

Civil Division
U.S. Department of Justice

FY 2008 Performance Budget
Congressional Submission

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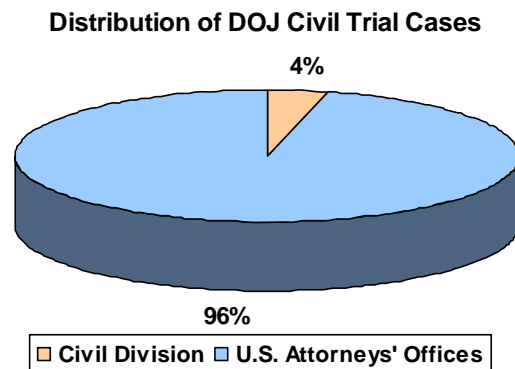
Table of Contents

	Page No.
I. Overview.....	2
II. Summary of Program Changes	6
III. Appropriations Language and Analysis of Appropriations Language	8
IV. Decision Unit Justification	
A. Legal Representation.....	10
1. Program Description	
2. Performance Tables	
3. Performance, Resources, and Strategies	
V. Program Increases by Item	
A. Immigration Litigation.....	28
B. Guantanamo Bay Detainee (GTMO) Litigation	33
VI. Program Offsets by Item.....	N/A
VII. Exhibits	
A. Organizational Chart.....	
B. Summary of Requirements	
C. Program Increases by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective.....	
E. Justification for Base Adjustments	
F. Crosswalk of 2006 Availability	
G. Crosswalk of 2007 Availability	
H. Summary of Reimbursable Resources.....	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Increases/Offsets	
K. Summary of Requirements by Grade.....	
L. Summary of Requirements by Object Class	
M. Status of Congressionally Requested Studies, Reports, and Evaluations	N/A

Civil Division: Overview

MISSION: The Civil Division represents the United States in any civil or criminal matter within its scope of responsibility – protecting the public fisc, ensuring that the Federal Government speaks with one voice in its view of the law, preserving the intent of Congress, and advancing the credibility of the Government before the courts.

Each year the Department of Justice (DOJ) receives roughly 100,000 new civil cases and matters, the majority of which are handled by the U.S. Attorneys' Offices. Situated at the seat of Government, the Civil Division retains only a small portion of this work. Generally, the Division's litigation falls into one of the following categories: cases filed in national or foreign courts; cases that cross multiple jurisdictions; cases that involve national policies; and/or cases that are so massive and span so many years that they would overwhelm the resources and infrastructure of any individual field office.



Source: Civil Division's case management system (CASES) and the U.S. Attorneys' Annual Statistical Report for FY 2005.

The Division's role is two-fold. It represents some 200 Federal agencies, the Administration and the Congress. And, it must represent the Government as a whole to ensure lasting precedents favorable to the United States.

The overwhelming majority – about 90 percent – of the Civil Division's cases are defensive, and each year, thousands of lawsuits are filed against the Government as a result of its policies, laws, and involvement in commercial activities, domestic and foreign operations, entitlement programs, as well as law enforcement initiatives, military actions, and counterterrorism efforts. Every year, Civil defeats billions of dollars in unmeritorious claims. The Division also brings suits on behalf of the United States, primarily to recoup money lost through fraud, loan defaults, and the abuse of Federal funds. Annually, billions of dollars are returned to the treasury, Medicare, and other entitlement programs as a result of Civil's affirmative litigation efforts.

In addition, the Civil Division is responsible for the administration of two compensation programs created by the National Childhood Vaccine Injury Act of 1986 and the Radiation Exposure Compensation Act (RECA) of 1990.

It is now possible for the public to view and better understand the responsibilities and goals of the Civil Division. Beginning in FY 2007, 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.usdoj.gov/jmd/2008justification>.

Full Program Costs

Funds for the Legal Representation Decision Unit, the Civil Division's only decision unit, are devoted almost entirely to front-line litigation in observance of the management initiatives contained in the DOJ Strategic Plan (2003-2008). Of the Division's roughly 1,000 employees, the vast majority are assigned to the litigating branches. In addition, most time expended by branch attorneys is devoted to litigation.

For FY 2006, \$380,000,000 was available to the Division, exclusive of the RECA Trust Fund (see Civil's RECA Trust Fund Budget) and the September 11th Victim Compensation Program, which sunset in 2003. Fifty-three percent of this funding came from the GLA appropriation while forty-seven percent was provided through DOJ allotments and reimbursements. The following table provides a list of the Civil Division's funding sources, including appropriations and reimbursements. The \$15,000,000 dollar decrease between 2005 and 2006 was largely a result of the progress made in resolving the *Winstar* cases.

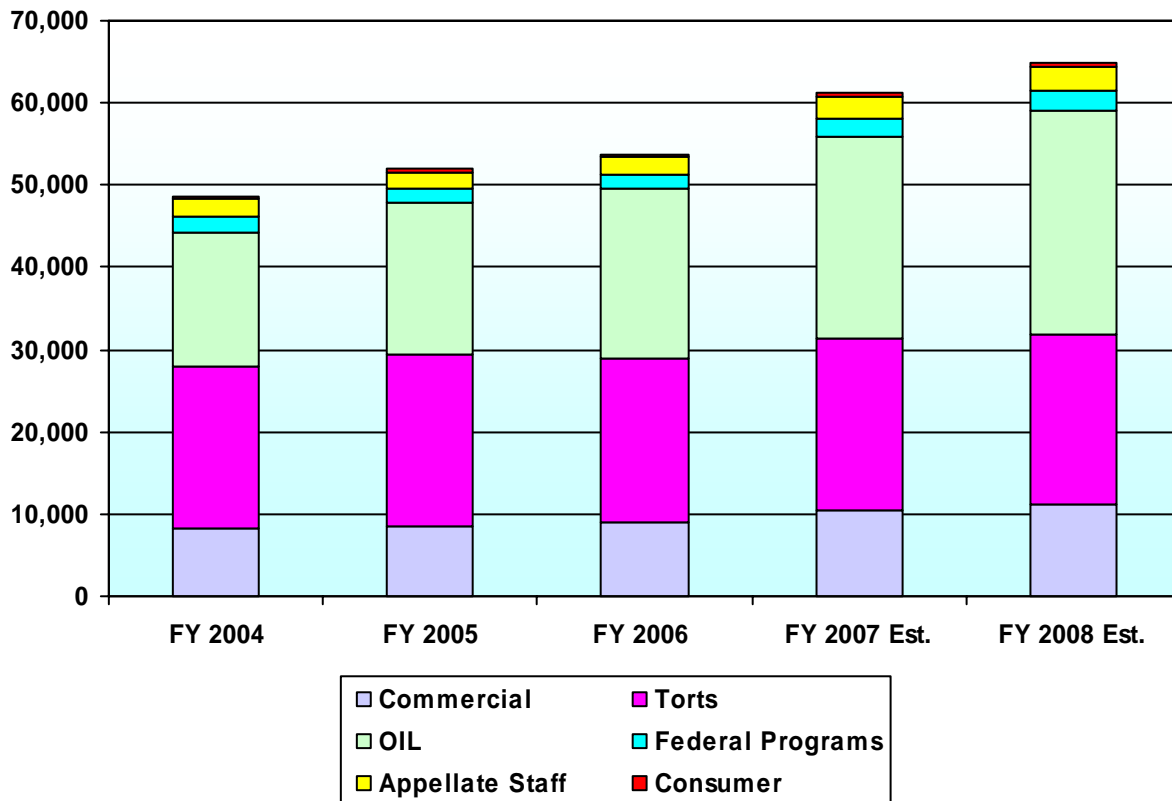
Civil Division Funding Sources (Dollars in Millions)						
Appropriations	2001	2002	2003	2004	2005	2006
Legal Representation (GLA)	153.7	162.5	167.5	174.4	174.9	192.2
Immigration & Katrina Emergency Supplemental	...	...	...	...	...	9.6
RECA - Admin. (Became part of Legal Representation in FY 2003)	2.0	1.9	...	...	...	...
Subtotal	155.7	164.4	167.5	174.4	174.9	201.8
Anticipated Reimbursements:						
FDIC - Winstar	70.6	63.3	32.3	38.5	30.2	18.3
Vaccine Compensation Program	4.0	4.0	4.0	4.0	6.3	6.3
Three Percent - Debt Collection	9.9	32.8	15.7	34.8	31.7	10.0
Health Care Fraud Abuse Control	16.7	21.0	14.4	14.5	15.5	15.3
Other Reimbursements	33.1	32.7	59.0	36.9	75.4	36.3
Subtotal	134.3	153.8	125.4	128.7	159.1	86.2
DOJ Accounts:						
Working Capital Fund	...	...	23.4	...	...	...
AFF & Super Surplus	...	...	...	...	...	.75
Expert Witnesses (FEW)	33.1	38.1	38.0	46.6	45.1	49.1
Private Counsel (FEW)	5.5	7.0	7.2	9.0	12.3	15.3
ALS No Year	...	...	...	2.5	3.3	15.6
VCR Carry Forward	...	2.0	2.0	0.2	...	...
Subtotal	38.6	47.1	70.6	58.3	60.7	80.75
TOTAL - ALL SOURCES	328.6	365.3	363.5	361.4	394.7	379.75

For FY 2008, the Division requests 1,368 positions (959 attorneys), 1,298 FTE, and \$245,023,000 to meet its mission and performance goals. Current services positions and FTEs reflect estimates that may change once final staffing decisions have been determined. The FY 2008 request includes program increases of 192 positions (147 attorneys), 97 FTE, and \$17,387,000 to address two of the nation’s most probing problems: immigration enforcement and the resolution of issues concerning Guantanamo Bay detainees.

Issues, Strategies, and Outcomes

Between FY 2006 and FY 2008 the workload is expected to grow from approximately 53,821 to 65,002 – an increase of 21 percent – as a result of continued growth in immigration cases, as well as an influx of cases filed by prisoners detained at Guantanamo Bay. These estimates exclude 9,004 Harbor Maintenance Tax as well as some 25,883 administrative claims that have been filed with the Army Corps of Engineers in connection with Hurricane Katrina. It is likely that a large number of these claims will be appealed to the Federal court and handled by the Civil Division attorneys.

Civil Division Caseload Growth¹



¹ The potential Katrina cases and the Harbor Maintenance Tax cases, for the purpose of this graphic, are so numerous that they must be treated as outliers and have been excluded.

Because the caseload is mostly defensive, the Division cannot control the number of cases filed, the timing of discovery, the size of evidentiary collections, the time span of litigation, or the scheduling of trials. The type, volume, and size of the cases are likewise determined by exogenous factors:

- **Military Actions** ● **Natural Disasters** ● **Influx of Illegal Aliens**
- **Challenges to Agency Actions** ● **Statutory Enactments** ● **Bankruptcies**
- **Implementation of Counterterrorism Measures** ● **Whistleblower Referrals**
- **Vaccine Program Expansion** ● **Federal Procurement Actions**

Despite these challenges, the Division has achieved remarkable success, as exemplified by the statistics below. This success has been attained by implementing effective strategies, such as retaining a high-quality legal staff and using advanced information technology systems to enhance attorney productivity. Thus far the Division has been able to maximize limited resources by implementing tighter cash-management controls and obtaining client agency reimbursements. Since FY 2001, the Division has met or exceeded all of its performance goals. Much of this success was achieved with the participation of the U.S. Attorneys Offices. See the Performance and Resources Table on page 19 for more information.

In FY 2006, the Civil Division:

- **Recovered over \$3.2 billion in monies owed to the U.S., yielding \$128 for every dollar spent²**
- **Defeated almost \$12 billion in unmeritorious claims, saving \$61 for every dollar spent**
- **Favorably resolved 87% of appellate immigration cases closed**
- **Favorably resolved 92% of non-monetary trial cases closed**
- **Favorably resolved 87% of non-monetary appellate cases closed**

² This rate of return is based on amounts recovered in affirmative cases funded through the Health Care Fraud and Abuse Control (HCFAC) Account and the Three Percent Fund.

Summary of Program Changes

Proposed FY 2008 Program Changes GLA Appropriation				
Item Name	Pos.	FTE	Dollars (\$000)	Page
Immigration Litigation	163	82	\$14,124	28
Guantanamo Bay Detainee Litigation	29	15	\$3,263	33
Total GLA Program Increases	192	97	\$17,387	

Immigration Litigation

- The Office of Immigration Litigation (OIL) defends and upholds the Department of Homeland Security's (DHS) enforcement actions, enabling the removal of thousands of illegal aliens. OIL's caseload has increased drastically in recent years and has outpaced existing resources. By FY 2008, the caseload is expected to reach a record level of 25,000 cases – nearly four times more cases than in FY 2002. The main factors contributing to this growth are (1) DHS's heightened enforcement efforts and (2) an increase in the rate at which aliens appeal removal decisions to the federal courts.
- As a stopgap measure to address the overwhelming number of cases, thousands of briefs have been reassigned to the Department's litigating components and to U.S. Attorneys' Offices (USAOs) nationwide. The "outsourcing" of briefs forces these components and USAOs to divert time away from efforts crucial to the achievement of their primary missions. Additional resources will enable the centralization of all immigration cases within OIL.
- As part of the Emergency Supplemental Appropriations Act, Congress appropriated \$9,000,000 for OIL, emphasizing the importance of immigration enforcement. The attorneys and support staff hired under the supplemental will be released when the funds expire later this year unless additional resources are made available. OIL will be unable to keep pace with DHS enforcement efforts thereby weakening the entire immigration enforcement system and necessitating additional resources in FY 2008.
- Inadequate resources for OIL could result in: adverse judgments leading to the release of criminal aliens; a decreased ability to pursue a unified national strategy for immigration enforcement; and an increased incentive for illegal aliens to attempt to enter the country, undermining national security. Therefore, the Civil Division requests 163 positions (124 attorneys), 82 FTE, and \$14,124,000 to enable OIL to keep pace with the ever expanding immigration caseload.

Guantanamo Bay Detainee Litigation

- Approximately 400 detainees are currently being held at the Guantanamo Bay Naval Base (GTMO). Through a process that includes a formal hearing before a military Combatant

Status Review Tribunal (CSRT), almost all of the detainees have been determined to be enemy combatants. These enemy combatants have filed habeas corpus suits against the United States in the District Court for the District of Columbia.

- The Detainee Treatment Act of 2005 (DTA) grants the United States Court of Appeals for the District of Columbia Circuit exclusive jurisdiction over challenges to the validity of any CSRT final determination. Reinforcing the DTA, the Military Commissions Act of 2006 replaces district court habeas jurisdiction with DTA review.
- Based on these two Acts, the Government has asked that all currently pending habeas actions be dismissed. The approximately 400 detainees may, instead, file challenges to the CSRTs in the D.C. Circuit. Defending this litigation is the Civil Division's responsibility.
- To handle this influx of complex GTMO cases, the Division will require a program increase of 29 positions (23 attorneys), 15 FTE, and \$3,263,000 in FY 2008.

Appropriations Language and Analysis of Appropriations Language*

Appropriations Language

The FY 2008 Budget request includes proposed changes in the appropriations language listed and explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed [\$6,333,000] *\$6,833,000*, to be appropriated from the Vaccine Injury Compensation Trust Fund.

Analysis of Appropriations Language

Administered by the Department of Health and Human Services, the Department of Justice, and the U.S. Court of Federal Claims, the Vaccine Injury Compensation Program (VICP) is intended to provide a more expeditious and less costly way for resolving claims. Administrative expenses are funded through a reimbursement from the VICP Trust Fund.

In FY 2005, the Vaccine Injury Compensation Program was assessed through the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) program and received a rating of "Adequate." The PART assessment recommended an independent evaluation regarding effectiveness, impact, and design. OMB stated, "The VICP has been assessed many times by various internal and external evaluators, but no single evaluation or group of evaluations together meet each of the standards of quality, independence, scope and regularity. There is a particular dearth of evaluations looking at overall program impact and effectiveness; most existing evaluations focused either on process or on only a portion of the program."

To implement the improvement plan recommended by OMB and to procure an independent evaluation of VICP's effectiveness, impact, and design, the Civil Division requests \$500,000.

* *The FY 2008 President's Budget uses the FY 2007 President's Budget language as a base so all language is presented as new.*

Appropriations Language

DEPARTMENT OF JUSTICE

FEES AND EXPENSES OF WITNESSES

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, *and for expenses of foreign counsel*, [such sums as are necessary,] \$168,300,000, to remain available until expended[: *Provided, That*], *of which* not to exceed \$10,000,000 [may be made available] *is* for construction of buildings for protected witness safesites[: *Provided further, That*]; not to exceed \$1,000,000 [may be made available] *is* for the purchase and maintenance of armored vehicles for transportation of protected witnesses[: *Provided further, That*]; *and* not to exceed \$9,000,000 [may be made available] *is* for the purchase, installation, maintenance and upgrade of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses. (*Department of Justice Appropriations Act, 2006.*)

Analysis of Appropriations Language

If agreed to by Congress, this change provides that foreign counsel fees be charged to the Fees and Expenses of Witnesses (FEW) appropriation.

The Civil Division, under the direction of the Assistant Attorney General, is the only litigating component of the Department of Justice authorized to oversee litigation in foreign courts. Under 28 CFR § 0.46: "The Assistant Attorney General in charge of the Civil Division shall, in addition to litigation coming within the scope of Sec. 0.45, direct all other civil litigation including claims by or against the United States, its agencies or officers, in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned, and shall employ foreign counsel to represent before foreign criminal courts, commissions or administrative agencies officials of the Department of Justice and all other law enforcement officers of the United States who are charged with violations of foreign law as a result of acts which they performed in the course and scope of their Government service."

This regulation expressly authorizes the employ of foreign counsel in certain criminal cases. Because the Division exercises sole responsibility over foreign litigation, it must retain private foreign counsel in all cases in which the United States is a party or has an interest. The necessity to employ foreign counsel derives from the fact that DOJ attorneys are not licensed to appear on behalf of the Government in foreign courts.

This requirement is analogous to the requirement to retain private counsel for constitutional tort cases. Specifically, DOJ attorneys may not represent Government employees who are sued for actions taken while performing the duties required by their jobs – when such representation would pose a conflict of interest between the defendants. In funding private counsel expenses out of the Fees and Expenses of Witnesses appropriation, Congress acknowledged that retention of private counsel for constitutional torts cases is mandatory and, accordingly, its funding source should be mandatory as well. Because the retention of private foreign counsel is mandatory, it follows that these expenses should also be funded out of the mandatory FEW appropriation.

Decision Unit Justification

Civil Division: Legal Representation Decision Unit

Legal Representation – TOTAL	Perm. Pos.	FTE	Amount (\$000)
2006 Enacted with Rescissions & Supplementals	1,100	1,096	\$202,489
2007 Estimate	1,208	1,176	\$204,612
Adjustments to Base & Technical Adjustments	32	25	\$23,024
2008 Current Services	1,176	1,201	\$227,636
2008 Program Increases	192	97	\$17,387
2008 Request	1,368	1,298	\$245,023
Total Change 2007-2008	160	122	\$31,737

The total change between the FY 2007 President’s budget request and the FY 2008 budget request is based on the standardized adjustments to base and increases required to address the estimated workload increase stemming from immigration enforcement and GTMO litigation.

The Civil Division is acutely aware of the resource limitations facing the Government. However, the vigorous defense of cases that are of paramount importance to the Administration must proceed successfully. The United States should not suffer the detrimental impacts that could arise from (1) an inability to promote the strongest possible immigration enforcement efforts; or (2) a failure to defend legal challenges filed by those detained at GTMO, many of whom are connected to al Qaeda. With respect to GTMO, this issue is so hotly-contested that additional appeals are extremely likely. If these cases cannot be resolved at the circuit court level, the Supreme Court may hear arguments. Depending on the outcome of these higher reviews, the resource requirements for FY 2008 will be adjusted.

Program Description

The Civil Division’s mission to represent the United States’ interests in the courts is vital, as the Government’s activities affect nearly every element of society. Each year the Government undertakes millions of commercial transactions involving purchases, contracts, loans, grants, and the management of trust funds. Its policies and laws interplay with major counterterrorism activities, the environment, the labor force, national and local economies, industry, prevention of crime, and the resources available to the General Fund.

Four Main Areas of Litigation

DEFENSIVE MONETARY

**Contract and Employment Claims,
Allegations of Negligence,
Patent Infringement, Constitutional Torts
Nearly \$162.5 Billion at Issue in FY 2006**

AFFIRMATIVE MONETARY

**Health Care Fraud, Procurement Fraud,
Illegal Telemarketing Schemes,
Loan Defaults, Bankruptcy,
Nearly \$24.5 Billion at Issue in FY 2006**

DEFENSE OF PROGRAMS

**Challenges to Federal Laws, Provisions of
Entitlement Programs, Immigration Decisions,
Counterterrorism Measures, and Implementation
of the Military Commissions Act**

ENFORCING CIVIL STATUTES

**Prosecution of Consumer Protection Violations,
Enforcement of Inspector General Subpoenas**

In total, 53,821 cases and matters were assigned to the Civil Division during FY 2006, and of this, the vast majority – 89 percent – were defensive. While plaintiffs in most defensive suits seek direct financial relief, some seek to force programmatic changes that can have far-reaching effects on law enforcement practices, entitlement programs, and implementation of Federal statutes. Civil's affirmative work is a relatively small, but critical aspect of the Division's mission, securing billions of dollars owed to the Government each year.

The Civil Division is composed of six litigating branches and the Office of Management Programs. The litigation handled by each Branch is described throughout the following pages.

Appellate Staff

Appellate Staff attorneys represent the United States at the highest levels of judicial review.

When trial losses involve policy-sensitive issues, the Division seeks appellate review. The docket includes challenges to the No Child Left Behind Act and to the policies of the Medicare and Medicaid programs. The Staff also handles a host of counterterrorism cases involving terrorist surveillance programs, the freezing of terrorist assets, and the designation of foreign terrorist organizations. These responsibilities have increased significantly with the enactment of the Military Commissions Act of 2006 (P.L. 109-366), which permits Guantanamo Bay detainees to challenge their status as enemy combatants. Several GTMO suits have already reached the appellate courts and approximately 400 GTMO cases may be filed in the U.S. Court of Appeals for the District of Columbia Circuit. These suits will require extensive involvement of the Appellate Staff (see page 33).

Other cases reaching the appellate level often have tremendous financial stakes. For example, several other large cases have involved attempts to seize over \$1 billion in Iraqi and Iranian

Government assets held by the U.S. These suits not only have high financial stakes, but their outcomes will establish important precedents with far-reaching effects on U.S. diplomatic relations and foreign policy.

Federal Programs

The Federal Programs Branch annually handles hundreds of defensive cases that are of unparalleled importance because of their far-reaching repercussions for Government programs and policies. For example, Federal Programs attorneys defend challenges to executive orders and Federal statutes, such as the Equal Pay Act and the Child Online Protection Act. In addition, the Branch's docket also includes a growing number of challenges to antiterrorism laws and national security measures – most notably the habeas corpus actions filed on behalf of Guantanamo Bay detainees.

While other Branches handle cases that directly involve the defense of monetary claims and the recovery of monies owed to the Government, Federal Programs protects the public fisc by defending Government policies and programs involving the distribution of monetary resources and benefits. For instance, branch attorneys are defending multiple suits filed on behalf of minority farmers who allege discrimination in credit and benefit programs administered by the U.S. Department of Agriculture. Plaintiffs in these cases seek more than \$40 billion in damages.

Torts Branch

In FY 2006, the Torts Branch handled over 20,878 cases and administrative claims with almost \$23 billion at issue. The caseload includes traditional tort suits, such as alleged malpractice at Federal medical facilities and other personal injury suits filed under the Federal Tort Claims Act (FTCA). Among the many issues faced by the Federal Government is how to deal with environmental contamination caused by important national defense activities. Congress has provided funds to clean up such contamination. However, tort suits are brought against the United States, seeking damages above and beyond the funds provided. The Civil Division works diligently to protect the public fisc when such lawsuits lack legal merit. In addition, the Torts Branch is responsible for aviation and maritime accident litigation, both of which produce high-dollar cases and large evidentiary collections.

Hurricane Katrina was the costliest and one of the deadliest hurricanes in the history of the United States. As a result of the destruction caused by this disaster approximately 26,000 administrative claims have been filed with the U.S. Army Corps of Engineers and more than 50 tort suits are pending in district courts. In total, the claimants seek \$150 billion. Thousands more claims are expected to be filed against the Corps and numerous claims are also expected to be filed against the Federal Emergency Management Agency and the U.S. Coast Guard. Given the huge financial stakes, the important legal precedents, and the extreme contentiousness surrounding the events that followed this disaster, claims will be appealed in Federal courts and thousands of cases may become the responsibility of the Civil Division's Tort Branch. Fundamental questions of liability may ultimately have to be resolved by the Supreme Court.



Torts attorneys also handle *Bivens* cases, which involve Federal employees who are personally sued for actions taken within the scope of their employment. For example, in *Mayfield v. Gonzales*, plaintiff filed charges against the Attorney General challenging the Administration's actions in the investigation of the Madrid train bombings in 2004. Effective representation of such employees allows public servants to carry out their duties without fear of personal liability for their actions.

The Civil Division's two compensation programs, the Radiation Exposure Compensation Program and the Vaccine Injury Compensation Program, fall within the responsibility of the Torts Branch. More detail on these programs may be found on pages 15-18.

Commercial Litigation

In FY 2006, the Branch handled nearly 9,106 active cases with \$159.8 billion at issue.³ The most significant of these suits are claims filed in the Court of Federal Claims and the Court of Appeals for the Federal Circuit, which are national courts located in Washington, D.C. These cases often involve protracted proceedings, high monetary stakes, complex damage theories, and huge evidentiary collections.

The *Winstar* cases made history in 1995 when some 400 financial institutions sought about \$30 billion for alleged losses arising from banking reforms enacted in the 1980s. In another massive group of lawsuits, Yankee Atomic Electric and other commercial nuclear utilities have filed 66 claims, known collectively as the Spent Nuclear Fuel litigation. Plaintiffs in these suits allege a multi-billion dollar breach of contract against the Department of Energy for its failure to accept and store spent nuclear fuel. One of the largest defensive cases being handled by Commercial attorneys is *Cobell v. Kempthorne*, a multi-billion dollar claim filed against the Department of the Interior. Plaintiffs - 300,000 Native Americans - seek a full accounting of their Individual Indian Trust accounts.

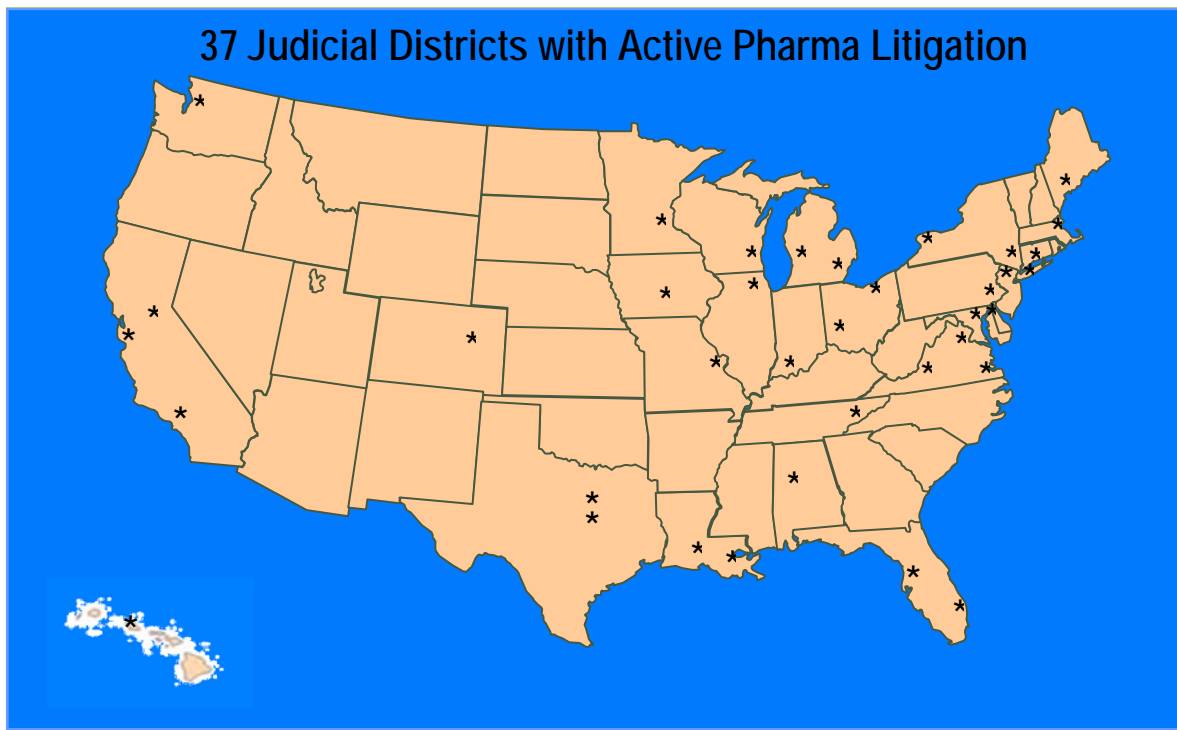
Commercial attorneys are also responsible for representing the United States in litigation filed outside of Washington, D.C. For example, the Court of International Trade, a national court located in New York City, is the venue for the thousands of Harbor Maintenance Tax Cases. In addition, the Office of Foreign Litigation attorneys manage and retain foreign counsel to represent the U.S. in cases filed in foreign courts. Most of these cases are defensive and arise from a range of actions including military redeployments and commercial transactions. The Office's affirmative efforts are primarily aimed at fighting cross-border fraud that targets American citizens, such as telemarketing fraud.

The Branch also handles a wide variety of litigation involving patents, trademarks, copyrights, trade secrets, and other related matters. For example, when patent infringement claims threatened a cessation of BlackBerry service, Intellectual Property attorneys worked to ensure that the Government would be exempt from an injunction against use of the service. The most significant defensive suits are brought by major corporations seeking substantial recoveries for the Government's use of patented inventions. Affirmative litigation enforces Government-owned patents, trademarks, copyrights, and patent indemnity agreements.

³ These amounts exclude \$4.2 billion at issue in the 9,004 Harbor Maintenance Tax filed in the Court of International Trade. The cases were resolved in the Government's favor in December 2005.

Through affirmative litigation, Commercial Litigation attorneys recover losses from those who perpetrate fraud against the Government and misuse taxpayers' monies. Working with the U.S. Attorneys' Offices, branch attorneys recover billions of dollars each year from individuals and companies who have defrauded the Government by violating the terms of Federal contracts, grants, loans, subsidies, Medicare, and other Federal health insurance programs.

A significant portion of these cases are known collectively as the "Pharma" litigation, which concerns filings under the False Claims Act alleging various types of fraud in the pricing and sale of pharmaceutical products paid by Federal health care programs. These claims are highly complex both legally and factually, and often involve allegations, named defendants, and witnesses from across multiple judicial districts. The Division's role is the key to ensuring that investigations and litigation are properly coordinated among Federal and state entities in all cases. To this end, the Commercial Frauds Staff is responsible for supervising the investigative work of many Federal investigative organizations and working closely with other Federal Government attorneys, as well as State Attorneys General and law enforcement partners. Over the past seven years, about \$5 billion has been recovered in Pharma matters, including \$1.2 billion in 2006 alone.



Consumer Litigation

The Office of Consumer Litigation enforces Federal consumer protection laws. Most enforcement suits involve fraud perpetrated by manufacturers and distributors of misbranded, adulterated, or defective consumer goods. For instance, a Denver grand jury charged Gary Lee Sutton with a 22-count indictment, alleging that Sutton purchased high-mileage vehicles at auction, rolled back the odometers to false, low mileages, fraudulently obtained false Colorado or Arizona titles, and then sold the used cars to

dealers in Colorado and elsewhere. Success in cases such as these safeguard consumers from dangerous or worthless products, and from unfair and deceptive trade practices.

The Office defends challenges to consumer protection laws. Such suits include those filed by major drug manufacturers challenging the Food and Drug Administration's (FDA) approval of generic versions of some of the most widely-used, name-brand medications. For example, in *Biovail Laboratories v. FDA*, the plaintiff, a name brand manufacturer, claimed that the FDA's approval of a generic drug for the antidepressant, Wellbutrin, XL, violated their right to a thirty month stay of generic competition. The issue, decided on December 21, 2006, was whether Biovail's right to a thirty month stay covered this specific generic drug. The district court agreed with the FDA that it did not, and upheld the FDA's approval of the generic competition.

Most of the Office's cases, however, are affirmative and are filed on behalf of the Food and Drug Administration, the Federal Trade Commission, the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration. The Office handles civil penalty cases brought under consumer protection statutes, as well as cases concerning fraudulent activities that exploit billions of dollars from unsuspecting consumers through unfair credit practices and deceptive advertisements and sales. A growing number of lawsuits seek recoveries in connection with health care fraud. All together, the Office's affirmative litigation generates hundreds of millions of dollars in recoveries for the United States.

Office of Immigration Litigation

Established in 1983 to achieve central control over immigration litigation, OIL upholds the enforcement actions of the Department of Homeland Security. With its unique expertise in immigration law, OIL provides the Government with the best possible defense against challenges to removal orders filed in circuit courts by illegal aliens, many of whom are criminals.

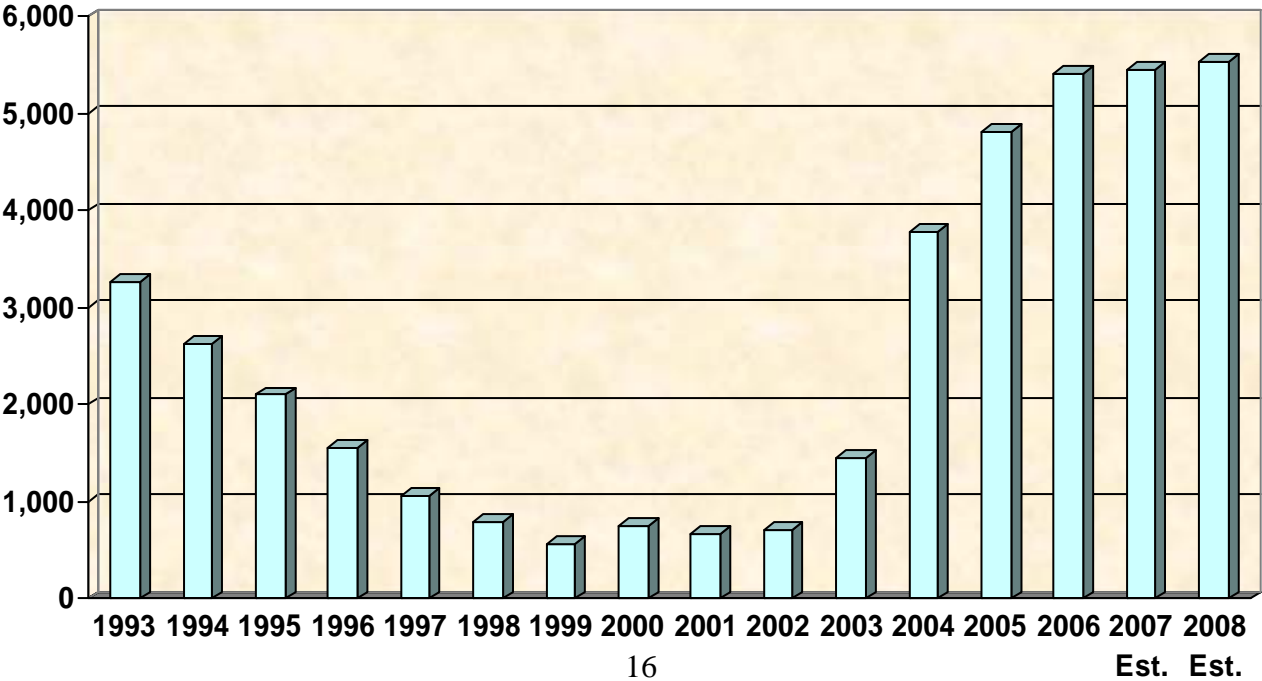
In addition to fulfilling a key role in addressing the public's widespread desire to gain control over the Nation's borders, the Office's docket often includes sensitive and difficult cases, some of which involve fundamental questions concerning the authority of the Executive, and the respective roles of Congress and the courts in immigration matters. OIL has developed substantial expertise relating to terrorism and alien terrorists, and will continue to vigorously defend counterterrorism efforts. Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement divisions estimate that more than 11 million illegal aliens reside in the United States. It is therefore not surprising that the 20,000 immigration cases filed in the Federal courts in FY 2006 more than tripled the number of cases filed in FY 2001. OIL's share of Federal court litigation is now so large that immigration cases comprise approximately one-third of the cases handled annually by the Department's Civil Division. Vigorous defense of these cases is critical to national security and the safety of our communities.

Compensation Programs

Vaccine Injury Compensation Program When tort claims are brought under the FTCA, plaintiffs must establish Government liability and damages. Congress recognized that it is not always appropriate for all such tort claims to meet the requirements of the FTCA. For instance, the Vaccine Injury Compensation Program (VICP) was created in 1986 by the National Childhood Vaccine Injury Act to encourage childhood vaccination by providing a streamlined system for compensation in rare instances when an injury results. Under the VICP, individuals claiming injury from a covered vaccine file a petition for no-fault compensation with the U.S. Court of Federal Claims (CFC), rather than filing a lawsuit against the vaccine manufacturer or administrator in the civil tort system. The Department of Health and Human Services (HHS) is the named “respondent” in all cases and is the general administrator of the Program. Civil Division attorneys in the Torts Branch represent HHS before the special masters in the Court of Federal Claims. To ensure that compensation is awarded to those whom Congress intended, claims are closely examined for legal and medical sufficiency, with the recognition that eligible claimants should be compensated fairly and expeditiously. Special masters of the court conduct hearings as necessary to determine whether a petitioner is entitled to compensation and, if so, how much.

The Act created a Vaccine Injury Compensation Trust Fund that is used for the payment of awards to individuals injured by vaccines, in addition to claimants’ attorneys’ fees. The Trust Fund is funded by an excise tax imposed on each dose of covered vaccine purchased. Funds are adequate for payment to eligible petitioners. Trust Fund monies also pay the administrative costs of HHS, the Civil Division’s VICP staff, and the Office of Special Masters of the CFC. Specifically, the Civil Division receives its funding through a reimbursement from HHS. The current reimbursement authority is \$6,333,000 (41 FTE).

**Childhood Vaccine Act Cases Pending
at the Beginning of the Fiscal Year**



Over the past several years, the number of vaccine claims filed with the Program has increased dramatically (see chart on previous page). Over 750 new cases were filed in FY 2005, and approximately 1,300 were filed in FY 2004, compared with just 213 filings in FY 2001. Driving the caseload growth are thousands of cases alleging injuries caused by the vaccine preservative thimerosal.

In total, more than \$1.6 billion in compensation has been awarded to over 2,000 claimants who would have stood little chance of recovery in traditional tort litigation. In addition, the Program has greatly reduced costly litigation against drug manufacturers and health care professionals who administer vaccines. Although an individual who is dissatisfied with the Court's final judgment can reject it and file a lawsuit in state or Federal court, very few such lawsuits have been filed since the Program began. The supply of vaccines in the U.S. has been stabilized, and the development of new vaccines has markedly increased.

In FY 2005, OMB used their Program Assessment Rating Tool to evaluate the Departments of Health and Human Services and Justice's respective roles in administering the Program. The Program received a rating of "Adequate" and is working to follow up on the various improvement actions recommended by OMB. For more information, see page 38.

Radiation Exposure Compensation Act (RECA) In passing RECA in 1990, Congress offered an apology and monetary compensation to individuals who suffered disease or death as a result of exposure to radiation released during atmospheric nuclear weapons testing in the 1950s and 1960s, and underground uranium mining operations from the 1940s to the 1970s. This program was designed as an alternative to litigation, in that the statutory criteria did not require claimants to establish causality. If claimants meet the criteria specified in the Act, compensation is awarded. RECA provides fixed payments in the following amounts: \$50,000 for individuals who lived "downwind" of the Nevada Test Site; \$75,000 for individuals present at test site locations; and \$100,000 for uranium miners, mill workers, and ore transporters.

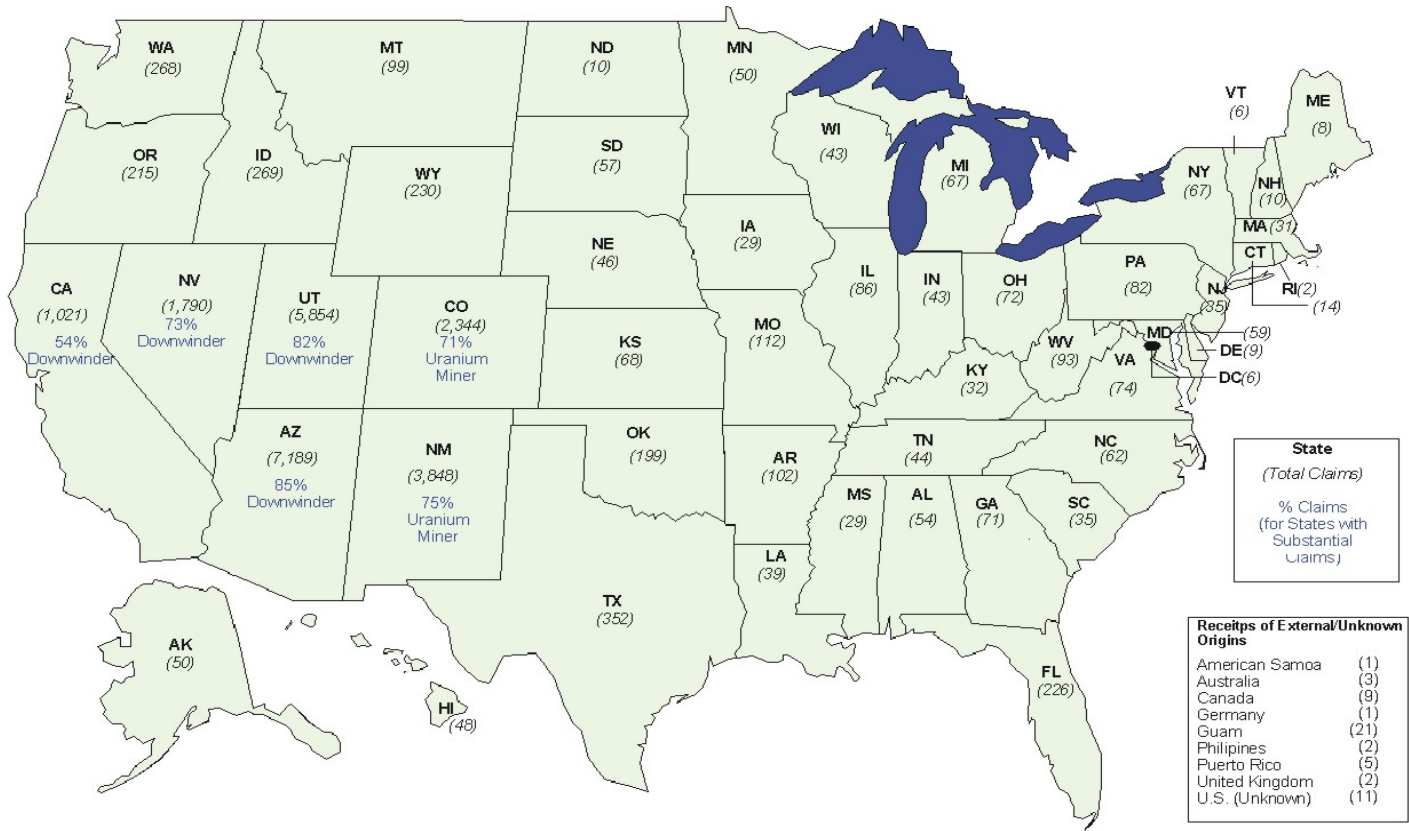
Since the Program began receiving claims in 1992, 25,696 claims have been filed and more than \$1.1 billion has been awarded to 16,867 claimants (as of January 3, 2007). The vast majority of claims are filed by people who live in the Four Corners region – Utah, Colorado, New Mexico, and Arizona. This area had the greatest concentration of uranium ore, and both the mining and production industries were centered there. The "downwind" regions, counties in Nevada, Utah, and Arizona, account for thousands of claims in connection with the fallout from above-ground nuclear weapons testing.

Since its inception, various groups have sought to pressure Congress and the Executive Branch to expand or otherwise change the scope of the Program. In July 2000, RECA Amendments extended compensation to new categories of beneficiaries; added compensable diseases; expanded both the years and geographic areas covered; and lowered the exposure level that miners must demonstrate to receive compensation. These statutory changes caused an influx of new claim filings and a substantial increase in awards.

A 2005 study published by the National Academy of Sciences recommended an overhaul of the Program that would base compensation on an exposure dose assessment for all victims regardless of geographic region. Such changes would require legislative amendments to the current statute. In this case, the claims examination process would dramatically expand and change. Bills were introduced in the previous Congress to include Idaho, Montana, and Guam as covered downwind areas.

In FY 2006, the RECA Program was evaluated with OMB’s Program Assessment Rating Tool. The Program received a rating of “Adequate,” and is working to implement the improvement actions recommended by OMB. For more information, see page 39.

CIVIL DIVISION RECA Claims Received by State (as of January 7, 2007)



PERFORMANCE AND RESOURCES TABLE

Decision Unit: Department of Justice – Civil Division – Legal Representation

DOJ Strategic Goal II: Enforce Federal Laws and Represent the Rights and Interests of the American People.

Objective 2.5: Enforce Federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.

WORKLOAD/ RESOURCES		Final Target		Actual		Estimate		Changes		Requested (Total)	
		FY 2006		FY 2006		FY 2007		Current Services Adjustments and FY 2008 Program Changes		FY 2008 Request	
Workload	1. Number of cases pending beginning of year	36,541		35,231		40,236		2,903		43,139	
	2. Number of cases received during the year	19,446		18,590		21,062		801		21,863	
	3. Total workload	55,987		53,821		61,298		3,704		65,002	
Total Costs and FTE Includes \$2.3 million for administrative expenses associated with the RECA Program in FY 2006 (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
		1,137	\$192,864 [\$96,007]	1,006	\$212,004 [\$86,487]	1,217	\$204,612 [\$65,107]	97	\$17,387 [\$7,771]	1,339	\$245,023 [\$57,336]
TYPE/ Strategic Objective	PERFORMANCE	FY 2006		FY 2006		FY 2007 President's Budget		Current Services Adjustments and FY 2008 Program Changes		FY 2008 Request	
Output	1. Number of cases terminated during the year	15,528		13,585		18,159		8,377		26,536	
Civil Division Performance Measures (Excludes VICP and RECA)											
Outcome	2. Percent of civil cases favorably resolved	80%		93%		80%		...		80%	
	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		91%		80%		...		80%	
	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		72%		60%		...		60%	
	5. Percent of favorable resolutions in non-monetary trial cases	80%		92%		80%		...		80%	
	6. Percent of favorable resolutions in non-monetary appellate cases	85%		87%		85%		...		85%	
Efficiency	7. Ratio of dollars defeated and recovered to dollars obligated for litigation	\$61		\$60		\$62		...		\$63	

PERFORMANCE AND RESOURCES TABLE (CONTINUED)

		Final Target	Actual	Estimate	Changes	Requested (Total)
TYPE/ Strategic Objective	PERFORMANCE	FY 2006	FY 2006	FY 2007	Current Services Adjustments and FY 2008 Program Changes	FY 2008 Request
Vaccine Injury Compensation Program						
Output	8. Percentage of cases where the deadline for filing the Government's response to petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete	80%	82%	83%	...	86%
	9. Median time to process an award for damages (in days)	500	335	485	...	475
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%
	11. Average claim processing time (in days)	1,005	834	1,213	...	1,433
Efficiency	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	90%	98%	92%	...	92%
Radiation Exposure Compensation Program						
Efficiency	13. Reduce backlog of pending claims by 60% by FY 2011	(10%) 1,819 claims	.5% 2,032 claims	(20%) 1,617 claims	...	(30%) 1,415 claims
Output	14. Reduce average claim processing time to 200 days by FY 2011	297	339	277	...	258
	15. Percentage of claims paid within six weeks of Program receipt of acceptance form	70%	71%	75%	...	80%
	16. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	85%	100%	88%	...	90%
	17. Percentage of claims adjudicated within 12 months or less (RECA)	71%	66%	71%	...	71%

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

- **All Workload and Performance Indicators:** The data source for all indicators is CASES, the Civil Division's fully automated case management system. Quality assurance efforts include: regular interviews with attorneys to review data listings for each case; input screens programmed to preclude the entry of incorrect data; exception reports which list data that are questionable or inconsistent; attorney manager review of numerous monthly reports for data completeness and accuracy; and verification of representative data samples by an independent contractor. Despite these measures, some data limitations do exist. Most significantly, incomplete data can cause the system to under-report case terminations and attorney time. Some performance successes can be attributed to litigation where the U.S. Attorneys' Offices were involved.
- **Performance Indicators 2, 5, and 6:** Favorable resolutions include only court judgments in favor of the Government; settlements are excluded.
- **All Workload and Performance Indicators:** All workload actuals and workload estimates exclude more than 9,000 Harbor Maintenance Tax Cases. These cases have been removed to avoid skewing the data.

ISSUES AFFECTING FY 2006 Performance

- **Performance Indicator 1:** The number of cases terminated in FY 2006 was lower than estimated due to the unpredictable nature of litigation. For example, the timing of judgments and other court decisions are up to the judge's discretion. Excluded from the data in the above table were 9,004 Harbor Maintenance Tax cases, which were resolved due to a ruling in the lead case.
- **Performance Indicator 7:** Reported values are averages for three fiscal years. Thus, the FY 2006 target represents fiscal years 2004-2006. Approximately 90 percent of total dollars defeated and recovered is the result of the Division's defensive work. Thus, the annual amount saved through litigation is driven largely by the amount sought in court by the Government's opponents – a metric that is extremely difficult to predict. The Division did not meet its FY 2006 target because it is impossible to predict accurately the number and value of cases that will be resolved in a given year. In addition, recoveries in affirmative cases are dependent upon the defendant's ability to pay (i.e. bankruptcy cases).
- **Performance Indicators 13, 14, and 17:** Processing times for on-site participants have increased as a result of the extended periods of time requested by the claimants to elect whether to accept the RECA award or an award pursuant to the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). According to the RECA statute, if on-site participant claimants accept an award under RECA, they will not be eligible to receive any payment or medical benefits under EEOICPA, even though they may qualify. Therefore, these claimants are provided with sufficient time in which to make this election. Also affecting the FY 2006 results was a reduced staffing level for most of the year. The Program lost five employees due to normal attrition and absent adequate staff, claim processing times increased, the backlog of pending claims grew, and fewer claims were adjudicated within 12 months than anticipated. By the end of FY 2006, the Program had hired six additional staff to assist in claims adjudication. Claim processing time is improving and the Program hopes to meet its targets in FY 2007 and FY 2008.

ISSUES AFFECTING SELECTION OF FY 2007 AND FY 2008 ESTIMATES

- **Workload Indicators 1, 2, and 3:** The workload is measured by tracking the sum of cases pending at the beginning of the year and new cases that the Division receives. Hundreds of thousands of potential Hurricane Katrina-related suits have been excluded from the workload indicators because they are an outlier that skews trend lines. Because 90 percent of the Division's caseload is defensive, the size of the workload is externally driven. Between FY 2006 and FY 2008, the workload is expected to increase by 21 percent. This increase is primarily the result of pending immigration and vaccine cases, as well as additional Guantanamo Bay detainee-related cases, all of which are defensive and are beyond the Division's control.
- **Performance Indicator 1:** The number of terminations is a performance measure that is directly linked to resources: increased funding provides the staff needed to resolve more cases, and at a faster rate. In FY 2008, there will be an estimated 3,038 additional terminations as the result of the requested OIL program increase.
- **Performance Indicators 2 and 3:** Vaccine Injury Compensation Program cases are excluded from these measures.
- **Performance Indicators 2 and 7-17:** In line with the PMA initiative to integrate budget and performance fully, the Civil Division has developed several new outcome-oriented performance measures.

PERFORMANCE MEASURE TABLE

Decision Unit: Department of Justice – Civil Division – Legal Representation

Performance Report and Performance Plan Targets		FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006		FY 2007	FY 2008
		Actual	Actual	Actual	Actual	Actual	Actual	Final Target	Actual	Target	Target
Output	1. Number of cases terminated during the year*	8,518	9,902	12,231	12,154	15,101	15,727	15,528	15,179	18,522	22,051
Civil Division Performance Measures (Excludes VICP and RECA)											
Outcome	2. Percent of civil cases favorably resolved	87%	93%	93%	94%	93%	90%	80%	80%	80%	80%
	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	84%	84%	86%	89%	90%	90%	80%	80%	80%	80%
	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	71%	66%	64%	66%	65%	72%	60%	60%	60%	60%
	5. Percent of favorable resolutions in non-monetary trial cases	74%	80%	85%	86%	84%	89%	80%	80%	80%	80%
	6. Percent of favorable resolutions in non-monetary appellate cases	89%	89%	89%	92%	93%	91%	85%	85%	85%	85%
Efficiency	7. Ratio of dollars defeated and recovered to dollars obligated for litigation	\$59	\$72	\$79	\$64	\$67	\$60	\$61	\$61	\$62	\$63
Vaccine Injury Compensation Program											
Outcome	8. Percentage of cases where the deadline for filing the Government's response to petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete	N/A	N/A	N/A	N/A	75%	84%	80%	82%	83%	86%
	9. Median time to process an award for damages (in days)	N/A	N/A	533	564.5	529.5	484	500	335	485	475
	10. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	N/A	N/A	0%	1.5%	0%	0%	0%	0%	0%	0%

* The number of terminations has been updated to reflect the removal of the 9,004 Harbor Maintenance Tax cases from the workload statistics.

PERFORMANCE MEASURE TABLE (CONTINUED)

Performance Report and Performance Plan Targets		FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006		FY 2007	FY 2008
		Actual	Actual	Actual	Actual	Actual	Actual	Final Target	Actual	Target	Target
	11. Average claim processing time (in days)	N/A	N/A	995	1,021	738	894	1,005	834	1,213	1,433
Efficiency	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	N/A	N/A	80%	92%	80%	95%	90%	98%	92%	92%
Radiation Exposure Compensation Program											
Efficiency	13. Reduce backlog of pending claims by 60% by FY 2011	N/A	N/A	N/A	N/A	N/A	2,021	(10%) 1,819	.5% 2,032	(20%) 1,617	(30%) 1,415
	14. Reduce average claim processing time to 200 days by FY 2011	N/A	N/A	N/A	N/A	N/A	316	297	339	277	258
	15. Percentage of claims paid within six weeks of Program receipt of acceptance form	N/A	N/A	N/A	37%	51%	63%	70%	71%	75%	80%
	17. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	N/A	N/A	N/A	N/A	77%	84%	85%	100%	88%	90%
	18. Percentage of claims adjudicated within 12 months or less (RECA)	74%	88%	64%	74%	55%	71%	71%	66%	71%	71%

Performance, Resources, and Strategies

Performance Plan and Report for Outcomes

The data presented in the Performance and Resources Table demonstrate the Civil Division’s consistent success in meeting performance targets in support of the Department’s Strategic Objective 2.5 to “enforce Federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.” The following cases summaries are highlights of how Civil has worked to protect the public fisc, defend U.S. policies, and enforce civil statutes in FY 2006.

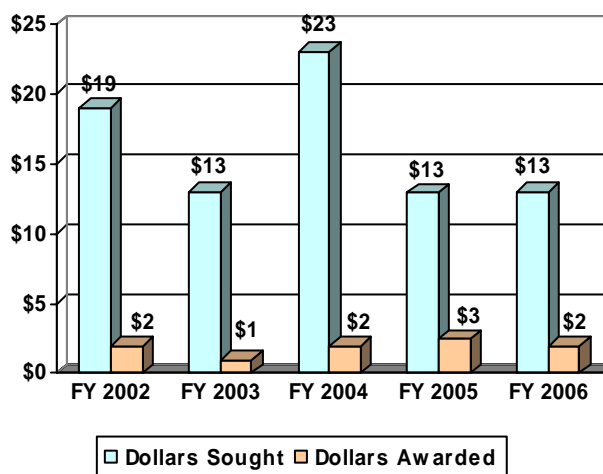
Between FY 2002 and FY 2006, more than \$71 billion was saved as a result of the Civil Division's successful defense against unmeritorious claims. In FY 2006 alone, the Division defeated over \$11 billion in exaggerated claims. Significant victories include the following:

- **Winstar** Of the 93 cases fully resolved to date, 73 resulted in zero damages paid to the plaintiff. For example, an appellate court affirmed the trial court’s judgment rejecting damages exceeding \$420 million in *Granite Management Corp. v. United States*.

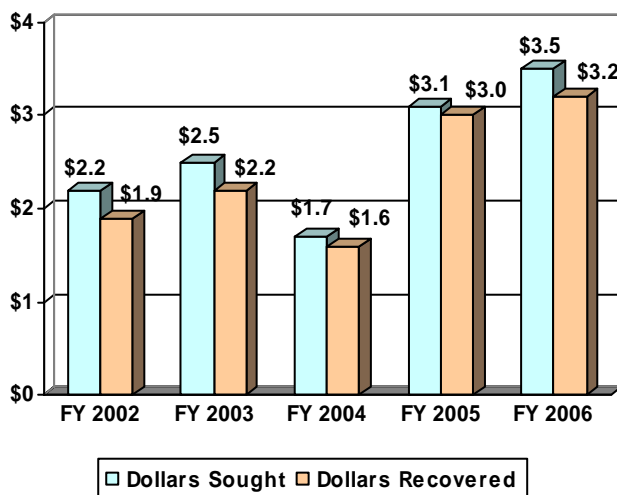
Granite Management had sued the United States alleging breach of contract and related claims.

- **Property Damage** A large housing developer accused the Government of negligently closing Hamilton Air Force Base and allowing landfill waste to damage property purchased after the base closure. A district court dismissed the \$100 million claim.

Defensive Cases Closed
(\$ in Billions)



Affirmative Cases Closed
(\$ in Billions)



Over the last five years, the Division has also made significant affirmative recoveries totaling nearly \$12 billion. Most were the result of procurement and health care fraud matters. The following cases are particularly noteworthy:

- **Health Care Fraud** In June 2006, two health care corporations settled allegations of health care fraud by agreeing to pay the United States in excess of \$1.18 billion. As incentive not to deny treatment to the sickest patients, the Medicare program allows for additional “outlier”

reimbursements to hospitals for unusually costly patient care. Tenet Healthcare Corporation, the nation's second largest hospital chain, was accused of fraudulently inflating costs of patient care to receive excessive outlier payments. Tenet agreed to pay \$919 million. In the midst of similar allegations, Saint Barnabas Corporation, New Jersey's largest health care system, agreed to a \$265 million settlement.

- **Procurement Fraud** Boeing Company agreed to pay the United States a record \$615 million to resolve allegations of Government procurement fraud. Boeing was accused of obtaining competitors' documents and inappropriately utilizing them to procure contracts from the Air Force and NASA. Of the total settlement, \$565 million was negotiated by the Civil Division.
- **Tobacco** In August 2006, the Division won a seven-year-old lawsuit against nine tobacco companies when a Federal judge found them guilty of civil fraud and racketeering for deceiving the public about the risks of smoking in order to maintain profits. The decision provides for injunctive relief, including disallowing future acts of fraud and ordering the companies to advertise "corrective statements" regarding the true health risks of nicotine and smoking. Furthermore, the judge barred these companies from using misleading terms such as "mild," "light," and "ultralight" in brand names.

"It is about an industry, and in particular these Defendants, that survives, and profits, from selling a highly addictive product which causes diseases that lead to a staggering number of deaths per year, an immeasurable amount of human suffering and economic loss, and a profound burden on our national health care system. Defendants have known many of these facts for at least 50 years or more. Despite that knowledge, they have consistently, repeatedly, and with enormous skill and sophistication, denied these facts to the public, to the Government, and to the public health community."

-Judge Kessler, August 17, 2006

Many of the non-monetary suits handled by the Civil Division are extremely contentious, often dealing with hotly-debated points of law and controversial Government policies and actions ranging from counterterrorism to pharmaceutical safety. Because such cases are high-profile and have far-reaching policy repercussions, Civil's success in them is imperative. The Civil Division's track record in enforcing civil statutes through affirmative programmatic litigation is no less impressive. The following cases are representative of those handled by Division attorneys on a daily basis.

- **Designation of Foreign Terrorists and Their Supporters** The U.S. has designated over 400 individuals, companies, and organizations as supporters of terrorists, terrorist groups and/or their support networks. As a result of these designations, the U.S. and its international partners have frozen more than \$145 million in assets that could have been funneled to terrorist activities.

In *Kahane Chai v. Department of State*, the D.C. Circuit upheld the redesignation of Kahane Chai/Kach by the Secretary of State as a Foreign Terrorist Organization under the Antiterrorism Act of 1996. The court rejected the petitioners' claim that the Secretary had insufficient record evidence to justify redesignation and it denied the petitioners' contention that due process rights had been violated. This group had previously been banned by the

Israeli Government because of its threats to Israeli and Arab leaders, and its glorification of an Israeli individual who had murdered Arab civilians.

- **Communications Decency Act** In *Nitke v. Gonzales*, the Supreme Court summarily affirmed a decision by a three-judge district court and rejected a First Amendment challenge to the Communications Decency Act's prohibition on the knowing transmission of obscenity or child pornography via the Internet. The plaintiff, an art photographer who specializes in sexually explicit material, challenged the Act on the grounds that the statute relies on community standards to determine obscenity. She also argued that the restriction on "obscene" communication was unconstitutionally vague. The Government successfully argued that the challenge was largely foreclosed by Supreme Court precedent and that the "vagueness" challenge was insubstantial.
- **Generic Drugs** In *Apotex Inc. v. Food and Drug Administration (FDA)*, the court upheld the FDA's patent-based approach to generic drug applications made prior to the Medicare Modernization Act. FDA awards a 180-day exclusivity period for each innovator company's patent that is challenged. Generic drug maker Apotex sought immediate approval to market a generic version of Prilosec – a drug for which FDA found another company was eligible for 180-day exclusivity. Apotex argued that FDA cannot award more than one period of exclusivity for each drug product, but the court agreed with FDA. Apotex's approach had support from a previous district court decision and could have forced FDA to change positions in numerous drug approvals.
- **Pharmaceutical Safety** The Division successfully shut down an illegal Internet pharmacy operation that smuggled millions of dollars in counterfeit pharmaceuticals into the country and illegally sold them to consumers online. Customers could order prescription drugs without having a prior prescription. The website falsely represented that a doctor would review the questionnaire and issue a lawful prescription before the drugs were shipped to the customers. The pharmacy operator was sentenced to serve a prison term of 51 months and forfeit substantial cash proceeds for his role in operating one of the largest Internet pharmacy schemes ever prosecuted.
- **Defense of the National Motto** In *Newdow v. Congress of the United States of America*, plaintiff sought to have the national motto, "In God We Trust," declared unconstitutional for violating the First Amendment. Plaintiff sought various forms of relief, including an injunction barring the Federal Government from printing coins and currency inscribed with the motto. In June 2006, the district court dismissed the case, citing precedent which establishes the national motto as constitutional, while also finding that the Legislative Branch defendants were immune from plaintiff's claims.
- **Toy Safety** In July 2006, the Ninth Circuit Court of Appeals affirmed the 21-month prison sentence for Matthew Lotze, who was convicted of fraud and false statement charges for reselling hazardous toys that he had been hired to destroy. Chevron Texaco Corporation had recalled the approximately 600,000 toy cars after the U.S. Consumer Product Safety Commission determined that they were banned hazardous substances because they contained small parts that could break off and pose a choking hazard to children under age three.

Strategies to Accomplish Outcomes

The Civil Division has achieved extraordinary success despite resource limitations. This is due in large part to numerous innovative strategies employed by the Division:

- Retain cases that require coordination at the seat of Government or subject matter expertise possessed by the Civil Division, as well as cases assigned to national and foreign courts.
- Improve information dissemination between the Civil Division and the U.S. Attorneys to promote and maintain uniform litigation positions.
- Recruit and retain a high-caliber legal staff with expertise that will best promote successful litigation. Structure support staff to take full advantage of new technologies that promote efficiency and productivity.
- Maximize resources by improving cash management and utilizing authority to obtain reimbursements. Develop new alternative funding sources.
- Invest in new technologies and litigation support services such as ALS to maximize productivity, meet court mandates, and prevail on behalf of the Government.

Program Increase

Item Name: Immigration Litigation
Budget Decision Unit: Legal Representation
Strategic Goal & Objective: Goal 2; Objective 2.5
Organizational Program: Office of Immigration Litigation

Component Ranking of Item: 1 of 2

Program Increase: Positions 163 Atty 124 FTE 82 Dollars \$14,124,000

Description of Item

Millions of illegal aliens are living in the United States – a situation that is problematic to the Administration, Congress, and the American public. The Civil Division’s Office of Immigration Litigation (OIL) serves a vital role in the enforcement of immigration law by defending petitions filed in circuit courts that seek to overturn removal decisions issued by the Department of Homeland Security and DOJ’s Executive Office for Immigration Review. Despite the volume of cases challenging orders of removal, a substantial portion of OIL’s litigation resources are also expended in defending class actions and other district court challenges to various aspects of immigration policy and enforcement, including cases involving counterterrorism and national security. Any attempt to secure the borders must include adequate resources for OIL. For FY 2008, the Civil Division requests 163 positions (124 attorneys), 82 FTE, and \$14,124,000 to uphold the laws governing immigration policy and enforcement.

Background

OIL defends the nation’s immigration laws at the highest level of judicial review. U.S. immigration enforcement functions begin with the Department of Homeland Security’s Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE). Both CBP and ICE enforce the United States’ immigration laws by, among other things, initiating legal proceedings to remove illegal aliens. In response, many aliens challenge ICE’s actions by seeking asylum or other relief from removal from DOJ’s Executive Office for Immigration Review’s Board of Immigration Appeals (BIA). If the BIA rules in favor of

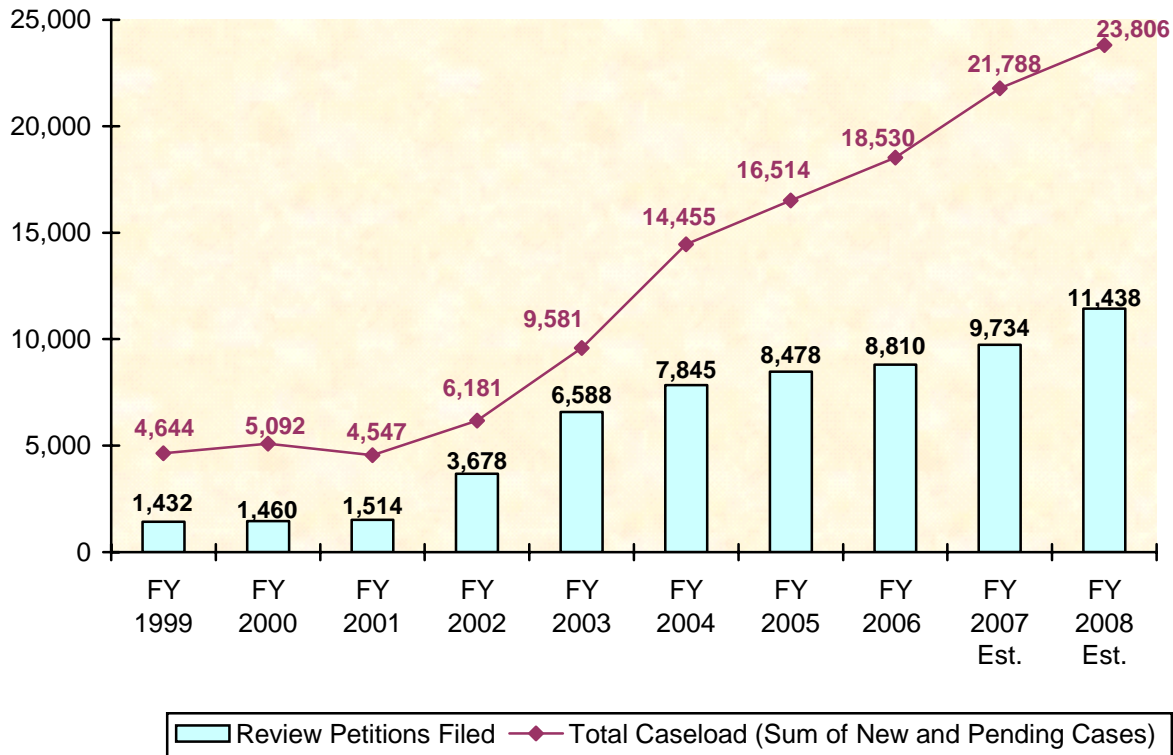


Source: LatinAmericanStudies.org

ICE, the alien can challenge the BIA’s decision by filing a petition for review in Federal court.

OIL's caseload is directly tied to DHS's immigration enforcement efforts and to the immigration adjudication rates of the BIA in the Department's Executive Office for Immigration Review. Thus, as DHS continues to increase its immigration enforcement efforts and the BIA continues to adjudicate large numbers of removal cases each year, OIL's caseload continues to grow. The vast majority of OIL's cases are review petitions challenging removal decisions issued by the BIA. In FY 2002 and FY 2003, thousands of review petitions flooded the Federal courts of appeal as the BIA aggressively reduced a substantial backlog of cases. As seen in the graph below, between FY 2002 and FY 2006, OIL experienced a sharp rise in the number of new petitions filed. Although the BIA backlog has been cleared, heightened enforcement activity by the DHS has caused review petitions to continue to inundate OIL's docket. This growth in caseload is also fuelled by a sharp rise in the percentage of removal decisions that aliens appeal to the Federal circuit courts.

OIL Unable to Keep Pace with Influx of Review Petitions



The adverse effects of OIL's caseload increasing faster than its resources are being felt throughout the entire system of immigration enforcement. Federal judges have issued harsh criticisms about the inundation of circuit court filings. The Department as a whole has also been burdened by the thousands of immigration briefs that must be "outsourced" to attorneys in other DOJ components or reassigned to U.S. Attorneys' Offices in order to keep up with the influx of review petitions. Most importantly, there may be severe national security consequences if OIL is unable to meet its responsibility to enforce the removal of illegal aliens.

Justification

OIL will require a FY 2008 program increase of 163 positions (124 attorneys), 82 FTE, and \$14,124,000. The purpose of this increase is to address the untenable burden placed on OIL attorneys as the caseload continues to rise.

This sharp rise in caseload has dramatically increased the number of cases that must be assigned to each OIL attorney – from a reasonable level of approximately 72 cases in FY 2002 to a peak of 158 in FY 2005. Despite the funding increase approved by Congress in FY 2006, the resulting drop in the per-attorney caseload was almost imperceptible. Over the next two years, over 20,000 new petitions for review are expected to be filed.

In order to provide the most effective and vigorous defense of immigration cases that meets both the standards of the Department and the expectations of the courts, the Civil Division seeks to reduce the number of cases per attorney to 82 in FY 2008, and eliminate the outsourcing of cases to other components and U.S. Attorneys' Offices. Ending outsourcing and reducing each OIL attorney's caseload will restore OIL's ability to adequately prepare for each case, ensuring immigration enforcement efforts are fully protected from unmeritorious challenges.

	Cases Per Attorney
FY 2002	72
FY 2003	110
FY 2004	137
FY 2005	158
FY 2006	143
FY 2007 Est.*	117
FY 2008 Est. (+124 Attorneys)	82

* Includes additional attorneys hired with funds from the FY 2006 Supplemental Appropriation.

Congress made it clear that improving immigration enforcement is a priority by passing the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery in June 2006, which appropriated \$9,000,000 for OIL through September 30, 2007. In September 2006, Congress passed the FY 2007 Homeland Security Appropriations Act, which provided an unprecedented level of funding for DHS's Secure Border Initiative. The new funding will allow DHS to add 1,500 border patrol agents and 6,700 detention beds, which is certain to translate into more cases for OIL.⁴ If this request is not approved, the attorneys and support staff hired under the OIL supplemental will be released when the funding expires in less than one year. OIL will be unable to keep pace with increased enforcement efforts of DHS and other Government entities, thereby weakening the entire immigration enforcement system and necessitating additional resources in FY 2008.

⁴ "President Signs FY 2007 Homeland Security Appropriations." DHS Press Release. October 4, 2006. http://www.dhs.gov/xnews/releases/pr_1159998463126.shtml

Impact on Performance

The impact of increased caseload on performance has been threefold:

1) Inadequate staffing has had a negative impact on OIL's performance in court.

OIL enforces and defends the Nation's immigration laws and policies at the highest levels of judicial review, directly supporting the Nation's desire to vigorously represent the United States in all matters for which the Department has jurisdiction. Inadequate staffing has a negative effect on the quality of advocacy, and some judges have complained that the high quality of Government representation has declined as the flood of immigration cases has increased. Moreover, judges have also voiced the opinion that the Government should use greater discretion in deciding which cases to defend in court, suggesting that adverse decisions could be avoided if the Government were to "screen" cases more carefully. Both criticisms are directly related to inadequate staffing. Inadequate staffing will inevitably cause overburdened attorneys to lose cases in appellate courts that should have been won and may lead to the Government's inability to provide a necessary response in all cases.

2) Outsourcing has undercut the productivity of the Department and its litigating divisions.

Outsourcing has forced DOJ components to draw resources away from their primary law enforcement missions. To provide some relief to OIL attorneys, thousands of immigration briefs have been "outsourced" to attorneys in other DOJ components and reassigned to U.S. Attorneys' Offices nationwide. Outsourcing entails the assignment of briefs to numerous Department components that are, by and large, unschooled in immigration law. OIL retains overall responsibility for each case regardless of whether the brief has been reassigned to one of the other litigating divisions – often including the responsibility to represent the Government should the case proceed to oral argument. Distributing cases in this manner is inefficient because it often takes attorneys in other components disproportionately more time to brief and argue cases than it takes OIL attorneys, who are more experienced and knowledgeable in this complex area of law. Moreover, because of the highly specialized nature of immigration law, the practice may prove to be significantly less effective in defending challenges to removal decisions than a centralized approach. Approval of this request will improve productivity and effectiveness both in OIL and numerous other DOJ litigating components.

3) Inadequate Resources for OIL adversely affects national security.

Immigration enforcement has risen to the forefront of U.S. law enforcement concerns. It is essential for the protection of the borders and the security of the nation. Without adequate resources, OIL will be unable to fulfill its role in the larger system of immigration enforcement and border protection – top priorities of the Department, the Administration, and the American public.

Approval of this request will (1) ensure OIL's ability to provide the best defense of immigration cases in court; (2) eliminate the need to outsource immigration briefs throughout the Department; and (3) ensure that the United States benefits from a unified Federal immigration enforcement strategy.

Funding – Office of Immigration Litigation

Base Funding

FY 2006 Enacted				FY 2007 Estimate				FY 2008 President's Budget Current Services			
Pos	Atty	FTE	(\$000)	Pos	Atty	FTE	(\$000)	Pos	Atty	FTE	(\$000)
204	155	183	\$31,108	318	241	269	\$44,121	315	239	323	\$56,796

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position	Number of Positions Requested	FY 2008 Request (\$000)
Attorney	\$98,493	124	\$12,213
Paralegal	\$52,267	8	417
Clerical	\$48,245	31	1,494
Total Personnel		163	14,124

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2008 Request (\$000)

Total Non-Personnel

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	315	239	323	\$54,186	\$2,610	\$56,796
Increases	163	124	82	14,124	...	14,124
Grand Total	478	363	405	68,310	2,610	70,920

Program Increase

Item Name: Guantanamo Bay Detainee Litigation
Budget Decision Unit: Legal Representation
Strategic Goal & Objective: Goal 1 and Goal 2; Objective 2.5
Organizational Program: Appellate Staff & Federal Programs Branch

Component Ranking of Item: 2 of 2

Program Increase: Positions 29 Atty 23 FTE 15 Dollars \$3,263,000

Description of Item

Protecting the American people from the threat of terrorism is one of the greatest challenges facing the Government today. Since September 11th, the Government has implemented numerous counterterrorism strategies that have disrupted terrorist attacks. Many of these policies, however, have drawn legal challenges in court, with cases often rising to the highest levels of judicial review. To ensure that such challenges do not strip the United States of critical counterterrorism tools and hinder counterterrorism efforts, a strong legal defense is essential.

Among the most complex and contentious counterterrorism suits currently before the courts are the Guantanamo Bay Detainee (GTMO) cases handled by the Civil Division. These suits have been filed on behalf of hundreds of alien enemy combatants held at the Guantanamo Bay Naval Base in Cuba. Most of these cases were placed on hold pending a decision in the leading case of *Al Odah v. United States* that will interpret the Detainee Treatment Act of 2005 (DTA) and the Military Commissions Act of 2006 (MCA). Under the MCA, the Division expects to defend approximately 400 GTMO cases in FY 2008 and beyond. In order to handle these cases, the Civil Division seeks Congressional approval of 29 positions (23 attorneys), 15 FTE, and \$3,263,000 for FY 2008.

Justification

The United States is currently detaining approximately 400 alien enemy combatants at its Guantanamo Bay Naval Base. The majority of these individuals were apprehended by the United States and its allies during military actions in Afghanistan. Since arriving at Guantanamo, nearly all of the detainees have been determined to be enemy combatants through multiple levels of military review, including a formal hearing before a military Combatant Status Review Tribunal (CSRT). The detainees were determined by the CSRTs to be members or associates of al Qaeda or the Taliban. Also, 14 high-level terrorist leaders or operatives were recently transferred to Guantanamo and are awaiting CSRTs. Each year, the U.S. conducts further reviews to assess the current threat posed by each detainee and to determine whether each should remain in custody, be transferred to another country, or be released.⁵

⁵ This annual review does not apply to enemy combatants designated for trial by military commission.

The Government has argued that because they are aliens located outside the U.S., the detainees are not entitled to the protections of the U.S. Constitution. The President has directed that all detainees be treated humanely, and, under the Supreme Court's decision in *Hamdan v. Rumsfeld*, detainees are protected under Common Article 3 of the Geneva Conventions. Also, the detainees are afforded significant procedural protections with respect to the determination of their enemy combatant status through the CSRTs. Despite these procedural protections, over the last several years more than 200 habeas actions have been filed in the District Court for the District of Columbia. Some of these actions concern two or more detainees.

In December 2005, Congress enacted the Detainee Treatment Act, which grants the District of Columbia Circuit Court of Appeals (D.C. Circuit) exclusive jurisdiction over challenges to the validity of any CSRT final determination. The Court may review whether the CSRT determination was consistent with the standards and procedures specified for CSRT proceedings, and whether such standards and procedures are consistent with the laws of the United States and the Constitution. To date, nine detainees have filed challenges to their detention in the D.C. Circuit under the DTA.

Congress enacted the Military Commissions Act of 2006 in October 2006. The Act states that, with the exception of D.C. Circuit review provided under the DTA, "no court, justice, or judge shall have jurisdiction to hear or consider" any habeas claim or claim relating to any aspect of the detention, transfer, trial, or conditions of confinement filed by an alien detainee determined to have been properly detained as an enemy combatant or who is awaiting such a determination. The Act applies "to all cases, without exception, pending on or after the date of enactment."⁶

- Based on this Act, the Government has asked that all habeas actions currently pending in the District Court for the District of Columbia be dismissed.
- Detainees claim that the MCA effects an unconstitutional suspension of habeas corpus.
- One district court judge dismissed a detainee's habeas petition citing the MCA's removal of Federal court jurisdiction over such matters (*Hamdan v. Rumsfeld*). Most likely, this decision will be appealed.
- Despite the new law, counsel for detainees continue to file habeas cases in district court.

A decision is currently pending in the D.C. Circuit in *Al Odah v. United States*. This matter concerns conflicting Federal district court decisions about whether or not the detainees have constitutional rights and whether the CSRTs provide them with any required due process. This decision is expected to determine the scope of both the Detainee Treatment Act and the Military Commissions Act. The non-prevailing party will likely seek Supreme Court review.

If this litigation is found in the Government's favor, the approximately 400 detainees may file challenges to the CSRTs in the D.C. Circuit. If the litigation is found against the Government, detainees may be able to maintain cases both in the D.C. Circuit and in the district court. In either case, the Government will be faced with defending at least 400 cases in FY 2008 and

⁶ Military Commissions Act of 2006, Pub. L. no. 109-366, 120 Stat. 2600, Sec. 7 (2006).

beyond, perhaps in multiple courts. GTMO suits are extremely high-profile and have attracted attorneys and legal scholars from around the nation to represent the detainees, ensuring that Civil Division attorneys will face a constant barrage of innovative legal arguments.

In addition, four other cases have been filed in the District Court for the District of Columbia on behalf of more than 30 detainees allegedly held by the United States at the U.S. military base in Bagram, Afghanistan. While these cases will be impacted by the outcome of *Al Odah v. United States*, the Government will nonetheless have to litigate the cases, and potentially other similar cases filed on behalf of Bagram detainees.

Approval of the Division's request of 29 positions (23 attorneys), 15 FTE, and \$3,263,000, will ensure that the Division is prepared to handle the onslaught of cases that represent a vital tool in rooting out and deterring terrorist acts. It will enable the Division to assemble a team of 23 attorneys headed by seven on-board, seasoned Civil Division attorneys who, by FY 2008, will have had substantial experience with the GTMO litigation. The size of this team is consistent with the size of the litigation teams established in the past to handle the Division's most massive litigation.

Included in this request is \$700,000 for Automated Litigation Support (ALS). Contractor-provided ALS services have proved to be indispensable when the Division's limited staff of attorneys has been confronted with massive discovery and trial support requirements. This program has a proven track record – over 20 years – for effectively supporting discovery, trials, appeals, and management of highly complex and expansive litigation. Without it, the Government's defense would be impaired significantly.

Impact on Performance

At the heart of the Guantanamo Bay detainee litigation are some of the most critical policy, security, and constitutional issues debated today. The Civil Division is responsible for defending current statutes in these highly contentious cases before the Federal courts. Accordingly, providing for a successful defense in the GTMO litigation directly addresses some of society's most prevalent concerns about protecting homes, families, communities, and the United States by preventing future acts of terrorism.⁷

The detainees held at Guantanamo Bay were active members or supporters of al Qaeda or the Taliban at the time of their capture, and several were highly placed deputies and associates of top al Qaeda leadership. For instance, Khalid Shaykh Muhammad was the mastermind behind the September 11, 2001 attacks, while another detainee was the intended "20th hijacker" on that day. Salim Ahmed Hamdan was Osama bin Laden's personal bodyguard and driver. Other notables include explosives experts who designed cell phone detonators and prototype shoe bombs to destroy airplanes and magnetic mines to sink ships. Other detainees were involved in political assassinations, attacks on journalists and aid workers, and terrorist financing operations. It is essential that the Government put forth the most vigorous defense possible to ensure that these individuals are not free to continue to support terrorist networks.

⁷ With respect to the Department's Strategic Plan, funding of this litigation supports the Department's Strategic Goal 2, Objective 2.5, to "vigorously represent the United States in all matters for which the Department has jurisdiction" as well as Goal 1, to "prevent terrorism and promote the nation's security."

By enacting the MCA, Congress provided detainees with a venue for legal review of the CSRT determinations. In upholding the provisions of the MCA, the Division expects to face a massive influx of Guantanamo litigation in the coming years. In FY 2008, the Division estimates that it may handle approximately 400 GTMO cases in the D.C. Circuit. Because of the resource-intensive nature of these cases, such a dramatic rise in workload cannot be handled within the Division's base resources. To ensure that the U.S. has the means to prevail in these top-priority cases and concurrently combat terrorist threats, adequate resources must be made available to the Civil Division.

Funding – Guantanamo Bay Detainee Litigation

Base Funding

FY 2006 Enacted				FY 2007 Estimate				FY 2008 President's Budget Current Services			
Pos	Atty	FTE	(\$000)	Pos	Atty	FTE	(\$000)	Pos	Atty	FTE	(\$000)
7	7	7	\$1,221	7	7	7	\$2,250	7	7	7	\$2,278

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position	Number of Positions Requested	FY 2008 Request (\$000)
Attorney	\$98,493	23	\$2,265
Paralegal	\$52,267	2	105
Clerical	\$48,245	4	193
Total Personnel		29	2,563

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2008 Request (\$000)
Automated Litigation Support	\$700
Total Non-Personnel	700

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services	7	7	7	\$1,278	\$1,000	\$2,278
Increases	29	23	15	2,563	700	3,263
Grand Total	36	30	22	3,841	1,700	5,541

Results of the Program Assessment Rating Tool (PART) Reviews

Civil Division During FY 2005, the Civil Division was assessed through OMB's Program Assessment Rating Tool (PART) along with five other litigating components (ATR, CRM, CRT, ENRD, and TAX), collectively named the General Legal Activities (GLA) Program. At the end of the assessment, the GLA program received a rating of "Effective."⁸ Other findings showed that:

- The Program effectively achieves its goal of resolving cases in favor of the Government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of Federal laws and programs; and prevent the Government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the U.S. Attorneys' Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

Additionally, to exhibit continual improvement of its practices, the GLA components have taken steps toward completing the follow-up actions recommended by OMB:

- Implementing a plan to conduct an independent evaluation.

In FY 2006, the Department's Justice Management Division (JMD) offered a proposal to the Management and Planning Staff (MPS) and the Office of the Inspector General (OIG) to perform an independent evaluation of the GLA components (GLAs). The proposal recommended that MPS perform initial background interviews in a manner consistent with OIG yellow book regulations. MPS would later hand off their preliminary research to OIG to review and offer their findings and recommendations. However, OIG was unable to include the GLA evaluation in their FY 2007 docket, and as a result, JMD and the GLAs are currently exploring other options to meet the PART follow-up action of "Performing an independent evaluation of the GLAs."

- Establishing leadership training and mentoring program to continue improving the quality of program management.

Civil's Attorney Training Committee completed three attorney trainings for new Honors Program and lateral attorney hires in January, February, and March. The trainings focused on electronic discovery and filing, alternative dispute resolution, and expert witnesses. All of the new Honors Program attorneys have completed the Civil advocacy course at the National Advocacy Center in South Carolina.

⁸ Programs undergoing the PART receive one of five ratings: Effective, Moderately Effective, Adequate, Ineffective, or Results Not Demonstrated.

- Working with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

The Civil Division serves as the chief GLA representative on three major CIO Department-wide initiatives: the consolidated case management system, the debt collection system, and the unified financial management system. Civil Division representatives are active participants in these time-intensive projects to develop efficient management tools. Significant progress continues to be made on the consolidated case management system (LCMS) and the debt collection system (CDCS).

Vaccine Injury Compensation Program During FY 2005, the Departments of Justice and Health and Human Services were evaluated through OMB's PART on their respective roles in administering the Vaccine Injury Compensation Program. The Program received a rating of "Adequate." This rating describes a program that needs to set more ambitious goals, achieve better results, improve accountability or strengthen its management practices.

OMB's findings include the following:

- The Department of Justice and the Department of Health and Human Services effectively collaborate to administer the program jointly. The two agencies have a good working relationship and coordinate well with one another and with the judges who adjudicate the claims.
- The Program has made progress in achieving its annual performance goals, but its performance on long-term goals has been inconsistent. In particular, the Program has experienced mixed results in ensuring that all eligible claimants are compensated and reducing the amount of time needed to process a claim.
- The Program's design contains flaws that hinder its ability to satisfy both claimants and vaccine manufacturers. Some of the design-related problems include loopholes allowing circumvention of the Program, extensive delays in the processing of claims, and a large balance in the Program's Trust Fund that remains unspent.

DOJ and HHS will take the following actions to improve the performance of the Program:

- Seek an independent evaluation to assess the Program's effectiveness, impact, and design.

On September 30, 2005, a contract was awarded to assess the feasibility and parameters of such an evaluation. The feasibility study is ongoing.

- Improve the way the Program projects its financial liabilities in future years.

In January 2006, HHS conducted an analysis of various options for this methodology and decided that the current methodology of estimating awards by increasing them by three percent over the previous year is the most appropriate methodology to use considering the multitude of unknown variables.

- Reduce claims processing time by increasing the use of electronic file sharing between agencies, expert witnesses, and other parties.

Efforts to convert paper to electronic files are ongoing. Certain interagency communications previously transmitted via paper hard copy are now electronic. For example, as of March 2006, medical records have been shared with HHS as electronic files on a weekly basis. Using electronic images has standardized our distribution of supplemental records, resulting in greater efficiency of case processing.

Radiation Exposure Compensation Program During FY 2006, the Radiation Exposure Compensation Program was evaluated with OMB's PART assessment. The Program received a rating of "Adequate." This rating describes a program that needs to set more ambitious goals, achieve better results, improve accountability or strengthen its management practices.

OMB's findings include the following:

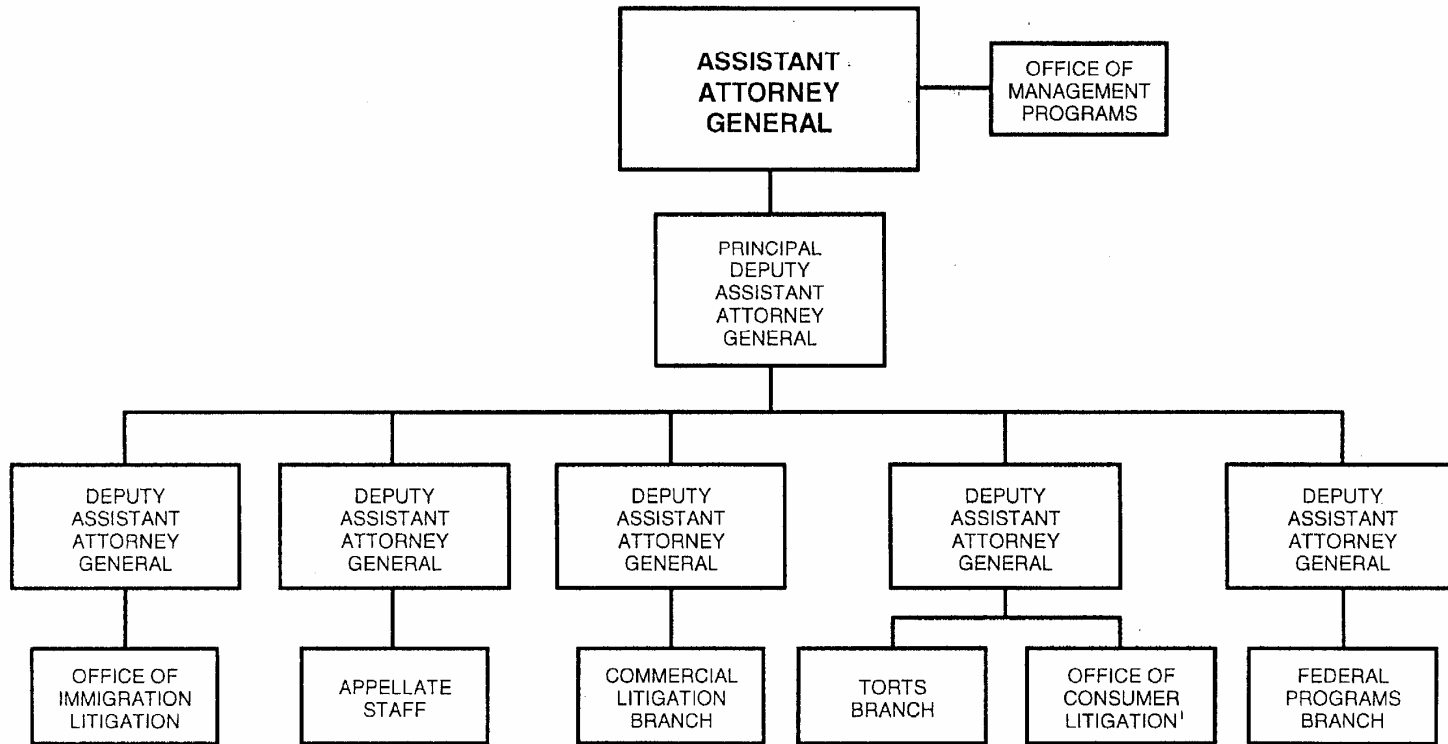
- The Program has developed ambitious annual and long-term goals focusing on outcomes that meaningfully reflect the purpose of the Program. However, the program must ensure that partners are committed to achieving annual and long term goals.
- The Program's statutory scheme contains flaws with respect to some of its claimant categories. Although the statute is founded on the scientifically-based association between exposure and illness for occupationally exposed uranium workers, the same is not true for the other claimant categories.


DOJ is taking the following actions to improve the performance of the Program:

- Ensure Program partners are expressly committed to achieving the stated annual and long-term performance goals of the Program.
- Develop a plan to tie resources to specific performance measures.
- Monitor the activities of the National Academy of Sciences and like organizations that are studying the Act's eligibility criteria.

A: Organizational Chart

CIVIL DIVISION



Approved by:  Date: August 5, 2004
JOHN ASHCROFT
Attorney General

B: Summary of Requirements

Summary of Requirements
Civil Division
Salaries and Expenses
(Dollars in Thousands)

	FY 2008 Pres. Budget		
	Perm. Pos.	FTE	Amount
2006 Enacted (with Rescissions, direct only)	1,100	1,096	\$192,864
2006 Supplementals	....	....	9,625
Total 2006 Appropriation Enacted (with Rescissions and Supplementals)	1,100	1,096	202,489
2007 President's Request (information only)	1,208	1,176	213,286
2007 Continuing Resolution Level (as reflected in the 2008 President's Budget; Information Only)	1,100	1,096	192,864
2007 Estimate (direct only)*	1,208	1,176	204,612
Technical Adjustments	....	....	4,679
Adjustments to Base			
Increases:			
2008 pay raise (3.0%)	....	....	2,888
2007 pay raise annualization (2.2%)	....	....	1,058
Annualization of 2007 positions (FTE)	....	57	....
Annualization of 2007 positions (dollars)	....	....	8,102
Annualization of 2006 positions (dollars)	....	....	272
Changes in Compensable Days	....	....	983
Retirement	....	....	238
Health Insurance	....	....	244
Employee Compensation Fund	....	....	3
General Services Administration (GSA) Rent	....	....	1,771
Moves (Lease Expirations)	....	....	2,644
DHS Security Charges	....	....	9
Security Investigations	....	....	62
Overseas Capital Security Cost Sharing	....	....	71
Subtotal Increases	....	57	18,345
Decreases:			
Unfunded Position and FTE Reduction	(32)	(32)	....
Total Adjustments to Base	(32)	25	18,345
Total Adjustments to Base and Technical Adjustments	(32)	25	23,024
2008 Current Services	1,176	1,201	227,636
Program Changes			
Increases			
Guantanamo Bay Detainee Litigation	29	15	3,263
Immigration Litigation	163	82	14,124
Subtotal Increases	192	97	17,387
Offsets	....	....	....
Total Program Changes	192	97	17,387
2008 Total Request	1,368	1,298	245,023
2007 - 2008 Total Change	160	122	31,737

* The Department of Justice 2008 budget request was built on a starting point that recognized progress in enacting the FY 2007 appropriation. The starting point used (referred to throughout this document as the "Estimate") is the average of the Senate Committee and House passed marks, less one percent, unless noted otherwise.

Summary of Requirements
Civil Division
Salaries and Expenses
(Dollars in Thousands)

Estimates by budget activity	2006 Appropriation Enacted w/Rescissions and Supplementals			2007 Estimate			2008 Adjustments to Base and Technical Adjustments			2008 Current Services			2008 Increases			2008 Offsets			2008 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,100	1,096	\$202,489	1,208	1,176	\$204,612	(32)	25	\$23,024	1,176	1,201	\$227,636	192	97	\$17,387	....	....	....	1,368	1,298	\$245,023
Total	1,100	1,096	202,489	1,208	1,176	204,612	(32)	25	23,024	1,176	1,201	227,636	192	97	17,387	....	....	....	1,368	1,298	245,023
Reimbursable FTE		41			41			....		41			....				....			41	
Total FTE		1,137			1,217			25		1,242			97				....			1,339	
Other FTE:																					
LEAP		....			....			....		....			....				....			....
Overtime		8			8			....		8			....				....			8	
Total Comp. FTE		1,145			1,225			25		1,250			97				....			1,347	

C: Program Increases/Offsets By Decision Unit

FY 2008 Program Increases/Offsets By Decision Unit

Civil Division

(Dollars in Thousands)

Program Increases	Legal Representation				Total Increases
	Pos.	Agt./Atty.	FTE	Amount	
Guantanamo Bay Detainee Litigation	29	23	15	\$3,263	\$3,263
Immigration Litigation	163	124	82	14,124	14,124
Total Program Increases	192	147	97	17,387	17,387
Program Offsets	Legal Representation				Total Offsets
	Pos.	Agt./Atty.	FTE	Amount	
Total Offsets	....	....	....	....	....

D: Resources by DOJ Strategic Goal and Strategic Objective

Resources by Department of Justice Strategic Goal/Objective
Civil Division
(Dollars in Thousands)

Strategic Goal and Strategic Objective	2006 Enacted w/Rescissions and Supplementals		2007 Estimate		2008 Current Services		2008				2008 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Goal 1: Prevent Terrorism and Promote the Nation's Security												
Subtotal, Goal 1	-	-	-	-	-	-	-	-	-	-	-	-
Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.	1,137	\$202,489	1,217	\$204,612	1,242	\$227,636	97	\$17,387	-	-	1,339	\$245,023
Subtotal, Goal 2	1,137	202,489	1,217	204,612	1,242	227,636	97	17,387	-	-	1,339	245,023
Goal 3: Assist State, Local, and Tribal Efforts to Prevent or Reduce Crime and Violence												
Subtotal, Goal 3	-	-	-	-	-	-	-	-	-	-	-	-
Goal 4: Ensure the Fair and Efficient Operation of the Federal Justice System												
Subtotal, Goal 4	-	-	-	-	-	-	-	-	-	-	-	-
GRAND TOTAL	1,137	202,489	1,217	204,612	1,242	227,636	97	17,387	-	-	1,339	245,023

E. Justification for Base Adjustments

Justification for Base Adjustments Civil Division

Increases

2008 pay raise. This request provides for a proposed 3.0 percent pay raise to be effective in January of 2008. (This percentage is likely to change as the budget formulation process progresses.) This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$2,888,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$2,473,000 for pay and \$415,000 for benefits).

Annualization of 2007 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2007 pay increase of 2.2 percent. The amount requested, \$1,058,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$793,000 for pay and \$265,000 for benefits).

Annualization of additional positions approved in 2006 and 2007. This provides for the annualization of 58 additional positions appropriated in 2006 and 114 additional positions requested in the 2007 President's budget. Annualization of new positions extends to 3 years to provide for entry level funding in the first year with a 2-year progression to the journeyman level. For 2006 increases, this request includes an increase of \$272,000 for full-year payroll costs associated with these additional positions. For 2007, this request includes a decrease of \$1,804,000 for one-time items associated with the increased positions, and an increase of \$9,906,000 for full-year costs associated with these additional positions, for a net increase of \$8,102,000.

	2006 Increases (\$000)	Annualization Required for 2008 (\$000)	2007 Increases (\$000)	Annualization Required for 2008 (\$000)
Annual salary rate of 172 new positions	\$5,019	\$210	\$10,080	\$5,858
Less lapse	....		(5,040)	....
Net Compensation	5,019	210	5,040	5,858
Other Personnel Compensation			13	116
Associated employee benefits	1,483	62	1,521	1,818
Travel			275	288
Transportation of Things			38	41
GSA Rent			....	1,064
Communications/Utilities			107	110
Printing/Reproduction			92	98
Other Contractual Services:				
25.2 Other Services			1,321	(611)
25.3 Purchase of Goods and Services from Government Accts.			599	(320)
Supplies and Materials			55	59
Equipment			505	(419)
TOTAL COSTS SUBJECT TO ANNUALIZATION	6,502	272	9,566	8,102

Changes in Compensable Days. The increased costs of two more compensable days in FY 2008 compared to FY 2007 is calculated by dividing the FY 2007 estimated personnel compensation \$105,905,000 and applicable benefits \$21,876,000 by 260 compensable days. The cost increase of two compensable days is \$983,000.

Retirement. Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on OPM government-wide estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 3 percent per year. The requested increase of \$238,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance. Effective January 2006, this component's contribution to Federal employees' health insurance premiums increased by 4.6 percent. Applied against the 2007 estimate of \$5,295,000, the additional amount required is \$244,000.

Employees Compensation Fund. The \$3,000 increase reflects payments to the Department of Labor for injury benefits paid on our behalf in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

General Services Administration (GSA) Rent. GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$1,771,000 is required to meet our commitment to GSA.

Moves (Lease Expirations). GSA requires all agencies to pay relocation costs associated with lease expirations. This request provides for the costs associated with new office relocations caused by the expiration of leases in FY 2008. Funding of \$2,644,000 is required for this account.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$9,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.

Security Investigations. The \$62,000 increase reflects payments to the Office of Personnel Management for security reinvestigations of employees requiring security clearances.

Overseas Capital Security Cost Sharing. The Department of State (DOS) has embarked on a 14-year, \$17.5 billion embassy construction program financed through a Capital Security Cost Sharing (CSCS) Program in which each agency contributes funding based on the number of positions that are authorized for overseas personnel. DOS and the Office of Management and Budget (OMB) established per capita charges, by position type (CAA, non-CAA, etc.), which reflect the costs of construction of the various types of space. The per capita charge is fixed and is being phased in over a five-year period, from FY 2005 (20%) to FY 2009 (100%). Funding of \$71,000 is required for FY 2008.

Decreases

Unfunded Position and FTE Reduction. Over the past several years, the Department has been unable to fund positions and FTE at authorized levels because of enacted rescissions, pay raise absorptions, and other mandatory increases. The Department is eliminating these unfunded positions and FTE in FY 2008, including 32 positions and 32 FTE for the Civil Division.

Note: ATBs must be recalculated following final FY 2007 action.

F: Crosswalk of 2006 Availability

Crosswalk of 2006 Availability
Civil Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2006 Enacted Without Rescissions			Rescissions			Supplementals			Reprogrammings / Transfers			Unobligated Balances Carried Forward/ Recoveries			2006 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,118	1,114	\$195,359	(18)	(18)	(\$2,495)	....	....	\$9,625	....	....	\$14,975	....	....	\$388	1,100	1,096	\$217,852
TOTAL	1,118	1,114	195,359	(18)	(18)	(2,495)	....	....	9,625	....	....	14,975	....	....	388	1,100	1,096	217,852
Reimbursable FTE		41			....			....			....			....			41	
Total FTE		1,155			(18)			....			....			....			1,137	
Other FTE																		
LEAP		....															....
Overtime		8			....												8	
Total Compensable FTE		1,163			(18)												1,145	

Enacted Rescissions. Funds rescinded as required by P.L. 109-108 and P.L. 109-148.

Supplementals. Funds received in P.L. 109-234.

Reprogrammings/Transfers. In FY 2005, Congress approved the transfer of 6 positions and related funding from the Civil Division to the U.S. Attorneys' Offices. The second year annualization for this transfer is \$665,000. In addition, the Civil Division was provided \$15,640,000 from the no-year Automated Litigation Support account, resulting in a net change of \$14,975,000.

G: Crosswalk of 2007 Availability

Crosswalk of 2007 Availability

Civil Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	2007 Estimate			Rescissions			Reprogrammings / Transfers			Unobligated Balances Carried Forward/ Recoveries			2007 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,208	1,176	\$204,612	....	....	....	....	....	....	....	....	\$5,703	1,208	1,176	\$210,315
TOTAL	1,208	1,176	204,612	....	....	....	....	....	....	....	....	5,703	1,208	1,176	210,315
Reimbursable FTE		41			....			....			....			41	
Total FTE		1,217			....			....			....			1,217	
Other FTE															
LEAP		....												....
Overtime		8			....			....			....			8	
Total Compensable FTE		1,225			....			....			....			1,225	

Unobligated Balances. Funds were carried over from FY 2006 from the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, and the GLA no-year account. The Civil Division brought forward \$5,295,000 from funds provided in 2006 for Border Security and \$408,000 for the Violent Crime Reduction Program and Private Counsel.

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Civil Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2006 Actual			2007 Planned			2008 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Office of Debt Collection (Request)	\$9,647	....	....	\$10,142	....	....	\$10,142	....	....	....
Department of the Navy	1,178	....	....	500	....	....	500	....	....	....
Department of Treasury	18,516	....	....	17,460	....	....	12,000	....	....	(\$5,460)
Department of the Air Force	3,487	....	....	2,700	....	....	2,700	....	....	....
Department of Energy	16,915	....	....	2,837	....	....	....	....	....	(2,837)
Department of Treasury, Vaccine Injury Compensation	27	6,166	....	41	6,333	....	41	6,833	....	....	500
Department of Agriculture	2,429	....	....	2,400	....	....	2,400	....	....	....
Department of Interior	6,866	....	....	6,250	....	....	6,250	....	....	....
Antitrust Division	177	....	....	170	....	....	194	....	....	24
Health Care Fraud and Abuse Account	15,309	....	....	15,459	....	....	15,459	....	....	....
US Trustees	25	....	....	25	....	....	25	....	....	....
Federal Bureau of Investigation	2,427	....	....	500	....	....	500	....	....	....
Department of Justice	6	....	....	....	....	....	....	....	....	....
Department of Labor	178	....	....	181	....	....	183	....	....	2
Department of Homeland Security	52	....	....	....	....	....	....	....	....	....
United States Marshals Service	150	....	....	150	....	....	150	....	....	....
Department of the Army	4	....	....	....	....	....	....	....	....	....
Office of Legal Policy	94	....	....	....	....	....	....	....	....	....
NASA Space Center	2,111	....	....	....	....	....	....	....	....	....
Department of Health and Human Services	100	....	....	....	....	....	....	....	....	....
Department of State	1	....	....	....	....	....	....	....	....	....
Office of Attorney Personnel	44	....	....	....	....	....	....	....	....	....
DOJ - Border Security	500	....	....	....	....	....	....	....	....	....
Asset Forfeiture Staff	100	....	....	....	....	....	....	....	....	....
National Institute of Health	5	....	....	....	....	....	....	....	....	....
Budgetary Resources:	27	\$86,487	....	41	\$65,107	....	41	\$57,336	....	....	(\$7,771)

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
Civil Division
Salaries and Expenses

Category	2006 Enacted w/ Rescissions and Supps.		2007 Estimate		2008 Request							
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	Adj. to Base Increases	Adj. to Base Decreases	Total ATB	Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Attorneys (905)	754	....	834	....	....	(22)	(22)	147	....	147	959	....
Paralegals / Other Law (900-998)	65	....	72	....	....	....	....	10	....	10	82	....
Clerical and Office Services (300-399)	281	....	302	....	....	(10)	(10)	35	....	35	327	....
Total	1,100	....	1,208	....	....	(32)	(32)	192	....	192	1,368	....
Headquarters (Washington, D.C.)	1,060	....	1,168	....	....	(32)	(32)	192	....	192	1,328	....
U.S. Field	39	....	39	....	....	....	....	....	....	....	39	....
Foreign Field	1	....	1	....	....	....	....	....	....	....	1	....
Total	1,100	....	1,208	....	....	(32)	(32)	192	....	192	1,368	....

J: Financial Analysis of Program Changes

Financial Analysis of Program Changes

Civil Division
Salaries and Expenses
(Dollars in Thousands)

Grades:	Guantanamo Bay Detainee Litigation		Immigration Litigation		Program Changes	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
GS-14	23	\$2,489	124	\$13,417	147	\$15,906
GS-9	2	94	8	375	10	469
GS-7	4	153	31	1,187	35	1,340
Total positions & annual amount	29	2,736	163	14,979	192	17,715
Lapse (-)	(14)	(1,368)	(81)	(7,489)	(95)	(8,857)
Other personnel compensation	....	4	....	29	....	....
Total FTE & personnel compensation	15	1,372	82	7,519	97	8,891
Personnel benefits		404		2,212		2,616
Travel and transportation of persons		67		357		424
Transportation of things		11		62		73
Communication, rents, and utilities		29		164		193
Printing		25		142		167
Other services		1,054		1,974		3,028
Purchases of goods & services from Government accounts		158		874		1,032
Supplies and materials		17		95		112
Equipment		126		725		851
Total, 2008 program changes requested	15	3,263	82	14,124	97	17,387

K: Summary of Requirements by Grade

Summary of Requirements by Grade

Civil Division
Salaries and Expenses

Grades and Salary Ranges	2006 Actual		2007 Estimate		2008 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Executive Level IV, \$143,000	1		1		1		....
SES, \$109,808 - \$152,000	34		34		34		....
GS-15, \$107,521 - 139,774	613		613		596		(17)	
GS-14, \$91,407 - 118,828	74		154		299		145	
GS-13, \$77,353 - 100,554	64		64		62		(2)	
GS-12, \$65,048 - 84,559	39		39		38		(1)	
GS-11, \$54,272 - 70,558	63		63		60		(3)	
GS-10, \$49,397 - 64,213	7		7		7		....
GS-9, \$44,856 - 58,318	67		67		74		7	
GS-8, \$40,612 - 52,794	30		30		30		....
GS-7, \$36,671 - 47,669	89		117		148		31	
GS-6, \$32,000 - 42,898	9		9		9		....
GS-5, \$29,604 - 38,487	8		8		8		....
GS-4, \$26,460 - 34,402	1		1		1		....
GS-3, \$23,571 - 30,645	1		1		1		....
GS-2, \$21,602 - 27,182	....		....		....		....
GS-1, \$19,214 - 24,029	....		....		....		....
Total, appropriated positions	1,100		1,208		1,368		160	
Average SES Salary		\$153,774		\$ 157,157		\$ 161,872		
Average GS Salary		\$104,855		\$ 107,162		\$ 110,377		
Average GS Grade		13.02		12.94		12.87		

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Civil Division
Salaries and Expenses
(Dollars in Thousands)

Object Classes	2006 Actual Obligations		2007 Estimate		2008 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Total FTE & personnel compensation	911	\$89,499	1,065	\$97,962	1,230	\$116,736	165	\$18,774
11.3 Other than full-time permanent	68	3,686	111	6,505	68	3,782	(43)	(2,723)
11.5 Total, Other personnel compensation	[8]	1,629	[8]	1,944	[8]	2,125	....	181
<i>Overtime</i>	[8]	465	[8]	478	[8]	492	....	14
<i>Other Compensation</i>	....	1,164	....	1,466	....	1,633	....	167
11.8 Special personal services payments	....	2,672	....	2,684	....	2,684	....	....
Total	979	97,486	1,176	109,095	1,298	125,327	122	16,232
Reimbursable FTE:								
Full-time permanent	[27]		[41]		[41]		[...]	
Other Object Classes:								
12.0 Personnel benefits		23,060		27,167		31,968		4,801
13.0 Benefits to former personnel		28		28		28		....
21.0 Travel and transportation of persons		3,351		3,600		4,312		712
22.0 Transportation of things		661		708		822		114
23.1 GSA rent		23,285		28,843		30,335		1,492
23.2 Rental payments to others		539		350		350		....
23.3 Comm., util., & other misc. charges		1,988		2,642		2,945		303
24.0 Printing and reproduction		1,538		1,530		1,795		265
25.1 Advisory and assistance services		773		1,000		1,000		....
25.2 Other services		45,716		24,265		33,607		9,342
25.3 Purchases of goods & services from Government acct		10,253		8,657		9,501		844
25.4 Operation and maintenance of facilities		99		50		50		....
25.6 Medical Care		82		85		85		....
25.7 Operation and Maintenance of Equipment		331		450		450		....
26.0 Supplies and materials		1,476		1,400		1,571		171
31.0 Equipment		1,333		445		877		432
42.0 Insurance Claims and Indemnities		5		....		....		....
Total obligations		212,004		210,315		245,023		34,708
Unobligated balance, start of year		....		(5,703)		....		5,703
Unobligated balance, end of year		5,703		....		....		....
Recoveries of prior year obligations		....		....		....		....
Total requirements		217,707		204,612		245,023		40,411

Note: The Civil Division received \$9,625,000 in Supplemental funds in Fiscal Year 2006, of which \$5,295,000 for Border Security will be carried forward into Fiscal Year 2007.