

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	Crim. No.: 14-141 (CRC)
	:	
AHMED SALIM FARAJ ABU KHATALLAH,	:	
	:	
Defendant.	:	

**GOVERNMENT’S OPPOSITON DEFENDANT’S MOTION TO BAR
VICTIMS’ FAMILY MEMBERS FROM SPEAKING AT SENTENCING**

The United States of America opposes defendant’s motion to bar members of Tyrone Woods’s and of Glen Doherty’s families from addressing the Court at sentencing in this matter.

The Crime Victims’ Rights Act (“CVRA”) provides that a “crime victim” has the “right to be reasonably heard at any public proceeding in the district court involving . . . sentencing” 18 U.S.C. § 3771(a)(4). “The term ‘crime victim’ means a person directly and *proximately harmed* as a result of the commission of a Federal offense” 18 U.S.C. § 3771(e)(2)(A) (emphasis added).

“The requirement that the victim be ‘directly and proximately harmed’ encompasses the traditional ‘but for’ and proximate cause analyses.” *United States v. Giraldo-Serna*, 118 F. Supp. 3d 377, 383 (D.D.C. 2015); *Burton v. United States*, 668 F. Supp. 2d 86, 108 (D.D.C. 2009) (“Proximate cause has been defined as that cause which, in natural and continual sequence, unbroken by any efficient intervening cause, produces the injury”) (citations and quotation marks omitted); *see also Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 340, 162 N.E. 99 (1928) (Cardoza, J.). Clearly, Messrs Woods and Doherty were proximately harmed by the defendant’s commission

of the federal offenses for which he was convicted in this case. *Cf. Illinois v. Carron*, 699 N.E.2d 241, 244 (Ill. App. Ct. 1998) (holding that acquittal of felony homicide charges did not preclude finding that the defendant was the proximate cause of automobile deaths for which the court permitted VIS).

Indeed, *but for* the attack on the U.S. Mission, Glen Doherty, who traveled to Benghazi from Tripoli in response to the attack at the Mission, would not even have been in Benghazi that night. *But for* the Attack on the Mission, Tyrone Woods, who was at the Mission and shot at during the attack, would not have been atop a building at the Annex, when it was attacked. *But for* the attack on the Mission, Messrs. Doherty and Woods would not have been killed by the mortar attack on the Annex. They were clearly directly and proximately harmed as a result of the Attack on the Mission.

Messrs. Doherty and Woods both responded to the attack on the Mission and heroically attempted to intervene and stop that heinous act. Their actions were, therefore, akin to those of other first responders who have been deemed to be victims. *See, e.g., United States v. Poole*, 241 F. App'x 153, 154-55 (4th Cir. 2007) (affirming district court's admission of VIS from arresting police officers); *United States v. Passmore*, No. 97-4781, 1998 WL 746866, at *1, *2 (4th Cir. Oct. 26, 1998) (*per curiam*) (under U.S.S.G. analysis finding that defendant's criminal conduct was the proximate cause of responding officer's accidental injury because harm to officer was a reasonably foreseeable result).¹

¹ “Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant.” *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993). Accordingly, even if the Court were to determine that Messrs. Woods and Doherty were not technically victims under the CVRA, their family members should still be allowed to address the Court at sentencing. *United States v. Leach*, 206 F. App'x 432, 434-35 (6th Cir. 2006) (holding that trial courts have considerable discretion to permit individuals to introduce evidence relating to “the nature and circumstances of the offense” without qualifying for victim status under CVRA); *cf. United States v. Duffy*, 315 F. App'x 216, 218 (11th Cir. 2009) (permitting VIS relating to a burglary at sentencing for a firearm conviction); *Rock v. Virginia*, 610 S.E.2d 314, 317-18 (Va. Ct. App. 2005) (allowing decedent's family members to provide VIS despite acquittal of murder charge).

Defendant's argument to the contrary is meritless. The defendant relies on this Court's ruling that the "deaths that ensued [at the Annex] are not relevant to any of Abu Khatallah's offenses of conviction." Memorandum Opinion dated June 20, 2018 (Dkt. # 528) at p.11, n.7. However, the Court's ruling was in the context of "relevant conduct" as defined in the Guidelines – not whether those who were killed or injured at the Annex are "victims" under the CVRA. Similarly, the case relied upon by the defendant is inapposite. Unlike here, in that case:

[It was] not alleged by the grand jury or the government, or acknowledged by the defendant, that he furthered the charged conspiracy through the use of either force or violence in the manner suggested by the movants. It follows that there is no basis for the Court to find that either force or violence was employed by members of the conspiracy in furtherance of the charged offense. Thus, the death of Henríquez can be neither the direct nor the proximate harm of the charged offense in this case.

Giraldo-Serna, 118 F. Supp. 3d at 384

In sum, pursuant to the CVRA and traditional sentencing norms, members of Woods's and Doherty's families should be afforded the opportunity to address the Court at sentencing in this matter.

Respectfully submitted,

JESSIE K. LIU
UNITED STATES ATTORNEY
D.C. Bar Number 472845

_____/s/_____
Michael C. DiLorenzo
MD Bar No. 931214 0189
Julianne Himelstein
D.C. Bar No. 417136
John Crabb Jr.
N.Y. Bar No. 2367670
Assistant United States Attorneys
Opher Shweiki
D.C. Bar No. 458776
Special Assistant United States Attorney