

No.: 25-24A1105

IN THE
Supreme Court of the United States

BRAD GREENSPAN,

Petitioner,

v.

GOOGLE, LLC, et al.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the D.C. Circuit erred in dismissing petitioner's Crime Victims' Rights Act petition as "moot" rather than adjudicating it on the merits as required by 18 U.S.C. § 3771(d)(3), which mandates that courts "take up and decide such application forthwith within 72 hours."

2. Whether a crime victim's petition for mandamus relief under the Crime Victims' Rights Act, 18 U.S.C. § 3771, requires independent consideration separate from other pending motions, particularly when the petition alleges violations of the right to confer with prosecutors about evidence of antitrust violations.

3. Whether the D.C. Circuit's misclassification of a CVRA petition, resulting in its dismissal as moot, constitutes a denial of the statutory rights guaranteed to crime victims under 18 U.S.C. § 3771.

4. Whether the D.C. Circuit's refusal to consider evidence of judicial conflicts of interest, document mishandling, and obstruction of justice in the underlying antitrust case violated Petitioner's constitutional rights to due process and access to the courts.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the District of Columbia Circuit were:

Petitioner Brad Greenspan, appellant below.

Respondents include the United States of America, the State of Arkansas, the State of California, the State of Florida, the State of Georgia, the State of Indiana, the Commonwealth of Kentucky, the State of Louisiana, the State of Michigan, the State of Mississippi, the State of Missouri, the State of Montana, the State of South Carolina, the State of Texas, the State of Wisconsin, and Google LLC.

Real parties in interest include the State of Colorado, the State of Nebraska, the State of Arizona, the State of Iowa, the State of New York, the State of North Carolina, the State of Tennessee, the State of Utah, the State of Alaska, the State of Connecticut, the State of Delaware, the District of Columbia, the Territory of Guam, the State of Hawaii, the State of Illinois, the State of Kansas, the State of Maine, the State of Maryland, the Commonwealth of Massachusetts, the State of Minnesota, the State of Nevada, the State of New Hampshire, the State of New Jersey, the State of New Mexico, the State of North Dakota, the State of Ohio, the State of Oklahoma, the State of Oregon, the Commonwealth of Pennsylvania, the Commonwealth of Puerto Rico, the State of Rhode Island, the State of South Dakota, the State of Vermont, the Commonwealth of Virginia, and the State of Washington.

RELATED PROCEEDINGS

- *USA v. Google, LLC*, 1:20-cv-03010, D.C. District Court
- *USA v. Google LLC*, 24-5006, Court of Appeals For The D.C. Circuit
- *In re: Brad Greenspan*, 24-5007, Court of Appeals For The D.C. Circuit

RULE 29.6 STATEMENT

The parent company for Google, LLC is Alphabet, Inc., a publicly traded corporation. No other publicly traded corporation owns more than 10 percent of Alphabet, Inc.

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The D.C. Circuit's order dismissing petitioner's writ of mandamus as moot is reproduced in the Appendix at App. 1a. The D.C. Circuit's order denying petitioner's motion to reopen is reproduced at App. 2a.

JURISDICTION

The D.C. Circuit entered its final judgment on February 21, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3771(d)(3) provides in relevant part:

"The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion."

15 U.S.C. § 7a-3(a)(1)(A)(i) provides in relevant part:

"No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and

conditions of employment of the covered individual because of any lawful act done by the covered individual to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual information relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws."

INTRODUCTION

This case raises a pivotal question about the proper implementation of the Crime Victims' Rights Act ("CVRA"), a statute meticulously crafted to safeguard the meaningful participation of crime victims in the federal criminal justice process. Enacted by Congress, the CVRA was designed to cement specific rights for victims—rights that extend beyond mere acknowledgment and demand substantive inclusion. Among these rights is the vital provision granting victims "the reasonable right to confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a)(5). This provision isn't just a procedural formality; it serves as a lifeline for victims, ensuring their voices resonate within the often opaque corridors of federal prosecution.

To uphold these guarantees, Congress instituted an expedited review mechanism—a directive with steel resolve—requiring courts to "take up and decide such application forthwith within 72 hours after the petition has been filed." 18 U.S.C. § 3771(d)(3). The language is unequivocal: swift action is not optional but mandated, reflecting Congress's intent to prioritize victims' rights in real time, not in theory.

Yet, this carefully constructed framework falters when judicial bodies neglect their obligations. The D.C. Circuit's dismissal of petitioner Brad Greenspan's CVRA petition as "moot," without so much as a substantive glance at its merits, starkly undermines this statutory design. The expedited review promised by Congress was abandoned, leaving petitioner stranded in a procedural limbo. This case thus presents an urgent opportunity for this Court to illuminate the duties of circuit courts when faced with CVRA petitions and to reaffirm the importance of procedural protections that are not merely aspirational but imperative.

STATEMENT OF THE CASE

I. Factual Background

This controversy springs from a high-stakes antitrust suit filed by the Department of Justice and a coalition of state attorneys general against Google LLC for monopolistic abuses under Section 2 of the Sherman Act. Petitioner Brad Greenspan sought to intervene in this action as a victim of Google's anticompetitive conduct and to provide evidence of additional antitrust violations under Clayton Act Rule 7a-3.

Petitioner Brad Greenspan—a pioneering entrepreneur who created Myspace.com through his company eUniverse—sought to intervene as a victim of Google's conduct and to present additional evidence of antitrust violations under the Clayton Act and Rule 7a-3.

eUniverse, by 2001 attracted more monthly U.S. visitors than Google. In 2002, as eUniverse's

CEO, he accepted \$20,000 from Google to endorse its AdSense technology. He alleges that Google then asked him to misappropriate valuable data from Yahoo—an offer he refused, instead making Yahoo an exclusive partner—and that Google has retaliated against him ever since.

In November 2024, Greenspan emailed the District Court Judge’s internship email address during the trial and requested to have his motion to intervene filed under seal because he was still finalizing the complete body of evidence he sought to submit. Instead the District Court Judge dropped the motion onto the docket unsealed under FRCP 5(d)(2)(b).

On January 4, 2024, Greenspan filed multiple motions in the district court—seeking relief under Rules 60(b)(3), submitting a notice of errata with the final exhibits of evidence, and moving for joinder of Alphabet—each accompanied by evidence of Google’s alleged anticompetitive actions. Although the clerk’s office stamped these filings “RECEIVED,” a court employee named Erica Duncan removed them before they could be docketed. The next day, Greenspan moved to recuse Judges Mehta and Reyes. On January 9, 2024, the district court denied his motion to intervene. Then, on January 25, 2024—without notice, shortly after Greenspan filed an appeal, and despite having granted his request for judicial notice days earlier—the court entered a pre-filing order branding him a vexatious litigant and barring all further filings without prior leave of court.

II. Procedural History

On December 31, 2024, petitioner invoked his rights under the CVRA by filing a petition for a writ of mandamus under 18 U.S.C. § 3771. He asked the court to compel the government to confer with him under the CVRA and Clayton Act Rule 7a-3, to restore records allegedly removed or destroyed, and to remedy conflicts of interest involving the district judge.

On February 21, 2025, the D.C. Circuit dismissed the CVRA petition as moot without addressing its merits or applying the Act's 72-hour review requirement. The dismissal was issued solely by the clerk—rather than by an appellate panel—depriving petitioner of full judicial consideration. The court refused to examine evidence of judicial conflicts or mishandling of documents, violating petitioner's due process and access-to-court rights. It also denied his motions for judicial notice and reconsideration, and ordered the Clerk to refuse any further submissions in the closed case.

REASONS FOR GRANTING THE PETITION

I. The D.C. Circuit's Dismissal of Petitioner's CVRA Petition as "Moot" Contravenes the Express Statutory Mandate of 18 U.S.C. § 3771(d)(3)

The Crime Victims' Rights Act provides a specific, expedited procedure for victims to assert their rights in federal court. When a victim's rights are denied in the district court, the statute provides:

"The movant may petition the court of appeals for a writ of mandamus. The court of appeals shall

take up and decide such application forthwith within 72 hours after the petition has been filed." 18 U.S.C. § 3771(d)(3).

Congress's use of the mandatory "shall" in this provision leaves no room for discretion. As this Court has consistently held, "shall" imposes a mandatory obligation. See, e.g., *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (noting that "the mandatory 'shall'... normally creates an obligation impervious to judicial discretion").

The D.C. Circuit's dismissal of petitioner's CVRA petition as "moot" without substantive consideration directly contravenes this statutory mandate. The court was required to "take up and decide" the petition "forthwith within 72 hours," yet it failed to do so. Instead, it summarily dismissed the petition without addressing its merits or explaining why the petition was moot.

This Court has recognized the importance of the CVRA's expedited review provision. In *United States v. Monzel*, 641 F.3d 528, 533 (D.C. Cir. 2011), cert. denied, 565 U.S. 1173 (2012), the D.C. Circuit itself acknowledged that "the CVRA contemplates that victims will have the opportunity to vindicate their rights quickly" and that "the statute's expedited review procedure would be meaningless if the court of appeals were required to wait for a final judgment before reviewing a district court's denial of relief."

The D.C. Circuit's dismissal of petitioner's CVRA petition as "moot" without explanation or substantive consideration undermines the expedited review procedure that Congress established. This Court should grant certiorari to clarify that circuit

courts must address the merits of CVRA petitions as mandated by the statute.

II. The D.C. Circuit Erred in Failing to Recognize Petitioner's CVRA Petition as an Independent Claim Requiring Separate Consideration

The D.C. Circuit's dismissal of petitioner's CVRA petition as "moot" suggests that the court viewed the petition as dependent on or subsidiary to petitioner's other motions. This was error. A CVRA petition is an independent claim for relief that must be considered on its own merits, regardless of the status of other proceedings.

The CVRA creates a distinct procedural mechanism for victims to assert their rights, separate from ordinary civil or criminal proceedings. As the Ninth Circuit explained in *Kenna v. U.S. District Court for the Central District of California*, 435 F.3d 1011, 1017 (9th Cir. 2006), the CVRA "contemplates active participation by crime victims in the judicial process." The statute provides that victims may assert their rights "in the district court in which a defendant is being prosecuted for the crime 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).

Petitioner's CVRA petition alleged specific violations of his rights as a crime victim, including his right to confer with prosecutors about evidence of antitrust violations. These claims required independent consideration under the CVRA's expedited review procedure, regardless of the status of Petitioner's other motions or the underlying antitrust case.

The D.C. Circuit's dismissal of the CVRA petition as "moot" without addressing its merits effectively denied petitioner the statutory rights guaranteed by the CVRA. This Court should grant certiorari to clarify that CVRA petitions require independent consideration on their merits, separate from other pending motions or proceedings.

III. The D.C. Circuit's Misclassification of Petitioner's CVRA Petition Raises Important Questions About the Proper Implementation of the Crime Victims' Rights Act

Petitioner's December 31, 2024 filing was explicitly titled "Petition for Writ of Mandamus Pursuant to 18 U.S.C. § 3771, Crime Victims' Rights" and invoked the specific protections of the CVRA. Despite this clear designation, the D.C. Circuit treated it as an ordinary mandamus petition subject to the traditional, highly deferential standard of review.

This misclassification is not merely a technical error but a substantive one that deprived Petitioner of critical statutory protections. As this Court recognized in *United States v. Monzel*, 641 F.3d 528, 533 (D.C. Cir. 2011), cert. denied, 565 U.S. 1206 (2012), the CVRA "contemplates that the mandamus petition will be the crime victim's one and only appeal; the victim is not entitled to a second appeal through ordinary appellate review." Given this unique procedural posture, courts must be particularly careful to properly classify and address CVRA petitions.

The D.C. Circuit's misclassification is especially troubling given the specific allegations in

Petitioner's CVRA petition. Petitioner alleged that Google had engaged in criminal violations of federal law, including obstruction of justice under 18 U.S.C. § 1519, making false statements under 18 U.S.C. § 1001, and antitrust violations under the Sherman Act. Petitioner further alleged that he had been retaliated against for providing information about these violations to the federal government, in violation of the Clayton Act's anti-retaliation provisions, 15 U.S.C. § 7a-3.

These allegations squarely implicate the CVRA, which defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense." 18 U.S.C. § 3771(e)(2)(A). By misclassifying Petitioner's CVRA petition, the D.C. Circuit effectively denied Petitioner the opportunity to have his claims as a crime victim properly adjudicated.

This Court should grant certiorari to clarify that courts must respect the statutory classification of CVRA petitions and apply the appropriate standard of review. This issue is particularly important in complex cases involving both civil and criminal aspects, where the distinction between different types of mandamus petitions may be overlooked.

Such misclassification raises important questions about the proper implementation of the CVRA. Congress created a specific, expedited procedure for victims to assert their rights, and courts must respect this procedure by properly identifying and processing CVRA petitions. When a court misclassifies a CVRA petition and fails to apply the statutory procedure, it effectively denies the victim the rights that Congress intended to provide.

This case presents an ideal vehicle for this Court to address this issue. Petitioner's mandamus petition explicitly invoked the CVRA, citing 18 U.S.C. § 3771 in its title and throughout the document. The petition specifically alleged violations of petitioner's rights as a crime victim, including his right to confer with prosecutors. Yet the D.C. Circuit appears to have treated the petition as an ordinary mandamus petition, dismissing it as "moot" without applying the CVRA's expedited review procedure.

This Court should grant certiorari to clarify that courts must properly identify and process CVRA petitions according to the statutory procedure, regardless of how they are docketed or classified by court personnel.

IV. The Procedural Irregularity in the December 10th, 2024 Order Denied Petitioner Full Appellate Review and Violated Statutory Rights

The order on the motion for reconsideration dated December 10th, 2024, was signed solely by the clerk rather than by any judges of the appellate panel. This procedural irregularity deprived Petitioner of full appellate review, as no judicial officers reviewed or approved the clerk's action. By permitting a non-judicial officer to effectively dispose of Petitioner's motion, the court denied Petitioner the fundamental right to meaningful appellate consideration, violating due process and the procedural protections mandated by the Crime Victims' Rights Act under 18 U.S.C. § 3771(d)(3).

This irregularity is significant as it connects to the broader failure of the court to comply with the

CVRA's requirements for timely and reasoned decisions by judicial officers. By allowing a clerk to effectively dispose of Petitioner's motion without judicial oversight, the court violated Petitioner's right to full appellate review, a fundamental component of due process.

Furthermore, this procedural anomaly contributed directly to the premature dismissal of Petitioner's claims and the undermining of the procedural protections guaranteed by the CVRA. This action effectively "eliminated" Petitioner's case without proper judicial consideration, denying Petitioner the opportunity to have the merits of the CVRA petition adjudicated. The absence of judicial review in this instance highlights a critical lapse in the appellate process, warranting this Court's intervention to ensure adherence to statutory mandates and the protection of crime victims' rights.

V. This Case Presents an Ideal Vehicle for Resolving Important Questions About the Application of the CVRA in Complex Antitrust Cases

The CVRA applies to victims of all federal crimes, including antitrust violations, yet there is limited precedent addressing how victims' rights apply in this specific context.

This case presents an ideal vehicle for resolving important questions about the application of the CVRA in complex antitrust cases. The underlying case, *United States v. Google LLC*, is one of the most significant antitrust actions in recent years, involving allegations of monopolization in the search and search advertising markets. The proper adjudication of

victims' rights in this context is essential to ensuring that the antitrust laws serve their intended purpose of protecting competition and consumers.

This case raises novel questions about the intersection of the CVRA and the Clayton Act's anti-retaliation provisions, 15 U.S.C. § 7a-3. Petitioner alleges that he was retaliated against for providing information about antitrust violations to the federal government, a claim that implicates both statutes. The proper resolution of these overlapping statutory claims is a matter of first impression that warrants this Court's review.

Petitioner alleges that he is a victim of Google's anticompetitive conduct and that he has evidence of additional antitrust violations that would be relevant to the government's case. He sought to exercise his right under the CVRA to confer with prosecutors about this evidence, but claims that this right was denied.

Petitioner as the Founder of Myspace.com and a former business partner of Google sought to provide direct evidence of additional antitrust violations that would benefit the government's case against Google, including information about "no-poach" agreements, Google's involvement in the Myspace buy-out bid rigging, and other anti-competitive practices. The D.C. Circuit's dismissal of his CVRA petition without consideration of this evidence potentially deprived the government and the public of valuable information about significant antitrust violations.

Moreover, this case highlights the challenges faced by whistleblowers who seek to provide evidence of corporate wrongdoing. Petitioner alleges that

Google has engaged in a pattern of retaliation against him for refusing to participate in anti-competitive practices and for attempting to provide evidence of such practices to government authorities. The D.C. Circuit's approach effectively shields such retaliation from scrutiny and undermines the protections Congress has established for whistleblowers under the Clayton Act and other statutes.

The D.C. Circuit's dismissal of petitioner's CVRA petition without addressing its merits leaves unresolved important questions about the rights of antitrust victims under the CVRA. For example:

- What constitutes a "reasonable right to confer with the attorney for the Government" in the context of a complex antitrust prosecution with multiple victims?
- How should courts balance the government's discretion in prosecuting antitrust cases with victims' rights under the CVRA?
- What remedies are available to victims when the government fails to consider evidence of additional antitrust violations?

These questions have significant implications for the enforcement of antitrust laws and the rights of victims of anticompetitive conduct. This Court should grant certiorari to provide guidance on these important issues.

Finally, this case presents clean legal questions about the proper interpretation and application of the CVRA's procedural requirements. The D.C. Circuit's dismissal of Petitioner's CVRA petition as "moot"

without addressing its merits provides a clear record for this Court to review and clarify the mandatory nature of the CVRA's procedural protections.

VI. The D.C. Circuit's Refusal to Consider Evidence of Judicial Conflicts of Interest, Document Mishandling, and Obstruction of Justice Violated Petitioner's Constitutional Rights to Due Process and Access to the Courts

Petitioner presented substantial evidence of judicial conflicts of interest, document mishandling, and obstruction of justice in the underlying antitrust case. This evidence included:

1. Judge Mehta's relationship with Shailesh Rao, a former Google executive described as a "close friend" of Judge Mehta. According to Petitioner, Rao worked at Google from 2005 to 2007 as Director of Local Search, during a critical period relevant to the antitrust case.

2. Judge Mehta's first cousin, Chirag Mehta, worked at Google from 2017 to 2021, after allegedly being "rescued" by Google following his termination from SAP amid bribery allegations.

3. Judge Mehta's purchase of \$50,000 worth of stock in the Baillee Griffin Long Term Global Growth Fund on June 22, 2022, shortly after his first cousin Chirag Mehta became Chief Product Officer at Zipline, a company backed by both the Baillee Fund and Google.

4. The improper handling of Petitioner's January 4, 2024 filings, which were stamped

"RECEIVED" by the clerk's office but subsequently "carried away" and not properly docketed.

5. Evidence of Google's destruction of documents and misuse of attorney-client privilege, as noted in the district court's August 6, 2024 judgment. The D.C. Circuit's refusal to consider this evidence violated Petitioner's constitutional rights to due process and access to the courts. As this Court has recognized, "the Due Process Clause has been interpreted as preventing the courts of a State from depriving interested parties of a fair opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Similarly, the right of access to the courts is "one aspect of the right to petition" protected by the First Amendment. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983).

By dismissing Petitioner's CVRA petition as "moot" without addressing the substantial evidence of judicial conflicts of interest and document mishandling, the D.C. Circuit effectively denied Petitioner a fair opportunity to be heard on these critical issues. This denial is particularly troubling given the serious nature of the allegations and their potential impact on the integrity of the judicial process.

This Court should grant certiorari to clarify that courts must consider evidence of judicial conflicts of interest and procedural irregularities when adjudicating CVRA petitions. This issue is particularly important in high-profile cases where the integrity of the judicial process is essential to public confidence in the administration of justice.

VII. The D.C. Circuit's Dismissal of Petitioner's CVRA Petition Creates a Circuit Split on the Proper Standard for Reviewing CVRA Petitions

The D.C. Circuit's summary dismissal of petitioner's CVRA petition as "moot" without substantive consideration conflicts with the approach taken by other circuits in reviewing CVRA petitions. This circuit split warrants this Court's review.

Several circuits have held that CVRA petitions must be decided on their merits, with reasoned explanations for the court's decision. For example, in *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008), the Fifth Circuit conducted a thorough analysis of the victim's claims under the CVRA, ultimately granting the petition in part. Similarly, in *In re Stewart*, 552 F.3d 1285, 1288-89 (11th Cir. 2008), the Eleventh Circuit provided a detailed analysis of the CVRA's requirements before denying the petition on the merits.

The CVRA itself requires that "[i]f the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion." 18 U.S.C. § 3771(d)(3). The D.C. Circuit's dismissal of petitioner's CVRA petition as "moot" without explanation fails to satisfy this requirement.

This Court should grant certiorari to resolve this circuit split and clarify that circuit courts must address the merits of CVRA petitions and provide reasoned explanations for their decisions, as required by the statute.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari to review the D.C. Circuit's dismissal of his petition under the Crime Victims' Rights Act.

Respectfully Submitted,

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