

No. 21–351

In the Supreme Court of the United States

Courtney Wild

Petitioner,

v.

United States District Court for the Southern
District of Florida,

Respondent,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

**MOTION AND BRIEF OF *AMICUS*
CURIAE CHILD USA
IN SUPPORT OF PETITIONER**

MARCI A. HAMILTON
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
215–353–8984
mhamilton@childusa.org

JAMES R. MARSH
Counsel of Record
Marsh Law Firm PLLC
31 Hudson Yards, 11th Floor
New York, NY 10001
212–272–3030
jamesmarsh@marsh.law

Counsel for Amicus Curiae Child USA

No. 21–351

In the Supreme Court of the United States

Courtney Wild

Petitioner,

v.

United States District Court for the Southern
District of Florida,

Respondent,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

**MOTION OF *AMICUS CURIAE* CHILD USA
IN SUPPORT OF PETITIONER**

MARCI A. HAMILTON
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
215–353–8984
mhamilton@childusa.org

JAMES R. MARSH
Counsel of Record
Marsh Law Firm PLLC
31 Hudson Yards, 11th Floor
New York, NY 10001
212–272–3030
jamesmarsh@marsh.law

Counsel for Amicus Curiae Child USA

Pursuant to Supreme Court Rule 37.2(b), Child USA respectfully moves for leave to file the accompanying brief as amicus curiae. The consent of Petitioners has been obtained, but the consent of the Department of Justice has not been received.

Counsel for the United States received an extension of time for amicus briefs in support of the respondent until November 3, 2021. Given that the Court granted that extension, there is no prejudice to the parties.

As an independent, non-partisan, privately funded research organization that seeks to improve the rights of victims of child sexual abuse in in the United States through civic discourse, legislative reform, and intellectually rigorous public policy solutions, CHILD USA is uniquely situated to file an amicus brief in this case.

The history of this case and the mistreatment of victims of childhood sexual abuse in the United States, puts Ms. Wild's claims at the center of an historic national debate on accountability for sexual offenses committed against children. The issues raised in this case will impact victims of child sex abuse across the country. This history, which is discussed in the accompanying amicus brief, provides important perspectives on why the Court should grant certiorari to consider this case.

RESPECTFULLY SUBMITTED

James R. Marsh
Counsel of Record
Marsh Law Firm PLLC
31 Hudson Yards, 11th Floor
New York, NY 10001
212-272-3030
jamesmarsh@marsh.law

Dated: October 4, 2021

TABLE OF CONTENTS

| | |
|---------------------------------|----|
| TABLE OF AUTHORITIES | ii |
| RELATED PROCEEDINGS..... | v |
| INTEREST OF AMICUS CURIAE | 1 |
| SUMMARY OF THE ARGUMENT | 2 |
| ARGUMENT | 3 |
| CONCLUSION..... | 17 |

TABLE OF AUTHORITIES

CASES

| | |
|---|----|
| <i>Barnes v. Gorman</i> , 536 U.S. 181, 185 (2002)..... | 11 |
| <i>In re Dean</i> , 527 F.3d 391, 394 (5th Cir. 2008) | 9 |
| <i>Griffin v. Illinois</i> , 351 U.S. 12, 19 (1956)..... | 14 |
| <i>Lexmark Int’l, Inc. v. Static Control Components, Inc.</i> , 572 U.S. 118, 128 (2014)..... | 11 |
| <i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137, 163 (1803)..... | 8 |
| <i>Paroline v. United States</i> , 572 U.S. 434 (2014)..... | 10 |
| <i>Skilling v. United States</i> , 561 U.S. 358, 377–99 (2010)..... | 10 |

STATUTES

| | |
|------------------------------|-----|
| 18 U.S.C. § 2255..... | 6,9 |
| 18 U.S.C. § 2259..... | 6,9 |
| 18 U.S.C. § 3771 | 6 |
| 18 U.S.C. § 3771(a)..... | 8 |
| 18 U.S.C. § 3771(a)(5)..... | 6 |
| 18 U.S.C. § 3771(d)(3) | 8 |

OTHER AUTHORITIES

| | |
|--|----|
| I. Angelakis, et. al., <i>Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis</i> , 49 PSYCHOLOGICAL MEDICINE 1057 (2019) | 12 |
| Rebecca Campbell, Ph.D., <i>The Neurobiology of Sexual Assault: Explaining Effects on the Brain</i> , NAT'L INST. OF JUSTICE (2012)..... | 11 |
| CHILD USA, <i>Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse</i> , CHILDUSA.ORG, 3 (Mar. 2020)..... | 11 |
| JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 122 (4th ed. 2006)..... | 9 |
| Steven Joffe, <i>Validating Victims: Enforcing Victims' Rights Through Mandatory Mandamus</i> , 2009 Utah L. Rev. 241, 242–43 (2009)..... | 13 |
| Harris & Roger D. Fallot, <i>Using Trauma Theory to Design Service Systems: New Directions for Mental Health Services</i> 89 (Spring 2001). | 13 |
| Gail Hornot, <i>Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know</i> , 29(2) J. PEDIATRIC HEALTHCARE 191 (2015)..... | 12 |
| Fang, et al., <i>The Economic Burden of Child Maltreatment in the United States & Implications for Prevention</i> , 36 CHILD ABUSE & NEGLECT 156 (2012) | 12 |

Jill Laurie Goodman & Dorchon A. Leidholdt, *Lawyer’s Manual on Human Trafficking*, NY STATE JUD. COMM. ON WOMEN IN THE CTS 169–76 (2013)..... 11

M. Merricka, et. al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (2017)..... 12

G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18 (1164) BMC PUBLIC HEALTH (2018)..... 10

N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009). 11

Perryman Group, *Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment*, (2014) 12

Spencer Rand, *A Poverty of Representation: The Attorney’s Role to Advocate for the Powerless*, 13 Tex. Wesleyan L. Rev. 545, 557 (2007). 12

M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011)..... 11

BESSEL A. VAN DER KOLK M.D., ET AL., *TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY* (2006) 11

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

United States District Court for the Southern District of Florida:

Jane Does Nos. 1 and 2 v. United States,
Case No. 9:08-cv-80736.

United States Court of Appeals for the Eleventh Circuit:

Jane Does Nos. 1 and 2 v. United States, Roy Black et al. Intervenors-Appellants,
Case No. 13-12923, 749 F.3d 999 (11th Cir. 2014).

In re: Courtney Wild,
Case No. 19-13843, 955 F.3d 1196 (11th Cir. 2020) (denying mandamus),
967 F.3d 1285 (11th Cir. 2020) (vacating opinion and granting rehearing *en banc*),
994 F.3d 1244 (11th Cir. *en banc* 2021) (denying mandamus).

INTEREST OF AMICUS CURIAE¹

Marsh Law Firm PLLC is based in New York, New York, and is working in partnership with Child USA.

CHILD USA is the leading national nonprofit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect in America. CHILD USA produces evidence-based solutions and information needed by policymakers, organizations, media, and society as a whole to increase child protection and the common good.

¹ Pursuant to Rule 37.2, prior to the filing of this brief, amicus notified counsel of record for all parties of their intent to file this amicus brief in advance of filing. Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part, and no person other than amicus and their counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rule 37.3, amicus filed the attached motion for leave to file this amicus brief. The petitioner has consented to the filing of this brief.

SUMMARY OF THE ARGUMENT

The Crime Victim Rights Act (CVRA), 18 U.S.C. § 3771, protects victims from the maw of the criminal justice system and it provides victims with the “reasonable right to confer with the attorney for the Government in the case.” 18 U.S.C. § 3771(a)(5). This 2004 law not only empowers victims to seek accountability from the government and defendants, but it also protects their civil causes of action.

In this case, federal prosecutors usurped Courtney Wild’s (Wild) civil rights and acted well beyond the scope of their authority when they conducted settlement discussions and negotiated civil remedies with defendant Jeffrey Epstein’s (Epstein) attorneys without consulting Wild. In doing so, the Government failed to seek restitution for Wild under 18 U.S.C. § 2259 and entered into agreements circumscribing Wild’s rights to a civil remedy under 18 U.S.C. § 2255. The Government did this without consulting with Wild or her attorney.

The CVRA gives crime victims a mechanism to enforce their CVRA rights including the right to confer with prosecutors for the Government.² In this case, federal prosecutors failed to confer with Wild about criminal restitution before, during, and after their negotiations with Epstein’s attorneys. Further, the same federal prosecutors negotiated Wild’s civil remedies without conferring with Wild at all. Under the CVRA, Wild is entitled to “confer with the government” concerning criminal restitution as well as any agreement the

² The CVRA requires federal prosecutors to confer with known and identified crime victims.

Government negotiates affecting her civil causes of action. Wild is entitled to a remedy under the CVRA for conduct by Government which not only mislead her about the status of their investigation, but utterly failed to inform her that they were negotiating her substantive legal rights to restitution and civil remedies.

ARGUMENT

I. The Government Violated Wild's CVRA Rights By Failing To Confer With Her About Mandatory Criminal Restitution Under 18 U.S.C. § 2259 And Civil Remedies Under 18 U.S.C. § 2255

In approximately 2005, the Federal Bureau of Investigations began investigating Epstein for sexual offenses against children including sexual offenses against Wild. By January of 2007, federal prosecutors in the United States Attorney's Office for the Southern District of Florida began discussions with Epstein's attorneys. Beginning in March of 2007, federal prosecutors contacted victims, including Wild, over the course of many months and informed them of their rights as a "victim and/or witness of a federal offense." This included "[t]he reasonable right to confer with the attorney for the [Government] in the case."³

On September 24, 2007, federal prosecutors entered into a secret pre-indictment non-prosecution agreement (NPA) with Epstein which resolved Wild's civil claims against Epstein and his co-conspirators.

³ See 18 U.S.C. § 3771(a)(5) (2008).

Federal prosecutors failed to confer with Wild or her attorney before signing the agreement. Epstein pleaded guilty to relatively minor criminal charges under Florida state law on June 30, 2008. The federal claims were dropped.

On July 8, 2008, after no federal prosecution commenced and no communication from federal prosecutors, Wild, through her attorneys, filed an emergency petition under the CVRA “in the district court in which the crime occurred.”⁴ In August of 2019, while the court was considering Wild’s claims, Epstein died.

In September 2019, the district court dismissed Wild’s suit.⁵ Wild responded by filing a petition for a writ of mandamus in the Eleventh Circuit as required by the CVRA.⁶ In 2020, a divided panel denied Wild’s mandamus petition because “the CVRA does not apply before the commencement of criminal proceedings—and thus, on the facts of this case, does not provide [Wild] any judicially enforceable rights.”⁷ Wild requested *en banc* review which was denied on April 15, 2021.⁸

Meanwhile, in June 2020, the United States Attorney in the Southern District of New York indicted Epstein’s alleged co-conspirator, Ghislaine Maxwell,

⁴ See 18 U.S.C. § 3771(d)(3) (2008).

⁵ See *Doe 1 v. United States*, 411 F. Supp 3d 1321 (S.D. Fla. 2019).

⁶ See 18 U.S.C. § 3771(d)(3) (stating that “[i]f the district court denies the relief sought, a victim “may petition the court for a writ of mandamus.”).

⁷ See *In re Wild*, 955, F.3d 1196, 1220 (11th Cir. 2020).

⁸ See *In re Wild*, 994 F.3d 1244 (11th Cir. en banc 2021).

for her participation in Epstein’s criminal conduct involving the sexual abuse of children in New York, Florida, and other locations. That case remains pending.

The 2004 version of the CVRA created eight basic rights for crime victims and provided remedies for victims to enforce those rights.⁹ The law gives victims a private cause of action to enforce their rights under the CVRA. After all, “it is a general and indisputable rule[] that where there is a legal right, there is also a legal remedy. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (quoting 3 William Blackstone, *Commentaries* *23). The CVRA expressly and unambiguously provides victims with a private cause of action.¹⁰ The rights and remedies in the CVRA clearly creates a victim’s path to justice. A victim may assert her rights in the district court where the prosecution is occurring “or, if no prosecution is underway, in the district court in the district in which the crime occurred.” 18 U.S.C. § 3771(d)(3). “The wisdom of Congress’ action ... is not within our province to second guess.” *Eldred v. Ashcroft*, 537 U.S. 186, 222 (2003).

Courts have held that some CVRA rights attach before a prosecution has started and that this logically includes a victim’s “reasonable right” under the CVRA “to confer with the attorney for the Government.” *See In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008) (per curiam). Congress passed the CVRA and made a policy decision that “victims have a right to inform the plea negotiation process by conferring with

⁹ 18 U.S.C. § 3771(a).

¹⁰ *See* 18 U.S.C. § 3771(d).

prosecutors before a plea agreement is reached.” *Id.* at 395.

In this case, the government violated Wild’s CVRA rights when they failed to reasonably confer with her about her right to seek criminal restitution and civil remedies for the federal offenses Epstein and his co-conspirators committed against her. The Government acted well beyond their authority when they effectively negotiated Wild’s civil remedies without formally representing her or even conferring with her. The Government entered into a binding agreement with Epstein and countless named and un-named co-conspirators to resolve Wild’s rights under 18 U.S.C. § 2255, a civil remedy for victims of sexual exploitation, without conferring with Wild or her attorney.

Prosecutorial discretion cannot reasonably include serving as an un-retained civil representative for victims. Nor does it encompass engaging in settlement negotiations without, at minimum, conferring with the parties most effected by the agreement—victims like Wild.

A. Federal Prosecutors Violated Wild’s CVRA Rights By Failing to Confer With Her About Mandatory Criminal Restitution Under 18 U.S.C. § 2259

According to the NPA, Epstein and his co-conspirators committed at least two federal criminal offenses against Wild which required them to pay mandatory

restitution under 18 U.S.C. § 2259.11 The imposition of criminal restitution under 18 U.S.C. § 2259 was nondiscretionary: “in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense” relating to the sexual exploitation of children under Chapter 110 of Title 18.¹² The mandatory nature of criminal restitution at the time of Epstein’s criminal offenses, as well as at the time of the NPA, clearly required Epstein to pay compensation for the damage he caused his victims, including Wild. The mandatory nature of criminal restitution “indicates Congress’ clear intent that victims [...] be compensated by the perpetrators who contributed to their anguish. It would undermine this intent to apply the statute in a way that would render it a dead letter.”¹³ The government-negotiated NPA in which Epstein agreed not to contest a capped amount of civil liability, clearly implicated Wild’s civil remedy.

Furthermore, the Government failed to discuss criminal restitution with Wild whatsoever even though the NPA acknowledged that Epstein committed violations of at least two federal offenses which required him to pay criminal restitution. The issuance of a restitution order under 18 U.S.C. § 2259 was “mandatory.”¹⁴ “[A]ny offense” under Chapter 110

¹¹ The NPA referenced violations of 18 U.S.C. §§ 2422(b) and 2423, and 18 U.S.C. § 1591 committed by Epstein and his co-conspirators, Sarah Kellen, Adriana Ross, Lesley Groff, and Nadia Marcinkova, along with any other possible co-conspirators.

¹² 18 U.S.C. § 2259 (Effective April 24, 1996 to December 6, 2018).

¹³ *Paroline v. United States*, 572 U.S. 434, 457 (2014).

¹⁴ 18 U.S.C. § 2259(b)(4) (Effective April 24, 1996 to December 6, 2018).

of Title 18 requires the offender to make mandatory restitution. Since the NPA with Epstein acknowledged and specified three separate federal offenses against specifically named victims, including Wild, it is difficult to imagine that any federal prosecutor would have had the prosecutorial discretion not to seek such an order without conferring with the victim when “[a] court may not decline to issue an order under this section.”¹⁵

Similarly, since a court cannot decline to issue a restitution order based on “the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source” or because of “the economic circumstances of the defendant” it is difficult to imagine that failing to seek restitution without conferring with the victim is a reasonable exercise of prosecutorial discretion.¹⁶ Nonetheless, it appears that federal prosecutors may have considered Epstein’s economic circumstances in crafting an NPA which avoided restitution by specifically requiring Epstein to pay damages in subsequent civil litigation under 18 U.S.C. § 2255. At a minimum, federal prosecutors violated Wild’s right under the CVRA to “confer with the Government” regarding any decisions made with respect to criminal restitution. In addition, federal prosecutors may have violated the clear statutory requirement in 18 U.S.C. § 2259 by failing to seek a restitution order or confer

¹⁵ 18 U.S.C. § 2259(b)(4)(B)(i) (Effective April 24, 1996 to December 6, 2018).

¹⁶ 18 U.S.C. § 2259(b)(4)(B)(ii) (Effective April 24, 1996 to December 6, 2018).

with Wild about her right to restitution and the civil options required by the NPA.

B. Federal Prosecutors Violated Wild’s CVRA Rights by Failing to Confer with Her About Civil Remedies Under 18 U.S.C. § 2255

Victims have an independent right to bring an action for civil damages even when there is no criminal case. Further, it is improper for the judiciary or executive branch to “limit a cause of action that Congress has created.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). When such a right exists, the Court is in “favor of any appropriate relief for violation of a federal right[.]” *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (emphasis removed).

18 U.S.C. § 2255 operates as a parallel civil cause of action for victims like Wild and serves as an additional vehicle to compensate victims for their losses beyond the compensation required by 18 U.S.C. § 2259. In 2007, Section 2255 provided civil remedies for “[a]ny person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of [18 U.S.C.]” Wild had a statutory right to recover her “actual damages” and “the cost of the suit, including a reasonable attorney’s fee.¹⁷ Wild was a victim of Epstein and his co-conspirators for violations of at least three federal criminal offenses, two of which served as predicate offenses for civil liability under

¹⁷See 18 U.S.C.A. § 2255 (Effective July 27, 2006 to March 6, 2013).

Section 2255 (which had a relatively brief six-year statute of limitations at the time).¹⁸ These offenses expressly included violations of 18 U.S.C. §§ 2422(b) and 2423 which Epstein and federal prosecutors specifically acknowledged in the NPA.

Wild's opportunity to file an action under Section 2255 was already limited by a short statute of limitations and the Government's failure to confer with her concerning the status of the criminal case ultimately limited her ability to pursue all appropriate civil remedies available to her. Wild was entitled to reasonable information concerning potential civil claims against Epstein since at least two of the offenses Epstein acknowledged committing were predicate crimes for civil damages under 18 U.S.C. § 2255.¹⁹ Nonetheless, in this case the Government failed to confer with Wild about any of this.

Wild's civil cause of action and the Government's duty to ensure her CVRA rights commenced as soon as she was identified as a victim of Epstein's federal crimes. As described in *In re Boland*, 946 F.3d 335, 339 (6th Cir. 2020) (quoting 18 U.S.C. §2255(a) (2006) (amended 2018) a person becomes a "victim" of a crime even if they are unaware of when the violation occurs—and even if they remain unaware after the violation.²⁰ At a minimum, when Epstein and his coconspirators violated 18 U.S.C. §§ 2422(b) and 2423,

¹⁸ *Id.*

¹⁹ See 18 U.S.C.A. § 2255 (Effective July 27, 2006 to March 6, 2013).

²⁰ See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 122 (4th ed. 2006) (discussing example of a sleeping attempted murder victim).

Wild suffered harm.²¹ Thus, Wild was Epstein’s “victim” and fully entitled to a civil remedy as soon as Epstein and his co-conspirators committed predicate crimes against her.

Furthermore, Wild’s civil remedies were available to her even though Epstein was never indicted. Even though the Government failed to confer with Wild, the NPA recognized that Wild had civil remedies against Epstein in 2007 and 2008. Epstein agreed not to contest liability under 18 U.S.C. § 2255 “up to a certain amount” and the Government tasked itself with selecting an attorney for the victims. In what mimics a civil settlement, federal prosecutors reduced Wild’s remedies to a pre-determined dollar amount and limited her claims to damages under 18 U.S.C. § 2255 without conferring with Wild. Not only did this secret civil settlement go far beyond the scope of any prosecutorial discretion, it superimposed a limit on Wild’s civil remedies under 18 U.S.C. § 2255.

II. This Case Threatens to Exclude Future Crime Victims from Criminal Proceedings Thereby Undermining the CVRA

It is not unusual for the Court to grant review in highly publicized cases because of the importance of such cases in shaping the public’s perception of the criminal justice system.²²

²¹ *See Id.* at 122.

²² *See, e.g., Skilling v. United States*, 561 U.S. 358, 377–99 (2010) (affirming lower court decision that substantial pre-trial publicity in the Enron case did not produce an unfair trial).

The important question of whether the CVRA gives victims a right to confer with the Government before they file an indictment implicates each crime victim—most of whom are not represented by counsel—and disproportionately impacts vulnerable victims like Wild. Without the Court’s intervention, the outcome in this case creates a perverse incentive for powerful defendants to use their influence to avoid accountability by preventing victims from participating in criminal proceedings, undermining the fundamental purpose of the CVRA.

A. The Cost of Federal Crime is Staggering to Victims and Society and That Cost Disproportionately Impacts Poor Victims and Those with Limited Access to Resources

Victims of childhood sexual abuse and trafficking are only one demographic of the many crime victims protected by the CVRA. Unfortunately, child sex abuse affects millions of children with approximately 1 in 5 girls and 1 in 13 boys becoming victims.²³

²³ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

Victims of childhood sexual abuse experience trauma and harm in ways that make it difficult or impossible to fully understand and cope with the abuse, to report it, and to hold offenders accountable.²⁴ Abusers frequently use their actual or perceived power to manipulate and coerce victims during their abuse or trafficking.²⁵ As a result, victims of abuse and trafficking often feel fearful and threatened which prevents them from reporting their abuse and exploitation.²⁶ Not surprisingly, most victims do not disclose their abuse until, on average, age 52, if they ever come forward at all.²⁷

²⁴ Centers for Disease Control and Prevention, *The Adverse Childhood Experiences (ACE) Study*, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Dep't of Health & Human Services Administration for Children & Families, Administration on Children, Youth & Families, and Children's Bureau, *Child Maltreatment 2017*, available at

<https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

²⁵ Jill Laurie Goodman & Dorchen A. Leidholdt, *Lawyer's Manual on Human Trafficking*, NY STATE JUD. COMM. ON WOMEN IN THE CTS 169-76 (2013),

http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf (hereinafter "Goodman").

²⁶ Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, NAT'L INST. OF JUSTICE (2012), available at

<https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; *R.L. v. Voytac*, 971 A.2d 1074 (N.J. 2009); BESSEL A. VAN DER KOLK M.D., ET AL., *TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY* (2006).

²⁷ See CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at

[13](https://childusa.org/wpcontent/uploads/2020/04/Delayed-</p></div><div data-bbox=)

The high social cost of child sex abuse adversely impacts children and leaves our communities searching for accountability from the criminal justice system. Without access to justice, victims and their families are forced to bear these costs themselves.²⁸ Often, the state and federal governments must also assume the burden and often lifetime expense of criminal wrongdoing.²⁹ Victims who do come forward face hurdles in disclosing their abuse, finding legal representation, and gaining access to the court system. Victims without financial or social resources

Disclosure-Factsheet-020.pdf (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014)).

²⁸ The average lifetime cost of child maltreatment (physical, sexual, emotional, psychological abuse, and neglect) is \$830,928.00 per victim. The toxic stress and trauma associated with childhood sexual abuse is even higher for those victims than for those who experience other forms of child maltreatment. See M. Merricka, et. al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (2017); I. Angelakis, et. al., *Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis*, 49 PSYCHOLOGICAL MEDICINE 1057 (2019); Gail Hornot, *Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know*, 29(2) J. PEDIATRIC HEALTHCARE 191 (2015); Perryman Group, *Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment*, (2014).

²⁹ Fang, et al., *The Economic Burden of Child Maltreatment in the United States & Implications for Prevention*, 36 CHILD ABUSE & NEGLECT 156 (2012) (explaining that the estimated average lifetime cost per victim of nonfatal child sexual abuse includes, in part: \$32,648 in childhood health care costs, \$10,530 in adult medical costs, \$144,360 in productivity losses, \$7,728 in child welfare costs, \$6,747 in criminal justice costs, \$7,999 in special education costs; the estimated average lifetime cost per death includes: \$14,100 in medical costs, and \$1,258,800 in productivity losses).

often struggle to secure adequate legal representation or to even learn or understand their rights.³⁰ A victim's access to criminal proceedings should not depend on the ability of a putative defendant to negotiate away a victim's federal statutory rights by utilizing secret non-prosecution agreements like the one in this case. All victims should enjoy the full protections and rights afforded to them by the CVRA even if they lack significant resources or outside support.

Crime victims were historically excluded from court proceedings and in many instances that exclusion added further harm to already devastated victims and their families.³¹ The CVRA was passed in part as a response to the secondary victimization caused by the systematic exclusion of victims in criminal proceedings.³²

Victims who survive childhood sexual abuse and trafficking crimes experience significant barriers to recovery. The CVRA was enacted to empower these victims in the criminal justice system by ensuring their safety, allowing them to be heard, and guaranteeing clear and effective communication about their rights.³³ The CVRA reflects trauma-informed principles of self-advocacy by giving victims the “right to be reasonably protected,” the right to

³⁰ Spencer Rand, *A Poverty of Representation: The Attorney's Role to Advocate for the Powerless*, 13 Tex. Wesleyan L. Rev. 545, 557 (2007).

³¹ Steven Joffe, *Validating Victims: Enforcing Victims' Rights Through Mandatory Mandamus* 2009 Utah L. Rev. 241, 242–43 (2009).

³² *Id.*

³³ Goodman, at 169–182.

information or “timely notice of any public court proceeding,” the right to be “heard,” the right to “confer with the attorney for the Government,” and the right to “dignity and privacy” among other rights.³⁴

Secret pre-charge non-prosecution agreements effectively undermine the purposes of the CVRA by limiting victims’ access to information, and the ability to collaborate with federal prosecutors in the criminal justice system. Allowing the Government to avoid the CVRA’s mandate of conferring with victims effectively strips victims of their rights under the CVRA. It also undermines the trust that future crime victims and the public have in the criminal justice system, the government, and the judiciary.

The crime victims impacted the most by this decision are those who most desperately need the CVRA’s protections—victims of sexual abuse and trafficking like Wild. Allowing the Government to negotiate secret deals without including victims not only contravenes the CVRA, it undermines public confidence in fairness and equal justice under law.

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”³⁵ Victims who lack the resources and influence as their abusers will be silenced by the very system designed to protect their rights if the Eleventh Circuit decision

³⁴ See generally 18 U.S.C. § 3771(a). The foundations of trauma-informed care are safety, trustworthiness, choice, collaboration, and empowerment. Maxine Harris & Roger D. Fallot, *Using Trauma Theory to Design Service Systems: New Directions for Mental Health Services* 89 (Spring 2001).

³⁵ See *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

is upheld. We therefore respectfully request this Court grant cert in this case.

CONCLUSION

Petitioner respectfully requests that the Court issue a writ of certiorari.

RESPECTFULLY SUBMITTED

JAMES R. MARSH
Counsel of Record
Marsh Law Firm PLLC
31 Hudson Yards, 11th Floor
New York, New York 10001
212-372-3030

October 4, 2021