



*U.S. Department of  
Justice*

# **Civil Division**

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## **FY 2023 Budget & Performance Plans**

March 2022

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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 implicates a wide range of the Federal Government’s legal interests and includes challenges to critical public-health measures, cases relating to cyber and national security prerogatives and decisions; challenges to immigration policies and decisions; challenges to Congressional enactments; contract disputes; efforts to combat fraud and the 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) 2023 Full Program Costs

The FY 2023 Civil Division budget request provides for **\$356,083,000** and **1,248** positions, including 959 attorneys. This request includes program increases for Civil’s prescription opioid, civil fraud, immigration, and data privacy civil litigation work.

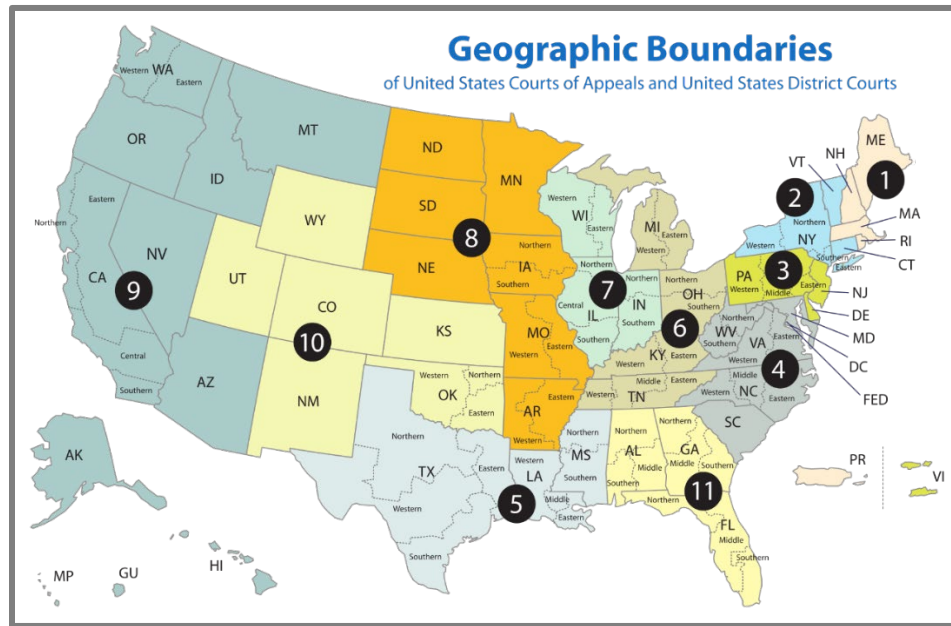
Beyond traditional litigation, the Civil Division helps administer three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Act Program, and the September 11<sup>th</sup> Victim Compensation Program.

#### 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 2021, the Civil Division:

- **Secured** over \$5.6 billion in settlements, judgments, fines, and restitution.
- **Defeated** all or nearly all of the opposing party’s claims in 85 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 in breadth 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, health, and economic security 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) and opioid 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, 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 Fiscal Year (FY) 2021, the Civil Division secured over \$5.6 billion in settlements, judgments, fines, and restitution in affirmative, monetary matters. 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, 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.

The Civil Division also has a critical role in defending federal programs, law, 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, including key pandemic-related public-health measures. Additionally, the Civil Division is the last but vital line in the nation's immigration system, and fosters a fair and equitable immigration 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, supports efforts at and within the nation's borders, and provides dependable counsel before the courts.

Overall, the Division's work reflects the diversity of the Federal Government's activities and includes providing legal advice 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:

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

### ***External Challenges***

In March 2020, the work environment changed drastically in a matter of days, as the Civil Division employees were sent home with little notice to work remotely as part of nationwide lockdown measures to stem the spread of COVID-19. What was initially thought of as a short-term requirement has now spanned for two years. While advance notice was extremely limited, the Civil Division and its staff have met the many challenges, moving almost all of its functions

to a remote and virtual setting. The Division’s information technology (IT) staff worked closely with the Sections to ensure they had the equipment necessary to continue operations remotely, and as telework requirements continued to expand, to include virtual mediation sessions, depositions and court settings, it became more critical than ever for IT staff to ensure the security of the many different platforms being used in this remote environment.

The pandemic response has highlighted the importance of remote access computing and collaboration, and the Administration recognizes the importance of securing the virtual environment and recently released an executive order<sup>1</sup> boosting the federal government’s cyber defenses. The executive order aims to strengthen cybersecurity for federal networks and outlines new security standards for commercial software. The Civil Division is committed to complying with these new guidelines, but as a result must commit more resources to its IT and IT security functional areas. As the Division modernizes its cybersecurity systems, costs are anticipated to increase. Highly qualified IT personnel must ensure the systems are operated with the protections necessitated by these new threats. The Civil Division faces new challenges as it moves toward a safe return to the office and a more hybrid model of telework and onsite work; requiring implementation of new strategies to continue to secure remote employees and guard against cyber threats.

In the long term, it is anticipated that a more hybrid model of work will become the “new normal.” The Civil Division is just one of many litigating offices that have been working remotely, and benefits, including cost savings in some areas, were identified during the maximum telework period. There is value in performing some depositions virtually, as they create more time to allow for one or two more witnesses to be deposed than otherwise would have been because of time and travel constraints. Additionally, the courts may continue a hybrid approach to managing their dockets, requiring more virtual hearings than pre-pandemic. The Civil Division must ensure its staff is equipped to meet these anticipated changes, including sufficient bandwidth and Wi-Fi capabilities.

These efforts to support the transition to a more flexible and virtual workplace with a strong cybersecurity posture require the Division to prioritize information technology and to pivot resources quickly. 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 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 Automated Litigation Support (ALS) Program to combat these challenges.

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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/>



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 is reflective of the 24 to 30 percent per year data volume growth the ALS Program has seen over the last five years. To address these challenges, the Civil Division relies on essential 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. This failure would place the Division's cases in jeopardy of an adverse judgment 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 essential ALS support, several hundred cases would lack basic services, such as data processing and document review, which would negatively affect the calculus for the Government's settlement evaluation. With increased data retrieval, review and search requirements, as well as secure storage of 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 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 remote work and cloud-based applications has been rapid over the past two 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 2023 will provide resources for the Civil Division to continue to address these challenges and excel in the face of them, supporting the nation's efforts to adapt to and recover from the COVID-19 pandemic, address increasing workloads, and protect the most vulnerable Americans.

## II. Summary of Program Changes

Item Name					Pg.
	Description	Pos.	FTE	Dollars (\$000)	
Prescription Opioid Litigation	Aggressively combat the opioid epidemic via civil enforcement actions.	7	4	\$1,125	36
Civil Fraud	Pursue fraudsters through civil litigation, hold them accountable, and protect taxpayer dollars and the health of the American public.	8	4	\$967	42
Immigration Litigation	Address the surge of cases in federal courts that will result from increases in volume and processing efficiency by EOIR; and a substantial increase in multi-jurisdictional litigation involving worker programs administered by the Departments of Homeland Security, Labor, and State, and programmatic immigration activities.	56	28	\$6,178	48
Data Privacy and Identity Integrity	Respond to increased concerns regarding the extraordinary increase in—and frequent misuse of—information stored about consumers.	6	3	\$990	54

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

The FY 2023 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, [\$21,738,000] \$31,738,000 to be appropriated from the Vaccine Injury Compensation Trust Fund and to remain available until expended.

#### Summary

The Vaccine Injury Compensation Program (“VICP” or the “Program”) has experienced a staggering and unrelenting increase in its caseload over the past seven years, with no expectation of abatement. More than 2,000 new petitions were filed in FY 2021, which exceeds the number of petitions filed in every year of the Program’s 33-year history, with only two exceptions: in FY 1991 (when the Program was first established) and in FY 2003 (when the Omnibus Autism Proceeding was created). Presently, more than 4,100 cases are pending, with a large number of case filings relating to the Human papillomavirus (HPV) vaccine still expected in FY 2022. More significantly, the Department of Health and Human Services (HHS) believes the coronavirus vaccines will be moved from the Countermeasures Injury Compensation Program (CICP) to the VICP in FY 2023. For FY 2023, Civil is requesting a total reimbursement of \$31.7 million. This funding level has been approved by the HHS’s Health Resources and Administration’s (HRSA) budget office, accounts for the annualization of the FY 2022 additional attorney positions, and adds 29 new positions (26 attorneys, two paralegals, and one procurement analyst staff).

Funding for the VICP is unique in that Congress appropriates a reimbursement from the Vaccine Injury Compensation Trust Fund to HHS, the Civil Division, and to the Office of Special Masters at the U.S. Court of Federal Claims. The Vaccine Injury Compensation Trust Fund, which has a current balance of more than \$4.1 billion and is funded by an excise tax on vaccines, also pays compensation to petitioners, as well as petitioners’ attorneys’ fees and litigation costs. Providing the Civil Division with the necessary resources to maintain its attorney staff and hire quality litigation consultants 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) children 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.

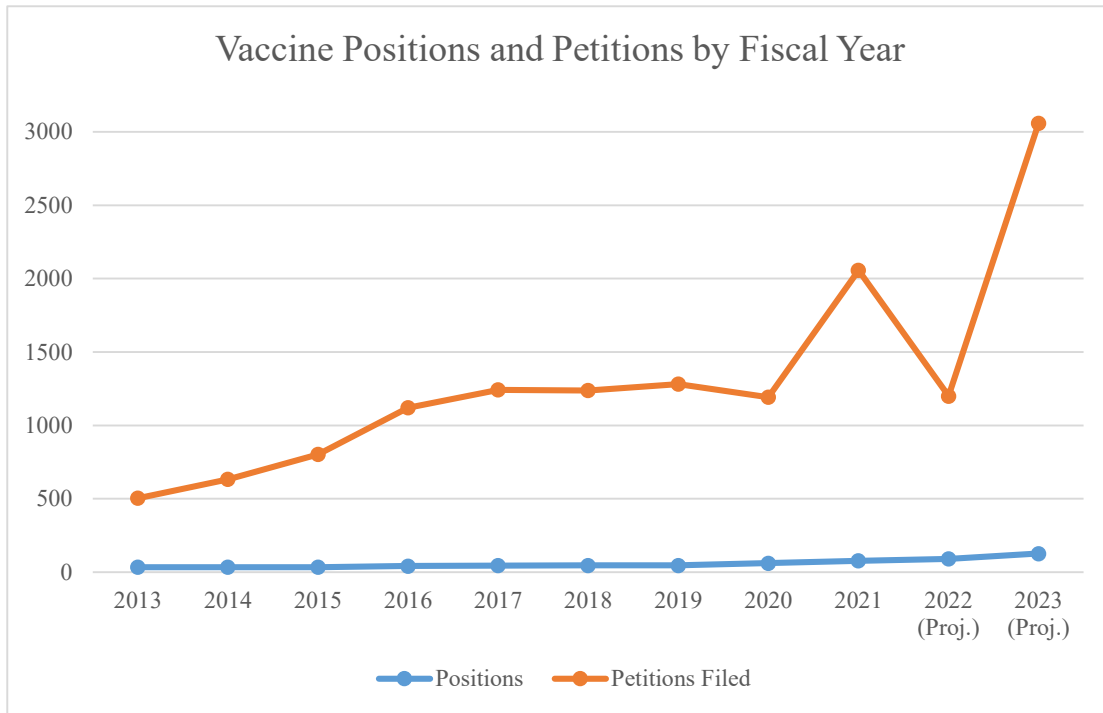
The Act established the VICP, a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines. In this system, an individual files a petition with the U.S. Court of Federal Claims. This program now applies to any individual, of any age; anyone who received a covered vaccine and believes they were injured as a result, can file a petition. 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.

The mission of the VICP is more critical than ever. HHS's Division of Injury Compensation Programs believes that the first step in the process for coronavirus vaccines to be added to the VICP (the Centers for Disease Control (CDC) recommendation for "routine administration" to children) has already occurred. Once Congress enacts an excise tax on these vaccines, it will only be a short period of time before VICP coverage of these cases begins, and there appears to be Congressional support in the Senate Health, Education, Labor, and Pensions (HELP) Committee for moving the vaccines to the VICP. It also seems quite possible that the coronavirus vaccines will become 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.

Through January 24, 2022, 3,627 claims related to coronavirus vaccines have been filed with the VICP. HHS conservatively estimates more than 1,500 coronavirus vaccine claims will be filed in FY 2023 alone; Civil predicts this number will be much higher, as it is believed that many are holding off filing claims under the VICP, due to the more limited damages and lack of reimbursement for attorneys' fees. With the anticipated addition of the coronavirus vaccine to the VICP resulting in a significant increase in the VICP caseload, it is essential that the program receive the requested funding to successfully manage its current caseload. 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.

#### Justification

There has been a tremendous flood of newly filed VICP cases in the past seven years, with an even greater increase in FY 2021. Into FY 2023, the program will continue to face an overwhelming workload that is simply unsustainable. Additional positions are desperately needed in order to adequately manage the growing backlog as well as the expected continued growth in the caseload.



There are several reasons for the increase, all of which indicate that the increased caseload will continue. New regulations took effect on March 21, 2017, 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. As of April 21, 2021, HHS has determined that SIRVA will remain an eligible injury, so cases pertaining to it are expected to continue going forward. Additionally, the vaccine injury attorney bar and anti-vaccine community are bringing aggressive and sophisticated cases. As previously mentioned, a large number of case filings relating to the HPV vaccine are expected to occur; with an effort by the aforementioned communities to bring a class action lawsuit against the manufacturer also anticipated. Class actions generate numerous claimants, and a prerequisite for a class action claim is to file a petition with the VICP. If these claims are not addressed in 240 days, a petitioner can exit the program and move towards litigation; therefore, it is extremely important that the VICP (both at DOJ and HHS) has the resources necessary to respond timely to these cases.

In addition, HHS expects the coronavirus vaccines will move from the CACP to the VICP in FY 2023. COVID claim estimates of 1,559, per HHS, are higher than the total filings for most years of the program. This estimate was derived from HHS’ experience with doses of flu vaccines distributed compared to the number of claims filed in the VICP, and the expectation that booster COVID vaccines will be administered. The CDC has approved booster shots for individuals 12 and older. This could increase the amount of COVID claims even more than the current estimate, especially given the publicity surrounding some adverse effects being investigated, as well as the VICP’s continuous coverage of SIRVA.

Currently, approximately one-third of Civil Division Vaccine attorneys have individual dockets of greater than 100 cases, which is double a typical attorney docket and is simply not sustainable.

Additional funding is required to keep pace with the growing caseload. The requested funding level of \$31.7 million would allow the caseload per attorney ratio to return to a slightly lower level of 70 cases, which will remain challenging, as 50-60 cases is considered a more manageable docket.

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 2023 Budget Request for VICP includes an increase of 26 attorneys, which will bring the number of attorney positions affiliated with the program to 97. 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 provides 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 administrative employee 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 2023 request includes a full-time permanent 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 FTE 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 additional new positions, 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 the Civil Division 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

<b>Legal Representation</b>	<b>Direct Pos.</b>	<b>Estimate FTE*</b>	<b>Amount (\$000s)</b>
2021 Enacted	1,136	1,071	\$316,438
2022 Annualized CR	1,136	1,136	\$316,438
2022 Rebaseline Adjustment	35	18	\$12,099
Adjustments to Base and Technical Adjustments	0	17	\$18,286
2023 Current Services	1,171	1,171	\$346,823
2023 Program Increases	77	39	\$9,260
2023 Program Offsets	0	0	\$0
2023 Request	1,248	1,210	\$356,083
Total Change 2022-2023	77	56	\$27,546

<b>Legal Representation – Information Technology Breakout (of Decision Unit Total)</b>	<b>Direct Pos.</b>	<b>Estimate FTE*</b>	<b>Amount (\$000s)</b>
2021 Enacted	22	22	\$21,404
2022 Annualized CR	22	22	\$21,404
2022 Rebaseline Adjustment	0	0	\$5,807
Adjustments to Base and Technical Adjustments	0	0	\$3,129
2023 Current Services	22	22	\$30,340
2023 Program Increases	0	0	\$0
2023 Program Offsets	0	0	\$0
2023 Request	22	22	\$30,340
Total Change 2022-2023	0	0	\$3,129

\* FY 2021 FTE is actuals

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 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. The Staff has also devoted significant resources in 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, as well as defended the CDC’s eviction moratorium and other government measures undertaken to slow the spread of COVID-19 and to protect the U.S. public. The Staff is currently devoting significant resources to litigation arising from vaccine mandates.

The Appellate Staff has defended actions intended to protect against wrongful discrimination, including discrimination against LGBTQ+ individuals, and to ensure that all Americans receive equal treatment under the law. They have 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, and 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, 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 2023. 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 1,500 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 State 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, the evasion of customs duties, 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 information technology (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 2021, the Department recovered more than \$5.6 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 2021, 598 qui tam suits were filed, and the Department obtained settlements and judgements totaling \$1.7 billion in these suits. Whistleblower awards during the same period totaled \$237.0 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. The Fraud Section has also 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 anticipates devoting significant attorney and staff resources to these matters.

### ***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, 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 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 has 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.

### **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, consumer product safety, elder fraud, opioids, data privacy, and adulterated food and dietary supplements. 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, 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. In the fight against the opioid epidemic, CPB is leading several criminal and civil investigations of prescription opioid distributors and retail chain pharmacies. CPB attorneys are using both criminal and civil tools to stop fraudsters.

### **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. 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 months, and even years to come.

### **Office of Immigration Litigation**

The Office of Immigration Litigation (OIL) attorneys defend the federal government's immigration laws and policies and handles 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. 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. From FY 2019 to FY 2021, OIL District Court Section's caseload increased 32 percent, from 3,363 cases to 4,443, with a 21 percent increase in class action cases handled by the District Court Section from FY 2019 to FY 2021 (and a 167 percent increase from FY 2016 to FY 2021).

#### ***COVID-19 Litigation:***

OIL-DCS has been severely impacted by COVID-19-related litigation. As of the beginning of February 2022, OIL-DCS received over 920 new claims raising COVID-19 issues, including 27 new class actions and several programmatic challenges to the U.S. Immigration and Customs Enforcement (ICE) and the 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 over 50 appealable adverse decisions for processing and subsequent work in the courts of appeals. While OIL-DCS has worked diligently to bring these cases to their conclusion, almost 115 remained pending as of the beginning of February 2022, and additional cases are anticipated given the increase of new arrivals at the southern border and challenges presented by COVID-19 variants. 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,

developing nationwide positions on settlement issues, and hosting twice weekly teleconferences to discuss developing issues and key arguments. 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-ENF) works closely with the Federal Bureau of Investigation, the Department of Homeland Security, and the Justice Department's U.S. Attorney's Offices and Criminal Division to pursue civil denaturalization cases against individuals who pose potentially grave threats to public safety and the nation's security, including known or suspected terrorists, human traffickers, war criminals, human rights violators, child sex abusers, and other individuals who committed serious criminal offenses. OIL-ENF also regularly provides advice on criminal naturalization fraud prosecutions under 18 U.S.C. § 1425.

### ***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 DHS enforcement efforts and the resulting removal adjudications by EOIR. OIL-Appellate has experienced a surge of cases relating to COVID-19 in the form of habeas petitions 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 noncitizens with pending petitions for review (PFR) in the circuit courts. In FY 2019, OIL-Appellate received 4,823 Petitions for Review (PFRs); for FY 2021, 5,222 PFRs were received, representing an 8.3 percent increase. Importantly, the number of pending cases has risen precipitously, from 8,743 in FY 2019 to 11,976 – a 37 percent increase.

### **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 also is home to tort reform programs, including the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Act Program, and the September

11<sup>th</sup> Victim Compensation Fund. 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.

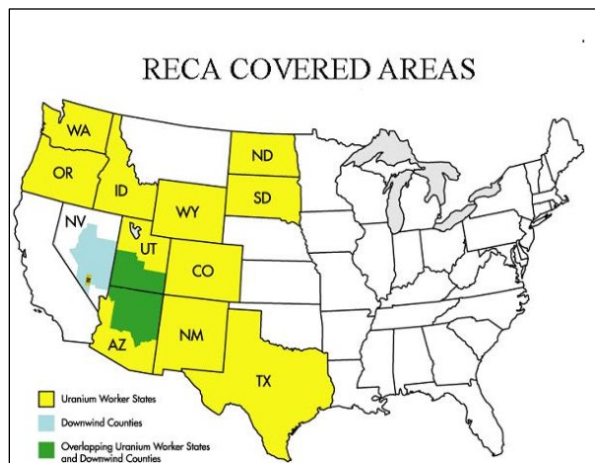
***The Constitutional Torts Staff*** provides legal representation to federal employees in cases filed against them personally for actions performed as part of their official duties. Most cases seek monetary damages under the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). This personal liability litigation is brought against federal employees 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 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 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 January 31<sup>st</sup>, 2022, the program has awarded more than \$4.7 billion to over 8,600 claimants, who almost certainly would not have received compensation through traditional tort litigation.

**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, the Act has compensated over \$2.4 billion in connection with over 38,000 approved claims for eligible individuals or their surviving beneficiaries through September 30, 2021. The deadline to file new claims under RECA is July 11, 2022;

currently, the Radiation Exposure Compensation Act Trust Fund terminates on that same date.

**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,



2021, the VCF has awarded \$9.3 billion in compensation to over 41,700 individuals who have suffered physical health conditions (including the families of over 2,200 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 Section***

The Civil Division’s Environmental Torts Litigation (ET) 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. Current 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.

### ***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, the 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 damages associated with family separations at the border, as well as representing the United States in multiple mass shooting cases.

### **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, 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, and has been integral to supporting the Civil Division's response to the COVID-19 pandemic, including preparing for the eventual return to work, and implementing the Administration's vaccine mandate across the Division.

## Performance and Resources Tables

Decision Unit: Civil Division - Legal Representation												
RESOURCES (\$ in thousands)			Target		Actual		Projected		Changes		Requested (Total)	
			2021		2021		FY 2022		Current Services Adjustments and FY 2023 Program Change		FY 2023 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)			1,217	316,438 [60,000]	1,133	316,438 [41,271]	1,235	328,537 [64,738]	98	27,546 [10,000]	1,333	356,083 [74,738]
Type	Strategic Objective	Performance	FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Change		FY 2023 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		N/A		5		5		10	
Key Performance Indicator	4.1	2. Percent of Consumer Protection Branch cases favorably resolved	N/A		96%		85%		N/A		85%	
Workload Measure	4.2	3. Number of cases pending beginning of year	34,838		33,080		27,393		8,843		36,236	
Workload Measure	4.2	4. Number of cases received during the year	15,386		15,016		12,899		5,545		18,444	
Workload Measure	4.2	5. Total Workload	50,224		48,096		40,298		-21,844		18,454	
Workload Measure	4.2	6. Number of cases terminated during the year	4,909		10,407		8,193		6,700		14,893	
Civil Division Performance (Excludes VICP and RECA)												
Performance Measure	4.2	7. Percent of civil cases favorably resolved	80%		95%		80%		N/A		80%	
Performance Measure	5.1	8. Percent of federal denaturalization dispositions favorably resolved	80%		91%		80%		N/A		80%	

Data Definition, Validation, Verification, and Limitations: Data was retrieved from the Civil Division's Case Management System.

## Performance and Resources Tables

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

RESOURCES			Target	Actual	Projected	Changes	Requested (Total)
			FY 2021	FY 2021	FY 2022	Current Services Adjustments	FY 2023 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%	85%	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%	85%	60%	N/A	60%
Performance Measure	4.2	11. Percent of favorable resolutions in non-monetary trial cases	80%	86%	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%

Data Definition, Validation, Verification, and Limitations: Data was retrieved from the Civil Division's Case Management System.

Strategic Objective	Performance Measure Table				
	Decision Unit: Civil Division - Legal Representation				
	Performance Measures		FY 2021	FY 2022	FY 2023
			Actual	Target	Target
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	5	10
4.1	Key Performance Indicator	2. Percent of Consumer Protection Branch cases favorably resolved	96%	85%	85%
4.2	Workload Measure	3. Number of cases pending beginning of year	33,080	27,393	36,263
4.2	Workload Measure	4. Number of cases received during the year	15,016	12,899	18,444
4.2	Workload Measure	5. Total Workload	48,096	40,297	18,454
4.2	Workload Measure	6. Number of cases terminated during the year	10,407	8,193	14,893
<b>Civil Division Performance (Excludes VICP and RECA)</b>					
4.2	Performance Measure	7. Percent of civil cases favorably resolved	95%	80%	80%
5.1	Performance Measure	8. Percent of federal denaturalization dispositions favorably resolved	91%	80%	80%

Data Definition, Validation, Verification, and Limitations: Data was retrieved from the Civil Division's Case Management System.

Strategic Objective	Performance Measure	FY 2021	FY 2022	FY 2023	
		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	85%	80%	80%
4.2	Performance Measure	10. Percent of affirmative cases in which at least 85 percent of the claim is recovered	85%	60%	60%
4.2	Performance Measure	11. Percent of favorable resolutions in non-monetary trial cases	86%	80%	80%
4.2	Performance Measure	12. Percent of favorable resolutions in non-monetary appellate cases	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%
2.6	Performance Measure	14. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	92%	92%

Data Definition, Validation, Verification, and Limitations: Data was retrieved from the Civil Division's Case Management System.

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

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

The Civil Division's work contributes to the Department of Justice's efforts to achieve 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 seeks and implements continual refinement and improvement of 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 is now preparing to adapt to longer-term hybrid work environments that so many American organizations are proposing for the future. The Division's information technology (IT) staff has worked tirelessly to ensure available equipment, upgraded and adjusted processes and software, and critical cybersecurity protections; and 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.

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

Malicious cyber activity threatens the health and safety of the American people, and the national and economic security of our country. The Fraud Section is investigating misrepresentations made by IT companies and others in connection with the government's acquisition of software, cloud-based storage, and related services that are designed to protect highly-sensitive government information from cybersecurity threats and compromises. The cases focus on whether the government received the goods and services with the purported cybersecurity protections it paid for and the failure by the companies to timely report or investigate breach incidents required by government contracts. The Fraud Section is part of that multi-agency and multi-district effort.

Relatedly, the Fraud Section is handling several matters involving fraud by applicants and recipients of federal grants. The cases under investigation involve government grant applicants and recipients who failed to disclose close ties with or funding from foreign governments, principally China. Misrepresentations in the grant process risk the disclosure of sensitive scientific research, a drain on American intellectual property, and industrial espionage. The lack of truthful information in this process also undermines the integrity of the grant process and potentially puts national security at risk.

Responding to increased concerns regarding the extraordinary increase in—and frequent misuse of—information stored about consumers, the Civil Division’s Consumer Protection Branch has focused efforts on ensuring consumers’ data privacy and identity integrity. Through collaboration with agency partners and the use of both civil and criminal tools, these efforts have resulted in landmark successes over the last few years, securing billions of dollars in penalties and novel compliance measures from corporate offenders. They also have allowed the Branch to participate in various Departmental, inter-agency, and international policy discussions. This work has been praised by Department and congressional leadership, and is consistent with the Biden Administration’s prioritization of data-privacy issues.

The Consumer Protection Branch has also been involved in several cases concerning malicious cyber actors who have targeted Americans. The Branch obtained an order of permanent injunction against an individual and five companies in a case against a large-scale technical-support fraud scheme alleged to have defrauded hundreds of elderly and vulnerable U.S. victims. The scheme allegedly contacted U.S. consumers via internet pop-up messages that falsely appeared to be security alerts from Microsoft or another well-known company and fraudulently claimed that the consumer’s computer was infected by a virus, providing a toll-free number to call for assistance. When victims called the toll-free number, they were connected to India-based call centers participating in the fraud scheme. Call center workers asked victims to give them remote access to their computers and told victims that they detected viruses or other malware on their computers. Eventually, the call center workers would falsely diagnose non-existent problems and ask victims to pay hundreds of dollars for unnecessary services and software.

Likewise, in *United States v. Internet Transaction Servs., Inc. et al.*, Case No. 2:21-CV-06582-JFW-KSx (C.D. Cal.), the government filed a civil complaint pursuant to 18 U.S.C. §1345 and secured a temporary restraining order against Harold Sobel, a U.S. citizen who lives in Ukraine, and several dozen other individuals and corporations for carrying out a scheme to steal funds directly from consumers’ bank accounts and to conceal that conduct from banks. The defendants allegedly engaged in a wide variety of fraudulent online transactions, including creating fake websites to deceive consumers, using fake email addresses to impersonate people, and using online transactions to steal repeatedly from thousands of consumers’ banks. The government obtained a temporary restraining order halting defendants’ illegal conduct, successfully sought appointment of a receiver who has discovered hundreds of thousands of dollars in assets concealed by the defendants, and has obtained default judgments against many of the defendants.

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 Cybersecurity Awareness Training (CSAT) yearly. The Division’s Office of Information Technology has likewise deployed Splunk across all servers and virtual desktops; and has procured and is developing the plan to deploy an East West Firewall to protect internal network traffic.

The Division’s Office of Information Technology continually seeks to maintain and improve cybersecurity and resilience. The Division recently hired a cybersecurity investigator; and



intends to continue strengthening cyber skills and abilities and deployment of cybersecurity resources.

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

In 2020, more than 93,000 Americans died from drug overdoses, the overwhelming majority involving opioids. 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 fraud and illegal prescription, distribution, and diversion offenses resulting in patient harm.

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, as well as establishing and maintaining 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 opioids are distributed lawfully under the CSA and other statutes like the Food 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. The Branch has led and coordinated investigations into numerous prescription opioid manufacturers and distributors, securing landmark results, including resolutions totaling more than \$2 billion with Indivior Inc. and its parent RB Group, followed by guilty pleas by Indivior's former CEO and Medical Director, as well as a multi-billion dollar global resolution with Purdue Pharma, and in collaboration with USAOs across the country, has worked to build capacity within the Department to bring civil enforcement actions under the CSA against individual retail pharmacies and physicians, with successes in many districts.

***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 in 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. Working with the National Center on Elder Abuse and the National White Collar Crime Center, the Elder Justice Initiative 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. 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 Divisions' 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 Divisions' Consumer Protection Branch also has been consulting with the Environmental and Natural Resources Division regarding efforts to combat the climate crisis.

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

Detering 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. Civil works to those ends through both affirmative and defensive, as well as, monetary and non-monetary cases.

For example, the Division's Consumer Protection Branch reached a settlement with Epsilon Data Management LLC (Epsilon), one of the largest marketing companies in the world, to resolve a criminal charge for selling millions of Americans' information to perpetrators of elder fraud schemes. As part of a deferred prosecution agreement (DPA) for one count of conspiracy to commit mail and wire fraud, Epsilon admitted that, from July 2008 through July 2017, employees in its Direct to Consumer (DTC) Unit knowingly sold modeled lists of consumers to clients engaged in fraud, such as mass mailing false "sweepstakes" and "astrology" solicitations to consumers. Under the terms of the DPA, Epsilon agreed to pay a total of \$150 million, with \$127.5 million of that amount going to compensate victims of the fraudulent schemes that used consumer data sold by Epsilon. Epsilon also agreed to implement significant compliance measures designed to safeguard consumers' data and prevent its sale to individuals or entities engaged in fraudulent or deceptive marketing campaigns. Further, the DPA requires Epsilon to maintain a procedure for consumers to request that it not sell their information to others.

Similarly, Indian drug manufacturer Fresenius Kabi Oncology Limited (FKOL) was sentenced to pay \$50 million in fines and forfeiture after pleading guilty to concealing and destroying records prior to a 2013 U.S. Food and Drug Administration (FDA) plant inspection. In a criminal information filed in federal court in the District of Nevada, the United States charged FKOL with violating the Federal Food, Drug and Cosmetic Act by failing to provide certain records to FDA investigators. As part of a criminal resolution with the Civil Division's Consumer Protection Branch, FKOL agreed to plead guilty to the misdemeanor offense. The U.S. District Judge accepted the company's guilty plea and sentenced FKOL to pay a criminal fine of \$30 million, forfeit an additional \$20 million, and implement a compliance and ethics program designed to prevent, detect, and correct violations of U.S. law relating to FKOL's manufacture of cancer drugs intended for terminally ill patients.

***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, the OIL-Appellate Section voluntarily remanded 935 petitions for review cases in FY 2021, in accordance with the Office's established criteria for remanding cases for further consideration based on faulty analysis, procedural errors, changes in the applicable law, and other problems. When a case is remanded, the noncitizen's removal order ordinarily is rendered non-final, and further proceedings ensue before the Board of Immigration Appeals or the Immigration Court to consider the noncitizen's removability or applications for relief or protection. Of the 935 voluntary remands, 221 cases were remanded for additional proceedings following Attorney General Garland's decisions in *Matter of A-B- III*, *Matter of L-E-A- III*, and *Matter of Cruz-Valdez*, and another 170 cases were voluntarily remanded after the Supreme Court's decision in *Niz-Chavez v. Garland*, which expanded eligibility for cancellation of removal, to allow noncitizens who appeared eligible for it to pursue that relief.

## **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 Divisions' 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.

The Civil Division also plays a critical role in defending the government in civil litigation cases resulting from the government's response to the COVID-19 pandemic. Attorneys in the Federal Programs and Commercial Litigation Branches have fielded urgent requests to review legislation and proposed agency rules and actions responding to the pandemic, are handling lawsuits against multiple federal agencies, and have likewise been involved in all aspects of the federal financial response to the crisis. The Commercial Litigation Branch's National Courts, Corporate/Financial, and Fraud Sections are representing the government in cases involving existing government contracts, class action lawsuits from federal employees seeking additional compensation, customs enforcement issues, and protecting the government's financial interests, to include the review of administrative and regulatory action implementing COVID-19 related legislation and debt relief measures taken during the pandemic. The Federal Tort Claims Act Section of the Torts Branch (FTCA Section) is assisting in the defense of numerous FTCA lawsuits related to the COVID-19 pandemic, including suits alleging failure to prevent infection at federal facilities and suits focusing directly on the provision of medical treatment. The number of lawsuits is expected to increase exponentially, as the FTCA Section is aware of nearly

1,000 administrative claims (and counting) related to COVID-19 that have been filed with Health and Human Services and the Bureau of Prisons alone. The FTCA Section will continue to monitor these cases and work with United States Attorney's Offices in an effort to ensure that the cases are defended in a consistent manner across the country. The Constitutional Torts Staff has also responded to agency requests for guidance on how to reduce personal-capacity litigation risk against federal officials arising from the government's response to the pandemic. The Constitutional Torts Staff has represented and continues to represent both high-ranking and line-level officials across a wide spectrum of federal agencies in a number of cases arising out of both custodial conditions in the COVID-19 era, as well as various federal vaccine mandates, and already secured dismissal of numerous constitutional tort and Religious Freedom Restoration Act cases against federal officials in these arenas.

### ***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. For example, as previously mentioned above, 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 work force. Consistently, the Civil Division 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, mentorship and coaching programs, as well as in programs and policies that support employee work-life balance and aim 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.

## V. Program Increases by Item

### A. PRESCRIPTION OPIOID LITIGATION

Budget Decision Unit(s): Legal Representation

Organizational Programs: Civil Division, Consumer Protection Branch Civil Division,  
Civil Division, Commercial Litigation Branch, Corporate/Finance  
Section

Program Increase: Positions 7; Atty 5; FTE 4; Dollars \$1,125,000

Description of Item:

The United States is at a dire moment in the opioid epidemic. The COVID-19 pandemic has exacerbated numerous factors involved in opioid addiction, and the Centers for Disease Control (CDC) estimates opioid-related deaths in 2020 eclipsed the toll from any year since the opioid epidemic began in the 1990s.<sup>2</sup> “Adults between the ages of 25 and 44 years have been more than twice as likely to die from opioid overdose than from COVID-19.”<sup>3</sup> Moreover, patients diagnosed with “long COVID” are now receiving prescription opioids at an alarming rate. “A new study in Nature found alarmingly high rates of opioid use among COVID-19 survivors with lingering symptoms at Veterans Health Administration facilities. [...] For every 1,000 long COVID patients who were treated at a Veterans Affairs facility, doctors wrote nine more prescriptions for opioids than they otherwise would have.”<sup>4</sup>

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<sup>2</sup> Goodnough, Abby “Overdose Deaths Have Surged During the Pandemic, C.D.C. Data Shows,” The New York Times, April 14, 2021 <https://www.nytimes.com/2021/04/14/health/overdose-deaths-fentanyl-opioids-coronaviurs-pandemic.html>

<sup>3</sup> McLellan, Thomas and Crothers, Jacob “Needed: an Operation Warp Speed for the opioid epidemic” STAT, April 29, 2021

<sup>4</sup> Sabo, Liz “Doctors prescribe more opioids to COVID-19 ‘long haulers,’ raising addition fears” Los Angeles Times April 28, 2021

## 12 Month–ending Provisional Counts and Percent Change of Drug Overdose Deaths

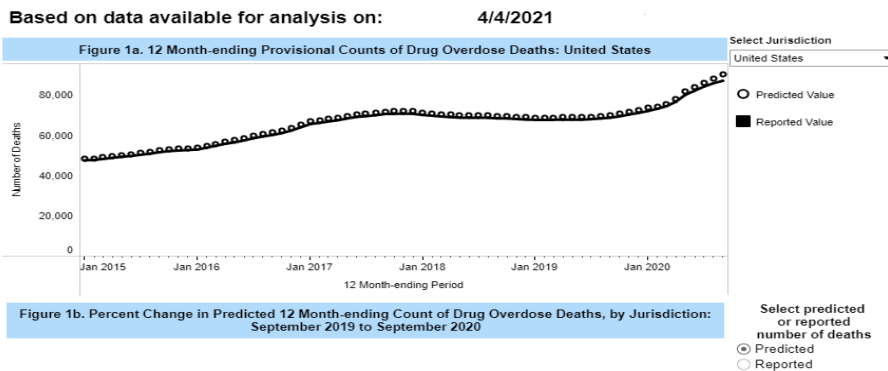


Chart Data from <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

The Department is committed to eradicating opioid-related deaths, with the Civil Division actively combatting fraud and abuse at every level of the opioid distribution system. Civil requests an increase of seven positions (five attorneys and two paralegals) and \$1.1 million in associated funding to staff and support its priority opioid-related investigations and litigation in the Consumer Protection Branch’s (CPB) national chain pharmacy litigation.

### Justification:

Using a wide range of enforcement tools, the Civil Division is uniquely positioned to pursue bad actors throughout the entire opioid distribution chain, including pharmaceutical manufacturers, wholesale distributors, pharmacies, pain management clinics, drug testing laboratories, and physicians. The Division also plays a key role in stopping those who are recklessly overprescribing and over-dispensing opioids, thus protecting the United States’ financial interests with respect to opioid-related medical care by ensuring that those responsible reimburse the United States for costs incurred by the Medicare Trust Fund, the Medicaid program, and other federal health care programs, such as those serving our nation’s veterans.

### National Chain Pharmacy Litigation

Out of approximately 39,300 pharmacies in the United States, Walmart, CVS, Rite-Aid, and Walgreens account for a combined 26,809 stores, or just over 68 percent of all pharmacies.<sup>5</sup> In 2019, these same four pharmacies had a combined estimated prescription revenue of \$225.5 billion.<sup>6</sup> The Civil Division has advanced the Department’s investigations related to chain pharmacies. The CPB, with the assistance of the Fraud Section and several U.S. Attorney’s Offices (USAOs), has filed suit against Walmart Inc. The CPB and the Fraud Section are continuing to actively investigate the remaining three pharmacies, including through litigation to compel compliance with investigative requests.

<sup>5</sup> “Pharmacies in the United States” [https://en.wikipedia.org/wiki/Pharmacies\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Pharmacies_in_the_United_States)

<sup>6</sup> “15 Largest Retail Pharmacy Chains in the USA” <https://www.discountdrugnetwork.com/5-largest-pharmacy-chains-usa/>

These cases, which seek to hold companies liable under the Controlled Substances Act (CSA) and/or the False Claims Act (FCA), are highly complex and require coordination across multiple agencies and USAOs. The suit filed against Walmart, for instance, is currently requiring the near full-time work of a CPB manager and five trial attorneys, and significant contractor support. The Civil Division will seek to hold chain pharmacies accountable for perpetuating the opioid crisis by proving that pharmacies knowingly filled prescriptions despite obvious signs of diversion and lack of an appropriate medical use, and failed to report suspicious orders to the Drug Enforcement Administration (DEA). Given the magnitude of the potential legal exposure, the Civil Division expects—as has already occurred in the filed suit—that the defendants will mount vigorous challenges to establishing liability through data analysis or statistical sampling, expert opinions, knowledge, and the basis for monetary penalties. The Civil Division also anticipates that, for any case that proceeds to litigation, the defendants will seek to take extraordinarily broad discovery on the DEA and, potentially, other federal agencies.

The litigation against the nationwide chain pharmacies mirrors the 1999 enforcement action against tobacco manufacturers. In both matters, the Department faced extremely well-financed defendants armed with potential defenses and a disincentive to settle because of ancillary state and private litigation. As expected in litigation against the chain pharmacies, discovery in the tobacco litigation was extraordinary—requiring an enormous commitment of resources to gather evidence and defend federal agencies from information requests. In the chain pharmacy litigations, the Civil Division anticipates litigating burdensome discovery requests seeking information from the DEA, the Food and Drug Administration (FDA), the Department of Health and Human Services (HHS), and other agencies. The Division’s success will depend in part on the resources it can bring to bear against well-funded defense teams. As just one limited example, the pharmacies are likely to seek to depose multiple current and former employees in all 23 domestic DEA Divisions. The Civil Division will need to depose hundreds of current and former pharmacy employees. It will be essential to have sufficient resources, including six contract law clerks, to protect the United States’ interests in this matter. The tobacco litigation involved years-long litigation, concluding with a nine-month trial and then years of post-trial proceedings; a similar trajectory is anticipated in the chain pharmacy opioid cases. The tobacco litigation began with a team of nearly 100 attorneys; and in fact the CPB is still litigating aspects of it today, more than 20 years later. The CPB is requesting five attorneys, two paralegals, and contract support to support this litigation.

#### Impact on Performance:

The requested resources would be dedicated to delivering on the Administration’s efforts to combat the opioid crisis. If successful, these matters will return money to the United States, including its federal health care programs, and save lives by enjoining and deterring prescribers and pharmacists from illegally dispensing opioids. This mission is as critical as ever, as the rate of opioid abuse is in fact again increasing and accelerating. The Washington Post recently called the opioid crisis “a hidden epidemic within the coronavirus pandemic.”<sup>7</sup> The Civil Division has partnered with various U.S. Attorneys’ Offices over the past two years to secure billions of

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<sup>7</sup> <https://www.washingtonpost.com/health/2020/07/01/coronavirus-drug-overdose/>

dollars in fines and forfeiture from opioid manufacturers as a means of deterring other bad actors.

The Civil Division is working to ensure that the United States protects taxpayers by recovering costs for federal healthcare programs and other federal interests, and makes positive and direct impacts on the lives of tens of thousands of Americans and broader communities throughout the country that have been devastated by the crisis. The opioid epidemic is a matter of national concern and a unified federal response that protects the United States' interests is a national priority.



**1. Base Funding**

<i>FY 2021 Enacted</i>				<i>FY 2022 President's Budget</i>				<i>FY 2023 Current Services</i>			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>10</u>	<u>10</u>	<u>10</u>	<u>2,204</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>2,226</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>2,249</u>

**2. Personnel Increase Cost Summary**

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	5	118	135	255	589	673	13
Paralegals / Other Law (0900-0999)	2	59	63	159	119	126	73
<b>Total Personnel</b>	<b>7</b>				<b>708</b>	<b>799</b>	<b>86</b>

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

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Base Automated Litigation Support	28	4	7	29	1
Contractor Support	389	65	6	390	0
<b>Total Non-Personnel</b>	<b>417</b>			<b>419</b>	<b>1</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 2023. The annualization in FY 2024 provides additional funding for a full year of support. In FY 2025, one 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 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	10	10	10	2,249	0	2,249	0	0
Increases	7	5	4	708	417	1,125	1,218	87
<b>Grand Total</b>	<b>17</b>	<b>15</b>	<b>14</b>	<b>2,957</b>	<b>417</b>	<b>3,374</b>	<b>1,218</b>	<b>87</b>

**6. Affected Crosscuts**

Opioids, Drugs

## **B. CIVIL FRAUDS**

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Budget Decision Unit: Legal Representation

Organizational Program: Civil Division, Commercial Litigation Branch, Frauds Section

Program Increase: Positions 8; Atty 7; FTE 4; Dollars \$967,000

### Description of Item:

The Civil Division's Commercial Litigation Branch, Fraud Section, investigates complex health care fraud allegations and files suit under the False Claims Act (FCA) to recover money on behalf of defrauded federal health care programs including Medicare, Medicaid, TRICARE, the Department of Veterans Affairs, and the Federal Employee Health Benefits Program. The Fraud Section works closely with U.S. Attorneys' Offices, and often teams with the Criminal Division, Health and Human Services – Office of the Inspector General (HHS-OIG), state Medicaid Fraud Control Units, and other law enforcement agencies to pursue allegations of health care fraud. As a result of these efforts, the Fraud Section has obtained recoveries in health care cases of over \$2 billion annually each year since FY 2010, returning funds to these essential federal programs.

Those who exploit Federal health care programs cost taxpayers billions of dollars and put beneficiaries' health and welfare at risk. The ongoing COVID-19 pandemic has brought into focus the importance of reliable and affordable healthcare. Not only does healthcare fraud violate public trust and compromise the integrity of programs, it also contributes to the soaring cost of healthcare in America. The Fraud Section is committed to pursuing bad actors and holding them accountable, protecting taxpayer dollars and the health of the American public. In order to address a myriad of Fraud issues, the Civil Division is seeking 8 positions, 7 attorneys, dedicated contract litigation support, and \$967,000 in new resources.

### Justification:

The Department of Justice (DOJ) is committed to prosecuting healthcare fraud under the FCA. The DOJ opened 800 new matters in FY 2021, including 485 new health fraud matters. Of the 288 FCA-related cases settled in FY 2021, 194 were healthcare-related.

### Medicare Managed Care Fraud

The Medicare Program provides vital healthcare access and coverage to America's seniors, and costs American taxpayers over \$820 billion annually<sup>8</sup> – the second largest line item in the federal budget, after Social Security. In 2021, over 45 percent of all Medicare funds – more than \$343 billion – were paid to private health insurers through the Medicare Advantage (MA) program (also known as Medicare Part C). As of Calendar Year 2021, more than a third of all Medicare

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<sup>8</sup> Centers for Medicare & Medicaid Services. *Historical NHE, 2018* [Fact Sheet]. U.S. Department of Health & Human Services. <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet#:~:text=Historical%20NHE%2C%202018%3A,16%20percent%20of%20total%20NHE>.

beneficiaries – more than 26 million seniors and disabled Americans – were enrolled in private MA plans. The Centers for Medicare and Medicaid Services (CMS) pays these private insurers a fixed monthly payment for each Medicare beneficiary who enrolls in their plan and adjusts these payments up or down to account for various “risk” factors that affect expected healthcare expenditures. Adding diagnosis codes for a beneficiary can increase payments for that beneficiary by thousands of dollars – even if the beneficiary receives no additional services. This payment structure creates a strong financial incentive for MA Organizations to identify all diagnoses for beneficiaries enrolled in their plans.

The Fraud Section is currently litigating claims against the largest MA Organization in the country, the UnitedHealth Group (UHG), arising from a scheme designed to make its beneficiaries appear sicker. The government alleges that the UHG failed to return over \$2.4 billion for invalid diagnosis codes it knew had no medical record support. More specifically, the UHG reviewed the medical records of millions of Medicare beneficiaries enrolled in its plans to identify unreported diagnosis codes that would increase Medicare reimbursement, but at the same time ignored, and failed to remove, diagnosis codes that would have otherwise reduced reimbursements. These schemes are sometimes referred to as “one-way” medical record reviews. Not only do the schemes fraudulently increase the amounts the government pays, but it threatens the integrity of patient medical histories, which are integral to safe and appropriate treatment by health care providers.

The Fraud Section currently has dedicated six trial attorneys (along with two supervising attorneys and two AUSAs) to work full time on the UHG litigation; in just the past two years, these attorneys have worked over 20,000 hours on the litigation.

Given the significant resources the Fraud Section has already devoted to pending MA program cases and lawsuits, the Section is requesting additional resources to support its efforts to investigate and litigate the potentially unlawful conduct by additional MA Organizations. With these additional resources, the Fraud Section will be able to investigate additional entities, which have already been identified, actively investigate potential fraud leads, help control the rising costs of health care, and protect the integrity of this critical multi-billion dollar program. This request will hold fraudsters accountable and serve as a deterrent to those considering engaging in such schemes.

### *Elder Justice*

The scope of elder abuse – including physical, sexual, and psychological abuse, as well as neglect, abandonment, and financial exploitation – affects millions of Americans each year. Due to their additional frailties, elders in nursing home settings can be especially vulnerable. For nearly 20 years, the Department of Justice has pursued nursing homes for providing grossly substandard care to Medicare and Medicaid residents. In the past two years, the Department has worked with subject matter experts at Vanderbilt University’s medical school on the development of data analytics to proactively identify nursing home providers providing grossly substandard services, leading to the launch of the National Nursing Home Initiative in May 2020, under which the Department identified over twenty of the worst nursing homes nationwide and assigned those cases for investigation. Recently the Fraud Section announced its \$11.2 million FCA settlement with Sava, one of the nation’s largest nursing home chains, to resolve allegations

that they billed Medicare for grossly substandard nursing services, as well as medically unnecessary and excessive rehabilitation therapy cases. Likewise, the Fraud Section has several cases in advanced settlement discussions that may also go into litigation.

These cases are critically important, especially given the disparate impact that the pandemic has had on nursing homes and their vulnerable residents nationwide; however, they are resource intensive and challenging to pursue. These cases typically require extensive medical reviews and require working with older adults, including those who may be more challenging to interview or have difficulty providing detailed or reliable information due to health issues such as dementia, memory loss or other significant medical impairments. The requested resources will leverage the Fraud Section's expertise and allow the Section to expand the scope of its nursing home work to pursue more substandard nursing homes and chains, as well as provide enhanced support of the already ongoing investigations. Additionally, these resources will support the Elder Justice Initiative, which helps to coordinate the Department's nursing home cases overall, and advance programmatic efforts to support state and local elder justice professionals (e.g., law enforcement, prosecutors, judges, etc.) to combat elder abuse, neglect, and financial exploitation.

#### High Risk and Data Outliers

Much of DOJ's civil healthcare fraud efforts are driven by whistleblower suits filed under the FCA. These suits are a vital source of healthcare fraud leads and have led to the successful recovery of billions of dollars for the public fisc. About 600 to 700 new whistleblower cases are filed every year, and the Department assigns attorneys to investigate and, where appropriate, to litigate the healthcare fraud allegations. These cases are frequently resource intensive to investigate, and roughly 80 percent of these whistleblower cases are declined after they are investigated.

In contrast, the Fraud Section has been highly successful in identifying and pursuing fraud schemes based on sources of information other than qui tam cases, such as data analytics, media reports, and referrals. These analytics identify nationwide trends based on the reimbursement claims data submitted by every Medicare-reimbursed doctor, home health agency, skilled nursing facility, hospice, and pharmacy in the United States, and analyze them across hundreds of different metrics. The analysis assists in identifying extreme outliers and indicates where the highest risk physicians are concentrated throughout the United States. While it would historically take months of document requests and interviews to discern this information about providers, it is now readily available, providing a roadmap to potential investigations and areas of fraud to concentrate on for the best results and most return on investment. In addition, the data also allows for the identification of nascent or novel fraud schemes or trends that present themselves much earlier than would otherwise be detected by the agency, and before a whistleblower reports them.

To adequately staff such efforts, the Fraud Section requests additional resources to focus on the most egregious healthcare fraud providers and schemes across the country. These resources would focus on leads identified by the Fraud Section's data analytics or referred by the HHS; and because of its utilization of reliable data, the Division anticipates increased efficiency and more effective investment of investigative time and resources.

### Telehealth Fraud

At the beginning of the COVID-19 pandemic, federal health care programs expanded the number of telehealth services reimbursable by Medicare, resulting in a significant increase in telehealth services paid for by the federal government. In the first two months of 2020, for example, telehealth services resulted in \$6 million in Medicare payments. By the end of 2020, payments had skyrocketed to more than \$3.2 billion; those numbers have remained high during 2021. These services play an important role in supporting public health, and as a result, federal health care coverage of telehealth is almost certain to outlast the pandemic. The CMS, for example, has already begun making permanent certain expansions of telehealth services; and several bipartisan bills have been introduced in Congress to permanently open the door to telehealth.

While the expansion of telehealth has increased access to and improved health care, it also has created new opportunities for unscrupulous providers to defraud federal health care programs and endanger patient safety. Examples include practices and physicians that have vastly expanded the number of patients they previously serviced, with many who are out-of-state; increased number of patients being prescribed controlled substances and opioids; billing for services that cannot be performed through telehealth, such as surgeries; billing for more than 24 hours of services in a single day; and billing the majority of their claims for the highest level of telehealth services. This type of fraud is not only a drain on the public fisc—it also makes it harder for patients, particularly those who are vulnerable, to receive quality, reliable, and honest medical care via telehealth.

For these reasons, the Fraud Section is spearheading a new initiative focused on identifying, investigating, and prosecuting health care practices and physicians who are utilizing telehealth to defraud federal health care programs. Using in-house data analytics and working with the CMS, the Section has identified more than 20 health care providers suspected of committing telehealth fraud. With additional resources, the Section will have the ability to launch these investigations and focus on this burgeoning area of fraudsters who are taking advantage of the pandemic for personal financial gain.

### Impact on Performance:

The addition of seven attorneys, one paralegal, and related litigation support will significantly enhance the Fraud Section's efforts to investigate and litigate the potentially unlawful conduct identified through existing investigations and ongoing data analytics. The Section's statutory obligation to investigate *qui tam* actions filed by whistleblowers—between 600-700 annually—places significant demands on existing staffing and impacts the ability to fully pursue the proactive healthcare fraud leads that are most likely to lead to significant cases. By providing these additional resources, the Civil Division's ability to pursue these leads and actions, hold accountable those who seek to commit fraud, protect the federal fisc, protect the health and safety of the public, and deter wrongdoing by potential fraudsters, will be greatly enhanced.

**1. Base Funding**

<i>FY 2021 Enacted</i>				<i>FY 2022 President's Budget</i>				<i>FY 2023 Current Services</i>			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>48</u>	<u>39</u>	<u>48</u>	<u>8,857</u>	<u>48</u>	<u>39</u>	<u>48</u>	<u>8,857</u>	<u>48</u>	<u>39</u>	<u>48</u>	<u>8,857</u>

**2. Personnel Increase Cost Summary**

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	7	118	135	255	826	943	18
Paralegals / Other Law (0900-0999)	1	59	63	159	59	63	36
<b>Total Personnel</b>	<b>8</b>				<b>885</b>	<b>1,006</b>	<b>54</b>

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

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Base Automated Litigation Support	32	4	8	33	1
Litigation Support	50	51	1	0	0
<b>Total Non-Personnel</b>	<b>82</b>			<b>33</b>	<b>1</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 2023. The annualization in FY 2024 provides additional funding for a full year of support. In FY 2025, one 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 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	48	39	48	7,588	1,269	8,857	0	0
Increases	8	7	4	885	82	967	1,039	55
<b>Grand Total</b>	<b>56</b>	<b>46</b>	<b>52</b>	<b>8,473</b>	<b>1,351</b>	<b>9,824</b>	<b>1,039</b>	<b>55</b>

**6. Affected Crosscuts**

Elder Justice, Access to Justice



## C. IMMIGRATION LITIGATION

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Budget Decision Unit(s):      Legal Representation

Organizational Program:      Civil Division, Immigration Litigation

Program Increase:              Positions 56; Atty 45; FTE 28; Dollars \$6,177,639

### Description of Item:

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 adequate resources for the Civil Division. Civil has experienced a surge in the number and complexity of immigration cases. Immigration litigation activities, as defined in this program increase, include petitions for review (PFRs), and individual plaintiff(s) and class action civil challenges to numerous aspects of the national immigration system, including foreign worker programs. To address these challenges, the Civil Division requests an additional 56 positions (45 attorneys and 11 paralegals), 28 FTE, and \$6.2 million.

### Justification:

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. From FY 2019 to FY 2020, OIL's pending caseload increased 51.9 percent, from 8,127 cases to 12,343. 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.

This program increase, which includes funding for attorneys and support staff, will strengthen the Division's ability to further the Department's efforts in navigating complex immigration court proceedings and promoting an efficient immigration system, including in regard to reducing backlogs in asylum and other types of immigration benefits adjudications. These additional resources are critical to improving the immigration system and providing timely judicial proceedings for immigrants.

### Petitions for Review (PFRs)

The Civil Division's OIL-Appellate Section routinely handles several thousand cases in the federal appellate courts each year that involve challenges to orders issued by the Department's Board of Immigration Appeals (BIA) and by the Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) components of the Department of Homeland Security (DHS). These cases frequently involve review of benefits applications made in removal proceedings under provisions of the Immigration and Nationality Act (INA), including those offering asylum protection for individuals fleeing harm in other countries. When claims are denied in removal proceedings, the law provides an opportunity to challenge those denials in the federal appellate courts, and those cases fall within the responsibility of OIL.

The size and scope of OIL-Appellate’s workload is directly affected by the pace of adjudications by the Executive Office for Immigration Review (EOIR). In a typical case, applications are first heard by an EOIR immigration judge (IJ). For those individuals whose claims are denied, they have the opportunity to appeal the decisions to the BIA. The surge of individuals coming to the border in recent years seeking refuge in the United States is a major factor fueling the ongoing backlog of EOIR adjudications, which has reached a level of 1.5 million cases as of the end of the first quarter FY 2022, including more than 600,000 asylum cases.

Reducing the backlog of asylum cases and bringing them to resolution more quickly is a priority of the current Administration. In recent years, EOIR has been diligently hiring additional IJs and creating new courtrooms to accommodate the increase in cases. In addition, the Administration is scheduled to publish a rule on March 29, 2022 that will revise the procedures for the adjudication of asylum applications made by individuals seeking entry at the border<sup>9</sup>. When the rule becomes final, it should resolve such claims more quickly by allowing the U.S. Citizenship and Immigration Services asylum officers to grant meritorious claims instead of referring them to immigration judges, as occurs under current regulations. The increased efficiency should also result in claims being denied more quickly for unsuccessful applicants, thus potentially increasing the rate of challenges to such denials being brought to the federal courts, as the governing review statute provides<sup>10</sup>.

As EOIR increases the volume and efficiency in processing immigration actions, the Civil Division will bear the responsibility of handling the resulting increase in cases into the federal courts. OIL-Appellate experienced an 18.7 percent increase in receipts from FY 2019 to FY 2020. In FY 2021, OIL-Appellate continued to receive an elevated workload, with 5,222 new cases, despite changes in substantive law and pandemic measures in place at many immigration courts that slowed the rate of final adjudications by EOIR. OIL-Appellate currently has an overall docket, as noted above, of approximately 12,000 cases. Without additional resources for the Civil Division, the backlog in cases will merely transfer from EOIR to the Civil Division. The resulting litigation can be extraordinarily complex, and involves the integrity of the asylum adjudication system and the immigration court system as a whole. It is imperative that the Civil Division’s resources keep pace with EOIR’s increases to ensure an overall effective system throughout DOJ.

#### *Programmatic Immigration Litigation Activities*

The Civil Division’s OIL District Court Section (OIL-DCS) is among the most highly active and busy litigation sections in the Department of Justice. Nearly all immigration regulations, policies, and significant adjudications are subject to high-profile challenges in federal court. The substance of OIL-DCS’s work includes defending executive branch discretion and legality in the most complex and nuanced areas of constitutional, statutory, and regulatory immigration law.

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<sup>9</sup> Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, Federal Register <https://www.federalregister.gov/public-inspection/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and>

<sup>10</sup> <https://www.federalregister.gov/documents/2021/08/20/2021-17779/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>

This litigation area includes national-security-related litigation handled by OIL-DCS's National Security Unit – involving the designation of foreign terrorist organizations and the Special Immigration Visa (SIV) program. Importantly, OIL-DCS has traditionally served as a force multiplier to the United States Attorney's Office community by handling class action litigation and major challenges, which in turn, empowers such offices to allocate staff resources to other Department priorities.

Due to the high volume of litigation that has been, and will continue to be, brought by sophisticated organizational and State plaintiffs, OIL-DCS is seeking additional resources. Currently, the Section is handling 106 complex class action matters and nationwide programmatic challenges. Because of the strain on current attorney levels, the District Court Section delegated 3,972 cases to United States Attorney's Offices for primary handling in FY 2021, up from 2,592 in FY 2019 and 3,347 in FY 2020. It is in the best interest of the U.S. government for the Civil Division to handle these cases, as its immigration attorneys are experts in the field.

OIL-DCS has an extremely limited capacity to personally handle new challenges that impact economic recovery and protect a fair and equitable immigration system. The Section has delegated dozens of class actions and programmatic challenges, including those challenging COVID-19 based conditions of confinement and presidential proclamations to USAOs. This will, in turn, diminish United State Attorney's Office capability to pursue other Department priorities and interference with the government's ability to speak with one voice regarding immigration litigation.

*Foreign Worker Litigation:*

Notably, the District Court Section faces a substantial increase in multi-jurisdictional litigation involving worker programs administered by the Departments of Homeland Security, Labor and State under the Immigration and Nationality Act (INA), foreign worker labor certification and wage determinations, nonimmigrant (temporary) and immigrant (permanent) worker programs, immigrant investor visas, and temporary employment authorization programs. The volume and complexity of worker program cases has steadily increased over the last several years and across the changes in the Administration. Newly received foreign worker cases peaked at 1,181 in FY 2020, up from 226 in FY 2018. COVID-19 related closures and resulting adjudications protocols by DHS caused a significant backlog in the processing of foreign worker immigration benefits. This has increased litigation challenging DHS's processing times on foreign worker petitions and applications based on allegations of unlawful delay, with over 800 such cases received since February 1, 2021. It is projected that new foreign worker case intake will remain high, and the percentage of these cases delegated to United States Attorney's Offices, as opposed to personally or jointly managed (PJM) by OIL-DCS, will remain high as well. These cases present a challenge for the Department as a whole, and providing additional resources to the Civil Division that has the requisite expertise as opposed to U.S. Attorneys will ensure a consistent and strategic approach to litigation and provide the best results for the government.

OIL-DCS's labor and employment practice defends DHS and Department of Labor's (DOL) administration of numerous statutes, policies, and programs that each support the U.S. economy. DHS labor and employment programs that OIL-DCS defends permit U.S. businesses to employ

highly skilled and other essential workers in industries where U.S. workers are not available. Such workers contribute to agricultural prosperity and security, increased entrepreneurship, and ensure that the United States remains at the forefront of STEM field technology and cutting edge research and development. Likewise, the Section's defense of the DOL's administration of labor certification and wage provisions of the INA protects the domestic labor market, the stability of which is an important element of the U.S. economy's recovery from the coronavirus pandemic. Similar to other OIL-DCS litigations, labor and employment cases are brought by a diverse and sophisticated array of plaintiffs, usually on an emergent class action basis.

OIL-DCS requires additional full-time attorneys to handle the consistent increase in defending complex immigration worker program litigation. The negative impact on the interests of the United States is apparent by the decentralized litigation strategies employed by USAOs, the numerous adverse orders and memorandum opinions in worker program litigation issued by district and appellate courts, and the body of worker program case law adverse to the United States that has developed. Additional funding for full-time attorneys will ensure that the Section can continue to fulfill its mission and defend the government's administration and enforcement of worker program provisions of federal statutes, strengthen our immigration system, and secure the interests of our nation.

Impact on Performance:

It is the Civil Division's role, as part of the Department, to enforce the nation's immigration laws, and facilitate legal avenues for immigration. The Civil Division must be prepared for the influx of PFRs and other programmatic challenges to prevent a breakdown in the immigration system. Improving efficiencies in immigration litigation are crucial in ensuring faith in the immigration process and ensuring the safety of the United States. The requested positions throughout the Civil Division will increase capacity to handle PFRs, class action suits, and foreign worker cases. Failure to fund the program increase would negatively impact our immigration system and delay due process for those in court.

**1. Base Funding**

<i>FY 2021 Enacted</i>				<i>FY 2022 President's Budget</i>				<i>FY 2023 Current Services</i>			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
<u>372</u>	<u>304</u>	<u>372</u>	<u>75,517</u>	<u>372</u>	<u>304</u>	<u>372</u>	<u>76,272</u>	<u>372</u>	<u>304</u>	<u>372</u>	<u>77,034</u>

**2. Personnel Increase Cost Summary**

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	45	118	135	255	5,299	6,060	115
Paralegals / Other Law (0900-0999)	11	59	63	159	653	694	400
<b>Total Personnel</b>	<b>56</b>				<b>5,952</b>	<b>6,754</b>	<b>515</b>

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

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Automated Litigation Support	226	4	56	230	5
<b>Total Non-Personnel</b>	<b>226</b>	<b>4</b>	<b>56</b>	<b>230</b>	<b>5</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 2023. The annualization in FY 2024 provides additional funding for a full year of support. In FY 2025, one 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 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	372	304	372	76,198	836	77,034	0	0
Increases	56	45	28	5,952	226	6,178	6,984	520
<b>Grand Total</b>	<b>428</b>	<b>349</b>	<b>400</b>	<b>82,150</b>	<b>1,062</b>	<b>83,212</b>	<b>6,984</b>	<b>520</b>

**6. Affected Crosscuts**

Immigration, Southwest Border

## D. DATA PRIVACY AND IDENTITY INTEGRITY

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Budget Decision Unit(s): Legal Representation

Organizational Programs: Civil Division, Consumer Protection Branch

Program Increase: Positions 6; Atty 6; FTE 3; Dollars \$990,425

### Description of Item:

Americans generate nearly three quintillion bytes of data every day, with more than 95 percent of all data in the history of the world having been generated in just the last two years. This data is generated through social media, communications, services, healthcare, and the increased connection of products to the Internet. The generation and collection of this data can have enormous benefits for consumers, but it also presents great risks. Deceptive policies and practices can mislead consumers about the use and sale of their information, and the proliferation of consumer information allows criminals across the globe to more frequently obtain and use that information to harmful effect. Indeed, the rates of data breaches and sophistication of technology-based schemes are alarming, and the resulting harm affects all Americans.

While there currently is no comprehensive federal privacy statute, various federal laws govern how consumer data is acquired, maintained, and used. As the component charged with using both civil and criminal tools to protect consumers' safety, economic security, and identity integrity, the Consumer Protection Branch (CPB) is most accustomed—and best positioned—to enforce those laws. In particular, the Branch's responsibility for bringing civil penalty and criminal actions under laws administered by the Federal Trade Commission (FTC) give it a unique and important tool set.

Responding to increased concerns regarding the extraordinary increase in, and frequent misuse of, information stored about consumers, the CPB has focused efforts on ensuring consumers' data privacy and identity integrity. Through collaboration with agency partners and the use of both civil and criminal tools, these efforts have resulted in landmark successes over the last year, securing billions of dollars in penalties and novel compliance measures from corporate offenders. This work has been praised by Department and Congressional leadership, and it advances the Biden Administration's prioritization of cyber-crime and data-privacy issues. The CPB requests an additional six attorneys and four contract law clerks, totaling \$1.0 million, to build on these successes and more vigorously investigate and pursue appropriate enforcement actions.

### Justification:

Over the last two years, the CPB has dedicated particular attention to the problem of data-privacy and identity-integrity violations. The Branch has advanced dozens of investigations and brought a number of enforcement actions, including the \$5 billion civil penalty settlement with Facebook. Resolving the company's liability for allegedly deceiving consumers regarding the use and sale of their data, that settlement covers Facebook and all of its subsidiaries, including WhatsApp and Instagram, and contains novel compliance terms that provide unique discovery rights for twenty years. The attorneys working on these issues must divert their time from other

priorities handled by the Branch, as there is no dedicated funding specifically for data privacy cases.

Other notable Branch achievements include the recent criminal case against Epsilon Data Management, which agreed to a deferred prosecution agreement and paid \$150 million to resolve its liability for knowingly selling consumers' data to clients engaged in fraudulent mass-mailing schemes. More than \$127 million of the resolution sum will go to victims of those schemes, and multiple executives are facing charges or have pled guilty. Further, the CPB successfully indicted five defendants responsible for the largest-ever identity theft case involving U.S. servicemembers and veterans, in which the defendants used the stolen electronic health records of thousands of warfighters to defraud them and redirect their benefits.

The Branch is also currently in active litigation against several defendants for deceiving consumers and misusing data for purported background reports offered online, including MyLife.com, and it recently resolved litigation against Vivint Smart Homes, Inc. for unlawfully using consumers' credit histories. In addition, the Branch is advancing investigations into some of the world's largest tech companies related to location-tracking practices, acquisition and use of children's data, and other concerns. Altogether, the CPB dedicated more than 15,600 hours to data-privacy and identity-integrity enforcement in FY 2021, with more than 3,800 hours of work occurring through February 2022.

The need for work in this space will only increase in coming years. The COVID-19 pandemic led to even more services and records—including healthcare services and records—moving online and into digital formats. This shift is already leading to an increase in data-security and data-privacy violations and concerns. Through developed knowledge, capabilities, and relationships, the CPB will be able to identify and pursue illegal conduct related to these services and records. In addition, as a result of the Supreme Court's recent *AMG* decision limiting the FTC's ability to secure equitable relief, the Branch is also seeing a significant increase in the number of referred FTC civil penalty actions in the data-privacy space. The United States also may soon follow the lead of foreign governments and states in enacting privacy legislation, and the Branch likely will need to respond to new requirements and responsibilities under any such laws. The requested funding will allow the Branch to pursue all these opportunities with zeal.

The additional, dedicated funding is particularly essential because data-privacy actions have proven extremely time and resource intensive to develop. Investigations often require the review of enormous amounts of data, and litigation frequently involves novel issues contested by sophisticated defense counsel. Given the complexity of data-privacy enforcement matters, as well as the likelihood of new statutory and regulatory developments, this initiative will likely be a multi-year effort, but one that produces results on a regular basis.

#### Impact on Performance:

The COVID-19 pandemic is driving the use of digital formats, and creating new data, faster than ever before. Data-misuse schemes disproportionately affect minority communities, and this increase in data proliferation creates great risks for the misuse of consumers' information, especially protected healthcare information. The CPB's data privacy initiative and the requested funds will be an excellent investment for the Department and American consumers and citizens,



protecting the rights and safety of all consumers' data through direct effects and the establishment of important precedents.

**1. Base Funding**

<i>FY 2021 Enacted</i>				<i>FY 2022 President's Budget</i>				<i>FY 2023 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>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

**2. Personnel Increase Cost Summary**

Type of Position/Series	Positions Requested	Annual Costs per Position* (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	6	118	135	255	706	808	15
<b>Total Personnel</b>	<b>6</b>				<b>706</b>	<b>808</b>	<b>15</b>

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

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Automated Litigation Support	24	4	6	25	1
Contract Law Clerks	260	65	4	260	0
<b>Total Non-Personnel</b>	<b>284</b>			<b>285</b>	<b>1</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 2023. The annualization in FY 2024 provides additional funding for a full year of support. In FY 2025, one 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 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	0	0	0	0	0	0	0	0
Increases	6	6	3	706	284	990	1,093	16
<b>Grand Total</b>	<b>6</b>	<b>6</b>	<b>3</b>	<b>706</b>	<b>284</b>	<b>990</b>	<b>1,093</b>	<b>16</b>

**6. Affected Crosscuts**

Cyber