



*U.S. Department of
Justice*

Civil Division

**FY 2019 Budget
and Performance Plans**

Submitted to the Congress of the United States
February 2018

[Page Intentionally Blank]

TABLE OF CONTENTS

	<u>Page</u>
1. Overview	1
2. Summary of Program Changes	4
3. Appropriations Language and Analysis	4
4. Program Activity Justification: Legal Representation	5
a. Program Description: Legal Representation	5
b. Performance, Workload, and Resource Tables	14
c. Performance, Resources, and Strategies	14
5. Program Increases	
a. Protecting Sensitive Information, National Security, and Other National Programs	15
6. Exhibits	
a. Organizational Chart	
b. Summary of Requirements	
c. FY 2019 Program Changes by Decision Unit	
d. Resources by DOJ Strategic Goal/Objective	
e. Justification for Technical and Base Adjustments	
f. Crosswalk of 2017 Availability	
g. Crosswalk of 2018 Availability	
h. Summary of Reimbursable Resources	
i. Detail of Permanent Positions by Category	
j. Financial Analysis of Program Changes	
k. Summary of Requirements by Object Class	
l. Status of Congressionally Requested Studies, Reports, and Evaluations (N/A)	

[Page Intentionally Blank]

Overview of the Civil Division

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 contract disputes, efforts to combat fraud and the abuse of federal funds, benefits programs, multi-million dollar tort claims, alleged takings of property, intellectual property disputes, challenges to immigration policies and decisions, defending constitutional and other challenges to Congressional enactments, and defending national security prerogatives and decisions.

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.

The Civil Division's work safeguards taxpayer dollars, preserves the intent of Congress, ensures the Federal Government speaks with one voice in its view of the law, handles cases that are so massive and span so many years that they would overwhelm the resources and infrastructure of any individual field office, and protects the safety and security of the American people.

The diversity of this subject matter is impressive, as are the results of this litigation. In FY 2017, the Civil Division:

- **Secured** over \$5.8 billion in settlements, judgments, fines, and restitution.
- **Defeated** tens of billions of dollars in cases that were closed.
- **Defeated** all or nearly all of the opposing party's claims in 96 percent of defensive cases.
- **Defended** cases in which opposing parties sought tens of billions of dollars from the United States.
- **Defeated** thousands of challenges to laws, regulations, policies, and administrative decisions.

Full Program Costs

This FY 2019 Civil Division budget request provides for \$284,558,000 and 1,121 FTE, including 825 attorneys. This request includes a program increase for Civil's Federal Programs Branch of \$3,020,000 and 14 FTE, due to an increasing workload in National Security and FOIA-related litigation.

The Civil Division Protects the U.S. Treasury

Year after year, the Civil Division, working with U.S. Attorneys, 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 2017, Civil, working with U.S. Attorneys, secured over \$5.8 billion in settlements, judgments, fines, and restitution in affirmative, monetary matters.

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, defending procurement decisions, patent claims, a variety of 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 tens of billions of dollars each year. In FY 2017, the Civil Division defeated tens of billions of dollars in cases that were closed.

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.

The Civil Division Protects the Safety and Security of the American People

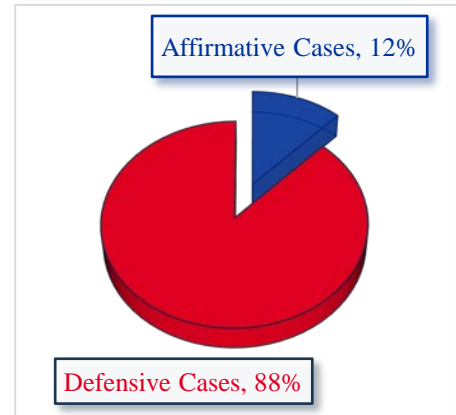
The Civil Division's litigation directly benefits the American people by protecting their safety and security. In immigration work, the Civil Division seeks to remove and/or denaturalize criminal offenders and others who have violated immigration laws. The Elder Justice Initiative supports state and local efforts to prevent and combat elder abuse, neglect, and financial exploitation of older Americans. Consumer protection cases prosecute mass marketing frauds such as lottery and sweepstakes scams. Health care fraud litigation deters health care providers from billing federal health care programs for medically unnecessary services that endanger patients' health and safety. 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 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.

Internal and External Challenges

The most significant challenges facing the Civil Division are described below.

Defensive Cases Allow Civil Little Control Over its Workload

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



Relatedly, the underlying events that give rise to litigation are typically beyond the Civil Division's control, unpredictable, or even unknowable. Incidents such as 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, but Civil cannot forecast when or where this litigation will occur.

Complex Data in Litigation Requires Automated Litigation Support

An ongoing challenge, and one that will indefinitely continue into the future, is the 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. To give some sense of the size of the data at issue, in FY 2017, the Civil Division's Automated Litigation Support (ALS) program housed 1,586.4 terabytes of data. If printed, a single terabyte of data equates to 75 million pages of paper. It is estimated that 1,586.4 terabytes of data, if printed and boxed, would be of sufficient volume to fill – from the floor to the ceiling – the Capitol Rotunda 24 times.

Not surprisingly, ALS services are critical to 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. To achieve this, innovative technology is used to analyze data. Many cases could not be properly investigated or litigated without these services. While these services are not inexpensive, the cost would be exponentially greater to hire attorneys and paralegals to manually review and analyze this data.

Environmental Accountability

Civil is actively working toward meeting all Administration and Department of Justice guidelines for improving environmental and energy performance. Civil is moving toward full compliance with efforts to achieve reductions in greenhouse gas emissions, acquiring green

products and services, and establishing cost-effective waste prevention and recycling programs. Examples of Civil’s environmentally sound practices include: significantly increasing teleconferencing capabilities throughout its office space to reduce travel costs, utilizing UNICOR’s e-recycling program for excess and obsolete computer equipment, installing motion detector lighting systems, using LED “green” lighting, 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 4 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. At the same time, Civil continues to execute plans to consolidate office space leases which will result in the Division occupying over 20 percent less office space. By August 2018, nearly all of Civil’s employees will be housed in office space that meets GSA LEED standards and is in close proximity to Metro, VRE, or MARC transit options.

Summary of Program Changes

Item Name	Description				Pg.
	Pos.	FTE	Dollars (\$000)		
Federal Programs	26	14	\$3,020		29

Appropriations Language and Analysis

General Legal Activities language is displayed in the GLA rollup budget submission.

The FY 2019 Budget Request does not include proposed changes in the Legal Activities, Salaries and Expenses, General Legal Activities appropriations language.

Program Activity Justification: Legal Representation

Program Description: Legal Representation

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2017 Enacted	1,167	1,221	\$292,214
2018 Continuing Resolution	1,120	1,120	\$290,230
2019 Adjustments to Base and Technical Adjustments	-19	-13	-\$8,692
2019 Current Services	1,101	1,107	\$281,538
2019 Program Increases	26	14	\$3,020
2019 Program Offsets	0	0	\$0
2019 Request	1,127	1,121	\$284,558
Total Change 2018-2019	7	1	-\$5,672

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 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 policies in federal appellate courts, such as Guantanamo Bay detainees challenging the lawfulness of their detentions, actions challenging counterterrorism surveillance and investigations, and challenges to terrorist financing and travel.

Appellate's monetary cases involve billions of dollars with outcomes that determine how the law or policy in question will affect millions of Americans.

Commercial Litigation Branch

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

Corporate and Financial Litigation Section

The Corporate and Financial Litigation Section protects the financial interests of the United States by handling unique nation-wide matters involving money and property. The Section represents the Federal Government in complex bankruptcy cases, as well as in contractual and monetary disputes that involve significant federal interests. The Section has a primary role in the United States' affirmative efforts to collect debts owed the United States. 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, insurers, communications companies, energy producers and suppliers, and commercial airlines.

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, and they reflect the wide range of the U.S. government's international activities. 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, data privacy, tax and revenue, intellectual property, visa fraud, 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, working with U.S. Attorneys across the country, recovers billions of dollars annually by investigating and litigating matters involving fraud against the Federal Government. This Section handles fraudulent activity arising from federal health care programs, financial institutions, loan programs, defense and other agency contracting, federal grant programs, customs duties, and royalties from oil and gas leases. Much of the Fraud Section's litigation is pursued under the False Claims Act.

In FY 2017, the Department secured over \$3.7 billion in settlements and judgments from False Claims Act cases. This represents the third highest annual recovery in the history of the False Claims Act. Since 1986, when the False Claims Act was significantly amended by Congress, total recoveries in False Claims Act matters have exceeded \$56.2 billion.

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 2017, 674 qui tam suits were filed, and the Department recovered \$3.4 billion in these and earlier filed suits. Whistleblower awards during the same period totaled \$520 million.

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. 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

The National Courts Section represents taxpayers in lawsuits brought against the Federal Government. 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, as well as other Federal district and appellate courts. The Section protects the public fisc, focusing on procurement and contract disputes; constitutional claims; pay claims; personnel appeals; veterans' benefit appeals; and international trade cases. 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, odometer fraud, and tobacco products. 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 and has obtained recoveries of hundreds of millions of dollars in criminal fines, forfeitures and disgorgement under the Federal Food, Drug and Cosmetic Act. In addition to recoveries under the Federal Food, Drug and Cosmetic Act, 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 defends federal programs, policies, laws, and regulations on behalf of federal agencies, the President, and Cabinet officers, including challenges to the constitutionality of Executive Branch actions as well as statutory law enacted by Congress. Federal Programs is involved in matters representing approximately 100 federal agencies. Many of its cases involve complex questions of constitutional law, including the scope of the powers of Congress, the President, and the federal courts, as well as limitations imposed by the Constitution. The Branch defends against challenges to the lawfulness of key government decisions in suits seeking to overturn important federal policies and programs.

The Federal Programs Branch handles a significant amount of work related to national security and national defense, with an emphasis on counterterrorism and cyber security. 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's mission is to litigate and provide centralized expertise on nationally significant district court-related immigration matters across

the ninety-four (94) federal district courts and resultant appeals before twelve (12) United States Court of Appeals. The overwhelming majority of the Section's cases are defensive. The District Court Section's defensive case load has seen significant growth in recent years, resulting in part from a renewed emphasis on immigration matters, including the factors outlined below:

- High-profile litigation surrounding the Administration's priorities;
- A significant increase in time-sensitive, high-visibility programmatic litigation, particularly with regard to the nation's foreign worker programs;
- Defense of 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; and
- 51 class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration, and enforcement of immigration law.

In addition to the dramatic increase in its defensive case load, the District Court Section has principal authority to handle and is engaging in a rapidly growing body of high visibility affirmative litigation in the form of civil denaturalization actions. It has successfully prosecuted the civil denaturalization of terrorists, violent criminals, child sex abusers, human rights violators, war criminals, and fraudsters. Moreover, U.S. Citizenship and Immigration Services is in the process of referring 1,600 civil denaturalization cases to the Department of prosecution in furtherance of Operation Janus, a DHS initiative that identified about 315,000 cases where some fingerprint data was missing from a centralized digital fingerprint repository. These cases are the result of an ongoing collaboration between the Department of Homeland Security and the Department of Justice to investigate and seek the denaturalization of those who obtained U.S. citizenship unlawfully.

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 Office of Immigration Litigation's 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 the enforcement efforts of the Department of Homeland Security 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 Office of Immigration Litigation's 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:

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

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 and Admiralty Section

The Aviation 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 and Admiralty Section has worked in tandem with the Department's Environment and Natural Resources Division and Criminal Division in representing the Federal Government in litigation arising from the explosion on the drilling rig Deepwater Horizon and the resulting oil spill in the Gulf of Mexico in 2010. The Department announced a settlement with BP of more than \$20 billion in October 2015.

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.

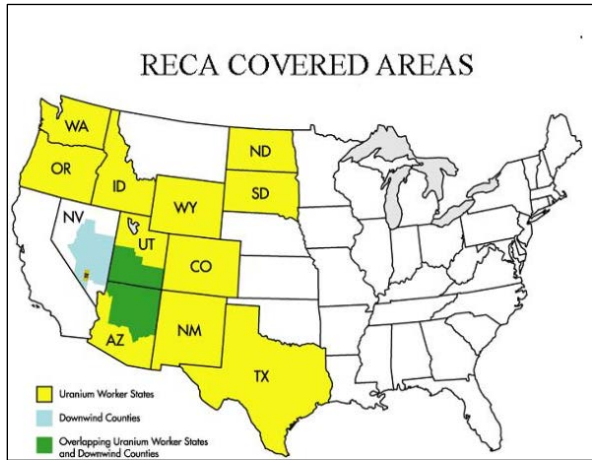
The **Constitutional Torts Staff** provides legal representation to federal employees in cases filed against them personally for actions performed as part of their official duties. Most cases seek monetary damages under the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal 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. While it would be impossible to list the variety of government activities that can give rise to litigation brought personally against government employees, the more controversial activities range from sensitive national security initiatives to enforcement and prosecution of criminal, environmental, and immigration laws and regulations.

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 need not 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 \$3.5 billion to over 5,700 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. During the ten-year period from FY 2005 to FY 2014, an average of 465 new vaccine cases were filed each year. That figure nearly tripled beginning in FY 2016, with a total of 1,120 new cases filed, and 1,243 new cases were filed in FY 2017. This trend shows no signs of abating, with approximately 1,400 new cases expected in FY 2018.

The Radiation Exposure Compensation Program is an administrative law system created by the Radiation Exposure Compensation Act. 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 \$2.2 billion in connection with over 33,000 approved claims for eligible individuals or their surviving beneficiaries.



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. In total, the Environmental Torts Litigation Section has saved the Federal Government billions of dollars.

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. Past litigation include cases involving thousands of property damage and personal injury claims allegedly due to environmental contaminants (e.g., chemicals, heavy metals, biological agents). ETL has litigated cases involving Legionella bacteria at a Veterans Administration hospital facility; the fall 2001 anthrax attacks; government activities at "Ground Zero" following the World Trade Center attacks; alleged heavy metal exposures from computer recycling at a federal correctional institution; 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 FTCA Section defended the United States in suits brought by individuals who were detained on immigration charges following the September 11, 2001, terrorist attacks. It also defended the United States in the tort litigation arising out of flooding that inundated large parts of the City of New Orleans and surrounding parishes after federal flood control levies failed during Hurricane Katrina. In addition, the FTCA Section makes appeal recommendations on all adverse judgments entered in FTCA cases. It also provides comments on FTCA-related congressional 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, 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, Management Programs staff of HR specialists, budget analysts, accountants, and information technology specialists provides 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

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

The VCF is not funded through the Civil Division’s appropriations. Rather, Congress originally appropriated a total of \$2,775,000,000 and, in the reauthorization, appropriated an additional \$4.6 billion. This funding is to be used for award payments as well as administrative expenses. As of December 2017, award determinations have been issued on over 14,900 claims at a value of over \$2.9 billion. The Civil Division provides support to the Special Master and her staff,

including inter-agency coordination, contract management by the Office of Litigation Support and the processing of VCF payments through the Office of Planning, Budget and Evaluation. 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, Workload, and Resource Tables

Performance Materials will be provided at a later date.

Performance, Resources, and Strategies

Performance Materials will be provided at a later date.

Performance Plan and Report for Outcomes

Performance Materials will be provided at a later date.

Strategies to Accomplish Outcomes

Performance Materials will be provided at a later date.

Program Increase: Protecting Sensitive Information, National Security, and Other National Programs

Organizational Program: Civil Division, Federal Programs Branch

Program Increase: Positions 26; Atty 22; FTE 14; \$3,020,000

Description of Item:

The Civil Division seeks a program increase of 26 positions (22 attorneys and 4 support staff) for its Federal Programs Branch, as that office has seen a surging caseload.

The Federal Programs Branch litigates on behalf of approximately 100 federal agencies, the President, Cabinet officers, and other government officials. These attorneys defend against constitutional challenges to federal statutes, lawsuits to overturn government policies and programs, and attacks on the legality of government decisions. The Federal Programs Branch also initiates litigation to enforce regulatory statutes and to remedy statutory and regulatory violations. Its work touches upon practically all aspects of the Federal Government. For example, the Federal Programs Branch defends the detention of dangerous terrorists at Guantanamo Bay, defends challenges to national security decisions, defends significant decisions affecting billions of dollars in the Medicare and Medicaid programs, and also handles litigation seeking sensitive government information under the Freedom of Information Act.

Litigation handled by the Federal Programs Branch directly advances several priorities of the Department and the Administration. A significant portion of Federal Programs' workload involves national security, with a particular emphasis on counterterrorism and cybersecurity. Indeed, well over half of Federal Programs' cases are national security-related. For example, the Civil Division supports the work of the Committee on Foreign Investment in the United States (CFIUS), which reviews transactions for national security risks that could result in foreign control of a U.S. business. Many of those transactions involve U.S. businesses that possess sensitive civilian or military technology or large quantities of personally identifiable information—including information of U.S. government employees—that a foreign adversary could target as a means of gaining access to U.S. government or industry computer systems. The Civil Division advises CFIUS and its agencies to ensure that their actions are as effective as possible and minimize the risk of legal challenges.

In the area of protecting law enforcement, Federal Programs regularly handles Freedom of Information Act ("FOIA") cases seeking records from criminal and civil law enforcement investigations, in which we argue that the records are exempt from disclosure to prevent interference with law enforcement proceedings. For health care fraud, Federal Programs plays a key role in defending regulations and policies of the Department of Health and Human Services that are designed to prevent fraud on the Medicare system.

Justification:

The workload of the Federal Programs Branch has grown dramatically in recent years. From FY 2014 to FY 2017, the annual caseload has increased by 25%, with National Security and FOIA

seeing increases of 10% and 100% respectively. Cases pertaining to law enforcement have increased by 77% during the same period. Despite the significant increase in case load, staffing has remained stagnant.

The burden on the remaining attorneys is significant. To successfully defend the Government and the Administration's laws, regulations, policies, and executive orders, Civil will need to hire an additional 26 positions, 22 of which are attorneys, at a cost of \$3.020 million. These positions will provide a 21% increase to current staffing levels, which is needed to address the rapidly rising case load.

As previously mentioned, the increased caseload and burden on the Federal Programs Branch is tied to two different areas – FOIA Litigation and National Security.

FOIA Litigation. Across the Federal Government, there has been an explosion of FOIA requests and litigation¹. There are several reasons for this increase; first and foremost, a host of government watchdog groups now essentially seek to use FOIA requests and related litigation as a weapon in the political and advocacy process. This phenomenon has been widely noted over several years². These advocacy groups raise their profile whenever they trumpet a new FOIA lawsuit they file against the Federal Government. Second, many federal agencies have significant backlogs of FOIA requests, which prompts more requesters to sue in an effort to obtain their requested records more quickly.

Third, the costs to file a FOIA request are now much lower for many requestors. Historically, a requestor pays the costs an agency bears in responding to a FOIA request. There is, however, an exception for the press, and with the rise of new media (bloggers, twitter users, etc.), many more people now claim this press exemption, which also encourages more, and far broader, requests. Fourth, in FOIA litigation, there are generous attorney fee provisions available to attorneys filing against the Federal Government. Under the OPEN Government Act passed by Congress in 2007 (P.L. 110-175), attorneys may recover their fees in FOIA litigation based on the so-called “catalyst theory” (which essentially states that a plaintiff is eligible for attorney’s fees if his or her lawsuit served as a catalyst for a federal agency voluntarily changing its conduct). FOIA litigation is one of the few types of cases where this theory is permitted. Finally, FOIA litigation is different from other civil litigation in that the burdens are not shared by both sides. In most cases, there is an incentive for each side to negotiate and attempt to find an acceptable limit to the scope of their requests – if one side asks for unnecessary and voluminous requests then the other side may be emboldened to do the same thing. But in FOIA litigation, there is no reciprocity; the Federal Government is the only side turning anything over. Thus, the FOIA requestors (and plaintiffs) have little incentive to reduce the scope of their requests.

¹ See <http://foiaproject.org/2018/01/16/lawsuits-trump-first-year/>, reporting that the number of FOIA lawsuits nationwide has increased by 70 percent in five years, including 26 percent in the last fiscal year, and continues to climb.

² See the FOIA Project “Dramatic Rise in FOIA Lawsuits Filed by Nonprofit Advocacy Groups, July 26, 2017, available at <http://foiaproject.org/2017/07/26/nonprofit-advocacy-groups/>.

National Security and Other National Programs. The Federal Programs Branch also defends laws, regulations, policies, and executive orders related to national security and other high profile policies. These are among the highest profile cases handled by the Civil Division. Routinely, in these matters, Federal Programs attorneys must consult senior DOJ leadership, high ranking officials at other federal agencies, and the White House. Currently, the Federal Programs Branch is involved in defending challenges to numerous executive orders signed by President Trump, including Executive Orders 13,780 and 13,769 (both titled “Protecting the Nation From Terrorist Entry into the United States”), Executive Order 13,768 (“Enhancing Public Safety in the Interior of the US”), as well as Executive Order 13,771 (which requires the Executive Branch agencies to repeal two regulations when issuing a significant regulation and to ensure that the costs of the new regulation are fully offset by deregulatory actions).

These cases are almost always defensive in nature, which means that opposing counsel picks the timing and location of a suit. Regardless of its budget or its ability to take on additional work, Federal Programs Branch attorneys must defend these cases or risk important policies – which are often top priorities for the Department of Justice as well as the entire Administration – being reversed by the courts. Further, given the stakes and complexity of these cases it would be practically impossible for the cases to be delegated to the U.S. Attorneys.

Impact on Performance:

For these reasons, the Federal Programs Branch must hire additional staff. At this time, Civil seeks funding for 26 positions in the FY 2019 budget. A majority of the \$3.020 million requested for this increase provides for hiring and staffing of the 26 positions. The additional 22 attorney positions will allow the Branch to handle personally the exploding number of significant national security and FOIA matters, and the additional support staff will support that litigation. A small portion of the request allows for space alterations to Civil’s office space to accommodate the increase in staff.

Base Funding

<i>FY 2017 Enacted</i>				<i>FY 2018 President's Budget</i>				<i>FY 2019 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
129	111	129	\$22,900	129	111	129	\$23,679	129	111	129	\$24,484

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 st Year Annualization	Number of Positions Requested	FY 2019 Request (\$000)	2 nd Year Annualization	FY 2020 Net Annualization (change from 2019) (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)
Attorneys (0905)	212	112	22	\$2,470	97	\$2,130	\$131
Paralegals / Other Law (0900-0999)	100	54	4	216	57	228	12
Total Personnel	312	166	26	\$2,686	154	\$2,358	143

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2019 Request (\$000)	FY 2020 Net Annualization (change from 2019) (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)
Buildout			\$334	-\$334	\$0
Total Non-Personnel			\$334	-\$334	\$0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2020 Net Annualization (change from 2019) (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)
Current Services	129	111	129	\$24,484	-	\$24,484	\$27,504	\$29,528
Increases	26	22	14	\$2,686	334	\$3,020	\$2,024	143
Grand Total	155	133	142	\$27,170	334	\$27,504	\$29,528	\$29,671