

United States Department of Justice

General Legal Activities



FY 2020 Congressional Budget Submission

Office of the Pardon Attorney

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I. Overview for Office of the Pardon Attorney

For FY 2020, the Office of the Pardon Attorney (OPA) requests a total of \$4,683,000, 19 positions, and 19 FTE, including 11 attorneys, to achieve its mission of advising and assisting the President in the exercise of the executive clemency power conferred on him by Article II, Section 2 of the Constitution. This request supports current services needs.

Introduction

For over 125 years, the President has requested and received the assistance of the Attorney General and his/her designees in the Department of Justice in exercising clemency power with regard to persons convicted for committing offenses against the United States. Within the Department, OPA is the component assigned to carry out this function under the direction of the Deputy Attorney General. The long-standing role of Department officials advising the President on clemency matters is reflected in various public record documents dating to the late 19th century. Moreover, since at least 1898, presidents have adopted advisory rules to describe their programs for processing clemency applications and their directions to the Attorney General in carrying out the Department's clemency advisory functions. The rules, which govern OPA's work but do not bind the President, are approved by the President and published by the Attorney General. The current version of the administrative rules was promulgated in October 1993 and amended in August and September 2000. They are published in 28 C.F.R. §§ 1.1 to 1.11 and available on OPA's web site at <https://www.justice.gov/pardon/legal-authority-governing-executive-clemency>.

The two principal forms of clemency sought by applicants are pardon after completion of sentence and commutation (reduction) of a sentence being served. The traditional standards by which clemency applications are evaluated in connection with the preparation of the Department's letters of advice to the President have been utilized for decades and are publicly available on OPA's web site at <https://www.justice.gov/pardon/about-office-0>.

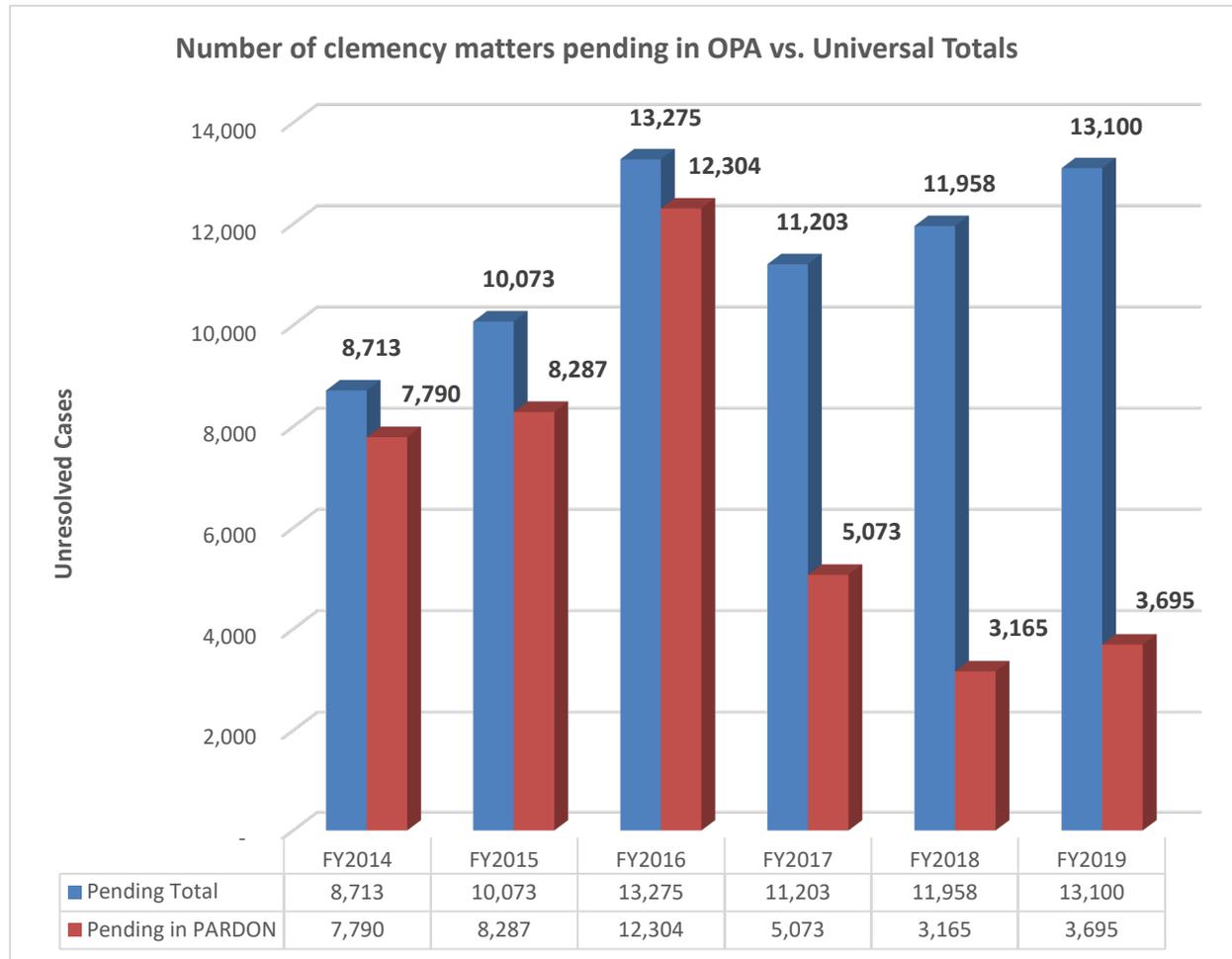
Program Description

The primary function of OPA is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department of Justice as to the appropriate disposition of each application for the signature of the Deputy Attorney General. In addition, OPA responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, Members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When asked to do so, OPA also provides general advice to the White House concerning executive clemency procedures and the historical background of clemency matters.

Challenges

OPA's workload has increased significantly since FY 2007, which was the last fiscal year in which fewer than 2,000 cases were received. Between FY 2009 and FY 2019, OPA received approximately 43,471 new petitions for processing, of which 38,773 were petitions for

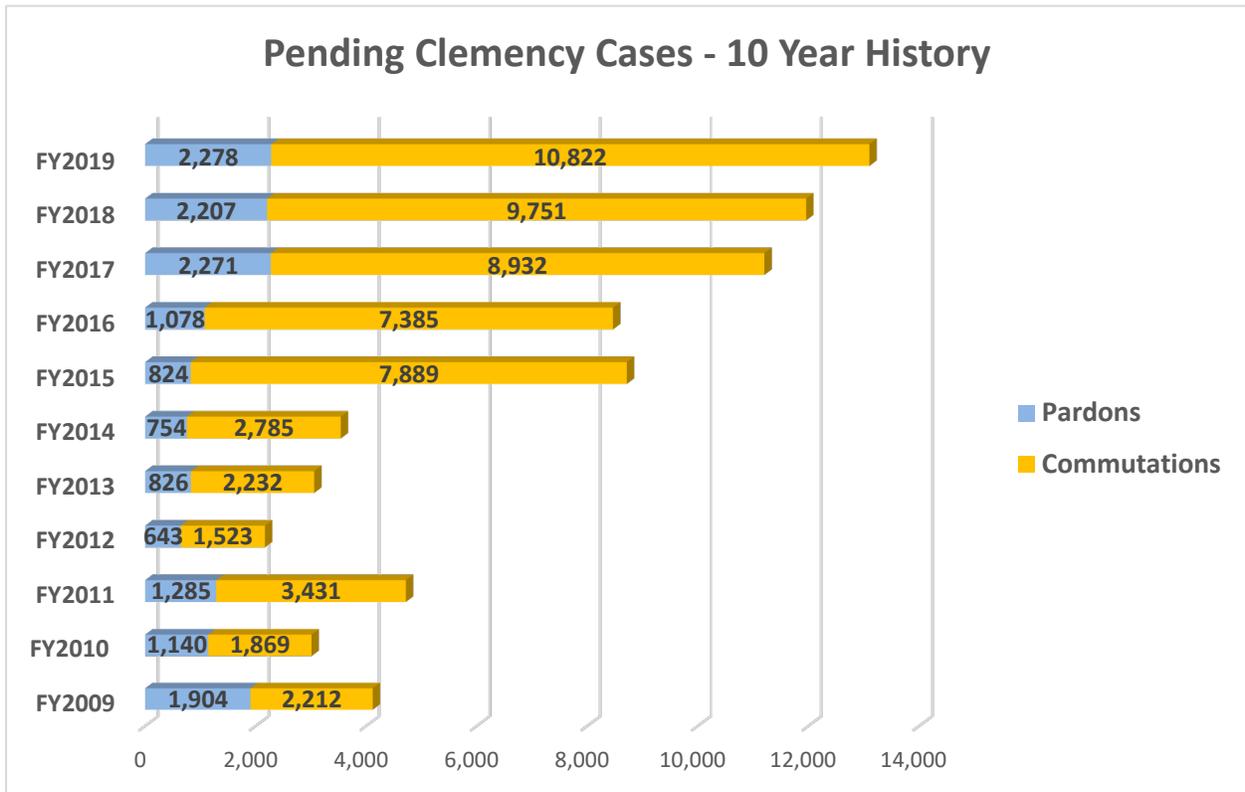
commutation of sentence. In FY 2016 alone, OPA received a total of 12,025 new petitions. Up until FY 2014, OPA’s authorized staffing level was 11 positions - a level that was established for the office in the mid-1990s, when OPA received approximately 600 new clemency cases per fiscal year. The authorized staffing level was raised and is now 19 employees. The current services level requested in the FY 2020 budget will allow OPA to continue to address the significant backlog in case processing derived from the increased workload in previous years.¹



OPA is required to process, analyze, and make recommendations on all applications it receives, regardless of whether the request for clemency is meritorious or not. Both denial and favorable recommendations are forwarded to the Deputy Attorney General and the President for final adjudication. On occasion, OPA is required to rework cases that have already been fully analyzed if deemed necessary by either the President or Deputy Attorney General. Since there is no limit to the number of clemency petitions that can be submitted to the OPA for consideration by the President and the President has plenary power to decide if and when to make clemency decisions, OPA has no control over the size of the universal caseload. OPA could easily receive cases beyond its capacity to process as it has over the past few years and cases can also remain in “pending” status somewhere other than OPA while still remaining on the open case list, per the

¹ The chart entitled **Number of clemency matters pending in OPA vs. Universal Total** shows the backlog of cases in OPA vs. those pending throughout the entire clemency process on the last day of each fiscal year for the past few years or during the last reporting for the current fiscal year. This dataset did not delineate whether cases were pending in OPA or elsewhere in the clemency process prior to FY 2014 because that information was not actively tracked.

chart above that shows the number of cases currently pending in OPA as opposed to those pending elsewhere in the clemency process. The impact of this massive influx of new cases over the past decade will continue to be felt by the office for many years to come. As a result, maintaining the current roster of staff and resources as requested for FY 2020 is essential to OPA’s continuing ability to address increased workloads and provide letter of advice to the President on the merits of those who have applied for executive clemency as well as provide a historical background of clemency matters.²



² The chart entitled **Pending Clemency Cases – 10 Year History** shows the successive increase of petitions pending universally at the end of a fiscal year or at the close of the most recent reporting period of the current year.

II. Summary of Program Changes

Not applicable

III. Appropriations Language and Analysis of Appropriations Language

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

IV. Program Activity Justification

A. Office of the Pardon Attorney

Office of the Pardon Attorney	Direct Pos.	Estimate FTE	Amount
2018 Enacted	19	17	\$4,496
2019 Continuing Resolution	19	19	\$4,496
Adjustments to Base and Technical Adjustments	0	0	\$187
2020 Current Services	19	19	\$4,683
2020 Request	19	19	\$4,683
Total Change 2019-2020	0	0	\$187

1. Program Description

OPA's primary function is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department as to the appropriate disposition of each application for the signature of the Deputy Attorney General and consideration by the President. OPA also responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant as well as deny clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When requested by the White House, OPA also provides general advice to the President concerning executive clemency procedures and the historical background of clemency matters.

2. Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Office of the Pardon Attorney												
RESOURCES			Target		Actual		Projected		Changes		Requested (Total)	
			FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			19	4,496	17	4,496	19	4,496		187	19	4,683
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
Program Activity			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		Processing presidential clemency petitions	19	4,496	17	4,496	19	4,496		187	19	4,683
Performance Measure	4.1	Number of clemency petitions pending anywhere in the clemency process		N/A		11,125		N/A				N/A
Performance Measure	4.1	Number of clemency petitions pending within the Office of the Pardon Attorney		3,500		2,689		1,500				250
Performance Measure	4.1	Number of clemency petitions pending within the Office of the Pardon Attorney that were opened more than 1 year ago		N/A		1,580		0				0
Performance Measure	4.1	Number of clemency petitions processed by the Office of the Pardon Attorney		3,000		3,528		1,500				1,500
Performance Measure	4.1	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney		2,400		2,988		2,400				2,400
OUTCOME Measure	4.1	Percentage of the total clemency caseload pending within the Office of the Pardon Attorney		N/A		24%		<=40%				<=40%

PERFORMANCE MEASURE TABLE

Component/Decision Unit: OFFICE OF THE PARDON ATTORNEY

Strategic Objective	Performance Report and Performance Plan Targets		FY 2014	FY 2015	FY 2016	FY 2017	FY 2018		FY 2019	FY 2020
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
	4.1	Performance Measure	Number of clemency petitions pending anywhere in the clemency process	8,713	10,073	13,275	11,203	N/A	11,125	N/A
4.1	Performance Measure	Number of clemency petitions pending within the Office of the Pardon Attorney	7,790	8,287	12,304	5,073	3,500	2,689	1,500	250
4.1	Performance Measure	Number of clemency petitions pending within the Office of the Pardon Attorney that were opened more than 1 year ago	N/A	N/A	N/A	N/A	N/A	1,580	0	0
4.1	Performance Measure	Number of clemency petitions processed by the Office of the Pardon Attorney	1,079	2,781	8,064	8,448	3,000	3,532	1,500	1,500
4.1	Performance Measure	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney	N/A	N/A	1,360	1,366	2,400	2,988	2,400	2,400
4.1	OUTCOME Measure	Percentage of the total clemency caseload pending within the Office of the Pardon Attorney	89%	82%	93%	45%	N/A	24%	40%	40%

N/A = Data unavailable

3. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

OPA's sole mission is to assist the President in the exercise of his constitutional clemency power, thus OPA's performance measure is the number of clemency petitions fully processed from receipt through recommendation or closure without Presidential action during a given fiscal year. Likewise, OPA's outcome measure is the percentage of clemency petitions that remain pending within OPA as opposed to those that are pending all throughout the clemency process at the end of the fiscal year. In FY 2014, there were 8,713 cases pending universally, while 7,790 were still pending in OPA, which means approximately 89% of all clemency cases were pending in OPA as opposed to waiting for a review by the Office of the Deputy Attorney General (ODAG) and The White House. Compared to the 11,125 cases pending universally at the end of July 2018, only 2,689 cases were pending in OPA. That equates to just about 24% of all cases pending within OPA as opposed to ODAG or The White House. The degree to which OPA will be able to meet its performance outcome target of less than or equal to 40% of the universal caseload will depend significantly on the volume of new petitions filed in upcoming fiscal years and how quickly OPA can work through the high cumulative number of petitions filed in the last few fiscal years.

Since OPA has no control over the number of clemency cases the Department receives for review or how long cases remain in the final stages of review within the Office of the Deputy Attorney General and the White House, OPA started clearly delineating the number of cases that are pending universally compared to those pending in OPA in FY 2014. In addition, OPA changed its performance outcome to track the percentage of cases pending in OPA versus those pending universally. The Office also created a new performance measurement to track the number of clemency petitions that are more than one year old and still pending within OPA because it has set a goal of processing cases within one year of them being opened for review.

b. Strategies to Accomplish Outcomes

In support of DOJ Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice. Under the current administration, OPA will continue to reduce the overwhelming backlog of clemency cases submitted during the last administration while also processing all new clemency cases submitted to the Department for review. OPA intends to maintain the necessary balance between attorneys and support staff to continue efficient processing of both new and pending clemency petitions. Given the volume of OPA's current caseload, it is critical that the office maintain equal levels of experienced clemency attorney advisors and support staff to evaluate the merits of incoming petitions, and draft cogent, legally correct letters of advice to assist the President's decision-making. OPA's support staff continue to provide crucial assistance in processing clemency petitions by completing cursory reviews, requesting additional information when necessary, drafting screening letters, and completing other necessary correspondence like responding to Freedom of Information Act and Privacy Act requests, responding to miscellaneous correspondence, correspondence assigned to the Office by the Department's Executive Secretariat, as well as case assignments from the White House Correspondence Office. This facilitates moving petitions through the review process in a timely and cost-effective manner and alleviates the administrative burden on attorney advisors, allowing them to focus their expertise on legal case analysis. Where possible, OPA will continue to seek

cost-effective ways to accomplish the clerical tasks required to process and manage the caseload, including maintaining OPA's electronic case management and tracking system.

c. Priority Goals

Not Applicable

V. Program Increases by Item

Not Applicable

VI. Program Offsets by Item

Not Applicable

VII. Exhibits