



*U.S. Department of
Justice*

Civil Division

FY 2022 Budget & Performance Plans

May 2021

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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 unique matters. In total, the Civil Division litigates matters on behalf of over 100 different federal agencies. This litigation encompasses an array of the Federal Government’s legal interests ranging from challenges to immigration policies and decisions, Congressional enactments, and national security prerogatives and decisions; contract disputes; efforts to combat fraud and the abuse of federal funds and benefits programs; multi-million dollar tort claims; alleged takings of property; and intellectual property disputes.

FY 2022 Full Program Costs

The FY 2022 Civil Division budget request provides for **\$328,537,000** and **1,171** positions, including 896 attorneys. This request includes a program increase for Civil’s COVID-19 related civil litigation work.

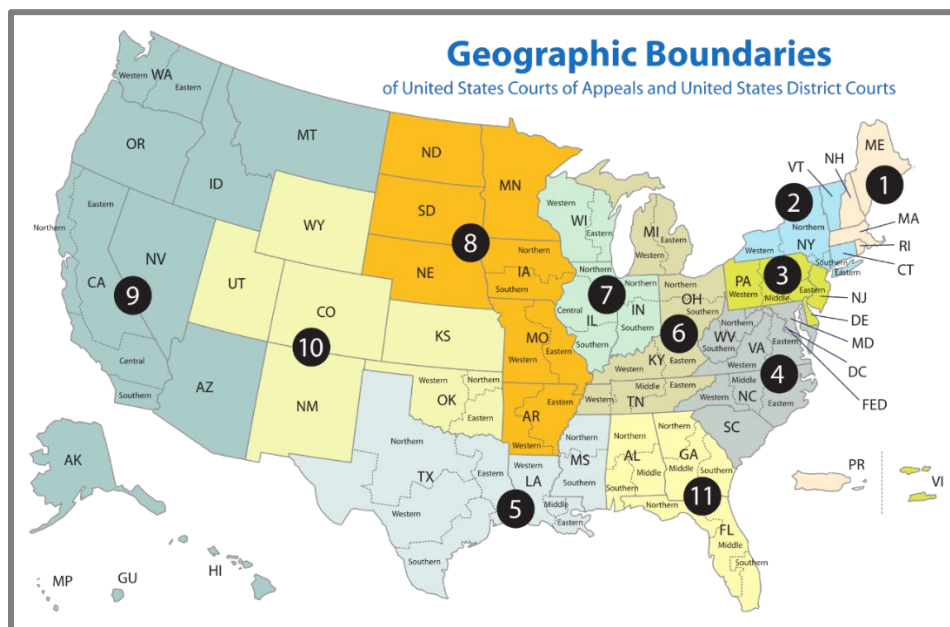
Beyond traditional litigation, the Civil Division helps administer three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the September 11th Victim Compensation Program.

Civil Division in Action

The diversity of the Civil Division’s subject matter expertise is impressive, as are the results of the Division’s litigation. In FY 2020, the Civil Division:

- **Secured** over \$6.1 billion in settlements, judgments, fines, and restitution.
- **Defeated** all or nearly all of the opposing party’s claims in 89 percent of defensive cases.
- **Defended** cases in which opposing parties sought trillions of dollars from the United States.
- **Defeated** thousands of challenges to laws, regulations, policies, and administrative decisions.

The Civil Division protects the United States Treasury, ensures that the Federal Government speaks with one voice in its view of the law, preserves the intent of Congress, and advances the credibility of the government before the courts. In these efforts, the Civil Division handles cases that are so massive and span so many years that it would overwhelm the resources and infrastructure of any individual field office. For this reason, 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.



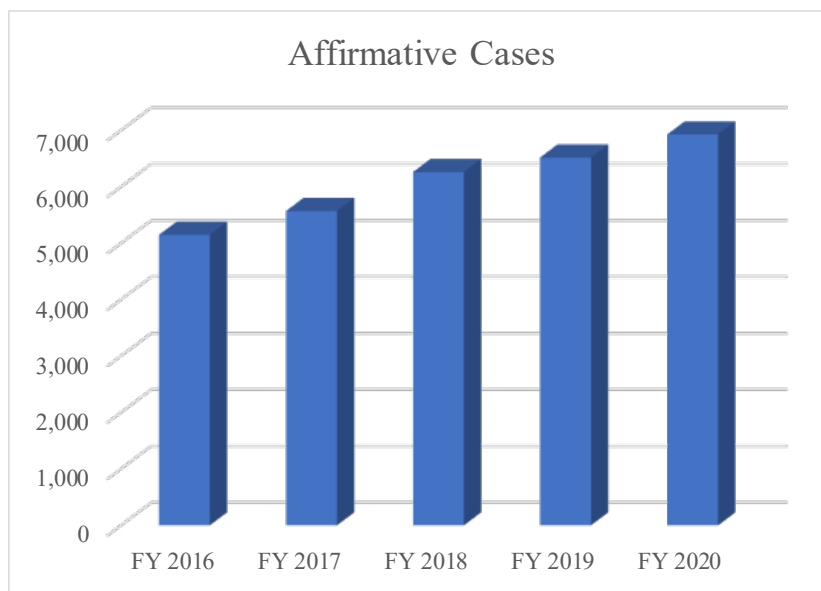
Electronic copies of the Department of Justice’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/doj/budget-and-performance>.

B. MISSION AND OBJECTIVES

The Civil Division’s litigation directly benefits the American people by protecting their safety, security, and health through defensive and affirmative litigation. The Division pursues fraud against those who seek to take advantage of the nation’s most vulnerable, as well as fraud against federal health care programs, including Coronavirus (COVID-19) pandemic related matters. Civil’s consumer litigation also includes a focus on cases against those who market unsafe or fraudulent products and services such as the sale of false, unapproved, misbranded, and counterfeit treatments, preventions, and vaccines; improper prescribing of medications; counterfeit and misrepresented personal protective equipment (PPE); and counterfeit, unapproved, and misrepresented COVID-19 test kits. 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 billions of dollars for the U.S. Treasury through cases involving health care fraud, financial fraud, procurement fraud, bankruptcies, and the underpayment of customs duties, civil penalties, and oil spills. 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 Fiscal Year (FY) 2020, the Civil Division secured over \$6.1 billion in settlements, judgments, fines, and restitution in affirmative, monetary matters. The Civil Division also defends federal agencies in cases where other parties file monetary claims against the Federal Government. The largest cases, in terms of dollars at issue, typically relate to contract disputes, procurement decisions, patent claims, accident and liability claims, 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 trillions of dollars each year; in FY 2020 the Division defeated trillions of dollars in cases that were closed.

Furthermore, the Civil Division’s litigation extends beyond monetary claims. Civil also protects the integrity of federal laws, regulations, policies, and programs. This litigation reflects the diversity of the Federal Government’s activities and involves challenges to statutes passed by Congress, domestic and foreign operations and providing legal advice and review to agencies interpreting, adjusting, or developing new regulations or responding to novel requirements and crises.



C. INTERNAL AND EXTERNAL CHALLENGES

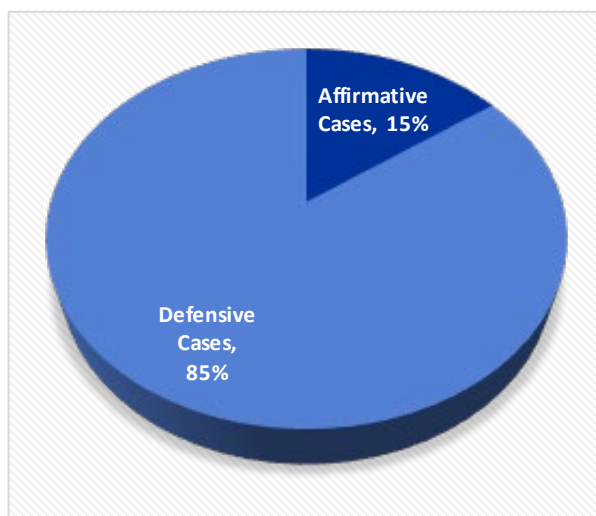
The Civil Division faces significant external and internal challenges affecting its ability to meet mission critical goals and objectives. These include, but are not limited to:

- Keeping pace with the increasing level of defensive cases, which allow Civil little control over its workload;
- Defending the U.S. Government against increasingly complex and well-litigated challenges; and
- Providing ample levels of Automated Litigation Support (ALS) to support Civil Division attorneys.

External Challenges

The Civil Division’s greatest continuing challenge is that 85 percent of its caseload defends the United States from claims filed against it. Opposing parties file constitutional, contractual, and accident liability challenges, and many other lawsuits against the United States in domestic and foreign courts. Opponents decide the time, nature, and location of the claim. Once litigation commences, the Federal Government must respond to the suit, lest it face default judgments or sanctions. Civil must vigorously represent the Federal Government in these increasingly complex matters.

The underlying events that give rise to litigation are typically beyond the Civil Division’s control, unpredictable, or even unknowable. Incidents such as challenges to executive orders, changes in federal policy, contractual disputes between an agency and its vendor, bankruptcy filings, natural disasters such as hurricanes, and other catastrophic events such as oil spills can lead to litigation. The COVID-19 global pandemic is proving to be such an event. As of March 2021, the Division has taken on 1,179 cases (including personally and jointly handled cases, monitored cases, and delegated cases.) In any such matter, including the pandemic response, the Civil Division represents the interests of the United States; however, Civil cannot forecast when or where this litigation will occur.



The Civil Division’s cases continue to grow in size, scope, and complexity in all aspects of the law, and the Division must litigate an increasing level of fast-moving and consequential cases, often against aggressive and well-litigated challengers. Such legal opponents are presenting complex, well-funded suits against the Federal Government, which requires the Civil Division to assign more attorneys to each case for longer periods of time in order to best defend the interests of the United States. Doing so exhausts available resources more rapidly and places a significant strain on the Division.

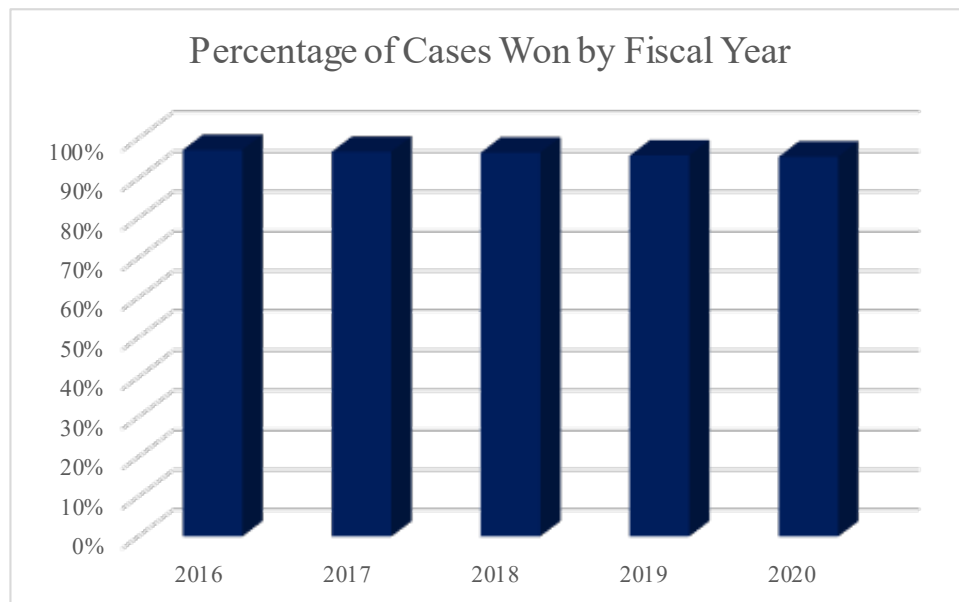
Internal Challenges

The Civil Division is responding to an ever-increasing caseload with greater complexity of data in 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 ALS Program to combat these challenges.

The Civil Division's ALS Program is essential to the Division's success in litigation. ALS services are critical for acquiring, screening, organizing, and analyzing documents and data required for cases. Civil uses 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 is a feature of Civil's cases as they grow in size and complexity. For example, the Office of Litigation Support (OLS) has supported the Division's Spent Nuclear Fuel (SNF) cases for nearly 16 years, beginning with the first complaint filed in February of 1998; OLS has supported 46 trials to date in the SNF litigation. One of the critical features of the ALS Program is Civil's ALS Labs. ALS Labs 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 search, review management, production and deliverable preparation, and discovery consultation services that are critical to the success of the Division's litigation efforts. Without ALS support, several hundred cases would not have basic services available, such as data processing and document review, which would negatively affect the calculus for the Government's settlement evaluation. A lack of ALS resources would also dramatically raise the possibility of the Government's cases failing, resulting in increased judgment awards or an adverse impact to Government programs and policies.

Addressing the Civil Division's Challenges

The overwhelming majority of the Civil Division's cases are defensive, and Civil must respond to the lawsuits on behalf of the Federal Government. The Civil Division makes every effort to be successful in the face of these challenges. The dedication to the Department's mission is evident in the percentage of cases won, which has remained above 95 percent in each of the past five years. The funding requested in FY 2022 will provide resources for the Civil Division to continue to address these challenges, while supporting the Administration's efforts to combat the COVID-19 pandemic and protect the most vulnerable Americans.



II. Summary of Program Changes

Item Name					Pg.
	Description	Pos.	FTE	Dollars (\$000)	
COVID-19 Civil Litigation	Additional term positions and resources to address the substantial additional workload associated with the COVID-19 pandemic and its wide ranging social and economic impacts.	35	18	\$4,755	25

III. Appropriations Language and Analysis of Appropriations Language

The FY 2022 Budget Request includes a proposed change in the Legal Activities, Salaries and Expenses, General Legal Activities appropriations language, which is explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

Proposed Change

In addition, for *reimbursement of* expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, [not to exceed \$17,000,000] *\$21,738,000* to be appropriated from the Vaccine Injury Compensation Trust Fund and to remain available until expended.

Analysis of Appropriations Language

The FY 2022 budget adds in “reimbursement” language that was previously removed in FY 2021’s enacted language. This language would clarify that the Vaccine funding is reimbursed by the U.S. Department of Health and Human Services (HHS) via direct collections. Additionally, the “not to exceed” language is requested to be deleted, as the appropriation language provides a defined amount for the Vaccine Injury Compensation Program.

Summary

The Vaccine Injury Compensation Program (“VICP” or the “Program”) has experienced a steady and staggering increase in its caseload over the past seven years, with no expectation of abatement, and indeed, the number of new cases continues to climb beyond projections. The VICP received more than three times the number of cases in the first quarter of FY 2021 than the program did in the first quarters of FY 2016 through FY 2020. Almost 1,600 new petitions were filed in the first six months of FY 2021, which exceeds the total annual number of petitions filed in every year in the Program’s 33-year history, with only two exceptions; the Program is on pace to receive at least 2,200 new cases in FY 2021, if not more. Presently, more than 5,000 cases are

pending. Additionally, a large number of case filings relating to the human papillomavirus (HPV) vaccine are expected to occur in late FY 2021 or early FY 2022, likely totaling upwards of 1,000 cases alone. In FY 2022, Civil is requesting a total reimbursement of \$21.7 million. This funding level accounts for the annualization of the FY 2021 additional attorney positions, and adds 13 new attorney positions and provides \$171,360 for an additional contract position to assist with the administrative tasks of the office, including managing the VICP's extensive expert witness program.

Funding for VICP is unique in that Congress appropriates a reimbursement from the Vaccine Injury Compensation Trust Fund to the HHS, the Civil Division, and to the Special Masters at the U.S. Court of Federal Claims. The Vaccine Injury Compensation Trust Fund, which has a current balance of \$4.1 billion and is funded by an excise tax on vaccines, also pays compensation to petitioners, as well as attorneys' fees and costs. Providing the Civil Division with the necessary resources to maintain its attorney staff and hire quality expert witnesses with medical, scientific and life care expertise will enable the Division to adequately litigate VICP cases, and will prevent potentially unmeritorious cases from receiving compensation and meritorious cases from being overcompensated.

Background

Congress enacted the National Childhood Vaccine Injury Act of 1986 (the "Act") to avert a crisis related to the vaccination of children. There were two primary concerns: (1) individuals harmed by vaccines faced an inconsistent, expensive, and unpredictable tort system; and (2) the risk of litigation threatened to reduce vaccine manufacturing to a level that could not meet market demands. This program now applies to any individual, of any age; anyone who received a covered vaccine and believes he or she was injured as a result, can file a petition.

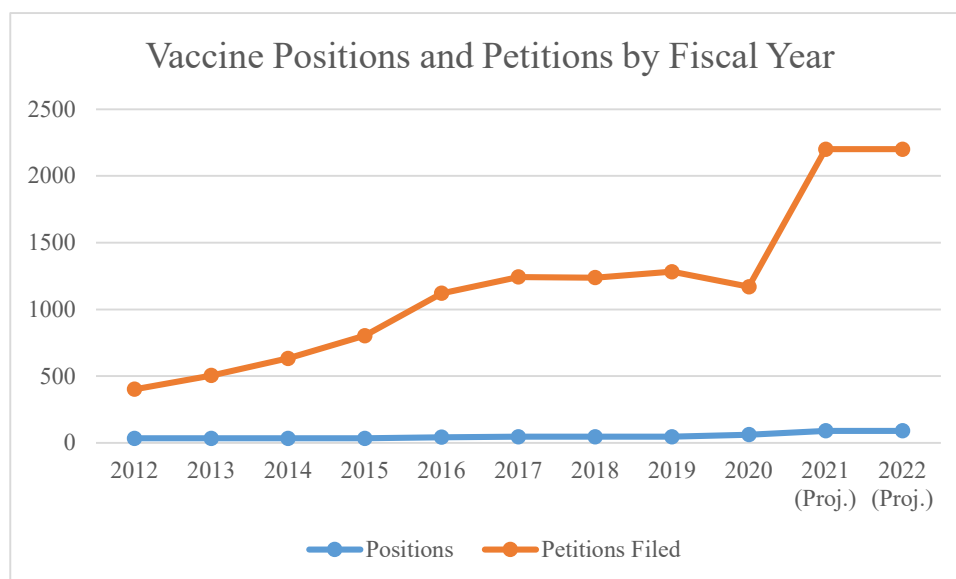
The mission of the VICP is more critical than ever. While vaccines have now been developed for the novel coronavirus, the vaccine composition is likely to need continued reviews and updates, as recent concerns with multiple new variants show that the virus is likely to continue to mutate in the years to come. The ability of vaccine manufacturers to rely on the Vaccine Injury Compensation Program to insulate them from liability for alleged injuries resulting from currently covered vaccines administered in the United States has been, and continues to be, key to manufacturers' willingness to develop new vaccines. If and when the coronavirus vaccine is recommended by the Centers for Disease Control for routine administration to children or pregnant women, the coronavirus vaccine may become covered by the VICP. It also appears possible that the coronavirus vaccine, many of which are currently administered in two doses (and could double the potential for claims), could be an annual vaccine, like the seasonal influenza vaccine, which accounts for the vast majority of currently pending cases in the VICP given its wide distribution. Consequently, the addition of coronavirus vaccine to the VICP's coverage could increase the number of VICP cases significantly necessitating even greater resources, making the requested funding all the more vital to the continued performance of the program's essential mission.

The Act established the VICP, a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines. In this system, an individual files a petition with the U.S. Court of Federal Claims. The Civil Division represents the interests of the United States

and collaborates closely with HHS to determine if a petitioner's alleged injuries merit compensation.

Justification

There has been a tremendous flood of newly filed VICP cases in recent years.



Securing additional attorney positions has been critical to being able to meet the demands of the caseload and the court. The Civil Division's FY 2022 President's Budget includes an increase of 13 attorneys, which will bring the number of positions affiliated with the program to 90. These attorneys conduct the necessary analysis and review of each case so as to settle and try those cases more effectively, as well as ensure that non-meritorious cases do not receive compensation, and meritorious ones are not overcompensated. Additionally, having an adequate number of attorneys on staff to manage the caseload contributes to attorney retention, and thus a consistent level of expertise needed in the defense of Vaccine Act cases.

In addition, given the volume of VICP expert witness contracts, it is essential that there is a dedicated contact to manage these contracts and to assist the expert witnesses in navigating the federal expert witness process, thereby generating good will and a willingness to continue participating as a government expert in Vaccine Act cases. Therefore, the FY 2022 request includes \$171,360 for a contract position to assist with the review, coordination and management of the expert witness contracts, to include tracking funding, assisting with timely contract modifications and deobligations, and functioning as a point of contact for expert witnesses to resolve any questions and concerns. Having a dedicated contractor for contract oversight will enable Civil Division attorneys to concentrate their efforts on successfully litigating cases and will allow paralegal support staff to focus on drafting legal pleadings and memoranda, and other tasks that are essential to support the litigation of Vaccine Act cases.

Impact on Performance

Funding necessary adjustments to base requirements, as well as a contract administrative position, will enable the Civil Division to properly litigate cases and prevent summary action

being taken by the Court which would be adverse to the government's interests. It will also ensure that petitioners with meritorious claims receive compensation in a timely manner, and prevent petitioners with pending claims from abandoning the VICP and filing civil lawsuits against vaccine manufacturers or administrators. Providing Civil with proper financial resource support will prevent failure of the Program as a whole by ensuring its continued viability.

IV. Program Activity Justification: Legal Representation

A. LEGAL REPRESENTATION

1. Program Description

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2020 Enacted	1,136	1,037	\$295,084
2021 Enacted	1,136	1,136	\$316,438
Adjustments to Base and Technical Adjustments	0	0	\$7,344
2022 Current Services	1,136	1,136	\$323,782
2022 Program Increases	35	18	\$4,755
2022 Request	1,171	1,154	\$328,537
Total Change 2021-2022	35	18	\$12,099

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 and their sections are listed below.



Appellate Staff



Commercial Litigation Branch

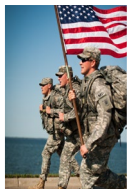
- Corporate and Financial Litigation Section
- Office of Foreign Litigation
- Fraud Section
- Intellectual Property Section
- National Courts Section



Consumer Protection Branch



Federal Programs Branch



Office of Immigration Litigation

- District Court Section
- Appellate Section
- Enforcement 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 set far-reaching precedents. The Appellate Staff litigates many of these difficult and controversial cases in which the Federal Government is involved, including 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, which are often the last word on these issues of national significance. A sizeable portion of Appellate's caseload involves the defense of national security policies in federal appellate courts, such as actions challenging the intelligence community's counterterrorism efforts, including surveillance and investigation methods, challenges to restrictions on terrorist financing and travel, defense of military policies, suits by Guantanamo Bay detainees challenging the lawfulness of their detentions, and defending individual federal officers and employees sued for alleged constitutional violations (Bivens claims). The Appellate Staff is also handling emergent and continuing litigation related to COVID-19; over the past year the Appellate Staff has devoted significant attorney time to bringing and defending appeals in the courts of appeals arising out of such matters. These disparate matters have involved defending the CDC's eviction moratorium, the Bureau of Prisons' efforts to combat COVID-19, the Small Business Administration's rules implementing the Coronavirus Aid, Relief, and Economic Security (CARES) Act's small business loan program, and the Small Business Administration's (SBA) implementation of the Paycheck Protection Program (PPP) in bankruptcy matters, as well as consultation on implementation of the American Rescue Plan Act's stimulus grants to state governments concerning eligibility for the SBA's PPP. The Appellate Staff also 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 involving money and property that involve significant federal interests. The Section has a primary role in the United States' affirmative efforts to collect debts owed the United States and protect the fiscal integrity of federal lending and health care programs. The Section's cases, which are both affirmative and defensive and litigated in courts throughout the country, involve many different industries, including health care providers, drug manufacturers, insurers, communications companies, energy producers and suppliers, and commercial airlines.

A significant focus of the Section are matters involving highly-regulated businesses and those with large-dollar government contracts, loans and grants that are in bankruptcy or otherwise facing financial distress. As a result of the COVID-19 pandemic, the government initiated a wide-range of financial programs involving billions of dollars. Litigation involving these programs and amounts to be repaid to the government will form a large portion of the Section's work in FY 2022. In addition, the pandemic has caused a substantial increase in business

failures. Large company business failures in highly regulated industries, including the energy, airline and health care industries, impact large-dollar federal interests that the Section protects with its sophisticated financial litigation expertise.

Office of Foreign Litigation

The Office of Foreign Litigation (OFL) represents government's interests in foreign courts. OFL currently has approximately 1,900 cases in over 100 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 State and its officials against claims arising from our 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. OFL cases span a wide range of subjects including: national security, visa fraud, data privacy, tax and revenue, intellectual property, employment, breach of contract, foreign aid, and real property disputes. 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 federal health care programs, the military, programs designed to aid small businesses, and the evasion of customs duties, and any other type of fraudulent conduct that results in the waste and abuse of taxpayer funds. 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 2020, the Department recovered more than \$5.2 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 2020, 672 qui tam suits were filed, and the Department obtained settlements and judgments totaling \$1.7 billion in these suits. Whistleblower awards during the same period totaled \$309.0 million.

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. Moreover, to ensure a coordinated approach to fighting fraud on these programs, the Fraud Section will continue to partner with the Criminal Division, the United States Attorney's Offices (USAO), federal agencies, and the Pandemic Response Accountability Committee (PRAC) on these matters. The Fraud Section has also been pursuing and will

continue to pursue and litigate the myriad types of health care and procurement fraud schemes arising from the COVID-19 pandemic, including 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 anticipates devoting significant attorney and staff resources to these matters.

The Fraud Section also heads the Department's Elder Justice Initiative, which leads and coordinates the Department's enforcement and programmatic efforts combatting elder abuse, neglect, and financial exploitation of the nation's seniors. The Section generated data to support the Department's 2020 National Nursing Home Initiative and trained hundreds of trial attorneys and Assistant United States Attorneys throughout the country on how to investigate and prosecute nursing homes for providing grossly substandard care to their residents, which gained critical importance over the last year in the face of the COVID-19 pandemic.

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 IP 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 infringement and defends the validity of government-owned patents in *inter partes* actions before the Patent Trial and Appeals Board. The IP 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 critical to national security. 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, and 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 growing number of lawsuits (referred to as bid protests), challenging agency contracting efforts. In FY 2020, National Courts received a massive influx of cases from the CIT for cases relating to tariffs on Chinese imports. The COVID-19 pandemic

has also caused a significant, resource-intensive increase in litigation and requests for advice from agencies, with numerous complaints being filed in the Court of Federal Claims.

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 under national consumer protection statutes. Its workload involves pharmaceuticals and medical devices, deceptive trade practices and telemarketing fraud, adulterated food and dietary supplements, consumer product safety, elder fraud, and opioids. In addition, the Branch defends the Federal Government against challenges to consumer protection programs and policies. The Branch is unique within Civil because it has both criminal and civil jurisdiction.

The CPB is at the forefront of the Department's nationwide response to detect, deter, disrupt, and punish illegal consumer fraud relating to the national emergency caused by COVID-19. Working together with federal law enforcement agencies throughout the country, CPB is coordinating enforcement responses to COVID-19-related consumer scams, leading a multi-agency working group, and collaborating closely with the Deputy Attorney General's coronavirus coordinators to identify and disrupt emerging fraud schemes. Constantly reviewing consumer complaints, CPB is sending investigative leads to the U.S. Attorneys' Offices (USAOs), deconflicting investigations, and providing training, guidance, and support for investigations and litigation. CPB attorneys are using both criminal and civil tools to stop fraudsters. Health-related frauds under investigation include, but are not limited to, the sale of false, unapproved, misbranded, and counterfeit treatments, preventions, and vaccines; improper prescribing of medications; counterfeit and misrepresented PPE; and counterfeit, unapproved, and misrepresented COVID-19 test kits. As of the end of March 2021, the Department of Justice had publicly charged 474 people with criminal offenses related to fraud schemes connected to the COVID-19 pandemic and involving attempts to obtain of \$569.0 million from the U.S. government and unsuspecting individuals.

Federal Programs Branch

The Federal Programs Branch has an intensely 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 most high profile, sensitive, 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 already active caseload, the COVID-19 pandemic and federal response has affected nearly every area of the Federal Programs Branch's diverse practice, and 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 weeks, months, and even years to come.

Office of Immigration Litigation

The Office of Immigration Litigation (OIL) attorneys vigorously defend the Executive Branch decisions regarding border security and pursue consistent enforcement of the country's immigration laws.

District Court Section

The Office of Immigration Litigation's District Court Section (OIL-DCS) is a highly active litigation section. It represents a number of agencies at the trial level in immigration cases arising in the 94 federal district courts nationwide, and has primary responsibility for handling appeals arising from those cases. OIL-DCS represents the federal government in cases involving a wide range of complex immigration matters, to include cases involving passports and visas; employment-related visas and foreign worker programs; soldier naturalization cases; class action lawsuits; and national security matters, including actions involving individuals with established terrorism ties.

OIL-DCS has been severely impacted by COVID-19-related litigation; through the end of March 2021, OIL-DCS received almost 900 new claims raising COVID-19 issues, including over 20 new class actions and several programmatic challenges to the U.S. Immigration and Customs Enforcement (ICE) and Executive Office for Immigration Review's (EOIR) operation of removal proceedings. This, together with COVID-19 related emergency litigation in several existing cases, has resulted in at least 60 appealable adverse decision for processing and subsequent work in the courts of appeals. While OIL-DCS worked diligently to bring these cases to their conclusion, almost 200 remain pending and more are expected. The majority of these cases began with extensive emergency motions for temporary restraining orders requiring response deadlines ranging from 24-hours to one-week, however, there remains ongoing complex discovery, monitoring of compliance with preliminary injunctions, settlement and mediation discussions, and corresponding monitoring and compliance obligations that could last years. OIL-DCS is also coordinating the nationwide response by providing support to United States Attorney's Offices, assigning an OIL-DCS point of contact to each case and hosting twice weekly teleconferences to discuss developing issues, key arguments, and issues. OIL-DCS further supports the government's COVID-19 litigation by drafting the briefings to support USAO arguments, and coordinating with the Department of Homeland Security (DHS), ICE, the Civil Division, and Departmental leadership.

Enforcement Section

The Office of Immigration Litigation's Enforcement Section (OIL-Enforcement) works closely with the Federal Bureau of Investigations (FBI), DHS, the Criminal Division, and the USAO to denaturalize individuals who pose potentially grave threats to public safety and the nation's security, including known or suspected terrorists, violent criminals, human traffickers, war criminals, human rights abusers, child sex abusers, and fraudsters. In February of 2020, for example, a former Nazi concentration camp armed guard was removed from the United States to Germany; as stated at the time, "...In this year in which we mark the 75th anniversary of the Nuremberg convictions, this case shows that many decades will not deter the Department from pursuing justice on behalf of the victims of Nazi crimes". OIL-DCS also coordinates litigation strategy on these cases with the various United States Attorneys throughout the United States.

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 Court of Appeals and support the Office of the Solicitor General's immigration litigation efforts in the U.S. Supreme Court. These cases comprise 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 him or her 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, and 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 the DHS enforcement efforts and the resulting removal adjudications by EOIR. OIL-Appellate is currently experiencing a surge of cases relating to COVID-19 in the form of habeas petitions being filed by detained petitioners seeking immediate release from custody. OIL-Appellate personally handles these cases instead of delegating to the U.S. Attorney's Office, because the habeas cases are filed by aliens with pending petitions for review (PFR) in the circuit courts. OIL-Appellate has approximately 10,300 cases pending in the circuits, and anticipates receiving another 3,600 PFR cases in the next six months. It is estimated about one third of all PFR cases involve detained individuals who may file a habeas corpus seeking release, and since March of 2020, the rate of habeas corpus filings has doubled to more than 250 from its previous annual high of about 125 personally-handled cases.

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 Section, and (4) Federal Tort Claims Act Litigation.

The Torts Branch also is home to tort reform programs, including the Vaccine Injury Compensation Program and the Radiation Exposure Compensation Act Program. 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 multiple 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 the cases regarding naval accidents on the destroyers USS Fitzgerald and USS John S. McCain.

Constitutional and Specialized Tort Litigation Section

The Constitutional and Specialized Tort Litigation Section consists of three groups: the Constitutional Torts Staff, the Office of Vaccine Litigation, and the Radiation Exposure Compensation Act Program. 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. Many cases encompass national security or law enforcement activity.

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 often in retaliation for doing their jobs or sometimes 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 Constitutional Torts 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. The importance of providing a vigorous defense to federal employees who are sued personally for official acts cannot be overstated. 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 in cases arising under the National Childhood Vaccine Injury Act of 1986, which created a unique mechanism for adjudicating claims of injury resulting from immunizations. Claimants 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 is designed to encourage the manufacture of vaccines 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. As a

result of the VICP, costly litigation has virtually ceased against drug manufacturers and health care professionals.

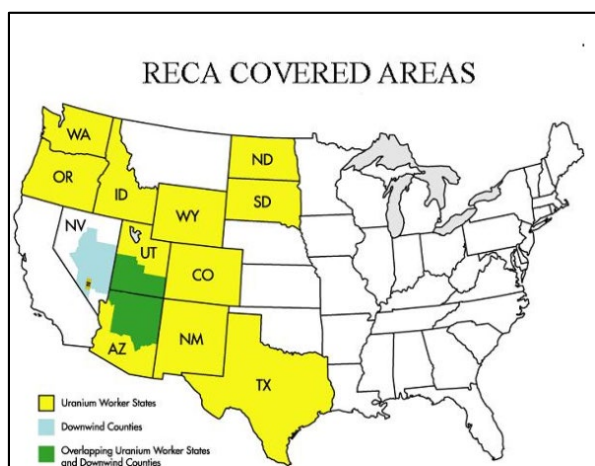
The VICP's administrative costs are funded out of an annual reimbursement from the Vaccine Injury Compensation Trust Fund, which itself is funded by an excise tax on vaccines. Compensation awards are paid from the trust fund as well. As of March 1st, 2021, the program has awarded more than \$4.5 billion to over 7,874 claimants, who almost certainly would not have received compensation through traditional tort litigation.

There has been a dramatic increase in vaccine cases filed in recent years, as the VICP has expanded to cover additional vaccines and injuries. From FY 2006 to FY 2012, approximately 400 new vaccine cases were filed each year. That figure nearly tripled beginning in FY 2016, with a total of over 1,100 new cases filed, and over 1,200 new cases filed in FYs 2017, 2018, and 2019. This trend shows no signs of abating, with at least 2,200 new cases expected in FY 2021 and 2,200 new cases expected in FY 2022. If the coronavirus vaccine were to become covered under the VICP (which would require that the vaccine be recommended for routine administration to children and pregnant women by the Centers for Disease Control, and a per-dose excise tax passed), this would have the potential to at least double the number of VICP petitions filed, to 5,000 in both FY 2021 and FY 2022. It is unclear at this time whether/when that coverage under the VICP would occur, or whether additional rulemaking would be required before the coronavirus vaccine would be included under the VICP. Also, at this point in time, we have no information about the safety and/or potential adverse effects of coronavirus vaccines, which obviously would impact the number of claims. At this point in time, coronavirus vaccine is covered under the Countermeasures Injury Compensation Program (CICP):

<https://www.hrsa.gov/cicp>.

The Radiation Exposure Compensation 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, the Act has compensated over \$2.4 billion in connection with over 37,481 approved claims for eligible individuals or their surviving beneficiaries through September 30, 2020.



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 ETL 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 multidistrict litigations. Mass tort cases being litigated by the ETL Section relate to: 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; natural resource damage and personal injury claims related to an alleged heavy metals release during an EPA investigation at Gold King Mine in Colorado; personal injury claims related to alleged groundwater contamination at Camp Lejeune, North Carolina; and World War II era chromium contamination from a former Air Force base in California allegedly causing groundwater contamination. Complex jurisdictional questions, a need for creative case-management solutions, and overlapping issues of history, law, and science are often the norm.



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.

The FTCA Section is currently defending the United States in suits brought by claimants seeking to hold the government liable for property damage, personal injury, and wrongful death arising out of the 2016 Great Smokey Mountains National Park Fires, as well as representing the United States in the Charleston, South Carolina and Sutherland Springs, Texas mass shooting cases. The number of lawsuits the FTCA Section has to defend will increase significantly as a result of the COVID-19 pandemic.

Office of Management Programs

The Office of Management Programs (OMP) supports the Civil Division's attorneys in all aspects of their work. The 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, the 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, the OMP is critical in supporting the Civil Division's mission overall.

September 11th Victim Compensation Fund Program

The September 11th Victim Compensation Fund ("VCF") was created by Public Law No. 107-42, as amended by Public Law No. 107-71, 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), which is administered by the Civil Division through a Special Master appointed by the Attorney General. As of December 31, 2020, the VCF has awarded nearly \$7.8 billion in compensation to 34,464 individuals who have suffered physical health conditions (including the families of over 1,700 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.

Performance and Resources Tables

Decision Unit: Civil Division - Legal Representation											
RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		2020		2020		2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 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)		1,220	295,084 [99,962]	1,084	293,270 [36,150]	1,217	316,438 [60,000]	18	12,099 [4,738]	1,235	328,537 [64,738]
Type	Performance	FY 2020		FY 2020		FY 2021		Current Services Adjustments		FY 2022 Request	
Workload Measure	1. Number of cases pending beginning of year	30,833		26,937		34,838		-7,445		27,393	
Workload Measure	2. Number of cases received during the year	13,215		18,066		15,386		-2,487		12,899	
Workload Measure	3. Total Workload	44,048		45,003		50,224		-9,932		40,292	
Workload Measure	4. Number of cases terminated during the year	12,445		10,165		4,909		3,284		8,193	
Civil Division Performance (Excludes VICP and RECA)											
Performance Measure	5. Percent of civil cases favorably resolved	80%		97%		80%		N/A		80%	
Performance Measure	6. Percent of federal denaturalization dispositions favorably resolved	80%		100%		80%		N/A		80%	
Performance Measure	7. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		89%		80%		N/A		80%	
Performance Measure	8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		85%		60%		N/A		60%	
Performance Measure	9. Percent of favorable resolutions in non-monetary trial cases	80%		81%		80%		N/A		80%	
Performance Measure	10. Percent of favorable resolutions in non-monetary appellate cases	85%		90%		85%		N/A		85%	

Data Definition, Validation, Verification, and Limitations: INFORMATION REQUIRED: Use this section to discuss data terms, data sources, how the information is collected, how the information is verified, and data limitations to include how well the indicator measures performance in this area.

Performance and Resources Tables

Decision Unit: Civil Division - Legal Representation

RESOURCES		Target	Actual	Projected	Changes	Requested (Total)
		FY 2020	FY 2020	FY 2021	Current Services Adjustments	FY 2022 Request
Vaccine Injury Compensation Program Performance						
Performance Measure	11. 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	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%

Data Definition, Validation, Verification, and Limitations: INFORMATION REQUIRED: Use this section to discuss data terms, data sources, how the information is collected, how the information is verified, and data limitations to include how well the indicator measures performance in this area.

History of Performance									
Decision Unit: Civil Division - Legal Representation									
Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
		Actual	Actual	Actual	Actual	Actual	Target	Target	Target
Workload Measure	1. Number of cases pending beginning of year	24,541	24,073	25,907	27,949	26,574	31,603	27,393	27,393
Workload Measure	2. Number of cases received during the year	14,471	17,108	14,027	14,046	18,103	12,434	12,899	12,899
Workload Measure	3. Total Workload	39,012	41,181	39,934	41,995	44,441	44,037	40,292	40,292
Workload Measure	4. Number of cases terminated during the year	13,036	15,274	11,985	11,162	10,134	12,442	8,193	8,193
Civil Division Performance (Excludes VICP and RECA)									
Performance Measure	5. Percent of civil cases favorably resolved	98%	97%	97%	97%	97%	80%	80%	80%
Performance Measure	6. Percent of federal denaturalization dispositions favorably resolved	100%	95%	94%	92%	100%	80%	80%	80%
Performance Measure	7. Percent of defensive cases in which at least 85 percent of the claim is defeated	91%	90%	84%	90%	89%	80%	80%	80%
Performance Measure	8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	69%	75%	76%	80%	85%	60%	60%	60%
Performance Measure	9. Percent of favorable resolutions in non-monetary trial cases	89%	89%	88%	81%	81%	80%	80%	80%
Performance Measure	10. Percent of favorable resolutions in non-monetary appellate cases	94%	94%	93%	91%	100%	85%	85%	85%

Data Definition, Validation, Verification, and Limitations: INFORMATION REQUIRED: Use this section to discuss data terms, data sources, how the information is collected, how the information is verified, and data limitations to include how well the indicator measures performance in this area.

Type	Measure	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
		Actual	Actual	Actual	Actual	Actual	Target	Target	Target
Vaccine Injury Compensation Program Performance									
Performance Measure	11. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	0%	0%	0%	0%	0%
Performance Measure	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	100%	92%	92%	92%

Data Definition, Validation, Verification, and Limitations: INFORMATION REQUIRED: Use this section to discuss data terms, data sources, how the information is collected, how the information is verified, and data limitations to include how well the indicator measures performance in this area.

V. Program Increases by Item

COVID-19 CIVIL LITIGATION

Organizational Program: Civil Division, Federal Programs Branch
Civil Division, Commercial Litigation Branch
Civil Division, Consumer Protection Branch
Civil Division, Office of Immigration Litigation

Program Increase: Positions 35 Atty 30 FTE 18 Dollars \$4,754,894

Description of Item:

The Civil Division requests 35 term positions (30 attorneys and 5 paralegals), 18 FTE, and \$4,754,894 in FY 2022 to address the substantial additional workload associated with the Coronavirus (COVID-19) pandemic, which is unlike any crisis this nation has experienced, resulting in far-reaching and long-term effects on society and the economy. The Division's workload has greatly expanded due to COVID-19, and will continue to do so.

The Civil Division is now defending the United States, its agencies, and its officers in 657 open and time-sensitive matters concerning essential elements of its pandemic response, such as drug approvals and restrictions, the temporary eviction moratorium, COVID-19-related immigration and travel limitations, loan programs for pandemic relief, and the disbursement of pandemic relief funds. It is also defending against suits involving ordinary government operations made difficult by the threat of COVID-19, including suits by federal employees seeking additional risk-related pay. Given the government-wide effort to revise regulatory programs and disburse enormous sums of loans and grants, the number and type of COVID-19-related cases filed against the government is expected to grow exponentially.

The Civil Division also handles affirmative civil enforcement matters arising from the COVID-19 pandemic, including investigations of alleged fraud in connection with the disbursement of trillions of dollars in relief funds through a wide array of government programs. As of the end of March 2021, 474 defendants have been publicly charged with criminal offenses based on fraud schemes connected to the COVID-19 pandemic, involving attempts to obtain over \$569.0 million from the U.S. government and unsuspecting individuals. Attorney General Merrick Garland stated that "The impact of the Department's work to date sends a clear and unmistakable message to those who would exploit a national emergency to steal taxpayer-funded resources from vulnerable individuals and small businesses. We are committed to protecting the American people and the integrity of the critical lifelines provided for them by Congress, and we will continue to respond to this challenge." The Civil Division's work is integral to continuing these priority efforts.

As it is in the best interest of the government that the division functions at an optimal level while continuing to engage in best practices to slow the spread of the virus and safeguard the health of employees, in addition to the initiatives as broken out below, the Civil Division's request includes \$537,668 for laptops, and \$100,000 to add video conferencing capabilities to 20 conference rooms. This will provide capacity expansion necessary to properly operate in the pandemic environment due to the increased use of video-conference based trials and remote work.

Justification:

The Civil Division's Federal Programs, Commercial Litigation, Consumer Protection, and Office of Immigration Litigation defend the government's civil interests and handle challenges to the COVID-19 response.

Federal Programs Branch

Federal Programs Branch attorneys have been providing legal advice and handling litigation arising out of nearly every aspect of the Federal Government's COVID-19 response for over a year. Early in the pandemic, the Branch established a team of attorneys to provide advice and handle emergency litigation. The Branch has been heavily involved in cases against the U.S. Department of Health and Human Services (HHS) and the Center for Disease Control (CDC). The Branch has handled nine challenges to the CDC's eviction moratorium alone, seven of which remain live. Three attorneys have spent from 50 to 90 percent of their time on these cases over the past six months, and the litigation continues.

Federal Programs attorneys have reviewed draft legislation leading to the enactment of the CARES Act and the implementation of rules by numerous federal agencies, including Housing and Urban Development rules providing protection from foreclosure and Small Business Administration (SBA) rules implementing the small business loan program. The Branch has handled at least 18 lawsuits challenging the loan programs operated by the SBA and Treasury, and has also defended a challenge to compliance with the obligation under the CARES Act to suspend wage garnishments on defaulted loans. Five attorneys have spent about 20 to 30 percent of their time on these cases over several months. Other work has included several cases challenging Treasury's allocation of emergency funds to Tribal governments; litigation arising out of Federal Emergency Management Agency (FEMA)'s allocation of Stafford Act funds and CARES Act funds to states to handle the pandemic response; and litigation challenging the Department of Agriculture (USDA)'s implementation of the statute providing emergency allotments under the Supplemental Nutrition Assistance Program in response to the pandemic, which, like the CDC eviction moratorium, seeks to provide protection and assistance to the most vulnerable Americans during the pandemic and resulting economic hardships.

The Branch's work related to law enforcement and national security has also increased significantly due to the pandemic. For example, the Branch has handled programmatic challenges against the Bureau of Prisons (BOP) and U.S. Marshals Service (USMS) regarding the agencies' response to the virus brought on behalf of inmates and employees. There have been at least 16 challenges to the manner by which the BOP is applying its incarceration and compassionate release policies, and four similar cases against the USMS relating to pre-trial detention. Several of the cases challenging BOP, USMS, and DHS policies are in emergency or

threatened Temporary Restraining Order and Preliminary Injunction postures with deadlines and other filings occurring multiple times a week. The Branch is also currently handling litigation concerning the disruption of counsel access to high-value detainees at Guantanamo Bay and expects further litigation over the preventive measures and medical care provided to detainees there. Adverse rulings in just these set of cases could result in the release of criminals who would otherwise be serving sentences.

Additionally, the Branch's already high-volume FOIA practice has required seeking numerous requests for stays and extensions of time due to agencies' diminished capacities to process FOIA requests. As of March 2021, the Branch is handling at least 36 FOIA cases concerning COVID-19-related records, and it expects more. As the federal government continues its robust response to the COVID-19 pandemic, the Civil Division expects the volume of cases to continue or increase and add to the Branch's significant pandemic caseload.

Commercial Litigation Branch

Historically, national crises have led to a surge in civil cases, generating significant litigation by (1) those directly affected by the government's efforts, (2) those who claim the government did not adequately assist them, and (3) speculators seeking to profit off the government's efforts to provide assistance. For example, the banking crises in the 1980s prompted Congress to pass the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989, with the objective of strengthening the banking system. As a result, savings and loans, banks, and their shareholders filed more than 120 lawsuits against the United States, seeking billions of dollars on the theory that FIRREA breached existing government contracts. Similarly, the government's response to the Great Recession and the American Recovery and Reinvestment Act of 2009 (ARRA) generated a wide range of litigation, some of which is ongoing more than a decade later.

The Commercial Litigation Branch's National Courts, Corporate/Financial, and Fraud Sections are encountering a broad range of litigation from the pandemic and the government response, and do not expect the work to abate for several years. The global economic downturn, loss of financial liquidity, and current levels of corporate debt, meanwhile, have combined to cause market analysts to project a substantial increase in business failures that are affecting the economy and federal financial interests now and will continue to do so for years to come. The Corporate/Financial Litigation Section is actively engaged with multiple federal agencies as they attempt to lend financial support to private industry in a fiscally responsible manner and modify affirmative debt collection practices to account for current financial conditions. The Section is handling multiple new litigation issues arising from the CARES Act, and anticipates a drastic increase in bankruptcy filings and corporate restructurings that impact large-dollar federal interests; cases already include more than 70 bankruptcy cases challenging the Small Business Administration's implementation of the Paycheck Protection Program (PPP), several cases challenging the constitutionality of amendments to the bankruptcy code made by the CARES Act, and cases challenging CARES Act provisions that assist health care providers. The litigation involving the PPP has consumed the full-time efforts of at least five attorneys.

Simultaneously, the Section is also advising multiple federal agencies on implementation of CARES Act funding programs for the airline and health care industries. The Section has already seen an increased need for government representation in large-dollar, complex bankruptcy cases

that operate in heavily regulated industries and are impacted by the COVID-19 pandemic. For example, the Section is representing important federal interests in the recently-filed bankruptcy case involving Intelsat, S.A., one of the largest providers of broadband services to the airline and cruise industries. Many complex bankruptcy cases have already been filed in the energy industry, particularly involving coal, oil, and gas producers. Additional cases are anticipated in the energy, communications, and transportation industries. Handling these complex bankruptcy cases requires specialized expertise and each case frequently requires 1,000 or more hours of attorney time each year. The pandemic's dramatic impact on the health care industry has also increased the Department's need for sophisticated bankruptcy expertise. Pending matters involving distressed hospitals and residential care facilities have grown complicated by new valuation, cost projection, and financing issues.

In addition, the frontline response to the pandemic has translated into financial instability throughout the healthcare industry which affects federally-financed healthcare facilities in both urban and rural areas. These health care providers rely heavily on the Medicare program for revenue and are the beneficiaries of federal loan and loan guaranty programs administered by the Departments of Housing and Urban Development, Agriculture and others. Many cases also involve allegations of COVID-related fraud. The pandemic's economic impacts will expand this aspect of the Division's workload through FY 2022 and beyond, as well as workload pertaining to protection of the financial interests of agencies that extend credit to critical business. This lending activity by the Department of Treasury, the Small Business Administration, the Department of Health and Human Services, and other agencies is requiring the Corporate/Financial Litigation Section to provide legal advice, as well as representation in corporate restructuring bankruptcy cases and affirmative litigation matters. The volume of litigation involving federal financial interests will grow through FY 2022 as businesses struggle to meet new challenges in the post-pandemic economy and fail to repay large-dollar loans and grants provided during the COVID-19 crisis; restructurings and related litigation will be complicated and involve time-consuming programmatic analyses and evaluation of complex financial transactions.

The Civil Division is likewise handling a surge in fraud cases arising from the pandemic through its enforcement of the civil False Claims Act. Through the CARES Act and American Rescue Plan Act, federal agencies are administering new programs distributing trillions of dollars in relief. “[Acting AAG] Boynton outlined six Biden administration priorities for FCA enforcement: fraud relating to the COVID-19 public health emergency, opioids, abuse and exploitation of senior citizens, fraud relating to electronic health records, telehealth schemes, and “technology outside of healthcare,” such as cybersecurity-related fraud. The DOJ is widely expected to engage in a significant uptick in enforcement actions as the Department begins to explore pandemic fraud relating to everything from CARES Act Provider Relief Fund payments to abuse of regulatory billing flexibilities offered by the Centers for Medicare & Medicaid Services (“CMS”). One target area also related to the pandemic is the new focus on telehealth.¹”

¹ Jones, Jaime L.M; Jenny, Brenna; Greene, Meredith N.; ““Come Down with a Sledgehammer”: Sen. Grassley and Acting Civil Division Head Boynton Discuss FCA Priorities”, February 18, 2021; Sidley False Claims Act Blog,

The Fraud Section is currently investigating hundreds of matters relating to the disbursement of provider relief funds, including healthcare provider loans and grants, the PPP, grants to state and tribal entities, and procurement contracts. The office is also investigating an array of healthcare fraud schemes arising from or exacerbated by the pandemic, including COVID-19 vaccine related fraud, lab testing schemes, and ineligible providers that exploited HHS waivers meant to make it easier for providers to offer services during the pandemic.

The Fraud Section has implemented a number of efforts to identify, monitor, and investigate these and other potential fraud schemes; the Section is actively reviewing whistleblower complaints; has identified dozens of potential additional cases based on referrals and media reports; and will conduct complex data analytics of loan information to identify and root out systemic fraud. The Fraud Section also has provided training to federal agencies on how to identify potential fraud impacting funds paid out by federal programs. In addition, the Fraud Section is working with the Pandemic Response Accountability Committee to establish a pipeline for fraud referrals. Lastly, the Section will be playing a central role coordinating all affirmative civil enforcement efforts related to COVID-19, including enforcement pursuant to the FCA. The Fraud Section anticipates that the majority of COVID-19 related fraud cases will be filed over the next one to two years and that the resulting investigations and potential litigation could continue for several additional years. The Fraud Section's attorneys are already fully occupied investigating or assisting with the more than 1,800 open qui tam actions pending in the office and 1,600 additional cases being litigated by whistleblowers. Since it is statutorily required to investigate the 600-700 new qui tam complaints filed by whistleblowers every year, the Fraud Section cannot re-purpose its existing resources to absorb the anticipated spike in COVID-19 related cases.

Consumer Protection Branch

The Civil Division's Consumer Protection Branch (CPB) is at the forefront of the Department's nationwide response to detect, deter, disrupt, and punish illegal conduct relating to the national emergency caused by COVID-19, and continues to play a key role in combatting coronavirus-related fraud schemes that target consumers. Working together with federal law enforcement agencies throughout the country, the CPB is coordinating enforcement responses to COVID-19-related consumer scams, leading a multi-agency working group, and collaborating closely with the Deputy Attorney General's coronavirus coordinators to identify and disrupt emerging fraud schemes.

With scammers around the world looking to bilk consumers with fake and unlawful cures, treatments, and personal protective equipment, the CPB has brought dozens of civil and criminal enforcement actions around the country to safeguard Americans' health and economic security, including taking the Department's first action against a COVID-19 fraud scheme. The CPB is responding to an increase in referred civil-penalty cases from the Federal Trade Commission, which recently received new COVID-19 authorities; combatting an increase in foreign-based scams that are stealing consumers' personal identifying information for fraudulent purposes by

<https://fcablog.sidley.com/come-down-with-a-sledgehammer-sen-grassley-and-acting-civil-division-head-boyn-ton-discuss-fca-priorities/>

falsely claiming to be state workforce agencies offering unemployment benefits; advancing efforts to enforce the CDC’s temporary eviction moratorium and working to coordinate actions across the United States to keep vulnerable tenants in their homes. Additionally, through work with the Department’s Servicemembers and Veterans Initiative, the CPB is advancing various matters related to the Department of Veterans Affairs, including an attempted \$750.0 million fraud involving bogus personal protective equipment. Of particular importance at the moment is work combatting vaccine-related fraud, wherein criminals are seeking to steal from consumers—while endangering their health—with falsely promised or counterfeit vaccines. The CPB also is working with multiple agency partners and leadership to prevent, identify, and counter fraud related to any established vaccine-verification programs.

In March 2020, for instance, the CPB brought the first court action to combat fraud related to the coronavirus pandemic, obtaining a temporary restraining order to block a website purporting to offer to the public World Health Organization COVID-19 vaccine kits. Just one week later in April 2020, the CPB brought charges via criminal complaint against an individual who fraudulently attempted to sell millions of nonexistent respirator masks to the Department of Veterans Affairs in exchange for large upfront payments. When announcing this case, the Attorney General declared, “[The Justice Department] will vigorously pursue fraudsters who exploit the COVID-19 pandemic to make money [...] COVID-19 scams divert government time and resources and risk preventing front-line responders and consumers from obtaining the equipment they need to combat this pandemic.”² These cases are factually complex and involve complicated legal issues, requiring extensive consultation with agency experts. They also involve burdensome discovery, massive electronic evidence, and data analysis — and litigation related to them will last for years.

Consistent with its responsibility to enforce the Food, Drug, and Cosmetic Act and represent the Food and Drug Administration (FDA) in litigation, the CPB is also working closely with the FDA on many issues, including identifying and pursuing appropriate enforcement actions. In addition, CPB attorneys are defending the FDA in all challenges to its COVID-19 programs and policies, including suits contesting important drug approvals. CPB attorneys also are reviewing and providing rapid input on proposed FDA and HHS guidance documents. Additionally, the CPB is playing a key role in the work of the Hoarding and Price-Gouging (HPG) Task Force, providing guidance for the Department’s criminal and civil enforcement of the Defense Production Act and utilizing its close relationships with industry partners to identify important points-of-contact for HPG Task Force leaders. Further, CPB attorneys are advancing investigations into PPE hoarding schemes and working with the DEA and the Department of Homeland Security to identify potential large-scale hoarding of designated scarce treatment drugs and PPE.

² U.S. Department of Justice, April 10, 2020, Georgia Man Arrested for Attempting to Defraud the Department of Veterans Affairs in a Multimillion-Dollar COVID-19 Scam [Press Release] <https://www.justice.gov/opa/pr/georgia-man-arrested-attempting-defraud-department-veterans-affairs-multimillion-dollar-covid>

The requested additional attorney resources are necessary to allow the CPB to maintain all of these efforts while advancing new, priority, COVID-related initiatives to protect consumers from harm.

COVID-19 Immigration Litigation

The COVID-19 pandemic is further compounding the caseload of the Division's Office of Immigration Litigation (OIL), with the severity of the virus having serious implications for how the government enforces immigration and oversees the population in detention.

The OIL-Appellate Section is currently experiencing a surge of cases relating to COVID-19 in the form of habeas petitions being filed by detained petitioners seeking immediate release from custody. OIL-Appellate personally handles these cases instead of delegating to the U.S. Attorney's Office, because the habeas cases are filed by aliens with pending PFRs in the circuit courts. OIL-Appellate has approximately 10,300 cases pending in the circuits, and anticipates about receiving another 3,600 PFR cases in the next six months. It is estimated about one third of all PFR cases involve detained individuals who may file a habeas corpus seeking release, and since March of 2020 the rate of habeas corpus filings has doubled to more than 250 from its previous annual high of about 125 personally-handled cases. That level would present a formidable strain on OIL-Appellate's resources, especially where the COVID-19-related cases frequently have extremely tight deadlines ranging from one day to one week. To put this in context, OIL-Appellate's highest number of habeas cases heretofore has been about 130 a year and the time constraints were then not as tight. The new level of habeas petition receipts would approach five percent of all OIL-Appellate case receipts going forward, constituting a substantial shift in the normal workload of the office.

In addition to the strain experienced by OIL-Appellate, the OIL-District Courts Section (OIL-DCS) has received a tsunami of COVID-19-related immigration litigation. OIL-DCS' resources, already stretched thin by increases in class actions and other complex litigation, have been severely impacted. Through the end of March 2021 OIL-DCS received almost 900 new claims raising COVID-19 issues, including over twenty new class actions and several programmatic challenges to ICE and EOIR's operation of removal proceedings. This, together with COVID-19 related emergency litigation in several existing cases, has resulted in at least sixty appealable adverse decision for processing and subsequent work in the courts of appeals. While OIL-DCS worked diligently to bring these cases to their conclusion, almost 200 remain pending and more are expected. Further, while the majority of these cases began with extensive emergency motions for temporary restraining orders requiring response deadlines ranging from 24-hours to one-week, there remains ongoing complex discovery, monitoring of compliance with preliminary injunctions, settlement and mediation discussions, and corresponding monitoring and compliance obligations that could last years. In addition to personally handling cases, OIL-DCS continues to coordinate the nationwide response, providing support to United States Attorney's Offices by assigning an OIL-DCS point of contact to each case and hosting twice weekly teleconferences to discuss developing issues, key arguments, and issues. OIL-DCS further supports the government's COVID-19 litigation by drafting the briefings to support USAO arguments, and coordinating with the DHS, ICE, the Civil Division, and Departmental leadership.

There is now a critical and immediate need for more litigators to help handle the tremendous and still-expanding caseload; presently, OIL-DCS cannot personally handle each new class action. Workload will continue to increase through the filing of new cases if COVID-19 continues to spread at ICE detention facilities and work on existing cases is anticipated to increase as well through intense discovery, compliance, and more emergency motions. Accordingly, based on the volume of new cases and anticipated continued work in existing cases, OIL-DCS would expect that each of the identified attorney FTEs and paralegals would work on 1.5 class action and/or programmatic challenge matters with an additional docket of 5-10 COVID-19 non-class action cases and 10-20 COVID-19 monitored cases.

Impact on Performance:

The Civil Division strives to defend the law, ensure that the United States supports the health and safety of all Americans, and protect the federal fisc. The COVID-19 pandemic affects all facets of society and the economy and thus does not spare the civil justice system. The Civil Division has already received numerous cases and increased workload related to the pandemic and its myriad impacts. Due to the novel nature of COVID-19, the ultimate number and duration of these cases is difficult to predict. The Civil Division's attorneys and supporting staff are extended past their capacity to meet surging case and workload demands. The requested funding will allow the Civil Division to properly anticipate and staff new litigation as well as accelerate pending cases. While the Division has assigned attorneys to pending cases, its ability to move these cases and undertake new ones will depend directly on the availability of attorneys, paralegals, and contract personnel to support these matters. Without additional funding, the administration of justice will be hampered during this uncharted time, potentially leading to permanent adverse effects on upholding the law, as well as negative consequences to the federal fisc. Inadequate funding for defensive litigation will lead to diversion of resources from affirmative financial recovery efforts to cover defensive COVID-19 related litigation; and the consequences of failure in COVID-19 related cases include not only the hampering of the government in its ability to respond to the pandemic, but also the loss of billions of dollars — losses that will only encourage others to file suit or seek to take advantage of the government. Based on the current COVID-19 caseload and the extensive anticipated caseload, the Civil Division is requesting \$4.8 million for 35 term positions (30 attorneys) to successfully litigate COVID-19 cases and for critical equipment and capacity upgrades necessary to continue operating in the current and expected environments.

Funding

Base Funding

<i>FY 2020 Enacted</i>				<i>2021 Enacted</i>				<i>FY 2022 Current Services</i>			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

Positions requested are term positions that are anticipated to be needed for a few years.

Type of Position/Series	Positions Requested	Annual Costs per Position (\$000)			FY 2022 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Attorneys (0905)	30	121	123	244	3,628	3,694	10
Paralegals / Other Law (0900-0999)	5	67	69	139	335	344	17
Total Personnel					3,963	4,038	27

Non-Personnel Increase Cost Summary

Attorneys and Paralegals both need automated litigation support (ALS) in order to be successful in their positions. The Civil Division's ALS budget cannot remain flat in the event of increased staffing. ALS is a recurring cost. An annualization of a one percent increase over the previous year's funding level was applied in FY 2023 and FY 2024.

Non-Personnel Item	FY 2022 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Video Teleconferencing	100	100	1	-100	0
Laptops	537	500	1	-538	0
Automation Litigation Support	155	155	1	0	0
Total Non-Personnel	792			-638	0

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	0	0	0	0	0	0	0	0
Increases	35	30	18	3,963	792	4,755	3,400	27
Grand Total	35	30	18	3,963	792	4,755	3,400	27

Affected Crosscut

N/A