



*U.S. Department of  
Justice*

# **Civil Division**

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## **FY 2024 Budget & Performance Plans**

March 2023

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## I. Overview of the Civil Division

### A. INTRODUCTION

The Civil Division (“Civil”) is the largest litigating component of the U.S. Department of Justice (“DOJ” or “the Department”). Each year, the Civil Division represents the United States and its agencies, Members of Congress, Cabinet Officers, and other federal employees in tens of thousands of matters. In total, the Civil Division litigates matters on behalf of over 100 different federal agencies. This litigation implicates a wide range of the Federal Government’s legal interests and includes cases relating to cyber and national security prerogatives and decisions; challenges to critical public-health measures, immigration policies and decisions, and Congressional enactments; contract disputes; efforts to combat fraud and abuse of federal funds and benefits programs; multi-million dollar tort claims; consumer protection matters; alleged takings of property; and intellectual property disputes.

#### Fiscal Year (FY) 2024 Full Program Costs

The FY 2024 Civil Division budget request provides for **\$423,604,000** and **1,387** positions, including **1,090** attorney positions. This request includes program increases for Camp Lejeune PACT Act litigation and for protecting national programs, federal policy priorities, and national security.

In addition to its litigating role, the Civil Division helps administer three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Act Program, and the September 11<sup>th</sup> Victim Compensation Fund.

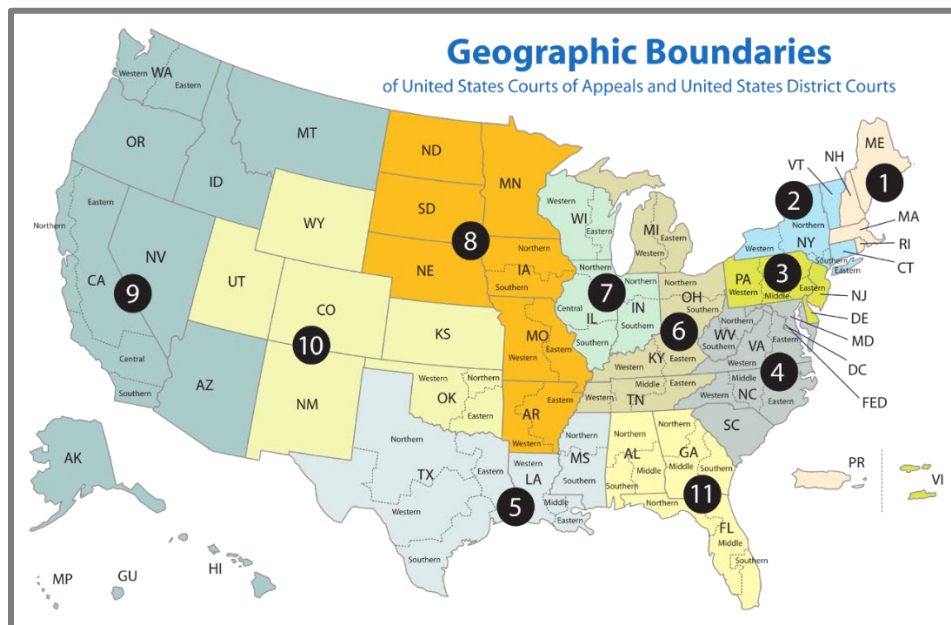
#### Civil Division in Action

In FY 2022, the Civil Division:

- **Returned** over \$952.4 million in restitution to the United States Treasury.
- **Defeated** all or nearly all of the opposing party’s claims in 84 percent of defensive cases.
- **Defended** cases in which opposing parties sought over a hundred billion dollars from the United States.
- **Defeated** thousands of challenges to laws, regulations, policies, and administrative decisions.

The Civil Division defends the United States Treasury, works to ensure that the Federal Government speaks with one voice in its view of the law, defends laws enacted by Congress, and advances the credibility of the government before the courts. In these efforts, the Civil Division

handles matters that are so significant in scope and span so many years that its caseload would overwhelm the resources and infrastructure of any individual field office. The Civil Division litigates matters in all Federal Judicial Circuits serving the 94 Federal Districts across the country. The Civil Division also handles cases in the Court of Federal Claims and the Court of International Trade.



## **B. MISSION AND OBJECTIVES**

The Civil Division’s litigation directly benefits the American people by protecting their safety, health, and economic security through defensive and affirmative litigation. The Division pursues fraud claims against those who seek to take advantage of the nation’s most vulnerable, as well as those who defraud federal health care programs, including by engaging in fraud related to COVID-19 or the distribution of opioids. Civil’s consumer litigation includes cases against those who market unsafe or fraudulent products and services, such as the sale and marketing of false, unapproved, misbranded, and counterfeit treatments and preventive therapies, and the improper prescribing of medications. Moreover, Civil litigates procurement fraud matters to ensure that government resources are not misused, as well as customs enforcement matters.

The Civil Division’s work also protects the health and integrity of the federal fisc. Year after year, the Civil Division recovers funds for the U.S. Treasury through cases involving health care, financial, and procurement fraud; bankruptcies; the underpayment of customs duties; and civil penalties. The largest recoveries typically occur under the False Claims Act; the Federal Food, Drug, and Cosmetic Act; or the Financial Institutions Reform, Recovery, and Enforcement Act. In FY 2022, the Civil Division returned over \$952.4 million in restitution to the United States Treasury. Among other things, the Division is an expert in civil cyber-fraud enforcement, and holds accountable entities and individuals that put U.S. information or systems at risk. The Civil Division also defends federal agencies in cases where other parties file monetary claims against

the Federal Government. The most significant cases, in terms of dollars at issue, typically relate to contract disputes, procurement decisions, patent claims, accident and liability claims, data privacy, and constitutional takings claims. The Civil Division's representation ensures that unmeritorious claims are not paid. The Federal Government's potential exposure in these cases is hundreds of billions of dollars each year.

The Civil Division also has a critical role in defending federal programs, laws, regulations, and agency decisions that are challenged in court. The Division defends – in district court and on appeal – a broad range of critical agency actions. Additionally, the Civil Division plays a vital role in the nation's immigration system, working to promote a fair and equitable system that reflects the nation's values. The Division also serves as a liaison and provides training to all of the government's immigration agencies and provides dependable counsel before the courts.

Overall, the Division's work reflects the diversity of the Federal Government's activities, and the Civil Division provides legal advice to agencies interpreting, modifying, or promulgating regulations or responding to novel requirements and crises.

## **C. EXTERNAL AND INTERNAL CHALLENGES**

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The Civil Division faces significant external and internal challenges affecting its ability to meet mission critical goals and objectives. These include, but are not limited to:

- Maintaining a strong cybersecurity posture;
- Transitioning to a more flexible workplace; and
- Providing reliable e-litigation resources to support Civil Division attorneys.

### ***External Challenges***

A variety of changes and events over the last several years, including the pandemic response and the rapid adaptations required, as well as more enduring changes to both private sector and government work environments, policies, and strategies, have highlighted the importance of remote-access computing and collaboration. The new hybrid work environment presents both challenges as well as opportunities. One such challenge is cybersecurity modernization. However, the hybrid work environment creates many opportunities, including the ability to better retain highly skilled personnel who are critical to the Division's work.

The Administration recognizes the importance of securing the virtual environment, having released an executive order boosting the federal government's cyber defenses,<sup>1</sup> and the Civil Division is committed to complying with these new guidelines. As the Division modernizes its cybersecurity systems, information technology (IT) costs are increasing. In addition, to this modernization effort there is a need for qualified IT personnel to ensure the systems are operated

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<sup>1</sup> Executive Order on Improving the Nation's Cybersecurity May 12, 2021 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>

with the protections necessitated by emerging threats. The Division is committed to these efforts and strives to be a leader in this arena while maintaining focus on its critical litigating mission, which such efforts help to enhance and secure.

### *Internal Challenges*

The Civil Division is responding to an ever-increasing caseload that requires more complex investigations and litigation. In many cases, voluminous quantities of emails, internal corporate documents, text messages, and voicemails are exchanged between parties. Civil relies heavily on its Automated Litigation Support (ALS) Program to address these challenges.

The Civil Division's ALS Program is essential to the Division's success in litigation. Civil uses critical ALS tools and contractors to organize and control document collection and data, respond to requests for documents by opposing counsel, develop institutional memory, and provide access to case material. Increasingly, large-scale document collection and discovery are a feature of Civil's cases as they grow in size and complexity. The Civil Division has seen a rapid increase in the volume of documents produced by client agencies. It is not uncommon for a case to have a corpus of over two million documents. This increase reflects the 24 to 30 percent annual data volume growth the ALS Program has seen over the last five years. To address these challenges, the Civil Division relies on advanced analytical tools to organize, evaluate and identify potentially responsive documents that the Division is required to produce for the opposing counsel. In order to keep pace with the litigative needs of the attorneys, the Division has embraced predictive modeling, which scores documents on potential relevance to the case. Without these tools or specialized contractor support, it would not be possible for the Division to meet court deadlines in its larger litigations. Such a failure would increase the risk of adverse judgments and potentially expose government litigators to sanctions from the courts.

One of the critical features of the ALS Program is Civil's ALS Labs, which are embedded in the Division's branches and provide essential onsite capability to streamline the processing and loading of data. The labs provide data intake tracking, processing and loading of documents from client agencies into software programs to perform document searches, review management, production and deliverable preparation, and discovery consultation services that are critical to the success of the Division's litigation efforts.

ALS resources are essential in the Civil Division to defend cases across the entire Federal Government. Without ALS support, cases would lack basic services, such as data processing and document review, which would negatively affect the Government's interests throughout the lifespan of a case, including when the Government evaluates possible settlement. With increased data retrieval, review and search requirements, as well as the need to securely store the critical data, funding will need to keep pace with the increased demands. Failure to do so could result in increased judgment awards or an adverse impact to Government programs and policies.

Additionally, it is anticipated that there will be a pronounced shift on the horizon towards cloud-based eDiscovery solutions, and experts project that in-house eDiscovery solutions are likely to be phased out in the next few years. The shift will be caused by two different influences: government policy and vendor cloud adoption. The federal government's Cloud First Policy strongly encourages the adoption of cloud-based tools. More importantly, many of the litigation

review platforms are moving to a cloud offering. The Civil Division has seen a number of vendors who currently provide on-premise software for document review begin to offer cloud-based tools. This move indicates a strong preference by the vendors to adopt a cloud model, as it provides a streamlined development environment, minimal up-front costs and additional revenue value for their products. Evaluation of current cloud-based offerings indicate that the expense to the Government will be substantial.

### *Addressing the Civil Division's Challenges*

The transition to hybrid work and cloud-based applications has been rapid over the past several years, and ongoing changes are expected to continue at an accelerated pace. The Civil Division makes every effort to be successful in the face of these challenges, leading the Department in information technology and e-litigation responses. The funding requested in FY 2024 will provide resources for the Civil Division to continue to address these challenges, embrace associated opportunities that stem from the effects of the COVID-19 pandemic, address increasing workloads, and protect the most vulnerable Americans.



## II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars (\$000)	Pg.
Camp Lejeune PACT Act Litigation	Provide resources to handle the thousands of expected claims resulting from Section 804 of the “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022” (PACT Act), Public Law 117–168.	67	34	20,879	28
Protecting National Programs, Federal Policy Priorities, and National Security	Provide resources to support the work of the Federal Programs Branch, which directly advances and defends priorities, policies, and actions of the Department, the United States Government, and the Administration, including critical national security items.	16	8	\$1,813	32

### III. Appropriations Language and Analysis of Appropriations Language

The FY 2024 budget request does not include proposed changes in the appropriations language.

### IV. Program Activity Justification: Legal Representation

#### A. LEGAL REPRESENTATION

##### 1. Program Description

<b>Legal Representation</b>	<b>Direct Pos.</b>	<b>Estimate FTE</b>	<b>Amount (\$000s)</b>
2022 Enacted	1,136	1,136	\$323,782
2023 Enacted	1,304	1,239	\$374,560
Adjustments to Base and Technical Adjustments	0	65	\$26,352
2024 Current Services	1,304	1,304	\$400,912
2024 Program Increases	83	42	\$22,692
2024 Program Offsets	0	0	\$0
2024 Request	1,387	1,346	\$423,604
Total Change 2023-2024	83	107	\$49,044

<b>Legal Representation – Information Technology Breakout (of Decision Unit Total)</b>	<b>Direct Pos.</b>	<b>Estimate FTE</b>	<b>Amount (\$000s)</b>
2022 Enacted	22	22	\$27,211
2023 Enacted	22	22	\$30,340
Adjustments to Base and Technical Adjustments	0	0	\$607
2024 Current Services	22	22	\$30,947
2024 Program Increases	0	0	\$0
2024 Program Offsets	0	0	\$0
2024 Request	22	22	\$30,947
Total Change 2023-2024	0	0	\$607

The Civil Division represents the United States in any civil or criminal matter within its scope of responsibility. The Civil Division is composed of six litigating branches (several of which have multiple sections) as well as an administrative office, the Office of Management Programs. The six litigating branches are listed below.



### **Appellate Staff**



### **Commercial Litigation Branch**

- Corporate and Financial Litigation Section
- Office of Foreign Litigation
- Fraud Section
- Intellectual Property Section
- National Courts Section



### **Consumer Protection Branch**



### **Federal Programs Branch**



### **Office of Immigration Litigation**

- District Court Section
- Appellate Section



### **Torts Branch**

- Aviation, Space and Admiralty Section
- Constitutional and Specialized Tort Litigation Section
- Environmental Tort Litigation Section
- Federal Tort Claims Act Litigation Section

## **Appellate Staff**

The Civil Division’s Appellate Staff represents the interests of the United States in federal circuit courts of appeals and state appellate courts. The Appellate Staff’s cases involve complex, sensitive, and novel legal questions that often set far-reaching precedents. These cases include constitutional challenges to statutes passed by Congress, as well as challenges to federal regulations, Executive Orders, and other Executive Branch decisions when these matters are litigated in appellate courts. The Staff has also devoted significant resources to defending measures taken to respond to the COVID-19 pandemic, including efforts to provide relief to socially and economically disadvantaged communities, which have been hardest hit by the pandemic. The Appellate Staff has defended the implementation of economic relief provided under the American Rescue Plan Act, the Paycheck Protection Program, and the Coronavirus Aid, Relief, and Economic Security Act.

The Appellate Staff has also defended actions intended to protect against wrongful discrimination and to ensure that all Americans receive equal treatment under the law. The Appellate Staff has also worked to defend the government’s response to the immigration crisis at the border and its efforts to ensure that noncitizens, including unaccompanied noncitizen children, are treated humanely, receive appropriate care and shelter, and are given a fair, orderly, and safe way to seek relief under our immigration laws. The Appellate Staff has assisted federal agencies with repealing and replacing high priority rules identified by the Administration as warranting reconsideration. They also continue to defend national security policies in a host of areas and defend individual federal officers and employees sued personally. Additionally, the Appellate Staff represents the United States in affirmative litigation, such as consumer protection cases and False Claims Act suits to recover money fraudulently obtained from the U.S. Treasury.

## **Commercial Litigation Branch**

The Civil Division's Commercial Litigation Branch has five sections: (1) Corporate/Financial Litigation, (2) Foreign Litigation, (3) Fraud, (4) Intellectual Property, and (5) National Courts.

### ***Corporate/Financial Litigation Section***

The Corporate/ Financial Litigation Section protects the financial interests of the United States by handling unique nationwide matters that involve significant federal interests. The Section protects the federal fisc when highly regulated businesses, and those with large-dollar government contracts, loans, and grants, are in financial distress. The Section has a primary role in the United States' affirmative efforts to collect debts owed to the United States and to protect the fiscal integrity of federal lending and health care programs. It also has a long-standing role in pursuing recoveries that thwart health care fraud and abuse. The Section's cases, which are both affirmative and defensive, involve many different industries, including health care providers, drug manufacturers, insurers, communications companies, energy producers and suppliers, crypto currency, and commercial airlines.

As a result of the COVID-19 pandemic, the government initiated a wide range of financial programs involving billions of dollars. The ensuing litigation involving these programs, including efforts to collect misspent funds and amounts owed on defaulted loans and guaranties, will form a large portion of the Section's work in FY 2024. In addition, it is anticipated that business failures that implicate federal financial interests will increase as government support related to pandemic relief comes to an end.

### ***Office of Foreign Litigation***

The Office of Foreign Litigation (OFL) represents government's interests in foreign courts. OFL currently has approximately 1,600 cases in over 150 countries. As OFL attorneys are not licensed to practice law in foreign jurisdictions, the office retains and closely instructs foreign counsel to represent U.S. interests in foreign courts. Most OFL cases are defensive, representing the United States and its officials against claims arising from the U.S. government's activities abroad. OFL also prosecutes affirmative litigation to counter fraud and other wrongs against the United States, and represents the interests of the U.S. in foreign criminal proceedings. Cases span a wide range of subjects including data privacy, tax and revenue, intellectual property, employment, breach of contract, foreign aid, real property disputes, visa fraud, and national security. OFL also provides advice to other parts of the government concerning a wide range of international and foreign law matters. In its capacity as Central Authority for international treaties governing cross-border discovery, OFL assists foreign courts and U.S. agencies in service and evidence collection.



### ***Fraud Section***

The Civil Division’s Fraud Section recovers billions of dollars annually by investigating and litigating matters involving fraud against the Federal Government. The Fraud Section pursues fraudulent schemes impacting cybersecurity, federal health care programs, and any other types of fraudulent conduct that results in the waste and abuse of taxpayer funds. The Section has long been a leader in pursuing fraud cases involving IT and military contracts, deficient goods and services, and bribery and corruption. Over the last year, the office has seen its national security practice increase and expand in new ways, especially in the areas of cybersecurity and protecting intellectual property and scientific research. Much of the Fraud Section’s matters are pursued under the False Claims Act (FCA) and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In FY 2022, the Department recovered more than \$2.2 billion in settlements and judgments under the FCA and FIRREA.

The False Claims Act whistleblower (or “qui tam”) provision allows individuals to file lawsuits alleging false claims on behalf of the government. If the government prevails, the whistleblower may receive up to 30 percent of the recovery. In FY 2022, 647 qui tam suits were filed, and the Department obtained settlements and judgments totaling \$1.9 billion in these suits. Whistleblower awards during the same period totaled \$488.0 million.

### ***Intellectual Property Section***

The Intellectual Property (IP) Section represents the United States in all intellectual property matters where a patent, copyright, or trademark is at issue. The Section enforces government-owned patents and trademarks through infringement suits and Uniform Domain-Name Dispute-Resolution Policy proceedings. It defends government agencies against claims of patent, copyright, and trademark infringement. It also defends the validity of government-owned patents and trademarks administrative tribunals of the United States Patent and Trademark Office. The Section also defends the Register of Copyrights and the Director of the Patent and Trademark Office in their respective administrative actions. Many of the cases handled by the IP Section involve complex technologies, such as pharmaceutical compositions and highly sophisticated electronic devices, as well as technologies to advance national security and protect critical infrastructure and communications networks. To meet the challenges presented by these cases, all attorneys assigned to the IP Section hold a degree in one of the physical sciences or in a field of engineering and each attorney must be eligible to register for practice before the U.S. Patent and Trademark Office.

### ***National Courts Section***

One of the largest and oldest litigating sections in the Department, the National Courts Section (National Courts) handles matters in three Federal courts with nationwide jurisdiction: the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Federal Claims, and the U.S. Court of International Trade (CIT), as well as other Federal district and appellate courts. National Courts focuses on procurement and contract disputes, constitutional claims, pay claims, personnel appeals, and veterans’ benefit appeals. It is also responsible for defending challenges to the government’s customs and trade decisions, as well as prosecuting civil penalty and collection actions for customs violations, in the CIT, an Article III court. Additionally, National Courts handles appeals from the Court of Federal Claims, the CIT, and numerous other tribunals in the United States Court of Appeals for the Federal Circuit. Since 2019, citing national security concerns, the Executive Branch has taken numerous actions in the realm of customs and trade

that have dramatically increased National Courts' workload. National Courts' larger trial cases often last for years and involve large sums of money. In the National Courts' procurement practice, attorneys defend against a steadily growing number of lawsuits (referred to as bid protests), challenging agency contracting efforts. Since FY 2020, National Courts has received, and continues to receive, a massive influx of cases from the CIT for cases relating to tariffs on Chinese imports. The COVID-19 pandemic also caused a significant, resource-intensive increase in litigation and requests for advice from agencies, with numerous class-action complaints raising constitutional and other claims being filed in the Court of Federal Claims. These cases are still a source of significant workload for the National Courts Section and are expected to likely remain so going forward into FY 2024.

### **Consumer Protection Branch**

The Civil Division's Consumer Protection Branch (CPB) protects the health, safety, and economic security of American consumers through criminal prosecutions and civil enforcement actions. The Branch's workload encompasses cases involving pharmaceuticals and medical devices, deceptive trade practices and telemarketing fraud, consumer product safety, elder fraud, opioids, data privacy, and adulterated food and dietary supplements. In addition, the Branch defends agencies—including the Food and Drug Administration—in civil litigation before district courts. The Branch is unique within the Civil Division because it has both criminal and civil authority.

The Branch stands at the forefront of the Department's nationwide efforts to detect, deter, disrupt, and punish conduct harming American consumers. It spearheads efforts to protect at-risk populations—including older adults, veterans and servicemembers, and non-English speaking individuals—from fraudsters, including those perpetrating imposter scams, lottery frauds, and romance scams. The Branch leads the Transnational Elder Fraud Strike Force, which works to prosecute foreign fraudsters targeting American consumers, as well as U.S.-based individuals and companies facilitating those schemes. In the ongoing fight against the opioid epidemic, the Branch is leading several criminal and civil investigations and enforcement actions involving prescription opioid manufacturers, distributors, and retail chain pharmacies, as well as several investigations into companies that are contributing to the manufacture and distribution of counterfeit pills laced with fentanyl. CPB brings both civil cases that seek to stop and remediate harmful conduct and criminal cases that seek to deter and punish those responsible for misconduct, and thereby help to ensure the safety of foods, drugs, and consumer products used by the American public.

### **Federal Programs Branch**

The Federal Programs Branch has an active trial court practice, litigating on behalf of the President, Cabinet officers, other government officials, and almost 100 federal executive agencies. Branch attorneys handle some of the highest profile, most sensitive, and most significant litigation matters affecting the United States' interests, including defending against constitutional challenges to federal statutes, suits to overturn significant government policies and programs, and attacks on the legality of government decisions with broad ramifications. The Branch also initiates litigation to enforce regulatory statutes, to remedy statutory and regulatory violations, and to challenge state and local laws that are pre-empted by federal law. The scope of its work is very broad and touches upon practically all aspects of the Federal Government. In

addition to the Branch's active caseload, the COVID-19 pandemic and federal response affected much of the Federal Programs Branch's diverse practice. Since early 2020, Branch attorneys have litigated challenges to nearly every aspect of the federal government's COVID-19 response, from economic recovery legislation and programs to federal vaccine mandates, as well as provided advice to many federal agencies regarding their implementation of federal COVID policies. The Civil Division expects the litigation arising out of this crisis, as well as the need to advise agencies relative to legislation or implementation of rules and regulations, to continue to occupy Branch attorneys in the years to come.

### **Office of Immigration Litigation**

The Office of Immigration Litigation (OIL) attorneys defend the federal government's immigration laws and policies and handle challenges to the nation's immigration system.

#### ***District Court Section***

The Office of Immigration Litigation's District Court Section (OIL-DCS) is a highly active litigation section that handles immigration-related lawsuits filed in federal courts against a number of departments and their agencies (*e.g.*, Departments of Justice, Homeland Security, State, Labor, Defense, Education, and Health and Human Services). The section litigates at the trial level in the 94 federal district courts and at the appellate level in 12 United States Courts of Appeals. OIL-DCS represents the executive branch in cases involving a wide range of complex immigration, nationality, detention, and border-security matters. This includes cases involving programmatic and class action challenges to agency policies and decisions on passports, visa applications, and consular processes; foreign worker, foreign investor, and temporary employment authorization programs; detention pending removal; military naturalization cases; and immigration matters with a national security nexus, including denaturalization cases against war criminals, individuals who committed (and failed to disclose) very serious felonies, and persons with established ties to terrorism.

OIL-DCS continues to be severely impacted by an ongoing increase in the number and complexity of class action lawsuits and programmatic challenges. This pre-existing strain on the section's resources has intensified because of an exponential increase in litigation challenging the processing delays of visa petitions and other immigration benefits applications by U.S. Citizenship and Immigration Services (USCIS) and visa application and consular processing delays by the Department of State. These delays began with the agencies' response to the COVID-19 pandemic and have been compounded by global events such as the United States' withdrawal from Afghanistan and the conflict in Ukraine, along with legislative changes and gaps in agency authorization to administer immigration programs. Two specialized immigration benefits programs, the employment-based fifth preference (EB-5) immigrant investor visa program and Special Immigrant Visa program (SIV), have been impacted by these delays and increased litigation. Additionally, agencies' current internal processing methods have caused increases in mandamus/delay litigation across several other immigration programs, resulting in litigation requesting expedited relief (preliminary injunctions and temporary restraining orders) and class action challenges. OIL-DCS expects this increase in delay/mandamus litigation to increase across the country.

### ***Appellate Section***

The Office of Immigration Litigation's Appellate Section (OIL-Appellate) defends the U.S. in immigration litigation before the federal appellate courts. OIL-Appellate attorneys handle removal cases in the Courts of Appeals and support the Office of the Solicitor General's immigration litigation efforts in the U.S. Supreme Court. These cases comprise of challenges related to whether an individual is subject to removal from the U.S. or is eligible for some form of benefit, relief, or protection that would allow them to remain in the United States. In total, the workload of OIL-Appellate is approximately 10 percent of all the appellate litigation in the federal circuit courts. OIL-Appellate also handles related litigation in the district courts whenever citizenship issues are transferred by appellate courts in accordance with the immigration statute's judicial review rules, as well as detention challenges in district courts filed by individuals with pending circuit court review petitions. The caseload is almost entirely defensive and is directly tied to DHS enforcement efforts and the resulting removal adjudications by the Executive Office for Immigration Review.

### **Torts Branch**

The Torts Branch is comprised of four litigating sections: (1) Aviation, Space and Admiralty, (2) Constitutional and Specialized Tort Litigation, (3) Environmental Tort Litigation, and (4) Federal Tort Claims Act Litigation. The Torts Branch is also home to the Division's compensation programs. The majority of the Torts Branch's workload involves defensive matters in which other parties have sued the Federal Government.

### ***Aviation, Space, and Admiralty Section***

The Aviation, Space, and Admiralty Litigation Section handles aviation and space tort litigation as well as a wide variety of admiralty matters. The Aviation caseload is largely comprised of defending the United States in wrongful death, serious personal injury, and extensive property damage actions arising from aircraft accidents. Federal activities giving rise to these lawsuits include air traffic control, military aviation operations, weather dissemination, charting of obstacles, operation of navigational aids, and certification of aircraft and air personnel. Major aviation clients include the Federal Aviation Administration, all branches of the U.S. military, the Department of Commerce, and agencies involved in aerial firefighting. Space cases may arise from accidents involving space launch or space vehicles, with the National Aeronautics and Space Administration (NASA) as the primary client agency. The Admiralty caseload involves the Federal Government's role as ship-owner, regulator, and protector of the nation's waterways. Cases relate to collisions involving government vessels, disputes over navigational markings, and challenges to the boarding of vessels on the high seas during national security activities. Affirmative admiralty actions seek compensation for the loss of government cargo and the costs associated with maritime pollution cleanups, including significant oil spills. The Aviation, Space, and Admiralty Section has recently been involved in litigation resulting from the naval accident on the destroyer USS John S. McCain.

### ***Constitutional and Specialized Tort Litigation Section***

The Constitutional and Specialized Tort Litigation Section consists of four groups: the Constitutional Torts Staff, the Office of Vaccine Litigation, the Radiation Exposure Compensation Act Program, and the September 11<sup>th</sup> Victim Compensation Fund. The staff



focuses on cases with critical and sensitive Executive Branch functions, cutting-edge questions of law affecting the federal workforce, and difficult personal liability cases.

***The Constitutional Torts Staff*** provides legal representation to federal employees in cases filed against them personally for actions performed as part of their official duties. Most cases seek monetary damages under the Supreme Court’s decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). This personal liability litigation is brought against federal employees, sometimes in retaliation for doing their jobs or as an attempt to indirectly challenge government action or initiatives. In addition to litigating the most difficult cases directly, Constitutional Torts devotes significant staff, time, and resources toward assisting U.S. Attorneys’ Offices on jointly handled cases, reviewing and approving representation requests from federal employees nationwide, and providing guidance to both federal agencies and Department components on legal and policy matters related to Department-provided representation of government officials. On average, the Staff processes requests for representation for over 125 federal employees each month, from all different agencies within each of the three branches of government. While it would be impossible to list the variety of government activities that can give rise to litigation brought personally against government employees, common examples range from sensitive national security initiatives to enforcement and prosecution of criminal, environmental, and immigration laws and regulations. Providing a vigorous defense to federal employees who are sued personally for official acts is an important responsibility. If the federal workforce is hampered by the fear of personal liability in money damages, government employees will be reluctant to do their jobs, which could adversely impact important government action or initiatives as well as deter otherwise well qualified individuals from serving in public positions.

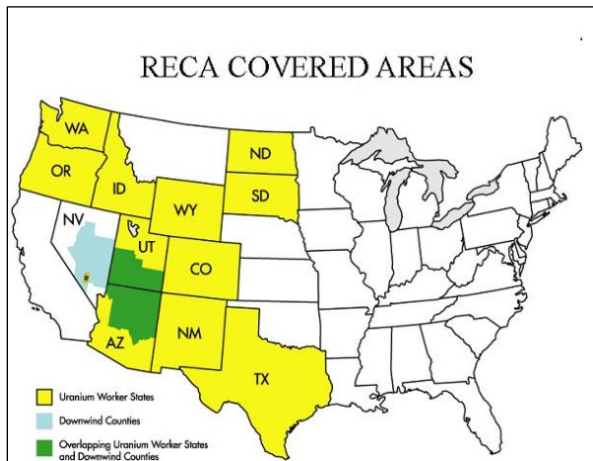
***The Office of Vaccine Litigation*** was established to represent Health and Human Services (HHS) in cases arising under the National Childhood Vaccine Injury Act of 1986, which created a unique mechanism for adjudicating claims alleging injury from certain immunizations. Petitioners are represented by private counsel, and cases are filed in the U.S. Court of Federal Claims and adjudicated by the Office of Special Masters. The Program was designed to stabilize vaccine supply and encourage vaccine development by limiting the litigation risk to vaccine manufacturers. As a streamlined “no-fault” system, petitioners must establish causation but do not need to prove that a vaccine was defective, or that there was any degree of negligence in its administration, making the VICP an attractive alternative to civil litigation. As a result of the VICP, costly litigation has significantly decreased against drug manufacturers and health care professionals.

The VICP’s administrative costs are funded out of an annual reimbursement from the Vaccine Injury Compensation Trust Fund, which itself is funded by an excise tax on vaccines. Compensation awards and petitioners’ attorneys’ fees are paid from the Trust Fund as well. As of January 1, 2023, the program has awarded over \$4.9 billion to 9,446 claimants, who almost certainly would not have received compensation through traditional tort litigation.

There has been a tremendous increase in the number of VICP cases filed over the past seven years, primarily due to new regulations that added new injuries to the Act’s Injury Table (of particular note, Shoulder Injury Related to Vaccine Administration (“SIRVA”) and Guillain-Barré

syndrome were added), which now make up approximately 80 percent of new case filings. In addition, HHS expects the coronavirus vaccines will be covered by the VICP in the future.

***The Radiation Exposure Compensation Act Program*** is an administrative law system created



by the Radiation Exposure Compensation Act (RECA). The Act provides set awards for individuals who developed specified illnesses following the government’s failure to warn of possible radiation exposure resulting from atmospheric nuclear weapons tests, or from employment in certain uranium production industry occupations during the build-up to the Cold War. Since its passage in 1990 through December 31, 2022, the Act has compensated approximately \$2.6 billion in connection with 40,258 approved claims for eligible individuals or their surviving beneficiaries. On June 7, 2022, the RECA Extension Act was signed into

law, providing a two-year extension to the RECA Trust Fund and the filing deadline for new claims from its date of enactment.

***The September 11<sup>th</sup> Victim Compensation Fund (“VCF”)*** was created to provide compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. The VCF is appropriated outside of the Civil Division’s annual account and provides compensation for economic and non-economic loss (less applicable offsets), and is administered by the Civil Division through a Special Master appointed by the Attorney General. As of December 31, 2022, the VCF has awarded nearly \$10.9 billion in compensation to almost 49,000 individuals who have suffered physical health conditions (including the families of over 2,700 people who have died), as a result of their exposure to the terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania.

### ***Environmental Torts Litigation Section***

The Civil Division’s Environmental Torts Litigation (ETL) Section defends the United States in complex, high stakes civil litigation in federal courts nationwide. Its attorneys directly handle all aspects of wrongful death, personal injury, and property damage cases that often involve hundreds, even thousands, of plaintiffs. The cases typically stem from alleged exposure to environmental contaminants, such as biological agents, chemicals, and other substances. They also involve complex issues of causation, novel issues of federal and state law, and numerous expert witnesses. Given its unique expertise, the Section has primary litigation responsibility for all suits brought against the United States under the Federal Tort Claims Act where the alleged injuries/damages are attributed to some form of environmental contaminant. Many of the Section’s cases are litigated as mass torts or multi-district litigation matters. Recent and ongoing mass tort cases litigated by the Section include: alleged damage to water systems and personal injury claims due to the military’s use of perfluorinated compounds in firefighting; personal

injury claims stemming from the Environmental Protection Agency’s (EPA) oversight of state and local entities involved in the Flint water crisis; and natural resource damage and personal injury claims related to an alleged heavy metals release during an EPA investigation at Gold King Mine in Colorado. Complex jurisdictional questions, a need for creative case-management solutions, and overlapping issues of history, law, and science are often the norm.

ETL has been significantly impacted by Section 804 of the “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022 (PACT Act), Public Law 117–168, which was signed into law on August 10, 2022. Section 804 aims to compensate service members and others who were exposed to contaminated water at Camp Lejeune, North Carolina, between 1953 and 1987. Service members and others who were stationed at or worked at Camp Lejeune during that time have developed cancer and other diseases that may be related to water contamination. The Agency for Toxic Substances Disease Registry estimates that as many as one million people were exposed to contaminated water at Camp Lejeune.

### ***Federal Tort Claims Act Litigation Section***

The Federal Tort Claims Act (“FTCA”) Section litigates complex and controversial cases under the Federal Tort Claims Act, which Congress passed in 1946 to waive the sovereign immunity of the United States with respect to claims for certain injuries and property damage caused by the negligence or wrongful conduct of federal employees. Today, FTCA litigation typically arises from medical care, regulatory activities, law enforcement, and maintenance of federal lands and buildings. The FTCA Section makes appeal recommendations on all adverse judgments entered in FTCA cases, and provides comments on FTCA-related legislation that may have an impact on taxpayer liability. Further, the FTCA Section is responsible for the administrative adjustment of tort claims arising out of DOJ activities.

### **Office of Management Programs**

The Office of Management Programs (OMP) supports the Civil Division’s attorneys in all aspects of their work. OMP provides the Division’s Human Resources (HR), Training, Budget, Finance, Procurement, Information Technology, Litigation Support, eDiscovery, Freedom of Information Act (FOIA), Facilities, Security, and Information Management functions. Whether helping an employee prepare a presentation for trial, maintaining and updating discovery software, selecting a health insurance plan, or developing Civil’s annual budget, OMP’s staff of HR specialists, budget analysts, accountants, attorneys, and information technology specialists provide the technological, analytical, and litigation tools necessary for Civil’s attorneys to compete against the best law firms in the world. As such, OMP is critical in supporting the Civil Division’s mission overall and has been integral to supporting the Civil Division’s return to the office and transition to a hybrid work model.

## Performance and Resources Tables

Decision Unit: Civil Division - Legal Representation												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Change		FY 2024 Request	
Total Costs and FTE			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			1,222	323,782 [69,000]	1,235	323,782 [37,594]	1,362	374,560 [91,738]	107	49,044 [0]	1,469	423,604 [91,738]
Type	Strategic Objective	Performance	FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Change		FY 2024 Request	
Key Performance Indicator	2.6	1. Number of relationships established with state and local law enforcement, either directly or through state Police Officer Standards and Training councils or commissions, to communicate elder justice best practices	N/A		0		10		0		10	
Key Performance Indicator	4.1	2. Percent of Consumer Protection Branch cases favorably resolved	N/A		92%		85%		N/A		85%	
Workload Measure	4.2	3. Number of cases pending beginning of year	34,838		35,789		42,253		4,865		47,118	
Workload Measure	4.2	4. Number of cases received during the year	15,386		14,085		12,899		1,847		14,746	
Workload Measure	4.2	5. Total Workload	50,224		49,200		55,152		6,712		61,864	
Workload Measure	4.2	6. Number of cases terminated during the year	4,909		8,378		8,193		2,582		10,775	
Civil Division Performance (Excludes VICP and RECA)												
Performance Measure	4.2	7. Percent of civil cases favorably resolved	80%		96%		80%		N/A		80%	
Performance Measure	5.1	8. Percent of federal denaturalization dispositions favorably resolved	80%		100%		80%		N/A		80%	

## Performance and Resources Tables

**Decision Unit: Civil Division - Legal Representation**

RESOURCES			Target	Actual	Target	Changes	Requested (Total)
			FY 2022	FY 2022	FY 2023	Current Services Adjustments	FY 2024 Request
<b>Civil Division Performance (Excludes VICP and RECA)</b>							
Performance Measure	4.2	9. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%	84%	80%	N/A	80%
Performance Measure	4.2	10. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%	87%	60%	N/A	60%
Performance Measure	4.2	11. Percent of favorable resolutions in non-monetary trial cases	80%	92%	80%	N/A	80%
Performance Measure	4.2	12. Percent of favorable resolutions in non-monetary appellate cases	85%	88%	85%	N/A	85%
<b>Vaccine Injury Compensation Program Performance</b>							
Performance Measure	2.6	13. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	N/A	0%
Performance Measure	2.6	14. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%

<b>Performance Measure Table</b>						
<b>Strategic Objective</b>	<b>Decision Unit: Civil Division - Legal Representation</b>					
	<b>Performance Measures</b>		<b>FY 2022</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
			<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Target</b>
2.6	Key Performance Indicator	1. Number of relationships established with state and local law enforcement, either directly or through state Police Officer Standards and Training councils or commissions, to communicate elder justice best practices	N/A	0	10	10
4.1	Key Performance Indicator	2. Percent of Consumer Protection Branch cases favorably resolved	N/A	92%	85%	85%
4.2	Workload Measure	3. Number of cases pending beginning of year	34,838	35,789	42,253	47,118
4.2	Workload Measure	4. Number of cases received during the year	15,386	14,085	12,899	14,746
4.2	Workload Measure	5. Total Workload	50,224	49,200	55,152	61,864
4.2	Workload Measure	6. Number of cases terminated during the year	4,909	8,378	8,193	10,775
<b>Civil Division Performance (Excludes VICP and RECA)</b>						
4.2	Performance Measure	7. Percent of civil cases favorably resolved	80%	96%	80%	80%
5.1	Performance Measure	8. Percent of federal denaturalization dispositions favorably resolved	80%	100%	80%	80%

Strategic Objective	Performance Measure	FY 2022	FY 2022	FY 2023	FY 2024	
		Target	Actual	Target	Target	
<b>Civil Division Performance (Excludes VICP and RECA)</b>						
4.2	Performance Measure	9. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%	84%	80%	80%
4.2	Performance Measure	10. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%	87%	60%	60%
4.2	Performance Measure	11. Percent of favorable resolutions in non-monetary trial cases	80%	92%	80%	80%
4.2	Performance Measure	12. Percent of favorable resolutions in non-monetary appellate cases	85%	88%	85%	85%
<b>Vaccine Injury Compensation Program Performance</b>						
2.6	Performance Measure	13. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	0%
2.6	Performance Measure	14. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	92%

### **3. PERFORMANCES, RESOURCES, AND STRATEGIES**

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#### **Performance Plan and Report for Outcomes**

The Civil Division's work contributes to all of the Department of Justice's efforts to achieve its strategic goals: Strategic Goal 1, Uphold the Rule of Law; Goal 2, Keep Our Country Safe; Goal 3, Protect Civil Rights; Goal 4, Ensure Economic Opportunity and Fairness for All; and Goal 5, Administer Just Court and Correctional Systems. Within those goals, the Civil Division's workload is directly tied to eight of the Department's Strategic Objectives, as outlined below. Civil has prioritized investigating cybersecurity matters, the unlawful diversion of opioids, the Elder Justice Initiative and efforts to prevent victimization, advancing environmental justice, and enhancing the integrity of the immigration system, while continuing its successful efforts in affirmative and defensive, monetary and non-monetary litigation.

#### ***The Civil Division Promotes Good Government (Strategic Objective 1.2)***

The Civil Division continually improves its operations and processes in order to best serve the United States and the American people. For example, the Division successfully pivoted to increased remote work and telework during the COVID-19 pandemic, and it is now adapting to longer-term hybrid work environments. The Division's information technology staff has worked tirelessly to ensure that needed equipment is available and to offer upgraded and adjusted processes, software, and critical cybersecurity protections, while the human resources and personnel staff have worked throughout the process to ensure appropriate adjustments to and enforcement of rules and regulations. Other sections—including but not limited to the Division's budget and accounting personnel, ALS personnel, and all of its litigating sections—have also closely evaluated their operations and the best path forward to ensure effective and efficient operations through innovative solutions and adjustments where appropriate. For example, the Division modernized storage capabilities for case files, migrating over three petabytes from a legacy system to a modern storage system, and the Division's e-discovery platform was also modernized, resulting in improved speed and reliability and increased security. The Division also built and rolled out a hoteling solution for hybrid work.

#### ***The Civil Division Enhances Cybersecurity and Fights Cybercrime (Strategic Objective 2.4)***

Malicious cyber activity threatens the health and safety of the American people, as well as the national and economic security of our country. The Deputy Attorney General launched a Civil Cyber-Fraud Initiative to leverage the Department's False Claims Act experience to combat new and emerging cyber threats. The Department is working with its agency partners to pursue contractors, grantees and others who knowingly misrepresented their information security, violated cybersecurity requirements, and / or submitted to the government false payment claims. The implementation of the Initiative is being led by the Commercial Litigation Branch's Fraud Section, and it has resulted in enhanced collaboration across government and significant recoveries for the public fisc. For example, Comprehensive Health Services LLC, a company providing health services to United States servicemembers, diplomats, officials and contractors working and receiving medical care in Iraq and Afghanistan paid \$930,000 to resolve allegations that it falsely represented compliance with contract requirements. The company allegedly failed to consistently store patients' medical records on a secure system, and instead saved and left



scanned copies of some records on an internal network drive, which was accessible to non-clinical personnel.

The Civil Division's Consumer Protection Branch is also heavily involved in cybersecurity efforts and has focused its efforts on ensuring consumers' data privacy and identity integrity, as well as other areas in which malicious cyber actors have targeted Americans. As a result of CPB's efforts, a Cameroonian national was extradited from Romania and sentenced to 21 months in prison for his role in a scheme to trick consumers into paying fees for pets that were never delivered and for using the COVID-19 crisis as an excuse to extract higher fees from victims. Desmond Fodje Bobga conspired with others to offer pets for sale on internet websites. Following each purchase, Bobga and his co-conspirators claimed that a transportation company would deliver the pet. They then posed as the transportation company and claimed the transport of the pet was delayed and victims would need to pay additional fees for delivery, telling some victims that more money was needed because the pet had been exposed to coronavirus. The Branch also successfully prosecuted a case in which Jon J. Kahen, the Chief Executive Officer and owner of a gateway VoIP carrier, pled guilty to money laundering after admitting that he knew his telecommunications services were being used by India-based VoIP providers to transmit fraudulent calls. Kahen's company offered various services, including a calling platform and domestic direct inward dial, toll-free, and call termination services, that introduced foreign phone traffic into the U.S. telephone system. The calls carried by Kahen were originally placed by fraudsters who intended to deceive U.S. consumers into believing a government agency was requiring them to pay money.

Additionally, the Civil Division seeks to deter and thwart malicious cyber actors who might attempt to target the Division itself; ensuring that all employees complete annual Cybersecurity Awareness Training (CSAT). The Division's Office of Information Technology continually seeks to maintain and improve cybersecurity and resilience, recently hiring a cybersecurity investigator, deploying Splunk across all servers and virtual desktops and planning to deploy an East West Firewall to protect internal network traffic.

***The Civil Division Combats Drug Trafficking and Prevents Overdose Deaths (Strategic Objective 2.5)***

In 2021, more than 107,622 Americans died from drug overdoses, the overwhelming majority involving opioids.<sup>2</sup> Rates of death attributed to prescription opioids have fallen in recent years but remain unacceptably high, and the Civil Division is involved in efforts to detect, limit, and deter opioids-related fraud and the illegal prescription, distribution, and diversion of opioids.

The Division's Consumer Protection Branch has played a leading role in the Prescription Interdiction Litigation (PIL) Task Force, coordinating investigative and prosecutorial efforts with numerous agencies and offices. It also established and currently maintains training materials and resources for use throughout the Department, in an effort to utilize available criminal and civil enforcement remedies throughout the supply chain to ensure that prescription opioids are distributed lawfully under the Controlled Substance Act (CSA) and other statutes like the Food

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<sup>2</sup> [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2022/202205.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm)

Drug and Cosmetic Act. The Branch has led working groups established through the PIL Task Force to investigate possible CSA violations by national chain pharmacies. One of those working groups is now litigating against Walmart, seeking civil penalties for its alleged misconduct as a dispenser and distributor of controlled substances. Additionally, in *United States v. Bacaner, et al.* (M.D. Fla.) the United States obtained permanent injunctive relief and civil penalties against a physician, clinic, and two owners based on allegations that the defendants used the clinic's operations to unlawfully prescribe controlled substances, where the United States alleged that drug toxicity played a role in the deaths of several individuals who received controlled substances from the defendants. The court order required the clinic to permanently close and barred the defendants from being involved with controlled substances.

### ***The Civil Division Protects Vulnerable Communities (Strategic Objective 2.6)***

The Civil Division's work on behalf of the United States and its people contributes to protecting and supporting all communities, including the most vulnerable segments of the population. The Division has focused particular effort on elder justice, and through collaborative efforts the Department has brought over 220 criminal and civil enforcement actions in 46 federal judicial districts related to conduct that targeted or disproportionately impacted older adults. These include matters involving tech support fraud, romance scams, and telemarketing scams.

The Civil Division also engages in efforts to encourage and enhance such collaborative efforts, and it has elevated the profile of these efforts with a key performance indicator (KPI) on the number of formal relationships established with state, county, and local law enforcement, either directly or through state Police Officer Standards and Training councils or commissions, to communicate elder justice best practices.

Working with the National Center on Elder Abuse and the National White Collar Crime Center, the Elder Justice Initiative, which is housed in the Civil Division, helped to develop the Elder Abuse Guide for Law Enforcement (EAGLE) Online Training. This free virtual training has been certified by the International Association of Directors of Law Enforcement Standards and Training's National Certification Program, which means that for the first time, law enforcement officers in 36 states can receive continuing education training credit for taking the course. Over 2,000 law enforcement (LE) officers have taken the online EAGLE training, and from January 1, 2022 through October 31, 2022, almost 800 LE officers or personnel participated in EAGLE training. Those individuals were surveyed and of those who responded, 90 percent indicated they would be likely to apply the skills and knowledge learned and would recommend the course to others. Similarly, the Department has conducted more than 400 elder justice training and outreach events to train state and local prosecutors, law enforcement, and elder justice professionals on how to identify, prevent, and combat elder abuse, neglect and financial exploitation.

### ***The Civil Division Advances Environmental Justice and Tackles the Climate Crisis (Strategic Objective 3.5)***

The Civil Division's Federal Programs Branch defends state-led challenges to Section 5 of Executive Order 13990, which generally requires federal agencies to properly account for the social costs of greenhouse-gas emissions. The Civil Division's Consumer Protection Branch

also has been consulting with the Environmental and Natural Resources Division regarding efforts to combat the climate crisis.

***The Civil Division Reinigorates Antitrust Enforcement and Protects Consumers, as well as Combats Corruption, Financial Crime, and Fraud (Strategic Objectives 4.1 and 4.2)***

Deterring corruption, financial crime, and other wrongful civil acts protects consumers, ensures the health and safety of individuals, preserves the safety and integrity of the economic system, and protects the public fisc. The Civil Division achieves this through both affirmative and defensive, as well as monetary and non-monetary cases. The Department has recognized the critical nature of these efforts with a KPI on the percentage of Consumer Protection Branch (CPB) cases favorably resolved; in FY 2022, 92 percent of such cases were favorably resolved.

For example, CPB brought civil and criminal actions that put an end to an international scheme that debited consumers' bank accounts without authorization. The scheme also deceived banks by artificially manipulating return rates associated with the scheme's bank accounts, which reduced bank scrutiny and lowered the risk banks would close the accounts. In FY 2022, Harold Sobel pled guilty for his role in helping the scheme obtain bank accounts and writing a script that scheme participants used when victims called to complain about the unauthorized debits. In a related civil case, CPB secured permanent injunctions against seven individuals and sixteen companies, preventing the scheme from continuing and resuming operation.

The Branch also obtained convictions for eight individuals and three companies for their roles in a scheme to illegally distribute synthetic steroids as muscle-building dietary supplements. According to court documents, Blackstone Labs LLC, its founders Phillip Braun and Aaron Singerman, and other co-conspirators intentionally distributed unapproved controlled substances for muscle growth. Many of the products sold by the defendants were anabolic steroids that were controlled substances under the Designer Anabolic Steroid Control Act. The defendants continued selling these products despite knowing about the law and its impact on legality of their products. Singerman and Braun pleaded guilty and were each sentenced to 54 months in prison. Blackstone's lead salesman, James Boccuzzi, was convicted by a jury in November 2021 and sentenced to 51 months in prison.

Another matter pursued by CPB involved individuals and companies participating in a large scheme to defraud health insurers and pharmacy benefit managers. The defendants used telemarketers to sell bogus prescriptions to consumers that the defendants filled using a series of pharmacies they owned; the defendants then billed private health insurance companies for those prescriptions at significant markups. One of the individual defendants, Peter Bolos, was sentenced to 14 years in prison and ordered to pay nearly \$25 million in restitution. Five corporate defendants were also ordered to pay \$25 million in restitution, another was ordered to pay \$21 million in restitution, and the final corporate defendant was ordered to pay \$5 million in restitution.

***The Civil Division Administers an Equitable and Efficient Immigration Court System (Strategic Objective 5.1)***

The Civil Division's Office of Immigration Litigation (OIL) plays a pivotal role in ensuring that the United States immigration system enforces the law fairly, equitably, and efficiently.

For example, during FY 2022, the Civil Division’s OIL – Appellate Section engaged in a series of outreach efforts, along with members of the private immigration bar, to improve the accessibility of circuit court mediation programs to litigants, including those who are not represented by counsel. These efforts culminated in a series of webinars hosted by chief circuit mediators in the First, Seventh, Ninth, and Tenth Circuits, in which OIL officials and private attorneys discussed their perspectives on the role of mediation in immigration cases and answered practical questions posed by private attorneys less familiar with such programs and how they might benefit potential clients. These webinars provided attendees direct access to the OIL – Appellate Section’s Director to facilitate meaningful dialogue about mediation benefits and remand processes. This outreach and engagement with the private bar and non-profit organizations was the first of its kind for OIL, and the webinars were well-received by both the mediation offices and the attendees, with everyone expressing appreciation for OIL’s participation.

The Section also made public the remand criteria it has long used to determine whether to seek remand in a case for further consideration by the Executive Office for Immigration Review (EOIR) by including the criteria in the Justice Manual at <https://www.justice.gov/jm/jm-4-7000-immigration-litigation>. When the Section’s attorneys are assigned cases in the federal courts, attorneys consider whether there may be a reason to return or “remand” the case to EOIR’s Board of Immigration Appeals (“Board”) or, when appropriate (for reinstatement or other orders), to the relevant component of DHS. Making the remand criteria public promotes transparency and provides noncitizens and their counsel with a better understanding of what goes into the Section’s decision to seek remand.

## **Strategies to Accomplish Outcomes**

The Civil Division strives to use the best strategies to achieve its outcomes. It is focused on efficiently using its resources, leveraging the most advanced technology, and recruiting and training dedicated public servants. By utilizing these strategies, the Civil Division ensures that the Federal Government will have the best possible legal representation.

### ***Civil Coordinates with Other Government Actors to Achieve Outcomes***

The Civil Division works closely with partners at all levels of government. For example, the Division’s Fraud Section and Consumer Protection Branch work together on cases involving health care fraud. Within the Department of Justice, the Civil Division routinely jointly handles cases with U.S. Attorneys and also works with the Executive Office for Immigration Review. In investigations, the Civil Division frequently collaborates with other agencies. When seeking to recover funds defrauded from federal and state governments, the Civil Division collaborates with state prosecutors. This collaboration ensures efficiency as information is quickly exchanged and multiple agencies can share costs. The Division likewise coordinates or collaborates with state and local government agencies, particularly with regards to the Elder Justice Initiative and efforts to ensure state and local prosecutors, law enforcement, and elder justice professionals can identify, prevent, and combat elder abuse, neglect, and financial exploitation of elders.

### ***Civil Employs New Innovative Technologies to Detect Criminal Activities***

The Civil Division constantly strives to be innovative in investigations and litigation. For example, in the fight against the opioid epidemic, the Civil Division is leading several multi-district criminal and civil investigations of prescription opioid distributors and retail chain pharmacies. While working with the Drug Enforcement Administration (DEA), Civil's Consumer Protection Branch designed and contracted for an analytical platform to utilize the DEA's Automation of Reports and Consolidated Orders System (ARCOS) data and other information to help identify suspicious distributor and pharmacy practices meriting investigation.

### ***Civil Engages, Educates, and Collaborates with Industries***

The Civil Division aims to coordinate with industry leaders to prevent and detect criminal activities. As previously mentioned, the Civil Division is leading the efforts in the Department's Transnational Elder Fraud Strike Force to support and coordinate the Department's enforcement and programmatic agendas in combatting elder financial fraud and scams that target our nation's seniors. Civil leads regular meetings between law enforcement and the banking industry to exchange information about trends and patterns of unlawful activity in the elder fraud context. The meetings also provide a platform for financial institutions to exchange information with one another about how best to prevent elder fraud from harming their customers and affecting their accounts.

### ***Civil Supports and Optimally Distributes its Workforce***

The Civil Division's greatest asset is its high-quality workforce. The Civil Division consistently recruits the best and brightest attorneys who are committed to public service and the mission of the U.S. Department of Justice. Civil ensures that its attorneys and support staff have the tools needed to succeed in litigation. Investments are made in training programs, professional development and leadership opportunities, and mentorship and coaching programs, as well as in programs and policies that support employee work-life balance, aiming to ensure a wide range of Americans are able to succeed in bringing their unique talents to the Division. Ultimately, these tools allow attorneys to be fully prepared to represent the United States in litigation. The Civil Division continuously monitors internal workload measures and performance metrics to ensure Civil attorneys are allocated amongst the Branches to best serve the Administration's priorities.

## **Agency Priority Goals**

### ***Combat Pandemic Fraud***

Given the breadth of its experience and subject matter expertise combatting fraud on government programs, the Fraud Section will continue to lead and coordinate the Department's affirmative civil enforcement efforts relating to fraud in connection with the trillions of dollars in relief programs provided by the CARES Act and the American Rescue Plan Act. The Fraud Section has been pursuing—and will continue to pursue and litigate—health care and procurement fraud schemes arising from the COVID-19 pandemic, including but not limited to, fraud related to medically unnecessary tests, abuse of expanded Medicare telehealth benefits, fraud in connection with the administration of the COVID-19 vaccine, and inflated pricing and defective equipment in connection with the Government's procurement of goods and services arising from the pandemic. The Fraud Section is devoting significant attorney and staff resources to these matters.

### ***Reinvigorate Antitrust Enforcement and Consumer Protection***

The Consumer Protection Branch (CPB) enforces consumer protection laws to end dangerous practices that harm America's most vulnerable populations, such as the sick and the elderly. Among its top priorities are pursuing cases against those who market unsafe pharmaceuticals and medical devices that endanger the health and safety of patients. In the fight against the opioid epidemic, CPB is leading several criminal and civil investigations of prescription opioid distributors and retail chain pharmacies. Additionally, CPB works closely with the Commercial Litigation Branch's Fraud Section, U.S. Attorneys' Offices, the Food and Drug Administration, and other law enforcement partners on a wide range of health care fraud cases, including those involving the promotion and distribution of unapproved and adulterated drugs and medical devices, and has been heavily involved in pursuit of those who peddled ineffective or potentially harmful products in connection with the COVID-19 pandemic. Under the Department's regulations, the Branch is the primary component charged with enforcement of the Food, Drug, and Cosmetic Act in the federal court system. In FY 2022, CPB investigated and resolved numerous cases involving harmful practices that endanger the public health, employing novel tools to prosecute wrongdoers who sell unsafe pharmaceuticals and medical products to the American public.

### ***Improve the Administration of Immigration Courts***

The Civil Division is the last but vital line in the nation's immigration system. Any attempt to foster a fair and equitable immigration system that reflects the nation's values must include the Civil Division. The Civil Division's Office of Immigration Litigation (OIL) defends the government's immigration laws and policies and handles challenges to the nation's immigration system. OIL also serves as a liaison and provides training to all of the government's immigration agencies, supports efforts at and within the nation's borders, and provides dependable counsel before the courts.

## V. Program Increases by Item

### A. CAMP LEJEUNE PACT ACT LITIGATION

Budget Decision Unit: Legal Representation

Organizational Program: Civil Division, Torts Branch, Environmental Torts Litigation Section

Program Increase: Positions 67; Atty 48; FTE 34; Dollars \$20,879,000

#### Description of Item:

The “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022” (PACT Act), Public Law 117–168, was signed into law on August 10, 2022. Section 804 of the PACT Act, the “Camp Lejeune Justice Act of 2022” (CLJA), aims to compensate service members and others who were exposed to contaminated water at Camp Lejeune, North Carolina, between 1953 and 1987 and developed cancer or another disease that was at least “as likely as not” caused by the exposure. The Agency for Toxic Substances Disease Registry estimates that as many as one million people were exposed to contaminated water at Camp Lejeune.

For nearly twenty years, the Civil Division’s Environmental Torts Litigation Branch (ETL) has been litigating Federal Tort Claims Act (FTCA) cases seeking compensation for harm alleged to have resulted from exposure to contaminated water at Camp Lejeune. The Division has obtained dismissals of these cases, primarily under three legal defenses provided by the FTCA: (1) *Feres v. United States*, which generally precludes claims for injuries incident to military service; (2) the discretionary function exception, which generally prohibits challenges to discretionary, policy-based conduct; and (3) North Carolina’s ten-year statute of repose for negligence actions.

Section 804 of the PACT Act facilitates recoveries for Camp Lejeune by allowing lawsuits in federal court while prohibiting the assertion of the legal defenses outlined above. Section 804 explicitly precludes the Government from raising certain defenses under the FTCA, including the discretionary function exception, any state statute of repose, and the *Feres* doctrine. Section 804 also restarts the statute of limitations for Camp Lejeune suits, lowers the standard of proof on causation, and may permit jury trials that would not be available under the FTCA. Most individuals who previously filed suits that were dismissed will also be able to file new cases.

While Section 804 seeks to make recovery easier for claimants, it nonetheless requires litigation of individual claims because each plaintiff still needs to establish causation under the CLJA and litigate their individual claim for damages. The process for filing a case first requires the filing of an administrative claim with the Navy; because of the administrative process and the complexity of the cases, it is possible that each case could take several years from the time of the initial claim to resolution. Further complicating matters, because only two of the six water

sources at Camp Lejeune were contaminated, it is expected that many people who were present at Camp Lejeune during the indicated time periods but were not exposed to the contaminated water sources may also file claims and cases. Thus, even those cases in which individuals were not exposed to contaminated water sources would require effort and resources to evaluate and resolve.

The CLJA will likely encourage an influx of federal-court litigation that will be extremely resource-intensive for both the Department and the federal district court in the Eastern District of North Carolina. Because of the complex nature of the cases, multiple attorneys will need to be assigned to each case. The Civil Division estimates that 48 additional attorneys, 13 paralegals, support staff, and numerous contractors will be required to handle the thousands of expected claims, for a total requested amount of \$20.9 million.

Justification:

With the passage of the CLJA, the Civil Division expects case-by-case district court litigation of potentially hundreds of thousands of claims, each requiring multiple attorneys to handle. Litigation in each case is estimated to last between two and five years. The workload is expected to continue for at least a decade. The Navy received over 3,000 administrative claims the day the PACT Act was signed into law, and to date, the Navy has received over 16,000 administrative claims. Several law firms have contacted the Navy IT Office regarding transferring administrative claims electronically, and the Navy expects to have such a system in place in the coming months. Accordingly, hundreds of thousands of additional claims are expected. Specifically, attorneys from the Keller Postman law firm informed ETL attorneys that, along with the Bell Legal Group, they plan to submit 50,000 to 60,000 administrative claims. Additionally, attorneys from the Dicello Leavitt firm and the Napoli Shkolnik firm have informed ETL attorneys that they each represent more than 50,000 plaintiffs. Law firms have been advertising for clients since before the law was enacted. These administrative claims will increasingly become active suits; February 10, 2023, was the first day that certain claimants could properly file suit in the Eastern District of North Carolina, and as of Friday, March 3<sup>rd</sup>, 165 cases have already been filed.

At the request of several plaintiffs' attorneys, ETL has been participating in meetings on the management of the cases. ETL is beginning to have coordinated discussions with representatives of the majority of claimant groups, including those listed above, in an effort to establish a comprehensive settlement mechanism. Given the large number of claimants and variation of claims, establishing a comprehensive settlement matrix is expected to be a complicated undertaking that will likely require court intervention and third-party neutrals. Assessing and analyzing individual claims, proving causation, and determining damages for settlement and/or trial are extremely arduous processes, and ETL anticipates needing to staff each suit with two to three attorneys.

Impact on Performance:

In order to timely litigate all claims filed by eligible veterans and other eligible individuals, and to provide due process and justice to the impacted parties, ETL will require 67 additional positions and corresponding contract support.



**1. Base Funding**

<i>FY 2022 Enacted*</i>				<i>FY 2023 Enacted</i>				<i>FY 2024 Current Services</i>			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>0</u>	<u>0</u>	<u>0</u>	<u>\$0</u>	<u>36</u>	<u>27</u>	<u>36</u>	<u>\$14,000</u>	<u>36</u>	<u>27</u>	<u>36</u>	<u>14,000</u>

\* The Civil Division received a \$3.0 million one-time transfer in FY 2022 for Camp Lejeune Pact Act Litigation.

**2. Personnel Increase Cost Summary**

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	5,996	48	236	125	1	6,016	18
Paralegals / Other Law (0900-0999)	834	13	114	59	36	765	471
Accounting and Budget (0500-0599)	107	1	200	85	6	85	6
Information Technology Management (2210)	106	1	199	140	1	140	1
Space Management Analyst (301)	186	2	172	73	19	145	39
Security Specialists (0080)	186	2	172	73	19	145	39
<b>Total Personnel<sup>3</sup></b>	<b>7,415</b>	<b>67</b>				<b>7,296</b>	<b>574</b>

<sup>3</sup> Totals may not add due to rounding.

**3. Non-Personnel Increase Cost Summary**

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Automated Litigation Support	248	4	61	258	10
Contractor Support	6,645	6,645	1	133	136
Space	5,751	5,751	1	-3,491	45
IT/Electronic Claims Management System	820	820	1	16	17
<b>Total Non-Personnel<sup>4</sup></b>	<b>13,464</b>			<b>-3,084</b>	<b>208</b>

**4. Justification for Non-Personnel Annualizations**

Base automated litigation support is included for each new attorney and paralegal. These costs are lapsed in FY 2024. The annualization in FY 2025 provides additional funding for a full year of support. In FY 2026, two percent inflation is applied to account for increases in contract costs. Additionally, funding is necessary to pay for additional space given the number of personnel; for FY 2024 funding for build out costs is also requested, and the non-recur cost adjustment for FY 2025 reflects the completion of build-out and the transition to regular yearly space costs.

**5. Total Request for this Item**

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	36	27	26	7,600	6,400	14,000	0	0
Increases	67	48	34	7,415	13,464	20,879	4,212	776
<b>Grand Total<sup>5</sup></b>	<b>103</b>	<b>75</b>	<b>60</b>	<b>15,015</b>	<b>19,864</b>	<b>34,879</b>	<b>4,212</b>	<b>782</b>

**6. Affected Crosscuts**

N/A

<sup>4</sup> Totals may not add due to rounding.

<sup>5</sup> Totals may not add due to rounding.

## **B. PROTECTING NATIONAL PROGRAMS, FEDERAL POLICY PRIORITIES, AND NATIONAL SECURITY**

Budget Decision Unit(s): Legal Representation

Organizational Programs: Civil Division, Federal Programs Branch

Program Increase: Positions 16; Atty 12; FTE 8; Dollars \$1,813,000

### Description of Item:

The Federal Programs Branch has an active trial court practice, litigating on behalf of the President, Cabinet officers, other government officials, and almost 100 agencies. Branch attorneys handle some of the highest profile, most sensitive, and most significant litigation matters affecting the United States' interests, including defending against constitutional challenges to federal statutes, suits to overturn significant government policies and programs, and attempts to vacate government decisions with broad ramifications. The Branch also initiates litigation to enforce important statutes, to remedy statutory and regulatory violations, and to challenge state and local laws that are pre-empted by federal law. Litigation handled by the Federal Programs Branch directly advances several priorities of the Department and the Administration, including by defending challenges to the President's Executive Orders. A significant portion of Federal Programs' workload involves national security. To adequately staff these matters, the Federal Programs Branch is requesting \$1.8 million, 16 positions (12 attorneys) and eight FTE.

### Justification:

Over the last 10-12 years, the Branch's caseload has increased 99 percent while its workforce has remained flat. During that same period, the number of cases involving expedited proceedings (generally motions for temporary restraining orders and/or preliminary injunctions) has also increased dramatically, requiring complex and extensive briefing in extremely short time frames. These trends show no sign of abating. There has also been a significant increase in "multiple-jurisdiction" challenges, in which a single program or policy is challenged in multiple jurisdictions across the country, often simultaneously. Defending these cases requires substantial Division resources. Many of these cases are brought by State Attorneys General and/or interest groups and are staffed by large law firms. The cases are often discovery and resource intensive, and so the Branch must staff them with large teams of attorneys and support staff instead of assigning them to a single attorney, which used to be the prevailing practice in the Branch.

Because the Branch handles some of the most complex and high-profile challenges to government laws and regulations, attorneys are expected to fully devote themselves to each case or set of cases in order to gain a comprehensive understanding of the relevant program and legal framework and to fully develop and vet the legal arguments. Branch attorneys are often called on to coordinate a national litigation strategy and to advise and closely consult with leadership at DOJ and client agencies. However, the increase in workload—coupled with the acceleration in the pace of litigation and the lack of increased staffing—threatens to undermine the model on which the Branch was built decades ago.

The requested funding would enhance the ability of the Federal Programs Branch to effectively defend federal policies by staffing cases at a level warranted by their complexity and importance, as well as the pace of the litigation. The enhanced staffing levels will enable attorneys to devote the time and attention required to assert the federal government's interests in the most complex federal cases. This funding will greatly limit the need to rely on individual U.S. Attorney's offices, who are already facing competing priorities and resource constraints.

Impact on Performance:

The requested resources would support a broad range of work. The Federal Programs Branch is heavily involved in work that supports the priority of Ensuring Economic Opportunity and Fairness for All. The Branch routinely handles litigation addressing the distribution of CARES Act and other federal funding, and it advises federal agencies and the White House on ways to prevent fraud and abuse. Branch attorneys have handled scores of cases raising constitutional challenges to consumer protection statutes such as the Telephone Consumer Protection Act and the Fair Debt Collection Protection Act. Federal Programs attorneys also handle litigation challenging food safety regulations promulgated by the Department of Agriculture and credit regulations promulgated by the National Credit Union Administration, among others.

The Branch also handles a wide range of national security matters. Branch attorneys review all proposed sanctions designations (including supporting information, much of which is often classified) by the Office of Foreign Assets Control and the State Department under the International Emergency Economic Powers Act and other sanctions regimes for litigation risk and legal sufficiency. Attorneys also handle challenges to decisions by the Committee on Foreign Investment in the United States—a broad interagency committee responsible for reviewing corporate transactions that could result in a foreign person being in control of a U.S. business, and taking action to identify and address national security risks associated with such transactions. Additionally, the Branch is regularly involved in other litigation matters involving the Department of State, ranging from the presentation of the United States' position on the immunity of foreign states and officials in suits brought in U.S. Courts to the regulation of munitions-related exports (including litigation concerning the export of files related to the manufacture of 3-D printed guns). The Branch is regularly called upon to protect national security information in litigation, and, where appropriate, to present state secrets privilege assertions in district courts. It also handles a sharply increasing volume of litigation seeking sensitive government information (including classified and law enforcement information) under the Freedom of Information Act ("FOIA").

In addition to contributing to these critical priorities and directly supporting the validity and operations of past and current United States policies, programs, and actions across administrations, this work and the requested resources also support the ability of the United States government and its agencies to respond to future needs and threats. The Branch's efforts help ensure that detrimental precedents are not set that would prevent the government from taking critical actions or making necessary decisions in response to new challenges.

**1. Base Funding**

<i>FY 2022 Enacted</i>				<i>FY 2023 Enacted</i>				<i>FY 2024 Current Services</i>			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>137</u>	<u>119</u>	<u>137</u>	<u>26,935</u>	<u>137</u>	<u>119</u>	<u>137</u>	<u>27,474</u>	<u>137</u>	<u>119</u>	<u>137</u>	<u>28,023</u>

**2. Personnel Increase Cost Summary**

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	1,499	12	236	125	1	1,504	4
Paralegals / Other Law (0900-0999)	257	4	114	59	36	235	145
<b>Total Personnel</b>	<b>1,756</b>	<b>16</b>				<b>1,739</b>	<b>149</b>

**3. Non-Personnel Increase Cost Summary**

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Automated Litigation Support	57	5	16	75	3
<b>Total Non-Personnel</b>	<b>57</b>			<b>75</b>	<b>3</b>

**4. Justification for Non-Personnel Annualizations**

Base automated litigation support is included for each new attorney and paralegal. These costs are lapsed in FY 2024. The annualization in FY 2025 provides additional funding for a full year of support. In FY 2026, two percent inflation is applied to account for increases in contract costs.

**5. Total Request for this Item**

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	137	119	137	26,277	1,746	28,023	0	0
Increases	16	12	8	1,756	57	1,813	1,815	152
<b>Grand Total<sup>6</sup></b>	<b>153</b>	<b>131</b>	<b>145</b>	<b>28,033</b>	<b>1,803</b>	<b>29,836</b>	<b>1,815</b>	<b>152</b>

**6. Affected Crosscuts**

National Security, Counterterrorism

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<sup>6</sup> Totals may not add due to rounding.