**Department of Justice**

2014

**PERFORMANCE BUDGET CONGRESSIONAL SUBMISSION**

**OFFICE OF THE SOLICITOR GENERAL**

**March 27, 2013**

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**I. Overview for the Office of the Solicitor General**

1. Introduction

For FY 2014, the Office of the Solicitor General (OSG) requests a total of $11,435,000, 54 positions, including 22 attorney positions, and 55 FTE to meet its mission.

2. Mission/Background

The mission of OSG is to conduct all litigation on behalf of the United States and its agencies in the Supreme Court of the United States, to approve decisions to appeal and seek further review in cases involving the United States in the lower federal courts, and to supervise the handling of litigation in the federal appellate courts.

The original Statutory Authorization Act of June 22, 1870, states: “There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties to be called the Solicitor General.” As stated in 28 CFR 0.20, the general functions of the Office are as follows: (1) conducting or assigning and supervising all Supreme Court cases, including appeals, petitions for and in opposition to *certiorari*, briefs and arguments; (2) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs); (3) determining whether a brief amicus curiae will be filed by the government, or whether the government will intervene, in any appellate court, or in any trial court in which the constitutionality of an Act of Congress is challenged; and (4) assisting the Attorney General and the Deputy Attorney General in the development of broad Department program policy.

OSG is headed by the Solicitor General, who is appointed by the President and confirmed by the Senate. Within the attorney staff, there are 17 career line attorney positions, three career Deputy Solicitors Generals, the Principal Deputy Solicitor General, and the Solicitor General. The attorneys prepare oral arguments, Supreme Court briefs, and other related legal materials. The 32 support staffers are organized into four sections which include Administration, Case Management, Research and Publication, and Research and FOIA.

…

**3. Challenges**

OSG’s mission and strategic objectives will essentially remain the same in FY 2014. However, OSG faces a set of new expectations and additional responsibilities. OSG has experienced an increase in several Court related activities. The government’s response to terrorism, immigration challenges and economic distress will place new demands on OSG, which it stands ready to meet.

The Office continues to play a significant role in terrorism issues. In the past administration, the Attorney General requested that the Solicitor General assume a range of litigation responsibilities in the lower courts with regard to challenges to the detention of individuals detained at the United States Naval Station located in Guantanamo Bay, Cuba, in connection with ongoing efforts to prevent and punish terrorist activities. With the enactment of the National Defense Authorization Act, such matters will likely continue to be a substantial part of the Office’s docket.

Moreover, OSG has been asked by the Attorney General to play a leading role in the development of complex immigration litigation. Most particularly, the Attorney General designated the Office to handle the lawsuit of *United States v. Arizona*, which involved challenges brought by the United States to Arizona’s recent immigration law (called S.B. 1070).

After OSG attorneys successfully handled arguments in district court, the case was granted certiorari and was argued during the 2011 Supreme Court Term. The outcome of this argument may result in continued litigious efforts.

OSG attorneys have increasingly been asked to brief and argue particularly difficult criminal cases, including matters involving the Fourth Amendment, the Fair Sentencing Act, and finance regulations. OSG presented argument in *United States v. Jones*, which challenged the warrantless installation and use of a GPS tracking device on a respondent’s vehicle to monitor its movements on public streets. OSG also plays a major role in challenges to the Fair Sentencing Act, which lowered penalties for certain cocaine-base offenses by increasing the threshold quantities of cocaine-base that trigger certain mandatory-minimum sentences.

In light of the overall budgetary situation in which the Government finds itself, OSG strives to meet the difficult challenge of managing a steady increase in casework, including the significant challenges highlighted in the matters above, without additional resources. For FY 2014, OSG is requesting base funding of 54 positions (22 attorneys), 55 FTE and $11,435,000 to accomplish its goals.

Following is a brief summary of the Department’s Strategic Goals and Objectives in which OSG plays a role.

DOJ Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Laws (FY 2014 Request: $11,435,000)

* Objective 2.6: Protect the federal fisc and defend the interests of the United States.

4. Full Program Costs

OSG has only one program—Federal Appellate Activity. Its program costs consist almost entirely of fixed costs, such as salaries and benefit costs, GSA rent, mandatory reimbursable agreements with other DOJ components, and printing.

5. Performance Challenges

**External Challenges.**In the vast majority of cases filed in the Supreme Court in which the United States is a party, a petition is filed by an adverse party and the United States responds in some way, either by filing a brief or, after reviewing the cases, waiving its right to do so. Additionally, the Supreme Court formally requests the Solicitor General to express the views of the United States on whether the Court should grant certiorari in a case in which the United States is not a party. The number of cases in which the Solicitor General petitions the Supreme Court for review, acquiesces in a petition for a writ of certiorari filed by an adverse party, or participates as an *intervener* or as amicus curiae is governed exclusively by the Solicitor General’s determination that it is in the best interest of the United States to take such action. Further, such activity may vary widely from year to year, which limits the Office’s ability to plan its workload.

The Office of the Solicitor General does not initiate any programs, but it is required to handle all appropriate Supreme Court cases and requests for appeal, amicus, or intervention authorization.

**Internal Challenges.** Prior FY performance measures indicate a gradual increase in the number of cases the Solicitor General either participated in and/or responded. The arrival of cases’ related to the challenges discussed above further predicts an ever increasing caseload.

**II. Summary of Program Changes**

The Office of Legal Counsel (OLC) and Office of the Solicitor General (OSG) are similarly sized components of the General Legal Activities (GLA) appropriation. Due to fiscal constraints, staffing challenges, and the need for constant reevaluation of processes to find the most efficient management of resources, several executive office functions has been consolidated into a single, unified executive office. This consolidation streamlines the executive office functions of OSG and OLC.

|  |  |  |
| --- | --- | --- |
| **Item Name** | **Description** | **Page** |
|  | **Pos.** | **FTE** | **Dollars ($000)** |
| **Federal** **Appellate****Activity** | **Administrative Functions Consolidation**  | **0** | **0** | **-231** | **12** |

**III. Appropriations Language and Analysis of Appropriations Language**

 (Please refer to the General Legal Activities Consolidated Justification)

**IV. Decision Unit Justification**

**A. Federal Appellate Activity**

|  |  |  |  |
| --- | --- | --- | --- |
| Federal Appellate Activity | Permanent Positions | FTE | Amount |
| 2012 Enacted  | 48 | 49 | 10,724 |
| 2013 Continuing Resolution | 48 | 49 | 10,724 |
| 2013 Continuing Resolution 0.612% Increase | 0 | 0 | 66 |
| 2013 Current Services | 48 | 49 | 10,790 |
| 2013 Supplemental Appropriation – Sandy Hurricane Relief | 0 | 0 | 0 |
| Base and Technical Adjustments | 0 | 0 | 876 |
| 2014 Current Services | 54 | 55 | 11,666 |
| 2014 Program Increase | 0 | 0 | 0 |
| 2014 Program Offsets | 0 | 0 | -231 |
| 2014 Request | 54 | 55 | 11,435 |
| Total Change 2012-2014 | 6 | 6 | 711 |

1. Program Description

The major function of the Solicitor General’s Office is to supervise the handling of government litigation in the Supreme Court of the United States and in Federal appellate courts, to determine whether an amicus curiae brief will be filed by the government, and to approve intervention by the United States to defend the constitutionality of Acts of Congress.

The original Statutory Authorization Act of June 22, 1870, states: “There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties to be called the Solicitor General.” As stated in 28 CFR 0.20, the general functions of the Office are as follows: (1) conducting or assigning and supervising all Supreme Court cases, including appeals, petitions for and in opposition to *certiorari*, briefs and arguments; (2) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs); (3) determining whether a brief amicus curiae will be filed by the government, or whether the government will intervene, in any appellate court, or in any trial court in which the constitutionality of an Act of Congress is challenged; and (4) assisting the Attorney General and the Deputy Attorney General in the development of broad Department program policy.

This Office does not initiate any programs, have control of the Supreme Court litigation it is required to conduct, or determine the number of appeal and amicus authorizations it handles. Amicus filings often involve important constitutional or Federal statutory questions that will fundamentally affect the administration and enforcement of major Federal programs. Examples in recent Terms include cases presenting significant issues of criminal procedure (affecting the government’s ability to succeed in prosecutions), as well as important issues under the civil rights laws (such as the Voting Rights Act and the Americans with Disabilities Act), the environmental laws (such as the Clean Water Act), and many others.

The following table provides a fiscal year snapshot of matters pending at the beginning of the Term of the Supreme Court, additional matters received, completed appellate determinations, certiorari determinations, miscellaneous recommendations, and oral arguments before the Supreme Court.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| ***FY*** | ***Supreme*** ***Court*** ***Term*** | ***Matters Pending*** | ***Addl. Matters Received*** | ***Appellate******Determinations*** | ***Certiorari Determinations*** | ***Miscellaneous******Recommendations*** | ***Oral******Arguments*** |
| 11 | 2010 | 520 | 3528 | 685 | 892 | 722 | 57 |
| 10 | 2009 | 517 | 3,959 | 667 | 974 | 628 | 57 |
| 09 | 2008 | 511 | 3,599 | 641 | 1,038 | 673 | 57 |

The figures on determinations and recommendations provided in this document do not directly correspond with the figures provided on the Office’s Workload Measurement Tables. Our Workload Measurement Tables track our workload by case; these figures track our workload by determination. Often, the Office of the Solicitor General will receive a request for authorization that includes more than one potential outcome: for example, the Solicitor General may receive a request for authorization for rehearing en banc, or, in the alternative, for a petition for a writ of certiorari. In that case, the Solicitor General may make two determinations; (1) no rehearing and (2) no certiorari. Our Workload Measurement Tables reflect that as a single request; here, we have provided a separate accounting for each determination. Additionally, the figures provided in this document under “miscellaneous requests” include requests for authorization of settlement, for stays, and for mandamus, while the figures on the Performance Measurement Tables do not include such requests.

The figure for oral argument participation reflects the number of oral arguments the Office presented to the Supreme Court as a party, *amicus curiae*, or intervener; it does not reflect the total number of underlying cases for each of those arguments.

1. **Performance Tables**



Table B – Performance Measure Table



**3. Performance, Resources, and Strategies**

Because the work of the Office is primarily governed by the Supreme Court’s schedule, the Office tracks its workload by Supreme Court Term. Fiscal years roughly correspond to Supreme Court Terms, which run from July of the Term year through June of the next year. Reference to fiscal years in this document will reflect information for the applicable Supreme Court Term. Accordingly, FY 2009 corresponds with the 2008 Supreme Court Term, FY 2010 corresponds with the 2009 Supreme Court Term, and so on. The Office of the Solicitor General handles Supreme Court matters on an ongoing basis. As a result, some matters will overlap from one fiscal year to the next, and they are included in the data for the term in which they most appropriately fit. The data in Table B includes requests for authorizations as well as recommendations against appeal, intervention, or participation amicus curiae. It does not include miscellaneous requests, such as requests for authorization of settlement, for stays, for mandamus, etc.

The Office of the Solicitor General utilizes an internal Automated Docket System (ADS) to track matters handled by its attorneys. For Supreme Court matters, all data is verified and checked against Supreme Court Records. Daily statistical reports are generated to ensure accurate tracking of both Supreme Court matters and requests for authorization to appeal, intervene, or participate as amicus curiae. Additionally, statistical reports on all Office matters are distributed to each attorney for review to ensure accurate tracking of the matters for which they are responsible.

The Office of the Solicitor General does not initiate any programs or have control over the number of Supreme Court cases it is required to handle or the number of requests for appeal, amicus, or intervention authorizations it receives. In the vast majority of cases filed in the Supreme Court in which the United States is a party, a petition is filed by an adverse party and the United States is obliged to respond. Additionally, the Office does not control the number of cases in which the Supreme Court formally requests the Solicitor General to express the views of the United States. The number of cases in which the Solicitor General petitions the Supreme Court for review, acquiesces in a petition for a writ of certiorari filed by an adverse party, or participates as an intervener or as amicus curiae is governed exclusively by the Solicitor General's determination that it is in the best interests of the United States to do so. Thus, the Solicitor General participates in 100% of the cases in which the United States is required to participate, as well as 100% of the cases in which the Solicitor General has determined that the interests of the United States require participation.

The Office of the Solicitor General’s only decision unit—Federal Appellate Activity—contributes to the Department’s Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law. The decision unit’s total resources fall under the Department’s Strategic Objective 2.6 – Protect the federal fisc and defend the interests of the United States.

a. Performance Plan and Report for Outcomes

The first performance measure reflects cases in which the Solicitor General participated. During the 2010 Supreme Court Term (FY 2011), the Office participated in 3,915 cases and in the 2011 Supreme Court Term (FY 2012); the Office participated in 3,517 cases.

The second performance measure reflects requests for determinations regarding appeal, *certiorari*, or other matters to which the Solicitor General responded. During the 2009 Supreme Court Term, the Office responded to 2,004 requests, and in the 2010 Supreme Court Term, the office responded to 2,600 requests. Because the work of the Office is primarily governed by the Supreme Court’s schedule, the Office tracks its workload by Supreme Court Term. Fiscal years roughly correspond to Supreme Court Terms, which run from July of the Term year through June of the next year.

In the vast majority of cases filed in the Supreme Court in which the United States is a party, a petition is filed by an adverse party and the United States is obliged to respond in some way, either by filing a brief or (after review of the case) waiving the right to do so. Additionally, the Office does not control the number of cases in which the Supreme Court formally requests the Solicitor General to express the views of the United States. Thus, performance measures may vary widely from year to year which increases the likelihood that OSG’s actual measures will also vary widely from projected goals. The number of cases in which the Solicitor General petitions the Supreme Court for review, acquiesces in a petition for a *writ of* *certiorari* filed by an adverse party, or participates as an *intervener* or as *amicus curiae* is governed exclusively by the Solicitor General’s determination that it is in the best interests of the United States to take such action.

b. Strategies to Accomplish Outcomes

To fulfill the Office of the Solicitor General’s critical mission of representing the interests of the United States in the Supreme Court, the Office will devote all resources necessary to prevail in the Supreme Court. For FY 2014, OSG is requesting base funding of 54 positions, 55 FTE, and $11,435,000 to accomplish its goals.

OSG has experienced an increase in several Court related activities. In addition, OSG has faced a set of new expectations, and has been called upon to assume added responsibilities. These include all the examples set forth in this budget submission. The government’s response to terrorism, economic distress, immigration challenges, and health care will place a range of new demands on OSG, which it stands ready to meet.

**V. Program Increases by Item**

N/A

**VI. Program Offsets by Item**

**Item Name: Administrative Functions Consolidation**

Budget Decision Unit(s): Federal Appellate Activity

Strategic Goal & Objective: DOJ Strategic Goal 2 Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law. 2.6 – Protect the federal fisc and defend the interest of the United States.

Organizational Program: Office of the Solicitor General

Program Reductions: Positions \_0\_ Atty \_0\_\_ FTE \_0\_\_ Dollar \_\_-$231,000\_\_\_\_

Description of Item

The offset will consolidate OSG and OLC’s administrative functions by merging both components’ executive offices into a single executive office.

Summary Justification

The Office of Legal Counsel (OLC) and OSG are similarly sized components of the General Legal Activities (GLA) appropriation. Due to fiscal constraints, staffing challenges, and the need for constant reevaluation of processes to find the most efficient management of resources, JMD proposes the consolidation of several administrative functions in these two components. The consolidation streamlines the administrative and executive office functions of OSG and OLC by merging the two offices, combining many of the overlapping functions with the goal of eliminating redundant positions through attrition. The executive offices of the two components have been merged under into a single, unified executive office. The office will answer to both the Assistant Attorney General (AAG) of OLC as well as the Solicitor General; a single executive officer will oversee budgetary, financial and administrative duties for both components.

Impact on Performance (Relationship of Decrease to Strategic Goals and Priority Goals)

This reduction in non-personnel resources will not affect OSG’s ability to accomplish its mission. The consolidation of the executive office functions will allow both OLC and OSG to operate in a more streamlined and efficient manner.

Base Funding

|  |  |  |
| --- | --- | --- |
|  FY 2012 Enacted  | FY 2013 CR | FY 2014 Current Services |
| Pos | agt/atty | FTE | $(000) | Pos | agt/atty | FTE | $(000) | Pos | agt/atty | FTE | $(000) |
| 0 | 0 | 0 | -231 | 0 | 0 | 0 | -231 | 0 | 0 | 0 | -231 |

Personnel Reduction Cost Summary

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Type of Position | Modular Costper Position($000) | Number ofPositionsReduced | FY 2014Request($000) | FY 2015 NetAnnualization (change from 2012)($000) | FY 2016 NetAnnualization (change from 2013)($000) |
| Admin | N/A | 0 | 0 | N/A | N/A |
| Total Personnel | N/A | 0 | 0 | N/A | N/A |

Non-Personnel Reduction Cost Summary

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Non-Personnel Item | Unit | Quantity | FY 2014Request($000) | FY 2015 NetAnnualization (change from 2012)($000) | FY 2016 NetAnnualization (change from 2013)($000) |
| Total Non-Personnel | N/A | N/A | -231 | N/A | N/A |

Total Request for this Item

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Pos | Atty | FTE | Total($000) | FY 2014 NetAnnualization (change from 2012)($000) | FY 2015 NetAnnualization (change from 2013)($000) |
| Current Services | 0 | 0 | 0 | -231 | N/A | N/A |
| Decreases | 0 | 0 | 0 | 0 | N/A | N/A |
| Grand Total | 0 | 0 | 0 | -231 | N/A | N/A |

VII. EXHIBITS