

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES**

***Defender Services***

**SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS**

<b>Fiscal Year 2023 Enacted Appropriation</b>	<b>\$1,382,680</b>
<b>Fiscal Year 2024 Appropriation Request</b>	<b>\$1,533,015</b>
<b>Requested Increase from Fiscal Year 2023 Enacted Appropriation</b>	<b>\$150,335</b>

**APPROPRIATION LANGUAGE**

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES**

**DEFENDER SERVICES**

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under 18 U.S.C. 3006A and 3599, and for the compensation and reimbursement of expenses of persons furnishing investigative, expert, and other services for such representations as authorized by law; the compensation (in accordance with the maximums under 18 U.S.C. 3006A) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of expenses of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d)(1); the compensation and reimbursement of expenses of attorneys appointed under 18 U.S.C. 983(b)(1) in connection with certain judicial civil forfeiture proceedings; the compensation and reimbursement of travel expenses of guardians ad litem appointed under 18 U.S.C. 4100(b); and for necessary training and general administrative expenses, [\$1,382,680,000]\$1,533,015,000, to remain available until expended.

(P.L. 117-328 - Financial Services and General Government Appropriations Act, 2023

**SUMMARY OF REQUEST  
DEFENDER SERVICES  
FISCAL YEAR 2024  
(Dollar amounts in thousands)**

**Fiscal Year 2024 Resource Requirements:**

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
	<b>Fiscal Year 2023 Obligations .....</b>	<b>3,451</b>	<b>1,506,986</b>
	Less encumbered carryforward from FY 2022 into FY 2023 .....	-	(13,476)
	<b>Fiscal Year 2023 Obligations Excluding Encumbered Carryforward .....</b>	<b>3,451</b>	<b>1,493,510</b>
	<b>Less:</b>		
	Unencumbered available carryforward from FY 2022 into FY 2023 .....	-	110,830
	<b>Fiscal Year 2023 Enacted Appropriation .....</b>	<b>3,451</b>	<b>1,382,680</b>

**Adjustments to Base to Maintain Current Services:**

**A. PERSONNEL**

***Pay and Benefit Adjustments***

	1. Proposed January 2024 pay adjustments		
5.28	a. Federal pay adjustment (5.2% for nine months) .....	-	23,198
5.29	b. Panel attorney capital rate adjustment (from \$210 per hour to \$220 per hour, effective January 1, 2024) .....	-	1,077
5.29	c. Panel attorney non-capital rate adjustment (from \$164 per hour to \$172 per hour, effective January 1, 2024) .....	-	2,172
5.29	2. Annualization of January 2023 pay adjustments		
	a. Federal pay adjustment (4.6% for three months) .....	-	6,833
	b. Panel attorney capital rate adjustment (from \$202 per hour to \$210 per hour) .....	-	863
	c. Panel attorney non-capital rate adjustment (from \$158 per hour to \$164 per hour) .....	-	10,913
5.30	3. Promotions and within-grade increases .....	-	4,457
5.30	4. Benefits increases		
	a. Health benefits .....	-	3,826
	b. FICA adjustment .....	-	1,263
5.31	5. One more compensable day .....	-	2,400

**B. OTHER ADJUSTMENTS**

***General Inflationary Adjustments***

5.31	6. Inflationary increases for contracts, services, supplies, and equipment .....	-	8,743
5.31	7. Inflationary increase in GSA space rental costs .....	-	2,103

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
	<i>Workload and Financing Adjustments</i>		
5.31	8. Change in projected panel attorney workload .....	-	(4,000)
5.32	9. Annualization of FY 2023 positions .....	14	2,990
5.32	10. Increase in appropriation needed to maintain FY 2023 requirements due to a decrease in carryover funding .....	-	70,830
	<b>Subtotal, Adjustments to Base to maintain current services .....</b>	<b>14</b>	<b>137,668</b>
	<b>Total Current Services Appropriation Required .....</b>	<b>3,465</b>	<b>1,520,348</b>
 <b><u>C. PROGRAM CHANGES:</u></b>			
5.32	11. FDO Staffing Formula Positions .....	(6)	(1,368)
5.33	12. Information technology, cybersecurity, and IT modernization requirements .....	-	11,486
5.34	13. Training operations .....	-	2,233
5.34	14. Reimbursable positions .....	-	316
	<b>Subtotal, program increases .....</b>	<b>(6)</b>	<b>12,667</b>
	<b>Total Fiscal Year 2024 Appropriation Required .....</b>	<b>3,459</b>	<b>1,533,015</b>
	<b>Total Appropriation Increase, Fiscal Year 2023 to Fiscal Year 2024 .....</b>	<b>8</b>	<b>150,335</b>
 <b><u>D. FINANCING THE FISCAL YEAR 2024 REQUEST:</u></b>			
	<b>Total Appropriation Required .....</b>	<b>3,459</b>	<b>1,533,015</b>
5.35	15. Anticipated carryforward from FY 2023 and prior years into FY 2024 .....	-	40,000
	<b>Estimated Obligations, Fiscal Year 2024 .....</b>	<b>3,459</b>	<b>1,573,015</b>

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES  
DEFENDER SERVICES**

**Obligations by Activity (\$000)**

Activity	FY 2022 Actual	FY 2023 Assumed	FY 2024 Request
CJA Representation & Related Expenses Obligations	1,307,490	1,487,504	1,549,428
Program Administration Obligations	13,878	19,482	23,587
<b>Direct Obligations</b>	<b>1,321,368</b>	<b>1,506,986</b>	<b>1,573,015</b>
Unencumbered Unobligated Balance, Start of Year	(126,718)	(110,830)	(40,000)
Encumbered Unobligated Balance, Start of Year	0	(13,476)	0
Total Unobligated Balance, Start of Year:	(126,718)	(124,306)	(40,000)
Deposits and Other Adjustments:			
Prior Year Recoveries	(8,258)	(8,000)	0
Anticipated Financial Plan Savings	0	(32,000)	0
Transfer	32,400	0	0
Unobligated Balance, End of Year:	124,306	40,000	0
Less Offsetting Collections	77	0	0
<b>Appropriation</b>	<b>1,343,175</b>	<b>1,382,680</b>	<b>1,533,015</b>

**Obligations by Budget Object Class (\$000)**

Description	FY 2022 Actual	FY 2023 Assumed	FY 2024 Request
11.1 Full-time permanent	395,987	448,672	477,906
11.3 Other than full-time permanent	7,745	9,630	10,259
11.5 Other personnel compensation	464	548	576
11.9 Personnel compensation subtotal	404,196	458,850	488,741
12.1 Personnel benefits	152,412	165,098	172,377
13.0 Benefits for former personnel	710	715	728
21.0 Travel	12,406	15,963	16,813
22.0 Transportation of things	296	421	430
23.1 Rental payments to GSA	46,951	51,643	53,437
23.2 Rental payments to others	504	1,177	1,200
23.3 Communications, utilities, and miscellaneous charges	14,370	22,681	15,399
24.0 Printing and reproduction	66	127	136
25.0 Other Services	479,509	550,098	568,708
26.0 Supplies and materials	1,735	2,149	2,192
31.0 Equipment	21,744	30,808	35,827
41.0 Grant payments	186,457	207,256	217,027
42.0 Insurance claims and indemnities	12	0	0
<b>Direct Obligations</b>	<b>1,321,368</b>	<b>1,506,986</b>	<b>1,573,015</b>

**Full-time Equivalents (FTE) by Activity**

Activity	FY 2022 Actual	FY 2023 Assumed	FY 2024 Request
CJA Representation & Related Expenses <sup>1</sup>	3,172	3,440	3,448
Program Administration	10	11	11
<b>Total FTE</b>	<b>3,182</b>	<b>3,451</b>	<b>3,459</b>

<sup>1</sup> The FTE listed are attributable to Federal Public Defender Organization staff

**COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES  
DEFENDER SERVICES  
Relation of Obligations to Outlays (\$000)**

	<b>FY 2022 Actual</b>	<b>FY 2023 Assumed</b>	<b>FY 2024 Request</b>
Direct obligations	1,323,332	1,506,986	1,573,015
Obligated balance, start of year	99,065	95,445	98,367
Recoveries of prior year unpaid obligations	(8,834)	(8,000)	(9,000)
Change in uncollected payments	0	0	0
Obligated balance, end of year	(95,445)	(98,367)	(86,429)
<b>Total Outlays</b>	<b>1,318,118</b>	<b>1,496,064</b>	<b>1,575,953</b>
Less Offsets	(1,297)	(2,000)	(2,000)
<b>Net Outlays</b>	<b>1,316,821</b>	<b>1,494,064</b>	<b>1,573,953</b>

## GENERAL STATEMENT AND INFORMATION

The right to effective assistance of counsel for persons financially unable to obtain adequate representation is constitutionally mandated. It is a critical component of the criminal justice system and a foundation of liberty in America. The Defender Services appropriation supports the appointment of counsel and other related services required to be provided under the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other statutes. It also provides for the continuing education and training of persons who furnish representational services under the CJA.

The constitutional right to the assistance of counsel is a cornerstone of the criminal justice system. In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), the United States Supreme Court wrote: “The right of one charged with [a] crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” The mission of the Defender Services program is to ensure that the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services.

The goals of the Defender Services program are to:

1. provide timely counsel services to all eligible persons;
2. provide appointed counsel services consistent with the best practices of the legal profession;
3. provide cost-effective services; and
4. protect the independence of the defense function performed by appointed counsel so that the rights of individual defendants are safeguarded and enforced.

By fulfilling its mission, the Defender Services program helps to:

- ensure the successful operation of the constitutionally based adversarial system of justice by which both federal criminal laws and federally guaranteed rights are enforced; and
- maintain public confidence in the nation’s commitment to equal justice under law.

The Defender Services account funds the operations of federal defender organizations (FDOs), payments to private attorneys appointed under the CJA, and program administration costs. The fiscal year (FY) 2024 appropriation request of \$1,533.0 million will enable FDOs and private attorneys to accept CJA appointments; retain necessary expert services; and undertake case-related travel.

The FY 2024 request will support:

- FDO personnel to support 98 percent of the projected staffing formula requirements (caseload adjusted);
- funding for training operations to include training in the post-COVID environment and expanded content and topics;
- reimbursable staff in the Defender Services Office (DSO) of the Administrative Office of the U.S. Courts (AO); and
- information technology (IT) and cybersecurity and IT infrastructure requirements.

### **TYPES OF COUNSEL**

The CJA authorizes the appointment of counsel, who are (1) attorneys employed by an FDO or (2) private attorneys appointed to represent clients (these private attorneys are known as “panel attorneys”). Each is described below.

#### ***Federal Defender Organizations***

The CJA authorizes two types of FDOs:

- federal public defender organizations (FPDOs), which are part of the judiciary; and
- community defender organizations (CDOs), which are private, state-chartered, non-profit corporations funded by annual federal judiciary grants.

An FDO (whether an FPDO or a CDO) may be established in any district (or combination of districts) in which at least 200 CJA appointments are made annually. There are 82 FDOs authorized to serve 91 of the 94 judicial districts. (Georgia-Southern and Kentucky-Eastern meet the requisite number of appointments but have chosen not to establish an FDO. Northern Mariana Islands does not meet the requisite number of appointments.)





FDOs are the flagship of federal criminal defense, delivering high-quality representation at reasonable costs while safeguarding the rights of individuals under the Constitution. They recruit, train, and retain lawyers with skills comparable to those who prosecute criminal matters in U.S. Attorneys' offices. Because of their expertise and efficiencies, FDOs provide cost-effective defense services consistent with the best practices of the legal profession.

FDO attorneys are available for appointment on short notice, ensuring that the rights of the accused are protected and that court operations are not disrupted. FDOs also optimally use national resources by sharing their expertise and best practices with other FDOs and panel attorneys.

FDO staff improve the overall quality of CJA representation within the districts they serve by providing expert advice, training, and other assistance to panel attorneys in complex legal and technical areas, such as sentencing, mitigation, litigation support, and cases involving death penalty issues.

### ***Panel Attorneys***

A panel attorney is a private lawyer who serves on a panel of qualified counsel maintained by the district or appellate court and is appointed by the court to represent eligible individuals under the CJA. The CJA specifies that in all judicial districts (including those served by an FDO), private attorneys shall be appointed "in a substantial proportion of the cases." 18 U.S.C. § 3006A(a)(3).

Panel attorneys are also utilized for three primary reasons.

- (1) Ethical standards prohibit appointing FDOs in conflict-of-interest situations (*e.g.*, an FDO is precluded from representing more than one defendant in a multi-defendant case and is disqualified from accepting a new appointment that may present a conflict with the interests of represented clients).
- (2) The workload demands in some FDOs periodically limit the ability of that FDO to accept new representations and maintain professional ethical standards.
- (3) The district is not served by an FDO. As noted above, three districts do not have an FDO.

The CJA provides these attorneys shall be reimbursed for their expenses and compensated for their services at authorized hourly rates. There are many factors which influence panel attorney representation costs, such as the increased complexity of federal cases, e-discovery and high rates of pretrial detention.

## CJA CASELOAD AND WORKLOAD TRENDS

Attorneys appointed under the CJA (FDO attorneys and private panel attorneys) provide constitutionally required defense services in a wide variety of complex criminal cases, such as international and domestic terrorism; cybercrime; child exploitation and obscenity; complex fraud cases (health care, identity theft, public corruption, and bank and investment fraud); environmental crimes; drug cases; immigration matters; human trafficking; and all other federal crimes.

To determine FY 2024 FDO staffing requirements, a five-year statistical average is used that includes actual caseload data from 2019 – 2022 and projected caseload for 2023<sup>1</sup>. As shown in the following chart, FDO weighted representations<sup>2</sup> increased significantly between statistical years<sup>3</sup> 2017 and 2019 and remained at a high level in 2020. Although the caseload declined in 2021 because of the COVID-19 pandemic, the caseload rebounded partially in 2022 and is projected to increase further in 2023 and 2024 as the effects of the pandemic dissipate and caseloads return toward pre-pandemic levels. For a discussion of the COVID-19 pandemic's impact on workload, see COVID-19 - Impact on page 5.15.

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<sup>1</sup> FDO workload forecasts, as with all other judiciary workload projections, are prepared by the AO's Judiciary Data and Analysis Office.

<sup>2</sup> Since FY 2016, the Defender Services program has used a comprehensive set of staffing formulas to determine FDO staffing requirements. These staffing formulas, developed using the same procedures as the rest of the judiciary, establish a fair, equitable, and rigorous basis for calculating and allocating FDO personnel. The judiciary uses a weighted caseload methodology for the federal defender portion of the Defender Services appropriation request to account for the complexity and resource intensity of FDO caseload. This methodology more precisely determines FDO staffing requirements. Instead of using raw, or unweighted case numbers, the formula uses a five-statistical-year average of FDO weighted representations to calculate the number of positions for each office. Using a five-statistical-year average provides a measure of protection against volatility in caseload.

<sup>3</sup> An FDO statistical year is a period beginning on April 1 of one year and ending on March 31 of the subsequent year.

<b>FDO Weighted Representations*</b>								
<b>Workload Factor</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Actual</b>	<b>2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Projected</b>	<b>2024 Projected</b>
FDO Weighted Representations – Non-capital	131,024	142,750	152,496	151,025	116,721	130,062	131,250	137,900
FDO Weighted Representations – Capital Prosecution	2,752	2,101	1,174	1,019	663	1,019	1,000	1,000
<b>Total FDO Weighted Representations</b>	<b>133,776</b>	<b>144,851</b>	<b>153,670</b>	<b>152,044</b>	<b>117,384</b>	<b>131,081</b>	<b>132,250</b>	<b>138,900</b>
Year-to-Year Change		8.3%	6.1%	-1.1%	-22.8%	11.7%	0.9%	5.0%

<b>Major Types of FDO Weighted Representations*</b>			
<b>Case Group</b>	<b>2021</b>	<b>2022</b>	<b>Percent Change</b>
Drug	14,602	15,903	8.9%
Immigration – Illegal Re-Entry	7,441	9,998	34.4%
Fraud	4,850	6,090	25.6%
Weapons	14,649	15,114	3.2%
Criminal-Other	41,772	52,187	24.9%
*Statistical data is for a 12-month period through March 31 of each year.			

Changes in technology, legislation, sentencing policy, and case law all add to the challenge of providing representation to eligible individuals in federal courts. The Defender Services program must respond to changes in case law, such as those resulting from Supreme Court decisions, changes in the U.S. Sentencing Guidelines, statutory changes, and changing priorities in federal law enforcement such as the opioid crisis and violent crimes initiatives.

Department of Justice (DOJ) policy also drives caseload for the CJA. In FY 2023, the U.S. Attorneys received an increase of \$212.1 million to support programs which are expected to increase related caseload.<sup>4</sup>

Like the FDOs, panel attorney representations were increasing before statistical year (SY) 2021 but decreased due to the COVID-19 pandemic. However, as the effects of the pandemic lessen, panel attorney representations are projected to remain steady in SY 2023 and increase in SY 2024. To determine FY 2024 panel attorney requirements, SY 2024 projected workload was used (65,200 representations<sup>5</sup>).

<b>Panel Attorney Representations*</b>								
<b>Workload Factor</b>	<b>2017 Actual</b>	<b>2018 Actual</b>	<b>2019 Actual</b>	<b>2020 Actual</b>	<b>2021 Actual</b>	<b>2022 Actual</b>	<b>2023 Projected</b>	<b>2024 Projected</b>
Panel Attorney Representations	79,352	77,130	89,079	93,189	64,326	62,866	62,400	65,200
Year-to Year Change		-2.8%	15.5%	4.6%	-31.0%	-2.3%	-0.7%	4.5%

\*Statistical data is for a 12-month period through March 31 of each year.

The following chart reflects panel attorney representations and payments by fiscal year. In FY 2022, panel attorney payments increased from \$373.0 million in FY 2021 to \$414.2 million in FY 2022 as the COVID-19 impact eased, an increase of \$41.2 million (11.1 percent). However, total panel attorney representations decreased by 807 (1.3 percent) from 61,546 in FY 2021 to 60,739 in FY 2022. Payments grew even though representations declined slightly due to the overall cost per case increasing by approximately 12 percent in FY 2022, and a caseload mix shift to higher cost cases. For example, the cost per drug case increased by approximately \$800 in FY 2022 while also having a slight caseload increase, which caused payments in this category to be \$15.7 million more than in FY 2021. Immigration representations declined by approximately 11 percent in FY 2022, but the total panel attorney payments in

<sup>4</sup> U.S. House Committee on Appropriations. Consolidated Appropriations Act, 2023, Summary of Appropriations Provisions by Subcommittee. <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY23%20Summary%20of%20Appropriations%20Provisions.pdf>, p. 5 (FY 2023).

<sup>5</sup> CJA Panel representations are based on vouchers paid during the 12-month period. If no voucher was paid, no representation is counted. The judiciary relies on a forecast of unweighted representations for estimating the panel attorney portion of the appropriation request. This projection is based on one representation for each case, regardless of the case type.

this category exceeded the FY 2021 level due to the increased complexity of these cases. In addition, capital prosecution costs increased by \$6.7 million with a minimum change in representations.

<b>Offense Type</b>	<b>FY 2021 Reps</b>	<b>FY 2021 Payments (\$ in millions)</b>	<b>FY 2022 Reps</b>	<b>FY 2022 Payments (\$ in millions)</b>
Capital Prosecution	643	\$33.3	647	\$40.0
Drugs	17,886	\$127.8	18,119	\$143.5
Immigration	7,593	\$18.2	6,761	\$18.6
Fraud	2,472	\$27.6	2,777	\$29.6
Weapons	4,413	\$31.9	4,784	\$36.4
Capital Habeas	288	\$13.1	284	\$12.2
Appeals	4,287	\$32.4	4,184	\$28.0
Criminal - Other	23,964	\$88.6	23,183	\$105.9
<b>Total</b>	<b>61,546</b>	<b>\$373.0</b>	<b>60,739</b>	<b>\$414.2</b>

\* Fiscal year data is for a 12-month period through September 30 of each year.

In accordance with the anticipated ECI increase, panel attorney hourly rates are projected to increase from FY 2023 to FY 2024 for non-capital and capital representations from \$164 to \$172 and \$210 to \$220, respectively.

### **FISCAL YEAR 2023 APPROPRIATIONS**

The judiciary built the FY 2024 budget request for the Defender Services appropriation on the FY 2023 enacted appropriation, which is \$1,382.7 million. For bill language, the judiciary used the language from P.L. 117-328, Financial Services and General Government Appropriations Act, 2023.

## SIGNIFICANT ISSUES FOR FISCAL YEAR 2024

### ***COVID-19 Impact***

The pandemic continues to impact both the FDOs and the CJA panel attorneys. After the initial COVID-19-driven caseload decline, the program has been subject to some volatility, although more recently it has begun to revert toward pre-pandemic levels. Caseload is currently projected to remain flat in FY 2023 and increase in FY 2024 as the pandemic's impact on the justice system is expected to ease; nevertheless, COVID-19 continues to impact FDO staffing and workload.

Notably, the number of pending criminal cases rose during the pandemic because cases took longer to resolve. Although federal criminal case openings declined during the height of the pandemic, so did case closings as cases remained active longer due to various pandemic-related challenges (including complications associated with criminal defense representation, e.g., client access, court hearing procedures, and investigations). The result was an increase in pending criminal cases. From June 2020 to June 2022, pending criminal defendants rose 11.5 percent, indicating that fewer criminal case openings did not result in a proportionate reduction in workload for CJA practitioners.

### ***Continued Impact of the McGirt Decision***

The impact of the Supreme Court's July 9, 2020, decision in *McGirt*, and its progeny, continues to ripple through the courts two and a half years later. *McGirt v. Oklahoma*, 591 U.S. \_\_\_ (2020). The original *McGirt* decision held that major crimes involving Indian defendants on the Creek Nation must be prosecuted by the federal government rather than the state. The Oklahoma Court of Criminal Appeals (OCCA) first expanded *McGirt*'s holding from Creek land to also encompass the Cherokee, Chickasaw, Choctaw, Seminole, and Quapaw Nations. Then, on balance, the OCCA limited *McGirt*'s reach by denying retroactive application for final state convictions with completed appellate review, and the Supreme Court denied certiorari.<sup>6</sup>

The Oklahoma Attorney General's Office filed more than 50 petitions with the Supreme Court requesting the overturn of the *McGirt* decision and raising other specific issues such as possible state concurrency based on the General Crimes Act cases and limitations on "Indian" status. On June 29, 2022, the Supreme Court held that Oklahoma had concurrent jurisdiction for cases involving alleged

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<sup>6</sup> *State ex rel. Matloff v. Wallace*, 2021 OK CR 21 (2022), *cert. denied sub nom. Parish. v. Oklahoma*, 142 S. Ct. 757 (2022).

non-Native American defendants and Native American victims on tribal land in *Castro-Huerta*.<sup>7</sup> Following the *Castro-Huerta* decision, the U.S. Attorneys in the Northern District of Oklahoma and the Eastern District of Oklahoma issued a joint statement affirming their continued goal and commitment to enforcing federal law in Indian Country.<sup>8</sup> This decision could impact federal “Indian Country” jurisdictions across the country. More recently, the Supreme Court denied certiorari on October 11, 2022, for two Oklahoma petitions requesting review of “Indian status” requirements.<sup>9</sup> While each decision brings some clarity, *McGirt* litigation will likely extend for years. *McGirt* and OCCA’s expansion of its holding reverted approximately 45% of Oklahoma back to Native American reservation land and transitioned criminal jurisdiction from the state to the federal level,<sup>10</sup> while *Castro-Huerta* allows federal authorities to coordinate with their state counterparts regarding non-Native American defendants on tribal land in the interest of justice, although these cases represent a smaller portion of the overall caseload.

Data from the AO’s Judiciary Data and Analysis Office (JDAO) indicates that cases filed against defendants in the Northern District of Oklahoma and the Eastern District of Oklahoma are still more than double what they were prior to *McGirt*. More recent data reflects filings against defendants for the six impacted tribes, but it does not demonstrate the full potential caseload as a backlog persists due to capacity limitations, pending Supreme Court decisions, and the lingering effects of the COVID-19 pandemic.

<b>Defendant Filings</b>	<b>July 19 - June 20</b>	<b>July 20 - June 21</b>	<b>July 21 - June 22</b>	<b>% Change 2020 vs 2021</b>	<b>% Change 2020 vs 2022</b>
Oklahoma Northern	248	733	572	195.6%	130.6%
Oklahoma Eastern	114	416	242	264.9%	112.3%

\*JDAO - Table D, Criminal Defendants, 12 months ending June 2020, 2021, and 2022

Because the number of new cases filed in federal court is dependent on the prosecutorial discretion of the U.S. Attorney’s Offices, it is difficult to predict with certainty the magnitude of future criminal filings. For FY 2023, the DOJ requested \$40.4 million for 312

<sup>7</sup> *Wadkins v. State*, 2022 OK CR 2 (2022), *cert denied sub nom Oklahoma v. Wadkins*, No. 21-1193, 2022 WL 6573438 (2022); *Sam v. State*, No. F-2017-1300 (Okl. Crim. App. 2022), *cert denied sub nom. Oklahoma v. Sam*, No. 21-1214, 2022 WL 6573447 (2022).

<sup>8</sup> U.S. Attorneys OKN, <https://www.justice.gov/usao-ndok/pr/united-states-attorneys-joint-statement-regarding-united-states-supreme-court-decision>, (June 29, 2022).

<sup>9</sup> *Wadkins v. State*, 2022 OK CR 2 (2022), *cert denied sub nom Oklahoma v. Wadkins*, No. 21-1193, 2022 WL 6573438 (2022); *Sam v. State*, No. F-2017-1300 (Okl. Crim. App. 2022), *cert denied sub nom. Oklahoma v. Sam*, No. 21-1214, 2022 WL 6573447 (2022).

<sup>10</sup> See Federal Bureau of Investigation, [Oklahoma FBI Case Volume Unprecedented](#).



additional positions in Indian country and *McGirt* funding for the U.S. Attorney’s Offices in Oklahoma and elsewhere,<sup>11</sup> as well as another \$73 million for related federal law enforcement agencies operating locally in Oklahoma.<sup>12</sup> As justification, the U.S. Attorney’s Offices repeated their prior year estimates that the Eastern District of Oklahoma and the Northern District of Oklahoma will need to handle “up to 4,400 additional felony defendants per year – or 366 per month.”<sup>13</sup> The DOJ expressed concern about past low crime enforcement rates due to resource constraints, recognizing that it filed charges in “only 22 percent and 31 percent of all felony referrals from law enforcement as of the end of fiscal year 2021” in Eastern District of Oklahoma and Northern District of Oklahoma, respectively.<sup>14</sup> While the programmatic distribution of the U.S. Attorney’s Office FY 2023 budget is unknown at this point, Congress increased the funding for U.S. Attorneys for FY 2023 by more than \$212 million.<sup>15</sup>

The DOJ’s anticipated staffing increases and possible shift of prosecution priorities is expected to hold caseload at levels that exceed current Oklahoma CJA resources. More than 1,400 felony cases have been filed based on *McGirt*, requiring attorneys from more than forty FDOs, and panel attorneys from around the country, to represent Oklahoma defendants.

The Defender Services FY 2023 financial plan includes 44 more positions to address *McGirt* caseload, bringing the current total to 102 positions (26 positions in FY 2021 and 32 positions in FY 2022), with no additional request for FY 2024 as the evolving jurisprudence is monitored. According to DOJ and AO estimates, *Castro-Huerta* is unlikely to reduce the requirements for the FDOs. The FY 2023 FTE approved would permit the Oklahoma FDOs to continue to hire staff, provide quality client representation, and handle a greater percentage of the caseload that must currently be distributed to out-of-district FDOs and CJA panel attorneys from other states. If future resource needs change, a revised request will be submitted.

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<sup>11</sup> See U.S. Attorneys, [U.S. Department of Justice FY 2023 Congressional Justification](https://www.justice.gov/jmd/page/file/1492126/download), <https://www.justice.gov/jmd/page/file/1492126/download> p. 45-46.

<sup>12</sup> See [U.S. Department of Justice FY 2023 Budget](#), pp. 726, 737, 740, 744.

<sup>13</sup> Compare U.S. Attorneys, [U.S. Department of Justice FY 2023 Congressional Justification](#), p. 45 with U.S. Attorneys, [U.S. Department of Justice FY 2022 Congressional Justification](#), p. 44.

<sup>14</sup> U.S. Attorneys, [U.S. Department of Justice FY 2023 Congressional Justification](#), p. 46.

<sup>15</sup> Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>, p.66 (December 29, 2022) (\$2,772M Request, \$2,632M Appropriation, increase of \$212M from FY 2022 appropriation).

### ***Training Requirements***

The Defender Services program provides training to FDO and CJA practitioners and service providers. The demand continues to increase, particularly for in-person training. To meet this demand and to provide the most up-to-date training consistent with the best practices of the legal profession, additional resources of \$2.2 million are needed for FY 2024. (See page 5.34 for more details.)

Twenty-first century training operations require up-to-date systems to best provide the training needed and capture the data necessary. These requirements include an Event Management System, a Learning Management System, a Customized Continuing Legal Education (CLE)-enabled platform and a Real-time Polling/Survey Platform (\$0.9 million). These are essential components of an effective adult-learning experience. Because the Defender Services program provides training for CJA practitioners who are not judiciary staff, the systems must be designed accordingly. Additional resources are also needed to meet the demand for hybrid (in-person and virtual) training in the post-pandemic world (\$0.8 million).

In FY 2024, Defender Services plans to expand training programs (\$0.6 million) on case management; mental health; representing clients with intellectual disabilities; diversity; managing electronically stored information (to be held jointly with the Department of Justice); and FDO budget, procurement, and financial training and materials.

### ***Information Technology (IT) Infrastructure Requirements***

This request assumes that there is \$12.5 million in the FY 2024 base for ongoing costs associated with IT infrastructure requirements during FY 2022 and FY 2023 and requests an additional \$9.9 million, for a total of \$22.4 million. Of the \$12.5 million included in the FY 2024 base, \$4.5 million is to sustain ongoing activities from the FY 2022 portion of the judiciary's cybersecurity and IT modernization plan and \$8 million is to sustain ongoing activities from the FY 2023 portion of the plan. This request for the additional \$9.9 million is the funding for the FY 2024 portion of the multi-year plan to address the judiciary's cybersecurity and modernization needs and IT infrastructure requirements in the following areas.

#### **Cybersecurity Support (\$725,000)**

Cybersecurity is constantly evolving and has become one of Defender Services' top IT priorities. This request for an additional \$725,000 will allow Defender Services to engage outside security experts to assess the security controls currently implemented and recommend any changes or remediations based on the findings. This evaluation will include both the internal network and national

FDO cloud applications, such as Office 365. As the FDOs move more services and data to the cloud, it is critical that the security controls configured on cloud services are consistent with judiciary standards and best practices.

#### DSO Networks Engineering, Governance, and Services Modernization (\$4,570,000)

Defender Services seeks to modernize the current Defender Wide Area Network (DWAN) infrastructure including virtual private network (VPN) remote access used by FDO staff. The request includes \$3.3 million to allow Defender Services to engage industry experts to help design and implement a modern DWAN structure which will serve as a foundation for improved security controls. The modern design will segment the network based on sensitivity of the data or resources and allow for more granular control of traffic limiting access to the minimum required. Additionally, the modern network will improve connectivity to FDO cloud services, such as Office 365, by establishing a private connection which can be used to limit access from the public internet. This will help security teams to better identify connections from legitimate FDO sources and monitor for suspicious activity.

The request also includes \$0.8 million to improve the current secure remote access solution used by FDO staff and extend it to FDO cloud resources. Ensuring a secure, encrypted connection to both the DWAN and FDO cloud data will help protect the confidentiality and integrity of sensitive information. Lastly, \$0.5 million will be used to renew software and support licensing for all firewall security devices used by every FDO office. These firewall devices provide insight to and control of network traffic traversing the DWAN.

#### Data Security Management and Improvement (\$4,632,000)

The current national FDO backup software solution was purchased in 2010. The request includes \$2.5 million to allow Defender Services to seek a new backup solution that can better protect sensitive data from security threats such as ransomware, take advantage of new storage technologies to more efficiently manage the amount of space required to store backups, and provide the capability to backup critical data stored in FDO cloud services. As the amount of data stored by FDO offices continues to grow, it is essential to the FDO's mission that Defender Services provide a backup software solution which can adequately protect their data.

The remaining \$2.1 million requested will help Defender Services upgrade its server and database software systems. The current version of the database software has memory limitations which are quickly being approached as the amount of FDO data grows. Upgrading to the enterprise editions of the software will remove these limitations and ensure proper security logs for analysis and review.

### ***Diversity Fellowship Program***

In September 2020, the Judicial Conference approved two positions for the Defender Services Capital Diversity Fellowship Program and 12 positions for the establishment of a pilot Defender Services Non-Capital Diversity Fellowship Program. Both programs began in 2022. Combined, the Defender Services Fellowship Program (Fellowship Program) will seek to enhance the quality of representation provided under the CJA by increasing the diversity of attorneys who are qualified to join FDOs, CJA panels, or federal capital trial teams. The Fellowship Program targeted a diverse pool of law school graduates and licensed attorneys interested in federal public defense. During the fellowship period, selected fellows will receive legal experience, mentoring and training in federal criminal defense practice. The intent is to increase participation by attorneys from groups traditionally underrepresented in the legal profession, enhancing the Defender Services program's ability to provide high-quality, effective representation.

The Fellowship Program will continue to support the 14 fellows selected to join FDOs for the 2022-2024 fellowship term. The Fellowship Program complies with all applicable equal employment opportunity laws, and eligibility to participate and selection are without regard to race, color, religion, age, gender, national origin, political affiliation, disability, sexual orientation, marital or family status, or other protected status.

### ***Reimbursable Positions for the Defender Services Office:***

The FY 2024 request includes a total of three additional reimbursable positions. These positions, which will be part of the AO's Defender Services Office, would be funded from the Defender Services appropriation, which will reimburse the AO account for all associated expenses. These positions would support program reviews and budgetary/financial operations support to federal defenders and their staff in the areas of audit preparation, financial management, internal controls, procurement, and accountable officer liability (See page 5.34 for more details.)

### ***U.S. Capitol Breach Cases***

The attack at the United States Capitol following the 2020 election resulted in the largest federal prosecution in the nation's history, both in the number of defendants prosecuted and the volume of the evidence. There are defendants in every federal circuit and from over 40 states. More than 900 individuals across the nation have faced criminal charges related to the breach, ranging from trespass and theft to assault on a federal law enforcement officer and conspiracy. Many of the defendants have relied on federal defenders or Criminal Justice Act panel attorneys for their defense.

The prosecutions continue to involve an unprecedented volume of electronically stored information, including thousands of hours of surveillance and body-worn camera footage, data from hundreds of smartphones and social media, and data from overlapping layers of law enforcement investigations. Individuals who have been charged from these events have been arrested all over the United States, and many are being represented by their local FDOs or CJA panels before and even after their transfer to the U.S. District Court for the District of Columbia. There are far too many cases for the District of Columbia FDO and local panel to support. Approximately one-third of the defendants charged thus far have resolved their cases; however, DOJ estimated earlier this year that between 700 and 1,200 additional cases will be filed, many of which will be felonies. These cases will likely be similarly geographically dispersed and continue to require resources from CJA counsel from around the country in 2023 and beyond.

### *Update on CJA Review Study*

In April 2015, Chief Justice John G. Roberts Jr. established the Ad Hoc Committee to Review the Criminal Justice Act (CJA Committee) to conduct a comprehensive and impartial review, consistent with Judicial Conference policy, of the administration and operation of the CJA program. In November 2017, the CJA Committee submitted its findings and recommendations to the Judicial Conference. The CJA Committee recommended establishing an independent Federal Defender Commission within the judicial branch, but outside the oversight of the Judicial Conference, with sole authority to set policy and practices related to the provision of federal defense. Recognizing that the creation of an independent commission would require an act of Congress and could not be implemented immediately, the Committee also made 35 interim recommendations designed to give the Defender Services program more authority and autonomy within the current structure. For the full text of the Committee's findings and recommendations, see: [2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act.](#)

Between September 2018 and March 2019, the Judicial Conference approved the vast majority of the interim recommendations (some with modifications) and the Executive Committee and the AO Director acted on others within their respective jurisdictions. The consideration of other recommendations, including the final recommendation, were deferred. The interim recommendations approved by the Judicial Conference include, but are not limited to, providing additional training opportunities, encouraging the establishment of capital habeas units, increasing staff and funding for litigation support activities and the National Litigation Support Team (NLST), and adequately funding and staffing the National IT Operations and Applications Development (NITOAD) within the Defender Services program. In response to these recommendations, the judiciary began and continues to work on implementing the Judicial Conference-approved interim recommendations.

Since October 2019, at the request of the Executive Committee of the Judicial Conference, the Defender Services Committee, with the assistance of the Federal Judicial Center, has been conducting a study to assess the judiciary's implementation of the adopted interim recommendations and the degree to which those actions have addressed concerns identified in the CJA Committee's report. That study, which will be completed in 2023, will help identify areas in which the judiciary can promote further implementation of the adopted policies, and it is expected that implementation efforts will continue throughout FY 2024. The study also will inform the Judicial Conference's consideration of remaining interim recommendations and the final recommendation to create an independent Federal Defender Commission, similar to policies identified in earlier studies (e.g., Oaks Report and Prado report) that would strengthen the independent defense function in an adversarial justice system. The FJC team has a [publicly available website](#) that includes more information about the study.

### **COST CONTAINMENT INITIATIVES**

The judiciary has implemented various cost-containment initiatives across the Defender Services program to reduce costs, where appropriate, without compromising its constitutional mandate. Funding decisions balance a keen awareness of the federal budget challenges, the need for continuous assessment of existing and potential cost-containment measures across the Defender Services program, and the dedication to supporting effective representation by FDOs and CJA panel attorneys. Key cost-containment initiatives include, but are not limited to:

- promoting the use of case budgeting to control expenditures in capital and other high-cost CJA panel attorney representations;
- identifying more cost-effective means of handling increasingly large and complex discovery in CJA representations;
- improving DOJ procedures related to death-eligible cases;
- providing robust distance learning;
- coordinating with other judiciary and DOJ components regarding remote detention of pretrial detainees; and
- promoting cost-effective use of paralegals.

### *Case Budgeting of CJA Panel Attorney Representations*

Defender Services funding continues to support eleven circuit case-budgeting attorney positions. These attorneys are assigned to federal judicial circuits across the country and identify cost drivers, monitor case expenditures, assist the courts and CJA panel attorneys with individual case budgeting and voucher review, and, in line with the Defender Services program's goals, promote representation consistent with the best practices of the legal profession.

### *Discovery Costs*

Each year, the data associated with individual CJA representations expands in size and complexity. There are a number of critical issues defense counsel must address to adequately manage and review e-discovery, including the large volume of information, the variety of sources from a multitude of digital devices and locations, proprietary formats, hidden information such as metadata and embedded data, and software and hardware limitations.

Federal defenders and panel attorneys require litigation resources, including national staff, to meet the challenge presented by DOJ's e-discovery and litigation support capabilities. Even in "simple", single defendant prosecutions, discovery can include electronically stored information (ESI, or e-discovery) extracted from client computers and mobile devices. Law enforcement officers review social media sites, like Facebook, Instagram, and Twitter, to capture possible incriminating materials. Video discovery is common and may include months of pole-camera recordings, business security videos, and hours of concealed camera footage. Additional discovery may include data from cell phone wiretaps, body wires, and GPS tracking devices.

To illustrate the volume and complexity of information in a recent multidefendant case, 13 people were charged with murder, arson, drug trafficking, money laundering and wire fraud, with one individual potentially facing the death penalty. The U.S. Attorney's office prosecuting the case provided rolling discovery of 22 separate productions over the course of two years. The discovery totaled over 2.14 terabytes of data, consisting of documents (the equivalent of 2,071,838 pages), video and audio recordings (219 hours in length), and forensic images and reports from 49 digital devices seized by law enforcement, totaling 425 gigabytes. In addition, there were 53.6 terabytes of pole camera recordings that would take 6,836 days to view if watched 24 hours per day.

Three major initiatives are in place to address e-discovery issues:

- (1) The DOJ/AO Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) addresses various issues related to e-discovery and discovery production between the prosecution and the attorneys for defendants charged in federal criminal cases and will meet in 2023. The working group has previously produced national guidance designed to facilitate a more predictable, cost-effective, and efficient management of electronic discovery, and a reduction in the number of disputes relating to ESI, by encouraging early discussion of electronic discovery issues through “meet and confers” between the prosecution and defense; the exchange of data in standard or reasonably useable formats; and resolution of disputes without the necessity of court involvement, where possible.
- (2) Contracts with five national coordinating discovery attorneys (CDAs) are in place to advise panel attorneys and defender organizations on cost-effective ways to manage large volumes of documents in the most complex cases to increase the quality of representation. As of October 2022, CDAs had been appointed by federal courts to assist CJA counsel in over 150 active cases in more than 50 districts, with at least one case in each circuit. Because most of these cases are large, multi-defendant prosecutions, CDAs are providing services to over 1,400 CJA clients.
- (3) The Defender Services program has procured national licenses for software applications and tools to allow for the more efficient capture, organization, analysis, review, and management of case-related electronic data by CJA panel attorneys and FDO staff, thereby generally avoiding the higher cost alternative of purchasing software for multiple individual cases year after year.



### ***Improvement in DOJ Procedures for Making Decisions Not to Seek the Death Penalty in Death-Eligible Cases***

Federal death penalty litigation remains active, with federal prosecutors in the first 20 months of the current administration filing new death-eligible cases at about the same rate as prosecutors in the first 20 months of the previous administration. As of early November 2022, there were approximately 197 individuals with death-eligible indictments pending an authorization decision<sup>16</sup> by the U.S. Attorney General. As of the same time, at least 14 individuals were authorized for federal capital prosecutions, one of whom began jury selection in the Fall of 2022 and another has a trial date in April 2023.

The judiciary continues to urge DOJ to streamline its procedures for evaluating and making decisions *not* to seek the death penalty in cases where the government can quickly conclude that the death penalty is inappropriate. Until DOJ formally notifies counsel and the court that it does not intend to seek the death penalty for a death-eligible defendant, which can take years to determine, defense counsel must assume that the death penalty will be pursued. Pending DOJ's decision, the judiciary is obligated to bear the substantial cost of the statutorily-required two capital-qualified defense counsel – currently compensated at the higher capital panel attorney hourly rate of \$210 – who must undertake the intensive, time-consuming work required to attempt to persuade the government not to seek the death penalty, as well as prepare for a capital trial and sentencing proceeding. An early decision by the Attorney General not to seek the death penalty could achieve significant cost savings for the Defender Services program, DOJ, and the courts.

DOJ has made some modifications to its death penalty authorization protocol to streamline and accelerate the process by which DOJ makes a formal determination that the death penalty will *not* be sought in cases where the local U.S. attorney recommends *against* seeking the death penalty, as well as some other changes. The Defender Services program will continue to collaborate with DOJ and support these and other efforts that could reduce costs in federal capital prosecution cases.

### ***Distance Learning***

The Defender Services program continues to develop and produce distance learning as part of its robust training program. Since October 2010, substantive criminal defense video training sessions have been made available to CJA practitioners, including CJA panel attorneys and defender staff, expanding the reach of the programs without requiring additional live training events. At this time, more than 73 training sessions presented at national and local programs over the last several years may be viewed by FDO staff and panel attorneys through the Training Division's website, [www.fd.org](http://www.fd.org). In FY 2022, the Training Division presented 16 live webinars,

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<sup>16</sup> For any federal death-eligible case to proceed as a death penalty case, the U.S. Attorney General must decide whether to seek the death penalty. After a case is approved by the Attorney General to proceed as a capital case, it is considered "authorized."

which were attended by 4,172 CJA practitioners and services providers. Currently there are 113 recorded webinars available which were accessed approximately 1,600 times in FY 2022. The FY 2022 webinars provided quality training on a variety of criminal defense topics including defending conspiracy cases, the Maritime Drug Law Enforcement Act, rethinking criminal defendants' Second Amendment claims after *Bruen*, and challenging recidivist sentence enhancements.

The training made available through distance learning provides an additional resource to improve the quality of representation provided by CJA counsel and enables live training programs to have a greater impact nationally. For example, FDOs are using the webinars as part of their local panel attorney training, which increases the availability of training without incurring additional costs. Though virtual programming cannot replace the in-person and hands-on training experience, it is a useful tool that will continue to be a prominent part of the Training Division's portfolio.

### ***Remote Detention Working Group***

In November 2021, the Remote Detention Working Group (RDWG) was established to enhance the lines of communication between the judiciary and components of the DOJ, including the United States Marshals Service (USMS), around problems created by the remote pretrial detention of individuals charged with federal criminal offenses. The working group held its first meeting in June 2022.

Housing individuals detained pretrial at significant distances from defense counsel and federal courthouses has substantial operational and cost implications for the Defender Services program. Additionally, remote pretrial detention raises fundamental concerns about the quality of representation provided under the CJA because, often, defense counsel is unable to meet and effectively communicate with their clients when facilities have inadequate confidential meeting spaces, telephone lines, video-technology, or means for reviewing e-discovery. Remote pretrial detention also results in increased costs for the Defender Services program when CJA counsel and members of the defense team must spend substantial time travelling long distances to meet with clients. While the use of remote technologies can be a supplemental tool for defense counsel, in-person client meetings remain the standard of practice necessary for effective representation under the CJA.

### ***Cost-Effective Use of Paralegals***

The Committee has long encouraged the use of paralegals by CJA panel attorneys' because they are billed at lower rates than appointed counsel, to promote cost-effective and high-quality representation. To assist panel attorneys in identifying qualified paralegals, the NLST created a website at [www.cjaresources.com](http://www.cjaresources.com) that contains a list of private paralegals that have been authorized by

a district court in the past to provide services in CJA cases and are interested in providing that assistance again. The website provides a starting point for CJA panel attorneys to find service providers and contact them to learn more about their skills, work experience, and references.

The NLST also provides frequent online trainings designed for private paralegals on various e-discovery tools and related technologies to improve their ability to assist CJA panel attorneys. This helps increase the availability of qualified paralegals and will improve the quality and cost-effectiveness of CJA representation in cases with voluminous discovery.

## JUSTIFICATION OF CHANGES

The FY 2024 request for the Defender Services account is \$1,533.0 million, an increase of \$150.3 million, or 10.9 percent, over the FY 2023 appropriations level of \$1,382.7 million.

The request will fund adjustments to base and staffing for the FDO program to support 98 percent of the staffing formula requirements (caseload adjusted), and AO reimbursable staff. This staffing allows the judiciary to support workload demands and implement CJA-related policies approved by the Judicial Conference.

This request also funds training and information technology requirements, including cybersecurity and IT infrastructure modernization for the Defender Services program.

## ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

### A. PERSONNEL

#### *Pay and Benefit Adjustments*

#### 1. Proposed January 2024 pay adjustments

##### a. Federal pay adjustment

#### **Requested Increase: \$23,198,000**

Consistent with guidance from the Office of Management and Budget, the judiciary is assuming federal pay rates will increase in January 2024 by 5.2 percent, of which 4.7 percent is for an across-the-board increase and 0.5 percent is for a locality increase. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2024, from January 2024 to September 2024. (If the pay adjustment included in the President's FY 2024 budget request is different from this 5.2 percent guidance, the judiciary will revise this line item in its FY 2024 budget re-estimate.)

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$1,077,000**

The requested funding would increase the capital panel attorney hourly rate by an assumed employment cost index (ECI) increase of 4.7 percent. (Panel attorneys do not receive locality pay.) This would increase the hourly rate from \$210 per hour to an estimated \$220 per hour, effective January 1, 2024. There is a time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of six months of the rate increase in FY 2024. (If the ECI pay adjustment included in the President’s FY 2024 budget request is different from this 4.7 percent guidance, the judiciary will revise this line item in its FY 2024 budget re-estimate.)

**c. Panel attorney non-capital rate adjustment**

**Requested Increase: \$2,172,000**

The requested funding would increase the non-capital panel attorney hourly rate by an assumed ECI increase of 4.7 percent. (Panel attorneys do not receive locality pay adjustments.) This would increase the hourly rate from \$164 per hour to an estimated \$172 per hour, effective January 1, 2024. There is a

time delay between when the rate increase is implemented and when vouchers are submitted with the higher rate. Therefore, the requested increase provides for the cost of three months of the adjustment in FY 2024. (If the ECI pay adjustment included in the President’s FY 2024 budget request is different from this 4.7 percent guidance, the judiciary will revise this line item in its FY 2024 budget re-estimate.)

**2. Annualization of January 2023 pay adjustments**

**a. Federal pay adjustment**

**Requested Increase: \$6,833,000**

The requested increase provides for the annualized costs of the 2023 pay adjustment associated with ECI and locality pay. As a result of this adjustment, federal pay rates increased by an average of 4.6 percent, effective as of January 2023. The requested increase provides for the cost of three months (from October 2023 to December 2023) of the 2023 pay increase in FY 2024.

**b. Panel attorney capital rate adjustment**

**Requested Increase: \$863,000**

The requested funding annualizes the FY 2023 panel attorney capital ECI rate increase from \$202 to \$210 per hour. An increase to the capital hourly rate impacts six months of costs in FY 2023. The requested increase annualizes this rate increase for the first six months of FY 2024.

**c. Panel attorney non-capital rate adjustment**

**Requested Increase: \$10,913,000**

The requested increase annualizes the FY 2023 panel attorney non-capital ECI rate increase from \$158 to \$164 per hour. An increase to the non-capital hourly rate impacts three months of costs in FY 2023. The requested increase annualizes this rate increase for the first nine months of FY 2024.

**3. Promotions and within-grade increases**

**Requested Increase: \$4,457,000**

The requested increase provides for promotions and within-grade increases for personnel. The FDO salary plans provide

for periodic within-grade increases for staff who receive at least a satisfactory performance rating.

**4. Benefits increases**

**a. Health benefits**

**Requested Increase: \$3,826,000**

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by an average of 6.6 percent both in January 2023 and January 2024. The requested increase annualizes the 2023 premium increase and includes a nine-month provision for the increase anticipated for FY 2024.

**b. FICA adjustment**

**Requested Increase: \$1,263,000**

Based on information from the Social Security Administration, employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax will increase in 2023. The salary cap for OASDI increased from \$147,000 to \$160,200 in January 2023. The requested amount is needed to pay the agency's contribution in FY 2024.

**5. One more compensable day**

**Requested Increase: \$2,400,000**

There is one more compensable day in FY 2024 than in FY 2023. The requested increase adjusts for personnel compensation and benefits associated with one more compensable day.

**B. OTHER ADJUSTMENTS**

*General Inflationary Adjustments*

**6. Inflationary increases for contracts, services, supplies, and equipment**

**Requested Increase: \$8,743,000**

Consistent with guidance from the Office of Management and Budget, this request of \$8,743,000 is required to fund inflationary increases of 2.4 percent for operating expenses such as travel, communications, contractual services, supplies and materials, and furniture and equipment.

**7. Inflationary increase in GSA space rental costs**

**Requested Increase: \$2,103,000**

The request represents a 3.0 percent inflationary increase and adjustments in the cost of GSA space rental charges for space for FY 2024.

*Workload and Financing Adjustments*

**8. Change in projected panel attorney requirements**

**Requested Decrease: -\$4,000,000**

Prior to the COVID-19 pandemic, panel attorney caseload and payments showed significant increases. However, the onset of the COVID-19 pandemic resulted in a large reduction in panel attorney vouchers and representations, and the recovery to pre-pandemic levels in panel attorney caseload and payments has been slower than expected. Therefore, to adjust for these decreases, a base adjustment of \$4.0 million is requested. Even with this \$4.0 million base reduction, there are adequate funds in the FY 2024 Defender Services request to meet projected panel attorney payment and representation requirements. As the projected caseload and payment trends change, the judiciary will advise the appropriations subcommittee staff of

any updates to this estimate in the FY 2024 budget re-estimate process.

**9. Annualization of FY 2023 positions**

**Requested Increase: \$2,990,000 FTE: 14**

The requested adjustment funds the annualization of the FDO position changes approved in FY 2023, including staffing formula decreases (-26 FPDO positions/-13 FTE and -6 CDO positions), additional *McGirt* (44 positions/22 FTE) and national positions (9 positions/5 FTE), and eight reimbursable positions.

**10. Increase in appropriation needed to maintain FY 2023 requirements due to a decrease in carryover funding**

**Requested Increase: \$70,830,000**

The judiciary has been able to reduce its Defender Services appropriation request using unobligated no-year funds carried forward in this account from prior fiscal years. In FY 2023, \$110.8 million in prior year unobligated balances was used to finance the FY 2023 requirements. In developing the FY 2024 request, the judiciary assumes \$40 million will carry forward

from FY 2023 and prior years into FY 2024 and be available to finance FY 2024 requirements. Because the judiciary anticipates having less in carryforward funding available in FY 2024, it requests \$70.8 million in funding to substitute direct appropriations for base expenses previously funded from carryforward balances. The judiciary will advise appropriations subcommittee staff of any changes to this estimate throughout FY 2023.

**C. PROGRAM INCREASES/DECREASES**

**11. FDO staffing formula positions**

**Requested Decrease: -\$1,368,000 FTE: -6**

The requested decrease is due to projected FDO caseload and the subsequent calculation of the FDO staffing formulas. The formulas use multi-year caseload averages and several other inputs, so the change in formula positions from FY 2023 to FY 2024 does not correlate directly with the projected change in caseload across just those two years. This request would provide FDOs with funds to support 98 percent of the staff projected to be required under the Judicial Conference-approved staffing formulas in FY 2024. This request is for 12 fewer FDO formula positions (12 for FPDOs) for six months.



More details on FDO workload are provided on pages 5.11-5.14.

## **12. Information technology, cybersecurity, and IT modernization requirements**

### **Requested Increase: \$11,486,000**

The requested increase will support three IT initiatives (\$1.4 million), contract management requirements (\$0.2 million), as well as cybersecurity and IT modernization initiatives (\$9.9 million).

The three IT initiatives are:

1. Defender Services Data Management System (\$969,200)
2. Investigative Database Tool (\$274,000)
3. Body-worn Camera Footage Management System (\$150,000)

The Defender Services Data Management System is the case management system which collects and integrates data from multiple sources into a single database for various uses (including program analysis, effective allocation of resources, and efforts to ensure the quality and cost-effectiveness of client

representations). It requires additional funding for expansion of the scope of work to address cybersecurity initiatives and additional contractor support.

LexisNexis Accurant for Government investigative database research tool is currently used by FDOs, and a secondary tool is needed to verify and cross-check LexisNexis information. This tool would result in more comprehensive and accurate investigations.

Body-worn camera footage is increasingly provided in discovery. This request would provide software and hosting services comparable to DOJ, and would assist FDOs in sorting, reviewing, and tagging video files while reviewing these voluminous recordings.

The cybersecurity and IT infrastructure initiatives are:

1. Cybersecurity Support (\$725,000)
2. DSO Networks Engineering, Governance, and Services Modernization (\$4,570,000)
3. Data Security Management and Improvement (\$4,632,000)

The cybersecurity and IT modernization requested increase of \$9.9 million will support critical requirements in these areas: cybersecurity support to engage outside security experts to evaluate security of FDO cloud services; DSO networks engineering and services modernization services to design modern network architecture that will allow for granular cybersecurity controls, better support for a remote workforce, and secure operations within a cloud environment; and data security management improvements to revamp our current backup solution and upgrade our server licenses to an enterprise edition which will better support FDO IT needs. These requirements were included as part of the judiciary's multi-year plan to address cybersecurity and modernization needs and IT infrastructure requirements.

More details on cybersecurity and infrastructure requirements are provided on pages 5.18-5.19.

### **13. Training operations**

**Requested Increase: \$2,233,000**

The requested increase will support the following three initiatives:

1. 21<sup>st</sup> Century Training Operations (\$852,000)

2. Training Post-COVID (\$758,000)
3. Additional Training Requirements (\$623,000)

The 21<sup>st</sup> Century training operations includes funding for an updated Event Management System which would provide full-service on-site attendee management. In addition, two other programs would be utilized: Learning Management System (to support the administration, documentation, tracking, reporting, automation and delivery of educational courses and training programs to manage all its electronic learning) and a real-time polling/survey platform.

Additional details on training requirements can be found on page 5.18.

### **14. Reimbursable positions**

**Requested Increase: \$316,000**

The requested increase supports three additional positions at the AO's Defender Services Office that would be funded by the Defender Services appropriation. These positions will support program reviews and budgetary/financial operations support to federal defenders and their staff in the areas of audit preparation, financial management, internal controls, procurement, and accountable officer liability.

**D. FINANCING THE FISCAL YEAR 2024 REQUEST**

**15. Anticipated carryforward from FY 2023 and prior years into FY 2024**

**Estimated funds available: \$40,000,000**

The judiciary projects \$40 million will be available through anticipated carryforward from FY 2023 and prior years into FY 2024 to offset the FY 2024 appropriation request for the Defender Services program. The judiciary will advise the appropriations subcommittee staff of any changes to this estimate throughout FY 2023.