

## Crime Victims' Rights Act Report 2023

This is the nineteenth 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 2023, more than 53,000 criminal cases were filed in the federal trial courts, involving more than 66,000 defendants. For that year, 5 mandamus actions in appellate courts were identified as brought per the provisions of the CVRA and 10 district court cases were identified as meeting 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 Doe*, 50 F.4th 1247 (9th Cir. 2022); *mandamus issued*, 57 F.4th 667 (9th Cir. 2023).

The government originally indicted Defendant on five counts that pertained to sex trafficking: (1) conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 1594; (2) sex trafficking, in violation of 18 U.S.C. § 1591; (3) conspiracy to transport for prostitution or other sexual activity, in violation of 18 U.S.C. § 2423; (4) transportation for prostitution or other criminal activity, in violation of 18 U.S.C. § 2423; and (5) coercion and enticement, in violation of 18 U.S.C. § 2422. Defendant later entered into a written plea agreement. In exchange for the government's promise to drop the original charges, Defendant agreed to plead guilty to two counts of interstate travel in aid of unlawful activity in violation of 18 U.S.C. § 1952(a)(3)(A) and to pay restitution to the victim. The government summarized the terms of the plea agreement by stating that Defendant agreed to pay the victim the full amount of the victim's losses as defined in 18 U.S.C. § 2259(b)(3). Defendant and his counsel agreed with this summary. The court accepted Defendant's guilty plea and scheduled sentencing.

About six months later, Defendant, represented by a different attorney, filed an opposition to the restitution. Defendant argued that the district court lacked authority to order restitution because he did not commit a crime under any statute that permits or mandates an order of restitution. Defendant also argued that even if the plea agreement is ambiguous, the court should interpret that ambiguity in Defendant's favor and hold that the district court lacked authority to award restitution under the plea agreement. In response, the government and victim stood by the plea agreement, asking the court to

order restitution to the victim. The government argued that 18 U.S.C. § 3663(a)(3) authorizes district courts to award restitution whenever a defendant agrees in a plea agreement to pay restitution. The district court denied restitution on the grounds that 18 U.S.C. § 2259 was not directly applicable because Defendant did not commit any of the enumerated offenses permitting an order of restitution. The district court also rejected the argument that the plea agreement could provide a basis for restitution, as a consent to application does not in itself expand the court's legal authority. *United States v. Alexander*, No. 2:17-CR-00072-RFB, 2022 WL 1472887 (D. Nev. May 10, 2022).

The victim sought a writ of mandamus pursuant to the CVRA, arguing that the district court erred in concluding that it lacked statutory authority to order restitution. The United States Court of Appeals for the Ninth Circuit granted the petition, holding that 18 U.S.C. § 3663(a)(3) grants district courts authority to order restitution whenever a defendant has agreed in a plea agreement to pay restitution, which Defendant did here. In any criminal case, regardless of the crimes of conviction and regardless of the defendant's conduct, a defendant may agree in a plea agreement to pay restitution to the victim. That is, even if a defendant's conduct or the crimes to which a defendant pleads guilty would not otherwise give rise to mandatory restitution, a defendant may agree to pay restitution, and the district court has authority to enforce that agreement by ordering restitution. The Ninth Circuit rejected Defendant's argument regarding ambiguity, holding that based on the facts of the case, all parties reasonably understood that Defendant agreed to pay restitution. Defendant argued that restitution should be limited to the categories found in 18 U.S.C. § 2259, but Defendant's obligation to pay was never in doubt. The Ninth Circuit instructed the district court to address any remaining disputes between the parties about proximate cause and the amount of loss.

*In re Karen Hylton*, No. 22-3083 (D.C. Cir. Nov. 4, 2022) (unpublished order).

District of Columbia police officer Terence Sutton (Sutton) was accused of chasing Karon Hylton-Brown (Karon) during a police pursuit and causing a vehicular collision that killed Karon. The government charged Sutton with second-degree murder as well as conspiracy and obstruction of justice in hiding the circumstances of the incident to prevent an internal investigation. The government also charged Andrew Zabavsky (Zabavsky), Sutton's supervising lieutenant, with conspiracy and obstruction of justice. The district court conducted a nine-week trial, after which a jury convicted Defendants on all counts.

Petitioner, Karon's mother, attended the trial. When the government twice displayed video evidence of the accident scene, Petitioner gasped. The defense alleged that Petitioner's conduct in the courtroom was disruptive and prejudicial to Defendants, and that her continued presence jeopardized the Defendants constitutional right to a fair trial. The District Court barred Petitioner from viewing further proceedings in person and

directed Petitioner to watch the proceedings on video elsewhere in the courthouse. *See United States v. Sutton*, No. 1:21-cr-598, November 2, 2022 Minute Entry (D.D.C.) (stating “for reasons stated on the record, the court will exclude the victim’s mother from attending the trial in courtroom 29A. The court will accommodate the victim’s mother by allowing her to view the trial in another courtroom via video.”). Petitioner filed an emergency petition for a writ of mandamus, arguing that pursuant to the CVRA, Petitioner was a victim in this case and had the right not to be excluded from any public court proceeding unless the court, after receiving clear and convincing evidence, determined that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding. Petitioner also maintained that forcing a victim to watch proceedings by video over her objection constituted an “exclusion,” that the CVRA allows exclusions only to protect the integrity of the victim’s testimony, and that this reason was not present in this case because Petitioner was not expected to be called as a witness in the matter. The day after the petition was filed, the district court held a hearing on the petition and restored Petitioner’s access to the live trial. *Id.*, Dkt. No. 439 (D.D.C. Nov. 3, 2022) (transcript of oral order). The United States Court of Appeals for the D.C. Circuit accordingly dismissed the petition as moot.

*In re Ken Ejimofor Ezeah*, No. 22-6183 (10th Cir. Dec. 1, 2022).

Petitioner, a federal prisoner proceeding pro se, pled guilty to one count of conspiring to commit wire fraud and was sentenced to 132 months in prison. Petitioner’s direct appeal failed when the United States Court of Appeals for the Tenth Circuit enforced the appeal waiver in his plea agreement. The district court denied Petitioner’s habeas petition under 28 U.S.C. § 2255, and the Tenth Circuit denied a certificate of appealability.

Petitioner then filed motions asserting rights as a crime victim under the CVRA. Petitioner argued that the prosecutor had coerced Petitioner into making an involuntary guilty plea and committed acts that went beyond prosecutorial misconduct and into the realm of criminal conduct. The district court interpreted Petitioner’s request as an attempt to obtain relief from his conviction under Rule 60(b)(4) of the Federal Rules of Civil Procedure and dismissed the motions for lack of jurisdiction over successive § 2255 motions. *United States v. Ezeah*, No. 16-CR-29, Dkt. No. 356 (W.D. Okla. Oct. 12, 2022) (unpublished order). Petitioner petitioned for a writ of mandamus, arguing that the district court ignored the caption on his motions indicating that he was seeking relief under the CVRA and had improperly characterized them as successive § 2255 motions. The Tenth Circuit denied the petition. Under traditional mandamus standards, petitioners must demonstrate that they have “no other adequate means to attain the relief they desire” and that their “right to the writ is clear and indisputable.” Petitioner did not meet these standards and thus was not entitled to mandamus relief.

United States v. The Boeing Co., No. 4:21-CR-5-O, 2022 WL 13829875 (N.D. Tex. Oct. 21, 2022); 617 F. Supp. 3d (N.D. Tex. 2022); 655 F. Supp. 3d 519 (N.D. Tex. 2023); mandamus denied sub nom. *In re Ryan*, 88 F.4th 614 (5th Cir. 2023).

In 2021, the government charged The Boeing Company (Boeing) with conspiracy to defraud the United States under 18 U.S.C. § 371. The government alleged that Boeing lied to the Federal Aviation Administration about the training that pilots would need for its new 737 MAX airplane, and that the deception led to crashes of that airplane in Indonesia and Ethiopia. Boeing entered a deferred prosecution agreement (DPA) that imposed criminal monetary penalties, compensation awards to airline customers and to the families of the crash victims, and federal oversight for compliance with both the DPA and other relevant federal laws.

In 2021, family members (the 2021 Petitioners) of some individuals who died in the Boeing airplane crashes filed motions under the CVRA asserting that the government had negotiated with the DPA without conferring with them, violating their rights as crime victims. In 2022, family members of other crash victims, plus two foreign airline carriers (the 2022 Petitioners), filed their own motions also seeking CVRA crime victim status and appropriate remedies. After holding hearings, the district court issued three opinions addressing the motions. The district court held that the 2021 Petitioners were the lawful representatives of crime victims under the CVRA and had standing to assert rights under the statute. The district court also found that the government violated the CVRA by excluding the 2021 Petitioners from DPA discussions on the erroneous basis that they lacked standing. Nonetheless, the district court held that it lacked the authority to reopen the DPA or to order any remedy beyond the discovery and the subsequent conferrals with the government that the 2021 Petitioners had already received.

With respect to the 2022 Petitioners, the district court denied them recognition as CVRA crime victims on the basis of laches. The doctrine of laches functions to bar equitable claims when Congress has imposed no statutory timeline for seeking relief. A party may assert the defense of laches when another party's unreasonable delay in seeking redress of its rights prejudices the party asserting the defense. Here, the 2022 Petitioners did not pursue their requested relief until nearly two years after the government filed the DPA and ten months after the 2021 Petitioners sought recognition of their rights. The 2022 Petitioners did not claim that this substantial delay resulted from a lack of knowledge about the proceedings, incapacity, or other reasons. Consequently, allowing the 2022 Petitioners to seek their requested rights late in the proceedings would have been prejudicial to the current parties. The government and Boeing spent the preceding 14 months litigating the 2021 Petitioners' status as "crime victims" and starting the process over again with a new set of alleged crime victims would have delayed resolution of the DPA and prejudice the government.

All petitioners filed petitions for mandamus with the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit denied the petitions without prejudice. The district court lacked the authority to modify the DPA, and laches did apply to any relief sought about the failure to confer before the criminal complaint was filed. Mandamus relief otherwise was premature. Criminal proceedings were ongoing, and the district court had a continuing obligation to uphold the public interest and to apply the CVRA.

In re QXD, No. 23-11125 (11th Cir. Sep. 8, 2023).

Defendant pled guilty to two counts of traveling in foreign commerce with intent to engage in illicit sexual activity in violation of 18 U.S.C. § 2423(b) and two counts of attempted enticement of a minor to engage in sexual activity in violation of 18 U.S.C. § 2422(b). The district court accepted the plea. Before sentencing, Defendant moved to withdraw his guilty plea. After a hearing, the district court denied the motion. The district court then sentenced Defendant to life imprisonment. The United States Court of Appeals for the Eleventh Circuit affirmed the convictions and sentence. *United States v. Day*, No. 22-11718, 2023 WL 3946830 (11th Cir. June 12, 2023).

The issue implicating the CVRA was restitution. Petitioner was one of Defendant's victims. Petitioner received a notice of victim rights under the Mandatory Victim Restitution Act of 1996 and requested restitution. Petitioner testified by video at the sentencing hearing about the harm that Defendant inflicted. The government advised the district court that it was not pursuing restitution because Petitioner did not submit any documentary support and because the Department of Homeland Security reported that any compensable costs were covered by third parties. The district court consequently decided not to order restitution. *See generally United States v. Day*, No. 8:19-cr-354, Dkt. Nos. 165, 166 (M.D. Fla. May 16-17, 2022). Petitioner then filed a motion for restitution 91 days after Defendant was sentenced. The passage of 91 days was significant to Petitioner's counsel because counsel interpreted 18 U.S.C. § 3664(d)(5), *Dolan v. United States*, 560 U.S. 605 (2010), and Federal Rule of Criminal Procedure 45(a)(1)(C) to mean that the request for restitution was timely.

Ultimately, though, the district court held, and the Eleventh Circuit agreed, that Petitioner's argument presupposed that the district court still was considering restitution and had to determine the amount of restitution within 90 days after sentencing as required by Section 3664(d)(5). In contrast, the district court had explicitly noted both at the sentencing hearing and in the final judgment that it would not order restitution. Defendant's sentence thus was final. Once a defendant's guilt has been adjudicated and the sentence has been imposed, the district court loses the authority to modify the defendant's sentence.

In re: Julian Rudolph, No. 23-1162 (10th Cir. May 24, 2023).

Defendant was convicted by a jury of committing foreign murder in violation of 18 U.S.C. §§ 1119 and 1111. The jury also convicted Defendant of committing mail fraud in violation of 18 U.S.C. §§ 1341 and 1342. With respect to the mail fraud, seven insurance companies paid nearly \$5 million on nine insurance policies due to the mail fraud. At sentencing, the district court ordered restitution in the amount paid on the policies.

Petitioners, Defendant's adult children, moved to assert their status as victims of mail (insurance) fraud, arguing that because they were the contingent beneficiaries of the life insurance policies, the insurance companies would have paid the benefits to them but for Defendant's fraud. The government argued that, pursuant to the CVRA, the only victims of the mail fraud were the insurance companies that made payments for claims fraudulently submitted by Defendant. In the government's view, Petitioners suffered no loss through Defendant's conduct; there was no reason to believe that the insurance companies would refuse to pay Petitioners on the policies once they were reimbursed through restitution; and even if the insurance companies refused to pay, Petitioners could bring a claim against the insurance companies.

The district court agreed and denied Petitioners' motion, citing *United States v. Rudolph*, No. 22-cr-12, Dkt. No. 344 (D. Colo. Apr. 20, 2023) (unpublished opinion). The district court found that Petitioners were not victims of the insurance fraud, noting that the indictment and final jury instructions identify only the insurance companies as the victims and that no evidence presented at trial showed that Defendant schemed to defraud Petitioners. Petitioners additionally did not suffer any loss and could bring claims against the insurers for any proceeds to which they believe they are entitled. Petitioners sought a writ of mandamus. The United States Court of Appeals for the Tenth Circuit denied the petition. Petitioners failed to show any injury to themselves that satisfies the "direct and proximate" harm required to assert their rights as victims of Defendant's fraud.

*United States v. Al-Marimi*, No. 22-CR-00392-DLF, Feb. 10, 2023 Minute Order (D.D.C.).

A grand jury indicted Defendant on multiple charges related to the 1988 destruction of Pan Am Flight 103 over Lockerbie, Scotland. Pursuant to the CVRA, the government sought relief to provide alternative victim notification and alternative procedures to access court proceedings to allow victims the right to be reasonably heard at proceedings involving release, plea, sentencing or any parole. The government argued that alternative procedures are appropriate given that the families of the 270 victims killed in the bombing are in 21 different countries, making the government's compliance with the

notification requirements outlined in § 3771(a)(b) and (c) impracticable. In addition, many of the victims' family members are elderly and physically unable to travel to Washington, D.C., and the ongoing COVID-19 pandemic created major obstacles for travel, especially for those at greater risk of contracting the virus.

The government's motion was granted in part and denied in part. The district court granted the requested relief of providing alternative victim notification and permitting the victims to be heard at select court proceedings but denied the requested relief of allowing victims to access in-person courtroom proceedings through a listen-only telephone line. The government cited no statute or case law that authorizes such an accommodation, which would be unprecedented. The CVRA, the only legal authority cited by the government, simply grants crime victims the right not to be excluded from any public court proceedings. The CVRA does not authorize courts to permit victims to access trials and other in-person public court proceedings telephonically.

*Yarin v. George*, No. 8:22-CV-2920-CEH-JSS, 2023 WL 5916435 (M.D. Fla. Feb. 13, 2023), report and recommendation adopted, 2023 WL 5218087 (M.D. Fla. Aug. 15, 2023).

A disabled Air Force veteran used his retired military ID and entered a Coast Guard station through the main gate to use the gym facilities. About 20 minutes later, two Coast Guard officers asked to see his military ID. The veteran produced the ID, and one officer photographed it. The officers told the veteran that he was not allowed to be on the base and that he had to leave. Based on the events that he alleged, the veteran filed pro se papers with the district court asserting that the officer who photographed his military ID violated 18 U.S.C. § 701; that he was a crime victim for purposes of the CVRA; that the district court needed to issue orders directing the Department of Justice and the FBI to prosecute the crime; and that the court needed to afford him all of his rights under the CVRA.

Adopting a report and recommendation from a magistrate judge, the district court dismissed the action. The court had no authority to order an executive agency to investigate an alleged crime. In the absence of a criminal prosecution, the veteran could not invoke the CVRA because the CVRA did not create a private right of action by which an alleged victim can initiate a freestanding lawsuit.

*United States v. Householder*, No. 1:20-CR-77, 2023 WL 3931536, at \*1 (S.D. Ohio June 9, 2023).

A former speaker of the Ohio House of Representatives was convicted of participating in a RICO conspiracy in violation of 18 U.S.C. § 1962(c) and (d). The conspiracy concerned accepting \$60 million in bribes from an energy company in exchange for

Defendant's ensuring the passage of legislation that was financially favorable to that company. In anticipation of sentencing hearings, Defendant's predecessor as speaker filed a motion to be designated as a crime victim under the CVRA. The movant alleged that Defendant, as part of the conspiracy, helped orchestrate circumstances, including rumors of the movant's involvement, that ultimately required the movant's resignation.

The court denied the motion for insufficient evidence of causation. Under the CVRA, a victim has to be directly and proximately harmed as a result of the commission of a federal offense. The movement offered no evidence that either his FBI investigation or his resignation would not have occurred but for the commission of the RICO conspiracy.

United States v. Runsdorf, No. 1:21-CR-112(10), 2023 WL 4835113 (E.D. Tex. July 26, 2023).

Defendant pled guilty to three charges: 1) conspiracy, in violation of 18 U.S.C. § 371; 2) money laundering, in violation of 18 U.S.C. § 1956; and 3) trafficking in drugs with a counterfeit mark, in violation of 18 U.S.C. § 2320(a)(4). While sentencing was pending, the movant—a company that sells prescription and non-prescription products to wholesalers, hospitals, specialty pharmacies, and retailers—filed a motion for restitution under the CVRA. The movant sought restitution of over \$6 million, which it alleged to be the gross value of pharmaceutical products that it lost when the Drug Enforcement Administration raided its warehouse and seized products that it believed were counterfeit.

The court denied the motion. The forfeited products violated multiple regulations that were not directly related to any involvement in trafficking counterfeit drugs. The forfeited products also were not mentioned in the indictment because they were not involved in Defendant's criminal offense. Consequently, the movant was not a crime victim under the CVRA because it failed to show that it was directly and proximately harmed by Defendant's criminal conduct.