

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

JANE DOE #1 and JANE DOE #2

v.

UNITED STATES

SUPPLEMENTAL AUTHORITY IN SUPPORT OF
JANE DOE #1 AND JANE DOE #2'S RESPONSE TO GOVERNMENT'S SEALED
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

COME NOW Jane Doe #1 and Jane Doe #2 (also referred to as “the victims”), by and through undersigned counsel, to provide supplemental authority in support of their Response to Government’s Sealed Motion to Dismiss for Lack of Subject Matter Jurisdiction (DE 127).

At issue in these pleadings is whether the victims’ petition for enforcement of their CVRA rights (filed in July 2008) should now be dismissed for a purported lack of subject matter jurisdiction. The Government has pointed to certain limitations on relief found in the CVRA as somehow restricting the victims’ ability to obtain relief. Those limitations, found in 18 U.S.C. § 3771(d)(5), apply only to crime victims’ efforts to obtain a “new trial” or to “re-open a plea or sentence,” as the victims specifically argued in their Response. *See* DE 127 at 5.

In a recently-published decision, the Fifth Circuit reversed a district court ruling and agreed with the victims’ interpretation of the statute. In *In re Allen*, ---F.3d---, 2012 WL 4009717 (5th Cir. 2012), the Fifth Circuit refused to apply certain time limits found in § 3771(d)(5) to crime victims seeking relief under the Act. The Fifth Circuit held that: “Because

Petitioners are not seeking to reopen a plea or sentence, that provision is *inapplicable*.” *Id.* at *1 (emphasis added).¹

Jane Doe #1 and Jane Doe #2 respectfully submit that this holding supports their argument that § 3771(d)(5) is inapplicable to this case, meaning that the Court remains free to adopt all other remedies, including equitable remedies, to enforce the CVRA. The Government’s motion to dismiss should accordingly be denied for this reason and the other reasons previously advanced by the victims.

¹ The arguments that the Fifth Circuit agreed with were advanced by one of victims’ counsel in this case, Professor Cassell.

DATED: December 10, 2012

Respectfully Submitted,

s/ Bradley J. Edwards

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CERTIFICATE OF SERVICE

The foregoing document was served on December 10, 2012, on the following using the Court's CM/ECF system:

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