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# Judiciary Appropriations, FY2021

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## Judiciary Appropriations, FY2021

Funds for the judicial branch are included annually in the Financial Services and General Government (FSGG) appropriations bill. The bill provides funding for the U.S. Supreme Court; the U.S. Court of Appeals for the Federal Circuit; the U.S. Court of International Trade; U.S. courts of appeals and district courts; the Administrative Office of the U.S. Courts; the Federal Judicial Center; the U.S. Sentencing Commission; federal defender organizations that provide legal representation to defendants financially unable to retain counsel in federal criminal proceedings; security and protective services for courthouses, judicial officers, and judicial employees; and fees and allowances paid to jurors.

The judiciary's FY2021 budget request was submitted to Congress on February 10, 2020. By law, the President includes, without change, the appropriations request submitted by the judiciary in the annual budget submission to Congress.

The FY2021 budget request included \$7.82 billion in discretionary funds, representing a 4.4% increase over the FY2020 enacted level of \$7.49 billion in discretionary funds provided in the FY2020 Consolidated Appropriations Act (P.L. 116-93).

The FY2021 budget request also included \$739.7 million in mandatory funds to pay the salaries and benefits of certain types of federal judges and to also provide for judicial retirement accounts.

The House Appropriations Committee held a markup (H.R. 7668) on July 15, 2020, and recommended the judiciary receive a total of \$7.77 billion in discretionary funds. On July 31, 2020, the House passed the FSGG appropriations bill as part of a second FY2021 consolidated appropriations bill (H.R. 7617).

The FSGG appropriations bill was not enacted prior to the beginning of FY2021 on October 1, 2020. Subsequently, the judiciary was funded through a series of continuing appropriations resolutions (through December 11, 2020, by P.L. 116-159; through December 18, 2020, by P.L. 116-215; through December 20, 2020, by P.L. 116-225; through December 21, 2020, by P.L. 116-226; and through December 28, 2020, by P.L. 116-246).

On November 10, 2020, the Senate Appropriations Committee majority issued a press release that included, for the FSGG appropriations bill and 11 other appropriations bills, links to draft bill text, explanatory statements and bill summaries. This draft FSGG bill would have provided \$7.67 billion in discretionary funds for the federal judiciary (an increase of \$185 million over the enacted level for FY2020 and approximately \$10 million less than what the House recommended for FY2021).

The final FY2021 amount enacted by Congress for the federal judiciary was \$7.72 billion in discretionary funds and was included as part of Division E in the Consolidated Appropriations Act, 2021 (P.L. 116-260, December 27, 2020).

In recent years, appropriations for the judiciary have comprised approximately 0.2% of total budget authority.

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## Introduction

This report provides an overview of the federal judiciary's FY2021 budget request, as well as information about Congress's consideration of the judiciary's request. The first section of this report includes subsections covering each major action involving the judiciary's FY2021 budget request, including

- the initial submission by the President of the judiciary's request on February 10, 2020;
- a hearing held on February 26, 2020, by the House Financial Services and General Government Appropriations Subcommittee on the FY2021 judiciary budget request;
- the House subcommittee markup on July 8, 2020;
- the House Appropriations Committee markup on July 15, 2020;
- passage of an FSGG appropriations bill by the House on July 31, 2020, as part of the second FY2021 consolidated appropriations bill;
- the enactment of several continuing resolutions during the period from October 1, 2020, to December 22, 2020;
- the Senate Appropriations Committee majority's release, on November 10, 2020, of a draft FSGG appropriations bill for FY2021; and
- enactment of FY2021 appropriations for the judiciary in the Consolidated Appropriations Act, 2021 (P.L. 116-260, December 27, 2020).

The second section of the report provides information about the specific discretionary appropriations requested by the judiciary for FY2021, as well as information about the mandatory appropriations and administrative provisions included in the appropriations process. The third section provides information about the various courts, judicial entities, and judicial services that are covered by appropriations for the judiciary. The report also identifies some of the courts and judicial services that are not covered by such appropriations (but are covered by other appropriations bills). Finally, the report provides information about ongoing policy issues affecting the judiciary that may be of interest to Congress during FY2021.

## FY2021 Consideration: Overview of Actions

This section provides an overview of the major actions involving congressional consideration of FY2021 judiciary appropriations. The final status of FY2021 judiciary appropriations is summarized in **Table 1**.

**Table 1. Overview of Congressional Consideration of Federal Judiciary's Budget Request, FY2021**

Committee Markup		Resolution of House-Senate Differences							
House <sup>a</sup>	Senate	House Report	House Passage	Senate Report	Senate Passage	Conference Report	House	Senate	Public Law
7/15/20 (30-22)	See table note b	H.Rept. 116-456	7/31/20 (217-197)	See table note b			12/21/20 (327-85)	12/21/20 (92-6)	12/27/20 P.L. 116-260

**Source:** Congressional Research Service examination of data from <http://congress.gov/>.

**Note:** This table provides an overview of congressional consideration of the federal judiciary's budget request for FY2021.

- a. The House subcommittee held its markup of the bill, which was reported by voice vote, on July 8, 2020.
- b. On November 10, 2020, the Senate Appropriations Committee majority released draft bill text, explanatory statements, and bill summaries for 12 regular FY2021 appropriations bills, including the FSGG bill.

## Submission of FY2021 Budget Request

The President's proposed FY2021 budget request was submitted on February 10, 2020. It contained \$7.82 billion in discretionary funds for judicial branch activities and \$739.7 million in mandatory funding for judges' salaries and judicial retirement accounts.<sup>1</sup> By law, the judicial branch appropriations request is submitted to the President and included in the budget submission without change.<sup>2</sup>

Appropriations for the judiciary comprise approximately 0.2% of total budget authority.<sup>3</sup>

## House Subcommittee Hearing on FY2021 Budget Request

The House Financial Services and General Government Appropriations Subcommittee held a hearing on the FY2021 budget request on February 26, 2020. Judge John W. Lungstrum, a senior U.S. district court judge for the District of Kansas and chairman of the Judicial Conference's Committee on the Budget, and James C. Duff, Director of the Administrative Office of the U.S. Courts, both testified before the subcommittee regarding the judiciary's request.

Representative Mike Quigley (IL), chairman of the subcommittee, highlighted in his opening statement several issues that the hearing would address, including making court hearings more accessible to the public; the extension of temporary judgeships; increased funding for courthouse construction and renovation projects; the judiciary's Capital Security Program; and the judiciary's efforts to address employee complaints related to workplace misconduct.<sup>4</sup>

Chairman Quigley also highlighted the notable increase in the judiciary's budget request related to the Federal Defender Services program—specifically, for “funding 237 more federal defender positions to uphold our Sixth Amendment's right to counsel,”<sup>5</sup> as well as a significant increase related to hiring “94 additional staff in the Probation and Pretrial Services Offices to assist with

<sup>1</sup> Office of Management and Budget, *President's Budget FY2021, Appendix*, “Detailed Budget Estimates by Agency,” Judicial Branch, at <https://www.govinfo.gov/app/collection/budget/2021/BUDGET-2021-APP>. The difference between discretionary and mandatory appropriations is discussed further in the text.

<sup>2</sup> Pursuant to 31 U.S.C. § 1105, “Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget ... shall be submitted to the President ... and included in the budget by the President without change.” Furthermore, Division C of the FY2012 Consolidated Appropriations Act (P.L. 112-74) added language to 31 U.S.C. § 1107 relating to budget amendments, stating: “The President shall transmit promptly to Congress without change, proposed deficiency and supplemental appropriations submitted to the President by the legislative branch and the judicial branch.”

<sup>3</sup> Calculations by CRS with data from Office of Management and Budget, *Historical Tables*, Table 5.2—Budget Authority By Agency: 1976–2025, at <https://www.whitehouse.gov/omb/historical-tables>.

<sup>4</sup> Rep. Mike Quigley, “Chairman Quigley Statement at Hearing on FY 2021 Judiciary Budget Request,” February 26, 2020, at <https://appropriations.house.gov/news/statements/chairman-quigley-statement-at-hearing-on-fy-2021-judiciary-budget-request>. For an article related to the discussion during the hearing of workplace misconduct in the federal judiciary, see Andrew Kragie, “Fed. Judge's Misconduct A ‘Shock’ To Kansas Colleagues,” *Law360*, February 26, 2020, at <https://www.law360.com/articles/1246422/fed-judge-s-misconduct-a-shock-to-kansas-colleagues>.

<sup>5</sup> *Ibid.*

post-release supervision.”<sup>6</sup> He stated that he looked “forward to discussing the justification for these budget increases as well as how Congress can help the judiciary meets its growing caseloads.”<sup>7</sup>

## House Appropriations Subcommittee on Financial Services and General Government Markup

On July 8, 2020, the House subcommittee held a markup of the FY2021 Financial Services and General Government (FSGG) bill. The subcommittee, by voice vote, recommended a total of \$7.77 billion in discretionary funds for the judiciary.<sup>8</sup>

## House Appropriations Committee Markup

On July 15, 2020, the House Appropriations Committee held a markup of the FY2021 FSGG bill.<sup>9</sup> The committee recommended \$7.77 billion in discretionary funds for the judiciary.<sup>10</sup>

The \$7.77 billion in discretionary funding recommended for the judiciary represents approximately 31.5% of the total \$24.64 billion in discretionary funding included in the FSGG appropriations bill reported by the committee (which also funds such entities as the Department of the Treasury, the Executive Office of the President, the Consumer Product Safety Commission, the Federal Trade Commission, the Securities and Exchange Commission, and the Small Business Administration).

The FY2021 FSGG bill was ordered reported by a roll call vote of 30-22 (H.R. 7668, H.Rept. 116-456). No amendments related to the judiciary were offered during the committee markup.

The report that accompanied the committee’s markup addressed several issues of interest to the committee. Specifically, the committee’s report, in part:

- encouraged “the Supreme Court to take steps to permit video and live audio coverage of all open sessions of the Court unless the Court decides that allowing such coverage in any case would violate the due process of one or more of the parties before the Court”;<sup>11</sup>
- urged “the Supreme Court to adopt a Code of Conduct applicable to the Justices”;<sup>12</sup>
- encouraged “increased education for bankruptcy judges on how bankruptcy court decisions impact national security”;<sup>13</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Note that this amount does not include mandatory funds for salaries and benefits of certain types of judgeships. See **Table 3** and accompanying text for additional information.

<sup>9</sup> House Appropriations Committee, “Appropriations Committee Approves Fiscal Year 2021 Financial Services and General Government Funding Bill,” press release, July 15, 2020, at <https://appropriations.house.gov/news/press-releases/appropriations-committee-approves-fiscal-year-2021-financial-services-and>.

<sup>10</sup> Note that this amount does not include mandatory funds for salaries and benefits of certain types of judgeships. See **Table 3** and accompanying text for additional information.

<sup>11</sup> House Appropriations Committee, H.Rept. 116-456, p.45.

<sup>12</sup> Ibid., p.45.

<sup>13</sup> Ibid., p.46.

- directed the judiciary “to include in their annual justification to Congress a report on the steps the [branch’s] Office of Integrity is taking to ensure it has enough resources and staff to provide an exemplary workplace for every judge and every court employee”;<sup>14</sup> and
- directed the judiciary “to expand its comprehensive training program on workplace behavior and bystander intervention.”<sup>15</sup>

## Passage by the House

The FSGG appropriations bill, included as part of a second FY2021 consolidated appropriations bill (H.R. 7617), was passed by a roll call vote of 217-197 in the House on July 31, 2020. No amendments were offered during House consideration that were related to the judiciary.

## Senate Appropriations Committee Majority Release of Draft Bill Text, Explanatory Statement, and Bill Summary for FY2021 FSGG Appropriations Bill

On November 10, 2020, the Senate Appropriations Committee majority issued a press release that provided hypertext links to the subcommittee allocations, as well as draft legislative text, explanatory statements, and highlights for each of the 12 FY2021 appropriations bills, including the FSGG bill.<sup>16</sup>

The Senate Appropriations Committee majority draft recommended a total of \$7.67 billion in discretionary funds for the judiciary.<sup>17</sup> The draft stated the position that the amount “will provide sufficient funding for federal court activities, including timely and efficient processing of federal cases, court security, and defender services.”<sup>18</sup>

## Enactment of Five Continuing Appropriations Resolutions

Final enactment of the judiciary’s budget did not occur prior to the beginning of FY2021 on October 1, 2020. Consequently, the judiciary was funded through December 11, 2020, by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159, October 1, 2020). The act passed the House on September 22, 2020, and the Senate on September 30, 2020. It was signed by the President on October 1, 2020.

Congress enacted four additional continuing resolutions prior to the final enactment of FY2021 regular appropriations for the federal judiciary:

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<sup>14</sup> Ibid., p.47.

<sup>15</sup> Ibid.

<sup>16</sup> Senate Appropriations Committee, “Committee Releases FY21 Bills in Effort to Advance Process, Produce Bipartisan Results,” press release, November 10, 2020, at <https://www.appropriations.senate.gov/news/committee-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results>.

<sup>17</sup> Note that this amount does not include mandatory funds for salaries and benefits of certain types of judgeships. See **Table 3** and accompanying text for additional information.

<sup>18</sup> Senate Appropriations Committee Press Release, “Committee Releases FY21 Bills in Effort to Advance Process, Produce Bipartisan Results,” Financial Services and General Government, 2021, *Highlights*, November 10, 2020, at <https://www.appropriations.senate.gov/news/committee-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results>.

- Further Continuing Appropriations Act, 2021, and Other Extensions Act (P.L. 116-215, December 11, 2020)—funded through December 18, 2020;
- Further Additional Continuing Appropriations Act, 2021 (P.L. 116-225, December 18, 2020)—funded through December 20, 2020;
- Extension of Continuing Appropriations Act, 2021 (P.L. 116-226, December 20, 2020)—funded through December 21, 2020; and
- Further Extension of Continuing Appropriations Act, 2021 (P.L. 116-246, December 22, 2020)—funded through December 28, 2020.

## Final Enactment of FY2021 Regular Appropriations for the Judiciary

Enactment of the judiciary’s budget for FY2021 was included in the Consolidated Appropriations Act, 2021.<sup>19</sup> The total amount in discretionary funds appropriated for the judiciary was \$7.72 billion, while the amount in mandatory funds provided for the judiciary was \$733.55 million. The act passed both the House and Senate on December 21, 2020. It was signed by the President on December 27, 2020.

## FY2021 Judiciary Budget Request

### Discretionary Appropriations

The judiciary’s FY2021 discretionary budget request totaled \$7.82 billion and represented a 4.4% increase from the \$7.49 billion in discretionary appropriations enacted by Congress for FY2020.

**Table 2** lists, for each account included in the judiciary’s discretionary budget, (1) the amount enacted by Congress for FY2020, (2) the judiciary’s FY2021 request, (3) the FY2021 amount that passed the House, (4) the FY2021 amount that was reported by the Senate Appropriations Committee, and (5) the FY2021 enacted amount.<sup>20</sup>

**Table 2. Judiciary Discretionary Appropriations, FY2020-FY2021**  
(in millions of dollars)

	FY2020 Enacted	FY2021 Requested	FY2021 House Passed	FY2021 Senate Committee Majority Draft Bill	FY2021 Enacted
<b>Supreme Court (total)</b>	<b>\$103.3</b>	<b>\$105.3</b>	<b>\$105.6</b>	<b>\$105.3</b>	<b>\$105.3</b>
<i>Salaries and Expenses</i>	\$87.7	\$93.6	\$95.0	\$94.7	\$94.7
<i>Building and Grounds</i>	\$15.6	\$11.7	\$10.6	\$10.6	\$10.6
<b>U.S. Court of Appeals for the Federal Circuit</b>	<b>\$32.7</b>	<b>\$34.0</b>	<b>\$33.8</b>	<b>\$33.1</b>	<b>\$33.5</b>

<sup>19</sup> P.L. 116-260 (December 27, 2020).

<sup>20</sup> The figures reported in **Table 2** for FY2020 are for regular FY2020 appropriations and do not include the supplemental appropriations provided in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

	FY2020 Enacted	FY2021 Requested	FY2021 House Passed	FY2021 Senate Committee Majority Draft Bill	FY2021 Enacted
<b>U.S. Court of International Trade</b>	\$19.6	\$20.1	\$20.0	\$19.9	\$20.0
<b>Courts of Appeals, District Courts, and Other Judicial Services (total)</b>	\$7,186.6	\$7,504.9	\$7,464.6	\$7,366.6	\$7,416.3
<i>Salaries and Expenses</i>	\$5,250.2	\$5,459.5	\$5,412.9	\$5,340.2	\$5,393.7
<i>Defender Services</i>	\$1,234.6	\$1,316.2	\$1,322.5	\$1,316.2	\$1,316.2
<i>Court Security</i>	\$639.2	\$664.0	\$664.0	\$664.0	\$664.0
<i>Fees of Jurors and Commissioners</i>	\$53.5	\$55.5	\$55.5	\$36.5	\$32.5
<i>Vaccine Injury Trust Fund</i>	\$9.1	\$9.7	\$9.7	\$9.7	\$9.9
<b>Administrative Office of the U.S. Courts</b>	\$94.3	\$99.8	\$98.0	\$95.7	\$95.7
<b>Federal Judicial Center</b>	\$30.4	\$31.3	\$31.1	\$30.9	\$29.0
<b>U.S. Sentencing Commission</b>	\$19.7	\$20.3	\$20.1	\$20.0	\$20.0
<b>TOTAL (Judiciary)</b>	\$7,486.5	\$7,815.7	\$7,773.3	\$7,671.5	\$7,719.8

**Sources:** Congressional Research Service examination of data from H.Rept. 116-456; draft of FSGG appropriations bill text provided by Senate Appropriations Committee at <https://www.appropriations.senate.gov/news/committee-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results>; Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding the House Amendment to the Senate Amendment to H.R. 133, Consolidated Appropriations Act, 2021; *FY2021 Judicial Branch Budget Justification*; and *The Judiciary Fiscal Year 2022 Congressional Budget Summary*.

**Notes:** The figures reported in **Table 2** for FY2020 are for regular FY2020 appropriations and do not include the supplemental appropriations provided in the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). All figures are rounded, and column sums may not equal the total due to rounding.

## Three Largest Discretionary Accounts for FY2021

Of the judiciary’s FY2021 *request* for \$7.82 billion in discretionary funds (see the second column in **Table 2**), the greatest percentage was for the *Salaries and Expenses—Courts of Appeals, District Courts, and Other Judicial Services* account—representing 69.9% of the request. The second greatest percentage was for the *Defender Services* account, representing 16.8% of the total discretionary request. The third greatest percentage was for the *Court Security* account, representing 8.5% of the request.<sup>21</sup> The remaining 4.8% of the FY2021 discretionary request was for the other accounts listed in the table.<sup>22</sup>

<sup>21</sup> Altogether, these three accounts represented 95.2% of the judiciary’s discretionary budget request for FY2021.

<sup>22</sup> The remaining nine accounts are listed here in descending order from the greatest percentage to smallest percentage of the judiciary’s FY2021 discretionary budget request: *Administrative Office of U.S. Courts* (1.3%); *Supreme Court—Salaries and Expenses* (1.2%); *Fees of Jurors and Commissioners* (0.7%); *U.S. Court of Appeals for the Federal Circuit* (0.4%); *Federal Judicial Center* (0.4%); *U.S. Court of International Trade* (0.3%); *U.S. Sentencing Commission* (0.3%); *Supreme Court—Building and Grounds* (0.1%); and the *Vaccine Injury Trust Fund* (0.1%).

Similarly, of the \$7.72 billion that was enacted by Congress for the judiciary's FY2021 budget, the greatest percentage was for the *Salaries and Expenses—Courts of Appeals, District Courts, and Other Judicial Services* account (see the final column in **Table 2**)—representing 69.9% of the enacted amount. The second greatest percentage was for the *Defender Services* account, representing 17.0% of the total enacted amount. The third greatest percentage was for the *Court Security* account, representing 8.6% of the enacted amount.<sup>23</sup> The remaining 4.5% of the FY2021 enacted amount was for the other accounts listed in the table.<sup>24</sup>

### Three Largest Percentage Increases from FY2020 Enacted Amounts

Of the accounts listed in **Table 2**, the largest percentage increase between the amount enacted in FY2020 and the amount requested by the judiciary for FY2021 was for the *Supreme Court—Salaries and Expenses* account—a 6.7% increase from the FY2020 amount enacted to the FY2021 request. The next greatest increases were for the *Defender Services* and *Vaccine Injury Trust Fund* accounts, both with a 6.6% increase.<sup>25</sup>

Of the same accounts listed in the table, the largest percentage increase between the amount enacted in FY2020 and the amount enacted by Congress for FY2021 was for the *Vaccine Injury Trust Fund* account—an 8.8% increase from the FY2020 enacted amount. The second greatest increase was for the *Supreme Court Salaries and Expenses* account, an 8.0% increase. The third greatest increase was for the *Defender Services* account, a 6.6% increase.<sup>26</sup>

### Percentage of Judiciary's FY2021 Request Enacted by Congress

Overall, Congress enacted \$7.72 billion, or 98.8%, of the judiciary's FY2021 discretionary budget request of \$7.82 billion. This was a slight increase from the percentage of the judiciary's budget request that Congress enacted for FY2020, when Congress enacted \$7.49 billion, or 98.2%, of the judiciary's FY2020 budget request of \$7.62 billion.

The enacted FY2021 amount for 9 of the 12 accounts was, in each case, at least 95% of the judiciary's FY2021 request for that account.<sup>27</sup> For example, for the *U.S. Court of Appeals for the Federal Circuit* account, Congress provided \$33.5 million—representing 98.5% of the judiciary's FY2021 request of \$34.0 million.

<sup>23</sup> Altogether, these three accounts represent 95.5% of the judiciary's enacted FY2021 budget.

<sup>24</sup> The remaining nine accounts are listed here in descending order from the greatest percentage to smallest percentage of the judiciary's enacted FY2021 discretionary budget request: *Supreme Court—Salaries and Expenses* and *Administrative Office of U.S. Courts* (both at 1.2%); *U.S. Court of Appeals for the Federal Circuit, Fees of Jurors and Commissioners*, and *Federal Judicial Center* (both at 0.4%); *U.S. Court of International Trade* and *U.S. Sentencing Commission* (both at 0.3%); and *Supreme Court—Building and Grounds* and the *Vaccine Injury Trust Fund* (both at 0.1%).

<sup>25</sup> Of all the accounts listed in **Table 2**, the percentage change between the amount enacted in FY2019 and the amount requested for FY2020 ranged from a decrease of -25.0% (for the *Supreme Court—Building and Grounds* account) to an increase of 6.7% for the *Supreme Court—Salaries and Expenses* account.

<sup>26</sup> Of all the accounts listed in **Table 2**, the percentage change between the amount enacted in FY2020 and the amount enacted in FY2021 ranged from a decline of -39.3% (for the *Fees of Jurors and Commissioners* account) to a high of 8.8% for the *Vaccine Injury Trust Fund* account.

<sup>27</sup> The three accounts for which Congress appropriated less than 95% of the judiciary's FY2021 request were the *Supreme Court—Building and Grounds* (90.6% of request enacted), *Fees of Jurors and Commissioners* (58.6%), and *Federal Judicial Center* (92.7%) accounts.

Altogether, for eight accounts, Congress appropriated less than the amount requested by the judiciary in its FY2021 budget submission.<sup>28</sup> For two accounts, Congress passed the same amount as was requested by the judiciary.<sup>29</sup> And for two accounts, Congress appropriated more than the amount requested by the judiciary in its FY2021 budget submission.<sup>30</sup>

The federal courts, judicial entities, and judicial programs funded by the various accounts listed in **Table 2** are discussed below in greater detail in the section of the report titled “Courts, Programs, and Other Items Funded by the Judiciary Budget”.

## Discretionary Appropriations in Recent Years

### FY2020

FY2020 judiciary funding was provided in Division C, Title III, of the Consolidated Appropriations Act, 2020 (P.L. 116-93), which was enacted on December 20, 2019. The act provided \$7.49 billion in discretionary funds for the judiciary.

#### Enactment of Supplemental FY2020 Appropriations for COVID-19 Response

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”)<sup>31</sup> to address the nationwide impact of Coronavirus Disease 2019 (COVID-19).<sup>32</sup> The act, in part, provided \$7,500,000 in funding for the federal judiciary to respond to the pandemic. Specifically, the CARES Act made appropriations to the federal judiciary “to prevent, prepare for, and respond to coronavirus, domestically or internationally.” By law, Congress designated such appropriations to be for an emergency requirement.

Three judiciary accounts received funds under the act: the *Supreme Court of the United States—Salaries and Expenses* account (\$500,000); the *Courts of Appeals, District Courts, And Other Judicial Services—Salaries and Expenses* account (\$6 million); and the *Defender Services* account (\$1 million).

### FY2019

FY2019 judiciary funding was provided in Division D, Title III, of the Consolidated Appropriations Act, 2019 (P.L. 116-6), which was enacted on February 15, 2019. The act provided \$7.25 billion in discretionary funds for the judiciary.

### FY2018

FY2018 judiciary funding was provided in Division E, Title III, of the Consolidated Appropriations Act, 2018 (P.L. 115-141), which was enacted on March 23, 2018. The act provided \$7.11 billion in discretionary funds for the judiciary.

<sup>28</sup> These eight accounts (and the percentage of the judiciary’s FY2021 request that was passed by Congress) are *Supreme Court—Building and Grounds* (90.6%); *U.S. Court of Appeals for the Federal Circuit* (98.5%); *U.S. Court of International Trade* (99.5%); *Courts of Appeals, District Courts, and Other Judicial Services—Salaries and Expenses* (98.8%); *Fees of Jurors and Commissioners* (58.6%); *Administrative Office of U.S. Courts* (95.9%); *Federal Judicial Center* (92.7%); and *U.S. Sentencing Commission* (98.5%).

<sup>29</sup> These two accounts are *Defender Services* and *Court Security*.

<sup>30</sup> These two accounts (and the percentage of the judiciary’s FY2021 request that was enacted by Congress) are the *Supreme Court—Salaries and Expenses* (101.2%); and *Vaccine Injury Trust Fund* (102.1%).

<sup>31</sup> P.L. 116-136 (March 27, 2020).

<sup>32</sup> The Senate had passed the bill on March 25, 2020.

## FY2017

FY2017 judiciary funding was provided in Division E, Title III, of the Consolidated Appropriations Act, 2017 (P.L. 115-31), which was enacted on May 5, 2017. The act provided \$6.93 billion in discretionary funds for the judiciary.

## Use of Nonappropriated Funds

The judiciary also uses nonappropriated funds to help offset its funding requirements. The majority of these nonappropriated funds are from the collection of fees, primarily court filing fees<sup>33</sup> and fees associated with obtaining case and docket information online from various federal courts.<sup>34</sup> These monies are used to offset expenses that would otherwise be covered by the discretionary *Salaries and Expenses* subaccount for the courts of appeals, district courts, and other judicial services. The numbers presented in this report reflect the net resources for the judiciary, and do not include these offsetting nonappropriated funds.

## Mandatory Appropriations

Mandatory appropriations are used to meet the constitutional and statutory obligations associated with the salaries and expenses of certain types of judgeships (and, consequently, are not considered *discretionary* appropriations for the judiciary).

Such appropriations fall into two categories: (1) funds used to pay the salaries of Article III judges (Supreme Court Justices, U.S. courts of appeals judges, etc.) and certain other types of federal judges (e.g., bankruptcy judges); and (2) funds used for several judicial retirement accounts—specifically, the Judicial Officers’ Retirement Fund (28 U.S.C. §377(o)); the Judicial Survivors’ Annuities Fund (28 U.S.C. §376(c)); and the U.S. Court of Federal Claims Judges’ Retirement Fund (28 U.S.C. §178(1)).

**Table 3. Judiciary Mandatory Funding, FY2020-FY2021**

(in millions of dollars)

Account	FY2020 Enacted	FY2021 Enacted
Supreme Court	\$2.7	\$2.7
Court of Appeals for the Federal Circuit	\$3.1	\$3.2
Court of International Trade	\$1.6	\$2.1

<sup>33</sup> Each type of federal court, and other federal judicial services, publishes a list of fees that are charged for services provided by the specific court. For a list of these fees, see Administrative Office of the U.S. Courts, *Fees*, at <https://www.uscourts.gov/services-forms/fees>.

<sup>34</sup> The Public Access to Court Electronic Records, or PACER, is a service that allows users, for a fee, to obtain case and docket information online from federal appellate, district, and bankruptcy courts, and the PACER Case Locator. According to the federal judiciary, PACER is provided “in keeping with its commitment to providing public access to court information via a centralized service.” See <https://www.pacer.gov>. Congressional authorization for the judiciary to collect fees was granted in the Judiciary Appropriations Act of 1991, P.L. 101-515 (November 5, 1990). Specifically, the act states that “the Judicial Conference shall prescribe reasonable fees ... for collection by the courts under those sections for access to information available through automatic data processing equipment.... The Director, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.” Title IV, §404(a); 104 Stat. 2132-2133.

Account	FY2020 Enacted	FY2021 Enacted
Courts of Appeals, District Courts, and Other Judicial Services	\$437.8	\$463.3
Judicial Retirement Funds	\$240.1	\$262.3
<b>Total (Judiciary)</b>	<b>\$685.3</b>	<b>\$733.6</b>

**Source:** Congressional Research Service examination of data from *The Judiciary Fiscal Year 2022 Congressional Budget Summary*.

**Note:** Enacted column reflects FY2021 assumed financial plan levels. All figures are rounded, and column sums may not equal the total due to rounding.

The mandatory appropriations provided for FY2021 totaled \$733.6 million. Of the FY2021 mandatory amount, \$471.3 million, or 64.2%, is for salaries and expenses associated with judgeships that the judiciary is constitutionally (or statutorily) required to pay. The remaining \$262.3 million (or 35.8% of FY2021 mandatory appropriations) is to provide for judicial retirement funds.

There was a similar breakdown in the use of mandatory funds for FY2020. Of the \$685.3 million in mandatory appropriations provided for FY2020, \$445.2 million (or 65.0%) was to fund the salaries and expenses associated with Article III judges and certain other types of federal judges. The remaining \$240.1 million (or 35.0% of FY2020 mandatory appropriations) was to provide for judicial retirement funds.

## Administrative Provisions

The judiciary's FY2021 request also contained several administrative provisions.<sup>35</sup> The provisions, in part, (1) allowed for the transfer, under certain conditions, of appropriations (up to 5%) between accounts, while also prohibiting some accounts from being increased by more than 10% by such transfers; (2) allowed for funds from the salaries and expenses appropriation for the *Courts of Appeals, District Courts, and Other Judicial Services* account to be available for "official reception and representation expenses of the Judicial Conference of the United States" (while also limiting the use of such funds to a maximum of \$11,000); and (3) provided for the extension of certain temporary U.S. district court judgeships.<sup>36</sup>

The final enacted FY2021 appropriations for the judiciary included versions of each of the six administrative provisions included in the judiciary's FY2021 request.

<sup>35</sup> "Administrative provisions" or "general provisions" provides restrictions, conditions, or requirements that may apply to an entire act, a specific department, agency, or account. Such provisions may be of a policy or operational character and are typically included at the end of an act.

<sup>36</sup> For a full list of the administrative provisions included in the judiciary's FY2021 request see pp. 61-62 of *The Judiciary Fiscal Year 2021 Congressional Budget Summary*.

# Courts, Programs, and Other Items Funded by the Judiciary Budget

## U.S. Supreme Court

The U.S. Supreme Court is the final arbiter in the federal court system. Congress has authorized nine judgeships for the Court. Among the nine Justices on the Court, one is also appointed as Chief Justice of the United States. Justices are appointed by the President with the advice and consent of the Senate.

## U.S. Courts of Appeals

U.S. courts of appeals, or circuit courts, take appeals from U.S. district court decisions and are also empowered to review the decisions of many administrative agencies. When hearing a challenge to a district court decision from a court located within its geographic circuit, the task of a court of appeals is to determine whether or not the law was applied correctly by the district court.<sup>37</sup> Cases presented to U.S. circuit courts are generally considered by judges sitting in three-member panels (circuit courts do not use juries).

The nation is divided into 12 geographic circuits, each with a U.S. court of appeals. There is also one nationwide circuit, the U.S. Court of Appeals for the Federal Circuit (discussed in the text below).

Altogether, 167 judgeships for these 12 regional circuit courts are currently authorized by law. The First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of authorized judgeships, 6, while the Ninth Circuit (comprising Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.<sup>38</sup>

U.S. circuit court judges are appointed by the President with the advice and consent of the Senate. Such appointments are generally considered to be effective for life (under Article III of the U.S. Constitution),<sup>39</sup> meaning judges remain in office until they die, assume senior status, resign, retire, or are removed by Congress through the process of impeachment.

## U.S. Court of Appeals for the Federal Circuit

This court has nationwide jurisdiction over certain types of cases, including international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, veterans' benefits, and public safety officers' benefits claims. The court also reviews certain administrative agency decisions.

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<sup>37</sup> Administrative Office of the U.S. Courts, "Court Role and Structure," at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>.

<sup>38</sup> The Ninth Circuit also includes two U.S. territories, Guam and the Northern Mariana Islands.

<sup>39</sup> Throughout the text of the report, the term "effective for life" reflects the constitutional prerogative of a judge appointed to an Article III court to remain in office "during good Behavior."

In FY2018, the court’s jurisdiction consisted of “administrative law cases (20%), intellectual property cases (67%), and cases involving money damages against the United States government (13%).”<sup>40</sup>

There are 12 judgeships authorized for the U.S. Court of Appeals for the Federal Circuit. Judges serving on the Federal Circuit are appointed by the President with the advice and consent of the Senate. Such appointments are also considered to be effective for life (under Article III of the U.S. Constitution), meaning judges remain in office until they die, assume senior status, resign, retire, or are removed by Congress through the process of impeachment.

## U.S. Court of International Trade

This court has nationwide jurisdiction over civil actions related to the customs and international trade laws of the United States. Most of the cases heard by the court “involve antidumping and countervailing duties, the classification and valuation of imported merchandise, actions to recover unpaid customs duties and civil penalties, and various actions arising generally under the tariff laws.”<sup>41</sup> For the 12-month period ending September 30, 2020, the court reported a total of 3,670 case filings.<sup>42</sup>

There are nine judgeships authorized for the U.S. Court of International Trade. Judges serving on the Court of International Trade are appointed by the President with the advice and consent of the Senate. Such appointments are also considered to be effective for life (under Article III of the U.S. Constitution), meaning judges remain in office until they die, assume senior status, resign, retire, or are removed by Congress through the process of impeachment.

## U.S. District Courts (Including Territorial Courts)

District courts are the federal trial courts of general jurisdiction. These trial courts determine facts and apply legal principles to resolve disputes.<sup>43</sup> Trials are conducted by a district court judge or, in some cases, a magistrate judge.

Each state has at least one district court (there is also one district court in each of the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands). States with more than one district court are divided into judicial districts, with each district having one district court. For example, California is divided into four judicial districts—each with its own district court. Altogether there are 94 district courts.<sup>44</sup>

<sup>40</sup> United States Court of Appeals for the Federal Circuit, *Court Jurisdiction*, at <http://www.cafc.uscourts.gov/the-court/court-jurisdiction>. “The administrative law cases consist of international trade disputes, personnel claims, and veterans’ claims. Nearly all of the intellectual property cases involve patents originating from the U.S. Patent and Trademark Office and all U.S. District Courts. Suits for money damages against the United States government include government contract cases, tax refund appeals, unlawful takings, and civilian and military pay cases.” *Ibid*.

<sup>41</sup> Administrative Office of the U.S. Courts, *U.S. Court of International Trade—Judicial Business 2019*, at <https://www.uscourts.gov/statistics-reports/us-court-international-trade-judicial-business-2019>.

<sup>42</sup> Administrative Office of the U.S. Courts, *Statistics & Reports*, Data Tables, Table G-1, U.S. Court of International Trade Judicial Business (September 30, 2020), at <https://www.uscourts.gov/statistics/table/g-1/judicial-business/2020/09/30>.

<sup>43</sup> Administrative Office of the U.S. Courts, “Court Role and Structure,” at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure>.

<sup>44</sup> These include three district courts located in several U.S. territories. Specifically, there is one district court each in Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. These courts were established by Congress under its

At present, there are 677 district court judgeships authorized by law.<sup>45</sup> Congress has authorized between 1 and 28 judgeships for each district court, with district courts serving more populous areas generally having more authorized judgeships. Among judicial districts with Article III judgeships, the Eastern District of Oklahoma (Muskogee) has the fewest number (with 1 authorized judgeship), while the district courts located in the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) have the greatest number (each with 28 authorized judgeships).

U.S. district court judges are appointed by the President with the advice and consent of the Senate. Such appointments are considered to be effective for life (under Article III of the U.S. Constitution), meaning judges remain in office until they die, assume senior status, resign, retire, or are removed by Congress through the process of impeachment.

Territorial district court judges, serving the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands,<sup>46</sup> are also appointed by the President with the advice and consent of the Senate (under Article IV of the U.S. Constitution). These appointments, however, are not effective for life but are for a fixed 10-year term in office.

## U.S. Magistrate Judges

Certain types of trials and proceedings held by district courts can also be conducted by magistrate judges.<sup>47</sup> A district court judge may refer certain matters to a magistrate judge (e.g., a magistrate judge may be assigned to hold a pretrial conference or an evidentiary hearing). A magistrate judge may also conduct any type of civil trial as long as the parties consent (i.e., there is *consent jurisdiction*), and they may also preside over all misdemeanor criminal trials as long as a defendant has waived his right to a trial before a district judge.<sup>48</sup> Magistrate judges cannot preside over felony criminal cases (but can handle pretrial matters and preliminary proceedings in such cases).<sup>49</sup>

The number of magistrate judge positions is determined by the Judicial Conference of the United States. For FY2019, the Judicial Conference<sup>50</sup> authorized 549 full-time magistrate judge positions, 29 part-time positions, and 3 combination clerk/magistrate judge positions.<sup>51</sup> Magistrate

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authority to govern the territories granted by Article IV of the Constitution. Judges confirmed to these courts serve 10-year terms (unlike Article III U.S. district court judges, who are appointed for life unless they voluntarily leave office or are removed from office by Congress). As with Article III courts, territorial courts hear cases arising out of federal law, their decisions may be appealed to a U.S. circuit court of appeals, and their judicial nominations are referred to the Senate Judiciary Committee.

<sup>45</sup> This total includes 4 permanent territorial district court judgeships and 10 temporary U.S. district court judgeships. See the U.S. Courts website at <http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx>.

<sup>46</sup> Judges appointed to U.S. district courts for the District of Columbia and the Commonwealth of Puerto Rico are appointed as Article III judges (and not as territorial district court judges).

<sup>47</sup> The office of magistrate judge was created by the Federal Magistrates Act of 1968, in part, to provide relief to district court judges in handling their caseloads. Federal Judicial Center, “Magistrate Judges,” at <https://www.fjc.gov/history/judges/magistrate-judgeships>.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> The Judicial Conference of the United States is the principal policymaking body for the federal courts system. The Chief Justice of the Supreme Court is the presiding officer of the conference, which comprises the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade.

<sup>51</sup> Under 28 U.S.C. §631(c), with the approval of the Judicial Conference, a clerk or deputy clerk of a court may be appointed as a part-time magistrate judge. Administrative Office of the U.S. Courts, “Status of Magistrate Judge

judges are non-Article III judges and are appointed by majority vote of the active district court judges serving on the court to which the magistrate would serve. Full-time magistrate judges serve a term of eight years and may be reappointed.<sup>52</sup>

For the 12-month period ending September 30, 2019, magistrate judges disposed of a total of 1,387,592 matters<sup>53</sup>—this included 354,381 civil matters that had been referred to them by district court judges; 17,817 civil cases in which they were the presiding judges for all proceedings by consent of the parties; 244,367 felony pretrial matters (e.g., disposing of certain types of motions); and 539,629 felony preliminary proceedings (e.g., search warrant applications). Other matters disposed of by magistrate judges included Class A misdemeanor cases, petty offense cases, and cases brought by prisoners (involving, for example, habeas corpus petitions and civil rights claims).

## U.S. Bankruptcy Courts

Federal courts have exclusive jurisdiction over bankruptcy matters (i.e., a bankruptcy case cannot be filed in state court). Bankruptcy courts are units of the federal district courts and exercise jurisdiction over bankruptcy matters as granted by statute and referred to them by their respective district courts.<sup>54</sup>

For the 12-month period ending September 30, 2019, debtors filed a total of 776,674 bankruptcy petitions—a 0.4% increase for the same period ending September 30, 2018.<sup>55</sup> Of all petitions filed during the 2019 fiscal year, nonbusiness (mostly consumer) petitions accounted for approximately 97% and business petitions accounted for 3%.<sup>56</sup>

As of September 2019, there were a total of 347 bankruptcy judgeships authorized by Congress (i.e., the number of bankruptcy judges is determined by Congress).<sup>57</sup> This was three fewer than in September 2018 due to the lapse of several temporary bankruptcy judgeships.<sup>58</sup>

Bankruptcy judges are non-Article III judges appointed by the court of appeals for the circuit where the bankruptcy court is located. Judges are appointed for a term of 14 years and may be reappointed.

## U.S. Court of Federal Claims

This court has nationwide jurisdiction over various types of monetary claims against the federal government, including “those involving tax refunds, federal taking of private property for public use, pay and dismissal of federal civilian employees, pay and dismissal of military personnel,

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Positions and Appointments—Judicial Business 2018,” at <https://www.uscourts.gov/statistics-reports/status-magistrate-judge-positions-and-appointments-judicial-business-2018>.

<sup>52</sup> 28 U.S.C. §631(d).

<sup>53</sup> Administrative Office of the U.S. Courts, “U.S. Magistrate Judges—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/us-magistrate-judges-judicial-business-2019>.

<sup>54</sup> Federal Judicial Center, “U.S. Bankruptcy Courts,” at <https://www.fjc.gov/history/courts/u.s.-bankruptcy-courts>.

<sup>55</sup> Administrative Office of the U.S. Courts, “U.S. Bankruptcy Courts—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/us-bankruptcy-courts-judicial-business-2019>.

<sup>56</sup> *Ibid.*

<sup>57</sup> Administrative Office of the U.S. Courts, “Status of Bankruptcy Judgeships—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/status-bankruptcy-judgeships-judicial-business-2019>.

<sup>58</sup> Specifically, two temporary judgeships for the Central District of California and one temporary judgeship for the Eastern District of Pennsylvania lapsed. *Ibid.*

land claims brought by Native Americans and/or their tribe(s), contract disputes, bid protests, patents and copyright, congressional reference, and the National Vaccine Injury Compensation Act.”<sup>59</sup>

Each January, pursuant to 28 U.S.C. §791(c), the clerk of the Court of Federal Claims submits to Congress a statement of all the judgments rendered by the court. The statement “notes the names of the claimants, the amounts, the dates of entry and nature of the claims, and the disposition for all judgments rendered the previous fiscal year.”<sup>60</sup>

In 2019, filings decreased in the court by 8% to 2,044.<sup>61</sup>

The court consists of 16 non-Article III judges who are appointed for a term of 15 years by the President with the advice and consent of the Senate.

## Probation and Pretrial Services

Federal probation and pretrial services officers investigate and supervise defendants and offenders within the federal criminal justice system. A pretrial services officer “supervises defendants awaiting trial who are released”<sup>62</sup> and provides reports “upon which the court can determine the conditions of release or detention while criminal cases are pending adjudication.”<sup>63</sup>

A probation officer “provides the court with reliable information concerning the offender, the victim, and the offense committed, as well as an impartial application of the sentencing guidelines.”<sup>64</sup> Officers also “supervise offenders sentenced to probation, as well as offenders coming out of federal prison who are required to serve a term of supervised release.”<sup>65</sup>

In 2019, pretrial services officers prepared 103,092 pretrial services reports for judges—an increase of 8% from 2018.<sup>66</sup> Of these reports, 97% were prebail reports.<sup>67</sup> Additionally, officers provided pretrial services supervision for approximately 26,116 defendants—an increase of 10% from 2018.<sup>68</sup> Such supervision included providing various support services (e.g., substance abuse treatment and location monitoring) and informing the courts and U.S. attorneys of any apparent violations of release conditions.<sup>69</sup>

In 2019, a total of 128,904 individuals were under postconviction supervision by probation officers—a decrease of less than 1% from 2018.<sup>70</sup> Of those under postconviction supervision,

<sup>59</sup> Administrative Office of the U.S. Courts, “U.S. Courts of Federal Claims—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/us-court-federal-claims-judicial-business-2019>.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2020 Congressional Budget Summary*, “Overview of the Judiciary,” p. 3.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Administrative Office of the U.S. Courts, “Pretrial Services—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/pretrial-services-judicial-business-2019>.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Administrative Office of the U.S. Courts, “Post-Conviction Supervision—Judicial Business 2019,” at <https://www.uscourts.gov/statistics-reports/post-conviction-supervision-judicial-business-2019>.

46% had been convicted of drug offenses; 17% had been convicted of property offenses; and 15% had been convicted of firearms offenses.<sup>71</sup>

Federal probation officers also prepared 73,337 presentence investigative reports—an increase of 9% from 2018.<sup>72</sup>

## Defender Services

The Sixth Amendment of the U.S. Constitution guarantees the right to representation by counsel in serious criminal proceedings. The federal judiciary has, historically, exercised “responsibility for appointing counsel in federal criminal proceedings for those unable to bear the cost of representation.”<sup>73</sup>

This account in the judiciary budget funds the operations of federal defender organizations responsible for providing representation to defendants financially unable to retain counsel in federal criminal proceedings. At present, there are 81 authorized federal defender organizations that employ more than 3,700 lawyers, investigators, paralegals, and support personnel.<sup>74</sup>

This account also provides funds to reimburse the services of private appointed counsel (i.e., *panel attorneys*) in federal criminal proceedings. The rates paid to panel attorneys cover both attorney compensation and office overhead.<sup>75</sup> There are case maximum amounts that limit the compensation paid to a panel attorney based on the type of case to which he or she is appointed.<sup>76</sup> Consequently, the costs associated with this account are driven, in part, by the number and type of prosecutions brought by U.S. attorneys offices.

## Court Security

This account provides for protective guard services and security systems and equipment for United States courthouses and other facilities housing federal court operations.

The majority of funding for court security is transferred to the U.S. Marshals Service (USMS), which is responsible for ensuring “the safe and secure conduct of judicial proceedings” and for “protecting federal judges, jurors, and other members of the federal judiciary.”<sup>77</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Administrative Office of the U.S. Courts, *Defender Services*, at <https://www.uscourts.gov/services-forms/defender-services>.

<sup>74</sup> Ibid. There are two types of federal defender organizations. The first type, federal public defender organizations, are federal entities and their staffs are federal employees. The *chief federal public defender* is appointed to a four-year term by the court of appeals of the circuit where the federal public defender organization is located. The second type, community defender organizations, are nonprofit defense counsel organizations incorporated under state laws. These nonprofit organizations operate under the supervision of a board of directors and can, when included in a judicial district’s plan to provide legal representation to indigent defendants, receive initial and sustaining grants from the federal judiciary to fund their operations. Ibid.

<sup>75</sup> At present, panel attorneys are paid an hourly rate of \$148 on noncapital cases, and, in capital cases, a maximum hourly rate of \$190. Ibid.

<sup>76</sup> For example, \$11,500 is the maximum attorney compensation for felony cases; \$3,300 is the maximum for misdemeanors; and \$8,200 is the maximum for appeals. These maximums may be exceeded if higher amounts are approved by the district judge (or circuit judge if the case is at the appellate level) and the chief judge of the circuit also approves. Ibid.

<sup>77</sup> U.S. Marshals Service, *Fact Sheet – Judicial Security 2021*, at <https://www.usmarshals.gov/judicial>.

At present, the Marshals protect 94 federal district courts, 866 judicial facilities (encompassing 67 million square feet) and approximately 2,700 federal judges.<sup>78</sup> The Marshals also have protective responsibility for approximately 30,300 federal prosecutors and court officials.<sup>79</sup> In FY2020, the Marshals assessed or handled 4,261 threats and inappropriate communications against protected persons in the judiciary.<sup>80</sup> Additionally, in FY2020, the Marshals “managed the design, installation, repair and replacement of 110 security projects, totaling \$93.7 million, to address vulnerabilities to judicial personnel and facilities.”<sup>81</sup>

As part of its mission to protect the federal judicial process, the U.S. Marshals Service administers the Judicial Facility Security Program (funded by the *Court Security* account). The program “oversees the daily operation and management of security services performed by approximately 5,600 court security officers”<sup>82</sup> and “installs and maintains security systems for the protection of federal courthouses and other judicial facilities.”<sup>83</sup>

## Fees of Jurors and Commissioners

This account in the judiciary’s budget funds the fees and allowances provided to petit and grand jurors and compensation for jury and land commissioners.<sup>84</sup> Petit jurors serve on a trial jury, while grand jurors serve on a grand jury.<sup>85</sup> Petit jurors are paid \$50 per day<sup>86</sup> but can, after serving 10 days on a jury, receive up to \$60 per day.<sup>87</sup> Grand jurors are also paid \$50 per day but can, after serving 45 days on a grand jury, receive up to \$60 per day.<sup>88</sup>

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<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Land commissioners are appointed in certain types of cases to “determine the issue of just compensation arising from the deprivation of private property for public use,”<sup>84</sup> including cases where a district court has ordered that “compensation for condemned property be determined by a commission of three persons appointed by the court.” Land commissioners are paid based on the daily equivalent of the highest rate payable under 5 U.S.C. §5332. U.S. Administrative Office of the U.S. Courts, *Courts Of Appeals, District Courts, And Other Judicial Services—Fees of Jurors and Commissioners—Summary Statement Of Account Requirements*, p. 6.9, at <https://www.uscourts.gov/file/25694/download>.

<sup>85</sup> A trial jury decides “whether the defendant committed the crime as charged in a criminal case, or whether the defendant injured the plaintiff in a civil case.” A grand jury “is presented with evidence from the U.S. attorney, the prosecutor in federal criminal cases. The grand jury determines whether there is ‘probable cause’ to believe the individual has committed a crime and should be put on trial. If the grand jury determines there is enough evidence, an indictment will be issued against the defendant.” Administrative Office of the U.S. Courts, *Types of Juries*, at <https://www.uscourts.gov/services-forms/jury-service/types-juries>.

<sup>86</sup> In FY2018, Congress approved the judiciary’s request to increase the daily petit juror attendance fee from \$40 to \$50, as well as increase the daily grand juror attendance fee from \$40 to \$50.

<sup>87</sup> Administrative Office of the U.S. Courts, *Juror Pay*, at <https://www.uscourts.gov/services-forms/jury-service/juror-pay>.

<sup>88</sup> Ibid.

Petit and grand jurors are also reimbursed for reasonable transportation expenses and parking fees.<sup>89</sup> Jurors can receive a subsistence allowance that covers their meals and lodging if they are sequestered during their service.<sup>90</sup>

A jury commissioner is appointed in some cases to work with the clerk of court to manage the random selection of petit and grand jurors.<sup>91</sup> The compensation paid to a jury commissioner is \$50 per day (plus the reimbursement of reasonable expenses related to his or her service).<sup>92</sup>

According to the U.S. Administrative Office of the U.S. Courts, “costs associated with this account can be unpredictable and are driven by the number of jury trials, the length of those trials, and statutory rates for reimbursement paid to jurors.”<sup>93</sup>

## Vaccine Injury Compensation Trust Fund

The National Childhood Vaccine Injury Act of 1986<sup>94</sup> created a program to provide compensation to people found to be injured by certain vaccines.<sup>95</sup> The program “is designed to encourage vaccination by providing a streamlined system for compensation in rare instances where an injury results from vaccination”<sup>96</sup> and provides “an alternative to traditional products liability and medical malpractice litigation for persons injured by their receipt or one or more of the standard childhood vaccines.”<sup>97</sup>

The program, according to the Department of Justice, “has succeeded in providing a less adversarial, less expensive, and less time-consuming system of recovery than the traditional tort system that governs medical malpractice, personal injury, and product liability cases.”<sup>98</sup>

The Vaccine Injury Compensation Trust Fund provides funding for the compensation program, covering claims related to vaccine-related injuries or deaths for covered vaccines administered on or after October 1, 1988. An individual who believes he or she has been injured by a covered vaccine can seek compensation from the fund by filing a claim against the Secretary of the Department of Health and Human Services in the U.S. Court of Federal Claims.<sup>99</sup>

According to the most recent *National Vaccine Injury Compensation Report* (updated March 1, 2021) published by the Health Resources and Services Administration (HRSA), more than 23,902 petitions have been filed since 1988 with the Vaccine Injury Compensation Program.<sup>100</sup> Of these

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> 28 U.S.C. §1863.

<sup>92</sup> 28 U.S.C. §1863(b)(1).

<sup>93</sup> Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2021 Congressional Budget Summary*, p. 43, at [https://www.uscourts.gov/sites/default/files/fy\\_2021\\_congressional\\_budget\\_summary\\_0.pdf](https://www.uscourts.gov/sites/default/files/fy_2021_congressional_budget_summary_0.pdf).

<sup>94</sup> 42 U.S.C. §§300aa-1 to 300aa-34.

<sup>95</sup> The program “was established after lawsuits against vaccine manufacturers and healthcare providers threatened to cause vaccine shortages and reduce vaccination rates.” U.S. Department of Health and Human Services, Health Resources and Service Administration, *About the National Vaccine Injury Compensation Program*, at <https://www.hrsa.gov/vaccine-compensation/about/index.html>.

<sup>96</sup> U.S. Department of Justice, *Vaccine Injury Compensation Program*, at <https://www.justice.gov/civil/vicp>.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Health Resources & Services Administration (HRSA), “Vaccine Injury Compensation Data,” at <https://www.hrsa.gov/vaccine-compensation/data/index.html>.

petitions, 19,609 have been adjudicated—with 7,874 petitions determined to be compensable and 11,735 petitions dismissed. The total compensation paid over the life of the program is approximately \$4.5 billion.<sup>101</sup> The Department of the Treasury manages the fund’s investments.<sup>102</sup>

## Administrative Office of the U.S. Courts

The Administrative Office of the U.S. Courts (AO) “is the agency within the judicial branch that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts.”<sup>103</sup> A main responsibility of AO is to provide staff support and counsel for the Judicial Conference, the national policymaking body for the federal courts, and the Conference’s committees.

With input from the Judicial Conference, AO also develops the annual judiciary budget for submission by the President and approval by Congress.

## Federal Judicial Center

As the federal judiciary’s research and education entity, the Federal Judicial Center (FJC) “develops orientation and continuing education programs for judges and other court personnel. It also studies judiciary operations and recommends to the Judicial Conference how to improve the management and administration of the federal courts.”<sup>104</sup>

The operations of the FJC are “overseen by a board of directors whose members are the Chief Justice, the director of the Administrative Office, and seven judges chosen by the Judicial Conference.”<sup>105</sup>

## United States Sentencing Commission

The United States Sentencing Commission is an independent agency that is located within the federal judiciary. It was created by Congress in 1984 “to reduce sentencing disparities and promote transparency and proportionality in sentencing.”<sup>106</sup> As such, the commission establishes and amends sentencing guidelines for the federal criminal justice system, as well as “monitors sentencing recommendations by probation officers and operates an information center on sentencing practices.”<sup>107</sup>

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<sup>101</sup> Ibid.

<sup>102</sup> Health Resources & Services Administration (HRSA), “About the National Vaccine Injury Compensation Program,” at <https://www.hrsa.gov/vaccine-compensation/about/index.html>.

<sup>103</sup> Administrative Office of the U.S. Courts, *Judicial Administration*, at <https://www.uscourts.gov/about-federal-courts/judicial-administration>.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> United States Sentencing Commission, *About the Commission*, at <https://www.ussc.gov>.

<sup>107</sup> Administrative Office of the U.S. Courts, *Judicial Administration*, at <https://www.uscourts.gov/about-federal-courts/judicial-administration>. For FY2018, 87.8% of federal offenders received a sentence of imprisonment (and no other type of sentence); 6.4% received probation (and no other type of sentence); 3.0% received a sentence of imprisonment and alternatives; 2.0% received probation and alternatives; and 0.8% received a fine (and no other type of sentence). United States Sentencing Commission, *U.S. Sentencing Commission’s 2018 Sourcebook of Federal Sentencing Statistics*, 2018 Sentencing Information, Sentence Type for Federal Offenders, Figure 6, at <https://www.ussc.gov/research/sourcebook-2018>.

The commission consists of seven voting members appointed by the President and confirmed by the Senate, with members serving staggered six-year terms.<sup>108</sup> No more than four members of the commission can be members of the same political party, and at least three members must be federal judges.<sup>109</sup> In order for a sentencing guideline to be amended, the amendment must receive the affirmative votes of four members of the commission.<sup>110</sup>

The commission has a staff of approximately 100 employees.<sup>111</sup> The commission is also advised by “four standing advisory groups representing the views of practitioners, probation officers, victims, and tribal lands.”<sup>112</sup> The purpose, in part, of the advisory group representing the views of tribal lands is to provide the commission “its views on federal sentencing issues related to American Indian defendants and victims and to offenses committed in Indian Country.”<sup>113</sup>

## Federal Courts Not Funded by the Judiciary Budget

Three specialized courts within the federal court system are *not* funded under the judiciary budget: the U.S. Court of Appeals for the Armed Forces (funded in the Department of Defense appropriations bill), the U.S. Court of Appeals for Veterans Claims (funded in the Military Construction, Veterans Affairs, and Related Agencies appropriations bill), and the U.S. Tax Court (funded under Independent Agencies, Title V of the FSGG bill). Additionally, federal courthouse construction is funded within the General Services Administration account under Independent Agencies, Title V of the FSGG bill.

## Select Ongoing Policy Issues for FY2021

### Number of U.S. District and Circuit Court Judgeships

Congress determines through legislative action both the size and structure of the federal judiciary. Consequently, the creation of any new permanent or temporary U.S. circuit and district court judgeships must be authorized by Congress.

The Judicial Conference of the United States, the policymaking body of the federal courts, makes biennial recommendations to Congress that identify any circuit and district courts that, according to the conference, require new permanent judgeships to appropriately administer civil and criminal justice in the federal court system. In evaluating whether a court might need additional judgeships, the Judicial Conference examines whether certain caseload levels have been met, as well as court-specific information that might uniquely affect a particular court.

The Judicial Conference’s most recent recommendation, released in March 2021, calls for the creation of two new permanent judgeships for the U.S. Court of Appeals for the Ninth Circuit (composed of California, eight other western states, and two U.S. territories). The Conference

<sup>108</sup> United States Sentencing Commission, *About—Organization*, at <https://www.ussc.gov/about/who-we-are/organization>.

<sup>109</sup> *Ibid.* Additionally, the Attorney General, or the Attorney General’s designee, and the Chair of the U.S. Parole Commission are each *ex officio*, nonvoting members of the commission.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> United States Sentencing Commission, *About*, at <https://www.ussc.gov/about-page>.

<sup>113</sup> United States Sentencing Commission, *Advisory Groups—Tribal Issues Advisory Group*, at <https://www.ussc.gov/about/who-we-are/advisory-groups>.

also recommends creating 77 new permanent U.S. district court judgeships, as well as converting 9 current temporary district court judgeships to permanent status.<sup>114</sup>

According to the Judicial Conference, since the enactment of the most recent omnibus judgeship bill in 1990 (P.L. 101-650), the number of U.S. circuit court judgeships has remained at 179 while appellate court case filings increased by 15% through the end of FY2018. During this same time period, Congress enacted legislation that increased the number of permanent and temporary district judgeships by 4% (from 645 to 673) while district court case filings increased by 39%.<sup>115</sup> In terms of specific types of cases, civil cases increased by 34% during the same period, and cases involving criminal felony defendants increased by 60%.<sup>116</sup>

On February 24, 2021, the Subcommittee on Courts, Intellectual Property, and the Internet of the House Judiciary Committee held a hearing to explore “the impact on the judiciary, judges, and litigants of not having a major addition of new lower court judgeships since the last comprehensive judgeship bill in 1990.”<sup>117</sup> In his opening remarks at the hearing, subcommittee Chairman Representative Hank Johnson (GA) said that, since 1990, “the country grew by 75 million people. Our economy more than doubled. The world became increasingly connected and complex, and the business of the courts changed accordingly. But even after three decades of rising caseloads and increasingly difficult cases, the number of federal judges has stayed almost exactly the same.”<sup>118</sup> While there was, generally, broad agreement among subcommittee members over the need for new judgeships, some members expressed concern over the timing of the hearing, held at the beginning of a new presidency, and any proposed legislation that might be perceived as giving one party an advantage in making appointments to the federal bench.<sup>119</sup>

## Judicial Security

Congress has, in the past, appropriated funds specifically to enhance the personal security of judges. For example, an FY2005 supplemental appropriations act included a provision providing funds for home intrusion detection systems for federal judges.<sup>120</sup> Additionally, the Court Security Improvement Act of 2007 included various measures to enhance security for judges and court personnel, as well as courtroom safety for the public.<sup>121</sup> The act, for example, amended 18 U.S.C. §930(e)(1) to prohibit the possession of dangerous weapons (other than firearms, which were already prohibited) in federal court facilities.

<sup>114</sup> For a list of U.S. district courts that the conference recommends receive new judgeships, see <https://www.uscourts.gov/news/2021/03/16/judiciary-seeks-new-judgeships-reaffirms-need-enhanced-security>.

<sup>115</sup> Judicial Conference of the United States, letter to the Honorable Lindsey Graham, Chairman, Senate Committee on the Judiciary, May 14, 2019, Appendix 2, p. 1.

<sup>116</sup> *Ibid.*

<sup>117</sup> Rep. Hank Johnson, “Rep. Johnson Chairs IP Subcommittee Hearing On New Lower Court Judgeships,” press release, February 24, 2021, at <https://hankjohnson.house.gov/media-center/press-releases/rep-johnson-chairs-ip-subcommittee-hearing-new-lower-court-judgeships>.

<sup>118</sup> *Ibid.*

<sup>119</sup> The subcommittee hearing is available at <https://judiciary.house.gov/subcommittees/subcommittee/?SubcommitteeID=14928>.

<sup>120</sup> P.L. 109-13 (May 11, 2005). In FY2018, the Judicial Security Division (JSD) of the U.S. Marshals Service maintained more than 1,600 residential security systems in judges’ personal residences. U.S. Marshal Service, “Judicial Security,” at <https://www.usmarshals.gov/judicial>.

<sup>121</sup> P.L. 110-177 (January 7, 2008).

Following a fatal attack in 2020 at the home of a federal judge in New Jersey<sup>122</sup> and the increasing number of threats directed against federal judges,<sup>123</sup> the federal judiciary has urged Congress to adopt several new safety measures intended to improve the security of federal judges.<sup>124</sup> One measure is a request by the judiciary that Congress appropriate funds to provide security monitoring services for active, senior, recalled, and retired federal judges (including the use of doorbell cameras, outdoor cameras, and motion detection devices).<sup>125</sup>

The judiciary also works closely with the U.S. Marshals Service (USMS) to ensure that adequate protective policies, procedures, and practices are in place for the federal courts. As discussed in the text above, the Marshals are largely responsible for protecting federal courthouses, judges, and other judicial employees. In FY2018, for example, after the USMS assessed the level of danger in explicit threats and inappropriate communications directed at judges and other court officers, there were 531 predicated protective investigations opened “based on the presence of or potential for criminal activity.”<sup>126</sup>

## Cost Containment by the Judiciary

The judiciary has implemented a number of cost containment initiatives since 2004, with a specific focus on implementing cost-containment initiatives related to personnel and space costs.<sup>127</sup> One initiative was the adoption of a 3% national space reduction target; this initiative reportedly “resulted in approximately 1.2 million useable square feet of space being removed from the Judiciary’s rent bill.”<sup>128</sup> Overall, the judiciary indicates in its budget materials that it “has exceeded its national space reduction goal by approximately 37 percent”<sup>129</sup> and “resulted in approximately \$36 million in annual rent avoidance.”<sup>130</sup>

Another initiative, the “No Net New policy,” requires that any increase in square footage within a federal judicial circuit needs to be offset by an equivalent reduction in square footage identified within the same fiscal year.<sup>131</sup> In FY2019, there were 10 projects approved under the No Net New policy, and the judiciary anticipates that these projects will “reduce the Judiciary’s footprint by an additional 57,000 square feet and result in \$3 million in rent cost avoidance every year.”<sup>132</sup>

<sup>122</sup> For additional information see Brian Mann, “Fatal N.J. Shooting By ‘Anti-Feminist’ Raises Questions About Protection of Judges,” *National Public Radio*, July 22, 2020, at <https://www.npr.org/2020/07/22/894121071/fatal-n-j-shooting-by-anti-feminist-raises-questions-about-protection-of-judges>.

<sup>123</sup> “In the last five years, threats of federal judges have jumped 400% to more than 4,000 last year—many of them death threats, sometimes ending in violence.” Bill Whitaker, “Federal Judges Call For Increased Security After Threats Jump 400% And One Judge’s Son Is Killed,” *CBS News*, February 21, 2021, at <https://www.cbsnews.com/news/federal-judge-threats-attack-60-minutes-2021-02-21>.

<sup>124</sup> Administrative Office of the U.S. Courts, “Congress Urged to Adopt Judicial Security Measures,” September 9, 2020, at <https://www.uscourts.gov/news/2020/09/09/congress-urged-adopt-judicial-security-measures>.

<sup>125</sup> *Ibid.* Another measure would “better prevent the unauthorized release of judges’ personally identifiable information, particularly on the internet, including restrictions on posting or sharing judges’ personal information by private or public entities.” *Ibid.* And another proposed measure would “give federal judges permanent authority to redact personally identifiable information from financial disclosure reports.” *Ibid.*

<sup>126</sup> U.S. Marshals Service, “Judicial Security,” at <https://www.usmarshals.gov/judicial>.

<sup>127</sup> Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2021 Congressional Budget Summary*, p. iii.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

The Senate Appropriations Committee majority draft explanatory statement for the FSGG FY2021 appropriations bill addressed the issue of cost containment by the judiciary, stating that the “judicial branch is subject to the same funding constraints facing the executive and legislative branches. It is imperative that the Federal judiciary devote its resources primarily to the retention of staff. Further, it is also important that the judiciary contain controllable costs such as travel, construction, and other expenses.”<sup>133</sup>

Previously, in its FY2020 budget summary, the Administrative Office of the U.S. Courts (AO) provided specific examples of the judiciary’s space reduction campaign.<sup>134</sup> Some examples included the following:

- The bankruptcy court for the District of New Hampshire “was relocated from leased space in Manchester into the District Court in Concord, NH. Savings: 20,000 square feet.”<sup>135</sup>
- In New York, the bankruptcy court in Buffalo “relocated into the district courthouse. In Manhattan, the Bankruptcy Court reduced space by digitizing paper records. Combined savings: 39,000 square feet.”<sup>136</sup>
- The bankruptcy court in San Francisco “saved over 25,000 square feet and \$1.5 million in annual rent by moving into the Phillip Burton Federal Building and U.S. Courthouse.”<sup>137</sup>
- Courthouse “library reductions in Camden, NJ; Wilmington, DE; Harrisburg, PA; Philadelphia; and U.S. Virgin Islands saved over 18,000 square feet.”
- The Sixth Circuit’s library headquarters in Cincinnati “relocated to space formerly used for Clerk’s Office file storage. Total savings: 15,000 square feet.”<sup>138</sup>
- Courthouses for which there was no permanently assigned judge, that is, *non-resident courthouses*, were closed in Bryson City, NC; Wilkesboro, NC; Beaufort, SC; and Parkersburg, WV. “Total savings: over 35,000 square feet.”<sup>139</sup>

“In Miami, 33,000 square feet and \$900,000 in annual rent were saved by relocating the Bankruptcy Court into the C. Clyde Atkins U.S. Courthouse. Two magistrate judges were relocated, and a circuit library and jury assembly area were vacated.”<sup>140</sup>

<sup>133</sup> Senate Appropriations Committee, “Committee Releases FY21 Bills in Effort to Advance Process, Produce Bipartisan Results,” press release, Financial Services and General Government, 2021, *Explanatory Statement For Financial Services And General Government Appropriations Bill, 2021*, November 10, 2020, at <https://www.appropriations.senate.gov/news/committee-releases-fy21-bills-in-effort-to-advance-process-produce-bipartisan-results>

<sup>134</sup> Administrative Office of the U.S. Courts, *The Judiciary Fiscal Year 2020 Congressional Budget Summary*, pp. iii-iv.

<sup>135</sup> Administrative Office of the U.S. Courts, “Judiciary Succeeds in Campaign to Cut Space and Rents,” at <https://www.uscourts.gov/news/2018/12/11/judiciary-succeeds-campaign-cut-space-and-rents>.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

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