

# **United States Department of Justice**

## **General Legal Activities**



**Office of the Pardon Attorney**

**FY 2021 Congressional Budget Submission**

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## **I. Overview for Office of the Pardon Attorney**

For FY 2021, the Office of the Pardon Attorney (OPA) requests a total of \$4,810,000, 20 positions, and 20 FTE, including 11 attorneys, to achieve its mission of advising and assisting the President in the exercise of the executive clemency power conferred on him by Article II, Section 2 of the Constitution. This request supports current services needs.

### **Introduction**

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

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

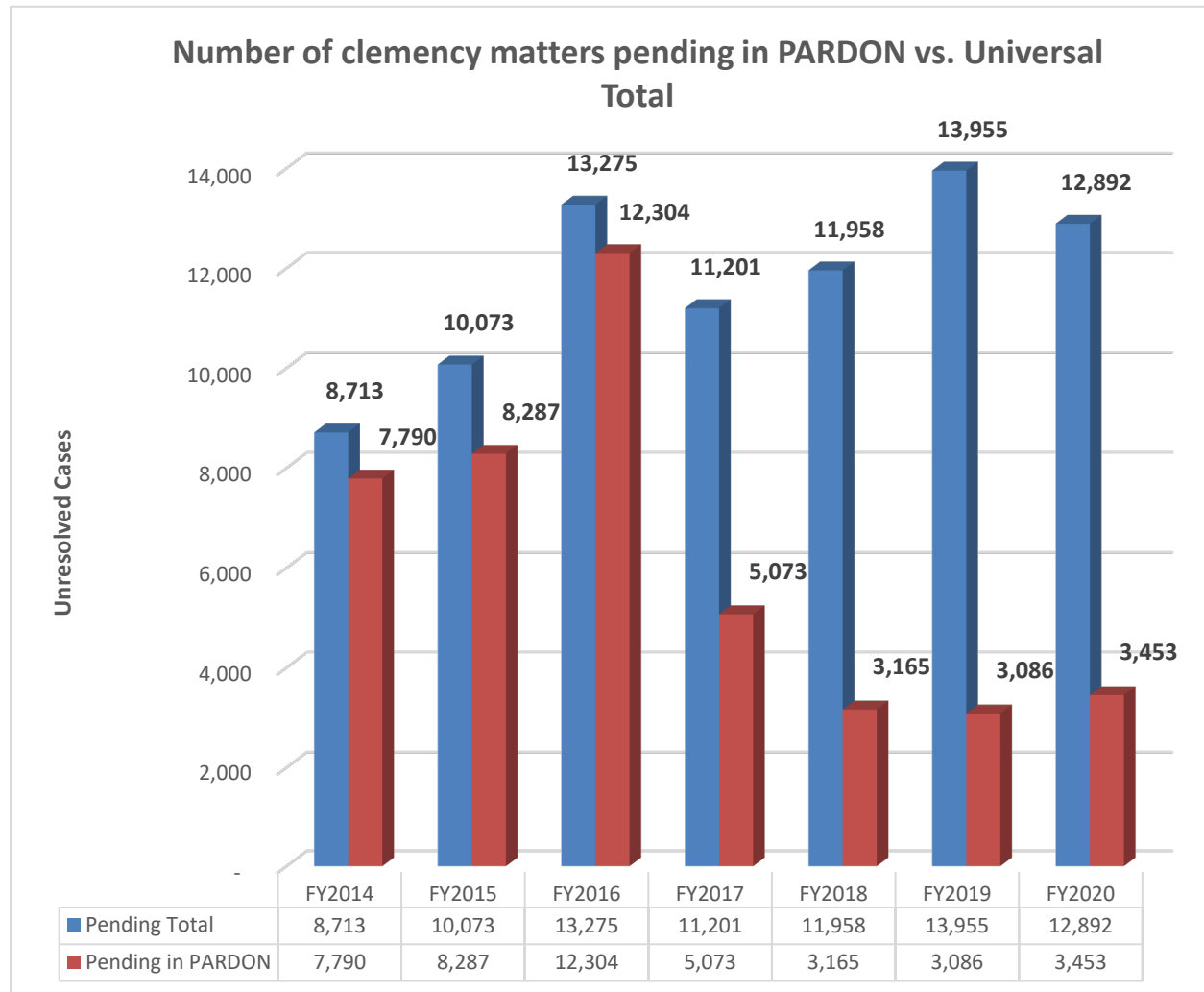
### **Program Description**

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

### **Challenges**

OPA's workload has continued to increase over the last decade to include a high profile presidential clemency initiative and various DOJ and White House priority processing projects. Between FY 2009 and FY 2019, OPA received approximately 44,958 new petitions (clemency cases) for processing, of which 40,038 were petitions for commutation of sentence. In FY 2016

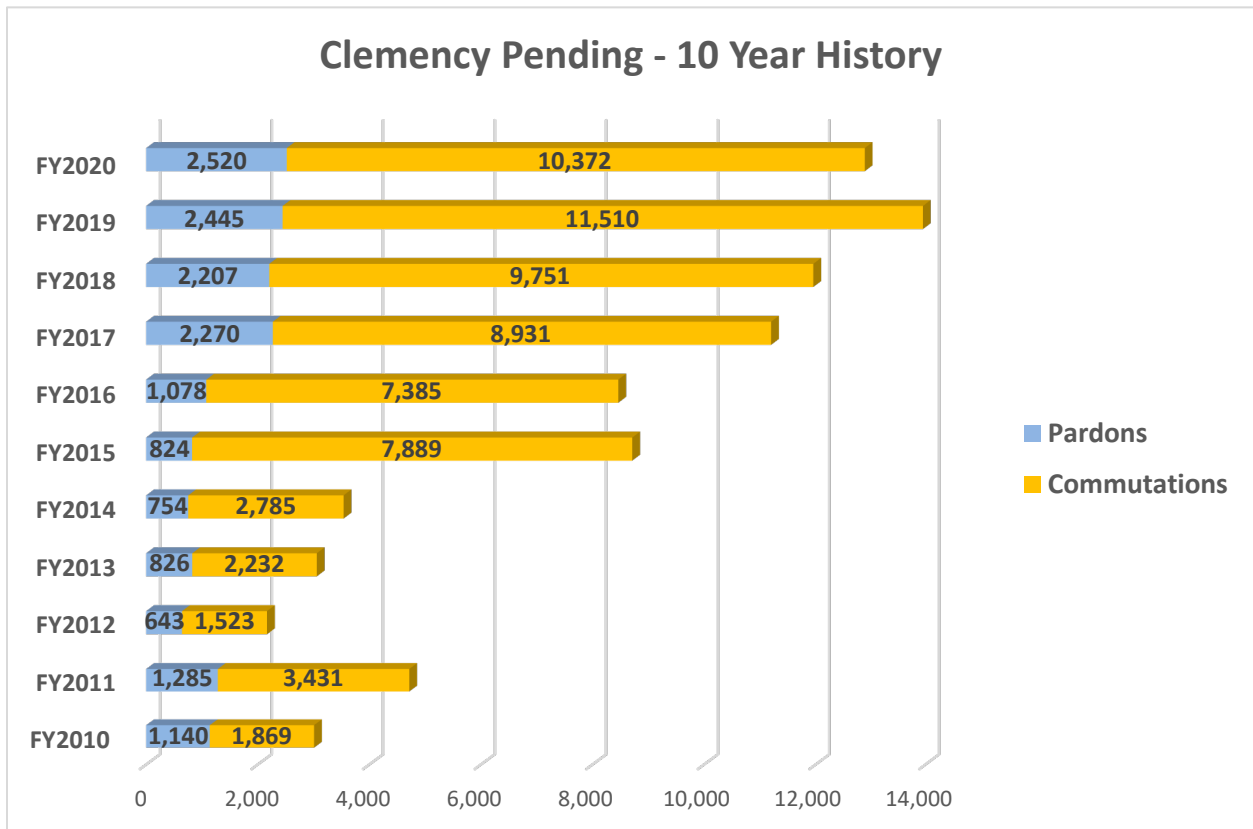
alone, OPA received a total of 12,025 new petitions. Up until FY 2014, OPA’s authorized staffing level was 11 positions - a level that was established for the office in the mid-1990s, when OPA received approximately 600 new clemency cases each fiscal year. The authorized staffing level was raised and is now 20 employees, but the volume of work is still daunting for such a small office. The current services level requested in the FY 2021 budget will allow OPA to continue to address the significant backlog in case processing derived from the increased workload in previous years.<sup>1</sup>



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

<sup>1</sup> The chart entitled **Number of clemency matters pending in OPA vs. Universal Total** shows the backlog of cases in OPA vs. those cases pending throughout the entire clemency process on the last day of each fiscal year for the past few years or during the last reporting for the current fiscal year.

cases can also remain in “pending” status somewhere other than OPA while still remaining on our open case list, per the chart above that shows the number of cases currently pending in OPA as opposed to those pending elsewhere in the clemency process. The impact of this massive influx of new cases over the past decade will continue to be felt by the office for many years to come. As a result, maintaining the current roster of staff and resources as requested for FY 2021 is essential to OPA’s continuing ability to address increased workloads and provide letters of advice to the President on the merits of those who have applied for executive clemency as well as provide a historical background of clemency matters.<sup>2</sup>



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

## II. Summary of Program Changes

Not applicable

## III. Appropriations Language and Analysis of Appropriations Language

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

## IV. Program Activity Justification

### A. Office of the Pardon Attorney

Office of the Pardon Attorney	Direct Pos.	Estimate FTE	Amount (\$000s)
2019 Enacted	19	16	\$4,474
2020 Enacted	20	20	4,766
Adjustments to Base and Technical Adjustments	0	0	44
2021 Current Services	20	20	4,810
2021 Request	20	20	4,810
<b>Total Change 2020-2021</b>	<b>0</b>	<b>0</b>	<b>\$44</b>

#### 1. Program Description

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

2. Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Office of the Pardon Attorney												
RESOURCES			Target		Actual		Projected		Changes		Requested (Total)	
			FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			19	4,474	19	4,474	20	4,766		\$44	20	4,810
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
Program Activity			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		Processing presidential clemency petitions	19	4,474	19	4,474	20	4,766		\$44	20	4,810
Performance Measure	4.1	Number of clemency petitions pending anyw here in the clemency process		N/A		13,955		N/A				N/A
Performance Measure	4.1	Number of clemency petitions pending w ithin the Office of the Pardon Attorney		3,500		3,086		2,500				2,000
Performance Measure	4.1	Number of clemency petitions pending w ithin the Office of the Pardon Attorney that w ere opened more than 1 year ago		N/A		611		100				100
Performance Measure	4.1	Number of clemency petitions processed by the Office of the Pardon Attorney		3,000		2,820		2,500				2,500
Performance Measure	4.1	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney		2,400		4,307		2,400				2,400
OUTCOME Measure	4.1	Percentage of the total clemency caseload pending w ithin the Office of the Pardon Attorney		N/A		22%		<=40%				<=40%

PERFORMANCE MEASURE TABLE										
Component/Decision Unit: OFFICE OF THE PARDON ATTORNEY										
Strategic Objective	Performance Report and Performance Plan Targets		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019		FY 2020	FY 2021
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
4.1	<b>Performance Measure</b>	Number of clemency petitions pending anywhere in the clemency process	10,073	13,275	11,201	11,958	N/A	13,955	N/A	N/A
4.1	<b>Performance Measure</b>	Number of clemency petitions pending within the Office of the Pardon Attorney	8,287	12,304	5,073	3,165	3,500	3,086	2,500	2,000
4.1	<b>Performance Measure</b>	Number of clemency petitions pending within the Office of the Pardon Attorney that were opened more than 1 year ago	N/A	N/A	N/A	N/A	N/A	611	100	100
4.1	<b>Performance Measure</b>	Number of clemency petitions processed by the Office of the Pardon Attorney	2,781	8,064	8,448	4,003	3,000	2,820	2,500	2,500
4.1	<b>Performance Measure</b>	Number of non-case related correspondence assignments closed by the Office of the Pardon Attorney	N/A	1,360	1,366	4,163	2,400	4,307	2,400	2,400
4.1	<b>OUTCOME Measure</b>	Percentage of the total clemency caseload pending within the Office of the Pardon Attorney	82%	93%	45%	26%	N/A	22%	<=40%	<=40%
N/A = Data unavailable										



### 3. Performance, Resources, and Strategies

#### a. Performance Plan and Report for Outcomes

OPA's sole mission is to assist the President in the exercise of his constitutional clemency power, thus OPA's performance measure is the number of clemency petitions fully processed from receipt through recommendation or closure without Presidential action during a given fiscal year. Likewise, OPA's outcome measure is the percentage of clemency petitions that remain pending within OPA as opposed to those that are pending all throughout the clemency process at the end of the fiscal year. In FY 2014, there were 8,713 cases pending universally, while 7,790 were still pending in OPA, which means approximately 89 percent of all clemency cases were pending in OPA as opposed to waiting for a review by the Office of the Deputy Attorney General (ODAG) and The White House. When compared to the 13,955 cases that were pending universally at the end of FY 2019, and factoring in that only 3,086 cases were pending in OPA, which equates to just about 22 percent of all cases pending within OPA, this small office continues to maximize its limited resources. The degree to which OPA will be able to meet its performance outcome target of less than or equal to 40 percent of the universal caseload will depend significantly on the volume of new petitions filed in upcoming fiscal years and how quickly OPA can work through the high cumulative number of petitions filed in the last few fiscal years.

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

#### b. Strategies to Accomplish Outcomes

*In support of DOJ Strategic Objective 4.1: Uphold the rule of law and integrity in the proper administration of justice.* Under the current administration, OPA will continue to reduce the overwhelming backlog of clemency cases submitted during the last administration while also processing all new clemency cases submitted to the Department for review. OPA intends to maintain the necessary balance between attorneys and support staff to continue efficient processing of both new and pending clemency petitions. Given the volume of OPA's current caseload, it is critical that the office maintain equal levels of experienced clemency attorney advisors and support staff to evaluate the merits of incoming petitions, and draft cogent, legally correct letters of advice to assist the President's decision-making. OPA's support staff continue to provide crucial assistance in processing clemency petitions by completing cursory reviews, requesting additional information and records when necessary, drafting screening letters, and completing other necessary correspondence like responding to Freedom of Information Act and Privacy Act requests, responding to miscellaneous correspondence, correspondence assigned to the Office by the Department's Executive Secretariat, as well as case assignments from the White House Correspondence Office. In an effort to cut down on the number of case status requests, OPA now proactively discloses the status of all cases received or closed since 1989 on

the Department's public facing website at <https://www.justice.gov/pardon/search-clemency-case-status-since-1989>. In addition, the information that feeds the search feature can be downloaded in the aggregate in Excel format, which negates the need for us to respond one-to-one to such requests. This facilitates moving petitions through the review process in a more timely and cost-effective manner and alleviates the administrative burden on OPA staff by allowing them to focus their expertise on legal case analysis. Where possible, OPA will continue to seek cost-effective ways to accomplish the clerical tasks required to process and manage its caseload, including maintaining OPA's electronic case management and tracking system.

c. Priority Goals

Not Applicable

**V. Program Increases by Item**

Not Applicable

**VI. Program Offsets by Item**

Not Applicable

**VII. Exhibits**