

## **REPORT OF THE UNITED STATES**

### **COURT OF APPEALS FOR THE ARMED FORCES**

**October 1, 2018, to September 30, 2019**

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 2018 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 2018 Term of the Court, for the period from October 1, 2018, to September 30, 2019, the Court heard cases with a full complement of five currently appointed Judges. 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 2018 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 2018 Term of Court.

#### **BAR OF THE COURT**

During the October 2018 Term, 169 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 37,254.

## **JUDICIAL OUTREACH**

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside of its permanent courthouse in Washington, D.C. during the October 2018 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 hearings during this period, with the consent of the parties, at the Fordham University School of Law; the United States District Court for the Southern District of New York, in conjunction with the Federal Bar Association’s Annual Meeting and Convention; the University of Kansas School of Law; and at the Command and General Staff College, Fort Leavenworth, Kansas. In addition, 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. The Judges continued to host a diverse array of groups at the courthouse, including international audiences, for tours and briefings.

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

On March 6 and 7, 2019, 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; Rear Admiral James E. McPherson, U.S. Navy, Judge Advocate General’s Corps (Retired), General Counsel, U.S. Army; Lieutenant Colonel Kwangik Son, Republic of Korea, Judge Advocate General’s Corps; Colonel Martin Mitchell, U.S. Air Force (Retired), Commissioner to Judge Kevin A. Ohlson, United States Court of Appeals for the Armed Forces; Colonel Sara M. Root, U.S. Army, Judge Advocate General’s Corps, Chief, Military Justice Legislation Training Team, Criminal Law Division; Lieutenant Colonel Adam S. Kazin, U.S. Army, Judge Advocate General’s Corps, Chief, Policy Branch, Criminal Law Division; Jack Hamann; Leslie Hamann; Elizabeth L. “Liz” Lippy, Associate Director of the Trial Advocacy Program, American University Washington College of Law; Major Frank E. Kostik, Jr., U.S. Army, Judge Advocate General’s Corps, Deputy Chief of the Defense Counsel Assistance Program; the Honorable Andrew S. Effron, Senior Judge, U.S. Court of Appeals for the Armed Forces; Aditya Bamzi, Associate Professor of Law, University of Virginia School of Law; Liam P. Hardy, Office of Legal Counsel, Department of Justice.

Scott W. Stucky  
Chief Judge

Margaret A. Ryan  
Judge

Kevin A. Ohlson  
Judge

John E. Sparks Jr.  
Judge

Gregory E. Maggs  
Judge

## **APPENDIX A – SELECTED DECISIONS**

*United States v. McDonald*, 78 M.J. 376 (C.A.A.F. 2019), holding that the offense of sexual assault by bodily harm required only a general intent mens rea and the accused's action could be considered innocent only if he had formed a reasonable belief that he had obtained consent, and, to eliminate a mistake of fact defense, the government needed only to prove that the accused had not done so.

*United States v. Stout*, 79 M.J. 168 (C.A.A.F. 2019), holding that the Government was entitled to amend the specifications of the charges to conform the time frame of the offenses to the substance of the victim's testimony during the preliminary hearing.

*United States v. Lewis*, 78 M.J. 447 (C.A.A.F. 2019), holding that the ACCA erred in finding that the military judge's finding of the accused's psychological disorder had minimal impact and the suppression of the accused's third statement to law enforcement was an abuse of discretion.

*United States v. Hamilton*, 78 M.J. 335 (C.A.A.F. 2019), holding that the admission of unsworn victim statements did not comply with the requirements defined by Rule for Courts-Martial 1001A (2016), but the error did not prejudice the accused's substantial rights.

*United States v. Tovarchavez*, 78 M.J. 458 (C.A.A.F. 2019), holding that the error in issuing an instruction permitting the panel to consider evidence that the accused committed another sexual offense, as evidence of his propensity or predisposition to engage in sexual offenses, was not harmless beyond a reasonable doubt.

*United States v. Tucker*, 78 M.J. 183 (C.A.A.F. 2018), holding that recklessness is the proper mens rea for the Article 134, UCMJ, offense of providing alcohol to underage individuals, and the military judge affirmatively misstated elements of providing alcohol to underage individuals, by instructing the accused on the mens rea of negligence during the providence inquiry.

*United States v. Hutchins*, 78 M.J. 437 (C.A.A.F. 2019), holding that the military judge did not err at the rehearing in denying a motion to suppress evidence related to offenses of which the accused had been acquitted at his first court-martial because the issue preclusion component of the Double Jeopardy Clause did not apply.

*United States v. Forbes*, 78 M.J. 279 (C.A.A.F. 2019), holding that the military judge was within her discretion in accepting the accused's pleas of guilty to sexual assault by bodily harm where the accused's failure to inform his sexual partners that he was HIV positive vitiates meaningful consent and causes the sexual act to be offensive.

*United States v. Voorhees*, 79 M.J. 5 (C.A.A.F. 2019), holding that trial counsel's personal attacks on defense counsel and accused's character, in addition to the expression of personal opinion, amounted to prosecutorial misconduct, but did not prejudice the accused; and the military judge's instructions were not erroneous as she was under no requirement to offer any instructions specific to general intent mens rea after informing panel members to consider the accused's conduct "under the circumstances."

*United States v. Briggs*, 78 M.J. 289 (C.A.A.F. 2019), *cert. granted*, 2019 U.S. LEXIS 6931, 2019 WL 6042319 (U.S. Nov. 15, 2019)(No. 19-108), holding that applying the amendment of Article 43, UCMJ, which eliminated the statute of limitations for the offense of rape, to the accused's pre-amendment conduct had an impermissible retroactive effect, and the military judge committed plain error by failing to inform the accused of the applicable five-year statute of limitations.

*United States v. Perkins*, 78 M.J. 381 (C.A.A.F. 2019), holding that the military judge did not abuse his discretion in denying a defense motion to suppress evidence obtained from the search of the accused's home; and that the investigating special agent had an objectively reasonable belief in the base commander's determination of probable cause and relied with good faith on the base commander's authorization for a search.

**APPENDIX B – STATISTICAL REPORTING**

**USCAAF STATISTICAL REPORT  
OCTOBER 2018 TERM OF COURT**

**CUMULATIVE SUMMARY**

CUMULATIVE PENDING OCTOBER 1, 2018

Master Docket	19
Petition Docket	52
Miscellaneous Docket	<u>0</u>
TOTAL	71

CUMULATIVE FILINGS

Master Docket	58
Petition Docket	440
Miscellaneous Docket	<u>23</u>
TOTAL	521

CUMULATIVE DISPOSITIONS

Master Docket	57
Petition Docket	425
Miscellaneous Docket	<u>21</u>
TOTAL	503

CUMULATIVE PENDING OCTOBER 1, 2019

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

**OPINION SUMMARY**

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	30	1	26	57
Petition Docket	0	1	424	425
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>21</u>	<u>21</u>
TOTAL	30	2	471	503

**MASTER DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM 19

FILINGS

Petition granted from the Petition Docket	53
Certificates filed	5
Mandatory appeals filed	0
Remanded/Returned cases	<u>0</u>
TOTAL	58

DISPOSITIONS

Affirmed	40
Reversed in whole or in part	9
Certificates dismissed	0
Other	<u>8</u>
TOTAL	57

PENDING AT END OF TERM

Awaiting briefs	8
Awaiting oral argument	4
Awaiting lead case decision (trailer cases)	2
Awaiting final action	<u>6</u>
TOTAL	20

**PETITION DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM	52
FILINGS	
Petitions for grant of review filed	438
Petitions for new trial filed	2
Returned cases	<u>0</u>
TOTAL	440
DISPOSITIONS	
Petitions for grant of review denied	360
Petitions for grant of review granted	52
Petitions for grant of review withdrawn	4
Petitions for grant of review dismissed	<u>9</u>
TOTAL	425
PENDING AT END OF TERM	
Awaiting pleadings	16
Awaiting staff review	41
Awaiting final action	<u>10</u>
TOTAL	67

**MISCELLANEOUS DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM	0
FILINGS	
Writ appeals sought	6
Writs of habeas corpus sought	10
Writs of coram nobis sought	1
Other extraordinary relief sought	<u>6</u>
TOTAL	23



DISPOSITIONS

Petitions or appeals denied	13
Petitions or appeals granted	2
Petitions or appeals dismissed	6
Petitions or appeals withdrawn	<u>0</u>
TOTAL	21

PENDING AT END OF TERM

Awaiting briefs	0
Awaiting staff review	0
Awaiting final action	<u>2</u>
TOTAL	2

**PETITIONS FOR RECONSIDERATION**

ALL CASES

Begin pending	5
Filed	<u>28</u>
TOTAL	33

End Pending 0

DISPOSITIONS

Denied	31
Granted	2
Dismissed	<u>0</u>
TOTAL	33

**MOTIONS**

ALL MOTIONS

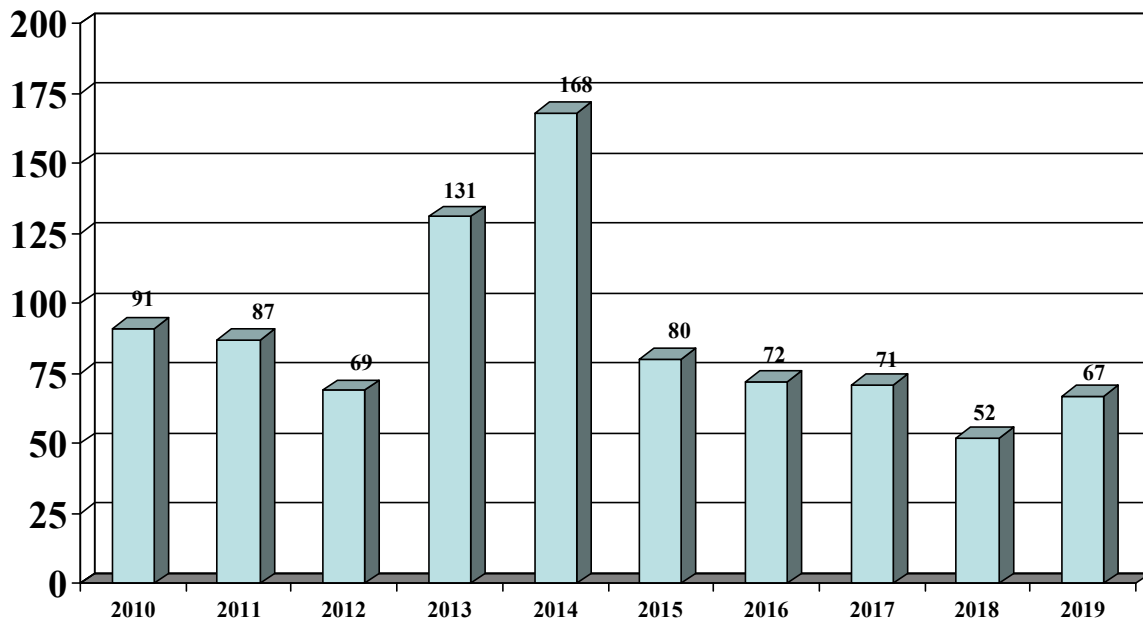
Begin pending	7
Filed	<u>441</u>
TOTAL	448

End Pending 5

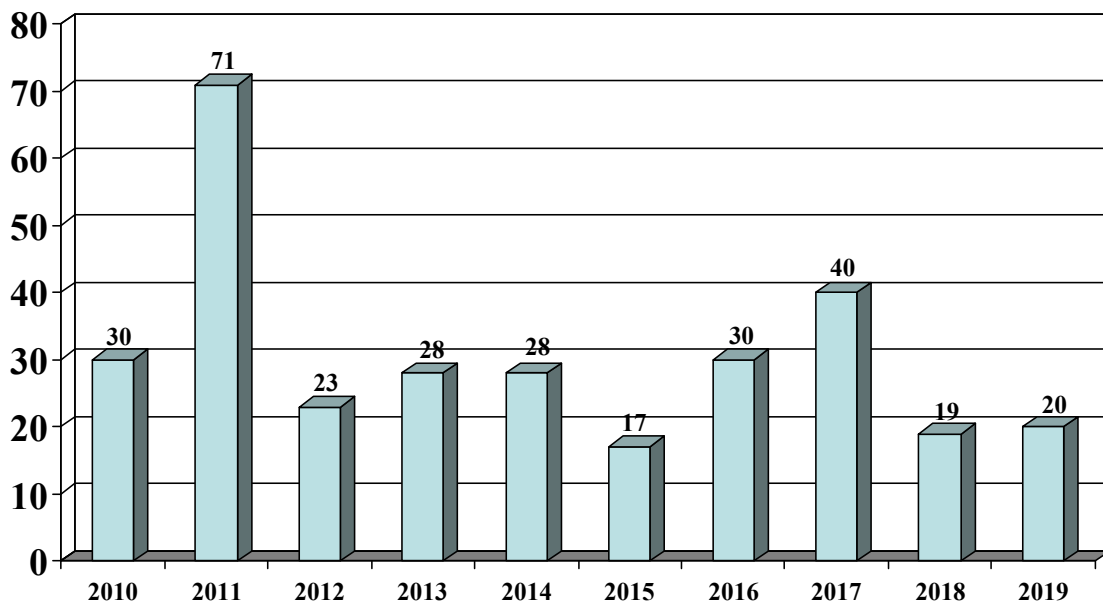
DISPOSITIONS

Granted	397
Denied	46
Dismissed	<u>0</u>
TOTAL	443

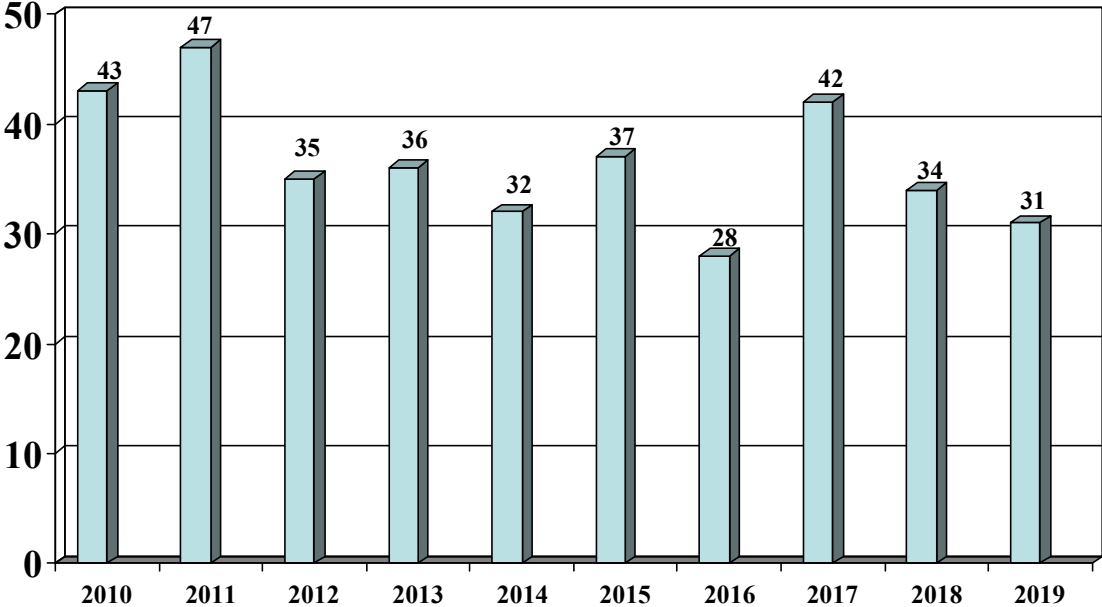
# Petition Docket Term End Pending



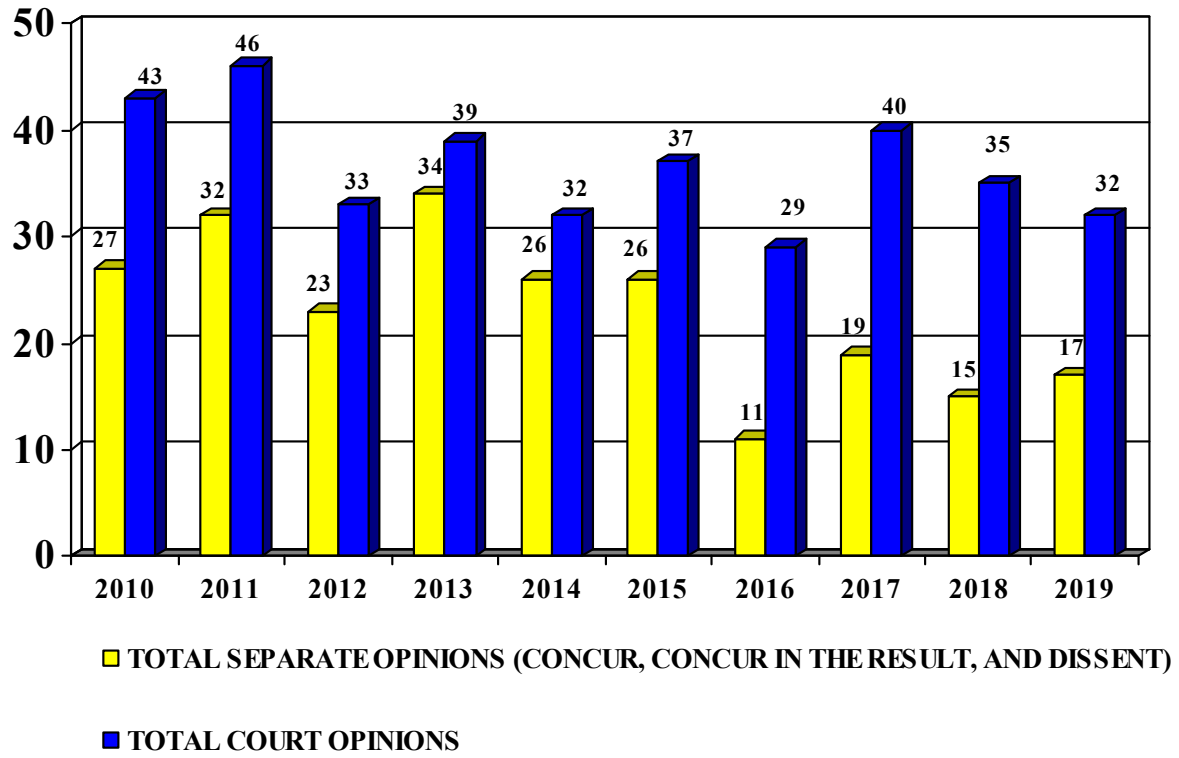
# Master Docket Term End Pending



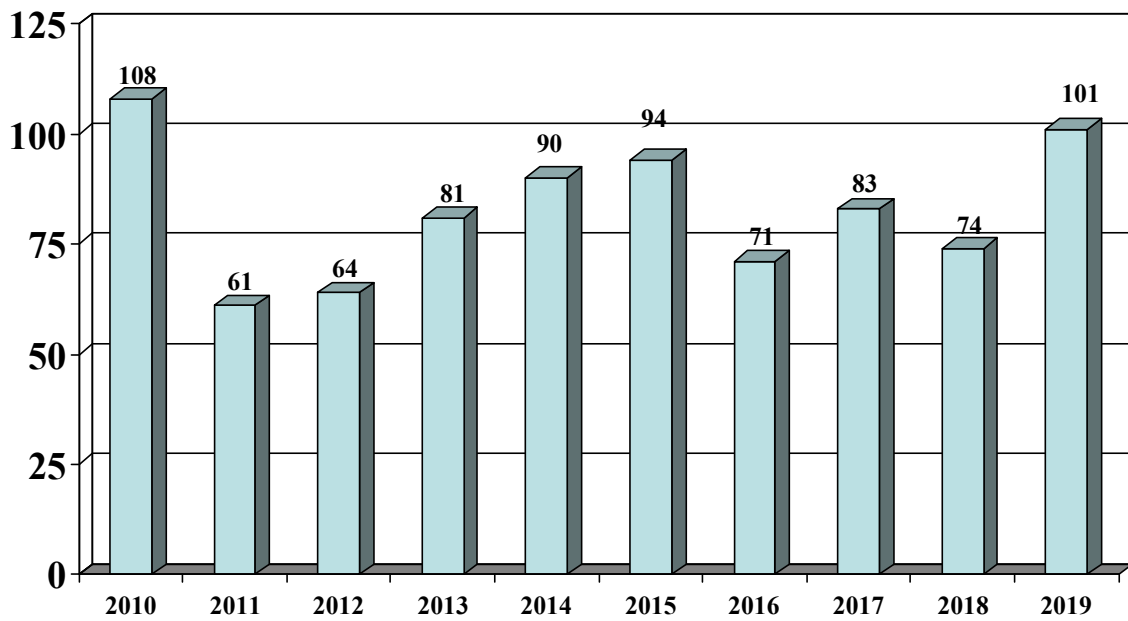
# Oral Arguments Per Year



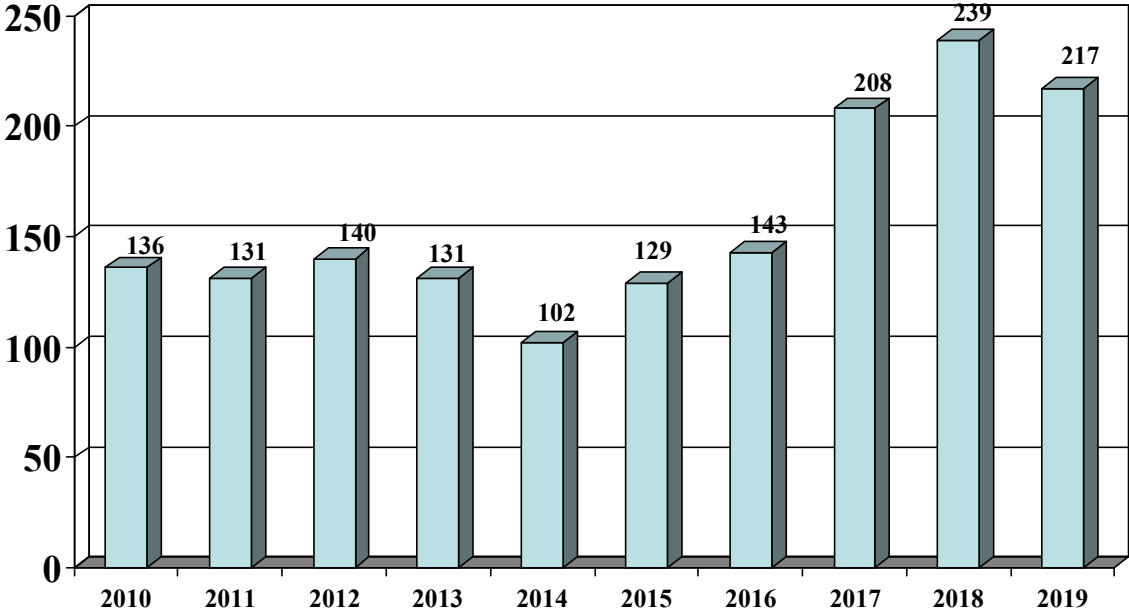
# Total Opinions Per Year



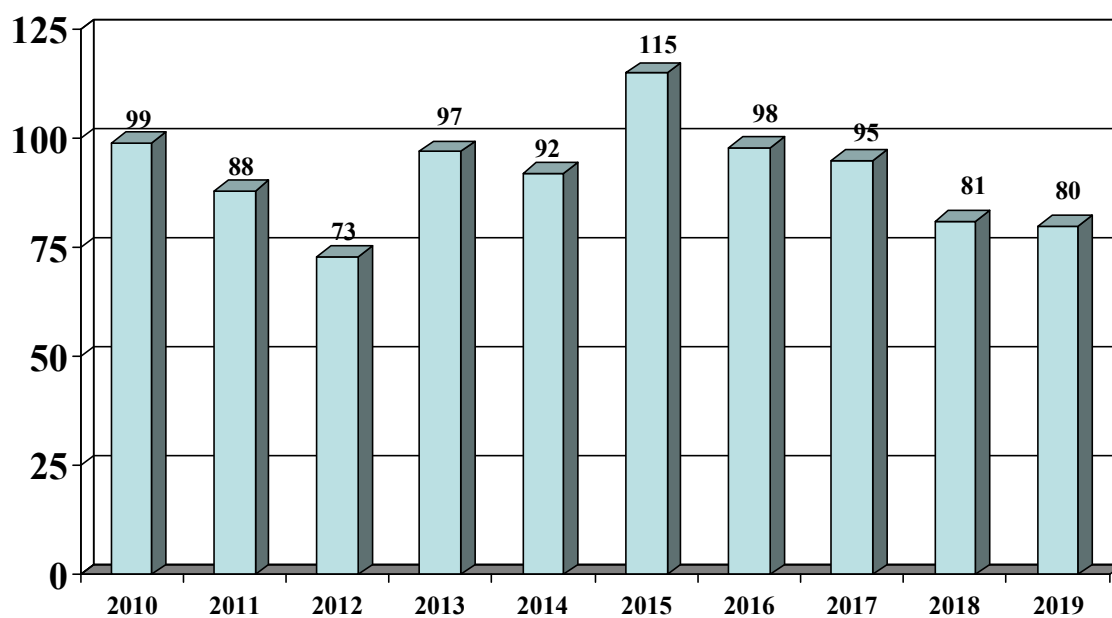
# Days from Petition Filing to Grant



# Days from Petition Filing to Oral Argument

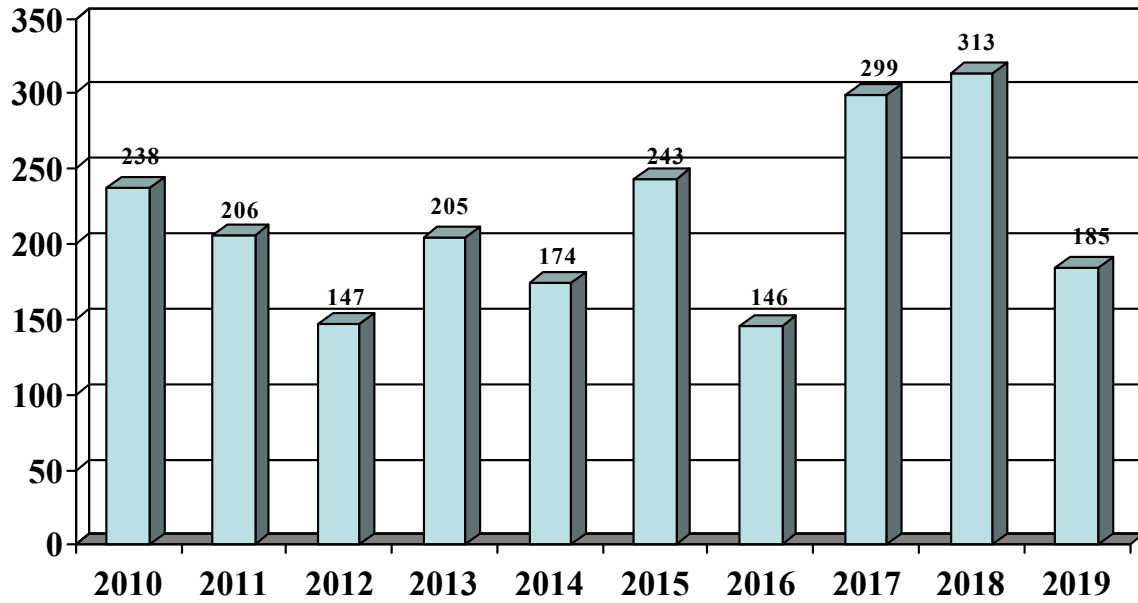


## Days from Oral Argument to Final Decision





## Days from Petition Filing to Final Decision



□ MASTER DOCKET(GRANTED/CERTIFIED/CAPITAL CASES)

# Total Petitions Filed Per Year

