

# VA



**U.S. Department of Veterans Affairs**

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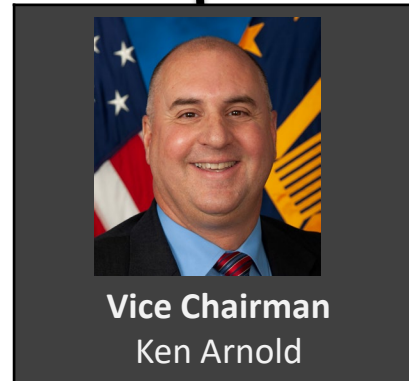
Board of Veterans' Appeals

Michigan VSO Training

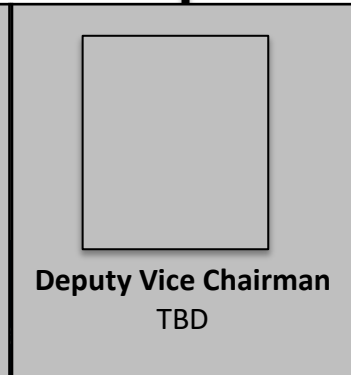
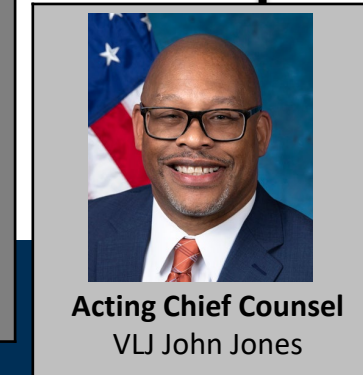
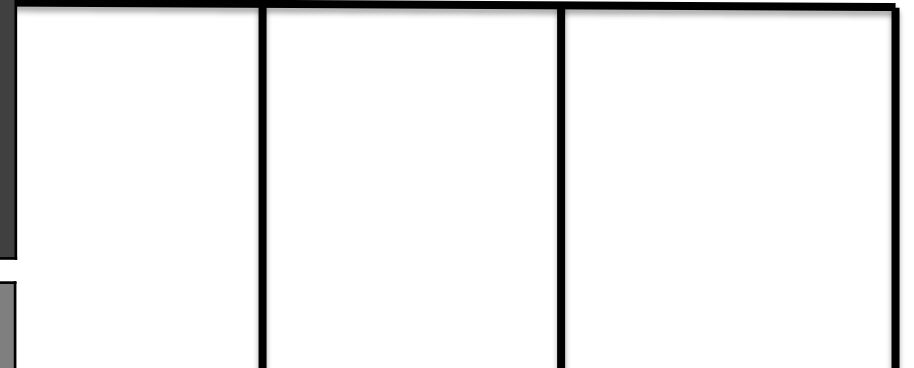
17 August 2023

Presented by Veterans Law Judge Paulette Vance Burton

# The Board's - Organizational Structure



Each DVC is 1<sup>st</sup> and 2<sup>nd</sup> Level  
Supervisor to over 350  
judges /counsel per DVC



# “Members of the Board”

- By statute, the Chairman “is directly responsible to the Secretary” because the Board is charged to “**decide all final decisions on questions of law and fact necessary to a decision by the Secretary** under laws **that affects** the provision of **benefits by the Secretary to veterans or the dependents or survivors of veterans.**” *See* 38 U.S.C. §§511(a), 7101(a) and 7104(a).
- The Chairman is a PAS official at Assistant Secretary level, appointed to a 6-year term
- Vice Chairman and all other Members of the Board “shall be appointed by the Secretary, **with the approval of the President**”
- By VA regulation, all Members of the Board are known as **Veterans Law Judges (VLJs)**
  - Includes SES Members of the Board

1933 – 15 Members

2023 (Almost 90 Years Later) – ~140 Members, including SES level

# Mission Matters ... From the Beginning



- On July 28, 1933, President Franklin D. Roosevelt created the Board of Veterans' Appeals (Board)
- Board was charged to:
  - **“provide every possible assistance”** to Veteran claimants
  - **“Final authority”** to decide cases as **“fair to the veteran as well as the Government.”**
- In short, provide fresh/final look at appeals for benefits/services after VA says “No”
- **Perfect I-CARE Mission**

# The Board's Mission



**It's all about maximizing the number of Veterans and their families served through hearings and decisions.**

- Responsible for fully considering and appropriately resolving final decisions on behalf of the Secretary for the provision of Veterans' benefits and services from all three Administrations and OGC.
- Strengthening employee and Veteran experience through strong partnerships with labor relations representatives, Veterans Service Organizations, private bar, Veteran advocates, and the Hill.
- Solicit and publicize Veteran experience feedback to demonstrate Board's commitment to resolving appeals in our non-adversarial and duty-to-assist system.

## FY 2023 Metrics through July 31, 2023

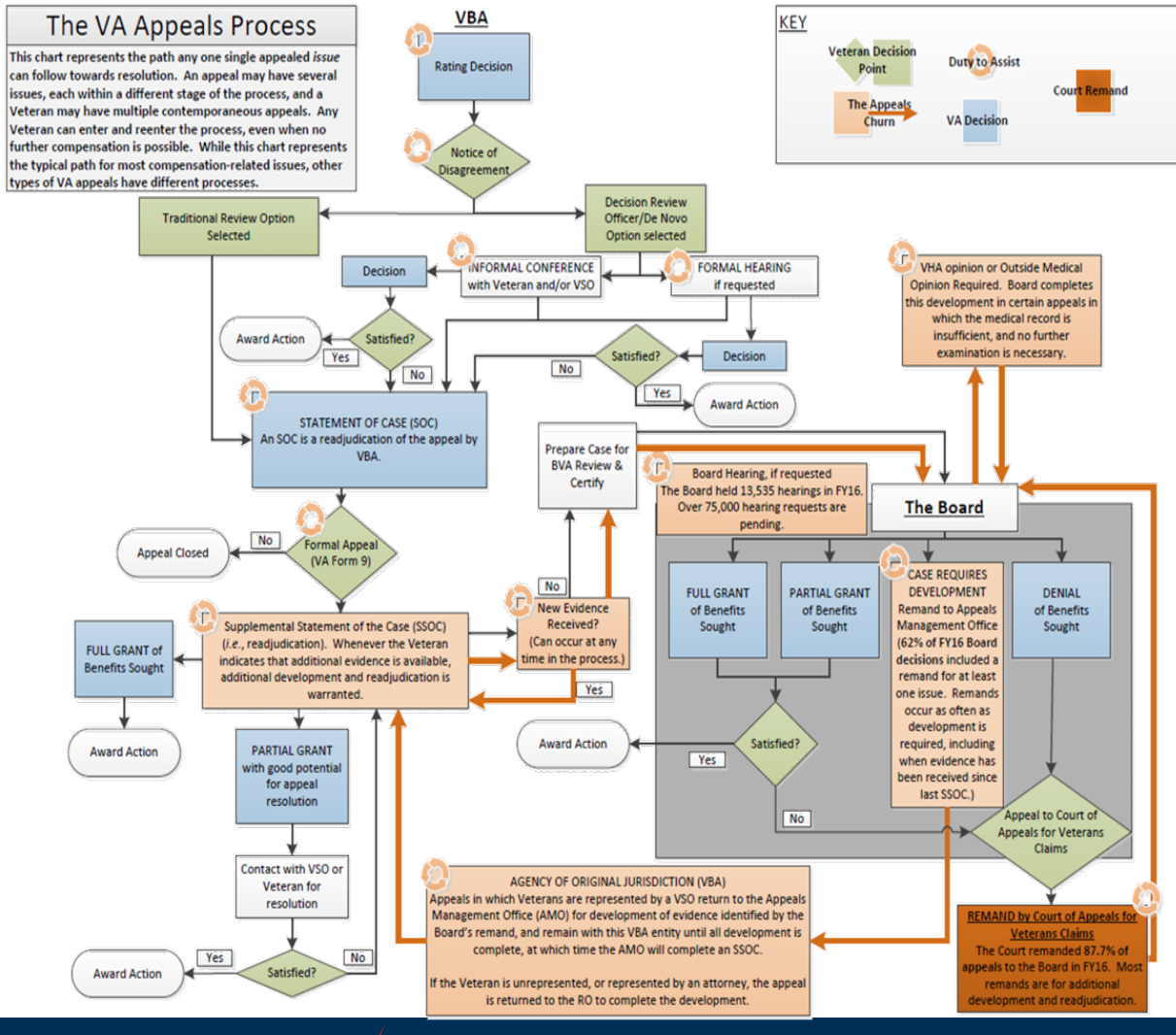
**81,776**  
**Decisions in FY 2023**

**213,715**  
**Appeals Pending**

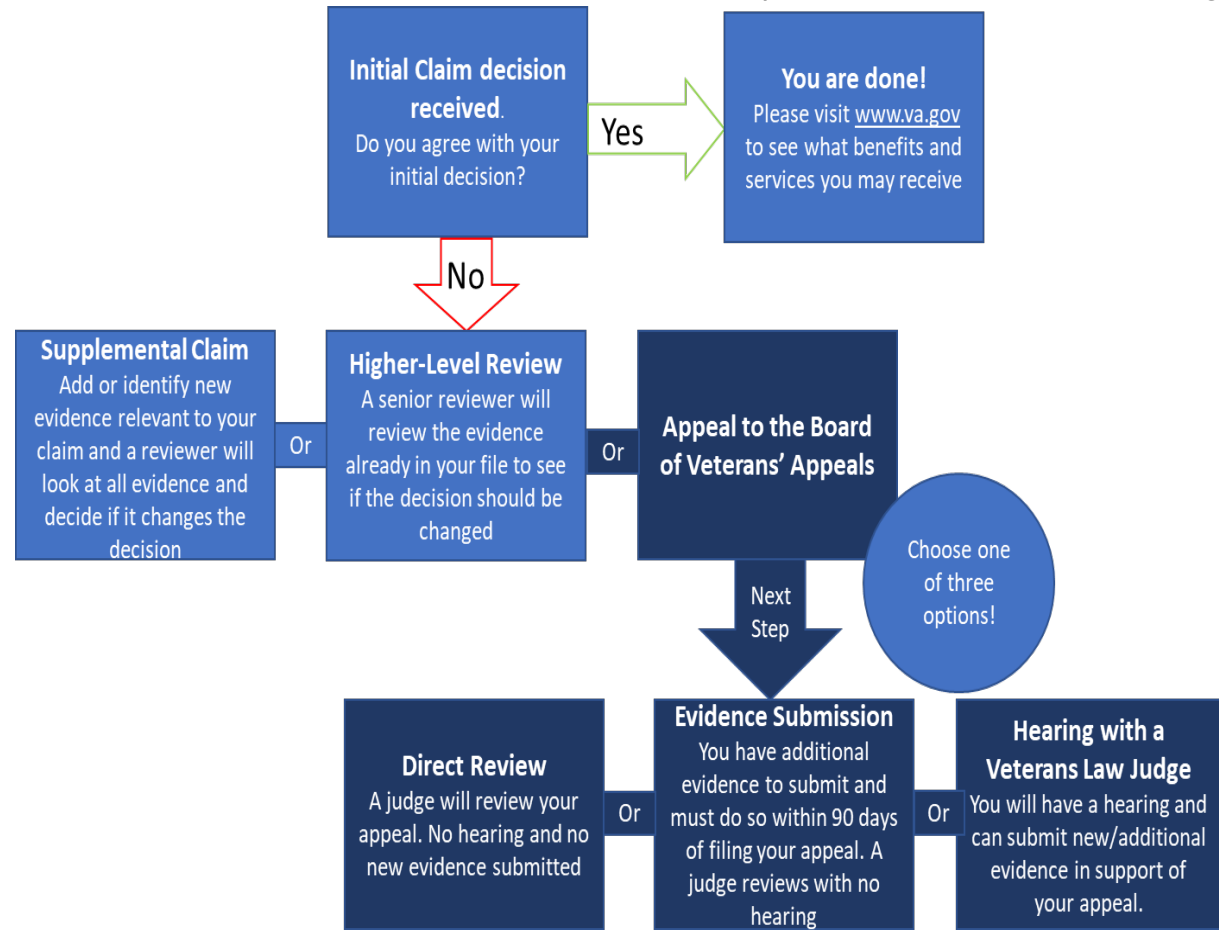
**72,447 Hearings Pending**  
**(1,548 Legacy)**

# The Story of Two Appeals Processes

## VACOLS: Legacy Appeals (65K Appeals Pending) (~32K Pending at Board)

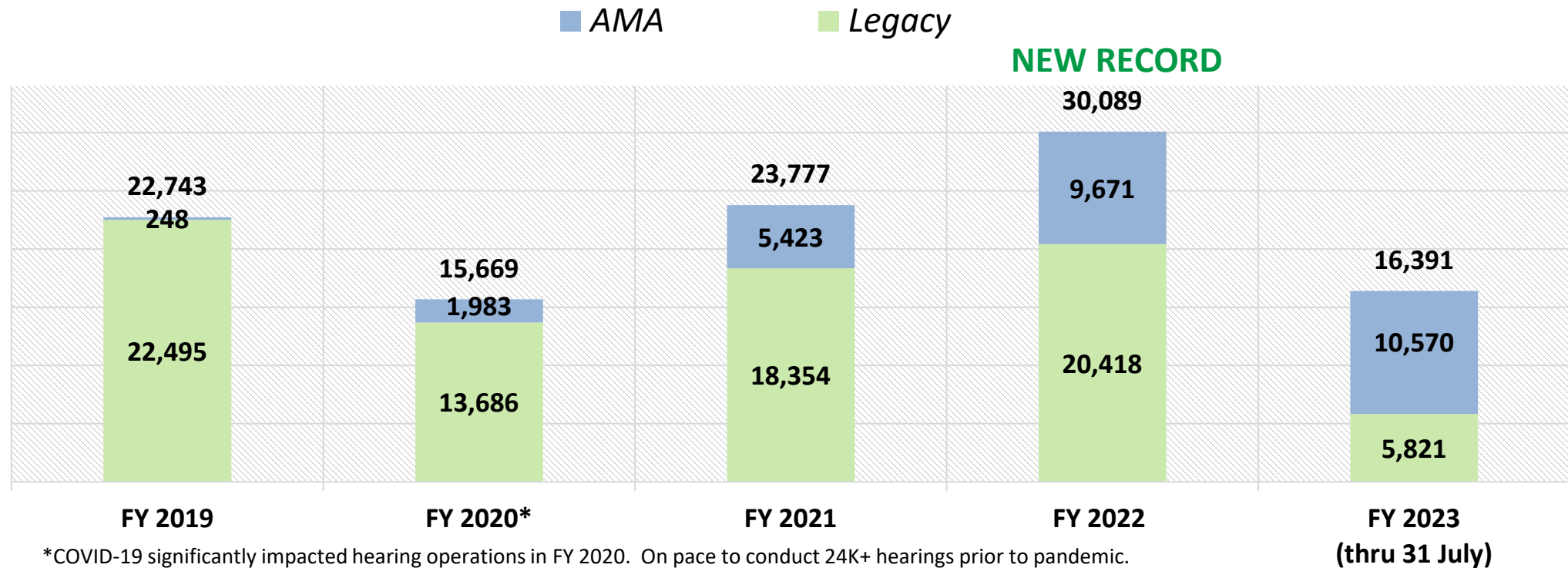


## Caseflow: AMA Appeals at the Board (~182K Appeals Pending)



- The *Veterans Appeals Improvement and Modernization Act of 2017 (AMA)* became effective February 19, 2019. Gave Veterans choice, clarity & control.
- In a 2016 agreement with stakeholders during creation of AMA, VA guaranteed prioritization of Veterans' pending legacy appeals.

# Hearings Held: 5-yr Trend



- Held a record 30,089 hearings in FY 2022
  - 2,507 hearings held per month
- ~ 1,639 held per month in FY 2023
- ~38% of hearings in FY 2023 are cancelled/withdrawn, no-show, or postponed every month

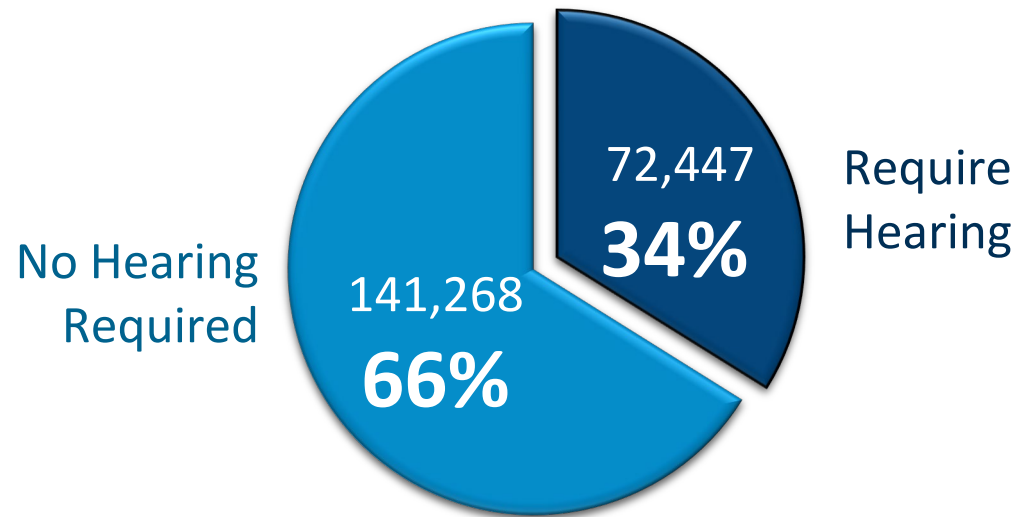
Data as of: July 31, 2023  
Data Source: Board's AMA Tableau and VACOLS Reports

# Pending Appeals and Hearing Requests

**213,715 appeals as of July 31, 2023**

AMA: 181,896

Legacy: 31,819



**34% of Pending Appeals Require a Veteran Requested Hearing**

Data as of: July 31, 2023

Data Source: Board's AMA Tableau and VACOLS Reports



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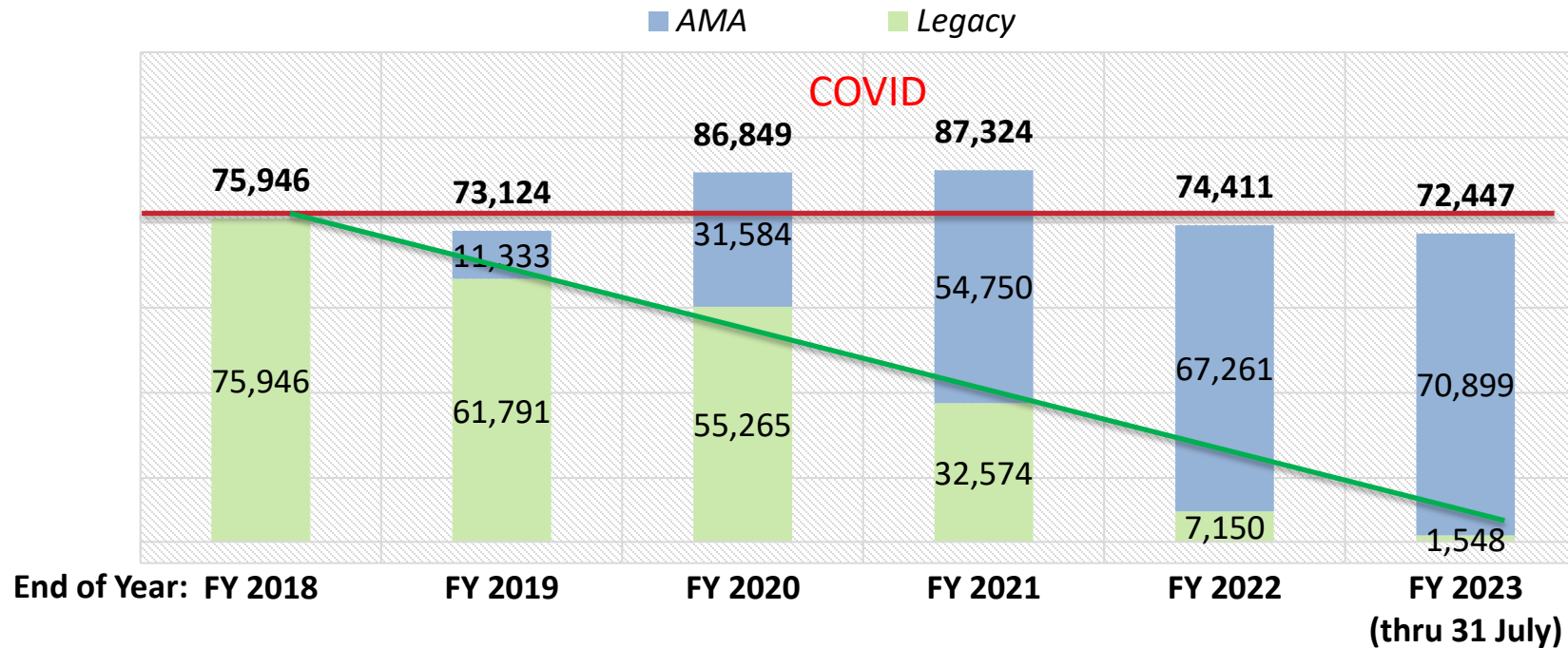
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# Positive Trend #1: Pending Legacy System Hearings Nearly Eliminated



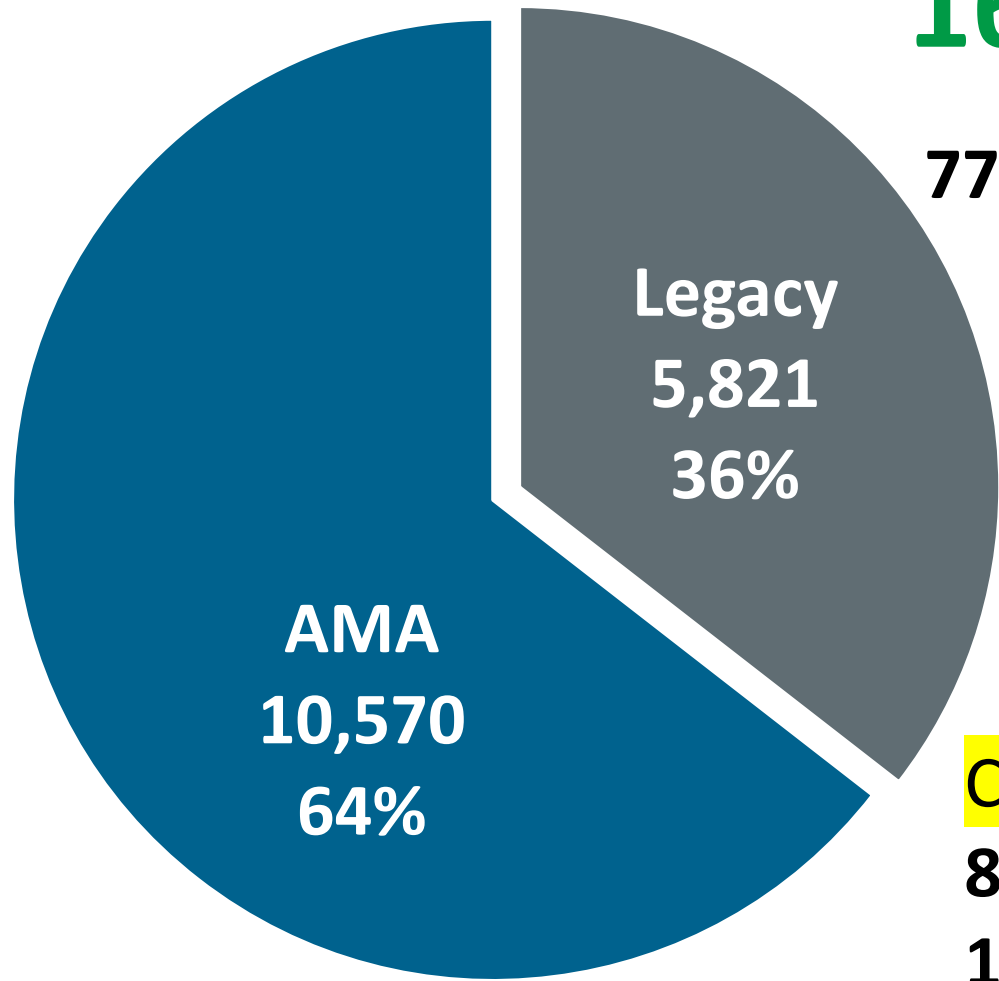
- **Total Hearings Pending:** <73K hearing requests pending | ↓ 2.6% since Sep 2022
- **Virtual hearing** solution has been implemented. 77% held virtually in FY 2023
- **2,200 pending legacy hearing requests; down 76% from start of FY 2023**
- **Declining % of Veterans choosing AMA hearing lane.**
  - 47% in FY21, 39% in FY22, 35% in FY23 through end of June

Data as of: July 31, 2023

Data Source: Board's AMA Tableau and VACOLS Reports

# Hearings Breakdown - FY 2023

## 16,391 Hearings Held



**77% Held Virtually** 12,600+ hearings held virtually

**78% Decrease** In pending Legacy hearings since start of FY 2023.

### CHALLENGE #1

**8,416 Hearings Cancelled/Postponed & 1,573 No Shows (i.e., ~38% scheduled fall out)**

Data as of: July 31, 2023



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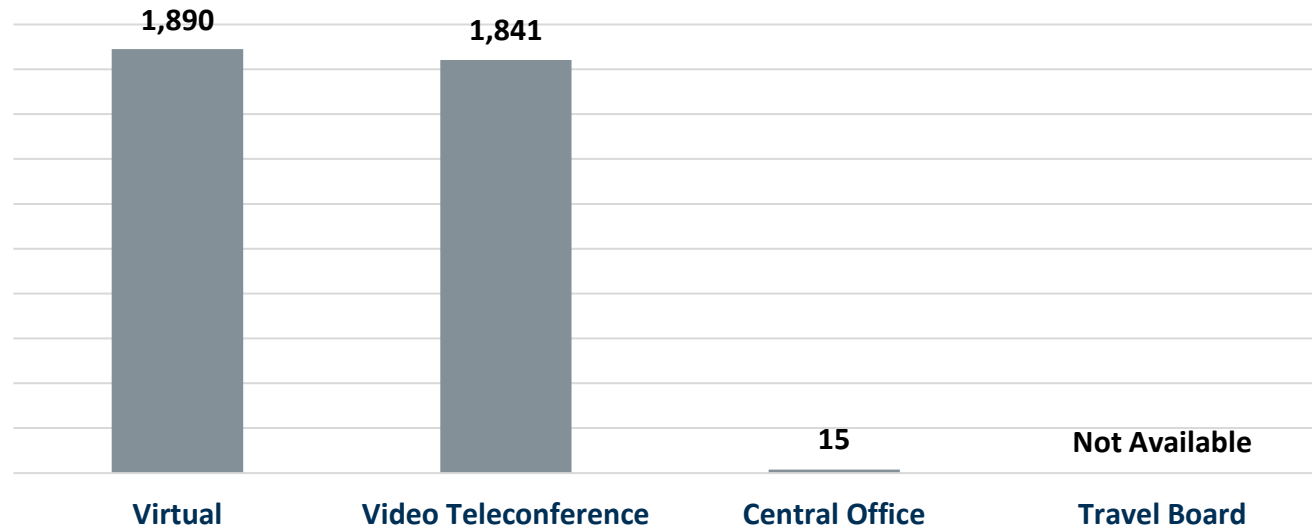
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# Positive Trend #2: Veterans choose Virtual Hearings

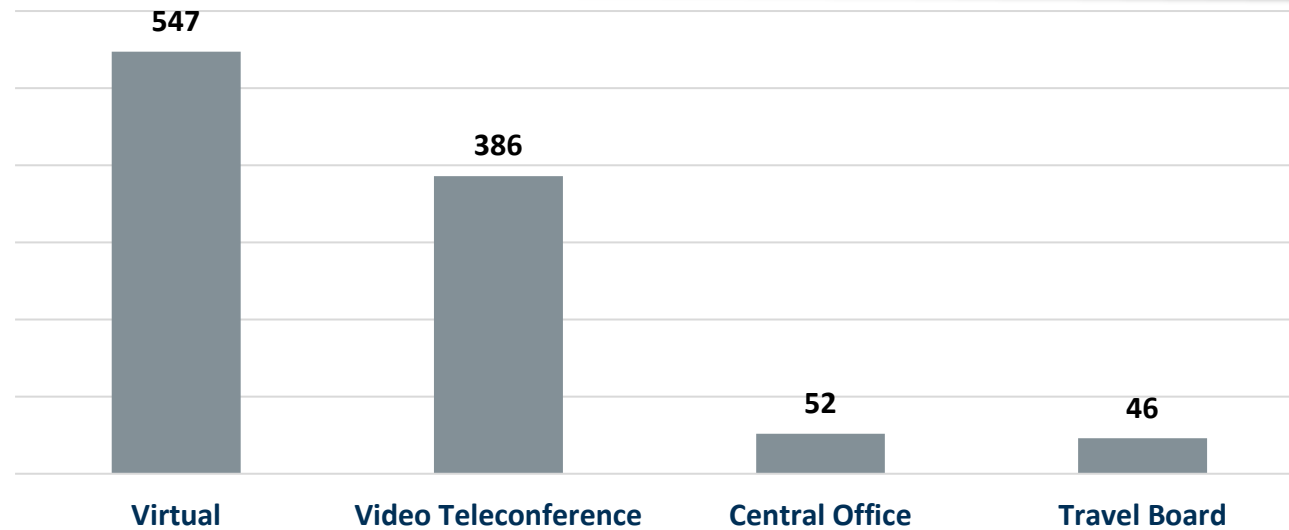
AMA  
Hearing Venue –  
Current Pending



Hearing Venue Not Yet Selected:

67,247

Legacy  
Hearing Venue -  
Current Pending

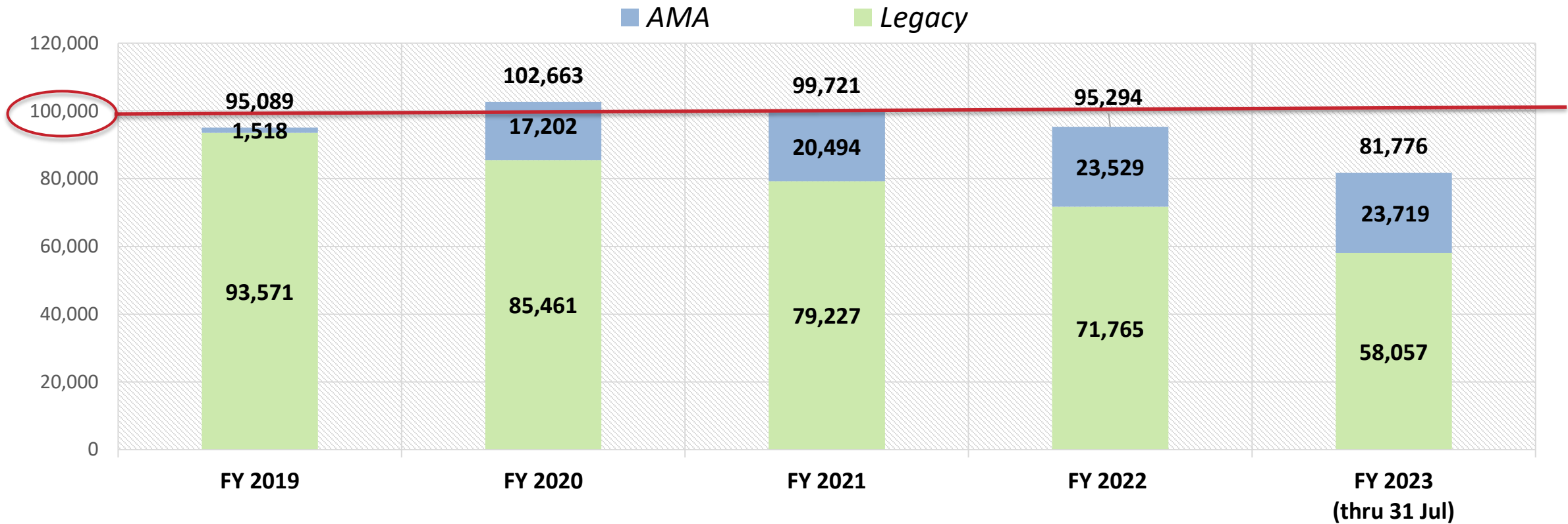


Hearing Venue Not Yet Selected:

489

Data as of: August 2, 2023

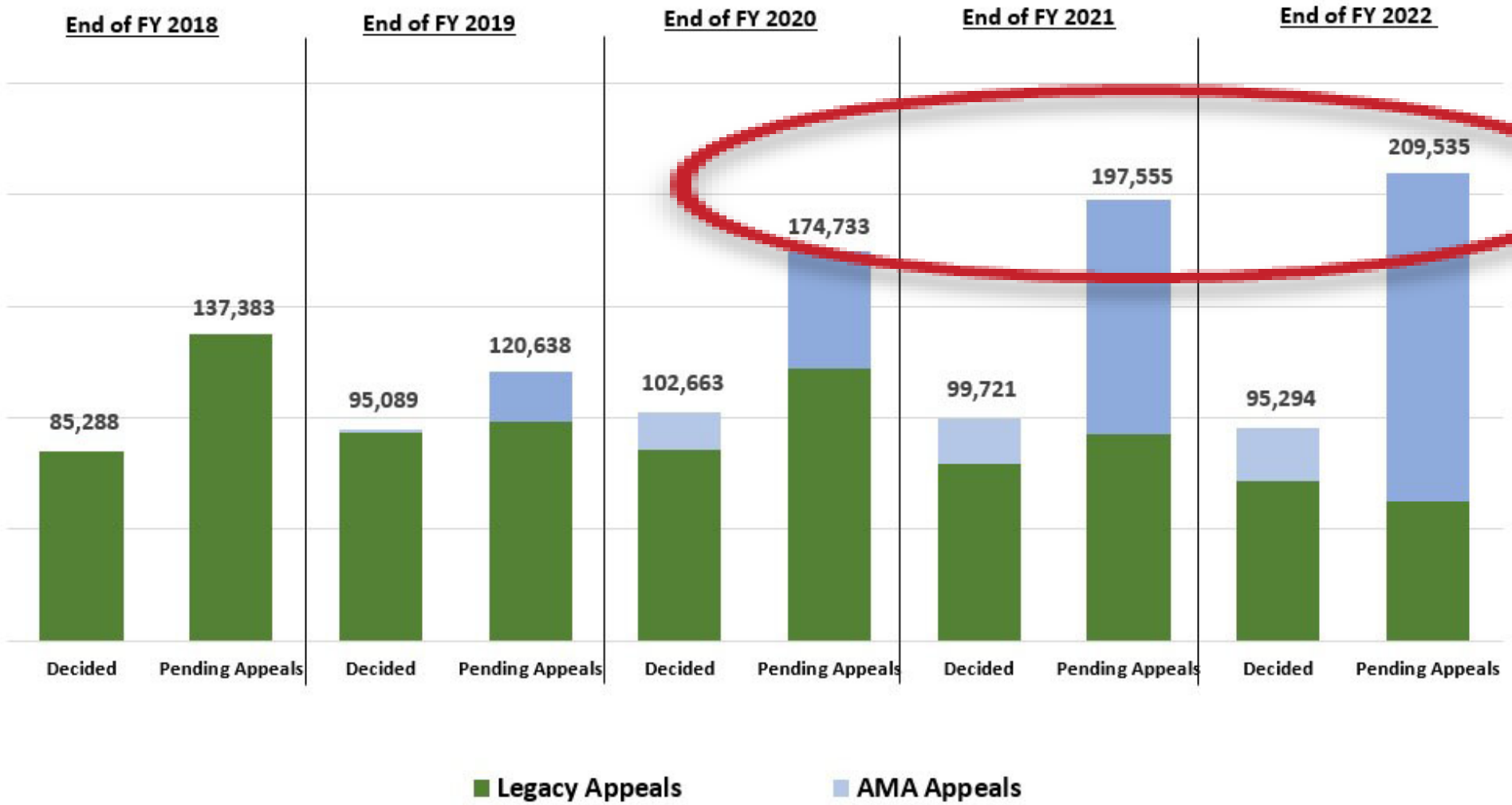
# Appeals Decided: 5-yr Trend



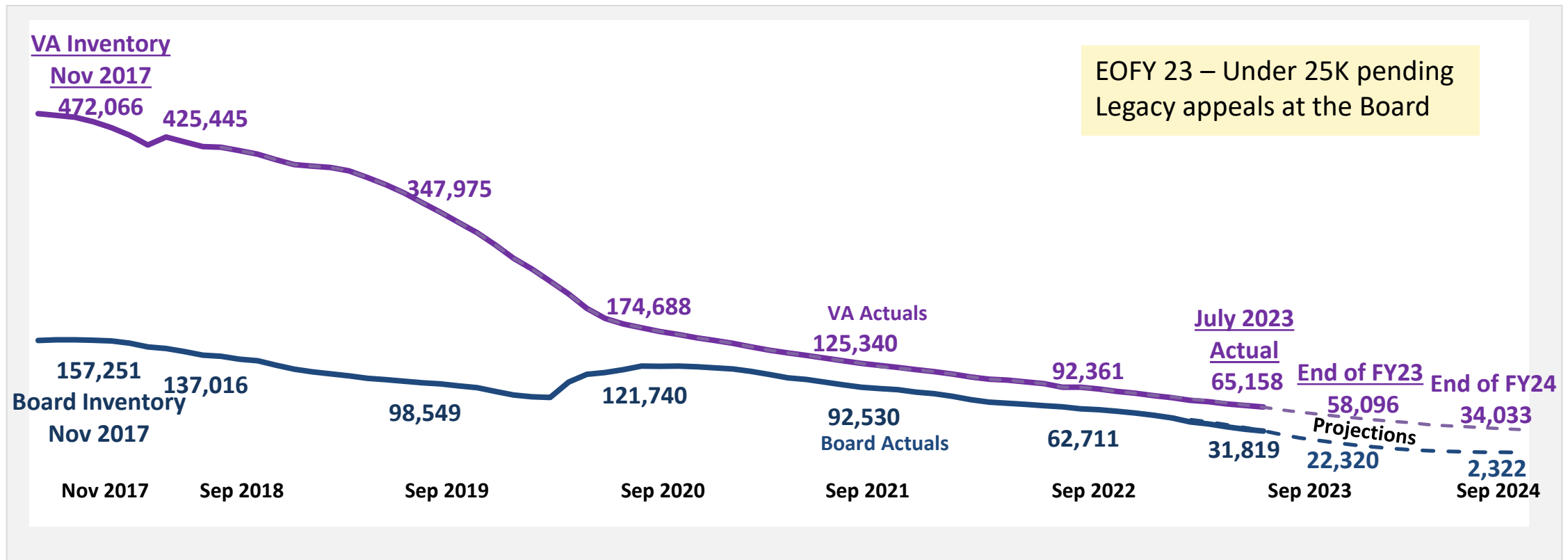
- 95,000+ decisions annually four consecutive years – roughly 396,000 decisions
  - Goal for FY 23 is to set highest ever annual record with 103,132 decisions
- Lower production in FY 2022 due to focus on hearings backlog caused by COVID
- Legacy resolution challenges continue...remand receipts projected well beyond 2024

# Sobering Trend: 100,000 Decisions, but >200,000 In Line

Appeals Adjudicated and Pending (FY 2018 - FY 2022)

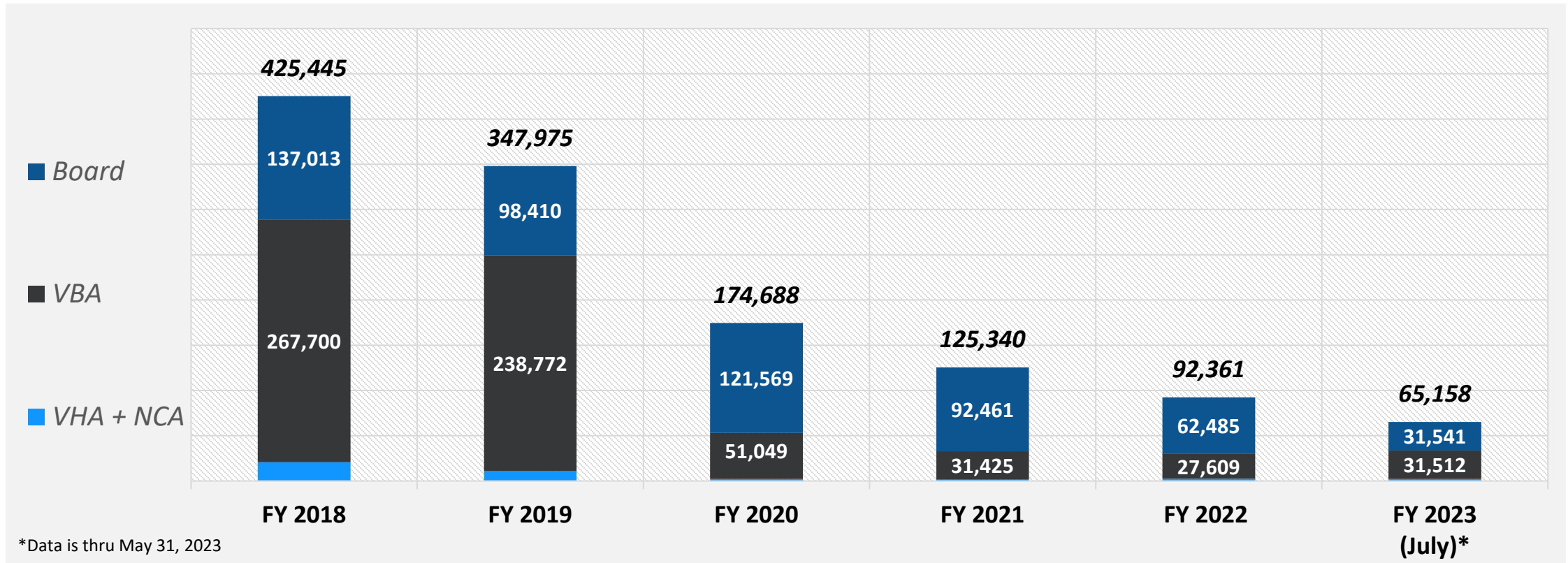


# Legacy Drawdown Plan



- Updated plan in Feb 2023 with revised projections thru EOFY 2024.
- Projects ~58K VA appeals and 22K Legacy system appeals pending at the Board at end of CY 2023.
- Potential for less than 3K original appeals by end of FY 24 (based on VBA recertification rate).

# VA Appeals – Focus on Legacy Case Drawdown

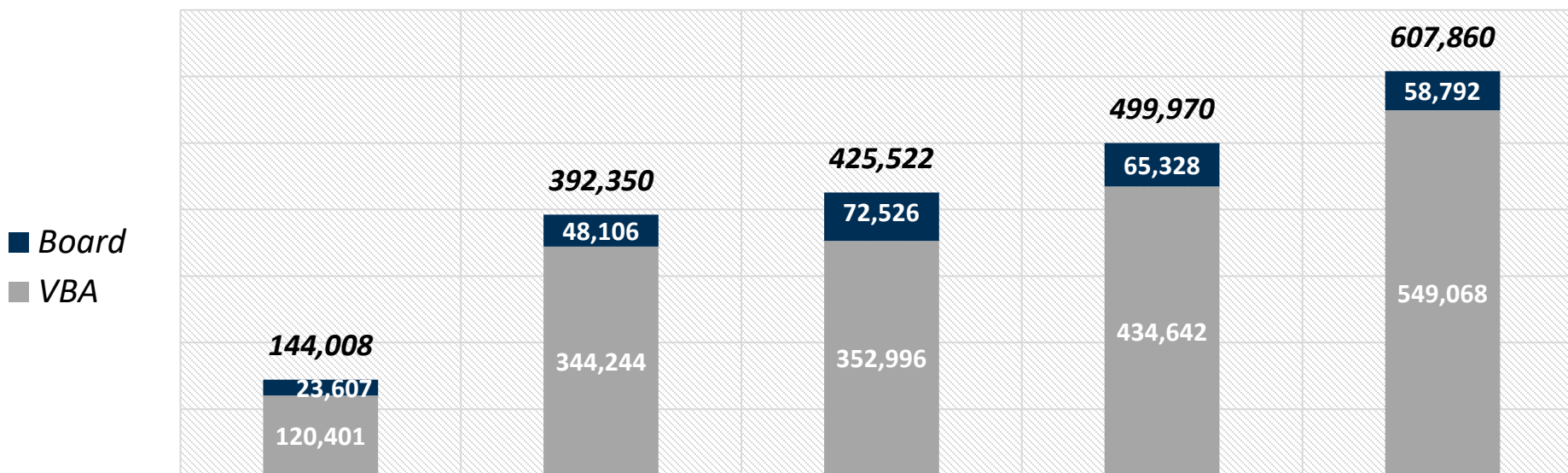


## Legacy Resolution Prioritization

- 85% reduction in appeals pending since end of FY 2018
  - ✓ 236,000+ less VBA appeals pending
  - ✓ 105,000+ less Board appeals pending
- ~65,000 remain pending; 63%+ are remanded appeals

Data as of: July 31, 2023. Updated Monthly

# Board Receipts of AMA Appeals



Appeal Receipts		FY 2019	FY 2020	FY 2021	FY 2022	FY 2023 (July)
VBA	HLR	21,395 (15%)	82,599 (21%)	102,706 (24%)	123,746 (25%)	145,082 (24%)
	Supplemental	99,006 (69%)	261,645 (67%)	250,290 (59%)	310,896 (62%)	403,986 (66%)
Board	Direct	8,745 (6%)	17,206 (4%)	27,815 (7%)	27,621 (5%)	26,219 (4%)
	Evidence	3,189 (2%)	8,404 (2%)	14,970 (4%)	12,432 (3%)	11,670 (2%)
	Hearing	11,673 (8%)	22,496 (6%)	29,741 (7%)	25,275 (5%)	20,903 (4%)

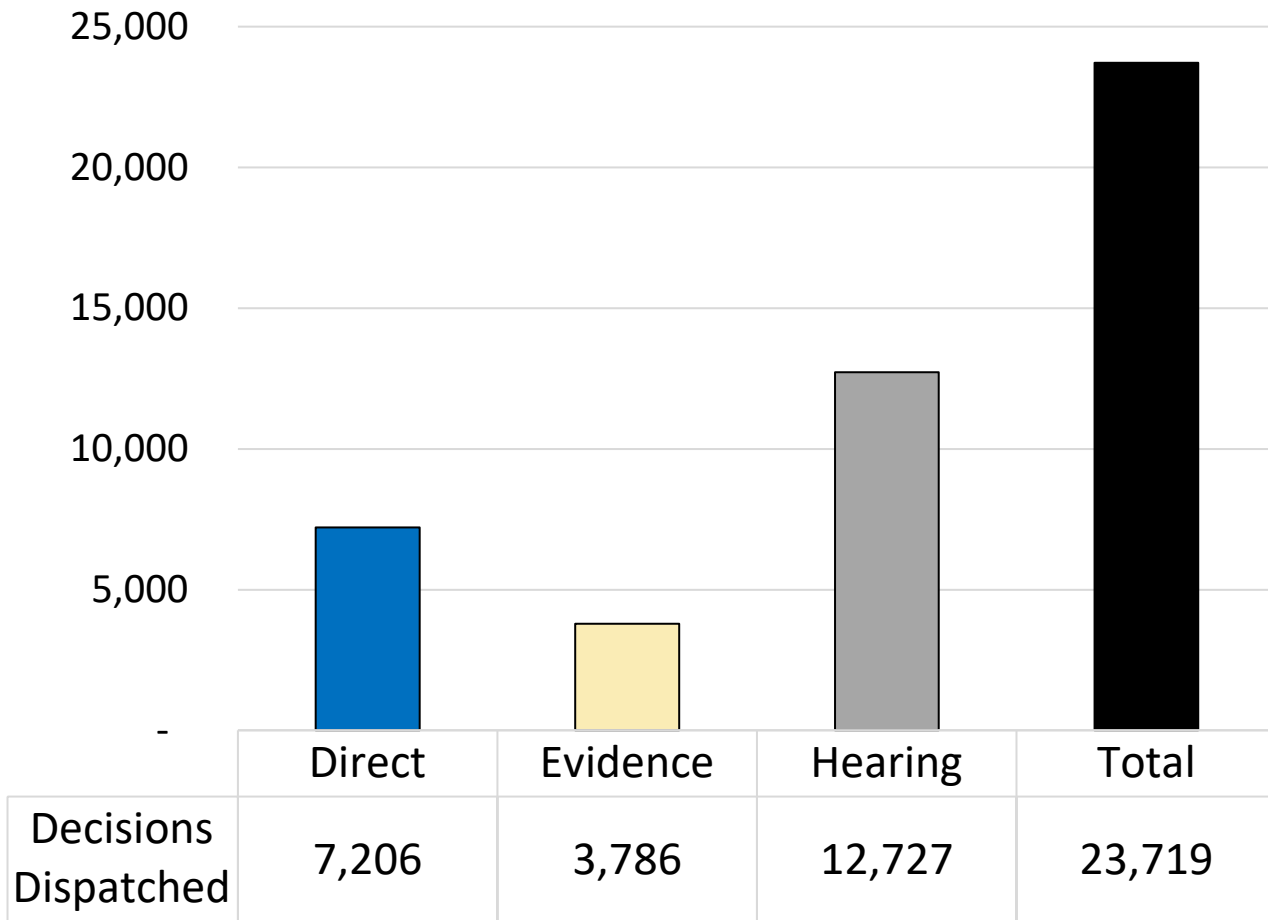
\*Receipts based on date docketed and excludes appeals later cancelled or in a pre-docket status.

Data as of: July 31, 2023. Updated Monthly

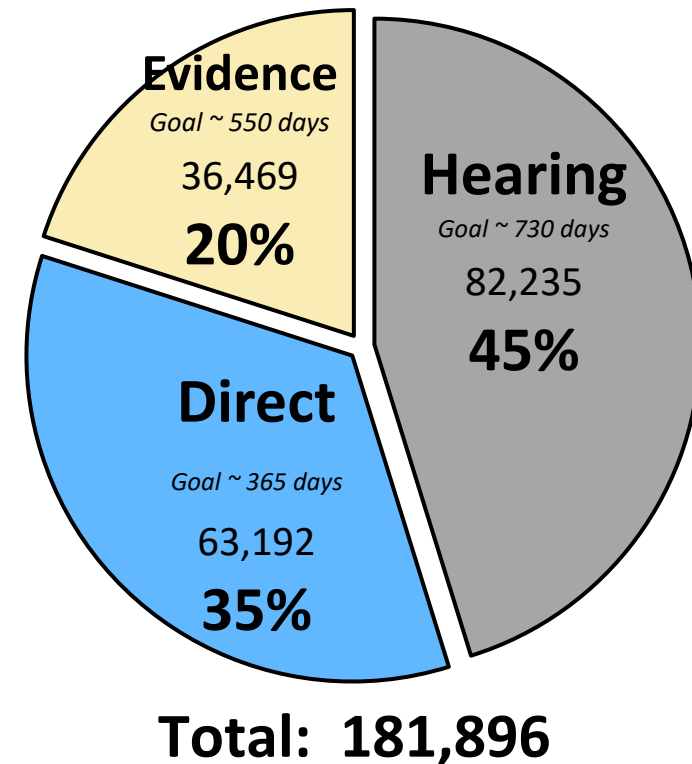


# AMA Appeals – FY 23 Decided & Pending

## AMA Decisions Dispatched FYTD



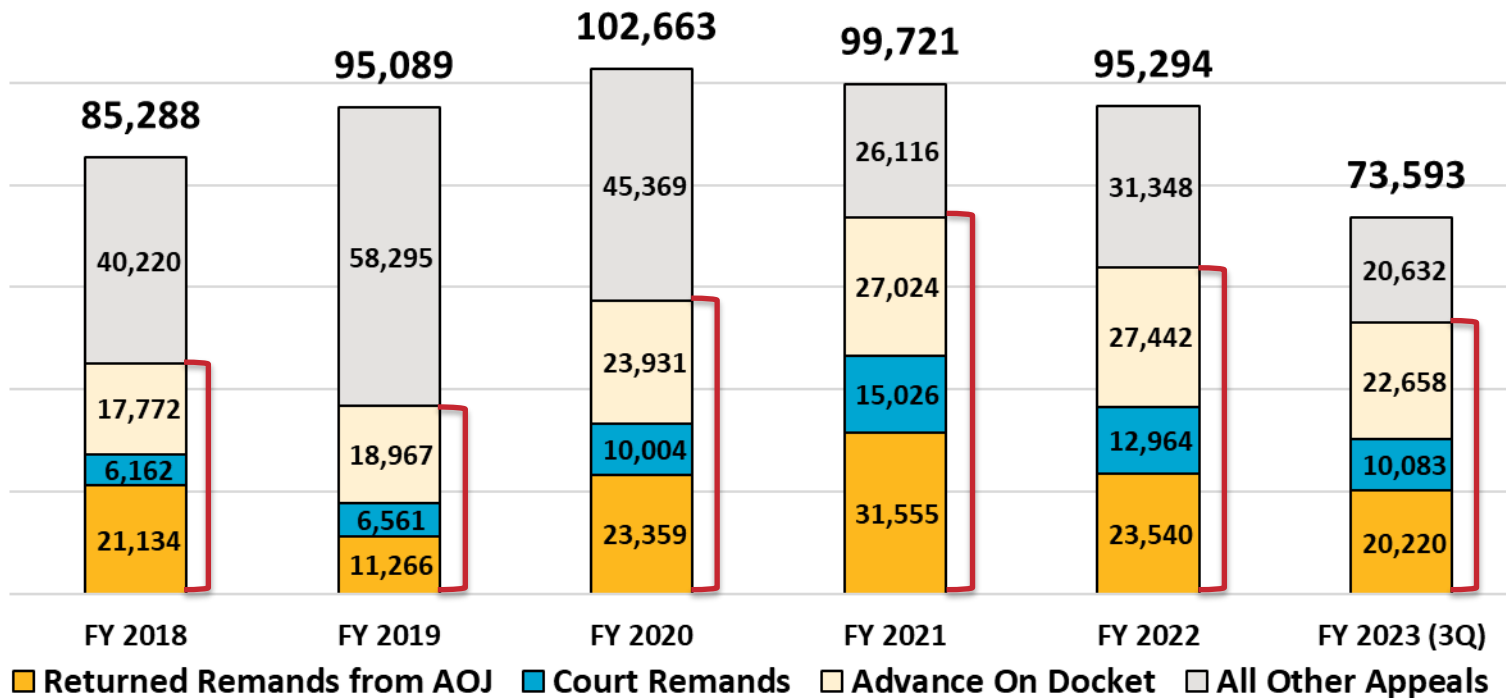
## Appeals Pending by Lane



Data as of July 31, 2023

# CHALLENGE #2: Remands & AOD Cases Dominate Workload

**Breakdown of Appeals Adjudicated  
FY 2018 - FY 2023 (3Q)**

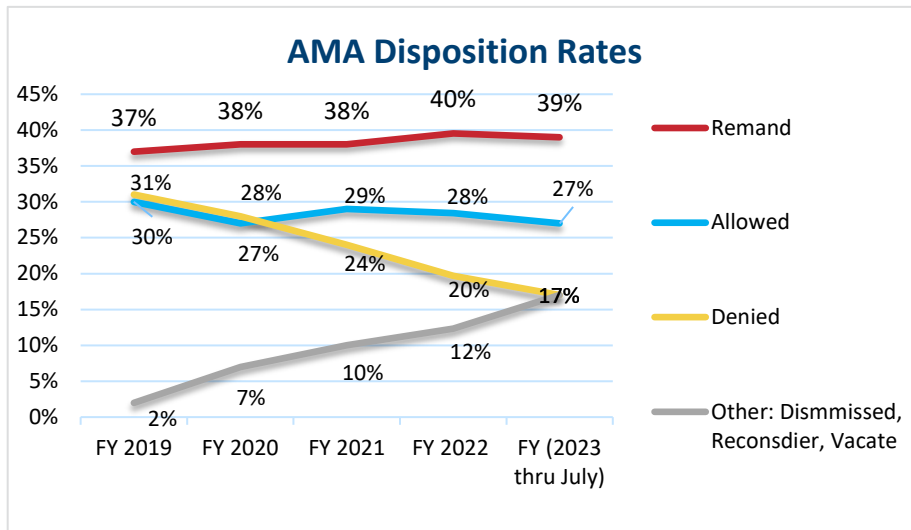
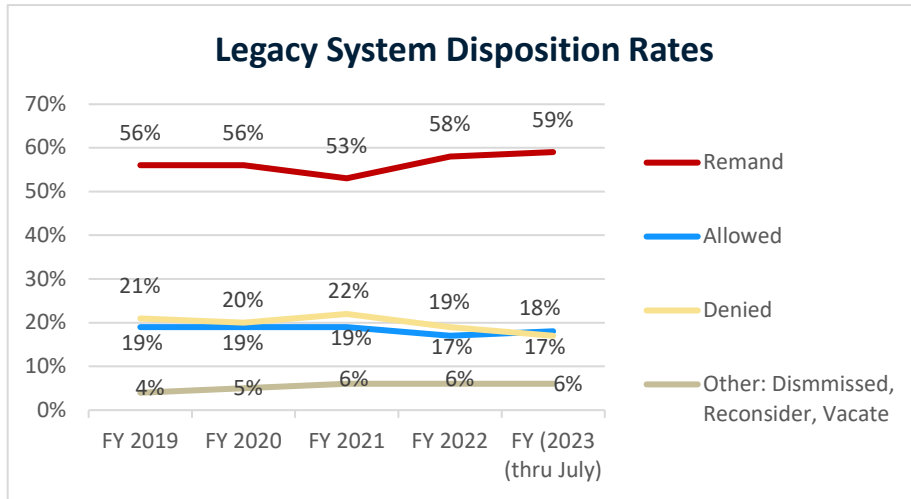


\* AOD's that were also CAVC remands were excluded from this total to avoid double counting.

\*\* Legacy Appeals: Returned remands that were also AOD or CAVC remands are excluded from this total to avoid double counting.

- 15% of Caseload is Returned Cases by the Court, Often with No Change in Outcome
- ~25-30% of Caseload is Re-adjudicated appeals back from VBA
- 32% of Caseload is Expedited Appeals Advanced on Docket (AOD) for serious illness, severe financial hardship, or age (>75)
- 24K Legacy Original Appeals Pending (out of ~34K)

# Positive Trend #3: AMA Is Working, But Being Held Back By Legacy



- Consistently 20% **FEWER REMANDS** under AMA
- Consistently 10% **HIGHER GRANT RATES** under AMA
- Remanded Legacy Cases Make Wait Times Longer for Others
- Remands Back from Court and VBA Continue to Challenge AMA Goals
  - 59% of appeals remanded 2x or more
  - 28% 3x or more
  - 15% 4x or more
  - 7% 5x or more

Data as of: July 31, 2023. Updated monthly.

# FY23 Hearing Status

FY 2023 (Oct - Jul)

Hearing Type	Held	Can/WD	No Show	No Dis	PP	Total
Central Office	3	44	22	3	98	170
Travel Board	136	49	45	1	36	267
Video	3,578	2,397	711	2	1,383	8,072
Virtual	12,674	2,571	795	7	1,838	17,885
<b>Grand Total</b>	<b>16,391</b>	<b>5,061</b>	<b>1,573</b>	<b>13</b>	<b>3,355</b>	<b>26,393</b>

FY 2023 (Oct - Jul)

Held or W/D	Scheduled	Resolved
21,452	26,393	81%

- Resolution rate: 81%
- Postponement rate: 13%
- No Show rate: 6%
- Challenges surround the ability to backfill hearings that are withdrawn or postponed close to the hearing date.

# Postponements

## **38 CFR 20.603(c), 20.704(c) *Requests for changes in hearing dates.***

Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown....Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the Board....If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. (*emphasis added*)

**3,355 Hearings Postponed through June 30, 2023**

# Failure to Appear

## **38 CFR 20.603(d), 20.704(d) *Failure to appear for a scheduled hearing.***

If an appellant...fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted.  
*(emphasis added)*

**1,573 Failure to appear through July 31, 2023**

# Withdrawal of Hearing Request

## **38 CFR 20.603(e), 20.704(e) *Withdrawal of hearing requests.***

A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant representative without the consent of the appellant. Notices of withdrawal must be submitted to the Board. (*emphasis added*)

**5,061 Hearing requests withdrawn through July 31, 2023**



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# Effective Communication

- Contact the Hearing Coordinators for help with hearings already scheduled
  - Full list of coordinators is located at [www.bva.va.gov](http://www.bva.va.gov)
- Board Fax Number: (844) 678-8979
- For general hearing-related concerns for special assistance
  - [BVAHearingTeam@va.gov](mailto:BVAHearingTeam@va.gov) (please don't give to Vets)
- For non-hearing-related questions (e.g. status update, motions, etc)
  - [BoardCustomerService@va.gov](mailto:BoardCustomerService@va.gov)