

COVID-19 and the U.S. District Courts: An Empirical Investigation

Roy Germano, Timothy Lau, and Kristin Garri

October 2022

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

This report was produced at U.S. taxpayer expense.

Abstract

This report uses caseload data to examine case-processing trends in the United States district courts during the COVID-19 pandemic. Two key conclusions emerge from our analysis. First, the data suggest that COVID-19 disrupted and delayed federal court operations in ways that could still be felt two years after the onset of the pandemic. Specifically, the median criminal defendant and the median civil case moved through the federal courts 44% and 7% slower during the second year of the pandemic compared to recent prepandemic years. Also, courts processed 27% fewer criminal defendants and 6% fewer civil cases during the first two years of the pandemic compared to the two-year period before the pandemic.

The second key conclusion relates to backlog. As courts limited in-person activities and suspended trials at the onset the pandemic, it seemed likely that pending cases would accumulate and exacerbate backlogs on the federal docket. But the data show that this is not what happened. By the end of the second year of the pandemic, there were fewer pending criminal defendants and fewer pending civil cases on the federal docket than would have been expected based on prepandemic trends. An important reason is that fewer new cases came onto the federal docket during the pandemic. Compared to the two years prior to the pandemic, 29% fewer criminal defendants and 6% fewer civil cases were filed in the U.S. district courts during the first two years of the pandemic.

Each court, however, experienced the pandemic differently. While backlog was lower than expected in the aggregate, about two-fifths of all districts emerged from the second year of the pandemic with more pending criminal defendants and pending civil cases on their dockets than expected based on prepandemic growth trends. In some of these districts, the growth in backlog was substantial.

In sum, the pandemic appears to have affected the federal docket in two divergent ways. On one hand, pandemic-related disruptions are associated with slower case processing, particularly in criminal proceedings. With respect to backlog, however, the impact of these disruptions appears to have been offset in the aggregate by the fact that fewer cases were being filed in the federal courts during the pandemic, although experiences varied by district.

Contents

ABSTRACT	I
CONTENTS	II
INTRODUCTION	1
COVID-19 AND THE RESPONSE OF THE FEDERAL JUDICIARY	3
CASE PROCESSING IN THE FEDERAL COURTS DURING THE COVID-19 PANDEMIC	5
A. Data.....	6
B. Jury Trials	6
C. Case-Processing Time	12
D. Terminations	15
EVALUATING CONCERNS ABOUT BACKLOG	18
E. Clearance Rates and Filing Trends	19
F. Evaluating Pandemic Backlog in the Context of Prepandemic Trends	22
CONCLUSION	26
APPENDIX: PROCEDURES FOR COUNTING CIVIL CASES	27

Introduction

The COVID-19 pandemic had a profound impact on the operations of the United States district courts. In the days and weeks after the first cases of COVID-19 were confirmed in the U.S., the federal courts issued an array of new policies and protocols to ensure the health and safety of those who interact with the judiciary.¹ Many of these new protocols placed restrictions on who could enter courthouses and required the suspension or delay of essential court activities, such as jury trials, grand jury proceedings, and in-person hearings. Over the weeks that followed, courts moved many activities online and, as the deadly first wave of the pandemic subsided, resumed some in-person activities with guidance from state and local health officials. Through subsequent waves of the pandemic, however, COVID-19 continued to disrupt the normal course of judicial business, forcing courts to again suspend trials and other in-person activities, extend deadlines, and adapt and operate in new ways.

More than two years after the pandemic began, it is important to assess how these disruptions and adaptations impacted and continue to impact the federal courts. Prior work has detailed the federal courts' varied responses to the pandemic and readiness to adopt virtual technologies.² Other studies have collected survey data and interview data to understand the experiences and perspectives of federal judges during the pandemic.³ This report adds to our growing knowledge of the pandemic's impact on the federal courts by analyzing new caseload data that covers the first two years of the pandemic. Using the Federal Judicial Center's (FJC) Integrated Data Base (IDB), we analyze the number of trials courts held, the rate at which courts processed cases, and the number of cases they closed. We also assess the extent to which the U.S. district courts cleared their dockets during the pandemic and evaluate concerns that the pandemic exacerbated case backlogs.

Two primary conclusions emerge from our analysis. First, the data suggest that COVID-19 disrupted and delayed federal court operations in ways that could still be felt two years after the onset of the pandemic. During the first year of the pandemic, for example, U.S. district courts had tried 52% fewer criminal defendants and 80% fewer civil cases by jury than they had before the pandemic. Relatedly, criminal and civil proceedings moved significantly slower during the first two years of the pandemic than in recent prepandemic years. By the end of the second year of the pandemic, median time from filing to termination in the U.S. district courts was 44% longer in criminal proceedings and 7% longer in civil proceedings compared to median processing times before the pandemic. Courts also processed fewer cases. Specifically, 27% fewer criminal

1. Court Orders and Updates During the COVID-19 Pandemic, <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic>.

2. Helen Hershkoff & Arthur Miller, *Courts and Civil Justice in the Time of COVID: Emerging Trends and Questions to Ask*, 23 N.Y.U. J. Legis. & Pub. Pol'y 321 (2021).

3. Carly Giffin & Rebecca Eyre, Federal Judicial Center, Results of a Survey of U.S. District and Magistrate Judges: Use of Virtual Technology to Hold Court Proceedings (2022), <https://www.fjc.gov/content/370037/results-survey-district-magistrate-judges-virtual-technology-court-proceeding>; Leeann Bass, Federal Judicial Center, COVID-19 Focus Groups Summary: Themes and Highlights (2021), https://www.fjc.gov/sites/default/files/materials/06/COVID-19_Focus_Groups_Summary_2021_Bass.pdf.

defendants and 6% fewer civil cases were terminated during the first two years of the pandemic compared to the two-year period before the pandemic.

The second key conclusion relates to backlog. As courts closed their doors and suspended trials in the early days of the pandemic, it appeared that pending cases would quickly accumulate and exacerbate backlogs on the federal docket.⁴ Our finding that the federal courts processed fewer cases during the pandemic would seem to support this prediction. But caseload data show that this is not what happened. In fact, by the end of the second year of the pandemic, there were fewer pending criminal defendants and fewer pending civil cases on the federal docket than would have been predicted based on prepandemic trends. A key explanation for the absence of significant backlog is that fewer new cases came onto the federal docket during the pandemic. Compared to the two years prior to the pandemic, 29% fewer criminal defendants and 6% fewer civil cases were filed in the U.S. district courts during the first two years of the pandemic. The decrease in filings was therefore comparable to the decrease in terminations.

Although this study is primarily concerned with aggregate trends, we find that courts varied widely in how they experienced the first two years of the pandemic. Importantly, we show that while backlog was lower than expected in the aggregate, about two-fifths of all districts emerged from the second year of the pandemic with more pending criminal defendants or more pending civil cases of their dockets than expected based on prepandemic growth trends. In some of these districts, the growth in backlog was substantial.

In sum, the pandemic appears to have affected the federal docket in two divergent ways. On one hand, pandemic-related disruptions slowed processing, particularly in criminal proceedings. With respect to backlog, however, the impact of these disruptions appears to have been offset in the aggregate by the fact that fewer cases were being filed in the federal courts during the pandemic, with varying outcomes at the district level.

This report proceeds in three parts. Part I provides a brief timeline of the COVID-19 pandemic and discusses some of the ways that federal district courts responded to it. Part II is an empirical analysis of case processing in the federal courts during the pandemic. Here we present data on the number of criminal defendants and civil cases that were tried by jury during the first two years of the pandemic, the median times in which criminal defendants and civil cases were processed, and the number of criminal defendants and civil cases that were terminated. Part III evaluates questions about clearance and backlog. In exploring these metrics, we present trends on the volume of criminal defendants and civil cases that were filed during the first two years of the pandemic.

4. See, e.g., Griff Witte & Mark Berman, *Long After the Courts Shut Down for COVID, the Pain of Delayed Justice Lingers*, Wash. Post, Dec. 19, 2021, https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7_story.html; National Public Radio, *As the Nation's Courthouses Reopen, They Face Massive Backlogs in Criminal Cases*, Morning Edition, July 14, 2021, <https://www.npr.org/2021/07/13/1015526430/the-nations-courthouses-confront-massive-backlogs-in-criminal-cases>.

COVID-19 and the Response of the Federal Judiciary

In December 2019, SARS-CoV-2, a novel coronavirus, was detected in Wuhan, China. The virus quickly spread to other parts of the world in January and February 2020. The disease it causes, coronavirus disease 2019, or COVID-19, was declared a global pandemic by the World Health Organization (WHO) on March 11, 2020.⁵ The United States subsequently declared COVID-19 a national emergency on March 13, 2020.

After the emergency declaration, states issued stay-at-home orders and government offices, school districts, and private businesses throughout the country ceased in-person operations. COVID-19 spread rapidly in the United States in the weeks that followed and hit its first peak of about 35,000 daily cases in early April.⁶ After COVID-19 cases subsided through much of May and June, the United States was hit by a second wave, which peaked at about 80,000 daily cases in mid-July.⁷ A third, more prolonged wave began during the early fall of 2020 and peaked at about 295,000 daily cases in January 2021.⁸

In December 2020, high-risk groups and frontline essential workers began receiving the first COVID-19 vaccines. Vaccine access became widespread in the United States in February and March 2021.⁹ Although the vaccines greatly reduced the risk of hospitalization and death and allowed some Americans to resume prepandemic routines, the United States was struck by two highly contagious variants of the virus during the summer of 2021 and the winter of 2021–2022. The fourth wave of the pandemic, driven by the Delta variant, peaked in September 2021 at about 200,000 daily cases. The fifth wave, which was driven by the Omicron variant, peaked in January 2022 at 1.3 million daily cases.

In the days and weeks after the March 13, 2020, national emergency declaration, the U.S. district courts adjusted their operating procedures to address the safety threat posed by COVID-19.¹⁰ On March 16, the Northern District of California became the first court to respond to COVID-19 by closing its buildings to the public.¹¹ Then, on March 17 and March 18, courthouses in multiple districts were closed after attorneys, employees, and law enforcement agents tested

5. Stephan Ludwig & Alexander Zarbock, *Coronaviruses and SARS-CoV-2: A Brief Overview*, 131(1) *Anesthesia & Analgesia* 93–96 (2020).

6. Centers for Disease Control, CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html>; Centers for Disease Control, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases.

7. COVID Data Tracker, *supra* note 6.

8. *Id.*

9. CDC Museum COVID-19 Timeline, *supra* note 6.

10. Court Orders and Updates During the COVID-19 Pandemic, *supra* note 1; John G. Roberts, U.S. Supreme Court, 2020 Year-End Report on the Federal Judiciary (2020), <https://www.supremecourt.gov/publicinfo/year-end/2020year-endreport.pdf>; Hershkoff & Miller, *supra* note 2. For district-level data on COVID-19 cases, hospitalizations, and vaccinations, see Jana Laks & Kristin Garri, Federal Judicial Center, COVID-19 Data and Trends for Federal Judicial Districts, <https://www.fjc.gov/content/356123/covid-19-data-and-trends-federal-judicial-districts>.

11. Judiciary Preparedness for Coronavirus (COVID-19), Mar. 12, 2020 (updated Mar. 17, 2020), <https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19>.

positive for COVID-19 or reported COVID-like symptoms.¹² On March 19, the Administrative Office of the U.S. Courts encouraged courts to allow employees to work remotely, postpone proceedings involving more than ten people, and require social distancing whenever people must congregate.¹³ In the days that followed, more courts closed their doors to the public, suspended in-person activities, postponed nonessential proceedings, and began conducting many civil and criminal proceedings by video and telephone conference.¹⁴ Additional criminal proceedings, such as felony pleas and sentencings, went virtual after Congressional authorization was granted on March 27.¹⁵ Although courts quickly issued orders allowing virtual hearings of all sorts, it took time for judges, court staff, and others outside of the courts (such as interpreters and detention facility staff) to adapt to teleworking, learn new software, and procure the necessary hardware to gain remote access to court proceedings. Some courts made these transitions faster than others.¹⁶

Because grand juries and jury trials could not easily be moved online, courts issued orders at the outset of the pandemic completely suspending them, usually for periods of a few weeks. These orders also postponed trial-specific deadlines related to discovery, exhibits, and depositions, and

12. Northern District of Georgia, In Re: Closing of the Rome Division Courthouse, Gen. Order 20-02, Mar. 17, 2020, https://www.gand.uscourts.gov/sites/default/files/NDGA_GeneralOrder20-02.pdf; District of Delaware, Temporary Closing of the J. Caleb Boggs U.S. Courthouse and Federal Building, Mar. 19, 2020, <https://www.ded.uscourts.gov/sites/ded/files/news/ORDER%20-%20Courthouse%20Closed%203-19-20.pdf>; Middle District of Pennsylvania, In Re: Closing of the Harrisburg Division of the United States District Court for the middle District of Pennsylvania, Standing Order No. 20-3, Mar. 18, 2020, <https://www.pamd.uscourts.gov/sites/pamd/files/general-orders/2020-003.pdf>.

13. Judiciary Preparedness for Coronavirus (COVID-19), *supra* note 11.

14. Federal Judiciary Confronts Coronavirus Spread: Judicial Conference Acts on Court Administration Matters, Mar. 17, 2020, <https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court>; Judiciary Preparedness for Coronavirus (COVID-19), *supra* note 11; Courts Deliver Justice Virtually Amid Coronavirus Outbreak, Apr. 8, 2020, <https://www.uscourts.gov/news/2020/04/08/courts-deliver-justice-virtually-amid-coronavirus-outbreak>. Courts also developed new websites and procedures to allow unrepresented litigants to submit documents to the court electronically. See Tim Reagan, Carly E. Giffin, & Roy P. Germano, Federal Judicial Center, Federal Courts' Electronic Filing by Pro Se Litigants (2022), <https://www.fjc.gov/content/368499/federal-courts-electronic-filing-pro-se-litigants>. See also, e.g., Western District of Virginia, Court Operations Under the Exigent Circumstances Created by COVID-19, Order No. 2020-5, Mar. 24, 2020, <http://www.vawd.uscourts.gov/media/31965088/courtoperationscovid19-amended.pdf>; District of Idaho, Court Operations in Response to Coronavirus (COVID-19), Gen. Order No. 362, Mar. 27, 2020, https://www.id.uscourts.gov/Content_Fetcher/index.cfm/Court_Operations_in_Response_to_COVID-19_3409.pdf?Content_ID=3409; Northern District of Indiana, Court Operations Under the Exigent Circumstances Created by COVID-19 and Related Coronavirus, Gen. Order No. 2020-05, Mar. 17, 2020, <https://www.innd.uscourts.gov/sites/innd/files/2020-05.pdf>; Northern District of Ohio, Coronavirus (COVID-19) Public Emergency, Order No. 2020-05-1, Mar. 23, 2020, [https://www.ohnd.uscourts.gov/sites/ohnd/files/GO-2020-05-1%20In%20re%20Coronavirus%20\(COVID-19\)%20Public%20Emergency.pdf](https://www.ohnd.uscourts.gov/sites/ohnd/files/GO-2020-05-1%20In%20re%20Coronavirus%20(COVID-19)%20Public%20Emergency.pdf).

15. Although the Federal Rules of Criminal Procedure allowed video conferencing in some criminal proceedings, section 15002 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act permitted the Judicial Conference of the United States to allow the temporary use of video conferencing and telephone conferencing in additional areas, such as felony pleas and sentencing. The CARES Act was passed by Congress on March 27, 2020, and the Judicial Conference of the United States authorized expanded video and audio access on March 29, 2020. See Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic, <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>. See also District of New Hampshire, Order Authorizing Video and Telephonic Conferencing Pursuant to the CARES Act H.R. 748, Order 20-12, Mar. 30, 2020, <https://www.nhd.uscourts.gov/pdf/ADM%201%2020-12.pdf>.

16. Bass, *supra* note 3.

they paused the clock on grand jury time limits and deadlines under the Speedy Trial Act.¹⁷ Courts that attempted to conduct in-person jury trials at the outset of the pandemic were reported to have difficulty empanelling representative juries.¹⁸ Courts varied in how quickly they resumed jury trials. Some extended suspensions after the original orders expired. Others resumed jury trials after the first wave of the pandemic subsided only to suspend them again during later waves of the pandemic.¹⁹

Once courts resumed trials, they tended to hold fewer trials than they had before the pandemic. Social distancing requirements made it challenging to assemble jurors, especially for courts with limited physical space.²⁰ This was particularly true of the jury selection process because it requires large numbers of prospective jurors to be physically present at once. To maintain distancing, courts spread prospective jurors out over multiple courtrooms. The use of multiple courtrooms for one trial made it difficult to conduct multiple trials simultaneously.²¹ Courts also implemented new cleaning protocols between sessions, which further limited the number of proceedings that could take place each day. Trials also had to be delayed or cancelled when jurors contracted COVID-19.²² Finally, some judges were hesitant to conduct trials virtually. Judges were particularly unwilling to conduct criminal trials remotely due to criminal defendants' Sixth Amendment right to confront witnesses and other due process concerns.²³

Case Processing in the Federal Courts During the COVID-19 Pandemic

In this part, we explore the impact that pandemic-related changes had on case processing in the federal courts. After discussing our data, we consider three areas. First, we analyze the number of trials that were held in the federal courts during the first two years of the pandemic. Second, we measure changes in the median length of time from filing to termination in criminal and civil proceedings during the pandemic compared to recent prepandemic years. Finally, we assess the number of criminal defendants and civil cases that courts closed out, or terminated, during the first two years of the pandemic.

17. *See, e.g.*, District of Arizona, Continuing Court Operations Under the Exigent Circumstances Created by Coronavirus Disease (COVID-19), General Order 20-15, Mar. 20, 2020, <https://www.azd.uscourts.gov/sites/default/files/general-orders/20-15.pdf>; Western District of Pennsylvania, Administrative Order Regarding Computation of Time for Filing of Informations or Indictments Due to COVID-19 Matters, May 1, 2020, https://www.pawd.uscourts.gov/sites/pawd/files/general-orders/Admin_Order_2%2020-MC-401_may1.pdf; Judiciary Preparedness for Coronavirus (COVID-19), *supra* note 11.

18. Courts Suspend Jury Trials in Response to Coronavirus, Mar. 26, 2020, <https://www.uscourts.gov/news/2020/03/26/courts-suspend-jury-trials-response-coronavirus>.

19. Courts Suspending Jury Trials as COVID-19 Cases Surge, Nov. 20, 2020, <https://www.uscourts.gov/news/2020/11/20/courts-suspending-jury-trials-covid-19-cases-surge>.

20. COVID-19 Judicial Task Force, Report of the Jury Subgroup, Conducting Jury Trials and Convening Grand Juries During the Pandemic, June 4, 2020, https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf; Bass, *supra* note 3.

21. Bass, *supra* note 3.

22. *Id.*

23. Giffin & Eyre, *supra* note 3; Bass, *supra* note 3.

A. Data

The primary source of data for this report is the FJC's Integrated Data Base (IDB). The IDB contains data on civil case and criminal defendant filings and terminations in the district courts. The FJC receives regular updates of the case-related data that the courts routinely report to the Administrative Office of the U.S. Courts. The FJC then processes the data into a unified longitudinal database that is available for public download.²⁴

When examining trends in the criminal data, our units of analysis are individual criminal defendants, not criminal cases. Each individual defendant in each criminal case is treated as a separate filing such that multidefendant cases are treated as multiple filings. Our counts of criminal defendants include defendants in cases filed as felonies, Class A misdemeanors, and petty offenses assigned to district judges but not magistrate judges. Our counts also include interdistrict transfers and reopens.²⁵

In discussions of the civil data, the units of analysis are cases. Our analyses of civil cases always exclude cases that were consolidated in a single district for pretrial proceedings under the multidistrict litigation (MDL) procedure set forth in 28 U.S.C. § 1407.²⁶ In these instances, we exclude both the case that was consolidated in the transferee court and, when applicable, the original case that was filed and closed under a different docket number prior to consolidation. To identify these cases, we used the IDB and case extracts provided by the Judicial Panel on Multidistrict Litigation (JPML) following the procedures described in the Appendix.

Because multidistrict litigation transfers happen on an ongoing basis, it is possible that the JPML transferred and consolidated additional civil cases after the datasets we used in this analysis were published. This means that researchers using civil caseload data published at a different time may make calculations that are different than the ones we report here. Moreover, to our best knowledge, there are not any established conventions for counting cases that have been consolidated into MDLs. Researchers may count civil cases differently if they use procedures and data that differ from the procedures and data we have described in the Appendix. For these reasons, we encourage readers to view our counts of civil cases as estimates rather than exact figures.

B. Jury Trials

We begin the analysis with jury trials. Jury trials were directly impacted by the pandemic. When courts closed their doors in the early days of the pandemic, they moved many types of proceedings to telephone and video conference. Jury trials, however, could not be moved online with the same ease as other types of proceedings. As a result, many districts suspended jury trials altogether during the first wave of the pandemic. Once jury trials resumed, social distancing requirements,

24. Federal Judicial Center, Integrated Database, <https://www.fjc.gov/research/idb>.

25. Federal Judicial Center, Criminal Integrated Database (IDB): 1996 to Present, Codebook (2016), <https://www.fjc.gov/sites/default/files/idb/codebooks/Criminal%20Code%20Book%201996%20Forward.pdf>.

26. More than 200,000 cases related to *In re: 3M Combat Arms Earplug Products Liability Litigation* (MDL No. 2885) were filed during 2020, making it the largest MDL in history. We have omitted cases that are part of multidistrict litigation from our analyses to avoid any suggestion that the record increase in filings related to *In re: 3M Combat Arms Earplug Products Liability Litigation* was caused by or associated with the pandemic.

cleaning protocols, and COVID-19 infections limited the number of trials courts could conduct at any given time. Through subsequent waves of the pandemic, some courts again opted to suspend jury trials.

Figure 1 depicts the impact of these suspensions and safety protocols by plotting the total number of criminal defendants tried by jury and the number of civil cases tried by jury during the first two years of the pandemic and the five previous years. In this and subsequent charts, we consider the first year of the pandemic to be the twelve-month period beginning March 14, 2020, and ending March 13, 2021, and the second year of the pandemic to be the twelve-month period beginning March 14, 2021, and ending March 13, 2022. We recognize that the first confirmed cases of COVID-19 were detected in the United States in January 2020 and that the coronavirus was not widespread in the U.S. until April 2020.²⁷ The national emergency declaration issued on March 13, 2020, however, had an immediate impact on the operations of the federal courts, so this date provides a convenient analytical starting point.²⁸ One year later, March 13, 2021, also marks a significant pandemic milestone. On this day, the Centers for Disease Control and Prevention estimated that more than one hundred million doses of the COVID-19 vaccine had been administered in the United States.²⁹

Figure 1. Criminal and Civil Jury Trials (Year Ending March 13)

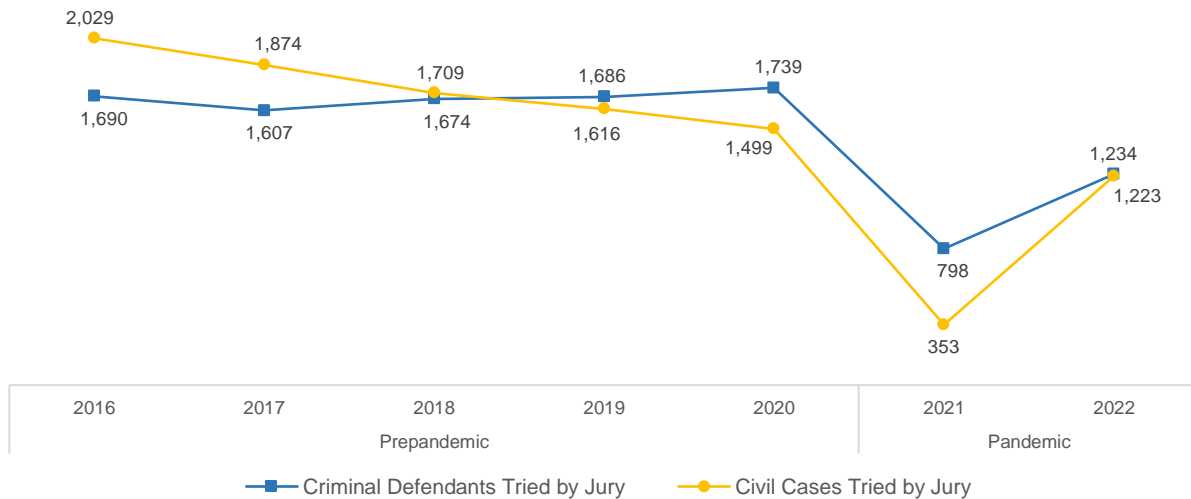


Figure 1 shows that there was a steep drop in the number of criminal and civil jury trials during the first year of the pandemic and a partial recovery during the second year of the pandemic. In the five years before the pandemic, the district courts tried an average of 1,679 criminal defendants by jury per year and 1,745 civil cases by jury per year. During the first year of the pandemic, the number of criminal defendants tried by jury decreased to 798, and the number of civil cases tried by jury decreased to 353. This amounts to decreases of 52% and 80%, respectively, from the five-

27. CDC Museum COVID-19 Timeline, *supra* note 6.

28. Judiciary Preparedness for Coronavirus (COVID-19), *supra* note 11.

29. CDC Museum COVID-19 Timeline, *supra* note 6.

year prepandemic average. Courts conducted more jury trials during the second year of the pandemic: 1,234 criminal defendants and 1,223 civil cases were tried by jury during the twelve-month period ending March 13, 2022. Although an increase from the first year of the pandemic, these numbers were still 27% and 30% below the prepandemic average. As a percentage of all criminal defendant terminations, 1.92% of defendants were tried by jury the year before the pandemic compared to 1.42% during the first year of the pandemic and 1.77% during the second year of the pandemic. As a percentage of all civil cases terminated, 0.63% were tried by jury during the year before the pandemic compared to 0.17% during the first year of the pandemic and 0.54% during the second year of the pandemic.

Figure 2. Criminal Defendants Tried, By Month

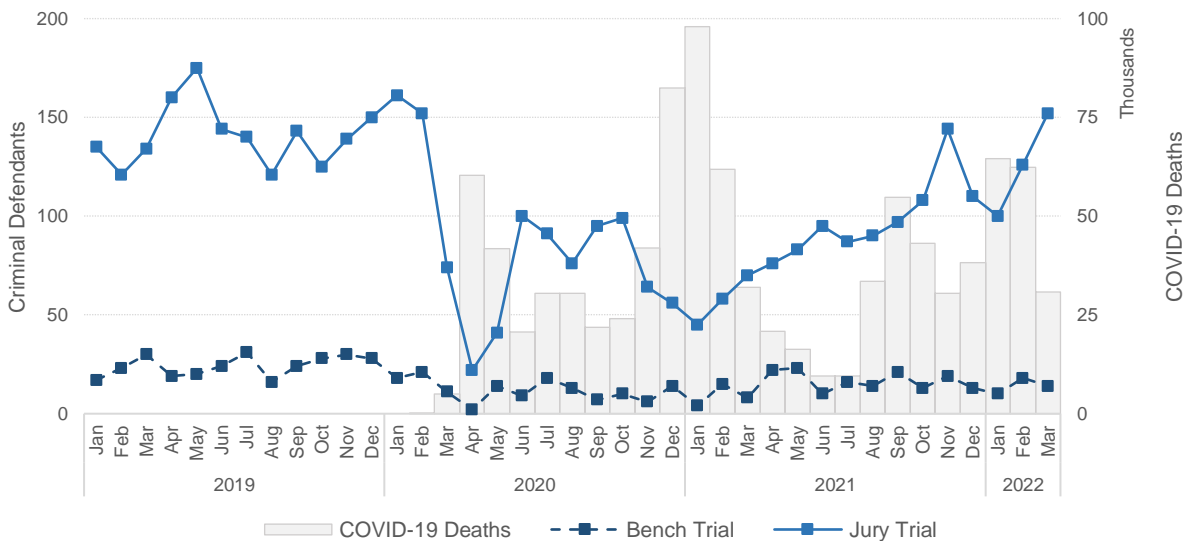


Figure 2 shows the number of criminal defendants tried per month during the first two years of the pandemic and the year before the pandemic. The data is disaggregated by bench trials and jury trials. For reference, the gray bars show the number of deaths from COVID-19 recorded per month in the United States on the right vertical axis as an indicator of the pandemic’s severity at different points in time.

Figure 2 reveals the striking decrease in criminal jury trials that occurred at the onset of the pandemic: 152 criminal defendants were tried by jury in February 2020 compared to 74 in March 2020 and only 22 in April 2020. Criminal jury trials then recovered quickly after the first wave of the pandemic subsided. A total of 100 criminal defendants were tried by jury in June 2020. The number of defendants tried by jury dropped during the second wave of the pandemic in July and August 2020, and then more significantly beginning in November 2020 when many courts again suspended jury trials in response to the pandemic’s third and most lethal wave.³⁰ At the height of the third wave in January 2021, only 45 criminal defendants were tried by jury. This was down from 161 defendants a year earlier in January 2020. Criminal jury trials rose steadily through the

30. Courts Suspending Jury Trials as COVID-19 Cases Surge, *supra* note 19.

rest of 2021. Criminal jury trials peaked at 144 defendants in November 2021, just exceeding the number of defendants tried before the pandemic in November 2019, but then dropped again as the Omicron variant spread during the winter of 2021–2022. In sum, the number of criminal defendants tried by jury tended to increase or decrease in ways that were consistent with pandemic conditions.

Bench trials are less common in criminal cases, but they also fell during the pandemic. Twenty-one criminal defendants were tried by judge in February 2020, eleven in March 2020, and two in April 2020. On average, twenty-three criminal defendants were tried by judge per month between April 2019 and March 2020, compared to an average of ten per month between April 2020 and March 2021 and an average of sixteen per month between April 2021 and March 2022.

Figure 3. Civil Cases Reaching Trial, By Month

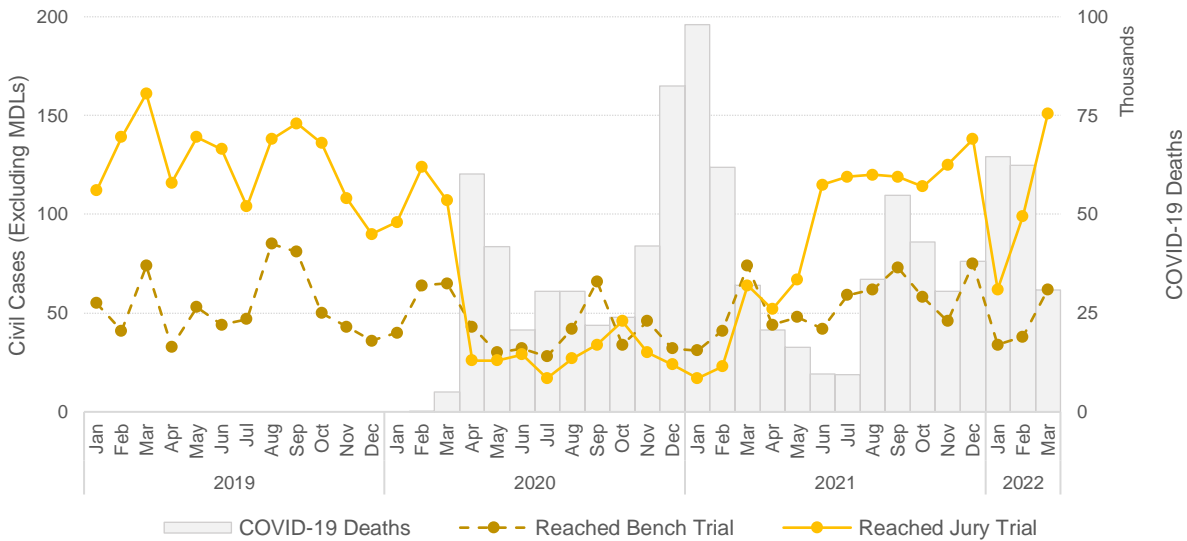
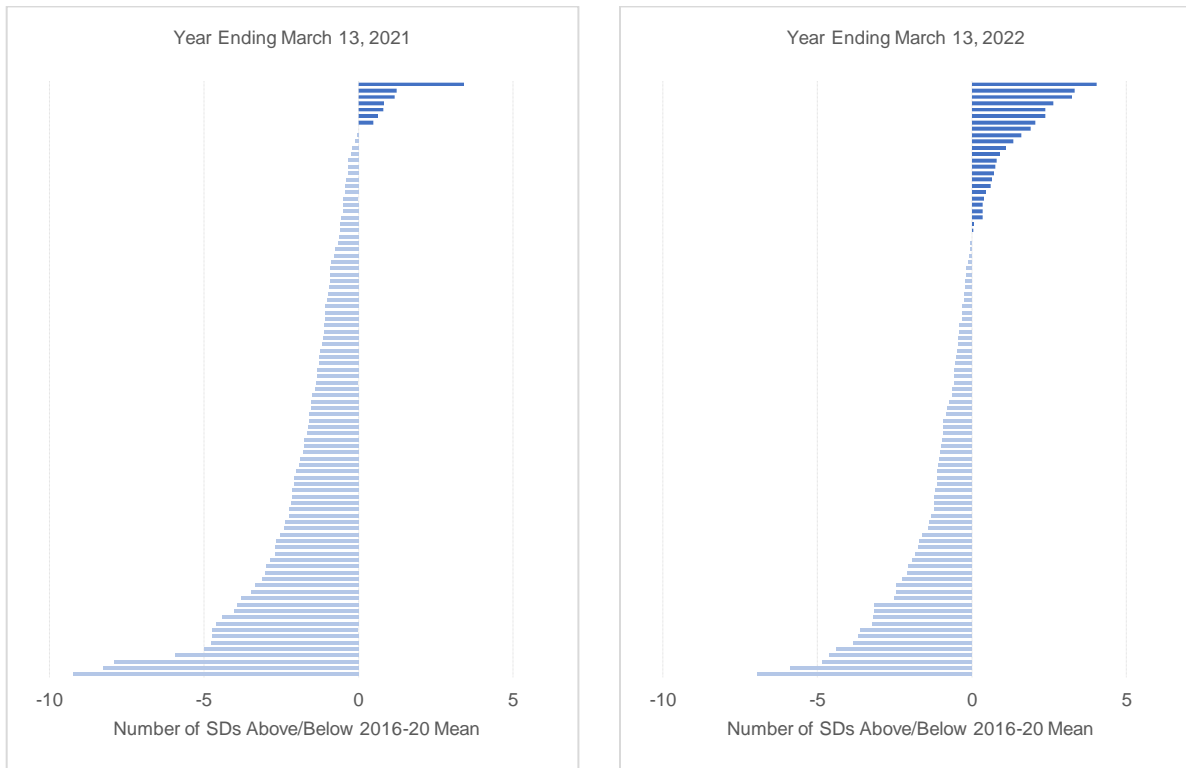


Figure 3 shows the number of civil cases tried by judge and by jury per month. The number of civil cases tried by jury plummeted when the pandemic hit, from 124 in February 2020 to 26 in April 2020 and 17 in July 2020. In contrast to criminal jury trials, civil jury trials remained low through the first three waves of the pandemic with subtle increases between waves. Civil jury trials returned to prepandemic levels beginning in the spring and summer of 2021 despite the increase in COVID-19 deaths driven by the Delta variant. A significant decrease occurred at the height of the Omicron variant in January 2022, but civil jury trials again returned to prepandemic levels by the end of the second year of the pandemic in March 2022. The decrease in civil bench trials, on the other hand, was subtle and often within the scope of typical prepandemic variation. Sixty-four civil cases were tried by judge in February 2020 compared to 43 in April 2020. Civil cases tried by judge fell from an average of 53 per month from April 2019 through March 2020 to 42 per month from April 2020 through March 2021, then back to an average of 53 cases per month from April 2021 to March 2022.

Each court had its own pandemic protocols, meaning that some courts held far fewer trials during the pandemic and others held nearly as many as in prepandemic years. A small number of courts held more jury trials during the pandemic compared to recent prepandemic years. We show district-level variation in jury trials in Figure 4 (criminal) and Figure 5 (civil). Figure 4, for instance, compares the number of criminal defendants tried by jury in each district during the first year of the pandemic (left panel) and second year of the pandemic (right panel) to what was typical of recent prepandemic years. Each bar represents a district court. The length of the bars represents the magnitude of change in the number of criminal defendants tried by jury in each district during the pandemic compared to the average in that district per year during the five years prior to the pandemic. In this respect, each court is compared to itself prior to the pandemic, not to other courts. Change is expressed here in terms of each court’s five-year prepandemic standard deviation to account for typical variation.³¹

Figure 4. Change in Number of Criminal Defendants Tried by Jury, By District



The left panel of Figure 4 indicates that nine district courts tried by jury as many as or more criminal defendants during the first year of the pandemic than the five-year prepandemic average. Except for one court, the increase was relatively small: between 0 and 1.2 standard deviations.

31. The standard deviation measures how widely the number of trials conducted in each district varied over the five years prior the pandemic. Thus it is an indicator of what could be thought of as “typical” prepandemic variation. Expressing change in terms of the standard deviation aids in understanding whether any changes observed during the pandemic were anomalous or consistent with typical prepandemic variation.

Eighty-five courts tried fewer criminal defendants by jury during the first year of the pandemic compared to the five-year prepandemic average. Most districts were still conducting fewer criminal jury trials during the second year of the pandemic. The right panel of Figure 4 shows that twenty-six district courts tried as many or more criminal defendants by jury compared to recent prepandemic years and sixty-eight courts tried fewer criminal defendants by jury. The magnitude of the decrease in defendants tried by jury tended to be smaller in the second year of the pandemic compared to the first year of the pandemic, as evidenced by the shorter bars in the right panel. Overall, the median court tried 1.4 standard deviations fewer criminal defendants by jury during the first year of the pandemic and 0.6 standard deviations fewer criminal defendants by jury during the second year of the pandemic.

Figure 5. Change in Number of Civil Cases Tried by Jury, By District

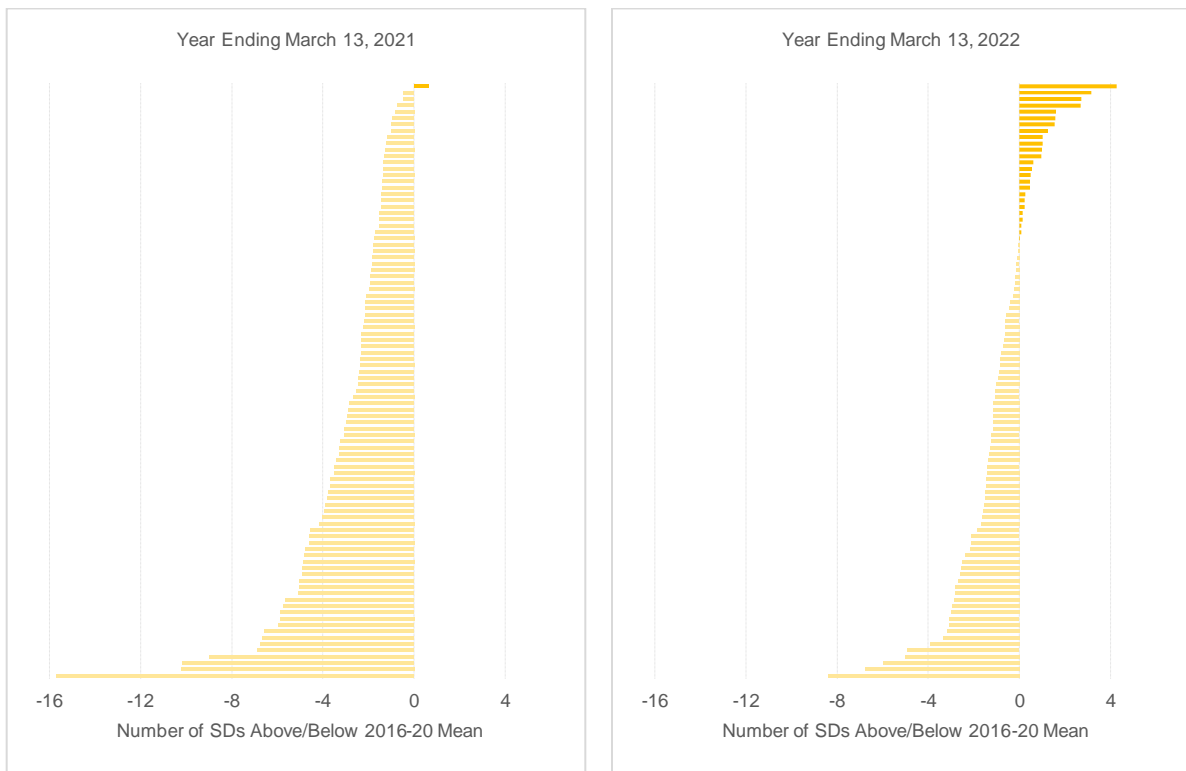


Figure 5 shows changes in the number of civil cases tried by jury in each district court during the first year (left panel) and second year (right panel) of the pandemic. Only one of ninety-four courts tried as many or more civil cases by jury during the first year of the pandemic relative to what was typical prior to the pandemic. The other ninety-three courts tried fewer cases by jury. In sixty-two districts, there was a more-than-two-standard-deviation decrease in the number of civil cases tried by jury. The situation improved during the second year of the pandemic. Twenty-six courts tried as many or more civil cases by jury during the second year of the pandemic compared to the five-year prepandemic average. Of the sixty-eight courts that tried fewer civil cases by jury during the second year, only twenty-three were more than two standard deviations below the

prepandemic average. The shorter bars in the right panel of Figure 5 indicate that the magnitude of the decrease in civil jury trials was generally much lower during the second year of the pandemic compared to the first. Overall, the median district court tried 2.4 standard deviations fewer civil cases by jury during the first year of the pandemic and 1.0 standard deviations fewer civil cases by jury during the second year of the pandemic.

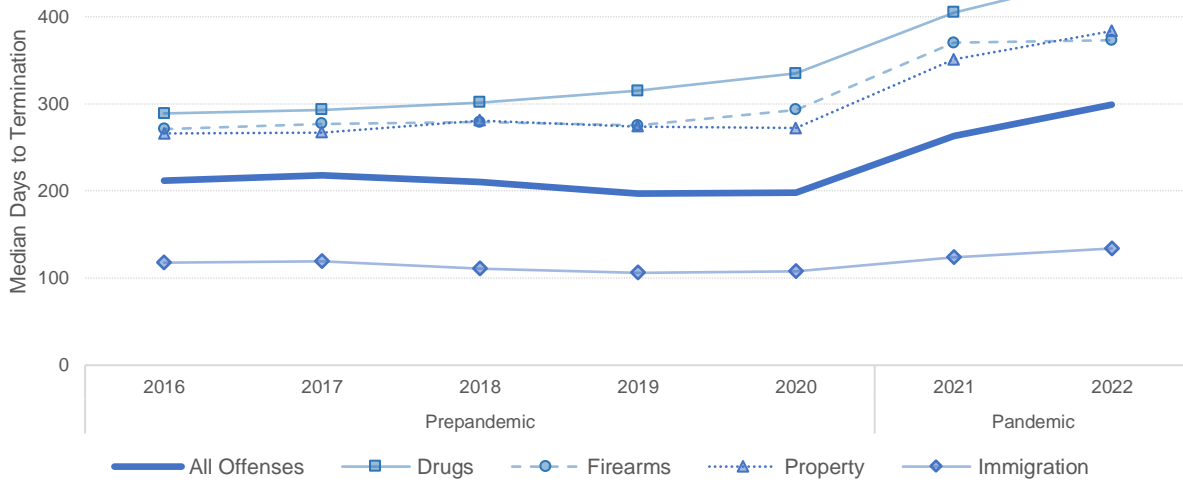
C. Case-Processing Time

The suspension of trials caused cases that were already headed to trial when the pandemic hit to stall. But the suspension of jury trials likely affected the docket more broadly. Trial dates and trial-specific deadlines move cases along and motivate parties to plead or settle. With trial-specific deadlines suspended and trial dates postponed indefinitely, parties were able to prolong litigation longer than they might have under normal circumstances.³² Other pandemic-related factors caused case processing to slow down. Stay-at-home orders, for example, introduced new delays at points in the judicial process that judges and staff were accustomed to handling in person. And while courts pivoted quickly to virtual and telephone conferencing, courts got access to remote technologies at different rates and had to invest time and resources into adapting to them. School closures furthermore created new burdens for parents, and COVID-19 infections forced some court employees, attorneys, and parties to take time off work.

Figure 6 shows median processing time in criminal proceedings during the pandemic and the five years that preceded it. In addition to showing median processing times for all criminal defendants, Figure 6 disaggregates median processing times by the four most common nature-of-offense categories: drugs, firearms, property, and immigration. In the five years prior to the pandemic, overall median defendant processing time averaged 207 days. During the first year of the pandemic, this number rose to 263 days—an increase of 27% from the five-year prepandemic average. Median time from filing to termination further rose during the second year of the pandemic to 299 days—a 44% increase from the prepandemic average.

32. Bass, *supra* note 3.

Figure 6. Median Number of Days from Filing to Termination, Criminal Defendants (Year Ending March 13)



Some of the increase in median processing time can be explained by the changing composition of defendants on the criminal docket. Immigration offenses, for example, decreased from 37% of all terminated defendants during the year before the pandemic to 33% during the first year of the pandemic and 25% during the second year of the pandemic.³³ Prior to the pandemic, median time to termination for defendants charged with immigration offenses was 112 days on average—about one-half to one-third the time as other offenses. Meanwhile, defendants charged with drug offenses rose from 26% to 31% of terminated defendants and defendants charged with firearms offenses rose from 13% to 16% of terminated defendants by the end of the second year of the pandemic. Median processing time in drugs and firearms cases was 307 days and 279 days, respectively, prior to the pandemic on average. Median processing time thus increased during the pandemic because there was a smaller share of quick-turnaround immigration cases and a larger share of slower-moving drugs and firearms cases on the docket.

This explanation, however, can only account for part of the increase in median time to termination during the pandemic. Figure 6 shows that courts were processing defendants in all nature-of-offense categories more slowly during the pandemic. Median time to termination for defendants charged with drug offenses, for example, increased by 46% during the pandemic, from

33. Criminal immigration cases decreased during the pandemic at least in part due to an order issued by the Centers for Disease Control and Prevention on March 20, 2020, which barred entry to some noncitizens entering the United States from Mexico and Canada. Some people who may have otherwise been detained and prosecuted for unlawful entry or reentry were instead quickly removed from the United States without a deportation order or federal charges. *See* Centers for Disease Control and Prevention, Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-26/pdf/2020-06327.pdf>; Syracuse University, Transactional Records Access Clearinghouse (TRAC), Major Swings in Immigration Criminal Prosecutions during Trump Administration, Dec. 18, 2020, <https://trac.syr.edu/immigration/reports/633/>.

an average of 307 days before the pandemic to 449 days during the second year of the pandemic. For defendants charged with firearms offenses, median time to termination increased by 34%, from 279 days to 373 days. Median time to termination increased by 41% for defendants charged with property offenses, from 272 days to 384 days. Even immigration cases took longer: up from 112 days before the pandemic to 134 days during the pandemic’s second year—an increase of 20%.

Figure 7. Median Number of Days from Filing to Termination, Civil Cases (Year Ending March 13)

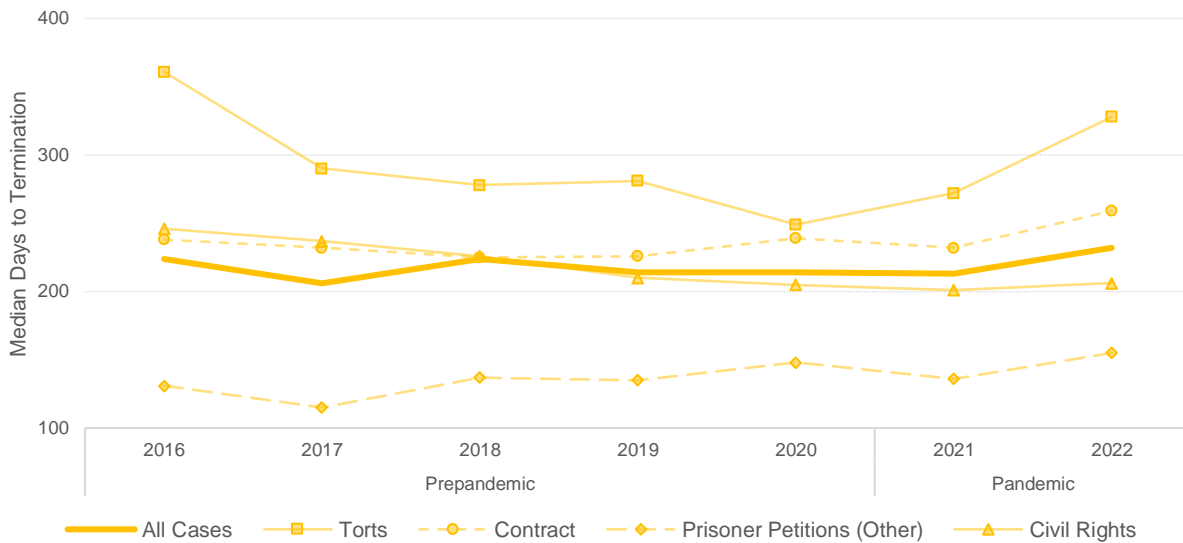


Figure 7 shows the median number of days to termination for all civil cases and four common categories of civil cases: torts, contract, nonhabeas prisoner petitions, and civil rights. Overall, median case-processing time rose by 7%, from a five-year prepandemic average of 216 days to 232 days during the second year of the pandemic. Median processing times varied by case type. Median time to termination in torts and contracts cases, for example, rose by 12%. Median time to termination in torts cases increased from a prepandemic average of 292 days to 328 days during the second year of the pandemic. Median time to termination in contracts cases increased from a prepandemic average of 232 days to 259 days during the second year of the pandemic. Median processing time in cases involving prisoner petitions (not including habeas petitions) rose by 16%, from a prepandemic average of 133 days to 155 days during the second year of the pandemic. Finally, median processing time in civil rights cases decreased by 8%, from a prepandemic average of 225 days to 206 days during the second year of the pandemic. Processing time in civil rights cases, however, had already been decreasing consistently in the years before the pandemic and remained virtually unchanged from the beginning of the pandemic through the second year of the pandemic.

In sum, median processing time increased by 44% in criminal proceedings and by 7% in civil proceedings during the first two years of the pandemic. This difference is likely explained by the unique ways in which the pandemic impacted criminal proceedings. After the national emergency was declared, courts issued general orders that paused the clock on grand jury time limits and deadlines under the Speedy Trial Act. This delayed criminal proceedings, including trials, that

typically occur within distinct timeframes.³⁴ Relatedly, courts had to navigate the complexities of meeting defendants' Sixth Amendment rights to confront witnesses while avoiding in-person proceedings. Furthermore, according to an FJC survey of judges' views on virtual technologies, courts were more hesitant to adopt virtual technologies in criminal proceedings compared to civil proceedings.³⁵ Finally, with criminal cases, processing times were likely extended by the need for defendants to quarantine in detention and related challenges involved with in-person communication between defendants and their attorneys.³⁶ COVID-19 furthermore required courts to develop new systems for coordinating with detention facilities, defense attorneys, interpreters, and law enforcement agencies to ensure that detained defendants could gain virtual access to the court for initial appearances, detention hearings, arraignments, and sentencings.³⁷

D. Terminations

Courts closed fewer cases during the pandemic. Figure 8 shows that from March 14, 2020, to March 13, 2021, 56,104 criminal defendants and 213,875 civil cases were terminated. On the criminal side, this amounted to a decrease of 38% from 90,443 defendants terminated the previous year and a decline of 31% from the prepandemic five-year average of 80,893.³⁸ On the civil side, the decrease was just 10% from 237,308 civil cases terminated the year prior to the pandemic and 9% from the prepandemic five-year average of 234,265. Criminal and civil terminations increased during the second year of the pandemic but were still below prepandemic levels. The 69,793 criminal defendants terminated during the second year of the pandemic was 14% below the five-year prepandemic average and the 227,472 civil cases terminated was 3% below the five-year prepandemic average. Overall, 27% fewer criminal defendants and 6% fewer civil cases were terminated during the first two years of the pandemic compared to the two years before the pandemic.

34. *See, e.g.*, Southern District of New York, Suspension of Jury Trials as a result of COVID-19 and the Limitation of Court Operations (20 MISC 197) (Apr. 20, 2020) and Extension of Time under the Speedy Trial Act (20 MISC 196) (Sept. 9, 2020), both available at <https://www.nysd.uscourts.gov/covid-19-coronavirus>.

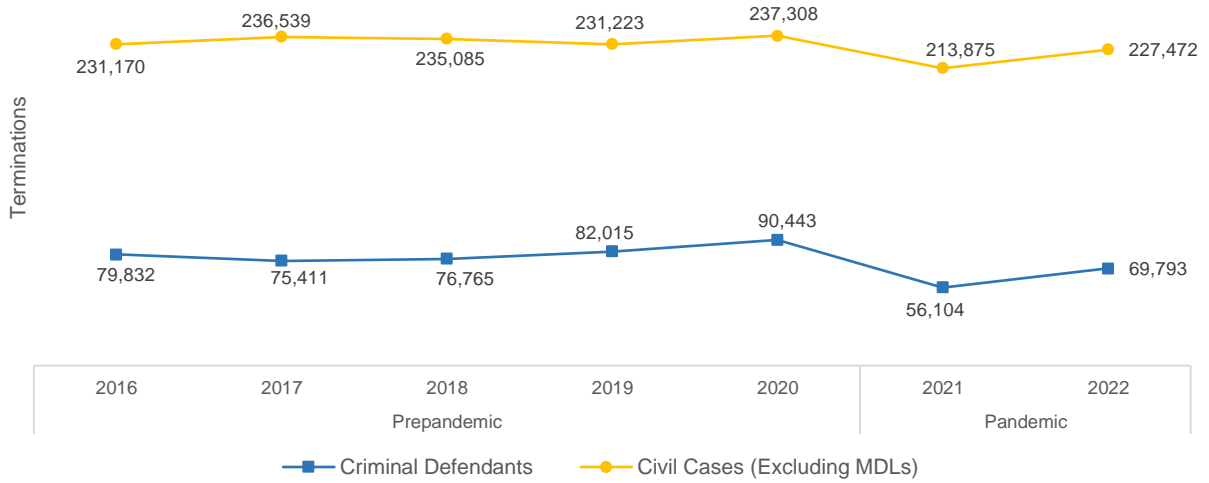
35. A Federal Judicial Center study of U.S. district and magistrate judges' views on using virtual technologies found, for instance, that judges express "more caution about the use of virtual technology for criminal court proceedings than civil court proceedings." Giffin & Eyre, *supra* note 3. *See also* Bass, *supra* note 3.

36. Giffin & Eyre, *supra* note 3.

37. Courts Deliver Justice Virtually Amid Coronavirus Outbreak, *supra* note 14; 2020 Year-End Report on the Federal Judiciary, *supra* note 10.

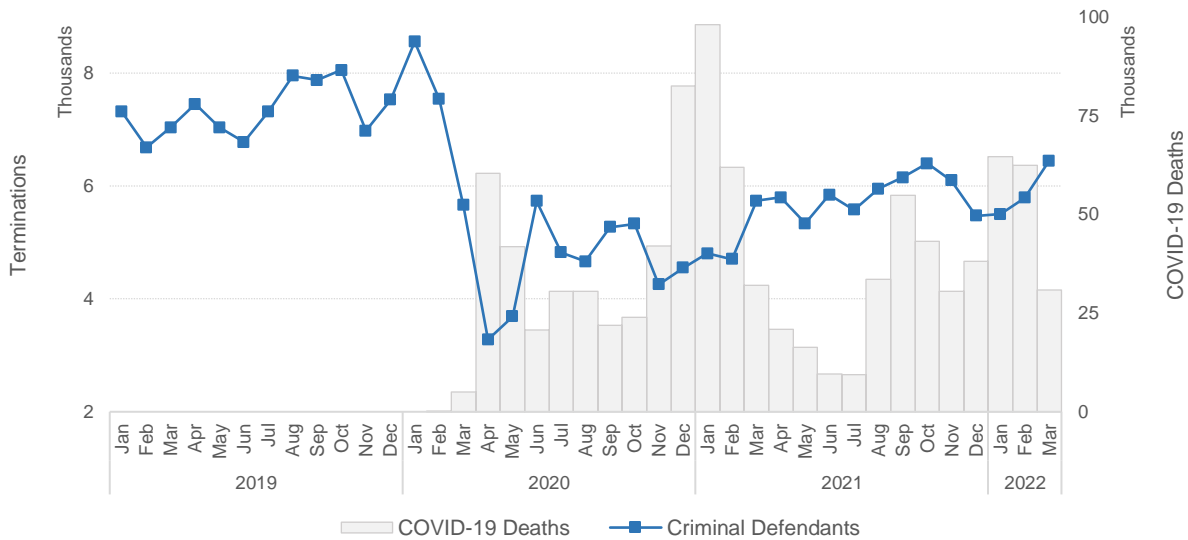
38. For definitional purposes, a defendant is considered terminated after reaching disposition and, when applicable, after being sentenced.

Figure 8. Civil and Criminal Terminations (Year Ending March 13)



Although our data cannot demonstrate that the pandemic caused these decreases, we observe a pronounced decline in criminal terminations at the start of the pandemic. Figure 9 shows the number of criminal defendants terminated per month during the first two years of the pandemic and the year before the pandemic. Again, the gray bars show the number of deaths per month from COVID-19 as reference. Three trends are evident from this chart. First, the number of defendants terminated per month was relatively consistent in the year before the pandemic, ranging from 6,683 to 8,556. Second, there was a sharp drop in monthly terminations at the beginning of the pandemic. Monthly terminations decreased from 7,537 defendants in February 2020 to 5,662 in March and 3,279 in April. Third, after the initial shock of the pandemic, monthly terminations gradually trended upward over the next two years and peaked at 6,448 in March 2022.

Figure 9. Criminal Defendant Terminations, By Month



Trends are harder to identify in the civil data. Figure 10 plots the number of civil cases terminated from January 2019 through March 2022. Unlike criminal terminations, the number of civil cases terminated per month varied considerably before the pandemic. Furthermore, while there was a large decrease in civil case terminations at the start of the pandemic, this decrease was comparable to decreases that occurred in late 2019, well before the onset of the pandemic. It is therefore unclear from this chart whether the drop in terminations we see in April and May 2020 reflects typical variation or a pandemic-related shock.

Figure 10. Civil Case Terminations, By Month

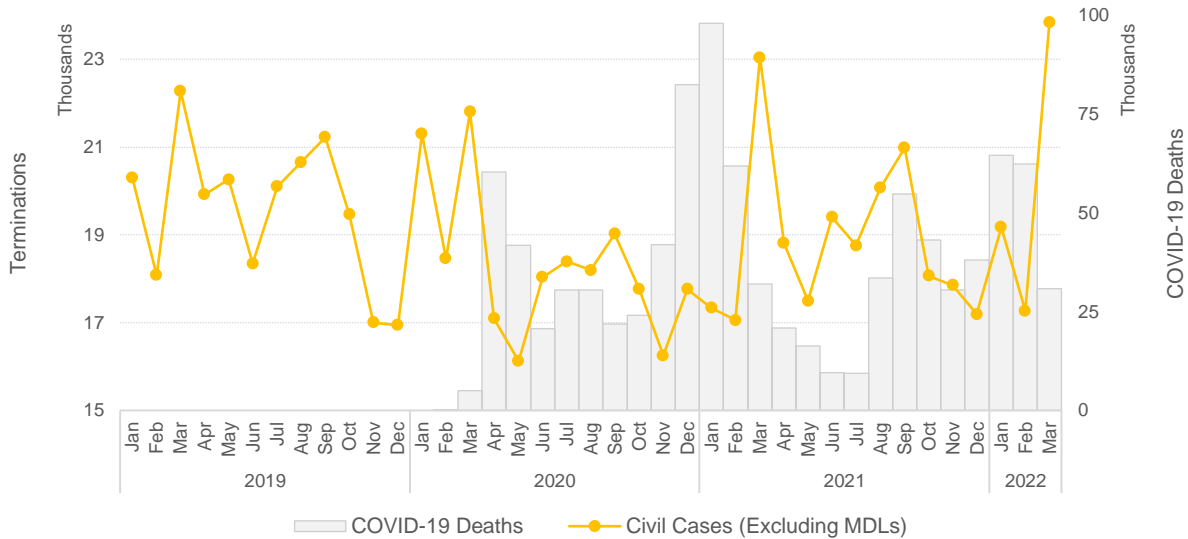


Figure 11 provides another perspective. Here we plot the percentage change in criminal and civil terminations in 2020–2022 compared to the average number of terminations for that month from 2015–2019. This chart again shows that criminal defendant terminations dropped significantly during the first wave of the pandemic, with a much smaller decrease on the civil docket. The number of criminal defendants terminated in March, April, and May 2020 were 16%, 51%, and 43% lower than the average number terminated in March, April, and May over the five previous years, respectively. In contrast, the number of criminal defendants terminated in January and February 2020—just before the pandemic hit—was 23% and 17% higher than the previous five-year average for January and February. Criminal terminations trended upward after the initial shock of the pandemic, but never exceeded the prepandemic average at any point during the first two years of the pandemic.

Figure 11. Criminal and Civil Terminations, Monthly Change Compared to Prepandemic Average

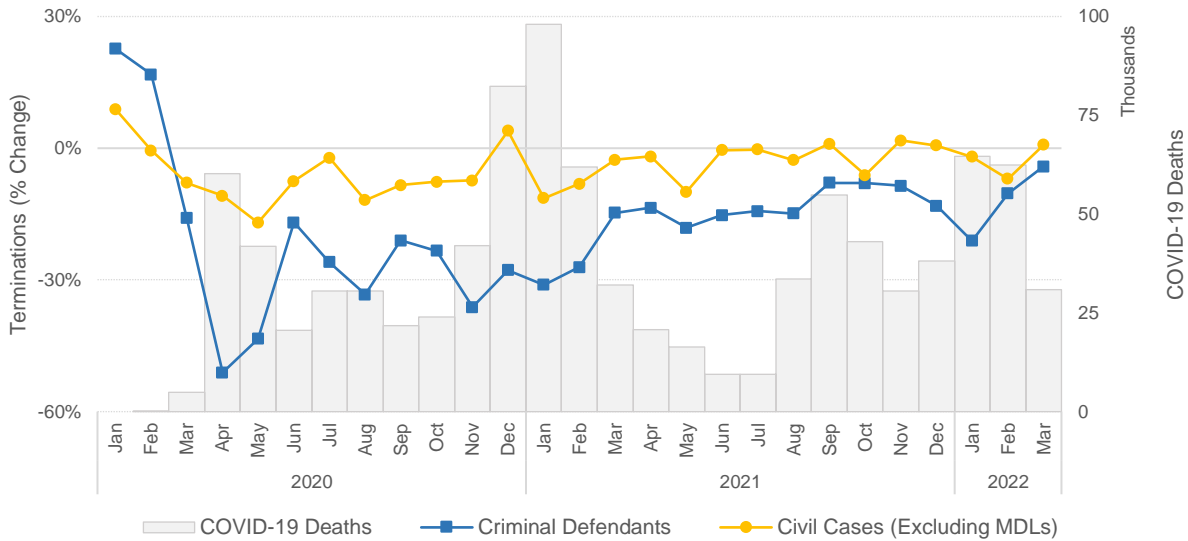


Figure 11 also shows that there was an 8%, 11%, and 17% drop in civil case terminations in March, April, and May 2020 respectively. Relative to the decrease in criminal terminations, however, the decrease in civil terminations was small and more gradual. Civil terminations moreover largely returned to, and at times exceeded, prepandemic levels after the first year of the pandemic.

Evaluating Concerns About Backlog

To this point, we have considered how case processing changed during the pandemic. We observed for both criminal and civil proceedings that courts conducted fewer jury trials, processed cases slower, and terminated fewer cases. The delays and reductions in terminations were more pronounced on the criminal docket, perhaps due to the sensitivity of criminal proceedings and the relative difficulty in moving some of them online.

It would be reasonable to expect that these trends would result in large case backlogs. Despite an increase in backlog during the first year of the pandemic, however, we find that backlog returned to prepandemic levels by the end of the second year of the pandemic. As we report in this part, courts were able to effectively clear their dockets despite pandemic-related delays at least in part because fewer new criminal defendants and civil cases came on to their dockets during the pandemic. As a result, the number of pending defendants and pending cases on the federal docket at the end of the second year of the pandemic was no greater than the amount that would have been expected based on prepandemic trajectories.

This part is divided into two sections. In the first section, we assess the extent to which courts cleared their dockets in the aggregate during the first two years of the pandemic. This discussion includes an examination of filing trends during the pandemic. The second section examines how the interaction between the processing and filing trends we have discussed affected the number of

pending cases and pending defendants on the federal docket by the end of each year of the pandemic.

E. Clearance Rates and Filing Trends

Figure 12 begins by plotting criminal and civil clearance rates during the first two years of the pandemic and the five previous years. We calculated the criminal clearance rate by dividing the number of criminal defendants terminated by the number of criminal defendants filed in each twelve-month period. A clearance rate less than 1 means that more new defendants came onto the docket than were processed, contributing to growing backlog. Conversely, a clearance rate above 1 means that courts processed more defendants than came onto the docket, resulting in reduced backlog. We calculated the civil clearance rate the same way, except units are cases rather than defendants.

Figure 12. Clearance Rates (Year Ending March 13)

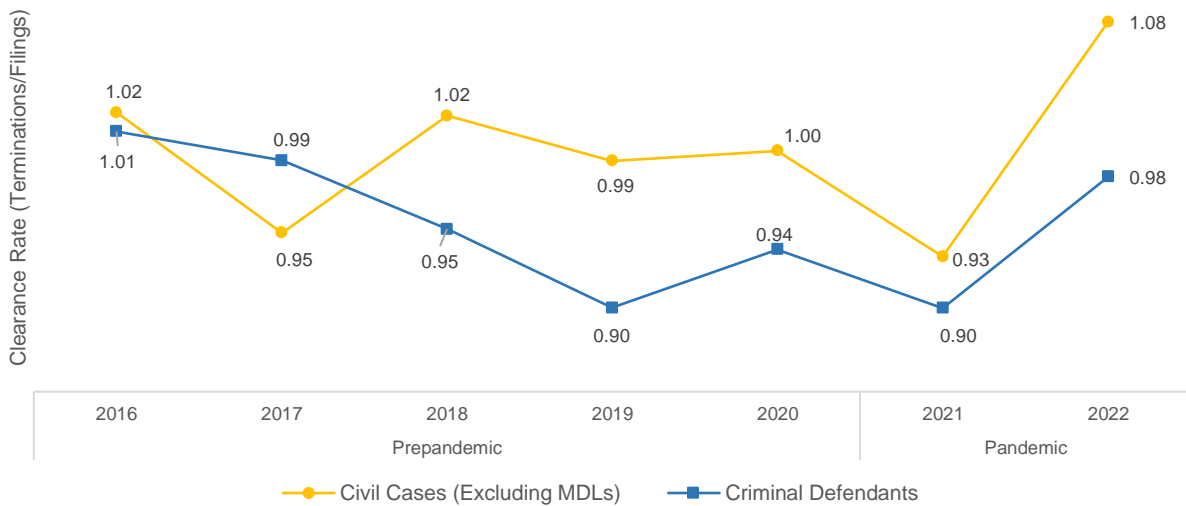
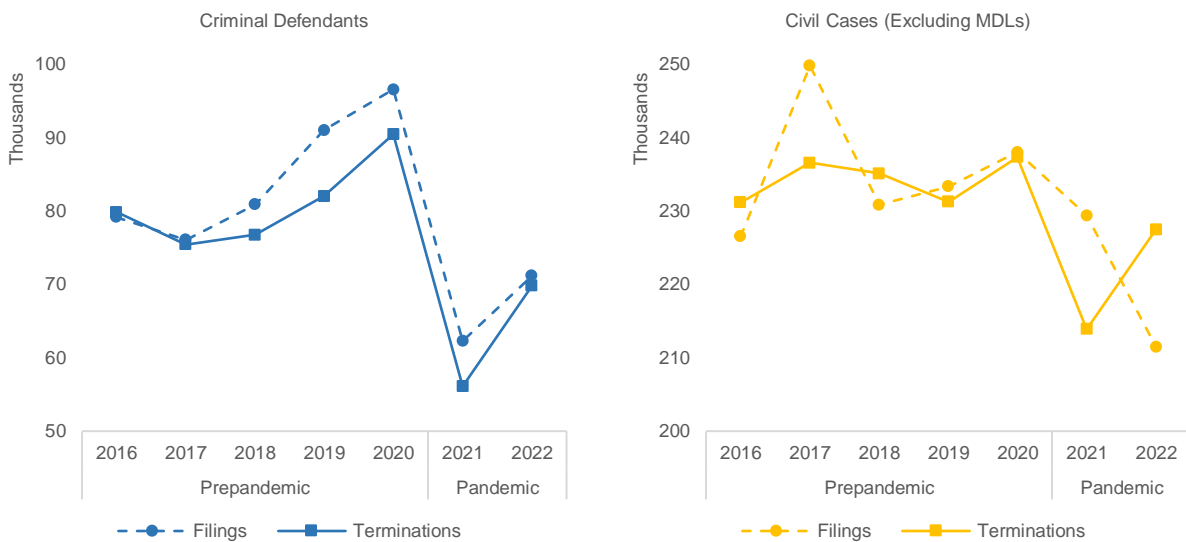


Figure 12 shows clearance rates for the criminal and civil dockets during the first two years of the pandemic and the five years that preceded it. The criminal clearance rate was 0.90 during the first year of the pandemic, meaning that for every ten new defendants who came onto the docket, nine left it. This was a decrease of 4% from the prior year’s clearance rate and a 6% decrease from the five-year prepandemic average. A 4% decrease in the criminal clearance rate is not out of the ordinary. In fact, criminal clearance rates have been decreasing steadily since the beginning of this series in March 2016. Criminal clearance rates decreased by 2% from March 2016 to March 2017, by 4% from March 2017 to March 2018, and by 5% from March 2018 to March 2019. Moreover, although a clearance rate of 0.90 is low, it is not at all unprecedented. In fact, two years prior to the pandemic, the criminal clearance rate was also 0.90.

The civil clearance rate was higher than the criminal clearance rate during the first year of the pandemic, but the magnitude of the decrease in the civil clearance rate that occurred during the first year of the pandemic was greater than the magnitude of the decrease in the criminal clearance rate. The clearance rate for civil cases was 0.93 during the first year of the pandemic. This was 7% lower than the previous year and 7% lower than the five-year prepandemic average. In contrast to criminal clearance rates, civil clearance rates have tended to hover just above or just below 1. The only recent exception was when the clearance rate dropped by 7% to 0.95 during the twelve-month period ending March 13, 2017.

Figure 12 also indicates that clearance rates increased significantly on both the criminal and civil dockets during the second year of the pandemic. The criminal clearance rate increased by 9% to 0.98, meaning that almost as many defendants left the docket as came onto it. The civil clearance rate increased by 15% to 1.08, meaning that more cases left the docket than came onto it. Both the 9% increase on the criminal docket and the 15% increase on the civil docket were large compared to prepandemic increases.

Figure 13. Filings and Terminations (Year Ending March 13)



Courts were able to clear their dockets so effectively at least in part because fewer new cases were filed during the pandemic. The left panel of Figure 13 shows the number of criminal defendants that were filed and the number of criminal defendants that were terminated during the first two years of the pandemic and the five previous years. The right panel of Figure 13 shows the same information, but for civil cases. Beginning first with the criminal side, a large decrease in terminations during the first year of the pandemic was accompanied by a comparable drop in filings. Specifically, 62,271 new criminal defendants were filed during the twelve-month period ending March 13, 2021. This was a 36% decrease from the prior twelve-month period, when 96,553 defendants were filed, and a drop of 27% from the five-year prepandemic average of 84,732. Criminal filings increased from the first year of the pandemic to the second year along

with terminations. During the year ending March 13, 2022, 71,139 defendants were filed—an increase of 14% from the first year of the pandemic, but 16% below the five-year prepandemic average.

Civil filings decreased over both years of the pandemic. There were an estimated 229,358 civil cases filed during the first year of the pandemic. This was a decrease of 4% from the previous year and 3% from the previous five-year average of 235,697.³⁹ A larger decrease in civil filings occurred during the second year of the pandemic. During the twelve-month period ending March 13, 2022, an estimated 211,472 civil cases were filed. This was a decrease of 10% from the five-year prepandemic average.

The number of criminal defendants and civil cases filed depends on the decisions and actions of policymakers, law enforcement agencies, prosecutors, attorneys, and pro se litigants. Although a comprehensive analysis of how filing trends may be related to pandemic events is beyond the scope of this analysis, a few categories bear mentioning. As stated earlier, for example, the share of immigration cases on the criminal docket decreased during the pandemic. Specifically, criminal immigration filings dropped from a total of 64,939 defendants filed during the two years prior to the pandemic to 33,642 defendants filed during the first two years of the pandemic—a 48% decrease. Some of this decrease may have been driven by a March 20, 2020, order from the Centers for Disease Control and Prevention that barred entry to some noncitizens entering the United States from Mexico and Canada.⁴⁰ Under this order, people who may have otherwise been detained and prosecuted for unlawful entry or reentry were instead quickly removed from the United States without a deportation order or federal charges.⁴¹

On the civil docket, real property filings, which include federal foreclosure and eviction cases, decreased from 13,176 cases filed in the two years before the pandemic to 6,197 cases filed during the first two years of the pandemic—a 53% decrease. The Coronavirus Aid, Relief, and Economic Security (CARES) Act became law on March 27, 2020, and prohibited servicers of federally backed mortgages from initiating foreclosure proceedings for 60 days and lessors of many types of homes from initiating proceedings to evict tenants for 120 days. The CARES Act also allowed borrowers to request forbearance on federally backed mortgage loans.⁴² These protections were extended through much of the second year of the pandemic.⁴³

39. Estimates of civil case filings exclude cases consolidated into an MDL. When such cases are included, there was a total of 470,660 civil cases filed during the first year of the pandemic—an increase of 47% over the previous year. This large increase was unrelated to the pandemic. More than 200,000 of these cases were consolidated into *In re: 3M Combat Arms Earplug Products Liability Litigation* (MDL No. 2885), pending in the Northern District of Florida.

40. Notice of Order Under Sections 362 and 365 of the Public Health Service Act, *supra* note 33.

41. Major Swings in Immigration Criminal Prosecutions during Trump Administration, *supra* note 33.

42. CARES Act, H.R.748, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/748>. See especially §§ 4022, 4023, 4024.

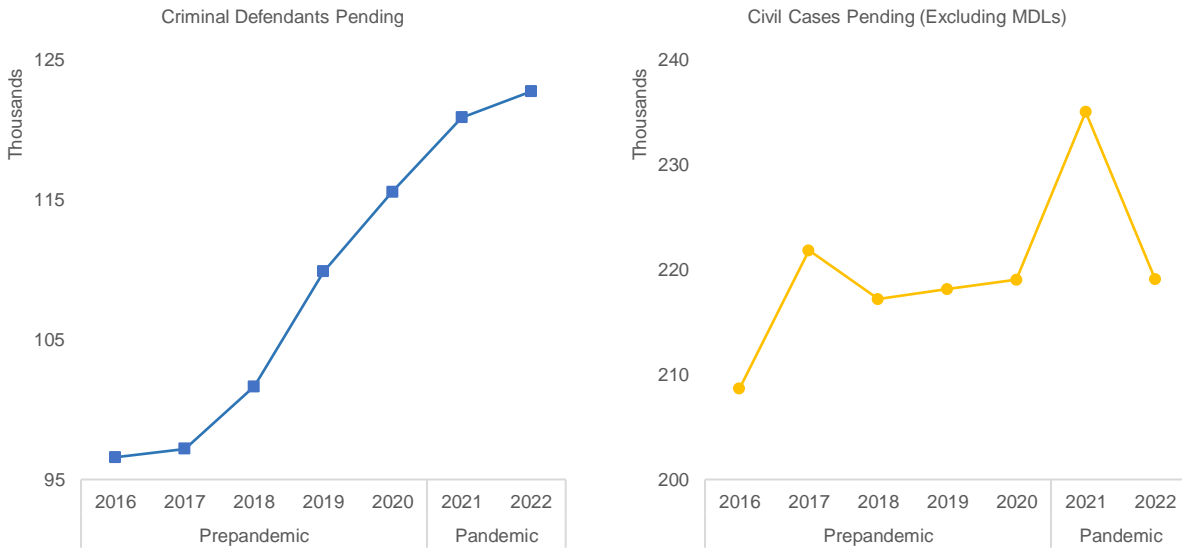
43. Government Accountability Office, COVID-19 Housing Protections: Mortgage Forbearance and Other Federal Efforts Have Reduced Default and Foreclosure Risks, Report to Congressional Committees (July 2021), <https://www.gao.gov/assets/gao-21-554.pdf>; Government Accountability Office, COVID-19 Housing Protections: Moratoriums on Evictions have Helped Limit Evictions, but Further Outreach is Needed, Report to Congressional Committees (March 2021), <https://www.gao.gov/assets/gao-21-370.pdf>.

Mandamus petitions, on the other hand, increased by 37% during the first two years of the pandemic, from 2,563 cases to 3,522 cases. The timing of the increase coincides with the first wave of the pandemic. Many of these petitions were requests for compassionate release by inmates claiming to have health risk factors that made them particularly vulnerable to COVID-19. Between January 2019 and March 2020, there were an average of 101 mandamus petitions filed per month. Mandamus petitions increased to 200 filed in April 2020 and peaked at 228 in July 2020.

F. Evaluating Pandemic Backlog in the Context of Prepandemic Trends

Overall, 29% fewer criminal defendants and 6% fewer civil cases were filed during the first two years of the pandemic compared to the two-year period before the pandemic. Recall that 27% fewer criminal defendants and 6% fewer civil cases were terminated during the first two years of the pandemic compared to the two years before the pandemic. The pandemic’s impact on case processing therefore appears to have been mostly offset by the decreased volume of filings. In the aggregate, courts were able to clear their dockets despite the suspension of trials and other disruptions because workload also decreased. This dynamic—slower case processing combined with reduced workload—is key to understanding backlog during the pandemic.

Figure 14. Number of Criminal Defendants and Civil Cases Pending (Year Ending March 13)



This give and take between delays and reduced workload is reflected in data on the number of pending criminal defendants and pending civil cases during the first two years of the pandemic. The left panel of Figure 14 depicts a steady upward trend in the number of pending criminal defendants in the years before the pandemic. From March 14, 2018, to March 13, 2019, the number of pending criminal defendants increased by 8%. From March 14, 2019, to March 13, 2020, the number of pending criminal defendants increased by 5%. This trend continued through the first year of the pandemic. From March 14, 2020, to March 13, 2021, the number of pending criminal defendants rose by 5% to 120,870. Thus, while backlog on the criminal docket increased during

the first year of the pandemic, the increase was consistent with increases observed in recent prepandemic years. The growth in pending criminal defendants then slowed to 1.5% during the second year of the pandemic as the number of defendants terminated approached the number of defendants filed. By the end of the second year of the pandemic, 122,737 criminal defendants were pending on the federal docket.

The right panel of Figure 14 indicates that the number of pending civil cases was increasing slowly in the years prior to the pandemic. From March 14, 2018, to March 13, 2019, and March 14, 2019, to March 13, 2020, for example, the pending civil caseload increased by less than 1% per year. A much larger increase occurred during the first year of the pandemic. Specifically, the number of pending civil cases on the federal docket rose from 219,016 cases on March 13, 2020, to 235,036 cases on March 13, 2021, for an increase of 7%.⁴⁴ Backlog growth that occurred during the first year of the pandemic, however, was virtually erased during the second year of the pandemic when courts terminated more civil cases than were filed. As Figure 14 shows, the number of pending civil cases was 219,016 when the pandemic began, 235,036 at the end of the first year of the pandemic, and 219,108 at the end of the second year of the pandemic.

In the aggregate, the U.S. district courts emerged from the second year of the pandemic with a backlog of criminal defendants and civil cases that was *lower* than what would have been expected had there been no pandemic and trends continued along prepandemic trajectories. In the five years before the pandemic, for instance, the number of pending criminal defendants increased an average of 3.43% per year and the number of pending civil cases increased an average of 0.54% per year. Using the number of pending defendants/cases on March 13, 2020, as the baseline, these rates of increase would predict 123,620 pending criminal defendants and 221,387 pending civil cases on March 13, 2022. In reality, there were 122,737 pending defendants on the criminal docket and 219,108 pending cases on the civil docket on March 13, 2022. Therefore, there were slightly fewer pending criminal defendants and pending civil cases on the federal docket at the end of the second year of the pandemic than would have been expected based on prepandemic trends.

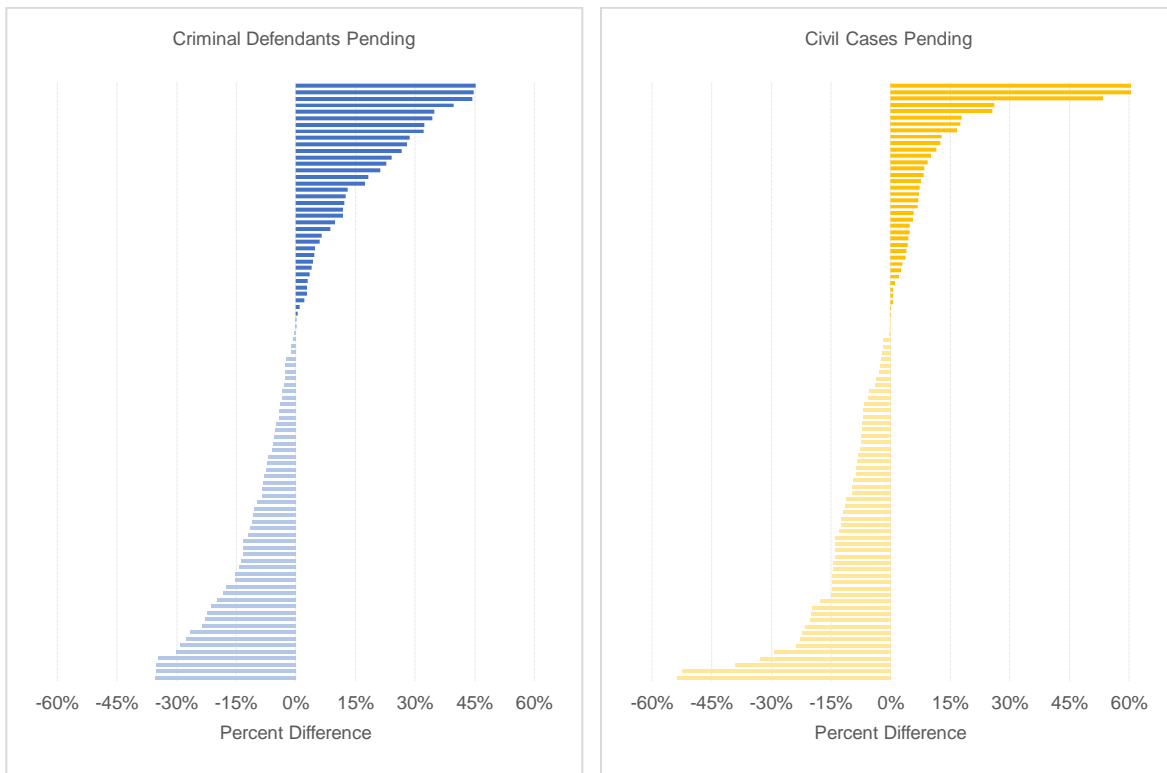
Each court, however, experienced the pandemic differently. The severity of the pandemic, for example, varied by district.⁴⁵ Moreover, some courts took longer to acclimate to remote work or resume trials, while other courts experienced resource constraints that slowed the transition to virtual proceedings. Differences such as these may have contributed to variation in backlog growth.

Figure 15 examines district-level variation in backlog growth. The left panel shows the percentage difference between the actual number of pending criminal defendants in each district on March 13, 2022, and the expected number of pending criminal defendants based on prepandemic growth trends. Similarly, the right panel shows the percentage difference between the actual number of pending civil cases in each district on March 13, 2022, and the expected number based on prepandemic trends.

44. Although a 7% increase is large compared to the most recent prepandemic years, we also note the pending civil caseload increased by 6% from March 13, 2016, to March 13, 2017.

45. See Laks & Garri, *supra* note 10.

Figure 15. Percentage Difference Between the Actual Number of Pending Defendants/Cases on Each District’s Docket at the End of the Second Year of the Pandemic and Expected Number Based on Prepandemic Trends.



Note: For clarity of presentation, the horizontal axis has been truncated at -60% and +60%. Two districts in the right panel have scores of 115% and 119%.

We compare actual outcomes to expected outcomes to factor out the usual growth in backlog.⁴⁶ To calculate the expected number of pending defendants/cases, we averaged the annual percentage increase in pending defendants/cases for each court over the five-year period preceding the pandemic. Then, with the number of pending defendants/cases on March 13, 2020, as the baseline, we used the average rate of prepandemic growth to calculate expected backlog on March 13, 2021, and March 13, 2022. A district with a positive percentage difference finished the second year of the pandemic with more pending criminal defendants or pending civil cases on its docket than would have been expected based on that district’s prepandemic trajectory. A district with a negative percentage difference emerged from the second year of the pandemic with fewer pending criminal defendants or pending civil cases on the docket than would have been expected based on that district’s prepandemic trajectory.

46. This approach is contrasted with approaches that compare actual pandemic outcomes to actual prepandemic outcomes (e.g., comparing backlog at the end of the second year of the pandemic to the five-year prepandemic mean, or comparing the number of pending defendants/cases at the end of the second year of the pandemic to the number of pending defendants/cases at the beginning of the pandemic). Comparing actual pandemic outcomes to actual prepandemic outcomes risks overstating the pandemic’s impact because backlog would likely have increased in many districts even if the pandemic had not occurred.

Figure 15 indicates that backlog was lower than expected in the majority of districts. At the same time, however, some courts emerged from the second year of the pandemic with many more pending criminal defendants or pending civil cases on their dockets than would have been expected based on prepandemic growth trends.

Beginning first with the criminal side, we observe that thirty-eight districts had a positive percentage difference, meaning that the actual number of pending criminal defendants on the docket at the end of the second year of the pandemic was higher than the number expected based on prepandemic trends. The remaining fifty-four districts had as many or fewer pending criminal defendants on the docket than expected.⁴⁷ Overall, the median district had 3% fewer pending defendants on its criminal docket than expected based on prepandemic trajectories. Among the thirty-eight districts where actual backlog was greater than expected backlog, the median district had 12% more pending criminal defendants on the docket than expected and districts in the top quartile had between 29% and 45% more pending criminal defendants on the docket than expected.⁴⁸

On the civil side, we observe that thirty-seven districts had more pending cases on the docket on March 13, 2022 than expected, while the remaining fifty-seven districts had fewer. The median district had 4% fewer pending civil cases on the docket than expected. Among the thirty-seven districts where actual backlog was higher than expected, the median district had 7% more pending civil cases on the docket than expected and districts in the top quartile had between 13% and 119% more pending civil cases on the docket than expected. Backlog therefore grew substantially in some districts during the first two years of the pandemic despite being lower than expected in the aggregate.

47. Two outlier districts with large numbers of pending criminal defendants have been omitted from Figure 15 and all related calculations discussed in this section. The dockets of the Northern and Eastern Districts of Oklahoma were anomalous due to the United State Supreme Court's July 2020 decision in *McGirt v. Oklahoma*. According to the Major Crimes Act, the prosecution of "[a]ny Indian who commits" certain offenses "within the Indian country" is "within the exclusive jurisdiction of the United States" (18 U.S.C. § 1153(a)). In *McGirt*, the Court determined that territory in Oklahoma promised to the Muscogee (Creek) Nation after its people's forced removal from Georgia and Alabama remains "Indian country" for purposes of federal criminal law (*McGirt v. Oklahoma*, 140 S. Ct. 2452, 2458 (2020)). As crimes committed by "Indian[s]" "within the Indian country" have historically been prosecuted by the state of Oklahoma in Oklahoma state courts, *McGirt* and subsequent decisions have the effect of expanding the federal criminal jurisdiction within Oklahoma. The boundaries of the five Indian nations affected by the *McGirt* decision, although not coextensive, largely coincide with the Northern and Eastern Districts of Oklahoma. It is therefore unsurprising that federal criminal litigation increased in these districts despite downward effects of the COVID-19 pandemic. Indeed, as noted by the United States Attorney's Office of the Eastern District of Oklahoma in an April 22, 2021, press release, there is "an unprecedented and historic number of indictments for the Eastern District," and "[t]he vast majority of the new filings are crimes arising out of Indian Country" (<https://www.justice.gov/usao-edok/pr/eastern-district-oklahoma-federal-grand-jury-hands-down-record-number-indictments>). Our data show that the number of pending criminal defendants was 92% and 177% higher than expected in the Northern and Eastern Districts of Oklahoma, respectively, at the end of the second year of the pandemic.

48. Again, these figures are based on calculations that omitted the Northern and Eastern Districts of Oklahoma.

Conclusion

This study has examined case-processing trends in the United States district courts during the first two years of the pandemic. We found that criminal defendants and civil cases have taken more time to move through the district courts since the onset of the pandemic, and, as of March 2022, processing time had not returned to the prepandemic norm. Likewise, fewer criminal defendants and civil cases have been tried, and, on that front, trials have not returned to the prepandemic norm either. On the other hand, the pandemic has resulted in a substantial decrease in criminal defendant and civil case filings. Consequently, even though the district courts were terminating and trying fewer criminal defendants and civil cases during the pandemic, the aggregate accumulation of pending criminal defendants and pending civil cases was actually lower than the amount of backlog expected based on prepandemic growth trends. Circumstances varied by district, however. Although a majority of districts emerged from the second year of the pandemic with less backlog than expected, backlog was higher than expected in two out of every five districts. In some of these districts, the growth in backlog was substantial.

In making these conclusions, it is important to emphasize that we cannot be sure that the trends reported here were necessarily *caused* by the pandemic. We have speculated about the causes of certain changes and trends and placed them in the context of what we know generally about how courts responded to COVID-19, but a closer understanding of how each court experienced the pandemic is needed to determine whether the changes we have described were caused by the pandemic or other factors. Although we briefly discussed district-level trends in the context of jury trials and backlog, this report was largely limited to aggregate trends.

Finally, it is important to reiterate that our analyses of the civil docket excluded cases that were consolidated by the JPML under the multidistrict litigation procedure set forth in 28 U.S.C. § 1407. To our best knowledge, there is not an established convention for counting cases that are consolidated into MDL. Moreover, our counts were based on IDB snapshots and JPML case extracts at particular points in time. Other researchers may count the number of cases consolidated into MDL differently if they use different procedures or data snapshots. For these reasons, we have encouraged readers to think of our counts of civil cases as estimates rather than exact figures.

Appendix: Procedures for Counting Civil Cases

All analyses of civil data in this report excluded cases that were consolidated by the Judicial Panel on Multidistrict Litigation (JPML) under the multidistrict litigation (MDL) procedure set forth in 28 U.S.C. § 1407. We have attempted to exclude cases that were consolidated in the transferee courts, and, when applicable, original cases that were filed and closed under different docket numbers prior to consolidation. To make estimates of cases consolidated into MDLs, we used snapshots of the FJC’s Integrated Data Base (IDB) for the years ending March 31, 2015–2022, and case extracts provided to the FJC by the JPML covering January 1, 2015–August 10, 2021, January 1, 2021–December 31, 2021, and January 1, 2022–May 13, 2022. We identified a case as consolidated into an MDL if any of the following were true:

1. The case’s entry in the IDB had a nonmissing value on the Multidistrict Litigation Docket Number (MDLDOCK) variable at any point in time.
2. The case’s entry in the IDB had a value of “10 – multi district litigation transfer” on the Disposition (DISP) variable at any point in time.
3. The case’s entry in the IDB had a value of “6 – multi district litigation (cases transferred to this district by an order entered by the Judicial Panel on Multi District Litigation pursuant to 28 USC 1407)” or “13 – multi district litigation originating in the district (valid beginning July 1, 2016)” on the Origin (ORIGIN) variable at any point in time.
4. The case was listed in the JPML case extracts from January 1, 2015–August 10, 2021, January 1, 2021–December 31, 2021, or January 1, 2022–May 13, 2022.