

Crime Victims' Rights Report 2022

Summary – uscourts.gov

This is the eighteenth report to Congress on crime victims' rights under § 104(a) of the Justice for All Act of 2004, Pub. L. No. 108-405. Section 104(a) requires the Administrative Office of the United States Courts (AO) to report “the number of times that a right established in Chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to Chapter 237 of title 18, and the result reached.” Title I of the Justice for All Act of 2004 is commonly referred to as the Crime Victims' Rights Act (CVRA) and is codified at 18 U.S.C. § 3771.

During fiscal year 2022, more than 54,900 criminal cases were filed in the federal trial courts, involving more than 68,400 defendants. For that year, the AO received reports from the appellate courts on one mandamus action brought per the provisions of the CVRA and identified one appellate court case and nine district court cases that meet the statute's reporting criteria. Summaries of those mandamus and trial court actions follow, including the reasons provided for the decisions in each of the cases. Related cases are combined into a single summary.

In re Wild, 994 F.3d 1244 (11th Cir. 2021) (en banc), cert. denied sub nom. Wild v. United States Dist. Ct. for S. Dist. of Fla., 142 S. Ct. 1188 (2022). Petitioner, an alleged victim of child sexual abuse and sex trafficking, brought a civil suit alleging that the government violated the CVRA by failing to confer with her before negotiating and entering into a non-prosecution agreement (NPA) with Jeffrey Epstein. The district court found that the government had infringed her rights under the CVRA, but while remedies were being considered, Epstein died. The district court then dismissed the lawsuit on the grounds that Epstein's death mooted any claims related to the NPA, that the court lacked jurisdiction to consider the NPA's application to Epstein's coconspirators, and that petitioner was not entitled to injunctive relief because she had not proven any ongoing or future threats of CVRA violations. Petitioner sought a writ of mandamus. The United States Court of Appeals for the Eleventh Circuit denied the petition, holding that crime victims' rights under the CVRA do not attach until proceedings are initiated against defendants. Petitioner sought a writ of certiorari. The petition was denied.

United States v. Thompson, No. CR19-159-RSL, 2022 WL 841178 (W.D. Wash. Mar. 21, 2022). Defendant was charged with allegedly hacking the financial institution Capitol One and stealing data containing the personal details (consumer information) of more than 100,000,000 individuals. Defense counsel asked the court to compel the Government to provide to defense a complete copy of consumer information containing unredacted personal details of the victims. In opposing this motion, the Government sought a protective order pursuant to the CVRA to protect the dignity and privacy of the victims by prohibiting production to defense counsel of a copy of more than 100,000,000 victims' unredacted personal information. The district court denied the motion, concluding that the defense is entitled to a copy of the Capitol One data pursuant to Fed.

Crim. P. 16(d)(1). The Government argued that production should be limited in recognition of the privacy interests of the victims and due to the increased risk of dissemination stemming from allowing the Office of the Federal Public Defenders to possess a copy of the Capitol One data. The Court stated that it is sensitive to the victims' privacy concerns but was not persuaded that restricting the defense team's access to the Capitol One data is the correct approach. Redaction is an appropriate solution that respects the victims' right to protection, dignity, and privacy. Regarding the increased risk of dissemination, the Court was not persuaded that this risk is sufficiently grave to merit limiting the defense's access to the data so long as the data is held on a computer that is both not connected to the internet and in a secure location.

United States v. Addaquay, No. 1:20-cr-00126-LMM-JSA (N.D. Ga. Nov. 19, 2021). The Government sought relief to provide alternative victim notification pursuant to the CVRA, arguing that there were more than 5,000 direct and proximate victims of wire fraud. The district court denied the requested relief, holding that the number of crime victims did not make it impractical to afford all crime victims their rights. Granting the relief would require the Court to find there were thousands of potential victims in the case when the Government only provided conclusory statements regarding the number of victims and did not establish the exact number.

United States v. Jonathan Markovich, et al., No. 0:21-cr-60020-WPD (S.D. Fl. Mar. 21, 2022). Petitioners, victims of a conspiracy to commit healthcare fraud, moved to assert full and timely restitution pursuant to the CVRA. The district court denied the motion. To grant restitution, there must be a direct and proximate link between the defendants' behavior and the damages sought. The government argued that the losses are directly related to the victim's death and for purposes of restitution the victim does not have to be the target of the offense. In rejecting this argument, the court stated, "I'm not comfortable ordering restitution in the way that this indictment was filed. If the government charged in the indictment the death and there was evidence at the trial, it would be a different situation."

United States v. Neel, No. 21-CR-00362-GKF, 2022 WL 736100 (N.D. Okla. Mar. 10, 2022). The Government asked the court to redact the first and last names of an alleged aggravated sexual abuse victim and of a Rule 404(b) witness for the prosecution and refer to them only by their initials in transcripts of proceedings. The government also asked the court to redact the alleged victim's address, which is the location of the alleged crimes. The district court denied the request. Whether judicial records and other case-related information should be sealed or otherwise withheld from the public is a matter left to the discretion of the court. Thus, when documents are used to determine a litigants' substantive legal rights, a strong presumption of access attaches, and the party seeking to restrict access bears the burden to demonstrate "some significant interest that outweighs the presumption." The government sought to redact this information from transcripts of closing arguments in a criminal jury trial. The court found that such proceedings are highly relevant to the judicial process and used to determine substantive legal rights, so a strong presumption of access attaches. The Government argued that pursuant to the CVRA, crime victims' right to be treated with fairness and respect for their dignity and privacy outweighed the presumption of access. In rejecting this argument, the court

stated, “the CVRA does not require that documents disclosing victim or witness identities be filed under seal or otherwise redacted.”

United States v. August, No. EP-21-CR-00912-FM, 2022 WL 780583 (W.D.Tex. Mar. 10, 2022). Defendant who was indicted for crimes related to the distribution of a controlled substance causing death or serious bodily injury moved to prohibit the Government from referring to any party, witness, or decedent as a “victim,” arguing that doing so would unduly prejudice him. In response, the Government argued that prohibiting it from referring to individuals as “victims” would violate rights guaranteed under the CVRA, that referring to certain patients and decedents as “victims” is not unfairly prejudicial because the terms are meant to distinguish between individuals involved in the trial, and that the term “victim” is legally defined and does not create an inference as to Defendant’s guilt. The district granted Defendant’s motion, finding that the definition of “crime victim” in the CVRA implies that a crime has been committed. The Court stated that core issues in this case include not just whether the Defendant distributed controlled substances, but whether his alleged distribution caused death or serious bodily injury to the individuals the Government seeks to address as victims. Therefore, any reference to an individual as a “victim” is unfairly prejudicial, as it encourages the jury to find guilt due to the implication that a crime has already been committed by Defendant.

Medina v. Shinn, No. CV-21-00889-PHX-GMS, 2022 WL 325707 (D. Ariz. Feb. 3, 2022). Defendant convicted of first-degree murder filed a notice of intent to seek habeas corpus relief. In response, the director of the state department of corrections, filed a motion to preclude defendant from directly contacting any victims in the case, arguing that the CVRA definition of victims in federal habeas proceedings arising from state crime convictions includes any “family member or other lawful representative” of the person killed, thereby granting this person the right to be treated fairly and with respect for their dignity and privacy. The district court denied the respondent’s motion for lack of standing to enforce these rights. The court recognize, that although the CVRA grants standing, in general, to the government to enforce victims' rights, it grants such standing in habeas proceedings only to “the crime victim or the crime victim’s lawful representative and the attorney for the Government, where the government does not include state employees and agencies. However, the respondent’s lack of standing did not prohibit the court from considering whether to require that the request to contact the victims be channeled through respondent’s counsel. To further the victims’ CVRA rights to have their dignity and privacy respected, the parties agreed on a procedure presented by the court whereby defense counsel can mail or email a victim in the case and ask to interview that person after notifying the court of this and submitting the proposed text of the request for review. The court also directed defense counsel to make reasonable efforts to determine whether an attorney represents a victim of interest and, if so, have defense counsel channel the request to interview through that attorney.

Burns v. Shinn, No. CV-21-1173-PHX-SPL, 2021 WL 5280601 (D. Ariz. Nov. 12, 2021). Defendant convicted of first-degree murder filed a notice of intent to seek habeas corpus relief. In response, the director of the state department of corrections moved to preclude the defendant's counsel from directly contacting any victims in the case. The district court denied respondent's motion. Although the CVRA grants standing, in general, to the government to enforce victims' rights, it grants such standing in habeas proceedings only to "the crime victim or the crime victim's lawful representative and the attorney for the Government, where the government does not include state employees and agencies." Inherent authority to regulate the proceeding and enter orders necessary to achieve the orderly and expeditious resolution of its docket does not necessarily give the court the inherent authority to proscribe otherwise lawful conduct outside the courtroom by the defense team. Moreover, even if the court had inherent authority to grant the requested relief, doing so was not necessary at that time, for the CVRA already specifies that state crime victims in federal habeas cases have the right to be treated with fairness and with respect for the victim's dignity and privacy. Respondent did not demonstrate that the protections of the CVRA are insufficient to protect state crime victims during federal habeas proceedings, and no evidence showed that the victim themselves requested the protection described.

Miller v. Shinn, No. CV-21-00992-PHX-ROS, 2021 WL 4503461 (D. Ariz. Oct. 1, 2021). Defendant convicted of first-degree murder filed a notice of intent to seek habeas corpus relief. In response, the director of the state department of corrections moved to preclude defendant's counsel from directly contacting any victims in the case unless contact was initiated through respondent's counsel. The district court denied respondent's motion. Although the government may assert a victim's rights in a federal criminal trial, only "the crime victim or the crime victim's lawful representative" may enforce the CVRA in federal habeas proceedings. The director of the state department of corrections was not the crime victim's lawful representative, and the court cannot assume that respondent's interests and the victim's interest are coextensive given that no victim had expressed a desire to avoid direct contact with defendant's counsel. In addition, the court's inherent authority to regulate the proceeding and enter orders necessary to achieve the orderly and expeditious resolution of its docket does not necessarily give the court the inherent authority to proscribe otherwise lawful conduct outside the courtroom by defendant's counsel. The court further noted that even if the court had inherent authority to grant the requested relief, doing so was not necessary at that time. The CVRA already specifies that state crime victims in federal habeas cases have the right to be treated with fairness and with respect for the victim's dignity and privacy. Respondent did not show that the protections of the CVRA are insufficient to protect state crime victims during federal habeas proceedings, and no evidence established that the victim requested such protection. Ultimately, under the CVRA, the victims are entitled to the "right to be reasonably protected from the accused" and to be "treated with fairness and with respect for the victim's dignity and privacy." Victims can voluntarily decide to have no contact with defense counsel, and counsel must respect that decision.

United States v. Rechnitz, No. 16 CR. 389 (AKH), 2021 WL 5232395 (S.D.N.Y. Nov. 9, 2021). After a district court declined to review a victim's motion for restitution under the CVRA on the grounds that it lacked jurisdiction over the motion because defendant's appeal from his sentence was pending, the victim petitioned the United States Court of Appeals for the Second Circuit to issue a writ of mandamus requiring the district court to consider the motion. The Second Circuit returned jurisdiction to the district court with a mandate to "reconsider its assessment of the defendant's culpability and financial conditions in light of new evidence presented by the victim and any other relevant factors." The defendant argued that such a review was untimely, as motions for reconsideration must be filed within 14 days after a court order, and the victim's motion was made more than 60 days after the defendant's sentencing. The district court ruled that the victim's motion for restitution was filed pursuant to the CVRA, not as a motion for reconsideration, and thus was not time-bound. The CVRA guarantees to crime victims "full and timely restitution as provided in law." The CVRA does not impose a date by which a crime victim must make a motion for full and timely restitution. Although the CVRA permits a victim to re-open a plea or sentence only if the victim petitions the court for a writ of mandamus within 14 days, the statute provides that the limits on relief does not affect the victim's right to restitution. Upon reconsidering its assessment of the defendant's culpability and financial condition, the court ruled that the defendant did not provide a reliable account of his financial condition, which prevented the court from imposing a rational payment schedule. Thus, the court ruled in favor of the victim against defendant in the full amount of the victim's remaining loss.