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DIANE DAVIS, JASON LEE ENOX, JEREMY  
LEE IGOU, AND JON WESLEY TURNER II,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

STATE OF NEVADA; BRIAN SANDOVAL,  
Governor, in his official capacity.

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Case No. 170C02271B

Dept. No. II

1 Defendants.

2  
3 THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
4 IN AND FOR CARSON CITY

5 FIRST AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY  
6 RELIEF

7 Plaintiffs Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley Turner II, for  
8 themselves and all others similarly situated, and upon knowledge of their own acts and  
9 information and belief for other matters, allege as follows:<sup>1</sup>

10 INTRODUCTION

11 1. The right to counsel is the lifeblood of the American criminal justice system. To  
12 ensure fair treatment under the law, the Sixth Amendment to the United States Constitution  
13 guarantees that “[i]n all criminal prosecutions, the accused shall . . . have the Assistance of  
14 Counsel for his defense.” U.S. Const. Amend. VI.<sup>2</sup> More than 50 years ago, the Supreme Court  
15 declared in *Gideon v. Wainwright* that the Sixth Amendment obligates states to provide counsel to  
16 criminal defendants unable to afford an attorney. 372 U.S. 335 (1963). Over the decades, the  
17 Supreme Court has expanded that obligation in significant ways, requiring the states to provide  
18 counsel to indigent defendants facing incarceration, including for misdemeanors, and extending  
19 protections to juveniles in delinquency proceedings. But the animating principle has remained  
20 the same: it is the state’s responsibility to ensure that “any person haled into court who is too  
21 poor to hire a lawyer” is provided with an adequate legal defense. *Gideon*, 372 U.S. at 344.

22 2. A state does not satisfy its obligation under *Gideon* simply by appointing someone  
23 with a law license to represent indigent defendants. The state must instead appoint attorneys  
24 under circumstances—financial, administrative, logistical, political—that permit those attorneys  
25 to do their jobs. The appointed lawyer must be in a position to provide *meaningful* assistance—

26 <sup>1</sup> All “Ex. \_\_\_” citations refer to the supporting exhibits filed in conjunction with this Complaint.

27 <sup>2</sup> The Sixth Amendment’s guarantees apply to the states through incorporation into the Fourteenth  
28 Amendment. U.S. Const. Amend. XIV.

1 otherwise the state effects “a denial of Sixth Amendment rights that makes the adversary process  
2 itself presumptively unreliable.” *United States v. Cronin*, 446 U.S. 648, 659 (1984); *Unger v.*  
3 *Sarafite*, 376 U.S. 575, 589 (1964) (the Sixth Amendment right to counsel would be “an empty  
4 formality” if appointed counsel were precluded from providing his or her client any meaningful  
5 representation). This foundational right attaches well before trial begins, because “certain pretrial  
6 events may so prejudice the outcome of the defendant’s prosecution that, as a practical matter, the  
7 defendant must be represented at those events in order to enjoy genuinely effective assistance at  
8 trial.” *Rothgery v. Gillespie Cty.*, 554 U.S. 191, 217 (2008).

9         3. *Gideon* and its progeny make clear that the hallmarks of a structurally sound  
10 indigent defense system in any state include the early appointment of qualified and trained  
11 attorneys who have sufficient time to provide effective representation under independent  
12 supervision.

13         4. The State of Nevada is failing, on a systemic level, to meet its foundational  
14 obligations under *Gideon* to indigent defendants in its rural counties.<sup>3</sup> The State has a  
15 constitutional obligation to provide meaningful legal representation to criminal defendants  
16 anywhere in Nevada who cannot otherwise afford an attorney. The Governor is vested  
17 constitutionally with the executive power of the State and must ensure that the laws of Nevada are  
18 faithfully executed—including Nevada’s state and federal constitutional obligations to indigent  
19 defendants. Nev. Const. art. 5, §§ 1, 7.

20         5. The principles of equal justice and due process rest on Nevada’s fulfillment of this  
21 duty. Yet the system of publicly-appointed defense attorneys in Nevada’s rural counties is  
22 plagued with serious structural deficiencies that have created a patchwork approach to indigent  
23 representation and rendered access to justice a function of geography. These are problems the  
24 State and the Governor (collectively “Defendants”) have long known about but failed to remedy.

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27 <sup>3</sup> In this complaint, “rural counties” means these Nevada counties: Churchill, Douglas,  
28 Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, and White Pine.

1           6.       Having abdicated its constitutional responsibility to provide defense of the poor,  
2 Nevada has left its rural counties to their own devices. To fulfill the obligations abandoned by  
3 the State, the rural counties—without sufficient resources, standards, or oversight—have turned  
4 to contract attorneys to provide indigent defense services. When a rural county uses a contract  
5 attorney for indigent defense services, the State does not cover any of the costs and does not  
6 oversee or supervise the county systems to ensure that the services meet constitutional standards.

7           7.       The State does nothing to ensure that the rural counties have the funding, policies,  
8 programs, guidelines, or other essential resources to equip their contract attorneys to provide  
9 constitutionally adequate legal representation. Without oversight from the State, rural county  
10 indigent defense services are under-funded, poorly administered, and entrusted to overburdened  
11 contract attorneys who lack the time, staff, and incentives to meaningfully perform their jobs.

12           8.       The host of structural problems afflicting Nevada’s publicly appointed defense  
13 system include:

- 14           • Inadequate resources;
  - 15           • Flat-fee and *de facto* flat-fee contracts that saddle appointed attorneys with  
16 burdensome workloads and disincentivize them from devoting sufficient time to  
17 investigating or litigating their cases;
  - 18           • Unconscionable delays because of the unavailability of appointed defense counsel;
  - 19           • No compensation for attorney travel time and costs;
  - 20           • Contracts that require attorneys to obtain a court order to pay any investigators or  
21 expert witnesses;
  - 22           • Contracts that include appellate work where the fees are already inadequate for  
23 trial level work;
  - 24           • Non-lawyer government officials selecting which attorneys receive the contracts;
  - 25           • Lack of appropriate qualifications, supervision, evaluation, training and continuing  
26 legal education for appointed defense counsel;
  - 27           • Lack of independence.
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9. These structural problems infect the representation that indigent rural county defendants receive at every stage of their cases. Too often, understaffed, inexperienced, poorly trained, or poorly supervised attorneys fail to: be present to advocate for their clients at initial appearances or arraignments, contest bail amounts or advocate for personal recognizance pretrial release, spend time and money to investigate and hire experts, reliably communicate with their clients in private settings, make themselves available to their clients for extended periods of time, file pretrial motions, obtain adequate discovery, take cases to trial and hold the prosecution to its burden of proof, and effectively advocate during sentencing proceedings. Despite the State's obligation to provide meaningful representation to indigent defendants, the State has done little or nothing to address these well-documented problems.

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10. Plaintiffs Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley Turner II are just a few of the many indigent defendants in Nevada's rural counties who have not received the meaningful representation guaranteed to them under the United States Constitution and the Nevada Constitution.

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11. The Plaintiffs cannot afford to retain an attorney of their choice. They are each therefore constitutionally entitled to have the State provide meaningful representation for each of them in their criminal cases.

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12. However, under the State's current structure for indigent defense, the adversarial system cannot function properly, and it cannot be relied on to reach just outcomes. Indigent defendants in Nevada's rural counties, such as the Plaintiffs', face devastating outcomes and impossible choices when their freedom hinges on the State's inadequate system of legal representation.

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13. Nevada began as a trailblazer in protecting the rights of indigent criminal defendants. In 1877, the Nevada Supreme Court reached the conclusion that "a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal." *In re Wixom*, 12 Nev. 219, 224 (1877). Not until 1963 did the U.S. Supreme Court catch up to Nevada and

1 affirm that the United States Constitution requires every state to provide legal representation to  
2 criminal defendants unable to afford an attorney. *Gideon*, 372 U.S. at 335.

3 14. The State’s current system, however, has created a crisis in Nevada that departs  
4 sharply from its legacy as an early protector of indigent defendants.

5 15. A 2007 report by the Nevada Supreme Court’s Indigent Defense Commission  
6 revealed the systemic failures of Nevada’s rural indigent defense system. It warned the State and  
7 the Governor that “Nevada’s least populous counties struggle to provide constitutionally  
8 mandated indigent defense services.”<sup>4</sup>

9 16. Most recently, in August of 2018, the Sixth Amendment Center<sup>5</sup>, working on  
10 behalf of Nevada’s Right to Counsel Commission, published a detailed report finding that the  
11 State of Nevada is still failing to meet its constitutional obligation to ensure that indigent  
12 defendants receive meaningful representation. Specifically, the report found that “the State of  
13 Nevada must, at the very least, have an entity authorized to promulgate and enforce systemic  
14 standards that align with the parameters outlined in *United States v. Cronin*. No such entity  
15 currently exists.”<sup>6</sup>

16 17. The Indigent Defense Commission and the Sixth Amendment Center have  
17 repeatedly studied—and re-diagnosed—the same problems with public defense in rural counties.  
18 Yet the State and Governor have repeatedly failed to fix the system. Bills have been introduced  
19 in the Nevada Legislature that would have provided a pathway toward fulfillment of the State’s  
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23 <sup>4</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
24 Ex. B: Report of The Nevada Supreme Court’s Indigent Defense Commission 7, ADKT No. 411  
25 (Nov. 20, 2007) (Doc. No. 07-28444).

26 <sup>5</sup> The Sixth Amendment Center is a nonprofit organization founded in 2013 to help state and local  
27 governments to meet their obligations to provide public indigent defense services, including by  
28 “measuring public defense systems against Sixth Amendment case law and established standards  
of justice.” *6AC & Our Work*, SIXTHAMENDMENT.ORG, <http://sixthamendment.org/about-us/> (last  
visited Oct. 30, 2017).

<sup>6</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 164.

1 constitutional duty to indigent defendants. But Nevada has failed to pass these bills or take any  
2 action sufficient to remedy the systemic failures.

3 18. Meanwhile, people accused of crimes in Nevada’s rural counties who cannot  
4 afford to retain a lawyer of their choice continue to be herded through the criminal justice system  
5 without the basic constitutional protection of meaningful representation.

6 19. Plaintiffs Diane Davis, Jason Lee Enox, Jeremy Lee Igou, and Jon Wesley  
7 Turner II bring this class action on behalf of themselves and all those similarly situated to remedy  
8 the State of Nevada’s and the Governor’s longstanding and repeatedly-documented failure to  
9 provide constitutionally meaningful legal representation to indigent men and women accused of  
10 crimes in Nevada’s rural counties. For example, in a 2007 report, the Indigent Defense  
11 Commission found that “Nevada’s least populous counties struggle to provide constitutionally  
12 mandated indigent defense services.”<sup>7</sup> Plaintiffs seek declaratory and injunctive relief from the  
13 ongoing injuries and harm caused by Defendants’ refusal to discharge their obligations. Plaintiffs  
14 and Class Members are facing actual and constructive denial of their right to meaningful  
15 representation at critical stages of their cases.

16 20. Plaintiffs’ experiences illustrate the rampant problems with Nevada’s rural  
17 indigent defense system. Each of the named Plaintiffs is indigent and either is facing or did face  
18 criminal charges that could lead or did lead to their imprisonment for years, if not decades. Each  
19 has had an attorney appointed to represent them, but the mere appointment of an attorney was  
20 insufficient to meet the State’s obligation to provide meaningful representation.

21 21. Upon information and belief, the State has not established a system or process for  
22 indigent defense in the rural counties that would satisfy its constitutional obligations. The State  
23 has not established caseload or workload standards or minimum performance standards; does not  
24 provide training resources; and does not provide monitoring or oversight of the provision of  
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26 <sup>7</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
27 Ex. B: Report of The Nevada Supreme Court’s Indigent Defense Commission 7, ADKT No. 411  
28 (Nov. 20, 2007) (Doc. No. 07-28444).

1 counsel to indigent defendants in the rural counties. For example, in its 2007 report, the Indigent  
2 Defense Commission “determined that there is a lack of oversight over contract attorney systems  
3 to ensure quality representation,” and noted that “[t]he focus of county governments has been to  
4 minimize costs involved in providing indigent defense.”<sup>8</sup> And again in 2018, the Sixth  
5 Amendment Center Report commissioned by the Right to Counsel Commission found that  
6 “Nevada does not have any statewide limits on the number of cases that an attorney representing  
7 indigent clients may handle in a year. . . [and] has no entity charge[d] with setting maximum  
8 indigent defense caseload limits to ensure sufficient time to provide effective assistance of  
9 counsel.”<sup>9</sup>

10 22. In the absence of adequate State systems, processes, structures, or standards to  
11 provide meaningful representation to indigent defendants in the rural counties, the named  
12 Plaintiffs have had insufficient time to meet confidentially with their contract-appointed  
13 attorneys, and often they meet with their attorneys only moments before a court proceeding.

14 23. Upon information and belief, the State and Governor have no adequate system in  
15 place to train, monitor, supervise, or hold appointed attorneys accountable to ensure meaningful  
16 representation for indigent criminal defendants like Plaintiffs. As the Indigent Defense  
17 Commission noted in its 2007 report, “[a] lack of available data from contract attorneys and the  
18 rural counties points to gaps in oversight and accountability.”<sup>10</sup> The State does not evaluate the  
19 representation provided to indigent defendants in the rural counties, including the quality of  
20 representation or the workload and caseload of the appointed attorneys. As Sixth Amendment  
21 Center noted in the 2018 report commissioned by the Nevada Right to Counsel Commission,  
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23 <sup>8</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
24 Ex. B: Report of The Nevada Supreme Court’s Indigent Defense Commission 11, ADKT No. 411  
25 (Nov. 20, 2007) (Doc. No. 07-28444)..

26 <sup>9</sup> Ex. 14, The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services, at 124.

27 <sup>10</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
28 Ex. B: Report of The Nevada Supreme Court’s Indigent Defense Commission 68, ADKT No. 411  
(Nov. 20, 2007) (Doc. No. 07-28444)..

1 “[t]he State of Nevada does not require uniform indigent defense data collection and reporting,”  
2 without which “right to counsel funding and policy decisions are subject to speculation,  
3 anecdotes, and potentially, even bias.”<sup>11</sup> The State does not provide training to appointed  
4 attorneys, or otherwise ensure that they have the requisite experience to be able to provide  
5 meaningful representation. In its 2007 report, the Indigent Defense Commission recommended  
6 that training requirements and performance standards be implemented.<sup>12</sup> Likewise, the 2018  
7 report commissioned by the Nevada Right to Counsel Commission documented a lack of  
8 guidance from the State and “a pervasive lack of institutionalized attorney supervision and  
9 training.”<sup>13</sup> Nor does the State oversee the indigent defense systems promulgated by the rural  
10 counties or discipline rural counties or appointed attorneys who fail to provide meaningful  
11 representation.

12           24. For reasons such as these, the State of Nevada and the Governor are failing to meet  
13 their constitutional obligation to provide meaningful representation to indigent criminal  
14 defendants such as Plaintiffs. Plaintiffs have suffered a denial of their right to meaningful  
15 representation provided by the State because of this systemic failure by the State and Governor to  
16 meet the State’s foundational, well-established obligation under *Gideon* to provide  
17 constitutionally meaningful legal representation to criminal defendants, such as Plaintiffs, who  
18 cannot afford it. As the 2018 Sixth Amendment Center Report commissioned by the Right to  
19 Counsel Commission found, “[t]he State of Nevada must, at the very least, have an entity  
20 authorized to promulgate and enforce systemic standards that align with the parameters outlined  
21 in *United States v. Cronin*. No such entity currently exists.”<sup>14</sup>  
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24 <sup>11</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at v.

25 <sup>12</sup> Ex. 1, *Final Report and Recommendations of Supreme Court Indigent Defense Commission*,  
26 Ex. B: *Report of The Nevada Supreme Court’s Indigent Defense Commission 27-28*, ADKT No.  
411 (Nov. 20, 2007) (Doc. No. 07-28444).

27 <sup>13</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at vi.

28 <sup>14</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at v.



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2 31. Nye County's flat fee contract system persists despite the Nevada Supreme Court's  
3 July 23, 2015 Order ADKT No. 411 that counties "shall not use a totally flat fee contract," and  
4 must permit "modification of fees for extraordinary cases, and allow for investigative fees and  
5 expert witness fees."<sup>15</sup>

6 32. Ms. Davis cannot afford to retain counsel of her own choosing. She must rely on  
7 the State to provide her with meaningful representation in her criminal cases.

8 33. The State has not established caseload or workload standards or minimum  
9 performance standards; does not provide training resources; and does not provide monitoring or  
10 oversight of the provision of counsel to indigent defendants in Nye County or the other rural  
11 counties.

12 34. Ms. Davis was arraigned on the arson and animal cruelty charges in 2013.  
13 Ms. Davis has since been represented by five different appointed attorneys.

14 35. After being arraigned on the arson and animal cruelty charges, Ms. Davis was  
15 released on personal recognizance. While her arson and animal cruelty case was pending, she  
16 was arrested and charged with identity theft, for which she was arraigned in October 2013.

17 36. Initially, a philanthropic women's group agreed to fund a private attorney for  
18 Ms. Davis, but after Ms. Davis was charged with additional crimes, the women's group used the  
19 remainder of the available funds to post a \$65,000 bond for Ms. Davis.

20 37. At some point after her arraignment for identity theft, Ms. Davis was no longer  
21 able to pay her attorney, and the same attorney that she had retained was then appointed by the  
22 court to represent her in both her arson and identity theft cases.

23 38. After Ms. Davis's attorney began to be compensated pursuant to Nye County's  
24 public defense contract, Ms. Davis was deprived by Defendants of her right to meaningful  
25 representation provided by the State.

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28 <sup>15</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc. No. 15-22416).

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2 39. At a November 2, 2015, status hearing for her arson case, Ms. Davis's appointed  
3 attorney informed the court that Ms. Davis was rejecting the State's plea deal and requested that  
4 the court continue the trial. The court then set the trial to begin on March 8, 2016. A calendar  
5 call was set for February 8, 2016, when the court would require the attorneys to appear to ensure  
6 that there were no scheduling conflicts with the March 8, 2016 trial date.

7 40. At the February 8, 2016 calendar call for her arson case, the partner of Ms. Davis's  
8 appointed attorney declared that they were not ready for trial and requested a continuance until  
9 July 2016 because they were still searching for a fire investigator—nearly three years after  
10 Ms. Davis's arraignment.

11 41. The court granted the continuance as to the arson case.

12 42. Ms. Davis went to trial on or about March 8, 2016, in her identity theft case.  
13 Ms. Davis was convicted and was sentenced in December 2016 to five years' probation.  
14 Ms. Davis has appealed.

15 43. Ms. Davis's first appointed attorney moved to withdraw as her counsel at a hearing  
16 on August 1, 2016. The court granted Ms. Davis's first attorney's motion and appointed  
17 Ms. Davis a second attorney, both to represent Ms. Davis in the appeal of her conviction and  
18 sentence after trial on the identity theft charges, and also during the arson trial.

19 44. Before her contract expiration, Ms. Davis's second appointed attorney made a  
20 motion to authorize retention of an investigator. The motion was granted in March 2017,  
21 authorizing payment of up to \$2,500 for the investigator.

22 45. But on January 25, 2017, Ms. Davis's second appointed attorney notified the court  
23 that her contract as an appointed attorney with the county would soon expire. As a result, the  
24 court appointed Ms. Davis a third attorney to represent her in the arson case and vacated the  
25 March 2017 trial date.

26 46. After Ms. Davis's third appointed attorney was unable to retain Ms. Davis's case  
27 due to his caseload, the court appointed a fourth attorney to represent Ms. Davis.  
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1           47.     This fourth appointed attorney represented Ms. Davis for a month and a half  
2 before he realized that he had a conflict of interest because he also represented a key witness  
3 against Ms. Davis. This attorney never contacted Ms. Davis at any point during his  
4 representation of her.

5           48.     On or about April 6, 2017, Ms. Davis's third appointed attorney was then re-  
6 appointed.

7           49.     Ms. Davis was not informed of the hearing at which this re-appointment took place  
8 and was not present.

9           50.     When Ms. Davis went to the courthouse on an unrelated matter several weeks after  
10 her third attorney was re-appointed, she was informed that her case file was still being held for  
11 him, and that he had not yet picked it up. Because her current attorney did not pick up her case  
12 file during this time period, he could not have reviewed any of its contents. Unsurprisingly, at the  
13 next court hearing, on April 24, 2017, Ms. Davis's attorney requested a two-week continuance,  
14 further delaying resolution of Ms. Davis's long-pending case.

15           51.     At the next status hearing, on May 8, 2017, Ms. Davis complained to the court  
16 about her current attorney's refusal to meet with a witness she identified and his unwillingness to  
17 adequately prepare for her trial.<sup>16</sup> At the hearing, Ms. Davis's current attorney explained that his  
18 caseload prevented him from focusing on Ms. Davis's case until her trial was imminent, stating:  
19 "As a public defender with a large caseload, I have to prioritize. Her case is important to me, yes,  
20 but so are all of my other clients' cases."<sup>17</sup>

21           52.     At the May 8, 2017, hearing, Ms. Davis asked to have a new attorney assigned to  
22 her trial. Her request was denied.

23           53.     In late 2017, Ms. Davis's third attorney requested to withdraw from her case, and  
24 this request was ultimately granted.

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26 <sup>16</sup> Ex. 2, Transcript of Proceedings, Status Hearing/Trial Setting, Fifth Judicial Court of the State  
27 of Nevada, State v. Davis, No. CR-7883, May 8, 2017.

28 <sup>17</sup> *Id.*

1           54.     In January 2018, Ms. Davis was appointed a fifth attorney. Upon taking Ms.  
2     Davis's case, her fifth appointed attorney repeatedly attempted to get Ms. Davis's files from her  
3     prior attorney. Ms. Davis's prior attorney never turned over her file to Ms. Davis's current  
4     appointed attorney.

5           55.     Despite having been appointed in January 2018, the prosecutor in Ms. Davis's case  
6     did not give her current appointed attorney discovery until May 2018. At that time, Ms. Davis's  
7     case was scheduled to go to trial in August 2018.

8           56.     At a status check in June 2018, Ms. Davis's current appointed attorney, who had  
9     only recently obtained discovery and still had not received files from Ms. Davis's prior attorney,  
10    requested a postponement of Ms. Davis's upcoming trial. The judge reluctantly agreed to allow a  
11    one-month continuance, and set Ms. Davis's trial for the end of September 2018.

12          57.     After her arson and related charges were pending for over four years, Ms. Davis's  
13    trial took place from September 24, 2018 to September 28, 2018. Ms. Davis was found not guilty  
14    on the 13 animal cruelty and related charges and guilty of one arson count. She is scheduled to be  
15    sentenced in January 2019.

16          58.     Upon information and belief, there was not and is not a State system or process to  
17    provide oversight, training, case management, appropriate incentives, and appropriate financial  
18    resources for appointed attorneys to provide meaningful representation to Ms. Davis or indigent  
19    criminal defendants like her in the rural counties.

20                   ***Jason Lee Enox***

21          59.     Plaintiff Jason Lee Enox is, and at all times pertinent has been, a resident of  
22    Fallon, Nevada. Mr. Enox earned a living painting houses and performing mechanic work.

23          60.     He was incarcerated in the Lyon County Jail beginning in January 2017 after being  
24    transferred from Churchill County. Mr. Enox was charged in Churchill County in August 2016  
25    with trafficking, possession and other drug-related charges, failure to stop, and possession of a  
26    billy club and stun gun. He was also charged with being a habitual criminal. These charges  
27    exposed Mr. Enox to a life sentence.  
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1           61. Churchill County relies on contract-appointed attorneys, who are paid an annual  
2 flat fee to represent indigent criminal defendants being prosecuted within its jurisdiction.

3           62. Churchill County's flat fee contract system persists despite the Nevada Supreme  
4 Court's July 23, 2015 Order ADKT No. 411 that counties "shall not use a totally flat fee  
5 contract," and must permit "modification of fees for extraordinary cases, and allow for  
6 investigative fees and expert witness fees."<sup>18</sup>

7           63. Mr. Enox cannot afford to retain counsel of his own choosing. He must rely on the  
8 State to provide him with meaningful representation in his criminal cases. Mr. Enox was first  
9 appointed counsel in approximately April 2016 in Churchill County, where his cases were then  
10 pending.

11           64. The State has not established caseload or workload standards or minimum  
12 performance standards; does not provide training resources; and does not provide monitoring or  
13 oversight of the provision of counsel to indigent defendants in Churchill County or the other rural  
14 counties.

15           65. Mr. Enox's first appointed attorney did so little on his case that the judge openly  
16 chastised the attorney in November 2016 and ordered the attorney to personally meet with  
17 Mr. Enox least every two weeks to work on his case. At that same hearing, Mr. Enox also raised  
18 concerns that his attorney was not collecting evidence.

19           66. During a January 2017 hearing, Mr. Enox again told the court that he had concerns  
20 about whether his attorney was collecting evidence. His attorney then told the court that he had a  
21 conflict of interest and that he would no longer represent Mr. Enox. The court then appointed a  
22 second attorney, who is currently representing Mr. Enox.

23           67. In the more than 20 months he was in jail before being sentenced, Mr. Enox lost  
24 his job and had to sell all of his belongings. His house was demolished because he was not able  
25 to fight against an ongoing property dispute while he was in custody. In early 2017, Mr. Enox's  
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28 <sup>18</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc. No. 15-22416).

1 father passed away, and Mr. Enox was unable to attend the funeral. Neither of Mr. Enox's  
2 appointed attorneys meaningfully tried to get Mr. Enox released to attend the funeral.

3 68. Mr. Enox believes that no investigators or experts were retained to work on his  
4 case. At a status hearing on September 26, 2017, just over a month before Mr. Enox's case was  
5 supposed to go to trial on October 30, 2017, Mr. Enox argued with his appointed attorney in open  
6 court and was finally able to get his attorney to request funding for an investigator. The court  
7 nevertheless authorized \$1,500 for an investigator to work on Mr. Enox's case. On information  
8 and belief, Mr. Enox's appointed attorney still did not hire an investigator.

9 69. Following the September 26, 2017 hearing and with a trial date looming, Mr. Enox  
10 felt that his attorney was not prepared to take his case to trial.

11 70. Just seven days after the September 26, 2017 status hearing, with a trial set to start  
12 only a few weeks later, Mr. Enox entered into an *Alford* plea agreement on October 3, 2017.  
13 Mr. Enox had repeatedly tried calling his appointed attorney, but Mr. Enox's attorney did not  
14 answer any of Mr. Enox's calls. Mr. Enox reluctantly entered into the plea agreement because he  
15 felt he could not go to trial with an attorney who he did not think would prepare and who had not  
16 even answered Mr. Enox's phone calls.

17 71. In connection with the *Alford* plea agreement, Mr. Enox met with his appointed  
18 attorney for 30 minutes, the longest meeting Mr. Enox ever had with his appointed attorney at any  
19 time since the attorney was appointed to represent Mr. Enox.

20 72. The Court sentenced Mr. Enox to an aggregate of 89 to 252 months in Nevada  
21 State Prison. If Mr. Enox serves the 252 months in prison, he will be 57 when he is released.

22 73. At the sentencing hearing, Mr. Enox submitted to the court three letters written by  
23 friends and family in support of his good moral character. The authors of these letters attempted  
24 to provide the letters to Mr. Enox's attorney in advance of the hearing, but were unsuccessful,  
25 leaving them no choice but to provide the court with the letters on the day of the hearing.

26 74. During the sentencing hearing, Mr. Enox's second appointed attorney  
27 acknowledged that, due to his case load, he had not met with Mr. Enox prior to sentencing except  
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1 for a brief meeting immediately before the hearing.

2 75. Upon information and belief, there was not and is not a State system or process to  
3 provide oversight, training, case management, appropriate incentives, and appropriate financial  
4 resources for appointed attorneys to provide meaningful representation to Mr. Enox or indigent  
5 criminal defendants like him in the rural counties.

6 *Jeremy Lee Igou*

7 76. Plaintiff Jeremy Lee Igou is, and at all times pertinent has been, a resident of  
8 Pahrump, Nevada. Prior to his incarceration, Mr. Igou lived with his significant other where he  
9 was the primary caretaker of his two minor children and his elderly grandfather.

10 77. Mr. Igou is currently incarcerated in the Nye County Jail. He has cases pending in  
11 the Fifth Judicial District Court of the State of Nevada and the Pahrump Justice Court. In the  
12 Fifth Judicial District, Mr. Igou is charged with being an ex-felon in possession of a firearm, two  
13 counts of an offense involving stolen property, unlawful use of a controlled substance, two counts  
14 of possession of a controlled substance, and two counts of the unlawful destruction of a vehicle.  
15 In the Justice Court proceedings, he is charged with six counts of possession of a firearm by a  
16 prohibited person, two counts of possession of a short-barreled rifle or shotgun, and with being a  
17 habitual criminal. If convicted of all charges, Mr. Igou faces life in prison.

18 78. Nye County relies on contract-appointed attorneys, who are paid an annual fee to  
19 represent indigent criminal defendants being prosecuted within its jurisdiction. Nye County's flat  
20 fee contract system persists despite the Nevada Supreme Court's July 23, 2015 Order ADKT  
21 No. 411 that counties "shall not use a totally flat fee contract," and must permit "modification of  
22 fees for extraordinary cases, and allow for investigative fees and expert witness fees."<sup>19</sup>

23 79. Mr. Igou cannot afford to retain counsel of his own choosing. He must rely on the  
24 State to provide him with meaningful representation in his criminal cases. Mr. Igou was first  
25 appointed counsel in approximately August 2017.

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<sup>19</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc. No. 15-22416).  
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2 80. The State has not established caseload or workload standards or minimum  
3 performance standards; does not provide training resources; and does not provide monitoring or  
4 oversight of the provision of counsel to indigent defendants in Nye County or the other rural  
5 counties.

6 81. In the Fifth Judicial District Court proceedings, Mr. Igou is charged with eight  
7 felony offenses. On August 1, 2017, his case was transferred from Justice Court to the Fifth  
8 Judicial District, but the prosecuting attorney did not file the information until September 8, 2017,  
9 38 days later. When the parties appeared for arraignment on September 12, 2017, the presiding  
10 judge—not Mr. Igou’s appointed attorney—commented on the significant delay between the  
11 transfer to District Court and when Mr. Igou was charged by information, stating that it was a  
12 potential violation of the Nevada statute governing information and indictments, Nev. Rev. Stat.  
13 § 173.035. The court requested briefing from the parties on what the remedy for this potential  
14 statutory violation should be, and continued Mr. Igou’s arraignment to November 7, 2017. The  
15 court also commented that this was the third case that day where criminal defendants were sitting  
16 in jail for weeks before charging documents were filed.

17 82. Mr. Igou’s arraignment was completed on November 7, 2017 where he waived his  
18 right to a speedy a trial. Mr. Igou has appeared in court only one time since, on April 3, 2018, at  
19 which time his appointed attorney requested to continue his trial, which was originally set for  
20 May 21, 2018. As a result of the continuance, Mr. Igou is not due back in court until January  
21 2019.

22 83. In Mr. Igou’s Justice Court case, Mr. Igou was charged on October 18, 2017 with  
23 six counts of possession of a firearm by a prohibited person, two counts of possession of a short-  
24 barreled rifle or shotgun, and with being a habitual criminal. Mr. Igou was arraigned on these  
25 charges on November 28, 2017, and the same contract public defender was appointed to represent  
26 him.

27 84. Like in his District Court case, little progress has been made in this matter. Mr.  
28 Igou has not yet appeared for his preliminary hearing, which was originally set for December 7,

1 2017, just 10 days after his arraignment.

2 85. Mr. Igou's first appointed attorney has requested a continuance almost every time  
3 they appeared or were scheduled to appear in court, including on December 7, 2017, January 11,  
4 2018, March 30, 2018, May 2, 2018, and June 26, 2018.

5 86. After the fifth request for a continuance, the court called Mr. Igou's appointed  
6 attorney's office and informed him that no additional continuances would be granted. The court  
7 then set Mr. Igou's preliminary hearing for August 30, 2018, over 10 months after his  
8 arraignment.

9 87. On July 24, 2018, Mr. Igou's appointed attorney relinquished his public defense  
10 contract with Nye County. A different contract-appointed attorney took over Mr. Igou's case.  
11 On August 29, 2018—a day before Mr. Igou's preliminary hearing—his new appointed attorney  
12 stipulated to another continuance.

13 88. As of the date of filing this Amended Complaint, Mr. Igou has not met or spoken  
14 with his new attorney.

15 89. Mr. Igou's frustration with the lack of progress in his two cases led him to request  
16 conflict-counsel from the Justice Court on February 8, 2018, during a pre-trial hearing. Mr. Igou  
17 outlined his frustrations to the judge and explained that he was particularly upset by the fact that  
18 his attorney had not provided him with any discovery. No conflict-counsel was assigned and no  
19 new attorney was appointed to represent Mr. Igou.

20 90. Upon information and belief, there was not and is not a State system or process to  
21 provide oversight, training, case management, appropriate incentives, and appropriate financial  
22 resources for appointed attorneys to provide meaningful representation to Mr. Igou or indigent  
23 criminal defendants like him in the rural counties.

24 *Jon Wesley Turner II*

25 91. Plaintiff Jon Wesley Turner II is currently incarcerated in the Nye County Jail.  
26 Mr. Turner was taken into custody on November 2, 2017, and charged with felony sexual assault,  
27 battery with the intent to commit sexual assault, battery with the intent to kill, assault and battery  
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1 with the use of a deadly weapon, and battery by strangulation. At just twenty-four years old, he is  
2 facing a life sentence.

3 92. Mr. Turner cannot afford to retain counsel of his own choosing. He must rely on  
4 the State to provide him with meaningful representation in his criminal cases. Mr. Turner was  
5 first appointed counsel in approximately December 2017.

6 93. The State has not established caseload or workload standards or minimum  
7 performance standards; does not provide training resources; and does not provide monitoring or  
8 oversight of the provision of counsel to indigent defendants in Nye County or the other rural  
9 counties.

10 94. Nye County relies on contract-appointed attorneys, who are paid an annual fee to  
11 represent indigent criminal defendants being prosecuted within its jurisdiction. Nye County's flat  
12 fee contract system persists despite the Nevada Supreme Court's July 23, 2015 Order ADKT No.  
13 411 that counties "shall not use a totally flat fee contract," and must permit "modification of fees  
14 for extraordinary cases, and allow for investigative fees and expert witness fees."<sup>20</sup>

15 95. Mr. Turner initially invoked his right to a speedy trial and his criminal trial was set  
16 for March 12, 2018. Just a month before his original trial date and a day before his February 6,  
17 2018, pre-trial hearing, Mr. Turner's appointed attorney visited him jail. The following day, on  
18 February 6, 2018, Mr. Turner appeared in court and waived his right to a speedy trial. The court  
19 granted the waiver based on Mr. Turner's appointed attorney's statements that he could not be  
20 prepared by the March 12, 2018 trial date, but the court admonished Mr. Turner's appointed  
21 attorney for his failure to prepare.

22 96. As of the date of this First Amended Complaint, Mr. Turner had not appeared in  
23 court since his last hearing on February 6, 2018, which was nearly eight months ago.

24 97. Mr. Turner has now been incarcerated for nearly a year. With a trial date a mere  
25 five months away, Mr. Turner is unaware of whether his attorney plans to try the case on the  
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28 <sup>20</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc. No. 15-22416).

1 current trial date, or whether his attorney is making efforts to prepare for trial.

2 98. Mr. Turner believes his appointed attorney relinquished his public defender  
3 contract in July. Mr. Turner believes a different contract-appointed attorney will now be taking  
4 over.

5 99. Upon information and belief, there was not and is not a State system or process to  
6 provide oversight, training, case management, appropriate incentives, and appropriate financial  
7 resources for appointed attorneys to provide meaningful representation to Mr. Turner or indigent  
8 criminal defendants like him in the rural counties.

9 **B. Defendants**

10 100. Defendant State of Nevada has violated and continues to violate the Nevada and  
11 United States Constitutions, which require the State to provide meaningful indigent defense  
12 services to Nevada's poorest citizens. The State Capital and center of State government is in  
13 Carson City.

14 101. Defendant Brian Sandoval, in his official capacity as the Governor of Nevada, has  
15 violated and continues to violate the Nevada and United States Constitutions, which require the  
16 State of Nevada to provide meaningful indigent defense services to Nevada's poorest citizens.  
17 Governor Sandoval, in his official capacity as the State's chief executive, must ensure that the  
18 laws of Nevada are faithfully executed.

19 **CLASS ACTION ALLEGATIONS**

20 102. Plaintiffs incorporate by reference all previous and following allegations of this  
21 Complaint as if fully laid out here.

22 103. Plaintiffs Davis, Enox, Igou, and Turner bring this action pursuant to Nevada Rule  
23 of Civil Procedure 23(b)(2) on behalf of themselves and all others similarly situated. The Class  
24 represented by the named Plaintiffs consists of all persons who are now or who will be under  
25 formal charge before a state court in a rural Nevada county of having committed any offense, the  
26 penalty for which includes the possibility of confinement, incarceration, imprisonment, or  
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1 detention in a correctional facility (regardless of whether actually imposed), and who are indigent  
2 and thus constitutionally entitled to the appointment of counsel.

3 104. As indigent persons unable to afford to hire counsel to defend them, Class  
4 Members depend on the State of Nevada and the Governor to provide them with meaningful  
5 counsel and other associated services necessary for their defense. Each day, hundreds of these  
6 Class Members are criminally prosecuted in the State of Nevada.

7 105. Class Members are being harmed by the State of Nevada's and the Governor's  
8 abdication of their responsibility to ensure that poor defendants in rural counties receive  
9 constitutionally sufficient legal representation that satisfies the guarantees of the Sixth and  
10 Fourteenth Amendments to the United States Constitution and Article I, Section 8, of the Nevada  
11 Constitution.

12 106. Certification of this action as a class action is appropriate under Nevada Rule of  
13 Civil Procedure 23(b)(2) for the following reasons:

- 14 a. The Class is so numerous and fluid so as to make joinder of all members of  
15 the Class impracticable. At any point, hundreds of indigent persons in  
16 Nevada's rural counties with pending criminal charges punishable by  
17 imprisonment must rely on appointed defense counsel for legal  
18 representation;
- 19 b. The case involves common questions of law, fact, and relief that are  
20 capable of class-wide resolution. Separate prosecution of these actions by  
21 individual Class Members would create a risk of differing and inconsistent  
22 adjudications, which could establish inconsistent standards of conduct,  
23 exacerbating the different and inadequate public defense programs  
24 currently in place in various counties in the state. Such a risk is of  
25 particular concern in this case since the lack of uniform performance  
26 standards is central to Plaintiffs' allegations;
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c. The claims of the named Plaintiffs are typical of the claims of the Class as a whole. The claims of the named Plaintiffs arise from the same acts and/or omissions of Defendants as do the claims of the Class. And like all Class Members, the named Plaintiffs are being actually and constructively denied their right to meaningful representation, in violation of the Sixth Amendment to the U.S. Constitution and Article 1, Section 8 of the Nevada Constitution. Defendants' ongoing abdication of their duty to guarantee the right to counsel is the cause of Plaintiffs' and Class Members' injuries;

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d. The individuals identified as named Plaintiffs will fairly and adequately protect the interest of the Class and will vigorously prosecute the suit on behalf of the Class. Plaintiffs and their legal counsel know of no conflicts of interest between the named Plaintiffs as representatives and Class Members concerning the relief sought in the complaint. The named Plaintiffs are jointly represented by the American Civil Liberties Union Foundation, the American Civil Liberties Union of Nevada (collectively, "ACLU"), Law Office of Franny Forsman PLLC, and the law firm of O'Melveny & Myers LLP. The ACLU has extensive experience in successfully representing individuals and classes in similar actions. The attorneys for the named Plaintiffs are capable and experienced litigators, are attorneys of good reputation, and have experience successfully representing parties in courts in complex litigation. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class; and

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e. The State of Nevada and the Governor have failed to ensure that Class Members' state and federal constitutional rights to counsel and due process are protected and effectuated. As a result, the State of Nevada and the Governor have acted and refused to act on grounds generally applicable to

1 the Class, making injunctive and declaratory relief for the entire Class  
2 appropriate.

- 3  
4 107. Questions of fact and law common to the Class include, but are not limited to:
- 5 a. Whether Defendants are required under both the United States and the  
6 Nevada Constitutions to provide meaningful representation to indigent  
7 persons charged with crimes in Nevada's rural counties;
  - 8 b. Whether Defendants have systemically denied Plaintiffs and Class  
9 Members meaningful representation at critical stages of their case;
  - 10 c. Whether Defendants have created circumstances such that even where  
11 counsel is nominally available, "the likelihood that any lawyer, even a fully  
12 competent one, could provide effective assistance is small," thereby  
13 constructively depriving Plaintiffs of counsel in violation of *Cronic*, 466  
14 U.S. at 660;
  - 15 d. Whether Defendants are in violation of their obligations under the Sixth  
16 and Fourteenth Amendments to the United States Constitution to ensure  
17 that defense counsel appointed for Class Members have the resources,  
18 oversight, supervision, and training necessary to provide Class Members  
19 with constitutionally sufficient representation;
  - 20 e. Whether Defendants are in violation of their obligations under Article 1,  
21 Section 8 of the Nevada Constitution to ensure that defense counsel  
22 appointed for Class Members have the resources necessary to provide  
23 Class Members with constitutionally sufficient representation;
  - 24 f. Whether, within the public defense system that Defendants have  
25 established and enabled, counsel for indigent defendants in rural Nevada  
26 counties are able to meaningfully represent their clients by performing  
27 functions including but not limited to adequately communicating with  
28 clients, investigating cases, hiring necessary experts, advocating for pretrial

1 release, filing necessary pretrial motions, holding the government to its  
2 burden at trial where appropriate, advising clients on guilty pleas—  
3 including the immigration consequences of guilty pleas—and advocating  
4 during sentencing proceedings.

- 5 g. Whether Defendants’ delegation and abdication of responsibility for  
6 providing indigent defense to creates disparate access to the fundamental  
7 right to counsel.
- 8 h. Whether Defendants have failed to ensure that defense counsel appointed  
9 to represent Class Members have been provided with the resources  
10 necessary to adequately challenge the State’s charges against the Class  
11 Members; and
- 12 i. Whether, as a result of Defendants’ actions and omissions, Class Members  
13 are currently being harmed based on the State’s failure to provide them  
14 with meaningful representation.

15 **ADDITIONAL FACTUAL ALLEGATIONS**

16 ***History of Indigent Defense in Nevada***

17 **Nevada’s Pioneering Role as a Protector of Indigent Defendants’ Rights**

18 108. The State of Nevada has a long history of recognizing the right to counsel for those  
19 criminal defendants unable to afford an attorney. “On November 6, 1863, Section 8 of the  
20 Nevada Constitution was proposed and adopted with no debate, ensuring from that day forward  
21 that ‘in any court whatever, the party accused shall be allowed to appear and defend in person and  
22 with counsel’ and that under no circumstances shall the accused be deprived of ‘life, liberty, or  
23 property, without due process.’”<sup>21</sup> The Constitution was approved on September 1, 1864,  
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26 <sup>21</sup> Ex. 3, Sixth Amendment Center, *Reclaiming Justice: Understanding the History of the Right to*  
27 *Counsel in Nevada So as to Ensure Equal Access to Justice in the Future* (“Reclaiming Justice”)  
28 10 (citing Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional  
Convention of the Territory of Nevada (Legislative Counsel Bureau, State of Nevada, William C.

1 containing that provision.<sup>22</sup>

2 109. By the 1870s, judges in Nevada typically appointed an attorney whenever a  
3 criminal defendant requested one.<sup>23</sup>

4 110. An 1875 Assembly Bill (No. 122) codified payment to attorneys appointed by the  
5 court, and the Nevada Supreme Court case *In re Wixom* in 1877 confirmed that “the failure to  
6 appoint counsel to the poor in a criminal case was a valid reason to overturn convictions on direct  
7 appeal.”<sup>24</sup>

8 111. The right to counsel was subsequently codified in Section 10883 of the Nevada  
9 Code in 1909: “If the defendant appears for arraignment without counsel, he must be informed by  
10 the court that it is his right to have counsel before being arraigned and must be asked if he desires  
11 the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to  
12 defend him.” Nev. Stat. 1909, 330-33.

13 **The U.S. Supreme Court’s Adoption and Expansion of the Right to Counsel for**  
14 **Indigent Defendants**

15 112. Years later, the United States Supreme Court mandated that states have the  
16 ultimate obligation to ensure that indigent defendants accused of felonies in state courts are  
17 provided with competent legal counsel. *Gideon*, 372 U.S. at 344.

18 113. After *Gideon*, the Supreme Court continued to expand the right to counsel in  
19 significant ways. The Court has extended the right to children in juvenile delinquency  
20 proceedings (*see In re Gault*, 387 U.S. 1 (1967)); probationers in probation revocation  
21 proceedings (*see Mempa v. Rhay*, 389 U.S. 128 (1967)); and indigent defendants charged with  
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25 Miller & Eleanore Bushnell eds., 1972), available at:  
26 [http://sixthamendment.org/6ac/nvreport\\_reclaimingjustice\\_032013.pdf](http://sixthamendment.org/6ac/nvreport_reclaimingjustice_032013.pdf).

27 <sup>22</sup> *Id.*

28 <sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 18 (citing *In re Wixom*, 12 Nev. at 219-24; Assembly Bill 122, Journal of the Assembly for the State of Nevada, 1875 at 48).

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misdemeanors (*see Alabama v. Shelton*, 535 U.S. 654, 661-62 (2002); *Argersinger v. Hamlin*, 407 U.S. 25 (1972)).

114. More recently, the Supreme Court found that the right to counsel attaches for all defendants at their initial appearances (*see Rothgery v. Gillespie Cty.*, 554 U.S. 191 (2008)); and that plea bargaining constitutes a “critical stage” of any criminal proceeding requiring the effective assistance of counsel (*see Lafler v. Cooper*, 566 U.S. 156 (2012); *Missouri v. Frye*, 566 U.S. 134 (2012)).

115. The United States Supreme Court has also explained that *constructive* denial of the right to counsel violates the Sixth Amendment. *Cronic*, 466 U.S. at 659. Constructive denial occurs when, among other things, an indigent defendant is denied assistance of counsel at a critical stage of the proceedings, when defense counsel fails to investigate the underlying facts of a case, or when defense counsel fails to subject the prosecution’s case to meaningful adversarial testing. *Id.*

#### **Nevada’s Erosion of Indigent Defense Protections**

116. While the United States Supreme Court has expanded the constitutional rights of criminal defendants, Nevada has taken several steps back, abandoning its role as an early leader in protecting the rights of indigent defendants. Rather than making good on its trailblazing efforts, which served as a model for other states, Nevada today fails to ensure that people accused of crimes within its borders who are unable to afford an attorney are provided with constitutionally meaningful legal assistance.

117. Under the current system, Nevada counties with a population over 100,000 must create a county public defender’s office. Nev. Rev. Stat. § 260.010. This applies to only two counties: Washoe (encompassing the city of Reno) and Clark (encompassing the city of Las Vegas). Counties that have fewer than 100,000 residents may establish a county public defender’s office – or pay for the services of the Nevada State Public Defender. *Id.* §§ 260.010, 180.110. When first established, the State paid the majority of the costs associated with use of

1 the State Public Defender, but now the responsibility has flipped and participating counties pay a  
2 greater proportion of the costs.

3 118. In practice, this forces the rural counties to forgo paying for the State Public  
4 Defender and to establish individual contracts with private attorneys to provide indigent defense  
5 services. When counties enter into these arrangements, the State covers only a small portion of  
6 the costs and does not oversee or supervise the county systems to ensure that the services  
7 provided meet constitutional standards.

8 119. While it is permissible for a state to delegate its indigent defense obligations, “it  
9 must do so in a manner that does not abdicate the constitutional duty it owes to the people.”  
10 *Claremont Sch. Dist. v. Governor*, 147 N.H. 499, 513 (2002). In other words, the state retains  
11 ultimate responsibility for protecting the Sixth Amendment rights of its citizens regardless of  
12 whether it has delegated this duty to the counties. *Armstrong v. Schwarzenegger*, 622 F.3d 1058,  
13 1062-63 (9th Cir. 2010), *aff’d sub nom. Armstrong v. Brown*, 732 F.3d 955, 957 (9th Cir. 2013),  
14 *cert denied*, 134 S. Ct. 2725 (2014) (holding that the State of California retains ultimate  
15 responsibility for providing reasonable accommodations to disabled prisoners and parolees under  
16 the Americans with Disabilities Act regardless of whether it has delegated the operation of jails to  
17 the counties); *Hurrell-Harring v. State*, 15 N.Y.3d 8, 26, 930 N.E.2d 217, 227 (2010) (allowing  
18 class action to proceed against the State of New York even though indigent defense obligations  
19 had been delegated to counties); *Duncan v. State*, 832 N.W.3d 752 (Mich. 2013) (mem.) (holding  
20 that putative class of criminal defendants could proceed with suit alleging State of Michigan  
21 failed to comply with its indigent defense obligations even though responsibility had been  
22 delegated to counties); *Tucker v. State*, 394 P.3d 54, 64 (Idaho 2017) (holding that State of Idaho  
23 “has ultimate responsibility to ensure that the public defense system passes constitutional  
24 muster,” even though State has delegated provision of indigent defense to counties).

### 25 **The Ongoing Indigent Defense Crisis in Nevada**

26 120. A decade ago, the Nevada Supreme Court created the Indigent Defense  
27 Commission (“IDC”) to address “concerns about the current process for providing indigent  
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1 defendants in criminal and juvenile delinquency cases with counsel and whether the attorneys  
2 appointed are providing quality and effective representation.”<sup>25</sup> The IDC was tasked with  
3 studying Nevada’s indigent defense systems and making recommendations to the Supreme  
4 Court.<sup>26</sup>

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6 121. At the IDC’s first meeting on May 15, 2007, it was announced that the primary  
7 goal of the IDC is to “effect compliance with ABA standards for indigent defense statewide.”<sup>27</sup>  
8 Chief Justice Maupin also noted that the “[i]ssues are different in rural areas where compliance  
9 becomes more problematic.”<sup>28</sup>

10 122. At this first meeting, the IDC identified what remains a pervasive constitutional  
11 violation throughout the State of Nevada: “Rural courts are getting inadequate counsel. There  
12 seems to be different levels of justice throughout Nevada that must be changed.”<sup>29</sup> The IDC  
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17 <sup>25</sup> Ex. 4, Order Establishing Study Committee on Representation of Indigent Defendants,  
18 Supreme Court of Nevada, ADKT No. 411 (Apr. 26, 2007) (Doc. No. 07-28443).

19 <sup>26</sup> *Id.*

20 <sup>27</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
21 Ex. A: Summary of May 15, 2007 Meeting, Statement of Chief Justice Maupin, ADKT No. 411  
22 (Nov. 20, 2007) (Doc. No. 07-28444). The ABA Ten Principles of a Public Defense Delivery  
23 System cited by Chief Justice Maupin was “created as a practical guide for governmental  
24 officials, policymakers, and other parties who are charged with creating and funding new, or  
25 improving existing, public defense delivery systems. The Principles constitute the fundamental  
26 criteria necessary to design a system that provides effective, efficient, high quality, ethical,  
27 conflict-free legal representation for criminal defendants who are unable to afford an attorney.”  
28 The ABA Ten Principles of a Public Defense Delivery System (approved by American Bar  
Association House of Delegates, February 2002).

<sup>28</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
Ex. A: Summary of May 15, 2007 Meeting, Statement of Chief Justice Maupin, ADKT No. 411  
(Nov. 20, 2007) (Doc. No. 07-28444).

<sup>29</sup> *Id.*

1 conducted an initial statewide survey of indigent defense services in June and July 2007.<sup>30</sup> The  
2 IDC identified problems then that still have not been solved a decade later.<sup>31</sup>

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4 123. The IDC issued its first report in November 2007. Several recommendations  
5 specifically sought to address the crisis in the rural counties. These included the recommendation  
6 that indigent defendants in all counties other than Clark, Washoe, and Elko should be represented  
7 by the State Public Defender's Office, with funding from the State.

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9 124. Since that first report, the IDC has repeatedly identified persistent problems with  
10 indigent defense delivery, especially in the rural counties, and issued recommendations designed  
11 to guarantee meaningful representation to all indigent defendants.<sup>32</sup> For example, in 2008, the  
12 IDC's Rural Subcommittee recommended that:

- 13 • The State of Nevada accept its constitutional responsibility to fully fund all aspects of the  
14 delivery of indigent defense services in all counties;
- 15 • Each county should be free to choose its own system, provided that the system meets  
16 performance and caseload standards and is subject to oversight;
- 17 • The State of Nevada should fund an independent, statewide oversight board, made up of  
18 members from all three branches of government at state and local level, and other relevant  
19 constituencies;
- The State of Nevada should create a permanent indigent defense commission;

20 <sup>30</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
21 Supreme Court of Nevada, ADKT No. 411 (Nov. 20, 2007) (Doc. No. 07-28444).

22 <sup>31</sup> Ex. 1, Final Report and Recommendations of Supreme Court Indigent Defense Commission,  
23 Ex. B: Report of the Nevada Supreme Court's Indigent Defense Commission 6, ADKT No. 411  
(Nov. 20, 2007) (Doc No. 07-28444).

24 <sup>32</sup> See also Ex. 5, Order, In the Matter of the Review of Issues Concerning Representation of  
25 Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411 (Jan. 4, 2008)  
(Doc. No. 08-33146); Ex. 6, Order, In the Matter of the Review of Issues Concerning  
26 Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT  
27 No. 411, Mar. 21, 2008 (Doc. No 08-33173); Ex. 7, Order, ADKT No. 411, Oct. 16, 2008 (Doc.  
28 No. 08-33207); Ex. 8, Nevada Supreme Court, Indigent Defense Commission Rural  
Subcommittee, Report and Recommendations, ADKT No. 411, Dec. 16, 2008 (Doc. No. 08-  
33209).

- 1
- The State of Nevada should fully fund the Office of the Nevada State Public Defender, with competitive salaries, adequate attorney training, funding for investigative services, and not administer the Office within the Department of Health and Human Services.<sup>33</sup>

2  
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4  
5 125. Defendants have adopted none of these recommendations.

6 126. The Rural Subcommittee filed an updated status report in 2014. This report reaffirmed its previous recommendations, the bulk of which remained unaddressed, and added more.<sup>34</sup>

7  
8 127. Most notably, the Rural Subcommittee recommended that the State of Nevada fully fund its constitutional obligation to provide indigent defense services to rural counties.

9  
10 128. In 2015, the Nevada Supreme Court adopted some of the Subcommittee's 2014 recommendations but took no action on whether the State of Nevada should fully fund indigent defense, calling it an "unresolved legal question which is better raised in an actual case in controversy."<sup>35</sup>

11  
12  
13 129. During the 2015 legislative session, Senate Bill 451 was introduced to address some of the systemic indigent defense issues plaguing Nevada. After a hearing, the bill died in committee.

14  
15  
16  
17 130. Meanwhile, the State allowed the status quo to continue while it prosecuted nearly 4,000 indigent defendants in rural counties in fiscal years 2015 and 2016 without constitutionally adequate representation.<sup>36</sup>

18  
19  
20  
21 \_\_\_\_\_  
22 <sup>33</sup> See Ex. 8, Nevada Supreme Court, Indigent Defense Commission Rural Subcommittee, Report and Recommendations, ADKT No. 411, Dec. 16, 2008 (Doc. No. 08-33209).

23 <sup>34</sup> See Ex. 9, Rural Subcommittee Report on the Status of Indigent Defense in the 15 Rural Counties and Recommendations to Improve Service to Indigent Defendants, ADKT No. 411, Oct. 24, 2014 (Doc. No. 14-25500).

24  
25 <sup>35</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc No. 15-22416).

26 <sup>36</sup> See Ex. 11, Nevada Supreme Court, Indigent Defense Commission, Feb. 23, 2016 Meeting Materials, Indigent Defense Caseload Statistics, Fiscal Year 2014-16; Ex. 12, Nevada Supreme Court, Indigent Defense Commission, Oct. 23, 2017 Meeting Materials, Indigent Defense Statistics, Fiscal Year 2016-18.

1           131. On June 8, 2017, the Governor signed into law Senate Bill 377, which created the  
2 Nevada Right to Counsel Commission (“NRTCC”).<sup>37</sup> SB 377 required the NRTCC to study  
3 Nevada’s system for providing counsel to indigent defendants in counties with a population of  
4 less than 100,000, and to make recommendations to the Nevada legislature on ways to improve  
5 the system.

6           132. The NRTCC commissioned the Sixth Amendment Center to conduct a study of  
7 indigent defense in Nevada’s rural counties.<sup>38</sup> For each of the fifteen rural counties<sup>39</sup> the Sixth  
8 Amendment Center studied, it collected statistical information, policies, and procedures; observed  
9 court procedures; and interviewed judges, county officials, prosecutors, indigent defense  
10 attorneys, court clerks, and law enforcement.<sup>40</sup>

11           133. In August of 2018, the Sixth Amendment Center published its 180-page final  
12 report. The findings are unequivocal: the State of Nevada currently fails to meet its constitutional  
13 obligation to ensure that indigent defendants receive meaningful representation.

14           134. The Sixth Amendment Center concluded that:

- 15           • “The State of Nevada has a Fourteenth Amendment obligation to ensure effective  
16 Sixth Amendment services in every court at every level everywhere in the state.”
- 17           • “The State of Nevada does not require uniform indigent defense data collection  
18 and reporting.”
- 19           • The rural counties’ indigent defense systems suffer from: “a pervasive lack of  
20 independence,” “a pervasive lack of institutionalized attorney supervision and  
21 training,” “a pervasive lack of attorneys at initial appearance to advocate for  
22 pretrial release of defendants,” “a pervasive lack of independent defense

23  
24 <sup>37</sup> Ex. 12, Senate Bill 377 (2017).

25 <sup>38</sup> Ex. 14, The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services, at 41.

26 <sup>39</sup> While the Sixth Amendment Center studied fifteen rural counties, the term “rural counties” in  
this complaint refers to the ten counties set forth in footnote 3, unless indicated otherwise.

27 <sup>40</sup> Ex. 14, The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services, at 41–  
28 42.

1 investigations,” “a pervasive lack of support services,” “fixed fee contracts,” and  
2 “excessive caseloads.”

- 3
- 4 • “The vast geographic distances, the paucity of attorneys in many areas of the state,  
5 the structure of Nevada’s courts . . . seems to render it nearly impossible for the  
6 individual counties and cities alone to provide public defense systems that can  
7 ensure effective assistance of counsel.”<sup>41</sup>

8 All of the seven recommendations are directed to the State of Nevada, not the rural counties,  
9 because it is the State’s obligation to ensure meaningful representation to indigent criminal  
10 defendants.<sup>42</sup> The Sixth Amendment Center report makes clear that the State systems that  
11 Plaintiffs challenge continues to harm indigent defendants, such as Plaintiffs, in the rural  
12 counties.

13 135. The recipient of this report, however, has no ability to enact reforms that would  
14 address the State’s failures identified by the report. The NRTCC was created solely to *recommend*  
15 legislation. There is no State oversight or enforcement mechanism to ensure compliance with any  
16 performance or caseload standards the NRTCC may recommend. The NRTCC is not authorized  
17 to implement any of its recommendations.

18 136. History has shown that without teeth, the reports and recommendations of such  
19 commissions do not remedy underlying problems. For example, on July 23, 2015, the Nevada  
20 Supreme Court issued Order ADKT No. 411. Among other things, this order adopted one of the  
21 IDC Rural Subcommittee’s recommendations that counties “shall not use a totally flat fee  
22 contract,” and must permit “modification of fees for extraordinary cases, and allow for  
23 investigative fees and expert witness fees.”<sup>43</sup> In issuing this order, the Supreme Court  
24 acknowledged that the “competent representation of indigents is vital to our system of justice.”

25  
26 <sup>41</sup> *Id.* at 164–65.

27 <sup>42</sup> *Id.* at 166–80.

28 <sup>43</sup> Ex. 10, Order, Nevada Supreme Court, ADKT 0411, July 23, 2015 (Doc. No. 15-22416).

1  
2 137. Over three years later, on information and belief, at least 10 of Nevada's 17  
3 counties have contracts that do not comply with Court's 2015 Order. Some of these contracts are  
4 explicitly flat-fee contracts, and some constitute *de facto* flat-fee contracts by either failing to  
5 provide for any modification of the annual compensation under the contract or limiting the ability  
6 to receive additional compensation so severely that it creates a substantial disincentive to  
7 appropriately litigate cases.

8 138. As the ABA has explained, "[c]ontracts with private attorneys for public defense  
9 services should never be let primarily on the basis of cost; they should specify performance  
10 requirements and the anticipated workload, provide an overflow or funding mechanism for  
11 excess, unusual, or complex cases, and separately fund, expert, investigative, and other litigation  
12 support services."<sup>44</sup> Few of these safeguards are found in the flat-fee contracts in Nevada's rural  
13 counties. Defendants have known this for years and have done little if anything. Upon  
14 information and belief, there was not and is not a State system or process to provide oversight,  
15 training, case management, appropriate incentives, and appropriate financial resources for  
16 appointed attorneys to provide meaningful representation to indigent criminal defendants in the  
17 rural counties.

18 **PROBLEMS PERVADING THE INDIGENT**  
19 **DEFENSE SYSTEM IN NEVADA'S RURAL COUNTIES**

20 139. Defendants bear the responsibility for ensuring that indigent defendants accused of  
21 a crime throughout Nevada receive constitutionally meaningful representation. But Defendants  
22 have set up a system that fails to ensure that result. In delegating responsibility for providing  
23 counsel to Nevada's rural counties without providing oversight, enforcement standards, or  
24 adequate resources, Defendants have abdicated their constitutionally-mandated duty to Plaintiffs  
25 and the Class.

26 \_\_\_\_\_  
27 <sup>44</sup> American Bar Association, *Ten Principles of a Public Defense Delivery System*, Feb. 2002,  
28 [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sc\\_laid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sc_laid_def_tenprinciplesbooklet.authcheckdam.pdf).

1  
2 140. The State has failed to require basic protections to ensure meaningful  
3 representation, such as the exercise of oversight over contracts and hiring arrangements for  
4 appointed counsel, training for appointed counsel, oversight and accountability of appointed  
5 counsel, caseload management, and access to investigative and trial resources including  
6 investigators and experts. The State has therefore abdicated its obligation to provide meaningful  
7 representation. In this vacuum, appointed counsel in the rural counties lack the appropriate  
8 incentives, training, oversight, and accountability to zealously represent indigent clients, for the  
9 reasons outlined below.

10 ***Flat-Fee and De Facto Flat-Fee Contracts***

11 141. The contracts that Nevada’s rural counties have entered into illustrate the varied  
12 ways in which Defendants have abdicated their constitutional duty to protect the rights of indigent  
13 defendants.

14 142. As the Sixth Amendment Center found, the rural counties suffer, to various  
15 degrees, from “fixed fee contracts that pay the same no matter how few or how many cases the  
16 attorney handles, and that require the attorney to pay for overhead out of the fixed compensation,  
17 and that in some instances require the attorney to pay for conflict-counsel out of the fixed  
18 compensation.”<sup>45</sup> The very terms of the appointed attorney contracts disincentivize zealous  
19 representation. Under the flat-fee and *de facto* flat-fee annual contract model, appointed attorneys  
20 are not paid any more or any less for the number or complexity of cases they handle, and  
21 insufficient safeguards exist to ensure performance; appropriate workload; separate funding for  
22 expert, investigative, or other litigation support functions; or overflow and funding mechanisms  
23 for excess, unusual, or complex cases.

24 143. By allowing these flat-fee and *de facto* flat-fee contracts to exist without requiring  
25 any safeguards or exercising any oversight, Defendants have abdicated their duty under *Gideon*.

26  
27 <sup>45</sup> Ex. 14, The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services, at  
28 164–65.

1 Defendants have essentially done nothing to ensure that the indigent defense provided pursuant to  
2 these flat-fee and *de facto* flat-fee contracts is constitutionally sufficient.

3 144. Upon information and belief at least ten rural counties use flat-fee or *de facto* flat-  
4 fee appointed attorney contracts. A flat-fee contract fails to provide for any modification of the  
5 annual compensation under the contract, and *de facto* flat-fee contracts limit the ability to receive  
6 additional compensation so severely that it creates a substantial disincentive to appropriately  
7 litigate cases.

8 145. Fees in flat-fee and *de facto* flat-fee contracts are established irrespective of the  
9 number of clients the attorney may be assigned during the term of the contract or the seriousness  
10 of those clients' criminal charges or the number of cases that proceed to trial.

11 146. None of the contracts in the rural counties provide additional compensation to  
12 attorneys for the vast amount of travel that is often required in those sparsely populated regions,  
13 and many of the contracts do not provide for additional expenses or fees when taking a case to  
14 trial.

15 147. Flat-fee and *de facto* flat-fee contracts create a serious conflict of interest for  
16 defense attorneys because attorneys are rewarded with more money for doing less work for  
17 clients. These contracts encourage the attorney to spend as little money and time as possible on  
18 each case in order to maximize the amount of money and time that can be used to cover other  
19 cases, and other expenses, including compensation for the attorney him or herself.

20 148. Upon information and belief, many of Nevada's rural counties contract with  
21 private attorneys who also represent their own paying clients, in addition to an unlimited number  
22 of indigent defendants whom they represent on an annual *de facto* flat-fee basis. This type of  
23 arrangement creates a conflict of interest, because the contract attorney is incentivized to spend  
24 no time or money on the cases of his indigent clients; no matter how much time or money the  
25 attorney spends on a case for an indigent client, the attorney is paid the same yearly flat-fee from  
26 the county.

1           149. None of the counties using the flat-fee or *de facto* flat-fee contract system prohibit  
2 attorneys from having private clients while fulfilling their contracts, nor do the counties require  
3 reporting or tracking of private caseloads. In fact, in counties whose population is less than  
4 100,000, appointed attorneys are expressly permitted to engage in private practice. *See Nev. Rev.*  
5 *Stat. § 260.040(4).*

6           150. Upon information and belief, several contract attorneys in the rural counties  
7 maintain multiple contracts to provide legal services across different counties, in addition to their  
8 own private practices, further minimizing the amount of time contract attorneys are able to devote  
9 to their primary indigent defense contracts.

10           151. Upon information and belief, many of the rural county contracts require the  
11 appointed attorney to pay for routine investigative and expert witness fees from the flat-fee  
12 amount paid for their services, and will allow additional payment only with a court order.

13           152. Because Defendants do not ensure appropriate compensation, allowances for  
14 investigation and litigation expenses, or require case load limits, the aforementioned problems  
15 associated with flat-fee and *de facto* flat-fee contracts pervade the rural counties.

16           153. In Nye County, for example, the current appointed attorney contract pays each  
17 contracting attorney \$150,000 per year. The County, upon information and belief, has  
18 courthouses in Beatty and Tonopah, which are more than two and a half hours apart by car.  
19 Travel from Beatty or Tonopah to the Pahrump Township Justice Court or Fifth District Court  
20 takes as long as an hour and a half. But the contract explicitly states that the attorney is not  
21 eligible for travel expenses. Given the distance and lack of compensation, a contracting attorney  
22 in Nye County is further discouraged from traveling to meet his or her client.

23           154. The appointed attorneys in Lyon County also face a substantial burden due to  
24 travel. There, the Dayton Justice Court and Canal Township Justice Court are a 40-minute drive  
25 from each other and at least a 50-minute drive from the Third District Court and Walker River  
26 Justice Court. Even though an appointed attorney in Lyon County could have appearances in  
27

1 each of these courthouses, and may even have multiple appearances in one day, the public  
2 defense contract in Lyon County prohibits reimbursement for travel expenses.

3 155. The appointed attorney in Eureka County maintains a law office in White Pine  
4 County, nearly 90-minutes away from Eureka, yet his contract similarly prohibits reimbursements  
5 for travel expenses.<sup>46</sup> Similarly, due to the high cost of living and relatively low take home pay  
6 they receive under their contracts, none of the appointed attorneys can afford to live in Douglas  
7 County and must travel from neighboring counties for court appearances or to meet with clients  
8 who are incarcerated.<sup>47</sup> None of this travel is eligible for reimbursement.

9 ***Lack of Investigation and Expert Analysis and Testimony***

10 156. Public defense contracts also lack sufficient provisions to ensure that contract  
11 attorneys have the ability to provide indigent defendants with even the most basic components of  
12 legal representation, including appropriate investigators and experts.

13 157. Many of the flat-fee and *de facto* flat-fee contracts do not provide for the cost of  
14 investigators and experts. Rather, the appointed attorney must make special requests of the court,  
15 on a case-by-case basis, to obtain the resources to hire an investigator or expert. As the Sixth  
16 Amendment Center found, the rural counties suffer, to various degrees, from “a pervasive lack of  
17 independent defense investigations in all but the most serious felony cases.”<sup>48</sup>

18 158. For example, in fiscal year 2015-2016, one appointed attorney in White Pine  
19 County had 109 felony appointments, but made only four fee requests for an expert, and one fee  
20 request for an investigator.

21 159. Another appointed attorney in Nye County had 253 misdemeanor appointments,  
22 41 gross misdemeanor appointments, and 159 felony appointments in fiscal year 2016, but made  
23 only nine fee requests for an expert and seven fee requests for an investigator.

24  
25 <sup>46</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 94.

26 <sup>47</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 87.

27 <sup>48</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at  
28 164.

1           160. An appointed attorney in Mineral County had 76 misdemeanor appointments,  
2 35 gross misdemeanor appointments, and 122 felony appointments during the first eight months  
3 of 2016, but reported that no experts or investigators were needed at all.

4           161. Here too, Defendants have abdicated their responsibility by failing to establish a  
5 mechanism to ensure that appointed attorneys are in fact requesting the appropriate investigators  
6 and experts, or for ensuring that the services that are in fact deployed are likely to result in  
7 meaningful representation.

8           ***Lack of Supervision and Standards for Minimum Qualifications***

9           162. The contracts for appointed attorneys typically do not include any requirement that  
10 the appointed attorney have any prior experience in criminal defense work or with indigent  
11 populations. Most of the rural appointed attorney contracts simply track the statutory  
12 requirements, and mandate that an appointed attorney be licensed to practice in Nevada and  
13 maintain good standing. *See Nev. Rev. Stat. § 260.030.* As the Sixth Amendment Center found,  
14 the rural counties suffer, to various degrees, from “a pervasive lack of institutionalized attorney  
15 supervision and training.”<sup>49</sup>

16           163. Nearly all of the rural appointed attorney contracts have no minimum  
17 qualifications or ongoing training requirements.

18           164. Notably, in Lander County, the contract attorney need not meet any specified  
19 qualifications and need not demonstrate that he or she is competent to represent an individual  
20 charged with a crime. Because the contract does not provide any funds for training, any training-  
21 related expenses would presumably come out of the flat-fee, further diminishing any incentive to  
22 gain additional skill or experience.

23           165. Defendants and the individual counties also do not adequately supervise or  
24 evaluate the contract defenders. Upon information and belief, in nearly every county that uses  
25

26  
27 <sup>49</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at  
28 164.

1 contract public defenders, the appointed attorneys there are not subject to any meaningful  
2 oversight as to the quality of representation they provide.

3 166. Although the Nevada Supreme Court on October 16, 2008, adopted performance  
4 standards recommended by the IDC, Defendants have made no provision for enforcement. The  
5 standards merely provide guidelines and do not mandate minimum levels of performance by  
6 appointed attorneys representing indigent defendants in rural counties. *See Washoe Cty. Pub.*  
7 *Def.'s Office v. Second Judicial Dist. Court of State ex rel. Cty. of Washoe*, No. 61173, 2013 WL  
8 5614272, at \*2 (Nev. Oct. 9, 2013). For the appointed attorneys serving under contracts in rural  
9 counties in Nevada, there are no performance standards and no means by which to evaluate the  
10 attorneys working in these counties.

11 167. This combination of lack of qualifications and lack of ongoing training and  
12 supervision leaves contract-appointed attorneys ill-equipped to provide meaningful representation  
13 to their indigent clients.

14 168. Defendants have failed to address this issue and have no provision for ensuring  
15 that appointed attorneys are qualified or that they have appropriate ongoing training and  
16 supervision. Moreover, Defendants provide no means of accountability for attorneys who fail to  
17 provide meaningful representation.

18 ***Lack of Independence***

19 169. The process that rural counties use to select contract-appointed attorneys and the  
20 role of the local judiciary in overseeing those attorneys also disincentivizes meaningful  
21 representation by making contract holders beholden to people other than their clients. As the  
22 Sixth Amendment Center found, the rural counties suffer, in various degrees, from “a pervasive  
23 lack of independence from judges, prosecutors, and county/city governance.”<sup>50</sup>  
24  
25  
26

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27 <sup>50</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at  
28 164.

1           170.     The first of the ABA Ten Principles is to ensure that “the public defense function,  
2 including the selection, funding, and payment of defense counsel is independent.”<sup>51</sup> As the Sixth  
3 Amendment Center has explained:

4           The public defense function “should be independent from political influence and  
5 subject to judicial supervision only in the same manner and to the same extent as  
6 retained counsel,” noting specifically that “[r]emoving oversight from the judiciary  
7 ensures judicial independence from undue political pressures and is an important  
8 means of furthering the independence of public defense.” Likewise, the public  
9 defense function should also “be independent from political influence.” To  
10 “safeguard independence and to promote the efficiency and quality of services, a  
11 nonpartisan board should oversee defender, assigned counsel, or contract  
12 systems.”<sup>52</sup>

13           171.     Appointed attorneys in rural counties are subject to both political influence and  
14 excessive judicial involvement in the defense function.

15           172.     In this system, appointed attorneys have to cater to local officials who frequently  
16 are not lawyers with criminal defense expertise and who therefore do not prioritize or demand the  
17 delivery of constitutionally adequate representation for rural defendants. For example, in  
18 Churchill County, applications in response to the County’s 2017 RFQ for an appointed attorney  
19 were evaluated by the County Manager, Comptroller, and Chief Civil Deputy District Attorney,  
20 with the primary selection criteria being “ability and history of successfully completing contracts  
21 of this type, meeting deadlines, office hours and experience in similar work, with consideration  
22 given to references.”<sup>53</sup>

23           173.     Upon information and belief, neither the Churchill County Manager nor  
24 Comptroller is an attorney licensed to practice law in Nevada. And involving anyone from the  
25 District Attorney’s Office in the selection of contract-appointed attorneys undermines  
26

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27 <sup>51</sup> American Bar Association, *Ten Principles of a Public Defense Delivery System*, Feb. 2002,  
28 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf)

<sup>52</sup> Ex. 3, Reclaiming Justice at 26 (internal citations omitted).

<sup>53</sup> Request for Qualifications for Public Defense Services, Churchill County, Nevada,  
<http://www.churchillcounty.org/DocumentCenter/View9998> (last visited Oct. 18, 2017).

1 independence and creates an egregious conflict, because it allows prosecutors to pick their  
2 opponents.

3           174. In addition, there exists a potential for undue influence because Nevada state law  
4 mandates that district attorneys, among other things, “review[] all contracts under consideration  
5 by the board of county commissioners,” and “provide[] advice relating to the impact of federal or  
6 state law on the county.”<sup>54</sup> Because contract public defenders are appointed by the board of  
7 county commissioners in the rural counties, the district attorneys in the rural counties are required  
8 to assist the boards of county commissioners in contract view and statutory interpretation related  
9 to the hiring of contract public defenders, who are also the district attorneys’ adversaries.<sup>55</sup>

10           175. District attorneys’ direct involvement in indigent defense in the rural counties  
11 violates all national standards, which “recommend that prosecutors not be involved in the  
12 oversight of indigent defense services and providers, ‘to remove any implication that defenders  
13 are subject to the control of those who appear as their adversaries.’”<sup>56</sup>

14           176. Even after an attorney has secured a public defense contract, many rural counties  
15 require the contract holder to request an order from a judge to obtain reimbursement for  
16 investigative costs, expert witness fees, or other necessary services. This impermissibly burdens  
17 the lawyer with the choice between revealing defense strategy to the judge and procuring the  
18 resources needed to hire an expert or investigator. Further, as Plaintiff Diane Davis’s case  
19 demonstrates, even if a lawyer requests funds for an expert or investigator, the court may choose  
20 not to provide the necessary funds, effectively denying indigent defendants like Ms. Davis the  
21 benefit of these crucial resources.

22           177. These structural problems result in a level of representation that “makes the  
23 adversary process itself presumptively unreliable.” *Cronic*, 446 U.S. at 659.

24 \_\_\_\_\_  
25 <sup>54</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 21.

26 <sup>55</sup> *Id.*, at 22.

27 <sup>56</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 22-  
28 23 (quoting ABA, *Standards for Criminal Justice, Providing Defense Services* 5-1.3(b)  
commentary at 19 (3d ed. 1992)).

1  
2 178. This structural lack of independence and potential for undue influence by district  
3 attorneys is mandated by Nevada state law, which requires that the district attorney advise the  
4 board of commissioners on regarding federal and state laws, contracts, and ordinances, involving  
5 the qualifications, selection, compensation, and performance of indigent defense attorneys.<sup>57</sup> The  
6 Sixth Amendment Center found that these “state law mandates bring district attorneys directly  
7 into interference with the right to counsel.”<sup>58</sup>

8 ***Lack of Representation at Initial Appearance***

9 179. Defendants’ failures also mean that rural counties do not comport with the  
10 Supreme Court’s decision in *Rothgery v. Gillespie County*, which reaffirmed that the right to  
11 counsel attaches when “formal judicial proceedings have begun.” 554 U.S. at 211. For a person  
12 who is arrested, the beginning of formal judicial proceedings is at the “criminal defendant’s initial  
13 appearance before a judicial officer, where he learns the charge against him and his liberty is  
14 subject to restriction.” *Id.* at 213. Once the right to counsel attaches at the initial appearance, a  
15 criminal defendant is “entitled to the presence of appointed counsel during any ‘critical stage’ of  
16 post-attachment proceedings.” *Id.* at 212.

17 180. But in Nevada’s rural counties, appointed attorneys are routinely unavailable to  
18 represent indigent defendants at every critical stage of the criminal process, including at  
19 arraignments where bond is determined, resulting in the actual denial of counsel to indigent  
20 defendants across the state. As the Sixth Amendment Center found, the rural counties suffer, to  
21 various degrees, from “a pervasive lack of attorneys at initial appearance to advocate for pretrial  
22 release of defendants.”<sup>59</sup>

23 181. Typically, attorneys are appointed to indigent defendants at their initial  
24 appearances, but the attorneys do not actually meet with their clients until days or weeks after the

25 <sup>57</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at 21.

26 <sup>58</sup> *Id.*

27 <sup>59</sup> Ex. 14, *The Right to Counsel in Rural Nevada: Evaluation of Indigent Defense Services*, at  
28 164.

1 appointment. As a result, bond determinations, which usually occur at the criminal defendant's  
2 initial appearance before the court, are nearly always made without the benefit of counsel.  
3 Consequently, bond may be set based on inappropriate factors, or the court may make its bond  
4 determination without the benefit of facts critical to such a determination.

5 182. Often, unrepresented indigent defendants must argue on their own behalf for their  
6 release on their own recognizance or for a reasonable reduction in their bond amount. Because  
7 they lack the training to advocate effectively, they are forced to remain in jail simply because they  
8 did not have the benefit of adequate legal counsel who could make appropriate arguments on their  
9 behalf.

10 183. In failing to ensure that indigent criminal defendants have meaningful  
11 representation at their initial proceedings and in all critical stages of a criminal case, Defendants  
12 have caused harm to Plaintiffs, and those similarly situated, by constructively denying them their  
13 Sixth Amendment right to counsel, their Fourteenth Amendment right to due process, and their  
14 corresponding Article 1 Section 8 rights under the Nevada Constitution.

15 ***Unnecessary and/or Extended Pretrial Detention***

16 184. Due in part to the State's failure to provide meaningful representation to indigent  
17 defendants at their initial appearances, bail is often set at amounts that indigent defendants cannot  
18 afford. Unnecessary, wealth-based pretrial detention has severe consequences for indigent  
19 defendants on their criminal cases as well as on their personal lives.

20 185. According to studies conducted or cited by, among others, the U.S. Department of  
21 Justice's Bureau of Justice Assistance and the private, nonprofit Arnold Foundation, the mission  
22 of which is to improve the lives of individuals by strengthening our social, governmental, and  
23 economic systems, whether or not a criminal defendant is held in pretrial custody can have a  
24 tremendous impact on the outcome of the case. For instance, in its review of outcomes for more  
25 than 150,000 defendants in Kentucky during 2009-2010, the Arnold Foundation determined that  
26 "[w]hen other relevant statistical controls are considered, defendants detained until trial or case  
27 disposition are 4.44 times more likely to be sentenced to jail and 3.32 times more likely to be  
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1 sentenced to prison than defendants who are released at some point pending trial.<sup>60</sup> Similarly, in  
2 New York City, “the citywide conviction rate for cases with no trial release was 92%. By  
3 contrast, the conviction rate for cases in which the defendant was at liberty from arraignment to  
4 disposition was 50%.”<sup>61</sup> The data suggests that pretrial detention can make it more difficult for  
5 criminal defendants to meet with their attorneys or to assist with their defense.

6 186. Pretrial detention can also serve as an inappropriate incentive to obtain a guilty  
7 plea in exchange for release from jail, notwithstanding a person’s innocence or the availability of  
8 viable defenses to challenge the prosecution’s case. Indeed, many Class Members feel compelled  
9 to take pleas, often to the highest charge, just to secure their release from custody.

10 187. The State’s abdication of its constitutional responsibilities created a system of poor  
11 training, cost-cutting contracts, and lack of oversight creating little incentive for appointed  
12 attorneys to argue for pretrial release of their indigent defendant clients.

13 ***Lack of Consistent or Confidential Attorney-Client Communication***

14 188. Indigent defendants in rural counties do not have sufficient access to their  
15 attorneys, with whom they are unable to communicate for weeks or months at a time. Multiple  
16 factors contribute to these breakdowns: vast travel distances, unreimbursed travel expenses, lack  
17 of sufficient support staff to help manage client relationships, and the flat-fee and *de facto* flat-fee  
18 contracts that incentivize lawyers to spend as little time as possible on any individual case.  
19 Indigent defendants’ lack of communication with their appointed attorneys makes it virtually  
20 impossible for them to understand developments in their case or to assist meaningfully in their  
21 own defense.

22 189. For example, several inmates at the Nye County Jail have submitted complaints  
23 directly to the jail about their lack of contact with their appointed attorneys. The Nye County  
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25 \_\_\_\_\_  
26 <sup>60</sup> Christopher T. Lowenkamp et al., Laura and John Arnold Foundation, Investigating the Impact  
of Pretrial Detention on Sentencing Outcomes 10 (Nov. 2013).

27 <sup>61</sup> Mary Phillips, N.Y.C. Crim. Just. Agency, Pretrial Detention and Case Outcomes 28 (Nov.  
28 2007).

1 Sherriff's office has forwarded all of these concerns to the District Attorney and the County  
2 Manager.<sup>62</sup>

3 190. One inmate in Nye County wrote about his inability to get in touch with his  
4 appointed attorney:

5 I have no way to get in touch with my lawyer and is is causing extream anguish.  
6 Ive called, ive written, I just tried to send email but the keyosk wont let me  
7 because i have no money. Ive grievenced the issue and reported it through this  
8 message a few times.<sup>63</sup>

9 191. Another inmate in Nye County voiced similar concerns:

10 Im still waiting to hear from my lawer [] i have written letters and have asked you  
11 personally to please help me contact my lawyer and still have not heard from him  
12 nor have i gotten a response. I was on the calander for court today 8-10-17 at 9am  
13 and never went Nor was i told My court was canceled. I've tried asking for my  
14 next court date and all i got was threatened with Disciplinary time what is going  
15 on? Whyam i being Treated like this ?<sup>64</sup>

16 192. When indigent defendants *do* get the opportunity to communicate with their  
17 appointed attorneys, the meetings are usually perfunctory and often held in open court or other  
18 areas of the courthouse that lack the privacy necessary for truly confidential discussions. There is  
19 no physical barrier or door protecting the attorney-client privileged discussions from other people  
20 in attendance. This is only exacerbated for those in custody, where conversations with appointed  
21 attorneys often take place in group holding cells where indigent defendants are not assured that  
22 their statements to counsel will not be overheard by other inmates and jail personnel. These kinds  
23 of interactions make it difficult to establish a meaningful attorney-client relationship, breach  
24 ethical standards, and could result in privileged communications being divulged.

25 \_\_\_\_\_  
26 <sup>62</sup> Ex. 13, August 22, 2017 Email from Lt. Lieutenant David Boruchowitz and attachment.

27 <sup>63</sup> *Id.* (reproduced as written).

28 <sup>64</sup> *Id.* (reproduced as written).

1           193. This systemic breakdown of the attorney-client relationship between indigent  
2 defendants and their contract public defense counsel is the direct result of Defendants' failure to  
3 manage and support a system of meaningful indigent defense.

4           ***Failure to Hold Prosecution to Its Burden***

5           194. While few criminal cases ever reach trial, criminal trials in Nevada's rural counties  
6 are especially rare.

7           195. For example, in Douglas County, of the approximately 930 indigent defense cases  
8 assigned to four contract-appointed attorneys in fiscal year 2015, only 35 went to trial. This  
9 amounts to a trial rate of 3.7%—compared to an approximately 6% rate nationwide. *See Frye*,  
10 566 U.S. at 143 (citations omitted).

11           196. In Churchill County, in fiscal year 2016, of the 364 indigent defense cases  
12 assigned to the one contract-appointed attorney during that period, only four went to trial—a rate  
13 of 1.1%. Notably, not one of the 135 felony cases assigned to this attorney was challenged at  
14 trial.

15           197. The rarity of trials means that appointed attorneys generally do not hold the  
16 prosecution to its burden of proof. As a result, indigent defendants feel disproportionately high  
17 pressure to accept pleas that do not reflect the merits of their cases. This is precisely what  
18 happened to Plaintiff Jason Enox, who mere weeks before trial, acquiesced to a plea deal rather  
19 than fight a potential life sentence with an attorney who Mr. Enox believed would not prepare and  
20 who not even answer Mr. Enox's phone calls.

21           198. Even when appointed attorneys do take cases to trial, the flat-fee terms of their  
22 contracts disincentivize them from adequately preparing for trial. The contracts also do not allow  
23 for attorneys to adjust their workloads should a trial consume their schedule, further  
24 disincentivizing them from taking cases to trial.

25           199. Defendants' abdication of constitutional responsibility for indigent defense created  
26 a created a system of poor training, lack of oversight, and perverse flat-fee contracts devoid of  
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1 incentives to take cases to trial and force the state to satisfy its burden against indigent  
2 defendants.

3 ***Harm to Plaintiffs***

4 200. Plaintiffs and the Class are suffering irreparable harm as a result of Defendants'  
5 dereliction of their constitutional duty to guarantee that indigent defendants receive meaningful  
6 representation.

7 201. Plaintiff Diane Davis is suffering irreparable harm. She was represented by five  
8 different attorneys over the four years that her case has been pending. All of her attorneys  
9 worked on a flat-fee or *de facto* flat-fee contract. Ms. Davis has been found guilty of first-degree  
10 arson, a Category B felony. She is now facing 1-20 years of imprisonment.

11 202. Plaintiff Jason Lee Enox is suffering irreparable harm. He was detained for 20  
12 before being sentenced and was being represented by an attorney on a *de facto* flat-fee contract.  
13 He was unable to contact his attorney for months at a time. During his pre-trial detention,  
14 Mr. Enox lost his job and had to sell everything that he owns. While incarcerated, Mr. Enox's  
15 father died and he was unable to attend the funeral. Mere weeks before his trial was scheduled to  
16 start, Mr. Enox believed that his attorney was not prepared for trial, so Mr. Enox agreed to enter  
17 an *Alford* plea on October 3, 2017 and was sentenced to a term of 89 months to 252 months.

18 203. Plaintiff Jeremy Lee Igou is suffering irreparable harm. He has been in pre-trial  
19 detention for 15 months and is being represented by an attorney on a flat-fee contract. He has  
20 been unable to contact his attorney for months at a time. Facing a life sentence, he does not know  
21 if any progress has been made in his case. While his appointed attorneys ask for continuance  
22 after continuance, Mr. Igou believes it will be more and more difficult for any attorney to defend  
23 his case.

24 204. Plaintiff Jon Wesley Turner II is suffering irreparable harm. Despite initially  
25 invoking his right to a speedy trial, he has now been incarcerated for 11 months. He is  
26 represented by an attorney on a flat-fee contract, but he has not met or spoken with the attorney in  
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1 nearly eight months. Mr. Turner does not know how he will be able to prepare for his March  
2 2019 trial date. Mr. Turner faces life in prison if he is convicted.

3 *State and Gubernatorial Liability*

4 205. The United States Supreme Court has affirmed that, under the Sixth Amendment  
5 to the U.S. Constitution, the State of Nevada has a duty to provide meaningful representation for  
6 criminal defendants who are unable to afford an attorney.

7 206. The Governor is constitutionally vested with the executive power of the State and  
8 must ensure the laws of Nevada are faithfully executed. Nev. Const. art. 5, §§ 1, 7.

9 207. The State of Nevada and the Governor have failed to ensure that the provision of  
10 indigent services is constitutionally adequate.

11 208. The State of Nevada and Governor have failed to provide any supervision over the  
12 provision of indigent defense services across the state.

13 209. The State of Nevada and Governor have failed to adopt any consistent, statewide  
14 caseload and workload standard for appointed attorneys across the state.

15 210. The State of Nevada and Governor have failed to adopt any statewide performance  
16 standards for appointed attorneys across the state.

17 211. By virtue of the ongoing work of the Indigent Defense Commission and the  
18 Supreme Court's adoption of a portion of the Rural Subcommittee's recommendations, the State  
19 of Nevada and Governor have been on notice for years that Nevada's appointed attorney system  
20 is failing to provide constitutionally sufficient representation.

21 212. Despite this notice, the State of Nevada and Governor have failed to take sufficient  
22 action to remedy the deficiencies in the provision of indigent defense services.

23 213. The failure of the State of Nevada and Governor to take sufficient steps to remedy  
24 the deficiencies in Nevada's indigent defense system is the proximate cause of the harm suffered  
25 by indigent criminal defendants in the state, including Plaintiffs and the Class they represent.  
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1 **CLAIMS FOR RELIEF**

2 **First Claim for Relief**

3 **Violation of the Sixth and Fourteenth Amendments to the United States Constitution**  
4 **(Right to Counsel) and 42 U.S.C. § 1983**  
5 **(All Plaintiffs and the Class Against All Defendants)**

6 214. Plaintiffs allege and incorporate by reference as if fully set forth herein the  
7 allegations contained in all preceding paragraphs of this Complaint.

8 215. The Sixth Amendment to the United States Constitution, as applied to the States  
9 through the Fourteenth Amendment, requires Defendants to ensure that all indigent criminal  
10 defendants receive meaningful legal representation at all critical stages of their cases.

11 216. Defendants have violated and continue to violate the Sixth and Fourteenth  
12 Amendments because they fail to ensure that Plaintiffs and all Class Members—indigent  
13 defendants in rural counties facing the possibility of incarceration—receive meaningful legal  
14 representation at all critical stages of their cases, resulting in the constructive denial of their right  
15 to counsel.

16 217. Plaintiffs bring this claim under 42 U.S.C. § 1983, which provides for suit against  
17 the government for constitutional violations.

18 **Second Claim for Relief**

19 **Violation of Article 1, Section 8, of the Nevada Constitution (Right to Counsel)**  
20 **(All Plaintiffs and the Class Against All Defendants)**

21 218. Plaintiffs allege and incorporate by reference as if fully set forth herein the  
22 allegations of all preceding paragraphs.

23 219. Article 1, Section 8 of the Nevada Constitution requires the State of Nevada and  
24 by extension, the Governor, to ensure that all indigent criminal defendants receive meaningful  
25 legal representation.<sup>65</sup>

26 220. Defendants are failing to ensure that Plaintiffs and all Class Members—indigent  
27 defendants in rural counties facing the possibility of incarceration—receive meaningful legal  
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<sup>65</sup> Plaintiffs assert that Nevada's right to counsel guarantees a higher level of representation than the Sixth Amendment requires, notwithstanding *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996).

1 representation at all critical stages of the case, in violation of Article I, Section 8 of the Nevada  
2 Constitution.

3  
4 **Third Claim for Relief**  
5 **Violation of the Fourteenth Amendment to the United States Constitution (Due Process)**  
6 **and 42 U.S.C. Section 1983**  
7 **(All Plaintiffs and the Class Against All Defendants)**

8 221. Plaintiffs allege and incorporate by reference as if fully set forth herein the  
9 allegations of all preceding paragraphs.

10 222. The Due Process Clause of the Fourteenth Amendment to the United States  
11 Constitution requires Defendants to ensure that all indigent criminal defendants receive  
12 meaningful legal representation.

13 223. Defendants are failing to ensure that Plaintiffs and all Class Members—indigent  
14 defendants in rural counties facing the possibility of incarceration—receive meaningful legal  
15 representation at all critical stages of the case, in violation of the Due Process Clause of the  
16 Fourteenth Amendment to the United States Constitution.

17 224. Plaintiffs bring this claim under 42 U.S.C. § 1983, which provides for suit against  
18 the government for constitutional violations.

19 **Fourth Claim for Relief**  
20 **Violation of Article 1, Section 8, of the Nevada Constitution (Due Process)**  
21 **(All Plaintiffs and the Class Against All Defendants)**

22 225. Plaintiffs allege and incorporate by reference as if fully set forth herein the  
23 allegations of all preceding paragraphs.

24 226. Under Article 1, Section 8, of the Nevada Constitution, the State of Nevada and,  
25 by extension, the Governor are required to ensure that all indigent criminal defendants receive  
26 meaningful legal representation at all critical stages of the case.

27 227. Defendants are failing to ensure that Plaintiffs and all Class Members—indigent  
28 defendants in rural counties facing the possibility of incarceration—receive meaningful legal  
representation at all critical stages of the case, in violation of Article 1, Section 8, of the Nevada  
Constitution.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A) Certify this case as a class action pursuant to Nevada Rule of Civil Procedure 23(b)(2);
- B) Declare that the State of Nevada and the Governor are constitutionally obligated to provide meaningful representation to indigent criminal defendants;
- C) Declare that the constitutional rights of Nevada’s indigent criminal defendants in the rural counties are being violated by Defendants on an ongoing basis, and provide a deadline for Defendants to move this Court for approval of specific modifications to the structure and operation of the State’s indigent-defense system;
- D) Enjoin Defendants from continuing to violate the rights of indigent defendants by providing constitutionally deficient representation;
- E) Enter an injunction requiring Defendants 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 Nevada;
- F) Enter an injunction that requires Defendants 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 Nevada in order to ensure accountability and to monitor effectiveness;
- G) Enter an injunction barring the use of flat-fee contracts in the delivery of indigent defense services in the State of Nevada;
- 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, and Nev. Rev. Stat. § 18.010(2); and
- I) Grant any other relief the Court deems necessary and proper to protect Plaintiffs and the Class from further harm.

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Dated: October 15, 2018

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