



*U.S. Department of  
Justice*

# **Civil Division**

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## **FY 2020 Budget & Performance Plans**

March 2019

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# I. Overview of the Civil Division

## A. INTRODUCTION

The Civil Division 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 2020 Full Program Costs

The FY 2020 Civil Division budget request provides for **\$299,538,000** and **1,146** positions, including 838 attorneys. This request includes a program increase for Civil's Consumer Protection Branch of \$611,000 and 6 positions to support increasing workload in protecting the health, safety, and economic security of American consumers.

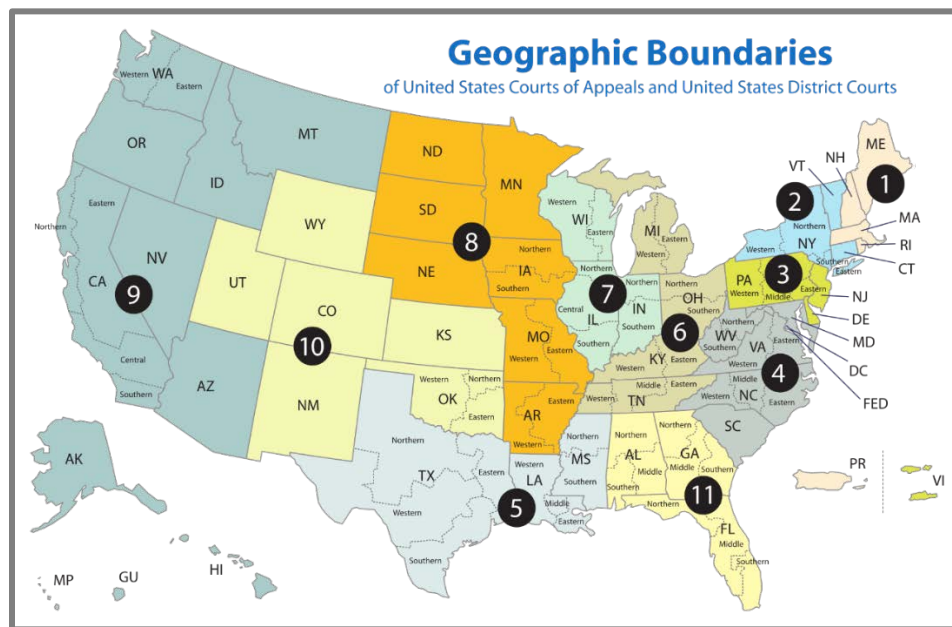
Beyond traditional litigation, the Civil Division helps administer three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the September 11th Victim Compensation Program.

### Civil 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 2018, the Civil Division:

- **Secured** over \$5.5 billion in settlements, judgments, fines, and restitution.
- **Defeated** all or nearly all of the opposing party's claims in 84 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.



## **B. MISSION AND OBJECTIVES**

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

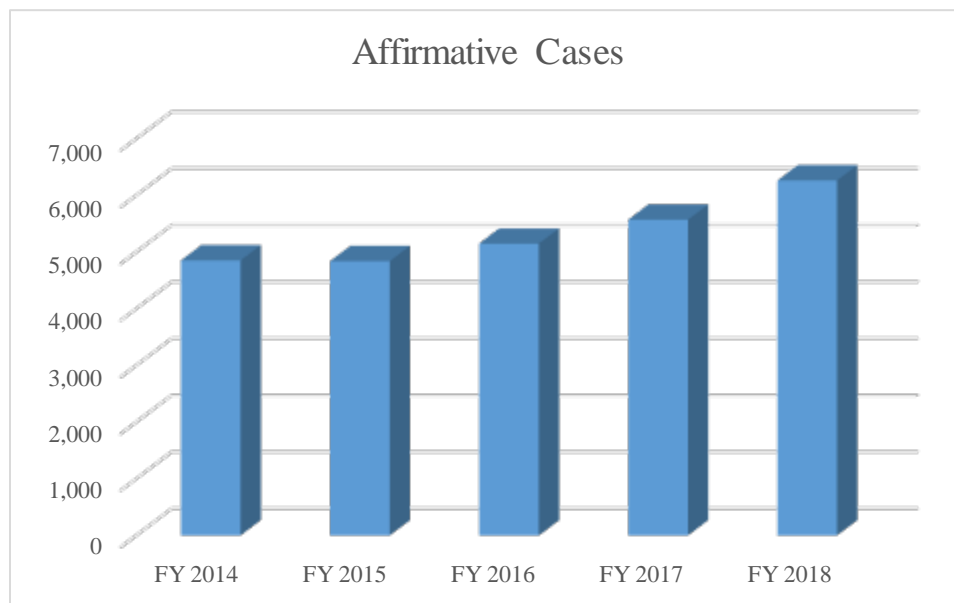
The Civil Division’s litigation directly benefits the American people by protecting their safety and security through defensive and affirmative litigation. The Division defends the detention of dangerous terrorists at Guantanamo Bay and handles litigation seeking sensitive government information (including 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. Procurement fraud matters 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 2018, the Civil Division secured over \$5.5 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.



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 2018, the Civil Division defeated tens of billions 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.

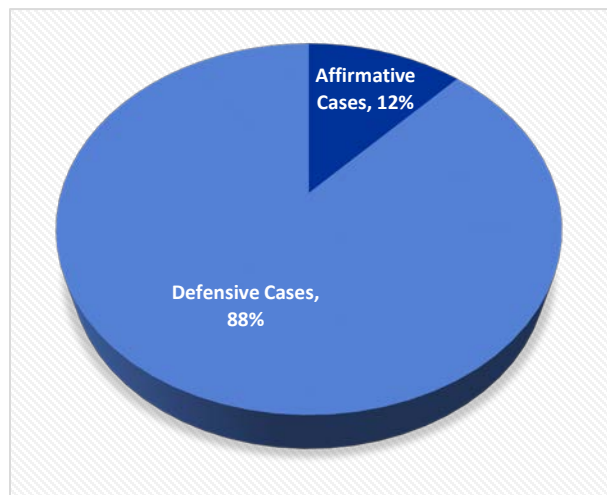
## **C. INTERNAL AND EXTERNAL CHALLENGES**

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 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 Automated Litigation Support (ALS) to 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 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. Regardless of its budget, other pressing priorities, or its ability to absorb additional work, Civil must vigorously represent the Federal Government in these increasingly complex matters.

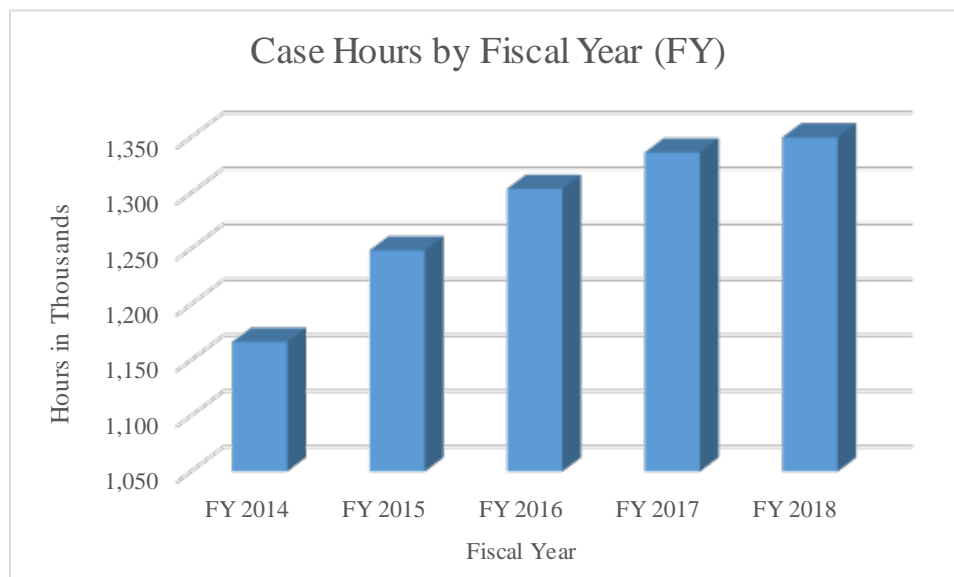


The underlying events that give rise to litigation are typically beyond the Civil Division's control, unpredictable, or even unknowable. Incidents such as challenges to executive orders, changes in federal policy, contractual disputes between an agency and its vendor, bankruptcy filings, natural disasters 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 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***

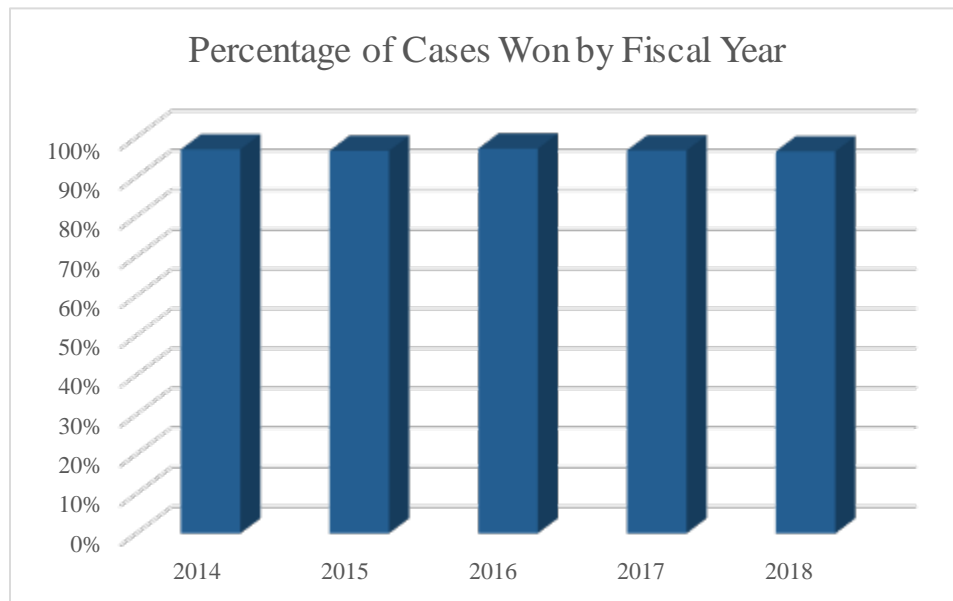
The Civil Division is responding to an increasingly complex caseload with increasing complexity of data in investigations and litigation. In many cases, voluminous quantities of emails, internal corporate documents, text messages, and voicemails will be exchanged between parties.

ALS is critical to the successful outcomes of cases, acquiring, screening, organizing, and analyzing documents and data. Civil uses ALS tools and contractors to organize and control document collection and data, respond to requests for documents, develop institutional memory, and provide access to case material at any time, from anywhere. Many cases could not be properly investigated or litigated without these critical services.

### ***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 stayed above 93% in the past four years. The funding requested in FY 2020 will provide resources for the Civil Division to continue to address

these challenges, while supporting the Administration’s efforts to enhance national security, assist the opioid initiative, 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 significantly 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. During FY 2018, the Division successfully completed two lease consolidation prospectus through GSA. These consolidations reduced our physical footprint by nearly 20 percent in compliance with the Reduce the Federal Footprint Initiative. Moreover, nearly all of Civil’s employees are now housed in office space that meets GSA LEED standards, which is located in close proximity to multiple mass transit options.

## II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars (\$000)	Pg.
Consumer Protection Branch	Additional positions for Civil's Consumer Protection Branch to handle its growing caseload, which focuses on protecting the health, safety, and economic security of American consumers through criminal prosecutions and civil enforcement actions.	6	3	\$611	34

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

The FY 2020 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.

Note.—A full-year 2019 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2019 (Division C of P.L. 115–245, as amended). The amounts included for 2019 reflect the annualized level provided by the continuing resolution.

#### **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 [\$10,000,000] \$13,000,000 to be appropriated from the Vaccine Injury Compensation Trust Fund.

#### **Summary**

The Vaccine Injury Compensation Program (“VICP” or the “Program”) has experienced a staggering increase in its caseload over the past six years, with no expectation of abatement. Therefore, it is essential that the Civil Division seek an increase in the amount of the appropriated reimbursement from the Vaccine Injury Compensation Trust Fund to handle VICP claims. In FY 2020, Civil is requesting a total reimbursement of \$13 million. This funding level would provide for an additional 15 positions, including 12 attorneys, bringing the total number of positions associated with the program to 61.

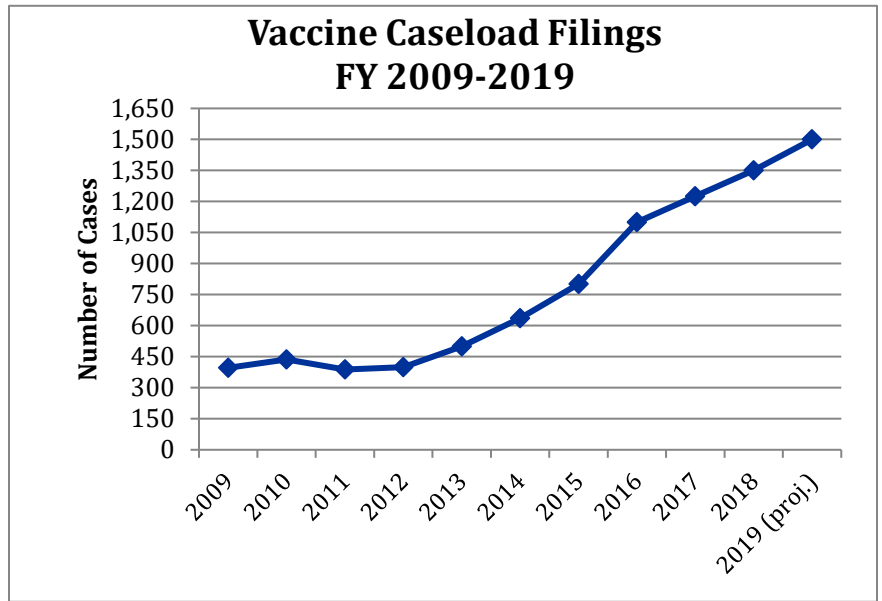
Funding for VICP is unique in that Congress appropriates a reimbursement from the Vaccine Injury Compensation Trust Fund to the U.S. Department of Health and Human Services (HHS), the Civil Division, and to the Special Masters at the U.S. Court of Federal Claims. The Trust Fund, which has a current balance of \$3.8 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 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. Between FY 2006 and FY 2012, approximately 400 VICP cases were filed each year. However, beginning in FY 2013 that number began to grow, exceeding 1,100 by FY 2016. In FY 2018, over 1,350 cases were filed. This reflects an increase of 238% over the annual 400 cases that Civil handled during the eight-year period from FY 2006 – FY 2012. However, since FY 2012, the staffing level has only increased by 12 positions, an increase of 35%. Additional positions are desperately needed in order to adequately manage the growing backlog and expected continued growth in the caseload.



There are several reasons for the caseload increase, all of which indicate that the increased caseload will continue. First, in December 2016, the 21<sup>st</sup> Century Cures Act became law (P.L. 114-255), which added coverage for a new category of cases arising from maternal immunization. Second, revisions to the Injury Table allow claimants to file with an expanded timeline or even re-file a previously dismissed case. Third, new regulations took effect on March 21, 2017, that added new injuries to the Act’s Injury Table (of particular note, Guillain-Barré syndrome and Shoulder Injury Related to Vaccine Administration were added), which now make up approximately 80% of new case filings. Fourth, the vaccine injury attorney bar is becoming more aggressive and sophisticated in bringing cases. Previously, vaccine injury law firms primarily represented petitioners in relatively small geographical regions. However, with a heavy, nationwide online presence, and the coordinated efforts of a vaccine practitioners’ bar association, these firms are reaching far more potential petitioners. These cases are generally very lucrative for petitioners’ attorneys as 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 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.

Additional funding is required to keep pace with the aforementioned growing caseload. Currently, each VICP attorney is handling an unsustainable average caseload of 90-100 cases. The requested funding level of \$13 million would allow the caseload per attorney ratio to be a challenging, but more manageable, 65-70 cases.

As of October 29, 2018, the number of cases awaiting initial review by HHS’s medical staff, a prerequisite to Civil processing the case, totaled 685. Thus, more than one half of the cases filed last fiscal year have received almost no attention from either HHS or Civil, and remain on a

“wait list.” Due to staffing levels 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, in FY 2018, 104 fewer cases were finally resolved than in FY 2017, and the average number of days for each case resolution has increased by 145 days. These statistics demonstrate that the Vaccine section’s need for additional staff is mission critical.

### **Impact on Performance**

Additional attorneys are necessary to address the increasing backlog and to meet the Program’s Congressional mandate to provide a fair and expeditious means to resolve vaccine injury claims. With increased staffing levels, Civil attorneys will be better equipped to tackle the backlog and respond timely to newly filed cases. They will have sufficient time to conduct the necessary analysis and review of cases so as to more effectively defend them, as well as to determine which cases should be settled out of court. Civil attorneys will be better able to ensure that only meritorious cases receive compensation, and that the amount of compensation awarded is both reasonable and appropriate. Another result will be preservation of the Trust Fund, so that sufficient compensation is available for all future meritorious cases. The expeditious resolution of pending cases fulfills two of the Program’s primary goals: (1) preservation of the nation’s vaccine supply; (2) and encouragement of vaccine manufacturers to pursue innovative methods of vaccine development, both of which benefit the nation’s public health.

The Court recently has issued orders in some 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. Increased staffing will enable Civil to avoid summary action being taken by the Court in pending cases, 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.

# Program Activity Justification: Legal Representation

## A. LEGAL REPRESENTATION

### 1. Program Description

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2018 Enacted	1,140	1,149	\$292,214
2019 Continuing Resolution	1,140	1,184	\$292,214
Adjustments to Base and Technical Adjustments	0	6	\$6,713
2020 Current Services	1,140	1,190	\$298,927
2020 Program Increases	6	3	\$611
2020 Program Offsets	0	0	\$0
2020 Request	1,146	1,193	\$299,538
Total Change 2019-2020	6	9	+\$7,324

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, occasionally, in state appellate courts. Appellate's cases involve complex, sensitive, and novel legal questions that set far-reaching precedents. The Appellate Staff also defends against constitutional challenges to statutes passed by Congress, as well as Executive Branch decisions when these matters are litigated in appellate courts. A notable amount of Appellate's caseload involves representing national security and immigration policies in federal appellate courts, such as Guantanamo Bay detainees challenging the lawfulness of their detentions, actions challenging counterterrorism surveillance and investigations, challenges to terrorist financing and travel, and challenges to Deferred Action for Childhood Arrivals (DACA).

### **Commercial Litigation Branch**

The Civil Division's Commercial Litigation Branch has five sections: (1) Corporate/Financial Litigation, (2) Foreign Litigation, (3) Fraud Section, (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 protects 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. Since 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 cases; 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, subjects including: national security, visa fraud, data privacy, tax and revenue, intellectual property, employment, breach of contract, 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 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, the evasion of customs duties, and any other type of fraudulent conduct that results in the waste of abuse of taxpayer funds. Much of the Fraud Section's litigation is pursued under the False Claims Act (FCA).

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 Fraud Section currently has over 75 active open opioid-related matters and has identified many additional potential opioid related subjects for investigation. The work the Fraud section has undertaken with respect to opioids has already yielded results: in April 2018, the Department filed suit alleging that drug manufacturer Insys Therapeutics paid kickbacks to healthcare providers for prescribing Subsys, an opioid 100 times more powerful than morphine. The Civil Division recently reached a proposed global resolution under which Insys will pay more than \$150 million. Additionally, in August 2018, the Department intervened in FCA actions alleging that drug manufacturer Indivior, Inc. used false and misleading claims to promote Suboxone – a powerful opioid approved to treat withdrawal symptoms of recovering addicts. Indivior also allegedly promoted Suboxone to physicians known to support diversion of the drug. The Fraud Section has 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, with identifying potential targets and undertaking medical reviews.

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 2018, 645 qui tam suits were filed, and the Department recovered \$2.1 billion in these and earlier filed suits. Whistleblower awards during the same period totaled \$767 million.

Among other examples of its critical activities, the Fraud Section has used the FCA successfully to combat price gouging by drug manufacturers, 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 sought to avoid or underpay import duties.

In FY 2018, the Department recovered more than \$2.8 billion in settlements and judgments under the FCA. Since 1986, when the FCA was significantly amended by Congress, total recoveries in FCA matters have exceeded \$59 billion.

### ***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 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, with an emphasis on counterterrorism, cyber security, and immigration. 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 the defense of United States' foreign intelligence surveillance activities; the protection of classified national security information through the state secrets privilege; the defense of military personnel policies and actions; the defense of watchlisting policies to protect U.S. transportation systems, including challenges to the No Fly List and Terrorist Screening Database; and 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; and the Federal Bureau of Investigation 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.

While the District Court Section does affirmatively file and prosecute an ever-increasing number of denaturalization cases, the overwhelming majority of the Section's cases are defensive. 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 74 class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration, and enforcement of immigration law, which represents a 23% increase over last year's record number of 60 class action cases. This Section's litigation also routinely involves national security cases. 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 mandatory detention pending removal, including naturalization claims of members of Hamas, Al-Qaeda, and Al-Shabab.

### ***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 matters surrounding aviation and maritime accidents. 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, NASA, and multiple agencies involved in aerial firefighting. 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. 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.

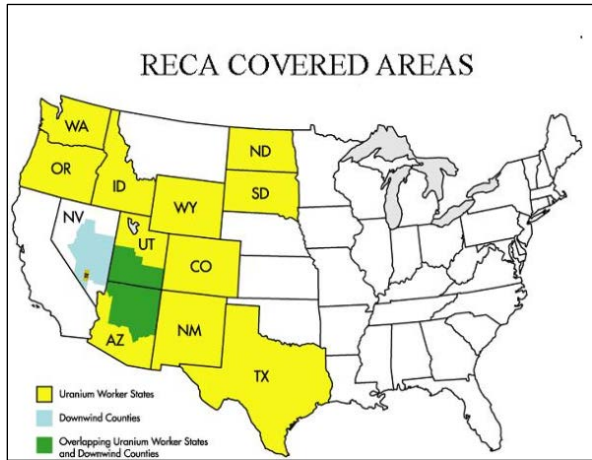
Attorneys' Offices on jointly handled cases, reviewing and approving representation requests from federal employees nationwide, and providing guidance to both federal agencies and Department components on legal and policy matters related to Department-provided representation of government officials. 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 deter well qualified individuals to serve 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 6,276 claimants who almost certainly would not have received compensation through traditional tort litigation.

There has been a dramatic increase in vaccine cases filed in recent years, as the 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 FY 2017. This trend shows no signs of abating, with approximately 1,600 new cases expected in FY 2020.

**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 34,000 approved claims for eligible individuals or their surviving beneficiaries through September 30<sup>th</sup>, 2018.

### ***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.

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 reauthorization, appropriated an additional \$4.6 billion. As of September 30, 2018, award determinations have been issued on over 21,000 claims at a value of over \$4.0 billion. The Reauthorization Act created two groups of claims – Group A and Group B. Group A claims are those where the claimant received a letter dated on or before December 17, 2015, notifying him or her of the award decision on the claim. Group B claims are those not in Group A. As directed in the Reauthorization Act, the VCF’s top priority after reauthorization was the payment in full of all Group A claims, many of which had previously received only partial payments. That task has been accomplished. For Group B claims, the



Department of the Treasury began processing payments on October 3, 2016, as soon as funding became available. Moreover, as required by the Reauthorization Act, once payment on all Group A claims was completed, the remainder of the Group A funds was transferred to the Group B account so that they are available to pay Group B claims.

## Performance and Resources Tables

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

RESOURCES											
		Target		Actual		Projected		Changes		Requested (Total)	
		2018		2018		FY 2019		Current Services Adjustments		FY 2020 Request	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		1,245	292,214	1,363	289,721	1,245	292,214	39	7,324	1,284	299,538
			[175,103]		[130,182]		[125,000]		[3,000]		[128,000]
Type	Performance	FY 2018		FY 2018		FY 2019		Current Services Adjustments		FY 2020 Request	
<b>Performance Measure: Output</b>	1. Number of cases pending beginning of year	29,050		24,779		29,050		5,223		34,273	
	2. Number of cases received during the year	16,044		14,217		16,044		321		16,365	
	3. Total Workload	45,094		38,996		45,094		5,544		50,638	
	4. Number of cases terminated during the year	10,821		10,610		10,821		0		10,821	
<b>Civil Division Performance (Excludes VICP and RECA)</b>											
<b>Performance Measure: Outcome</b>	5. Percent of civil cases favorably resolved	80%		97%		80%		N/A		80%	
	6. Percent of federal denaturalization dispositions favorably resolved	80%		100%		80%		N/A		80%	
	7. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		84%		80%		N/A		80%	
	8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		76%		60%		N/A		60%	
	9. Percent of favorable resolutions in non-monetary trial cases	80%		88%		80%		N/A		80%	
	10. Percent of favorable resolutions in non-monetary appellate cases	85%		93%		85%		N/A		85%	

		Target	Actual	Projected	Changes	Requested (Total)
		FY 2018	FY 2018	FY 2019	Current Services Adjustments	FY 2020 Request
<b>Vaccine Injury Compensation Program Performance</b>						
<b>Performance Measure: Outcome</b>	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%
<b>Performance Measure: Efficiency</b>	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%
<b>Radiation Exposure Compensation Program Performance</b>						
<b>Performance Measure: Outcome</b>	13. Reduce average claim processing time to 200 days by FY 2016	200	130	200	N/A	200
	14. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	96%	90%	N/A	90%
	15. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	100%	95%	N/A	95%
<b>Performance Measure: Efficiency</b>	16. Percentage of claims adjudicated within 12 months or less.	80%	94%	80%	N/A	80%

<b>History of Performance</b>										
<b>Decision Unit: Civil Division - Legal Representation</b>										
<b>Performance Report and Performance Plan Targets</b>		<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>		<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
		<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>	<b>Target</b>	<b>Target</b>
<b>Performance Measure: Output</b>	1. Number of cases pending beginning of year	26,545	26,764	24,541	26,867	29,050	24,779	29,050	34,273	39,817
	2. Number of cases received during the year	15,212	14,836	14,471	15,918	16,044	14,217	16,044	16,365	16,968
	3. Total Workload	41,757	41,600	39,012	42,785	45,094	38,996	45,094	50,638	56,785
	4. Number of cases terminated during the year	16,941	15,383	13,036	12,107	10,821	10,610	10,821	10,821	10,821
<b>Civil Division Performance (Excludes VICP and RECA)</b>										
<b>Performance Measure: Outcome</b>	5. Percent of civil cases favorably resolved	97%	93%	98%	97%	80%	97%	80%	80%	80%
	6. Percent of federal denaturalization dispositions favorably resolved	94%	89%	100%	95%	80%	94%	80%	80%	80%
	7. Percent of defensive cases in which at least 85 percent of the claim is defeated	90%	86%	91%	90%	80%	84%	80%	80%	80%
	8. Percent of affirmative cases in which at least 85 percent of the claim is recovered	61%	73%	69%	75%	60%	76%	60%	60%	60%
	9. Percent of favorable resolutions in non-monetary trial cases	91%	87%	89%	89%	80%	88%	80%	80%	80%
	10. Percent of favorable resolutions in non-monetary appellate cases	93%	91%	94%	94%	85%	93%	85%	85%	85%

Type	Measure	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018		FY 2018	FY 2019	FY 2020
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
<b>Vaccine Injury Compensation Program Performance</b>										
<b>Performance Measure: Outcome</b>	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%
<b>Performance Measure: Efficiency</b>	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	92%	100%	92%	92%	92%
<b>Radiation Exposure Compensation Program Performance</b>										
<b>Performance Measure: Outcome</b>	13. Reduce average claim processing time to 200 days by FY 2016	272	200	151	153	200	130	200	200	200
	14. Percentage of claims paid within six weeks of Program receipt of acceptance form	86%	90%	95%	95%	90%	96%	90%	90%	90%
	15. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	97%	95%	92%	100%	95%	100%	95%	95%	95%
<b>Performance Measure: Efficiency</b>	16. Percentage of claims adjudicated within 12 months or less	76%	80%	88%	89%	80%	94%	80%	80%	80%

**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**

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

The Civil Division's work contributes to the Department of Justice's efforts to achieve Strategic Goal 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 Federal Bureau of Investigation (FBI), Department of Homeland Security (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. 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. In FY 2018, the Unit received 144 referrals and filed 48 cases. In the first two months of FY 2019 alone, the Unit received 54 referrals – nearly as many as they received in all of FY 2017. If the referral rate remains constant, the Unit will receive 324 cases for FY 2019, a 125% increase over FY 2018. This is on top of a 148% increase in FY 2018. Having reached maximum capacity, the Unit cannot file cases for the majority of their referrals now, and the projected increase over FY 2019 and FY 2020 is staggering.

Furthermore, a DHS initiative, Operation Janus, identified approximately 315,000 cases where some fingerprint data was missing from the centralized digital fingerprint repository. Among those cases, some individuals may have sought to circumvent criminal record and other background checks in the naturalization process. These cases are the result of an ongoing collaboration between DHS and DOJ to investigate and pursue denaturalization proceedings against those who fraudulently obtained citizenship<sup>1</sup>. In response to Operation Janus, U.S. Citizenship and Immigration Services (USCIS) is increasing their dedicated staff from 13 FTEs to 70, and increasing the number of referrals to 360 annually, with an ultimate goal of referring at least 1,600 cases to OIL-DCS for prosecution as part of the operation.

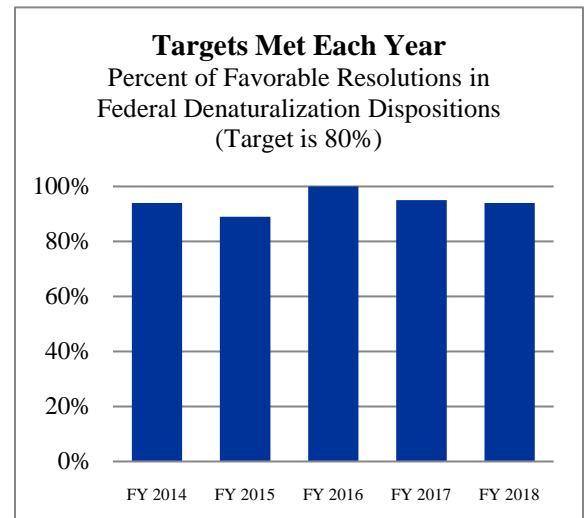
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<sup>1</sup> <https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus>

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 2020, 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 U.S. Department of Homeland Security (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. Over the past sixteen months, the Federal Programs Branch has assumed primary responsibility for defending challenges to executive orders related to immigration and protecting the nation’s borders, including Executive Orders 13,780 and 13,769 (both titled “Protecting the Nation From Terrorist Entry into the United States”) and Executive Order 13,768 (“Enhancing Public Safety in the Interior of the US”). Between January 2017 and June 2018, the Civil Division’s Appellate Staff team defended the President’s executive orders and proclamation limiting the entry of foreign nationals who could pose a threat to national security. The team engaged in multiple rounds of appellate litigation, including highly expedited stay and merits briefings in four appeals in two circuits. These briefings 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. The appeals culminated in a decision by the U.S. Supreme Court upholding a presidential proclamation as a lawful exercise of the President’s authority to suspend entry of classes of aliens, and rejecting an Establishment Clause challenge to the proclamation. *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

The Civil Division also has defended action taken by the Department to deny grant funding to jurisdictions that have not demonstrated compliance with 8 U.S.C. section 1373, and the decision of the Secretary of Homeland Security to rescind the Deferred Action for Childhood Arrivals policy. The Appellate Staff has assembled a team of attorneys to work on a number of cases related to sanctuary cities and their interference with the Federal Government’s ability to enforce federal immigration law. The team is handling appeals in three circuits relating to grant conditions designed to ensure that state and local law enforcement partners cooperate with DHS. The team has also worked closely with OIL to develop the legal theories underlying a lawsuit against the State of California challenging the State’s new sanctuary-city legislation. In that case, the district court granted in part and denied in part the federal government’s motion for a



preliminary injunction, and the Federal Government appealed. The Appellate Staff has filed an opening brief and a reply in brief in the Ninth Circuit, and the case will likely be argued in spring 2019.

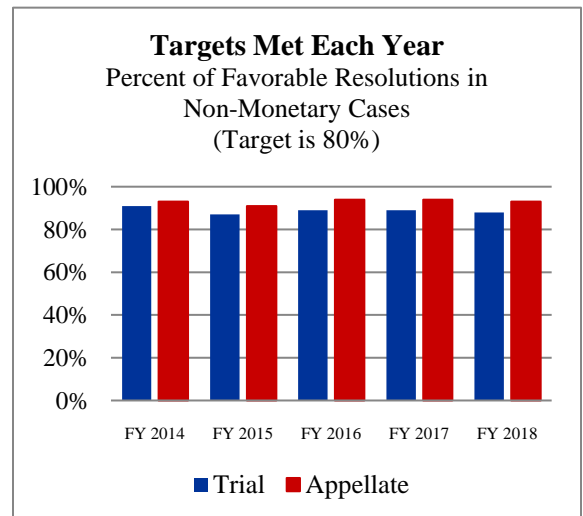
**The Civil Division Upholds the Rule of Law and Integrity in the Proper Administration of Justice (Strategic Objective 4.1)**

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 13,771, which generally requires two deregulatory actions for every regulatory action promulgated by Executive Branch agencies, and Executive Order 13,798, 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.

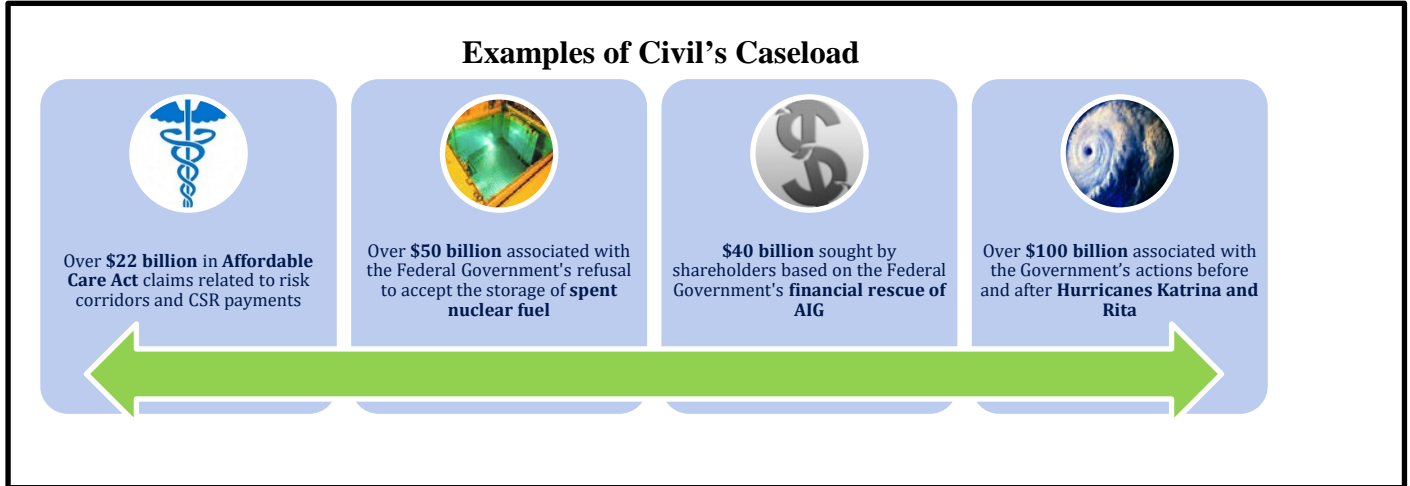
Civil’s recent performance for its non-monetary cases is summarized in the chart to the right. As this chart reveals, Civil has consistently met its performance targets in non-monetary cases like the ones described above. In FY 2020, Civil will strive to maintain its high performance standards.



**Civil’s Performance in Monetary Defensive Cases**

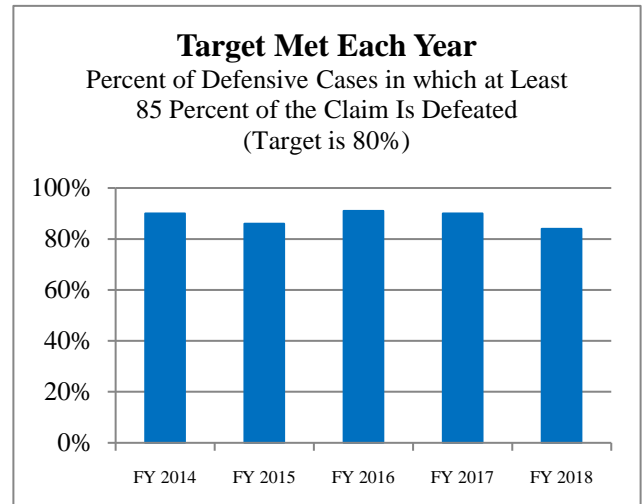
The Federal Government engages in countless transactions annually, such as purchasing and leasing goods or services, offering loan guarantees and grants, signing contracts, and issuing payroll. Inevitably, disagreements sometimes arise over the terms of these agreements, or even who should be awarded 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 2018, Civil defeated \$13.3 trillion 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 2020 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 significant returns to the Treasury, this litigation also punishes bad actors who seek to harm and defraud individual Americans. Below is a sampling of Civil's recent work that directly impacts the health, safety, and economic security of American consumers.

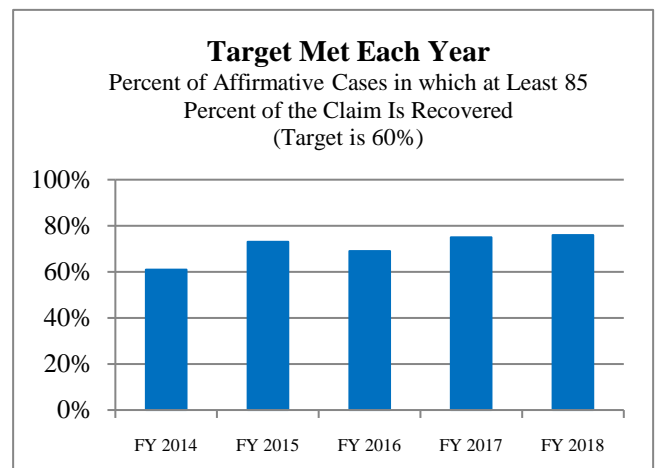
In 2018, the Fraud Section reported some of the largest recoveries involving the health care industry. Drug wholesaler AmerisourceBergen paid \$625 million to resolve allegations that it circumvented safeguards protecting the integrity of the nation's drug supply when repackaging oncology drugs administered to cancer-stricken patients. DaVita Medical, a large physician practice group, paid \$270 million to resolve its liability for providing inaccurate information to the Medicare Advantage Program that caused inflated payments to managed care organizations.

The former hospital chain, Health Management Associates, paid over \$216 million to resolve allegations that it improperly billed outpatient services as more-costly inpatient services, paid kickbacks to physicians for patient referrals, and inflated claims for emergency department facility fees. In another hospital matter, William Beaumont Hospital paid \$84.5 million to resolve allegations of improper financial relationships with referring physicians.

In addition to these settlements, the Fraud Section also obtained various civil judgments under the FCA. For example, after a two-week trial, we obtained judgments totaling more than \$114 million against three individuals who were found to have paid physicians illegal remuneration disguised as “handling fees” for each patient they referred to two blood testing laboratories. The Fraud Section also introduced evidence at trial that this kickback scheme resulted in physicians referring patients to the laboratories for medically unnecessary tests, which were then billed to federal health care programs. In another two-week jury trial, the Fraud Section obtained a judgment of \$5.49 million against a spinal surgeon and his fiancée, who leveraged the physician’s ability to select spinal implant devices to extract lucrative commissions from device suppliers for the fiancée’s medical supply company.

In March, 2018, Toyobo Co. Ltd. of Japan and Toyobo U.S.A. Inc. agreed to pay \$66 million to resolve claims under the False Claims Act that they sold defective Zylon fiber used in bullet proof vests that the United States purchased for federal, state, local, and tribal law enforcement agencies. The Fraud Section alleged that the defendants knew that Zylon fiber degraded excessively when exposed to heat and humidity and thus was incapable of retaining its ballistic protection. On May 2, 2018, the Department announced that \$11 million of the settlement would be used to help purchase approximately 18,700 additional bullet-resistant vests for law enforcement officers through the Bulletproof Vest Partnership (BVP) Program.

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 2018, the Civil Division has again achieved nearly 80% success rate in recovering at least 85% of the claim.



***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, to include the freedom to exercise free speech and religion. Civil’s Federal Programs Branch and Appellate Staff handle a majority of the Division’s First Amendment cases.

Federal Programs and Appellate consult with agencies on free exercise and establishment clause issues, and Federal Programs has worked on memoranda and briefs aimed at defending free

speech on college campuses. In addition to these efforts, Federal Programs is working in conjunction with the Appellate Staff to defend the Interim Final Rule Expanding Exemption for religious and moral objectors from the Affordable Care Act's contraceptive coverage mandate, as well as defending the Navy's ability effectively and appropriately 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.

**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 Technology for Improved Financial Management***

The Civil Division constantly strives to reduce costs. In recent years, Civil found innovative ways to reduce utilities, travel, printing, publication, and other administrative costs. Further, beginning in FY 2018, Civil employs the Department's Unified Financial Management System (UFMS). This new system allows the Civil Division to better track costs and payments, and ensure that all funding sources are fully utilized. In the current fiscal environment, it is critical that Civil explores and maximizes alternative funding sources in order to address the Administration's priorities and serve the American people. All of these efforts ensure that the Civil Division is efficiently using taxpayer dollars.

### ***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.

## **IV. Program Increase: Protecting the Health, Safety, and Economic Security of American Consumers**

<b>Item Name:</b>	<b>Protecting the Health, Safety, and Economic Security of American Consumers</b>
Strategic Goal:	4.1 - Uphold the Rule of Law and Integrity in the Proper Administration of Justice
Organizational Program:	Civil Division, Consumer Protection Branch
Program Increase:	Positions <u>6</u> ; Atty <u>5</u> ; FTE <u>3</u> ; Dollars <u>\$611,000</u>

### **Description of Item:**

The Civil Division seeks a program increase of six positions (five attorneys and one support staff) for its Consumer Protection Branch, which plays a vital role in protecting the health, safety, and economic security of American consumers.

The Consumer Protection Branch leads the Justice Department's efforts to enforce federal consumer protection laws throughout the United States. The Branch pursues both criminal prosecutions and civil actions of national significance to protect Americans from scams and abuse, and it enforces laws and defends agency actions that safeguard consumers from dangerous drugs, medical devices, foods, and other products. The Branch accomplishes many of these aims with skills gained as the Department's designated expert in enforcing the Federal Food, Drug, and Cosmetic Act (FDCA) and in prosecuting complex consumer frauds. It also employs the collaborative efforts of a range of federal investigative agencies and partner U.S. Attorneys' Offices.

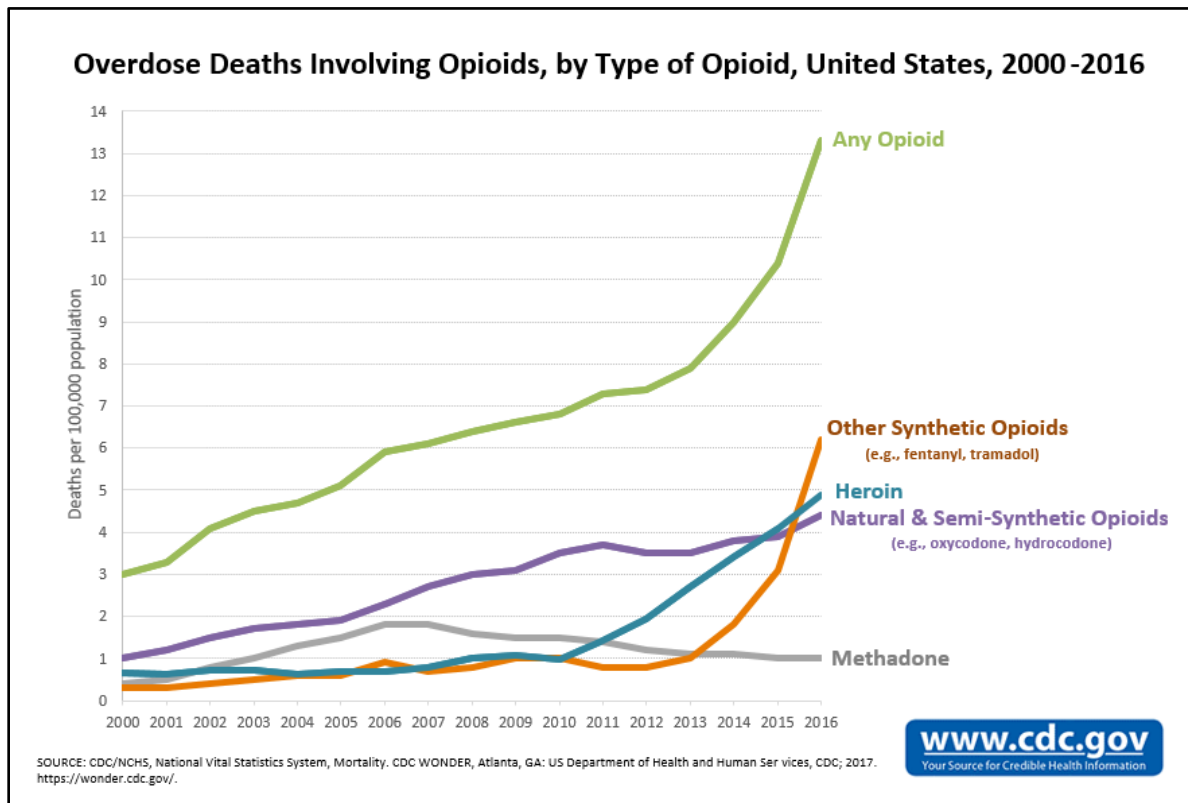
The Branch's infrastructure allows it to nimbly respond to conduct that is most harmful to consumers, speedily bringing enforcement actions to interdict ongoing threats. Consistent with this structure, the Branch is now leading a number of Department priority initiatives, including: combatting the opioid crisis by pursuing criminal and civil actions against opioid manufacturers, distributors, pharmacies, and over-prescribing doctors; protecting the elderly and vulnerable populations from fraud and abuse; and pursuing schemes that disproportionately affect U.S. servicemembers and veterans.

### **Justification:**

In addition to accomplishing its traditional mission of enforcing food, drug, and product safety laws, the Consumer Protection Branch is now assertively advancing a number of new initiatives to address some of the nation's top priorities. Additional resources are necessary to maintain and develop these efforts.

## Opioid Crisis

The opioid epidemic is an ongoing national crisis. In 2016, opioids were involved in 42,249 deaths, which is five times higher than the opioid-related death rate in 1999.<sup>2</sup> Of those reported deaths, more than 40% involved a prescription opioid, equating to more than 42 deaths per day.<sup>3</sup> The Administration is addressing this threat aggressively, with the President 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 the Prescription Interdiction and Litigation (PIL) Task Force was established to combat the opioid crisis at every level of the distribution system.



The Civil Division’s Consumer Protection Branch is a leading member of the PIL Task Force, working relentlessly to address the opioid crisis with both criminal and civil enforcement tools.

Building on its expertise in enforcing the FDCA, the Consumer Protection Branch is advancing criminal investigations to determine whether opioid manufacturers and responsible executives violated the law in the marketing and sale of products, paid kickbacks to induce drug prescriptions, and/or knowingly caused the submission of false claims for reimbursement to government health care programs. All of the investigations require painstaking review of

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

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

hundreds of thousands, or even millions, of documents and numerous witness interviews to gather relevant evidence, decipher suspect activities, and identify possibly illegal conduct. This investigatory work requires an enormous commitment of attorney and support-staff time, which only will increase as investigations approach possible litigation.

The Consumer Protection Branch also is leading efforts across the country to reduce the opioid-related death toll by pursuing legal actions against practitioners who write excessive numbers of opioid prescriptions associated with patient overdose deaths. The crux of this effort is the Branch's collaboration with U.S. Attorneys' Offices to file civil injunctive actions under the Controlled Substances Act against dangerously over-prescribing doctors while simultaneously pursuing criminal investigations of those doctors. The Branch is currently investigating practitioners in more than a dozen districts and anticipates identifying many more suspects in the coming year. The Branch also is advising numerous U.S. Attorney's Offices on techniques and theories for initiating and conducting their own investigations, benefiting from the experience Branch attorneys have gained themselves. This substantial and fast-paced work requires an enormous commitment of attorney resources, travel, and managerial time. The Drug Enforcement Agency (DEA) is the lead investigative agency assigned to this effort, as the effort is advancing a key goal of the PIL Task Force and has received the strong support of the the Department.

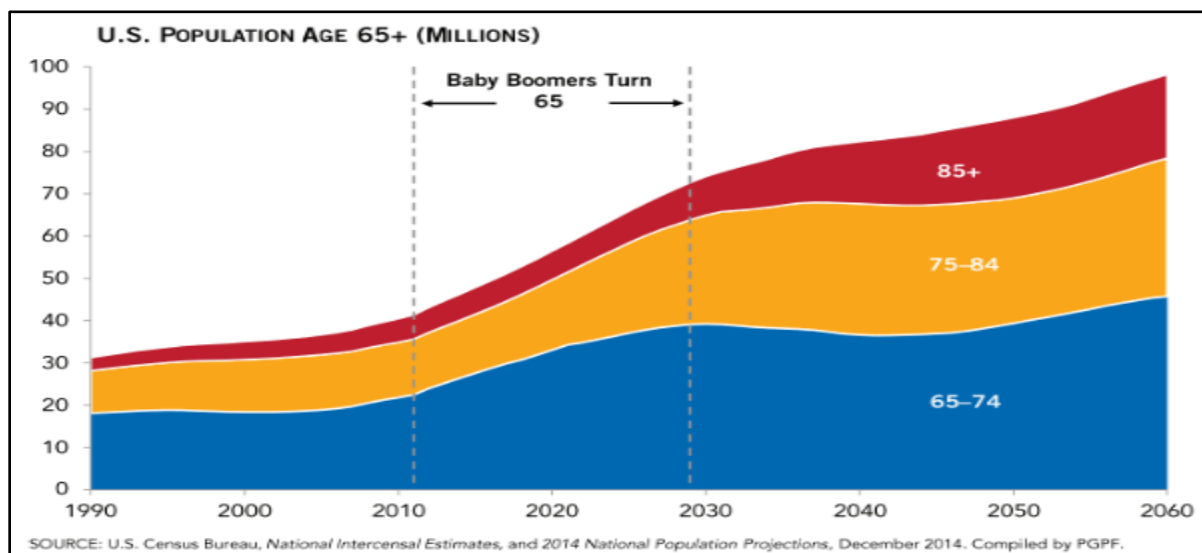
In addition, the Branch recently has begun employing new analytical techniques it developed to identify and investigate distributors and pharmacies associated with extraordinary rates of opioid dispensing. The DEA and U.S. Attorneys are enthusiastically supporting this effort, which has already identified numerous leads and led to law enforcement actions. The work is resource intensive, requiring quick action by attorneys to develop evidence, draft pleadings, and reach areas of need.

Through all these efforts, the Consumer Protection Branch is advancing the core of the Department's efforts to address the prescription opioid crisis and achieving the primary aims of the PIL Task Force.



## Elder Justice

According to statistics released by the U.S. Census Bureau in 2017, residents age 65 and over grew from 35.0 million in 2000, to 49.2 million in 2016, accounting for 12.4 percent and 15.2 percent of the total population, respectively.<sup>4</sup> 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.<sup>5</sup> The aging population has given predatory criminals new opportunities to exploit the elderly through abuse, neglect, and financial fraud. The Consumer Protection Branch is leading efforts to thwart and appropriately punish such criminals.



As a vital member of the Elder Fraud Initiative, the Consumer Protection Branch plays a leading role in protecting elderly Americans from Transnational Criminal Organizations engaged in fraud schemes. The Branch is presently orchestrating a global takedown of specific types of telemarketing fraud schemes modeled on the February 2018 elder fraud sweep. The targeted schemes are the fastest growing fraud threat to America's seniors, with seniors filing more than 50,000 complaints through August of 2018. The schemes are also difficult to track down and the perpetrators (almost all of whom are foreign) are difficult to prosecute. Through close collaboration with the Federal Bureau of Investigation (FBI), Postal Inspection Service, Federal Trade Commission, and foreign law enforcement, the Consumer Protection Branch has developed a sophisticated ability to identify fraudsters and the entities that facilitate their schemes. The Branch is also coordinating the efforts of scores of U.S. Attorneys' Offices, State Attorneys General, and foreign prosecutors to take action against identified fraudsters. Additionally, the Consumer Protection Branch is building an unprecedented coalition of educational and industry collaborators, including private tech companies committed to stopping elder fraud schemes. The Branch is pushing all of these efforts toward a takedown scheduled to occur in 2019. Following that takedown, the Branch then will need to litigate and prosecute all initiated actions, requiring a significant commitment of attorney and staff time and travel.

<sup>4</sup> <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html>

<sup>5</sup> <https://www.nij.gov/topics/crime/elder-abuse/Pages/welcome.aspx>

Furthermore, the Consumer Protection Branch is advancing the first-ever effort to hold responsible those entities and individuals who knowingly facilitate massive fraud schemes against older Americans. Through work leading up to the 2018 elder fraud sweep, the Branch and its dedicated Postal Inspectors detected numerous entities that were aiding large fraud schemes. Investigation has revealed that some of those entities and associated individuals were doing so knowingly. As a result, the Branch now is pursuing criminal actions against those responsible. This effort has the potential to establish precedent and result in a deterrent message that will stop individuals and entities from knowingly facilitating fraudsters who steal from senior citizens. But it is a labor-intensive effort, requiring the review of numerous documents, extensive witness interviews, and complex litigation.

In conjunction with the Postal Inspection Service, the Branch also is preparing to redouble its efforts against telemarketing frauds that target seniors. This includes “grandparent,” romance, prize-promotion, IRS, and extortion scams. A particular focus will be on Jamaican lottery fraud schemes, which steal hundreds of millions of dollars a year from Americans, are a driving force of violent crime in Jamaica, and in one particularly tragic case even resulted in an American being lured to Jamaica and murdered there by fraudsters. The Branch has developed a new system to aid in this effort: a system that identifies Jamaican lottery frauds in real time. This system is showing major investigative promise, but requires a substantial influx of prosecutors to advance cases.

Also, in work that touches on both elder fraud and abuse, the Branch is launching a new initiative to investigate and prosecute those who provide criminally inadequate and fraudulent care to nursing home residents. Working with the FBI and other federal and state partners, this initiative will seek out the worst actors across the country and aim to hold them accountable for any misconduct. As with its other new efforts, however, the Branch requires additional resources to fully deliver on the promise of this initiative.

#### **U.S. Servicemembers and Veterans Fraud Initiative**

The Branch for years has doggedly pursued fraudsters who scam U.S. servicemembers and veterans. Through a newly expanded relationship with the Defense Criminal Investigative Service (DCIS), the Branch has launched more investigations—involving a more varied set of frauds and victims—than ever before. The fraud being investigated by the Branch include those that steal servicemembers’ identities, deceive them into surrendering their veterans’ benefits, and otherwise cost them millions of dollars.

The Branch also is pursuing a new set of schemes that are costing servicemembers their lives by misleading them into taking exercise supplements filled with illicit substances that cause death and illness. Building on its FDCA expertise and a longstanding relationship with the Uniformed Services University of the Health Sciences, the Branch specifically is working with DCIS and the Food and Drug Administration to investigate and prosecute the worst actors in this space, including those who knowingly sell misbranded supplements as well as those who smuggle and distribute those supplements’ illicit ingredients into and throughout the United States. This work is extremely time intensive, requiring a significant amount of undercover work, search warrants, and knowledge of foreign and military law. But the work can save U.S. servicemembers’ lives, making it a significant priority for the Branch, a point of great interest to the Department of Defense, and a worthy cause for additional resources.

**Impact on Performance:**

The Consumer Protection Branch will use the sought resources to maintain and advance all of its ongoing initiatives. *First*, addressing its most critical need, the Branch will hire more attorneys. With 20 trial attorneys currently employed, the Branch requires additional attorneys and support dedicated to build and litigate cases. *Second*, to help review voluminous evidentiary records and satisfy discovery obligations, the Branch will use additional funding to hire essential personnel to continue work necessary for unique research purposes. Any money provided to the Branch will be well allocated to protect Americans' health, safety, and economic security.

**Base Funding**

<i>FY 2018 Enacted</i>				<i>FY 2019 Continuing Resolution</i>				<i>FY 2020 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
26	20	26	\$6,343	26	20	26	\$6,533	26	20	26	\$6,729

**Personnel Increase Cost Summary**

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 <sup>st</sup> Year Annualization	Number of Positions Requested	FY 2020 Request (\$000)	2 <sup>nd</sup> Year Annualization	FY 2021 Net Annualization (change from 2019) (\$000)	FY 2022 Net Annualization (change from 2020) (\$000)
Attorneys (0905)	\$212	\$111	5	\$558	\$54	\$484	\$14
Paralegals / Other Law (0900-0999)	\$100	\$56	1	\$53	\$19	\$57	\$3
<b>Total Personnel</b>			<b>6</b>	<b>\$611</b>	<b>\$73</b>	<b>\$541</b>	<b>\$17</b>

**Non-Personnel Increase/Reduction Cost Summary**

Non-Personnel Item	Unit Cost	Quantity	FY 2020 Request (\$000)	FY 2021 Net Annualization (change from 2019) (\$000)	FY 2022 Net Annualization (change from 2020) (\$000)
Buildout			\$0	\$0	\$0
<b>Total Non-Personnel</b>			<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**Total Request for this Item**

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2021 Net Annualization (change from 2019) (\$000)	FY 2022 Net Annualization (change from 2020) (\$000)
Current Services	26	20	26	\$6,729	\$0	\$6,729	\$7,340	\$7,881
Increases	6	5	3	\$611	\$0	\$611	\$541	\$17
<b>Grand Total</b>	<b>32</b>	<b>25</b>	<b>29</b>	<b>\$7,340</b>	<b>\$0</b>	<b>\$7,340</b>	<b>\$7,881</b>	<b>\$7,898</b>