

Crime Victims' Rights Act Report 2024

This is the twentieth 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 2024, more than 57,000 criminal cases were filed in the federal district courts, involving more than 69,000 defendants. For that year, 4 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 district court actions follow, including the reasons provided for the decisions in each of the cases. Related cases are combined into a single summary.

United States v. Brian Jeffrey Raymond, No. 21-CR-00380-CKK (D.D.C. Nov. 3, 2023) (minute order).

A grand jury indicted Defendant on multiple charges including sexual abuse, abusive sexual contact, coercion and enticement, and transportation of obscene material. The charges arose from allegations that Defendant drugged and sexually assaulted numerous women over several years. The indictment named 14 separate victims. Defendant entered into a plea agreement with the government, and the district court set a plea hearing for November 6, 2023.

Prior to the plea hearing, the government filed a motion for alternate procedures under the CVRA permitting victims to attend the plea hearing remotely. The government specifically requested that the court set up a video conference (VTC) or Zoom link to permit the victims to attend the hearing with two interpreters. The government noted that under the CVRA, a crime victim has the right not to be excluded from any such public court proceeding. *See* 18 U.S.C. § 3771(a)(3). The CVRA recognizes that in cases involving large numbers of crime victims, it may be impracticable to provide all crime victims the rights identified in Section 3771(a). *See* 18 U.S.C. § 3771(d)(2). But in such instances, the CVRA permits the court to find that the case involves "multiple crime victims," *id.*, and then permits the court to "fashion a reasonable procedure to give effect" to the CVRA rights. The CVRA does not specify the alternative procedures but provides that alternative procedures shall not "unduly complicate or prolong proceedings." The

government argued that remote attendance was appropriate because the victims received little advance notice of the plea hearing. Six victims named in the indictment lived in the United States. Of those six, only one lived within commuting distance of the district court. Two of the victims who lived in the United States, including the victim living within commuting distance, were currently receiving medical treatment outside of the jurisdiction. Eight victims named in the indictment lived outside the United States; of those eight, seven were foreign nationals for whom last-minute travel was burdensome. Furthermore, policy established by the Judicial Conference of the United States Courts provides that a judge “may authorize broadcasting for other purposes of judicial administration” as long as it is done in a manner that will “be consistent with the rights of the parties and though recent policy updates did not extend remote public access to criminal proceedings, the revision does not affect a judge’s ability to permit broadcasting and remote hearings for parties and counsels.”

The district court denied the government’s motion in an electronic minute order, finding that it remains the policy of the United States District Court for the District of Columbia, pursuant to Judicial Conference policy, to permit no exceptions to the pre-COVID rule against public access to criminal proceedings via video or teleconference. The court further held that the statutory right of victims not to be excluded from a plea hearing, *see* 18 U.S.C. § 3771(a)(3), would not be disturbed by this policy because the courtroom would remain open to the public, including to victims. The court concluded that allowing remote access here would create difficulty “distinguish[ing] between this case and others in which victims, media, and the public also request remote access.”

United States v. Rivera-Ingles, No. CR DLB-20-432, 2023 WL 8452449 (D. Md. Dec. 6, 2023).

Defendant fatally struck Kevin Wright while driving on the Baltimore-Washington Parkway. Defendant pled guilty to driving under the influence of alcohol, reckless driving, assault, and driving without a license. Petitioner, the mother of Wright’s children and the victim’s representative under the CVRA, argued that the CVRA provides authority to reconsider Defendant’s sentence and to unseal the presentence report, the parties’ sentencing memorandum, and the court’s statement of reasons.

The district court denied the motion. The CVRA allows crime victims to move to reopen a plea or sentence only if the victim asserted their right to be heard before or during the proceeding at issue and such right was denied. Here, Petitioner asserted her right to be heard during the sentencing proceeding, and the court granted that right. Petitioner did not assert any of the other rights that she mentioned in her motion, and the court did not deny them. Petitioner further did not seek a writ of mandamus from the Fourth Circuit within 14 days of the sentencing that she challenged. Thus, the CVRA did not authorize the court to reconsider the sentence or to grant the post-sentence request to unseal the presentence report, the parties’ sentencing memorandum, and the court’s

statement of reasons.

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. Dec. 15, 2023).

In 2021, the government charged The Boeing Company (Boeing) with conspiracy to defraud the United States under 18 U.S.C. § 3771. 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 along with two foreign airline carriers (the 2022 Petitioners) filed their own motions 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 2 years after the government filed the DPA and 10 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 had 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.

Randles v. United States, No. CV 23-200-KD-MU, 2023 WL 9470614 (S.D. Ala. Dec. 18, 2023).

Plaintiff filed a complaint against the United States alleging that certain FBI agents had engaged in a conspiracy to commit criminal acts. Specifically, Plaintiff alleged that the agents violated his civil rights by failing to investigate alleged criminal acts reported by Plaintiff and by disclosing Plaintiff's private information. Plaintiff also moved to assert his rights as a victim under the CVRA, including a right to restitution. The court denied the motion, relying on an Eleventh Circuit holding that "the CVRA does not provide a private right of action authorizing crime victims to seek judicial enforcement of CVRA rights outside the confines of a preexisting [criminal] proceeding." *In re Wild*, 994 F.3d 1244, 1269 (11th Cir. 2021).

United States v. Rowland, No. 23-CR-207-1 Sealed Order (M.D.N.C. Dec. 6, 2023); In re Burton, No. 23-2299, 2023 WL 8919759 (4th Cir. Dec. 21, 2023).

Defendant pled guilty to knowingly, intentionally, and unlawfully using a cellular telephone to facilitate the unlawful and intentional distribution of controlled substances. Defendant, a college student, distributed a phone number for a local dealer to other students looking to purchase drugs. Another student used the number to purchase drugs and died from a combined overdose of cocaine, fentanyl, and ethanol. The deceased student's mother and uncle filed a petition arguing that they were crime victims and were entitled to all the rights and protections afforded by the CVRA. The district court denied the Petitioners recognition as CVRA crime victims, holding that Defendant's distribution of the drug dealer's phone number, which was the offense of conviction, did not directly and proximately cause their relative's death. Petitioners thus did not fall within the definition of "victim" under the statute. Petitioners sought a writ of mandamus from the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit denied the petition, ruling that it was satisfied to adopt the sealed "Memorandum Opinion and Order" filed by the district court on December 6, 2023.

United States v. Madani Ilara Tejan, No. 21-CR-00101-DKC (D. Md. Feb. 27, 2024) (docket order).

A jury convicted Defendant of multiple drug and firearms counts stemming from a murder committed during a violent robbery. Prior to Defendant's sentencing hearing, the government filed a motion to permit the Fotachwi family members to provide victim impact statements at Defendant's sentencing. Fotachwi was a co-conspirator in the drug conspiracy with Defendant and witnessed the murder. Defendant later killed Fotachwi to prevent him from disclosing Defendant's alleged crimes. The government argued that Fotachwi's family members qualified as crime victims under 18 U.S.C. § 3771(e)(2)(A) because Fotachwi was directly and proximately harmed as a result of Defendant's crimes, and when a crime victim is deceased, family members may assume the crime victim's rights under 18 U.S.C. § 3771(e)(2)(B). Following a hearing, the court denied the government's motion. Although Fotachwi's death was relevant conduct that the court would take into account at sentencing, it was not a direct and proximate harm resulting from the offenses of conviction. The offenses of conviction were the drug and firearms crimes, and the murder was committed during the robbery. Fotachwi did not die during any of those events.

Zeil v. United States Dep't of Just., No. 3:23-CV-00289 (VAB), 2024 WL 1330812 (D. Conn. Mar. 28, 2024).

Petitioner moved to compel the Department of Justice to acknowledge his rights under the CVRA with respect to the real estate fraud, financial fraud, environmental fraud, and banking fraud that allegedly victimized him. The court denied the motion. Even assuming that a federal offense occurred, the right to be reasonably heard under the CVRA at a public proceeding in district court arises only after charges have been brought against a Defendant and a case has been opened.

United States v. Hared, No. 3:19-CR-00040-WHO-1, 2024 WL 1898422 (N.D. Cal. Apr. 30, 2024).

Defendants pled guilty to crimes related to stealing cryptocurrency from multiple victims. The counts charged included conspiracy to commit computer fraud and abuse in violation of 18 U.S.C. § 1030(b), aggravated identify theft in violation of 18 U.S.C. § 1028A(a)(1), and conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. Defendants were sentenced in 2023.

The issue implicating the CVRA was restitution. Petitioners, both victims of Defendants, received communications from the U.S. Attorney's Office, including an explanation of their rights under 18 U.S.C. § 3771(a) and a note that if they were "requesting restitution for any financial losses sustained as a result of the conduct

charged,” they should “submit proof of [their] loss with all supporting documents (i.e. receipts, bank statements, etc.)” and that the notice “may be [their] final opportunity to submit proof of loss to substantiate an Order of Restitution.” Neither Petitioner participated in the restitution process, but both filed claims with the government in October 2018 for remission of stolen property and provided information about the value of their stolen property. However, the government’s remission and restitution teams did not share this information, so the government’s request for restitution for the victims did not include the valuations that the victims provided to the remission team. Petitioners received some restitution, but much less than they believed they were owed. After Defendants’ sentencing hearing, Petitioners filed motions to reopen sentencing or to amend the restitution orders under the Mandatory Victim Restitution Act (MVRA) and the CVRA to reflect the value of the cryptocurrency that they lost, which increased in value significantly after the theft.

The district court denied the motions. The MVRA allows victims to petition the court for an amended restitution order within 60 days of discovering further losses, but Petitioners did not discover further losses after sentencing and instead received restitution in an amount lower than they sought. The CVRA repeats the rights to restitution provided in the MVRA without creating any additional substantive rights. Moreover, neither the MVRA nor the CVRA permit a cause of action against the government for making a mistake in issuing or enforcing a restitution order. *See* 18 U.S.C. §§ 3664(p), 3771(d)(6).

United States v. Sutton, No. CR 21-0598 (PLF), 2024 WL 2846768 (D.D.C. June 5, 2024).

Defendants were convicted of second-degree murder, conspiracy to obstruct justice, and obstruction of justice. Prior to sentencing, the probation office filed draft presentence investigation reports for both Defendants. Both the Defendants and the Government filed objections to the presentence investigation reports. Due to the substantial objections raised by both parties, the court vacated the sentencing hearing scheduled for June 26, 2024, and scheduled a new hearing for September 11, 2024. Petitioner, the victim’s mother, argued that the sentencing of Defendants was unreasonably delayed and moved for the delay to be corrected under the CVRA. Defendants opposed the motion, arguing that Petitioner is not a crime victim under the CVRA. The court granted in part and denied in part Petitioner’s motion.

The district court found that Petitioner is a “crime victim” entitled to relief under the CVRA, but did not consider the delay in sentencing to be unreasonable under the circumstances. Due to the objections to the draft presentence investigation reports, the probation office needed to revise the report to correct inaccurate facts and guideline

calculations. The court also cited the probation office's caseload, noting that approximately 1,400 January 6 cases had been filed that required probation office resources.

Kode v. Williamson Cnty., No. 1:23-CV-1223-RP, 2024 WL 4404498 (W.D. Tex. July 8, 2024).

Petitioner filed a complaint alleging that Defendants participated in a “decade-long” racially motivated “conspiracy” and “racketeering enterprise” against him arising from disputes between him, his neighbors, and a homeowners’ association regarding the maintenance of his lawn and residential property. In addition to his complaint, Petitioner filed a motion for relief under the CVRA. The court denied the motion, concluding that no private right of action exists under the CVRA.

United States v. Sullivan, 118 F.4th 170 (2d Cir. Sep. 6, 2024).

Defendants were officers and executives of the Connecticut Municipal Electric Energy Cooperative (“CMEEC”) who misappropriated funds from CMEEC to pay for personal vacations. Defendants were indicted in a four-count indictment charging each of them with one count of conspiracy to commit theft from 2014 to 2017 from a program receiving federal funds. The district court sentenced one Defendant to 12 months’ imprisonment, sentenced the other two Defendants to 6 months’ imprisonment, and awarded CMEEC restitution of \$748,800.63 under the Mandatory Victims Restitution Act (MVRA), but denied CMEEC’s request for over \$9.5 million in restitution for attorneys’ fees it had advanced to the five trial Defendants for their defense. CMEEC filed a petition for mandamus under the Crime Victims’ Rights Act (CVRA), challenging the denial of restitution for Defendants’ attorney fees. CMEEC argued that the defense fees were a compensable “loss of property” resulting from Defendants’ conduct underlying their convictions and that the district court had abused its discretion in concluding that the fees lacked a sufficient causal connection to Defendants’ offense. The circuit court denied CMEEC’s petition for mandamus. Restitution is permitted only for an amount of loss caused by the specific conduct forming the basis for the offense of conviction. Thus, the criminal conduct must be the cause in fact of the claimed harm. Here, the court concluded that the district court did not abuse its discretion in finding a lack of causation between Defendants’ convictions and the advanced attorneys’ fees because CMEEC decided on its own initiative to pay the Defendants’ legal fees in accordance with its bylaws and a contract that it willingly executed. CMEEC’s bylaws contained a preexisting clause requiring CMEEC to indemnify its officers and directors, which obligated CMEEC to defend them regardless of whether they had in fact stolen the funds. Thus, given that Defendants’ conduct did not influence CMEEC’s decision to advance the fees, the advanced funds were not a “loss of property” resulting from the offense.

Sat v. Schmidt, No. 3:23-CV-1546-SI, 2024 WL 4276498 (D. Or. Sept. 23, 2024).

Plaintiff filed a complaint alleging that the local district attorney's office violated his rights under the First and Fourth Amendments when it declined to speak to him about a criminal case that arose from a "hit-and-run" accident in which he was the victim. Defendants moved for judgment on the pleadings, which the court granted but with leave to amend the complaint. Plaintiff filed an amended complaint adding that Defendants violated his rights as a crime victim under the CVRA. The court granted Defendants' renewed motion for judgment on the pleadings, holding that the CVRA only applies to victims of federal crimes. Plaintiff here was a victim of a state crime prosecuted by the state district attorney's office and therefore could not state a claim under the CVRA.

Cheng v. Att'y Gen. of United States, No. 24-1645, 2024 WL 4501077 (3d Cir. Oct. 16, 2024).

Plaintiff, an inmate at a federal prison, filed a complaint alleging that he had been assaulted by another inmate and that the assailant had not been referred to the FBI as promised by a special investigative supervisor. Plaintiff also contended that he had not been informed of his rights as a crime victim. Plaintiff moved for declaratory and injunctive relief under the CVRA. In response, Appellee filed a motion to dismiss the complaint for failure to state a claim. The district court granted the motion to dismiss, and Plaintiff filed a notice of appeal. On appeal, Plaintiff argued that the plain language of subsections (a)(5) and (a)(8) of § 3771 allows a crime victim to assert these rights prior to the filing of an indictment. The court denied the appeal. Although subsection (a)(5) gives a crime victim the reasonable right to confer with the attorney for the Government in a case, the right does not apply before there is a "case." Rights codified by the CVRA are limited to the criminal justice process.

U.S v. United States, No. 24-CV-4769 (LTS), 2024 WL 4817474 (S.D.N.Y. Nov. 18, 2024).

Plaintiff brought an action under the CVRA alleging that Defendants committed many ongoing patterns of crimes targeting African Americans, including "Kidnappings; Murders; Rapes; Racketeering; Terrorism; [and] Hate Crimes." The court dismissed the complaint because the CVRA does not provide a private right of action to bring a civil rights action in federal court.