

STATEMENT OF
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ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
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INTRODUCTION

Chairman Quigley, Ranking Member Womack, and members of the Subcommittee, I am pleased to appear before you today for the very first time as Director of the Administrative Office of the United States Courts (AO). In this capacity, I am here to present the AO's FY 2022 budget request and to provide an update on a number of important AO activities and projects that are of interest to the Subcommittee. In addition to serving as the AO Director, I am also the Secretary to the Judicial Conference of the United States, which is the policy making and governance body for the judiciary, and, in that role, I intend to offer my support for the budget request of the entire judicial branch and ask for the Subcommittee's assistance on several Conference priorities beyond the judiciary's own budget.

Before turning to the substance of my remarks, I would like to briefly introduce myself and express my commitment to maintaining the collegial and productive relationship that has always existed between the Subcommittee and the Director of the AO. I assumed the role of AO Director just three weeks ago after spending more than 13 years as a federal district court judge in the Eastern District of New York. Prior to my nomination, and for a total of more than 25

years, I served as the United States Attorney for the Eastern District of New York, the New York State Inspector General, and as a local prosecutor. I look forward to continuing to serve the judicial branch and the administration of justice in this new and vital role.

I am joined today by Judge John Lungstrum, Chair of the Judicial Conference Committee on the Budget. He has provided many years of dedicated service to the branch as both a district court judge and by serving in several key leadership roles in our governance structure. His steady hand and wise guidance on budget matters have been invaluable to the judicial branch. I echo Judge Lungstrum's gratitude to the Subcommittee for its generous and consistent support of the judiciary, which was demonstrated once again in the recently enacted FY 2021 Financial Services and General Government appropriations bill. We are cognizant of the constraints you face and the many competing demands for the resources under your control, and we remain extremely thankful that the Subcommittee has continued to make the judiciary a funding priority despite these challenges.

I would like to begin my testimony today with a discussion of the important role of the AO in support of the branch, an update on several important ongoing initiatives of interest, and some details on the AO's FY 2022 funding priorities.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

The judiciary is a largely decentralized organization. Significant operational and administrative authority rests with judges, clerks, federal defenders, and probation and pretrial chiefs across the country. They have the flexibility to make most decisions according to their local circumstances and priorities, guided by the policy framework established by the Judicial Conference. The role of the AO is to facilitate both sides of that management process. We staff the Judicial Conference and its 25 committees as they set national policy on court administration,

resource management, information technology, space, security, and other important topics. At the same time, the AO provides support to judges, court employees, and federal defenders as they execute that policy through their local authorities. Our support functions include the direct provision of services; the development and implementation of new technologies and business processes for use in the field; and the performance of branch-wide administrative functions that cannot be efficiently handled at the judicial district or circuit level. The AO has proudly served the federal judicial community for more than 80 years, and I look forward to leading this organization into the future.

At any given time, the AO is balancing numerous major projects and strategic initiatives on behalf of itself and the judiciary as a whole. From developing the next generation probation and pretrial services case management system to negotiating new pricing terms for our rental agreements with the General Services Administration (GSA), AO employees are engaged in a wide variety of activities that help the judiciary function effectively and efficiently. Although there are innumerable examples that I could provide, I would like to take this opportunity to update the Subcommittee on some timely issues of interest.

COVID-19

Since the start of the COVID-19 pandemic, the AO has been hard at work both to ensure the effective continuity of its own operations and to support the broader judiciary as our courts, federal defenders, and probation and pretrial services officers seek to maintain the timely and efficient administration of justice. The AO's prior experience with broad-based telework prepared us well for the transition to full remote operations, and the work of our organization has proceeded without interruption, allowing us to successfully protect the health and welfare of our

employees without compromising our standards of service to the rest of the judiciary and to the public.

To support the branch through its transition to remote and other alternative operations, the AO established the COVID-19 Judiciary Task Force in February 2020. The Task Force serves as a centralized entity to monitor the pandemic's impact on judiciary operations, identify and address emerging issues, and coordinate the judiciary's pandemic-related guidance, and resource and legislative needs. It is led by the AO's experts in emergency management, with assistance from virtually every other office in the AO. Its members include judges and staff from around the country, as well as representatives from our external partners, such as the United States Marshals Service, other Department of Justice components, the Federal Protective Service, and GSA. When necessary, the Task Force has formed subgroups on specialized topics, such as the Jury Subgroup, which developed and released to the courts and the public guidance for safely conducting jury trials and convening grand juries during the pandemic.

To share necessary updates with both internal and external audiences, the AO has developed and released communications across multiple platforms, including videos, an online clearinghouse of Frequently Asked Questions and other guidance, public email broadcasts, and targeted outreach to media. Through these means, the AO keeps the judicial community and the public apprised of the status of court operations; changes to practices, such as the use of teleconferencing to provide the media and the public with electronic access to virtual court proceedings; and the availability of financial and other resources to help address the challenges of operating during a public health emergency.

Beyond guidance and communications, the AO has also provided direct services to courts and federal defender organizations around the country to assist their transition to alternative

operations. This has included everything from identifying and moving funding to meet emergent needs in the districts and circuits, to providing training on options for COVID-safe virtual pre-trial and post-release supervision of people in the community, and even acquiring and distributing 1.5 million face masks to judiciary personnel. Because the nature of this pandemic has required such a heavy reliance on information technology tools to take the place of in-person operations, we also have undertaken especially intensive efforts to ensure that the judiciary's data networks can withstand the increased demands of widespread telework, videoconferencing, and remote court proceedings. During peak usage periods, the number of users simultaneously connected to the judiciary's virtual private network increased by 780 percent, from a pre-pandemic daily average of 2,500 users to as many as 22,000 users once lockdown orders and other public health controls were implemented.

While we would never wish to repeat the experience of continuing the administration of justice through a national emergency such as this one, I am very proud of the resiliency we have demonstrated over the past year, and I believe that we will emerge from the COVID-19 pandemic even stronger than before, having adopted some valuable innovations and lessons from this pandemic that will help us perform our functions even better in the future.

Workplace Conduct

Ensuring a safe and respectful workplace has always been a goal of the judiciary. We have elevated it as a top priority and redoubled our efforts in this area since 2018, when the Chief Justice established the Federal Judiciary Workplace Conduct Working Group. As AO Director, I will lead this group of judges and other senior court executives as we continue to improve the judiciary's policies and safeguards to protect its employees from inappropriate workplace conduct.

Much has already been accomplished. Thanks to steps taken to date, judiciary employees now have additional venues in which to report workplace misconduct concerns, including options for reporting concerns anonymously and to individuals outside of an employee's immediate chain of command. In addition to increasing the number of avenues for reporting, we have also responded to the desire for more flexible options for addressing alleged misconduct outside a formal complaint process, such as informal advice and assisted resolutions that can include facilitated discussions or voluntary mediation. We offer multiple resources, including the national-level Office of Judicial Integrity, 11 circuit-level Directors of Workplace Relations, and hundreds of local Employment Dispute Resolution (EDR) coordinators, who can provide this additional guidance and assistance to employees as appropriate, and, of course, formal complaint processes also remain available for any employee who wishes to pursue them. We also continue to develop and offer new training and certification programs, including online training that has been particularly valuable in the current pandemic environment, and to increase the frequency and visibility of our communications to employees about workplace conduct resources.

We have made substantial improvements that have real impacts on our employees and continue to do so with a number of new achievements in the last year. Every circuit and nearly 80 percent of the districts have now adopted a model EDR plan that clearly defines misconduct; offers flexible avenues for reporting; and requires annual training to increase supervisor and employee awareness of rights and options. The Judicial Conference approved amendments to the Code of Conduct for employees of federal public defender organizations that mirror misconduct-related changes made to the Codes of Conduct for judges and court employees in 2019. We recruited for and hired our second-ever Judicial Integrity Officer after the incumbent became the

Director of Workplace Relations for the Eighth and Tenth Circuits. In total, we have taken action on all 30 of the Working Group's initial recommendations.

More remains to be done, and I assure you that we are committed fully to creating and sustaining a professional workplace where every employee has the security of knowing that wrongful conduct will be identified and redressed promptly, fairly, and without retaliation. We are energized by our past successes, cognizant of our continuing challenges, and motivated to build on our momentum and to ensure an exemplary workplace for every court employee and judge.

Diversity and Inclusion

As Director, I share my predecessor's goals of making the AO the best service organization and place to work in all of government. To that end, I am committed to recruiting, hiring, and retaining a highly qualified and diverse workforce, and ensuring that our workplace is welcoming and respectful to all. Building on previous efforts, we took several steps this year to further these priorities. We conducted our first workforce demographic survey, allowing employees to self-report their race, ethnicity, and gender identity, so that we can better understand how our workforce compares to that of the rest of the federal workforce and the general population. We also appointed the first AO Diversity and Inclusion Officer, who will develop new programs to help attract a diverse pool of applicants for AO positions, provide guidance on evaluating efforts to create a more diverse workforce, and facilitate training, programs, and events to promote an inclusive work environment.

In addition to these AO-wide efforts, individual offices and divisions within the AO are planning and implementing diversity and inclusion programming of their own. Our Facilities and Security Office (FSO), for example, recently created five paid FSO summer internships that will

focus recruitment on Historically Black Colleges and Universities and Community Colleges. In addition, our Defender Services Office was deeply involved in the planning and development of the FY 2022 request to establish a Federal Defender Diversity Fellowship Program that will supplement the pipeline of attorneys from all backgrounds who are qualified to join a federal defender organization, a district Criminal Justice Act panel, or a federal capital defense team. I am proud of the fact that managers and employees throughout the AO view diversity and inclusion as a priority and have taken the initiative to broaden opportunities to join the federal workforce. Through our combined endeavors, I am hopeful that we will make significant, durable progress toward our goal of fulfilling the AO's best and highest potential.

AO FISCAL YEAR 2022 BUDGET REQUEST

In FY 2021, Congress provided the AO with an appropriation of \$95.7 million, an increase of 1.5 percent. Together with applicable judiciary fees and reimbursements from other appropriations, these funds will support our base operations and some critical new management initiatives. Because the AO's budget is very personnel-heavy, however, pay adjustments, benefits increases, and other pressures required us to take some economizing measures, including a nine percent across the board reduction to full salary requirements. As you evaluate FY 2022 funding requests, we ask that you keep in mind the vital services the AO provides to the entire judiciary and ensure that those services are funded as needed.

To facilitate the work of the AO in FY 2022, our appropriation request totals \$100.3 million. That is an increase of \$4.7 million, or 4.9 percent, over the FY 2021 enacted appropriation. Of this increase, \$4.0 million – 85 percent of the total requested increase – is necessary just to maintain current services, and \$0.7 million is for new initiatives.

The AO's current services level will fund a variety of pay and benefit increases, most of which are outside of our control. Included in these adjustments is an assumed one percent federal employee pay adjustment for FY 2022. Should the President's Budget include a different pay adjustment assumption when it is submitted later this spring, we will adjust our request as necessary to reflect the executive branch assumption.

Beyond pay and benefit adjustments and standard inflationary increases, the current services level also includes funding needed to annualize investments made in FY 2021, including for new staffing for several priority initiatives in the areas of compliance and risk, procurement reform, and internal controls. The importance of these key management initiatives should not be overlooked. Investing relatively small sums to ensuring proper oversight of contracts or the early and accurate identification of risks to large development projects, for example, pays big dividends in the form of better program outcomes, more cost effective operations, and even improved oversight by external entities, including this subcommittee. These initiatives go a long way to protect taxpayer funds and enhance confidence in the integrity and efficiency of our systems and processes.

The program increases in our FY 2022 request seek to build on the momentum of our FY 2021 request by continuing to make investments in both procurement management and risk and compliance. Our budget includes an increase of \$100,000 to add a third position to our relatively new Office of Compliance and Risk (OCR). This new position will focus exclusively on risk management, using Government Accountability Office and industry best practices to ensure that we have clearly identified, mitigated, and monitored the probability and impact of risks to our operations and maximized our opportunities for success. In conjunction with existing resources focused on the remediation of findings and corrective actions from audits and other reviews, the

OCR will be well positioned to ensure that our management practices meet the highest modern standards.

The AO request also includes a program increase of \$600,000 for procurement and contract management improvements. These resources will allow us to add personnel focused on expanding training and support for contracting officer representatives, who perform day-to-day contract management and oversight; enhancing the requirements-development process, which has a major impact on the size and structure of resulting contracts; and improving our contract invoicing, which is necessary for the accurate and timely disbursement of contract funds. These initiatives are all aimed at obtaining the best value for the government in every contract we execute.

Just as the AO continually emphasizes to the courts and federal defender organizations the importance of sound financial management practices, we at the AO also look within our own operation to see how we can better manage resources, increase transparency, and improve financial processes. The requested increases for FY 2022 will both improve the AO's operations and better equip us to bring these same innovations and developments to the broader court and defender communities, to the benefit of the entire judiciary and the taxpayer.

OTHER JUDICIAL CONFERENCE PRIORITIES

As noted in my introduction, the Judicial Conference has several important priorities beyond the judiciary's own budget that are relevant to the Subcommittee. On behalf of the Conference, I ask for your support of our efforts to extend critical temporary district judgeships at risk of expiration, ensure sufficient funding of judiciary construction priorities within GSA's budget, and address vulnerabilities in judicial security that were underscored by recent events. I will address each of these priorities in turn.

Temporary District Judgeships

Having the necessary number and distribution of judicial officers is critical to the effective administration of justice. The Judicial Conference regularly reviews the number and location of circuit, district, magistrate, and bankruptcy judges to assess whether existing judgeships are sufficient and deployed in the appropriate judicial districts. To the extent that these assessments determine that additional judgeships are needed from Congress, those recommendations are communicated by the Judicial Conference to the House and Senate Judiciary Committees for action, such as the recent extension of temporary bankruptcy judgeships in the Bankruptcy Administration Improvement Act of 2020, for which we are very grateful. The newest set of judgeship recommendations will be transmitted after next month's meeting of the Judicial Conference, and we hope that Congress will act on those recommendations.

Unfortunately, it has been several decades since the enactment of a comprehensive Article III judgeship bill, and the absence of legislation has left the branch with a group of temporary judgeships that are continuously vulnerable to expiration. In order to avoid the significant disruptions and workload burdens that would follow from the loss of these important judgeships, this subcommittee has worked with us to preserve them by including extensions of their expiration dates in the annual Financial Services appropriations bill (or a continuing resolution, as appropriate). We are grateful for your past support for these extension requests, which this year preserved 10 temporary district judgeships and one temporary bankruptcy judgeship.

Continuing uncertainty about the potential for permanent judgeship legislation in the upcoming year causes us to include in our FY 2022 request the legislative language needed to

extend for one year eight temporary district judgeships that meet the Judicial Conference's standard for conversion to permanent status or, in the absence of conversion, continued extension. These temporary judgeships are in the following districts: Arizona, California-Central, Florida-Southern, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern. We continue to ask for your support for these requested extensions, without which the administration of justice in the affected districts would be disrupted and delayed.

Judiciary Construction Priorities

With more than 630 federally owned or leased court facilities, the judiciary is one of GSA's largest tenants. We rely on GSA to rent us sufficient space for our operations; to maintain and improve that space as needed; and to construct new space for our use when required. We work collaboratively with GSA every day to ensure the facilities-related needs of the court and federal defender communities are met, and we are proud of the strong working relationships we have forged with our GSA partners. The Judicial Conference supports the provision of the necessary resources to ensure that GSA can execute our space priorities adequately. For the purposes of the Subcommittee, the Conference's space priorities are reflected in three significant programs funded within GSA's Federal Buildings Fund: the Judiciary Capital Security Program (CSP), new courthouse construction, and Basic and Major Repairs and Alterations.

Capital Security Program

The CSP is a GSA special emphasis program designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new construction. Substantial improvements in the overall security of our court facilities can be achieved with relatively modest alterations and at far lower cost than wholesale new construction. For example, the Federal Building and U.S. Courthouse in Benton, Illinois, had a

Facility Benefit Assessment (FBA) security score of only 46.1 out of 100 prior to receiving CSP funded upgrades. After modest changes, including reconfiguring corridors, installing a new elevator, enclosing a sally port, and adding visual barriers, that courthouse's security score was remeasured at 80.2, a 74 percent gain, which was achieved with an investment of only \$4.7 million.

Projects in the CSP are selected through a collaborative process involving the judiciary, the United States Marshals Service, and GSA, and then implemented with GSA funding. Since its inception in FY 2012, the CSP has supported 12 projects in seven states or territories, including Arkansas, Georgia, and Illinois. GSA also recently identified available program funding to initiate a thirteenth project, in Detroit, Michigan, once the necessary approvals are received.

At a time when threats against judges are increasing and violent incidents in and around federal courthouses have become more common, the basic security improvements made possible by the CSP are more important than ever. However, the program has not received a congressional appropriation since FY 2018, and a backlog of approved projects has developed. Recognizing the pressures and tradeoffs that are required to complete the FSGG bill, we hope the Subcommittee will reverse this trend in FY 2022 by providing our CSP request of \$19.8 million. These funds will allow GSA to address fully our highest priority unfunded project in Augusta, Georgia, where the existing courthouse has an FBA security score of just 26.2 out of 100. The planned project in Augusta will improve security conditions by adding an enclosed sally port, enlarging the security screening area, providing dedicated elevators for judges and for prisoners, and reconfiguring circulation patterns to separate judges, prisoners, and the public as they move through the courthouse.

New Courthouse Construction

The new courthouse construction program is designed to resolve space deficiencies that are much broader than the security issues addressed by the CSP. When a court facility faces not only security problems but also a lack of sufficient courtroom or chambers space, deteriorated building infrastructure, and chronic maintenance issues, the most feasible solution to meet the operational needs of the court is to build a new courthouse or an annex to an existing courthouse. The construction of those new facilities or annexes is funded by GSA in accordance with the priorities of the Judicial Conference as expressed on our Federal Judiciary Courthouse Project Priorities (CPP) plan.

We are very grateful to the Subcommittee for its robust support of the new courthouse construction program over the past five years. Since FY 2016, the Subcommittee has fully funded 11 new courthouse projects from our CPP, five of which will open this year and an additional four in 2022. The improved working environments in those courts will benefit the judiciary and the public in the form of increased capacity, efficiency, accessibility, security, and safety. We look forward to hosting interested members of the Subcommittee for a tour of any of our newly constructed projects once it is safe to do so.

The recently enacted FY 2021 omnibus appropriations bill included partial funding for another two courthouse projects in Hartford, Connecticut, and Chattanooga, Tennessee, and, again, we are grateful for this support. Hartford and Chattanooga were the top two priority projects on the FY 2021 version of the CPP, and they remain the top two projects on the FY 2022 CPP. The FY 2022 CPP also reflects the designation of a courthouse annex in San Juan, Puerto Rico, as a judicial space emergency. Space emergencies are tracked outside of the CPP priority rankings and are intended to convey urgency resulting from unexpected and/or

catastrophic conditions that may not be fully captured by the judiciary's standard asset management planning process that determines CPP priorities.

The Conference declared San Juan a space emergency due to GSA's designation of the Degetau Federal Building as structurally deficient and at extremely high risk of seismic activity. These seismic vulnerabilities, in combination with the operational concerns that led to the location being added to the CPP in 2016 and the logistical challenges of housing court operations during the seismic retrofitting of the Degetau building, are so significant and cause such severe risks to the court on multiple fronts that San Juan was removed from its prior ranking on Part II of the CPP and placed in the standalone emergency category. This emergency designation makes the courthouse project in San Juan the de facto top construction priority of the branch. The projects that remain on Part II, which tracks outyear funding priorities, include Bowling Green, Kentucky; Anchorage, Alaska; Greensboro/Winston-Salem, North Carolina; McAllen, Texas; and Norfolk, Virginia.

Repairs and Alterations

In addition to the CSP and new courthouse construction priorities, the judiciary also supports sufficient funding for GSA's Basic and Major Repairs and Alterations (R&A) program to ensure safe, secure, and functional space for judiciary employees. The judiciary pays GSA \$1.1 billion in annual rent, a portion of which is intended to cover the costs of maintaining and upgrading facilities as necessary to support the conduct of our operations. Years of deferred maintenance in many judiciary facilities, however, have resulted in significant mold and water intrusion problems, broken elevators and HVAC systems, and other conditions that negatively impact the ability of the courts to operate as needed. In some cases, these conditions impacted the health and safety of employees and the public, requiring the judiciary to vacate into

temporary space while remedial measures were taken. GSA has not yet submitted its FY 2022 request for Basic and Major R&A, but I urge the Subcommittee to ensure that sufficient funds are available to properly maintain court and defender facilities and deliver safe and functional working environments.

Judicial Security

I want to close with a brief discussion of judicial security, which is another critically important Judicial Conference priority and one that is a shared responsibility of this subcommittee, the Commerce-Justice-Science and Homeland Security Appropriations Subcommittees, and the Judiciary Committee.

Seven months ago, an aggrieved litigant went to the New Jersey home of U.S. District Judge Esther Salas and murdered her son and critically wounded her husband. Thankfully, Judge Salas was not physically injured in this horrific attack. This incident came amidst a trend of rising threats against judges, as well as sustained civil unrest and several violent incidents occurring in or near federal courthouses. These disquieting and, in some cases, tragic events, along with the January 6 attack on the U.S. Capitol, in which we recognized a number of vulnerabilities shared by our own facilities, have sharpened the Judicial Conference's focus on the need to make significant and urgent improvements to the full range of judicial security activities.

A slate of proposed improvements was adopted by the Conference and transmitted to Congress last summer and included: legislation on the protection of judges' personally identifiable information (PII), particularly online; the creation of a resource to monitor the availability of that PII and associated threats; additional funding for the U.S. Marshals Service to improve judges' home intrusion detection systems (HIDS) and to hire more Deputy U.S.

Marshals; and additional funding for the Federal Protective Service to replace and upgrade exterior cameras at federal courthouses and court-occupied facilities.

We have made significant progress on several of these items, including the creation of a draft online privacy and safety bill for judges that has bipartisan support and the enactment of additional funding for the U.S. Marshals Service both to improve their ability to proactively monitor for online threats against judges and to replace and upgrade the entire HIDS inventory with modern, more capable technology. We are encouraged by this progress and hope to build on it as we work to achieve the enactment of our remaining priorities. While these improvements are largely outside of the jurisdiction of this subcommittee, we would still appreciate and value your support for the provision of these critically important resources as we pursue them with the relevant members and subcommittees.

In addition to the measures approved by the Conference last year, the judiciary has also begun incorporating lessons learned from the experience of Congress on January 6 into our own security plans and priorities. To that end, we have identified a need for additional resources in the judiciary's Court Security appropriation for targeted infrastructure fixes, such as "riot glass" and magnetic door locks, that can better protect federal courthouses against large groups seeking unlawful entry. In addition, we need additional funds to expand our vulnerability management program, which will help to build security capabilities in the circuits and districts and to proactively identify and remove judges' PII from the internet before it can be weaponized against anyone, especially judges involved in high-risk sensitive cases. These evolving requirements, which have been developed in response to very recent events, were not able to be included in our FY 2022 budget request, but we would be pleased to work with the Subcommittee to find ways

to address them going forward so that we can achieve our shared goal of maintaining an independent, safe judicial branch.

CONCLUSION

Chairman Quigley, Ranking Member Womack, and members of the Subcommittee, thank you for your ongoing support of the AO and the judicial branch as a whole. I realize the magnitude of the challenge facing you as you seek to apportion the resources at your disposal among the many competing and important interests represented within the Subcommittee's jurisdiction. As you make those difficult choices and tradeoffs, I ask that you keep in mind the unique constitutional role of the judiciary and the importance of its effective functioning to our democracy. By providing the resources needed by the AO and the rest of the branch, you are ensuring that the judiciary can continue to perform its vital role as intended and required.

Thank you again for the opportunity to testify today. I would be pleased to answer your questions.