

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**UNITED STATES OF AMERICA,**

v.

**NISREEN ASSAD IBRAHIM BAHAR,**  
a/k/a “Umm Sayyaf,”  
**Defendant.**

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Case No. 1:16-mj-63-MSN

**MOVANTS’ REPLY IN SUPPORT OF THE MOTION  
TO ENFORCE THE MOVANTS’ RIGHTS UNDER THE  
CRIME VICTIMS’ RIGHTS ACT**

Victim Movants Mary Roe, Mary Roe II, Mary Roe III, Nasima Avdo Saleh, and Mary Roe VI (collectively, the “Movants”) submit the following Reply in support of the Motion to Enforce the Movants’ Rights Under the Crime Victims’ Rights Act (“Motion”).

For over four years, the Movants have repeatedly requested that the Government recognize them as crime victims under the Crime Victims’ Rights Act (“CVRA”), 18 U.S.C. § 3771, and afford them the rights conferred by the statute. It is only with the filing of the Motion that the Government has finally agreed to formally recognize the Movants as crime victims under the CVRA. *See* Dkt. 30 at 8. However, the Government continues to deny the Movants their CVRA rights.

For two years prior to filing of the Motion, the Government denied the Movants’ entitlement to statutory rights and took no steps to effectuate the Movants’ CVRA rights or to provide key information to which they now agree the Movants are entitled. The Government does not contest this inaction. *See* Dkt. 30 at 7. While the Government’s recent cooperation and steps

to remedy this inaction are welcome, to date the Government has not yet provided a sufficient response to the Movants' requests for information. Given these circumstances, the Movants must maintain their request that the Court order the Government to provide them with all information necessary to effectuate their CVRA rights, including the five categories identified in their Motion.

## **ARGUMENT**

### **I. The Government Misconstrues the Movants' Request**

The Government misconstrues the Motion in two ways: (a) the Movants are neither requesting that the CVRA be applied extraterritorially, nor (b) seeking to infringe upon the Government's prosecutorial discretion or the conduct of U.S. foreign policy. The Movants only request the information to which they are entitled as crime victims under the CVRA.

#### **A. The Movants Do Not Seek Extraterritorial Application of the CVRA**

The Government mischaracterizes the Motion as an attempt to apply the CVRA extraterritorially. *See* Dkt. 30 at 10, 12–13. Not so. The Movants seek to effectuate their rights before this Court because the United States Department of Justice ("DOJ") filed the operative criminal complaint *in this Court* as a "*step toward achieving justice in the case.*"<sup>1</sup>

The Government repeatedly emphasizes the "unusual" nature of this prosecution in an attempt to minimize the degree and extent to which Movants should be able to exercise their rights as crime victims for a federal crime charged in the United States. *See* Dkt. 30 at 9 n.5, 12. In such circumstances, however, the Government is not absolved of its obligations to federal crime victims

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<sup>1</sup> Dep't of Justice, *Wife of Dead ISIL Leader Charged in Death of Kayla Jean Mueller*, Feb. 8, 2016, available at <https://www.justice.gov/usao-edva/pr/wife-dead-isil-leader-charged-death-kayla-jean-mueller>.

simply because a case involves foreign victims or proceedings. The Attorney General’s Guidelines for Victim and Witness Assistance affirms the Government’s obligations to notify victims located in foreign countries, as well as to assist crime victims in “obtaining information about and participating in foreign prosecutions” when a crime is also being prosecuted in the United States.<sup>2</sup>

The Government acknowledges it was conducting an ongoing federal investigation when it chose to transfer the Defendant to the custody of the Kurdish Regional Government (“KRG”). *See* Dkt. 30 at 5. The Government subsequently elected to file a criminal complaint against the Defendant with the expectation that she would “be first brought to and found in the Eastern District of Virginia.” Dkt. 4, Heaney Aff. ¶ 1. The Government’s decision to involve a foreign criminal justice system in the prosecution of a federal crime does not vitiate the Movants’ CVRA rights, including their right to request and obtain information regarding the status of those foreign proceedings, particularly given DOJ’s ongoing involvement therein.<sup>3</sup>

Simply put, the CVRA provides the Government no mechanism to avoid its obligations to the Movants simply by claiming that “[t]his prosecution is not an ordinary one” that “involves unique circumstances,” especially where the Government itself created those “unique circumstances.” Dkt. 30 at 9 n.5, 12.

**B. The Movants Do Not Request an Adjudication of Prosecutorial Discretion or Foreign Policy Under the CVRA**

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<sup>2</sup> U.S. Dep’t of Justice, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE, 2011 ed. (rev. May 2012), at 13.

<sup>3</sup> *See* U.S. Dep’t of Justice, *Wife of Dead ISIL Leader Charged in Death of Kayla Jean Mueller*, Feb. 8, 2016, available at <https://www.justice.gov/usao-edva/pr/wife-dead-isil-leader-charged-death-kayla-jean-mueller> (“We fully support the Iraqi prosecution of Sayyaf and will continue to work with the authorities there to pursue our shared goal of holding Sayyaf accountable for her crimes.”).

The Movants’ request does not seek to direct the exercise of the Government’s prosecutorial discretion or the conduct of U.S. foreign policy. The Movants do not seek to dictate how the Government conducts its prosecution of the Defendant. The Movants only request the seat at the table that the CVRA guarantees them. Therefore, the Government’s contention that the Movants’ “disagreement with the [G]overnment’s reasoning [not to prosecute]—while unfortunate—does not give rise to a violation of the CVRA” is simply not relevant to the disposition of the Motion. Dkt. 30 at 15.

## **II. The Government Has Not Met Its Obligations Under the CVRA**

The Movants are entitled to the information necessary to effectuate their CVRA rights. *See supra* n.2; Dkt. 15 at 25–26. The CVRA affords victims the right to “obtain information from prosecutors and convey information to prosecutors, to enable the victims to form and express opinions.” *United States v. BP Prod. N. Am. Inc.*, 2008 WL 501321, at \*14 (S.D. Tex. Feb. 21, 2008). This right to obtain information “is not limited to particular proceedings—it is intended to be expansive, and thus applies broadly to any critical stage or disposition of the case.” *United States v. Heaton*, 458 F. Supp. 2d 1271, 1273 (D. Utah 2006). A victim may also seek discovery to determine whether her CVRA rights have been violated. *See Does v. United States*, 817 F. Supp. 2d 1337, 1344 (S.D. Fla. 2011).

Following the submission of the Motion,<sup>4</sup> the Government agreed to confer with the Movants’ counsel and provided certain information about the case to counsel. The Movants

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<sup>4</sup> Notably, although the Government avers that it intended to treat the Movants as crime victims from the outset “and provide them with the rights, information, and assistance contemplated by the statute as well as further information and services as appropriate,” most of the information provided by the Government in the past two months comes more than four years after the first meeting with the Movants’ counsel in March 2017, and only after the Movants were left with little choice but to file this Motion. *See* Dkt. 30 at 6; Dkt. 15 at 14–17.

appreciate the Government's efforts and look forward to continuing this dialogue. However, the Movants disagree that the Government has "met all of its obligations under the CVRA," and the Government overstates the scope of information it has provided to the Movants. Dkt. 30 at 1–2, 10–13. Providing some information is not synonymous with providing adequate information, particularly because the Movants' right to obtain information "must be read expansively in light of the CVRA's broad goal of ensuring that victims are treated fairly." *BP. Prod. N. Am. Inc.*, 2008 WL 501321, at \*16.

The Government has not yet provided the Movants with certain key pieces of information that fall squarely within the bounds of the CVRA's "reasonableness" standard. For example, the Government has yet to provide the Movants with adequate information regarding: (1) whether the charge in the KRG proceeding encompassed the Defendant's treatment of the Movants—including abduction, enslavement, torture, and sexual abuse—or was solely focused on her status as a member of the Islamic State of Iraq and the Levant ("ISIL"); (2) the evidence presented during the KRG proceeding, including whether any witnesses gave testimony with respect to the Defendant's treatment of the Movants and other Yazidi women and girls; (3) the location, circumstances and conditions surrounding the Defendant's ongoing detention in the KRG and possible basis and timing of her potential release; (4) the circumstances of the Defendant's transfer from U.S. to KRG custody; and (5) the rationale behind the Government's efforts, or lack thereof, to extradite or prosecute the Defendant. *See* Dkt. 15 at 23–24.

The Movants seek adequate information regarding the charges and evidence in the KRG's prosecution of the Defendant, including whether the KRG's prosecution encompassed the Defendant's treatment of the Movants. Gaining access to this information is a necessary precursor to allowing the Movants to properly "express opinions," as is their right under the CVRA. *BP.*

*Prod. N. Am. Inc.*, 2008 WL 501321, at \*15 (“The right to confer is a right to obtain and provide information and to express opinions.”). To date, the Movants have only been orally informed that the Defendant was convicted of a terrorism offense, and that she gave a statement admitting to her own involvement in the enslavement of Yazidi women. *See* Dkt. 30 at 5. The Government has not provided written confirmation of those oral representations, nor have they provided *any* information about whether the Defendant’s other victims were given the opportunity to testify to the torture, sexual abuse, and cruel and inhumane treatment inflicted by the Defendant. Critically, the Movants themselves were not afforded this right by KRG authorities and were not provided with any information about the KRG prosecution by the Government in sufficient time for them to seek to claim and exercise such right before the KRG proceeding.

This information is essential to inform the Movants’ views regarding the Defendant’s pending federal prosecution and what can be done in these proceedings to ensure justice is achieved for the Defendant’s victims. In addition, the information sought by the Movants regarding the charges, evidence, and judicial findings in the KRG’s prosecution of the Defendant is integral to the Movants’ ability to express their views in any future restitution effort. *See United States v. Rubin*, 558 F. Supp. 2d 411, 425 (E.D.N.Y. 2008) (“[c]onferring with and seeking information from the [G]overnment in connection with restitution to be sought . . . would appear to be well within [the] bounds [of the CVRA’s conferral right]”). This would include, for example, the ability to seek restitution through future forfeiture actions in the United States involving property seized from ISIL members. This information will likewise be integral to enabling the Movants to participate meaningfully in current and future proceedings in the KRG, to which the Government is providing support, and to exercise their rights to “form and communicate” their views with this Court. *BP. Prod. N. Am. Inc.*, 2008 WL 501321, at \*14.

The Movants also seek information regarding the Defendant’s detention in the KRG, including her location and the possibility of parole, escape, or being subject to a prisoner swap with ISIL. *See* Dkt. 15 at 26–27. This information is obviously critical to the Movants’ ability to ensure their personal safety and that of their families. Arguably, their “right to be reasonably protected from the accused” is among the most important rights provided by the CVRA. 18 U.S.C. § 3771(a)(1). The limited information the Government recently provided the Movants—which the Government said it received at an unspecified earlier time from Iraqi authorities which thus was not up-to-date—is insufficient to allow the Movants to adequately evaluate their safety and that of their families, particularly given that public reporting suggests that the Defendant has been sentenced to death as opposed to a life sentence, contradicting some of the basic facts provided by the Government.<sup>5</sup> The Movants have experienced extraordinary personal risk in their pursuit of justice. Their request for clarity regarding whether the Defendant is in a secure location in Iraq and likely to serve out her reported life-sentence is a minimum and reasonable request given the instability in the region and the ongoing and serious risk that the Movants could be subject to reprisals if the Defendant was freed. *See* Dkt. 17 at 6–7.

Prospectively, the Movants have requested that the Government set up a notification system through which this information is provided contemporaneously. The Government has “agreed in principle” to set up such a notification system. Dkt. 30 at 9. But this measure is not a voluntary commitment—it is required to discharge the Movants’ CVRA “right to be reasonably protected from the accused.” 18 U.S.C. § 3771(a)(1).

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<sup>5</sup> *See, e.g.,* Martin Chulov, *Isis wife and alleged Kayla Mueller jailer: ‘Our husbands became like wild animals’*, GUARDIAN, May 31, 2019, available at <https://www.theguardian.com/world/2019/may/31/isis-wife-alleged-kayla-mueller-jailer-umm-sayyaf-husbands-wild-animals> (reporting that Defendant was sentenced to death and is currently on death row).

The Movants also seek information regarding the Government's decision to transfer the Defendant from U.S. to KRG custody. The Government's decision to transfer Defendant to KRG custody in Iraq is the most consequential decision they made in this case, given that the Government now cites the Defendant's presence in Iraq as the reason she (as an Iraqi citizen) cannot be extradited to face justice in any other court of law. (Movants respectfully disagree.) To date, the Government has told the Movants only that the Defendant was transferred from U.S. custody to the KRG after considering the relevant legal, diplomatic, intelligence, security, and law enforcement dimensions of the transfer, and because the Defendant was an Iraqi citizen. *See* Dkt. 30 at 2–3. This is not an explanation, particularly given the Defendant was first captured in *Syria* before the Government voluntarily transferred her to Iraq. *See* Dkt. 4, Heaney Aff. ¶ 13.

Finally, the Movants have not received sufficient information to effectuate their CVRA rights in relation to the rationale underpinning the Government's efforts, or lack thereof, to extradite or prosecute the Defendant. While the Government states that it “understands—and welcomes—the victims’ views on this subject,” the Government has not provided the Movants with sufficient information for the Movants to actually be able to form and provide their views. Dkt. 30 at 14. While the Government has stated that it has no plans to extradite the Defendant, it has not made any attempt to resolve the inherent contradiction between the Government's position that the Defendant's extradition would likely be prohibited and its position that the Government's charges against the Defendant “served as a safeguard in the event that the Iraqi prosecution and sentence did not hold Sayyaf accountable for her crimes.” Dkt. 30 at 6.

A victim is not treated justly and equitably if her views are not even before the court.” *Heaton*, 458 F. Supp. 2d at 1272. Without further information regarding the Government's rationale underpinning this decision, or explaining why the Movants' arguments that such



extradition is legally possible have been rejected, the Movants are unable to form and express their views on this matter, nor evaluate whether their CVRA rights have been violated. *See* Dkt. 15-2 (setting out support for the Movants’ position that extradition is possible and warranted).

While the Government appears to defend the non-disclosure of certain information around Defendant’s transfer by describing it as “sensitive and privileged information and questions of foreign policy,” such a blanket statement does not absolve the Government of its obligation to provide sufficient information for the Movants to effectuate their CVRA rights, and evaluate whether their rights have been violated. Dkt. 30 at 13. The Movants are not seeking sensitive and privileged information. Rather, the Movants request sufficient information regarding the circumstances of the Defendant’s transfer from U.S. to KRG custody so as to assess whether the Government violated its obligation to inform and confer with the Movants before taking an action tantamount to ending the criminal case before this Court. *See* 18 U.S.C. § 3771(a)(2), (5); Dkt. 15 at 26.<sup>6</sup>

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<sup>6</sup> Regarding the request for information around the Defendant’s transfer, the Government posits a foregone conclusion that certain CVRA rights do not attach during a federal investigation or prior to a “public court proceeding.” Dkt. 30 at 13 n.7. The Government further disputes that the Defendant’s transfer to KRG custody could be considered a de facto disposition of the case. *See* Dkt. 30 at 13 n.7. Several federal circuits have firmly rejected such temporal restrictions on the Government’s obligation under the CVRA to notify and confer with victims regarding the disposition of a case. *See In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008) (“There are clearly rights under the CVRA that apply before a prosecution is underway . . . Logically, this includes the CVRA’s establishment of victims reasonable right to confer with the attorney for the Government”). *See also Doe 1 v. United States*, 359 F. Supp. 3d 1201, 1220 (S.D. Fla. 2019) (finding that “victims should be notified of *significant events* resulting in resolution of their case without a trial” (emphasis added)). Senator Feinstein, one of the CVRA’s sponsors, stated that the right to confer may apply to “any critical stage or disposition of the case.” *See* 150 Cong. Rec. at S4260, S4268 (daily ed. Apr. 22, 2004). Regardless, whether CVRA rights attach during the investigatory phase of a criminal case (thus whether the Government may have violated its obligations in transferring the Defendant to KRG custody) is not a question

### CONCLUSION

For the reasons stated above, the Movants request this Court issue an order recognizing the Movants as crime victims under the CVRA and requiring the Government to provide them with all information necessary to effectuate their rights under the CVRA, including information about: (1) the Defendant's charges, trial, conviction, sentence, and detention by the KRG; (2) the conduct of the trial, including the evidence that was presented, and the conduct that formed the basis of the allegations and conviction; (3) the location and conditions of the Defendant's current detention, including any potential for the Defendant's early release, escape, or a prisoner exchange deal; (4) the circumstances of the Defendant's transfer from U.S. to KRG custody in 2015, including any understandings or agreements relating to the Defendant; and (5) any efforts that the Government has taken, or is planning to take, if any, to extradite or transfer the Defendant to the United States to face charges.

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before the Court. *See also* Dkt. 30 at 3 n.2 (Government stating that the legal contours of the CVRA are not currently necessary to resolve). The Movants are simply asking for enough relevant information to allow them to assess the issue.

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By: Katherine M. Davis

Katherine Maddox Davis (VSB 89104)  
Cate Harding (*Motion for pro hac vice admission pending*)  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
Phone: (202) 955-8587  
Fax: (202) 831-6038  
Email: kdavis@gibsondunn.com  
Email: charding@gibsondunn.com

Zainab N. Ahmad  
Charline O. Yim  
Marryum A. Kahloon  
*Motions for pro hac vice admission pending*  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Phone: (212) 351-2609  
Fax: (212) 817-9500  
Email: zahmad@gibsondunn.com  
Email: cyim@gibsondunn.com  
Email: mkahloon@gibsondunn.com

Daniel McLaughlin  
Elzbieta T. Matthews  
Carmen K. Cheung  
*Motions for pro hac vice admission pending*  
Center for Justice & Accountability  
One Hallidie Plaza, Suite 750  
San Francisco, CA 94102  
Phone: (415) 544-0444  
Fax: (415) 544-0456  
Email: dmlaughlin@cja.org  
Email: ematthews@cja.org  
Email: ccheung@cja.org

Amal Clooney  
*Motion for pro hac vice admission pending*  
53-54 Doughty Street  
London, WC1N 2LS  
UNITED KINGDOM  
Phone: +4402074741313  
Email: lal@doughtystreet.co.uk

*Counsel for Movants Mary Roe, Mary Roe II, Mary  
Roe III, Nasima Avdo Saleh and Mary Roe VI*