



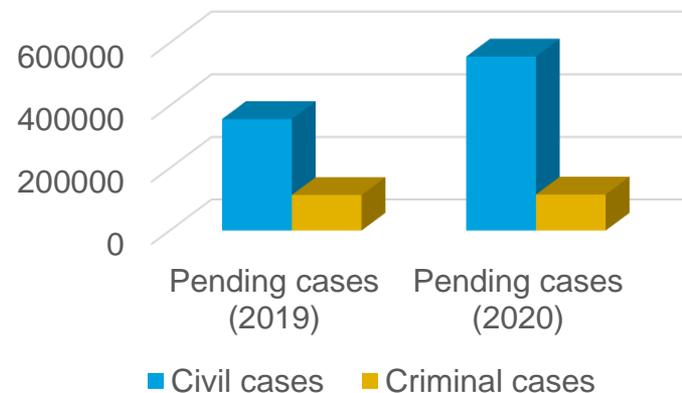
# Effect of the Pandemic on Procedures in U.S. Courts

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# Delay of Cases During Pandemic

- Delays due to pandemic have disproportionately affected civil cases
  - Criminal cases must take priority: constitutional right to a speedy trial in criminal cases, but no such right for civil cases
- Comparing pending federal cases as of September 30, 2019, to those as of September 30, 2020:
  - 1.2% increase in pending criminal cases
  - 55.8% increase in pending civil cases



# Delay in Civil Jury Trials

- Right to jury trial applies to criminal and civil cases
- Public health risk to empanel an in-court jury
  - Example: in November, a civil case in the Eastern District of Texas was initially postponed when a juror tested positive for COVID-19 – the judge later declared a mistrial when 15 people involved in the case tested positive for COVID-19
- Remote jury trials are very rare

# Court Proceedings Not Uniform During Pandemic

- Decisions relating to federal courts' operation are made at the circuit and district level
- Within a court, individual judges usually have some discretion to decide how to conduct proceedings

# Remote Court Proceedings

- Court can choose a virtual conference platform to be used:
  - *E.g.*, WebEx, Microsoft Teams, Zoom
- Fully remote proceedings do not require any participant to physically be in court, but judges usually are

# In-Court Proceedings

- For in-court proceedings, social distancing and masks are usually required
- Some courts conducting in-court proceedings may allow participants to attend telephonically, such as where the hearing does not require visual aids

# The Federal Circuit

- Oral Arguments
  - All oral arguments are now telephonic (no video)

# Eastern District of Texas

- Chief Judge Gilstrap
  - Had been conducting in-court trials during the pandemic but recently postponed all in-court trials until at least March 1, 2021, in part because of a COVID-19 outbreak in the trial of another judge in this district
  - Other hearings are conducted in court
    - Recently, a joint motion to conduct the claim construction hearing remotely was denied

# Western District of Texas

- Judge Albright
  - Had been conducting in-court trials during the pandemic but recently granted a continuance of a trial in a patent case, citing the increase in COVID-19 cases in Texas
  - Directs parties to confer about the necessity of holding a hearing remotely

While Judge Albright will hold in-court claim construction hearings by default, he has conducted at least three claim construction hearings via Zoom

# The Future

- Continued use of remote technology after the pandemic ends will not be universal
  - Some judges, such as Judge Barbara Lynn in the Northern District of Texas, voiced enthusiasm for remote technology and foresees continued use
  - Other judges, such as Chief Judge Gilstrap in the Eastern District of Texas, are not interested in continuing use of remote technology
- Many courts are likely to continue use of remote hearings in some fashion
- Remote jury trials are unlikely after the pandemic ends

# THANK YOU!



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