

RECENT COURT FILING

CONSTITUTIONAL LAW — RIGHT TO COUNSEL — DEPARTMENT OF JUSTICE FILES STATEMENT OF INTEREST SUPPORTING MEANINGFUL JUVENILE RIGHT TO COUNSEL. — Statement of Interest of the United States, *N.P. ex rel. Darden v. State*, No. 2014-CV-241025 (Ga. Super. Ct. Mar. 13, 2015).

“The Constitution of the United States guarantees adequate counsel for indigent defendants, and the Department of Justice is committed to ensuring that right is met,” said Attorney General Loretta Lynch in September 2015.¹ Yet this commitment is a relatively recent development for the Department of Justice (DOJ). In 2010, the DOJ launched the Access to Justice Initiative to help improve justice systems that serve people unable to afford lawyers.² Since then, the DOJ has assumed an unprecedented role in addressing constitutionally inadequate state provisions of counsel. Critical to this active role has been the DOJ’s nascent strategy of filing statements of interest to support the right to counsel in state courts.³ Recently, the DOJ broke new ground in this effort, filing a statement in *N.P. ex rel. Darden v. State*,⁴ a class action lawsuit alleging systemic deprivation of juveniles’ right to counsel,⁵ to assert — for the first time — the United States’s interest in children’s due process right to counsel.⁶ One month after the filing, the *N.P.* parties settled, submitting a joint consent decree that promised to remedy the alleged right-to-counsel violations.⁷ Apart from offering a potentially persuasive interpretation of constitutional law, the *N.P.* statement — considered with previous DOJ filings — suggests that DOJ participation in state right-to-counsel litigation may be a

¹ Press Release, Office of Pub. Affairs, U.S. Dep’t of Justice, Department of Justice Files Amicus Brief in Pennsylvania Right to Counsel Case (Sept. 11, 2015), <http://www.justice.gov/opa/pr/departments-justice-files-amicus-brief-pennsylvania-right-counsel-case> [<http://perma.cc/N4TV-CDTN>].

² *Access to Justice*, U.S. DEP’T JUSTICE, <http://www.justice.gov/atj> [<http://perma.cc/MYQ3-4JHG>].

³ The DOJ grounds its authority to file statements of interest in 28 U.S.C. § 517, which empowers “the Attorney General to attend to the interests of the United States in any case pending in a federal or state court.” See, e.g., Statement of Interest of the United States at 2, *N.P. ex rel. Darden v. State*, No. 2014-CV-241025 (Ga. Super. Ct. Mar. 13, 2015) [hereinafter *N.P. Statement of Interest*] (citing 28 U.S.C. § 517 (2012)).

⁴ No. 2014-CV-241025 (Ga. Super. Ct. dismissed May 27, 2015).

⁵ See Complaint for Injunctive & Declaratory Relief at 11, 67, *N.P.*, No. 2014-CV-241025 (Jan. 7, 2014) [hereinafter Complaint].

⁶ *Supporting the Right to Counsel Through Statements of Interest*, U.S. DEP’T JUSTICE, <http://www.justice.gov/atj/supporting-right-counsel-through-statements-interest> (last updated May 27, 2015) [<http://perma.cc/QW5T-EKVU>] [hereinafter *Supporting the Right to Counsel*].

⁷ See *id.*; Consent Decree, *N.P.*, 2014-CV-241025 (Apr. 20, 2015).

powerful tool for mitigating the institutional obstacles such litigation has traditionally faced.

On January 7, 2014, indigent children and adults facing criminal prosecution in Georgia's Cordele Judicial Circuit (the Circuit) filed a class action lawsuit in Georgia superior court claiming that the right to counsel "is routinely violated or reduced to a hollow formality" in the Circuit.⁸ Specifically, the *N.P.* plaintiffs alleged that "[c]hildren routinely appear in a juvenile court without counsel" and that some children are even "tried and sentenced without counsel despite their desire to be represented by counsel."⁹ The complaint further claimed that the Circuit's public defender office is so "severely understaffed and grossly underfunded"¹⁰ that public defenders "are unable to provide representation in all of the courts and cases in the Circuit."¹¹ Accordingly, detainees "regularly languish in jail for weeks or months"¹² without assistance of counsel, even though Georgia law requires public defenders to assist clients "not more than three business days after" their arrest and application for counsel.¹³ Thus, the plaintiffs argued, poor criminal defendants in the Circuit lack any meaningful right to counsel.¹⁴ They are instead merely "processed through the courts in assembly-line fashion."¹⁵

The *N.P.* plaintiffs primarily grounded their request for relief in the Due Process Clause of the Fourteenth Amendment.¹⁶ Invoking the Supreme Court's landmark decisions in *Gideon v. Wainwright*¹⁷ and *In re Gault*,¹⁸ the plaintiffs emphasized that the right to counsel attends "every indigent child accused of a delinquent act and adult accused of a crime who faces the loss of liberty."¹⁹ Yet, the plaintiffs argued, the Circuit public defender office's caseloads "vastly exceed national standards[,] . . . mak[ing] it impossible" for public defenders to perform even the "basic duties of an attorney."²⁰ Accordingly, the plaintiffs

⁸ Complaint, *supra* note 5, at 5.

⁹ *Id.* at 7.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

¹² *Id.* at 9.

¹³ GA. CODE ANN. § 17-12-23(b) (2013).

¹⁴ Complaint, *supra* note 5, at 11.

¹⁵ *Id.* at 11-12.

¹⁶ See *id.* at 35, 74-75. The plaintiffs also invoked the Georgia Constitution and Georgia's Indigent Defense Act, 2003 Ga. Laws 191 (codified as amended in scattered sections of the Georgia Code Annotated). Complaint, *supra* note 5, at 35.

¹⁷ 372 U.S. 335 (1963). Finding indigent criminal defendants' right to counsel "fundamental and essential to fair trials," *id.* at 344, the Supreme Court in *Gideon* incorporated the Sixth Amendment right to counsel into the Fourteenth Amendment via the Due Process Clause, thus securing the right to counsel in state criminal courts, see *id.* at 341-45.

¹⁸ 387 U.S. 1 (1967). The *Gault* Court extended *Gideon's* holding to juvenile delinquency proceedings where children face a potential loss of liberty. See *id.* at 41.

¹⁹ Complaint, *supra* note 5, at 35.

²⁰ *Id.* at 44.

sought injunctive relief to require Georgia to provide meaningful and timely counsel to all indigent children and adults facing loss of liberty in the Circuit.²¹

On March 13, 2015, the DOJ filed a statement of interest in *N.P.*, directly addressing — for the first time in its history — children’s due process right to counsel in state courts.²² Characteristically, the DOJ filed its statement “[w]ithout taking a position on the merits of the case.”²³ Instead, the DOJ aimed “to assist the Court in determining the types of safeguards that must be in place to ensure that children receive the due process the Constitution demands.”²⁴

Like the *N.P.* plaintiffs, the DOJ grounded its analysis in due process doctrine.²⁵ Yet the DOJ went beyond the reasoning in *Gideon* and *Gault*, asserting not only that children have a right to counsel, but also that they “are entitled to procedural safeguards that acknowledge their vulnerability.”²⁶ For support, the DOJ cited the Supreme Court’s recent tendency to increase juvenile protections based on “significant gaps between juveniles and adults,”²⁷ including children’s “immaturity, impetuosity, and failure to appreciate risks and consequences.”²⁸ Thus, the DOJ asserted, considerations of these vulnerabilities should apply “to the entirety of a juvenile’s contact with the justice system.”²⁹ Accordingly, while traditional standards of representation serve as a baseline for juvenile defense, “the unique qualities of youth demand *special* training, experience and skill for their advocates.”³⁰ In particular, the DOJ argued, juvenile defenders must be able to “build a trust-based attorney-client relationship”³¹ that spans “the time of arrest through the disposition of [the] case.”³² Consequently, when “severe structural limitations” deny public defenders “the time or resources to engage in effective advocacy” or prevent them from “receiv[ing] adequate train-

²¹ See *id.* at 81–83.

²² See *N.P.* Statement of Interest, *supra* note 3; *Supporting the Right to Counsel*, *supra* note 6. Noting that it had previously filed statements “in cases concerning the right to counsel in adult proceedings,” the DOJ confined the scope of its *N.P.* statement “to the allegations regarding juveniles.” *N.P.* Statement of Interest, *supra* note 3, at 2 n.1.

²³ *N.P.* Statement of Interest, *supra* note 3, at 2. The DOJ’s previous right-to-counsel filings also did not opine on the merits. See Statement of Interest of the United States at 1, *Hurrell-Harring v. State*, No. 8866-07 (N.Y. Sup. Ct. Sept. 25, 2014) [hereinafter *Hurrell-Harring* Statement of Interest]; Statement of Interest of the United States at 1, *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013) (No. C11-1100) [hereinafter *Wilbur* Statement of Interest].

²⁴ *N.P.* Statement of Interest, *supra* note 3, at 2.

²⁵ See *id.* at 7–11.

²⁶ *Id.* at 10.

²⁷ *Id.* (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)).

²⁸ *Id.* (quoting *Miller*, 132 S. Ct. at 2468).

²⁹ *Id.*

³⁰ *Id.* at 11 (emphasis added).

³¹ *Id.* at 12.

³² *Id.* at 13.

ing or supervision,” juveniles lose their right to counsel in a system of “*de facto* nonrepresentation.”³³ Indeed, the DOJ cautioned, “[i]f the allegations in this case are ultimately proven true, then Plaintiffs are being systematically deprived of their constitutional right to counsel.”³⁴

Finally, the DOJ asserted that considerations of juvenile vulnerability also demand that a “juvenile’s waiver of counsel cannot be knowing, intelligent, and voluntary without first consulting counsel.”³⁵ In the DOJ’s view, since children “tend to underestimate the risks involved in a given course of conduct”³⁶ and since decisions to waive counsel “must be well thought-out, with an understanding of present and future ramifications,” children suffer a disadvantage in deciding to waive their right to counsel.³⁷ Thus, the DOJ concluded, given “the serious and weighty responsibility”³⁸ that falls upon courts accepting waivers of counsel, courts should not accept juvenile waivers without first appointing an attorney to “explain the importance of counsel.”³⁹

On April 20, 2015, one month after the DOJ’s filing, the parties to *N.P.* submitted a joint consent decree to the court.⁴⁰ Without “admit[ting] to the truth or validity of any claim,”⁴¹ several state and county defendants agreed to “the addition of two full-time, salaried lawyers and one full-time, salaried investigator” to the Circuit Public Defender office;⁴² to have public defenders interview detainees “within three . . . business days” of being taken into custody;⁴³ to provide defendants with consistent representation “through final disposition”;⁴⁴ to create a juvenile division within the Public Defender office with “[a]t least one full-time public defender”;⁴⁵ to have public defenders, upon “notice from the juvenile court,” describe to indigent juveniles the “services of counsel available” and “the benefits of such representation”;⁴⁶ and to have every public defender attend criminal defense training, with juvenile defenders attending “at least one juvenile delin-

³³ *Id.* at 15.

³⁴ *Id.*

³⁵ *Id.* at 16; see also *Johnson v. Zerbst*, 304 U.S. 458, 464–65 (1938) (defining waiver of the right to counsel as “an intentional relinquishment . . . of a known right or privilege,” *id.* at 464, that must be made “intelligent[ly] and competent[ly],” *id.* at 465).

³⁶ *N.P.* Statement of Interest, *supra* note 3, at 18 (quoting Kristin Henning, *Juvenile Justice After Graham v. Florida: Keeping Due Process, Autonomy, and Paternalism in Balance*, 38 WASH. U. J.L. & POL’Y 17, 24 (2012)).

³⁷ *Id.* at 17.

³⁸ *Id.* at 18 (quoting *Johnson*, 304 U.S. at 465).

³⁹ *Id.*

⁴⁰ Consent Decree, *supra* note 7, at 1.

⁴¹ *Id.*

⁴² *Id.* at 3.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.*

quency defense training program per year.”⁴⁷ The parties agreed to keep the consent decree in effect for three years.⁴⁸

The DOJ’s *N.P.* statement of interest — considered in context with the DOJ’s two previous right-to-counsel statements — suggests that DOJ filings in state indigent defense litigation may be an important tool to help effect outcomes favorable to the right to counsel in state courts. The apparent influence of these statements may result from the way DOJ filings garner national media attention and encourage settlement agreements. In this way, the filings may mitigate one of the traditional obstacles to structural right-to-counsel litigation: the “inhospitable fora” of state courts.⁴⁹ Although the precise influence of the DOJ’s emergent filing strategy remains to be determined, the DOJ’s right-to-counsel statements of interest to date suggest that federal participation in state indigent defense litigation may be a powerful means of securing the right to counsel in state criminal justice systems.

In spite of broad consensus that state indigent defense systems are in crisis,⁵⁰ structural challenges to state provisions of counsel have historically been rare.⁵¹ Where they have been made, these challenges have faced several powerful obstacles.⁵² Here, two related obstacles deserve particular attention: abstention doctrine and the “inhospitable fora” of state courts.⁵³ Invoking abstention, federal courts have consistently dismissed lawsuits that “would likely require intensive federal

⁴⁷ *Id.* at 7. Although the consent decree is largely self-executing, it bears mention that it will be up to the Circuit’s juvenile courts to ensure a system in which juvenile waivers of counsel are not accepted without first appointing counsel. The consent decree requires public defenders to receive “notice from the juvenile court” before mandating their communication of the benefits of counsel. *Id.* at 6. Moreover, the courts will ultimately decide whether and in what circumstances to accept juvenile waivers, as the DOJ’s *N.P.* statement recognized. See *N.P.* Statement of Interest, *supra* note 3, at 18.

⁴⁸ Consent Decree, *supra* note 7, at 7.

⁴⁹ Note, Gideon’s *Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, 113 HARV. L. REV. 2062, 2077 (2000).

⁵⁰ See, e.g., Stephen B. Bright & Sia M. Sanneh, Essay, *Fifty Years of Defiance and Resistance After Gideon v. Wainwright*, 122 YALE L.J. 2150, 2152 (2013) (reporting that indigent defense services are typically “a far cry from the constitutional requirement” of *Gideon*); Joseph L. Hoffmann & Nancy J. King, Essay, *Rethinking the Federal Role in State Criminal Justice*, 84 N.Y.U. L. REV. 791, 826 (2009) (“Systematic underfunding of criminal defense representation in the state courts persists, resulting in repeated and widespread breakdowns in defense representation in many states.” (footnote omitted)).

⁵¹ See Cara H. Drinan, *The Third Generation of Indigent Defense Litigation*, 33 N.Y.U. REV. L. & SOC. CHANGE 427, 431 (2009) (“It is estimated that no more than ten of these suits were filed between 1980 and 2000.”).

⁵² In addition to the obstacles noted below, these challenges have also faced the hurdle of standing. See *id.* at 440. Since standing requires a showing of “actual harm to the indigent defendant clients,” some courts have dismissed structural challenges for lack of evidence that structural deficiencies *actually* prejudiced indigent defendants. *Id.*

⁵³ Note, *supra* note 49, at 2077; see also *id.* at 2077–78.

judicial oversight of state prosecutions”⁵⁴ in order to preserve principles of “federalism and comity.”⁵⁵ Accordingly, abstention has relegated these structural challenges to the province of state courts.⁵⁶ At first blush, state courts might seem like ideal fora for these lawsuits since state judges would presumably be familiar with right-to-counsel violations in their courtrooms. Yet as Professor Cara H. Drinan has noted, in the thirty-nine states that hold judicial elections, “there is good reason to think that these judges are subject to the same pressure to be perceived as ‘tough on crime’ as politicians often are.”⁵⁷ In this way, the “political process failure” that “has led states to default on their obligation” to provide counsel may be as salient in state courts as it is in state legislatures.⁵⁸ Thus, because indigent defendants lack political leverage, “elected state courts may be particularly inhospitable fora” for these structural challenges to state provisions of counsel.⁵⁹

The DOJ’s *N.P.* statement of interest appears to have played a critical role in helping overcome state-level institutional barriers to produce a favorable legal settlement. Although precisely describing the statement’s causal relationship to the resulting settlement is difficult, evidence suggests that the statement helped produce the settlement in at least three ways. First, the U.S. Attorney who filed the *N.P.* statement “became actively involved in the case” after the filing “and helped mediate the settlement.”⁶⁰ Thus, by introducing a third-party federal mediator to the litigation, the DOJ filing may have helped enable the *N.P.* plaintiffs to reach an out-of-court settlement, thereby circumventing the elected state courts. Second, not only did the U.S. Attorney mediate, but he also used the DOJ statement to enlist Georgia’s Attorney General and Solicitor General to “help[] all involved reach a consensus” in *N.P.*⁶¹ In this way, by engaging high-profile state political actors, the statement and the U.S. Attorney may have helped accelerate the settlement process.⁶² Third, the DOJ filing helped attract ad-

⁵⁴ Drinan, *supra* note 51, at 441.

⁵⁵ Note, *supra* note 49, at 2077.

⁵⁶ *See id.*

⁵⁷ Drinan, *supra* note 51, at 467.

⁵⁸ Note, *supra* note 49, at 2066; *see also id.* at 2077.

⁵⁹ *Id.* at 2077.

⁶⁰ Press Release, S. Ctr. for Human Rights, Cordele Judicial Circuit to Get Additional Lawyers to Represent Children and Adults (Apr. 21, 2015), http://www.schr.org/resources/cordele_judicial_circuit_to_get_additional_lawyers_to_represent_children_and_adults [<http://perma.cc/B74E-WVKN>].

⁶¹ Press Release, U.S. Dep’t of Justice, Justice Department Applauds Settlement to Improve Juvenile Right to Counsel in Georgia (Apr. 22, 2015), <http://www.justice.gov/opa/pr/justice-department-applauds-settlement-improve-juvenile-right-counsel-georgia> [<http://perma.cc/UD8C-B2RT>].

⁶² *See* Drinan, *supra* note 51, at 458 (noting that when “individuals with ‘power and clout’ are involved, the reform process moves faster” (quoting Interview with Robert L. Spangenberg, President, The Spangenberg Group (June 20, 2008))).

ditional national media attention to the litigation,⁶³ which may have strengthened the defendants' incentives to settle.⁶⁴

The DOJ's two previous right-to-counsel statements of interest lend additional support to the idea that DOJ filings might be able to play an important role in helping to prompt structural state indigent defense reform. First, in *Wilbur v. City of Mount Vernon*,⁶⁵ the DOJ filed a statement of interest in federal court supporting the right to counsel in adult proceedings.⁶⁶ Like in *N.P.*, this statement generated national media attention,⁶⁷ transforming a "city of about 8,000 people into a national symbol."⁶⁸ Unlike *N.P.*, however, *Wilbur* did not settle.⁶⁹ Instead, the court found that the defendant cities had "systemic flaws that deprive[d] indigent criminal defendants of their Sixth Amendment right to the assistance of counsel."⁷⁰ Counsel for one of the defendant cities reportedly suggested that he had "no doubt" that the DOJ filing played a role in the court's "sharp rebuke" of the cities' indigent defense systems.⁷¹ Second, in *Hurrell-Harring v. State*,⁷² the DOJ filed a statement of interest in New York state court to provide a framework

⁶³ See, e.g., Carrie Johnson, *Justice Department Weighs in on Assembly-Line Justice for Children*, NPR (Mar. 21, 2015, 7:11 AM), <http://www.npr.org/2015/03/21/394278540/justice-department-weighs-in-on-assembly-line-justice-for-children> [<http://perma.cc/46J7-WZ2H>].

⁶⁴ State officials named as defendants in structural litigation "have an obvious incentive to encourage settlement." Drinan, *supra* note 51, at 455. It follows that negative media attention would only reinforce this incentive. Indeed, just as it "may well be that courts will only be willing to [engage in systemic reform] in the face of broadly perceived crisis," Note, *supra* note 49, at 2078, it may also be that state political actors will be particularly willing to agree to systemic reform when faced with a media crisis.

⁶⁵ 989 F. Supp. 2d 1122 (W.D. Wash. 2013).

⁶⁶ *Wilbur* Statement of Interest, *supra* note 23.

⁶⁷ See, e.g., Andrew Cohen, *How Eric Holder Can Help Public Defenders and Their Clients*, THE ATLANTIC (Aug. 23, 2013), <http://www.theatlantic.com/national/archive/2013/08/how-eric-holder-can-help-public-defenders-and-their-clients/278976> [<http://perma.cc/VR9-L2A5>].

⁶⁸ Matt Apuzzo, *Justice Dept. Presses Civil Rights Agenda in Local Courts*, N.Y. TIMES (Aug. 19, 2015), <http://www.nytimes.com/2015/08/20/us/justice-dept-presses-civil-rights-agenda-in-local-courts.html>.

⁶⁹ See *Wilbur*, 989 F. Supp. 2d 1122.

⁷⁰ *Id.* at 1131.

⁷¹ Apuzzo, *supra* note 68. The *Wilbur* court may have been influenced by the persuasiveness of the DOJ's filing itself rather than its impact on institutional political dynamics. Although only briefly noting that it had "considered the post-trial submission[] of . . . the United States," *Wilbur*, 989 F. Supp. 2d at 1123 n.1, the court's discussion of injunctive relief closely resembled the DOJ's analysis. For example, citing *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), both the court's opinion and the DOJ's filing began by observing the court's "broad authority" to order equitable relief. Compare *Wilbur*, 989 F. Supp. 2d at 1134, with *Wilbur* Statement of Interest, *supra* note 23, at 6. From there, citing *Brown v. Plata*, 131 S. Ct. 1910 (2011), both noted the court's sensitivity to local interests even as they asserted the court's unwillingness to "shrink from [its] obligation to 'enforce the constitutional rights of all 'persons,'" *id.* at 1928 (quoting *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (per curiam)). Compare *Wilbur*, 989 F. Supp. 2d at 1134, with *Wilbur* Statement of Interest, *supra* note 23, at 6–7.

⁷² No. 8866-07 (N.Y. Sup. Ct. settled Oct. 21, 2014).

for assessing systemic constructive denial-of-counsel claims.⁷³ Like in *N.P.*, the DOJ statement garnered national media attention.⁷⁴ Also like in *N.P.*, the parties to *Hurrell-Harring* had “extensive negotiations” after the filing and settled the case only one month later,⁷⁵ even though litigation had been ongoing for seven years.⁷⁶

Considered together, *N.P.*, *Wilbur*, and *Hurrell-Harring* suggest that DOJ statements of interest might be able to play an influential role in addressing unconstitutional state provisions of counsel. Accordingly, the DOJ should pay careful attention to its apparent influence and continue to seek out new opportunities to stake “the United States’ compelling interest in protecting the right to counsel.”⁷⁷ Of course, the difficulty of measuring these statements’ precise impact limits their predictive capacity regarding potential future statements.⁷⁸ Indeed, external variables may dictate these statements’ influence. Notably, for example, it is unclear how the DOJ selects the cases in which it files statements. High-ranking DOJ officials have “encouraged [DOJ] lawyers to look for local cases that present[] . . . important civil rights arguments.”⁷⁹ But it remains uncertain whether the DOJ seeks out cases where its involvement may tip the balance or whether the DOJ prefers well-positioned cases likely to succeed on the merits. Still, the apparent impact of the DOJ’s statements to date is itself a noteworthy development in the right to counsel in state courts. And the reasonable inference that these statements may exercise influence by helping to overcome state-level institutional barriers to the right to counsel is even more significant. At least in Georgia, there is good reason to believe that DOJ participation may have helped effect critical reform. The DOJ must therefore continue “sending a clear message”⁸⁰: for at least some of the millions who will face criminal prosecution in their lifetimes, a DOJ statement of interest could be the difference between a meaningful right to counsel and a “hollow formality.”⁸¹

⁷³ See *Hurrell-Harring* Statement of Interest, *supra* note 23.

⁷⁴ See, e.g., Christopher Mathias, *Holder Backs Lawsuit Against Cuomo for Failing to Provide Legal Counsel to the Poor*, HUFFINGTON POST (Sept. 25, 2014, 3:59 PM), http://www.huffingtonpost.com/2014/09/25/holder-cuomo-lawsuit-legal-counsel-poor_n_5881656.html [<http://perma.cc/L32G-GAS9>].

⁷⁵ *Supporting the Right to Counsel*, *supra* note 6.

⁷⁶ Press Release, N.Y. Civil Liberties Union, Settlement Begins Historic Reformation of Public Defense in New York State (Oct. 21, 2014), <http://www.nyclu.org/news/settlement-begins-historic-reformation-of-public-defense-new-york-state> [<http://perma.cc/QC9Q-TJ69>].

⁷⁷ *N.P.* Statement of Interest, *supra* note 3, at 4.

⁷⁸ And, of course, the very existence of future statements may depend on political factors. Former Attorney General Eric Holder supported the DOJ strategy, which Attorney General Lynch has continued “unabated,” Apuzzo, *supra* note 68, but this support may change.

⁷⁹ *Id.*

⁸⁰ *Id.* (quoting Attorney General Holder).

⁸¹ Complaint, *supra* note 5, at 5.