

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

October 1, 2023, to September 30, 2024

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 2023 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 2023 Term of the Court, the Court issued opinions in 28 of 29 orally-argued cases prior to the end of the Term. One case, *United States v. Mendoza*, No. 23-0210/AR, was carried over into the October 2024 – September 2025 Term of Court. A 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*.

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.

RULES OF PRACTICE AND PROCEDURE

During the October 2023 Term, the Court completed a long-term effort to redraft the Court's Rules of Practice and Procedure. On June 7, 2024, the Court published a notice of the proposed Rules Changes in the Federal Register FR Doc. 2024-12388, for public view and comment. Comments were accepted for 30 days, and a total of five were received.

After circulating the proposed comments among its Rules Committee and the five active judges, the Court adopted some of the proposals. On August 15, 2024, the Court published a response to the public comments, thereby finalizing the rules published on June 7. The new Rules of Practice and Procedure for the Court are effective October 1, 2024, and are promulgated on the Court's official website.

BAR OF THE COURT

During the October 2023 Term, 146 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 38,088.

JUDICIAL OUTREACH

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. During the October 2023 Term, with the consent of the parties, the Court conducted hearings at Joint Base Lewis-McChord, Washington and at the U.S. Navy Undersea Museum, Keyport, Washington.

CONTINUING LEGAL EDUCATION AND TRAINING PROGRAM

In May 2024, the Court held its Continuing Legal Education and Training Program at the George Mason University Antonin Scalia Law School in Arlington, VA. The program opened with welcoming remarks from the Honorable Kevin A. Ohlson, Chief Judge, United States Court of Appeals for the Armed Forces. He preceded the following speakers: Dr. Benjamin M. Schneider, Assistant Professor, Department of Military History, U.S. Army Command and General Staff College; Mr. Robert Monahan, Captain, JAGC, U.S. Navy (Retired), Commissioner to the Honorable Kevin A. Ohlson; Ms. Deborah S. Mayer, Captain, JAGC, U.S. Navy (Retired), Former Prosecutor, Special Prosecutor's Office, Kosovo Specialist Chambers; Captain Stephen C. Reyes, JAGC, U.S. Navy, Chief Trial Judge, Navy-Marine Corps Trial Judiciary, and Chair, Sentencing Parameter and Criteria Board; Lieutenant Colonel Christopher Goewert, U.S. Air Force; Major Ryan Farrell, Trial Attorney, Federal Defenders of Eastern Washington and Idaho, California Air National Guard; Professor Eric R. Carpenter, Professor of Law, Florida International University; Adjunct Professor Ronald J. Coleman, Georgetown Law, Visiting Fellow, Information Society Project, Yale Law School; Professor Jennifer Mascott, Assistant Professor of Law, Antonin Scalia Law School, Co-Executive Director, The C. Boyden

Gray Center for the Study of the Administrative State; Lieutenant Colonel Caitlin Chiaramonte, United States Army, Academy Professor, United States Military Academy West Point; Lieutenant Colonel Marc Zelnick, United States Army, Deputy Staff Judge Advocate, 21st Theatre Sustainment Command; Dr. Mary Ann Franks, Eugene L. and Barbara A. Bernard Professor in Intellectual Property, Technology, and Civil Rights Law at George Washington Law School; the Honorable Caroline D. Krass, General Counsel of the Department of Defense; Mr. Tim MacArthur and Ms. Leigh Winstead of the Veterans and Servicemembers Clinic; Ms. Martha Bashford, Manhattan District Attorney's Office (Retired) & Fellow, American Academy of Forensic Sciences and American College of Trial Lawyers; Dr. William Wells, Department of Criminal Justice and Criminology, Sam Houston State University & Criminologist, Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Ms. Kate Tagert, Attorney-Advisor, Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; and Hon. Martin Mitchell, Veterans Law Judge, Board of Veterans' Appeals.

Kevin A. Ohlson
Chief Judge

John E. Sparks, Jr.
Judge

Gregory E. Maggs
Judge

Liam P. Hardy
Judge

M. Tia Johnson
Judge

APPENDIX A

United States v. Brown, 84 M.J. 124 [C.A.A.F. 2024]. The question in this case was whether Appellant's convictions for disrespect toward a non-commissioned officer under Article 91 are legally insufficient where there is an absence of evidence that the charged conduct occurred in the sight, hearing, or presence of the non-commissioned officers while they were in the execution of their offices. The majority found that an accused servicemember can be convicted under Article 91(3) even if his or her disrespectful conduct occurs outside the physical presence of the victim. Further, the majority held that that under Article 91(3), servicemembers can only be held criminally liable if at the time they conveyed the disrespectful language or behavior the victim was then in the execution of his or her office. The dissent highlighted that, because the communications were made digitally, there was no evidence that Appellant's disrespectful behavior occurred within the sight or hearing of the non-commissioned officers.

United States v. Keago, 84 M.J. 367 [C.A.A.F. 2024]. The question in this case was whether the military judge erred by denying three actual and implied bias challenges for cause against three panel members. The majority found that that the voir dire responses of two of the members presented close cases of implied bias. Because the liberal grant mandate requires military judges to excuse potential panel members in close cases, the military judge erred by denying those two challenges. The dissent described the implied bias test as ambiguous and questioned whether it is inconsistent with the Rules for Courts-Martial.

United States v. Parino-Ramcharan, 84 M.J. 445 [C.A.A.F. 2024]. The question in this case was whether the Judge Advocate General and the Air Force Court of Criminal Appeals lacked jurisdiction to review Appellant's case, and, accordingly, this Court did not have jurisdiction to consider Appellant's petition. The majority held that a key provision in Article 69(c)(1)(A), UCMJ, contains a scrivener's error and, as a result, the Judge Advocate General, the Air Force Court of Criminal Appeals, and this Court had jurisdiction to review Appellant's case. The dissent argued that the plain language of Article 69(c)-(d) prevents review of the Appellant's Article 65(d) case.

United States v. Grijalva, 84 M.J. 433 [C.A.A.F. 2024]. The question in this case was whether a charge brought under Article 134, UCMJ, was preempted by Article 117a, UCMJ, the elements of which the charging language closely tracked. The majority found that the elements contained in the charge when compared to those

in Article 117a were essentially the same, and it therefore preempted the charge. The concurring opinion agreed that the charge was preempted, finding that the Government had simply dropped elements of Article 117a to utilize Article 134 as a loophole to ease its evidentiary burden at trial. The dissent contended that there was clear legislative history and language to show that Article 117a was not intended to be the sole tool to address the conduct at issue, and therefore could not preempt a similar charge brought under Article 134.

United States v. Mendoza, __ M.J. ____ [C.A.A.F. 2024]. The question in this case was whether a defendant who is charged with sexual assault on a theory that the victim did not consent can be found guilty on evidence that the victim was incapable of consent. The majority found that Article 120, UCMJ, establishes “incapable of consent” and “did not consent” as separate theories of liability, the conflation of which raises concerns for an appellant’s due process rights. Because the Army Court of Criminal Appeals’s decision upholding Appellant’s conviction does not explain how or why the evidence of the victim’s intoxication factored into its analysis, the Court reversed the lower court’s decision and remanded the case for the court to re-consider its legal and factual sufficiency analysis. The dissent argued that the evidence should be found legally insufficient or, if the evidence is legally sufficient, to find that the Government violated Appellant’s due process right to fair notice.

APPENDIX B

**USCAAF STATISTICAL REPORT
OCTOBER 2023 TERM OF COURT**

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2023

Master Docket	27
Petition Docket	38
Miscellaneous Docket	<u>3</u>
TOTAL	68

CUMULATIVE FILINGS

Master Docket	38
Petition Docket	220
Miscellaneous Docket	<u>14</u>
TOTAL	272

CUMULATIVE DISPOSITIONS

Master Docket	29
Petition Docket	198
Miscellaneous Docket	<u>15</u>
TOTAL	242

CUMULATIVE PENDING OCTOBER 1, 2024

Master Docket	37
Petition Docket	51
Miscellaneous Docket	<u>2</u>
TOTAL	90

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	28	0	3	31
Petition Docket	0	0	198	198
Miscellaneous Docket	<u>1</u>	<u>0</u>	<u>14</u>	<u>15</u>
TOTAL	29	0	215	244

MASTER DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 27

FILINGS

Petition granted from the Petition Docket	33
Certificates filed	4
Mandatory appeals filed	0
Remanded/Returned cases	<u>0</u>
TOTAL	37

DISPOSITIONS

Affirmed	23
Reversed in whole or in part	5
Certificates dismissed	0
Other	<u>1</u>
TOTAL	29

PENDING AT END OF TERM

Awaiting briefs	10
Awaiting oral argument	6
Awaiting lead case decision (trailer cases)	9
Awaiting final action	<u>12</u>
TOTAL	37

PETITION DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 29

FILINGS

Petitions for grant of review filed	219
Petitions for new trial filed	1

Returned cases	<u>0</u>
TOTAL	220

DISPOSITIONS

Petitions for grant of review denied	161
Petitions for grant of review granted	33
Petitions for grant of review withdrawn	2
Petitions for grant of review dismissed	<u>2</u>
TOTAL	198

PENDING AT END OF TERM

Awaiting pleadings	12
Awaiting staff review	33
Awaiting final action	<u>6</u>
TOTAL	51

MISCELLANEOUS DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	3
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FILINGS

Writ appeals sought	5
Writs of habeas corpus sought	0
Writs of coram nobis sought	1
Other extraordinary relief sought	<u>8</u>
TOTAL	14

DISPOSITIONS

Petitions or appeals denied	3
Petitions or appeals granted	3
Petitions or appeals dismissed	9
Petitions or appeals withdrawn	<u>0</u>
TOTAL	15

PENDING AT END OF TERM

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

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin pending 4
Filed 12
TOTAL 16

DISPOSITIONS

Denied 8
Granted 1
Dismissed 1
TOTAL 10

End Pending 7

MOTIONS

ALL MOTIONS

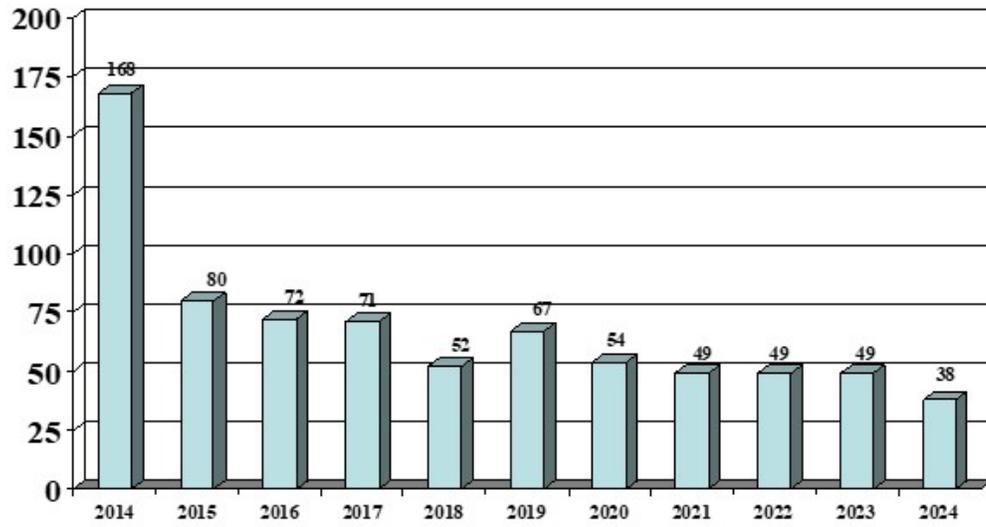
Begin pending 13
Filed 278
TOTAL 291

DISPOSITIONS

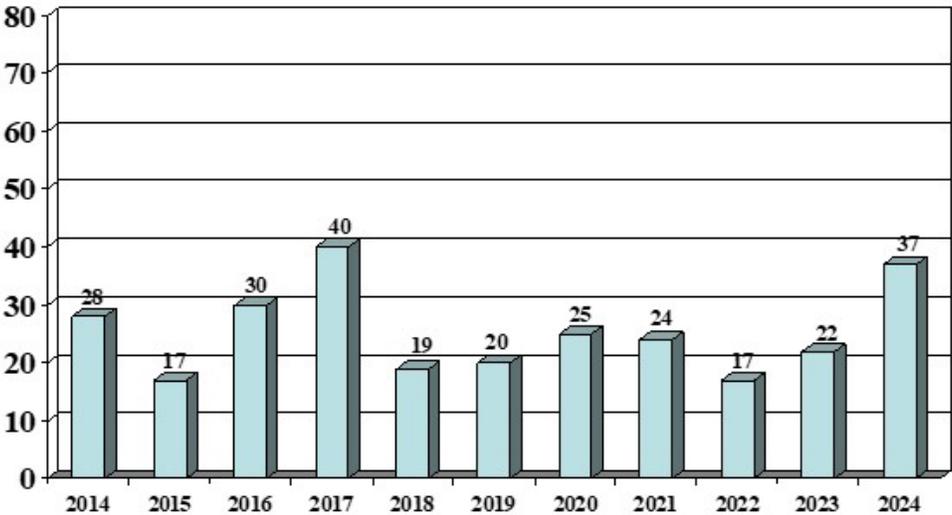
Granted 249
Denied 35
Dismissed 0
TOTAL 284

End Pending 7

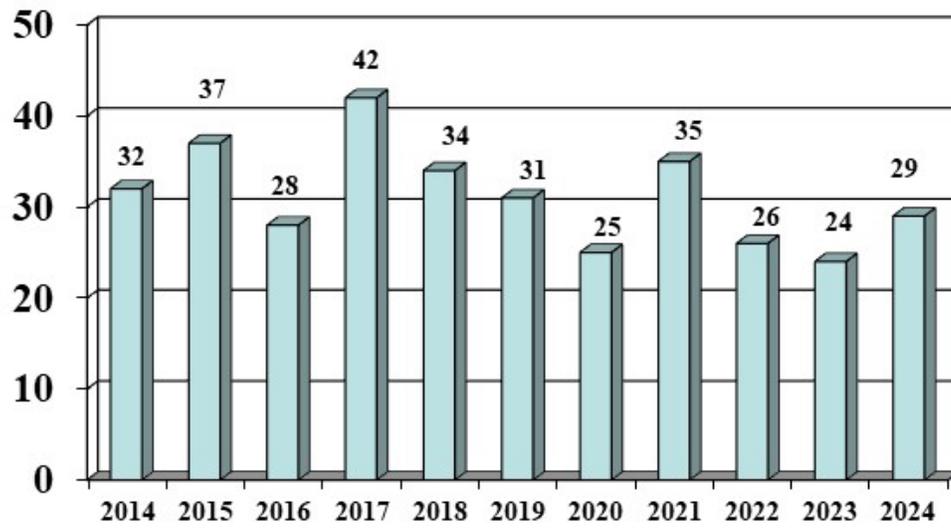
Petitions Pending at End of Term



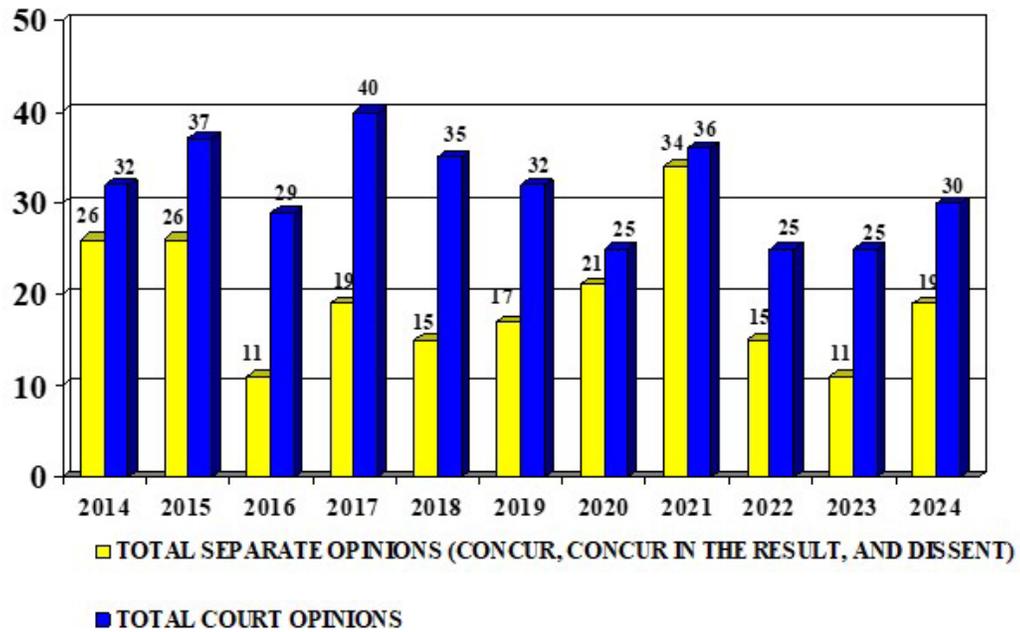
Master Docket Cases Pending at End of Term



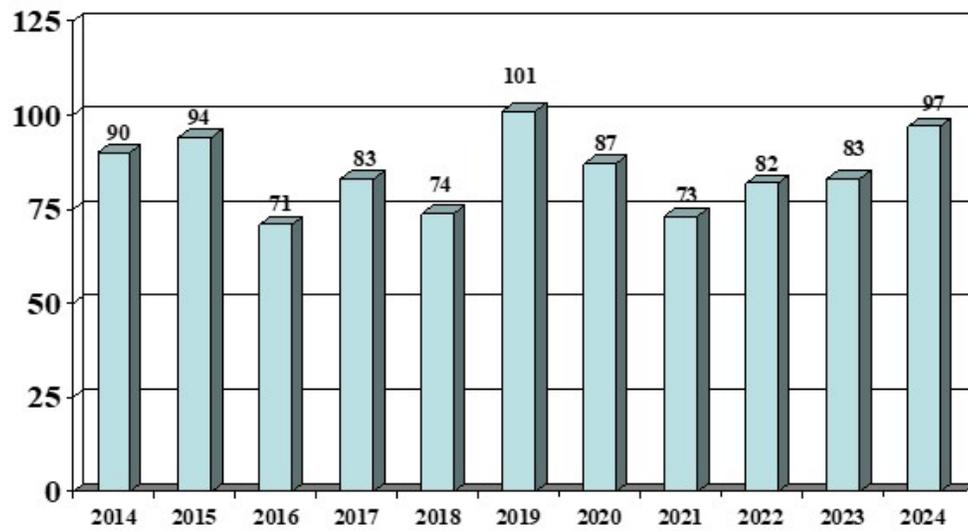
Oral Arguments Per Year



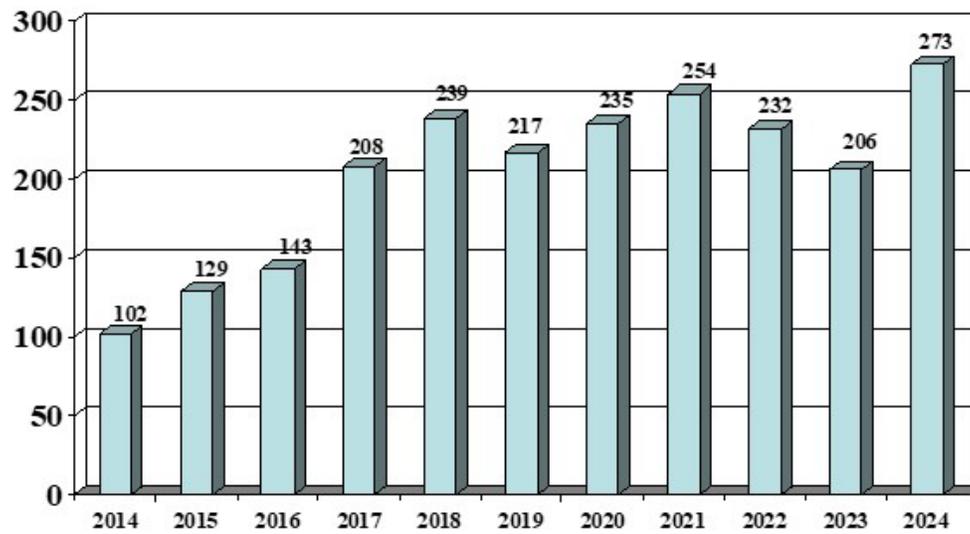
Total Opinions Per Year



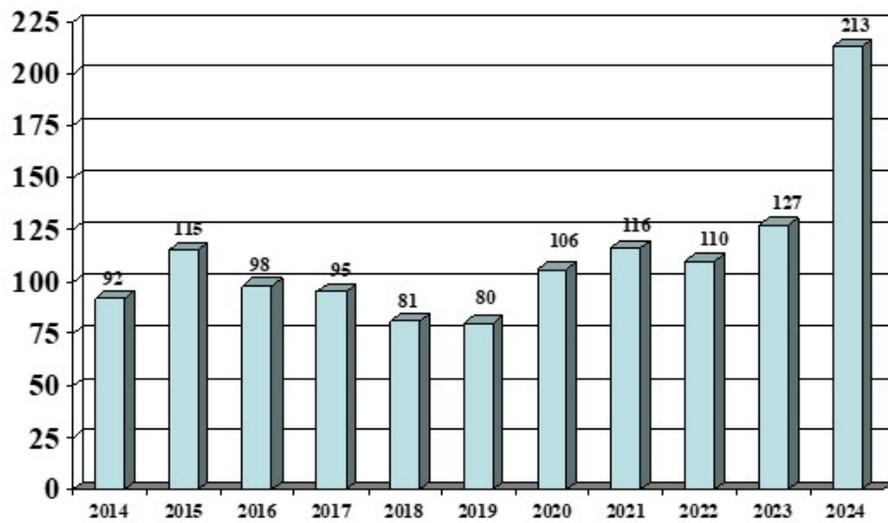
Days from Petition Filing to Grant



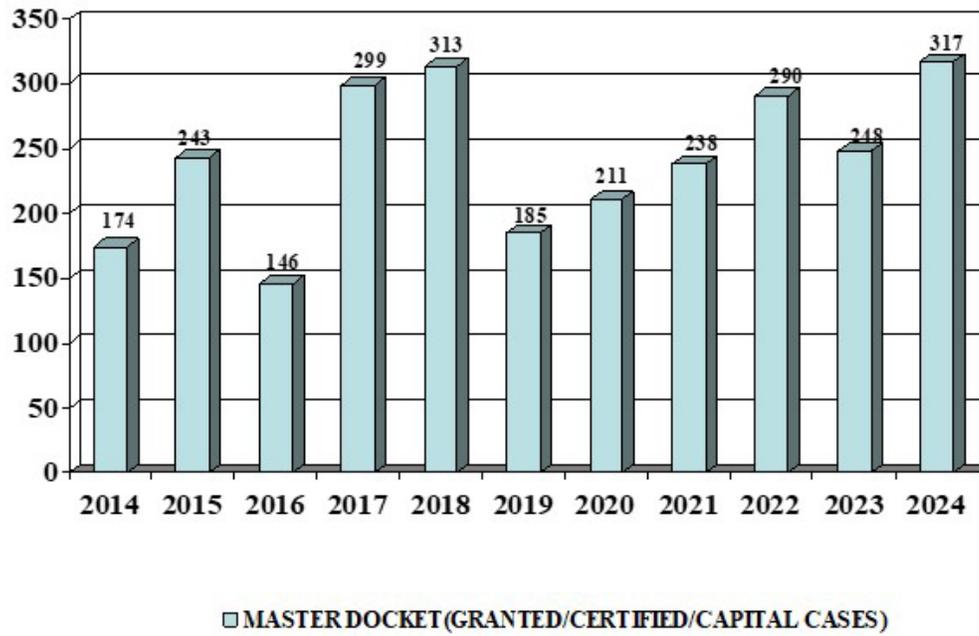
Days from Petition Filing to Oral Argument



Days from Oral Argument to Final Decision



Days from Petition Filing to Final Decision



Total Petitions Filed Per Year

