commission is responsible for promulgating rules related to training and data-reporting requirements for defense attorneys across the state, and making recommendations

Union's Criminal Law Reform Project, and the law firm of Hogan Lovells US LLP, whose attorneys possess substantial expertise in prosecuting class action lawsuits generally, and in indigent-defense reform litigation in particular.

94. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct, exacerbating the differing and inadequate public-defender programs currently in place in various counties in the State. Such a risk is of particular concern in this case since the lack of uniform performance standards is central to the Plaintiffs' allegations.

95. The common questions of law and fact articulated above predominate over any case-specific questions that may arise out of any of the individual Class members' criminal cases. As such, a class action is superior to other available methods for the fair and efficient adjudication of this matter.

96. Defendants have failed to adequately fund, supervise, and administer indigent- defense services in Idaho, thereby violating the rights of poor defendants across the state. As such, these Defendants have acted and refused to act on grounds generally applicable to the entire Class, thereby making it appropriate for this Court to issue final injunctive and declaratory relief for all Class members.

FACTUAL ALLEGATIONS

Overview of the Current State of Indigent-Defense in Idaho

97. The State of Idaho leaves the responsibility for providing trial-level legal representation to indigent criminal defendants to each of its 44 counties.

98. Yet the State does not provide any funding, training, or supervision to support the delivery of indigent-defense services at the trial level.

99. According to the NLADA Report, as well as the more recent county-by-county surveys conducted by the Idaho Criminal Justice Commission and the ACLU, respectively, no county in Idaho is currently providing indigent-defense services that meet state or federal legal standards.

100. State officials themselves have recognized the current constitutional crisis regarding indigent defense services in Idaho. In August 2013, the Chief Justice of the Idaho Supreme Court noted that “our system for the defense of indigents, as required by Idaho’s constitution and laws, is broken.” And Governor Otter acknowledged in his 2015 State of the State address that, despite the 2014 amendments to Idaho’s public defense statutes, “our current method of providing legal counsel for indigent criminal defendants does not pass constitutional muster.”

101. These constitutional and statutory deficiencies manifest themselves in myriad ways, including (1) failure to provide counsel to indigent defendants at their initial appearance; (2) extended and unnecessary pretrial detention; (3) excessive caseloads that far exceed national standards; (4) lack of sufficient investigation; (5) lack of sufficient expert analysis and testimony; (6) lack of consistent, effective, and confidential communication between indigent defendants and public defenders; (7) continued use of fixed-fee contracts for attorneys providing indigent-defense services; (8) lack of public-defender independence; (9) lack of sufficient training in the field of criminal defense; (10) lack of informed and consistent oversight of the provision of indigent-defense services throughout the State; and (11) lack of sufficient supervision and evaluation.

expectations. As a result, many of Idaho’s public defenders are beholden to their commissioners and therefore lack the independence necessary to do their jobs effectively.

149. Indeed, Defendant Otter recently approved, and the State of Idaho enacted, changes to Idaho’s indigent-defense statutes that removed a two-year-minimum term requirement for public defenders in institutional offices. Removing the two-year-minimum term requirement severely undercuts any independence those public defenders might hope to have, as it leaves them vulnerable at any time to termination for no reason or for unjustified reasons. The removal of the minimum term requirement was done over the expressed objection of public defenders.

150. The State’s failure to set standards regarding the commissioners’ ability to hire and fire public defenders without justification results in, among other things, less zealous advocacy on the part of the defending attorneys, including a reticence to seek supplemental funding for investigators, experts, or other necessary resources.

Lack of Sufficient Supervision and Evaluation

151. While independence is essential, the last of the ABA *Ten Principles* also requires that public defenders be “supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” ABA *Ten Principles*, no. 10.

152. The State currently plays no role whatsoever—either by way of directly supervising or setting guiding principles regarding the same—in supervising or evaluating the work done by public-defense offices and contractors in the various counties.

153. The limited supervision that does exist is often deficient since it is carried out by local county commissioners with little or no experience overseeing the work of an attorney.

State Liability

162. The United States Supreme Court has made clear that pursuant to the Sixth Amendment to the U.S. Constitution, it is the states' constitutional duty to provide for the effective assistance of counsel for criminal defendants who are unable to afford an attorney.

163. The State of Idaho has failed to provide any significant funding to support the provision of indigent defense services across the state.

164. The State of Idaho has failed to provide any supervision over the provision of indigent defense services across the state.

165. The State of Idaho has failed to establish or adopt any consistent, statewide caseload standards for public defenders in the state.

166. The State of Idaho has failed to establish or adopt any consistent, statewide performance standards for public defenders in this state.

167. In light of the NLADA's 2010 report, the ongoing work of the CJC and other committees tasked with studying indigent defense issues in Idaho, and the amendments to the public defense statutes in 2014, the State of Idaho has been on notice for more than half a decade that its public-defender system is failing to provide constitutionally sufficient representation.

168. Despite being on notice of the many failings of Idaho's indigent defense system, the State has failed to take sufficient action to remedy the deficiencies.

169. The State's failure to take sufficient steps to remedy the deficiencies of Idaho's indigent defense system is the proximate cause of the harm suffered by indigent criminal defendants throughout Idaho—including the named Plaintiffs and the Class they represent.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of the Sixth Amendment to the United States Constitution and 42 U.S.C. § 1983 (All Plaintiffs and the Class against All Defendants)

170. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Complaint.

171. The Sixth Amendment to the United States Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of their cases.

172. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

173. **The State of Idaho has violated the Sixth Amendment because it has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of their cases, including at initial appearances, resulting in the constructive denial of counsel.**

Second Claim for Relief

Violation of Article 1, Section 13 of the Idaho Constitution (Right to Counsel) (All Plaintiffs and the Class against All Defendants)

174. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

175. Article 1, Section 13, of the Idaho Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation.

176. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearance, in violation of Article 1, Section 13, of the Idaho Constitution.

Third Claim for Relief

**Violation of the Fourteenth Amendment to the United States Constitution
and 42 U.S.C. Section 1983
(All Plaintiffs and the Class against All Defendants)**

177. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

178. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State of Idaho to ensure that all indigent criminal defendants receive meaningful and effective legal representation.

179. 42 U.S.C. § 1983 provides for suit against the government for constitutional violations.

180. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Fourth Claim for Relief

**Violation of Article 1, Section 13, of the Idaho Constitution (Due Process)
(All Plaintiffs and the Class against All Defendants)**

181. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations of all preceding paragraphs.

182. Under Article 1, Section 13, of the Idaho Constitution, the State of Idaho is required to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances.

183. The State of Idaho has failed to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of the case, including at initial appearances, in violation of Article 1, Section 13, of the Idaho Constitution.

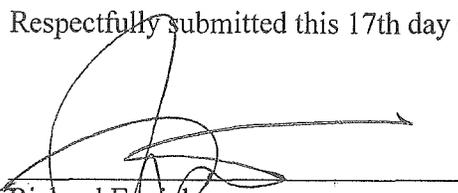
RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A) Certify this case as a class action pursuant to Rule 23 of the Idaho Rules of Civil Procedure;⁴⁸
- B) Declare that the State of Idaho is obligated to provide constitutionally adequate representation to indigent criminal defendants, including at their initial appearances;
- C) Declare that the constitutional rights of Idaho's indigent criminal defendants are being violated by the State on an ongoing basis, and provide a deadline for the State to move this Court for approval of specific modifications to the structure and operation of the State's indigent-defense system;
- D) Enjoin the State from continuing to violate the rights of indigent defendants by providing constitutionally deficient representation;
- E) Enter an injunction requiring the State to propose, for this Court's approval and monitoring, a plan to develop and implement a statewide system of public defense that is consistent with the U.S. Constitution and the Constitution and laws of the State of Idaho;
- F) Enter an injunction that requires the State to propose, for this Court's approval and monitoring, uniform workload, performance, and training standards for attorneys representing indigent criminal defendants in the State of Idaho in order to ensure accountability and to monitor effectiveness;
- G) Enter an injunction barring the use of fixed-fee contracts in the delivery of indigent-defense services in the State of Idaho;
- H) Award Plaintiffs and the Class reasonable attorneys' fees and costs incurred during the course of this litigation pursuant to 42 U.S.C. § 1988, I.C. § 12-117, the Private Attorney General doctrine and other applicable law; and
- I) Grant any other relief the Court deems necessary and proper to protect Plaintiffs and the Class from further harm.

⁴⁸ Plaintiffs' motion for class certification, along with their supporting brief, have been filed with this court in conjunction with this complaint.

Respectfully submitted this 17th day of June, 2015.



Richard Eppink
ACLU of Idaho Foundation

Jason D. Williamson
ACLU Foundation

Andrew C. Lillie
Kathryn M. Ali
Bret H. Ladine
Jenny Q. Shen

Attorneys for Plaintiffs