

STATEMENT OF
HONORABLE AMY J. ST. EVE, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

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INTRODUCTION

Chairman Quigley, Ranking Member Womack, and members of the Subcommittee, my name is Amy St. Eve, and I am pleased to appear before you to present and explain the fiscal year (FY) 2023 budget request of the federal Judiciary. I am a circuit judge for the United States Court of Appeals for the Seventh Circuit, which is based in Chicago. Prior to the appellate bench, I had the privilege of spending 16 years as a federal district judge in the Northern District of Illinois. I also spent eleven years as an attorney either in private practice or working for the federal government and one year working in-house for a company. Most important for our purposes today, I currently serve as chair of the Judicial Conference Committee on the Budget, which is charged with formulating the Conference's budget request and ensuring that Congress has the information needed to effectively evaluate and act on that request.

I assumed my current role on the Budget Committee in October of 2021 when Judge John Lungstrum stepped down after many years of dedicated and valuable service. Although I've had the opportunity to meet or speak with some of you since October, this represents my first

appearance before the Subcommittee as a whole. I look forward to our discussion today, as well as to the opportunity to work more closely with all of you and your staff as my term as chair continues. If there is ever anything that you need from me to better inform and support your work, please do not hesitate to contact me.

My testimony today will address the Judiciary's FY 2022 funding outcomes, several timely and critical crosscutting budget issues, and the details of our FY 2023 discretionary appropriations request before briefly updating the Subcommittee on the status of our long-standing cost containment efforts. My remarks are meant to complement those of Judge Roslynn Mauskopf, the Director of the Administrative Office of the United States Courts (AO) and Secretary of the Judicial Conference, who will address several significant Judicial Conference appropriations priorities as well as the budget request of the AO itself.

I note that my remarks are focused on the portions of the Judiciary's budget that are within the jurisdiction of the Judicial Conference. That includes the operations of our bankruptcy, district, and appellate courts and our probation and pretrial services offices; court-appointed counsel for federal defendants who are financially unable to obtain adequate representation; court security; and federal jury costs. Conversely, it excludes the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, the Federal Judicial Center, and the U.S. Sentencing Commission. Those entities formulate and submit their own budget requests and have detailed their needs and priorities in a series of written statements that I would like to offer for the record. It also excludes the U.S. Supreme Court, which works directly with the Subcommittee to submit and justify its own budget request. To the extent that you have further questions about any of those budget requests, I would be happy to put the Subcommittee in touch with the right people to fully address those questions.

FISCAL YEAR 2022 FUNDING OUTCOMES

I'd like to begin by acknowledging the herculean task recently completed by the Subcommittee with the enactment of an FY 2022 appropriations omnibus. We understand how much time and effort go into such an enormous undertaking, and we appreciate that the Subcommittee faced many hard choices about how and where to invest its resources, particularly given the significant decrease in the Subcommittee's funding allocation relative to the FY 2022 House bill and the substantial increase in funds requested by the Internal Revenue Service and other agencies funded by the Subcommittee.

The \$8 billion provided for the Judiciary in the Consolidated Appropriations Act of 2022 is going to allow us to implement several important funding priorities. In the courts, FY 2022 funding increases are expected to support the onboarding, housing, and staffing of 70 more Article III judges, seven new magistrate judges, and 13 more bankruptcy judges. We will support the costs of existing staff wherever possible to allow courts to address both new cases and workload that became backlogged as a result of the pandemic. We will continue to make the most urgent investments in our cybersecurity protections and the modernization of our information technology (IT) systems, including the critical relocation of one of our two national data centers, and we will open new courthouses in San Antonio, Texas; Nashville, Tennessee; Anniston, Alabama; and Harrisburg, Pennsylvania, each of which will be fully outfitted with the necessary infrastructure to support daily operations.

On the federal defender side, FY 2022 funding will allow us to hire additional attorneys and support staff as needed, particularly in the judicial districts where caseload has skyrocketed in the aftermath of the Supreme Court's 2020 decision in *McGirt v. Oklahoma*. In addition to supporting the costs of a new federal defender office in Muskogee, Oklahoma, which was

opened in November 2021 to better address *McGirt*-related workload, FY 2022 funding will also establish a federal defender staffing reserve to enable a nimbler response to future unexpected workload changes and launch a new Diversity Fellowship Program to increase the diversity of the federal public defense bar.

Within our court security program, FY 2022 resources will allow us to continue progress on several long-term projects. We will hire additional court security officers (CSOs) needed to support the revised CSO staffing standards first implemented several years ago. Our program to modernize courthouse physical access control systems will reach a sustainment level that can support regular maintenance and the cyclical replacement of these systems when required. In addition, we have the funds to continue building toward a similar readiness level for the other major courthouse security systems and equipment categories and to outfit newly constructed facilities with the security infrastructure they require to open safely. Beyond these ongoing programs, we will also begin work on several critical new initiatives, including targeted infrastructure enhancements to strengthen the entrances, lobbies, and first floors of court facilities against hostile intrusions by groups seeking to disrupt the judicial process and a proactive effort to identify and redact judges' personally identifiable information (PII) from the internet before that information can be used against anyone in a threatening manner, as it was when a disgruntled litigant found the home of U.S. District Judge Esther Salas two years ago and murdered her son and gravely wounded her husband.

Finally, in our Fees of Jurors account, the FY 2022 omnibus provides the resources needed to adequately compensate federal jurors and land commissioners for their service as required by law.

While we are pleased to be able to make these important new investments, FY 2022 will be a difficult budget year for much of the Judiciary. The omnibus provides a 3.5 percent increase over FY 2021 for the Judicial Branch, but that remains well below the requested 6.3 percent increase. As a very personnel-heavy institution, the largest impact of insufficient funding is often seen in our staffing levels. Some courts or probation and pretrial services offices will have to defer necessary hiring, allow vacancies to go unfilled, or even incentivize separations through buy-outs or early retirements in order to reduce costs as needed during FY 2022. When there are fewer staff available, the essential work of the courts takes longer than it could or should. Case processing times may increase, or services to the public may be scaled back. For example, back home in Chicago, the district court has approximately \$29 million of restitution that has been collected for payment to crime victims but lacks the staff support to get those payments made in a timely manner. We strive to always ensure that mission critical functions are accomplished effectively, but our ability to do so efficiently and promptly are directly tied to our ability to maintain and, where needed, hire staff.

Although personnel is the single largest component of our budget, constrained resources impact far more than just our staffing levels. They also impact longer term strategic investments that must be postponed or scaled back to fit within available funds. Courts may not be able to maintain or upgrade audio/visual equipment used by attorneys to present their cases, causing trial delays until one of the limited courtrooms with the necessary technology infrastructure is available. The procurement and implementation of software upgrades might be deferred, allowing obsolete and less secure applications to remain connected to our networks. Equipment like servers might not be maintained according to a recommended cyclical replacement schedule, introducing greater risk of technology failures and associated downtime.

We know that we are certainly not alone in facing these challenges or in the need to make difficult trade-offs to live within available funding levels, but we are entrusted with unique and foundational constitutional and statutory missions that we must uphold. For that reason, we hope the Subcommittee will continue prioritizing investments in the Judiciary to allow us to carry out these missions effectively and efficiently in the future.

SIGNIFICANT ISSUES FOR FISCAL YEAR 2023

Before turning to the specifics of the Judiciary's FY 2023 budget request, I would like first to address some significant cross-cutting issues that affect our operations and needs across multiple categories of activity and provide necessary context for our priorities and requirements.

COVID-19

The first of these issues, unsurprisingly, is the ongoing COVID-19 pandemic. Thanks to effective public health measures and the availability of vaccines and post-infection treatments, our circumstances are much improved from this time last year, but conditions still have not returned to normal across the Judicial Branch. According to recovery status updates provided by the courts, only a handful are back to fully using pre-pandemic operating procedures, with the rest still implementing adaptive measures such as remote work, limitations on gathering sizes in the courthouse, or social distancing requirements in group spaces. These measures, while effective in allowing the most critical work of the courts to continue, are often less efficient and sometimes more costly than normal operations. In Chicago, for example, compliance with COVID protocols means that a single trial consumes four courtrooms in order to accommodate trial participants, jurors, and spectators with the necessary distancing requirements. This means that fewer trials can be conducted at any one time and more resources must be spent on ensuring

that trial activity is open to the public and can be appropriately seen and heard across each of the multiple courtrooms involved.

In other instances, there are no adaptive measures that can fully replicate the experience of normal in-person work. In the Defender Services program, for example, defenders and panel attorneys have struggled with the ability to maintain confidential remote access for meaningful engagement with incarcerated clients and to conduct critical field work, such as investigations. These situations pose a persistent operational challenge for the Judiciary as we continue to navigate this pandemic.

In addition to operational issues and the added cost of COVID-safe adaptations, the Judiciary has also struggled with significant pandemic-related fluctuations in workload and caseload, which make it more difficult than normal to accurately project next year's funding needs or to estimate our anticipated filing fee revenue. This has been especially true in bankruptcy cases, where filings were just beginning to level off after many years of precipitous declines when the pandemic hit and filings dropped significantly again. At some point, bankruptcy proceedings may rebound significantly, and we need to be prepared for that rebound despite not having particularly reliable information about when it will occur. We hope that continued public health progress will stabilize conditions soon and allow us to make more confident projections of our workload, but our experience this winter with the Omicron variant has taught us that progress in the pandemic is not always linear and that the prospect of further uncertainty may continue for the foreseeable future. In the meantime, we will do our best to estimate requirements as accurately as possible and to keep the Subcommittee informed of shifting estimates when needed.

Off-Cycle Funding Requests

Since early 2021, the Judiciary has submitted three emergency off-cycle funding requests to Congress for possible inclusion in an emergency security supplemental, a government-wide infrastructure package, or a supplemental title of annual appropriations legislation. These three requests, some of which overlap one another, address requirements in several exigent programmatic areas: physical security, cybersecurity, and IT modernization.

On the physical security side, our request for emergency supplemental funding was driven by a significant heightening of the threat environment facing judges, Judiciary staff, and the judicial process generally. In the year leading up to our submission of a security supplemental request, we experienced in fairly rapid succession two shootings of courthouse security personnel at our facilities, the attack on Judge Salas' family, and several dozen incidents in which federal courthouses were, intentionally or not, the epicenter of local civil unrest. At the same time, our partners at the U.S. Marshals Service (USMS) were documenting a 387 percent increase in the number of threats made against federal judges and other participants in the judicial process since 2015, and security incidents directed at other federal entities made clear the vulnerability of our own facilities to potentially violent assaults by those seeking to disrupt the work of the government. In response to these circumstances, we developed a \$123 million request that would allow us to better facilitate and coordinate security services in the field, assist judges and eligible relatives in removing their PII from the internet (as this was a key element in the attack on Judge Salas' family), and make small infrastructure investments at as many federal courthouses as possible to better protect entrances, lobbies, and accessible portions of building exteriors from groups seeking unauthorized entry.

Our off-cycle IT requests are driven by two separate, but related, dynamics. The first is technological obsolescence. A combination of constant technical innovation and long-term underinvestment has left a number of our major systems and applications out of date and, thus, inefficient, difficult to maintain, and at regular risk of failure. The second dynamic is security. As technology ages, it may no longer reflect industry standards for cybersecurity, though even our newer IT assets face security risks as the threat environment is constantly evolving and increasing in sophistication. We have spent the last two years working in close coordination with Executive Branch partners, including the Cybersecurity and Infrastructure Security Agency, the Department of Justice (DOJ), and the General Services Administration's (GSA) 18F technology consultancy, to better understand our IT vulnerabilities and challenges. The results of this coordination, together with internal assessments, greatly informed our decision to seek significant resources in this area as the inadequacies in our systems and the magnitude of our challenges became clear. We were able to share some significant details about these substantial challenges in a recent briefing for the Subcommittee's leadership. Because of the sensitivity of the information, I regret that we cannot share more information in this setting, but we can provide additional details and context to interested members through other means.

To address our most pressing IT security and modernization requirements, our pending supplemental appropriations request seeks \$403 million, which includes \$375 million for the courts and \$28 million for Defender Services requirements. Many of the activities that would be supported by these funds will be familiar as the same kinds of cybersecurity initiatives are being pursued in the Executive Branch. These include better verifying the users on our systems and networks by moving to biometrics or requiring multiple means of user identity authentication; segmenting our networks so that a breach in one area can be effectively contained rather than

spreading unimpeded; and implementing more aggressive internal testing and assessment programs to proactively identify weaknesses and threats. At the same time, we also need to substantially upgrade or replace some of our oldest systems, including our probation case management system, our financial management system, and our debt collection system, to ensure necessary functionality and reduce security risks. We have to modernize our IT systems in order to combat sophisticated cyber threats.

We originally requested these resources via the supplemental or reconciliation processes because they seemed better structured to address our needs. The annual appropriations process is necessarily constrained by spending caps, subcommittee allocations, and competing priorities, and we hoped that alternative processes might allow Congress to address our significant needs without overburdening this subcommittee. In addition, receiving the necessary funds in a larger, one-time lump sum would allow us to undertake projects with the full confidence that we would have sufficient resources to see them through successfully to completion. Unfortunately, none of our off-cycle requests made their way into any enacted legislation.

In light of our lack of success in receiving off-cycle funding, we began trying to address the most critical needs from our requests through other means. In December 2021, the Subcommittee approved our proposal to reprogram \$8 million in available balances within the Court Security account to start our new vulnerability management program and to transfer \$32 million of Defender Services balances to the court Salaries and Expenses (S&E) account to fund priority cybersecurity initiatives. We also added \$15 million of courthouse hardening and \$21 million of IT modernization funds to our FY 2022 re-estimated request for the Subcommittee's consideration during final FY 2022 conference negotiations.

Building on these initial steps, we continued the process of migrating critical portions of our supplemental requests into our FY 2023 budget, both through annualizing the activities started in FY 2022 and adding new activities where possible. In total, there are \$93 million of IT-related requirements and \$46 million of physical security requirements in our FY 2023 budget that originated in an off-cycle funding request. The precise details of how to track these requirements from the off-cycle requests to our FY 2022 budget and our FY 2023 request are somewhat obscured by the fact that the FY 2023 request was built on assumed levels for FY 2022, and those assumptions were not uniformly correct. We will provide a rebaselined crosswalk of requirements along with our spring budget re-estimate in order to show the detailed allocation of these resources by account and line item.

We continue to hope that Congress will find a way to address our various off-cycle funding requests through a supplemental or some other mechanism outside of the annual appropriations process. For that reason, we did not simply add the entirety of our off-cycle requests to our FY 2023 budget. We understand, however, that opportunities for supplemental appropriations are rare and may not be forthcoming, and we have taken under advisement a request of the Subcommittee to provide a plan showing how we would fully incorporate our supplemental requests into our annual budget over the course of the next few fiscal years. That plan is being finalized and will be provided to the Subcommittee along with our FY 2023 spring budget re-estimate.

Significant External Cost Drivers

The final crosscutting issue that I want to highlight before turning to the details of our FY 2023 budget request is the impact on the Judiciary of significant external cost drivers, including Supreme Court decisions and new legislation, that are producing substantial new workload in

many of our program areas. The effects of these drivers may not always be apparent in our national workload statistics, but they still present meaningful resource challenges.

One of the most significant of these cost drivers is the continuing effect of the Supreme Court's 2020 decision in *McGirt v. Oklahoma*. Although *McGirt* has had a very localized impact on the Judiciary's workload, the effect in Oklahoma has been nothing short of seismic. By federalizing huge swaths of the state and local criminal caseload in the state, *McGirt*—and subsequent decisions extending its reasoning—turned the Oklahoma judicial districts into some of the country's busiest virtually overnight. In the year following the *McGirt* decision, felony case filings in the eastern and northern districts of Oklahoma increased by 274 percent and 195 percent, respectively, compared to the previous year, and those numbers were artificially suppressed by the effects of the COVID-19 pandemic and capacity limitations at DOJ, which was insufficiently staffed to bring all eligible cases. In fact, DOJ estimates that the number of felony defendants charged in these two districts will increase from an average of fewer than 20 per year in the pre-*McGirt* era to more than 4,400 per year once *McGirt* is being fully implemented, an increase of 25,000 percent. These extraordinary increases will impact virtually every facet of our operations. We need additional judges, more clerk's office staff, more probation and pretrial services officers, more federal defenders, more jurors, more courtrooms, chambers, and other space to house these additional employees, and more security to protect the enhanced level of judicial activity. There are resources throughout our FY 2023 request for *McGirt*-related work, and, absent some significant change in the current legal framework, this will continue to be a feature of our requests in future fiscal years.

A second major recent external cost driver is the continued implementation of the First Step Act, which allows more individuals convicted of a federal offense to be released to the

supervision of a probation officer and on a faster timeline than was previously the case. Although the First Step Act was enacted in 2018, several critical elements of it are only now being implemented, including the early release credit system created by the Bureau of Prisons (BOP) for inmates who complete certain rehabilitative programming. The regulations for these early release credits were just finalized in January and, because they are being applied retroactively, resulted in probation officers receiving more than 6,000 new cases, or more than 14 percent of an entire year's worth of normal supervision workload, in a single day. We estimate that an additional 3,200 inmates will be released pursuant to these regulations by June 2022, with further releases continuing into the indefinite future. This substantial workload was not fully anticipated in our statistical projections because the timing of the final regulations, as well as their retroactivity, was unexpected. Nevertheless, BOP is releasing these individuals, and we must be prepared to assess their risk levels, provide them appropriate supervision, and ensure their receipt of necessary reentry services.

I offer these two examples as particularly noteworthy illustrations of a larger truth, which is that our work is very heavily influenced by actions and decisions of others. Significant new legal and legislative developments can greatly impact the courts, probation and pretrial offices, or federal defenders in ways that we cannot always anticipate and often cannot avoid. We do our best to capture and reflect these dynamics in our request and will inform the Subcommittee as early as possible when an external event such as the *McGirt* decision or the enactment of the First Step Act is going to have a significant impact on the resources required to meet our commitments and responsibilities.

FISCAL YEAR 2023 DISCRETIONARY APPROPRIATIONS REQUEST

The Judiciary's FY 2023 request totals \$8.6 billion in discretionary appropriations. In addition to our discretionary funding, the Judiciary also requests a total of \$767 million in mandatory funds for judges' salaries and retirement funds. My remarks today, however, will focus on the discretionary portion of the request that is most relevant to the Subcommittee.

As noted briefly above, an FY 2022 appropriation had not yet been enacted at the time that we formulated our FY 2023 request. For that reason, we used assumptions about FY 2022 final outcomes to build our FY 2023 numbers, and our FY 2023 discretionary request represents an overall 7.2 percent increase above that assumed FY 2022 level. The assumptions we made regarding FY 2022 turned out to be fairly accurate in the aggregate—across the entire Judiciary, the assumptions differed from final enacted levels by a total of only \$78 million. Some account level differences are more salient than others, however, and we will submit a rebaselined request this spring to reflect the effect of final FY 2022 levels on our FY 2023 request. In the meantime, our current FY 2023 request provides an accurate sense of the scope, scale, and content of the increases and other changes we are seeking for the upcoming fiscal year, but caution should be exercised in attempting to compare it to current year spending levels.

Government-Wide Budget Issues

The Judiciary's FY 2023 request includes funding related to the implementation of several government-wide policies. The first and most impactful of these relates to federal employee pay. The Judiciary's budget each year includes, by necessity, the funds needed to annualize the prior year's authorized federal employee pay adjustment and, by practice, the funds needed to implement the proposed federal employee pay adjustment included in the Executive

Branch budget request. The FY 2023 pay raise assumption of 4.6 percent is the highest in 20 years and, due to the personnel-heavy nature of our operations, translates into more than \$150 million of costs for the Judiciary. This represents more than a quarter of our total requested increase, just for this one single line item. Although we recognize that federal employee pay rates are a government-wide issue and will be addressed on a government-wide basis, I would like to reiterate the importance of fully funding any pay increase that is approved. We have no choice but to implement an authorized pay adjustment, regardless of the level of appropriations we receive, and we have very few flexibilities in our budget to absorb unbudgeted costs beyond reductions in staffing, which can have a significant negative impact on the Judiciary's ability to effectively fulfill its constitutional and statutory roles.

In a similar vein, non-pay inflation is also a substantial government-wide issue that is beyond our control. Our FY 2023 request includes \$24 million for expected GSA rent inflation and another \$37 million for general inflation, including the increased cost of services, travel, supplies, and other commodities. Because inflation is a dynamic indicator that is particularly volatile right now, the economic factors used to build our request (most of which were set by the Office of Management and Budget in November 2021) may be significantly out of date by the time a final FY 2023 appropriation is enacted. The uncertainty associated with inflation further underscores the importance of funding our request as fully as possible so as to provide a more robust hedge against the significant degradation of purchasing power that could be experienced if inflation turns out to be higher than the budget request assumes.

Salaries and Expenses

The Judiciary's largest appropriation by a wide margin is the courts' S&E account, which funds our appellate, district, and bankruptcy courts, as well as our probation and pretrial services

offices and bankruptcy administrator offices. In addition to salaries, benefits, and standard operating costs, this account also pays for rent and related expenses at more than 700 court facilities nationwide; the development, operation, and maintenance of major information technology systems; and the provision of court-ordered services, such as drug testing or mental health counseling, for individuals under the supervision of a federal probation or pretrial services officer. Just this one account constitutes about 70 percent of the entire Judicial Branch's budget.

The breadth of this account is both a strength and a weakness. Having so much of our funding for so many of our activities consolidated into a single appropriation does provide us with flexibility to address changing priorities or unexpected circumstances by reallocating funds between activities when necessary and possible. On the other hand, the scope of the account can make it difficult to effectively communicate with specificity all of the critically important activities funded here, and it is possible to overlook the importance of the account simply because it appears so general. The fact remains, however, that nearly everything that happens in a federal court receives some funding from this account, and almost every priority that the Judiciary pursues, including cybersecurity, pandemic response, implementation of legislation like the First Step Act, and more, depends on this account receiving sufficient resources.

The FY 2023 request for the S&E account totals \$6.0 billion, a 5.7 percent increase above the assumed FY 2022 level. Over \$278 million of that increase—almost 90 percent of the total increase being sought—is needed just to maintain current service levels. That includes funding to address the proposed FY 2023 pay raise, rental and other inflation, the annualization of our FY 2022 cybersecurity and IT modernization initiatives, and the law clerks and administrative staff (including related operational costs) that are required to support projected net increases in the numbers of active and senior Article III judges and bankruptcy judges. An additional \$44

million is requested to pay for program increases associated with workload changes, supplementary law clerk programs, IT requirements, and an increase in the number of magistrate judges.

With respect to workload changes, the FY 2023 S&E request includes a program increase of \$30 million to support an additional 282 full time equivalents, almost entirely in the area of probation and pretrial services. This number is drawn from the outputs of our various court support staffing formulas and reflects anticipated changes in caseload and workload. As noted above, workload for probation officers, in particular, has been heavily impacted by the enactment of the First Step Act. In addition, broader prosecutorial, sentencing, and corrections trends have resulted in the probation and pretrial population skewing more heavily toward higher risk supervisees that require more of their supervising officers' time and resources. These factors are driving a significant projected increase in total probation and pretrial staffing requirements, which is joined by marginal increases in bankruptcy and district staffing needs and a slight projected decrease in appellate staffing needs.

A second new investment in the S&E FY 2023 request is for supplementary law clerk programs. The Judiciary enforces strict limits on the number of law clerks that each type of federal judge can hire, but we have identified a handful of scenarios where exceptions to these limits are necessary and prudent. In particular, courts experiencing a sharp and unexpected increase in caseload, receiving cases of significantly higher than average complexity, or suffering from a shortage of available judges can apply for and receive additional law clerks to help mitigate the burden of addressing those circumstances. The request includes a total of \$2.9 million to expand the temporary bankruptcy law clerk program and the national court law clerk program to make these added law clerk resources available to a wider range of courts in FY

2023.

The third set of program increases in the S&E request encompass a variety of small IT requirements. These include \$4 million for software upgrades and support and training for internal controls evaluation tools that courts use to ensure their compliance with basic financial and operational control requirements; \$3 million to hire additional IT staff to support ongoing work in both cybersecurity and the modernization of the probation and pretrial services case management system; and \$2 million to develop and publish technical standards and recommendations to move the Judiciary's myriad applications, systems, and services closer to a simpler, standardized IT framework that is easier and more cost effective to maintain, protect, and upgrade.

The final requested S&E program increase is for additional magistrate judges, who handle significant portions of the district courts' workload, including many pre-trial activities, settlement conferences, all petty offenses, many prisoner petitions, and, in some cases, full civil trials. The Judiciary has a rigorous internal review process by which magistrate judge positions are approved and allocated, and that process has determined that additional magistrate judges are needed in Muskogee, Oklahoma; Tampa, Florida; Concord, New Hampshire; and New York City, New York. In addition, that same process determined that two existing part-time magistrate judges in the District of Columbia and Greenville, North Carolina, should be converted to full-time status and the rate of pay for an existing part-time magistrate judge in Fairbanks, Alaska, should be increased to reflect updated workload for that position. To support these new and adjusted judge positions, including the necessary associated staff, the FY 2023 request includes \$3 million.

Defender Services

Earlier this spring, the Judiciary celebrated the 59th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, which established that the right of a defendant to counsel is essential to a fair trial and resulted in the creation of the modern public defense system. At the federal level, this system is funded through our Defender Services account, which covers all costs related to the provision of court-appointed counsel under the United States Constitution, the Criminal Justice Act, and other statutes. Because fewer than 10 percent of federal defendants have the financial means to afford counsel, the Judiciary provides representation in the overwhelming majority of cases and, in doing so, we help to ensure that all defendants are equal before the law, regardless of their economic circumstances. Having presided over hundreds of criminal cases, I know how invaluable these services are.

The Defender Services appropriation request for FY 2023 totals \$1.5 billion, an 8.8 percent increase above the assumed FY 2022 level. The main drivers of the FY 2023 Defender Services request are the adjustments to base that are needed simply to maintain current services, including federal pay and benefit adjustments and the annualization of FY 2022 hiring. In total, the FY 2023 request consists of \$105 million of these adjustments to base and just \$13 million of program increases. These program increases address both staffing and information technology needs.

Staffing in the Defender Services program has several components. The bulk of federal defender organization (FDO) staff are provided in accordance with staffing formulas. These formulas use caseload statistics to calculate the number of staff necessary to accomplish the day-to-day legal and administrative work of an FDO. For the past four fiscal years, the Judiciary has pursued sufficient funding to ensure that 98 percent of the full FDO formula requirements can be

met, and the FY 2023 request continues that trend.

There are some necessary staffing categories in the Defender Services program, however, that are not captured by the staffing formulas. One of the biggest categories is staffing associated with the *McGirt* decision. As noted above, the Supreme Court's ruling in *McGirt* and the subsequent extension of *McGirt's* reasoning to additional tribal lands has radically altered the legal landscape in Oklahoma. The FDO staffing formulas, when they were developed in 2016, could not anticipate such a fundamental reordering of state and federal jurisdiction and, as such, the formulas make insufficient allowance for the drastically increased workload in the affected judicial districts. To account for these critical needs, the FY 2023 request includes \$5 million and 44 new positions to address *McGirt*-related workload in Oklahoma, bringing the Defender Services program's total investment in *McGirt*-related staffing to 98 positions over three years.

Beyond *McGirt*, the other categories of positions not captured by the FDO staffing formulas are those that perform specialized functions that are not common to all FDOs or are better provided on a national or centralized basis. These functions include administrative activities, such as training, IT, and budget analysis, as well as technical legal services, such as the management of high-volume electronic discovery materials. To reflect the program's needs in these non-formula categories, the FY 2023 request includes one additional position for national IT support, eight positions for national litigation support efforts, and eight positions for administrative support within the Defender Services Office, at a total cost of \$1.7 million.

The final requested increases for the Defender Services program, totaling \$9 million, are related to IT. Much of the Judiciary's IT infrastructure is shared across the branch, including our core data communications network and common applications for human resources or financial management services, but the Defender Services program has its own unique IT needs, both to

protect the independence of the defense function and to serve specialized requirements that are distinct from the IT needs of the courts. Our FY 2023 request includes new resources to keep pace with the usage of existing Defender Services IT assets, including adding licenses to litigation support applications, increasing the capacity of file sharing systems, and logging and scanning increased network traffic, as well as funds to expand existing cybersecurity capabilities, modernize aging or obsolete networks and applications, and pay for the Defenders' portion of the cost of relocating one of the Judiciary's two national data centers. Although these Defenders-related investments are sometimes overlooked because they are smaller in size than the IT requirements of the courts, they are every bit as necessary to ensure that the Judiciary's IT infrastructure as a whole remains as protected, reliable, and functional as possible.

Court Security

At the time of our hearing last year, the Judiciary was still reeling from the series of serious and, in some cases, tragic security incidents that are discussed in more detail above. While our security situation today is improved thanks to several new initiatives of the Judicial Conference, the commitment of our security partners at the USMS and Federal Protective Service (FPS), and the provision of new resources by the Subcommittee, we still face a dynamic and complex threat environment that requires additional funds to address.

The Court Security appropriation request for FY 2023 totals \$786 million, an 11.5 percent increase above the assumed FY 2022 level. These resources provide for our contract CSOs, security systems and equipment, FPS charges, our comprehensive emergency management and security coordination activities, and the Judiciary Vulnerability Management Program, which, among other things, helps judges and their families reduce the online availability of PII like home addresses or phone numbers. The increase above FY 2022 consists

of \$33 million in adjustments to base to maintain current services, such as CSO wage rate adjustments and changes to FPS charges, and \$48 million in program increases for new or expanded security activities. These program changes primarily fall in three major focus areas.

First, the FY 2023 request includes a total of \$9 million of changes to the CSO program. CSO positions are allocated to facilities based on a staffing standard developed by the USMS, and the Judiciary transfers funds to the USMS to support an agreed upon number of work hours for each CSO position. In recognition of lower turnover and vacancy rates among the existing CSO workforce, the request includes funds to increase the number of funded CSO work hours by 10 hours per position annually. In addition, as the culmination of six years of gradual increases, the FY 2023 request includes the final 93 new CSO positions needed to fully staff to the current USMS staffing standards at all existing court facilities and the two new courthouse annexes that are opening in Charlotte, North Carolina, and Savannah, Georgia, in FY 2023 or early FY 2024. Finally, the request includes a supplement to the staffing standard of 16 additional CSOs for courts impacted by the *McGirt* decision, which has significantly increased the level of judicial activity that must be protected in the eastern and northern districts of Oklahoma.

The second category of increases addresses the security systems and equipment components of the program. In coordination with the USMS, the Judiciary has been attempting to get all its major systems and equipment onto a more sustainable and effective maintenance and replacement cycle. More regular maintenance reduces instances of disruptive system failures while reasonable cyclical replacement schedules ensure that new and better technologies can be integrated into the program over time. The FY 2023 request includes \$13 million to support a ten year replacement cycle for our interior courthouse security camera systems and a significant increase in the maintenance schedule for the automated barriers that control access to

court parking garages or lots. In addition, it includes \$3 million for the security systems and equipment needed in preparation for the opening of new courthouse projects that are being constructed in Fort Lauderdale, Florida, and Toledo, Ohio.

The final category of proposed increases is related to the courthouse hardening program. As noted above, this program was conceived in the aftermath of numerous incidents that demonstrated the vulnerability of courthouses and other federal buildings to groups seeking to breach a facility to disrupt the work of the government. To address this risk, the Judiciary is pursuing the implementation of small, targeted infrastructure fixes, such as break-resistant glass, magnetic door locks, and temporary fencing, that can help to better protect courthouse entrances, lobbies, and accessible portions of a building's exterior. We intend to prioritize these fixes at facilities that have high levels of judicial activity, have previous experience with incidents of unrest, are the subject of law enforcement threat intelligence, and/or are located in areas that are common sites of large group activity. Additionally, we will consider a courthouse's existing design features and the feasibility of making cost effective, fast improvements. The FY 2023 request includes an increase of \$20 million, and a total investment of \$35 million, for this program.

Fees of Jurors and Commissioners

The Fees of Jurors and Commissioners account funds statutory fees and allowances for federal jurors and for land commissioners, who are appointed by a court to determine fair compensation in federal eminent domain cases. The Judiciary places a very high priority on meeting the needs of federal jurors, who provide a vital constitutional service by acting as the voice of their fellow citizens in the courtroom and fulfill the critical role of serving as a jury of one's peers. Jury service demands effort, attention, and significant time away from critical

personal or professional responsibilities. Providing the daily jury attendance fee is the least the United States government can do to recognize the contribution of its jurors to the administration of justice and to our system of democracy.

Our FY 2023 Fees of Jurors request of \$45.7 million, a 30 percent increase above the assumed FY 2022 level, should allow us to fully compensate jurors and land commissioners to the extent allowed under current law without any deferred payments or transfers of resources from other Judiciary accounts. The larger than normal year-to-year increase in this account reflects the reduced level of jury activity that has been experienced during the pandemic, when many jury trials were delayed for public health reasons. These delays allowed balances to accumulate in the Fees of Jurors account, which were subsequently used to defray jury costs in place of additional FY 2022 appropriations. Now that we expect those one-time balances to be exhausted and jury trials to increase during FY 2022, an increase in appropriations is needed to maintain current services in this account in FY 2023.

NON-APPROPRIATED RESOURCES

Any discussion of our appropriations request must also acknowledge our non-appropriated resources. Like many other federal entities, the Judiciary has access to several sources of funding outside of the annual appropriations process. These sources include a slate of fees—filing fees for litigants, miscellaneous fees for other participants in the judicial process, user fees for those who view and extract court electronic records from our online system—as well as a limited pool of unobligated balances of prior year appropriations that we have been given the authority to retain and use over a period of multiple fiscal years.

These non-appropriated resources constitute a critical component of our annual budget

request. We account for these resources in our congressional justification, showing our expected collection and proposed use of these funds just as we describe and justify our proposed use of appropriated dollars. In any given fiscal year, we collect and retain about \$350 million in fees of varying types and carry over approximately \$200 million of unencumbered unobligated balances, primarily in the main court S&E account.

Having access to these non-appropriated resources provides the Judiciary with an additional degree of flexibility, allowing us to better plan and carry out complex, multi-year investments such as large IT projects. In addition, the continuous availability of non-appropriated funds allows us to sustain paid operations during any time in which there is a lapse in appropriations. But the benefits of these funding flexibilities are not realized solely by the Judiciary. They also serve a critical purpose for the Congress because they help to directly offset requirements that would otherwise have to be sustained with additional appropriated money. Every dollar of requirements that we can fund with fees or carryover balances is a dollar that the Subcommittee does not have to appropriate, freeing up scarce taxpayer funds for other priorities while still allowing the Judiciary to accomplish important programmatic goals. Although our fee collections and carryover balances have decreased in recent years, particularly as a result of falling bankruptcy filings during the pandemic, these non-appropriated funds remain an important resource for the Judiciary and the Congress to support critical judicial activity.

COST CONTAINMENT

Each year, the chair of the Budget Committee dedicates a portion of his or her testimony to the Judiciary's ongoing efforts to achieve efficiencies, promote innovative business practices, and ensure that every one of our dollars is put to its best and highest use. I hope that the consistency of our emphasis and reporting on these cost containment efforts effectively

communicates to the Subcommittee how seriously we take them and how committed we are to being responsible stewards of the funds that you provide.

We've talked at length in prior years about our major cost containment successes. These include the removal of more than 1.2 million square feet from our space footprint, the cancellation of thousands of print-based legal research materials in favor of cheaper online sources, and the transition of well over half of traditional paper-based bankruptcy notification mailings to more modern, cheaper electronic delivery forms. We have continuously incorporated savings into our budget requests as those savings were realized. As a result, our FY 2023 request reflects the cumulative results of more than 15 years of cost containment work.

The maturity of our cost containment program has benefits but also presents challenges. In the years since the program was started, it has become thoroughly ingrained into the Judiciary's governance practices and standard operating procedures. Pursuing efficiencies and savings has simply become a normal part of our regular budget processes. At the same time, however, we are finding that the most obvious and achievable targets for cost containment have already been addressed by this point in the program's history, leaving us with more difficult, intractable problems to solve and the imperative to be more creative in our cost containment thinking.

To that end, I hope to take advantage of the enormous amounts of information that we have gained over the last two years through the experimentation, innovation, and adaptation that the Judiciary had to embrace in order to continue operating safely through a global public health emergency. If there is any silver lining to our pandemic experience, it is the learning opportunities that were presented by the necessity of finding new ways to do old things. On a broad scale, we discovered that we can effectively accomplish much more of our work remotely

and that new technologies and applications exist that can change and improve longstanding methods. These insights may seem obvious, but, because we had not implemented them on such a broad scale before, these last two years were our first real opportunity to put these theoretical ideas to the test and see if they would work for us in practice.

I do not mean to suggest that every operational adaptation undertaken during the pandemic was an unmitigated success or even that the adaptations that were successful should become a permanent way of doing business within the Judiciary. But as chair of the Budget Committee, I am committed to evaluating these adaptations to see which effectively served our interests and merit longer term consideration. If we have more people teleworking on a regular basis, perhaps we can give up some additional space in our facilities. If we have new IT tools that allow more effective collaboration across long distances, perhaps we can have more sharing of services across court units and judicial districts in a way that would reduce total staffing needs and/or reduce travel costs. I cannot commit to those outcomes here today, but I can commit that the Budget Committee and our partners within the Judicial Conference structure and the court community at large will vigorously assess all options and pursue those that we collectively determine will help reduce or avoid costs without harming the integrity of judicial operations. In this way, I hope that we will enter an exciting new phase of cost containment and maintain the momentum that we have worked so hard to develop over the years. I also hope that we will continue to have the support of the Subcommittee as we pursue these efforts, as we have often found that savings opportunities require a marginal upfront financial investment in order to realize more substantial long-term efficiencies.

CONCLUSION

Chairman Quigley, Ranking Member Womack, and members of the Subcommittee, thank

you for the opportunity to testify today. I hope that my testimony and our discussion will inform your consideration of our budget request and assist you as the Subcommittee undertakes the difficult task of dividing up your finite resources among the many different agencies and functions supported in your bill. I understand that we have asked a lot of the Subcommittee, but that is because a lot is asked of us, as well. We take very seriously our constitutional and statutory obligations, our independence, and our commitments to ensuring the fair and efficient administration of justice. If we are to continue meeting those obligations and commitments, additional investments are required. But I assure you that we take just as seriously our responsibility to be good stewards of the resources at our disposal and to get the maximum value possible for the investments that you make in our capabilities.

Thank you for your continued support of the federal Judiciary. I would be pleased to answer any questions the Subcommittee may have.