

**REPORT OF THE UNITED STATES  
COURT OF APPEALS FOR THE ARMED FORCES**

**October 1, 2019, to September 30, 2020**

The Judges of the United States Court of Appeals for the Armed Forces submit their Annual Report on the administration of the Court and military justice during the October 2019 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146a, Uniform Code of Military Justice (UCMJ), Title 10, United States Code, § 946a.

**THE BUSINESS OF THE COURT**

During the October 2019 Term of the Court, for the period from October 1, 2019, to September 30, 2020, the Court heard cases with a full complement of five currently appointed Judges. Judge Margaret A. Ryan completed her term on July 31, 2020, reducing the Court to a quorum of four currently appointed Judges from August 1, 2020, to September 30, 2020, and beyond. Pursuant to public health guidance in response to the COVID-19 pandemic, the Court rescheduled oral arguments originally set for hearing in April to June of 2020. The rescheduled hearings were held telephonically. Recordings from these hearings are available on the Court's website, consistent with in-person hearings. Through the end of the Term of Court, the Court continued to monitor federal and local responses to the pandemic, adjusting safety protocols for Court personnel, requiring masks in the courthouse, reconfiguring work spaces for social distancing, and upgrading numerous amenities to enable proper sanitization with minimal contact. Overnight June 1-2, 2020, during a wave of social justice protests in the District of Columbia, the courthouse received considerable damage in the form of broken windows and spray paint. The last of this damage was repaired on September 17, 2020. The Court wishes to express its gratitude for the outstanding support received from the Chief Management Officer of the Department of Defense, the Director of Washington Headquarters Services and the Pentagon Force Protection Agency.

Information pertaining to specific opinions is available from the Court's published opinions and Daily Journal, available on the Court's website. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's website. Additionally, the Court's website contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing, and the Court's library.

During the October 2019 Term of Court, the Court met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. An informal summary by the Court staff of selected decisions is presented in *Appendix A*. Statistical reporting and graphical representations of the filing and disposition of cases are set forth in *Appendix B*.

## **RULES OF PRACTICE AND PROCEDURE**

No changes were made to the Court's Rules of Practice and Procedure during the October 2019 Term of Court.

## **BAR OF THE COURT**

During the October 2019 Term, 149 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 37,403.

## **JUDICIAL OUTREACH**

In furtherance of a practice established in 1987, the Court scheduled a special session and heard oral argument outside of its permanent courthouse in Washington, D.C. during the October 2019 Term of Court. The practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a federal Court of Appeals and the military's criminal justice system. The Court conducted a hearing during this period, with the consent of the parties, at the J. Reuben Clark Law School at Brigham Young University. Due to the public health crisis of COVID-19, outreach originally planned at Northwestern University Pritzker School of Law and the University of Chicago Law School for the spring was canceled. Prior to the pandemic, the Judges of the Court participated in numerous engagements, professional training, speaking, and educational endeavors on military installations, at law schools, and before professional groups. Additional engagements were performed in-person or using online meeting tools thereafter.

## **CONTINUING LEGAL EDUCATION AND TRAINING PROGRAM**

On March 11 and 12, 2020, the Court held its Continuing Legal Education and Training Program at the American University Washington College of Law in Washington, D.C. The program opened with welcoming remarks from the Honorable Scott W. Stucky, Chief Judge, United States Court of Appeals for the Armed Forces. He preceded the following speakers: Colonel Frederic L. Borch III, U.S. Army (Retired), Regimental Historian and Archivist at The Judge Advocate General's Legal Center and School; Lieutenant Colonel Rebecca L. Farrell, U.S. Army Judge Advocate General's Corps Chair, Criminal Law Department, The Judge Advocate General's Legal Center and School; Andrew Popper, Ann Loeb Bronfman Distinguished Professor of Law and Government, American University Washington College of Law; The Honorable Margaret Bartley, Chief Judge, U.S. Court of Appeals for Veterans Claims; Elizabeth L. "Liz" Lippy, Associate Director of the Trial Advocacy Program, American University Washington College of Law; Michael M. Greenburg, Attorney at Law, Law Office of Michael M. Greenburg, P.C.; Thomas E. Ayres, General Counsel of the U.S. Department of the Air Force, Major General, U.S. Army Judge Advocate General's Corps (Retired); Major Noah L. Coakley II, U.S. Air Force Judge Advocate General's Corps, Special Victims' Counsel Division, Community Legal Services Directorate, Air Force Legal Operations Agency; Colonel Martin Mitchell, U.S. Air Force (Retired), Commissioner to Judge Kevin A. Ohlson, United States Court of Appeals for the Armed Forces.

Scott W. Stucky  
Chief Judge

Kevin A. Ohlson  
Judge

John E. Sparks, Jr.  
Judge

Gregory E. Maggs  
Judge

## APPENDIX A

*United States v. Guardado*, 79 M.J. 301 (C.A.A.F. 2020), holding that the military judge did not err in denying the accused's motion for confinement credit for the government's failure to restore him to his original pay status pending his rehearing results because the payment level was not punishment, but the result of the payment authority following binding case law.

*United States v. Hennis*, 79 M.J. 370 (C.A.A.F. 2020), holding that although there was a break in service, the accused was subject to court-martial jurisdiction as he was on active duty at the time of the offenses and when charges were preferred, charged offenses were punishable by confinement for more than five years, and at time of preferral the Double Jeopardy Clause barred a state from prosecuting him.

*United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), holding that the ACCA could not consider materials outside the record the accused submitted in support of constitutional challenges to confinement conditions, clarifying the Court's past distinct lines of precedent.

*United States v. Clark*, 79 M.J. 449 (C.A.A.F. 2020), holding that the military judge erred in concluding that agents' comments during the accused's interrogation were not "statements" pursuant to Rule for Courts-Martial 914, indicating that lost videotaped interrogation constituted a "statement" because it met the R.C.M. 914(f)(2) standard.

*United States v. Wall*, 79 M.J. 456 (C.A.A.F. 2020), holding that the ACCA improperly reassessed the accused's approved sentence it had set aside and there was a risk that the "reassessment" would influence the convening authority's action in exercise of discretion, as it sent a sufficiently direct signal to the convening authority that confinement for ten years was appropriate.

*United States v. Gonzalez*, 79 M.J. 466 (C.A.A.F. 2020), holding that the ACCA did not have the authority to conduct a sentence reassessment after setting aside a sentence, whereupon setting aside one of the accused's several convictions and also setting aside his sentence, the ACCA erred in remanding the case with instructions regarding the sentence.

*United States v. Carter*, 79 M.J. 478 (C.A.A.F. 2020), holding that the military judge did not commit plain error by admitting evidence of the accused's cell site location information and affirming the ACCA because trial defense counsel believed the confession of the accused's brother to be false, and the Rules of Professional Conduct prohibited counsel from introducing evidence he knew was false.

*United States v. Moore*, 79 M.J. 483 (C.A.A.F. 2020), holding that the five-year statute of limitations in Article 43(b)(1), UCMJ (2012), barred rehearing of two sexual assault specifications after they were amended by the convening authority, as the text of Articles 34 and 43, UCMJ (2012), did not support this position.

*United States v. Bess*, 80 M.J. 1 (C.A.A.F. 2020), holding that the military judge did not abuse her discretion in denying the accused's oral discovery request. The accused failed to carry his burden to show unlawful command influence by more than mere speculation, failed to establish a prima facie case of exclusion based on race, and did not merit a *DuBay* hearing.

*United States v. Prasad*, 80 M.J. 23 (C.A.A.F. 2020), holding that the military judge's erroneous instructions were not harmless beyond a reasonable doubt, conflating the beyond a reasonable doubt and the preponderance of the evidence standards, which created a significant risk that the members applied an impermissibly low standard of proof.

*United States v. Rice*, 80 M.J. 36 (C.A.A.F. 2020), holding that the civilian possession of child pornography offense was a lesser included offense of the offense charged under the general article for the same conduct, and barred by the Double Jeopardy Clause.

*United States v. Washington*, 80 M.J. 106 (C.A.A.F. 2020), holding that the accused failed to establish apparent unlawful command influence because testimony about sexual harassment training the accused underwent was not done for the purpose of influencing trial, no one argued that training reflected law, the military judge properly instructed members, and members agreed that they could follow the military judge's instructions.

*United States v. Reyes*, 80 M.J. 218 (C.A.A.F. 2020), holding that accused's 451-day pretrial confinement did not require a verbatim record of the military judge's speedy trial rulings made prior to withdrawal and rereferral of charges, and given all the circumstances accused was not prejudiced by the delay.

*United States v. Bergdahl*, 80 M.J. 230 (C.A.A.F. 2020), holding that the accused's sentence of dishonorable discharge was affirmed because an objective, disinterested observer would not harbor any significant doubts about the ultimate fairness of the court-martial proceedings where it was the accused's misconduct, rather than any outside influences, that foreordained the Army's handling and disposition of this case, and that a chairman of the Senate Armed Services Committee and a sitting president of the United States are both capable of committing unlawful command influence.

**USCAAF STATISTICAL REPORT  
OCTOBER 2019 TERM OF COURT**

**CUMULATIVE SUMMARY**

CUMULATIVE PENDING OCTOBER 1, 2019

Master Docket	20
Petition Docket	67
Miscellaneous Docket	<u>2</u>
TOTAL	89

CUMULATIVE FILINGS

Master Docket	47
Petition Docket	369
Miscellaneous Docket	<u>17</u>
TOTAL	433

CUMULATIVE DISPOSITIONS

Master Docket	42
Petition Docket	382
Miscellaneous Docket	<u>15</u>
TOTAL	439

CUMULATIVE PENDING OCTOBER 1, 2020

Master Docket	25
Petition Docket	54
Miscellaneous Docket	<u>4</u>
TOTAL	83

**OPINION SUMMARY**

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	25	0	17	42
Petition Docket	0	0	382	382
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>15</u>	<u>15</u>
TOTAL	25	0	414	439

### **MASTER DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM	20
FILINGS	
Petition granted from the Petition Docket	41
Certificates filed	6
Mandatory appeals filed	0
Remanded/Returned cases	<u>0</u>
TOTAL	47
DISPOSITIONS	
Affirmed	24
Reversed in whole or in part	13
Certificates dismissed	0
Other	<u>5</u>
TOTAL	42
PENDING AT END OF TERM	
Awaiting briefs	8
Awaiting oral argument	5
Awaiting lead case decision (trailer cases)	0
Awaiting final action	<u>12</u>
TOTAL	25

### **PETITION DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM	67
FILINGS	
Petitions for grant of review filed	368
Petitions for new trial filed	1
Returned cases	<u>0</u>
TOTAL	369
DISPOSITIONS	
Petitions for grant of review denied	336
Petitions for grant of review granted	41
Petitions for grant of review withdrawn	5

Petitions for grant of review dismissed	<u>0</u>
TOTAL	382

PENDING AT END OF TERM

Awaiting pleadings	13
Awaiting staff review	34
Awaiting final action	<u>7</u>
TOTAL	54

**MISCELLANEOUS DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM	2
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FILINGS

Writ appeals sought	6
Writs of habeas corpus sought	4
Writs of coram nobis sought	3
Other extraordinary relief sought	<u>4</u>
TOTAL	17

DISPOSITIONS

Petitions or appeals denied	9
Petitions or appeals granted	0
Petitions or appeals dismissed	6
Petitions or appeals withdrawn	<u>0</u>
TOTAL	15

PENDING AT END OF TERM

Awaiting briefs	0
Awaiting staff review	1
Awaiting final action	<u>3</u>
TOTAL	4



**PETITIONS FOR RECONSIDERATION**

**ALL CASES**

Begin pending	0
Filed	<u>10</u>
TOTAL	10

End Pending 1

**DISPOSITIONS**

Denied	8
Granted	1
Dismissed	<u>0</u>
TOTAL	9

**MOTIONS**

**ALL MOTIONS**

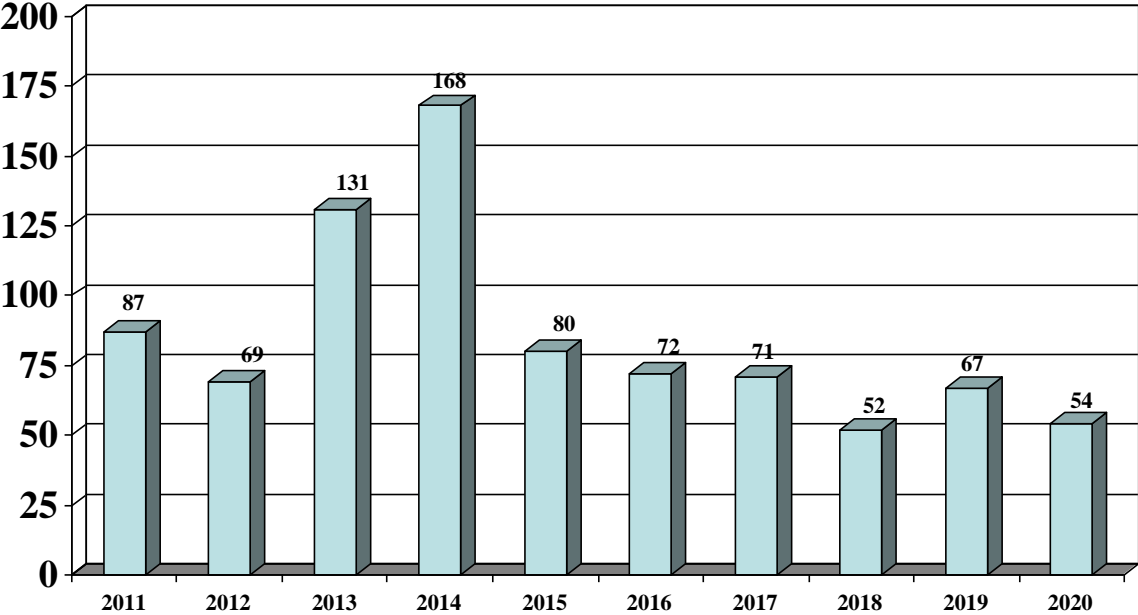
Begin pending	5
Filed	<u>288</u>
TOTAL	293

End Pending 10

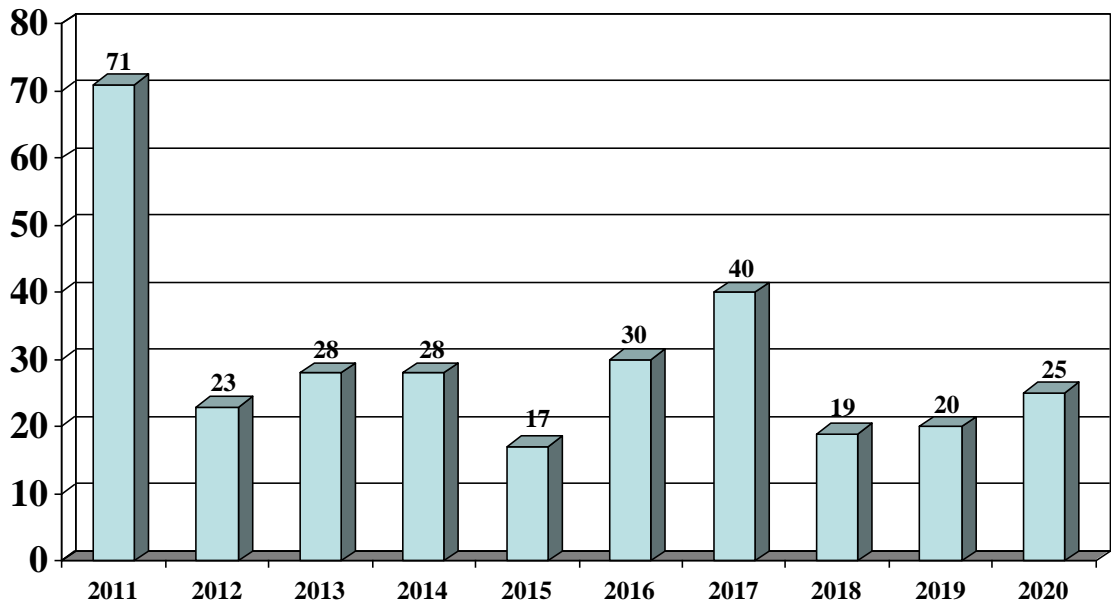
**DISPOSITIONS**

Granted	247
Denied	34
Dismissed	<u>2</u>
TOTAL	283

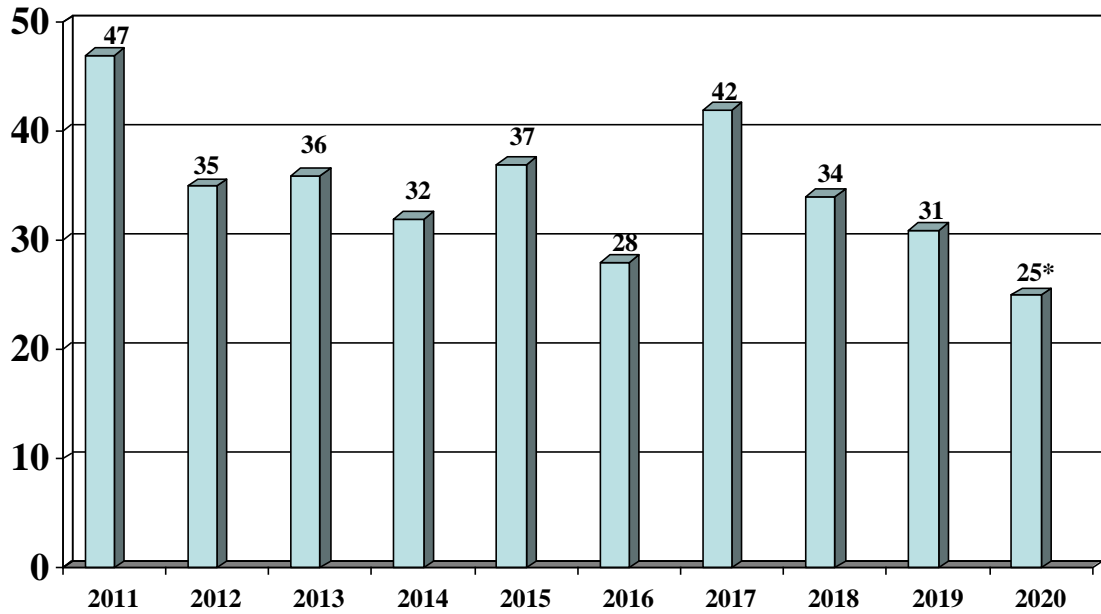
# Petitions Pending at End of Term



# Master Docket Cases Pending at End of Term

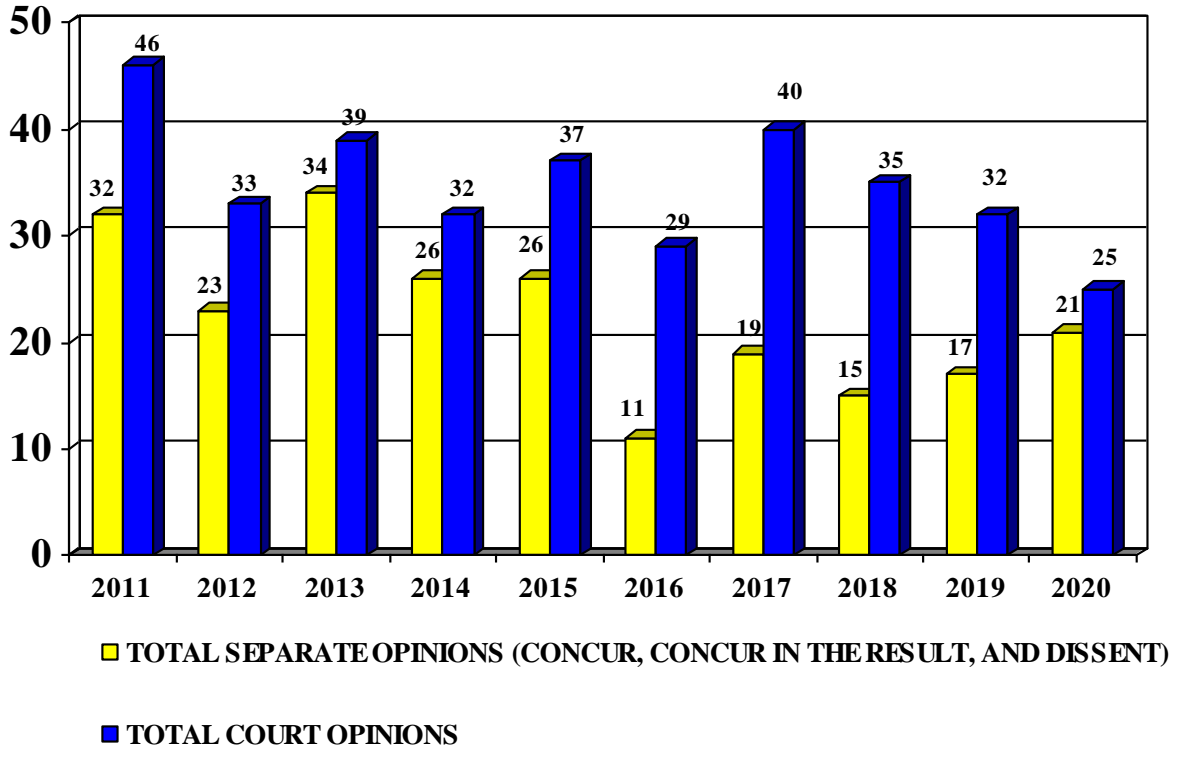


# Oral Arguments Per Year

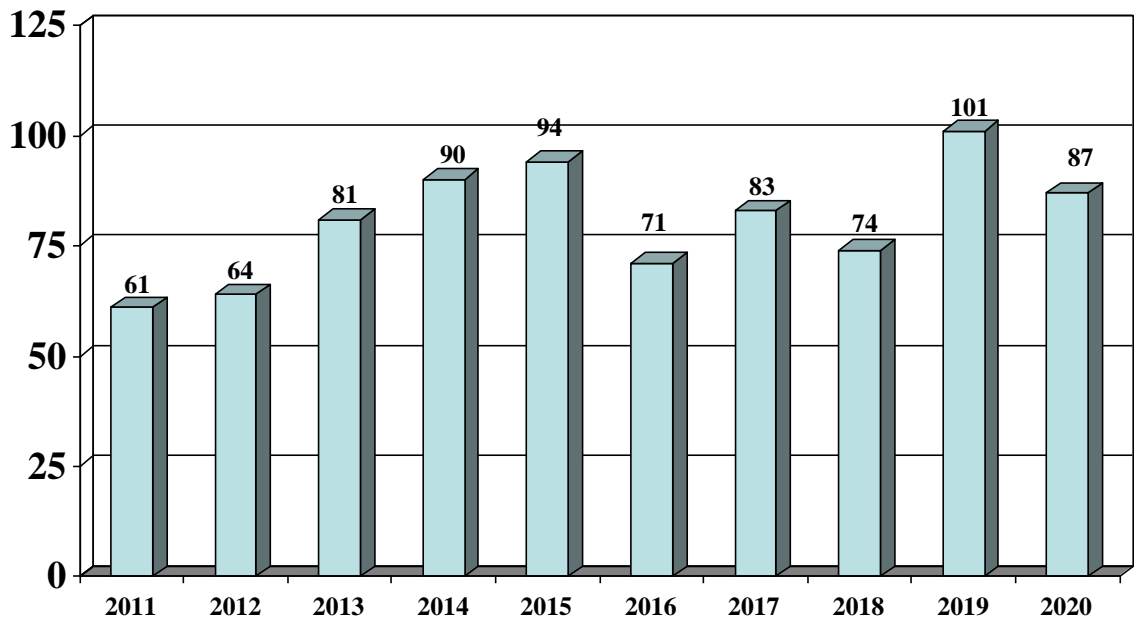


\*Three additional cases were heard at oral argument in late September 2020. They pertain to the next term of court.

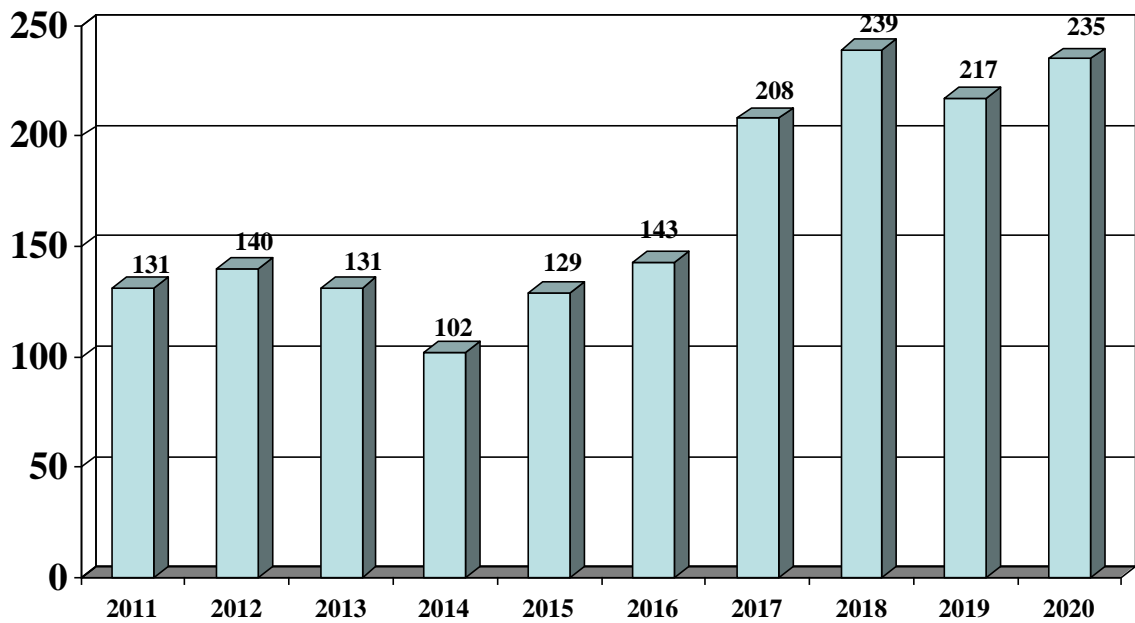
# Total Opinions Per Year



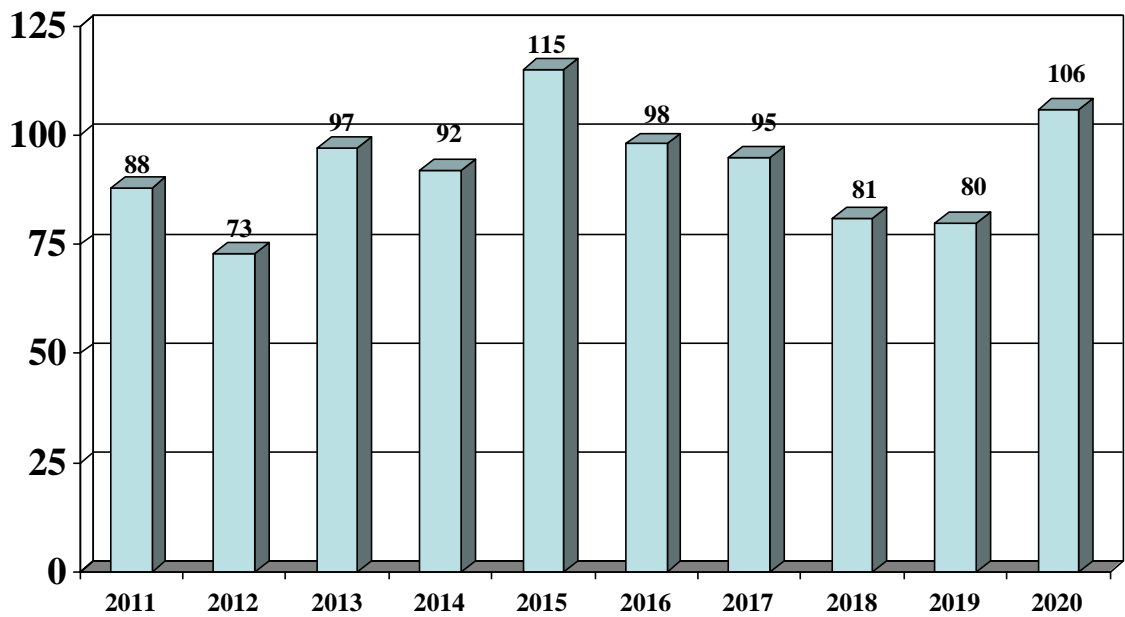
# Days from Petition Filing to Grant



# Days from Petition Filing to Oral Argument

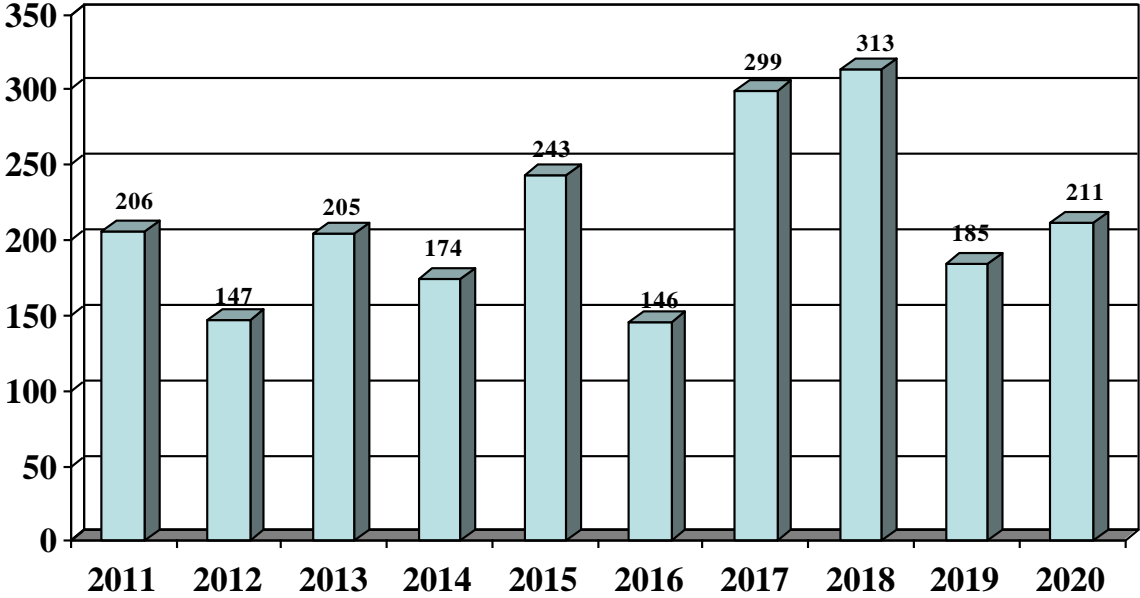


# Days from Oral Argument to Final Decision





# Days from Petition Filing to Final Decision



■ MASTER DOCKET(GRANTED/CERTIFIED/CAPITAL CASES)

# Total Petitions Filed Per Year

