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* Please refer to the General Legal Activities Consolidated Exhibits

I. Overview for the Office of the Solicitor General

1. Introduction

For FY 2011, the Office of the Solicitor General (OSG) requests a total of \$11,018,000, 48 positions, including 22 attorney positions, and 49 FTE to meet its mission. This request is a current services request for OSG since no program increases are being requested.

2. Mission/Background

Mission: The major function of the Solicitor General's Office is to conduct substantially all litigation on behalf of the United States and its agencies in the Supreme Court of the United States, to approve decisions to appeal and seek further review in cases involving the United States in the lower federal courts, and generally to supervise the handling of litigation in the federal appellate courts. The original Statutory Authorization Act of June 22, 1870, states: "There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties to be called the Solicitor General." As stated in 28 CFR 0.20, the general functions of the Office are as follows: (1) conducting or assigning and supervising all Supreme Court cases, including appeals, petitions for and in opposition to *certiorari*, briefs and arguments; (2) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs); (3) determining whether a brief *amicus curiae* will be filed by the government, or whether the government will intervene, in any appellate court, or in any trial court in which the constitutionality of an Act of Congress is challenged; and (4) assisting the Attorney General and the Deputy Attorney General in the development of broad Department program policy.

3. Challenges

Although OSG's mission and strategic objectives will not change in FY 2011, the challenges it faces may. In recent years, OSG has faced new expectations unprecedented in its history, and was called upon to assume added responsibilities. For example, in the past administration the Solicitor General was asked by the Attorney General and the White House to assume a range of litigation responsibilities in the lower courts with regard to challenges to the United States government's detention at Guantanamo Bay, Cuba, and at the Naval Brig in South Carolina of persons captured in connection with the ongoing efforts to prevent and punish terrorist activities. These cases are handled by a team of government lawyers headed by the Solicitor General and have placed a significant drain on the limited resources of the Office. In this administration the Office assumed a leading role in the legal proceedings regarding Ali Saleh Al-Marri, an individual who was detained at the Naval Brig in South Carolina and later faced criminal proceedings in Illinois. The Office likewise assumed the leading role over the defense of the detention of enemy combatants at Bagram Airfield, Afghanistan. In the years to come, in addition to continuing to play a significant role in the litigation relating to terrorism, the Office may play a similar role in defending the new economic regulation arising from the current financial crisis, as well as a similar role in the health care arena. Finally, attorneys from the OSG increasingly have been asked to brief and argue particularly important criminal cases in the *en banc* stage in the appellate courts. In light of the overall budget environment the Government finds itself in, OSG has taken the difficult step of not asking for additional resources at this time. Instead, OSG remains committed to identifying business process improvements that increase operating efficiencies. While OSG has been successful in recent years in that respect, the unpredictable nature of the challenges highlighted above will likely continue to test OSG's ability to effectively operate in this dynamic environment.

OSG supports the strategic plan of the Department of Justice in the following way:

DOJ Strategic Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People (FY 2011 Request: \$11,018,000)

- Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

4. Full Program Costs

OSG has only one program—Federal Appellate Activity. Its program costs consist almost entirely of fixed costs, such as salaries and benefit costs, GSA rent, mandatory reimbursable agreements with other DOJ components, and printing. OSG’s Federal Appellate Activity Program has not been subject to an OMB program assessment.

5. Performance Challenges

External Challenges The Office of the Solicitor General (OSG) does not initiate any programs, but it is required to handle all appropriate Supreme Court cases and requests for appeal, amicus, or intervention authorization. In the vast majority of cases filed in the Supreme Court in which the United States is a party, a petition is filed by an adverse party and the United States responds in some way, either by filing a brief or (after reviewing the cases) waiving its right to do so. Additionally, the Supreme Court formally requests the Solicitor General to express the views of the United States on whether the Court should grant *certiorari* in a case in which the United States is not a party. The number of cases in which the Solicitor General petitions the Supreme Court for review, acquiesces in a petition for a writ of *certiorari* filed by an adverse party, or participates as an intervenor or as amicus curiae is governed exclusively by the Solicitor General’s determination that it is in the best interest of the United States to take such action. Further, such activity may vary widely from year to year, which limits the Office’s ability to plan its workload and performance activity, since the Office has no control over this activity.

Internal Challenges Because of the size of the Office, when positions become vacant it places undue burden on the entire staff to keep the work flowing. When attorneys leave and before replacements arrive, the work must be assigned to another attorney who is already overburdened. This slows down the process and, in turn, affects all units/sections in the office, i.e., Paralegal Unit, Desktop Publishing Unit, and Case Management Section.

6. Environmental Accountability

OSG has incorporated green purchasing and recycling into its core business processes and continues to look for new and creative ways to integrate environmental accountability into OSG’s day-to-day decision making and long term-term planning processes.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Adjust Travel Expenditures	This item is an offset of \$13,000 for travel and management efficiencies.	0	0	(\$13)	

III. Program Changes by Decision Unit to Strategic Goal: N/A

IV. Appropriations Language and Analysis of Appropriations Language (Please refer to the General Legal Activities Consolidated Exhibits)

V. Decision Unit Justification

A. Federal Appellate Activity

Federal Appellate Activity TOTAL	Perm. Pos.	FTE	Amount
2009 Enacted with Rescissions	48	49	\$10,440,000
2009 Supplementals			
2009 Enacted w/Rescissions and Supplementals	48	49	10,440,000
2010 President's Budget	48	49	10,809,000
Adjustments to Base and Technical Adjustments	48	49	222,000
2011 Current Services	48	49	11,031,000
2011 Program Increases			
2011 Program Decreases			-13,000
2011 Request	48	49	11,018,000
Total Change 2010-2011			\$209,000

1. Program Description

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

The original Statutory Authorization Act of June 22, 1870, states: "There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties to be called the Solicitor General." As stated in 28 CFR 0.20, the general functions of the Office are as follows: (1) conducting or assigning and supervising all Supreme Court cases, including appeals, petitions for and in opposition to *certiorari*, briefs and arguments; (2) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for

rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs); (3) determining whether a brief *amicus curiae* will be filed by the government, or whether the government will intervene, in any appellate court, or in any trial court in which the constitutionality of an Act of Congress is challenged; and (4) assisting the Attorney General and the Deputy Attorney General in the development of broad Department program policy.

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

During FY 2008 (the 2007 Term of the Supreme Court running June 30, 2007 through June 29, 2008), the Office had 651 Supreme Court matters pending at the beginning of the Term, received an additional 3,830 Supreme Court matters, terminated 3,970 of these matters, and left a balance of 511 matters pending at the end of the Term. The Office completed 744 appellate determinations, 1,184 *certiorari* determinations and 594 miscellaneous recommendations.¹ The Office participated in 55 oral arguments before the Supreme Court.² During FY 2009 (the 2008 Term of the Supreme Court running June 30, 2008 through June 30, 2009), the Office had 511 Supreme Court matters pending at the beginning of the Term, received an additional 3,599 Supreme Court matters, terminated 3,617 of these matters, and left a balance of 493 matters pending at the end of the Term. The Office completed 641 appellate determinations, 1,038 *certiorari* determinations and 673 miscellaneous recommendations.³ The Office participated in 57 oral arguments before the Supreme Court.⁴ Finally, during FY 2010 (the 2009 Term of the Supreme Court running June 30, 2009 through June 30, 2010), the Office anticipates having approximately 493 Supreme Court matters pending at the

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

² The figure for oral argument participation reflects the number of oral arguments the Office presented to the Supreme Court as a party, *amicus curiae*, or intervenor; it does not reflect the total number of underlying cases for each of those arguments.

³ The figures on determinations and recommendations provided in this document do not directly correspond with the figures provided on the Office's Workload Measurement Tables. Our Workload Measurement Tables track our workload by case; these figures track our workload by determination. Often, the Office of the Solicitor General will receive a request for authorization that includes more than one potential outcome: for example, the Solicitor General may receive a request for authorization for rehearing *en banc*, or, in the alternative, for a petition for a writ of *certiorari*. In that case, the Solicitor General may make two determinations; (1) no rehearing and (2) no *certiorari*. Our Workload Measurement Tables reflect that as a single request; here, we have provided a separate accounting for each determination. Additionally, the figures provided in this document under "miscellaneous requests" include requests for authorization of settlement, for stays, and for *mandamus*, while the figures on the Performance Measurement Tables do not include such requests.

⁴ The figure for oral argument participation reflects the number of oral arguments the Office presented to the Supreme Court as a party, *amicus curiae*, or intervenor; it does not reflect the total number of underlying cases for each of those arguments.

beginning of the Term, receiving an additional 3,599 Supreme Court matters, terminating approximately 3,617 of these matters, leaving a balance of 493 matters pending at the end of the Term. The Office also anticipates completing approximately 641 appellate determinations, 1,038 *certiorari* determinations, 673 miscellaneous recommendations, and participating in approximately 57 oral arguments before the Supreme Court.

PERFORMANCE AND RESOURCES TABLE											
Decision Unit: Federal Appellate Activity											
DOJ Strategic Goal/Objective: Goal 2 -- Prevent Crime, Enforce Laws and Represent the Rights and Interests of the American People. Objective 2.7-- Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.											
WORKLOAD/ RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2009		FY 2009		2010 Enacted		Current Services Adjustments and FY 2011 Program Change		FY 2011 Request	
Workload											
Cases in which the Solicitor General Participated			3,300		3,599		3,750				3,750
Requests to which the Solicitor General Responded			1,851		2,352		1,851				1,851
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
		49	10,440	49	10,440	49	10,809		209	49	11,018
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2009		FY 2009		2010 President's Budget		Current Services Adjustments and FY 2011 Program Change		FY 2011 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	Federal Appellate Activity	49	10,440	49	10,440	49	10,809		209	49	11,018
Workload Measure	Cases in which the Solicitor General participated		3,300		3,599		3,750				3,750
Workload Measure	Requests to which the Solicitor General responded		1,851		2,352		1,851				1,851
OUTCOME											

A. Definitions of Terms or Explanations for Indicators:

Footnote 1: Because the work of the Office is primarily governed by the Supreme Court's schedule, the Office tracks its workload by Supreme Court Term. Fiscal years roughly correspond to Supreme Court Terms, which run from July of the Term year through June of the next year. Reference to fiscal years in this document will reflect information for the applicable Supreme Court Term. Accordingly, FY 2008 corresponds with the 2007 Supreme Court Term, FY 2009 corresponds with the 2008 Supreme Court Term, and so on. The Office of the Solicitor General handles Supreme Court matters on an ongoing basis. As a result, some matters will overlap from one fiscal year to the next, and they are included in the data for the term in which they most appropriately fit.

Footnote 2: Includes requests for authorizations as well as recommendations against appeal, intervention, or participation amicus curiae. This category does not include miscellaneous requests, such as requests for authorization of settlement, for stays, for mandamus, etc.

B. Data Validation and Verification.

The Office of the Solicitor General handles all aspects of the law—not just civil matters. The Office uses the Automated Docket System (ADS) to track the matters handled by its attorneys. Data are keyed by the Case Management staff. For Supreme Court matters, all data are verified by the Supervisor or her Assistant, and checked against Supreme Court Records. The Case Management System Supervisor executes daily statistical reports to ensure accurate tracking of both Supreme Court matters and requests for authorization to appeal, intervene, or participate as amicus curiae. Additionally, once a week the Case Management System Supervisor distributes statistical reports on all Office matters to each attorney in the Office. The attorneys then review the reports to ensure accurate tracking of the matters for which they are responsible.

Issues Affecting OSG's Program Performance.

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

PERFORMANCE MEASURE TABLE											
Decision Unit: Federal Appellate Activity											
Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009		FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Cases in which the Solicitor General participated	3,736	3,811	3,345	4,000	4,423	4,000	3,300	3,599	3,750	3,750
Performance Measure	Requests to which the Solicitor General responded	1,779	1,815	2,145	2,389	2,274	2,341	1,851	2,352	1,851	1,851
Performance Measure											
Efficiency Measure											
OUTCOME Measure											

N/A = Data unavailable

* Denotes inclusion in the DOJ Annual Performance Plan

3. Performance, Resources, and Strategies

The Office of the Solicitor General's only decision unit—Federal Appellate Activity—contributes to the Department's Strategic Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. The decision unit's total resources fall under the Department's Strategic Objective 2.7 – Vigorously enforce and represent the interests of the United States in all matters over which the Department of Justice has jurisdiction.

a. Performance Plan and Report for Outcomes

The first performance measure is: Cases in which the Solicitor General participated. During the 2007 (FY 2008) Supreme Court Term (June 30, 2007 through June 30, 2008), the Office participated in 4,000 cases and in the 2008 (FY 2009) Supreme Court Term, the Office participated in 3,599 cases.

The second performance measure is: Requests for determinations regarding appeal, *certiorari*, or other matters to which the Solicitor General responded. During the 2007 Supreme Court Term, the Office responded to 2,341 requests, and in the 2008 Supreme Court Term, the office responded to 2,352 requests. Because the work of the Office is primarily governed by the Supreme Court's schedule, the Office tracks its workload by Supreme Court Term. Fiscal years roughly correspond to Supreme Court Terms, which run from July of the Term year through June of the next year.

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

b. Strategies to Accomplish Outcomes

To fulfill the Office of the Solicitor General's critical mission of representing the interests of the United States in the Supreme Court, the Office will devote all resources necessary to prevail in the Supreme Court. For FY 2011, OSG is requesting base funding of 48 positions, 49 work years and \$11,018,000 to accomplish its goals.

OSG has experienced an increase in several Court related activities. In addition, the OSG is facing new expectations unprecedented in its history and has been called upon to assume added responsibilities. These include all the examples set forth in Section I.3 of this budget submission. The government's response to both terrorism and economic distress will place a range of new demands on OSG, which it stands ready to meet.

The Office is reviewing its operations and processes to increase overall efficiency and reduce costs. The Office has made a number of changes and will continue to make additional changes when appropriate.

This strategy will better enable the OSG and the Department to meet its mission and goals under DOJ Strategic Goal Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

VI. Program Offsets by Item

Item Name:	<u>Adjust Travel Expenditures</u>
Budget Decision Unit(s):	<u>Office of the Solicitor General</u>
Strategic Goal(s) & Objective(s):	<u>DOJ Strategic Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People</u>
Organizational Program:	<u>Federal Appellate Activity</u>
Component Ranking of Item:	<u>N/A</u>
Program Reduction:	Positions: ____ Agt/Atty ____ FTE ____ Dollars <u>(\$13)</u>

Description of Item

This item is an offset of \$13,000 for travel and management efficiencies.

Summary Justification

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For the Office of the Solicitor General, travel or other management efficiencies will result in offsets of \$13,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.

Impact on Performance (Relationship of Reduction to Strategic Goals)

The travel and management offset will not have any significant effect on the strategic goal or performance of OSG.