

CVRA rights attach prior to the filing of criminal charges.³⁴⁴ The Appellate Division Chief noted that, although the holding conflicted with the 2005 Guidelines, the “court’s opinion makes sense.”

Dean involved a federal prosecution arising from a 2005 explosion at an oil refinery operated by BP Products North America, Inc. (BP) that killed 15 people and injured more than 170. Before bringing criminal charges, the government negotiated a guilty plea with BP without notifying the victims. The government filed a sealed motion, alerting the district court to the potential plea and claiming that consultation with all the victims was impractical and that such notification could result in media coverage that would undermine the plea negotiations. The court then entered an order prohibiting the government from notifying the victims of the pending plea agreement until after it had been signed by the parties. Thereafter, the government filed a criminal information, the government and BP signed the plea agreement, and the government mailed notices of the plea hearing to the victims informing them of their right to be heard. One month later, 12 victims asked the court to reject the plea because it was entered into in violation of their rights under the CVRA. The district court denied their motion, but concluded that the CVRA rights to confer with the prosecutor in the case and to be treated with fairness and respect for the victim’s dignity and privacy vested prior to the initiation of charges.³⁴⁵ The district court noted that the legislative history reflected a view that “the right to confer was intended to be broad,” as well as being a “mechanism[.]” to ensure that victims were treated with fairness.

In denying the victims relief, the Fifth Circuit nevertheless concluded that the district court “failed to accord the victims the rights conferred by the CVRA.”³⁴⁶ In particular, the Fifth Circuit cited the district court’s acknowledgement that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” The Fifth Circuit also noted that such consultation was not “an infringement” on the government’s independent prosecutorial discretion, but “it is only a requirement that the government confer in some reasonable way with the victims before ultimately exercising its broad discretion.” In the wake of the *Dean* opinion, two Department components wrote separate memoranda to the Solicitor General with opposing views concerning whether the CVRA right to confer with the prosecution vests prior to the initiation of a prosecution.

IX. JUNE 2008: VILLAFAÑA’S PRE-PLEA CONTACTS WITH THE ATTORNEY REPRESENTING THE VICTIMS WHO LATER BECAME THE CVRA PETITIONERS

According to an affidavit filed in the CVRA litigation by her attorney, Bradley Edwards, Wild retained Edwards in June 2008 to represent her “because she was unable to get anyone from the [USAO] to tell her what was actually going on with the federal criminal case against Jeffrey Epstein.”³⁴⁷ Villafaña told OPR that Wild did not contact her directly and she was not aware of

³⁴⁴ *In re Dean*, 527 F.3d 391 (5th Cir. 2008). The Fifth Circuit opinion was not binding precedent in Florida, which is within the Eleventh Circuit.

³⁴⁵ *United States v. BP Products North America, Inc.*, 2008 WL 501321, at *11 (S.D. Tex. 2008). Victims who wished to be heard were permitted to speak at the plea hearing.

³⁴⁶ *Dean*, 527 F.3d at 394.

³⁴⁷ Before Epstein’s state court plea hearing, Edwards also began representing the victim who became Jane Doe #2. Although OPR focuses on Villafaña’s communications with Edwards in this section, OPR notes that Villafaña