



# FY 2024 Congressional Submission

Office of the Solicitor General

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# **I. Overview for the Office of the Solicitor General**

## **Introduction**

In FY 2024, the Office of the Solicitor General (OSG) requests a total of \$16,075,000 and 57 positions, including 25 attorney positions, and 57 FTE to meet its mission.

## **Mission/Background**

The mission of OSG is to conduct all litigation on behalf of the United States and its agencies in the Supreme Court of the United States, to approve decisions to appeal and to seek further review in cases involving the United States in the lower federal courts, and to supervise the government's litigation in the federal appellate courts.

OSG was created by the Statutory Authorization Act of June 22, 1870, which states: "There shall be in the Department of Justice an officer learned in the law, to assist the Attorney General in the performance of his duties to be called the Solicitor General." As provided in 28 C.F.R. 0.20-0.21, the general functions of the Office are as follows: (1) conducting or assigning and supervising all Supreme Court cases, including appeals, petitions for and briefs in opposition to certiorari, merits briefs, and oral arguments; (2) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for rehearing en banc and petitions to such courts for the issuance of extraordinary writs); (3) determining whether an amicus curiae brief will be filed by the government, or whether the government will intervene, in any appellate court, or in any trial court in which the constitutionality of an Act of Congress is challenged; and (4) assisting the Attorney General, the Deputy Attorney General, and the Associate Attorney General in the development of broad Department policy.

OSG is headed by the Solicitor General, who is appointed by the President and confirmed by the Senate. The OSG staff includes 23 attorney positions. The attorneys prepare Supreme Court briefs, appeal recommendations, and other related legal materials and present oral arguments. The 32 support staffers assist the attorneys in the performance of those functions, including by conducting research, reviewing briefs, tracking dockets and deadlines, overseeing filings, and completing various administrative tasks.

## **Challenges**

OSG's overall mission will remain the same in FY 2024. The Office's docket, which mirrors the docket of the Supreme Court and the federal courts of appeals, covers a range of issues that are critical to our legal system and to our Nation's security and economy. Litigating those issues on behalf of the United States requires careful attention and coordination within the government, as well as a sophisticated assessment of how to interpret and apply relevant constitutional provisions, statutes, and precedents to most effectively advance the interests of the United States consistent with applicable law.

In recent years, constitutional, criminal, and administrative law cases have been at the heart of the Supreme Court's caseload. For example, with respect to constitutional cases, the Supreme Court will decide in its upcoming term whether consideration of race in undergraduate admissions is constitutional; whether the Indian Child Welfare Act of 1978 exceeds Congress's powers under the Indian Commerce Clause or violates the anticommandeering doctrine of the

Tenth Amendment, the Equal Protection Clause, or the nondelegation doctrine; and whether a state law that has out-of-state economic effects and affects an integrated, nationwide industry violates the dormant Commerce Clause. Constitutional cases like these require substantial time and resources to solicit and coordinate the views of all interested agencies and components of the government; to research the relevant constitutional questions, which often requires substantial historical inquiries; to develop arguments that most effectively advance the interests of the United States; and to present those arguments as persuasively as possible in written briefs and oral presentations to the Court.

The Solicitor General likewise defends the implementation of government programs and congressional enactments. Although the Supreme Court's precise docket in FY 2024 is impossible to predict, during the current term OSG has defended a variety of agency initiatives, including the Environmental Protection Agency's authority to regulate greenhouse gas emissions from power plants and the Department of Homeland Security's authority to manage the Nation's border.

The Solicitor General also routinely participates in cases that present important questions of federal statutory interpretation. Experience suggests that in FY 2024, OSG will continue to be involved in cases implicating an array of federal statutes, such as the Voting Rights Act, the Civil Rights Act of 1964 and other antidiscrimination laws, the Patent Act, the Copyright Act, the Employee Retirement Income Security Act, the Securities Act and the Securities Exchange Act, the Fair Labor Standards Act, the Labor Management Relations Act, the Federal Arbitration Act, the Immigration and Nationality Act, and the Bankruptcy Code. In preparation for these cases, OSG attorneys engage in extensive coordination and consultation with the agencies that Congress has directed to implement these statutes.

In addition, the Supreme Court typically hears at least a half-dozen federal criminal cases each term and considers hundreds of petitions for writs of certiorari seeking review of federal criminal convictions. OSG handles all of those matters, and also participates as amicus curiae in state criminal cases that present issues of importance to the United States.

Finally, OSG regularly handles cases affecting foreign affairs, including cases under the Foreign Sovereign Immunities Act, the Alien Tort Statute, and the Torture Victims Protection Act. These cases can have important consequences for the conduct of foreign affairs and typically require close consultation with the Department of State and other interested agencies.

### **Full Program Costs**

OSG has only one program—Federal Appellate Activity. Its program costs consist almost entirely of operational costs, such as salaries and benefits, printing, GSA rent, and reimbursable agreements with other DOJ components.

### **Performance Challenges**

The Office of the Solicitor General does not initiate any programs, but it is required to handle all appropriate Supreme Court cases and requests for authorization to appeal, intervene, or file an amicus brief. For the vast majority of cases filed in the Supreme Court in which the United States is a party, a petition is filed by an adverse party and the United States responds in some way, either by filing a brief or, after reviewing the case, waiving its right to do so. Additionally,

the Supreme Court regularly requests the Solicitor General to express the views of the United States on whether the Court should grant certiorari in cases in which the United States is not a party. And when the Supreme Court grants a case in which the United States is not already a party, the Solicitor General determines whether it is in the interests of the United States to file an amicus curiae brief.

The number of cases in which the Solicitor General petitions the Supreme Court for review, acquiesces in a petition for a writ of certiorari filed by an adverse party, or participates as an amicus curiae is governed exclusively by the Solicitor General’s determination that it is in the best interest of the United States to take such action. The number of those determinations—and the number of cases in which the Supreme Court grants certiorari over the Solicitor General’s opposition—may vary widely from year to year. That variation limits the Office’s ability to plan its workload.

One particular challenge in recent years has been a gradual increase in the number of criminal cases in which the Solicitor General is required to file a brief in opposition to a petition for a writ of certiorari. In FY 2014, OSG filed responses to only 8.1% of criminal petitions and waived its right to respond to the rest. By FY 2022, that percentage had increased to 25%, in part because the Supreme Court has become more likely to call for a response if OSG initially waives its right to respond. This general trend, and the resulting increase in OSG’s workload, can be expected to continue.

## II. Summary of Program Changes

OSG is requesting a program enhancement for contractor resources to provide professional services in furtherance of its mission.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
<b>Mission Critical Contract Support Staff</b>	<b>Supports contractor resources to provide professional services in furtherance of its mission.</b>	<b>0</b>	<b>0</b>	<b>625</b>	<b>9</b>
<b>Attorney Positions</b>	<b>Supports the mission in a full range of matters that include the drafting of briefs in opposition to certiorari, petitions for certiorari and briefs on the merits of Supreme Court cases.</b>	<b>2</b>	<b>2</b>	<b>452</b>	<b>11</b>

## III. Appropriations Language and Analysis of Appropriations Language

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

## IV. Program Activity Justification

### A. Federal Appellate Activity

<i>Federal Appellate Activity</i>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2022 Enacted	55	47	\$14,087
2023 Presidents Budget	55	55	14,460
Adjustments to Base and Technical Adjustments	0	0	538
2024 Current Services	55	55	14,998
2024 Program Increases	0	0	1,077
2024 Program Offsets	0	0	0
2024 Request	57	57	16,075
<b>Total Change 2023-2024</b>	<b>2</b>	<b>2</b>	<b>\$1,615</b>

#### 1. Program Description

The major functions of the Office of the Solicitor General are conducting government litigation in the U.S. Supreme Court, supervising government litigation in the federal courts of appeals, and approving intervention by the United States to defend the constitutionality of Acts of Congress.

OSG does not initiate programs or determine the number of appeal and amicus authorizations it handles. OSG Supreme Court filings, including its amicus briefs, often involve important constitutional or federal statutory questions that will fundamentally affect the enforcement of federal law or the administration of major federal programs. Examples in recent terms include cases presenting significant issues of criminal procedure (affecting the government’s ability to succeed in prosecutions), as well as important issues under the civil rights laws (such as the Voting Rights Act and the Civil Rights Act of 1964), the environmental laws (such as the Clean Air Act), and many others.

The following table provides a fiscal year snapshot of matters pending at the beginning of the term of the Supreme Court, additional matters received, completed appellate determinations, certiorari determinations, miscellaneous recommendations, and oral arguments before the Supreme Court.

<i>FY</i>	<i>Supreme Court Term</i>	<i>Matters Pending</i>	<i>Addl. Matters Received</i>	<i>Appellate Determinations</i>	<i>Certiorari Determinations</i>	<i>Miscellaneous Recommendation Determinations</i>	<i>Oral Arguments</i>
19	2018	484	3042	680	662	444	54
20	2019	378	2556	761	529	519	51
21	2020	632	2479	622	575	610	51
22	2021*	701	2645	459	494	688	50

\*At the time of preparation, the 2021 Supreme Court Term has not concluded. These numbers do not reflect the full term final count.

The determinations and recommendations fields in the chart above do not directly correspond with the Office’s workload measurement tables. The workload measurement tables track the

workload by case whereas the figures above track the workload by determination. Often, the Office of the Solicitor General will receive a request for authorization that includes more than one potential outcome. For example, the Solicitor General may receive a request for authorization for rehearing en banc, or, in the alternative, for a petition for a writ of certiorari. In that case, the Solicitor General may make two determinations: (1) no rehearing and (2) no certiorari. The workload measurement tables reflect that as a single request. The table above provides a separate accounting for each determination. Additionally, the miscellaneous recommendations field includes requests for authorization of settlement, for stays, and for mandamus, while the figures on the performance measurement tables do not include such requests.

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

2. Performance and Resource Tables

<b>PERFORMANCE AND RESOURCES TABLE</b>												
<b>Decision Unit:</b>												
<b>RESOURCES (\$ in thousands)</b>			<b>Target</b>		<b>Actual</b>		<b>Target</b>		<b>Changes</b>		<b>Requested (Total)</b>	
			<b>FY 2022</b>		<b>FY 2022</b>		<b>FY 2023</b>		<b>Current Services Adjustments and FY 2024 Program Changes</b>		<b>FY 2024 Request</b>	
<b>Total Costs and FTE</b> (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
			55	14,087	47	14,087	55	14,460	2	1,615	57	16,075
<b>TYPE</b>	<b>STRATEGIC OBJECTIVE</b>	<b>PERFORMANCE</b>	<b>FY 2022</b>		<b>FY 2022</b>		<b>FY 2023</b>		<b>Current Services Adjustments and FY 2024 Program Changes</b>		<b>FY 2024 Request</b>	
<b>Program Activity</b>			<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
	Upholding the Rule of Law		55	14,087	47	14,087	55	14,460	2	1,615	57	16,075
<b>APG Measure:</b>	1.2	N/A										
<b>KPI: Output</b>	1.1.1	N/A										
<b>Performance Measure:</b>	1.2	Cases in which the Solicitor General Participated	3300		2608**		3300				3300	
<b>Performance Measure:</b>	1.2	Requests to which the Solicitor General Responded	1400		1388**		1400				1400	
<p>* Denotes inclusion in the DOJ Quarterly Status Report and DOJ Annual Performance Plan.                      * This table is required.                      **These are partial numbers through March 31, 2022. The FY22 (2021 Supreme Court Term) concludes on Sept 30, 2022 when full year numbers will be available.</p>												



**A. Definitions of Terms or Explanations for Indicators:**

**Footnote 1:** Because the work of the Office is primarily governed by the Supreme Court’s schedule, the Office tracks its workload by Supreme Court Term. Fiscal years roughly correspond to Supreme Court Terms, which run from July of the Term year through June of the next year. Reference to fiscal years in this document will reflect information for the applicable Supreme Court Term. Accordingly, FY 2024 corresponds with the 2023 Supreme Court Term FY 2023 corresponds with the 202 Supreme Court Term, and so on. The Office of the Solicitor General handles Supreme Court matters on an ongoing basis. As a result, some matters will overlap from one fiscal year to the next, and they are included in the data for the term in which they most appropriately fit.

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

**B. Data Validation and Verification.**

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

**Issues Affecting OSG’s Program Performance.**

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

Performance		FY 2022	FY 2023	FY 2024
		Actual	Target	Target
Agency Priority Goal Measure	1.2			
Key Performance Indicator	1.1.1			
Performance Measure	Cases in which the Solicitor General Participated	2,608*	3,300	3,300
Performance Measure	Requests to which the Solicitor General Responded	1,388*	1,400	1,400

[N/A= Data Unavailable]

\* These are partial numbers through March 31, 2022. The FY22 (2021 Supreme Court Term) concludes on Sept 30, 2022 when full year numbers will be available.

## V. Program Increases by Item:

**Item Name:** **Mission Critical Contract Support Staff**

**Budget Decision Unit(s):** Federal Appellate Activity

**Strategic Goal & Objective:** 1- Upholding the Rule of Law

**Organizational Program:** Office of the Solicitor General

**Program Increase:** Positions 0 Atty 0 FTE 0 Dollars \$625,000

### Description of Item

OSG is requesting a program enhancement for necessary contractor resources to provide professional services in furtherance of its mission.

### Justification

OSG has procured contracted professional services in support of its mission for a number of years. The services include operations and maintenance support of OSG's Automated ReCommendations System (ARCS), paralegal support for OSG's Research & Publications Section (R&P), and paralegal support of OSG's Freedom of Information Act (FOIA) program. With regard to ARCS, OSG fully implemented this system in FY 2021 after two years of development. The system provides a means of capturing, archiving, and searching recommendation memoranda related to the Solicitor General's decisions about matters of appellate litigation over the last several decades and going forward. The system is critical to OSG's work because it allows OSG attorneys to quickly and comprehensively search for past work product related to matters pending before the Office. Additional funding is necessary to maintain technical support and operations of the ARCS system. The professional services that support our R&P and FOIA programs are necessary in ensuring we meet our obligations to the Department. R&P, in particular, plays a crucial function in ensuring the accuracy and professional presentation of the hundreds of briefs OSG files each year.

The heavy workload of the Office requires adequate staffing of support personnel and paraprofessionals in order to meet its demanding mission. The requested funding will lend support to the Executive Office of OSG by providing consulting, administrative and technical support in the areas of R&P operations, FOIA, and IT system maintenance, as well as paralegal support in processing our briefs and other legal documents in preparation for submission to the Court.

### Impact on Performance

The request for this increase supports Strategic Goal & Objective - Uphold the Rule of Law. This enhancement is necessary in ensuring continued operations in maintaining ARCS and supporting OSG's R&P and FOIA programs.

Funding

Base Funding

FY 2022 Enacted				2023 President's Budget Request				FY 2024 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
55	23	55	\$14,087	55	23	55	\$14,460	55	23	55	\$14,998

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Mission Critical Contract Support Staff	\$625	\$625	1	\$0	\$0
<b>Total Non-Personnel</b>	<b>\$625</b>	<b>\$625</b>	<b>1</b>	<b>\$0</b>	<b>\$0</b>

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	55	23	55	\$10,583	\$4,415	\$14,998	N/A	N/A
Increases	0	0	0	0	625	625	N/A	N/A
<b>Grand Total</b>	<b>55</b>	<b>23</b>	<b>55</b>	<b>\$10,583</b>	<b>\$5,040</b>	<b>\$15,623</b>	<b>N/A</b>	<b>N/A</b>

Affected Crosscut

None

**Item Name:** Attorney Positions  
Budget Decision Unit(s): Office of the Solicitor General  
Strategic Goal & Objective: 1- Upholding the Rule of Law  
Organizational Program: Office of the Solicitor General

Program Increase: Positions   2   Atty   2   FTE   2   Dollars   \$452,000  

Description of Item

OSG is requesting an increase of two attorney positions, two FTE and \$452,000 in furtherance of its mission.

Justification

In light of its increasing workload in several key areas, OSG has been challenged in maintaining its demanding workload with the current FTE level. That workload has increased substantially over time, and we anticipate it will increase further in the coming years. OSG conducts all litigation on behalf of the United States and its agencies in the Supreme Court of the United States, to approve decisions to appeal and to seek further review in cases involving the United States in the lower federal courts, and to supervise the government’s litigation in the federal appellate courts. We have determined two additional attorney positions are necessary to meet these and other demands of the Office.

The additional resources will support the office in a full range of matters that include the drafting of briefs in opposition to certiorari, petitions for certiorari and briefs on the merits in Supreme Court cases, recommendations to the Solicitor General regarding authorization of government appeals in the lower courts and assisting in the preparation of oral arguments in the Supreme Court.

Impact on Performance

A program increase of two attorney positions, two FTE and \$452,000 in support of the Department’s Strategic Goal is necessary in meeting the responsibilities of the Office in its role of litigating on behalf of the United States at the U.S. Supreme Court. We have determined that two new positions will enable the office to meet the demands placed upon it without any decrease in the quality of its work.

Funding

Base Funding

FY 2022 Enacted				2023 President's Budget Request				FY 2024 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
55	23	55	\$14,087	55	23	55	\$14,460	55	23	55	\$14,998

Personnel Increase Cost Summary – Attorney Positions

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full-Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1 <sup>st</sup> Year	2 <sup>nd</sup> Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	\$420	2	\$210	\$170	\$170	\$0	\$0
<b>Total Personnel</b>	\$420	2	\$210	\$170	\$170	\$0	\$0

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Contract Services and Supplies	\$22	\$11	2	4	0
Acquisitions & Assets	\$10	\$5	2	8	60
<b>Total Non-Personnel</b>	<b>\$32</b>	<b>\$16</b>	<b>2</b>	<b>\$12</b>	<b>\$60</b>

Total Personnel Request

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	55	23	55	\$10,583	\$4,415	\$14,998	N/A	N/A
Increases	2	2	2	420	32	452	N/A	N/A
<b>Grand Total</b>	<b>57</b>	<b>25</b>	<b>57</b>	<b>\$8,239</b>	<b>\$1,077</b>	<b>\$9,316</b>	<b>N/A</b>	<b>N/A</b>

Affected Crosscut

None

## **VI. Program Offsets by Item:**

Not Applicable.

## **VII. Exhibits**