

**JUSTICE FOR ALL: A LEGAL COMPARISON OF THE ROLE OF  
CRIME VICTIMS IN THE UNITED STATES, ARIZONA, AND SPAIN**

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## I. INTRODUCTION

Most crimes would not exist if there was not a person who was victimized in the process of the crime.<sup>1</sup> As Judge Stephanos Bibas observed, “[c]rime has a human face, and that face deserves standing and a say in the matter.”<sup>2</sup> Adversarial criminal justice systems traditionally do not have a special role for the victim to fill.<sup>3</sup> Conversely, inquisitorial systems traditionally allow victims to participate more actively in the criminal justice process.<sup>4</sup> Adversarial systems are generally found in countries that have a common law legal system.<sup>5</sup> These countries include the United States and the United Kingdom.<sup>6</sup> Inquisitorial systems are typically found in countries that also have a civil law legal system.<sup>7</sup> Civil law legal systems are in various countries around the world, including France, Spain, and Mexico.<sup>8</sup> This Note will first provide an overview of how the systems operate to provide legal background. Although there are several differences between these two systems, this Note focuses specifically on the differences in the roles of victims.<sup>9</sup>

The victims’ rights movement in the United States began 30 years ago.<sup>10</sup> At that time, victims had few legal rights.<sup>11</sup> Today, every state within the United States and the District of Columbia have implemented some form of victims’ rights.<sup>12</sup> These rights typically include the right to safety, the right to provide impact statements, and the right to information regarding the case.<sup>13</sup> However, this

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<sup>1</sup> See 28 C.F.R. § 94.102 (“Crime victim or victim of crime means a person who has suffered physical, sexual, financial, or emotional harm as a result of the commission of a crime.”). There are so-called “victimless crimes,” such as drug possession. John Devendorf, *What Are Some Examples of Victimless Crimes?*, LAWINFO (May 12, 2021), <https://www.lawinfo.com/resources/criminal-defense/what-are-some-examples-of-victimless-crimes.html>.

<sup>2</sup> STEPHANOS BIBAS, *THE MACHINERY OF CRIMINAL JUSTICE* 85 (2012) (arguing in favor of more active victim participation).

<sup>3</sup> *Adversarial and Inquisitorial Systems: A Brief Overview of Key Features*, LAW COMMISSION TE AKA MATUA O TE TURE, [https://moodle.pmaclism.catholic.edu.au/pluginfile.php/18970/mod\\_resource/content/1/Adversarial%20and%20inquisitorial%20system%20outline.pdf](https://moodle.pmaclism.catholic.edu.au/pluginfile.php/18970/mod_resource/content/1/Adversarial%20and%20inquisitorial%20system%20outline.pdf) (last visited Oct. 15, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> *International Legal Systems – An Introduction*, U.S. DEPT. JUST. NAT’L SEC. DIV., <https://www.justice.gov/archives/nsd-ovt/page/file/934636/download> (last visited Feb. 24, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Victims’ Rights Movement: Factors & Emergence*, STUDY.COM, <https://study.com/academy/lesson/victims-rights-movement-factors-emergence.html> (last visited Apr. 13, 2022).

<sup>11</sup> *Id.*

<sup>12</sup> *About Victims’ Rights*, VICTIM L., <https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp> (last visited Feb. 9, 2022) (whether this was through statute, constitutional amendment, or case law).

<sup>13</sup> *International Legal Systems – An Introduction*, *supra* note 5.

discussion is far from over, with victims' rights making headlines across the nation.<sup>14</sup> One of the most famous cases of modern times is that of Courtney Wild, one of Jeffrey Epstein's accusers.<sup>15</sup> Jeffrey Epstein was a wealthy hedge fund manager when he was accused of sex trafficking.<sup>16</sup> Courtney Wild's current claims involve violations of her victim's rights with regard to a plea agreement that was entered before Jeffrey Epstein died in 2019.<sup>17</sup>

In Spain, due to the nature of the civil law inquisitorial criminal justice system, victims have typically had a more active role in criminal proceedings.<sup>18</sup> This includes victims actively participating by filing the initial criminal charges, for example.<sup>19</sup> At trial, the victim sits next to the public prosecutor, can be represented by their own attorney, and questions witnesses.<sup>20</sup> Even with this stark difference in the role victims play in the criminal justice systems, the victims' rights movement continues making headlines in Spain with the current push to improve the substantive laws penalizing sexual assaults.<sup>21</sup>

With these arguments in mind, a "victim" has multiple definitions, but the term is typically used to refer "to a person who has been harmed by a crime, accident, or other adverse circumstances."<sup>22</sup> Thus, crime rates are important to determine how many victims the United States and Spain manage in their criminal justice system each year. Another important consideration is the total population of each jurisdiction. As of 2022, the population of the United States is approximately 334 million people.<sup>23</sup> Specifically, in Arizona, the population is approximately 7.64 million people.<sup>24</sup> Finally, the population in Spain is approximately 46 million people.<sup>25</sup>

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<sup>14</sup> See *Victims' Rights News*, LEWIS & CLARK, [https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/news/other/](https://law.lclark.edu/centers/national_crime_victim_law_institute/news/other/) (last visited Feb. 9, 2022).

<sup>15</sup> Josh Gerstein, *Jeffrey Epstein accuser asks Supreme Court to uphold victims' rights*, POLITICO (Aug. 31, 2021), <https://www.politico.com/news/2021/08/31/jeffrey-epstein-courtney-wild-supreme-court-508157>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *International Legal Systems – An introduction*, *supra* note 5.

<sup>19</sup> *Id.*

<sup>20</sup> Daniel E. Murray, *A Survey of Criminal Procedure in Spain and Some Comparisons with Criminal Procedure in the United States (Part II)*, 40 N.D. L. REV. 131, 138 (1964).

<sup>21</sup> Belén Carreño & Nathan Allen, *Spain says non-consensual sex is rape, toughens sexual violence laws*, REUTERS (July 6, 2021) <https://www.reuters.com/world/europe/spain-says-non-consensual-sex-is-rape-toughens-sexual-violence-laws-2021-07-06/>.

<sup>22</sup> *Victim*, VOCABULARY.COM, <https://www.vocabulary.com/dictionary/victim> (last visited Feb. 25, 2022).

<sup>23</sup> *United States Population (Live)*, WORLDOMETER, <https://www.worldometers.info/world-population/us-population/> (last visited Apr. 12, 2022).

<sup>24</sup> *Arizona Population 2022*, WORLDOMETER, <https://worldpopulationreview.com/states/arizona-population> (last visited Apr. 12, 2022).

<sup>25</sup> *Spain Population (Live)*, WORLDOMETER, <https://www.worldometers.info/world-population/spain-population/> (last visited Apr. 12, 2022).

The computation of crime indices is complicated, but it serves as a good estimate of the overall level of crime in a specific country.<sup>26</sup> They can vary greatly depending on a variety of factors, including trends in reporting and poverty.<sup>27</sup> The “crime rate is calculated by dividing the total number of reported crimes of any kind by the total population, then multiplying the result by 100,000.”<sup>28</sup> As of 2022, the United States was ranked the 56<sup>th</sup> most dangerous country in the world with a crime index of 47.81.<sup>29</sup> In contrast, Spain was ranked 103<sup>rd</sup> with a crime index of 33.32.<sup>30</sup> Specifically, violent crime rates are significantly lower in Spain, with a violent crime index of 27.58.<sup>31</sup> The United States has a violent crime index of 48.89, which is approximately 77% higher than Spain.<sup>32</sup> Tourists in Spain can expect more petty crimes, such as pickpocketing and fraudulent schemes.<sup>33</sup> The most serious crimes a tourist can expect are terrorist attacks.<sup>34</sup> In the United States, however, tourists tend to feel less secure due to mass shootings.<sup>35</sup> Such events are uncommon in tourist areas.<sup>36</sup> The United States has an overall safety index of 68, while Spain has an overall safety index of 83.<sup>37</sup>

Another important aspect to consider is the overall number of crimes and the number of cases that flow through the criminal justice system each year in the United States, Arizona, and Spain. In 2019, the United States estimated a total of 1,203,808 violent crimes occurred across the nation.<sup>38</sup> Furthermore, in 2019, an

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<sup>26</sup> *About Crime Indices at This Website*, NUMBEO, [https://www.numbeo.com/crime/indices\\_explained.jsp](https://www.numbeo.com/crime/indices_explained.jsp) (last visited Apr. 8, 2022).

<sup>27</sup> *Crime Rate by Country 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/crime-rate-by-country> (last visited Apr. 8, 2022).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Victim*, VOCABULARY.COM, <https://www.vocabulary.com/dictionary/victim> (last visited Feb. 25, 2022); *see also Crime Rate by Country*, *supra* note 27.

<sup>31</sup> *Crime Comparison Between United States and Spain*, NUMBEO, [https://www.numbeo.com/crime/compare\\_countries\\_result.jsp?country1=United+States&country2=Spain](https://www.numbeo.com/crime/compare_countries_result.jsp?country1=United+States&country2=Spain) (last visited Feb. 25, 2022).

<sup>32</sup> *Id.*

<sup>33</sup> *How Safe Is Spain for Travel?*, TRAVEL SAFE, <https://www.travelsafe-abroad.com/spain> (last visited Feb. 25, 2022) (providing for high risk of pickpocketing and schemes).

<sup>34</sup> *Id.*

<sup>35</sup> *How Safe Is United States for Travel?*, TRAVEL SAFE, <https://www.travelsafe-abroad.com/united-states/> (last visited Feb. 25, 2022).

<sup>36</sup> *Id.*

<sup>37</sup> *How Safe is Spain for Travel?*, *supra* note 33; *How Safe is United States for Travel?*, *supra* note 35.

<sup>38</sup> *2019 Crime in the United States: Violent Crime*, FBI [hereinafter *Violent Crime*] <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/violent-crime> (last visited Apr. 12, 2022).

estimated 6,925,677 property crimes occurred within the United States.<sup>39</sup> This is a grand total of 8,129,485 property and violent crimes in the United States.<sup>40</sup> Of these, approximately 27,118 violent crimes and 166,235 property crimes were reported in Arizona.<sup>41</sup> This is a total of 193,353 violent and property crimes in Arizona.<sup>42</sup> In 2019, Spanish police were informed about a total of 2,199,475 criminal offenses.<sup>43</sup> Thus, Spain recorded approximately a quarter of the cases that the United States did in 2019.<sup>44</sup>

This Note explores the key differences in victims' rights between adversarial and inquisitorial systems. It then discusses different aspects that each system could improve upon, focusing specifically on victims' rights at the federal level in the United States, the state level in the state of Arizona, and the national level in Spain. Subsection II provides the bulk of the legal discussion, divided into three parts. Part A explores the overarching federal approach to victims' rights in the United States. It then discusses victims' rights specifically in the state of Arizona, which vary slightly. Part B explores victims' rights at the European Union level. It then focuses on victims' rights at the national level in Spain. Part C makes comparisons and draws conclusions between the systems described in Parts A and B by exploring current trajectories in the advancement of victims' rights. This final section shows that each system can draw from the other, with neither system being perfect. Subsection III provides the overall conclusion to this Note.

## II. LEGAL DISCUSSION

### **A. United States: The Adversarial Criminal Justice System in Action**

The United States has an adversarial criminal justice system.<sup>45</sup> This means that the system is set up to allow opposing parties to present their evidence to an

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<sup>39</sup> *2019 Crime in the United States: Property Crime*, FBI [hereinafter *Property Crime*] <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/property-crime> (last visited Apr. 12, 2022).

<sup>40</sup> *See Violent Crime*, *supra* note 38; *Property Crime*, *supra* note 39.

<sup>41</sup> *Crime in Arizona 2019*, AZDPS, [https://www.azdps.gov/sites/default/files/media/FINAL\\_Crime%20in%20Arizona%202019.pdf](https://www.azdps.gov/sites/default/files/media/FINAL_Crime%20in%20Arizona%202019.pdf) (last visited Apr. 12, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> *Portal Estadístico de Criminalidad*, GOBIERNO DE ESPAÑA MINISTERIO DEL INTERIOR, <https://estadisticasdecriminalidad.ses.mir.es/publico/portalestadistico/portal/datos.html?type=pcaxis&path=/Datos1/&file=pcaxis> (last visited Apr. 12, 2022) (searching for “Total Infracciones Penales” and “2019”).

<sup>44</sup> *Id.*; *Violent Crime*, *supra* note 38; *Property Crime*, *supra* note 39. These numbers are not exact comparisons because the law in each jurisdiction differs as to what constitutes a criminal infraction.

<sup>45</sup> Gary Goodpaster, *On the Theory of American Adversary Criminal Trial*, 78 J. CRIM. L. & CRIMINOLOGY 118, 119 (1987).

impartial trier of fact.<sup>46</sup> The United States' adversarial system consists of two opposing parties: the prosecution and the defense.<sup>47</sup> A trier of fact refers to either the judge or jury who will evaluate the validity of the facts presented at trial and render a verdict.<sup>48</sup>

The Sixth Amendment to the United States Constitution, among others, outlines the rights afforded to a criminal defendant.<sup>49</sup> This includes the right to an impartial jury, the right to a public trial, and the right to an attorney.<sup>50</sup> Thus, the criminal justice system in the United States is designed to ensure protection of the defendant's constitutional rights by implementing numerous safeguards.<sup>51</sup> The most commonly known safeguard is that a criminal defendant is presumed innocent until proven guilty by the highest standard: beyond a reasonable doubt.<sup>52</sup> Victims, however, do not have any enumerated federal constitutional rights with regard to criminal proceedings.<sup>53</sup>

In a traditional adversarial system, the role of the victim is somewhat analogous to the role of a witness.<sup>54</sup> Victims are not parties to the case; in other words, they are not able to file motions or actively participate in hearings.<sup>55</sup> Instead, in the United States' modern adversarial system, victims have been afforded certain rights throughout the criminal justice process, which has expanded their traditional role as a witness.<sup>56</sup> For example, these rights at the federal level include the right to be present at any public proceeding, the right to confer with the prosecution, and the right to notification regarding the case proceedings.<sup>57</sup> Still, however, these rights do not allow the victim to actively participate in hearings or to file motions.<sup>58</sup>

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<sup>46</sup> Monroe H. Freedman, *Our Constitutionalized Adversary System*, 1 CHAP. L. REV. 57, 57 (1998).

<sup>47</sup> *Adversary procedure*, BRITANNICA, <https://www.britannica.com/topic/adversary-procedure> (last visited Oct. 14, 2021).

<sup>48</sup> *Trier of fact*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/trier\\_of\\_fact](https://www.law.cornell.edu/wex/trier_of_fact) (last visited Nov. 20, 2021).

<sup>49</sup> U.S. CONST. amend. VI; *See also* U.S. CONST. amends. IV, V, VIII, XIV.

<sup>50</sup> U.S. CONST. amend. VI.

<sup>51</sup> *The American System of Criminal Justice*, LAW OFFICES OF STIMMEL, STIMMEL & ROESER, <https://www.stimmel-law.com/en/articles/american-system-criminal-justice> (last visited Apr. 8, 2022).

<sup>52</sup> *Id.*

<sup>53</sup> *See generally* U.S. CONST.

<sup>54</sup> *Adversarial and Inquisitorial Systems*, *supra* note 3.

<sup>55</sup> *Criminal and Civil Law*, VICTIM CONNECT RES. CTR., <https://victimconnect.org/learn/criminal-and-civil-law/> (last visited Oct. 15, 2021); *see also Parties*, THE FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/Parties> (last visited Dec. 17, 2021).

<sup>56</sup> *See* 18 U.S.C. § 3771.

<sup>57</sup> *Id.*

<sup>58</sup> *Criminal and Civil Law*, *supra* note 55. *See also Parties*, *supra* note 55.

## 1. The Federal Criminal Justice Process for the Defendant and the Victim

A criminal investigation can begin when an officer observes suspicious activity or when a third party reports a crime to law enforcement officials.<sup>59</sup> The third party can be a witness to the crime or the victim themselves.<sup>60</sup> There are multiple ways for a victim to report a crime; the most common known method is by calling the United States' emergency system number, 911.<sup>61</sup>

In federal courts, criminal charges can be brought through an indictment, an information, or a citation.<sup>62</sup> An indictment is brought by a grand jury, an information is filed by the prosecution, and a citation is usually filed by the police.<sup>63</sup> If the crime is a victim crime, the victim has the right to be notified about the progress of the criminal investigation, the arrest of the criminal defendant, and when charges are filed against the defendant.<sup>64</sup>

If the defendant is arrested after the charges have been filed, the defendant will first appear in front of a judge for an "Initial Appearance."<sup>65</sup> During the hearing, the defendant will be notified about their rights and the charges they are facing.<sup>66</sup> The judge will also determine whether release is appropriate according to the Federal Rules of Criminal Procedure by determining if the defendant is a danger to the community or a flight risk.<sup>67</sup> The victim, when the crime is a victim crime, is notified of the initial appearance and can choose to be present.<sup>68</sup> Under Rule 60 of the Federal Rules of Criminal Procedure, the victim can also address the court about any decision or information regarding the defendant's release.<sup>69</sup>

The next step in the process is usually an arraignment, during which the defendant is once again read the indictment and the judge reconsiders the conditions of release.<sup>70</sup> At the arraignment, the defendant will be asked how they would like to

<sup>59</sup> Stacy Barrett, *How Does a Criminal Case Go Through the Justice System?*, ALLLAW, <https://www.alllaw.com/articles/nolo/criminal/process.html> (last visited Apr. 10, 2022).

<sup>60</sup> *Id.*

<sup>61</sup> *Reporting Crime*, USA.GOV, <https://www.usa.gov/report-crime> (last visited Apr. 10, 2022).

<sup>62</sup> *How Courts Work*, AM. BAR ASS'N (Sept. 9, 2019), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/bringingcharge/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/bringingcharge/).

<sup>63</sup> *Id.*

<sup>64</sup> *Understanding Your Rights and the Federal Court System*, JUSTICE.GOV, <https://www.justice.gov/usao-mdal/victim-and-witness-assistance-program/rights> (last visited Apr. 10, 2022).

<sup>65</sup> *What Happens in a Federal Criminal Case*, COFER LUSTER L. FIRM (Dec. 28, 2020), <https://coferluster.com/what-happens-in-a-federal-criminal-case/>.

<sup>66</sup> FED. R. CRIM. P. 5(d) (using female pronouns as a matter of convenience, although both men and women can be defendants).

<sup>67</sup> *Id.* at Rule 5(d)(3); *Understanding Your Rights and The Federal Court System*, *supra* note 64.

<sup>68</sup> *Understanding Your Rights and The Federal Court System*, *supra* note 64.

<sup>69</sup> FED. R. CRIM. P. 60(a)(3).

<sup>70</sup> *Understanding Your Rights and The Federal Court System*, *supra* note 64.

plead to the charges—either “guilty” or “not guilty.”<sup>71</sup> Once again, the victim will be notified about the hearing, can choose to be present, and can address the court when the judge considers the defendant’s release conditions.<sup>72</sup>

If the defendant pleads not guilty, a variety of pre-trial hearings come next, such as pretrial conferences, where different topics are discussed.<sup>73</sup> As with the previous hearings, the victim has the right to be notified and present at the pretrial conferences.<sup>74</sup> During this time, plea negotiations typically begin between the prosecution and the defense.<sup>75</sup> Plea negotiations play an important role in the United States’ criminal justice system.<sup>76</sup> Plea agreements save a lot of time and costs for the prosecution, the defense, and the court.<sup>77</sup> Also, plea agreements typically offer the defendant a lesser sentence than they would receive if the case went to trial.<sup>78</sup> This is so that there is an incentive for the defendant to admit wrongdoing and enter into a plea agreement with the prosecution.<sup>79</sup>

In 1982, Congress passed what is commonly referred to as the Crime Victims’ Rights Act (CVRA).<sup>80</sup> Under the CVRA, during plea negotiations, the victim has the right to be informed about the plea agreement in a timely manner.<sup>81</sup> If a plea agreement is entered, there would be no trial, and the victim has the right to address the court when the plea agreement is entered.<sup>82</sup> Courts are not bound by the terms of the plea agreement and can reject them.<sup>83</sup> Before victims were provided with the right to be informed about the plea agreement, typically plea agreements are not known to the public until they are presented to the court for approval.<sup>84</sup>

If the parties do not reach an agreement, however, then the case proceeds to trial.<sup>85</sup> At the trial, a party may request, or the court may instruct, witnesses to be excluded from the courtroom so that they cannot hear the testimony of other

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<sup>71</sup> FED. R. CRIM. P. 10(a)(3).

<sup>72</sup> *Id.* at Rule 60(a)(3).

<sup>73</sup> *Id.* at Rule 17.1.

<sup>74</sup> *Id.* at Rule 60(a)(1)–(2).

<sup>75</sup> Joseph Abrams, *The Art of the Federal Plea Bargain*, JOSEPH ABRAMS LAW (Apr. 1, 2021), <https://www.josephabramslaw.com/the-art-of-the-federal-plea-bargain-what-you-need-to-know/>.

<sup>76</sup> *How Courts Work: Steps in a Trial*, AM. BAR ASS’N (Nov. 28, 2021), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/pleabargaining/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/pleabargaining/).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> CONG. RSCH. SERV., *Crime Victims’ Rights Act: A Summary and Legal Analysis of 18 U.S.C. § 3771*, RL33679, 48 <https://sgp.fas.org/crs/misc/RL33679.pdf> (last updated June 8, 2021).

<sup>81</sup> 18 U.S.C. § 3771(a)(9).

<sup>82</sup> *Id.*; *Plea Bargaining*, JUSTICE.GOV, <https://www.justice.gov/usao/justice-101/pleabargaining> (last visited Nov. 20, 2021).

<sup>83</sup> *How Courts Work: Steps in a Trial*, *supra* note 76.

<sup>84</sup> *Id.*

<sup>85</sup> *A Federal Criminal Case Timeline*, OFF. FED. PUB. DEF. – E.D. VA., <https://vae.fd.org/sites/vae.fd.org/files/FedCrimTimeline.pdf> (last visited Nov. 20, 2021).



witnesses.<sup>86</sup> Nevertheless, victims can only be excluded if the judge finds, by clear and convincing evidence, that the victim's testimony will be influenced if the victim is present while other witnesses are testifying.<sup>87</sup> If the victim is not excluded from trial, then the victim can be present throughout the duration of trial.<sup>88</sup>

The trier of fact can either be a judge or a jury.<sup>89</sup> A defendant is constitutionally entitled to a jury trial,<sup>90</sup> but may waive this right in writing. However, the prosecutor and judge must also agree to waive the jury trial.<sup>91</sup> If this right is not waived, then a jury will be impaneled because the defendant would be exercising her constitutional right to a trial by jury.<sup>92</sup> Most jury panels will consist of 12 jurors.<sup>93</sup> The process to impanel the jury can be lengthy and complicated.<sup>94</sup> However, this process does not include the victim.<sup>95</sup> The jury, or the judge if a jury trial has been waived, will listen to all of the evidence and determine if the defendant is guilty or not guilty.<sup>96</sup> The burden of proving the defendant guilty, beyond a reasonable doubt, is placed on the prosecution.<sup>97</sup>

If the defendant is found guilty at trial, or pleads guilty at any of the hearings, the court will schedule a sentencing hearing.<sup>98</sup> At the sentencing hearing, the victim has the right to be heard in open court.<sup>99</sup> Victims can make an oral statement or a written statement, or both, through a Victim Impact Statement.<sup>100</sup> These statements can be combined and presented to the judge however the victim would like.<sup>101</sup> These statements allow the victim to describe anything and everything they want the judge to know about the case.<sup>102</sup> This includes describing

<sup>86</sup> FED. R. EVID. 615 (excluding all witnesses except for four enumerated exceptions).

<sup>87</sup> FED. R. CRIM. P. 60(a)(2); 18 U.S.C. § 3771(a)(3).

<sup>88</sup> FED. R. CRIM. P. 60(a)(2); 18 U.S.C. § 3771(a)(3).

<sup>89</sup> *Trier of fact*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/trier\\_of\\_fact](https://www.law.cornell.edu/wex/trier_of_fact) (last visited Nov. 20, 2021).

<sup>90</sup> U.S. CONST. amend. VI.

<sup>91</sup> FED. R. CRIM. P. 23(a).

<sup>92</sup> U.S. CONST. amend. VI.

<sup>93</sup> FED. R. CRIM. P. 23(b)(1) (listing exceptions to this rule in 23(b)(2)–(3)).

<sup>94</sup> *How Courts Work*, AM. BAR ASS'N (Sept. 9, 2019), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/jury\\_select/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jury_select/).

<sup>95</sup> *See Id.*

<sup>96</sup> *Overview of the Federal Criminal Justice System*, OFF. VICTIMS CRIME ARCHIVE, [https://www.ncjrs.gov/ovc\\_archives/reports/fraud/rrr/ofcjs.htm](https://www.ncjrs.gov/ovc_archives/reports/fraud/rrr/ofcjs.htm) (last visited Nov. 21, 2021).

<sup>97</sup> *Criminal Cases*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases> (last visited Nov. 21, 2021).

<sup>98</sup> Susan Williams, *Federal Sentencing Hearings: What to Expect*, SUSAN E. WILLIAMS (May 14, 2018), <https://www.swilliams-law.net/blog/federal-sentencing-hearings-what-to-expect>.

<sup>99</sup> 18 U.S.C. § 3771(a)(4) (adding that the victim has the right to be heard “at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.”).

<sup>100</sup> *Victim Impact Statements*, JUSTICE.GOV, <https://www.justice.gov/usao-ak/victim-impact-statements> (last visited Nov. 20, 2021).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

the emotional, physical, and financial impact the crime has had on the victim.<sup>103</sup> Judges consider the Victim Impact Statements from all victims, among other factors, in the case when determining what sentence to give the defendant.<sup>104</sup>

As part of a defendant's sentence, the judge can also order the defendant to pay the victim "restitution,"<sup>105</sup> which is defined as "full or partial compensation paid by a criminal defendant to a victim . . . ordered as part of a criminal sentence."<sup>106</sup> Restitution does not include losses for "pain and suffering."<sup>107</sup> A victim may be able to hire an attorney to recover losses for pain and suffering civilly or to enforce a criminal restitution order civilly.<sup>108</sup> Civil litigation, however, can be lengthy and costly to the victim who has already suffered a loss through no fault of their own.<sup>109</sup>

After the sentencing hearing, a criminal defendant can appeal their conviction or the sentence imposed by the court.<sup>110</sup> The defendant files this appeal in the Circuit Court of Appeals that corresponds with the district court's jurisdiction.<sup>111</sup> During these appeals, no new evidence is presented; instead, an appeal asks the appellate Circuit Court to correct errors of law within the lower trial court's record.<sup>112</sup> The other appellate choice that defendants have is to file for a writ of habeas corpus, in which the appellate court can consider evidence that is outside of the lower court's record.<sup>113</sup> If either of these types of appeals is unsuccessful, the defendant can then appeal to the Supreme Court of the United States.<sup>114</sup> This is the final step in the appeals process.<sup>115</sup> Victims have the right to be present and be notified about all of these types of appellate proceedings.<sup>116</sup>

Finally, as a last resort, a criminal defendant can petition the president for clemency.<sup>117</sup> Clemency occurs when the president of the United States either

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Victim Impact Statements*, *supra* note 100.

<sup>106</sup> *Restitution in Federal Criminal Cases: A Sketch*, CONG. RSCH. SERV., <https://sgp.fas.org/crs/misc/RS22708.pdf> (updated Oct. 15, 2019) (citing Black's Law Dictionary). *See also* 18 U.S.C. §§ 3663, 3363A (granting the judge the power to order restitutions, depending on the nature of the crime).

<sup>107</sup> *Restitution*, JUSTICE.GOV, <https://www.justice.gov/usao-ak/restitution> (last visited Apr. 11, 2022).

<sup>108</sup> *Id.*

<sup>109</sup> California Business Journal Editorial Staff, *Lawsuit Basics: How Much Does It Cost To Sue Someone?*, CAL. BUS. J., <https://calbizjournal.com/lawsuit-basics-how-much-does-it-cost-to-sue-someone/> (last visited Apr. 11, 2022).

<sup>110</sup> *A Brief Description of the Federal Criminal Justice Process*, FBI, <https://www.fbi.gov/resources/victim-services/a-brief-description-of-the-federal-criminal-justice-process> (last visited Nov. 21, 2021).

<sup>111</sup> *Id.*

<sup>112</sup> Paul Wallin, *Blog*, WALLIN & KLARICH (Mar. 6, 2010), <https://www.wklaw.com/what-is-the-difference-between-an-appeal-and-a-writ-of-habeas-corpus/>.

<sup>113</sup> *Id.*

<sup>114</sup> *A Brief Description of the Federal Criminal Justice Process*, *supra* note 110.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

reduces the defendant's sentence or grants the defendant a pardon.<sup>118</sup> A presidential pardon is a symbol of forgiveness for a crime, but it does not expunge the defendant's record or mean that the criminal defendant is innocent.<sup>119</sup> Both of these options are very rare occurrences.<sup>120</sup> However, if this relief is sought, the victim does not have the right to be present during any meetings regarding the petition.<sup>121</sup> The victim also does not have the right to meet the president.<sup>122</sup> Instead, the victim can write a letter to the Department of Justice to provide input on the defendant's application for clemency.<sup>123</sup>

If the defendant is sentenced to a prison term, they are then referred to as an "inmate."<sup>124</sup> At this stage, the victim can request to be notified about certain aspects of the inmate's sentence.<sup>125</sup> This includes the right to notification regarding the inmate's projected release date.<sup>126</sup> The United States Bureau of Prisons would then notify the victim if the "inmate dies, escapes, is furloughed . . . , is transferred, or is paroled."<sup>127</sup> However, Congress has since repealed the parole laws.<sup>128</sup> Therefore, new offenders are not eligible for parole; only inmates who have committed crimes before November 1987 are eligible.<sup>129</sup>

While the U.S. Constitution enumerates many rights and protections for criminal defendants, it makes no mention of victims; instead, Congress creates these rights through legislation.<sup>130</sup> Although federal victims' rights are codified in the Crime Victims' Rights Act (CVRA), the statute is not without limitations.<sup>131</sup> One limitation is that "[i]n no case shall a failure to afford a right under [the CVRA] provide grounds for a new trial."<sup>132</sup> The reason for this limitation is based on constitutional provisions such as double jeopardy, which would bar a new trial regardless of whether victims' rights were violated.<sup>133</sup>

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<sup>118</sup> *Clemency*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/facts-and-research/clemency> (last visited Nov. 21, 2021).

<sup>119</sup> *Pardons*, NOLO, <https://www.nolo.com/legal-encyclopedia/pardons.html> (last visited Dec. 17, 2021).

<sup>120</sup> *Clemency*, *supra* note 118 (displaying chart that indicates only 3 federal clemencies for humanitarian reasons since 1977); *See also Clemency Statistics*, JUSTICE.GOV, <https://www.justice.gov/pardon/clemency-statistics> (last visited Nov. 21, 2021) (providing charts of petitions, pardons, commutations, and denials for most presidents).

<sup>121</sup> *A Brief Description of the Federal Criminal Justice Process*, *supra* note 110.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Marcus J. Berghahn, *Frequently Asked Questions Upon Conviction In Federal Court*, HURLEY BURISH, S.C. ATT'YS, <https://hurleyburish.com/frequently-asked-questions-upon-conviction-in-federal-court/> (last visited Dec. 18, 2021).

<sup>125</sup> *Overview of the Federal Criminal Justice System*, OFF. VICTIMS CRIME ARCHIVE, [https://www.ncjrs.gov/ovc\\_archives/reports/fraud/rrr/ofcjs.htm](https://www.ncjrs.gov/ovc_archives/reports/fraud/rrr/ofcjs.htm) (last visited Nov. 21, 2021).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *A Brief Description of the Federal Criminal Justice Process*, *supra* note 110.

<sup>129</sup> *Id.*

<sup>130</sup> CONG. RSCH. SERV., *supra* note 80.

<sup>131</sup> 18 U.S.C. § 3771(d); *See also* FED. R. CRIM. P. 60(b).

<sup>132</sup> 18 U.S.C. § 3771(d)(5).

<sup>133</sup> CONG. RSCH. SERV., *supra* note 80.

Proponents for this limitation argue, among other things, that if a new trial were ordered it would simply be another chance for the criminal defendant to be acquitted.<sup>134</sup> However, a victim may make a motion under the CVRA “to re-open a plea or sentence”<sup>135</sup> if the victim asserted the right to be heard and was denied such right; the victim filed the appeal within ten days; and the defendant did not plead “to the highest offense charged.”<sup>136</sup> Nonetheless, the CVRA specifies that the victim has no cause of action against the federal government should the federal court or prosecutor fail to uphold or enforce that victim’s enumerated rights in the CVRA.<sup>137</sup>

## 2. The Criminal Justice Process for the Defendant and the Victim in the State of Arizona

Each state in the United States codifies its own criminal procedure rules, which often parallel those at the federal level.<sup>138</sup> Specifically, in Arizona a criminal misdemeanor case begins in a limited jurisdiction court by the filing of a complaint by the State.<sup>139</sup> The Arizona Rules of Criminal Procedure define “the State” as a prosecutor, such as those employed at the county or state level, who files charges against defendants within the state’s jurisdiction.<sup>140</sup>

To file a felony case in Arizona, the prosecutor can either get an indictment by a grand jury or file a complaint in a limited jurisdiction court.<sup>141</sup> The commencement rules, contained in Arizona Rules of Criminal Procedure Rule 2, do not allow a victim to file a complaint directly with the court in criminal cases.<sup>142</sup> Similarly, crime victims in Arizona cannot dismiss cases.<sup>143</sup>

Each state provides victims with a variety of different rights.<sup>144</sup> For example, in the state of Maryland, victims can file an “Application for Statement of Charges” directly to a judge to commence the criminal process.<sup>145</sup> However, these types of victim-filed complaints are still reviewed by the District Court commissioner.<sup>146</sup> Some states have even incorporated victims’ rights in their state

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<sup>134</sup> *Id.*

<sup>135</sup> 18 U.S.C. § 3771(d)(5).

<sup>136</sup> *Id.* § 3771(d)(5)(A)-(C).

<sup>137</sup> *Id.* § 3771(d)(6).

<sup>138</sup> *Steps in the Federal Criminal Process*, JUSTICE.GOV, <https://www.justice.gov/usao/justice-101/steps-federal-criminal-process> (last visited Nov. 20, 2021).

<sup>139</sup> ARIZ. R. CRIM. P. 2.1(a).

<sup>140</sup> *Id.* at Rule 1.4.

<sup>141</sup> *Id.* at Rule 2.2.

<sup>142</sup> *See generally id.* at Rule 2.

<sup>143</sup> *Office of Victim Services FAQs*, ARIZ. ATT’Y GEN. MARK BRNOVICH, <https://www.azag.gov/criminal/victim-services/faq> (last visited Apr. 12, 2022).

<sup>144</sup> *Victims’ Rights Law by State*, NAT’L CRIME VICTIM L. INST. (Oct. 17, 2013), <https://law.lclark.edu/live/news/23544-victims-rights-law-by-state>.

<sup>145</sup> *Criminal Cases*, MD. CTS., <https://www.mdcourts.gov/legalhelp/criminalcases> (last visited Oct. 15, 2021).

<sup>146</sup> *Id.*

constitutions,<sup>147</sup> whereas the U.S. Constitution does not have such a provision.<sup>148</sup> Arizona incorporated a Victims' Bill of Rights in its Constitution via amendment in 1990.<sup>149</sup>

Arizona's Victims' Bill of Rights defines the term "victim" as "a person against whom the criminal offense has been committed or if the person is killed or incapacitated, the person's spouse, parent, child or another lawful representative, except if the person is in custody for an offense or is the accused."<sup>150</sup> This amendment incorporated twelve enumerated rights, which include the rights to be heard, be present, and, upon request, be notified about criminal proceedings in the case in which they are a victim.<sup>151</sup> However, Arizona's Victims' Bill of Rights does not make a victim a party to the criminal proceeding.<sup>152</sup> This means that the victim cannot typically file motions in the criminal case, provide arguments to the court, or question witnesses on the stand.<sup>153</sup>

Although the criminal process is similar for the defendant in federal and state courts, Arizona has provided victims with broader rights at trial than those afforded at the federal level.<sup>154</sup> First, the Victims' Bill of Rights in Arizona does not give judges discretion to exclude a victim from trial.<sup>155</sup> Instead, the Arizona amendment states that "a victim of crime has a right: . . . [t]o be present at . . . all criminal proceedings where the defendant has the right to be present."<sup>156</sup> The Arizona Supreme Court has upheld this right to appear despite legal challenges, holding that a defendant's due process rights are not impacted by a victim's presence at various proceedings.<sup>157</sup>

Another difference between federal victims' rights and Arizona victims' rights involves plea negotiations.<sup>158</sup> Under the federal CVRA, the victim has the right to timely notification of any plea agreement reached between the defendant and the prosecution.<sup>159</sup> Arizona has expanded this right by including that the victim has the right "[t]o confer with the prosecution . . . before any disposition of the

<sup>147</sup> *Victims' Rights Law by State, supra* note 144.

<sup>148</sup> See U.S. CONST.; *About Victims' Rights*, OFF. JUST. PROGRAMS, <https://victimlaw.org/victimlaw/pages/victimsRight.jsp> (last visited Oct. 15, 2021).

<sup>149</sup> ARIZ. CONST. art. II, § 2.1.

<sup>150</sup> ARIZ. CONST. art. II, § 2.1(C).

<sup>151</sup> ARIZ. CONST. art. II, § 2.1(A).

<sup>152</sup> ARIZ. CONST. art. II, § 2.1.

<sup>153</sup> *Parties*, FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/Parties> (last visited Dec. 17, 2021).

<sup>154</sup> Compare 18 U.S.C. § 3771 with ARIZ. CONST. art. II, § 2.1.

<sup>155</sup> ARIZ. CONST. art. II, § 2.1(A)(3).

<sup>156</sup> ARIZ. CONST. art. II, § 2.1(A)(3). See also *Status of the Law*, OFF. VICTIMS CRIME ARCHIVE, [https://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin3/cvvp\\_2.html](https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin3/cvvp_2.html) (last visited Nov. 21, 2021) (20 other states have this right).

<sup>157</sup> *Status of the Law*, OFF. VICTIMS CRIME ARCHIVE, [https://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin3/cvvp\\_2.html](https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin3/cvvp_2.html) (last visited Nov. 21, 2021). See also *State v. Fulminante*, 193 Ariz. 485, 502–03 (1999).

<sup>158</sup> Compare 18 U.S.C. § 3771(a)(9) with ARIZ. CONST. art. II, § 2.1(A)(6).

<sup>159</sup> 18 U.S.C. § 3771(a)(9).

case.”<sup>160</sup> This means that at the federal level, victims are informed about any potential agreements once they have been reached, but before they are presented to the court.<sup>161</sup> In Arizona, however, the victim has the right to speak directly with the prosecutor before the plea agreement is entered.<sup>162</sup> However, this right does not allow the victim to direct the outcome of the prosecution.<sup>163</sup> Instead, if the victim disagrees with the terms of the plea agreement, the victim can address these concerns with both the prosecutor and the judge.<sup>164</sup>

Standing is defined as the “capacity of a party to bring suit in court.”<sup>165</sup> Not every individual has standing to bring any suit that they wish. At the federal level, the U.S. Supreme Court has provided a test to determine whether a particular individual has standing.<sup>166</sup> Most states, however, provide standing rights via statute.<sup>167</sup> Arizona has followed this format by enacting Arizona Revised Statutes (A.R.S.) Section 13-4437, which affords victims standing to enforce their constitutional and legislative rights.<sup>168</sup> Furthermore, the statute states that a victim can hire their own counsel to enforce their rights as a victim.<sup>169</sup> If the victim hires an attorney, that attorney will be endorsed, meaning they will receive copies of all pleadings in the case and can be included in any meetings that “directly involve a victim’s right enumerated in article II, section 2.1” of the Arizona Constitution.<sup>170</sup>

Additionally, A.R.S. Section 13-4437 provides victims with standing to recover damages from government agencies that “intentional[ly], knowing[ly] or grossly negligent[ly]” violate the victim’s rights.<sup>171</sup> This directly opposes the federal CVRA, which expressly prohibits recovery of damages from a government agency for violations of victims’ rights.<sup>172</sup>

Although victims are not direct parties to criminal cases in Arizona, they can request restitution for damages caused, just as they can at the federal level.<sup>173</sup>

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<sup>160</sup> ARIZ. CONST. art. II, § 2.1(A)(6) (emphasis added).

<sup>161</sup> 18 U.S.C. § 3771(a)(9).

<sup>162</sup> *Office of Victim Services FAQs*, *supra* note 143.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Standing*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/standing> (last visited Apr. 8, 2022).

<sup>166</sup> *Id.* (“In *Lujan v. Defenders of Wildlife* (90-1424), 504 U.S. 555 (1992), the Supreme Court created a three-part test to determine whether a party has standing to sue: (1) The plaintiff must have suffered an ‘injury in fact,’ meaning that the injury is of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent (2) There must be a causal connection between the injury and the conduct brought before the court (3) It must be likely, rather than speculative, that a favorable decision by the court will redress the injury.”).

<sup>167</sup> *Id.*

<sup>168</sup> ARIZ. REV. STAT. § 13-4437.

<sup>169</sup> *Id.* § 13-4437(A).

<sup>170</sup> *Id.* § 13-4437(D).

<sup>171</sup> *Id.* § 13-4437(B).

<sup>172</sup> 18 U.S.C. § 3771(d)(6).

<sup>173</sup> ARIZ. REV. STAT. § 13-804.

Restitution is limited to direct economic loss from the crime.<sup>174</sup> For example, a criminal defendant can be ordered to pay restitution for damages caused to property if convicted of arson.<sup>175</sup> A criminal defendant can also be ordered to pay the victim's travel expenses to and from court regardless of the crime.<sup>176</sup> Arizona courts have further limited restitution to losses that meet three requirements: "(1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss."<sup>177</sup> By statute, Arizona victims can present evidence at any restitution hearing to prove their economic loss.<sup>178</sup>

Arizona courts, however, limit victims' involvement by restricting their appellate rights.<sup>179</sup> In *State v. Lamberton*, the Arizona Supreme Court held that a victim is not considered an "aggrieved party" and therefore cannot file a petition for review when a court renders a verdict in a criminal case.<sup>180</sup> The court, relying on the fact that a victim is not a party to a criminal proceeding and cannot commence a criminal proceeding, reasoned that the prosecution can voice the victim's concerns in its own petition—although it is not required to do so.<sup>181</sup>

In summary, in the United States, federal victims' rights are codified by statute and are in the Federal Rules of Criminal Procedure.<sup>182</sup> Arizona has expanded federal victims' rights through statutes, the Arizona Rules of Criminal Procedure, and the Arizona Constitution.<sup>183</sup>

## **B. Spain: Inquisitorial Criminal Justice Systems in Action**

### 1. The Criminal Justice System and Victims' Rights

The European Union was created in 1993<sup>184</sup> and is currently composed of twenty-seven European countries, called Member States.<sup>185</sup> Within the European Union, there are various branches that hold elections and serve different functions,

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<sup>174</sup> *Id.*

<sup>175</sup> *Restitution Eligibility*, AZCOURTS.GOV, <https://www.azcourts.gov/cscommittees/Victim-Restitution/Restitution-Eligibility> (last visited Dec. 19, 2021).

<sup>176</sup> *Id.*

<sup>177</sup> *State v. Lewis*, 214 P.3d 412, ¶7 (Ariz. App. 2009).

<sup>178</sup> ARIZ. REV. STAT. § 13-4437(E).

<sup>179</sup> *See State v. Lamberton*, 899 P.2d 939 (Ariz. 1995).

<sup>180</sup> *Id.* at 941.

<sup>181</sup> *Id.* at 940-43.

<sup>182</sup> 18 U.S.C. § 3771; FED. R. CRIM. P. 60.

<sup>183</sup> ARIZ. CONST. art. II, § 2.1; ARIZ. REV. STAT. §§ 13-804, 4437.

<sup>184</sup> *European Union*, BRITANNICA, <https://www.britannica.com/topic/European-Union> (last visited Jan. 15, 2022).

<sup>185</sup> *Country Profiles*, EUR. UNION, [https://european-union.europa.eu/principles-countries-history/country-profiles\\_en](https://european-union.europa.eu/principles-countries-history/country-profiles_en) (last visited Jan. 15, 2022); *The European Union: What it is and What it Does*, EUR. COMM'N, <https://op.europa.eu/webpub/com/eu-what-it-is/en/> (last visited Jan. 15, 2022).

including courts.<sup>186</sup> The European Union's courts typically do not hear cases regarding individual criminal acts that occur within a specific Member State.<sup>187</sup> Instead, each Member State creates, structures, and codifies its own criminal justice system.<sup>188</sup> However, the European Union can issue regulations and decisions that are binding on all Member States.<sup>189</sup> These regulations include requirements that each Member State's criminal justice system must follow and implement.<sup>190</sup>

Most countries in Europe have a civil law legal system.<sup>191</sup> A civil law system relies on legislation and operates within those laws' textual confines.<sup>192</sup> Countries operating under a civil law system commonly incorporate an inquisitorial criminal justice system for criminal cases.<sup>193</sup>

An inquisitorial system is one in which the court investigates any allegations against a defendant pre-trial, with the primary purpose of avoiding trial for an innocent defendant.<sup>194</sup> Spain, a Member State of the European Union,<sup>195</sup> follows this inquisitorial format, in which the judge investigates all criminal allegations.<sup>196</sup> There are typically three phases to Spanish criminal proceedings: the investigation, the intermediary phase, and the trial.<sup>197</sup> This is considered "the ordinary criminal procedure," a very lengthy process that applies to crimes punishable by more than nine years' imprisonment.<sup>198</sup> Offenses that are punishable for a term of less than nine years go through "the abbreviated procedure."<sup>199</sup> Finally,

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<sup>186</sup> *The European Union: What it is and What it Does*, *supra* note 185.

<sup>187</sup> *General Court*, CT. JUST. EUR. UNION, [https://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/#compet](https://curia.europa.eu/jcms/jcms/Jo2_7033/en/#compet) (last visited Oct. 15, 2021).

<sup>188</sup> Alison Brooks & Colby Eisenhart, *Characteristics of European Union Justice Systems*, NAT'L INST. JUST. (Sept. 2, 2009), <https://www.ojp.gov/pdffiles1/nij/grants/230400.pdf>.

<sup>189</sup> *Applying EU law*, EUR. COMM'N, [https://ec.europa.eu/info/law/law-making-process/applying-eu-law\\_en](https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en) (last visited Apr. 13, 2022).

<sup>190</sup> *Id.*

<sup>191</sup> Brooks & Eisenhart, *supra* note 188, at 2.

<sup>192</sup> *The Common Law and Civil Law Traditions*, BERKELEY L., <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf> (last visited Oct. 15, 2021).

<sup>193</sup> *Inquisitorial Procedure*, BRITANNICA, <https://www.britannica.com/topic/inquisitorial-procedure> (last visited Oct. 15, 2021).

<sup>194</sup> *Adversarial Versus Inquisitorial Legal Systems*, UNODC, <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html> (last visited Oct. 15, 2021).

<sup>195</sup> *Countries in the EU and EEA*, GOV.UK, <https://www.gov.uk/eu-eea> (last visited Nov. 21, 2021).

<sup>196</sup> Brooks & Eisenhart, *supra* note 188, at 29.

<sup>197</sup> *Common Doubts in Stages of Criminal Proceedings*, PINERA DEL OLMO, <https://www.pineradelolmo.com/criminal-proceedings-stages-time-frames/> (last visited Oct. 15, 2021).

<sup>198</sup> *Criminal Court Procedures in Spain*, SPAIN L., <https://www.spainlawyer.com/legal-guide/criminal-court-procedures-in-spain/> (last visited Jan. 16, 2022); *Court Process in Spain*, MOLINA SOLICITS., <https://www.molinasolicitors.com/legal/the-court-process-in-spain/> (last visited Jan. 16, 2022).

<sup>199</sup> *Criminal Court Procedures in Spain*, *supra* note 198.



an even quicker procedure is applied to misdemeanors.<sup>200</sup> Most crimes are punishable by less than nine years in prison, with such severe punishment reserved for more violent crimes.<sup>201</sup>

#### a. The Investigation Phase

The Investigation can range anywhere from months to years.<sup>202</sup> Investigations commence when an aggrieved person (victim), or any Spaniard (non-victim), files a *querrela*—an accusation—before a judge.<sup>203</sup> Investigations can also commence through the filing of a *denuncia*—a report—which anyone can file.<sup>204</sup> The victim in a criminal proceeding may participate solely as a witness, or they may choose to be a party to the case, called an *acusación particular*<sup>205</sup>—a private prosecutor.<sup>206</sup> If the victim chooses to be an *acusación particular*, they can be represented by an attorney at all stages of the proceeding.<sup>207</sup> The *Juez de Instrucción*, or investigative judge, prepares the case for trial.<sup>208</sup>

#### b. The Intermediary Phase

During the Intermediary Phase, the judge concludes the investigation by sending all of the findings to the *fiscal*—the public prosecutor<sup>209</sup>—who then decides if the charges should be pursued.<sup>210</sup> If the prosecutor elects not to pursue the case, the victim can appeal this decision.<sup>211</sup> If the case is selected for trial, then a different judge will take the case.<sup>212</sup> During this phase, if the case is selected for trial,

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<sup>200</sup> *Id.*

<sup>201</sup> See *Criminal Law in Spain*, GUIDES GLOB., <https://www.guidesglobal.com/criminal-law-in-spain/> (last visited Feb. 24, 2022).

<sup>202</sup> *The Spanish National Court*, CTR. JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/the-spanish-national-court/> (last visited Oct. 15, 2021).

<sup>203</sup> *How to Initiate a Criminal Procedure in Spain*, IGLESIAS & ASOCIADOS, <https://www.igleas.com/english/criminal-law/how-to-initiate-a-criminal-procedure-in-spain/> (last visited Oct. 15, 2021).

<sup>204</sup> *Id.*

<sup>205</sup> *The Spanish National Court*, *supra* note 202.

<sup>206</sup> *Victims' Rights – by Country*, EUR. JUST. (Nov. 3, 2020), [https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-es-en.do?member=1](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-es-en.do?member=1).

<sup>207</sup> *The Spanish National Court*, *supra* note 202.

<sup>208</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, FAIR TRIALS INT'L 8 (Feb. 2013), <https://www.fairtrials.org/wp-content/uploads/Spain-advice-note.pdf>.

<sup>209</sup> *Criminal Court Procedures in Spain*, *supra* note 198.

<sup>210</sup> *Victims' Rights – by Country*, *supra* note 206.

<sup>211</sup> Law 4/2015, of 27 April, On the Standing of Victims of Crime tit. II, art. 12(2) [hereinafter Law 4/2015] (B.O.E. 2015, 101) (Spain).

<sup>212</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, *supra* note 208, at 8–9.

preparation occurs.<sup>213</sup> Final protective measures are also taken to ensure that the evidence tends to show that the accused committed the alleged crime.<sup>214</sup> These measures are *Audencia Previas*—pre-trial hearings—which can take anywhere from six to eighteen months to schedule.<sup>215</sup>

Spain does not have a common practice of plea bargaining.<sup>216</sup> Therefore, prior to the oral trial, the focus is on what evidence is admissible to prove that the accused is guilty.<sup>217</sup> If a victim has decided to participate in the criminal proceedings as an *acusación particular*, their attorney and the victim can be present at all of the pre-trial hearings scheduled.<sup>218</sup>

### c. The Trial

The trial phase begins with each party filing pleadings based on the findings of the investigation.<sup>219</sup> Within these pleadings, the prosecutors should also include the facts that could result in criminal liability from the investigation.<sup>220</sup> The accused must then either admit or deny each separate fact made in these pleadings.<sup>221</sup> Then, the judge reviews the evidence and admits or rejects any facts as necessary according to law.<sup>222</sup>

After the judge finalizes the pleadings, the trial is set.<sup>223</sup> All trials are held publicly.<sup>224</sup> Depending on the nature of the charge, the trial may be conducted by a single judge, a panel of three judges, or a jury.<sup>225</sup> Typically a witness takes the stand

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<sup>213</sup> *Criminal Court Procedures in Spain*, *supra* note 198.

<sup>214</sup> *Id.*

<sup>215</sup> *Court Process in Spain*, *supra* note 198.

<sup>216</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, *supra* note 208, at 6; *Pleading Guilty in Spain – Don't! (Without Advice)*, MOLINA SOLICS., <https://www.molinasolicitors.com/criminal-law/pleading-guilty-in-spain-dont-without-advice/> (last visited Jan. 15, 2021) (“Also plea bargains do not really exist in Spain so you cannot think that pleading guilty will make a big difference to the sentencing.”).

<sup>217</sup> *Criminal Court Procedures in Spain*, *supra* note 198.

<sup>218</sup> *Help for U.S. Citizen Victims of Crime in Spain*, U.S. EMBASSY, (Apr. 2012) [https://es.usembassy.gov/wp-content/uploads/sites/260/2017/03/Spain\\_Victim\\_Assistance\\_Handout\\_0412.pdf](https://es.usembassy.gov/wp-content/uploads/sites/260/2017/03/Spain_Victim_Assistance_Handout_0412.pdf).

<sup>219</sup> Murray, *supra* note 20, at 132.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> Antonio Tapia Frade & Amalia del Campo Pastor, *Legal Systems in Spain: Overview*, THOMSON REUTERS PRAC. L. UK, [https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a457178](https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a457178) [hereinafter *Legal Systems in Spain: Overview*] (last updated Feb. 1, 2018).

<sup>223</sup> Murray, *supra* note 20, at 134.

<sup>224</sup> *Id.* at 135.

<sup>225</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, *supra* note 208, at 21.

and recounts the evidence in a narrative format.<sup>226</sup> The other parties, including the *acusación particular*, can then cross-examine the witness.<sup>227</sup>

Jury trials are only applicable to certain offenses,<sup>228</sup> such as violent crimes.<sup>229</sup> Juries in Spain consist of nine jurors and one *magistrado*—trial judge—who presides over the court in the province where the trial is being held.<sup>230</sup> In cases in which the offense is not jury-eligible, the trial judge determines if the accused should be acquitted or convicted.<sup>231</sup> Spain has a presumption of innocence<sup>232</sup> and the burden of proof is *in dubio pro reo*—where doubt remains.<sup>233</sup> If a judge finds that doubt still remains, then the accused can be acquitted.<sup>234</sup>

The judge is typically the one who issues a sentence if the evidence shows that the defendant is guilty.<sup>235</sup> Sentences are typically imposed between six weeks to six months after the conclusion of the trial.<sup>236</sup> The sentence imposed can be appealed to Spain's *Audencia Provinciales*—the Appeal Court—which does not have open hearings.<sup>237</sup> Instead, a panel of three judges reviews the record from the previous proceedings.<sup>238</sup> There is one *Audencia Provincial* in each province.<sup>239</sup> The final step is an appeal to the *Tribunal Supremo*—the Supreme Court.<sup>240</sup> Very few cases are heard at the *Tribunal Supremo*.<sup>241</sup> Cases involving amounts in controversy over €600,000 and cases which have a difficult question of law are selected to be heard.<sup>242</sup>

Finally, once a criminal defendant goes to prison, a victim may choose to be notified of certain decisions in the case, including release decisions if the defendant was convicted of a violent offense.<sup>243</sup> This is because the defendant could harm the victim after being released.<sup>244</sup>

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<sup>226</sup> Murray, *supra* note 20, at 143.

<sup>227</sup> *Id.*

<sup>228</sup> *Legal Systems in Spain: Overview, supra* note 222 (jury eligible offenses include: Unlawful killing; Intimidation; Failure in the duty to assist; Trespassing a dwelling; Forest fires; Failure in the duty to maintain safe custody of documents; Corruption, Influence peddling, Embezzlement, Fraud and illegal taxation; Matters concerning civil servants, where they are alleged to have entered into negotiations that are prohibited; Failure in the duty to maintain safe custody of prisoners).

<sup>229</sup> *Information on Criminal Proceedings and Defence Rights in Spain, supra* note 208, at 21.

<sup>230</sup> *Legal Systems in Spain: Overview, supra* note 222.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Criminal Court Procedures in Spain, supra* note 198.

<sup>236</sup> *Court Process in Spain, supra* note 198.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Criminal Court Procedures in Spain, supra* note 198.

<sup>241</sup> *Court Process in Spain, supra* note 198.

<sup>242</sup> *Id.*

<sup>243</sup> Law 4/2015, *supra* note 211, at tit. 1. art. 7.

<sup>244</sup> *Id.*

## 2. Victims' Rights: European Union and Spain

In 2012, the European Union published a directive requiring Member States to implement basic victims' rights.<sup>245</sup> Member States had until 2015 to implement these provisions.<sup>246</sup> Among other things, the directive required Member States to afford victims the right to receive information about cases to which they are a party, the right to review decisions not to prosecute, and the right to protection from the accused.<sup>247</sup> In 2020, the European Commission generated a report evaluating each Member State's actual compliance with the directive.<sup>248</sup> According to the report, Spain is not one of the Member States in proceedings for failure to implement the directive.<sup>249</sup> Thus, Spain is in compliance.<sup>250</sup>

Spain does not mention "victims" in its constitution.<sup>251</sup> Generally, the public prosecutor is required to "procure before [the court] the satisfaction of social interest" under the nation's constitution.<sup>252</sup> The majority of Spain's victims' rights are instead codified by statute.<sup>253</sup>

Under these statutes, victims have multiple rights, including the right to notification regarding court proceedings upon request; the right to understand and be understood; and the right to make a complaint.<sup>254</sup> Specifically, victims are entitled to actively participate in criminal proceedings to which they are a party, which includes the ability to begin criminal proceedings through filings, be heard by the judge conducting the investigation, and appeal decisions to not prosecute.<sup>255</sup> Additionally, when a victim elects to participate as an *acusación particular*, the victim sits next to the public prosecutor and is able to ask questions of the witnesses presented at trial.<sup>256</sup> This allows the victim, through an *acusación particular*, to

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<sup>245</sup> Directive 2012/29/EU of Oct. 25, 2012, Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L 315) 57, 57–73.

<sup>246</sup> *Victims' Rights in the EU*, EUR. COMM'N, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en) (last visited Oct. 15, 2021).

<sup>247</sup> Directive 2012/29/EU of Oct. 25, 2012, *supra* note 245.

<sup>248</sup> *Victims' Rights in the EU*, *supra* note 246.

<sup>249</sup> *Report from the Commission to the European Parliament and the Council*, COM (2020) 188 final (Nov. 5, 2020).

<sup>250</sup> *Id.*

<sup>251</sup> CONSTITUCIÓN ESPAÑOLA [C.E.], B.O.E. n. 311, Dec. 29, 1978 (Spain).

<sup>252</sup> *Id.* art. 124.

<sup>253</sup> *See* Law 4/2015, *supra* note 211.

<sup>254</sup> *Id.* at tit. I.

<sup>255</sup> *Id.* at tit. II, art. 11-12.

<sup>256</sup> Murray, *supra* note 20, at 138.

actively participate in the trial.<sup>257</sup> When there are multiple victims, all may appear with their own counsel as *acusación particulares*.<sup>258</sup>

In Spain, victims of gender-based violence are afforded additional rights, including the right to female social workers, also called civil servants; specialized legal assistance; and priority to subsidized housing.<sup>259</sup> These rights are codified due to the human rights aspect of gender-based violence.<sup>260</sup>

Regarding restitution, the *querrela* is designed to merge the criminal and civil responsibilities of the defendant into a single court proceeding.<sup>261</sup> Victims in Spain are entitled to “the restitution of property, redress for any damage and compensation for the harm caused by the punishable act.”<sup>262</sup>

### **C. Comparisons and Implications: Modern Trends in Victims’ Rights**

Overall, Arizona and Spain have very different criminal justice systems.<sup>263</sup> This is because both systems have diverse backgrounds and deep roots in different procedures.<sup>264</sup> Each jurisdiction provides victims with different rights and roles throughout the criminal justice process, evidenced by negotiations, compensation for attorney’s fees, and sexual assault statutes.<sup>265</sup>

#### **1. Procedural Rights: Plea Bargaining and the Victim’s Rights**

In the United States, at the federal level, victims have the right to confer with the prosecutor and the right to be informed before a plea agreement is entered.<sup>266</sup> However, when these rights are violated, victims currently have little to no recourse to enforce their rights.<sup>267</sup>

For example, Jeffrey Epstein, a wealthy hedge fund manager, was accused of sex trafficking and conspiracy charges for the sexual abuse of dozens of girls on

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<sup>257</sup>

*Id.*

<sup>258</sup> LEY DE ENJUICIAMIENTO CRIMINAL [L.E. CRIM.] [CODE OF CRIM P.] art. 109a (2016) (Spain).

<sup>259</sup> GOBIERNO DE ESPAÑA, GUIDE RTS. WOMEN VICTIMS GENDER VIOLENCE (May 2019),

<https://violenciagenero.igualdad.gob.es/en/informacionUtil/derechos/docs/mayo2019/GUIADERECHOSeng22052019.pdf>.

<sup>260</sup>

*Id.*

<sup>261</sup> Murray, *supra* note 20, at 16.

<sup>262</sup> Law 4/2015, *supra* note 211, at tit. IV, art. 35(3) (amending the Criminal Procedure Rules).

<sup>263</sup>

*See supra* Parts A and B.

<sup>264</sup>

*See supra* Parts A and B.

<sup>265</sup>

*Compare* L.E. CRIM. (Spain) *with* FED. R. CRIM. P. There are many other examples of differences and modern trends, however, those will not be discussed in this Note.

<sup>266</sup>

18 U.S.C. § 3771.

<sup>267</sup>

Gerstein, *supra* note 15.

multiple occasions between 2002 and 2005.<sup>268</sup> He was convicted prior to these new allegations and served a thirteen-month prison sentence beginning in 2009.<sup>269</sup> This sentence was based on a plea that Epstein entered with prosecutors who had not met with the victims or spoken to them prior to the agreement.<sup>270</sup> The 2009 plea agreement resulted in Epstein being convicted of state prostitution charges, instead of the federal prostitution and sexual abuse charges he was facing.<sup>271</sup> However, in 2019, Epstein died in federal custody while awaiting trial on new charges.<sup>272</sup> His death caused a lot of conspiracy theories to arise, as he was expected to provide federal officials with information regarding other wealthy men involved in the same sexual activities as Epstein.<sup>273</sup>

Courtney Wild, one of Jeffrey Epstein's accusers and victims from the original charges, petitioned the U.S. Supreme Court in an attempt to enforce her rights with regard to the 2009 plea agreement.<sup>274</sup> Her case was originally denied by the Eleventh Circuit Court of Appeals, in which the court held that the CVRA does not allow a freestanding civil action for judicial enforcement of victims' rights.<sup>275</sup> The court reasoned that because the government had not filed any official charges against the defendant, there was no preexisting proceeding for the court to grant relief.<sup>276</sup> On February 2, 2022, the U.S. Supreme Court denied certiorari to Wild.<sup>277</sup> If the Supreme Court had granted certiorari, the petition would likely have been denied based on the reasoning presented by the Eleventh Circuit. By denying certiorari, however, the Supreme Court has not expanded upon current victims' rights, and has in effect upheld the Eleventh Circuit reasoning without setting precedent.<sup>278</sup>

Conversely, in Spain a similar issue would not arise due to the structure of criminal proceedings. Plea bargaining is not a common practice in Spanish criminal

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<sup>268</sup> Lia Timson, *Who was Jeffrey Epstein?*, SYDNEY MORNING HERALD (July 3, 2020), <https://www.smh.com.au/world/north-america/a-terrific-guy-who-is-jeffrey-epstein-and-what-is-he-accused-of-20190717-p52811.html>.

<sup>269</sup> *Id.*

<sup>270</sup> Kayla Goggin, *Victim's Challenge to Epstein Plea Deal Rejected by Full 11<sup>th</sup> Circuit*, COURTHOUSE NEWS SERV. (Apr. 15, 2021), <https://www.courthousenews.com/victims-challenge-to-epstein-plea-deal-rejected-by-full-11th-circuit/>.

<sup>271</sup> Susan Spencer-Wendel, *Details of Epstein's Plea Deal Released*, SUNSENTINEL (Sept. 19, 2009), <https://www.sun-sentinel.com/news/fl-xpm-2009-09-19-0909180353-story.html>.

<sup>272</sup> Timson, *supra* note 268.

<sup>273</sup> Joshua Chaffin, *Epstein's Death Proves Feeding Ground for Conspiracy Theories*, FIN. TIMES (Nov. 22, 2019), <https://www.ft.com/content/8f406516-0c9e-11ea-b2d6-9bf4d1957a67>.

<sup>274</sup> Gerstein, *supra* note 15.

<sup>275</sup> *In re Wild*, 994 F.3d 1244 (11th Cir. 2021).

<sup>276</sup> *Id.*

<sup>277</sup> *Wild v. U.S. Dist. Ct. for S. Dist. of Fla.*, 142 S. Ct. 1188 (2022).

<sup>278</sup> *Certiorari*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/certiorari> (last visited Apr. 12, 2022).

courts.<sup>279</sup> Instead, if a defendant pleads guilty or admits to the accusations, there is no guarantee of leniency.<sup>280</sup> Unlike the practice in the United States, Spanish criminal defendants receive the punishment for the charges they admit to.<sup>281</sup> Furthermore, because civil and criminal disputes can be combined in the Spanish criminal system, a victim is always notified about any discussions or agreements made.<sup>282</sup>

In 2016, Spain introduced legislation that solidified victims' roles and rights throughout the criminal proceedings.<sup>283</sup> This law requires victim notification if a public prosecutor decides to dismiss charges and the victim is not actively participating in the proceedings.<sup>284</sup> The legislation also provides that a victim can challenge a decision "to dismiss or shelve" a case.<sup>285</sup> Thus, although Spain does not have a plea bargaining process,<sup>286</sup> a victim is notified of and can challenge decisions to dismiss.<sup>287</sup> This is not the exact same scenario as Courtney Wild's appeal due to the lack of pleas, however, based on current legislation, such an appeal would have been avoided had it taken place in Spain. Instead, Courtney Wild would have had the opportunity to participate in the trial as an *acusación particular*,<sup>288</sup> and Jeffrey Epstein would not have been able to enter into a plea agreement for lesser charges.<sup>289</sup>

## 2. Procedural Rights: Restitution, Civil Suits, and the Victim's Right to Attorneys' Fees

The Arizona Supreme Court recently decided that if a victim in Arizona decides to hire an attorney, determining who bears the burden of those costs depends on the reason for hiring the attorney.<sup>290</sup> The decision held that "attorney fees are appropriately ordered as restitution when an attorney is reasonably

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<sup>279</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, *supra* note 208, at 6; *Pleading Guilty in Spain – Don't! (Without Advice)*, *supra* note 216 ("Also plea bargains do not really exist in Spain so you cannot think that pleading guilty will make a big difference to the sentencing.").

<sup>280</sup> *Pleading Guilty in Spain – Don't! (Without Advice)*, *supra* note 216.

<sup>281</sup> *Id.*

<sup>282</sup> Law 4/2015, *supra* note 211, at pmb1.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> Jaime Campaner, *Plea bargaining: Recent Developments in Spain*, CAMPANER L., <http://www.ecba.org/extdocserv/conferences/oslo2018/PleaBargainingCampaner.pdf> (last visited Jan. 15, 2022) (discussing issues with "hidden plea bargaining" through with the public prosecutor attempts to be more lenient with cooperating co-defendants who turn against one another).

<sup>287</sup> *See* Law 4/2015, *supra* note 211.

<sup>288</sup> *The Spanish National Court*, *supra* note 202.

<sup>289</sup> *Pleading Guilty in Spain – Don't! (Without Advice)*, *supra* note 216.

<sup>290</sup> *State v. Reed*, 502 P.3d 979, 983–84 (Ariz. 2022).

necessary to remedy the harm caused by the criminal conduct.”<sup>291</sup> This includes attorney’s fees for enforcement of victim rights that have been violated.<sup>292</sup> In *State v. Reed*, the victim hired her own attorney pursuant to A.R.S. § 13-4437(A).<sup>293</sup> The trial court ordered the defendant’s estate to pay the victim’s attorney’s fees as part of court-mandated restitution.<sup>294</sup>

On appeal, the Arizona Court of Appeals Division 1 upheld the order.<sup>295</sup> One of the main concerns that the Court of Appeals had with the case was that the restitution ordered was in the amount of \$17,909.50 for attorney’s fees alone.<sup>296</sup> This amount was for six months of preparation, including preparation for the restitution hearing.<sup>297</sup> The Arizona Supreme Court reversed in part the attorney’s fees award because there was no evidence that the attorney was “reasonably necessary,” stating that “most and possibly all of [the victim’s] attorney fees were not directly caused by [the defendant’s] criminal conduct and were instead an indirect consequence of that conduct.”<sup>298</sup> The Court further remanded the case to determine whether certain parts of the attorney’s fees should be awarded as restitution.<sup>299</sup>

At the federal level, trial courts have allowed for recovery of attorney’s fees when the costs incurred were related to internal investigations.<sup>300</sup> However, no definitive answer has come from the U.S. Supreme Court.<sup>301</sup>

Alternatively, in Spain, victims of certain crimes are automatically entitled to free legal aid,<sup>302</sup> specifically victims of “gender or domestic violence; human trafficking; and terrorism.”<sup>303</sup> All other victims can request free legal aid through

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 984.

<sup>293</sup> *State v. Reed*, 456 P.3d 453, 455 (Ariz. 2020).

<sup>294</sup> *Id.*

<sup>295</sup> *State v. Reed*, 483 P.3d 221, 228 (Ariz. Ct. App. 2020), *review granted* (Aug. 24, 2021).

<sup>296</sup> *Id.* at 224.

<sup>297</sup> *Id.*

<sup>298</sup> *State v. Reed*, 502 P.3d at 985.

<sup>299</sup> *Id.* at 986.

<sup>300</sup> *See U.S. v. Donaghy*, 570 F.Supp.2d 411 (E.D.N.Y. 2008) (holding that the Mandatory Victims Restitution Act and Witness Protection Act allow recovery of attorney fees when incurred as an investigation cost). *See also U.S. v. Gupta*, 925 F.Supp.2d 581 (S.D.N.Y. 2013).

<sup>301</sup> Marjorie Pearce & Mary K. Treanor, *Supreme Court Forecloses Reimbursement for Certain Internal Investigations Under Mandatory Victims Restitution Act*, BALLARD SPAHR 1 (Nov. 2018), <https://www.ballardspahr.com/-/jssmedia/Files/Articles/2018-11-Supreme-Court-Forecloses-Reimbursement.pdf>.

<sup>302</sup> *Legal Aid in Spain*, Gov.UK, <https://www.gov.uk/government/publications/legal-aid-in-spain/legal-aid-in-spain> (last updated May 18, 2021); *Royal Decree 141/2021, March 9 Which Approves the Regulation of Free Legal Assistance*, AGENCIA ESTATAL BOLETÍN OFICIAL DEL ESTADO art. 27(1), <https://www.boe.es/buscar/act.php?id=BOE-A-2021-3698> (last visited Jan. 15, 2022).

<sup>303</sup> *Legal Aid in Spain*, *supra* note 302, at art.27(1), art. 22(3); *Royal Decree 141/2021*, *supra* note 302.



various programs and offices.<sup>304</sup> Often, free legal aid may also come in a discounted or pro-rated form, depending on the income of the individual and the circumstances of the crime.<sup>305</sup> These lawyers are provided through the *Colegio de Abogados*—College of Lawyers<sup>306</sup>—which is funded by the government.<sup>307</sup> Thus, in Spain, criminal defendants are not responsible for the cost of a victim’s attorney’s fees; depending on the nature of the case,<sup>308</sup> the government takes on that burden.<sup>309</sup>

### 3. Substantive Rights: The Rights of Sexual Assault Victims

At the federal level, the United States Code provides that sexual assault occurs through the use of force or “without the consent of the other person.”<sup>310</sup> The United States Code further provides that consent must be determined by looking at the totality of the circumstances.<sup>311</sup> The definition in the statute clarifies that consent cannot be inferred based on the victim’s clothing or relationship with the perpetrator.<sup>312</sup> The most recent version of the federal consent laws went into effect on January 1, 2019.<sup>313</sup> Consent works in a variety of ways where courts must first determine whether the victim is capable of consenting,<sup>314</sup> and if so, whether the victim freely gave such affirmative consent.<sup>315</sup>

Similarly, in Arizona, sexual assault is defined as “intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.”<sup>316</sup> Arizona’s statutes define “[w]ithout consent” to include when there is use of force, coercion, or deceit; erroneous belief of the victim that the perpetrator is their spouse; or the victim is incapable of consent.<sup>317</sup> Thus, in both the federal criminal code and Arizona’s criminal code, if the

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<sup>304</sup> *Legal Aid in Spain, supra* note 302.

<sup>305</sup> *Legal Aid in Spain – Guide*, AGE IN SPAIN, <https://www.ageinspain.org/post/legal-aid-in-spain-guide> (last updated June 21, 2021).

<sup>306</sup> Myra Cecilia Azzopardi, *Colegio de Abogados/The College of Lawyers*, CITIZENS ADVICE BUREAU (Jan. 25, 2017), <https://www.citizensadvice.org.es/faq/colegio-de-abogadosthe-college-lawyers/>.

<sup>307</sup> *Solicitar Justicia Gratuita*, ABOGACIA ESPAÑOLA, <https://www.abogacia.es/servicios/ciudadanos/servicios-de-orientacion-juridica-gratuita/> (last visited Jan. 15, 2022).

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> 10 U.S.C. § 920(b)(2)(A).

<sup>311</sup> *Id.* § 920(g)(7)(C).

<sup>312</sup> *Id.* § 920(g)(7).

<sup>313</sup> *Id.* § 920.

<sup>314</sup> *Legal Role of Consent*, RAINN, <https://www.rainn.org/articles/legal-role-consent> (last visited Jan. 15, 2022) (noting that courts will determine if the victim has the ability to consent by looking at age, intoxication level, and even mental capacity).

<sup>315</sup> *Id.*

<sup>316</sup> ARIZ. REV. STAT. § 13-1406(A).

<sup>317</sup> *Id.* § 13-1401(A)(7).

perpetrator of a sexual assault does not use violence but the victim repeatedly says “no,” the perpetrator can still face sexual assault charges.<sup>318</sup>

In Spain, however, the current sexual assault statute requires a perpetrator to “have used physical violence or intimidation for an assault to be classified as rape.”<sup>319</sup> There is a movement to strengthen victims’ rights by amending the sexual assault legislation to allow defendants to be convicted of rape for non-consensual sex, not just violent non-consensual sex.<sup>320</sup> This legislation was presented to the Spanish Parliament on October 14, 2021, where it ultimately passed.<sup>321</sup> However, it may take up to a year more for the bill to be written into the laws, as the next step is for the Courts of Justice to revise it.<sup>322</sup>

The movement, known as the “Only Yes Is Yes” bill, originated after a 2016 gang-rape case in Pamplona, Spain.<sup>323</sup> The case, in which five men recorded themselves repeatedly assaulting an 18-year-old girl, has become known as the “wolf pack” rape case.<sup>324</sup> The video depicted the woman “being silent and passive,” which judges interpreted to be equivalent to consent.<sup>325</sup> Due to the lack of evidence of any use of violence, the court convicted the men of sexual abuse, which is the lesser-included offense of sexual assault.<sup>326</sup> The subsequent legislation provides clear and explicit guidance to courts by further clarifying the meaning of consent for cases such as this one.<sup>327</sup>

Further, the proposed legislation makes stalking, street harassment, and female genital mutilation crimes in Spain that can be pursued in court by the aggrieved victim.<sup>328</sup> This proposed legislation thus expands a variety of different existing statutes.<sup>329</sup> If enacted, it will improve upon victims’ rights by allowing rape victims to come forward even if the defendant did not use violence in the commission of the crime.<sup>330</sup> This would make Spain’s sexual assault laws more like the United States’ federal laws and Arizona’s state laws.<sup>331</sup>

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<sup>318</sup> See *id.* §§ 13-1406(A), 13-1401(A)(7); 10 U.S.C. § 920.

<sup>319</sup> Carreño & Allen, *supra* note 21.

<sup>320</sup> *Id.*

<sup>321</sup> Josphine Joly, *Spanish Parliament Begins Debate on ‘Only Yes is Yes’ Sexual Consent Law*, EURONEWS (last updated Oct. 15, 2021), <https://www.euronews.com/2021/10/15/spanish-parliament-begins-debate-on-only-yes-is-yes-sexual-consent-law>.

<sup>322</sup> *Id.*

<sup>323</sup> Mayte Franco, *Only Yes is Yes: Spain Tightens Consent Law*, STORK (Nov. 7, 2021), <https://www.iestork.org/only-yes-is-yes-spain-tightens-consent-law/>.

<sup>324</sup> Joly, *supra* note 321; Franco, *supra* note 323.

<sup>325</sup> Joly, *supra* note 321.

<sup>326</sup> *Id.*

<sup>327</sup> Franco, *supra* note 323.

<sup>328</sup> Carreño & Allen, *supra* note 21.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> Compare *id.*, with ARIZ. REV. STAT. §§ 13-1406(A) (2009), 13-1401(A)(7) (2021), and 10 U.S.C. § 920.

### III. CONCLUSION

The differences in inquisitorial systems and adversarial systems mean that victims have different rights and roles within the criminal process in Spain and Arizona.<sup>332</sup> One of the key differences between the two is active victim participation.<sup>333</sup> By providing victims with the opportunity to hire their own attorneys, Spain encourages victims to come forward with criminal complaints.<sup>334</sup> Victims of specific crimes can even get an attorney for free, which Arizona has recently restricted through case law.<sup>335</sup> However, when a victim is able to recover attorney's fees in Arizona, it is at the criminal defendant's expense, unlike in Spain where it is at the government's expense.<sup>336</sup> In Spain, victims can actively participate in the proceeding at their own discretion;<sup>337</sup> and if they choose not to they still have rights, some of which they can opt into.<sup>338</sup> Victims also have the enumerated right to bring about criminal charges in Spain,<sup>339</sup> whereas only the police, grand jury, or prosecutor can do so in the United States.<sup>340</sup>

Although Spain provides strong procedural rights and protections to victims, it does not actively protect specific victims through laws like the United States does.<sup>341</sup> By not allowing sexual assault to include non-consensual sex that lacked violence, Spain does not substantively protect its victims as well as the United States before the case even enters the criminal justice system.<sup>342</sup> Recent proposed legislation would also criminalize other behaviors such as stalking<sup>343</sup>, something that has been a crime in the United States since the 1996 enactment of the Violence Against Women Act.<sup>344</sup>

Another key difference between inquisitorial and adversarial systems is the pre-trial procedure. In the United States and Arizona, there are a variety of hearings before a trial, all of which allow the defendant to plead guilty or not guilty.<sup>345</sup> At a pre-trial hearing, a judge will often ask the parties if they have reached an agreement in which a criminal defendant would plead guilty in exchange for a lesser sentence or charge.<sup>346</sup> This process is known as plea bargaining, a practice

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<sup>332</sup> See *supra* Parts II.A, II.B of this Note.

<sup>333</sup> *The Spanish National Court, supra* note 202.

<sup>334</sup> *Id.*

<sup>335</sup> *State v. Reed*, 502 P.3d at 983–84.

<sup>336</sup> Compare *id.* with *Solicitar Justicia Gratuita, supra* note 307.

<sup>337</sup> *The Spanish National Court, supra* note 202.

<sup>338</sup> Law 4/2015, *supra* note 211, at tit. I, arts. 4–8.

<sup>339</sup> *Id.* at tit. II, art. 11.

<sup>340</sup> *How Courts Work, supra* note 62.

<sup>341</sup> Compare Carreño & Allen, *supra* note 21, with ARIZ. REV. STAT. §§ 13-1406(A) (2009), 13-1401(A)(7) (2021), and 10 U.S.C. § 920.

<sup>342</sup> Compare Carreño & Allen, *supra* note 21, with ARIZ. REV. STAT. §§ 13-1406(A) (2009), 13-1401(A)(7) (2021), and 10 U.S.C. § 920.

<sup>343</sup> Carreño & Allen, *supra* note 21.

<sup>344</sup> *Interstate Stalking*, JUSTICE.GOV, <https://www.justice.gov/usao-ndga/victim-witness-assistance/interstate-stalking> (last updated Dec. 23, 2021).

<sup>345</sup> 18 U.S.C. § 3771; *Plea Bargaining, supra* note 82; ARIZ. CONST. art. II, § 2.1.

<sup>346</sup> *Plea Bargaining, supra* note 82.

that is not permitted in Spanish criminal procedure.<sup>347</sup> The United States and Arizona, which both allow plea bargaining, afford victims with the right to confer with the prosecution regarding any agreements within a reasonable time period for federal cases, or prior to entering into any agreement in Arizona.<sup>348</sup>

Overall, the differences are heavily embedded in Spain and the United States' rules of criminal procedure.<sup>349</sup> Each system has its own advantages and disadvantages.<sup>350</sup> However, each system can learn from the other. The United States and Arizona would benefit from more active victim participation, whether through funding victim's attorneys or allowing victims to file criminal complaints like Maryland and Spain allow.<sup>351</sup> Spain would better serve its victims by updating its legislation, including adding consent laws to sexual assault statutes and making stalking and harassment crimes.<sup>352</sup> No system is ever perfect, but we must strive to remember that each case has a human aspect to it.<sup>353</sup> Nearly every crime involves some form of injury, whether that be physical or financial, to the victim who then has to go through the criminal justice system.<sup>354</sup> Each system can better serve these victims by providing strong procedural and substantive rights to the injured throughout the criminal justice process.<sup>355</sup>

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<sup>347</sup> *Information on Criminal Proceedings and Defence Rights in Spain*, *supra* note 208, at 6; *Pleading Guilty in Spain – Don't! (Without Advice)*, *supra* note 216.

<sup>348</sup> 18 U.S.C. § 3771(a); ARIZ. CONST. art. II, § 2.1(A).

<sup>349</sup> Compare L.E. CRIM. P. (Spain), with FED. R. CRIM. P.

<sup>350</sup> See *supra* Part II.C of this Note.

<sup>351</sup> *Criminal Cases*, *supra* note 145.

<sup>352</sup> Carreño & Allen, *supra* note 21.

<sup>353</sup> BIBAS, *supra* note 2.

<sup>354</sup> See *supra* Parts II.A & II.B.

<sup>355</sup> See *supra* Part II.C.