

**VIA EMAIL ONLY**

April 3, 2020

The Honorable Juliet J. McKenna  
Presiding Judge, Criminal Division  
District of Columbia Superior Court

The Honorable Danya A. Dayson  
Deputy Presiding Judge, Criminal Division  
District of Columbia Superior Court

**Re: Amicus Curiae Letter Brief in Response to the Court's Order to Show Cause in *In Re Sentenced Misdemeanants*, Case No. 2020 CNC 000120**

Dear Presiding Judge McKenna and Deputy Presiding Judge Dayson:

**I. Interest of Amicus Curiae**

The National Crime Victim Law Institute (NCVLI) is a nonprofit located at Lewis and Clark Law School in Portland, Oregon. NCVLI is recognized as the premier national organization working to promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI participates as amicus curiae in cases that present victims' rights issues of broad importance. This is one of those cases as it involves the potential violation of a large number of crime victims' rights to notice, hearing, fair treatment and reasonable protection. NCVLI submits this letter brief without local counsel due to the exigent nature of the proceedings under consideration.

**II. This Court Has a Duty Under Federal Law to Ensure All Crime Victims are Afforded Their Rights Under 18 U.S.C. § 3771**

Under the federal Crime Victims' Rights Act (CVRA), crime victims have rights to be reasonably protected from the accused; to reasonable notice of and to reasonably heard at the proceedings involving release; and to be treated with fairness and with respect. 18 U.S.C. § 3771(a)(1), (2), (4), (8). This Court has a statutory duty to "ensure that the crime victim[s] [are] afforded the[ir] rights" under the law. 18 U.S.C. § 3771(b)(1); *see also United States v. Palmer*, 643 F.3d 1060, 1067 (8th Cir. 2011) (reversing the district court's issuance of a special condition in its restitution order on the ground that such order "manifestly violates the law"; and stating that its ruling is "consistent with [its] solemn statutory duty [under the CVRA] to safeguard the victim's" right to full restitution). The plain language of the CVRA makes clear

that the Court's duty is independent of the government's statutory obligation to use its "best efforts to see that crime victims are notified of, and accorded, the[ir] rights." 18 U.S.C. § 3771(c).

Release of any of the proposed misdemeanants without affording their victims reasonable notice and an opportunity for hearing, and without imposing appropriate protective measures, would violate the CVRA and be subject to reversal. *See* 18 U.S.C. § 3771(c) (affording crime victims the right to petition the court of appeals for a writ of mandamus).<sup>1</sup> Consequently, courts must adopt procedures to ensure that crime victims are not deprived of their rights. *Cf. Dolan v. United States*, 560 U.S. 605, 612, 615 (2010) (affirming a district court's imposition of the initial restitution order past the ninety-day statutory deadline because a contrary ruling "would defeat the basic purpose of" a law intended to benefit victims); *United States v. Adetiloye*, 716 F.3d 1030, 1040-41 (8th Cir. 2013) (declining to affirm the district court's order awarding restitution to only three out of sixty-five victims, despite the fact that it found the government had failed to meet its burden of proof; stating that "the district court should have [*sua sponte*] postponed the restitution proceedings to allow for the gathering and presentation of additional evidence"; and explaining that a contrary ruling would defeat the purpose of a law intended to benefit victims (citing *Dolan*, 560 U.S. at 615)).

Here, the Court's duty to all of the crime victims impacted by this case requires the Court to do more than simply ordering the United States Attorney's Office and the Office of the Attorney General to "certify" in their responses whether they have "made efforts consistent with" their statutory obligations under the CVRA and D.C. Code § 23-1902. (Mar. 31, 2020 Order to Show Cause at 2.) Amicus is not suggesting that these offices will not make their best efforts to comply with the law; rather, in the current pandemic, which is creating unique hurdles for individuals and the system, the Court cannot delegate its obligation to protect rights to other actors' best efforts. Instead, the Court must adopt reasonable procedures to ensure the affected victims are afforded reasonable notice, opportunity to be heard, and reasonable protection from the convicted offenders *before* releasing any of the misdemeanants.

The Court has a number of options that may achieve reasonable notice and opportunity to be heard; among these:

- Delaying proceedings sufficiently to ensure sufficient time for notification and access to technology for exercise of the right to be heard;
- Requiring notice to victims through mass publication;
- Conducting hearings via closed circuit television from a different room in the courthouse to maintain the requisite social distance;

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<sup>1</sup> Such failure to ensure the victims' rights also risks trial and appellate court congestion and the corresponding increased health risks for the community as the victims whose rights have been violated will have to file papers to seek court reconsideration and ultimately mandamus review. The Court should not put crime victims to the Hobson choice of exercising their rights and accessing justice or safeguarding their health.

- Conducting telephonic hearings; and
- Conducting two-way video conference hearings with procedures in place that protects the victims' rights to privacy and protection.

Crime victims' rights should not be lost to the hue and cry of the moment. While the process and method may change, victims' rights can and must be complied with.

Respectfully submitted,



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