



NATIONAL CRIME VICTIM LAW INSTITUTE

Considerations When Talking to Immigrant Clients Who Were Trafficked About Legal “Victim” Status and Choices Regarding Engagement with the Criminal Legal System

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The ability of any person to make informed choices about whether and to what extent to engage with the criminal legal system requires understanding whether and how they qualify as a legal “victim” entitled to rights at different points in a criminal case.¹ This understanding can be especially important for immigrant crime victims, as eligibility for certain immigration benefits can require engagement and even “cooperation” with law enforcement in the investigation or prosecution of a crime. With knowledge about their entitlement to rights and the limits of those rights within the criminal legal system, immigrant crime victims can make more informed decisions about engagement.

Discussing the significance of legal “victim” status with clients is one way that attorneys can help their clients understand their rights in the criminal legal system.² This resource is designed to help facilitate such attorney-client discussions by outlining key topics related to “victim” legal status for all crime victims and highlighting topics of special relevance to immigrant victims of human trafficking.

Topics for attorneys to address and consider when discussing legal “victim” status with their clients include:

- **“Victim” as a Legal Status.** A conversation with an individual about their legal status as a “victim” and the rights associated with that status should start with an explanation of what the status does – and what it does not – mean. The term refers to whether a person is entitled to assert rights under a jurisdiction’s crime victims’ rights laws; critically, it is not an assessment of whether a person has experienced harm as the result of crime. Additionally, some individuals identify themselves as “survivors” – as opposed to “victims” – and prefer that others do the same. Attorneys can recognize and respect these preferences while also

explaining to clients that “victim” is a legal status term used in contexts involving legal systems and rights.³

- **Legal “Victim” Status of Trafficked Persons.** When discussing legal “victim” status with trafficked persons, it is important to emphasize two additional points. First, forced criminal acts that a trafficked person engaged in as a result of being trafficked (*e.g.*, immigration crimes, illegal commercial sex acts) generally does not diminish that person’s “victim” status for the purposes of asserting victims’ rights in connection with their trafficking.^{4, 5} Second, a trafficking victim’s criminal record does not bear on their legal status a “victim” in a criminal case.⁶
- **Legal “Victim” Status in the Criminal Legal System.** Crime victims’ broad, participatory rights apply to legal “victims” primarily in the criminal legal system.⁷ Some immigration benefits for victims that exist outside of the criminal legal system, like U Visas and T Visas, can require engagement with law enforcement in the investigation or prosecution of a crime.⁸ Access to victims’ rights within the criminal legal system and immigration benefits are just two of the many factors that can inform whether immigrant clients choose to report their victimization to law enforcement and whether and how they continue to engage with law enforcement subsequent to making a report.
- **Legal “Victims” Can Assert and Seek Enforcement of Rights.** Legal “victims” have standing to assert and seek enforcement of their rights in the criminal legal system⁹ and have the right to retain counsel to represent these legal interests in that system.^{10, 11}
- **Definition(s) of “Victim” within a Jurisdiction’s Criminal Legal Provisions.** Attorneys should be familiar with the definition(s) of “victim” in their jurisdictions and understand when and how these definitions apply, so that they can provide their clients with the information and context to make informed decisions about engaging with criminal court processes. Key points on this topic may include:
 - **Sources of Legal Definition.** Fully understanding the scope of “victim” within a jurisdiction requires analysis of the definition of “victim” in constitutional victims’ rights amendments,¹² victims’ rights statutes,¹³ other criminal code provisions,¹⁴ and rules of criminal procedure.¹⁵ It also requires review of relevant court decisions interpreting these provisions.
 - **Multiple Definitions within a Single Jurisdiction.** A single jurisdiction’s laws may contain multiple definitions of “victim.” In some instances, multiple definitions do not conflict with one another because they apply to different rights and/or different procedures.¹⁶ At other times, there can be conflicts between definitions, which generally can be resolved through principles of statutory interpretation.¹⁷

- **Common Elements of Definitions of “Victim.”** Although definitions of “victim” vary, there are common elements.
 - **Harm/Offense.** Definitions of “victim” tend to reference an experience of harm and/or a criminal offense. Some jurisdictions define “victim” broadly to include any person harmed by a criminal offense;¹⁸ while others take a narrower approach by limiting the types of harms¹⁹ and/or criminal offenses²⁰ that fall within the definition.
 - **Causation.** Definitions of “victim” also tend to require a causal connection between the harm experienced by the victim and criminal conduct/offense at issue. The nature of this causal connection and the language used to describe it can vary.²¹
 - **Identity/Relationship.** In some jurisdictions, the term “victim” includes certain family members and/or legal guardians of a direct victim of crime,²² where these individuals can assert victims’ rights on their own behalf as “victims.”²³ Definitions of “victim” in many jurisdictions also provide that family members or other persons are authorized to act as the representatives of victims who are minors, incapacitated, incompetent, or deceased; under these definitions, family members and other representatives are asserting the rights of the direct “victim” in a representative capacity.²⁴ In general, definitions of “victim” do not include a person accused of the crime.²⁵
 - **Participation in a Criminal Case is *Not* a Component.** A victim’s decisions regarding whether and to what extent they participate in the investigation and prosecution of the person who harmed them does not diminish the victim’s legal status as a “victim.”
- **Exercising Rights Generally Does Not Diminish Legal “Victim” Status or Interfere with Ability to Assert Other Participatory Rights.**
 - **Requesting Anonymity.** Victims who exercise their privacy rights to require use of pseudonyms to guard against the disclosure of their name(s) and other identifying details²⁶ retain “victim” status.
 - **Non-Disclosure of Personal Records in Response to Subpoenas.** Victims exercise their right to refuse to disclose personal information or records – such as the confidential contents of an immigrant victim’s U or T Visa application or privileged medical records – generally does not impact the victim’s legal rights regarding participation in future criminal court proceedings.

- **“Victim” Legal Status and Rights Apply to Interactions with Law Enforcement.** Numerous victims’ rights are implicated at the earliest stages of a criminal investigation, including when victims are interviewed by law enforcement or other government agencies.²⁷ Legal “victim” status and the rights tied to this status apply during these interviews, as well as other pre-charging interactions with law enforcement. Victims have the right to have retained counsel present and representing their interests during these interactions.²⁸

- **“Victim” Legal Status and Language Access When Engaging with the Criminal Legal System.** For immigrant victims with limited English proficiency (LEP), engaging with the criminal legal system can be daunting, if not impossible, without language assistance.²⁹ In some jurisdictions, legal “victims” are expressly entitled to an interpreter during key interactions with the criminal legal system, such as law enforcement interviews, meetings with prosecutors, and court proceedings.³⁰ In other jurisdictions, legal “victims” may also be entitled to interpretive services because such services are necessary for the meaningful exercise of their other rights.³¹ Whether and how an attorney can help their client determine if a particular criminal legal system is staffed to meet the client’s unique language access needs is beyond the scope of this resource.

- **A Person May Be a Legal “Victim” Even if They are not Named in the Charging Instrument.** In some jurisdictions and under certain circumstances, a person may be a legal “victim” entitled to rights even if they are not named in an indictment or information.³² To the extent that charging decisions can limit the availability of victims’ rights in other jurisdictions and contexts, it is recommended that victims exercise their rights to confer with the prosecution early in a case.
 - **A Trafficked Person May Be a Legal “Victim” Entitled to Restitution When They are Not Named in a Charging Instrument.** Federal law mandates restitution for individuals who are “victims” of human trafficking crimes, including conspiracy to commit human trafficking.³³ In some instances, federal prosecutors do not include all victims of a trafficking conspiracy in an indictment.³⁴ Courts nonetheless have awarded mandatory restitution to these legal “victims.”^{35, 36}

- **Early Conferral with the Prosecutor Can Help Protect Legal “Victim” Status, Thereby Preserving Access to Certain Rights.** One common right of crime victims is the right to confer with the prosecution.³⁷ It is important that victims be made aware of this right and how to exercise it early in their involvement in a criminal case. Charging and other pretrial decisions by the prosecution – such as entering into deferred prosecution agreements and plea agreements – can impact a client’s “victim” status and, consequently, their access to rights. For instance, a plea agreement may result in the elimination of charges that would otherwise qualify an individual for “victim” status.³⁸ If a victim and/or counsel are communicating with the prosecution early in a case, they may

be able to protect the victim’s rights and interests by ensuring that certain charges are not excluded pretrial or by including an express provision to protect rights in a plea agreement, such as restitution.³⁹

- ❑ **Testifying at Trial or Other Proceedings is Not Required to Maintain Legal “Victim” Status.** If a victim does not testify at trial or other proceedings, they do not waive their rights as “victims.” For example, if the prosecution chooses not to call a victim to testify at trial, the victim may still request and be entitled to receive court-ordered restitution.⁴⁰
- ❑ **Multiple “Victims.”** There can be more than one person in a case who meets the legal definition of “victim” and, typically, the existence of multiple “victims” in a single case does not diminish any one victim’s legal rights. In instances where the number of victims is particularly high and the legal issues complex, some victims’ rights laws – such as those that apply in federal jurisdictions – authorize courts to employ alternative procedures but still require that the court give effect to victims’ rights.⁴¹ Additionally, the laws governing specific rights might also place limitations on access to these rights in certain multiple victim scenarios; for instance, under federal restitution law, when the number of crime victims is so large as to render individual restitution calculations impracticable, the court is not required to order restitution.⁴²
- ❑ **Availability of Victims’ Rights for Non-“Victims.”** When an individual does not fall within a jurisdiction’s legal definition of “victim,” there may be other authorities under which they can still assert certain victims’ rights. For instance, some jurisdictions statutorily extend specific rights to non-victims,⁴³ like the right to restitution⁴⁴ or various rights for witnesses of crime.⁴⁵ Additionally, courts may extend certain rights to non-“victims” through their equitable powers; an example of this includes exercising discretion to consider victim impact statements from persons who fall outside the statutory definition of “victim.”⁴⁶

¹ Crime victims’ rights are personally held legal rights that victims can assert in connection with a criminal case. The federal government, all states, the District of Columbia, and most U.S. territories have constitutional and/or statutory provisions that afford crime victims broad, participatory rights. For an overview of the ten most common victims’ rights, see *Ten Common Victims’ Rights* (Nat’l Crime Victim Law Inst., Portland, Or.), 2023, https://ncvli.org/wp-content/uploads/2024/02/Common-Victims-Rights_final.pdf. For information about which victims’ rights apply at different stages of the criminal legal process, see *Victims’ Rights During Significant Stages of the Criminal Justice Process* (Nat’l Crime Victim Law Inst., Portland, Or.), 2023, <https://ncvli.org/wp-content/uploads/2022/09/Victims-Rights-During-Significant-Stages-of-the-Criminal-Justice-Process-last-updated-2022.pdf>. Additional in-depth information about victims’ rights can be found in NCVLI’s searchable Law Library, <https://ncvli.org/professional-resources/victim-law-library/>, in NCVLI’s Rights Enforcement Toolkit, <https://ncvli.org/what-we-do/legal-assistance/rights-enforcement-toolkit/>, and by contacting NCVLI for technical assistance, <https://ncvli.org/request-technical-assistance/>.

² Some protections available to immigrant victims that fall outside of the criminal legal system, like T and U Visas, depend upon legal definitions of “victim” that are not explored in this resource. See, e.g., 22 U.S.C. § 7102(16), (11) (defining “victim of a severe form of trafficking in persons” for the purposes of T Visa eligibility); 8 C.F.R. § 214.14(a)(14) (explaining the term “[v]ictim of qualifying criminal activity” for the purposes of U Visa eligibility). Likewise, because this resource focuses on the rights of crime victims based on their legal status as

“victims” in a criminal matter involving the person who victimized them, it does not explore definitions of “victims of human trafficking” that apply in other criminal law contexts, like procedures authoring the vacatur of convictions and expungement or sealing of records for certain offenses committed as the result of being a victim of human trafficking. See, e.g., Vt. Stat. Ann. tit. 13, § 2658(a)(2) (defining “[v]ictim of human trafficking” for the purposes of a statute governing motions to vacate convictions obtained as a result of a person having been a “victim of human trafficking”).

³ See generally *Use of the Term “Victim” In Criminal Proceedings*, Victim Law Article (Nat’l Crime Victim Law Inst., Portland, Or.), 2009 (updated 2014), <https://law.lclark.edu/live/files/21940-use-of-the-term-victim-in-crim-proc11th-edpdf> (discussing the word “victim” as a legal status term).

⁴ The United States Department of Justice recognizes this key point about human trafficking victims in its guidelines for victim and witness assistance. See U.S. Dep’t of Justice, *The Attorney General Guidelines for Victim and Witness Assistance* 21 (2022 ed.) (“Victims of human trafficking may be considered victims for purposes of the prosecutions of such crimes despite any legal culpability that the victims may have for ancillary offenses, such as immigration or prostitution crimes. Department personnel should be aware that the rights of human trafficking victims may conflict with the rights of any victim of their crimes and shall use best efforts to afford all victims their rights as permissible and appropriate under the facts and circumstances.”).

⁵ Courts have addressed this topic in the context of sex trafficking victims’ right to restitution. See, e.g., *United States v. Mammedov*, 304 F. App’x 922, 926–27 (2d Cir. 2008) (concluding, upon review of the definition of “victim” under the mandatory restitution provision of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1593, and the scope of losses covered by restitution under the TVPA, that the district court did not commit plain error in ordering defendant to pay restitution to three sex trafficking victims for money they earned from illegal commercial sex acts because “the express terms of 18 U.S.C. § 1593 require that the victims in this case, i.e., persons who engaged in commercial sex acts within the meaning of 18 U.S.C. § 1591, receive restitution, notwithstanding that their earnings came from illegal conduct”); *United States v. Rivera*, No. 22-2780-CR, 2024 WL 2813548, at *1 (2d Cir. June 3, 2024) (affirming restitution order in sex trafficking case for money the victims earned from commercial sex work based on the clear terms of the restitution provisions of TVPA (citing *Mammedov*, 304 F. App’x at 927)).

⁶ See Sarah Dohoney Byrne & Jules Carter, *A Penumbra of Rights at Risk: Human Trafficking Victims’ Rights in Federal Criminal Cases*, 31 B.U. Pub. Int. L.J. 143, 152 (2022) (discussing how a victim’s federal right under the Crime Victims’ Rights Act, 18 U.S.C. § 3771(a)(8), to be treated with respect for their dignity includes the right of human trafficking victims to be viewed by the criminal legal system and its actors as “victims” not “villains” and noting the challenges this group of victims face in this regard).

⁷ See generally *Ten Common Victims’ Rights*, *supra* note 1.

⁸ See generally U.S. Citizenship and Immigration Services, *Immigration for Law Enforcement, Healthcare Providers, and Other Front-Line Workers: Violence Against Women Act, T Nonimmigrant Status, U Nonimmigrant Status* (Apr. 10, 2024), https://www.dhs.gov/sites/default/files/2024-05/24_0410_uscis_ops-immigration-options-victims-of-crime-en-508c.pdf (discussing general requirements for U and T visa eligibility, including different cooperation requirements for certification and related exemptions).

⁹ *Ten Common Victims’ Rights*, *supra* note 1, at 1.

¹⁰ See generally *Survey of Select State Laws Governing Victims’ Right to Counsel* (Nat’l Crime Victim Law Inst., Portland, Or.), 2023, <https://ncvli.org/survey-of-select-state-laws-governing-crime-victims-right-to-counsel/> (providing an overview of crime victims’ right to counsel and collecting select state laws governing victims’ right to counsel).

¹¹ Victims and attorneys who are interested in learning more about asserting and seeking and enforcement of victims’ rights within the criminal legal system can do so by consulting NCVLI’s video and written resources on this topic. For example, *NCVLI QuickTool: Activating Rights and Issue Spotting*, 2023, <https://www.youtube.com/watch?v=JC5PTs1Inqo>, provides a general overview of common victims’ rights and an issue spotting exercise. Additional resources specifically designed for victims are available on the “Victims’ Resources” page of NCVLI’s website, <https://ncvli.org/victims-resources/>. NCVLI offers numerous resources for attorneys on the “Professional Resources” page of its website, <https://ncvli.org/professional-resources/>. Attorneys who [join](#) NCVLI’s membership alliance, the National Alliance of Victims’ Rights Attorneys & Advocates (NAVRA), have access to the Victims’ Rights Attorney Toolkit, which contains additional written and video resources designed to help attorneys gain knowledge and skills for building an effective practice representing victims in the criminal legal system.

¹² See, e.g., Cal. Const. art. I, § 28(e) (“As used in [California’s constitutional victims’ rights amendment], a ‘victim’ is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term ‘victim’ also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term ‘victim’ does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.”); Or. Const. art. I, § 42(6)(c) (defining “victim” for the purposes of the state’s constitutional victims’ rights amendment to mean “any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor”).

¹³ See, e.g., 18 U.S.C. § 3771(e)(2)(A) (defining, for the purposes of the federal Crime Victims’ Rights Act, the term “crime victim” to mean “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia”); Or. Rev. Stat. Ann. § 147.500(13) (defining “victim” for the purposes of the state’s statutory victims’ rights statutes to mean “any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of the crime alleged in the criminal proceeding and, in the case of a victim who is a minor, the legal guardian of the minor”).

¹⁴ See, e.g., 18 U.S.C. § 1593(c) (defining “victim,” for the purposes of mandatory restitution for human trafficking victims under the TVPA, as “the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian”).

¹⁵ See, e.g., Fed. R. Crim. P. 1(b)(12) (defining “victim” to mean a “crime victim” as defined by the Crime Victims’ Rights Act, 18 U.S.C. § 3771(e)(2)).

¹⁶ For example, in West Virginia, a “victim” for purposes of the right to be heard at sentencing “means a person who is a victim of a felony, or, where a death occurs during the commission of a felony or a misdemeanor, the fiduciary of a deceased victim’s estate or a member of a deceased victim’s immediate family, if known to the prosecutor.” W. Va. Code Ann. § 61-11A-2(a). A “victim” for purposes of the right to notification regarding an offender’s release, placement or escape “means a victim of a [murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, any sexual offense against a minor, or any violent crime against a person] who is alive and competent.” W. Va. Code Ann. § 61-11A-8(e), (i)(2).

¹⁷ For example, where the statutory definition of “victim” is more narrowly defined than the constitutional definition of “victim,” a court may invalidate the statutory definition on the ground that it is unconstitutional. See, e.g., *State ex rel. Thomas v. Klein*, 150 P.3d 778, 781–82 (Ariz. Ct. App. 2007) (holding that the definition of “criminal offense” as set forth in Arizona Revised Statute section 13-4401(6) was unconstitutional because the definition, amended after the constitutional Victims’ Bill of Rights was enacted, denied “victim” status to a category of people – “those who have had a misdemeanor committed against them that did not involve physical injury, the threat of physical injury, or a sexual offense” – who were not excluded by constitutional definition of “victim”).

¹⁸ See, e.g., Alaska Stat. Ann. § 12.55.185(19)(A) (defining “victim” to mean, *inter alia*, “a person against whom an offense has been perpetrated”); Ind. Code Ann. § 35-40-4-8 (defining “victim” to mean “a person that has suffered harm as a result of a crime that was perpetrated directly against the person” and not “a person that has been charged with a crime arising out of the same occurrence”).

¹⁹ See, e.g., Idaho Code Ann. § 19-5306(5)(a) (emphasis added) (defining “victim” as “an individual who suffers direct or threatened *physical, financial or emotional harm* as the result of the commission of a crime or juvenile offense”); N.J. Const. art. I, ¶ 22 (emphasis added) (defining “victim” as “a person who has suffered *physical or psychological injury* or has incurred *loss of or damage to personal or real property* as a result of a crime”); N.Y. Exec. Law § 621 (emphasis added) (defining “victim” as “a person who suffers *personal physical injury* as a direct result of a crime”); Mo. Rev. Stat. § 595.200(6) (emphasis added) (defining “victim” as “a natural person who suffers direct or threatened *physical, emotional or financial harm* as the result of the commission or attempted commission of a crime”).

²⁰ See, e.g., La. Stat. Ann. § 46:1842(15) (defining “victim” as “as a person against whom any of the following offenses has been committed [enumerating certain crimes, including homicide, sex offense, human trafficking, and domestic violence]; Tex. Code Crim. Proc. Ann. art. 56A.001(7) (“Victim” means a person who: (A) is the victim of the offense of: (i) sexual assault; (ii) kidnapping; (iii) aggravated robbery; (iv) trafficking of persons; or (v) injury to a child, elderly individual, or disabled individual; or (B) has suffered personal injury or death as a result of the criminal conduct of another.”).

²¹ For example, some definitions expressly require a “direct” connection between the specified harm and specified conduct (e.g., the “victim” is someone who was “directly harmed as a result of crime” or who “was harmed as a direct result of crime”). See, e.g., Md. Code Crim. P. § 11-104(a)(2) (defining “victim” as “a person who suffers actual or threatened physical, emotional, or financial harm as a direct result of a crime”); Mich. Comp. Laws Ann. § 18.351(k) (“‘Victim’ means a person who suffers a personal injury as a direct result of a crime.”); N.Y. Exec. Law § 621 (defining “victim” as “a person who suffers personal physical injury as a direct result of a crime”); N.D. Const. art. I, § 25(4) (“As used in this section, a “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.”); Vt. Stat. Ann. tit. 13, § 5301(4) (“‘Victim’ means a person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim.”). Other definitions state that the specified harm must only be a “result of” the specified conduct. See, e.g., Minn. Stat. Ann. § 611A.01(b) (emphases added) (“‘Victim’ means a natural person who incurs loss or harm *as a result of a crime*, including a good faith effort to prevent a crime, and for purposes of sections [Minn. Stat. Ann. § 611A.04 and 611A.045], also includes (1) a corporation that incurs loss or harm *as a result of a crime*, (2) a government entity that incurs loss or harm *as a result of a crime*, and (3) any other entity authorized to receive restitution under section 609.10 or 609.125.”); N.J. Const. art. I, ¶ 22 (emphasis added) (defining “victim” as “a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property *as a result of a crime*”). Some jurisdictions expressly incorporate a foreseeability component into their causal requirement by defining victim as someone who is “directly and proximately” harmed by criminal conduct/offense, where proximate harm refers to harm that is a reasonably foreseeable consequence of the conduct at issue. See, e.g., 18 U.S.C. § 3771(e)(2)(A) (emphasis added) (defining, for the purposes of the federal Crime Victims’ Rights Act, the term “crime victim” to mean “a person *directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia*”); Ky. Rev. Stat. Ann. § 421.500(1)(a) (emphasis added) (“As used in [the state’s victims’ rights laws] ‘victim’ means an individual *directly and proximately harmed* as a result of: 1. The commission of a crime classified as a felony; a misdemeanor involving threatened or actual physical injury, harassment, or restraint; a misdemeanor involving a child or incompetent person; or a misdemeanor involving a sexual offense or a trespass; or 2. Conduct which, if committed by an adult, would be classified as a felony or a misdemeanor described in subparagraph 1. of this paragraph.”); Nev. Const. art. I, § 8A (emphasis added) (“As used in this section, ‘victim’ means any person *directly and proximately harmed by the commission of a criminal offense* under any law of this State.”). Some courts interpret definitional language requiring that a victim’s harm be “the result of” criminal conduct/offense as also calling direct and proximate cause analysis. See, e.g., *State v. Lampien*, 223 P.3d 750, 757 (Idaho 2009) (stating that Idaho defines “victim” as an individual who suffers certain harms “as a result of” the commission of a crime and finding that the “as a result of” language requires a showing of direct and proximate cause, consistent with tort principles).

²² See, e.g., Cal. Const. art. I, § 28(e) (defining “victim” to include “a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act” and “the person’s spouse, parents, children, siblings, or guardian”); Minn. Stat. Ann. § 611A.01(b) (“The term ‘victim’ includes the family members, guardian, conservator, or custodian of a minor, incompetent, incapacitated, or deceased person.”); Or. Const. art. I, § 42(6)(c) (defining “victim” to mean “. . . in the case of a victim who is a minor, the legal guardian of the minor”); S.C. Code Ann. § 16-3-1510(1) (providing that the term “victim” includes “any individual’s spouse, parent, child, or the lawful representative of a victim who is: (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated”); Vt. Stat. Ann. tit. 13, § 5301(4) (“‘Victim’ means a person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim.”).

²³ See *State v. Allison*, 999 N.W.2d 835, 841 (Minn. 2024) (concluding that under Minn. Stat. Ann. § 611A.01(b), “a person whose minor child is harmed by a crime is not in a secondary class of victims who simply step into the shoes of the child victim for the limited purpose of exercising the duties they owe to the child,” but that, [i]nstead, the statute creates a singular class of victims that includes the direct victims of a crime and, if the direct victim is a minor, those family members of the minor who incur a personal loss or harm as a direct result of the crime”).

²⁴ See, e.g., 18 U.S.C.A. § 3771(e)(2)(B) (“In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights

under this chapter[.]”); Cal. Const. art. I, § 28(e) (defining “victim” to include “a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated”).

²⁵ See, e.g., Minn. Stat. Ann. § 611A.01(b) (“The term ‘victim’ does not include the person charged with or alleged to have committed the crime.”); S.C. Code Ann. § 16-3-1510(1) (providing that the term “[v]ictim” does not include any individual who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question”).

²⁶ Criminal courts routinely recognize that victims’ privacy rights support the nondisclosure of their names and other identifying details. See, e.g., *United States v. James*, 810 F.3d 674, 676 n.1 (9th Cir. 2016) (referring to the victim by her initials “to protect the victim’s privacy”); *United States v. Clark*, 335 Fed. App’x 181, 182–83 (3d Cir. 2009) (concluding that redaction of the names of child pornography victims and their family members from victim impact statements was consistent with the guarantee under Crime Victims’ Rights Act (CVRA) to be treated with respect for one’s dignity and privacy); *State v. Lehr*, 38 P.3d 1172, 1175 n.1 (Ariz. 2002) (identifying adult and child sexual assault victims by initials “to protect their privacy and that of their families”); *White v. State*, 632 S.W.3d 232, 236 n.3 (Tex. Ct. App. 2021) (referring to victims by their initials to protect their constitutional right to privacy (citing Tex. Const. art. I, § 30(a)). In addition to general privacy rights supporting anonymity, statutes authorize the use of pseudonyms for certain categories of victims in some jurisdictions in various aspects of a criminal case and/or records. See, e.g., Fla. Stat. Ann. § 92.56(3) (providing that the state may use a pseudonym instead of the victim’s name to designate the victim in certain criminal cases, including cases involving human trafficking and child abuse); Nev. Rev. Stat. Ann. § 200.3772 (establishing a procedure for substitution pseudonyms for the names of victims of certain sexual offense on files, records and reports).

²⁷ The victims’ rights implicated by investigative interviews include the rights to reasonable protection from the accused; to freedom from intimidation, harassment, and abuse in the criminal justice process; to privacy; to be treated with fairness, dignity, and respect; to advance notice of case-related proceedings or events that implicate a victim’s rights; to confer with the attorney for the government; to language access; and to restitution. *Crime Victims, Including Victims of Human Trafficking, Have the Right to Retained Counsel’s Presence and Representation During Investigative Interviews 2* (Nat’l Crime Victim Law Inst., Portland, Or.), 2024, <https://ncvli.org/victims-of-human-trafficking-like-all-crime-victims-have-the-right-to-retained-counsel-presence-and-representation-during-investigative-interviews-2024/>.

²⁸ See generally *id.* (discussing the victims’ rights and interests implicated by investigative interviews and detailing the right of victims to retained counsel’s presence and representation during such interviews).

²⁹ See generally *Interpreters During Court Proceedings: A Requirement for the Meaningful Exercise of Rights and Access to Justice for Victims in Need of Language Assistance* (Nat’l Crime Victim Law Inst., Portland, Or.), 2023, <https://ncvli.org/interpreters-during-court-proceedings-a-requirement-for-the-meaningful-exercise-of-rights-and-access-to-justice-for-victims-in-need-of-language-assistance-2024/> (discussing the legal and policy reasons why victims are entitled to interpretive services during criminal court proceedings).

³⁰ See *id.* at 1 n.13, 2 & nn.18–20 (detailing laws that require interpretive services for “victims” at certain points in the criminal legal system).

³¹ See *id.* at 3–4 (discussing how the meaningful exercise of the independent rights of “victims” in federal and state criminal court proceedings requires access to an interpreter throughout these proceedings).

³² For instance, some state laws expressly provide that a victim need not be named in a charging instrument to be entitled to restitution. See, e.g., Fla. Stat. Ann. § 775.0844(8) (mandating that a person convicted of aggravated white collar crime involving elderly victims pay restitution “to each victim of the crime, regardless of whether the victim is named in the information or indictment”); 730 Ill. Comp. Stat. Ann. 5/5-5-6(b) (providing that restitution is to be ordered for “actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant”); Mont. Code Ann. § 46-18-243(2)(a)(v) (defining “victim,” for the purposes of restitution, to include “any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain”). Other jurisdictions address this through court decisions. See, e.g., *United States v. Brock-Davis*, 504 F.3d 991, 999 (9th Cir. 2007) (stating “the fact that the [victim] was not mentioned in the indictment is immaterial” for purposes of restitution under the federal Mandatory Victims Restitution Act (citations omitted)); *People v. Walker*, 180 Cal. Rptr. 3d 700, 704 (Cal. Ct. App. 2014) (noting that “[w]hether these potential victims were specifically named in the charging document is irrelevant” to the issue of whether they were entitled to receive restitution).

³³ 18 U.S.C. § 1593; see 18 U.S.C. § 1953(c) (defining “victim” for the purposes of mandatory restitution under the TVPA).

³⁴ Brandy Wagstaff, *Securing Restitution for Victims of Human Trafficking*, 70 DOJ J. Fed. L. & Prac. 339, 351 (2022).

³⁵ See *id.* at 52 & n.61 (citing cases).

³⁶ Cf. *United States v. Batres*, 731 F. App'x 341, 343 (5th Cir. 2018) (affirming the district court's restitution order to three victims of conspiracy to commit sex trafficking of minors, where the victims were not identified in the pretrial investigation report).

³⁷ See *Ten Common Victims' Rights*, *supra* note 1, at 4 (discussing victims' right to confer).

³⁸ Notably, there are some jurisdictions that guard against victims losing their rights through a plea agreement through statute. See, e.g., Ariz. Rev. Stat. Ann. § 13-4402.01(A) ("If a criminal offense against a victim has been charged but the prosecution on the count or counts involving the victim has been or is being dismissed as the result of a plea agreement in which the defendant is pleading to or pled to other charges, the victim of the offenses involved in the dismissed counts, on request, may exercise all the applicable rights of a crime victim throughout the criminal justice process as though the count or counts involving the person had not been dismissed."); Utah Code Ann. § 77-38-2(9)(c) ("For purposes of the right to be present and heard at a public hearing as provided in Subsection 77-38-2(5)(h) [parole hearing or other hearing regarding discretionary release] and the right to notice as provided in Subsection 77-38-3(7)(a) [hearings provided for in Subsection 77-38-2(5)(h)], 'victim of a crime' includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty"). Case law also supports the conclusion that a victim's rights cannot be waived through a plea bargain. See, e.g., *Lafontant v. State*, 13 A.3d 56, 66 (Md. Ct. Spec. App. 2011) (finding that a plea agreement that does not expressly address restitution cannot impair the crime victim's statutory right to restitution); *People v. Brown*, 54 Cal. Rptr. 3d 887, 896 (Cal. Ct. App. 2007) (concluding that "[v]ictim restitution may not be bargained away by the People").

³⁹ See Wagstaff, 70 DOJ J. Fed. L. & Prac. at 353–55 (discussing the different ways that prosecutors can secure restitution for human trafficking victims through plea agreements).

⁴⁰ Courts routinely award restitution to non-testifying victims. See, e.g., *United States v. Mueffelman*, 400 F. Supp. 2d 368, 370, 379–380 (D. Mass. 2005) (awarding restitution, after a jury trial, to 326 "victims" of defendants' criminal scheme, including individuals who were not named in the indictment but who the court found met the definition of "victim" under the Mandatory Victims' Rights Act (MVRA), 18 U.S.C. § 3663A(a)(2)); *United States v. Lomas*, 392 Fed. App'x 122, 127–29 (4th Cir. 2010) (ordering defendant to pay restitution to all 993 victims of mail fraud scheme, even though only one victim was named in indictment, where others all met the statutory definition of "victim" under the Mandatory Victims' Rights Act (MVRA), 18 U.S.C. § 3663A(a)(2)).

⁴¹ See, e.g., 18 U.S.C. § 3771(d)(2) ("In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings."); Ky. Rev. Stat. Ann. § 421.500(1)(b) ("In a case in which the number of victims makes it impracticable to accord all victims those rights provided by [Ky. Rev. Stat. Ann.] 421.500 to 421.575, the court may fashion a reasonable procedure that does not unduly complicate or prolong the proceeding, to give effect to this section."); Minn. Stat. Ann. § 611A.01(b) ("In a case where the prosecutor finds that the number of family members makes it impracticable to accord all of the family members the rights described in sections [Minn. Stat. Ann. §] 611A.02 to 611A.0395, the prosecutor shall establish a reasonable procedure to give effect to those rights. The procedure may not limit the number of victim impact statements submitted to the court under section 611A.038.").

⁴² See 18 U.S.C. § 3663A(c)(3) (stating that restitution is not mandatory "if the court finds, from facts on the record, that – (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution by any victim is outweighed by the burden on the sentencing process").

⁴³ Cf. *State v. Hunt*, 927 N.W.2d 412, 415 (N.D. 2019) (finding that application of restitution statute to allow individuals other than statutory "victims" to recover restitution did not conflict with, and could be harmonized with victims' constitutional rights amendment, which contained no directive preventing the legislature from expanding statutory reach of restitution beyond the scope of constitutional provision, and where the constitutional provision's definition of "victim" did not conflict with legislature's expansion of restitution).

⁴⁴ See, e.g., Alaska Stat. Ann. § 12.55.045(a) (emphasis added) (authorizing courts to order restitution to "the victim or other person injured by the offense"); N.D. Cent. Code Ann. § 12.1-32-08(1) (emphasis added) ("The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any

other sentence the court may impose, shall order that the defendant make restitution to the victim or *other recipient* as determined by the court.”).

⁴⁵ See, e.g., 725 Ill. Comp. Stat. Ann. 120/5 (affording rights to witnesses of crime).

⁴⁶ See, e.g., *Beck v. Commonwealth*, 484 S.E.2d 898, 905 (Va. 1997) (finding that the court may consider victim impact evidence provided from persons other than those who fall within the legal definition of “victim”); *People v. Albert*, 523 N.W.2d 825, 826 (Mich. Ct. App. 1994) (finding that a sentencing court has broad discretion in the sources and types of information it considers when imposing a sentence and is not limited to considering information from individuals who meet the definition of “victim”). But see, e.g., *State v. Behrnes*, 706 So. 2d 179, 182–83 (La. Ct. App. 1997) (concluding that the trial court committed reversible error by allowing a rape victim’s stepsisters to give victim statements, where “this class of relatives is not enumerated in the statute” and defendant was not permitted to rebut the step-sisters’ statements).