

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.10-CV-02930-JLK-BNB

COLORADO CRIMINAL DEFENSE BAR, a Colorado non-profit corporation;
COLORADO CRIMINAL JUSTICE REFORM COALITION, a Colorado non-profit
corporation,

Plaintiffs,

v.

JOHN W. SUTHERS, in his official capacity as Attorney General of the State of Colorado;
DOUGLAS K. WILSON, in his official capacity as Colorado State Public Defender;
SCOTT STOREY, in his official capacity as District Attorney,

First Judicial District;

MITCHELL R. MORRISEY, in his official capacity as District Attorney,

Second Judicial District;

FRANK RUYBALID, in his official capacity as District Attorney,

Third Judicial District;

DAN MAY, in his official capacity as District Attorney,

Fourth Judicial District;

MARK HURLBERT, in his official capacity as District Attorney,

Fifth Judicial District;

TODD RISBERG, in his official capacity as District Attorney,

Sixth Judicial District;

DANIEL HOTSENPILLER, in his official capacity as District Attorney,

Seventh Judicial District;

LARRY ABRAHAMSON, in his official capacity as District Attorney,

Eighth Judicial District;

MARTIN BEESON, in his official capacity as District Attorney,

Ninth Judicial District;

THOM LEDOUX, in his official capacity as District Attorney,

Eleventh Judicial District;

DAVID MAHONEE, in his official capacity as District Attorney,

Twelfth Judicial District;

ROBERT E. WATSON, in his official capacity as District Attorney,

Thirteenth Judicial District;

ELIZABETH OLDHAM, in her official capacity as District Attorney,

Fourteenth Judicial District;

JENNIFER SWANSON, in her official capacity as District Attorney,
Fifteenth Judicial District;
ROD FOURACRE, in his official capacity as District Attorney,
Sixteenth Judicial District;
DON QUICK, in his official capacity as District Attorney,
Seventeenth Judicial District;
CAROL CHAMBERS, in her official capacity as District Attorney,
Eighteenth Judicial District;
KENNETH R. BUCK, in his official capacity as District Attorney,
Nineteenth Judicial District;
STANLEY L. GARNETT, in his official capacity as District Attorney,
Twentieth Judicial District;
PETE HAUTZINGER, in his official capacity as District Attorney,
Twenty-First Judicial District;
RUSSELL WASLEY, in his official capacity as District Attorney,
Twenty-Second Judicial District,

Defendants

SECOND AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a)(1)(B) and 28 U.S.C. § 2201(a), Plaintiffs file this Second Amended Complaint to obtain a declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution by deferring the appointment of counsel for certain indigent criminal defendants until after such defendants engage in discussions with prosecuting attorneys regarding potential plea offers.

PARTIES

1. Plaintiff Colorado Criminal Defense Bar is a Colorado non-profit corporation based in Denver, Colorado.
2. Plaintiff Colorado Criminal Justice Reform Coalition is a Colorado non-profit corporation based in Denver, Colorado.

3. Defendant John W. Suthers is the Attorney General of the State of Colorado. Attorney General Suthers is sued in his official capacity only.
4. Defendant Douglas K. Wilson is the Colorado State Public Defender. Colorado State Public Defender Wilson is sued in his official capacity only.
5. Defendant Scott Storey is the District Attorney for the First Judicial District. District Attorney Storey is sued in his official capacity only.
6. Defendant Mitchell R. Morrissey is the District Attorney for the Second Judicial District. District Attorney Morrissey is sued in his official capacity only.
7. Defendant Frank Ruybalid is the District Attorney for the Third Judicial District. District Attorney Ruybalid is sued in his official capacity only.
8. Defendant Dan May is the District Attorney for the Fourth Judicial District. District Attorney May is sued in his official capacity only.
9. Defendant Mark Hurlbert is the District Attorney for the Fifth Judicial District. District Attorney Hurlbert is sued in his official capacity only.
10. Defendant Todd Risberg is the District Attorney for the Sixth Judicial District. District Attorney Risberg is sued in his official capacity only.
11. Defendant Daniel Hotsenpiller is the District Attorney for the Seventh Judicial District. District Attorney Hotsenpiller is sued in his official capacity only.
12. Defendant Larry Abrahamson is the District Attorney for the Eighth Judicial District. District Attorney Abrahamson is sued in his official capacity only.
13. Defendant Martin Beeson is the District Attorney for the Ninth Judicial District. District Attorney Beeson is sued in his official capacity only.

14. Defendant Thom LeDoux is the District Attorney for the Eleventh Judicial District.

District Attorney LeDoux is sued in his official capacity only.

15. Defendant David Mahonee is the District Attorney for the Twelfth Judicial District.

District Attorney Mahonee is sued in his official capacity only.

16. Defendant Robert E. Watson is the District Attorney for the Thirteenth Judicial District.

District Attorney Watson is sued in his official capacity only.

17. Defendant Elizabeth Oldham is the District Attorney for the Fourteenth Judicial District.

District Attorney Oldham is sued in her official capacity only.

18. Defendant Jennifer Swanson is the District Attorney for the Fifteenth Judicial District.

District Attorney Swanson is sued in her official capacity only.

19. Defendant Rod Fouracre is the District Attorney for the Sixteenth Judicial District.

District Attorney Fouracre is sued in his official capacity only.

20. Defendant Don Quick is the District Attorney for the Seventeenth Judicial District.

District Attorney Quick is sued in his official capacity only.

21. Defendant Carol Chambers is the District Attorney for the Eighteenth Judicial District.

District Attorney Chambers is sued in her official capacity only.

22. Defendant Kenneth R. Buck is the District Attorney for the Nineteenth Judicial District.

District Attorney Buck is sued in his official capacity only.

23. Defendant Stanley L. Garnett is the District Attorney for the Twentieth Judicial District.

District Attorney Garnett is sued in his official capacity only.

24. Defendant Pete Hautzinger is the District Attorney for the Twenty-First Judicial District.

District Attorney Hautzinger is sued in his official capacity only.

25. Defendant Russell Wasley is the District Attorney for the Twenty-Second Judicial District. District Attorney Wasley is sued in his official capacity only.

JURISDICTION AND VENUE

26. The Court has personal jurisdiction over each defendant because each defendant resides in this district.

27. Venue is appropriate because all defendants reside in the state and district of Colorado and because Colo. Rev. Stat. § 16-7-301(4) is enforced in this district.

28. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

GENERAL ALLEGATIONS

29. In *Rothgery v. Gillespie County*, the United States Supreme Court held that a defendant's right to counsel under the Sixth Amendment to the United States Constitution attaches at "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction." 554 U.S. 191, 213 (2008).

30. *Rothgery* held that "[o]nce attachment occurs, the accused at least is entitled to the presence of appointed counsel during any 'critical stage' of the postattachment proceedings." *Id.* at 212.

31. In *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473, 1486 (2010), the Supreme Court held "that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel."

32. The Sixth Amendment to the United States Constitution is made obligatory upon the states by the Fourteenth Amendment to the United States Constitution. *Gideon v. Wainwright*, 372 U.S. 335, 339-45 (1963).

33. Under Colo. Rev. Stat. § 16-7-301(4), Colorado does not provide appointed counsel during a critical stage of postattachment proceedings against indigent defendants with a right to counsel.

34. Colo. Rev. Stat. § 16-7-301(4) provides that, in “misdemeanors, petty offenses, or offenses under title 42, C.R.S.,” an indigent defendant’s “application for appointment of counsel and the payment of the application fee shall be deferred until after the prosecuting attorney has spoken with the defendant as provided in this subsection (4).”

35. Subsection (4) requires the prosecuting attorney to “tell the defendant any offer that can be made based on the facts as known by the prosecuting attorney at that time.” Colo. Rev. Stat. § 16-7-301(4).

36. Subsection (4) provides that “[t]he defendant and the prosecuting attorney may engage in further plea discussions about the case, but the defendant is under no obligation to talk to the prosecuting attorney.” *Id.*

37. Subsection (4) further provides that “[t]he prosecuting attorney shall advise the defendant that the defendant has the right to retain counsel or seek appointment of counsel.” *Id.*

38. Indigent defendants whose applications for counsel are deferred under subsection (4) have already appeared before a judicial officer to learn the charges against them and the potential restrictions on their liberty.

39. The Sixth Amendment right to counsel has already attached for indigent defendants whose applications for counsel are deferred under subsection (4).

40. Indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) nonetheless cannot apply for appointed counsel until after plea discussions with the prosecuting attorney.

41. Plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) are a critical stage of the proceedings against indigent defendants.

42. Colo. Rev. Stat. § 16-7-301(4) deprives indigent defendants accused of misdemeanors, petty offenses, or offenses under title 42 of the Colorado Revised Statutes of their right to counsel during this critical stage of the postattachment proceedings against them.

43. Colo. Rev. Stat. § 16-7-301(4) applies to all defendants charged with “misdemeanors, petty offenses, or offenses under title 42, C.R.S.”

44. Misdemeanors are punishable by imprisonment, including sentences up to 18 months’ imprisonment. Colo. Rev. Stat. § 18-1.3-501.

45. Several misdemeanor offenses subject to the uncounseled plea discussions required by Colo. Rev. Stat. § 16-7-301(4), including but not limited to the following, impose mandatory jail sentences:

- (a) a misdemeanor conviction for assault in the third degree in violation of Colo. Rev. Stat. § 18-3-204 carries a mandatory sentence of “at least six months,” *see* Colo. Rev. Stat. § 18-1.3-501(6);
- (b) a misdemeanor conviction for assault in the third degree in violation of Colo. Rev. Stat. § 18-3-204 against certain victims carries a mandatory “term of imprisonment greater than the maximum sentence” provided under title 18 of the Colorado Revised Statutes, *see* Colo. Rev. Stat. § 18-1.3-501(1.5)(a);
- (c) a second or subsequent misdemeanor conviction for moving certain livestock from a hold or quarantined area carries a mandatory “sentence of imprisonment within the minimum and maximum terms” provided under title 18 of the Colorado Revised Statutes, *see* Colo. Rev. Stat. § 35-50-119(2); and
- (d) a misdemeanor conviction for driving under restraint in violation of Colo. Rev. Stat. § 42-2-138(1)(d)(I) carries a mandatory minimum jail sentence of thirty days;

- (e) a second misdemeanor conviction for driving under restraint in violation of Colo. Rev. Stat. § 42-2-138(1)(d)(I) carries a mandatory minimum jail sentence of ninety days;
- (f) a misdemeanor conviction for driving under the influence in violation of Colo. Rev. Stat. § 42-4-1301 carries a mandatory minimum jail sentence of five days subject to suspension by the court, *see* Colo. Rev. Stat. § 42-4-1307(3)(I);
- (g) a misdemeanor conviction for driving under the influence in violation of Colo. Rev. Stat. § 42-4-1301 when the defendant's blood alcohol content ("BAC") was 0.20 or more carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(3)(III)(b);
- (h) a misdemeanor conviction for driving under the influence in violation of Colo. Rev. Stat. § 42-4-1301 after a prior alcohol-related driving offense or certain other offenses carries a mandatory jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (5)(I);
- (i) a misdemeanor conviction for driving under the influence in violation of Colo. Rev. Stat. § 42-4-1301 after two or more prior alcohol-related driving offenses or certain other offenses carries a mandatory minimum jail sentence of sixty days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (6)(I);
- (j) a misdemeanor conviction for driving under the influence per se in violation of Colo. Rev. Stat. § 42-4-1301 carries a mandatory minimum jail sentence of five days subject to suspension by the court, *see* Colo. Rev. Stat. § 42-4-1307(3)(I);
- (k) a misdemeanor conviction for driving under the influence per se in violation of Colo. Rev. Stat. § 42-4-1301 when the person's BAC was 0.20 or more carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(3)(III)(b);
- (l) a misdemeanor for driving under the influence per se in violation of Colo. Rev. Stat. § 42-4-1301 after a prior alcohol-related driving offense or certain other offenses carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (5)(I);
- (m) a misdemeanor conviction for driving under the influence per se in violation of Colo. Rev. Stat. § 42-4-1301 after two or more prior alcohol-related driving offenses or certain other offenses carries a mandatory minimum jail sentence of sixty days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (6)(I);

- (n) a misdemeanor conviction for a habitual user driving a motor vehicle in violation of Colo. Rev. Stat. § 42-4-1301 carries a mandatory minimum jail sentence of five days subject to suspension by the court, *see* Colo. Rev. Stat. § 42-4-1307(3)(I);
- (o) a misdemeanor conviction for a habitual user driving a motor vehicle in violation of Colo. Rev. Stat. § 42-4-1301 after a prior alcohol-related driving offense or certain other offenses carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (5)(I);
- (p) a misdemeanor conviction for a habitual user driving a motor vehicle in violation of Colo. Rev. Stat. § 42-4-1301 after two or more prior alcohol-related driving offenses or certain other offenses carries a mandatory minimum jail sentence of sixty days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (6)(I);
- (q) a misdemeanor conviction for driving with ability impaired in violation of Colo. Rev. Stat. § 42-4-1301 carries a mandatory minimum jail sentence of two days subject to suspension by the court, *see* Colo. Rev. Stat. § 42-4-1307(4)(I);
- (r) a misdemeanor conviction for driving with ability impaired in violation of Colo. Rev. Stat. § 42-4-1301 when the person's BAC was more than 0.20 carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(4)(III)(b);
- (s) a misdemeanor conviction for driving with ability impaired in violation of Colo. Rev. Stat. § 42-4-1301 after a prior alcohol-related driving offense or certain other offenses carries a mandatory minimum jail sentence of ten days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (5)(I);
- (t) a misdemeanor conviction for driving with ability impaired in violation of Colo. Rev. Stat. § 42-4-1301 after two or more prior alcohol-related offenses or certain other offenses carries a mandatory minimum jail sentence of sixty days, *see* Colo. Rev. Stat. § 42-4-1307(1)(a), (6)(I); and
- (u) a misdemeanor conviction for driving with a suspended, cancelled, or revoked license in violation of Colo. Rev. Stat. § 42-7-422 carries a mandatory minimum jail sentence of five days.

46. Petty offenses are punishable by imprisonment, including sentences up to 6 months' imprisonment. Colo. Rev. Stat. § 18-1.3-503.

47. Colo. Rev. Stat. § 16-7-301(4) does not require a prior written statement, pursuant to Colo. Rev. Stat. § 16-5-501, that the prosecuting attorney does not intend to seek incarceration as part of the penalty upon conviction of an offense for which the defendant has been charged.

48. In proceedings against indigent defendants under Colo. Rev. Stat. § 16-7-301(4), any written statement by the prosecuting attorney “that incarceration is not being sought as provided in section 16-5-501” is deferred until after the prosecuting attorney has engaged in plea discussions with such defendants pursuant to Colo. Rev. Stat. § 16-7-301(4). Colo. Rev. Stat. § 16-7-207(1)(c).

49. Under Colo. Rev. Stat. § 16-7-301(4), unrepresented indigent defendants may accept plea offers involving incarceration, including time served.

50. Under Colo. Rev. Stat. § 16-7-301(4), unrepresented indigent defendants may reject plea offers and be incarcerated following further proceedings or a trial.

51. Colo. Rev. Stat § 16-7-301(4) violates the Sixth Amendment right to counsel of indigent defendants by deferring their applications for assistance of counsel until after plea discussions with the prosecuting attorney.

52. The provision in Colo. Rev. Stat. § 16-7-301(4) that “the defendant is under no obligation to talk to the prosecuting attorney” does not render Colo. Rev. Stat. § 16-7-301(4) constitutional.

53. Colo. Rev. Stat. § 16-7-301(4) does not require the prosecuting attorney or the court to inform indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) that they are “under no obligation to talk to the prosecuting attorney.”

54. A prosecuting attorney's obligation to advise defendants subject to Colo. Rev. Stat. § 16-7-301(4) of their right to retain or seek appointment of counsel does not render Colo. Rev. Stat. § 16-7-301(4) constitutional.

55. Indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) do not automatically waive their right to counsel by engaging in plea discussions with the prosecuting attorney when their applications for appointed counsel are deferred until after those plea discussions.

56. Colorado Rule of Criminal Procedure 5(c)(2) requires that defendants accused of misdemeanors and petty offenses be advised that they cannot apply for the appointment of counsel "until after the prosecuting attorney has spoken with the defendant as provided in C.R.S. 16-7-301(4)(a)."

57. A number of Colorado county courts provide defendants charged with misdemeanor and petty offenses with a standard advisement of rights form at his or her initial appearance.

58. On information and belief, many Colorado county courts use standard advisement of rights forms that make no reference to the required plea discussions between the defendant and the prosecuting attorney pursuant to Colo. Rev. Stat. § 16-7-301(4).

59. On information and belief, other Colorado county courts use standard advisement of rights forms that refer to the required plea discussions between the defendant and the prosecuting attorney pursuant to Colo. Rev. Stat. § 16-7-301(4), but do not advise or suggest that a defendant may waive his or her right to counsel by engaging in such discussions.

60. For example, Arapahoe County, Colorado, and Park County, Colorado, provide defendants with standard advisement of rights forms at initial appearances on misdemeanor and petty offense charges.

61. The initial appearance advisement of rights forms used by Arapahoe County and Park County state that the defendant must first engage in plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) before the defendant may apply for appointed counsel.

62. The initial appearance advisement of rights forms used by Arapahoe County and Park County do not state that defendant may decline to engage in plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

63. The initial appearance advisement of rights forms used by Arapahoe County and Park County do not state that the defendant may have a right to appointed counsel during plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

64. The initial appearance advisement of rights forms used by Arapahoe County and Park County do not advise or suggest that a defendant may waive his or her right to counsel by engaging in plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

65. The initial appearance advisement of rights forms used by Arapahoe County and Park County do not advise or suggest that a defendant may waive his or her right to counsel if he or she accepts a plea bargain offer made during plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

66. In *Padilla*, the Supreme Court held that, during negotiation of a plea, the Sixth Amendment right to counsel includes the right to be advised of certain consequences of accepting a plea offer. *Padilla*, 130 S. Ct. at 1486.

67. Accepting a plea offer may affect a defendant's parole or immigration status, alimony or child support obligations, ability to obtain or retain a driver's license, or ability to own a gun.

68. Prosecuting attorneys are adverse to defendants subject to Colo. Rev. Stat. § 16-7-301(4), and are ethically barred from providing legal advice to such defendants regarding the consequences of accepting or rejecting a plea offer. *See* C.R.P.C. 4.3.

69. Colo. Rev. Stat. § 16-7-301(4) defers applications for appointment of counsel until after plea discussions with the prosecuting attorney, thereby depriving indigent defendants with a right to counsel of their right to be advised of certain consequences of accepting a plea offer.

70. On July 1, 2008, Colorado State Public Defender Wilson and State Court Administrator Gerald Marroney requested that Attorney General Suthers issue an opinion regarding the constitutionality of Colo. Rev. Stat. § 16-7-301(4) because they had “concern[s] about the continued constitutionality” of the statute “in light of *Rothgery*.”

71. On July 2, 2008, Attorney General Suthers sent a letter to Colorado State Public Defender Wilson and State Court Administrator Marroney declining to issue a formal opinion, but asserting that enforcement of Colo. Rev. Stat. § 16-7-301(4) is “constitutionally defensible.”

72. In a memorandum dated January 30, 2009, and addressed to Colorado State Public Defender Wilson, Assistant Solicitor General Catherine P. Adkisson analyzed the constitutionality of Colo. Rev. Stat. § 16-7-301(4) in light of *Rothgery*, concluding that the statute was “defensible.”

73. On February 6, 2009, Colorado State Public Defender Wilson sent a letter to Assistant Solicitor General Adkisson inquiring about the memorandum and whether it had authoritative status.

74. On February 18, 2009, Attorney General Suthers responded to Colorado State Public Defender Wilson’s letter dated February 6, 2009, reiterating that Colo. Rev. Stat. § 16-7-301(4)

is “constitutionally defensible” and characterizing Assistant Solicitor General Adkisson’s memorandum as “neither a formal or informal opinion of the attorney general’s office.”

75. Colorado State Public Defender Wilson and State Court Administrator Marroney continued to act in accordance with Colo. Rev. Stat. § 16-7-301(4) after receiving Attorney General Suthers’s assertion that Colo. Rev. Stat. § 16-7-301(4) is “constitutionally defensible.”

76. Colo. Rev. Stat. § 21-1-104(1)(a) requires public defenders to “[c]ounsel and defend” indigent defendants “at every stage of the proceedings following arrest, detention, or service of process,” whether they are “held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation.”

77. Required plea discussions with the prosecutor under Colo. Rev. Stat. § 16-7-301(4) are a “stage of the proceedings following arrest, detention, or service of process.” *See* Colo. Rev. Stat. § 21-1-104(1)(a).

78. Public defenders’ statutorily mandated duties under Colo. Rev. Stat. § 21-1-104(1)(a) include counseling and defending indigent defendants during plea discussions pursuant to Colo. Rev. Stat. § 16-7-301(4).

79. Colo. Rev. Stat. § 16-7-301(4) defers indigent defendants’ applications for appointment of counsel until after plea discussions with the prosecuting attorney, thereby (i) creating inconsistency and uncertainty for public defenders attempting to comply with their professional and statutory obligations, (ii) impairing public defenders’ ability to carry out their professional obligations and statutorily mandated duties, (iii) impairing public defenders’ economic and liberty interest in practicing and receiving the benefits of their chosen profession, and

(iv) impairing public defenders' ability to fulfill their mission of representing indigent defendants with a right to counsel.

80. Colo. Rev. Stat. § 21-2-104(1)(a) requires alternate defense counsel to “[c]ounsel and defend” indigent defendants “at every stage of the proceedings following arrest, detention, or service of process,” whether they are “held in custody, filed on as a delinquent, or charged with a felony offense.”

81. Required plea discussions with the prosecutor under Colo. Rev. Stat. § 16-7-301(4) are a “stage of the proceedings following arrest, detention, or service of process.” *See* Colo. Rev. Stat. § 21-1-104(1)(a).

82. Alternate defense counsel's statutorily mandated duties under Colo. Rev. Stat. § 21-2-104(1)(a) include counseling and defending indigent defendants during plea discussions pursuant to Colo. Rev. Stat. § 16-7-301(4).

83. Attorneys listed as alternate defense counsel are paid an hourly rate of \$65 for representing indigent defendants.

84. Colo. Rev. Stat. § 16-7-301(4) defers indigent defendants' applications for appointment of counsel until after plea discussions with the prosecuting attorney, thereby (i) creating inconsistency and uncertainty for attorneys listed as alternate defense counsel attempting to comply with their professional and statutory obligations, (ii) impairing the ability of attorneys listed as alternate defense counsel to carry out their professional obligations and statutorily mandated duties, (iii) impairing the economic and liberty interests of attorneys listed as alternate defense counsel to practice and receive the benefits of their chosen profession, (iv) reducing the hourly compensation available to attorneys listed as alternate defense counsel, and (v) impairing

the ability of attorneys listed as alternate defense counsel to fulfill their mission of representing indigent defendants with a right to counsel.

Plaintiff Colorado Criminal Defense Bar

85. Plaintiff Colorado Criminal Defense Bar is a Colorado non-profit corporation founded in 1979 and dedicated to representing and protecting the rights of persons accused of crimes.

86. Colorado Criminal Defense Bar has organizational standing to bring this lawsuit.

87. Colorado Criminal Defense Bar was not founded for the purpose of challenging Colo. Rev. Stat. § 16-7-301(4).

88. Following the Supreme Court's issuance in 2008 of *Rothgery v. Gillespie County*, individuals and organizations approached Colorado Criminal Defense Bar and its members regarding the constitutionality of Colo. Rev. Stat. § 16-7-301(4) and the adverse consequences resulting from it.

89. Colorado Criminal Defense Bar has a substantial interest in the representation and treatment of criminal defendants in Colorado.

90. Colorado Criminal Defense Bar is a professional association of attorneys, investigators, and paralegals who represent persons accused of crimes.

91. Colorado Criminal Defense Bar provides support for its active professional network, criminal defense training programs, and numerous other public and member services related to protecting the rights of the accused.

92. Colorado Criminal Defense Bar provides a referral service that assists convicted individuals when they discover the collateral consequences of a guilty plea entered without representation.

93. Colorado Criminal Defense Bar suffers and will continue to suffer injury-in-fact to its mission of protecting the rights of persons accused of crime when Colorado defers, until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), applications for assistance of counsel by indigent defendants.

94. Colorado Criminal Defense Bar expends significant resources in contracting with a consultant to provide policy development and lobbying services.

95. During the 2009 legislative session, Colorado Criminal Defense Bar diverted significant resources from its other policy development and lobbying services when the consultant expended numerous hours drafting, and lobbying for, a bill that would pay for counsel for indigent defendants currently denied counsel during plea discussions under Colo. Rev. Stat. § 16-7-301(4).

96. During the 2009 legislative session, the consultant dedicated at least 40 hours to drafting and lobbying for a bill that would pay for counsel for indigent defendants currently denied counsel during plea discussions under Colo. Rev. Stat. § 16-7-301(4), thereby diverting the amount of time and funds Colorado Criminal Defense Bar could spend on other matters.

97. After the 2009 legislative session, Colorado Criminal Defense Bar expended significant additional resources when the consultant worked with organizations and legislators to consider other legislative means to ensure that Colorado complies with *Rothgery*.

98. Colorado Criminal Defense Bar continues to expend significant resources in response to Colo. Rev. Stat. § 16-7-301(4) because the consultant continues to expend time working to ensure that Colorado complies with *Rothgery*.

99. Colorado Criminal Defense Bar has suffered and will continue to suffer injury because it must expend significant funds to maintain and upgrade the functionality of its website in connection with its highly trafficked referral service that assists convicted individuals when they discover the collateral consequences of a guilty plea entered without representation, thereby diverting resources from its other programs and website activities.

100. Colorado Criminal Defense Bar spends \$60 per professional hour for its website maintenance and upgrades and has expended at least \$5,000 on these costs in recent years.

101. At least a portion of these costs are attributable to addressing issues related to uncounseled plea discussions under Colo. Rev. Stat. § 16-7-301(4).

102. Colorado Criminal Defense Bar has suffered and continues to suffer injury from the continued application of Colo. Rev. Stat. § 16-7-301(4).

103. Colorado Criminal Defense Bar has suffered and will continue to suffer injury-in-fact because Attorney General Suthers has asserted that enforcement of Colo. Rev. Stat. § 16-7-301(4) is “constitutionally defensible” and Defendants have continued to act in accordance with the statute.

104. Colorado Criminal Defense Bar’s injury would be redressed by (i) a declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution, and (ii) an injunction against enforcement of Colo. Rev. Stat. § 16-7-301(4), because the organization would no longer need to divert its resources to ensure that Colorado complies with *Rothgery*.

105. Colorado Criminal Defense Bar also has associational standing to bring this lawsuit.

106. Colorado Criminal Defense Bar has approximately 50 members who work as public defenders in the Office of the State Public Defender.

107. Colorado Criminal Defense Bar has approximately 300 members who work as attorneys listed as eligible alternate defense counsel under Colo. Rev. Stat. § 21-2-105.

108. Colo. Rev. Stat. § 16-7-301(4) has impaired and continues to impair the ability of Colorado Criminal Defense Bar members who are public defenders or attorneys listed as eligible alternate defense counsel to (i) avoid inconsistency and uncertainty regarding compliance with their professional and statutory obligations, (ii) carry out their professional obligations and statutorily mandated duties to represent indigent defendants in Colorado state court, (iii) fulfill their economic and liberty interests in practicing and receiving the benefits of their chosen profession, and (iv) fulfill their mission of representing indigent defendants.

109. Colo. Rev. Stat. § 16-7-301(4) reduces the hourly compensation available to the members of the Colorado Criminal Defense Bar who are attorneys listed as eligible alternate defense counsel.

110. Colorado Criminal Defense Bar is aware of specific members who are attorneys in the Office of the State Public Defender or attorneys listed as eligible alternate defense counsel who regularly face uncertainty regarding fulfillment of their professional and constitutional obligations because of Colo. Rev. Stat. § 16-7-301(4).

111. Colorado Criminal Defense Bar is aware of specific members who have had to turn down requests for counsel from indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4).

112. The injury to the Colorado Criminal Defense Bar members who are public defenders or attorneys listed as eligible alternate defense counsel would be redressed by (i) a declaratory

judgment that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution, and (ii) an injunction against enforcement of Colo. Rev. Stat. § 16-7-301(4), because a declaratory judgment and injunction would resolve inconsistencies and uncertainties impairing those members' ability to fulfill their professional and statutory obligations, and allow those members to fulfill their obligations to represent indigent defendants in plea discussions with the prosecuting attorney.

113. Neither Colorado Criminal Defense Bar's claim under 28 U.S.C. § 2201(a) nor its request for declaratory and injunctive relief requires the participation of its individual members in this lawsuit.

114. Colorado Criminal Defense Bar also has third-party standing to bring this lawsuit on behalf of indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

115. The interests of the Colorado Criminal Defense Bar and its members who are public defenders or serve as alternate defense counsel are aligned with those of indigent defendants with respect to the unconstitutionality of Colo. Rev. Stat. § 16-7-301(4) and opposition to its enforcement.

116. Through the assistance and representation its members provide to indigent defendants, Colorado Criminal Defense Bar and its members have developed a substantial, continuing relationship with those defendants.

117. The Colorado Criminal Defense Bar and its members have substantial, continuing relationships with indigent defendants through the members' representation of these defendants on multiple occasions.

118. Indigent defendants with a right to counsel rely on members of Colorado Criminal Defense Bar who are public defenders or serve as alternate defense counsel to provide the representation to which those defendants are constitutionally entitled.

119. Colorado Criminal Defense Bar members who are public defenders or serve as alternate defense counsel are precluded from being appointed to represent indigent defendants with a right to counsel when those indigent defendants are prevented from applying for appointed counsel.

120. Because Colo. Rev. Stat. § 16-7-301(4) prevents indigent defendants from applying for appointed counsel until after the required plea discussions with the prosecuting attorney, Colorado Criminal Defense Bar and its members do not learn of these indigent defendants' plea discussions until after the fact, when it is too late to provide counsel.

121. By precluding members of the Colorado Criminal Defense Bar who are public defenders or serve as alternate defense counsel from representing indigent defendants at the time of the plea discussions required by Colo. Rev. Stat. § 16-7-301(4), these members are prevented from entering into attorney-client relationships with indigent defendants with a right to counsel.

122. Because Colo. Rev. Stat. § 16-7-301(4) precludes members of Colorado Criminal Defense Bar who are public defenders or serve as alternate defense counsel from representing indigent defendants at the time of the plea discussions required by the statute, indigent defendants are prevented from entering into attorney-client relationships, to which they are legally entitled, with those members of Colorado Criminal Defense Bar.

123. Indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) are unlikely to

know that their right to counsel attaches at the time they appear before a judicial officer to learn the charge against them and potential restrictions on their liberty.

124. Indigent defendants are unlikely to know that their right to counsel already has attached when their requests for appointed counsel are deferred under Colo. Rev. Stat. § 16-7-301(4).

125. Indigent defendants are unlikely to know that the required plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) constitute a critical stage of the proceedings against them.

126. Indigent defendants are unlikely to be able to argue effectively that the Sixth Amendment entitles them to appointed counsel during their required plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

127. The collateral consequences of which indigent defendants are not advised at the time of their uncounseled pleas with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) frequently do not arise until after the indigent defendants are time-barred from challenging their pleas.

128. Because indigent defendants may be time-barred from challenging the uncounseled plea agreements entered into with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), their ability to challenge the uncounseled guilty pleas in proceedings regarding the collateral consequences is hindered.

129. Indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) face genuine practical hindrances to their ability to assert their Sixth Amendment right to counsel during those

plea discussions if Colorado Criminal Defense Bar and its members cannot bring this claim on their behalf.

Plaintiff Colorado Criminal Justice Reform Coalition

130. Plaintiff Colorado Criminal Justice Reform Coalition is a non-profit corporation founded in 1999 and dedicated to reversing the trend of mass incarceration in Colorado and preventing the growth of a for-profit, private prison industry in Colorado.

131. Colorado Criminal Justice Reform Coalition has organizational standing to bring this lawsuit.

132. Colorado Criminal Justice Reform Coalition was not founded for the purpose of challenging Colo. Rev. Stat. § 16-7-301(4).

133. Following the Supreme Court's issuance in 2008 of *Rothgery v. Gillespie County*, individuals and organizations approached Colorado Criminal Justice Reform Coalition and its members regarding the constitutionality of Colo. Rev. Stat. § 16-7-301(4) and the adverse consequences resulting from it.

134. Colorado Criminal Justice Reform Coalition is a membership organization comprising over 100 diverse organizations and faith communities and over 6,000 individuals from across Colorado.

135. Colorado Criminal Justice Reform Coalition's individual members and coalition partners represent a diverse cross-section of Colorado, including people who are currently or formerly defendants, inmates and parolees, family members, attorneys, researchers, criminal justice professionals, educators, students, mental health and substance abuse treatment providers, civil

and human rights organizations, victim advocates, child welfare professionals, various faith communities, fiscal conservatives, and civil libertarians.

136. Colorado Criminal Justice Reform Coalition has a substantial interest in the treatment of indigent Colorado defendants with a right to counsel.

137. Colorado Criminal Justice Reform Coalition serves as a resource for people in jail and prison, people who were incarcerated previously, and their families.

138. Colorado Criminal Justice Reform Coalition engages in policy research, legislative lobbying, and educational initiatives to teach the public and policymakers about effective alternatives to incarceration, drug policy and sentencing reform, parole and re-entry issues, and collateral consequences of a criminal conviction.

139. Colorado Criminal Justice Reform Coalition participates in the Comprehensive Sentencing Task Force of Colorado's Commission on Criminal and Juvenile Justice.

140. Colorado Criminal Justice Reform Coalition participates in the Drug Policy Task Force of Colorado's Commission on Criminal and Juvenile Justice.

141. Colorado Criminal Justice Reform Coalition suffers and will continue to suffer injury to its mission of reversing the trend of mass incarceration in Colorado when Colorado defers, until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), applications for assistance of counsel by indigent defendants.

142. Colorado Criminal Justice Reform Coalition has expended and continues to expend resources in conducting numerous meetings with attorneys and the Colorado Criminal Defense Bar to discuss and research the effects of Colo. Rev. Stat. § 16-7-301(4) on the organizations,

their members, and their clients, thereby diverting resources from its core activities of drug policy and sentencing reform.

143. Colorado Criminal Justice Reform Coalition has expended and continues to expend significant resources responding to a growing number of people who contact the organization for assistance relating to issues of proper representation during criminal proceedings.

144. Due to a growing number of people who contact the organization for help in dealing with or overcoming barriers arising from the collateral consequences of plea deals, including, on information and belief, plea deals reached under Colo. Rev. Stat. § 16-7-301(4), Colorado Criminal Justice Reform Coalition has diverted and will continue to divert significant resources from its core activities in drug policy and sentencing reform, devoting those resources instead to addressing the collateral consequences, in part, of such plea deals.

145. In 2008, Colorado Criminal Justice Reform Coalition expended significant resources when it created a new position and hired a Re-Entry Coordinator to focus specifically on addressing barriers to re-entry, reducing collateral consequences, and responding to an ever-increasing volume of requests from members and the general public who were suffering from the collateral consequences of conviction, in part due to the uninformed convictions pursuant to Colo. Rev. Stat. § 16-7-301(4).

146. In November 2007, Colorado Criminal Justice Reform Coalition expended significant resources when it published the first edition of its guide for people who have been incarcerated: *Getting on After Getting Out: A Re-Entry Guide for Colorado*.

147. Colorado Criminal Justice Reform Coalition distributed over 23,000 free copies to people in prison or on parole.

148. In January 2011, Colorado Criminal Justice Reform Coalition expended significant resources when it published the second edition of its guide for people who have been incarcerated: *Getting on After Getting Out: A Re-Entry Guide for Colorado*.

149. From 2007 through 2011, Colorado Criminal Justice Reform Coalition has expended significant resources in lobbying the Colorado legislature to mitigate the collateral consequences of certain felonies, misdemeanors, and petty offenses, including misdemeanors and petty offenses for which uncounseled indigent defendants may reach plea deals under Colo. Rev. Stat. § 16-7-301(4).

150. Colorado Criminal Justice Reform Coalition had to increase its fundraising to have the resources to expand its activities to include addressing the collateral consequences of convictions, including convictions obtained as a result of Colo. Rev. Stat. § 16-7-301(4).

151. Colorado Criminal Justice Reform Coalition has suffered and continues to suffer injury from the continued application of Colo. Rev. Stat. § 16-7-301(4).

152. Colorado Criminal Justice Reform Coalition suffers and will continue to suffer injury-in-fact because Attorney General Suthers has asserted that enforcement of Colo. Rev. Stat. § 16-7-301(4) is “constitutionally defensible” and Defendants have continued to act in accordance with the statute.

153. Colorado Criminal Justice Reform Coalition also has associational standing to bring this lawsuit.

154. Colorado Criminal Justice Reform Coalition’s membership includes over 100 members who work as attorneys in the Office of the State Public Defender or private defense attorneys who may work as alternate defense counsel under Colo. Rev. Stat. § 21-2-105.

155. Colo. Rev. Stat. § 16-7-301(4) has impeded and continues to impede the ability of Colorado Criminal Justice Reform Coalition members who are public defenders or attorneys listed as eligible alternate defense counsel to (i) avoid inconsistency and uncertainty regarding compliance with their professional and statutory obligations, (ii) carry out their professional obligations and statutorily mandated duties to represent indigent defendants in Colorado state court, (iii) practice and receive the benefits of their chosen profession, and (iv) fulfill their mission of representing indigent defendants.

156. Colorado Criminal Justice Reform Coalition is aware of specific members who are attorneys in the Office of the State Public Defender or attorneys listed as eligible alternate defense counsel and who, on information and belief, regularly face uncertainty regarding their professional and statutory obligations because of Colo. Rev. Stat. § 16-7-301(4).

157. On information and belief, the prisoners and former prisoners on whose behalf Colorado Criminal Justice Reform Coalition advocates include indigent defendants who were denied their right to counsel under Colo. Rev. Stat. § 16-7-301(4).

158. The injury to the Colorado Criminal Justice Reform Coalition members who are public defenders or attorneys listed as eligible alternate defense counsel would be redressed by (i) a declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution, and (ii) an injunction against enforcement of Colo. Rev. Stat. § 16-7-301(4), because a declaratory judgment and injunction would resolve inconsistencies and uncertainties impairing those members' ability to fulfill their professional and statutory obligations, and allow those members to fulfill their obligations to represent indigent defendants in plea discussions with the prosecuting attorney.

159. Neither Colorado Criminal Justice Reform Coalition's claim under 28 U.S.C. § 2201(a) nor its request for declaratory and injunctive relief requires the participation of its individual members in this lawsuit.

160. Colorado Criminal Justice Reform Coalition and its members have third-party standing to bring this lawsuit on behalf of indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

161. The interests of Colorado Criminal Justice Reform Coalition and its members who are public defenders or serve as alternate defense counsel are aligned with those of indigent defendants with respect to the unconstitutionality of Colo. Rev. Stat. § 16-7-301(4) and opposition to its enforcement.

162. By serving as a resource for prisoners and their families, Colorado Criminal Justice Reform Coalition has developed a substantial, continuing relationship with indigent Colorado defendants with a right to counsel.

163. On information and belief, the prisoners and former prisoners with whom Colorado Criminal Justice Reform Coalition and its members have developed a substantial, continuing relationship include indigent defendants who were denied their right to counsel under Colo. Rev. Stat. § 16-7-301(4) and imprisoned in violation of the Sixth Amendment.

164. On information and belief, Colorado Criminal Justice Reform Coalition and its members have developed substantial, continuing relationships with indigent defendants through the members' representation of these defendants on multiple occasions.

165. Indigent defendants with a right to counsel rely on members of Colorado Criminal Justice Reform Coalition who are public defenders or serve as alternate defense counsel to provide the representation to which those defendants are constitutionally entitled.

166. Members of Colorado Criminal Justice Reform Coalition who are public defenders or serve as alternate defense counsel are precluded from being appointed to represent indigent defendants with a right to counsel when those indigent defendants are prevented from applying for appointed counsel.

167. Because Colo. Rev. Stat. § 16-7-301(4) prevents indigent defendants from applying for appointed counsel until after the required plea discussions with the prosecuting attorney, Colorado Criminal Justice Reform Coalition and its members do not learn of these indigent defendants' plea discussions until after the fact, when it is too late to provide counsel.

168. By precluding members of Colorado Criminal Justice Reform Coalition who are public defenders or serve as alternate defense counsel from representing indigent defendants at the time of the plea discussions required by Colo. Rev. Stat. § 16-7-301(4), these members are prevented from entering into attorney-client relationships with indigent defendants with a right to counsel.

169. Because Colo. Rev. Stat. § 16-7-301(4) precludes members of Colorado Criminal Justice Reform Coalition who are public defenders or serve as alternate defense counsel from representing indigent defendants at the time of the plea discussions required by the statute, indigent defendants are prevented from entering into attorney-client relationships, to which they are legally entitled, with those members of Colorado Criminal Justice Reform Coalition.

170. Indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) are unlikely to

know that their right to counsel attaches at the time they appear before a judicial officer to learn the charge against them and potential restrictions on their liberty.

171. Indigent defendants are unlikely to know that their right to counsel already has attached when their requests for appointed counsel are deferred under Colo. Rev. Stat. § 16-7-301(4).

172. Indigent defendants are unlikely to know that the required plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) constitute a critical stage of the proceedings against them.

173. Indigent defendants are unlikely to be able to argue effectively that the Sixth Amendment entitles them to appointed counsel during their required plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

174. The collateral consequences of which indigent defendants are not advised at the time of their uncounseled pleas with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) frequently do not arise until after the indigent defendants are time-barred from challenging their pleas.

175. Because indigent defendants may be time-barred from challenging the uncounseled plea agreements entered into with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), their ability to challenge the uncounseled guilty pleas in proceedings regarding the collateral consequences is hindered.

176. Indigent defendants whose applications for counsel are deferred until after plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) face genuine practical hindrances to their ability to assert their Sixth Amendment right to counsel during those

plea discussions if Colorado Criminal Justice Reform Coalition and its members cannot bring this claim on their behalf.

Jane Doe Allegations

177. Jane Doe is a member of Plaintiff organization Colorado Criminal Defense Bar.

178. Jane Doe has been a member of Colorado Criminal Defense Bar for approximately one and a half years.

179. Jane Doe is an attorney licensed to practice law in the State of Colorado.

180. Jane Does is a Colorado state deputy public defender and has been for approximately four and a half years.

181. In her time as a deputy public defender, Jane Doe has seen Colo. Rev. Stat. §16-7-301(4) applied to indigent defendants who have the right to counsel.

182. Jane Doe has observed indigent defendants plead guilty to offenses covered by Colo. Rev. Stat. § 16-7-301(4) and be sentenced to time-served or additional time in jail after engaging in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. §16-7-301(4).

183. Jane Doe has been in court and had indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) ask her for assistance.

184. Jane Doe has declined such defendants' requests for assistance, because the indigent defendants had not yet engaged in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. § 16-7-301(4).

185. Jane Doe has a continuing relationship with some indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4), through her representation of those defendants on multiple occasions.

186. Those indigent defendants with whom Jane Doe has a continuing relationship are required to engage in uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), even though Jane Doe has previously represented and formed attorney-client relationships with those defendants.

187. Jane Doe believes that she has statutory, constitutional, and ethical obligations to represent indigent defendants once their right to counsel attaches.

188. Jane Doe believes that her obligations to represent indigent defendants extends to indigent defendants with the right to counsel who are subject to Colo. Rev. Stat. § 16-7-301(4).

189. Jane Doe believes there is a conflict between her statutory, constitutional, and ethical obligations to represent indigent defendants and Colo. Rev. Stat. § 16-7-301(4).

190. Jane Doe feels a personal obligation to represent her indigent defendant clients, including those subject to Colo. Rev. Stat. § 16-7-301(4), to the best of her ability.

191. Jane Doe believes there is a tension between this personal sense of responsibility to represent indigent defendants to the best of her ability and Colo. Rev. Stat. § 16-7-301(4), which precludes her from doing so.

192. Jane Doe believes that most if not all indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) do not knowingly and voluntarily waive their right to counsel by engaging in uncounseled plea discussions with the prosecuting attorney as required by Colo. Rev. Stat. § 16-7-301(4), or by accepting plea bargains offered during such negotiations.

193. Jane Doe's clients subject to Colo. Rev. Stat. § 16-7-301(4) have told her that plea deals offered by the prosecuting attorney during uncounseled plea discussions under Colo. Rev. Stat.

§ 16-7-301(4) were no longer available once the indigent defendants were represented by counsel.

194. Jane Doe is aware of other public defenders in her office who share her belief that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional and have had similar experiences with respect to the statute's application and effects.

195. Jane Doe wishes to have these allegations made anonymously because of the possibility of adverse consequences for herself and/or her clients if she is publicly identified.

John Doe #1 Allegations

196. John Doe #1 is a member of Plaintiff organization Colorado Criminal Defense Bar.

197. John Doe #1 has been a member of Colorado Criminal Defense Bar for more than two years.

198. John Doe #1 is an attorney licensed to practice law in the state of Colorado.

199. John Doe #1 is a Colorado state deputy public defender and has been for approximately one and a half years.

200. John Doe #1 has observed the application of Colo. Rev. Stat. § 16-7-301(4) to indigent defendants who have the right to counsel.

201. John Doe #1 has observed indigent defendants plead guilty to offenses covered by Colo. Rev. Stat. § 16-7-301(4) and receive sentences including jail (including time-served) after engaging in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. § 16-7-301(4).

202. John Doe #1 has been discouraged from informing indigent defendants, before appointment of counsel and before they engage in uncounseled plea discussions with the

prosecuting attorney pursuant to Colo. Rev. Stat. § 16-7-301(4), that the indigent defendants have a right to request counsel and do not have to accept any plea deal offered by the prosecuting attorney during plea discussions under the statute.

203. John Doe #1 believes that most if not all indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) do not knowingly and voluntarily waive their right to counsel by engaging in uncounseled plea discussions with the prosecuting attorney as required by Colo. Rev. Stat. § 16-7-301(4), or by accepting plea bargains offered during such negotiations.

204. John Doe #1 has observed indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) ask the prosecuting attorney, who is required to engage in uncounseled plea discussions with the defendants, questions about the consequences, including collateral consequences, of their plea deals.

205. John Doe #1 believes that indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) are frequently confused about the role played by the prosecuting attorney with whom they are required to engage in uncounseled plea discussions, and some indigent defendants have indicated to John Doe #1 that they believed that the prosecuting attorney was their lawyer.

206. John Doe #1 has a continuing relationship with some indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) through his representation of those defendants on multiple occasions.

207. Those indigent defendants with whom John Doe #1 has a continuing relationship are required to engage in uncounseled plea discussions with the prosecutor under Colo. Rev. Stat. § 16-7-301(4), even though John Doe #1 has previously represented and formed attorney-client relationships with those defendants.

208. John Doe #1 feels a personal obligation to defend his indigent clients to the best of his ability.

209. John Doe #1 believes that it is difficult to comply with his personal, state law, and constitutional obligations to represent indigent defendants and Colo. Rev. Stat. § 16-7-301(4).

210. John Doe #1's clients subject to Colo. Rev. Stat. § 16-7-301(4) have told him that plea deals offered by the prosecuting attorney during uncounseled plea discussions under Colo. Rev. Stat. § 16-7-301(4) were no longer available once the indigent defendants were represented by counsel.

211. John Doe is aware of other public defenders in his office who share his belief that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional, and have had similar experiences with respect to the statute's application and effects.

212. John Doe #1 wishes to have these allegations made anonymously.

John Doe #2 Allegations

213. John Doe #2 is a member of Plaintiff organization Colorado Criminal Defense Bar.

214. John Doe #2 has been a member of Plaintiff organization Colorado Criminal Defense Bar for approximately five years.

215. John Doe #2 is a member of Plaintiff organization Colorado Criminal Justice Reform Coalition.

216. John Doe #2 has been a member of Plaintiff organization Colorado Criminal Justice Reform Coalition for more than one year.

217. John Doe #2 is an attorney licensed to practice law in the state of Colorado.

218. John Doe #2 is a former Colorado state deputy public defender.

219. John Doe #2 was a deputy public defender for approximately three and a half years.

220. In his time as a deputy public defender, John Doe #2 saw Colo. Rev. Stat. §16-7-301(4) applied to indigent defendants with the right to counsel.

221. As a deputy public defender, John Doe #2 observed indigent defendants plead guilty to offenses covered by Colo. Rev. Stat. § 16-7-301(4) and be sentenced to time-served or receive sentences including time in jail after engaging in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. §16-7-301(4).

222. John Doe #2's role as a public defender included advising and training other public defenders and alternate defense counsel on the immigration consequences associated with guilty pleas and convictions, including guilty pleas reached after uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

223. As a public defender, John Doe #2 believed that he had statutory, constitutional, and ethical obligations to represent indigent defendants once their right to counsel attached.

224. As a public defender, John Doe #2 believed there was a conflict between his statutory, constitutional, and ethical obligations to represent indigent defendants and Colo. Rev. Stat. § 16-7-301(4).

225. As a public defender, John Doe #2 believed that most if not all indigent defendants who were required to engage in uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4) did not understand that they might be waiving the right to counsel by engaging in, or accepting a plea offer during, those plea discussions.

226. John Doe #2 currently works on immigration rights issues and represents low-income individuals with respect to immigration and criminal issues.

227. John Doe #2 advises lawyers who serve as alternate defense counsel with respect to the immigration consequences of their clients' cases, including the immigration consequences of guilty pleas entered pursuant to uncounseled plea discussions under Colo. Rev. Stat. § 16-7-301(4).

228. John Doe #2 also represents individual clients with respect to immigration issues, and John Doe #2's work includes representing individuals who entered into guilty pleas pursuant to uncounseled plea discussions under Colo. Rev. Stat. § 16-7-301(4) with the adverse collateral immigration consequences of those pleas.

229. John Doe #2 estimates that roughly 10 to 20 percent of his practice involves cases dealing with the adverse collateral immigration consequences resulting from guilty pleas entered during uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

230. John Doe #2's clients and the clients of the other attorneys he advises include individuals who entered into uncounseled guilty pleas after engaging in uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), and whose sentences included jail time, but were never informed about the adverse immigration consequences associated with entering into their uncounseled plea deals.

231. John Doe #2 does not believe that his clients, or the clients of the attorneys he advises, who entered into uncounseled plea deals under Colo. Rev. Stat. § 16-7-301(4) understood whether they might waive their right to counsel by engaging in uncounseled plea discussions with the prosecuting attorney or accepting a plea bargain offered during those discussions.

232. Many indigent defendants suffering collateral immigration consequences as a result of their guilty pleas entered during uncounseled plea discussions with the prosecuting attorney

under Colo. Rev. Stat. § 16-7-301(4) with whom John Doe #2 has had experience do not discover such adverse consequences until well-after their guilty pleas are entered, when the immigration consequences arise.

233. By the time they suffer adverse immigration consequences resulting from their uncounseled plea deals entered pursuant to Colo. Rev. Stat. § 16-7-301(4), many indigent defendants with whom John Doe #2 works have lost the ability to challenge the constitutionality of their plea because such a challenge is time-barred.

234. John Doe #2's clients and the clients of the other attorneys he advises include individuals whose uncounseled guilty pleas to misdemeanor offenses after engaging in uncounseled plea discussions under Colo. Rev. Stat. § 16-7-301(4) subsequently result in deportation or are used to prohibit them from raising defenses to deportation, to revoke their lawful immigration status, to deny them access to bail bonds pending deportation, to impair their eligibility for citizenship, to impair their ability to travel to or from the United States, or to make them permanently ineligible for admission into the United States.

235. The individuals with whom John Doe #2 works who suffer such adverse immigration consequences as a result of their uncounseled plea deals reached under Colo. Rev. Stat. § 16-7-301(4) are frequently time-barred from raising a collateral challenge to the uncounseled guilty plea.

Other Members Allegations

236. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Does ##1 and 2, are public defenders and believe that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional.

237. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Does ##1 and 2, are public defenders and have observed indigent defendants plead guilty to offenses covered by Colo. Rev. Stat. § 16-7-301(4) and be sentenced to time-served and/or additional jail after engaging in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. § 16-7-301(4).

238. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe, are public defenders and have been in court and had indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) ask them for assistance.

239. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe, are public defenders and have declined such requests for assistance, because the indigent defendants had not yet engaged in uncounseled plea discussions with the prosecuting attorney, as required by Colo. Rev. Stat. § 16-7-301(4).

240. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #1, are public defenders and have a continuing relationship with some indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4), by virtue of representing those defendants on multiple occasions. Those indigent defendants are required to engage in uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4), even though they have been previously represented by and formed attorney-client relationships with those other members of Colorado Criminal Defense Bar who are public defenders.

241. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #2, are public defenders and believe that they have statutory,

constitutional, and ethical obligations to represent indigent defendants once the defendants' right to counsel attaches.

242. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #2, are public defenders and believe that their obligations to represent indigent defendants extend to indigent defendants who are subject to Colo. Rev. Stat. § 16-7-301(4).

243. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #2, are public defenders and believe there is a conflict between their statutory, constitutional, and ethical obligations to represent indigent defendants and Colo. Rev. Stat. § 16-7-301(4).

244. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #1, are public defenders and feel a personal obligation to represent their indigent defendant clients, including those subject to Colo. Rev. Stat. § 16-7-301(4), to the best of their abilities.

245. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #1, are public defenders and believe there is a tension between this personal sense of responsibility to represent indigent defendants to the best of their ability and Colo. Rev. Stat. § 16-7-301(4), which precludes them from doing so.

246. Colorado Criminal Defense Bar has had communications with other members who, like John Doe #1, are public defenders and believe they have competing obligations between state law and Supreme Court precedent and Colo. Rev. Stat. § 16-7-301(4).

247. Colorado Criminal Defense Bar has had communications with other members who, like Jane Doe and John Doe #2, are public defenders and believe that most if not all indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) do not knowingly and voluntarily waive their right to counsel by engaging in uncounseled plea discussions with the prosecuting attorney as required by Colo. Rev. Stat. § 16-7-301(4), or by accepting plea bargains offered during such negotiations.

248. Colorado Criminal Defense Bar has had communications with other members who, like John Doe #1, are public defenders and believe that indigent defendants subject to Colo. Rev. Stat. § 16-7-301(4) frequently do not understand the role played by the prosecuting attorney with whom they are required to engage in uncounseled plea discussions.

249. Colorado Criminal Defense Bar has had communications with other members who, like John Doe #2, are public defenders and have had indigent clients suffer adverse collateral consequences, of which they were not aware at the time they entered into their plea agreement, as a result of entering into plea agreements during uncounseled plea discussions with the prosecuting attorney under Colo. Rev. Stat. § 16-7-301(4).

Defendant Attorney General John W. Suthers

250. Attorney General Suthers has responsibility for enforcing Colo. Rev. Stat. § 16-7-301(4) because he must “appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor.” Colo. Rev. Stat. § 24-31-101(1)(a).

251. Prosecution of the misdemeanors, petty offenses, and traffic offenses specified in Colo. Rev. Stat. § 16-7-301(4) is a criminal action and proceeding in which the state may be a party or may be interested.

252. Attorney General Suthers may be required by the governor to prosecute the misdemeanors, petty offenses, and traffic offenses specified in Colo. Rev. Stat. § 16-7-301(4).

253. Attorney General Suthers has enforced or facilitated enforcement of Colo. Rev. Stat. § 16-7-301(4).

254. Attorney General Suthers has a substantial interest in this case because a declaration that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional would require the Attorney General and his subordinates to (i) cease plea discussions under Colo. Rev. Stat. § 16-7-301(4) with unrepresented indigent defendants with a right to counsel, or (ii) ensure that indigent defendants with a right to counsel receive representation during plea discussions under Colo. Rev. Stat. § 16-7-301(4).

Defendant Colorado State Public Defender Douglas K. Wilson

255. Colorado State Public Defender Wilson has a statutory obligation to “provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents.” Colo. Rev. Stat. § 21-1-101(1).

256. Colorado State Public Defender Wilson has a statutory obligation to “employ and fix the compensation for a chief deputy public defender, deputy state public defenders, investigators, and any other employees necessary to discharge the functions of the office,” as well as the responsibility to “establish such regional offices as he deems necessary to carry out his duties.” Colo. Rev. Stat. § 21-1-102(3)-(4).

257. Colorado State Public Defender Wilson has a statutory obligation to review applications and appointments for counsel and make a “determination of indigency.” Colo. Rev. Stat. § 21-1-103(3).

258. Colorado State Public Defender Wilson continued to act in accordance with Colo. Rev. Stat. § 16-7-301(4) after Attorney General Suthers asserted that Colo. Rev. Stat. § 16-7-301(4) was “constitutionally defensible.”

259. Colorado State Public Defender Wilson has not authorized or instructed his subordinate public defenders to represent indigent defendants during plea negotiations subject to Colo. Rev. Stat. § 16-7-301(4).

260. Colorado State Public Defender Wilson has a substantial interest in this case because a declaration that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional would require the Colorado State Public Defender and his subordinates to (i) review and process applications and appointments for counsel of defendants engaging in plea discussions under Colo. Rev. Stat. § 16-7-301(4), and (ii) ensure that his subordinates represent indigent defendants during plea discussions under Colo. Rev. Stat. § 16-7-301(4).

Defendants District Attorneys

261. Under Colorado law, each district attorney must “appear on behalf of the state” in “all indictments, actions and proceedings which may be pending in the district court in any county within his district wherein the state or the people thereof or any county of his district may be a party.” Colo. Rev. Stat. § 20-1-102.

262. The misdemeanors, petty offenses, and offenses under title 42 covered by Colo. Rev. Stat. § 16-7-301(4) are prosecuted through summonses and complaints, indictments, actions, and proceedings wherein the state or the people thereof or any county may be a party.

263. On information and belief, all defendant district attorneys have continued to act in accordance with Colo. Rev. Stat. § 16-7-301(4) after Attorney General Suthers asserted that Colo. Rev. Stat. § 16-7-301(4) was “constitutionally defensible.”

264. By virtue of Colo. Rev. Stat. § 21-1-103(3), the district attorneys, as prosecuting attorneys, participate in the process of appointing counsel to indigent defendants.

265. The district attorneys have a substantial interest in this case because a declaration that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional would require the district attorneys and their subordinates to (i) cease plea discussions under Colo. Rev. Stat. § 16-7-301(4) with unrepresented indigent defendants with a right to counsel, or (ii) ensure representation during plea discussions under Colo. Rev. Stat. § 16-7-301(4) with indigent defendants with a right to counsel.

266. In the First Amended Complaint, Plaintiffs named District Attorney Bill Thiebaut, in his official capacity as District Attorney for Colorado’s Tenth Judicial District, as a defendant. (Doc. # 10, filed Feb. 25, 2011.)

267. In his Answer, District Attorney Thiebaut admitted, among other things, that (a) Colo. Rev. Stat. § 16-7-301(4) is applied to indigent defendants with the right to counsel, (b) indigent defendants subject to the statute enter into uncounseled guilty pleas that result in sentences including imprisonment, and (c) Colo. Rev. Stat. § 16-7-301(4) is unconstitutional. (Doc. #46, filed June 17, 2011.)

268. Plaintiffs subsequently entered into a settlement agreement with Thiebaut, in which he agreed that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional, but stated that he would continue to follow and enforce the statute unless and until the statute is ruled unconstitutional by a court of law. (Doc. #51-1, filed July 7, 2011.)

269. In light of their settlement, the Court subsequently granted the parties' joint motion to dismiss the claims against Thiebaut, with prejudice. (Doc. # 53, filed July 11, 2011.)

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

270. The foregoing paragraphs are hereby incorporated as if set forth in this claim for relief.

271. Plaintiffs and Defendants have adverse legal interests because Defendants execute Colo. Rev. Stat. § 16-7-301(4), which violates the Sixth and Fourteenth Amendments to the United States Constitution.

272. A substantial and justiciable controversy exists between Plaintiffs and Defendants because Defendants execute Colo. Rev. Stat. § 16-7-301(4), which violates the Sixth and Fourteenth Amendments to the United States Constitution.

273. A substantial and justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs' members consistently confront inconsistency and uncertainty regarding their compliance with their professional and statutory obligations due to Colo. Rev. Stat. § 16-7-301(4)'s deferral of appointment of counsel until after indigent defendants' plea discussions with the prosecuting attorney.

274. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution will relieve Plaintiffs' members of their conflicting and uncertain obligations and terminate the legal controversy.

275. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution will remedy the constitutional violation and terminate the legal controversy.

276. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution will remedy Plaintiffs' harms because (i) Plaintiffs will no longer need to divert resources from their typical activities in an attempt to mitigate the effects of Colo. Rev. Stat. § 16-7-301(4); (ii) Plaintiffs will no longer need to expend substantial resources to ensure that Colorado complies with *Rothgery*; (iii) certain of Plaintiffs' members will no longer be hindered in carrying out their professional obligations and statutorily mandated duties to represent indigent defendants in Colorado state courts; (iv) certain of Plaintiffs' members will no longer be denied their economic and liberty interests in practicing their chosen profession; and (v) Defendants Attorney General Suthers and the District Attorneys will no longer conduct plea discussions with uncounseled indigent defendants who have a right to counsel and who are subject to Colo. Rev. Stat. § 16-7-301(4).

277. Defendants' execution of Colo. Rev. Stat. § 16-7-301(4) in violation of the Sixth and Fourteenth Amendments to the United States Constitution occurs regularly and is of sufficient immediacy and reality as to warrant the issuance of a declaratory judgment.

278. A declaration of rights pursuant to 28 U.S.C. § 2201(a) is the most effective remedy for the constitutional controversy between Plaintiffs and Defendants.

279. Plaintiffs seek a declaratory judgment for the legitimate purpose of resolving a substantial and justiciable controversy.

280. On information and belief, no direct constitutional challenge to Colo. Rev. Stat. § 16-7-301(4) is pending or anticipated in the Colorado courts, and a declaration of rights pursuant to 28 U.S.C. § 2201(a) will neither increase friction between the federal and state courts nor improperly encroach upon state jurisdiction.

281. Because Plaintiffs do not challenge a pending criminal proceeding in the Colorado courts, a declaration of rights pursuant to 28 U.S.C. § 2201(a) will neither increase friction between the federal and state courts nor improperly encroach upon state jurisdiction.

282. Plaintiffs' injuries caused by Colo. Rev. Stat. § 16-7-301(4) will be remedied by a declaration that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional.

SECOND CLAIM FOR RELIEF

283. The foregoing paragraphs are hereby incorporated as if set forth in this claim for relief.

284. Plaintiffs and Defendants have adverse legal interests because Defendants execute Colo. Rev. Stat. § 16-7-301(4) in connection with offenses that carry mandatory jail sentences, which violates the Sixth and Fourteenth Amendments to the United States Constitution.

285. A substantial and justiciable controversy exists between Plaintiffs and Defendants because Defendants execute Colo. Rev. Stat. § 16-7-301(4) in connection with offenses that carry mandatory jail sentences, which violates the Sixth and Fourteenth Amendments to the United States Constitution.

286. A substantial and justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs' members consistently confront inconsistency and uncertainty regarding their

compliance with their professional and statutory obligations due to Colo. Rev. Stat.

§ 16-7-301(4)'s deferral of appointment of counsel until after indigent defendants' plea discussions with the prosecuting attorney in connection with offenses that carry mandatory jail sentences.

287. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution when applied in connection with offenses that carry mandatory jail sentences will relieve Plaintiffs' members of their conflicting and uncertain obligations and terminate the legal controversy.

288. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution when applied in connection with offenses that carry mandatory jail sentences will remedy the constitutional violation and terminate the legal controversy.

289. A declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution when applied in connection with offenses that carry mandatory jail sentences will remedy Plaintiffs' harms because (i) Plaintiffs will no longer need to divert resources from their typical activities in an attempt to mitigate the effects of Colo. Rev. Stat. § 16-7-301(4); (ii) Plaintiffs will no longer need to expend substantial resources to ensure that Colorado complies with *Rothgery*; (iii) certain of Plaintiffs' members will no longer be hindered in carrying out their professional obligations and statutorily mandated duties to represent indigent defendants in Colorado state courts; (iv) certain of Plaintiffs' members will no longer be denied their economic and liberty interests in practicing their chosen profession; and (v) Defendants Attorney General Suthers and the District Attorneys will no longer conduct plea

discussions with uncounseled indigent defendants who have a right to counsel and who are subject to Colo. Rev. Stat. § 16-7-301(4).

290. Defendants' execution of Colo. Rev. Stat. § 16-7-301(4) in violation of the Sixth and Fourteenth Amendments to the United States Constitution when applied in connection with offenses that carry mandatory jail sentences occurs regularly and is of sufficient immediacy and reality as to warrant the issuance of a declaratory judgment.

291. A declaration of rights pursuant to 28 U.S.C. § 2201(a) is the most effective remedy for the constitutional controversy between Plaintiffs and Defendants.

292. Plaintiffs seek a declaratory judgment for the legitimate purpose of resolving a substantial and justiciable controversy.

293. On information and belief, no direct constitutional challenge to the application of Colo. Rev. Stat. § 16-7-301(4) in connection with offenses that carry mandatory jail sentences is pending or anticipated in the Colorado courts, and a declaration of rights pursuant to 28 U.S.C. § 2201(a) will neither increase friction between the federal and state courts nor improperly encroach upon state jurisdiction.

294. Because Plaintiffs do not challenge a pending criminal proceeding in the Colorado courts, a declaration of rights pursuant to 28 U.S.C. § 2201(a) will neither increase friction between the federal and state courts nor improperly encroach upon state jurisdiction.

295. Plaintiffs' injuries caused by applying Colo. Rev. Stat. § 16-7-301(4) in connection with offenses that carry mandatory jail sentences will be remedied by a declaratory judgment that Colo. Rev. Stat. § 16-7-301(4) is unconstitutional.

WHEREFORE, Plaintiffs request:

- (1) a declaration that Colo. Rev. Stat. § 16-7-301(4) violates the Sixth and Fourteenth Amendments to the United States Constitution by deferring, until after plea discussions with the prosecuting attorney, applications for assistance of counsel by indigent defendants;
- (2) any further necessary or proper relief in light of this declaration, as authorized by 28 U.S.C. § 2202;
- (3) an injunction forbidding enforcement of Colo. Rev. Stat. § 16-7-301(4) against indigent defendants with a right to counsel;
- (4) an injunction requiring that Attorney General Suthers (i) not conduct plea negotiations under Colo. Rev. Stat. § 16-7-301(4) until and unless defendants with a right to counsel have had the opportunity to apply for and receive counsel, and (ii) instruct his subordinates to do the same;
- (5) an injunction requiring that Colorado State Public Defender Wilson (i) represent indigent defendants in plea negotiations under Colo. Rev. Stat. § 16-7-301(4), and (ii) instruct his subordinates to do the same;
- (6) an injunction requiring that Colorado District Attorneys (i) not conduct plea negotiations under Colo. Rev. Stat. § 16-7-301(4) until and unless defendants with a right to counsel have had the opportunity to apply for and receive counsel, and (ii) instruct their subordinates to do the same;
- (7) attorneys' fees and costs; and
- (8) all other relief to which Plaintiffs are entitled in law or equity.

Dated: January 20, 2012

Respectfully submitted,

/s/ Scott F. Llewellyn

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2012, I electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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