

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

Darwin Yarls, Jr., Leroy Shaw, Jr., and Douglas	*	
R. Brown On Behalf of Themselves and All Others	*	
Similarly Situated,	*	Civil Action No. 3:16-cv-31-JJB-RLB
	*	
Plaintiffs,	*	
vs.	*	JUDGE: James J. Brady
	*	
	*	
Derwyn Bunton, in his official capacity as	*	MAGISTRATE JUDGE:
Chief District Defender for Orleans Parish,	*	Richard L. Bourgeois, Jr.
Louisiana; James T. Dixon, Jr., in his official	*	
capacity as Louisiana State Public Defender,	*	
	*	Complaint – Class Action
Defendants.	*	
	*	

SECOND AMENDED CLASS ACTION COMPLAINT¹

¹ Plaintiffs file this Second Amended Class Action Complaint pursuant to the Court’s July 14, 2016 Order. (ECF No. 34.)

INTRODUCTION

1. Plaintiffs Darwin Yarls, Jr., Leroy Shaw, Jr., and Douglas R. Brown are each currently detained on separate felony accusations in Orleans Parish. The prosecution has not formally charged any of the Plaintiffs with a crime, either by information or indictment.

2. Plaintiffs cannot afford attorneys. They have requested and been approved for a public defender from the Orleans Public Defender's Office ("OPD").

3. However, OPD has refused to accept Plaintiffs as clients due to budgetary shortages and excessive caseloads. OPD has instead placed Plaintiffs on a waiting list for appointed counsel. OPD's refusal to represent Plaintiffs means they must languish indefinitely in jail without counsel until adequate resources are identified to provide them with an attorney.

4. As long as Plaintiffs remain without counsel, their prosecutions cannot proceed. Meanwhile, Plaintiffs have no access to an attorney for critical pretrial functions that would ordinarily be performed by defense counsel, such as conducting a preliminary examination to challenge their arrests and bail conditions; investigating the allegations; filing motions to preserve potentially exculpatory evidence; or negotiating with the prosecution.

5. The public defender's budgetary crisis and its denial of counsel to Plaintiffs both result from the State of Louisiana's chronic underfunding of its public defender system. While the legislature yearly appropriates funds for public defense, the public defender system overwhelmingly relies on locally generated fines and fees for revenue.

6. Under this scheme, approximately two-thirds of the state's budget for public defenders comes from a \$45 fee assessed primarily on traffic tickets. No other state in the nation

is as dependent on local fines and fees to fund indigent defense.²

7. Louisiana's structure dictates that the funding available to a public defender is inherently unreliable. Funding is captive to arbitrary factors like how many highways pass through a district, the degree to which local law enforcement prioritizes traffic enforcement, or the extent to which the district attorney relies on pretrial diversion.

8. As a result, public defenders have continually faced funding emergencies like the one in Orleans Parish. Indeed, this crisis extends well beyond Orleans Parish. There are currently thousands of individuals languishing without appointed counsel throughout the state of Louisiana, all because of Louisiana's dysfunctional funding scheme.

9. Plaintiffs bring this class action under 42 U.S.C. § 1983 on behalf of themselves and those similarly situated who have been or will be denied competent, conflict-free counsel indefinitely in Orleans Parish and throughout the state of Louisiana.

10. Defendants have admitted that their inability to provide effective representation to Plaintiffs and those similarly-situated is unconstitutional.³ Plaintiffs therefore seek a declaratory judgment on behalf of class members that indefinitely being denied effective representation violates their Sixth and Fourteenth Amendment right to counsel, as well as their Fourteenth Amendment right to due process and the equal protection of the laws. Plaintiffs separately seek injunctive relief on behalf of class members to remedy these admitted constitutional violations.

² David Carroll, *Indigent Defense Progress Stunted by Out-Dated Funding Mechanism in Louisiana*, 6AC: Pleading the Sixth, Sept. 26, 2012, <http://sixthamendment.org/indigent-defense-progress-stunted-by-out-dated-funding-mechanism-in-louisiana/>.

³ See Parties' Joint Mot. for Final Declaratory and Partial Injunctive Relief, ECF. No. 29.

JURISDICTION AND VENUE

11. Plaintiffs' claims arise under the Constitution and laws of the United States. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3).

12. The federal rights asserted by Plaintiffs are enforceable under 42 U.S.C. § 1983.

13. This Court has the authority to grant declaratory relief under 28 U.S.C. § 2201-2202 and Fed. R. Civ. P. 57.

14. Venue is proper in the Middle District of Louisiana under 28 U.S.C. § 1391(b). The Louisiana Public Defender Board resides in this district, and all defendants are residents of Louisiana, in which the Middle District of Louisiana is located.

PARTIES

Plaintiffs

15. Plaintiff Darwin Yarls, Jr. is an adult resident of Orleans Parish in the State of Louisiana.

16. Plaintiff Leroy Shaw, Jr. is an adult resident of Orleans Parish in the State of Louisiana.

17. Plaintiff Douglas R. Brown is an adult resident of Orleans Parish in the State of Louisiana.

Defendants

18. Defendant Derwyn Bunton is the Chief Public Defender for the Orleans Parish Public Defender's Office. He is sued in his official capacity for equitable relief.

19. Defendant James Dixon is the state public defender for the Louisiana Public

Defender Board (the “Board”), the executive agency charged with administering Louisiana’s indigent defense system. Dixon is employed by the Board to carry out its responsibilities. Defendant Dixon’s office approved and supervises OPD’s Restriction of Services Plan (“ROS”). He is sued in his official capacity for equitable relief.

FACTS

20. Plaintiff Yarls was arrested on January 12, 2016, on an accusation of vehicular homicide. The alleged accident occurred nearly two months prior to the arrest. The victim was Mr. Yarls’ longtime girlfriend. The statutory maximum for this offense is thirty years in prison with hard labor. La. Rev. Stat. Ann. §14:32.1. Mr. Yarls is 52-years old.

21. Mr. Yarls had his initial appearance before the magistrate on January 12, 2016.

22. The magistrate found probable cause for the offense and set Mr. Yarls’ bail at \$75,000. Mr. Yarls has been unemployed since the accident and lacks the means to purchase his release.

23. Plaintiff Shaw was arrested on January 12, 2016, on an accusation of armed robbery. The statutory maximum for this offense is ninety-nine years in prison with hard labor without benefit of parole, probation, or suspension of sentence. La. Rev. Stat. Ann. §14:64. Mr. Shaw is 49-years old.

24. Mr. Shaw had his initial appearance before the magistrate on January 12, 2016.

25. The magistrate found probable cause for the offense and set Mr. Shaw’s bail at \$75,000. Mr. Shaw is unemployed and receives Social Security Disability. He lacks the means to purchase his release.

26. Plaintiff Brown was arrested on January 13, 2016, on an accusation of first degree robbery. The statutory maximum for this offense is forty years in prison with hard labor

without benefit of parole, probation, or suspension of sentence. La. Rev. Stat. Ann. §14:64.1. Mr. Brown is 45-years old.

27. Mr. Brown had his initial appearance before the magistrate on January 14, 2016.

28. The magistrate found probable cause for the offense and set Mr. Brown's bail at \$25,000. Mr. Brown works at a temp service and makes approximately \$1,000 a month. He lacks the means to purchase his release.

29. Counsel appointments in Orleans Parish are conducted at the initial appearance, pursuant to Article 230 of the Louisiana Code of Criminal Procedure. If the magistrate court determines that an arrestee is unable to afford counsel, the court appoints OPD, which represents approximately 85% of criminal defendants in the parish.

30. In accordance with this practice, the magistrate on January 12, 2016 determined separately that Mr. Yarls and Mr. Shaw could not afford attorneys and appointed OPD.

31. Under ordinary circumstances, OPD would accept Mr. Yarls and Mr. Shaw as clients and begin representing them immediately upon the magistrate's order of appointment.

32. However, an OPD representative, acting on behalf of Defendant Bunton, notified the court that OPD could not accept appointment for Mr. Yarls or Mr. Shaw.

33. The court, in response to OPD's refusals, scheduled a second hearing for January 15, 2016, to again determine whether Mr. Yarls and Mr. Shaw were entitled to appointed counsel.

34. However, prior to their January 15 hearing, Mr. Yarls and Mr. Shaw were brought before the court on January 14, 2016 for another hearing to determine counsel.

35. The court again found Mr. Yarls and Mr. Shaw indigent and appointed OPD to represent Mr. Yarls and Mr. Shaw.

36. Again, an OPD representative, acting on behalf of Defendant Bunton, notified the court that OPD could not represent Mr. Yarls and Mr. Shaw.

37. The magistrate accepted OPD's notice that they could not represent Mr. Yarls⁴ and Mr. Shaw.⁵

38. Also in accordance with the standard practice in Orleans Parish, the magistrate on January 14, 2016 determined that Mr. Brown could not afford an attorney and appointed OPD.

39. Again, an OPD representative, acting on behalf of Defendant Bunton, informed the court that OPD could not represent Mr. Brown.

40. The magistrate accepted OPD's notice that they could not represent Mr. Brown.⁶

41. OPD initially refused to represent Plaintiffs as part of its ROS protocol.

42. OPD initiated the ROS on July 1, 2015 – the first day of its 2016 fiscal year – due to a \$1 million shortfall in locally generated (\$300,000) and state (\$700,000) revenue for Fiscal Year 2015. Ex. 1, Letter from Derwyn D. Bunton, Chief Dist. Def., OPD, to New Orleans Criminal Justice Stakeholders (Jun. 18, 2015).

43. Defendant Dixon officially approved the ROS on behalf of the Louisiana Public Defender Board on December 1, 2015. Ex. 2, Letter from Derwyn D. Bunton, Chief Dist. Def.,

⁴After Plaintiffs filed the Complaint, the district court appointed OPD to represent Plaintiff Yarls on March 16, 2016. OPD filed a notice to decline the appointment, which the court denied. OPD then filed a motion to decline Mr. Yarls' appointment on March 26, 2016. The district court denied OPD's motion to decline and appointed OPD on April 13, 2016.

⁵After Plaintiffs filed the Complaint, the district court appointed OPD to represent Plaintiff Shaw on March 31, 2016. His charges were *nolle prossed* on July 28, 2016 by nolle prosequi, and he was released from custody.

⁶After Plaintiffs filed the Complaint, the district court appointed private counsel to represent Plaintiff Brown on April 6, 2016. However, his appointed counsel filed a motion with the state court on June 23, 2016 to request adequate funds for the defense, and, if sufficient funds are not available, to stay the prosecution until funding becomes available. The motion has yet to be heard. The district court handling Mr. Brown's case previously concluded that funds generally are not available for pro bono representation in Orleans Parish. *State v. Bernard*, No. 528-021 K (La. Crim. Dist. Ct., Orleans Parish April 8, 2016).

OPD, to the Honorable Arthur Hunter, Jr., Orleans Par. Criminal Dist. Court, Section K (Dec. 11, 2015) at 1.

44. The ROS included a hiring freeze for current and future staff attorney vacancies. Ex. 3, Orleans Public Defenders Office, Restriction of Services Plan Fiscal Year 2016 at 3. Defendant Bunton asserted in the ROS that OPD's inability to replace or expand staff, combined with the office's already excessive number of active cases, would result in clients being placed on a waiting list for representation.⁷ *Id.* at 4, 5.

45. Since beginning the ROS, OPD has lost a significant number of attorneys, particularly among its most experienced staff. Ex. 2, at 1. This has caused the caseloads for most staff attorneys to rise well above the standards set by the American Bar Association and the Louisiana Public Defender Board. *Id.* at 1-2.

46. On November 20 and 23 of 2015, Judge Hunter of the Orleans Parish Criminal District Court held a hearing on OPD's ability to provide constitutionally-adequate and ethical representation to its clients.

47. OPD staff members, including Defendant Bunton, and expert witnesses all asserted at the hearing that OPD was failing to meet its constitutional and ethical obligations to clients because too many staff attorneys had unmanageable caseloads. *See generally*, Ex. 4, Tr. of Ct. Proceedings Held on the 20th Day of November in 2015, *Louisiana v. Wroten et. al*, No.

⁷ Orleans Parish also provides funding to OPD as a matter of parish policy. *See State v. Citizen*, 898 So. 2d 325, 338 (La. 2005). Since OPD announced its ROS, Orleans Parish has increased its allocation to OPD by \$400,000. Ex. 3, at 2, n.1. This increase prevented OPD from implementing ten days of staff furloughs in 2016, wherein OPD would not appear at arraignments and initial appearances for any potential client. But the additional funding is not enough to keep OPD from placing clients on a waiting list for representation. *See Ken Daley, Orleans public defenders need time to find lawyers for cases, Bunton says*, TIMES-PICAYUNE, Jan. 4, 2016, http://www.nola.com/crime/index.ssf/2016/01/public_defenders_start_declini.html.

520-385 (La. Crim. Dist. Ct., Orleans Parish); Ex. 5, Tr. of Ct. Proceedings Held on the 23rd Day of November in 2015, *Louisiana v. Wroten et. al*, No. 520-385 (La. Crim. Dist. Ct., Orleans Parish); Ex. 6, Aff. of Derwyn Bunton, Chief District Defender, Nov. 20, 2015; Ex. 7, Aff. of Lauren Anderson, Attorney, Nov. 20, 2015; Ex. 8, Aff. of Mariah Holder, Attorney, Nov. 20, 2015; Ex. 9, Aff. of Phillip Jobe, Investigator, Nov. 20, 2015; Ex. 10, Aff. of Stanislav Moroz, Attorney, Nov. 20, 2015; Ex. 11, Aff. of Thomas Frampton, Attorney, Nov. 20, 2015; and Ex. 12, Aff. of Tina Peng, Attorney, Nov. 20, 2015.

48. Following the hearing, Defendant Bunton announced on December 11, 2015, that OPD would start declining serious felony cases in mid-January of 2016. Ex. 2, at 2. The withdrawals would occur at a defendant's first appearance before the magistrate. *Id.*

49. Defendant Bunton predicted that OPD's inability to accept additional clients would continue either until its caseloads reduced or it received additional funding to hire more attorneys. *Id.*

50. Due to Defendant Bunton and OPD's inability to represent them, Plaintiffs are suffering and will continue to suffer irreparable harm. Most critically, they face an unduly heightened risk of prolonged and unnecessary pretrial detention. *See* Ex. 3, at 5.

51. Plaintiffs have no advocates to advise them on whether to request a preliminary examination under Louisiana law, wherein they could challenge probable cause for their arrests or argue to lower their bail conditions. *See* Ex. 6, ¶5.

52. Plaintiffs are also without an attorney to investigate the charges and prepare a defense, file motions to preserve potentially exculpatory evidence or other discovery, conduct additional bail advocacy, or negotiate with the prosecution. *See id.*

53. These critical pretrial functions are all services available to defendants who can

afford private counsel.

Louisiana's Funding Scheme for Public Defense

54. Plaintiffs' placement on a waiting list for appointed counsel results from the State of Louisiana's chronic underfunding of its public defender system.

55. The Louisiana Constitution obligates the legislature to provide a uniform system of competent representation for indigent defendants. LA. CONST. art. I, § 13.

56. In 2007, the legislature established the Louisiana Public Defender Fund (the "Fund"), administered by the Louisiana Public Defender Board, to meet this mandate. The Fund is primarily appropriated by the legislature, but lacks a guaranteed funding stream or source of revenue.

57. According to Defendant Dixon, the legislature has never provided the Board with adequate funding to operate the state's public defender system. Ex. 13, La. Pub. Def. Bd., 2014 Annual Board Report at 22.

58. The legislature also established in each of the state's forty-two judicial districts a Judicial District Indigent Defender Fund, which is administered by the district public defender.

59. The Fund consists of locally generated fines and fees, the most significant of which is a \$45 fee assessed in cases when a defendant is convicted after trial, a plea of guilty or nolo contendere, or when a defendant forfeits a bond.

60. In practice, most of the revenue generated by this fee comes from traffic tickets. The fees collected from traffic tickets constitute nearly two-thirds of the funds available for public defense in Louisiana. *Id.*

61. The amount of money a district defender collects from traffic tickets varies widely from fiscal year to fiscal year, and from district to district. Factors such as the

number of highways passing through a district and law enforcement's traffic enforcement priorities contribute greatly to this variance, independent of the actual demand for public defenders in a particular district.

62. Defendant Dixon and Defendant Bunton have admitted that Louisiana's dependence on locally generated revenue is inherently unreliable and inadequate. Ex. 2, at 3; Ex. 13, at 22.

63. Since 2010, twenty-nine of the state's forty-two public defenders have received emergency funding to avoid financial failure. Ex. 13, at 22. But districts such as the twenty-ninth (St. Charles Parish), through which multiple state highways pass, typically enjoy budget surpluses. Four other defender districts anticipate similar surpluses for Fiscal Year 2016. *Id.* at 23.

64. Louisiana's dysfunctional funding scheme has forced at least thirty of its forty-two defender districts to announce severe service restrictions in the past year.⁸ The affected districts are spread throughout the state, and include both rural and urban parishes.

65. As with OPD, many of the plans include protocols for establishing waiting lists, either because a district can no longer accept certain cases involving conflicts of interest among co-defendants, or to mitigate caseloads that vastly exceed ethical guidelines.

66. According to the most recently reported data from the Louisiana Public Defender Board, there are over 6,000 individuals currently without appointed counsel in sixteen of the state's forty-two judicial districts.⁹ For instance, the 15th Judicial District, which includes

⁸ Copies of the ROS plans for each of these districts are on file with Plaintiffs' counsel.

⁹ June 14, 2016 Agenda and Supporting Documents, Louisiana Public Defender Board Meeting at 244, available at http://lpdb.la.gov/Meetings/txtfiles/pdf/Board_Meeting/Z_Board_Jun%2014%202016_Agenda%20and%20Supporting%20Documents.pdf.

Lafayette, Acadia, and Vermillion parishes, has placed 5,297 individuals on its waiting list.¹⁰ The 16th Judicial District's (St. Martin, St. Mary, Iberia parishes) waiting list has 250 individuals,¹¹ and the 19th Judicial District (East Baton Rouge) has 196.¹² Each of the districts relying on waiting lists suffers from the same fundamental defect: an insufficient amount of resources from the state to provide constitutionally-compliant defense counsel for those who cannot afford it.

67. On June 14, 2016, the Louisiana Public Defender Board altered its funding allocation to increase the proportion of available Fiscal Year 2017 funds that will go to district defenders approximately 50% to 65%.¹³ This increase was accomplished largely by reducing the funding allocation for capital defense by 33.3%.¹⁴ The Louisiana legislature has since codified this funding allocation. La. Rev. Stat. Ann. §15:167.

68. The new legislation does not increase the total amount of funds provided to the Board, nor does it address the system's overreliance on unpredictable traffic fees. Defendants have publicly declared that the new funding allocation does not remedy Louisiana's inherently unstable and inadequate funding scheme, and Defendant Dixon has warned that it may also cause funding shortages and delays in capital cases.¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 234.

¹⁴ *Id.*

¹⁵ See, e.g., Julia O'Donoghue, *Lawmakers look to shift money to public defenders – from death penalty appeals*, Times-Picayune, Apr. 7, 2016, http://www.nola.com/politics/index.ssf/2016/04/lawmakers_look_to_give_more_mo.html; Jeff Adelson, *Orleans public defender says office's funding still precarious despite more state money*, New Orleans Advocate, July 27, 2016, http://www.theadvocate.com/new_orleans/news/article_e095d542-5449-11e6-a3d1-6ff52f5f8151.html.

CLASS ALLEGATIONS

69. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this suit on behalf of themselves and all others similarly situated who are or will be affected by Defendants' inability to provide constitutionally-compliant representation to poor people accused of crimes.

70. Plaintiffs seek to represent a class defined as Louisiana arrestees with a right to appointed counsel who have been or will be denied competent, conflict-free counsel indefinitely due to Defendant Dixon's inability to allocate sufficient funding for their representation.

71. Plaintiffs seek to represent a subclass defined as Orleans Parish arrestees with a right to appointed counsel who have been or will be denied competent, conflict-free counsel indefinitely due to Defendants inability to allocate sufficient funding for their representation.

72. A class action is appropriate in order to obtain declaratory relief establishing that Defendants' placement of Plaintiffs and those similarly-situated on waiting lists for appointed counsel, or their failure to otherwise provide adequate resources for the representation of criminal defendants, violates class members' rights to counsel and to equal protection.

73. A class action is also appropriate in order to obtain injunctive relief ensuring that public defender districts throughout the state of Louisiana have the resources necessary to remove individuals from their waiting lists, and to provide constitutionally-effective representation for all arrestees.

74. As alleged above, there are over 6,000 individuals currently without appointed counsel in sixteen of the state's forty-two judicial districts.¹⁶ OPD has declined to represent

¹⁶ June 14, 2016 Agenda and Supporting Documents, Louisiana Public Defender Board Meeting at 244, available at

over 150 individuals. It is unknown how many clients district defenders will ultimately place on waiting lists for representation, and the number of clients on the waiting lists have fluctuated and will continue to do so.

75. The class and subclass are so numerous that joinder of all respective members is impracticable, and, because the classes include future members, their size will fluctuate over time if Defendants' unconstitutional failures persist.

76. Joinder is also impracticable because the Defendant Dixon and Board have no way to determine the identity and exact number of unrepresented people in Louisiana at any given time. Counsel for Defendant Dixon has indicated to counsel for Plaintiffs that the Board's estimate of unrepresented individuals does not accurately represent the number of individuals actually on waiting lists. Further, the Louisiana Public Defender Board has provided to counsel for Plaintiffs, pursuant to ongoing public record requests, data collected from district defenders concerning the number of people those defenders are unable to represent. However, counsel for Defendant Dixon has indicated to counsel for Plaintiffs that this data is also inaccurate, only sporadically includes the identity of unrepresented individuals, and is sometimes inconsistent with other public reports.

77. There are questions of law and fact common to the classes.

78. Common questions of fact include: the budgetary circumstances that led OPD and defender districts across the state to begin placing individuals on waiting lists for representation; the protocols OPD and other district defenders use to refuse appointments; the procedures, if any, used by OPD and other district defenders, judges, and prosecutors to

http://lpdb.la.gov/Meetings/txtfiles/pdf/Board_Meeting/Z_Board_Jun%2014%202016_Agenda%20and%20Supporting%20Documents.pdf

monitor cases on the waiting list; the typical amount of time individuals must remain on the waiting lists in the defender districts; the circumstances under which individuals are removed from the waiting lists in the defender districts, including the workloads and resources available to attorneys assigned to waitlisted cases; and the amount of funding available and necessary to provide effective representation for all class members.

79. Common questions of law include whether the placement of putative class members on a waiting list for appointed counsel violates their Sixth Amendment right to counsel and/or their Fourteenth Amendment right to the equal protection of the laws.

80. Plaintiffs' claims or defenses are typical of the claims or defenses of the proposed class and subclass. The constitutional deprivations Plaintiffs have suffered and continue to suffer are the same as those of putative class members.

81. Plaintiffs and their attorneys will fairly and adequately protect the interests of the classes. Plaintiffs have no interests antagonistic to the proposed class, and they are represented by attorneys with significant expertise in criminal procedure and complex civil litigation.

82. Plaintiffs seek a declaratory judgment that theirs and others' denial of counsel violates their constitutional rights, and injunctive relief to remedy these constitutional violations. Defendants' actions and omissions in violation of the federal constitution apply generally to the class as a whole; thus, final declaratory relief is appropriate for the proposed class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

CLASS AND INDIVIDUAL CLAIMS FOR RELIEF

Count 1: Sixth and Fourteenth Amendment Right to Counsel

83. Because Plaintiffs and class members are too poor to afford private counsel,

Defendants' inability to provide competent, conflict-free representation violates Plaintiffs' and class members' Sixth and Fourteenth Amendment right to the assistance of counsel.

Count 2: Fourteenth Amendment Right to Due Process and Equal Protection Relative to Criminal Defendants Able to Afford Private Counsel.

84. Plaintiffs and class members have a fundamental right to the assistance of appointed counsel because they cannot afford private counsel.

85. Defendants' inability to provide representation for Plaintiffs and class members has created dual criminal justice systems based on wealth. Criminal defendants who can afford private counsel have unfettered access to the assistance of counsel for preliminary examinations and other critical defense functions. But Plaintiffs and class members cannot access these protections until adequate resources are identified to appoint competent, conflict-free counsel.

86. Defendants' inability to provide competent, conflict-free representation for Plaintiffs and class members invidiously discriminates against class members based on wealth, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

- a. Certify this case as a class action;
- b. Conduct separate determinations of liability for Defendants' admitted constitutional violations, and of the appropriate remedy for Defendants' admitted constitutional violations, pursuant to Rule 42(b) of the Federal Rules of Civil Procedure;
- c. Order a speedy hearing of the agreed declaratory judgments, pursuant to Rule 57 of the Federal Rules of Civil Procedure;

- d. Enter declaratory relief in the form of a judgment establishing that class members' placement on a waiting list for appointed counsel by Defendants, and Defendants' inability to assign class members competent, conflict-free counsel, violates their Sixth and Fourteenth Amendment right to the assistance of counsel;
- e. Enter declaratory relief in the form of a judgment establishing that class members' placement on a waiting list for appointed counsel by Defendants, and Defendants' inability to assign them competent, conflict-free counsel, invidiously discriminates against class members based on wealth, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment;
- f. Enter declaratory relief in the form of a judgment establishing that, when assigned counsel's workloads or lack of available resources prevent counsel from providing indigent defendants with effective and conflict-free assistance of counsel, clients are deprived of their right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution; thus, the Sixth and Fourteenth Amendments require public defenders and other assigned counsel to refuse new or withdraw from existing cases when workloads or a lack of available resources would prevent counsel from providing effective and conflict-free assistance of counsel;
- g. Enter declaratory relief in the form of a judgment establishing that any determination that workloads or inadequate resources will prevent a public defender or other assigned counsel from providing indigent defendants with effective and conflict-free assistance of counsel must be based on objective, reliable data;
- h. Grant injunctive relief requiring Defendant Dixon to develop and conduct a workload study that provides an objective, reliable basis for public defenders or other assigned counsel in Orleans Parish and throughout Louisiana to refuse or withdraw from representation based

on excessive workloads or a lack of adequate resources;¹⁷

- i. Grant injunctive relief requiring Defendant Dixon to develop and implement a plan to provide each criminal defendant in Orleans Parish and elsewhere in the state of Louisiana with competent, conflict-free counsel, and to ensure that assigned counsel has the necessary resources to provide effective assistance of counsel as required by the Sixth and Fourteenth Amendments, but on the condition that implementation of the plan not interfere with ongoing prosecutions;
- j. Appoint a special master, pursuant to Rule 53 of the Federal Rules of Civil Procedure, to assist the Court in fashioning and implementing a necessary and appropriate remedy for the agreed constitutional violations;
- k. Grant injunctive relief enjoining any provision of Louisiana law that directly prevents Defendants from remedying their admitted constitutional violations, but only to the extent absolutely necessary and appropriate to remedy the admitted constitutional violations;
- l. Grant any other relief this Court deems just and proper.

Submitted the 12th of August, 2016.

¹⁷ The Louisiana Public Defender Board is currently conducting a workload study with the American Bar Association and the Louisiana accounting firm Postlethwaite and Netterville. *See* Memorandum from Louisiana Public Defender Board to All Louisiana Public Defenders, (March 18, 2016), available at http://lpdb.la.gov/Serving%20The%20Public/News/txtfiles/pdf/LPDB%20Memo%20to%20Defenders_3_18_2016.pdf; *see also* Letter from Paulette Brown, President, American Bar Association to Honorable John Bel Edwards, Governor of Louisiana (March 30, 2016), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_2016mar30_louisianapublicdef_letter.authcheckdam.pdf.

Respectfully submitted,

/s/ Brandon J. Buskey*, AL ASB2753-A50B (Lead Attorney)
Ezekiel Edwards*, NY 4189304
American Civil Liberties Union Foundation
Criminal Law Reform Project
125 Broad Street, 18th Floor New
York, NY 10004
212-284-7364
bbuskey@aclu.org
eedwards@aclu.org
*Admitted *Pro Hac Vice*

/s/ Candice C. Sirmon, La No. 30728 (Notice Attorney)
ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, La 70156 (504)
522-0628
Facsimile: (888) 534-2995
Email: csirmon@laaclu.org

William P. Quigley #07769
Loyola University New Orleans
College of Law
7214 St. Charles Avenue New
Orleans, LA 70118
Cell 504.710.3074
quigley77@gmail.com

Anna Lellelid-Douffet #35204
PO Box 19388
New Orleans, LA 70179 (504)
224-9670 (c)
alellelid.law@gmail.com

CERTIFICATE OF SERVICE

I do hereby certify that on August 12, 2016, a true and correct copy of the foregoing Second Amended Class Action Complaint was served via with the CM/ECF system electronic system on John M. Landis and Maggie A. Broussard, counsel for Defendant James T. Dixon, Jr. and Mark Surprenant, Jennifer Barriere and Justin Schmidt counsel for Defendant Derwyn Bunton.

/s/ Candice C. Sirmon
Candice C. Sirmon, La. No. 30728
ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, LA 70156
(504) 522-0628
Fax: (504) 613-6511
csirmon@laaclu.org