

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

October 1, 2020, to September 30, 2021

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 2020 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 2020 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. 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*.

Pursuant to public health guidance in response to the COVID-19 pandemic, 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.

After Judge Margaret A. Ryan completed her term on July 31, 2020, the Court was reduced to a quorum of four Judges. Until a replacement was confirmed and appointed in December 2020, Chief Judge Scott W. Stucky called upon the Court's Senior Judges pursuant to Article 142(e), UCMJ, to conduct essential business of the Court and hear cases set for argument on the master docket. Senior Judge Andrew S. Effron heard eight cases; Senior Judge Ryan heard four cases; and Senior Judge Susan J. Crawford heard four cases. On December 8, 2020, Judge Liam P. Hardy took his oath of office as a Judge, filling the vacancy left by the departure of Senior Judge Ryan. On July 31, 2021, Chief Judge Stucky completed his 15-year term, again reducing the Court to a quorum of four 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

No changes were made to the Court's Rules of Practice and Procedure during the October 2020 Term of Court.

BAR OF THE COURT

During the October 2020 Term, 202 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 37,605.

JUDICIAL OUTREACH

In furtherance of a practice established in 1987, the Court typically schedules a special session to hear oral argument outside of its permanent courthouse in Washington, D.C. 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. Due to the public health crisis of COVID-19, all outreach originally planned for the October 2020 Term of Court 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

The Court's Continuing Legal Education and Training, held annually, at the American University Washington College of Law in Washington, D.C, was cancelled due to the public health crisis of COVID-19.

Kevin A. Ohlson
Chief Judge

John E. Sparks, Jr.
Judge

Gregory E. Maggs
Judge

Liam P. Hardy
Judge

APPENDIX A

United States v. Begani, 81 M.J. 273 [C.A.A.F. 2021]. The test for personal jurisdiction is one of status, namely, whether the accused in a court-martial proceeding is an individual who can be regarded as falling within the term “land and naval forces.” A member of the Fleet Reserve who receives retainer pay, is subject to recall, and is required to maintain military readiness remains a member of the land and naval forces and is thus subject to court-martial jurisdiction.

United States v. Brown, 81 M.J. 1 [C.A.A.F. 2021]. The All Writs Act requires two determinations: [1] whether the requested writ is in aid of the court’s existing jurisdiction; and [2] whether the requested writ is necessary or appropriate. The power to issue writs extends to the potential jurisdiction of an appellate court where an appeal is not then pending but may be later perfected. In this case, the CCA had statutory jurisdiction to entertain the writ petition, even though appellee’s sentence was not reviewable under Article 66, UCMJ. For courts-martial referred on or after January 1, 2019, pursuant to Article 66(b)(1)(D), an accused is entitled to have the Courts of Criminal Appeals review his or her case with respect to matters of law upon application following review and a decision from The Judge Advocate General under Article 69(d)(1)(B). Referral of a case by TJAG to a CCA is no longer required to vest jurisdiction in that court.

United States v. Willman, 81 M.J. 355 [C.A.A.F. 2021]. Consistent with the plain language of Article 66(c), UCMJ, Courts of Criminal Appeals may only act “on the basis of the entire record” when performing sentence appropriateness review. While CCAs may consider evidence entirely outside the record when considering Eighth Amendment and Article 55, UCMJ, claims, these courts may not consider matters that are not a part of the record when performing a sentence appropriateness review.

United States v. McPherson, 81 M.J. 372 [C.A.A.F. 2021]. Indecent acts with a child did not fall within the definition of “child abuse offense” in the 2016 version of Article 43(b)(2)(B), UCMJ, where the statute uses the words “constitutes...any offense in violation of” the articles in the enumerated list of offenses (to include Article 120b, UCMJ) instead of the words “would constitute” a violation of the enumerated articles. In this case, the alleged indecent acts “would constitute” offenses under Article 120b, UCMJ, if that article had existed in 2004 when the indecent acts allegedly occurred, but such was not the case and appellant could not be charged with violating that article.

Having been charged under Article 134, UCMJ, the offenses alleged did not constitute a “child abuse offense” within Congress’s definition in the 2016 version of Article 43(b)(2)(B), UCMJ. Thus, the five-year statute of limitation for indecent acts that existed in 2004 was applicable and no statute could revive an expired period of limitations without violating the Ex Post Facto Clause.

**USCAAF STATISTICAL REPORT
OCTOBER 2020 TERM OF COURT**

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2020

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

CUMULATIVE FILINGS

Master Docket	58
Petition Docket	345
Miscellaneous Docket	<u>21</u>
TOTAL	424

CUMULATIVE DISPOSITIONS

Master Docket	59
Petition Docket	350
Miscellaneous Docket	<u>24</u>
TOTAL	433

CUMULATIVE PENDING OCTOBER 1, 2021

Master Docket	24
Petition Docket	49
Miscellaneous Docket	<u>1</u>
TOTAL	74

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	35	1	25	61
Petition Docket	0	0	350	350
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>24</u>	<u>24</u>
TOTAL	35	1	399	435

MASTER DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	25
FILINGS	
Petition granted from the Petition Docket	52
Certificates filed	4
Mandatory appeals filed	2
Remanded/Returned cases	<u>0</u>
TOTAL	58
DISPOSITIONS	
Affirmed	42
Reversed in whole or in part	12
Certificates dismissed	0
Other	<u>5</u>
TOTAL	59
PENDING AT END OF TERM	
Awaiting briefs	7
Awaiting oral argument	12
Awaiting lead case decision (trailer cases)	0
Awaiting final action	<u>5</u>
TOTAL	24

PETITION DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	54
FILINGS	
Petitions for grant of review filed	344
Petitions for new trial filed	1
Returned cases	<u>0</u>
TOTAL	345
DISPOSITIONS	
Petitions for grant of review denied	295
Petitions for grant of review granted	52
Petitions for grant of review withdrawn	1

Petitions for grant of review dismissed	<u>2</u>
TOTAL	350

PENDING AT END OF TERM

Awaiting pleadings	12
Awaiting staff review	30
Awaiting final action	<u>7</u>
TOTAL	49

MISCELLANEOUS DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	4
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FILINGS

Writ appeals sought	10
Writs of habeas corpus sought	4
Writs of coram nobis sought	4
Other extraordinary relief sought	<u>3</u>
TOTAL	21

DISPOSITIONS

Petitions or appeals denied	19
Petitions or appeals granted	0
Petitions or appeals dismissed	5
Petitions or appeals withdrawn	<u>0</u>
TOTAL	24

PENDING AT END OF TERM

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

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin pending	1
Filed	<u>15</u>
TOTAL	16

DISPOSITIONS

Denied	8
Granted	4
Dismissed	<u>0</u>
TOTAL	12

End Pending 4

MOTIONS

ALL MOTIONS

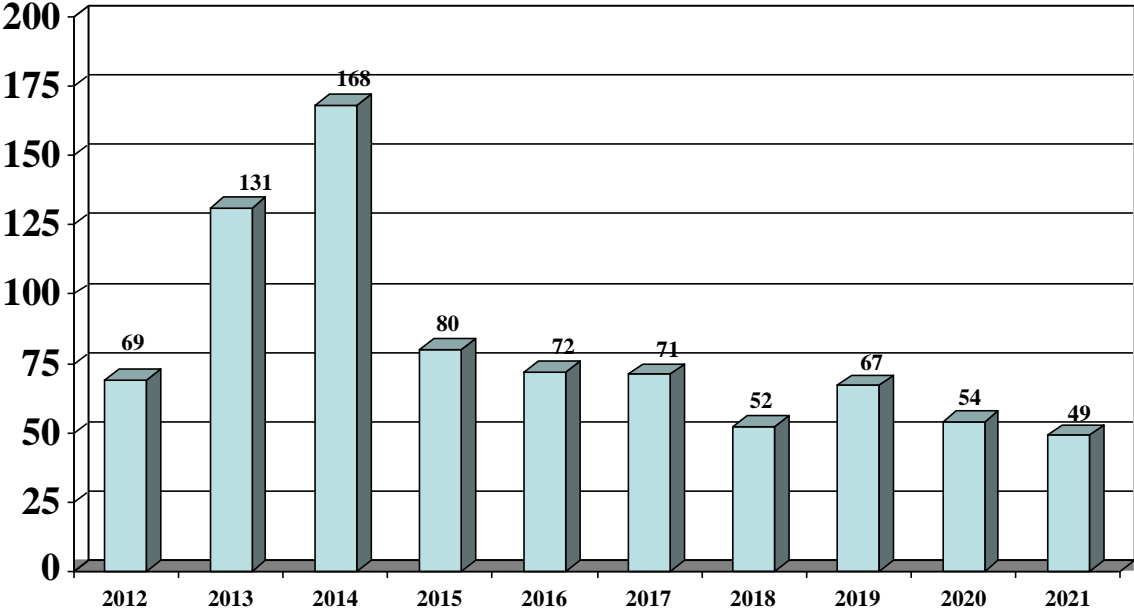
Begin pending	10
Filed	<u>376</u>
TOTAL	386

DISPOSITIONS

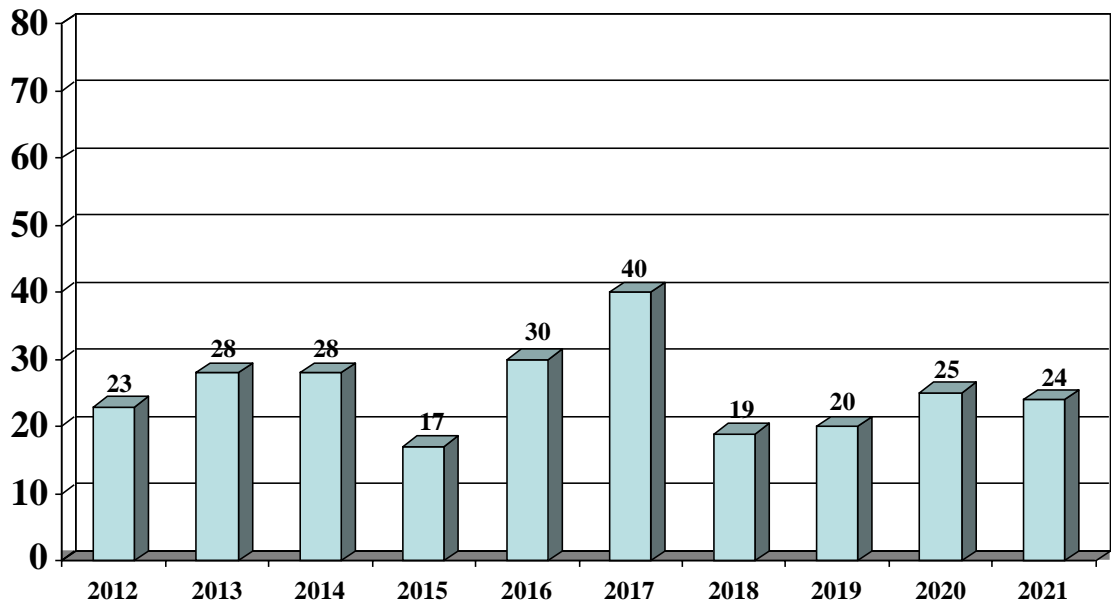
Granted	348
Denied	33
Dismissed	<u>0</u>
TOTAL	381

End Pending 4

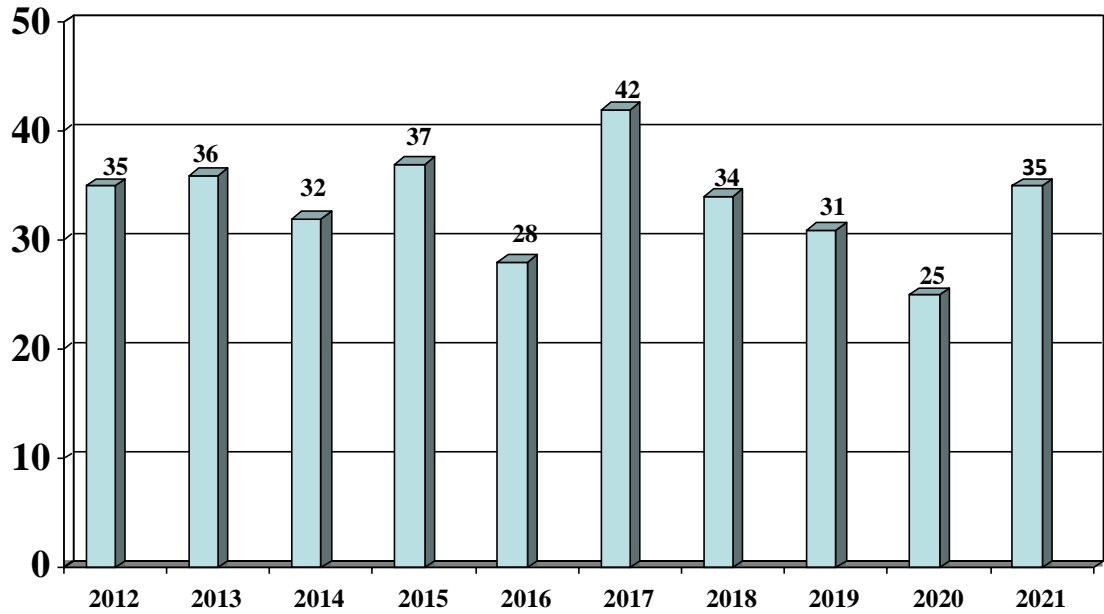
Petitions Pending at End of Term



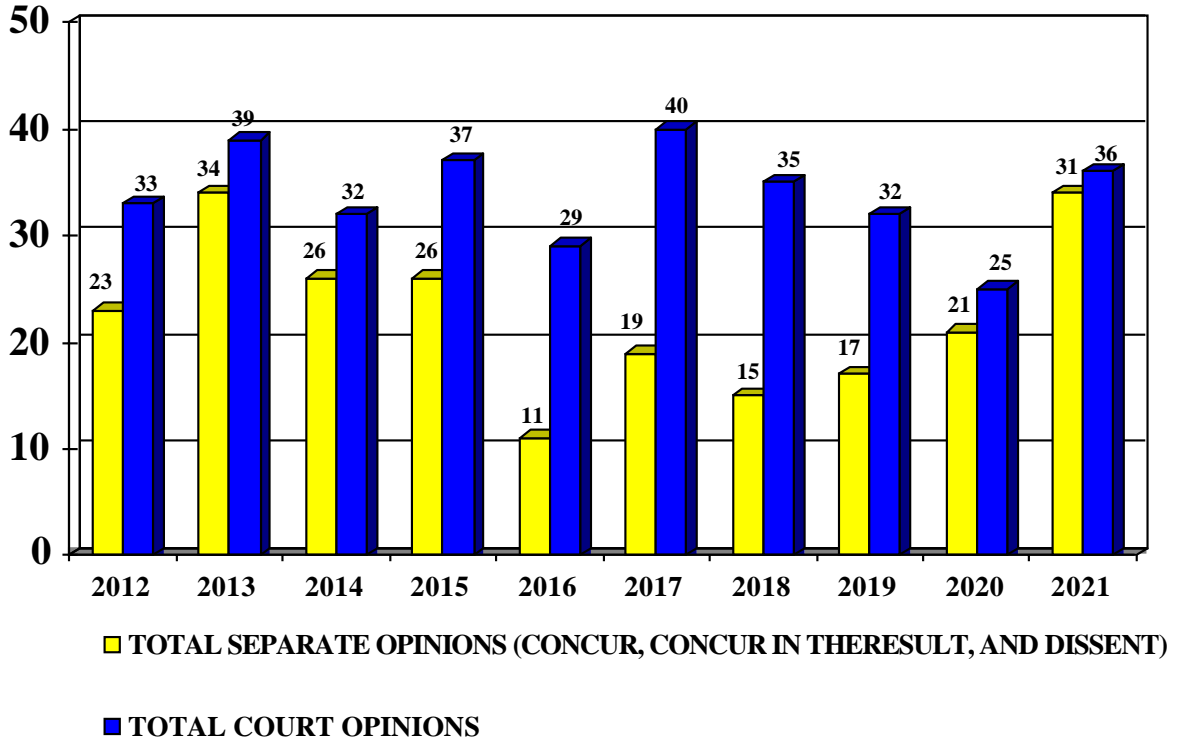
Master Docket Cases Pending at End of Term



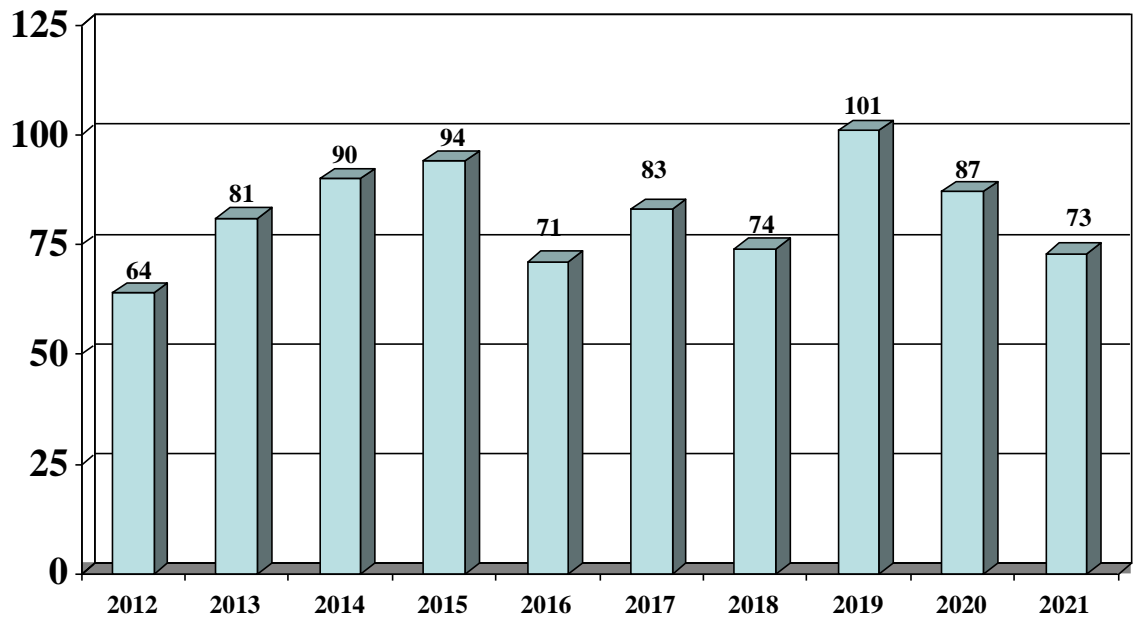
Oral Arguments Per Year



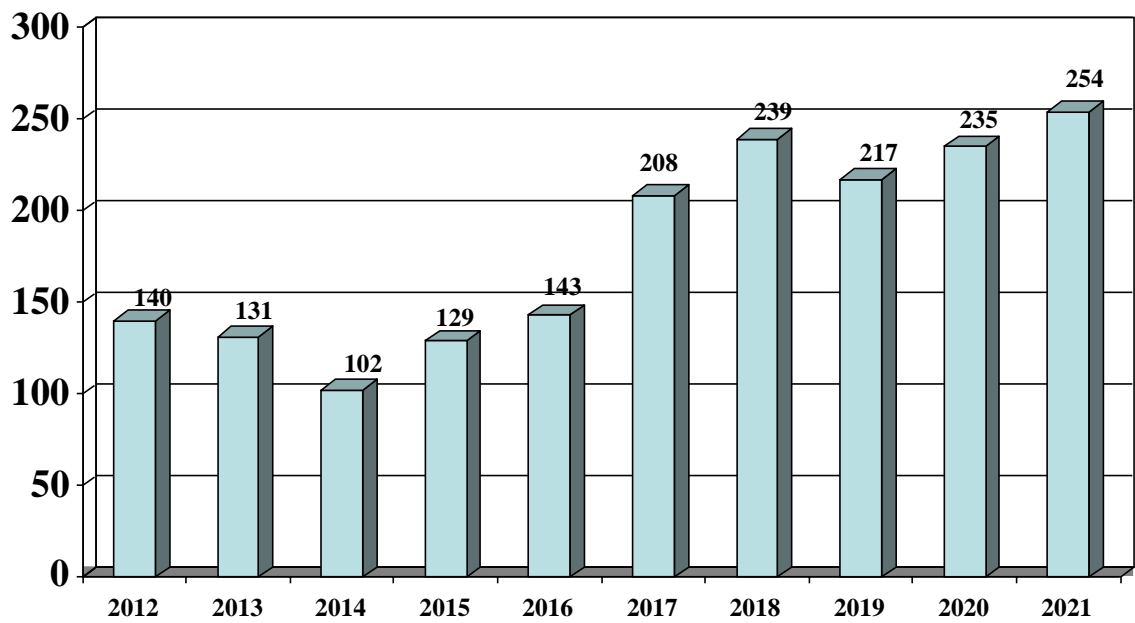
Total Opinions Per Year



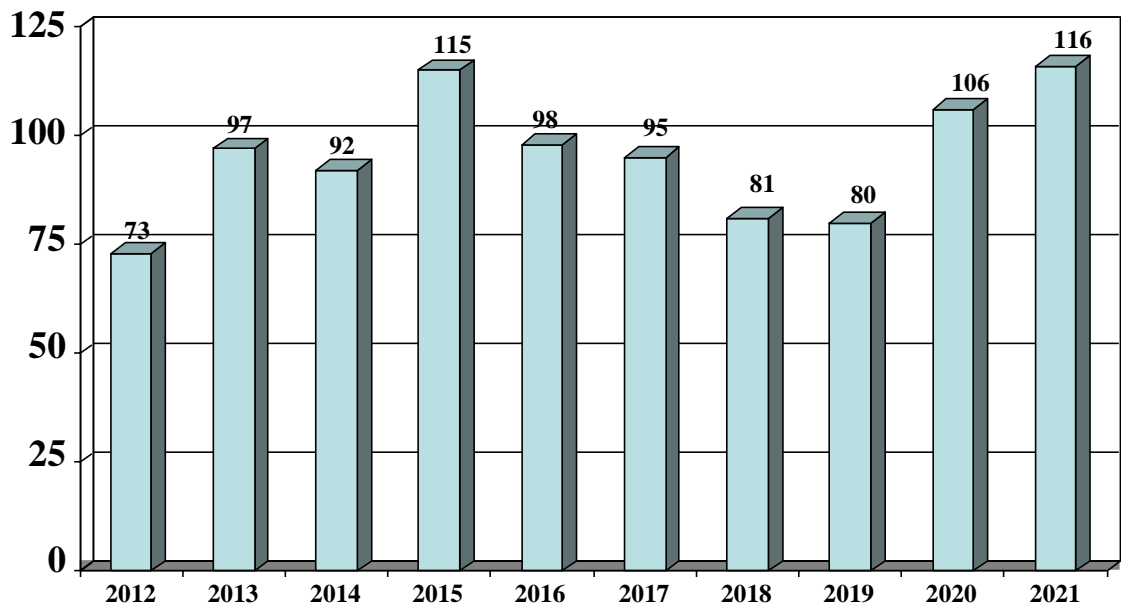
Days from Petition Filing to Grant



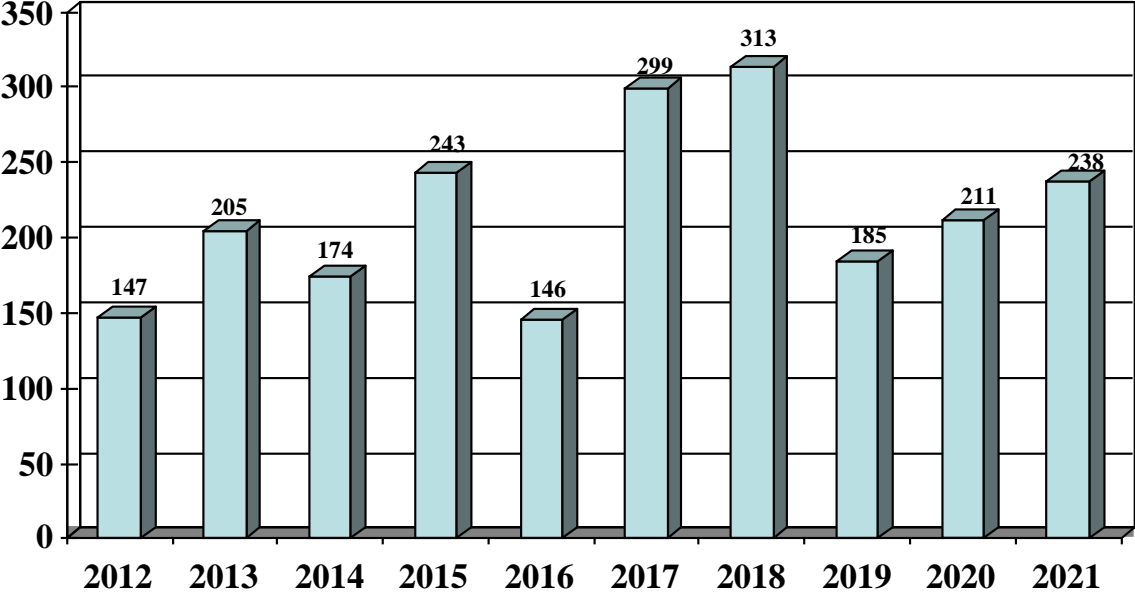
Days from Petition Filing to Oral Argument



Days from Oral Argument to Final Decision



Days from Petition Filing to Final Decision



□ MASTER DOCKET (GRANTED/CERTIFIED/CAPITAL CASES)

Total Petitions Filed Per Year

