

Crime Victims' Rights Report 2020

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This is the sixteenth 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 2020, more than 59,800 criminal cases were filed in the federal trial courts, involving more than 73,800 defendants. For that year, the AO received reports from the appellate courts on four mandamus actions brought per the provisions of the CVRA and identified six appellate court cases and seven 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 Ippolito, 811 F. Appx 795 (3d Cir. 2020). Petitioner accused a United States attorney and the director of the United States Trustee Program of failing to investigate fraud related to his bankruptcy proceedings and to honor his rights under the CVRA; he also claimed a county prosecutor did not meet requirements of the state's law and constitution vis-à-vis crime victims. The district court dismissed the case with prejudice. Petitioner did not file a notice of appeal, but instead sought a writ of mandamus. The United States Court of Appeals for the Third Circuit denied the petition. No evidence established that anyone other than petitioner concluded he might meet the CVRA's definition of a crime victim, “and one does not acquire status under the CVRA based on his own say-so.” Petitioner cited cases indicating that a formal prosecution need not be underway for a person to qualify as a crime victim under the CVRA, but those cases differed from this one in that law enforcement officials had found “enough evidence of criminality to open investigations.” Thus, the CVRA did not apply to this petition, and no review was conducted pursuant to 18 U.S.C. § 3771(d)(3). Moreover, a mandamus petition is not a substitute for an appeal. Although in some cases, especially when litigants are acting pro se, a court may treat a mandamus petition as a notice of appeal, the circuit court declined to do so here given that this petition “clearly reflects a deliberative and purposeful choice to seek relief under the CVRA.”

United States v. C.S., 968 F.3d 237 (3d Cir. 2020). A juvenile who had made threats against a local church in an online group chat devoted to the Islamic State and had equipment

and materials to carry out these threats was adjudicated delinquent. The government moved under the CVRA to notify the church and local police of the threats and the juvenile's placement on house arrest. The district court allowed only the church to receive such notification without disclosure of the juvenile's identity, ruling that the church met the statutory definition of a crime victim, but the police did not. The United States Court of Appeals for the Third Circuit affirmed. The Juvenile and Delinquency Prevention Act gives district courts discretion to disclose information about juvenile proceedings when doing so is in the public interest. The CVRA authorized notification to the church, which was a target of the threats and thus qualified as a crime victim. The order was "appropriately circumscribed" because it did not permit release of the juvenile's name or photograph to the church and it barred disclosure to the local police "because, under the facts of this case, they were not 'crime victims' entitled to notification."

In re Hankins, 794 F. Appx. 280 (Mem) (4th Cir. 2020). After a district court declined to review state court decisions, a man sought mandamus relief under the CVRA on the grounds that his wife, her attorneys, and others conspired to steal his children, his home, his company, and his money and that the state courts failed to protect his rights. The United States Court of Appeals for the Fourth Circuit dismissed the petition. Petitioner did not meet the CVRA definition of a crime victim and has not been denied any rights under that law.

In re Barber, 957 F.3d 1381 (9th Cir. 2020). After the district court found that a prior civil settlement reduced the amount of restitution to which a crime victim was entitled, the victim filed a petition for a writ of mandamus pursuant to the CVRA. The United States Court of Appeals for the Ninth Circuit denied the petition. Evidence in the record supported the district court's decision, which "was neither an abuse of discretion nor legally erroneous."

Frank v. United States, 789 F. Appx 177 (11th Cir. 2019), and Frank v. United States, Case No. 18-cv-62832-BLOOM/White, 2018 WL 6803710 (S.D. Fla. Dec. 17, 2018) (slip copy). A Florida prisoner asserted that various agencies' failure to respond to his attempts to report federal crimes committed against him by state agencies and a bank violated his right under the CVRA to confer with a government attorney. A magistrate judge determined that pursuant to the Younger doctrine, the claim could not be adjudicated because doing so would interfere with a pending criminal investigation and, in the alternative, that the complaint should be dismissed as frivolous. The prisoner objected, clarifying that the matter did not involve his criminal prosecution and claiming that he became the victim of kidnapping, robbery, and RICO Act violations when he was removed from prison and taken to foreclosure proceedings after he had refused to attend a previously scheduled hearing. The district court agreed that Younger did not apply, but dismissed the complaint, finding that the prisoner's "dissatisfaction with the results of the foreclosure case" did not establish he was a crime victim pursuant to the CVRA. The United States Court of Appeals for the Eleventh Circuit affirmed. Although the CVRA grants the right to confer with a government attorney "even if there is no ongoing prosecution in connection with

the applicable crime,” in this case the complaint gave no information about the alleged offenses beyond dates and purported perpetrators. “Such conclusory statements are insufficient to establish a cause of action” or to allege that one is a crime victim under the CVRA.

In *re Wild*, 967 F.3d 1285 (11th Cir. 2020). Petitioner, an alleged victim of child sexual abuse and sex trafficking, claimed 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. Although both petitioner and the district court concluded that the CVRA may possibly apply pre-charge, it “is neither best nor most naturally read that way” given its text and structure, the historical context of its passage, and “the prosecutorial-discretion principles that the Act was designed to safeguard.” Petitioner pointed to the CVRA’s guarantee of the right to confer with an attorney for the government in a case, but *Chavez v. Martinez*, 538 U.S. 760 (2003), established that a criminal case does not commence with an investigation and “at the very least requires the initiation of legal proceedings,” and “it makes little sense that Congress would have tethered the conferral right to a single government lawyer” if it had intended to have the CVRA apply pre-charge. Petitioner also cited the CVRA’s provisions related to coverage and venue. Her interpretation of the former would require law enforcement officers to confer with victims before conducting investigations, and “we cannot assume that Congress intended such a jarring result.” The venue provision states that if no prosecution is underway, the victim’s rights shall be asserted in the district where the crimes took place, but this may be referring to the period after the filing of a criminal complaint and before indictment or to the period following a conviction. Finally, to assess whether a movant meets the CVRA’s definition of a crime victim, a court must determine if a federal offense has occurred, and it cannot do this before the government has elected to press charges without placing “enormous pressure on the government’s charging decisions” and possibly damaging any ongoing investigation.

Clark v. Cal. Dep’t of Corr., No. 2:19-cv-2014 KJM KJN P, 2019 WL 5692773 (E.D. Cal. Nov. 4, 2019). Petitioner pled no contest to robbery and evading a police officer and was incarcerated in a state prison. Acting pro se, he filed petitions in federal court for a writ of habeas corpus and a writ of mandate, claiming that the state government and state court had violated his rights under the CVRA by ignoring his requests for re-designation of sentence and affidavit of truth. The district court dismissed the case for lack of jurisdiction. Petitioner did not meet the

CVRA's definition of a crime victim, as he had not been "directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."

United States v. Gordon, 1:19-v-00007-JAW, 2019 WL 6112838 (D. Me. Nov. 18, 2019). During a criminal trial, the government moved for and had admitted into evidence exhibits containing names, home addresses, and other information about thousands of victims of defendant's crimes. After guilty verdicts were handed down, the government filed an unopposed motion to seal these exhibits along with one that had not been admitted but only been referred to during trial. Stating that it "has the impression that the United States Attorney's Office in the District of Maine does not take the right of public access to criminal proceedings as seriously as the Court does" given that the motion consisted of only a few pages and did not distinguish among redactable, sealable, and publicly accessible exhibits, the district court deferred ruling on the motion until the government submitted a supplemental memorandum. Because all but one of the exhibits the government wished to seal had been admitted into evidence at a public trial, they were judicial records "to which the presumption of public access applies," and only "the most compelling reasons can justify" sealing them, *Anderson v. Cryovac, Inc.*, 805 F.2d 1 (1st Cir. 1986). The CVRA provides victims with the right to be reasonably protected from the accused and the right to be treated with fairness and respect for one's dignity and privacy, and *United States v. Robinson*, No. 08-10309-MLW, 2009 WL 137319 (D. Mass. Jan. 20, 2009), stated that in an extortion case, publicizing a victim's name would "subject the victim to precisely the harm threatened by the defendant." However, Fed. R. Crim. P. 49 permits a court to issue a protective order redacting information for privacy and good cause, which may be an appropriate tool preferable to "wholesale sealing."

United States v. Decator, No. CCB-95-202, 2020 WL 3868993 (D. Md. July 9, 2020). Three robbery defendants who received mandatory sentences of 45 years sought and obtained compassionate release after serving approximately 25 years. Weeks after two defendants had left prison and hours after the court had ordered the release of the third, the government sought a stay of the release orders pending an appeal and requested a 10-day delay of release to allow the Bureau of Prisons to, among other actions, notify victims and witnesses of the offenders' release as required by the CVRA. Noting that it "did not find these reasons for delay applicable or compelling," the court denied the government's motion and ordered the immediate release of defendants. The government cited no case in which a court granted a stay that caused a previously released defendant to return to prison, and, having already found that defendants "did not belong in prison," the court declined to order "their return to custody in the midst of a pandemic."

United States v. Torres, No. 20-cr-00418, 2020 WL 4500046 (D.N.J. Aug. 5, 2020). Defendant was charged with crimes against three victims he allegedly lured across state lines, assaulted, raped, and coerced into prostitution and other criminal acts. The government sought a

protective order pursuant to the CVRA to protect the victims' identities and personal information by having material produced in discovery assigned to the following categories: protected information involving sexually explicit information or images of victims or witnesses, which would be shared with counsel but not the defendant; redacted materials identifying potential victims or witnesses or containing sensitive information, which defendant would be barred from sharing with anyone and required to return when the case ended; and unrestricted materials, which defendant would be allowed to retain a single copy of but forbidden to share with anyone. The district court granted the motion in part and denied it in part. "Good cause for a protective order must be balanced with an accused's constitutional right to the effective assistance of counsel." Although the requested order generally balanced defendant's ability to review discovery materials with the victims' "serious privacy and safety concerns," the government cited no grounds for limiting defendant to a single copy of "unrestricted materials" and prohibiting defendant from distributing these materials to the public or any other person, so that portion of the motion was denied. The court also rejected the government's request to require defendant to return audio and visual materials containing information deemed sensitive or useful for identifying the victims and instead directed the government to redact this information before disclosing the materials to defendant.

United States v. Rechnitz, No. 16 Cr. 389 (AKH), 2020 WL 1467888 (S.D.N.Y. Mar. 26, 2020). After defendant was convicted of conspiring to commit wire fraud, he and his co-conspirators were ordered to pay restitution of \$19 million to the Correction Officers' Benevolent Association (COBA), although defendant's liability was limited to \$10 million. COBA sought an amended sentence recognizing that, as the victim of defendant's crime, it was entitled to full restitution under the CVRA and asked the court to order defendant to pay it the remaining balance owed, asserting that defendant had arranged for the bribe at issue in the conspiracy, was as responsible as his co-defendants for restitution, and had provided unreliable information the court used to determine his ability to pay restitution. The district court denied the motion without prejudice. Because defendant had filed a notice of appeal before a ruling was made on COBA's motion, the district court lacked jurisdiction to consider the motion before the appeals court made its own ruling. Noting that precedent permitted authorities to gather assets they had been unaware of "as the result of a defendant's dishonesty," the district court instructed COBA to petition for a writ of mandamus from the circuit court pursuant to the CVRA.

Rodgers v. Trate, No. 1:19-cv-000207 (Erie), 2020 WL 1308181 (W.D. Pa. Mar. 19, 2020). Defendant pled guilty to second-degree murder and was incarcerated. At a parole hearing in 2015, the decedent's mother said she opposed defendant's release. Defendant was denied parole. In accordance with the CVRA, the mother received notice of a second parole hearing held in November 2017, but she did not respond before the hearing occurred. A parole date was set for July 2018, and defendant was transferred to a halfway house in March 2018. A month after the hearing, however, the mother told the United States Parole Commission that she felt unsafe and requested a new hearing at which she could testify. The commission ordered a

reconsideration hearing, and defendant was returned to prison in May 2018. The hearing examiner again recommended parole, but the commission voted against this. Defendant sought a writ of habeas corpus. The district court granted his petition, finding a violation of defendant's due process rights. Under C.F.R. § 2.28, a parole decision may be reopened only if "new and significant adverse information" warrants this. The mother testified at the rehearing that defendant had never said he was sorry for the murder, but he made apologies at hearings in 2015, 2017, and 2018. Her revelation that defendant had used "armor-piercing bullets" was new, but not significant, and she had expressed fear for her safety in 2015. In opening the hearing, the examiner said, "[T]here isn't any new information . . . we're doing this hearing because the victim contacted the parole commission after your hearing," and a commissioner's memorandum noted that the parole decision was reopened "for a special reconsideration hearing due to the victim was unable to exercise her right to participate in the parole hearing," indicating that the commission acted arbitrarily in rescinding defendant's parole.

Rivers v. United States, No. 6:18-cv-00061, 2020 WL 1527860 (W.D. Va. Mar. 9, 2020). Plaintiff asserted she had been defrauded by a man who told her he owned Rivermont Banking Company, but actually had been barred from the banking business. She spoke to state and federal law enforcement personnel about this over several years, but no criminal charges were filed. Acting pro se, plaintiff sued dozens of individuals, government agencies, and private entities. She filed ancillary motions seeking enforcement of and relief under the CVRA and a court order appointing a "prosecutor or advocate to communicate with the Government in this matter on [her] behalf" and requiring the U.S. government to give her materials related to its purported negotiations and agreements with "bad actors" who committed crimes against her. A magistrate judge recommended that the district court deny the motions. Plaintiff showed she was a crime victim, but her allegations and supporting exhibits established that the government had met the requirements of the CVRA. Although the CVRA provides that crime victims have a reasonable right to confer with government attorneys in their cases and "gives victims a voice in this process," this does not entitle them to "dictate the manner, timing, or quantity of conferrals," *In re Dean*, 527 F.3d 391 (5th Cir. 2008). Government agents assessed plaintiff's documents "on a rolling basis," met often with her or her attorney, and heard her concerns. Prosecutors have the discretion to decide whether to press charges, and the CVRA did not guarantee plaintiff any more than what she received. Plaintiff had no right under the CVRA to receive the requested investigative materials, as *United States v. Moussaoui*, 483 F.3d 220 (4th Cir. 2007), stated that the CVRA grants rights limited to the criminal justice process and "is silent and unconcerned with victims' rights to file civil claims against their assailants." Plaintiff also was not entitled to remedies under the CVRA based on the foreclosure of another person's home. She alleged that the sale of this home had been used to launder money obtained from her under false pretenses and that the foreclosure might hinder recovery of her assets, but *United States v. Chambers*, 14 F. Appx. 140 (4th Cir. 2001), held that "society is the primary victim of money laundering undertaken for the purposes of concealment."