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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. ) No. 3:19-cr-00111-RRB-MMS  
)  
JESSICA JOYCE SPAYD, )  
)  
Defendant. )  
)  
\_\_\_\_\_ )

**REPLY REGARDING MOTION FOR ALTERNATIVE  
VICTIM NOTIFICATION UNDER 18 U.S.C. § 3771(d)(2)**

Without citing a single case or the applicable statute, the defendant opposes the government’s motion for alternative victim notification under Section 3771(d)(2) of the Crime Victims’ Rights Act (“the Act”) (ECF No. 41). *See* 18 U.S.C. § 3771. Instead, defendant asks the Court to issue an order denying the victims of defendant’s illegal

prescribing practices notice of these criminal proceedings until the sentencing stage. *See* Objection to Motion for Alternate Victim Notification (ECF No. 46) at 3 (“Def’s Br.”). But defendant’s proposal would be illegal under the Act, which *requires* that the Department of Justice make best efforts to ensure that crime victims are provided with “reasonable, accurate, and timely notice of *any* public court proceeding...” in federal criminal actions, 18 U.S.C. § 3771(a) and (c)(1) (emphasis added), and that the Court “ensure that the crime victim is afforded” those rights, 18 U.S.C. § 3771(b). Importantly, where, as here, a court finds that the number of crime victims makes it “impracticable” to accord all of the crime victims their enumerated rights, the Court “*shall* fashion a reasonable procedure to give effect to ... [the Act].” 18 U.S.C. § 3771(d)(2) (emphasis added). The defendant provides no valid reason why the Court and the government should abandon these statutory obligations in this case.

The defendant states that any victims prior to 2014 are “irrelevant to any determination of guilt because such a crime would be committed prior to the statute of limitations.” Def’s Br. at 2. While that may be the case, providing victims with the notice required by the Act has nothing to do with a defendant’s “guilt or innocence,” as defendant claims. *Id.* Rather, as one court explained, “[i]n passing the Act, Congress made the policy decision-which we are bound to enforce-that the victims have a right to inform the plea negotiation process by conferring with prosecutors before a plea agreement is reached.” *See In re Dean*, 527 F.3d 391, 395 (5th Cir. 2008). For this reason, pre-2014 victims are also not “irrelevant” under the Act, which defines crime victims broadly

as “a person directly and proximately harmed as a result of the commission of a Federal offense ...” 18 U.S.C. § 3771(e). *See also In re Stewart*, 552 F.3d 1285, 1289 (11th Cir. 2008) (“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.”); *United States v. Turner*, 367 F.Supp.2d 319, 335 (E.D.N.Y. 2005) (Senate intended “to promote a liberal reading of the statute in favor of interpretations that promote victims’ interest in fairness, respect, and dignity.”).

Further, even limiting the victim pool to victims since 2014 would not eliminate the need for alternative notification methods here. Since 2014, the defendant has prescribed opioids to over 450 people, many of whom received large, potentially lethal dosages well above the CDC’s maximum recommended safe amounts. This victim pool still implicates *at least* hundreds, and potentially thousands of victims—including family members of deceased and addicted patients—directly and proximately harmed by defendant’s illegal conduct. This makes compliance with the notification requirements outlined in section 3771(a), (b) and (c) impracticable and unduly burdensome. Neither the government nor the Court has the resources to accord all of these victims the notice required by subsection 3771(a).<sup>1</sup> In these circumstances, the Act places no limitations on the alternative procedures which a Court may fashion other than that the procedures be reasonable to effectuate the Act and that they not unduly complicate or prolong the proceedings. 18

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<sup>1</sup> In practice, this would require the government to draft and send thousands of individually addressed letters to victims, which would greatly stretch the resources of the government and place large, unnecessary costs on the taxpayers.

U.S.C. §3771(d)(2).

The defendant also suggests that alternative means of notifying victims are not necessary here because the government has access to all of the documents necessary to identify every patient who received a prescription from the defendant between 2014 and the present. Def's Br. at 2. However, obtaining all of those documents and reviewing them for information is an ongoing process. It is a process that requires the government to endeavor, one line at a time, down the list of hundreds and hundreds of victims' names, through surely outdated contact information, while also trying to establish the type of harm suffered by the patient. Even were the government able to review every line, it is incorrect to argue that these documents can assure compliance with the Act. The purpose of the "Multiple crime victims" provision of the Act is to address the problems associated with a large volume of witnesses so that the Court can give effect to the Act. The statute explicitly recognizes the delay and inefficiency caused by cases involving large numbers of victims, and alleviates these issues by authorizing the type of alternative notification procedures sought here.

Further, contrary to defendant's suggestion, the government's proposal to issue a press release directing potential victims to the U.S. Attorney's Office website where all required notices will be posted would not result in "wasting everyone's time." Def's Br. at 3. Indeed, the purpose of this notification procedure is to conserve the resources of the government and the Court while still complying with the obligations of the Act. The defendant's concerns regarding prejudicial pretrial publicity arising from the proposed

press release, *id.* at 2, are similarly misplaced. Numerous courts have approved these precise procedures in similar cases, and defendant provides no reason why this case is different. In *United States v. Babich*, 301 F. Supp. 3d 213, 217 (D. Mass. 2017), the court found “that alternative notification procedures [were] appropriate” in an unlawful prescribing case where the government “had positively identified approximately 30 victims and potentially there were thousands of victims.” *Id.* In doing so, the court also rejected the same argument made by defendant here: that issuing a press release “risk[ed] tainting the jury pool depriving them of their right to a fair trial.” *Id.* at 217. The court explained:

Recognizing the competing interests at stake, namely, the defendants' Sixth Amendment right to an impartial jury and a fair trial, the public's First Amendment right of access to proceedings and filings as well as the rights of potential victims, courts have imposed certain restrictions on such alternative notification procedures. Specifically, courts have held that any press releases and/or notices shall avoid reciting allegations contained in the pleadings and shall contain language indicating that the defendant is presumed innocent unless and until proven guilty. *See, e.g., United States v. Merrill*, No. 14-CR-40028, 2014 WL 6387368, at \*2 (D. Mass. Nov. 14, 2014); *United States v. Saferstein*, No. 07-CR-557, 2008 WL 4925016, at \*3–4 (E.D. Pa. Nov. 18, 2008). The Court finds that such restrictions are appropriate in this case and allows issuance of press releases in satisfaction of the government's obligations under 18 U.S.C. § 3771(a).

*Id.* at 217-18.

The government has no intention of reciting allegations contained in the pleadings in its press release and, as is standard practice, the government will include language indicating that the defendant is presumed innocent unless and until proven guilty.

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Accordingly, the government respectfully requests the Court grant the motion for alternative victim notification procedures and deny the defendant's competing request.

RESPECTFULLY SUBMITTED this 27th day of December, 2019, in Fairbanks, Alaska.

BRYAN SCHRODER  
United States Attorney

/s/ Ryan D. Tansey  
RYAN D. TANSEY  
Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served electronically on all counsel of record via the CM/ECF system.

/s/ Ryan Tansey  
Office of the U.S. Attorney