No. __-_____

IN THE
SUPREME COURT OF THE UNITED STATES

In re Jonathan F. Ball,

Petitioner.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where a person moves to assert a victim's rights under the Crime Victims' Rights Act, 18 U.S.C. § 3771 ("CVRA"), and is invited by the Government to present an oral victim impact statement at the defendant's sentencing hearing, does the Due Process Clause of the Fifth Amendment guarantee the movant the opportunity to present testimony, evidence and/or oral argument at the sentencing hearing to establish "victim" status when the Government reverses course and, joined by the defendant, argues for the first time during the sentencing hearing that the movant is not a "victim"?

2. Is a person harmed by the defendant's retaliation for that person's fulfillment of legal duties to try to prevent and/or report the conduct involved in the defendant's criminal scheme a "victim" under the CVRA?

3. Does the CVRA provide a right of allocution during the defendant's sentencing hearing as previously held by the Third, Sixth, and Ninth Circuits, or may a district court limit a "victim" or a person asserting a victim's rights under the CVRA to a written submission as held by the Fourth Circuit in this case?

PARTIES TO THE PROCEEDINGS

1. Petitioner, Jonathan F. Ball, was the movant asserting a victim's rights under the CVRA in the underlying criminal action, *United States v. Browndorf*, No. 2:22-cr-00291-LKG-1 (D. Md.), and the petitioner for a writ of mandamus pursuant to 18 U.S.C. 3771(d)(3) before the United States Court of Appeals for the Fourth Circuit in the matter styled *In re Jonathan F. Ball*, No. 25-1264.

2. Respondent, United States of America prosecuted the underlying criminal action in which Petitioner moved to assert CVRA rights.

3. Respondent, Matthew C. Browndorf, was the defendant in the underlying criminal action in which Petitioner moved to assert CVRA rights.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner, Jonathan F. Ball, is an individual who is not subject to the corporate disclosure requirements of S. Ct. Rule 29.6.

RELATED PROCEEDINGS

The proceedings directly related to this matter are:

- *United States v. Browndorf*, No. 2:22-cr-00291, U.S. District Court for the District of Maryland. Ruling issued March 6, 2025.
- *In re Jonathan F. Ball*, No. 25-1264, U.S. Court of Appeals for the Fourth Circuit. Judgment entered March 22, 2025. Rehearing denied April 18, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Jonathan F. Ball, an attorney and member of the bar of this Court appearing through himself as legal counsel, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit denying his petition for writ of mandamus pursuant to 18 U.S.C. § 3771(d)(3) in this case.

DECISIONS BELOW

The decisions below denied Petitioner's assertion of a victim's rights under the CVRA. The Fourth Circuit's decision and order denying Petitioner's petition for writ of mandamus and its order denying Petitioner's petition for rehearing are not reported and are reprinted in Petitioner's Appendix at pages 1a-6a and 15a, respectively. The oral ruling and order of the United States District Court for the District of Maryland is not published and was announced on the record during Respondent Browndorf's sentencing hearing, the relevant pages of the transcript of which are reprinted in Petitioner's Appendix at pages 7a-14a.

JURISDICTION

The Fourth Circuit panel decision was issued on March 22, 2025. (Pet. App. 1a-6a). Petitioner sought rehearing, but his petition was denied on April 18, 2025. (Pet. App. 15a). This petition is timely filed within 90 days of the Fourth Circuit's denial of the

petition for rehearing. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause provides that "No person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

The pertinent provisions of 18 U.S. Code § 3771 - Crime victims' rights are reproduced in Petitioner's Appendix at pages 16a-18a.

INTRODUCTION

Matthew Browndorf, the principal owner and managing attorney of a law firm with multiple offices across the country, devised and perpetrated together with his co-schemers a sophisticated wire fraud and money laundering scheme pursuant to which he stole millions of dollars of clients' funds that should have been safeguarded in client trust or IOLTA accounts. After joining Browndorf's firm in its New Jersey office in April 2016, Petitioner discovered a critical element of Browndorf's scheme – Browndorf had been operating the firm's New Jersey office without having the required IOLTA account(s) in which to safeguard clients' funds, presumably to avoid scrutiny from the bank or the state's IOLTA Fund into what he was doing with funds that belonged to the firm's clients. Petitioner knew of no legitimate reason for Browndorf's firm not to have the required IOLTA account and therefore suspected that criminal activity

was afoot, *i.e.*, that Browndorf was either preparing, or actively engaged in and trying to prevent the discovery of, his scheme to steal clients' funds that his firm should have been safeguarding in client trust and/or IOLTA accounts.

In fulfillment of his duties imposed by the New Jersey Rules of Court and Rules of Professional Conduct, Petitioner confronted Browndorf, urged him open the required IOLTA account to properly safeguard clients' funds, and then reported him to the appropriate authorities when he refused to do so. Browndorf retaliated against Petitioner, causing Petitioner to suffer and incur substantial pecuniary harm. A New Jersey state court awarded Petitioner a substantial judgment for damages caused by Browndorf's retaliation for Petitioner's fulfillment of his duties that interfered with Browndorf's criminal scheme.

Browndorf was indicted in the District of Maryland on multiple counts of wire fraud and money laundering that were part of his scheme to steal funds that belonged to his law firm's clients, which should have been held in trust and/or IOLTA accounts. The indictment specifically indicated that Browndorf's criminal scheme was carried out both within and outside of the District of Maryland. Browndorf eventually pleaded guilty pursuant to a plea agreement that recited that Browndorf's scheme was carried out both within and outside of the District of Maryland.

Petitioner asserted a victim's rights under the Crime Victims' Rights Act, 18 U.S.C. § 3771 ("CVRA"), to seek restitution and also impact the length and character of the sentence to be imposed against Browndorf. The request for restitution was intended

to prevent Browndorf from discharging his liability to Petitioner through a personal bankruptcy petition. 11 U.S.C. § 523(a)(13) (restitution ordered under title 18, United States Code is exempted from discharge). Petitioner submitted a preliminary written victim impact statement. Neither the Government nor Browndorf objected to Petitioner's preliminary written submission or otherwise raised any issue concerning Petitioner's "victim" status.

The Government invited Petitioner to address the Court and Browndorf at the sentencing hearing. Petitioner appeared at the sentencing hearing and listened to the factual representations and arguments made by Browndorf's counsel and the Government so that Petitioner could controvert or supplement them.

In a stunning reversal of position, the Government asserted for the first time at the sentencing hearing that Petitioner did not qualify for "victim" status under the CVRA. Browndorf seized the opportunity to join in the Government's newly asserted position. The District Court heard the Government's and Browndorf's arguments, but refused Petitioner's request to be heard on the issue.

The District Court ruled that it was undisputed that Petitioner was not a "victim," and refused to allow Petitioner to allocute a victim impact statement and request for restitution. But Petitioner's supposed lack of "victim" status was not undisputed. Petitioner was prepared to demonstrate that he was a "victim" as a matter of fact and law, and asked respectfully to be heard on that issue. The district court refused to let Petitioner speak.

Petitioner filed a timely petition for writ of mandamus pursuant to 18 U.S.C. § 3771(d)(3) in the Court of Appeals for the Fourth Circuit, which denied

that petition as well as Petitioner's petition for rehearing.

Proper resolution by this Court of the questions presented in this petition is of critical importance to cases nationwide in which: (1) the government or defendant object for the first time at the sentencing hearing to the "victim" status of a person moving to assert rights under the CVRA; (2) the person asserting a victim's rights under the CVRA was harmed by the defendant in retaliation for fulfilling a legal duty to try to prevent and/or report the defendant's scheme that includes the offenses in the guilty plea or conviction; and/or (3) a victim's right to allocute at the sentencing hearing will depend upon the circuit in which the defendant's case is pending. Consequently, this Court should grant the requested writ of certiorari.

STATEMENT OF THE CASE

In setting forth this Statement of the Case, Petitioner will, where possible, cite to record evidence reproduced in Petitioner's appendix. Because the district court refused to allow Petitioner to present testimony, evidence, or oral argument in support of his assertion of a victim's rights under the CVRA at Browndorf's sentencing hearing, there are facts that Petitioner would have been able to prove that were excluded from the record. Petitioner will also refer to those facts because they demonstrate the consequences of the district court's and Fourth Circuit's rulings that Petitioner now asks this Court to reverse or at least vacate.

1. Browndorf's Law Firm and Criminal Scheme

Browndorf was at all relevant times an attorney admitted to the bars of New Jersey, New York, and Pennsylvania. (Pet. App. 24a-25a, 33a). Browndorf was the majority owner and CEO of Plutos Sama, LLC ("Plutos Sama"), which operated as a holding company for Browndorf's various business endeavors. (Pet. App. 33a). In June 2015, Plutos Sama purchased a then-existing Mayland based law firm operating as Fisher Law Group. (Pet. App. 34a). Browndorf executed the purchase agreement for that transaction as a managing member of Plutos Sama. (*Id.*).

After Plutos Sama acquired Fisher Law Group, the name of the firm was changed to BP Fisher. (*Id.*). BP Fisher indicated on its letterhead that it had offices in many states across the country including New Jersey, New York, and Pennsylvania. Browndorf was operating BP Fisher in New Jersey and actively handling residential mortgage foreclosures on properties in New Jersey on behalf of lenders or servicers by September 2015.

The New Jersey Rules of Court provide that "[e]very attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed" separate business (*i.e.*, operating) and trust accounts. N.J. Ct. R. 1:21-6. At least one of the attorney's/firm's trust accounts must be an IOLTA account for safekeeping of client funds. *Id.*; N.J. Ct. R. 1:28A-2. Browndorf's BP Fisher law firm's New Jersey office was thus required to have

an IOLTA account for the safekeeping of clients' funds.

Unbeknownst to Petitioner when he accepted a job at BP Fisher, Browndorf, together with his co-schemers, was engaged in a scheme to defraud by misappropriating BP Fisher's clients' funds that should have been held inviolate in IOLTA accounts. (Pet. App. 35a). The scheme was carried out both within and outside of the District of Maryland. (Pet. App. 26a-28a, 35a).

2. Petitioner Discovers Browndorf's Scheme

Petitioner is an attorney admitted in New Jersey, New York, and Pennsylvania. In April 2016, after interviewing with Browndorf in BP Fisher's New York City office, Petitioner was hired by BP Fisher as an at-will employee. Browndorf represented to Petitioner that the firm had already established and had been operating a New Jersey office that handled residential mortgage foreclosure cases representing lenders and/or mortgage servicers. (Pet. App. 49a).

Petitioner was given the title of "New Jersey and Pennsylvania Managing Attorney." (*Id*). In reality, however, Petitioner had no managerial authority whatsoever. Petitioner had no ownership interest in either Plutos Sama or BP Fisher. Petitioner was not an authorized signer on any Plutos Sama or BP Fisher bank accounts. (*Id*.). In fact, at Browndorf's direction, proceeds from New Jersey foreclosure sales were sent by the various county sheriff's offices to BP Fisher's office in Irvine, California, where Browndorf worked.

As an attorney working for BP Fisher in New Jersey, Petitioner was subject to the New Jersey Rules of Professional Conduct. Those rules require, *inter*

alia, safekeeping of clients' funds, ensuring his own and the firm's compliance with the rules, refraining from practicing law in any jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction, and reporting known violations of the rules by other attorneys to appropriate authorities. N.J. Ct. R. RPC 1.15, 5.1(a), (b) and (c)(2), 5.2(a), 5.5(a)(1), 8.3(a), and 8.4(a); *see also* N.J. Ct. R. 1:21-6 (requiring attorneys and firms practicing in New Jersey to maintain business and client trust accounts) and R. 1:28A-2 (requiring that client funds be held in an IOLTA trust account). In the course of updating his New Jersey attorney registration to reflect his new employment with the BP Fisher firm, Petitioner learned that the firm had never opened nor registered the required IOLTA account for its New Jersey practice. (Pet. App. 48a-49a). This came as a surprise to Petitioner because the firm had been practicing in New Jersey since 2015, and Browndorf and at least one other attorney who had been with the firm since then were New Jersey admitted attorneys that knew or should have known that the firm could not practice in New Jersey without the required IOLTA account. Because neither Browndorf nor BP Fisher had a NJ IOLTA account for safekeeping of BP Fishers' clients' funds, Browndorf and BP Fisher were engaged in the unauthorized practice of law in New Jersey and were not safekeeping client funds. (Pet. App. 50a).

Petitioner did not know of any legitimate reason for Browndorf or BP Fisher to be practicing in New Jersey without the required IOLTA account. BP Fisher was receiving proceeds from judicial foreclosure sales of New Jersey properties that belonged to the firm's clients. Petitioner reasonably suspected that Browndorf was misappropriating

client funds. Based upon what he witnessed with respect to Browndorf's and BP Fisher's conduct in New Jersey, Petitioner suspected that Browndorf was likely engaged in similar conduct in the other jurisdictions where BP Fisher operated.

3. Petitioner Confronts and Reports Browndorf

In fulfillment of his legal duties, Petitioner confronted his superiors at BP Fisher all the way up to and including Browndorf to try to get the firm to comply with its obligations to safeguard clients' funds. (Pet. App. 49-50a). Browndorf refused to establish the required New Jersey IOLTA account. (Pet. App. 44a). Given Browndorf's recalcitrance, Petitioner reasonably believed that Browndorf intended, or was already carrying out his scheme, to steal clients' funds.

Petitioner refused to participate in Browndorf's and BP Fisher's scheme. Instead, Petitioner fulfilled his duty to report Browndorf and BP Fisher to the New Jersey Office of Attorney Ethics. (*Id.*). Because Petitioner had no access to the firm's financial records, he could not show a specific theft. Consequently, Petitioner relied on the New Jersey Office of Attorney Ethics to use its investigatory powers to trace funds received by BP Fisher from New Jersey foreclosure sales and make appropriate criminal investigatory and prosecutorial referrals with respect to BP Fisher's and/or Browndorf's misappropriation of specific funds belonging to the firm's clients that should have been held in a New Jersey IOLTA account. Had Petitioner not fulfilled his duty and instead went along with Browndorf's scheme, he risked being charged as an accomplice under 18 U.S.C. § 2, as well as suspension

of his law licenses or even disbarment for participating in Browndorf's scheme to steal clients' funds that should have been held in an IOLTA trust account. *See Attorney Grievance Commission of Maryland v. Andrew Ryan Corcoran*, Misc. AG 11-2021 (Md. 2022); *Matter of Corcoran*, 211 A.D.3d 281, 77 N.Y.S.3d 584 (1st Dept. 2022); and *In re: Andrew Ryan Corcoran*, 282 A.3d 107 (D.C. 2022) (all involving imposition of discipline against attorney who worked at Browndorf's firm and participated in Browndorf's scheme).

4. Browndorf Retaliates and Harms Petitioner

Browndorf fired Petitioner from BP Fisher in retaliation for Petitioner's fulfillment of his legal duties to try to prevent Browndorf's theft of clients' funds and to report Browndorf's conduct to the authorities. (*Id.*). Browndorf did so because Petitioner interfered with Browndorf's scheme, and in hopes that the scheme would not be detected. Petitioner sued Browndorf and BP Fisher for violating the New Jersey Conscientious Employee Protection Act, N.J.S.A §§ 34:19-1 – 34:19-8, and obtained a judgment against Browndorf in the amount of $925,731.19, plus post-judgment interest, which remains largely unpaid at this time. (Pet. App. 50a-51a, 54a-55a).

5. Browndorf's Indictment and Guilty Plea

Browndorf was indicted on August 16, 2022, in the District of Maryland on multiple counts of wire fraud and money laundering involving his theft of clients' funds that should have been held in trust and/or

IOLTA accounts. (Pet. App. 24a-29a). Rather than go to trial, Browndorf entered a guilty plea on July 10, 2024. (Pet. App. 30a-43a). The guilty plea agreement recited that Browndorf's scheme and artifice to defraud was carried out both within and outside of the District of Maryland. (Pet. App. 35a). Browndorf agreed that he stole at least $1,351,795.64 and acknowledged that the government could have presented more evidence of more thefts had the case gone to trial. (Pet. App. 43a).

6. Petitioner Asserts CVRA Rights

After Browndorf entered his guilty plea and prior to the sentencing hearing held on March 6, 2025, Petitioner asserted CVRA rights by submitting his preliminary written victim impact statement requesting, *inter alia*, restitution in the district court. (Pet. App. 47a-55a). *See* 18 U.S.C. § 3771(d)(3) (requiring assertion of CVRA rights in the district court),*United States v. Sullivan*, 118 F.4th 170, 230–31 (2d Cir. 2024) (any written or oral application requesting a district court to grant specified relief to one asserting a victim's right constitutes a motion for purposes of 18 U.S.C. § 3771(d)(3)), and *United States v. Monzel*, 641 F.3d 528, 530 (D.C. Cir. 2011) (written victim impact statement requesting restitution constitutes a motion for purposes of 18 U.S.C. § 3771(d)(3)).

7. Petitioner Is Invited to Speak at Sentencing

The Government invited Petitioner's participation in and allocution at the sentencing hearing. (Pet. App. 56a ("[I]f you would like to speak at the sentencing …

[y]ou would be welcome to either read your statement or speak independently ….") and 57a ("Please advise … if you would like to orally address the courts (sic) on March 6, 2025."). This invitation was extended after Petitioner had filed a preliminary written statement. (Pet. App. 47a-55a). It was not surprising that the Government considered Petitioner to be a "victim." The Government's sentencing memorandum acknowledged the existence of "but for" causation of the losses suffered by the creditors in BP Fisher's bankruptcy – including Petitioner – by Browndorf's conduct in furtherance of his scheme. (Pet. App. 45a-46a).[1]

Petitioner sought to be heard by the district court regarding his request for restitution that would prevent Browndorf from discharging through a bankruptcy petition his liability under the New Jersey state court judgment in favor of Petitioner. *See* 11 U.S.C. § 523(a)(13) (restitution ordered under title 18,

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[1] "But [Browndorf's] fraudulent scheme did not only impact the three victims that [the Government and Browndorf] have identified as deserving of restitution. [Browndorf's law firm's] bankruptcy docket lists over 100 creditors. … [N]one of these creditors would be out money *but for* [Browndorf's] conduct." (Pet. App. 46a) (emphasis added). Petitioner is a creditor in Browndorf's law firm's bankruptcy. *In re BP Fisher Law Group, LLP*, No. 8:18-bk-10158-TA (Bankr. C.D. Cal.) at Claim No. 43-1. This Court can and should take judicial notice of that indisputable fact pursuant to Fed. R. Evid. 201. *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239-1240 (4th Cir. 1989) (collecting cases holding that trial and appellate courts may take judicial notice of proceedings in other courts).

United States Code is exempted from discharge). Petitioner also sought to be heard on matters affecting the length and character of the sentence to be imposed. The district court docket reflects that neither the Government nor Browndorf filed any objections challenging Petitioner's "victim" status in response to Petitioner's written submission nor at any other time prior to the sentencing hearing. (Pet. App. 19a-23a).

8. The Government Reneges at the Hearing

At the sentencing hearing, the Government reversed course to Petitioner's prejudice and objected to Petitioner addressing the district court and Browndorf on the basis that Petitioner was not a "victim." (Pet. App. 9a). Browndorf, who had not objected prior to the hearing, joined in the Government's newly asserted position. (Pet. App. 11a-12a). Neither the Government nor Browndorf disclosed to the district court that the Government had invited Petitioner to address the district court and Browndorf at the sentencing hearing.

9. Petitioner Is Not Permitted to Respond

Blindsided by the Government's and Browndorf's new position taken for the first time during the sentencing hearing, Petitioner sought to respond. No sooner than Petitioner rose to his feet and uttered the words "[i]f I may, Your Honor," the district court ordered Petitioner to sit down and be quiet. (Pet. App. 13a). Remarkably, the district court (apparently relying on the agreement of the Government and Browndorf's counsel) stated that it was "undisputed"

that Petitioner was "not a victim in this case" (*Id.*)—ignoring the fact that Petitioner sought to dispute this newly interjected issue at the sentencing hearing.

The supposedly undisputed fact that Petitioner was not a "victim" was one of three errant reasons the district court recited on the record. The district court's implicit sustaining of Browndorf's objection that Petitioner's attempted assertion of a victim's rights was untimely was simply incorrect because neither Federal Rule of Criminal Procedure 32 nor Federal Rule of Criminal Procedure 60 impose a time bar. Browndorf was present and would have had the opportunity to respond to anything Petitioner said. *See*, *e.g.*, *United States v. Eberhard*, 525 F.3d 175, 178 (2d Cir. 2008) (lack of prior notice of victims' identity and substance of their statements not error where defendant was afforded an opportunity to respond after hearing from victims). Similarly, the duration of the sentencing hearing did not justify denying Petitioner the opportunity to be reasonably heard at a meaningful time and in a meaningful manner during the public proceeding for imposition of Browndorf's sentence. (Pet. App. 13a ("In light of … frankly, the late hour where we are, I am not inclined to have [Petitioner] directly address the Court.")). Neither the district court, the Government, nor Browndorf indicated what authority conditions the assertion of CVRA rights on a district court's inclination.

10. Mandamus Relief is Denied

Petitioner filed a timely petition for writ of madamus pursuant to 18 U.S.C. § 3771(d)(3) in the United States Court of Appeals for the Fourth Circuit

on March 20, 2025. A three-judge panel denied the petition in an unpublished opinion and order issued on March 22, 2025. (Pet. App. 1a-6a). Petitioner then filed a timely petition for panel rehearing and/or rehearing *en banc* on April 4, 2025. That petition was denied on April 18, 2025. (Pet. App. 15a).

REASONS FOR GRANTING THE PETITION

This Court has not previously addressed the three significant and compelling issues presented by this petition. These issues have far reaching implications for crime victims nationwide. This case presents an appropriate vehicle for this Court to decide them.

Certiorari should be granted for three reasons.

First, the Fourth Circuit's and the district court's decisions below deprive persons asserting a victim's rights under the CVRA of fundamental due process in contravention of this Court's precedents including *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' These essential constitutional promises may not be eroded.") (citations omitted) and *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (observing that a fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner"), as well as the right guaranteed by the CVRA to be "reasonably heard *at any public proceeding in the district court involving* …

sentencing ...." 18 U.S.C. 3771(a)(4). The decisions below also contravene this Court's admonition that a person whose rights are to be affected "must be allowed to state his position orally" because "[w]ritten submissions do not afford the flexibility of oral presentations; they do not permit the [affected party] to mold his argument to the issues the decision maker appears to regard as important." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

Here, Petitioner was denied the opportunity to be reasonably heard at the sentencing hearing in response to the Government's and the defendant's assertion for the first time during the sentencing hearing that the movant was not entitled to "victim" status under the CVRA. The due process violation was particularly egregious because the Government invited Petitioner to address the district court and the defendant at the sentencing hearing, only to reverse course and argue at the sentencing hearing that Petitioner was not entitled to "victim" status and should not be heard. The Fourth Circuit's decision in this case condones, if not endorses, this violation of fundamental procedural due process rights of persons asserting a victim's rights under the CVRA.

Second, the Fourth Circuit tortured the plain language of CVRA, and reached an absurd result in interpreting the CVRA to disqualify from "victim" status persons harmed by a defendant's retaliation for the person's fulfilling a legal duty to try to prevent and/or report the defendant's criminal scheme. Other trial and appellate courts across the country have accorded "victim" to persons who were harmed when: (a) they had the simple misfortune to be in the wrong place at the wrong time during the defendant's commission of, or attempt to evade capture after

committing , a federal offense, or (b) the defendant retaliated for the person's service as a court-appointed receiver to try to recover proceeds of the defendant's criminal enterprise. If simply being in the wrong place at the wrong time or unwinding the defendant's scheme after the fact are not too tangential to support a finding of "victim" status under the CVRA, surely being harmed while fulfilling a legal duty to try to prevent and/or to report the defendant's criminal scheme should qualify a person for "victim" status.

Third, the Fourth Circuit's limitation of the right to be reasonably heard granted by the CVRA to submission of a written statement prior to the sentencing hearing conflicts with decisions of Third, Sixth, and Ninth Circuits holding that the CVRA accords the right to speak at the sentencing hearing. *See United States v. Vampire Nation*, 451 F.3d 189, 197 n. 4 (3d Cir. 2006) ("The right of victims to be heard is … in the nature of an independent right of allocution at sentencing. Under the CVRA, courts may not limit victims to a written statement.") (citations omitted), *In re McNulty*, 597 F.3d 344, 349 (6th Cir. 2010) (movant was permitted "to submit testimony and evidence at sentencing."), *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010) (movants admitted that they were afforded every opportunity for participation including their appearance through counsel at sentencing.), and *Kenna v. United States District Court,* 435 F.3d 1011, 1016-1017 (9th Cir. 2006) ("Victims now have an indefeasible right to speak, similar to that of the defendant, … [and] the right … to look [the] defendant in the eye and let [them] know the suffering [their] misconduct has caused."). This Court should resolve the conflict to

ensure that victims under the CVRA nationwide are provided the right under 18 U.S.C. § 3771(a)(4) to be reasonably heard at any public proceeding including a sentencing hearing.

1. DUE PROCESS REQUIRES THAT A MOVANT ASSERTING CVRA RIGHTS BE GIVEN AN EFFECTIVE OPPORTUNITY TO PRESENT TESTIMONY, EVIDENCE, AND/OR ORAL ARGUMENT IN RESPONSE TO OBJECTIONS THAT THE MOVANT IS NOT A "VICTIM"

For more than a century, this Court has held that fundamental procedural due process requires, in pertinent part, that parties whose rights are to be affected are entitled to be heard. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). The hearing must be "at a meaningful time and in a meaningful manner[.]" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Parties whose rights are to be affected must be provided "adequate notice …, and an effective opportunity to defend … by presenting [their] own *arguments and evidence orally*." *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970) (emphasis added). "The right to be heard would be … of little avail if it did not comprehend the right to be heard …." *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932).

Both the district court and the Fourth Circuit contravened this Court's controlling precedents by depriving Petitioner, an attorney, of the opportunity to present his own testimony, evidence and oral argument in response to the objection raised for the first time at Browndorf's sentencing hearing that Petitioner was not a "victim" under the CVRA. Neither the Government nor Browndorf objected to

Petitioner's "victim" status in response to Petitioner's preliminary written victim impact statement. Quite to the contrary, the Government invited Petitioner to orally address the district court at Browndorf's sentencing hearing: "If you would like to speak at the sentencing … [y]ou would be welcome to either read your statement or speak independently …." (Pet. App. __a) and ("Please advise … if you would like to orally address the courts (sic) on March 6, 2025." (Pet. App. __a). Petitioner appeared at Browndorf's sentencing hearing to orally address the district court and Browndorf. Petitioner's expectation of orally addressing the district court at Browndorf's sentencing hearing was supported by, and fully consistent with statutory and decisional law, the Federal Rules of Criminal Procedure, and publications of multiple agencies involved in administering the CVRA. *See*, *e.g.*, *In re McNulty*, 597 F.3d 344, 349 (6th Cir. 2010) (movant was permitted "to submit testimony and evidence at sentencing."), *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010) (movants admitted that they were afforded every opportunity for participation including their appearance through counsel at sentencing.), 18 U.S.C. 3771(a)(4) (providing "[t]he right to be reasonably heard at any public proceeding in the district court involving … sentencing …."), and Fed. R. Crim. P. 32(i)(4)(B) ("Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.") and 60(a)(3) ("The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning … sentencing …."); *see also* BENCHBOOK FOR U.S. DISTRICT JUDGES §4.01E (March 2013) (instructing district judges to ask before

imposing sentence whether any victims present at the hearing wish to make a statement), Off. for Victims of Crime, U.S. Dep't of Just., ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 2022 edition, https://ovc.ojp.gov/library/publications/attorney-general-guidelines-victim-and-witnessassistance-2022-edition, at Article IIIC (defining who is a "victim" for sentencing purposes) and Article IIIE (directing Department of Justice personnel to use their best efforts to assist persons or entities significantly harmed by a defendant's "relevant criminal conduct, including any scheme, conspiracy, or pattern of criminal activity, as well as the full course of conduct related to the offense," in participating in public court proceedings and pursuing restitution), and U.S. Sent'g Comm'n, PRIMER ON CRIME VICTIMS' RIGHTS (2024), https://www.ussc.gov/sites/default/files/pdf/training/primers/2024_Primer_Crime_Victims.pdf, at Article III ("Determining Who is a Crime Victim for Sentencing Purposes") and Article IV (recognizing a "victim's" right to decide "as the sentencing hearing is taking place, to make a statement, regardless whether the victim has provided advance notice ….").

In a stunning reversal of position, the Government blindsided Petitioner by reneging its invitation for Petitioner to speak at the sentencing hearing and objecting on the grounds that Petitioner was not a "victim" under the CVRA.[2] (Pet. App. 9a). Browndorf

[2] The Government referenced an email it sent to the district court and, presumably, Browndorf's counsel, in advance of the sentencing hearing. (Pet. App. 9a). Petitioner was neither copied on that email when it was sent nor ever provided a copy of that email.

seized upon the Government's highly prejudicial change of position and joined in that objection. (Pet. App. 11a-12a). The district court's refusal to hear Petitioner in response to the newly asserted objection during the sentencing hearing violated all of the authorities cited in the previous paragraph and surely deprived Petitioner of fundamental due process.

Having been invited to speak at the sentencing hearing, and having no notice of any objection to his "victim" status until the Government revealed its change of position during the hearing, Petitioner had no reason to anticipate or address the "victim" status issue in advance of the hearing. The district court sustained the objection without first permitting Petitioner to respond, going so far as to say that it was "undisputed" that Petitioner was "not a victim in this case" (Pet. App. 13a) notwithstanding Petitioner's assertion that he was a "victim." (Pet. App. 47a-53a). Up until that point in time, Petitioner's assertion of a victim's rights was not affected. But when Petitioner's rights were going to be affected because of the Government's and Browndorf's newly asserted objection to Petitioner's "victim" status, Petitioner respectfully requested the opportunity to respond. (Pet. App. 13a). No sooner than Petitioner rose to his feet and uttered the words "[i]f I may, Your Honor," the district court ordered Petitioner to sit down and be quiet. (*Id.*).

Neither the district court nor the Fourth Circuit offered any cognizable grounds for failing to adhere to this Court's controlling precedents regarding procedural due process. The district court was clearly mistaken that it was "undisputed" that Petitioner was not a "victim." Petitioner sought, but was denied,

the opportunity to make his case that he was, in fact and law, a "victim." The district court's implicit sustaining of Browndorf's objection that Petitioner's attempted assertion of a victim's rights was untimely was simply incorrect because neither Federal Rule of Criminal Procedure 32 nor Federal Rule of Criminal Procedure 60 impose a time bar. Browndorf was present and would have had the opportunity to respond to anything Petitioner said. *See*, *e.g.*, *United States v. Eberhard*, 525 F.3d 175, 178 (2d Cir. 2008) (lack of prior notice of victims' identity and substance of their statements not error where defendant was afforded an opportunity to respond after hearing from victims). Similarly, the duration of the sentencing hearing did not justify denying Petitioner the opportunity to be reasonably heard at a meaningful time and in a meaningful manner during the public proceeding for imposition of Browndorf's sentence. (Pet. App. 13a ("In light of … frankly, the late hour where we are, I am not inclined to have [Petitioner] directly address the Court."); *see* Pet. at pp. 19-20). Neither the district court, the Government, nor Browndorf indicated what authority conditions the assertion of CVRA rights on a district court's inclination, particularly after the Government and the defendants were afforded more than two hours to address sentencing issues.

The Fourth Circuit overlooked or misapprehended that Petitioner's preliminary written victim impact statement was not a brief on the issue of "victim" status. The Fourth Circuit failed to even acknowledge that the Government invited Petitioner to make an oral victim impact statement at Browndorf's sentencing hearing, but then reversed course and argued at the hearing that Petitioner was

not a "victim." The Fourth Circuit's decision thus stands for the proposition that a district court may hear argument in support of an objection made for the first time at a hearing while barring any argument in opposition to the objection. The Fourth Circuit engaged in no discussion, let alone meaningful analysis, of the requisites to satisfy the fundamental procedural due process guarantees of the Fifth Amendment.

Making matters worse, the Fourth Circuit held that a district court may properly and permissibly limit a movant asserting a victim's rights under the CVRA to a written submission. As discussed above, this contravenes the Court's decision in *Goldberg*. Moreover, the Fourth Circuit's rationale vitiates Federal Rules of Criminal Procedure 32 and 60, which permit a movant asserting a victim's rights under the CVRA to do so for the first time at and during a sentencing hearing without having previously made any written submission. Moreover, and as discussed below, the Fourth Circuit's ruling on this issue creates a conflict with decisions of the Third, Sixth and Ninth Circuits holding that the CVRA provides victims with a right of allocution at sentencing hearings.

This Court should grant this petition to ensure that the fundamental procedural due process rights of victims and persons asserting a victim's rights under the CVRA, are protected. Where the Government and/or a defendant object for the first time at a sentencing hearing that a movant asserting a victim's rights under the CVRA is not a "victim," the movant must be reasonably heard on that issue during the sentencing hearing, including an opportunity to

present testimony, evidence, and oral argument in opposition to the objection.

2. A PERSON WHO FULFILLS A DUTY TO TRY TO PREVENT, REPORT, OR REMEDIATE THE DEFENDANT'S SCHEME AND IS HARMED BY THE DEFENDANT'S RETALIATION IS A "VICTIM" UNDER THE CVRA

In furtherance of its intent to enact the CVRA as a wide-ranging bill of rights for crime victims, Congress unsurprisingly crafted a broad definition of "victim." Indeed, the co-sponsors of the CVRA described the term "victim" as having "an intentionally broad definition because all victims of crime deserve to have their rights protected." 150 CONG. REC. S4260-01, S4270 (Apr. 22, 2004) (colloquy between co-sponsors Senator Feinstein and Senator Kyl); *see also Kenna,* 435 F.3d at 1015-16 (discussing significance of CVRA co-sponsors' Senate floor statement).

Under the CVRA, a "victim" is "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia." 18 U.S.C. § 3771(e)(2)(a). This definition was not newly devised for the CVRA. Rather, the "direct and proximate" harm requirement has long existed in federal law, specifically in restitution statutes. For example, the Victim and Witness Protection Act (VWPA) defines a "crime victim" entitled to seek restitution as "[a] person *directly and proximately harmed* as a result of the commission of an offense for which restitution may be ordered." 18 U.S.C. § 3663(a)(2) (emphasis added). Similarly, the Mandatory Victims Restitution Act (MVRA) defines a "crime victim" as "[a] person *directly and proximately*

harmed as a result of the commission of an offense for which restitution may be ordered." 18 U.S.C. § 3663A(a)(2) (emphasis added). Thus, in drafting the CVRA, Congress simply borrowed the phrase from these earlier-enacted restitution statutes. *See* Hon. Jon Kyl, Steven J. Twist, and Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 LEWIS & CLARK L. REV. 581, 594 (2005) ("The CVRA's definition of a crime victim is based on the federal restitution statutes."); Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 BYU L. REV. 835, 857.

Because the CVRA's definition of "crime victim" is essentially – and intentionally – identical to the definitions in the VWPA and MVRA, courts have frequently looked to those earlier enacted restitution statutes (and cases interpreting them) for guidance in determining who is a "victim" under the CVRA. *See United States v. Atlantic States Cast Iron Pipe Co.,* 612 F. Supp. 2d 453, 462 (D.N.J. 2009); *see also McNulty,* 597 F.3d at 350 n.6 (holding that cases defining "victim" under VWPA and MVRA are "persuasive" but "not binding on our interpretation of the CVRA"); Under this body of restitution law, this Court and others have frequently used a two-part analysis to determine whether a person affected by a crime meets the CVRA's definition of crime victim. Courts examine "(1) the behavior constituting [the] 'commission of a [f]ederal offense'; and (2) 'the direct and proximate effects of that behavior on parties other than the United States.'" *United States v. Giraldo-Serna*, 118 F. Supp. 3d 377, 382–83 (D.D.C.

2015) (quoting *In re Stewart,* 552 F.3d 1285, 1288 (11th Cir. 2008) (quoting 18 U.S.C. § 3771(e)) (cleaned up), *mandamus granted in part by In re de Henriquez*, 2015 WL 10692637 (D.C. Cir. 2015); *see also McNulty,* 597 F.3d at 351 ("In making this [CVRA 'victim'] determination, ... [courts] must (1) look to the offense of conviction, based solely on facts reflected in the jury verdict or admitted by the defendant; and then (2) determine, based on those facts, whether any person or persons were 'directly and proximately harmed as a result of the commission of that [f]ederal offense.'" (internal quotation omitted)); *Morris v. Nielsen*, 374 F. Supp. 3d 239, 252 (E.D.N.Y. 2019) ("phrase 'direct and proximate' has thus been defined consistently for over a hundred years, in both common and federal statutory law").

Where the defendant perpetrated an offense that was part of a scheme, the MVRA provides that the term "victim" means: "a person directly and proximately harmed … by the defendant's criminal conduct in the course of the scheme …" Pub. L. No. 104-132, 110 Stat. 1214, 1228 (1996) (codified as amended in scattered sections of U.S.C., including 18 U.S.C. § 3663A). Here, the Government charged (Pet. App. 26a-27a (paragraphs 8-12 of the indictment)), and Browndorf agreed (Pet. App. 33a-43a (Stipulation of Facts (Trial Court Doc. 52-1)), that Browndorf's offenses were part of a scheme, carried out by Browndorf and his co-schemers both within and outside of the District of Maryland, to steal BP Fisher's clients' funds that should have been held inviolate in IOLTA accounts.

Under this broad definition, an individual who was not an intended target of the defendant's crime qualifies as a "victim" under the CVRA so long as that

individual is harmed as a result of the crime's commission. Consequently, a "crime victim" need not even be included in the charging document:

> [The CVRA] does not limit the class of crime victims to those whose identity constitutes an element of the offense or who happen to be identified in the charging document. The statute, rather, instructs the district court to look at the offense itself only to determine the harmful effects the offense has on parties. Under the plain language of the statute, a party may qualify as a victim, even though it may not have been the target of the crime, as long as it suffers harm as a result of the crime's commission.

Stewart, 552 F.3d at 1289.

"The CVRA's 'directly and proximately harmed' language imposes dual requirements of showing cause-in-fact and foreseeability. A person is directly harmed by the commission of a federal offense where that offense is a but-for cause of the harm, and the Government conceded in its sentencing memorandum that Browndorf's scheme was the but-for cause of Petitioner's harm. *See* Pet. at p. 12 and note 1, *supra*. A person is proximately harmed when the harm is a reasonably foreseeable consequence of the criminal conduct." *United States v. Giraldo-Serna*, 118 F. Supp. 3d 377, 383 (D.D.C. 2015) (quoting *In re Fisher*, 640 F.3d 645, 648 (5th Cir. 2011) (internal quotation omitted)), *mandamus granted in part by In re de Henriquez*, 2015 WL 10692637 (D.C. Cir. 2015).

Against this backdrop, several of the circuit courts have held that people misfortunate enough to be in the wrong place at the wrong time relative to the defendant's commission of a crime are "victims." *See,*

e.g., United States v. Washington, 434 F.3d 1265, 1268-70 (11th Cir. 2006) (condominium association afforded victim status where its property was damaged during defendants' flight from bank robbery), and *United States v. Donaby*, 349 F.3d 1046 (7th Cir. 2003) (affirming award of restitution under the MVRA for damage caused to police car during defendant's flight from bank robbery); *see also Moore v. United States*, 178 F.3d 994, 1001 (8th Cir. 1999) (bank customer was victim of attempted bank robbery for purposes of the MVRA where defendant had stood within six feet of customer and pointed sawed-off gun at him). A district court has allowed victim impact allocution from an attorney who was harmed by the defendant's retaliation for the attorney's actions as the court-appointed receiver to recover assets from the defendant's criminal scheme. *Phila. Lawyer Questions Par Funding Defendant's Remorse for Attack at Sentencing Hearing*, The Legal Intelligencer, March 27, 2025 (reporting on sentencing hearing in *United States v. LaForte*, No. 2:23-cr-00198 (E.D. Pa.)). In each of the cited cases, the dual requirements of cause-in-fact and foreseeability were satisfied. The "victims" in each of those cases suffered harm that would properly be included in the loss determination called for by the Sentencing Guidelines. United States Sentencing Commission, *Guidelines Manual*, §1B1.3(a)(1)(B) ("in the case of a jointly undertaken criminal activity (a … scheme … undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of

attempting to avoid detection or responsibility for that offense[.]").

If simply being in the wrong place at the wrong time or unwinding the defendant's scheme after the fact are not too tangential to support a finding of "victim" status under the CVRA, surely being harmed while fulfilling a legal duty to try to prevent and/or to report the defendant's criminal scheme should qualify a person for "victim" status. Browndorf retaliated against Petitioner because Petitioner fulfilled his legal duties that threatened Browndorf's ability to carry out his scheme.

As a consequence of Browndorf having denominated him as managing attorney of BP Fisher's New Jersey office, Petitioner was duty-bound under the New Jersey Rules of Professional Conduct to, *inter alia*, safekeep BP Fisher's clients' funds, ensure his own, BP Fisher's, and the firm's attorneys' compliance with the rules, refrain from practicing law personally or through BP Fisher in any jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction, and report known violations of the rules by other attorneys to appropriate authorities. N.J. Ct. R. RPC 1.15, 5.1(a), (b) and (c)(2), 5.2(a), 5.5(a)(1), 8.3(a), and 8.4(a); *see also* N.J. Ct. R. 1:21-6 (requiring attorneys and firms practicing in New Jersey to maintain business and client trust accounts) and R. 1:28A-2 (requiring that client funds be held in an IOLTA trust account). When Petitioner discovered that Browndorf and BP Fisher had been practicing in New Jersey without the required IOLTA account for safekeeping clients' funds, Petitioner became suspicious. Petitioner tried to get Browndorf and BP Fisher to comply with this basic requirement, but Browndorf refused to do so.

Petitioner knew of no legitimate reason for Browndorf and/or BP Fisher to be practicing in New Jersey without the required IOLTA account and therefore reasonably believed that Browndorf was engaged in criminal activity. Petitioner fulfilled both his duty to try to ensure Browndorf's and BP Fisher's compliance with the rules, and his duty to report them when they persisted in their failure or refusal to comply.

Browndorf recognized that Petitioner's fulfillment of his legal duties jeopardized Browndorf's scheme. In an attempt to eliminate or minimize Petitioner's derailing or impairing his scheme, Browndorf retaliated against Petitioner by terminating his employment. A New Jersey state court determined that Browndorf's retaliation caused Petitioner to suffer damages amounting to $925,731.19, plus post-judgment interest, which remains largely unpaid at this time. *See Ball v. BP Fisher Law Group, LLP*, No. CAM-L-2133-17 (N.J. Super. – Law Division) (Judgment entered Aug. 5, 2022). (Pet. App. 54a-55a).

This Court should grant this petition and determine whether a person harmed by the defendant's retaliation for that person's fulfillment of legal duties to try to prevent and/or report the conduct involved in the defendant's criminal scheme is a "victim" under the CVRA. The record is sufficiently developed with uncontroverted or incontrovertible facts demonstrating that Petitioner acted under a legal duty to try to prevent, and then report, Browndorf's scheme, and that Browndorf harmed Petitioner in retaliation in an attempt to protect his scheme and avoid detection or responsibility for his scheme. All that remains is for this Court to decide whether those acting under a duty are equally

deserving of "victim" status as are bystanders who just happen to be in the wrong place at the wrong time.

3. THIS COURT SHOULD RESOLVE THE CIRCUIT SPLIT AS TO WHETHER THE CVRA CONFERS A RIGHT OF ALLOCUTION AT A SENTENCING HEARING

Although the decision below is unreported and does not expressly acknowledge the contrary decisions of other Courts of Appeal, the Fourth Circuit's decision creates a circuit split regarding whether the CVRA's right to be reasonably heard provides a "victim" or a person asserting a victim's rights under the CVRA the right to present testimony, evidence, and/or oral argument at the defendant's sentencing hearing. Only this Court can resolve this disagreement amongst the circuit courts. Without a ruling from this Court, the CVRA will not be interpreted and applied uniformly across the country. Rather, the extent of rights accorded to those asserting a victim's rights will vary significantly depending upon the circuit in which the underlying criminal prosecution is pending.

The Third, Sixth, and Ninth Circuits have ruled that the CVRA's right to be reasonably heard means the opportunity to present testimony, evidence, and/or oral argument. *See United States v. Vampire Nation*, 451 F.3d 189, 197 n. 4 (3d Cir. 2006) ("The right of victims to be heard is … in the nature of an independent right of allocution at sentencing. Under the CVRA, courts may not limit victims to a written statement.") (citations omitted), *In re McNulty*, 597 F.3d 344, 349 (6th Cir. 2010) (movant was permitted

"to submit testimony and evidence at sentencing."), *In re Acker*, 596 F.3d 370, 372 (6th Cir. 2010) (movants admitted that they were afforded every opportunity for participation including their appearance through counsel at sentencing.), and *Kenna v. United States District Court,* 435 F.3d 1011, 1016-1017 (9th Cir. 2006) ("Victims now have an indefeasible right to speak, similar to that of the defendant, … [and] the right … to look [the] defendant in the eye and let [them] know the suffering [their] misconduct has caused."). Without acknowledging these decisions and their interpretation of the right to be reasonably heard, the Fourth Circuit held in this case that the right to be reasonably heard means submission of a written statement and nothing more.

This Court should grant this Petition and resolve the circuit split in this case because the Fourth Circuit's decision is simply incorrect. The Third, Sixth, and Ninth Circuits got it right.

The express language of the CVRA confers "[t]he right to be reasonably heard *at any public proceeding in the district court involving … sentencing* …." 18 U.S.C. 3771(a)(4) (emphasis added). Here, Petitioner sought to be heard at Browndorf's sentencing hearing, *i.e.*, a public proceeding in the district court. Restricting assertion of CVRA rights to a written submission made is diametrically opposed not only to the express language of the statue, but numerous other authorities. The Rules of Criminal Procedure incorporate the notion that the CVRA's right to be reasonably heard means active participation in the sentencing hearing. Fed. R. Crim. P. 32(i)(4)(B) ("Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.")

and 60(a)(3) ("The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning … sentencing ….") The Federal Judicial Center directs district judges to ask before imposing sentence whether any victims present at the hearing wish to make a statement. BENCHBOOK FOR U.S. DISTRICT JUDGES §4.01E (March 2013). The Sentencing Commission recognizes a "victim's" right to decide "as the sentencing hearing is taking place, to make a statement, regardless whether the victim has provided advance notice …." U.S. Sent'g Comm'n, PRIMER ON CRIME VICTIMS' RIGHTS (2024), https://www.ussc.gov/sites/default/files/pdf/training/primers/2024_Primer_Crime_Victims.pdf, at Article IV. Finally, the Department of Justice, whose Assistant United States Attorney reneged on the invitation for Petitioner to speak at Browndorf's sentencing hearing, directs its personnel to use their best efforts to assist persons or entities significantly harmed by a defendant's "relevant criminal conduct, including any scheme, conspiracy, or pattern of criminal activity, as well as the full course of conduct related to the offense," in participating in public court proceedings and pursuing restitution. Off. for Victims of Crime, U.S. Dep't of Just., ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 2022 edition, https://ovc.ojp.gov/library/publications/attorney-general-guidelines-victim-and-witnessassistance-2022-edition, at Article IIIE.

By interpreting the CVRA to limit Petitioner to submission of a written statement and affirming the district court's decision barring Petitioner from speaking at Browndorf's sentencing hearing, the Fourth Circuit committed reversible error and

created an untenable circuit split. This Court should resolve the circuit split by reversing the Fourth Circuit and adopting the interpretation of the CVRA's right to be reasonably heard employed by the Third, Sixth, and Ninth Circuits.

4. FURTHER PERCOLATION WILL NOT AID THIS COURT'S REVIEW

The questions presented in this petition are not only exceptionally important; they are fully and fairly presented here. In many instances, a person asserting a victim's rights under the CVRA will be unrepresented. They will lack the funds to engage counsel, and also lack the education, training, and experience to effectively represent themselves in seeking the full extent of the broad rights the CVRA was intended to provide. That impediment is not present in this case because Petitioner is an attorney and a member of the bar of this Court. There are no other obstacles to this Court's ability to reach and decide the questions presented in this petition.

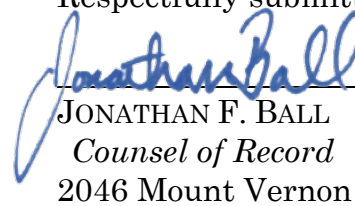
There is no reason for this Court to await a future case in which to review the question presented. This Court would be in no better a position to resolve the questions presented (and, almost certainly, persons asserting a victim's rights under the CVRA would be in a far worse position if they continue to be denied the opportunity to respond to objections to their "victim" status, let alone the opportunity to present oral testimony, evidence, and oral argument, at sentencing hearings) if it awaited another counseled appeal from a movant asserting CVRA rights whose fundamental due process rights are denied.

The circuit split regarding the right of allocution under the CVRA is well defined. The Third and Ninth Circuits have held that the CVRA confers upon "victims" a right of allocution co-extensive with the defendant's right of allocution. The Sixth Circuit has gone even further so as to indicate that the right to participate through presentation of oral testimony, evidence, and oral argument, extends to those asserting a victim's rights under the CVRA where "victim" status is opposed by the defendant or the Government. The Fourth Circuit held in this case that a district court may deny such right of allocution based upon its inclination. Given the diametrically opposed circuit court decisions interpreting the CVRA, this Court's existing fundamental due process jurisprudence – especially its decision in *Goldberg* interpreting the opportunity to be reasonably heard arising under a different statute to mean a right to an oral presentation at a hearing, and the various rules and administrative materials either providing or indicating a preference for oral presentations in support of assertion of CVRA rights, there is no reason to defer consideration of the issues presented in this petition.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,



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