

ANALYSIS

Department of Justice Nonunanimous Jury Conviction Caseloads

Analyst: Steve Robbins

Request: Acknowledge the receipt of a report on Department of Justice caseloads and costs related to nonunanimous jury convictions in Oregon.

Analysis: The Department of Justice (DOJ) provided its written report in response to the following budget note included in the budget report for SB 5514 (2023):

The Department of Justice is instructed to report to the 2025 Legislature on the department's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in Ramos v. Louisiana (2020) and the Oregon Supreme Court decision in Watkins v. Ackley (2022).

The report begins with background information on nonunanimous jury convictions in Oregon, and the impact of U.S. Supreme Court and Oregon Supreme Court rulings in 2020 and 2022, respectively, that led to more than one thousand individuals who had been convicted of crimes in Oregon challenging the validity of those convictions. The two divisions within DOJ primarily tasked with addressing these challenges were the Trial Division and the Appellate Division.

Trial Division

The Trial Division handles civil proceedings for post-conviction relief (PCR) - or those cases seeking to overturn a conviction after the criminal proceedings and direct appeals are complete. That equates to at least 850 petitions filed by individuals serving prison sentences in the trial court. Claims peaked in 2020 at 315 and have fallen to 48 in 2024. The work to resolve those filed cases is then slightly delayed, peaking in 2023 with 324 resolutions and is still over 250 in 2024. As of the writing of the report, approximately 120 cases remain pending, and the Department estimates that it will take another year or two to get them resolved.

Appellate Division

Cases related to direct criminal appeals and post-conviction appeals are handled by the Appellate Division. Due to the timing of the Ramos v. Louisiana Supreme Court ruling, over 700 individuals raised an issue with their case via direct appeals prior to conviction. DOJ reports that they feel the Appellate Division's work with direct appeals is complete.

For PCR appeals, DOJ has received approximately 200 claims based on the Supreme Court ruling, and around 60 of those are currently pending, indicating that work will continue for several years. A high point of 96 PCR appeals were resolved in 2023.

Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.

Department of Justice Chase

Request: Report on the trial and appellate caseloads and costs related to nonunanimous jury convictions by the Department of Justice.

Recommendation: Acknowledge receipt of report.

Discussion: Pursuant to a budget note included in the budget report for Senate Bill 5514 (2023), the Department of Justice (DOJ) was instructed to report to the 2025 Legislature the trial and appellate caseloads and costs related to nonunanimous jury convictions under the U.S. Supreme Court decision in *Ramos v. Louisiana* (2020) and the Oregon Supreme Court decision in *Watkins v. Ackley* (2022).

In *Ramos v. Louisiana* (2020), the U.S. Supreme Court ruled that the Sixth Amendment requires a unanimous jury verdict in criminal proceedings – this overruled the Oregon precedent, which allowed for nonunanimous jury convictions. Two years later, in *Watkins v. Ackley*, the Oregon Supreme Court ruled that the *Ramos* decision should apply retroactively to cases that had already been fully adjudicated. Since 2020, more than a thousand individuals challenged the validity of their convictions because of the *Ramos* ruling.

DOJ's Trial Division received 850 *Ramos*-related post-conviction petition filings, of which approximately 120 remain pending before the post-conviction trial court. The Trial Division projects that most of the *Ramos* filings have been received, however, due to the Court of Appeals decision in *Hill v. Miller* (2024), which effectively eliminated the statute of limitations for post-conviction petitions, it is possible litigation on nonunanimous jury verdict claims will continue. The Appellate Division handles direct criminal appeals and postconviction appeals affected by *Ramos* and *Watkins*. Between 2020 and 2024, more than 700 direct criminal appeals were filed in which the criminal defendant raised an issue related to *Ramos*. Almost 500 of those cases were reversed at least in part and sent back for new trials; in the other cases, the courts concluded that no relief was warranted, generally because there was no indication that the jury had been nonunanimous. The Appellate Division's work on the direct criminal appeals is likely complete while post-conviction appeal petitions handled by either the Trial Division (for individuals in prison) or district attorneys (for individuals out of custody) are ongoing. As of January 2025, the Appellate Division received approximately 200 appeals raising claims based on *Ramos* and *Watkins*. About 60 of those appeals are currently pending. It may be several years before all the appeals are fully resolved.

It is difficult to estimate the cost of litigating the *Ramos* and *Watkins* issues since many of the cases involve other legal claims. DOJ attorneys track billable hours by case (or category of cases) and not by legal claim, thus the department is unable to determine how much time was spent on nonunanimous verdict related issues.

While progress has been made in addressing cases affected by *Ramos* and *Watkins*, the work is expected to continue through the 2025-27 biennium. The Trial Division anticipates resolving most, if not all, of the 120 remaining cases by June 30, 2027, and

the Appellate Division expects to resolve approximately 60 cases per year for the next two to three years. These timelines are subject to change in the event additional petitions are filed arguing that the statute of limitations has not expired.



DEPARTMENT OF JUSTICE

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February 14, 2025

Senator Kate Lieber, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs Lieber and Sanchez:

Nature of the Request

The Oregon Department of Justice requests that the committee acknowledge receipt of this written report on DOJ's Trial and Appellate divisions' caseloads and costs.

Agency Action

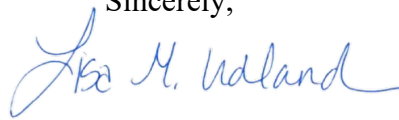
The Oregon Department of Justice is responding to its requirement to report to the 2025 Legislature on the department's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in *Ramos v. Louisiana* (2020) and the Oregon Supreme Court decision in *Watkins v. Ackley* (2022).

Senator Kate Lieber, Co-Chair
Representative Tawna Sanchez, Co-Chair
February 14, 2025
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Action Requested

The Oregon Department of Justice requests that the Joint Committee on Ways and Means acknowledge receipt of the report.

Sincerely,



LISA M. UDLAND
Deputy Attorney General

Attachment

cc: Dan Rayfield, Attorney General
Ben Gutman, Appellate Division
Sheila Potter, Trial Division
Sarah Roth, Administrative Services Division
Steve Robbins, LFO
Stacey Chase, DAS-CFO

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Department of Justice Trial and Appellate Divisions

Report on Caseloads Related to Nonunanimous Jury Convictions

Background

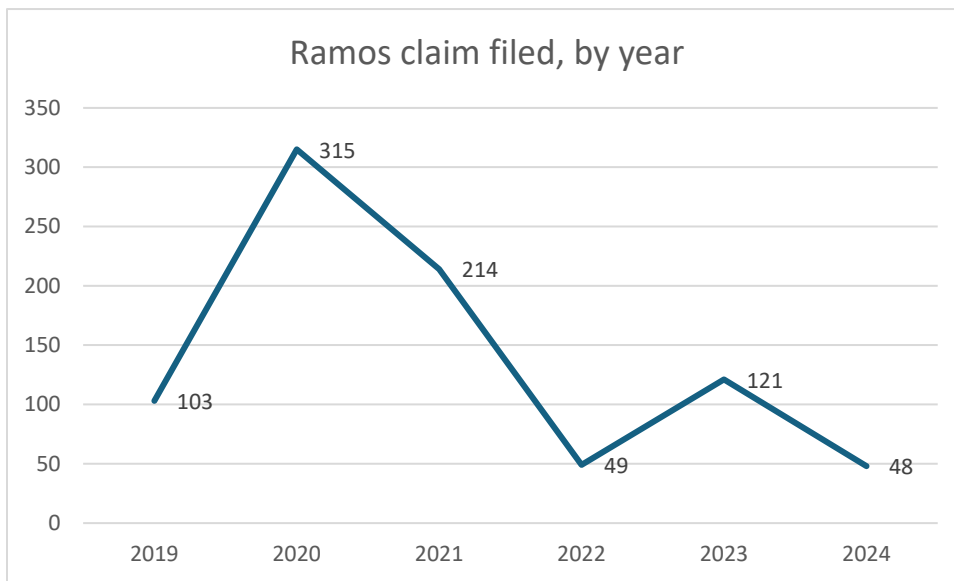
In the 1930s, Oregon voters approved a constitutional amendment providing that “ten [out of twelve] members of the jury may render a verdict of guilty or not guilty.” That made Oregon the only state other than Louisiana that allowed nonunanimous convictions in criminal cases. The U.S. Supreme Court upheld Oregon’s law against federal constitutional challenge in 1972, but then in 2020, in *Ramos v. Louisiana*, it overruled that precedent and held that the Sixth Amendment—which guarantees criminal defendants the right to a jury trial—requires that the jury be unanimous. Two years later, in *Watkins v. Ackley*, the Oregon Supreme Court decided that the *Ramos* ruling should apply retroactively to cases that had already been fully adjudicated before that ruling, because a nonunanimous verdict “violates our sense of what is fundamentally fair in a criminal proceeding.”

In the aftermath of *Ramos* and *Watkins*, more than a thousand individuals who had been convicted of crimes challenged the validity of those convictions. Some of them could show that they had been convicted by a nonunanimous jury; others involved cases where the jury had not been polled, or did not involve jury trials at all, or raised other issues about the appropriate legal remedy. The Department of Justice was responsible for responding to many of those challenges and for either defending the conviction in court or conceding relief as appropriate.

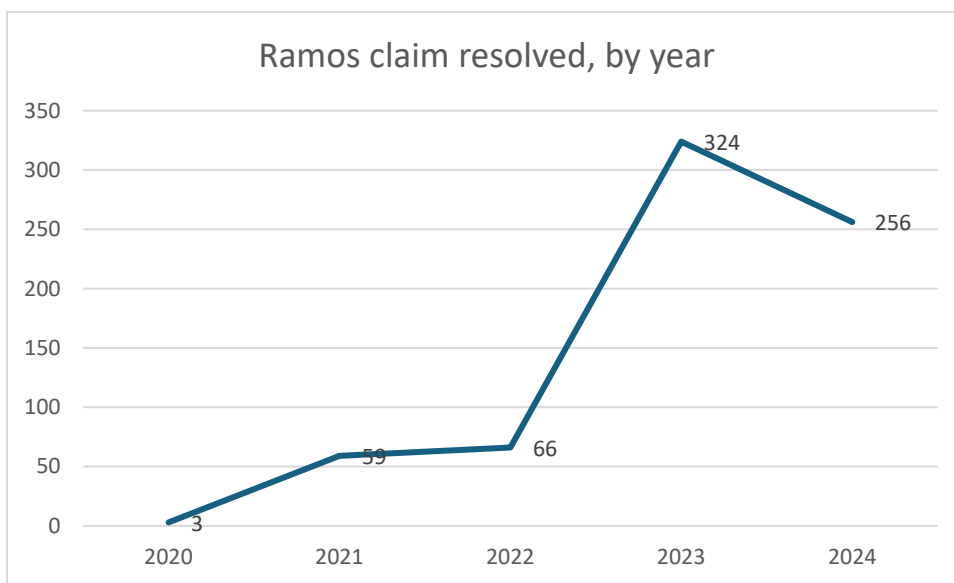
Trial Division

Some of the challenges based on *Ramos* and *Watkins* have come through petitions for post-conviction relief. Post-conviction petitions are civil proceedings that seek to overturn a criminal conviction or sentence after the underlying criminal proceedings, including direct appeals, are complete. The claims in a post-conviction petition typically allege ineffective assistance of defense counsel, prosecutorial misconduct, or an invalid guilty plea—claims that ordinarily cannot be raised in a direct appeal. A post-conviction petition also can be used to challenge a criminal conviction affected by the decisions in *Ramos* and *Watkins* when the underlying conviction is already final. That means that those petitions typically involve older convictions that went to trial well before the Supreme Court decided *Ramos*.

The Trial Division handles the post-conviction petitions filed by individuals serving prison sentences in the trial court. Since the decision in *Ramos*, the Trial Division has received at least 850 cases that include an allegation that a conviction should be vacated because of *Ramos* and *Watkins*. The Trial Division saw significant *Ramos*-related filings in 2020 and 2021, with smaller numbers in the years to follow.

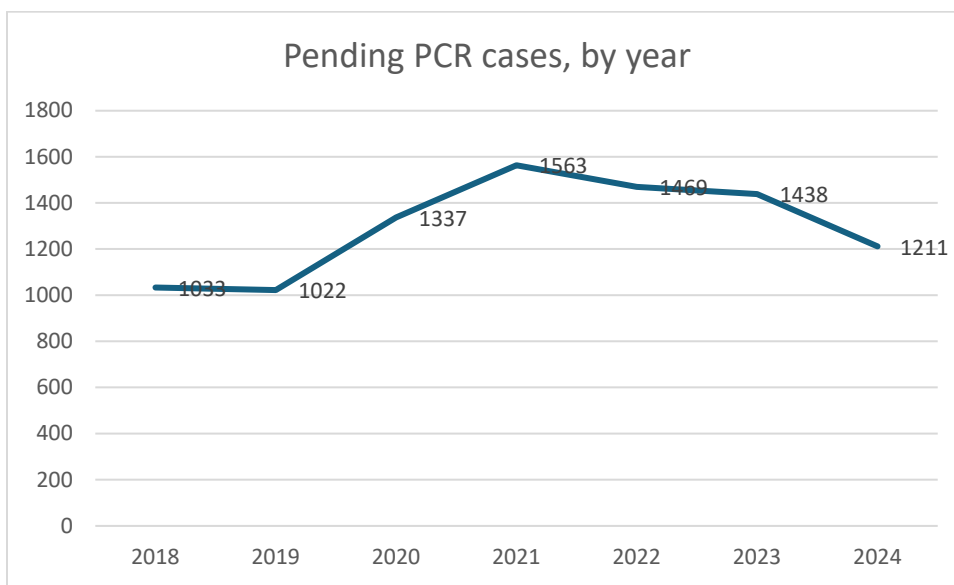


In contrast, the work of resolving the *Ramos*-related filings occurred in the years of 2023 and 2024, following the Oregon Supreme Court's decision in *Watkins*.



Of those 850 cases, about 120 cases remain pending before the post-conviction trial court. A small number of those remaining cases will be resolved either through settlement or by returning the person back to the criminal court for retrial or resentencing. A larger number of those cases will continue to trial before the post-conviction court because they involve matters that we believe are not affected by a nonunanimous jury verdict, such as that the conviction was the result of a guilty plea or the jury was not polled. Those 120 cases will likely take at least a year or two to fully resolve in the post-conviction trial court, as some matters are newly filed or involve other non-*Ramos* claims, and the litigants are still awaiting the appointment of counsel or the filing of a formal petition.

The continuing impact from the nonunanimous jury verdict cases that the Trial Division has received to-date is reflected in pending case numbers that have not yet returned to pre-*Ramos* levels for post-conviction case filings, as set forth in the chart below.



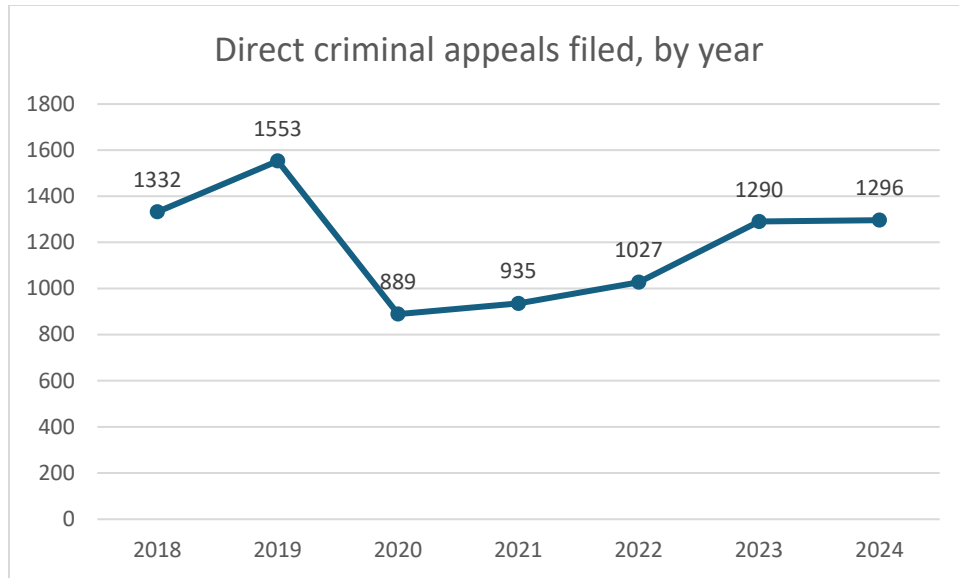
The Trial Division projects that we have received the majority of *Ramos* and *Watkins* filings, as the statute of limitations under SB 321 directed a petition could be filed as a result of a nonunanimous jury verdict before December 30, 2024. However, a 2024 Court of Appeals decision, *Hill v. Miller*, effectively eliminated the statute of limitations for post-conviction petitions in many cases, and it is possible we will see continued litigation on nonunanimous jury verdict claims as a result.

Appellate Division

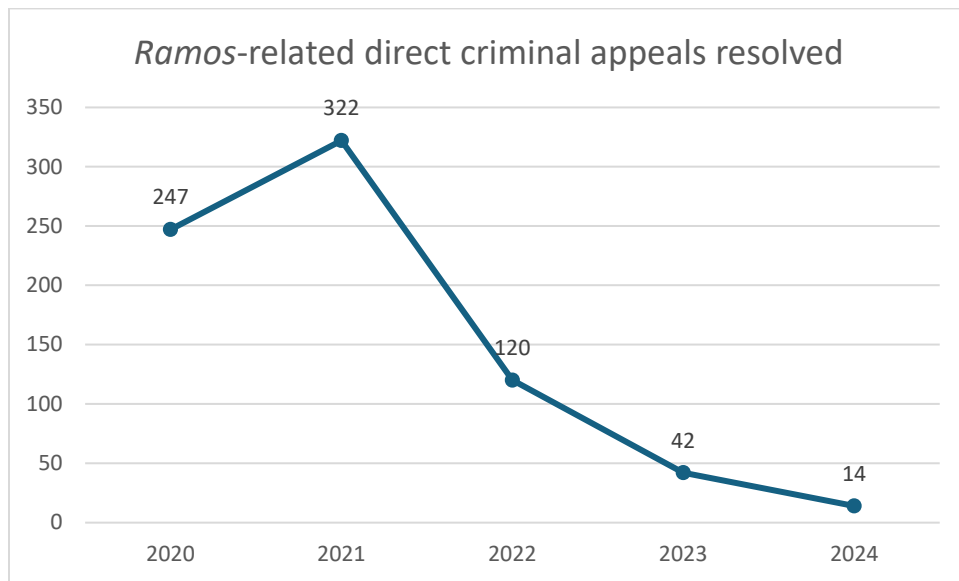
The Appellate Division handles two main categories of cases that were directly affected by *Ramos* and *Watkins*: direct criminal appeals and post-conviction appeals.

The direct criminal appeals are largely over at this point. These are appeals of cases that went to trial before the *Ramos* decision in 2020, because as soon as that decision was issued trial courts stopped allowing nonunanimous convictions. Between 2020 and 2024, more than 700 direct criminal appeals were filed in which the criminal defendant raised an issue related to *Ramos*. Almost 500 of those cases were reversed at least in part and sent back for new trials; in the other cases, the courts concluded that no relief was warranted, generally because there was no indication that the jury had been nonunanimous. Although it is theoretically possible that a pre-2020 case could still turn up on direct appeal, it is likely that no or almost no such cases exist at this point. The Appellate Division's work on the direct appeals is thus likely complete.

The following charts reflect how the direct criminal appeals affected the Appellate Division's workload over time. The first chart shows the overall number of direct criminal appeals filed by year, including both *Ramos*-related appeals and all other appeals. Many of the *Ramos*-related arguments started being made even before the U.S. Supreme Court's 2020 decision, as it became clear that the Court might change the law on the issue. Overall numbers dropped during the early pandemic days when trial courts were holding fewer trials but have steadily recovered since. Because most of these appeals take several years to reach final resolution, the overall workload has remained more constant.



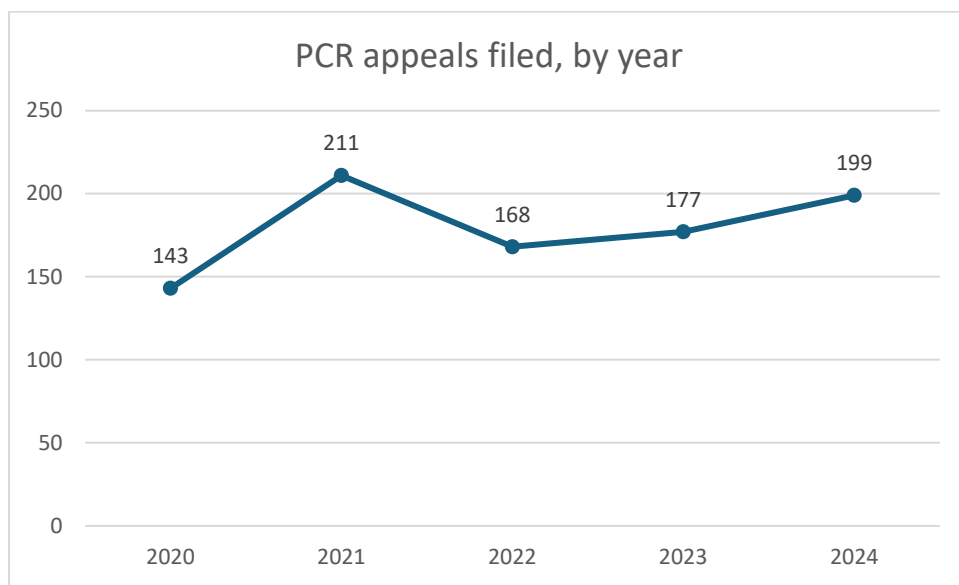
The second chart focuses just on *Ramos*-related appeals and shows the number of those appeals finally resolved in each year since 2020. It reflects that most of the direct criminal appeals were resolved by 2022 and that by 2024 the remaining appeals had slowed to a trickle.

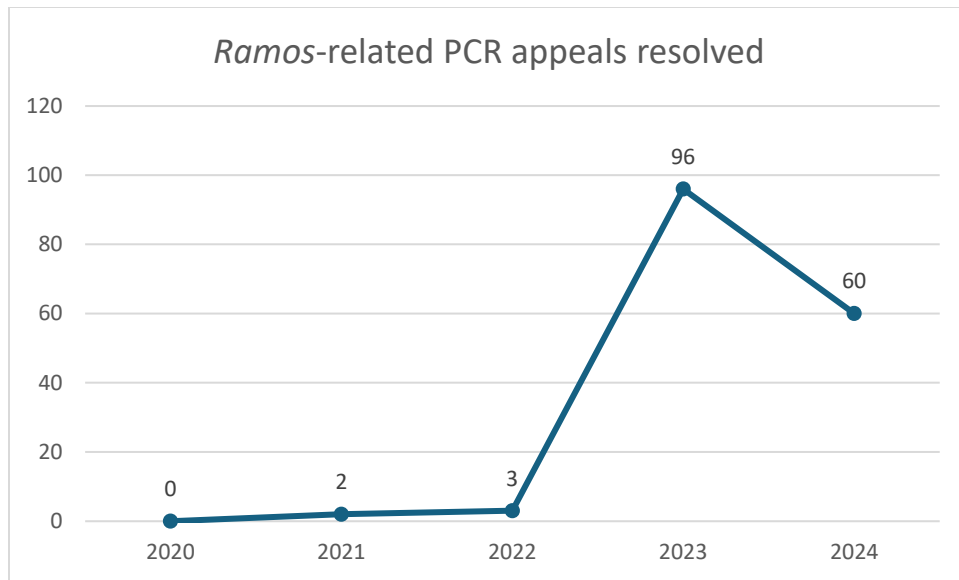


By contrast, the post-conviction appeals are ongoing. These are appeals of post-convictions petitions handled either by the Trial Division (for individuals in prison) or district attorneys (for individuals out of custody). As of January 2025, the Appellate Division has received about 200 appeals raising claims based on *Ramos* and *Watkins*. About 60 of those appeals are currently pending. Those numbers include only appeals where the opening brief has been filed, which is

typically six to twelve months after the appeal is filed, because the opening brief identifies the legal challenges that the person is raising. The future workload probably also includes several dozen more cases where an appeal has been filed but the opening brief has not yet been filed, plus the cases that are still pending at the trial level or that have not yet been brought. Note that the Appellate Division handles post-conviction appeals not only from the Trial Division but also from district attorneys' offices, who handle the trial-level proceedings when the individual is out of custody. At our current rate, even assuming that no further proceedings are filed beyond the ones we know about, it will probably be several years before all of those appeals are fully resolved.

Again, the following charts illustrate the workload: first the overall number of post-conviction appeals filed, which increased in 2021 after *Ramos* and continues to be high by historical standards, and second the number of those appeals finally resolved, which picked up only in 2023 after *Watkins*.





For all of these cases, it is difficult to give a meaningful estimate of the cost of litigating the *Ramos/Watkins* issues in particular. Many of the cases also involve other legal claims, and the AAGs who handle the cases do not segregate their billing by particular claim. Rather, as is consistent with Department of Justice practice generally, AAGs bill their time to a single case or category of cases, regardless what particular issue they are addressing in that case. For that reason, there is no accurate way to determine after the fact how much time we spent on nonunanimity-related issues in particular.

Conclusion

Enormous progress has been made in addressing the cases affected by *Ramos* and *Watkins*, but the work is likely to continue at least through the 2025-2027 biennium. If no additional post-conviction petitions are filed, the Trial Division anticipates resolving most if not all of the 120 remaining cases by the end of the 2025-2027 biennium. But it is possible that the Trial Division will receive additional petitions arguing that the statute of limitations has not expired. The Appellate Division will likely continue to handle a steady stream of post-conviction appeals that will diminish over time but likely will not resolve fully until several years after the last trial-level case is resolved. In the shorter term, it is reasonable to expect that the Appellate Division will resolve about 60 cases per year for the next two to three years.