No. 25-1061

IN THE

Supreme Court of the United States

HOLLY ANN ELKINS,

Petitioner,

v.

THE UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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AMICUS CURIAE BRIEF OF THE TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF THE PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Texas Criminal Defense Lawyers Association (TCDLA) is a non-profit voluntary membership organization dedicated to the protection of those individual rights guaranteed by the state and federal constitutions and to the constant improvement of the administration of criminal justice in the State of Texas.

Founded in 1971, TCDLA currently has a membership of over 3,400 and offers a statewide forum for criminal defense counsel, provides a voice in the state legislative process in support of procedural fairness in criminal defense and forfeiture cases, and assists the courts by acting as amicus curiae.

Neither TCDLA nor any of the attorneys representing TCDLA have received any fee or other compensation for preparing this brief, which complies with all applicable provisions of the Supreme Court Rules, and copies have been served on all parties.

SUMMARY OF THE ARGUMENT

The federalization of traditional criminal prosecution is not done in isolation. When Congress criminalizes an offense traditionally reserved for state prosecution, it is adding more than a potential new kind of crime for which a person can be convicted and punished federally. Federalization necessitates dispensing justice for a newly defined criminal offense. The problem becomes systemic, and the trend becomes

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[1] TCDLA timely notified counsel for the petitioner of its intent to file a brief at least ten days prior to its due date. Rule 37. Lead counsel for TCDLA authored this brief in part. No counsel for a party to this matter participated in drafting. Rule 37.6. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. *Id.*

unsustainable when accounting for the need to afford the accused an attorney for their defense. Congress asks federal courts to subsume the failures of a failed system of appointed counsel much in the same way this Court asked states to do so decades ago: without guidance or funding. Whether this can even be accomplished depends on organizations like TCDLA retooling training and educational opportunities, and then purely hoping that attorneys will have the capacity and desire to come perform the far more difficult task of defending clients in federal court. TCDLA writes to share how the former would be quite difficult and the latter, potentially impossible.

ARGUMENT

The problems in indigent defense are not solely a state court problem; however, it is well established that state courts bear the significant burden of the constitutional mandate that the accused be represented by counsel. The burden allocation is neither fortuitous nor an imperative. It is the product of the traditional state role in defining and prosecuting criminal offenses. With every successful effort to federalize criminal prosecution comes the institutional burdens of ensuring that all aspects of justice are fulfilled. The appointment of counsel is not an aspect of this; it is a feature. The right to counsel is central to ensuring the exercise of each and every right the accused is afforded.

TCDLA writes to offer this Court a perspective on the difficulties the state of Texas faces in meeting this burden and why efforts to force federal courts to subsume traditional state prosecutions do more than merely shift the burden. It exacerbates a problem in an unsustainable way.

1. Continued federalization of traditional state offenses will require federal courts to carry the burden of *Gideon*'s failed promises

What happens when Congress proliferates the need for appointed counsel in federal criminal prosecutions?

To practitioners, anecdote and experience lend a simple answer: nothing great. The thought is humorous in the way humor evokes shared understandings. It calls to mind the lectures[2] of a well-known retired Texas judge and his unique 24-year judicial vantage point of the intersection between Texas politics and criminal procedure. Among the topics in his syllabus[3] was the evolution of Texas's approach to indigent defense and the passage of Article 26 of the Texas Code of Criminal Procedure (The Texas indigent defense statute).[4] According to the judge, among policy-makers who celebrated the requirements of *Gideon v. Wainright* was a belief in an opportunity to develop a new niche of professionals—trained and seasoned lawyers who tried cases at the same rate as prosecuting attorneys. This belief served as a premise for a broader conclusion that those among the bar programmed with a different perspective on individual liberties would soon ascend to judicial and policymaking roles. This, in turn, would reshape criminal justice in our State. It was as starry-eyed as *Gideon* itself.

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[2] He would call them "stories."

[3] He would still call them "stories."

[4] Senate Bill 7 (77th RS) https://capitol.texas.gov/tlodocs/77R/billtext/html/SB00007F.htm and https://capitol.texas.gov/tlodocs/77R/analysis/html/SB00007F.htm

That this noble intention was meant as a laughable anecdote[5] was underscored, not ironically, by the fact that he laughed while telling it. The punchline is a lived one among practitioners in an era that scholars and colleagues who concur in *Gideon*'s failed promise. The gullibility of this idealistic legislator, viewed with 20-20 hindsight, *is* funny. The schadenfreude is in the ubiquitous acknowledgment of *Gideon*'s opposite effect—one acknowledged both by the accused, who refer to their lawyers as public pretenders (among other things), and by an attorney general lamenting the quality of representation that results from "insufficient resources, overwhelming caseloads, and inadequate oversight." Eric Holder, Att'y Gen., *Address at the American Bar Association National Summit on Indigent Defense* (Feb. 4, 2012) (transcript available at http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech120204.html).

While *Gideon's* failures have obtained notoriety among the bench and bar, the prevalence of *Gideon*'s failures pales in comparison to the importance of reciting seemingly rote criticisms. One such example that resonates with this Organization is Professor Carol Steiker's "tribute" on the 50th anniversary of the right to counsel. The chord she strikes is both in her frank assessment and in her bona fides as a professor and a former public defender. Her transition from discussing the infamous Texas lawyer who slept through a capital trial to the systemic issues that produce bad results highlights both the worst of us who are welcome and the best of us who are thwarted. In her words:

[5] We would call it a lecture.

> The failures of individual lawyers, however appalling, are often the product of structural forces that pose systemic barriers to the delivery of adequate criminal defense services to the poor, even by demonstrably capable and dedicated lawyers. Structural constraints prevent many well-intentioned lawyers from meeting regularly with their clients, conducting adequate investigations or legal research, trying (as opposed to pleading) plausible cases, and providing meaningful adversarial testing of the evidence on the rare occasions when they do go to trial.

Carol S. Steiker, *Gideon at Fifty: A Problem of Political Will*, 122 YALE L.J. 2694, 2701 (2013). She describes her condemnation as widely accepted because it is. *Id*. (citing Jordan Glaser, Note, *The Silence of Gideon's Trumpet: The Court's Inattention to Systemic Inequities Causing Violations of Speedy Trial Rights in Vermont v. Brillon*, 129 S. Ct. 1283 (2009), 89 NEB. L. REV. 396 (2010); Victoria Nourse, *Gideon's Muted Trumpet*, 58 MD. L. REV. 1417 (1999); Kim Taylor-Thompson, *Tuning Up Gideon's Trumpet*, 71 FORDHAM L. REV. 1461 (2003); Stephen B. Bright, Stephen O. Kinnard & David A. Webster, *Keeping Gideon from Being Blown Away: Prospective Challenges to Inadequate Representation May Be Our Best Hope*, CRIM. JUST., Winter 1990; Holder, Att'y Gen., *supra*. But even less critical authors, meaning to comment on matters only related to indigent defense, recognize the practical and doctrinal disconnect between effective representation and ethically competent representation. *See e.g.* David Marcus, *Groups and Rights in Institutional Reform Litigation*, 97 NOTRE DAME L. REV. 203 (2022). In his discussion on the viability of a class action as a catalyst for

addressing the "American indigent defense crisis," Professor Marcus identifies the unfortunate but neat fit between the realities of *Gideon* and the unambitious standard of *Strickland*. He notes that *Strickland*'s results-oriented approach to judging effective assistance means "defendants do not have a right to lawyer performance that measures up by some metric of competence or professionalism." *Id.* (discussing *Strickland v. Washington*, 466 U.S. 668 (1984)).

Perhaps it is only a coincidence, but the experience of practitioners is that *Gideon*'s low achievement and *Strickland*'s low standard are not unrelated. Indeed, if the half-century of the right to counsel has shown anything, it is that *Strickland*'s low standard is an imperative to what our government has achieved in the wake of *Gideon*. It pains this Organization more than others to acknowledge this. We have all watched a colleague flounder. And we have had to navigate the tension between feelings of solidarity and vicarious shame toward the lawyer and the profession. Admittedly, this tension is sometimes resolved by leaving the courtroom to avoid our own anxiety that we might also flounder in a system where our greatest opponent is the system itself. We are loath to describe a colleague as a "bad lawyer," but we must recognize that even as we tout our members as the best in the profession, the low bar to entry and unrealistic demands sometimes produce the worst of us or the worst in us.

This calls back to the answer we initially posed: Nothing good comes from the proliferation of traditional state-law issues in federal criminal courts. An unremarkable case from the Fifth Circuit helps make this point, well. A lawyer once miscalculated his

client's estimated sentence under the federal sentencing guidelines to the tune of 300 months. The Fifth Circuit determined that this did not rise to the level of ineffective assistance of counsel. *United States v. Valdez*, 973 F.3d 396, 406 (5th Cir. 2020). That *Lopez* is a generally unremarkable opinion makes it all the more significant to the point we make. It happens. A lot.

And federal sentencing guidelines are hardly the only complicated thing about practicing in federal court. It requires far more than giving it a good college try. Federal courts are the intellectual ivory towers of our judicial system. Advocacy is researched. Advocacy is written. Advocacy is deadline and rule enforced. These are three dreadful sentences if you know what another well-known appellate jurist in Texas once informally shared with an author of this brief. "There are walkin' talkin' lawyers and there are readin' writin' lawyers." The fact is that many of our brethren and sistren—the walkin' talkin'—are neither equipped nor trained in the readin' writin' necessary to effectively practice in federal courts where plea offers are "take it or leave it" and litigation requires far more than convincing a jury.

We are hesitant to say anything that could be interpreted as "watch us bumble." We are professsionals proud of our role in this democratic institution. But, as professionals, we must admit our weaknesses as an institution. There are many capable among us who are on the level, but still far too few. We share in the recognition that the well-established gulf between the right to counsel and effective counsel will create a new imperative in the character of federal practice should the floodgates of federalization remain open. Federal courts will soon be forced to accept the same

quality of cursory representation given to defendants in state trial courts. The slope is as slippery as it is regrettable.

2. Continued federalization of traditional state offenses would require significant retooling of indigent defense solutions under the most optimistic outlook

Despite the identical obligation to appoint counsel in criminal prosecutions, the great weight of this burden has consistently fallen on state and local governments. *See* Erwin Chemerinsky, *Lessons from Gideon* (Remarks), 122 Yale L.J. 2676 (2013). The disruption caused by continued federalization is more than a balance shift among the respective courts—it places a demand on the bar that might be unsustainable.

The federal system of appointed counsel under the Criminal Justice Act (CJA) imposes materially higher qualifications, training, and performance standards than those required in Texas state courts. 18 U.S.C. § 3006A (2024). Attorneys must be vetted for federal criminal experience, trial competence, and ongoing compliance with panel requirements. These safeguards reflect the heightened complexity of federal criminal practice, including the application of sentencing guidelines, multi-defendant litigation, and extensive discovery obligations.

By contrast, Texas indigent defense systems operate under the Texas Fair Defense Act and under county-specific plans with widely varying qualification criteria and limited uniform enforcement of competency or workload standards. S.B. 7, 77th Leg., R.S. (Tex. 2001). As a result, the pool of attorneys qualified for

federal appointments is both smaller and more rigorously screened.

The proliferation of federal criminal prosecutions resulting from the federalization of traditional state criminal offenses necessarily requires expanding the pool of qualified attorneys who represent indigent defendants and invariably imposes unsustainable demands on them. This undermines the workload controls and competency requirements emphasized by the American Bar Association (ABA), which are implicit in guidelines for federal criminal defense practice. This structural imbalance creates a substantial risk that defendants will be denied their Sixth Amendment right to effective assistance of counsel. The result is not only an injury to an individual's rights. Our legal system, more broadly, suffers from the resulting post-conviction litigation, lawsuits for civil damages, and the diminished public perception of the judiciary.

It is well known that defending the accused is more challenging in federal court than in state court. In a federal prosecution, counsel must be able to analyze and apply the U.S. Sentencing Guidelines, understand the nuances and exceptions to mandatory minimum sentencing, adapt to challenges in multi-defendant conspiracy litigation, and remain constantly apprised of procedural rules, local rules, and rules contained in case-specific judicial orders.

Federal criminal defense is also unlike state defense where counsel can offload significant ethical considerations when negotiating an agreed outcome. In federal practice, the entry of a guilty plea often marks the beginning of litigation rather than the avoidance. When the client is expecting a judge to exercise discretion in sentencing, an attorney is required to

conduct investigations into the background of the client, possible grounds for mitigation, the court's usual sentencing practices, and available alternatives to incarceration. *See ABA Criminal Justice Standards for the Defense Function,* supra note 3, std. 4-1.2. Each function invokes subsidiary obligations, including: (1) determining which matters require the exercise of attorney judgment over client preference, (2) fulfilling the duties of diligence and zeal, (3) fulfilling the duty to consult with the client and to keep the client informed, and (4) the duty to exercise independent professional judgment and provide candid advice. Model Rules of Pro. Conduct r. 1.2, 1.3, 1.4, 2.1 (Am. Bar Ass'n 2020) (substantively like Tex. Disciplinary Rules Prof'l Conduct rr. 1.02, 1.01, 1.03, 2.01 (State Bar of Tex. 2021)).

Arguably, the insistence that appointed counsel perform these functions well is more pronounced in federal courts than in state courts. Under the Criminal Justice Act (CJA), federal criminal court appointments require formalized vetting of the individual attorney before approval. 18 U.S.C. § 3006A (2024). Each federal district has its own district-wide CJA panel. Attorneys must be approved by a CJA panel selection committee, with selection based on federal criminal experience, trial experience, and demonstrated competence. Continued CJA appointments require ongoing performance review, continuing legal education hours, and compliance with panel rules.

Texas's CJA equivalent is found in the Fair Defense Act, codified in Article 26 of the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. art. 26. It is a far cry from a piece of legislation mandating standards or uniformity. In Texas, each county sets its own qualification standards, appointment procedures,

rotation systems, and compensation structures. Judges often approve lists and control appointment flow by curating or narrowing the broader list into a smaller, unofficial list of preferred attorneys. The attorney qualifications one might find in a typical county-level plan include: (1) licensed and in good standing with the State Bar of Texas; (2) varying degrees of continuing legal education; and (3) no *recent* disciplinary history. S.B. 7, 77th Leg., R.S. (Tex. 2001). Counties endeavoring to implement bureaucratic controls have the option of funding a managed counsel system or a public defender's office, but such solutions are neither required nor preferred by policymakers responsible for their funding and adoption. The result is a vast, statewide cohort of criminal attorneys representing clients on an appointed basis who have met varying but often low thresholds of competence and have little to no oversight over the performance of their crucial function.

Optimism about attorneys rising to the challenge rests on the hope that counsel will pursue unenforced but necessary training and education. Our organization—3,814 members strong—is the largest in the State of Texas and provides such opportunities. With more than 60 seminars hosted annually and a grant-funded initiative to educate attorneys accepting court-appointed representation, TCDLA has a unique perspective on the challenges posed by over-federalization of criminal prosecution. It is one from which we can confidently predict an ensuing educational component to the indigent defense crisis. We are well acquainted with both the caliber of representation required to defend those accused in state and federal court *and* the undertaking required to educate those to meet the challenge Congress seemingly wishes to thrust upon the judiciary.

We have reviewed our own records from the preceding five years of indigent defense training to share some trends in this area. Our State indigent defense training includes four dominant topic areas—those taught with the most frequency: (1) state court trial skills and advocacy; (2) substantive state law updates; (3) mental health for both attorney and client with reference to state procedures; and (4) ethical concerns in criminal representation.[6] These topics would account for approximately 4 hours of CLE training in a single 6-hour seminar offered on 6-8 occasions yearly in various Texas cities. They highlight what is likely the bulk of state-funded training topics in a given year. By contrast, TCDLA generally hosts a single 7-12-hour seminar in federal criminal defense each year. An attendee of a TCDLA federal seminar might expect topics such as pretrial motions, Fifth Circuit case law, pretrial release, and federal sentencing guidelines.[7] Our organization's federal seminars are considered advanced, and, anecdotally, most lecturers assume attendees have baseline knowledge. We offer this contrast to highlight two basic truths: (1) we treat federal training and federal practice as distinct, nuanced, and difficult—because it is, and (2) the continued federalization of criminal prosecution would require a considerable

[6] *Tex. Crim. Def. Laws. Ass'n, Criminal Defense Lawyers Project Continuing Legal Education Seminar State Themes/Agendas* (unpublished manuscripts from last 5 years) (on file with author).

[7] *Tex. Crim. Def. Laws. Ass'n, Criminal Defense Lawyers Project Continuing Legal Education Seminar Federal Themes/Agendas* (unpublished manuscripts from last 5 years) (on file with author).

undertaking in the area of attorney training—because we know.

That improved training efforts could even meet the challenge assumes the capability and desire among a broader base of practitioners. Appointment standards aside, whatever one might define as having what it takes to defend a person accused in state court does not necessarily translate into having the capacity or intellect to do the same in federal court. A large, willing, and qualified bar requires more than training. To this end, TCDLA could add a finer point from which the Court might make additional conclusions of its own. There must be some reason that far more Texas lawyers attend our seminars pertinent to the less lucrative practice of indigent *state* criminal defense than those dedicated to *federal*.

TCDLA conducted additional investigation to further bear this phenomenon out. Although CJA panels may have far fewer attorneys than state appointment lists, understanding the numerical disparity is important. As part of the research conducted for this brief, Counsel reached out to each division of each federal district in Texas to retrieve a copy of the division's CJA panel of attorneys, either by reviewing the contents of each district's website or by contacting courtroom deputies, clerks, and attorneys practicing in the respective district and division. The tables below provide as much detail on CJA panel numbers as we could compile quickly enough to provide information to the Court.

Northern District of Texas

	Number of CJA Panel Attorneys
Dallas Division[8]	284 total
Fort Worth Division[9]	100 total
Lubbock Division[10]	36 total
Amarillo Division[11]	Unknown
Abilene Division[12]	33 total
San Angelo Division[13]	33 total
Wichita Falls Division[14]	11 total

[8] CJA Panel list received from CJA Panel Representative for NDTX, Attorney Paul Lund.

[9] CJA Panel list received from CJA Panel Representative for NDTX, Attorney Paul Lund.

[10] CJA Panel list received from District Clerk for NDTX, Tammy Shipley Manquero.

[11] CJA Panel list not received.

[12] CJA Panel list received from Clerk for NDTX, Tammy Shipley Manquero.

[13] CJA Panel list received from Clerk for NDTX, Tammy Shipley Manquero.

[14] CJA Panel list received from Clerk for NDTX, Tammy Shipley Manquero.

Eastern District of Texas[15]

	Number of CJA "A" Panel Attorneys	Number of CJA "B" Panel Attorneys
Beaumont Division	29 total	14 total
Lufkin Division	17 total	3 total
Marshall Division	23 total	8 total
Sherman Division	88 total	41 total
Texarkana Division	25 total	6 total
Tyler Division	27 total	14 total

**The EDTX General Order separates CJA panel members into "A" and "B" Panel members.*

Southern District of Texas[16]

	Number of CJA Panel Attorneys
Brownsville Division	Unknown
Corpus Christi Division	Unknown
Houston Division	Unknown
Galveston Division	Unknown

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[15] U.S. Dist. Ct. for the E. Dist. of Tex., *General Order 19-05* (2019), https://www.txed.uscourts.gov/sites/default/files/goFiles/19-05.pdf.

[16] Counsel was unable to receive a CJA Panel list for any division in SDTX.

Laredo Division	Unknown
McAllen Division	Unknown
Victoria Division	Unknown

Western District of Texas

	Number of CJA Panel Attorneys
Alpine Division	Unknown
Austin Division	Unknown
Del Rio Division	Unknown
El Paso Division[17]	55 total
Fort Hood Division	Unknown
Midland-Odessa Division	Unknown
Pecos Division[18]	Unknown
San Antonio Division[19]	83 total
Waco Division	Unknown

The United States Courts report judicial caseload statistics per year, for the 12-month period ending March 31. The 2025 report states that criminal defendant filings in the U.S. district courts increased

[17] CJA Panel list received from Division Office Manager for WDTX El Paso Division, Kenneth Princen.

[18] Counsel was unable to receive a CJA Panel list as it is not offered to the public, per Division Manager for WDTX Pecos Division, Yvette Lujan.

[19] CJA Panel list received from Divisional Manager for WDTX San Antonio Division, K. Kim Nguyen.

12 percent (up 7,609 defendants) to 73,644.[20] Filings rose in all southwestern border districts, rising 21 percent in the Southern District of Texas and 19 percent in the Western District of Texas. The 2025 Caseload Statistics Tables contain U.S. District Courts data pertaining to criminal defendants commenced, terminated, and pending, and time interval from commencement to termination for a 12-month period ending March 31, 2025.[21]

In Texas federal district courts, the breakdown of criminal cases is as follows:

	Felony Offense	**Total Commenced**	**Total Cases Disposed** [22]	**Case lifespan** [23]
Northern District of Texas	1,760	1,354	1,223	9 months
Eastern District of Texas	2,928	886	1,160	23.8 months
Southern District of Texas	8,424	6,820	6,926	4.7 months
Western District of Texas	6,466	8,202	8,775	5.8 months

[20] Admin. Off. of the U.S. Courts, *Federal Judicial Caseload Statistics*, (Mar. 31, 2025), https://www.uscourts.gov/data-table-report-names/federal-judicial-caseload-statistics.

[21] *Id.*, tbl. D-1A.

[22] *Id.*, tbl. D-6A.

[23] *Id*.

Comparing data from publicly available state sources (or data that administrators are willing to share with the public) is not straightforward. Publicly available data is limited, and local officials are reluctant to share internal records informally. Still, some deductions can be made from what *can be* quickly compiled.

- TIDC reported that in Texas for the year 2023, 293,507 total felony charges were disposed of and 86% of felony charges were defended with appointed counsel. The number of misdemeanor charges disposed of in Texas was 379,777 with 54% of misdemeanor charges defended by appointed counsel. The increase in total expenditures in 2023 over the 2001 baseline was 364% in Texas.[24]
- In Dallas County (Northern District, Texas), 26,589 felony cases were reported disposed of in 2023.[25] 123% of those felony charges were defended with appointed counsel. The number of misdemeanor charges disposed of in Dallas County was 29,547. 77% of misdemeanor charges were defended by appointed counsel.
- In Tarrant County (Northern District, Texas), 26,011 felony cases were reported disposed of in 2023.[26] 79% of those felony charges were defended with appointed counsel. The number of misdemeanor charges disposed of in Tarrant County was 28,816. 61% of misdemeanor charges were defended by appointed counsel.

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[24] Tex. Indigent Def. Comm'n, *County Data Sheet (Indigent Defense Data)*, https://tidc.tamu.edu/Public.Net/Reports/DataSheet.aspx?cid=57

[25] *Id., Dallas County Data Sheet.*

[26] *Id., Tarrant County Data Sheet.*

- In Collin County (Eastern District, Texas), 6,330 felony cases were reported disposed of in 2023.[27] 74% of those felony charges were defended with appointed counsel. The number of misdemeanor charges disposed of in Collin County was 9,878. 44% of misdemeanor charges were defended by appointed counsel.
- In Denton County (Eastern District, Texas), 4,848 felony cases were reported disposed of in 2023.[28] 79% of those felony charges were defended with appointed counsel. The number of misdemeanor charges disposed of in Denton County was 7,267. 47% of misdemeanor charges were defended by appointed counsel.

The number of appointed attorneys needed to meet the demand of state prosecutions targeting indigent defendants in state courts—in just a handful of Texas counties—illustrates how the preferences of Congress and the limitations potentially articulated by this Court operate as a de facto floodgate of a problem that is presently impounded in state courts.

These distinct problems are exacerbated, not merely shifted, by federalization. The 1973 National Advisory Commission on Criminal Justice Standards and Goals recommends that attorneys handle no more than 150 felony and 400 misdemeanor cases per year. Nat'l Advisory Comm'n on Crim. Just. Standards & Goals, *Courts* 276 (1973). The Texas Indigent Defense Commission provides similar recommendations: (1) Misdemeanors (Class A and Class B, combined): 452 cases; (2) State Jail Felonies: 174; (3) Third Degree Felonies: 144 cases; (4) Second Degree Felonies: 105

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[27] *Id., Collin County Data Sheet.*

[28] *Id., Denton County Data Sheet.*

cases; and (5) First Degree Felonies: 77 cases. Tex. Indigent Def. Comm'n, *Caseload Limit Worksheet* (2025), https://tidc.tamu.edu/public.net/Content/Caseload%20Limit%20Worksheet.xlsx .

Notwithstanding noble intentions, these recommendations, and others like them, have served as nothing more than markers in articles or briefs such as this one to illustrate the problem. A report published in 2023 by RAND Corporation, the National Center for State Courts, the American Bar Association Standing Committee on Legal and Indigent Defense (SCLAID), and a private law firm studied the use of case weights and caseload standards, collectively, "workload standards" to help in estimating the numbers of criminal defense attorneys who should be made available for appointments as the nature and size of noncapital adult criminal caseloads increase over time. Nicholas M. Pace et al., *National Public Defense Workload Study* 25 (RAND Corp. 2023), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf; *see also* Tex. Indigent Def. Comm'n, *Fair Defense Laws* (2019), https://tidc.texas.gov/media/0w5jn2jt/fair-defense-laws.pdf. It also identified instances in which caseloads have risen to the point where the lawyers may be unable to adequately discharge their professional duties. The research analyzed 17 state-level public defense workload studies conducted between 2005 and 2022 to calculate the average time needed to provide effective assistance in different adult criminal cases. The study assumed 2,080 available per-attorney hours annually and found that public defenders often handle 2-3 times too many cases by this metric. The study's conclusion was an obvious one: attorney caseload must be reduced significantly to meet constitutional standards of adequate representation

and to avoid excessive caseload that could lead to an ethical violation. Am. Bar Ass'n, *National Public Defense Workload Standards*, https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/natl-pub-def-standards/; *see also* ABA Formal Opinion 06-441.

The concerns are not hypothetical. The State Bar of Texas compiles data on attorney grievances and shows that criminal attorneys are the target of more grievances than any other practice area on a consistent yearly basis. greatest number of grievances lodged. State Bar of Texas, *Attorney Grievance Process Chart*, https://www.texasbar.com/Content/NavigationMenu/NewsandPublications/FortheMedia2/GrievanceandEthicsInformation/GrievanceChart.pdf. Within this data are also the types of grievances one might expect to see when attorneys represent too many clients: communication, neglect, and wrongfully declining or terminating representation.

State courts are required to ignore the basic economic principles of supply and demand. Even a woefully insufficient number of attorneys willing to accept indigent representation will not stop the wheels of purported justice (and criminal appointments) from turning. The ABA, TIDC, and all of the law professors who have shared their thoughts have combined to affect a meaningless, if any, reduction in indigent counsel caseloads. "Thank you for your input" is an appropriately punchy response that might be used to convey the sentiment of the bar and judiciary alike when considering all of these standards and opinions and suggestions and recommendations and studies and limits and so forth. Burdening counsel with unethical workloads to achieve the directives of *Gideon* is a necessary evil. It has become a feature, not

a bug, in our system of justice. But it is one mostly contained within the practice of state criminal defense. What is not necessary—what would constitute a needless own-goal exacerbating the problem—is shifting this burden to federal courts and asking attorneys to raise their hands to the question "who wants to do this?"

PRAYER

The Court should grant the petition and set the case for argument.

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Respectfully submitted.

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