



***U.S. Department  
of Justice***

# **Civil Division**

## **FY 2018 Budget and Performance Plans**

Submitted to the Congress of the United States  
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## 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, its departments and 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. Due to an increasing immigration workload and immediate staffing needs, this request includes a program increase for immigration litigation.

The diversity of this subject matter is impressive, as are the results of this litigation. In FY 2016, the Civil Division:

- **Secured** over \$6.9 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 91 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 2018 Civil Division Budget Request provides for 1,140 authorized positions, including 833 attorneys, and totals \$291.75 million. Finally, electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>.

## ***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 2016, Civil, working with U.S. Attorneys, secured over \$6.9 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 2016, 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***

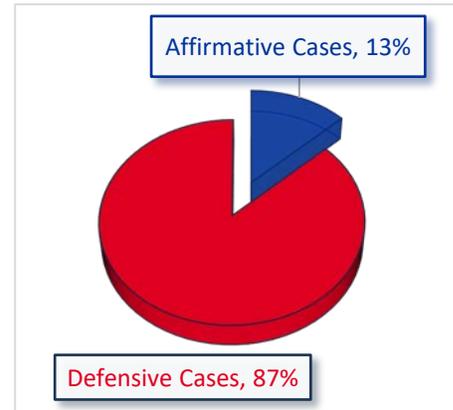
The Civil Division's litigation directly benefits the American people by protecting their safety and security. In immigration work, the Civil Division seeks to remove and/or denaturalize criminal offenders and others who have violated immigration laws. The Elder Justice Initiative supports state and 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 87% 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 increasingly 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 2016, the Civil Division's Automated Litigation Support (ALS) program housed 1,126.4 terabytes of data. If printed, a single terabyte of data equates to 75 million pages of paper. It is estimated that 1,126.4 terabytes of data, if printed and boxed, would be of sufficient volume to fill – from the floor to the ceiling – the Capitol Rotunda 15 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 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 20 percent less office space. By January 2018, nearly half of Civil's employees will be housed in office space that meets GSA LEED standards and is in close proximity to Metro, VRE, and MARC transit options.

## Summary of Program Changes

Item Name	Description				Pg.
		Pos.	FTE	Dollars (\$000)	
<b>Immigration Litigation</b>	20 positions to handle a growing caseload	20	10	\$1,876	26

## Appropriations Language and Analysis

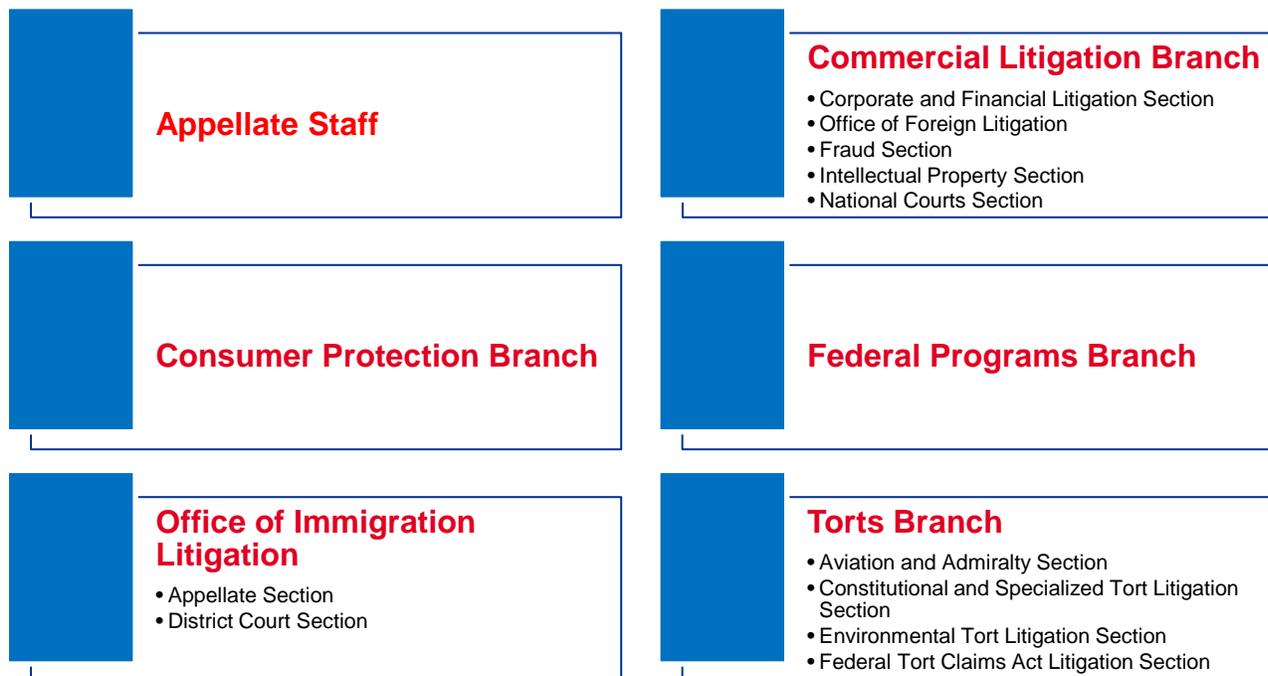
The FY 2018 Budget Request does not include proposed changes in the Legal Activities, Salaries and Expenses, General Legal Activities appropriations language.

# Program Activity Justification: Legal Representation

## *Program Description: Legal Representation*

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2016 Enacted	1,325	1,194	\$292,214
2017 Continuing Resolution	1,325	1,189	\$291,658
Adjustments to Base and Technical Adjustments	-205	-69	-\$1,784
2018 Current Services	1,120	1,120	\$289,874
2018 Program Increases	20	10	\$1,876
2018 Request	1,140	1,130	\$291,750
Total Change 2017-2018	-185	-59	\$92

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

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 handles unique nation-wide matters involving money and property, and represents the Federal Government's interests in complex bankruptcy cases and other contractual and monetary disputes. 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, communications companies, energy producers and suppliers, and commercial airlines.

### Office of Foreign Litigation

The Office of Foreign Litigation ensures that U.S. policies, programs, and activities are protected when challenged in foreign courts. In addition, the Office manages litigation in the courts of foreign nations so that people and entities cannot avoid paying money owed to the U.S. Treasury by absconding to a foreign country.



This Office handles all types of cases in courts of foreign countries – whether civil, criminal, affirmative, or defensive. At any given time, the Office handles approximately 1,000 civil and criminal matters in over 100 different countries. While Office attorneys do not practice law in foreign countries, the Office works closely with local attorneys in foreign countries to represent the United States. The office also provides advice and counsel on issues relating to international law both within the Department and to agency partners, including the Department of State.

## 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.

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 2016, 702 qui tam suits were filed, and the Department recovered \$2.9 billion in these and earlier filed suits.

In FY 2016, the Department secured over \$4.7 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 \$53 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. 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 an engineering field. Many of the Section's attorneys are U.S. Patent and Trademark bar members.

## National Courts Section

The mission of the National Courts Section is to protect taxpayer dollars in lawsuits brought against the Federal Government. It is one of the largest and oldest litigating sections in the Department, and handles matters in three federal courts of 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. Some of the Section's areas of focus include government contract matters, constitutional and pay claims against the Federal Government, personnel benefits appeals, and international trade cases. National Courts cases often last for several years, if not decades, and involve large sums of money.

## **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. In a significant number of matters, Federal Programs defends critical national security policies, decisions, and information.

## **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 immigration-related cases in the district courts. Agencies represented include: the Department of Homeland Security and the Department of Health and Human Services in cases involving a wide range of complex immigration matters; the Department of 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 office also

provides advice and counsel on issues relating to immigration-related national security and labor matters within the Department of State and Homeland Security. 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 action cases, which have increased dramatically in recent years. The attorneys in the Section currently handle 51 class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration, and enforcement of immigration law. Also, this Section's litigation 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 Office of Immigration Litigation's Appellate Section is approximately 10% of all the appellate litigation in the federal circuit courts.

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 comprised of litigation related to activities such as air commerce regulation, air traffic control, aviation security, provision of weather services, and aeronautical charting, and the aviation activities of the military services and other federal agencies. When aircraft accidents occur, the Aviation and Admiralty Litigation Section handles litigation involving the Federal Aviation Administration's air traffic control, weather dissemination services, and its certification of airports, aircraft, and air personnel. 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 Constitutional Torts Staff provides legal representation to federal employees in cases filed against them for actions performed as part of their official duties. 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.

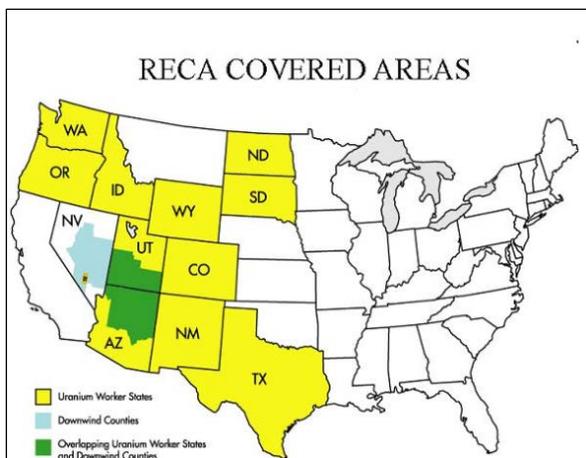
**The Office of Vaccine Litigation** was established to represent HHS in cases arising under the National Childhood Vaccine Injury Act of 1986, which created a unique mechanism for adjudicating claims of injury resulting from immunizations. Claimants are represented by private counsel, and cases are 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 \$3.3 billion to over 5,200 claimants who almost certainly would not have received compensation through traditional tort litigation.

There has been a steady increase in vaccine cases filed in recent years, as the Program has expanded to cover additional vaccines and injuries. In FY 2009, 400 new vaccine cases were filed. In FY 2016, a total of 1,120 new cases were filed – which is a massive increase. At this time, this trend is expected to continue with approximately 1,400 new cases expected in FY 2017.

**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 nearly \$2.2 billion in connection with over 33,000 approved claims for eligible individuals or their surviving beneficiaries.



### **Environmental Tort Litigation Section**

The Environmental Tort Litigation 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 Tort Litigation Section has saved the Federal Government billions of dollars.

Past litigation efforts include cases involving thousands of property damage and personal injury claims allegedly due to environmental contaminants (e.g., chemicals, heavy metals, biological agents). Many of the cases are litigated as mass torts or multidistrict litigations. Recent cases have related to: 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, a statute Congress first passed in 1946 to provide damages for certain injuries and property damage federal employees caused. Today, FTCA litigation typically arises from medical care, regulatory activities, law enforcement, and maintenance of federal lands.

The FTCA Section has also defended the United States in suits brought by individuals who were detained on immigration charges following the September 11, 2001 terrorist attacks. 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 supports the Civil Division’s attorneys in all aspects of their work. Whether helping an employee prepare a presentation for trial, maintaining and updating discovery software, selecting a life insurance plan, or developing Civil’s annual budget, Management Programs staff of 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 original VCF (“VCF1”) operated from 2001-2004 under the direction of Special Master Kenneth Feinberg, and distributed over \$7 billion. VCF1 concluded operations in June 2004.

On January 2, 2011, the James Zadroga 9/11 Health and Compensation Act of 2010 (“Zadroga Act”), Public Law No. 111-347, was signed into law. Title II of the Zadroga Act reactivated the September 11th Victim Compensation Fund (“VCF2”), expanded its pool of eligible claimants, and appropriated \$2.775 billion for additional payments. VCF2 opened in October 2011 and was originally authorized to accept claims for a period of five years, ending in October 2016, with a final year for processing and paying claims until October 2017.

On December 18, 2015, the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act (“Reauthorization Act”), Public Law No. 114-113, was signed into law. The new act extended VCF2 for anAlso, additional five years, allowing individuals to submit claims until December 18, 2020, and appropriated an additional \$4.6 billion to pay claims.

Also, 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.

Regulations governing the VCF’s review of claims are published at 28 C.F.R. part 104. The VCF also maintains a website, [www.vcf.gov](http://www.vcf.gov), which provides information to the public concerning the operation of the Fund and instructions to potential claimants regarding application procedures, including a substantial Policies and Procedures document (available at <https://www.vcf.gov/pdf/VCFPolicy.pdf>) that includes information on eligibility criteria, the methodology used to calculate economic and non-economic loss, payment procedures, appeals and hearings, claims for deceased individuals, and information for claimants who are represented by an attorney.

**Funding and Operations.** The VCF is not funded through the Civil Division's appropriations. Rather, Congress originally appropriated a total of \$2.775 billion 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 2016, award determinations have been issued on over 11,000 claims at a value of over \$2.24 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.

**Additional Information.** The [www.vcf.gov](http://www.vcf.gov) website includes complete program information, frequently asked questions, messages from the Special Master, public reports on VCF progress, and detailed information on how to file a claim. The VCF's Fifth Annual Status Report was published in March 2017, and is available at <https://www.vcf.gov/pdf/VCFStatusReportMar2017.pdf>.

## Performance, Workload, and Resources - Civil Division

		Target		Actual		Target		Changes		Requested (Total)	
		FY 2016		FY 2016		FY 2017		Current Services Adjustments		FY 2018 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)		1,426	\$292,214 (\$198,801)	1,376	\$290,755 (\$168,635)	1,426	\$291,658	-59	\$92 (\$3,639)	1,367	\$291,750
							(\$246,561)				\$250,200
Type	Performance	FY 2016		FY 2016		FY 2017		Current Services Adjustments		FY 2018 Request	
<b>Workload/Output</b>	1. Number of cases pending beginning of year	23,541		24,541		24,486		N/A		27,597	
	2. Number of cases received during the year	16,478		14,471		16,618		N/A		14,872	
	3. Total Workload	40,019		39,012		41,104		N/A		42,469	
	4. Number of cases terminated during the year	15,533		13,063		15,898		N/A		12,803	
<b>Civil Division Performance (Excludes VICP and RECA)</b>											
<b>Outcome</b>	5. Percent of civil cases favorably resolved	80%		98%		80%		N/A		80%	
	6. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		91%		80%		N/A		80%	
	7. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		69%		60%		N/A		60%	
	8. Percent of favorable resolutions in non-monetary trial cases	80%		89%		80%		N/A		80%	
	9. Percent of favorable resolutions in non-monetary appellate cases	85%		94%		85%		N/A		85%	

		Target	Actual	Target	Changes	Requested (Total)
		FY 2016	FY 2016	FY 2017	Current Services Adjustments	FY 2018 Request
<b>Vaccine Injury Compensation Program Performance</b>						
<b>Outcome</b>	10. 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%
<b>Efficiency</b>	11. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	0	92%
<b>Radiation Exposure Compensation Program Performance</b>						
<b>Outcome</b>	12. Reduce average claim processing time to 200 days by FY 2016	200	151	200	0	200
	13. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	95%	90%	0	90%
	14. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	92%	95%	0	95%
<b>Efficiency</b>	15. Percentage of claims adjudicated within 12 months or less.	80%	88%	80%	0%	80%

Type	Measure	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Workload/Output	1. Number of cases pending beginning of year	34,462	27,750	26,545	26,764	23,541	24,541	24,486	27,597
	2. Number of cases received during the year	17,303	15,566	15,212	14,836	16,478	14,471	16,618	14,872
	3. Total Workload	51,765	43,316	41,757	41,600	40,019	39,012	41,104	42,469
	4. Number of cases terminated during the year	22,586	16,129	16,941	15,383	15,553	13,036	15,898	12,803
<b>Civil Division Performance (Excludes VICP and RECA)</b>									
Outcome	5. Percent of civil cases favorably resolved	96%	98%	97%	93%	80%	98%	80%	80%
	6. Percent of defensive cases in which at least 85 percent of the claim is defeated	90%	87%	90%	86%	80%	91%	80%	80%
	7. Percent of affirmative cases in which at least 85 percent of the claim is recovered	73%	64%	61%	73%	60%	69%	60%	60%
	8. Percent of favorable resolutions in non-monetary trial cases	90%	90%	91%	87%	80%	89%	80%	80%
	9. Percent of favorable resolutions in non-monetary appellate cases	94%	94%	93%	91%	85%	94%	85%	85%
<b>Vaccine Injury Compensation Program Performance</b>									
Outcome	10. 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%
Efficiency	11. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	92%	100%	92%	92%

Type	Measure	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>Radiation Exposure Compensation Program Performance</b>									
<b>Outcome</b>	12. Reduce average claim processing time to 200 days by FY 2016	116	247	272	200	200	151	200	200
	13. Percentage of claims paid within six weeks of Program receipt of acceptance form	92%	86%	86%	90%	90%	95%	90%	90%
	14. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	100%	96%	97%	95%	95%	92%	95%	95%
<b>Efficiency</b>	15. Percentage of claims adjudicated within 12 months or less	97%	75%	76%	80%	80%	88%	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.

## **Performance, Resources, and Strategies**

The Civil Division's work greatly contributes to the Federal Government's priorities. Civil has continued its successful efforts in recent years in affirmative and defensive, monetary and non-monetary litigation because of its highly skilled attorneys who efficiently use technological resources. Their successes, discussed below, are only possible with sufficient funding. In many of these cases, Civil works with colleagues in U.S. Attorney offices.

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

### ***The Civil Division Defends the Interests of the United States***

Civil defends the integrity of federal laws, regulations, policies, adjudications, and programs. Each year, thousands of lawsuits are filed to block or attempt to challenge the actions of the Federal Government. In particular, due to an immigration caseload that is growing and is expected to continue to grow, the Civil Division seeks a program increase for 20 positions for immigration litigation. (For more information about the program increase, see page 26.)

### ***Ensuring the Safety and Security of the American People***

Civil represents the Federal Government in challenges to efforts that protect the American people. Each year, the Civil Division defends thousands of immigration removal orders, comprised of 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. Also, Civil defends challenges to immigration policies and files denaturalization cases seeking to revoke the citizenship of individuals who pose a danger to the American people.

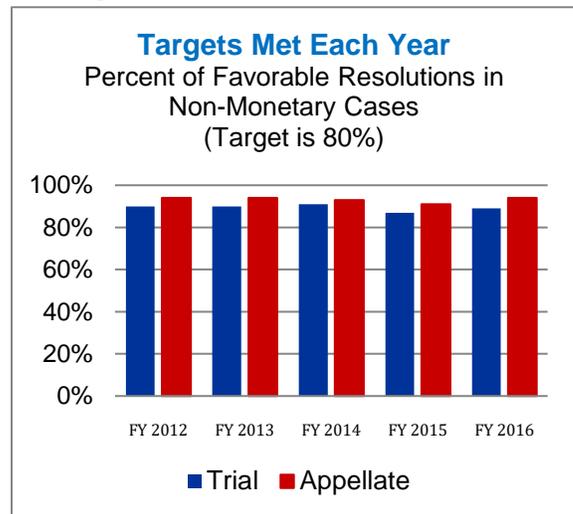
Still further, the Civil Division defends against challenges to the Federal Government's border patrol procedures, the use of advanced imaging technology during TSA screening procedures, the No Fly List, and the Terrorist Screening Database. Attorneys in the Civil Division defend the Department of the Treasury's Office of Foreign Assets Control for actions related to economic sanctions issues such as the freezing of assets due to sanctions. In other matters, Civil defends *Bivens* lawsuits brought against law enforcement and other high ranking government officials related to their efforts in protecting national security.

## ***Defending Other Statutes, Regulations, Policies, and Decisions***

Beyond these national security and homeland security matters, Civil has successfully defended numerous federal laws against constitutional challenges. To cite just a couple of examples, Civil led the defense of laws that impose registration requirements on sex offenders and laws that help protect cell phone users from “robocalls” and automated, unsolicited text messages. And in several separate cases, Civil is currently defending the Social Security Administration’s and Securities and Exchange Commission’s use of Administrative Law Judges in administrative proceedings. Civil attorneys also represent the Federal Government, as the nation’s largest employer, in a host of labor and employment cases filed against the Federal Government related to civil rights and discrimination.

### ***Indicator of Civil’s Performance in Non-Monetary Defensive Cases***

Civil’s recent performance for its non-monetary cases is summarized in the chart to the right. As this chart reveals, Civil consistently has met its performance targets in non-monetary cases like the ones described above.



## ***The Civil Division Investigates Fraudulent Activity and Recovers Federal Funds***

The Civil Division’s litigation involving fraud on the public fisc returns billions of dollars to the Federal Government each year. In FY 2016, the Civil Division, working with U.S. Attorneys, secured over \$6.9 billion in settlements, judgments, fines, and restitution. FY 2016 was not an anomaly; year after year Civil routinely returns billions of dollars to federal agencies and the U.S. Treasury.

This work entails large dollar health care fraud, financial fraud, and procurement fraud recoveries. Some examples of recent accomplishments in these areas appear below. At the same time, there are other areas in which the Civil Division recovers money. For instance, the Civil Division pursues affirmative litigation when a complex Chapter 11 bankruptcy case is filed or the debtor is able, but unwilling, to pay a large debt to the Government. In contracting matters, the Civil Division files claims to recover funds when vendors violate the terms of the contract and also ensures that importers pay the correct duty on goods that they seek to import into the United States. Also, affirmative Admiralty litigation seeks compensation for the loss of government cargo; damage to locks, dams, and natural resources; and the costs associated with maritime

pollution cleanups. Recent examples of the Civil Division's successes in these matters are below; in these matters, the Civil Division collaborated with U.S. Attorneys' Offices.

In February 2016, Morgan Stanley paid a \$2.6 billion penalty to resolve claims related to its marketing, sale, and issuance of residential mortgage-backed securities. The penalty resolved claims under the Financial Institutions Reform, Recovery, and Enforcement Act. This act authorizes the Federal Government to impose civil penalties against financial institutions that violate various predicate offenses, including wire and mail fraud.

In April 2016, Wells Fargo Bank, N.A. paid \$1.2 billion to settle civil mortgage fraud claims stemming from Wells Fargo's participation in a Federal Housing Administration (FHA) lending program. As part of the settlement, Wells Fargo acknowledged responsibility for, among other things, certifying to the Department of Housing and Urban Development (HUD), during the early 2000s, that certain residential home mortgage loans were eligible for FHA insurance when in fact they were not, resulting in the Government having to pay FHA insurance claims when loans defaulted.

In the area of health care fraud, in April 2016, drug manufacturers Wyeth and Pfizer Inc. paid \$784.6 million to settle federal and state claims that Wyeth knowingly reported false and fraudulent prices on two drugs that were used to treat acid reflux. The Federal Government alleged that Wyeth (before it was acquired by Pfizer) failed to report deep discounts available to hospitals, as required by the Federal Government to ensure that the Medicaid program enjoyed the same pricing benefits available to the company's commercial customers. In total, the company paid \$413.2 million to the Federal Government and \$371.4 million to state health care programs.

In November 2015, L-3 Communications EoTech, Inc., its parent company, L-3 Communications Corporation, and EoTech's president paid \$25.6 million to settle allegations that EoTech sold defective holographic weapon sights to the U.S. Department of Defense, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation. These sights were designed to allow users to quickly acquire and hit targets, and to return fire in a range of extreme environmental conditions. Defendants knew that the sights failed to perform as represented in cold temperatures and humid environments, but delayed disclosure of these defects for years.

In April 2016, Z Gallerie LLC, a California-based seller of upscale furniture and accessories in stores throughout the country and on the internet, paid \$15 million to resolve allegations that the company engaged in a scheme to evade customs duties on imports of wooden bedroom furniture from the People's Republic of China, in violation of the False Claims Act.

## ***The Civil Division Protects the Health, Safety, and Economic Security of Consumers***

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 September 2016, the Civil Division, working with U.S. Attorney offices and a number of foreign authorities, took steps to thwart international mass-mailing fraud that targeted the elderly. Specifically, the Department of Justice filed civil and criminal cases in federal district court against several individuals and companies that allegedly engaged in multiple international mail fraud schemes that have defrauded elderly and vulnerable U.S. victims. The complaints allege that victims responded to direct mail solicitations that falsely claimed that the individual won, or soon would win, cash or some other valuable prize. In total, it is estimated that millions of U.S. victims sent hundreds of millions of dollars to the perpetrators. In addition to filing the charges, U.S. and foreign law enforcement executed a number of search and seizure warrants to collect evidence and seize illegal proceeds. The U.S. Treasury Department also designated a foreign payment processor as a Transnational Criminal Organization for its role in facilitating the movement of fraudulent mass-mail fraud proceeds for over 20 years. This designation bars U.S. persons from transacting business with the processor.

In May 2016, B. Braun Medical Inc. (B. Braun) agreed to pay \$4.8 million in forfeiture and penalties as well as an additional \$3 million in restitution to resolve its criminal liability for selling contaminated pre-filled saline flush syringes. The saline syringes at issue had a B. Braun label but were manufactured by another company. Moreover, this resolution mandates that B. Braun improve its oversight of its product suppliers so as to prevent future sales of contaminated products.

In July 2016, the U.S. Court of Appeals for the Eighth Circuit affirmed the prison sentences and denied a petition for *en banc* review of two defendants who pled guilty to misdemeanor violations of the Federal Food, Drug and Cosmetic Act in connection with their role in a 2010 nationwide outbreak of contaminated eggs produced and distributed by Quality Egg LLC. Those eggs were linked to more than 1,900 reported consumer illnesses in multiple states — a nationwide outbreak of salmonellosis that led to one of the largest egg recalls in American history. In June 2014, Quality Egg, which itself pled guilty to crimes associated with its sale of eggs, was sentenced to pay a fine of \$6.79 million. In April 2015, the two corporate officers (a father and son) each were sentenced to serve three months in prison. (The individual defendants have petitioned the Supreme Court for certiorari.)

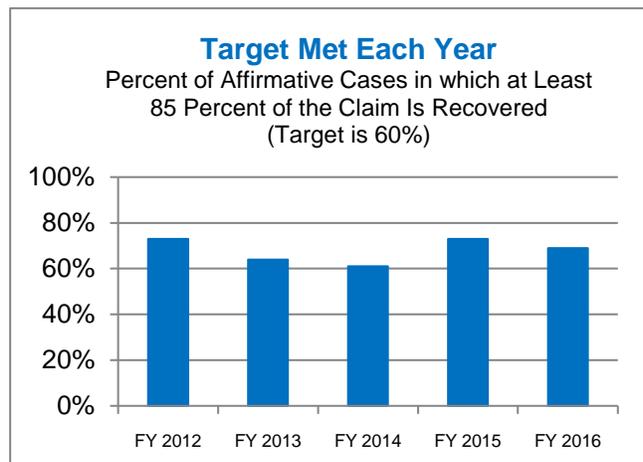
In December 2016, ConAgra Grocery Products LLC, a subsidiary of ConAgra Foods, pled guilty to a misdemeanor Federal Food, Drug and Cosmetic Act charge in connection with a 2006-2007 nationwide salmonellosis outbreak caused by the

company's peanut butter. Pursuant to a plea agreement, the company admitted that it shipped contaminated Peter Pan and private label peanut butter and agreed to pay an \$8 million criminal fine – the largest ever paid in a federal food safety case – as well as forfeit \$3.2 million in assets. The CDC eventually identified more than 700 cases of salmonellosis linked to the outbreak and estimated that thousands of additional related cases went unreported.

Also, in December 2016, the world's largest dietary supplement retailer, GNC Holdings Inc. (GNC), entered into a wide-ranging non-prosecution agreement with the Department to reform its practices related to potentially unlawful dietary ingredients and dietary supplements, and further promised to embark on a series of voluntary initiatives designed to improve the quality and purity of dietary supplements. The agreement resolved GNC's liability for selling certain dietary supplements produced by a firm now facing criminal charges. As part of the agreement, GNC agreed to pay \$2.25 million to the U.S. Government and cooperate in dietary supplement investigations conducted by the government.

### ***Indicator of Civil's Performance in Monetary Affirmative Cases***

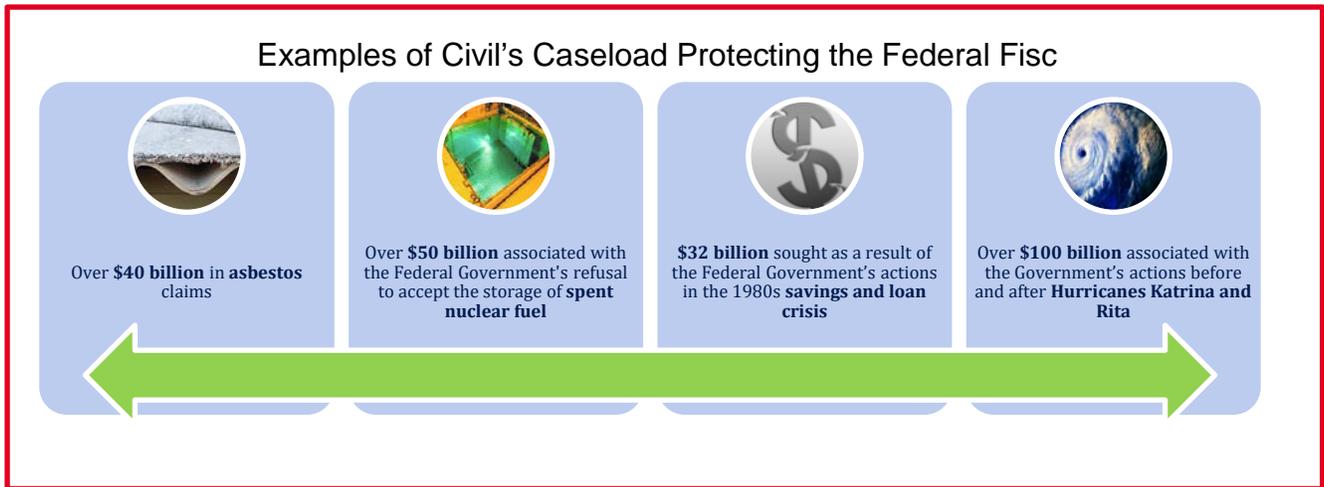
As with other performance measures, Civil consistently has met its performance targets for affirmative, monetary cases over the past several years. The chart to the right illustrates that Civil and its partners recover at least 85% of the amount sought in these affirmative cases.



### ***The Civil Division Protects the Federal Fisc***

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, 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, 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.

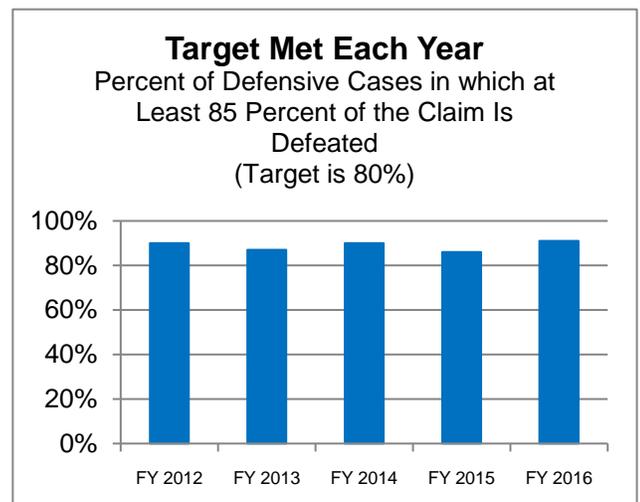
The events that give rise to these cases – whether regulatory action or natural disasters – are unique and varied. Yet, the results are remarkably similar. Historically, in defensive cases handled by Civil, the U.S. Treasury has paid a very small percentage of the total dollars claimed – often only pennies 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 2016, Civil defeated tens of billions of dollars in amounts sought by opposing parties. In terms of cases handled in FY 2016 by Civil Division attorneys – though not necessarily closed – Civil defended against tens of billions of dollars.

**Indicators of Civil's Performance in Monetary Defensive Cases**

These cases are illustrative examples of the major monetary, defensive cases in which Civil represents the Federal Government. Civil has consistently 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.



## Strategies to Accomplish Outcomes

Key Civil Division Outcomes:

**Recover** money lost to fraud, waste, and abuse.

**Protect** the federal fisc from unmeritorious claims.

**Promote** America's national and homeland security interests.

**Uphold** immigration enforcement actions.

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 Criminal Division and the Environment and Natural Resources Division. 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 Strives to Reduce Costs Whenever Possible*

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, Civil employs its Automated Litigation Support program. This program utilizes specialized people and technology to aid in discovery, pre-trial activities, and trial preparation – resulting in saving time, money, and resources. Finally, Civil has worked with OMB and GSA on two separate office consolidations that will, in the long-term, result in eventual cost savings to the Federal Government of reduced rent costs. All of these projects ensure that the Civil Division is efficiently using taxpayer dollars.

### *Civil Supports 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. Still further, its attorneys and support staff are provided the tools, including litigation support and other information technology items, to aid them in performing their jobs.

## **Program Increase: Immigration Litigation**

**Item Name:** Immigration Litigation

**Program Increase:** Positions – 20; Attys – 15; FTE – 10; Dollars – \$1,876,000

### ***Summary***

The Civil Division seeks 20 positions to handle immigration litigation. Additional staffing is critical given the litigation that will arise from the Federal Government's commitment to enforcing America's immigration laws, protecting the nation from foreign terrorists entering the United States, and securing the nation's southern border.

### ***Justification***

The Civil Division's Office of Immigration Litigation oversees all civil immigration litigation in federal courts and coordinates national immigration matters before federal district and appellate courts. This litigation involves national security, public safety, terrorism-related issues, denaturalization matters, challenges to removal orders, employment-based immigration, and student visas. Moreover, the Office of Immigration Litigation's caseload involves both programmatic challenges to immigration laws and policies as well as individual challenges to immigration decisions. The Office of Immigration Litigation is comprised of two separate sections: (1) Office of Immigration Litigation – District Court Section, and (2) Office of Immigration Litigation – Appellate Section.

While this litigation encompasses different types of cases and different legal issues, there is a common denominator – whenever the Federal Government's immigration policies or actions are litigated in court, generally, the Civil Division must represent the Federal Government.

The Administration has made a clear commitment to ensuring a lawful system of immigration that serves the interests of the American people. This commitment is evident in the proposed funding increases for the Department of Homeland Security and for the Department of Justice's Executive Office for Immigration Review in the President's FY 2018 Budget Request (as noted in OMB's "America First, A Budget Blueprint to Make America Great Again" budget summary). The immigration litigation caseload of the Civil Division will increase. New policies will be subject to new programmatic challenges. More rigorous enforcement of immigration laws will lead to more aliens being detained, more aliens subject to orders of removal, and, thus, more individual challenges to the Federal Government's actions.

The need for additional staffing is immediate. In particular, the OIL-District Court Section has already seen a significant increase in litigation and has been advised by its client agencies that changed priorities will lead to further increases in litigation. In

response, the Department has made a commitment to its client agency and to the Senate Judiciary Committee to handle these cases without delay.

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. At the same time, affirmative denaturalization cases involve individuals who pose potentially grave threats to the nation’s national security and public safety; such cases must not be delayed or postponed.

Without additional staffing, Civil would need to contemplate several options. First, more immigration cases would be delegated to U.S. Attorney offices, even though these offices may face difficulties in absorbing the work. Indeed, several U.S. Attorney offices have recently asked OIL-DCS to take on all immigration cases arising in their respective jurisdictions. Second, Civil Division attorneys handling other priority work outside the immigration realm, possibly including consumer protection, defending procurement activity, or pursuing money owed to the Federal Government because of fraud, would take on immigration cases. Third, attorneys from other DOJ components would be pressed to handle immigration matters. Relying on attorneys with limited immigration expertise is not practical given that immigration law is a highly specialized and nuanced area of the law. Still further, taking attorneys away from other projects, whether in the Civil Division or in other DOJ components, means that other vital priorities would be negatively impacted. Finally, DOJ attorneys with limited, if any, immigration experience representing the Federal Government on sensitive matters before federal courts risks undermining the credibility of the U.S. Department of Justice before federal judges.

At this time, the Civil Division is seeking 20 additional positions (15 attorneys and 5 support staff). The Civil Division has an immediate need for this staffing. The workload challenges for each section of the Office of Immigration Litigation are explained below.

### ***Office of Immigration Litigation – District Court Section***

The Civil Division’s Office of Immigration Litigation – District Court Section (“OIL-DCS”) represents the U.S. in federal trial and appellate courts in matters involving the Immigration and Nationality Act. OIL-DCS’s caseload includes matters related to denaturalization, terrorism-related immigration issues, detention, and employment-based immigration. The number and type of cases, however, do not reflect the fact that these cases are time and resource-heavy. The work is complex, high profile, and precedent-setting. Additional positions are needed for two growing areas: (1) national security cases as well as (2) programmatic challenges.

First, OIL-DCS's national security docket includes denaturalization, detention, and other naturalization matters. Regarding denaturalization, OIL-DCS pursues the revocation of U.S. citizenship from known or suspected terrorists and human rights violators. As a recent example, in a March 20, 2017, press release DOJ announced filing a civil action in Illinois against a 47-year-old naturalized citizen accused of unlawfully procuring his U.S. citizenship. The naturalized citizen is a native of Pakistan and is currently serving a criminal sentence for conspiracy to provide material support to al-Qaeda and for providing material support to al-Qaeda. Regarding denaturalization proceedings, in short, the Immigration and Nationality Act provides for the revocation of U.S. citizenship where an alien illegally procured naturalization or obtained it through willful material misrepresentations. Civil denaturalization is a critical tool to disrupt terrorist activities. In an April 20, 2017, press release, DOJ announced that a federal court had entered an order revoking the naturalized U.S. citizenship of a confessed al-Qaeda operative. According to the Attorney General, "[t]his case demonstrates the Department's commitment to using all tools at its disposal, both criminally and civilly, to strategically enforce our nation's immigration laws and to disrupt international terrorism." Beyond protecting the American people, denaturalization is a critical instrument to return human rights violators to the countries where they perpetrated barbarous acts of genocide, persecution, and other crimes against humanity. Denaturalization proceedings are the first step to these individuals' expulsion from the United States.

OIL-DCS denaturalization cases have included:

- A naturalized U.S. citizen who plotted to set off a bomb in New York City during Thanksgiving 2012.
- A naturalized U.S. citizen who plotted to assassinate the Saudi Arabian Ambassador.
- A naturalized U.S. citizen who used his charity as an illegal front to funnel over \$3.5 million dollars to a foreign intelligence agency.
- A naturalized U.S. citizen who conspired with al-Qaeda in a plot to bring down the Brooklyn Bridge.
- A human rights violator responsible for at least 12 extrajudicial killings during armed conflict between Latin American government forces and guerilla groups.

The number of denaturalization cases handled by the Civil Division will increase dramatically in the very near future. In the past five years OIL-DCS, has received and handled approximately 60 new denaturalization cases. But, at this time, Civil is anticipating the potential referral of hundreds of additional denaturalization cases. Given the national security and public safety issues in these matters, OIL-DCS must move to initiate denaturalization proceedings as soon it receives these matters. Indeed, the Attorney General stated in the April 20, 2017, press release that "[t]he Justice Department is committed to protecting our nation's national security and will aggressively pursue denaturalization of known or suspected terrorists[.]" Although OIL-DCS is committed to aggressively pursuing denaturalization of known or suspected terrorists, current staffing simply cannot effectively handle the expected exponential growth in caseload.

In addition to denaturalization cases, OIL-DCS has defended dozens of habeas actions brought by detained aliens and thus ensured terrorist aliens are kept in detention – and away from innocent Americans – pending removal. Past cases involved Al-Qaeda operatives who plotted to bomb San Francisco landmarks; an alien who helped set up a terrorist training camp in America; and an alien convicted of bombing a Pan Am flight and connected to terrorist plots in Europe and Brazil. In other matters, OIL-DCS aggressively defends cases brought by known or suspected terrorists who are seeking to become U.S. citizens. Terrorist organizations systematically recruit naturalized and prospective U.S. citizens and passport holders to exploit the ease in which they can travel globally to deliver assistance to terrorist networks. Past cases have involved naturalization claims of members of Al-Qaeda, Hamas, and Al-Shabab.

In addition to these national security and public safety matters, OIL-DCS represents the Federal Government in programmatic challenges to immigration laws, regulations, and policies. In such a challenge, an individual or group challenge the application of a law, regulation, or policy application to any and all persons or groups. When these challenges are successful, entire immigration programs are shut down. The volume of these cases has grown in recent years and is expected to continue to do so. Of late, OIL-DCS has defended a growing number of class action cases. Each requires a team of several attorneys. Cases can last for more than a decade. Historically, OIL-DCS handles 15 class action cases at any one time but is now handling more than 51. Another area of increasing interest in programmatic challenges has been litigation surrounding the Federal Government's foreign guest worker immigration programs run by the Department of Homeland Security and the Department of Labor. Finally, recent immigration policy pronouncements by the Administration, including executive orders, have caught the attention of many interested parties. Already, several of these policies have been subject to programmatic challenges. The Civil Division defends laws, statutes, and policies when challenged, and, thus, Civil must represent the Federal Government in these cases. Also, Civil's Federal Programs Branch has assisted in defending these challenges. The Federal Programs Branch has been defending these challenges in multiple jurisdictions across the country and will defend any future challenges to these and any future immigration policy pronouncements. In addition, the Federal Programs Branch will take the lead in any affirmative litigation considered in further support of the Administration's immigration policies.

### ***Office of Immigration Litigation – Appellate Section***

The Office of Immigration Litigation – Appellate Section holds primary responsibility for civil immigration case litigation before the federal appellate courts. 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 and the resulting removal adjudications by the Department of Justice's Executive Office for Immigration Review ("EOIR"). The Department of Homeland Security initiates legal proceedings to remove aliens. 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. Current staffing levels require each attorney in OIL-Appellate to handle over 50 different immigration cases each year. As noted above, as there is a direct pipeline of cases from DHS to EOIR to OIL-Appellate, increasing budgetary resources for DHS and EOIR will result in an increase in OIL-Appellate's caseload. Without sufficient staffing, the enhanced efforts of DHS and EOIR will be stymied as cases will be delayed when they reach the federal appellate courts.

As with OIL-DCS, 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, including:

- A high-level Salvadoran defense minister responsible for widespread murders and torture in the 1980s,
- A Bosnian-Serb paramilitary police officer who lied to U.S. immigration officials about his service during the Bosnian War from 1992 to 1995, and
- Major participants in 1990s Rwandan genocide and the Guatemala 1982 Dos Erres massacre in which more than 200 men, women, and children were tortured and murdered.

### ***Performance and Budget Information***

Outcomes of the immigration related litigation are reflected in two of the Civil Division's performance measures: (1) the percentage of favorable resolutions in non-monetary trial cases; and (2) the percentage of favorable resolutions in non-monetary appellate cases. Civil has a strong history of meeting, or exceeding, these targets. Due to an increasing caseload, for Civil to continue to achieve impressive results in these performance measures, additional funding is needed in FY 2018 for the Civil Division.

**Base Funding**

<i>FY 2016 Enacted</i>				<i>FY 2017 Continuing Resolution</i>				<i>FY 2018 Current Services</i>			
<u>Pos</u>	<u>Agt/ Atty</u>	<u>FTE</u>	<u>\$(000)</u>	<u>Pos</u>	<u>Agt/ Atty</u>	<u>FTE</u>	<u>\$(000)</u>	<u>Pos</u>	<u>Agt/ Atty</u>	<u>FTE</u>	<u>\$(000)</u>
414	315	410	\$68,700	414	315	410	\$68,700	406	315	402	\$69,650

**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 2018 Request (\$000)	2 <sup>nd</sup> Year Annualization	2 <sup>nd</sup> Year FY 2019 Net Annualization (change from 2018) (\$000)	3 <sup>rd</sup> Year FY 2020 Net Annualization (change from 2019) (\$000)
Attorneys (0905)	\$203	\$108	15	\$1,616	\$92	\$1,383	\$113
Paralegals / Other Law (0900-0999)	\$96	\$52	5	\$260	\$54	\$272	\$19
<b>Total Personnel</b>			20	\$1,876		\$1,655	\$132

**Non-Personnel Increase Cost Summary – N/A**

**Total Request for this Item**

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)	FY 2020 Net Annualization (change from 2019) (\$000)
Current Services	406	315	402	\$69,650	\$0	\$69,650		
Increases	20	15	10	\$1,876	\$0	\$1,876	\$1,655	\$132
<b>Grand Total</b>	426	330	412	\$71,526	\$0	\$71,526		