



*U.S. Department of
Justice*

Civil Division

FY 2021 Budget & Performance Plans

February 2020

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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. Each year, the Civil Division represents the United States and its agencies, Members of Congress, Cabinet Officers, and other federal employees in tens of thousands of unique matters. In total, the Civil Division litigates matters on behalf of over 100 different federal agencies. This litigation encompasses an array of the Federal Government’s legal interests ranging from challenges to immigration policies and decisions, the Constitution, Congressional enactments, and national security prerogatives and decisions; contract disputes; efforts to combat fraud and the abuse of federal funds and benefits programs; multi-million dollar tort claims; alleged takings of property; and intellectual property disputes.

FY 2021 Full Program Costs

The FY 2021 Civil Division budget request provides for **\$327,207,000** and **1,205** positions, including 889 attorneys. This request includes a program increases for Civil’s Elder Justice Initiative of \$4,235,000 and 17 positions to support and coordinate the Department’s enforcement and programmatic agendas in combatting elder abuse, neglect, and financial fraud and scams that target our nation’s seniors; as well as for Civil’s Immigration Enforcement efforts of \$6,034,000 and 52 positions to defend the government’s immigration laws and policies and handle challenges to immigration enforcement actions.

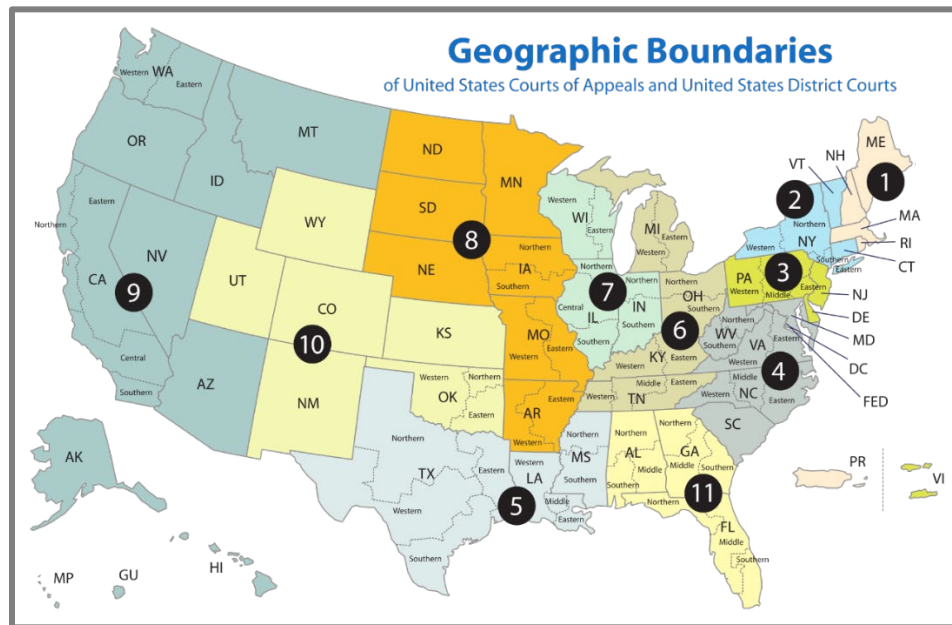
Beyond traditional litigation, the Civil Division helps administer three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the September 11th Victim Compensation Program.

Civil Division in Action

The diversity of the Civil Division’s subject matter expertise is impressive, as are the results of the Division’s litigation. In FY 2019, the Civil Division:

- **Secured** over \$6.5 billion in settlements, judgments, fines, and restitution.
- **Defeated** all or nearly all of the opposing party’s claims in 90 percent of defensive cases.
- **Defended** cases in which opposing parties sought trillions of dollars from the United States.
- **Defeated** thousands of challenges to laws, regulations, policies, and administrative decisions.

The Civil Division protects the United States Treasury, ensures that the Federal Government speaks with one voice in its view of the law, preserves the intent of Congress, and advances the credibility of the government before the courts. In these efforts, the Civil Division handles cases that are so massive and span so many years that it would overwhelm the resources and infrastructure of any individual field office. For this reason, the Civil Division litigates matters in all Federal Judicial Circuits serving the 94 Federal Districts across the country.



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/CJ>.

B. MISSION AND OBJECTIVES

1. The Civil Division Protects the Safety, Security, and Freedom of the American People

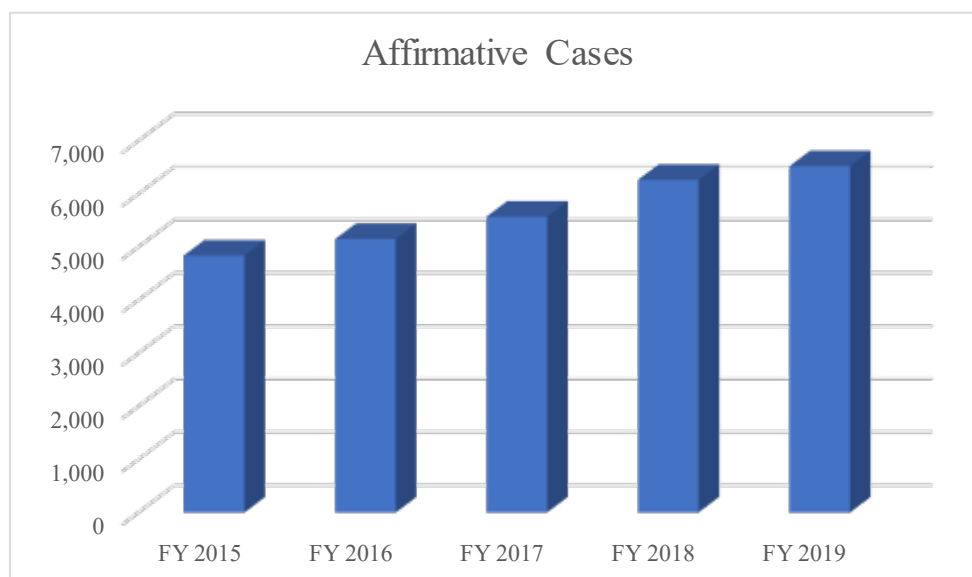
The Civil Division’s litigation directly benefits the American people by protecting their safety and security through defensive and affirmative litigation. The Division defends the detention of dangerous terrorists at Guantanamo Bay and handles litigation seeking sensitive government information (including classified and law enforcement information) under the Freedom of Information Act (“FOIA”). Civil’s immigration litigation seeks to remove and/or denaturalize criminal offenders and others who have violated immigration laws. The Civil Division also serves as a leading member of the Elder Justice Initiative. The initiative supports state and local efforts to prevent and combat elder abuse, neglect, and financial exploitation of older Americans. Additionally, in an effort to deter health care providers from billing federal health care programs for medically unnecessary services that endanger patients’ health and safety, the Civil Division aggressively litigates health care fraud cases. Moreover, Civil conducts Commercial litigation of procurement fraud matters to ensure that government resources allocated to national defense and

security are not misused and that our military personnel are not put at risk by faulty or defective equipment. Consumer fraud litigation also pursues cases against those who market unsafe or fraudulent products and services such as tainted dietary supplements or contaminated food. Finally, customs fraud enforcement matters protect both the security of the nation's borders and American workers by seeking damages and penalties from importers who violate international trade laws.

Furthermore, the Civil Division is committed to protecting first amendment rights, to include the freedom to exercise free speech and religion. Civil consults with agency clients on free exercise and establishment clause issues, and the Federal Programs Branch is currently working on statements to defend free speech on college campuses. In addition to these efforts, the Civil Division defends the Interim Final Rule Expanding Exemption for religious and moral objectors from the Affordable Care Act's contraceptive coverage mandate, and defends the Navy's ability to meet the religious freedom exercise needs of thousands of uniformed personnel and their dependents. While these cases account for a small percentage of Civil's workload, the outcome of these cases will have far reaching implications for the first amendment rights of U.S. citizens.

2. The Civil Division Protects the U.S. Treasury and the Interests of the American People

Year after year, the Civil Division recovers billions of dollars for the U.S. Treasury. Such revenue-generating cases involve health care fraud, financial fraud, procurement fraud, bankruptcies, the underpayment of customs duties, civil penalties, and oil spills. The largest recoveries typically occur under the False Claims Act; the Federal Food, Drug, and Cosmetic Act; or the Financial Institutions Reform, Recovery, and Enforcement Act. In FY 2019, the Civil Division secured over \$6.5 billion in settlements, judgments, fines, and restitution in affirmative, monetary matters. Furthermore, Civil is in the forefront in combatting the opioid epidemic through the criminal and civil prosecution of manufacturers and prescribers. In protecting the U.S. Treasury and the well-being of the American people, the Civil Division is aggressively holding companies, institutions, and individuals accountable, as reflected in the increase of affirmative cases.



Additionally, the Civil Division is principally 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 United States Court of International Trade (CIT), an article III court. Having trade relations with over 75 countries around the world, the United States is the largest global importer of goods, which was valued at \$2.6 trillion in 2018. As of the end of FY 2016, \$2.8 billion in antidumping and countervailing duties owed to the United States remained uncollected¹. Antidumping and countervailing duties are intended to protect the U.S. manufacturing industry from foreign manufacturers. At the same time, the Civil Division defends federal agencies in cases where other parties file monetary claims against the Federal Government. The largest cases, in terms of dollars at issue, typically relate to contract disputes, procurement decisions, patent claims, accident and liability claims, and constitutional takings claims. The Civil Division's representation ensures that unmeritorious claims are not paid. The Federal Government's potential exposure in these cases is trillions of dollars each year. In FY 2019, the Civil Division defeated trillions of dollars in cases that were closed.

3. The Civil Division Defends the U.S. Government's Interests

The Civil Division's litigation extends beyond monetary claims. Civil also protects the integrity of federal laws, regulations, policies, and programs. This litigation reflects the diversity of the Federal Government's activities and involves challenges to statutes passed by Congress, domestic and foreign operations, denaturalizing dangerous criminals, national security and homeland security policies, protecting against the disclosure of sensitive information, and employment discrimination litigation filed against federal agencies.

C. INTERNAL AND EXTERNAL CHALLENGES

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

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

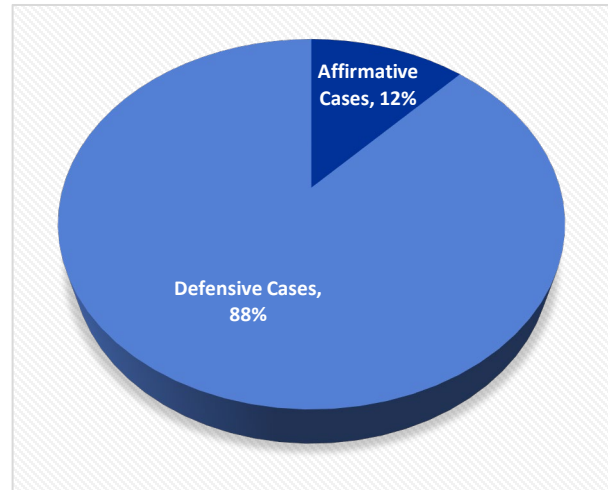
External Challenges

The Civil Division's greatest continuing challenge is that 88% of its caseload defends the United States from claims filed against it. Opposing parties file constitutional, contractual, and accident liability challenges, and many other lawsuits against the United States in domestic and foreign

¹ Department of Homeland Security (2017) *Fact Sheet: Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws*
<https://www.dhs.gov/news/2017/03/31/fact-sheet-enhanced-collection-and-enforcement-antidumping-and-countervailing-duties>

courts. Opponents decide the time, nature, and location of the claim. Once litigation commences, the Federal Government must respond to the suit, lest it face default judgments or sanctions. Civil must vigorously represent the Federal Government in these increasingly complex matters.

The underlying events that give rise to litigation are typically beyond the Civil Division's control, unpredictable, or even unknowable. Incidents such as challenges to executive orders, changes in federal policy, contractual disputes between an agency and its vendor, bankruptcy filings, natural disasters such as hurricanes, and other catastrophic events such as oil spills can lead to litigation. In any such matter, the Civil Division will represent the interests of the United States; however, Civil cannot forecast when or where this litigation will occur.



The Civil Division's cases continue to grow in size, scope, and complexity in all aspects of the law, including immigration, national security, torts, appellate, and intellectual property. The Civil Division must litigate an increasing level of fast-moving and consequential cases compared to prior fiscal years. Civil has also encountered aggressive and well-litigated challenges to Administration priorities. Such legal opponents are presenting complex, well-funded suits against the Federal Government, which requires the Civil Division to assign more attorneys to each case for longer periods of time in order to best defend the interests of the United States. Doing so exhausts resources more quickly and places significant strain on the Civil Division.

Internal Challenges

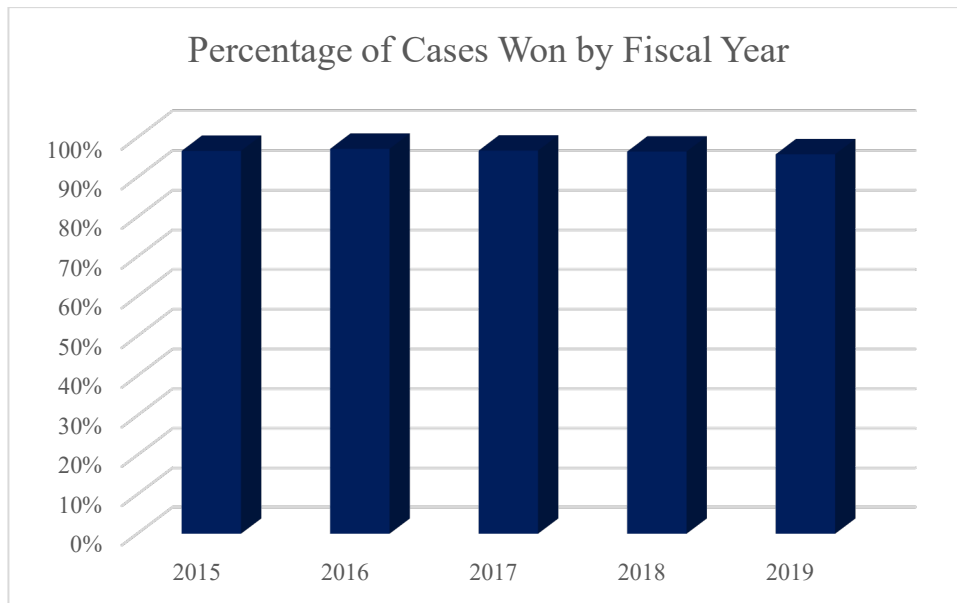
The Civil Division is responding to an increasingly complex caseload with increasing complexity of data in investigations and litigation. In many cases, voluminous quantities of emails, internal corporate documents, text messages, and voicemails will be exchanged between parties. Civil relies heavily on its ALS Program to combat these challenges.

The Civil Division's ALS Program is essential to the Division's success in litigation. ALS services are critical for acquiring, screening, organizing, and analyzing documents and data required for cases. Civil uses ALS tools and contractors to organize and control document collection and data, respond to requests for documents by opposing counsel, develop institutional memory, and provide access to case material at anytime from anywhere. Increasingly, large-scale document collection and discovery is a feature of cases as they grow in size and complexity. One of the critical features of the ALS Program is Civil's ALS Labs. ALS Labs are embedded in the Division's branches, and provide essential onsite capability to streamline the processing and loading of data. The labs provide data intake tracking, processing and loading of documents into software programs to perform document search, review management, production and deliverable preparation, and discovery consultation services that are critical to the success of the Division's litigation efforts. Without ALS support, several hundred cases would not have

basic services available, such as data processing and document review, which would negatively affect the calculus for the Government's settlement evaluation. A lack of ALS resources would also dramatically raise the possibility of the Government's cases failing, resulting in increased judgment awards or an adverse impact to Government programs and policies.

Addressing the Civil Division's Challenges

The overwhelming majority of the Civil Division's cases are defensive, and Civil must respond to the lawsuits on behalf of the Federal Government. The Civil Division makes every effort to be successful in the face of these challenges. The dedication to the Department's mission is evident in the percentage of cases won, which has remained above 93% in each of the past five years. The funding requested in FY 2021 will provide resources for the Civil Division to continue to address these challenges, while supporting the Administration's efforts to combat elder fraud and address illegal immigration.



D. ENVIRONMENTAL ACCOUNTABILITY

Civil is actively working toward meeting all Administration and Department of Justice guidelines for improving environmental and energy performance. Civil continues to identify ways to achieve reductions in greenhouse gas emissions, acquire green products and services, and establish cost-effective waste prevention and recycling programs. Examples of Civil's environmentally-sound practices include: significantly increasing video teleconferencing capabilities throughout its office space to reduce travel costs, installing daylight-harvesting and occupant-sensing lighting systems in all new GSA-leased office space, and reducing the overtime use of heating and air conditioning. For several years, Civil has served as a leader within the Department in the area of energy savings achieved through advanced virtualization technology. Through successful server and desktop virtualization efforts, Civil eliminates nearly four million pounds of CO2 each year, which is the equivalent of removing over 325 cars from

the road or planting nearly 6,000 trees annually. The Civil Division also incorporates Energy Star requirements into procurement actions and utilizes the Electronic Product Environmental Assessment Tool when making IT purchases. As a result of the Civil Division's FY 2018 building consolidations, over two thirds of employees are housed in office space that both shrinks the GSA footprint and meets LEED standards, in addition to being located in close proximity to multiple mass transit options. Finally, approximately 78% of the Civil Division's employees participate in the Transit Subsidy Benefit Program.

II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars (\$000)	Pg.
Elder Justice Initiative	Additional positions for the Civil Division's Consumer Protection Branch and Commercial Litigation Branch to lead the Department of Justice's (DOJ) Elder Fraud Initiative, and to support and coordinate the Department's enforcement and programmatic agendas in combatting elder abuse, neglect, and financial fraud and scams that target our nation's seniors.	17	9	\$4,235	39
Immigration Enforcement	Additional positions for the Civil Division's Office of Immigration Litigation (OIL), Appellate Staff, and Federal Programs Branch to defend the government's immigration laws and policies and handle challenges to immigration enforcement actions.	52	26	\$6,034	48

III. Appropriations Language and Analysis of Appropriations Language

The FY 2021 Budget Request includes a proposed change in the Legal Activities, Salaries and Expenses, General Legal Activities appropriations language, which is explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

Proposed Change

In addition, for [reimbursement of] expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, [not to exceed \$13,000,000] *\$19,000,000* 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 steady and staggering increase in its caseload over the past seven years, with no expectation of abatement. Therefore, it is essential that the Civil Division secure an increase in the amount of the appropriated reimbursement from the Vaccine Injury Compensation Trust Fund to handle VICP claims. In FY 2021, Civil is requesting a total reimbursement of \$19.0 million. This funding level would provide for an additional 29 attorney positions, bringing the total number of positions associated with the program to 90.

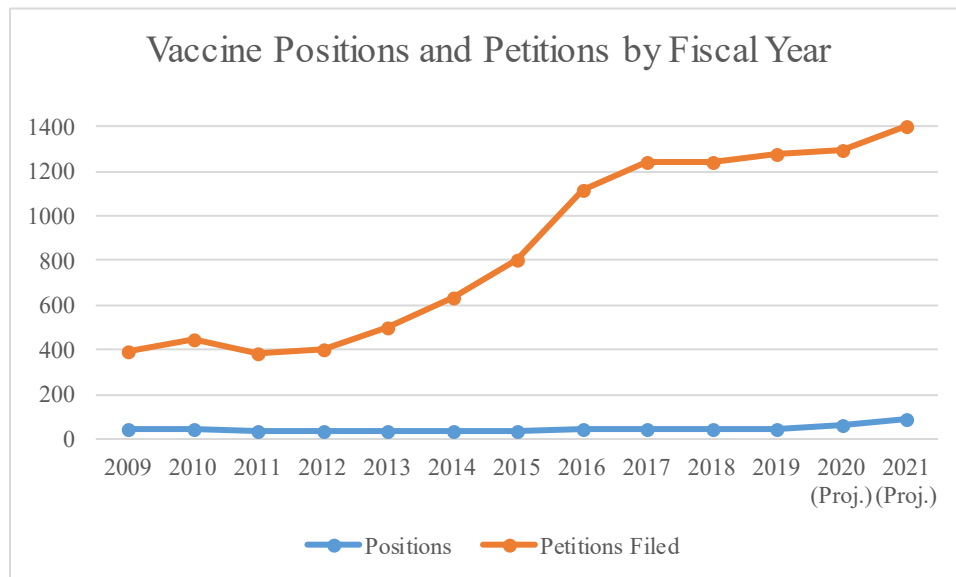
Funding for VICP is unique in that Congress appropriates a reimbursement from the Vaccine Injury Compensation Trust Fund to the U.S. Department of Health and Human Services (HHS), the Civil Division, and to the Special Masters at the U.S. Court of Federal Claims. The Vaccine Injury Compensation Trust Fund, which has a current balance of \$3.9 billion and is funded by an excise tax on vaccines, also pays compensation to petitioners, as well as attorneys’ fees and costs. Therefore, providing the Civil Division with the necessary resources to adequately litigate VICP cases will prevent potentially unmeritorious cases from receiving compensation and other meritorious cases from being overcompensated.

Background

Congress enacted the National Childhood Vaccine Injury Act of 1986 (the “Act”) to avert a crisis related to the vaccination of children. There were two primary concerns: (1) individuals harmed by vaccines faced an inconsistent, expensive, and unpredictable tort system; and (2) the risk of litigation threatened to reduce vaccine manufacturing to a level that could not meet market demands. The Act established the VICP, a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines or the administration thereof. In this system, an individual files a petition with the U.S. Court of Federal Claims. The Civil Division represents the interests of the United States and collaborates closely with HHS to determine if a petitioner’s alleged injuries merit compensation.

Justification

There has been a tremendous flood of newly filed VICP cases in recent years, and resources for the Civil Division have not kept pace with the over 250% rise in workload since FY 2012. Between FY 2006 and FY 2012, approximately 400 VICP cases were filed each year. However, beginning in FY 2013 that number began to grow steadily, exceeding 1,100 by FY 2016. Over 1,200 cases were filed in FY 2017, FY 2018, and FY 2019. This reflects an unsustainable increase over the steady annual 400 cases that Civil handled during the eight-year period from FY 2006 – FY 2012. Since FY 2012, the staffing level has only increased from 34 positions to 46, an increase of merely 35%. This vastly disproportionate growth of cases to resources has prevented the Civil Division from keeping pace with newly filed cases and has contributed to an alarming and continual increasing backlog. Claims are averaging a wait of nine months for review, resulting in delays in compensating petitioners. Even with Congress’ approval of 15 positions and \$3 million for FY 2020, 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 caseload 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% of new case filings. Additionally, the vaccine injury attorney bar has become more aggressive and sophisticated in bringing cases. With a heavy, nationwide, online presence, and the coordinated efforts of a vaccine practitioners’ bar association, these firms are reaching far more potential petitioners. The Vaccine Act includes a fee-shifting provision such that attorneys’ fees and costs are compensated from the Vaccine Trust Fund, with no cap on the hourly rate (now approaching \$500/hour for experienced counsel) or total amount that may be awarded. Indeed, the Federal Government is generally required to pay attorneys’ fees and costs even when petitioners are denied compensation. There is virtually no risk or disincentive to filing as many cases as possible. Also, in December 2016, the 21st Century Cures Act became law (P.L. 114-

255), which added coverage for a new category of cases arising from maternal immunization, although, to date, only a handful of cases have been filed alleging in utero injuries.

In addition, legislative proposals to increase the number of Special Masters from eight to 16 have been introduced in both the U.S. Senate and House of Representatives. If the number of Special Masters doubles, there will be an escalation in the already intense pressure from the Office of Special Masters to resolve vaccine cases more quickly. From FY 2015 to FY 2019, the U.S. Court of Federal Claims has received a 56% increase in Vaccine funding, while the Civil Division has only seen a 28% increase. A corresponding increase in funding for the Civil Division is essential to avoid summary action being taken against the United States in pending cases.

Additional funding is required to keep pace with the aforementioned growing caseload. Currently, each Vaccine attorney is handling an astounding average caseload of 100 cases; more than one-third of Vaccine attorneys have individual dockets of greater than 129 cases, more than double a typical attorney docket. That volume is simply not sustainable. The requested funding level of \$19.0 million would allow the caseload per attorney ratio to return to a challenging, but more manageable, 50-60 cases.

As of November 14, 2019, the number of cases awaiting initial review by HHS's medical staff, a prerequisite to Civil processing the case, totaled more than 880, all of these cases were filed in 2019. The number of new petitions filed since the beginning of FY 2019 is 754. Thus, more than one-third of the cases filed last fiscal year have received almost no attention from either HHS or the Civil Division, and remain on a "wait list." Due to understaffing within the Vaccine section, newly filed cases cannot be processed as quickly and thus the rate of case resolutions, or terminations, is decreasing, resulting in an even larger pending caseload. To illustrate, since May 2019, the average number of days for each case resolution has increased by 42 days. These statistics demonstrate that the Vaccine section's dire need for additional staff is mission critical.

Impact on Performance

Faced with a crushing caseload, Vaccine attorneys have had no choice but to seek extensions from the Court. Recent Court rulings exemplify the judiciary's dissatisfaction with Vaccine's (1) ability to meet court deadlines; and (2) the government's responsibility to adequately staff its litigation:

"The undersigned is sympathetic to the fact that the members of the DICP and DOJ tasked with reviewing these petitions are facing an increasing number of petitions and that limited resources are being stretched thin. If the issue is a lack of resources or how the Secretary is allocating resources, it is not clear what incentive exists for the reapportionment of those resources if the Secretary is allowed to delay processing of the case [...] The Secretary's motion for an enlargement of time to file his Rule 4(c) report is GRANTED IN PART."

-- Special Master Christian J. Moran

"The undersigned cannot grant this motion. To date, Respondent has been given two-hundred and ten days to complete an initial review of Petitioner's medical records and

state a position on litigation or settlement. [...] The Office of Special Masters is aware of the many issues created by Respondent's ongoing lack of resources. However, Respondent's lack of resources cannot justify effectively halting all claims for an indefinite amount of time [...] Respondent's Motion for Extension of Time is DENIED."

-- Special Master Herbrina D. Sanders

The Court now regularly issues orders in many cases, indicating that no further extensions of time will be allowed for the government to determine its position on entitlement to vaccine compensation, regardless of whether HHS staff has been able to review and analyze the medical evidence. The Court is also requiring Vaccine attorneys to provide medical record reviews without the benefit of a medical analysis from HHS. Increased staffing will enable Civil to avoid summary action being taken by the Court which would be adverse to the government's interests. It will also ensure that petitioners with meritorious claims receive compensation in a timely manner, and prevent petitioners with pending claims from abandoning the VICP and filing civil lawsuits against vaccine manufacturers or administrators. Providing Civil with proper staffing levels will prevent failure of the Program as a whole by ensuring its continued viability.

IV. Program Activity Justification: Legal Representation

A. LEGAL REPRESENTATION

1. Program Description

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2019 Enacted	1,136	1,055	\$289,334
2020 Enacted	1,136	1,155	\$295,084
Adjustments to Base and Technical Adjustments	0	3	\$21,854
2021 Current Services	1,136	1,158	\$316,398
2021 Program Increases	69	35	\$10,269
2021 Request	1,205	1,193	\$327,207
Total Change 2020-2021	69	38	\$32,123

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

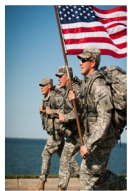
- Corporate and Financial Litigation Section
- Office of Foreign Litigation
- Fraud Section
- Intellectual Property Section
- National Courts Section



Consumer Protection Branch



Federal Programs Branch



Office of Immigration Litigation

- Appellate Section
- District Court Section



Torts Branch

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

Appellate Staff

The Civil Division's Appellate Staff represents the interests of the United States in federal circuit courts of appeals and state appellate courts. The Appellate Staff's cases involve complex, sensitive, and novel legal questions that set far-reaching precedents. The Appellate Staff litigates many of the most difficult and controversial cases in which the Federal Government is involved, including constitutional challenges to statutes passed by Congress, as well as challenges to federal regulations, Executive Orders, and other Executive Branch decisions when these matters are litigated in appellate courts, which are often the last word on these questions of national significance. Many of the Appellate Staff's cases present significant separation-of-powers questions, and the office is responsible for defending the interests of the Executive Branch in a wide range of cases. A sizeable portion of Appellate's caseload involves the defense of national security policies in federal appellate courts, such as suits by Guantanamo Bay detainees challenging the lawfulness of their detentions, actions challenging the intelligence community's counterterrorism efforts, including surveillance and investigations methods, challenges to restrictions on terrorist financing and travel, defending military policies, and defending individual federal officers and employees sued for alleged constitutional violations (*Bivens* claims). The Appellate Staff also handles appeals in high-profile challenges to Executive Branch immigration policies, such as Deferred Action for Childhood Arrivals (DACA), sanctuary cities, and national security entry vetting. The Appellate Staff also represents the United States in affirmative litigation, such as consumer protection cases and False Claims Act suits to recover money fraudulently obtained from the U.S. Treasury.

Commercial Litigation Branch

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

Corporate/Financial Litigation Section

The Corporate/ Financial Litigation Section protects the financial interests of the United States by handling unique nation-wide matters involving money and property that involve significant federal interests. The Section has a primary role in the United States' affirmative efforts to collect debts owed the United States and protect the fiscal integrity of federal healthcare programs. The Section's cases, which are both affirmative and defensive and litigated in courts throughout the country, involve many different industries, including health care providers, drug manufacturers, insurers, communications companies, energy producers and suppliers, and commercial airlines.

A majority of the Section's cases involve representing the Federal Government in complex bankruptcy cases, including cases in which the Section pursues recovery of civil fraud and criminal restitution claims and protects a broad range of federal interests related to the opioid crisis. The Corporate/Financial Litigation Section expects to play a major role in protecting the United States' financial and regulatory interests in bankruptcy cases as manufacturers and distributors are required to reorganize or liquidate due to financial pressures they face from cities, states, individuals and private insurers that have absorbed costs related to the sale and distribution of opioids.

Office of Foreign Litigation

The Office of Foreign Litigation (OFL) represents U.S. government interests in foreign courts. OFL currently has approximately 1,800 cases in over 100 countries. As OFL attorneys are not licensed to practice law in foreign jurisdictions, the office retains and closely instructs foreign counsel to represent U.S.



interests in foreign courts. Most OFL cases are defensive, representing the United State and its officials against claims arising from our activities abroad. OFL also prosecutes affirmative litigation to counter fraud and other wrongs against the United States, and represents the interests of the U.S. in foreign criminal proceedings. OFL cases span a wide range of subjects including: national security, visa fraud, data privacy, tax and revenue, intellectual property, employment, breach of contract, foreign aid, and real property disputes. OFL also provides advice to other parts of the U.S. 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. This section pursues fraudulent schemes impacting federal health care programs, our military, programs designed to aid small businesses, and the evasion of customs duties, and any other type of fraudulent conduct that results in the waste and abuse of taxpayer funds. Much of the Fraud Section’s matters are pursued under the False Claims Act (FCA) and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). In FY 2019, the Department recovered more than \$5.8 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 2019, 635 qui tam suits were filed, and the Department obtained settlements and judgements totaling \$2.2 billion in these and earlier filed suits. Whistleblower awards during the same period totaled \$271 million.

The Fraud Section’s health care fraud activities have included an emphasis on combatting the opioid epidemic. The Fraud Section is uniquely situated to pursue fraudsters throughout the entire opioid distribution chain, including pharmaceutical manufacturers, pharmacies, pain management clinics, drug testing laboratories, and physicians. The work of the Fraud section with respect to opioids has already yielded significant results. In July 2019, Reckitt Benckiser Group paid \$1.4 billion – the largest recovery in the United States in a case concerning an opioid drug – to resolve its potential criminal and civil liability for its conduct relating to the drug Suboxone. Of this amount, the civil recovery was \$700 million, including \$500 million to the federal government and \$200 million to the states for their Medicaid programs. The United States also filed suit against Reckitt’s successor, Indivior, in August 2018 for engaging in an

illicit nationwide scheme to increase prescriptions of Suboxone Film. In June 2019, Insys Therapeutics, the manufacturer of Subsys – an opioid 100 times more powerful than morphine – agreed to pay \$225 million to resolve its liability for, among other things, kickbacks it paid to doctors to induce them to prescribe the drug. Of that amount, the civil recovery was \$195 million. The Fraud Section has also been actively supporting the opioid-related efforts of other components throughout the Department, including the Criminal Division, the U.S. Attorneys’ Offices, and the Drug Enforcement Administration, by identifying potential targets and undertaking medical reviews.

The Fraud Section also has led an initiative that has recovered over \$850 million from pharmaceutical manufacturers to resolve allegations that they illegally paid the Medicare copays for their own products by using purportedly independent foundations as conduits for these payments. Copay obligations help to maintain patient and physician price sensitivity, which act as an important check against potential drug price-gouging and overutilization. Likewise, by engaging in such illegal conduct, the pharmaceutical manufacturers gave their products an unfair competitive advantage over drugs whose manufacturers played by the rules and did not pay their own patients’ Medicare copays.

Among other examples of its critical activities, the Fraud Section has used the FCA successfully to protect elderly patients from abusive nursing home care, to impose liability on those who sold defective bullet-proof vests to federal and state law enforcement officers, and to pursue those who made false statements to avoid customs duties or to improperly obtain contracts reserved for small or veteran-owned businesses.

Intellectual Property Section

The Intellectual Property Section represents the United States in all intellectual property matters where a patent, copyright, or trademark is at issue. 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 this Section handles involve complex technologies, such as pharmaceutical compositions and highly sophisticated electronic devices, as well as technologies critical to national security, such as the F-35 Fighter Jet Program. To meet the challenges presented by these cases, all attorneys assigned to the Section have a degree in one of the physical sciences or in a field of engineering. Many of the Section’s attorneys are registered to practice before the U.S. Patent and Trademark Office.

National Courts Section

One of the largest and oldest litigating sections in the Department, National Courts handles matters in three Federal courts with nation-wide 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. The Section focuses on procurement and contract disputes, constitutional claims, pay claims, personnel appeals, veterans’ benefit appeals, and international trade cases. The Section is 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. The Section also 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. Within the past year, citing national security concerns, the Executive Branch has taken numerous actions in the realm of customs and trade that have

dramatically increased the Section's workload in a manner that will extend indefinitely. National Courts' larger trial cases often last for years and involve large sums of money. In the Section's procurement practice, attorneys defend against a growing number of lawsuits (referred to as bid protests), challenging agency contracting efforts. These fast-moving cases often involve matters impacting national security, the acquisition of major military weapon systems, complex information systems, or the delivery of health care services to military members and veterans.

Consumer Protection Branch

The Civil Division's Consumer Protection Branch protects the health, safety, and economic security of American consumers through criminal prosecutions and civil enforcement actions under national consumer protection statutes. Its workload involves pharmaceuticals and medical devices, deceptive trade practices and telemarketing fraud, adulterated food and dietary supplements, consumer product safety, elder fraud, and opioids. In addition, the Branch defends the Federal Government against challenges to consumer protection programs and policies. The Branch is unique within Civil because it has both criminal and civil jurisdiction.

The Consumer Protection Branch has seen great success over the past several years under the Federal Food, Drug and Cosmetic Act (FDCA), and has obtained recoveries of hundreds of millions of dollars in criminal fines, forfeitures and disgorgement. The Consumer Protection Branch is advancing a number of initiatives to combat the nation's opioid crisis, including leading criminal investigations into seven different opioid manufacturers to determine whether they violated the FDCA in the marketing and sale of their products, paid kickbacks to induce drug prescriptions, and/or knowingly caused the submission of false claims for reimbursement to government health care programs. The Branch is working these efforts in tandem with the Civil Frauds Section. The Branch's efforts on these cases constitute the present core of the Department's efforts to hold opioid manufacturers accountable for their role in creating and perpetuating the opioid crisis.

In addition to recoveries under the FDCA, the Consumer Protection Branch handles a significant portion of financial fraud work. That financial fraud work has, itself, secured hundreds of millions of dollars in civil fines.

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, including an extensive docket of cases involving the President (including several Emoluments Clause challenges), the 2020 census, foreign affairs, military policies, immigration enforcement and intelligence community programs and activities.

The Federal Programs Branch handles a significant amount of work related to national security and national defense, foreign affairs, U.S. economic sanctions, counterterrorism policies, immigration policy, and the protection of classified intelligence sources, methods, and information. Indeed, well over half of the cases and matters for which Civil is responsible are national security-related, as is a significant portion of the legal advice Civil provides to agencies. The Branch's litigation in this area includes (1) the defense of United States' foreign intelligence and surveillance activities; (2) the protection of classified national security information of the U.S. Intelligence Community (e.g. CIA, NSA, FBI) and the Department of Defense through the state secrets privilege as well as through enforcement of prepublication review non-disclosure obligations; (3) the defense of the President's immigration executive orders and policies; (4) the defense of foreign affairs policies and actions, including matters concerning the immunity of foreign states and officials in U.S. courts; (5) the defense of U.S. economic sanctions against foreign terrorist entities, foreign states and foreign persons, including with respect to Cuba and Iran; (6) the defense of military actions and policies such as the President's national emergency proclamation transferring additional funds for a border wall, and the use of lethal military force overseas; (7) the defense of military personnel policies, including policies concerning accession into military service by foreign persons; policies concerning military service by transgender individuals, policies concerning the retention of military service members with HIV; and policies concerning the integration of women into combat positions; (8) the defense of watch-listing policies to protect U.S. transportation systems, including challenges to the No Fly List and Terrorist Screening Database; and (9) the defense of challenges by terrorist detainees at Guantanamo Bay to the legality of their detention.

Office of Immigration Litigation

The Office of Immigration Litigation is organized into two sections—the District Court Section and the Appellate Section. Office of Immigration Litigation attorneys vigorously defend Executive Branch decisions regarding border security and pursue consistent enforcement of the country's immigration laws.

District Court Section

The Office of Immigration Litigation's District Court Section 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. The section represents the Department of Homeland Security (DHS) and the Department of Health and Human Services in cases involving a wide range of complex immigration matters; the Department of State (State) in cases involving passports and visas; the Department of Labor in employment-related visas and foreign worker programs; the Department of Defense and the Department of the Army in alien soldier naturalization cases; and the Federal Bureau of Investigation (FBI) on national security matters, including denaturalization and other actions involving individuals with established terrorism ties. The Section also provides advice and counsel on immigration-related national security issues and labor matters within State and DHS. The District Court Section coordinates litigation strategy on these cases with the various United States Attorneys throughout the United States.

The most complex and time-consuming cases this Section handles are class actions, which have increased dramatically in number in recent years. The Section's attorneys are defending 79 class

action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration, and enforcement of immigration law, which represents a 137% increase since FY 2016 and a 38% increase over FY 2018's record number of 60 class action cases. This Section's litigation also routinely involves national security issues. The District Court Section defended numerous cases brought by known or suspected terrorists and convicted criminals attempting to acquire immigration benefits, thwart removal, or avoid detention pending removal, including naturalization claims of members of Hamas, Al-Qaeda, and Al-Shabab.

In addition to defensive litigation, the District Court Section affirmatively files and prosecutes an ever-increasing number of denaturalization cases. The Section's National Security and Affirmative Litigation (NS/A) Unit works closely with the FBI, DHS, the Criminal Division, and USAOs to denaturalize individuals who pose potentially grave threats to public safety and the nation's security. These include known or suspected terrorists, violent criminals, human traffickers, war criminals, human rights abusers, child sex abusers, and fraudsters. The number of referrals from agencies has increased from 58 in FY 2017 to 144 in FY 2018, and then increased dramatically in FY 2019 to 212, as agencies have begun committing additional resources to the detection and prosecution of naturalization fraud.

Appellate Section

The Office of Immigration Litigation's Appellate Section defends the U.S. in immigration litigation before the federal appellate courts. Appellate attorneys handle removal cases in the Courts of Appeals and support the Office of the Solicitor General's immigration litigation efforts in the U.S. Supreme Court. These cases comprise 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 the Appellate Section is approximately 10% of all the appellate litigation in the federal circuit courts. The Section 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 the Department of Justice's Executive Office for Immigration Review (EOIR). As EOIR handles more cases and issues more decisions, the Appellate Section will handle more immigration appeals in federal appeals courts. Given the defensive nature of the Appellate Section's litigation, Civil attorneys must respond to each challenge or risk immigration enforcement actions being negated.

In addition, the Appellate Section also provides advice and counsel to U.S. Attorneys' offices prosecuting criminal immigration issues that overlap with the Office's civil litigation. This Section provides support and counsel to all federal agencies involved in the admission, regulation, and removal of aliens under U.S. immigration and nationality statutes, as well as related areas of border enforcement and national security.

Torts Branch

The Torts Branch is comprised of four litigating sections: (1) Aviation, Space and Admiralty, (2) Constitutional and Specialized Tort Litigation, (3) Environmental Tort Litigation Section, and (4) Federal Tort Claims Act Litigation.

This Branch also is home to tort reform programs, including the Vaccine Injury Compensation Program and the Radiation Exposure Compensation Act Program. The majority of the Torts Branch's workload involves defensive matters in which other parties have sued the Federal Government.

Aviation, Space and Admiralty Section

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

Constitutional and Specialized Tort Litigation Section

The Constitutional and Specialized Tort Litigation Section consists of three groups: the Constitutional Torts Staff, the Office of Vaccine Litigation, and the Radiation Exposure Compensation Act Program. The staff focuses on cases with critical and sensitive Executive Branch functions, cutting-edge questions of law affecting the federal workforce, and difficult personal liability cases. Many cases encompass national security or law enforcement activity.

The ***Constitutional Torts Staff*** provides legal representation to federal employees in cases filed against them personally for actions performed as part of their official duties. Most cases seek monetary damages under the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). This personal liability litigation is brought against federal employees often in retaliation for doing their jobs or sometimes as an attempt to indirectly challenge government action or initiatives. The staff focuses on critical and sensitive Executive Branch functions, cutting-edge questions of law affecting the federal workforce, and difficult personal liability cases. In addition to litigating the most difficult cases directly, Constitutional Torts devotes significant staff, time, and resources toward assisting U.S. Attorneys' Offices on jointly handled cases, reviewing and approving representation requests

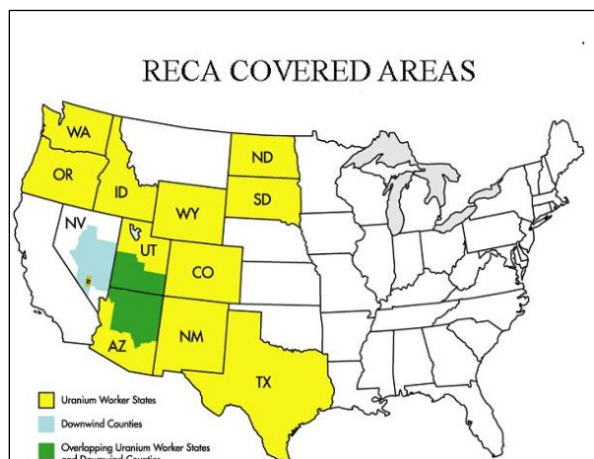
from federal employees nationwide, and providing guidance to both federal agencies and Department components on legal and policy matters related to Department-provided representation of government officials. On average, the Constitutional Torts Staff processes requests for representation for over 125 federal employees each month, from all different agencies within each of the three branches of government. While it would be impossible to list the variety of government activities that can give rise to litigation brought personally against government employees, common examples range from sensitive national security initiatives to enforcement and prosecution of criminal, environmental, and immigration laws and regulations. The importance of providing a vigorous defense to federal employees who are sued personally for official acts cannot be overstated. If the federal workforce was hampered by the fear of personal liability in money damages, government employees would 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 Program, costly litigation has virtually ceased against drug manufacturers and health care professionals.

The Program’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. The program has awarded more than \$4 billion to over 6,994 claimants as of December 1st, 2019, who almost certainly would not have received compensation through traditional tort litigation.

There has been a dramatic increase in vaccine cases filed in recent years, as the Program has expanded to cover additional vaccines and injuries. From FY 2006 to FY 2012, approximately 400 new vaccine cases were filed each year. That figure nearly tripled beginning in FY 2016, with a total of over 1,100 new cases filed, and over 1,200 new cases filed in FYs 2017, 2018, and 2019. This trend shows no signs of abating, with approximately 1,300 new cases expected in FY 2020 and over 1,400 new cases expected in FY 2021.

The Radiation Exposure Compensation Program is an administrative law system created by the Radiation Exposure Compensation Act (RECA).



The Act provides set awards for individuals who developed specified illnesses following the government’s failure to warn of possible radiation exposure resulting from atmospheric nuclear weapons tests, or from employment in certain uranium production industry occupations during the build-up to the Cold War. Since its passage in 1990, the Act has compensated over \$2.3 billion in connection with over 36,000 approved claims for eligible individuals or their surviving beneficiaries through September 30th, 2019.

Environmental Torts Litigation Section

The Environmental Torts Litigation (ETL) Section defends the U.S. in high-stakes and complex environmental tort litigation involving alleged exposure to toxic substances in the environment, the workplace, and government-owned housing. These cases often cover complex scientific and medical issues requiring the presentation of expert testimony.

Many of the cases involve high-stakes, mass tort or multidistrict litigation. ETL’s current caseload includes: the Flint Water Crisis Litigation, defending claims in excess of a billion dollars; the Gold King Mine Disaster litigation, defending claims in excess of a billion dollars for the 2015 release of contaminants into the Animas and San Juan Rivers; and the Aqueous Film Forming Foam (aka Fire-Fighting Foam) Litigation, defending claims against military bases across the country in excess of a billion dollars. ETL has litigated cases involving Legionella bacteria at a Veterans Administration hospital facility; government activities at “Ground Zero” following the World Trade Center attacks; contamination from a U.S. Army chemical warfare research facility during World War I; thousands of personal injury and property damage claims allegedly caused by the military exercises occurring over a thirty-year period on the island of Vieques, Puerto Rico; hundreds of property damage claims allegedly caused by the Department of Interior’s use of herbicides to prevent wildfires on federal land; thousands of alleged personal injury claims due to contaminated drinking water from Camp Lejeune; and consolidated lawsuits involving nearly 100,000 individual administrative claims seeking well in excess of \$100 billion for alleged personal injuries from exposure to formaldehyde in emergency housing units provided by FEMA in response to Hurricanes Katrina and Rita in 2005.



Federal Tort Claims Act Litigation Section

The Federal Tort Claims Act (“FTCA”) Section litigates complex and controversial cases under the Federal Tort Claims Act, which Congress passed in 1946 to waive the sovereign immunity of the United States with respect to claims for certain injuries and property damage caused by the negligence or wrongful conduct of federal employees. Today, FTCA litigation typically arises from medical care, regulatory activities, law enforcement, and maintenance of federal lands and buildings.

The Section is currently defending the United States in suits brought by claimants seeking to hold the government liable for property damage, personal injury, and wrongful death arising out of the 2016 Great Smokey Mountains National Park Fires. It currently is also representing the United States in the Charleston, South Carolina and Sutherland Springs, Texas mass shooting cases. In addition, the FTCA Section makes appeal recommendations on all adverse judgments entered in FTCA cases. It also provides comments on FTCA-related legislation that may have an impact on taxpayer liability. Further, the FTCA Section is responsible for the administrative adjustment of tort claims arising out of DOJ activities.

Office of Management Programs

The Office of Management Programs (OMP) supports the Civil Division’s attorneys in all aspects of their work. OMP provides the Division’s Human Resources (HR), Budget, Finance, Procurement, Information Technology, Litigation Support, 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, 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.

September 11th Victim Compensation Fund Program

The September 11th Victim Compensation Fund (“VCF”) was created by Public Law No. 107-42, as amended by Public Law No. 107-71, to provide compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. The Fund 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.

On July 29, 2019 the President signed Public Law, The Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund (“VCF Permanent Authorization Act”). The VCF Permanent Authorization Act extends the VCF’s claim filing deadline to October 1, 2090.

The VCF is not funded through the Civil Division’s appropriations; rather, Congress initially appropriated a total of \$2.8 billion specifically for VCF-related award payments and administrative expenses, and in the 2015 reauthorization, appropriated an additional \$4.6 billion, bringing the total appropriation to \$7.4 billion at that time. The VCF Permanent Authorization

Act provides “such sums as may be necessary for fiscal year 2019 and each fiscal year thereafter through fiscal year 2092, to remain available until expended.”

As of September 30, 2019, the VCF has received 52,460 claims. The VCF has made initial award determinations on 24,318 eligible claims, and has issued revised awards on 6,281 claims due to an amendment or appeal. The total amount awarded through September, 2019, is \$5.67 billion.

With the enactment of the VCF Permanent Authorization Act, the Special Master has determined that the VCF’s funding is now sufficient to pay all pending and projected claims, and the reductions in awards announced in February 2019 due to insufficient funding are no longer necessary. Under the Act, the VCF is required to issue payments to any claimants who were impacted by the reductions in order to make up the difference between the reduced award that was paid and the unreduced value that would have been awarded had the reductions not been applied.

Performance and Resources Tables

Decision Unit: Civil Division - Legal Representation

RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		2019		2019		2020		Current Services Adjustments		FY 2021 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		1,199	289,334 [125,000]	1,102	287,160 [32,174]	1,220	295,084 [100,000]	67	32,123 [6,000]	1,287	327,207 [106,000]
Type	Performance	FY 2019		FY 2019		FY 2020		Current Services Adjustments		FY 2021 Request	
Performance Measure: Output	1. Number of cases pending beginning of year	29,050		27,949		30,833		770		31,603	
	2. Number of cases received during the year	16,044		14,046		13,215		-781		12,434	
	3. Total Workload	45,094		41,995		44,048		-11		44,037	
	4. Number of cases terminated during the year	10,821		11,162		12,445		-3		12,442	
Civil Division Performance (Excludes VICP and RECA)											
Performance Measure: Outcome	5. Percent of civil cases favorably resolved	80%		97%		80%		N/A		80%	
	6. Percent of federal denaturalization dispositions favorably resolved	80%		92%		80%		N/A		80%	
	7. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		90%		80%		N/A		80%	
	8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		80%		60%		N/A		60%	
	9. Percent of favorable resolutions in non-monetary trial cases	80%		81%		80%		N/A		80%	
	10. Percent of favorable resolutions in non-monetary appellate cases	85%		91%		85%		N/A		85%	

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

		Target	Actual	Projected	Changes	Requested (Total)
		FY 2019	FY 2019	FY 2020	Current Services Adjustments	FY 2021 Request
Vaccine Injury Compensation Program Performance						
Performance Measure: Outcome	11. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	N/A	0%
Performance Measure: Efficiency	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%
Radiation Exposure Compensation Program Performance						
Performance Measure: Outcome	13. Maintain an average claim processing time of 200 days	200	108	200	N/A	200
	14. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	97%	90%	N/A	90%
	15. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	100%	95%	N/A	95%
Performance Measure: Efficiency	16. Percentage of claims adjudicated within 12 months or less.	80%	97%	80%	N/A	80%

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History of Performance											
Decision Unit: Civil Division - Legal Representation											
Strategic Objective	Performance Report and Performance Plan Targets		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019		FY 2020	FY 2021	FY 2022
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
4.1	Performance Measure: Output	1. Number of cases pending beginning of year	26,764	24,541	24,073	25,907	29,050	27,949	30,833	31,603	31,595
4.1		2. Number of cases received during the year	14,836	14,471	17,108	14,027	16,044	14,046	13,215	12,434	11,699
4.1		3. Total Workload	41,600	39,012	41,181	39,934	45,094	41,995	44,048	44,037	43,294
4.1		4. Number of cases terminated during the year	15,383	13,036	15,274	11,985	10,821	11,162	12,445	12,442	12,232
Civil Division Performance (Excludes VICP and RECA)											
4.1	Performance Measure: Outcome	5. Percent of civil cases favorably resolved	93%	98%	97%	97%	80%	97%	80%	80%	80%
2.1		6. Percent of federal denaturalization dispositions favorably resolved	89%	100%	95%	94%	80%	92%	80%	80%	80%
4.1		7. Percent of defensive cases in which at least 85 percent of the claim is defeated	86%	91%	90%	84%	80%	90%	80%	80%	80%
4.1		8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	73%	69%	75%	76%	60%	80%	60%	60%	60%
4.1		9. Percent of favorable resolutions in non-monetary trial cases	87%	89%	89%	88%	80%	81%	80%	80%	80%
4.1		10. Percent of favorable resolutions in non-monetary appellate cases	91%	94%	94%	93%	85%	91%	85%	85%	85%

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

Type	Measure	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019		FY 2020	FY 2021	FY 2022
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
Vaccine Injury Compensation Program Performance										
Performance Measure: Outcome	11. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	0%	0%	0%	0%	0%	0%
Performance Measure: Efficiency	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	92%	100%	92%	92%	92%
Radiation Exposure Compensation Program Performance										
Performance Measure: Outcome	13. Maintain an average claim processing time of 200 days	200	151	153	130	200	108	200	200	200
	14. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	95%	95%	96%	90%	97%	90%	90%	90%
	15. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	92%	100%	100%	95%	100%	95%	95%	95%
Performance Measure: Efficiency	16. Percentage of claims adjudicated within 12 months or less	80%	88%	89%	94%	80%	97%	80%	80%	80%

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

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

- **All Workload and Performance Indicators:** The data source for all indicators is CIMS, the Civil Division’s automated case management system. Quality assurance efforts include regular interviews with attorneys to review data listings; program input screens designed to preclude incorrect data; exception reports listing questionable or inconsistent data; attorney manager review of monthly reports for data completeness and accuracy; and verification of representative data samples by an independent contractor.
- **Limitations:** Incomplete data may cause the system to under-report workload and output data. These numbers are updated in future reports. Some performance successes can be attributed to litigation where U.S. Attorneys' offices were involved.
- **Indicators 5, 8, and 9:** Favorable resolutions include court judgments in favor of the government as well as settlements.
- **All Workload and Performance Indicators:** Workload and output data exclude Hurricane Katrina administrative claims and FEMA Hurricane Katrina/Rita trailer-related administrative claims. These claims have been removed to avoid skewing the data.

3. PERFORMANCES, RESOURCES, AND STRATEGIES

Performance Plan and Report for Outcomes

The Civil Division’s work contributes to the Department of Justice’s efforts to achieve Strategic Goal 2, Secure the Borders and Enhance Immigration Enforcement and Adjudication, and Goal 4, Promote the Rule of Law, Integrity, and Good Government. Within those goals, Civil’s workload is directly tied to five of the Department’s Strategic Objectives, outlined below. Civil has prioritized immigration enforcement and adjudication, and has continued its successful efforts in recent years in affirmative and defensive, monetary and non-monetary litigation.

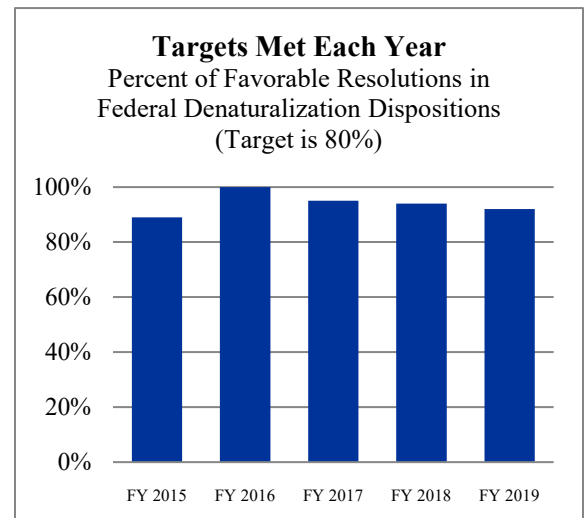
The Civil Division Prioritizes Criminal Immigration Enforcement (Strategic Objective 2.1)

The Civil Division’s Office of Immigration Litigation (OIL) oversees all civil immigration litigation in federal courts and coordinates national immigration matters before federal district and appellate courts. The overwhelming majority – approximately 96% – of OIL’s cases are defensive, meaning that another party has filed an action against the Federal Government, and the Civil Division must respond pursuant to a court-ordered schedule. However, Civil has experienced a rapid growth in affirmative denaturalization proceedings. Working closely with the FBI, DHS, and the Criminal Division, OIL-District Courts Section (OIL-DCS)’s National Security and Affirmative Litigation Unit (NS/A Unit) brings denaturalization actions against individuals who pose potentially grave threats to the national security and public safety such as known or suspected terrorists, violent criminals, human traffickers, human rights abusers, child sex abusers, and fraudsters.

Beyond protecting the American people, denaturalization is a critical instrument to return human rights violators to the countries where they perpetrated persecution, war crimes, and other crimes against humanity. Denaturalization proceedings can serve as a key and necessary step toward removing such individuals’ from the United States and revoking their U.S. passports, preventing their return.

Indicators of Performance in Denaturalization Cases

Civil’s recent performance for its denaturalization cases is summarized in the chart to the right. A “favorable resolution” in any civil denaturalization case filed by the Department is anything other than a disposition on the merits in favor of the defendant. In FY 2021, OIL-DCS must balance its growing denaturalization practice with the fast-paced growth of its significant defensive litigation practice, which includes complex, programmatic challenges to client agencies’ civil detention authority, expedited removal authority, and other capabilities that are fundamental to protecting our nation’s borders.



The Civil Division Ensures an Immigration System that Respects the Rule of Law, Protects the Safety of U.S. Citizens and Serves the National Interest (Strategic Objective 2.2)

The Office of Immigration Litigation – Appellate Section (OIL-Appellate) holds primary responsibility for civil immigration case litigation before the federal appellate courts that emerge from administrative removal proceedings that take place before immigration judges within the Department of Justice, Executive Office for Immigration Review (EOIR). These cases involve a myriad of complex and challenging factual, legal, and constitutional issues relating to whether an individual, pursuant to the Immigration and Nationality Act, is subject to removal from America or is eligible for some form of benefit, relief, or protection that would allow him or her to remain in the United States. Each year, the office receives several thousand new cases that are heard in the America’s federal appellate courts. Over the past 10 years, OIL-Appellate has averaged receiving more than 7,400 new cases each year.

The workload of OIL-Appellate is directly tied to enforcement efforts of the DHS and the resulting removal adjudications by the Department of Justice’s EOIR. DHS initiates legal proceedings to remove aliens, and immigration judges at EOIR preside over removal proceedings to determine whether an alien should be ordered removed. Appeals may be filed with the Board of Immigration Appeals at EOIR and, ultimately, with federal appellate courts. When these cases enter the federal appellate courts, OIL-Appellate represents the Federal Government. Historically, over the past 15 years, 25% of decisions from the Board of Immigration Appeals are appealed to the federal appellate courts. In total, thousands of new immigration cases are filed in the federal appellate courts each year.

OIL-Appellate’s work directly relates to national security and public safety. In litigation conducted in recent years, a national security unit within OIL-Appellate has secured through the federal appeals courts the removal of terrorist aliens and human rights abusers, including:

- A member of Iraq’s Republican Guard (IRG) who lied about his activities during a time that the IRG is known to have engaged in ethnic and sectarian killings and other mass human rights violations;
- A Somali national found to have provided material support to Al Shabaab;
- A Pakistani national who studied and taught at madrassas sponsored by Laskar-e-Tayyiba (perpetrators of the 2008 Mumbai massacre);
- A co-conspirator who assisted in the illegal export of electronics with military applications;
- A former member of the Belloso Batallion, an El Salvadoran anti-terrorist unit, who extra-judicially executed suspected guerillas;
- A former Venezuelan military cadet who illegally exported assault weapons to Venezuela;
- A member of the El Salvador national police who assisted in the torture of guerrillas by a special unit that used electric shock to elicit information; and
- An Ethiopian national and member of Oromo terrorist group who engaged in passport fraud.

Civil’s Federal Programs and Appellate Branches also provide litigative expertise pertaining to the U.S. immigration system, particularly in the growing litigation surrounding sanctuary cities,

federal requests for assistance from state and local governments in enforcing immigration law, and the President's executive orders concerning immigration enforcement. Both the Federal Programs Branch and the Appellate Staff have expended substantial resources defending the President's executive orders and a subsequent proclamation limiting the entry of foreign nationals who could pose a threat to national security. Both offices have engaged in multiple rounds of litigation, with the Federal Programs Branch handling cases in multiple district courts and the Appellate Staff handling four appeals in two circuits and the Supreme Court. These cases have involved difficult and novel questions of law regarding the scope of the President's power to suspend entry of foreign nationals and the applicability of the Establishment Clause to presidential action regarding aliens abroad, and have demanded a commensurately large share of both office's resources. Although the Supreme Court ruled in the government's favor in June 2018, litigation remains ongoing, with a district court in Maryland recently denying in relevant part a motion to dismiss claims challenging, among other things, the implementation of the proclamation's waiver provisions for foreign nationals seeking to enter the United States from countries that have been found to have inadequate information-sharing practices or otherwise present a security risk. That lawsuit is likely to lead to discovery and further motions practice. The Federal Programs Branch also continues to defend a lawsuit challenging executive branch policies regarding the processing of refugee applications. Both of these ongoing litigation matters are likely to lead to further appellate proceedings.

Both offices have also assembled teams of attorneys to defend the decision of the Secretary of Homeland Security to rescind the Deferred Action for Childhood Arrivals (DACA) policy. The Federal Programs Branch defended approximately a dozen lawsuits in a half-dozen district courts; most of these cases proceeded on an extremely expedited basis, involved burdensome discovery, and required extensive motions practice. On appeal, the Appellate Staff is handling cases in four different courts of appeals, as well as working on Supreme Court filings. Collectively, these cases have required a commitment in excess of 10,000 attorney and paralegal hours by both offices.

Both offices have assembled teams of attorneys to defend multiple challenges, over the course of several years, to the Attorney General's authority to deny grant funding to sanctuary jurisdictions that refuse to cooperate – or flatly obstruct – the efforts of Federal immigration enforcement. Most of these cases relate to the Byrne JAG program, which provides law enforcement grants to state and local jurisdictions around the country. Starting during the prior administration, the Office of Justice Programs (OJP) has placed a number of conditions upon the grants designed to promote compliance with federal law and cooperation with Federal immigration enforcement more generally. In addition to prohibiting state and local bans on voluntary communication between local law enforcement and Federal agents about criminal aliens, the conditions are also intended to encourage local access to detention facilities for federal immigration agents, advance notice of release of criminal aliens, and guarantees by state and local officials to refrain from publicly disclosing in advance tactical information about Federal immigration enforcement operations. The Federal Programs Branch is currently litigating nine of these cases; one prior case involved not only motions practice, but also discovery, mediation, and a multi-day bench trial. The Appellate team has handled appeals in four circuits, including four separate appeals in the Seventh Circuit and five separate appeals in the Ninth Circuit. The Appellate team has also been heavily involved in a lawsuit against the

State of California challenging the State’s new sanctuary-city legislation, working closely with OIL on district-court filings and briefing and arguing an appeal in the Ninth Circuit. After a partial win and partial loss, the team is pursuing options for further review. Collectively, both offices have committed in excess of 8,000 attorney and paralegal hours to these cases.

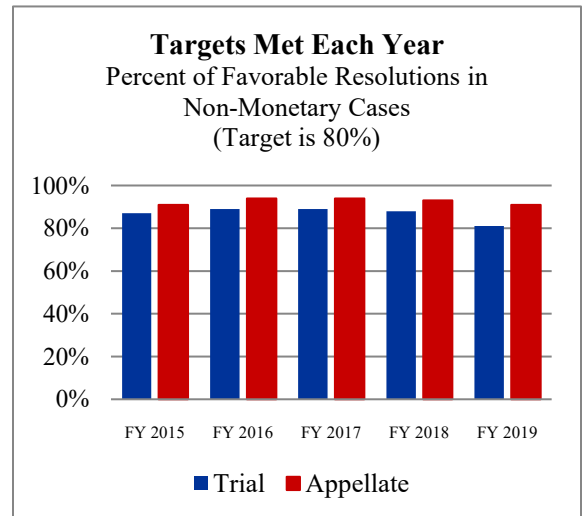
The Civil Division Upholds the Rule of Law and Integrity in the Proper Administration of Justice (Strategic Objective 4.1)

Civil defends the integrity of federal laws, regulations, policies, adjudications, and programs through both affirmative and defensive, as well as, monetary and non-monetary cases. Each year, thousands of lawsuits are filed to block or attempt to challenge the actions of the Federal Government.

Civil’s Performance in Non-Monetary Defensive Cases

Litigation handled by the Civil Division directly advances a number of the priorities of the Administration. For example, Civil has defended against all challenges to the constitutionality of the President’s executive orders and Presidential Memoranda. In addition to the litigation described in more detail below, these have included challenges to Executive Order 13771, which generally requires two deregulatory actions for every regulatory action promulgated by Executive Branch agencies, and Executive Order 13798, which seeks to protect religious liberty. A significant portion of the Division’s workload implicates national security and foreign affairs, with a particular emphasis on counterterrorism, cybersecurity and immigration.

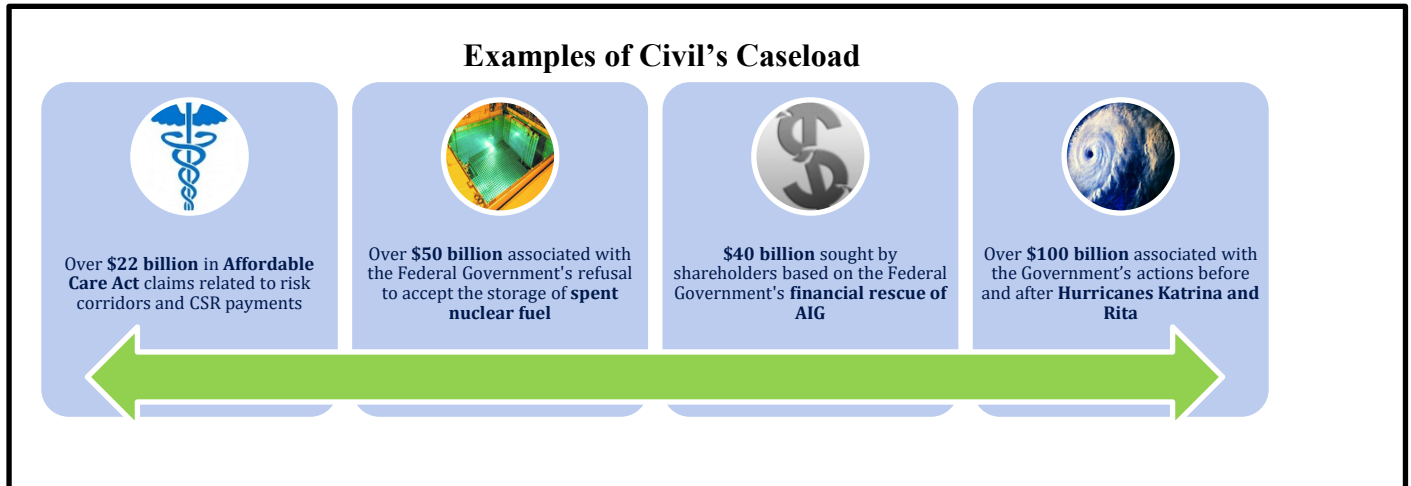
Civil’s recent performance for its non-monetary cases is summarized in the chart to the right. As this chart reveals, Civil has consistently met its performance targets in non-monetary cases like the ones described above. In FY 2021, Civil will strive to maintain its high performance standards.



Civil’s Performance in Monetary Defensive Cases

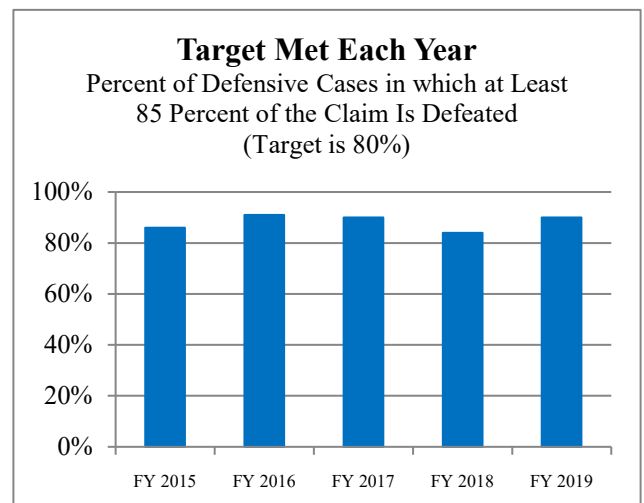
The Federal Government engages in countless transactions annually, such as purchasing and leasing goods or services, offering loan guarantees and grants, signing contracts, and issuing payroll. Inevitably, disagreements sometimes arise over the terms of these agreements, or even who should be awarded a contract, and parties will sue the Federal Government. In other situations, a debtor may not be able to pay the full amount of its debt to the Federal Government and will file a bankruptcy case. Likewise, the Federal Government’s activities can give rise to numerous allegations of negligence and tort claims. Suits arise from medical care or treatment, regulatory activities, law enforcement, veterans’ benefits, trade matters, and the maintenance of federal lands. Similarly, the Civil Division defends the Federal Government in complex Chapter 11 bankruptcy matters and, in so doing, protects the Federal Government’s contracting rights and regulatory interests while also avoiding the payment of unwarranted damages. These cases can last for several years or even decades. Just as importantly, one negative precedent will encourage similar future suits and thereby worsen the Federal Government’s bottom line.

The events that give rise to these cases – whether regulatory action or natural disasters – are unique and varied. Yet, the results are remarkably similar. Historically, in defensive cases handled by Civil, the U.S. Treasury has paid a very small percentage of the total dollars claimed – often only pennies for each dollar claimed.



As noted in the graphic above, the amounts sought in these cases are substantial. Civil estimates that in cases resolved in FY 2019, Civil defeated trillions of dollars in amounts sought by opposing parties.

These cases are illustrative examples of the major monetary, defensive cases in which Civil represents the Federal Government. Civil has routinely met its performance target by consistently defeating the overwhelming majority of amounts sought in claims brought against the Federal Government in these defensive, monetary cases. In FY 2021 Civil will continue to defend the U.S. government and protect the interests of taxpayers.



Civil's Performance in Monetary Affirmative Cases

In addition to achieving significant monetary returns for the Treasury, the Fraud Section holds accountable bad actors whose fraudulent schemes put the safety, welfare and security of American consumers and businesses at risk. Below is a small sampling of the Fraud Section's recent efforts.

In April 2019, General Electric agreed to pay the United States \$1.5 billion in civil penalties to resolve claims involving subprime residential mortgage loans originated by one of its subsidiaries. The company sold the vast majority of its loans to investment banks which, in turn, issued and sold residential mortgage-backed securities (RMBS) to investors. The company allegedly knowingly misrepresented the quality of its loans and the extent of its own internal

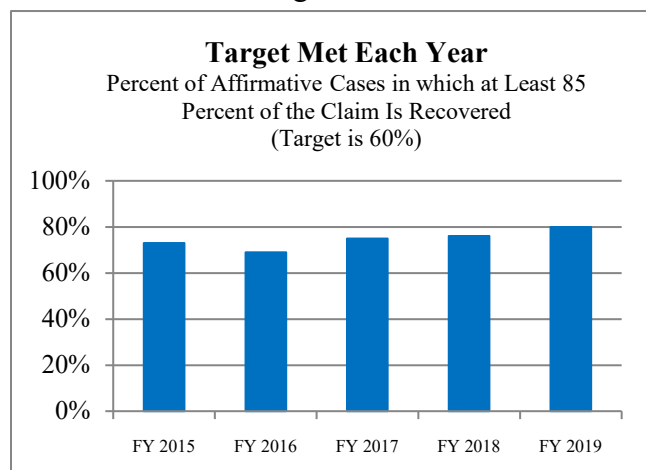
quality and fraud controls. The government’s investigation revealed that the majority of the loans originated and sold for inclusion in RMBS were fraudulent or otherwise defective.

Also in April 2019, Hydro Extrusion Portland, Inc., formerly known as Sapa Profiles, Inc. (Sapa), paid \$34 million to resolve claims arising from its delivery of aluminum extrusions that failed to meet required specifications and its falsification of test results to cover up these deficiencies. Sapa supplied the non-conforming extrusions to government contractors, which incorporated the parts into rockets used by NASA and missiles used by the Department of Defense’s Missile Defense Agency (MDA). While the defective extrusions were discovered before any of the MDA missiles were launched, two of the rockets carrying NASA payloads crashed, resulting in a complete loss of the critical payloads.

Finally, this past year the Fraud Section reached settlements exceeding \$163 million with five South Korean fuel companies to resolve claims for their alleged roles in a decade-long conspiracy to rig bids on Department of Defense contracts to supply fuel to U.S. military bases throughout South Korea. The collusion resulted in the United States government paying inflated prices for the fuel and related costs to transport the fuel.

As with other performance measures, Civil has consistently met its performance targets for affirmative, monetary cases over the past several years. The chart to the right

illustrates that Civil and its partners aim to recover at least 85% of the amount sought in these affirmative cases. In FY 2019, the Civil Division achieved an 80% success rate in recovering at least 85% of the claim, which is higher than in previous fiscal years.



The Civil Division Defends First Amendments Rights to Exercise Religion and Free Speech (Strategic Objective 4.2)

The Civil Division is committed to protecting First Amendment rights, including the freedom of speech and the free exercise of religion. Civil’s Federal Programs Branch and Appellate Staff handle the majority of the Division’s First Amendment cases.

Federal Programs and Appellate regularly consult with agencies and U.S. Attorney’s Offices regarding free speech, free exercise, and establishment clause issues and participate in litigation on behalf the United States regarding those issues. For example, with respect to freedom of speech, Federal Programs has prepared memoranda and briefs aimed at defending free speech on college campuses, and the Appellate Staff filed an amicus brief supporting a religious organization’s right to run an advertisement on public buses as part of the organization’s Christmas campaign.

With respect to freedom of religion, Federal Programs and the Appellate Staff each filed intervener briefs defending the constitutionality of the Early Retirement Income Security Act’s

“church plan exemption,” which allows churches and other religious organizations to structure their pension plans consistent with their religious beliefs. Federal Programs and Appellate also have successfully defended against establishment clause challenges to the federal statutes that require inscription of the national motto on all U.S. coins and currency. In addition, Federal Programs is defending the Navy’s ability to effectively and appropriately meet the religious needs of thousands of uniformed personnel and their dependents, and the Appellate Staff recently assisted the Bureau of Prisons in revising its policies to be more accommodating of inmates’ religious needs to engage in group prayer.

Federal Programs and the Appellate Staff also are defending agency rules that provide an expanded religious exemption for religious objectors to the contraceptive coverage mandate the agencies promulgated under the Affordable Care Act, and separate rules that establish an administrative enforcement mechanism for federal statutes that provide conscience protections for health care workers. These and numerous other matters concerning free speech and religious freedom comprise a significant part of Civil’s workload.

The Civil Division Achieves Management Excellence (Strategic Objective 4.4)

The Civil Division’s Office of Management Programs (OMP) ensures ethical conduct, develops its work force, and produces accurate and transparent information. The efforts of OMP enable Civil Division attorneys to successfully defend the United States government and pursue cases against bad actors.

To ensure ethical conduct, all new Civil Division employees must attend ethics training conducted by the Department’s Ethics Office within 90 days of onboarding. All attorneys are required to take a government ethics refresher course annually, and are required to take professionalism training; compliance is strictly enforced. In addition to training efforts, the Civil Division’s Human Resources (HR) staff coordinates with the Division’s Ethics Official to identify potential and actual conflicts of interest through its systematic management of the public and financial disclosure process.

In order to best develop its workforce, the Civil Division is strengthening the capabilities of its HR professionals. Civil seeks to ensure it is an agile organization who can respond to changing mission needs, hold employees accountable for performance, and acquire top talent. Civil’s HR staff have conducted studies to critically examine Civil Division positions and have advised on organization and position classification structures. OMP aids managers in acquiring talent who can accomplish the Civil Division’s core mission – to represent the legal interests of the United States, safeguard taxpayer dollars, and protect the safety, health, and economic security of the American people.

At the start of FY 2018, the Civil Division transitioned to the Department’s Unified Financial Management System (UFMS). UFMS has allowed Civil to provide a higher level of stewardship of the federal fisc than under the previous financial system, due to improved process management and oversight capabilities. In conjunction with the day-to-day management of funds, Civil has also produced clean financial audits, which contributes to the Department receiving a clean audit opinion. The Civil Division is committed to the proper and efficient use of taxpayer dollars.

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, its 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, Civil collaborates with client agencies. When seeking to recover funds defrauded from federal and state governments, Civil collaborates with state prosecutors. This collaboration ensures efficiency as information is quickly exchanged and multiple agencies can share costs.

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 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, the Civil Division is leading the efforts in the Department of Justice's (DOJ) 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 is meeting with retail industry leaders, e.g., Target and Best Buy, to share information on how to detect elder fraud within their internal database systems.

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, as well as mentorship and coaching programs. 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.

Priority Goals

The Civil Division fully supports the Department of Justice's Agency Priority Goals of Combatting the Opioid Crisis and Combatting Elder Fraud. Civil's contributions to achieving these goals are outlined below.

Combatting the Opioid Crisis

The opioid epidemic is an ongoing national crisis. In 2017, opioids were involved in 47,600 deaths, which is 12% higher than the already staggering rate seen in 2016². Of those reported deaths, more than 35% involved a prescription opioid, equating to more than 42 deaths per day associated with prescription opioids³. The Administration is addressing this threat aggressively, issuing Executive Order 13784 establishing the Commission on Combatting Drug Addiction and the Opioid Crisis, and declaring the opioid epidemic a public health emergency in October 2017. The Department is equally committed to eradicating opioid-related deaths, and in February 2018 established the Prescription Interdiction and Litigation (PIL) Task Force to combat the opioid crisis at every level of the distribution system. The Civil Division is an integral member of the PIL Task Force and is working relentlessly to address the opioid crisis.

The Civil Division is fully committed to supporting the Department's and Administration's opioid initiative, and is advancing a number of efforts to combat the nation's opioid crisis. Civil is uniquely positioned to pursue criminals throughout the entire opioid distribution chain, including pharmaceutical manufacturers, wholesale distributors, pharmacies, pain management clinics, drug testing laboratories, and physicians. Civil also plays a key role in stopping those who are recklessly overprescribing and over-dispensing opioids, and in 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.

Combatting Elder Fraud

Foreign-based organized crime groups employ sophisticated schemes to steal billions of dollars each year from millions of older Americans. The schemes often utilize American corporations' infrastructure, products, and reputation to facilitate their crimes. The recent Elder Fraud Sweep highlighted law enforcement efforts to combat such schemes. More focused and decisive action is required to reverse the dramatic upward trend of victim losses.

The Civil Division's Consumer Protection Branch, in conjunction with partner U.S. Attorneys' Offices (USAOs) and the FBI, proposed creating a Transnational Elder Justice Strike Force to take action against the most pernicious transnational elder fraud schemes, which was approved by the Attorney General on June 3, 2019.

The Strike Force will coordinate and augment the Department resources most focused on elder fraud schemes to identify and prosecute the criminal organizations that are most harming older

² <https://www.cdc.gov/drugoverdose/data/statedeaths.html>

³ <https://www.cdc.gov/drugoverdose/data/overdose.html>

Americans. The Strike Force will operate by identifying and deconflicting leads, developing investigations, and pursuing actions venued in a strike-force district. Much of this operation will occur at and through the leading efforts of the Consumer Protection Branch, but personnel in strike-force districts will be essential partners in advancing leads and bringing cases.

V. Program Increases by Item

A. ELDER JUSTICE INITIATIVE

Strategic Goal:	4. Promote Rule of Law, Integrity, and Good Government
Strategic Objective:	4.1 Uphold the rule of law and integrity in the proper administration of justice
Organizational Program:	Civil Division, Commercial Litigation Section Civil Division, Consumer Protection Branch
Program Increase:	Positions <u>17</u> Atty <u>14</u> FTE <u>9</u> Dollars <u>\$4,235,000</u>

Description of Item

The Civil Division’s Consumer Protection Branch and Commercial Litigation Branch are leading efforts in the Department of Justice’s (DOJ) Elder Fraud Initiative to support and coordinate the Department’s enforcement and programmatic agendas in combatting elder abuse, neglect, and financial fraud and scams that target our nation’s seniors.

Through tech-support, imposter, lottery, and other types of schemes, fraudsters solicit and extort billions of dollars a year from seniors. Elder Fraud is on the rise as more seniors are reporting being the targets of fraud than at any prior time. Researchers estimate that as many as one in 10 older adults in the United States—age 60 or older—experience abuse each year, although elder abuse is generally underreported⁴. This trend is driven in large part by organized crime groups, which are committing significant resources and technological tools to increase the effectiveness of schemes.

As a key member of the Elder Fraud Initiative, the Consumer Protection Branch plays a leading role in protecting elderly Americans from fraud schemes. For the past two years, the Branch has coordinated historic sweeps of elder fraud cases, ensuring that the resources of the federal and various state governments are brought to bear against those who seek to prey upon elderly Americans. Those sweeps have brought criminal and civil actions against more than 500 defendants responsible for causing more than 3 million Americans at least \$1.5 billion in losses. In conjunction with the 2019 sweep, the Branch further coordinated an initiative against the money-mule networks that facilitate elder fraud schemes, taking action against more than 600 money mules in just a few short weeks. The Branch also leads the Department’s Transnational

⁴ R. Acierno, M.A. Hernandez, A.B. Amstadter, H.S. Resnick, K. Steve, W. Muzzy, D.G. Kilpatrick. “Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,” *American Journal of Public Health*, vol. 100, no. 2 (2010): pp. 292-297. E.O. Laumann, S.A. Leitsch, L.J. Waite. “Elder Mistreatment in the United States: Prevalence Estimates From a Nationally Representative Study,” *Journals of Gerontology Series B*, vol. 63, no. 4 (2008): pp. S248-S254. M.S. Lachs and K.A. Pillemer. “Elder Abuse,” *The New England Journal of Medicine*, vol. 373 (2015): 1947-1956.

Elder Fraud Strike Force, which the Attorney General established in June 2019 to disrupt and prosecute the largest foreign-based elder fraud schemes. The Civil Division has submitted a request to the Department to secure funding for this Strike Force in FYs 2019 and 2020 through the Three Percent Fund. The Civil Division is requesting permanent funding for the Strike Force in FY 2021.

In addition to these government-wide efforts, the Consumer Protection Branch independently brings numerous cases each year against Transnational Criminal Organizations (TCO) engaged in elder fraud. Using state-of-the-art investigative tools, deep experience, and a broad collection of statutes, the Branch pursues both civil and criminal penalties against foreign schemes that target or disproportionately affect older Americans. For instance, the Branch this year secured guilty pleas from two Canadians and initiated extradition proceedings on a French-national residing in Spain for their roles in operating a massive mail fraud scam that stole hundreds of millions of dollars from elderly Americans. Using operations in multiple different countries, the fraudsters relentlessly bombarded susceptible seniors with false inducements and arranged with others to sell those seniors' identifying information to other criminals.⁵

The Consumer Protection Branch frequently coordinates with other DOJ components and U.S. Attorneys' Offices, offering guidance and resources, and collaborating to advance enforcement actions. Indeed, senior managers from the Branch routinely lead webinars and other training sessions on elder fraud enforcement topics, including a recent training on identifying and pursuing money mules. Branch lawyers have built on that training by helping U.S. Attorneys' Offices put the taught techniques to work, collaborating recently with specific offices to disrupt scores of money mules.

The Commercial Litigation Branch's Fraud Section also advances elder justice issues by spearheading the launch of Elder Justice Task Forces across the country to focus on, among other things, nursing homes that were defrauding the Medicare and Medicaid programs by billing for grossly substandard services. Additionally, the Commercial Litigation Branch has worked with and supported various components throughout the Department (e.g., Office for Victims of Crime, Office on Violence Against Women, National Institute of Justice, Antitrust, and the Civil Rights Division) on their elder abuse and fraud related projects, many of which are highlighted on the Department's Elder Justice Website (www.elderjustice.gov), which the Branch developed and maintains. The Branch's efforts most recently were highlighted through its coordination with the Consumer Protection Branch and other federal partners, on the Rural and Tribal Elder Justice Summit, which convened on November 14-15, 2018, in Des Moines, Iowa. The Summit brought together more than 250 elder justice professionals from around the country, including state and local prosecutors, law enforcement officials, judges, victim specialists, and social workers. The Rural Summit examined the unique challenges of combating elder abuse in rural and tribal

⁵ See Department of Justice (March 2019), *Three Individuals Charged With Operating Massive Psychic Direct Mail Fraud Scheme*, <https://www.justice.gov/opa/pr/justice-department-coordinates-largest-ever-nationwide-elder-fraud-sweep-0>

communities, while also highlighting innovative practices, available tools and resources, and ongoing initiatives to enhance the capacity of elder justice professionals to support elderly victims. The Summit, through training led by the Consumer Protection Branch, also emphasized the importance of greater collaboration between federal, state, and local authorities to combat elder fraud.

In support of the Department's and Administration's heightened priorities in the Elder Justice Initiative, the Civil Division requests a total of 17 positions (14 attorneys) and \$4.2 million to pursue civil and criminal penalties against predatory actions targeted towards the nation's elderly, and to provide training and resources to partners in the federal, state, and local government.

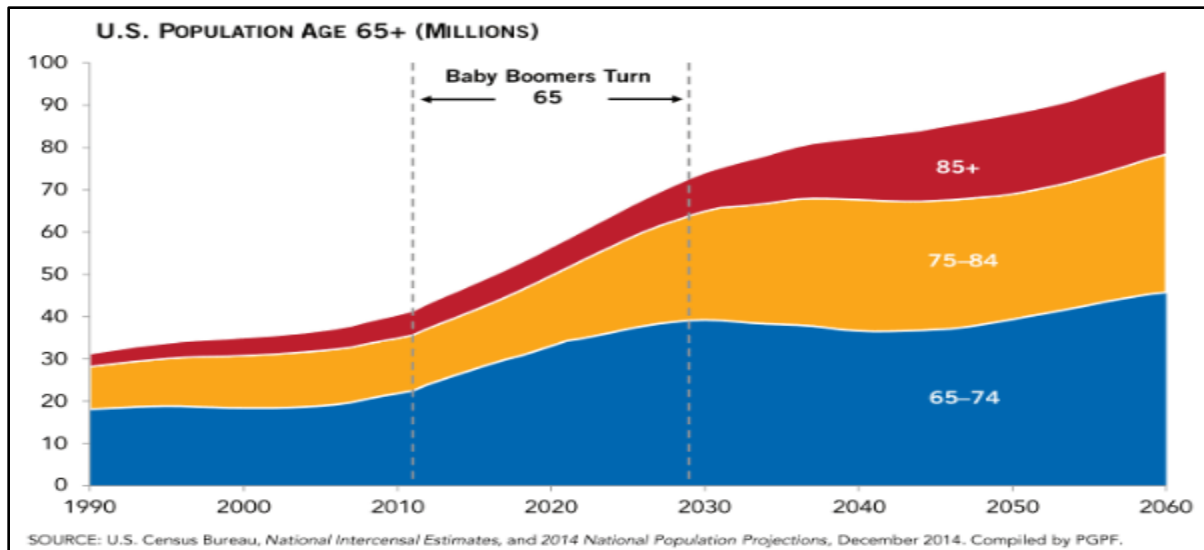
Justification

According to statistics released by the U.S. Census Bureau in 2017, residents age 65 and over grew from 35 million in 2000, to 49.2 million in 2016, accounting for 12.4 percent and 15.2 percent of the total population, respectively.⁶ This trend is expected to increase, as the U.S. Census Bureau projects that more than 62 million Americans will be age 65 or older in 2025.⁷ The aging population has rendered opportunities to predators who exploit the elderly through elder abuse, neglect, and financial fraud and scams. The Civil Division is aware of the growing challenges of combatting Elder Fraud, and is requesting additional, permanent resources to continue and expand efforts to protect the Nation's elderly population.

The House Committee on Appropriations recently recognized the harmful impact of elder fraud, including telemarketing, mass-mail, and tech-support fraud schemes and expressly encouraged the Consumer Protection Branch "to redouble its efforts to deter, investigate, and prosecute individuals and entities responsible for elder fraud and abuse." The Consumer Protection Branch has heeded the House Committee's call and seeks to expand substantially its ability to combat these nefarious schemes.

⁶ <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html>

⁷ <https://www.nij.gov/topics/crime/elder-abuse/Pages/welcome.aspx>



Elder Abuse Prevention and Prosecution Act (EAPPA) and Elder Justice Initiative

The significance of Elder Justice was brought to the forefront when, in October 2017, the President signed into law the Elder Abuse Prevention and Prosecution Act (EAPPA) establishing numerous requirements on the Department to enhance its efforts to combat elder abuse, neglect, and financial exploitation. These requirements include gathering data from federal law enforcement organizations on its elder fraud cases, developing model guardianship and power of attorney laws, and developing best practices on combatting elder abuse, neglect and exploitation for state and local law prosecutors, law enforcement, judges, victim service providers, and others. Furthermore, EAPPA establishes a number of annual reporting requirements for the Department. EAPPA sets forth permanent obligations on the Department, and given that the Civil Division will be expected to play a significant role complying with those obligations, additional resources will allow the Civil Division to implement those requirements and projects. These obligations include but are not limited to creating, compiling, evaluating, and disseminating materials and information, and providing the necessary training and technical assistance, to assist States and units of local government in investigating, prosecuting, pursuing, preventing, understanding, and mitigating the impact of: (A) physical, sexual, and psychological abuse of elders; (B) exploitation of elders, including financial abuse and scams targeting elders; and (C) neglect of elders. Moreover, the proposal will allow the Civil Division to continue maintaining and developing content for the Elder Justice Website. The website was expressly identified in EAPPA as the anticipated repository of much of the content and data required under the Act; it is a resource that is relied on heavily by DOJ components.

In addition to EAPPA, the Attorney General has identified the Elder Justice Initiative as one of the Department's priorities. While Civil had already been performing some of the tasks set forth in the EAPPA, and identified by the Attorney General as such, additional resources will be needed to comply with these heightened obligations.

Transnational Criminal Organizations

Transnational Criminal Organizations (TCOs) relentlessly barrage elderly Americans with fraud schemes, wiping out their financial resources and independence and causing devastating

emotional damage. A public outcry is mounting to better address the rampant problem, which some predict will lead to more homeless elderly Americans. Analysts from across the government have also raised alarm bells about these schemes. TCOs from across the world have added resources and tools to their attacks on elderly Americans, and the problem will continue to worsen without substantial countermeasures. The Consumer Protection Branch is ideally suited and positioned to lead the charge against elder fraud schemes, but it requires the requested staff and resources to do so. Many large-scale schemes have victims spread across federal districts. Cases involving such schemes face a diffusion of responsibility among USAOs and often require foreign law enforcement cooperation through Mutual Legal Assistance Treaty requests and extraditions. Given the requested resources, the Branch would expand its use of civil and criminal authorities to additional elder fraud schemes, help newly-appointed Elder Justice Coordinators at each USAO to identify and pursue elder fraud cases, reach out to cooperative foreign counterparts, and, in doing so, prevent losses to hundreds of thousands of vulnerable Americans.

The two historic elder fraud sweeps announced in 2018 and 2019 highlighted the Consumer Protection Branch's key role in combatting elder fraud. In each sweep, the Department brought cases against hundreds of defendants, seized substantial ill-gotten gains, and led a consumer education campaign. The Branch led and executed each of these sweeps, which generated widespread attention to the scope of America's elder fraud epidemic.

In light of the continued increases in elder fraud, more focused and decisive action is required to reverse the dramatic upward trend of victim losses. Foreign-based organized crime groups employ sophisticated schemes to steal billions of dollars each year from millions of older Americans. For example, as part of the 2019 elder fraud sweep, the Branch initiated a "Tech-support fraud takedown," which addressed large scale and widespread schemes in which callers falsely claim to be well-known, legitimate technical-support companies and extract large payments from elderly victims through lies and misrepresentations.

In addition to bringing its own cases, Branch personnel are serving as a central deconfliction point for the dozens of tech-support fraud investigations conducted from U.S. Attorneys Offices across the country. This effort consists of coordinating between the Branch's own investigations and those conducted across the country by FBI, the Postal Inspection Service, Homeland Security Investigations and civil authorities including the Federal Trade Commission and numerous state attorney general offices. These efforts require time and resources to ensure that various criminal and civil agencies do not duplicate efforts or interfere with each other's investigations.

In June 2019, the Attorney General announced the establishment of a Transnational Elder Fraud Strike Force designed to disrupt, investigate, and prosecute the largest and most harmful foreign-based elder fraud schemes. The Consumer Protection Branch, working closely with FBI, plays the principle coordinating role for the initiative. The Branch also secured substantial agent support for the Strike Force from the Postal Inspection Service and other law enforcement agencies.

The Branch identifies leads and referrals for cases to be handled by Branch attorneys as well as six major U.S. Attorney Offices across the country known as “Strike Force Districts,” each with prosecutors and field agents designated to work on transnational elder fraud cases. Funding for personnel that support the Strike Force initially was provided by the Three Percent Fund. However, appropriated funds are needed to convert the Strike Force into a permanent feature of the Department’s efforts to combat transnational elder fraud. The Strike Force addresses elder fraud schemes operating across the globe, but focuses its efforts on several identified hotspots. These hotspots include India, the Latin American and Caribbean region, West Africa, and the Philippines. The sections below summarize some of the elder fraud threats originating in each of these regions.

India

India has become a hotspot for technical-support schemes. In 2018, the schemes generated more than 142,000 consumer complaints to the FTC’s Consumer Sentinel Network. Consumers age 60 and over filed more loss reports from technical-support scams from 2015 to 2018 than for any other fraud category.

Indian technical-support scams are especially sophisticated. Well-organized and funded, evidence shows that the scams often operate from call centers that can employ hundreds of telemarketers, computer technicians, and business developers. Telemarketers and technicians working in the call centers operate 24 hours a day—contacting English-speaking victims in the United States, British Commonwealth countries, and Europe. Typically, victims of the scams respond to an internet pop-up message or a telephone call claiming to come from a well-known American company and falsely warning of a threat from computer viruses. Victims then are prompted to submit payment for supposedly expensive tech-support and anti-virus software and they are induced to allow remote access to their computers. By either path, victims are robbed of money for nothing in exchange. The scammers then re-victimize those who have proven susceptible to the fraud through other lies, computer hacks, and threats.

India-based technical-support schemes typically use U.S.-based individuals to process victim payments. These individuals, often known as “payment gateways,” collect victim payments through various means, keep a fee, and transmit profits to kingpins or their designees in India. The harm from technical-support scams is multifaceted. In addition to victims’ losses, the American companies whose identities are faked suffer reputational harm and encounter significant costs in responding to consumer complaints and attempting to thwart the scams.

The tech-support takedown featured as part of the Elder Fraud Sweep demonstrated the Department’s ability to enjoin technical-support scams and prosecute those responsible through concerted effort. It also gathered a substantial amount of information about the operations of some of the most active criminal organizations through disruption of those organizations’ payment gateway networks.

Latin America and Caribbean Region

A number of different elder fraud schemes originate in the Latin American and Caribbean (LAC) region. Most prominent among these is the lottery fraud scheme. In that scheme, victims falsely are told they have won large sums of money, and can claim their prizes once they pay certain

taxes and fees. Victims pay via mechanisms that do not suggest that their money is going overseas. In particular, scheme leaders often arrange for victims to send payment to a U.S. accomplice serving as a money mule, who receives it and then sends it, less a commission, to the leaders or their designees.

Criminal organizations with set structures and numerous actors also are perpetrating lottery, timeshare, and other fraud and extortion schemes from other LAC countries, including Costa Rica, Peru, and Columbia. The Consumer Protection Branch and U.S. Postal Inspection Service have developed significant expertise, knowledge, and in-country presence related to Jamaican and other LAC fraud. Indeed, the Branch has shown particular aptitude for prosecuting Spanish-language fraud and extortion schemes emanating from LAC countries. Such schemes are on the rise, targeting Spanish speakers in the United States and disproportionately affecting the elderly. Working with its law enforcement partners, the Consumer Protection Branch is bringing significant perpetrators of such schemes to justice.⁸

West Africa

West African criminal organizations are the principal perpetrators of romance scams targeting the elderly. Operating from massive call centers in Nigeria or Ghana, the fraudsters behind the scams use online dating services or social media to contact U.S. victims. The fraudsters impersonate individuals looking for a relationship and often claim to be involved in businesses overseas. They then convince victims that they need funds to help with a purported emergency or business dealings. After sending money through networks of money mules located throughout the United States, victims are “reloaded” until they have no money left. In 2018, victims reported losing \$143 million to romance scams—a higher total than for any other type of scam reported to the Federal Trade Commission.

West African organized crime also perpetrates so-called “person in need” or “grandparent scams,” in which victims are convinced to send money based on false claims that a relative needs money for bail or another emergency. This scheme, the romance scam, and other varieties of fraud make West Africa the largest source of elder fraud schemes in the world.

The Philippines

Intelligence gathered from suspicious activity reports and FinCEN indicate that elder fraud schemes run from the Philippines are quite sophisticated. The country’s long-standing call center industry and large number of ex-pat Americans has provided a basis for telemarketing fraud and computer hacking schemes to flourish. Numerous other crimes committed from the Philippines share a reliance on a money mule network within the United States to receive and relay victim money back to the leaders of criminal organizations.

The Branch requires additional resources to operate the Transnational Elder Fraud Strike Force on a permanent basis, as well as to coordinate the Department’s nationwide effort against elder

⁸ See Department of Justice (April 2019), *Four Extradited from Peru for Operating Spanish-Speaking Call Centers that Extorted U.S. Consumers*, <https://www.justice.gov/opa/pr/four-extradited-peru-operating-spanish-speaking-call-centers-extorted-us-consumers>

fraud schemes. These funds are needed to allow elder fraud to remain a priority while the Branch also pursues other DOJ priorities, including the opioid epidemic and health care fraud, food, drug, and product safety, and agency defensive litigation. With so many competing priorities, it is not possible to divert existing staff to pursue more elder fraud cases without sacrificing other efforts devoted to protecting the health and safety of the American public.

Impact on Performance

Additional attorneys and program analysts will enable the Civil Division to meet the EAPPA requirements and continue supporting the Department’s elder justice efforts. The requested attorneys would allow Civil Frauds to enhance its existing ability to provide guidance and support to Assistant United States Attorneys around the country working on these cases. Hiring permanent program analysts would allow the Civil Division to obtain a permanent level of staffing to develop institutional knowledge.

The requested positions would also allow Civil’s Consumer Protection Branch to initiate civil and criminal cases against the most significant elder fraud schemes, both domestic and foreign, affecting the largest number of victims, and help USAOs do the same—including through the Branch’s leadership of the Transnational Elder Fraud Strike Force. Resources are vital in combatting the coordinated global attack on our elderly. The Civil Division has developed tools that provide real-time data about the schemes most deserving of attention, and shares this information with Department prosecutors and civil attorneys across the country. As a result, the additional resources will inure to the benefit of all Department staff devoted to combatting elder financial exploitation, wherever they are located. In short, affording the requested resources and personnel will directly result in the Department’s increased ability to save hundreds of thousands of elderly Americans from losing hundreds of millions of dollars to fraud schemes, to prevent abuse, and pursue those guilty of elder fraud and failure of care.

Base Funding

<i>FY 2019 Enacted</i>				<i>FY 2020 Enacted</i>				<i>FY 2021 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
11	10	11	\$2,900	11	10	11	\$2,999	11	10	11	\$2,999

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Adjustments	Number of Positions Requested	FY 2021 Request (\$000)	2 nd Year Annualization	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Attorneys (0905)	\$208	\$114	7	\$798	\$115	\$805	\$42
Attorneys (0905) – Strike Force	\$208	\$208	7	\$1,456	\$4	\$28	\$28
Paralegals / Other Law (0900-0999)	\$104	\$58	2	\$116	\$55	\$110	\$6
General Investigative (1800-1899) – Strike Force	\$176	\$176	1	\$176	\$3	\$3	\$3
Total Personnel			17	\$2,546	\$177	\$946	\$79

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2021 Request (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Base Automated Litigation Support	\$13	14	\$182	\$6	\$6
Transnational Strike Force Automated Litigation Support	\$1,507	1	\$1,507	\$45	\$47
Total Non-Personnel		15	\$1,689	\$51	\$53

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Current Services	11	10	11	\$2,999	\$0	\$2,999	\$7,234	\$8,231
Increases	17	14	9	\$2,546	\$1,689	\$4,235	\$997	\$132
Grand Total	28	24	20	\$5,545	\$1,689	\$7,234	\$8,231	\$8,363

Affected Crosscuts

Elder Justice will be reported to the Department of Justice’s Economic Fraud Crosscut.

B. IMMIGRATION ENFORCEMENT

Strategic Goal:	Secure the Borders and Enhance Immigration Enforcement and Adjudication
Strategic Objective:	2.1 Prioritize criminal immigration enforcement 2.2 Ensure an immigration system that respects the rule of law, protects the safety of U.S. Citizens and serves the national interest
Organizational Program:	Civil Division, Immigration Litigation Civil Division, Appellate Civil Division, Federal Programs
Program Increase:	Positions <u>52</u> ; Atty <u>43</u> ; FTE <u>26</u> ; Dollars <u>\$6,034,000</u>

Description of Item:

The Civil Division is the last line of defense in immigration enforcement. Any attempt to strengthen the nation's borders and to protect citizens from terrorists and violent criminals must include adequate resources for the Civil Division. Contributing to this growth, first and foremost, are the heightened immigration enforcement activities pursued by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) – activities that will continue to rise for the foreseeable future. Civil has seen a surging caseload and increasing complexity in regards to these matters. Immigration enforcement, as defined in this program increase document implicates federal court appellate challenges to administratively final removal orders from the immigration court system [petition for reviews (PFRs)]; related individual plaintiff(s) and class action civil detention challenges that flow from aliens who are detained in relation to immigration enforcement; a sharply growing plethora of other immigration and constitutional challenges to nearly all aspects of the national immigration system; and affirmative litigation that the Civil Division leads in the immigration enforcement efforts. To address these challenges, the Civil Division requests an additional 52 positions (43 attorneys and 9 paralegals), 26 FTE, and \$6,034,000 for FY 2021.

Justification:

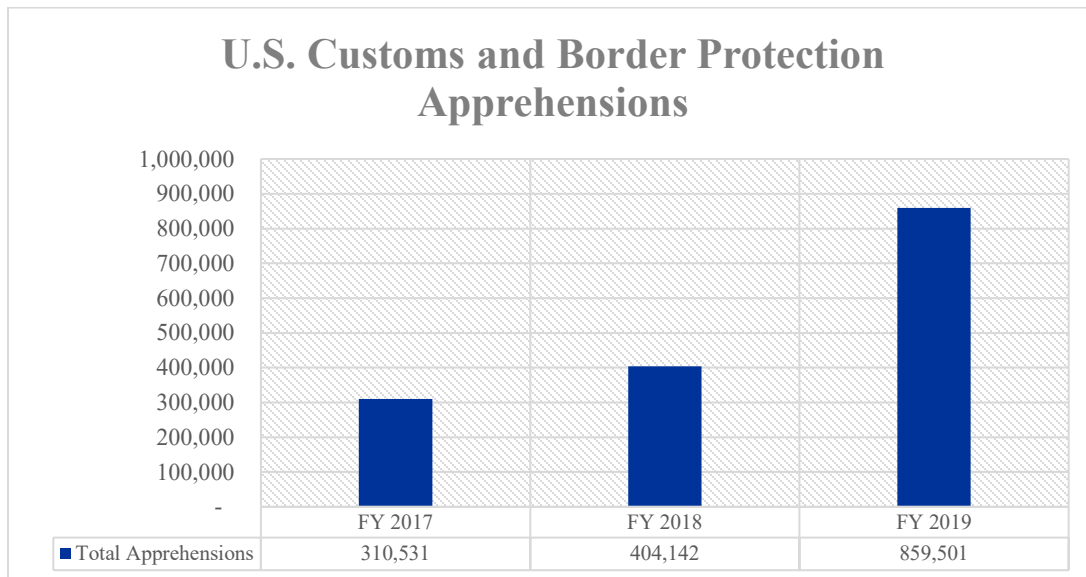
The Civil Division's Office of Immigration Litigation (OIL), Appellate Staff, and Federal Programs Branch defend the government's immigration laws and policies and handle challenges to immigration enforcement actions. OIL also serves as liaison and provides training to all of the government's immigration agencies, supporting enforcement efforts at and within the nation's borders and providing dependable counsel before the courts. At no time in history has this mission been so important.

As outlined in the Department's FY 2018-2022 Strategic Plan, "Border security, immigration enforcement, and immigration adjudication are priorities cutting across multiple government agencies. They are critically important to the national security of the United States. Illegal immigration presents a significant threat to national security and public safety [...] Enforcement of our nation's immigration laws is a fundamental priority of the Department of Justice [...]. It

is critical to the defense of the United States that criminal immigration laws are enforced.”⁹ The Civil Division fully supports Strategic Goal Two – Secure the Borders and Enhance Immigration Enforcement and Adjudication. This program increase, which includes attorneys and support staff, will strengthen the Division’s ability to further the Department’s efforts in immigration enforcement and defense of the United States.

Petitions for Review (PFRs)

U.S. immigration enforcement begins when DHS files a Notice to Appear (NTA), which charges a potential illegal alien with a violation of federal immigration law and seeks the removal of that individual from the United States. DHS released a policy memorandum in June 2018, providing updates to United States Citizenship and Immigration Services (USCIS) guidelines for referring cases and issuing NTAs¹⁰. As a result of this memo and other changes in immigration enforcement priorities and policies, USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) have enhanced their enforcement authority and processing significantly. The number of CBP apprehensions of individuals who are not lawfully in the U.S. is drastically increasing¹¹.



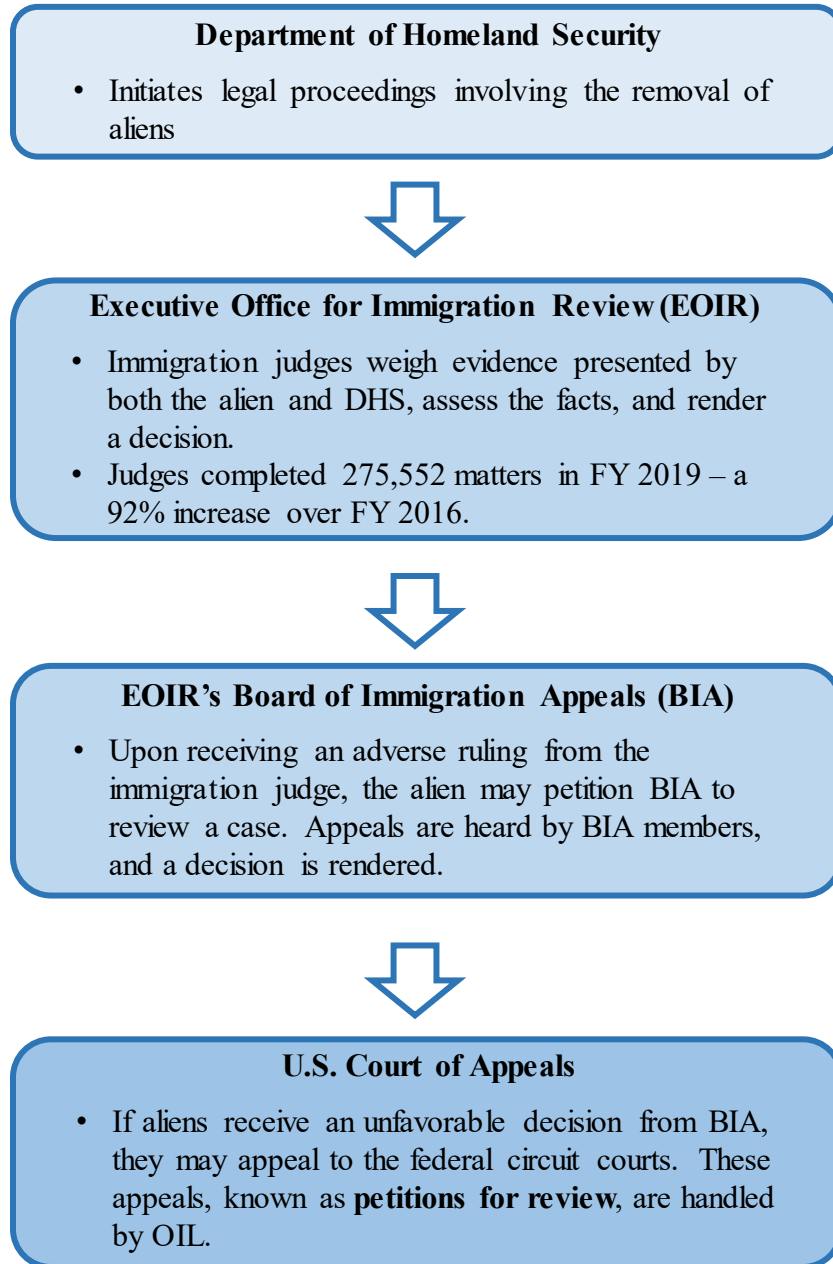
Those individuals apprehended by DHS are granted the right to a removal proceeding, which are then brought before an immigration judge in one of EOIR’s 52 immigration courts. The steps a case takes as it moves through the immigration system are described in the chart below.

⁹ U.S. Department of Justice (2018) *Department of Justice Strategic Plan for 2018 – 2022*
<https://www.justice.gov/jmd/page/file/1071066/download>

¹⁰ U.S. Citizenship and Immigration Services (2018) *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (DHS Publication No. PM-602-0050.1) <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

¹¹ U.S. Customs and Border Protection (2019) *CBP Enforcement Statistics 2019*
<https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>

Civil Defends Immigration Enforcement



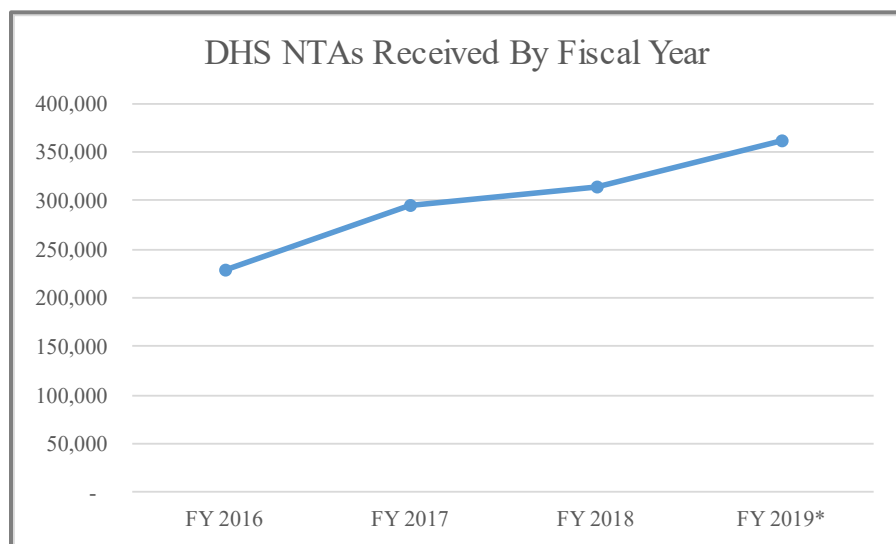
An immigration judge weighs evidence presented by both the alien and DHS, assesses the facts, considers the various factors, and renders a decision that can be appealed to EOIR's Board of Immigration Appeals (BIA).

When aliens receive an unfavorable decision from BIA, they can appeal to the federal judicial system. These appeals are handled by Civil's Office of Immigration Litigation Appellate Section (OIL-Appellate), as congressionally mandated. This directive means OIL cannot delegate petitions for review to the U.S. Attorneys' Offices (USAOs). These PFRs comprise the majority

of OIL-Appellate’s docket. Accordingly, OIL is the last line of defense against criminal and other illegal aliens who challenge their exclusion or expulsion from the United States.

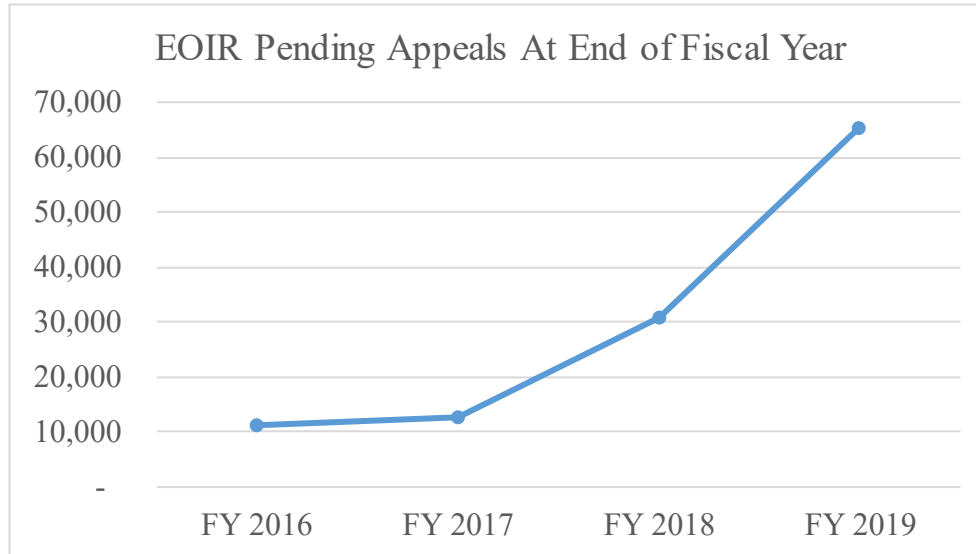
DHS, EOIR, and Civil are inextricably linked. The actions of one organization greatly affect the workings of the others. Modifications in immigration laws and regulations, in addition to changes in DHS and EOIR policies can greatly impact any one of the components’ caseloads. Critical to the success of DHS’s removal goals is the ability of EOIR and Civil to timely adjudicate their cases.

DHS’s and EOIR’s enforcement has increased as more resources have been made available. In FY 2018, DHS issued 314,316 NTAs, which is a 38% increase from FY 2016; FY 2019 is expected to exceed the number of NTAs issued in FY 2018.



*Assumes straight-line projection of data through March 31, 2019.

EOIR’s BIA has also seen an explosion of cases pending in their backlog.

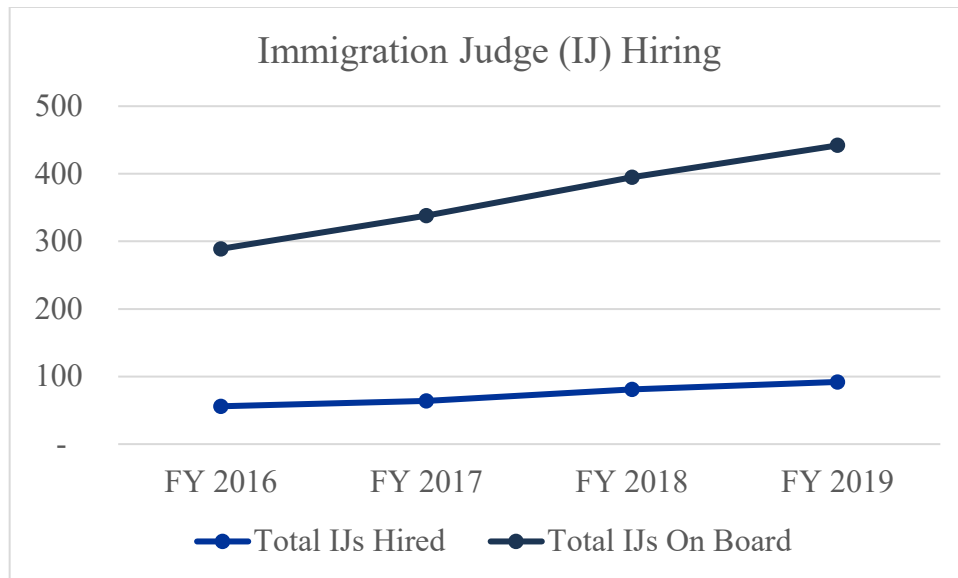


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As BIA hires more Immigration Judges (IJs) and brings more cases to court, the Civil Division will bear the responsibility of handling these cases. An EOIR press release from August 16th, 2018 states, “As part of a series of common-sense reforms to the immigration court system, [the] Attorney General [...] last year introduced a “streamlined hiring plan” emphasizing clear deadlines for ensuring immigration judge candidates move efficiently through the hiring process. Due to this effort, some of the immigration judges sworn-in [...] were hired in approximately 266 days, down from an average of 742 days just one year ago.”¹³ This represents a 64% reduction in hiring time for IJs. EOIR is committed to hiring 75 new IJs in FY 2019, and 100 new IJs in both FYs 2020 and 2021, for a total of 275 new IJs. These large cohorts of judges, coupled with an expedited hiring time, will result in an increase of cases before the Civil Division.

¹² Executive Office of Immigration Review (2019) *Adjudication Statistics, Case Appeals Filed, Completed, and Pending* <https://www.justice.gov/eoir/page/file/1198906/download>

¹³ U.S. Department of Justice (2018) *Executive Office for Immigration Review Announces Largest Immigration Judge Investiture Since At Least 2010, Hiring Times Reduced by More Than 50%* [Press Release] <https://www.justice.gov/opa/pr/executive-office-immigration-review-announces-largest-immigration-judge-investiture-least>



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Assuming an IJ processing rate of 700 cases per year, with 275 more IJs on board, and an appeal rate of 21%, the Civil Division anticipates it will receive 8,886 additional PFRs in FY 2021. The sharp rise in caseload will dramatically increase the number of cases that must be assigned to each OIL attorney. OIL-Appellate organizes attorneys into teams, with paralegals servicing the needs of those teams. A typical ratio is three paralegals for every team of 15 attorneys.

Programmatic Immigration Litigation Activities

The Civil Division is responding to substantial changes in key immigration litigation activities, including increases in the number of immigration detention habeas stemming from increases in the removal proceeding caseload discussed above, class action lawsuits, denaturalization proceedings, and litigation over programmatic and policy changes. These increases are coupled with the growing complexity of litigation. The Office of Immigration Litigation’s District Court Section (OIL-DCS) is a highly active litigation section. In the overwhelming majority of cases, OIL-DCS defends 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.

Class action immigration litigation against the United States is particularly resource-intensive, with each case requiring a team of attorneys and support staff. The increase in the number of class actions has been dramatic, with a 137% increase in these large, complex cases from FY 2016 to present. Moreover, many of OIL-DCS’s class actions involve applications by plaintiffs for preliminary injunctions (PIs) or temporary restraining orders (TROs) with nationwide effect, which are resource intensive and have extremely short response deadlines. Both the increase in class action caseload and complexity of those actions are evidenced by the increase in the hours

¹⁴ Executive Office of Immigration Review (2019) *Adjudication Statistics, Immigration Judge (IJ) Hiring* <https://www.justice.gov/eoir/page/file/1104846/download>

reported on class action matters. Hours spent on class actions nearly tripled between FY 2017 and FY 2018 (22,647 to 59,509), and increased again to 75,235 in FY 2019. Increasingly, large-scale document collection and discovery are a feature of such cases as they grow in size and complexity. For example, in FY 2017 the Office of Litigation Support (OLS) hosted 162 GB of data for discovery in OIL-DCS cases, which is equivalent to 12 million pages of documents. In FY 2018, the total hosted data was 3,359 GB, or about 252 million pages; FY 2019 saw a massive increase to 16,384 GB of hosted data, the equivalent of over 1.2 billion pages. Such voluminous discovery directly translates to additional attorney hours. In FY 2018, OIL-DCS attorneys logged almost 22,600 hours in discovery. In FY 2019, this ballooned to 36,425 hours expended on discovery. This is equivalent to having 18.2 attorneys working full time on only discovery over the same period.

In addition to class action lawsuits, Civil has experienced a rapid growth in denaturalization proceedings. OIL-DCS's critical denaturalization docket also reflects an existing strain on current resources, with the potential for exponential growth in an area that is a high priority for the Department. The Section's NS/A Unit works closely with the FBI, DHS, the Criminal Division, and USAOs to denaturalize individuals who pose potentially grave threats to public safety and the nation's security. These include known or suspected terrorists, violent criminals, human traffickers, war criminals, human rights abusers, child sex abusers, and fraudsters. Historically, the NS/A Unit received about 30 referrals from agencies and filed about 18 denaturalization cases per year. In FY 2017, they received 58 referrals and filed 18 cases. FY 2018 saw a sharp and sustained increase to 144 referrals, with 49 cases filed. In FY 2019, the number of referrals increased dramatically to 212, as agencies have begun committing additional resources to the detection and prosecution of naturalization fraud. Having reached maximum capacity, the Unit is challenged to file cases for the majority of their referrals now, and the projected increase over prior fiscal years is significant. One referring agency alone, USCIS, increased their dedicated staff from 13 FTEs to 70, and is expecting the number of referrals to rise to 360 annually, with an ultimate goal of referring at least 1,600 cases to the Civil Division for prosecution. Civil has consistently obtained a higher than 90% success rate in denaturalization cases, which feature prosecution of some of the most threatening enemies to our nation. For example, in November 2018, in *United States v. Zazi*, the Civil Division secured the denaturalization of a Colorado man who had conspired to bomb the New York City Subway in 2009. With additional resources, OIL-DCS will be able to continue to properly staff these critical cases, which ensure the safety of U.S. citizens.

OIL-DCS and Civil's Appellate Staff and Federal Programs Branch have seen an enormous increase in litigation regarding programmatic and policy challenges with national impact through the last two fiscal years. Unlike other programmatic litigation, these cases have been unique in the frequency of emergency litigation, the inclusion of constitutional claims that have resulted in discovery, and the ongoing nature of the challenges through discovery, amended complaints, and appellate work. In addition to the ongoing litigation of these cases, Civil anticipates similar challenges with greater frequency over the course of the upcoming fiscal years.

Since January 2017, the Civil Division's Federal Programs Branch and Appellate Staff have experienced a substantial increase in their immigration-related caseload, which has taxed the resources of both offices. Both offices have expended substantial resources defending the

Administration's orders and subsequent proclamations, and have engaged in multiple rounds of litigation, with the Federal Programs Branch handling cases in multiple district courts and the Appellate Staff simultaneously handling appeals in multiple courts of appeals and drafting filings for the Supreme Court. These cases have involved difficult and novel questions of law, and have demanded a commensurately large share of both offices' resources. These cases have proceeded on an extremely expedited basis, involving burdensome discovery, and requiring extensive motions practice both in the district courts and in the courts of appeals. Collectively, these cases have required a commitment in excess of 10,000 attorney and paralegal hours by both offices. Both offices have assembled teams of attorneys to defend multiple challenges, over the course of several years, related to Federal immigration enforcement.

Senior attorneys on the Appellate Staff regularly advise and consult about appellate litigation considerations in cases handled by OIL. The Appellate Staff also provides a dedicated liaison to OIL for appellate matters, answering questions and providing advice to OIL attorneys. This liaison also reviews and advises Department leadership about recommendations for appeal or further review (rehearing or certiorari) in all OIL cases, and consults with the Office of the Solicitor General in select cases raising sensitive or significant legal issues in immigration matters. Federal Programs Branch attorneys have also coordinated with OIL on several cases in which OIL-DCS has primary responsibility, as have OIL-DCS attorneys for several cases in which the Federal Programs Branch has primary responsibility.

As reflected above, cases handled by the Federal Programs Branch continue to grow in size and complexity. The collection and review of massive numbers of documents and the depositions of numerous, often high level officials across multiple defendant agencies, once rare, are increasingly a part of the Branch's litigation. Moreover, the Branch has observed a trend of multiple, overlapping lawsuits challenging the same federal policy being filed in different jurisdictions across the country, often on compressed timelines. Responding to this multi-pronged litigation strategy exacerbates resource constraints to the extent it requires teams of attorneys to defend multiple lawsuits, all brought at the same time. In order to meet these increasing demands, it is essential that the Civil Division obtain more resources.

Impact on Performance:

This Administration has established immigration enforcement as a priority, and as a pillar of national security and protecting the American people. It is Civil's role, as part of the Justice Department, to enforce the nation's immigration laws, prosecute violators, and secure all borders. The Civil Division must be prepared for the influx of immigration judges to prevent a breakdown in the immigration system. Enforcing and upholding immigration laws and policies are crucial in promoting legal immigration, 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, denaturalization cases, and programmatic and policy changes.

Additional staff will allow the Civil Division to meet its obligation to represent the Federal Government in defensive cases, and to handle more high priority cases personally with specialized immigration attorneys, reducing reliance on U.S. Attorneys less familiar with complex immigration laws. Many large-scale programmatic challenges are national in scope,

involving immigration and national security matters of the highest national priority, and cannot be delegated.

Base Funding

<i>FY 2019 Enacted</i>				<i>FY 2020 Enacted</i>				<i>FY 2021 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
445	348	441	\$79,377	445	348	431	\$82,076	445	348	431	\$84,942

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Annualization	Number of Positions Requested	FY 2021 Request (\$000)	2 nd Year Annualization	FY 2022 Net Annualization (change from 2019) (\$000)	FY 2023 Net Annualization (change from 2020) (\$000)
Attorneys (0905)	\$208	\$114	43	\$4,897	\$115	\$4,934	\$275
Paralegals / Other Law (0900-0999)	\$104	\$58	9	\$524	\$55	\$493	\$30
Total Personnel			52	\$5,421	\$170	\$5,427	\$305

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2021 Request (\$000)	FY 2022 Net Annualization (change from 2019) (\$000)	FY 2023 Net Annualization (change from 2020) (\$000)
Base Automated Litigation Support	\$14	43	\$613	\$17	\$17
Total Non-Personnel			\$613	\$17	\$17

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2022 Net Annualization (change from 2019) (\$000)	FY 2023 Net Annualization (change from 2020) (\$000)
Current Services	445	348	431	\$84,942	\$0	\$84,942	\$90,976	\$96,420
Increases	52	43	26	\$5,421	\$613	\$6,034	\$5,444	\$322
Grand Total	497	391	457	\$90,363	\$613	\$90,976	\$96,420	\$96,742

Affected Crosscuts

Immigration will be reported to the Department's Immigration and Counterterrorism (Border Security) Crosscuts.