

letters to victims sent after the NPA was signed were not misleading in stating that the matter was “under investigation” because the government continued to investigate given its uncertainty that Epstein would plead guilty; and (3) Villafaña contacted the petitioners’ attorney prior to Epstein’s state plea to advise him of the hearing. Nonetheless, Villafaña told OPR that, while there were valid reasons for the government’s position that CVRA rights do not apply pre-charge, “[T]his is a case where I felt we should have done more than what was legally required. I was obviously prepared to spend as much time, energy and effort necessary to meet with each and every [victim].”

Over the course of the litigation, the district court made various rulings interpreting the provisions of the CVRA, including the court’s key conclusion that victim CVRA rights “attach before the Government brings formal charges against a defendant.” The court also held that (1) “the CVRA authorizes the rescission or ‘reopening’ of a prosecutorial agreement, including a non-prosecution agreement, reached in violation of a prosecutor’s conferral obligations under the statute”; (2) the CVRA authorizes the setting aside of pre-charge prosecutorial agreements”; (3) the CVRA’s “reasonable right to confer” “extends to the pre-charge state of criminal investigations and proceedings”; (4) the alleged federal sex crimes committed by Epstein render the *Doe* petitioners “victims” under the CVRA; and (5) “questions pertaining to [the] equitable defense[s] are properly left for resolution after development of a full evidentiary record.”

On February 21, 2019, the district court granted the petitioners’ Motion for Partial Summary Judgment, ruling that “once the Government failed to advise the victims about its intention to enter into the NPA, a violation of the CVRA occurred.” The government did not dispute the fact that it did not confer with the petitioners prior to signing the NPA, and the court concluded that “[a]t a bare minimum, the CVRA required the Government to inform Petitioners that it intended to enter into an agreement not to prosecute Epstein.” The court found that the post-NPA letters the government sent to victims describing the investigation as ongoing “misled the victims to believe that federal prosecution was still a possibility” and that “[i]t was a material omission for the Government to suggest to the victims that they have patience relative to an investigation about which it had already bound itself not to prosecute.”<sup>386</sup>

The court relied on *Dean* and *BP Products* to support its holding and noted that the government’s action with respect to the NPA was especially troubling because, unlike a plea agreement for which the victims could voice objection at a sentencing hearing, “[o]nce an NPA is entered into without notice, the matter is closed and the victims have no opportunity to be heard regarding any aspect of the case.” The court also highlighted the inequity of the USAO’s failure to communicate with the victims while it simultaneously engaged in “lengthy negotiations” with Epstein’s counsel and assured the defense that the NPA would not be “made public or filed with the Court.”

Although the USAO defended its actions by citing the 2005 Guidelines for the Department’s position that CVRA rights do not attach until after a defendant is charged, the court was “not persuaded that the [G]uidelines were the basis for the Government’s decision to withhold information about the NPA from the victims.” The court found that the government’s reliance on

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<sup>386</sup> The court did not resolve the factual question as to whether the victims were given adequate notice of Epstein’s state court plea hearing.