

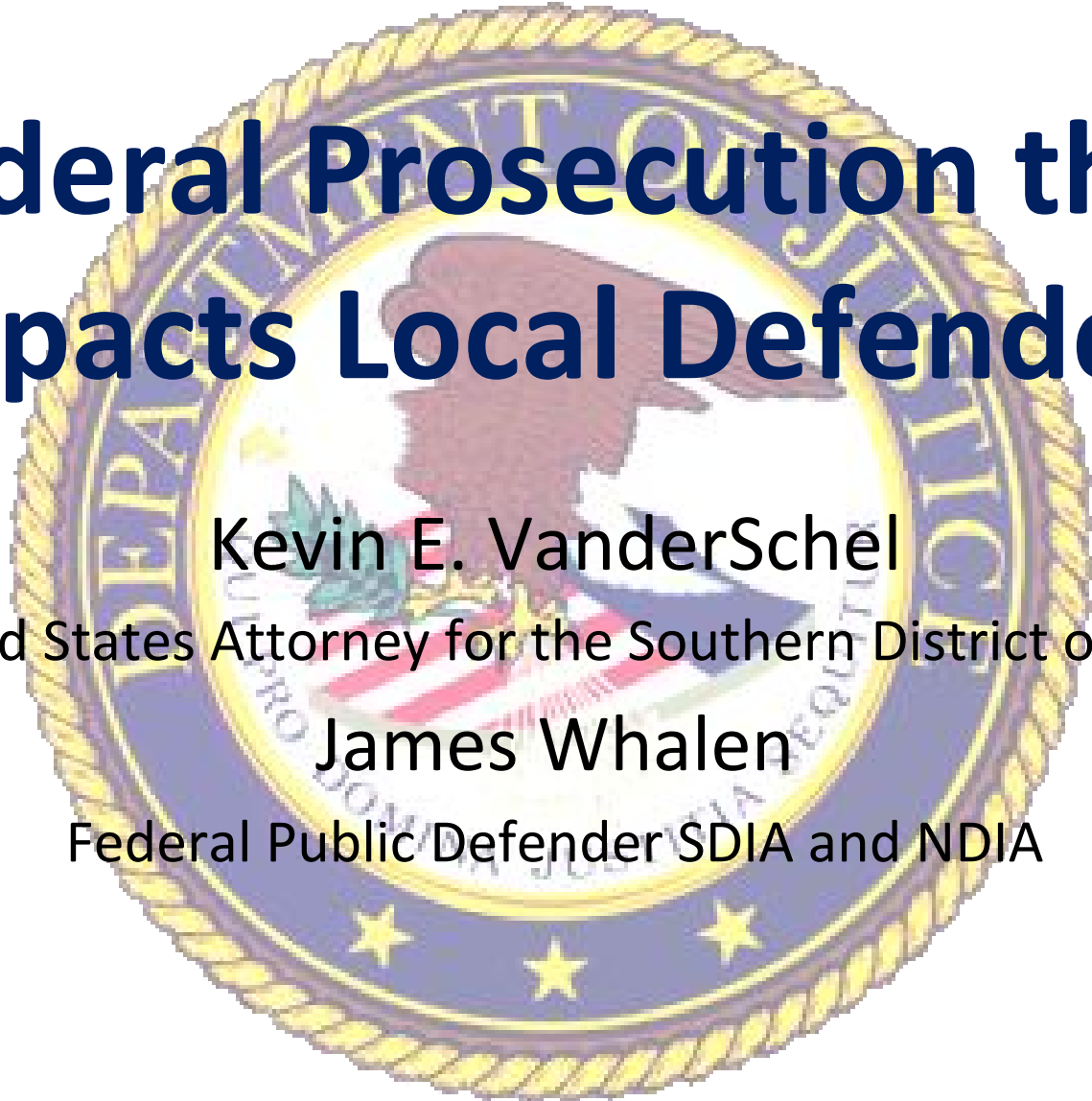
# Federal Prosecution that Impacts Local Defenders

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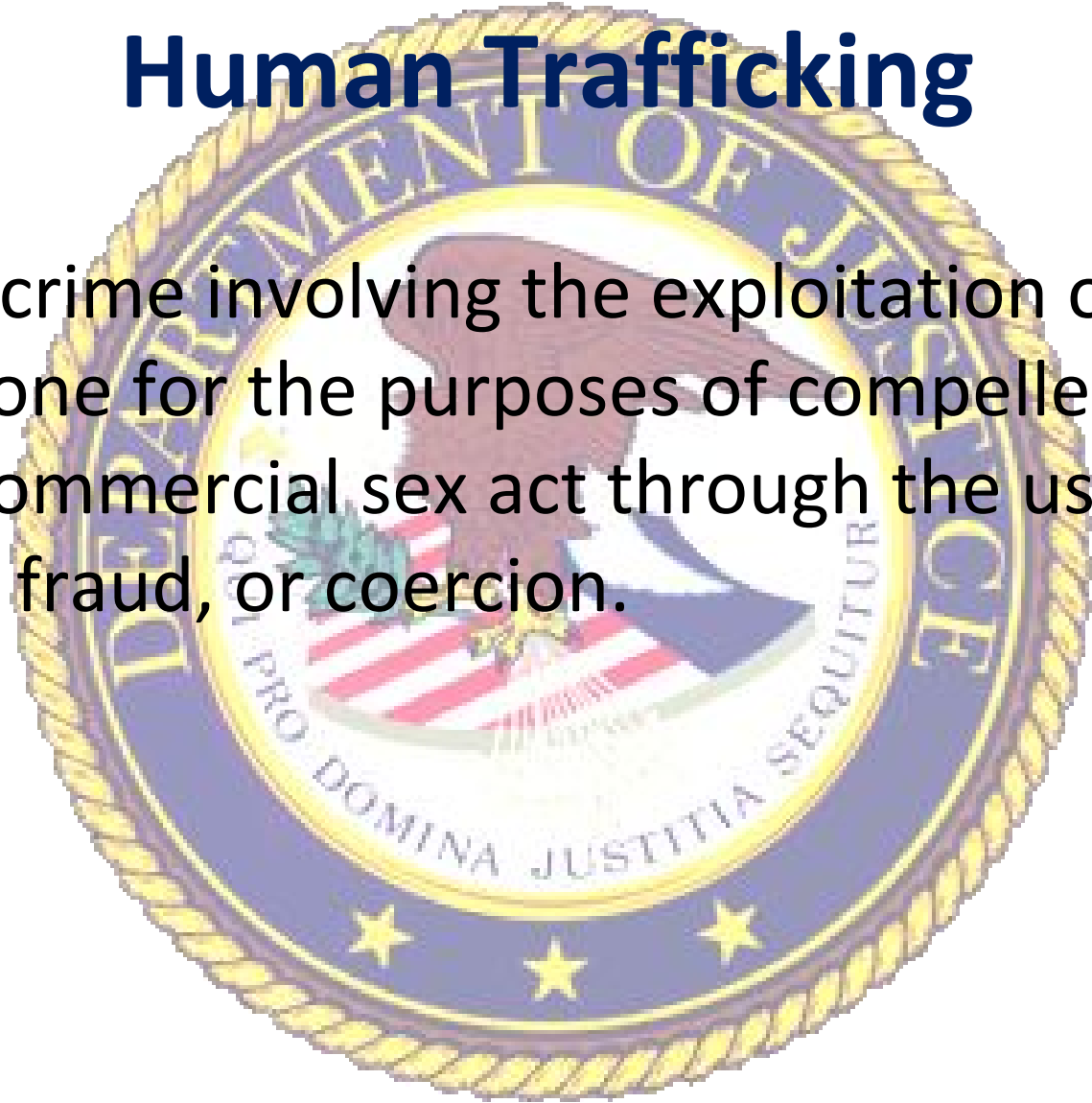
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Federal Public Defender SDIA and NDIA



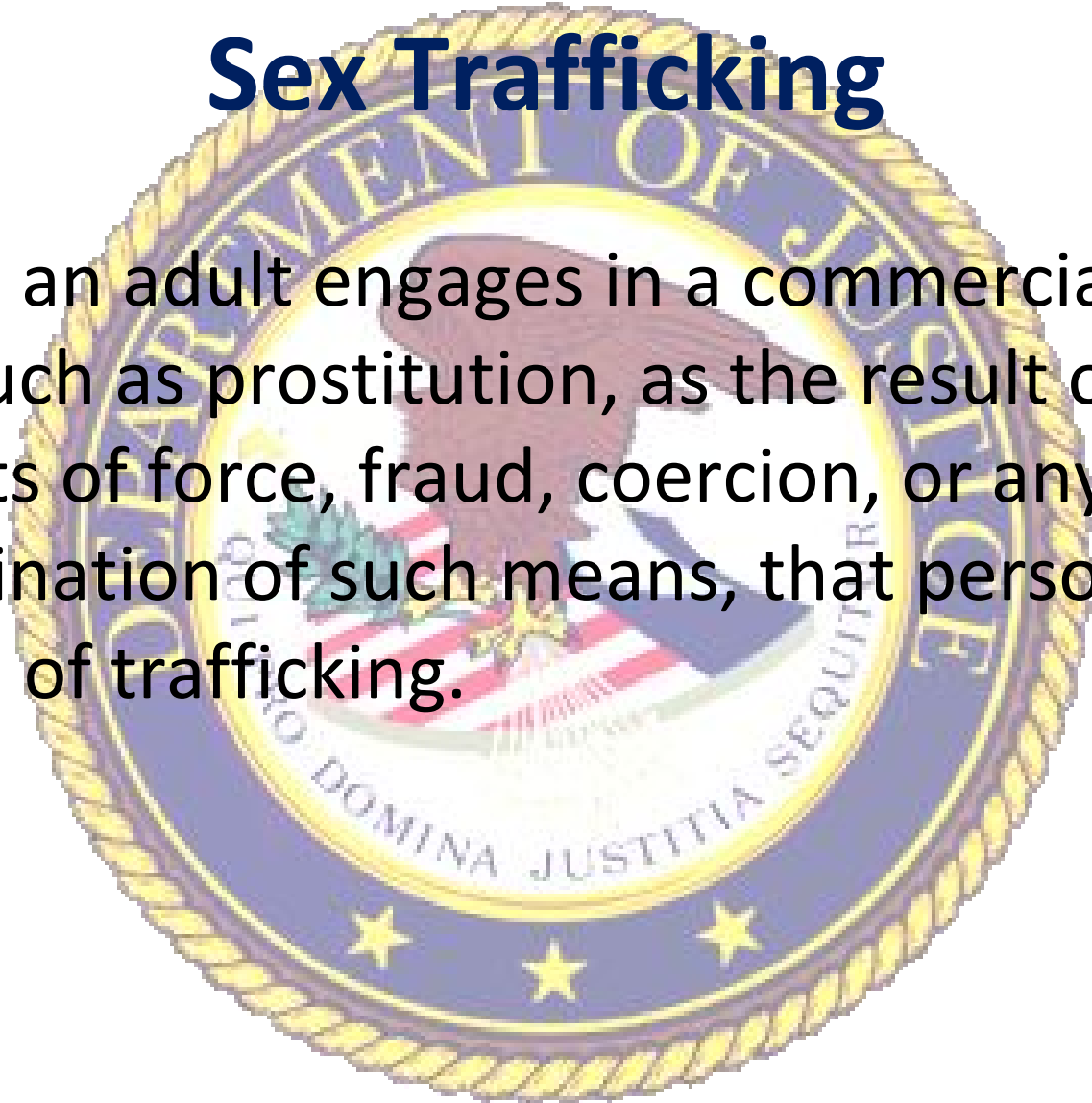
# Human Trafficking

- It is a crime involving the exploitation of someone for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion.



# Sex Trafficking

- When an adult engages in a commercial sex act, such as prostitution, as the result of force, threats of force, fraud, coercion, or any combination of such means, that person is a victim of trafficking.



# Sex Trafficking - Child

- When a child (under 18 years of age) is recruited, enticed, harbored, transported, provided, obtained, or maintained to perform a commercial sex act, proving force, fraud, or coercion is not necessary for the offense to be characterized as human trafficking.



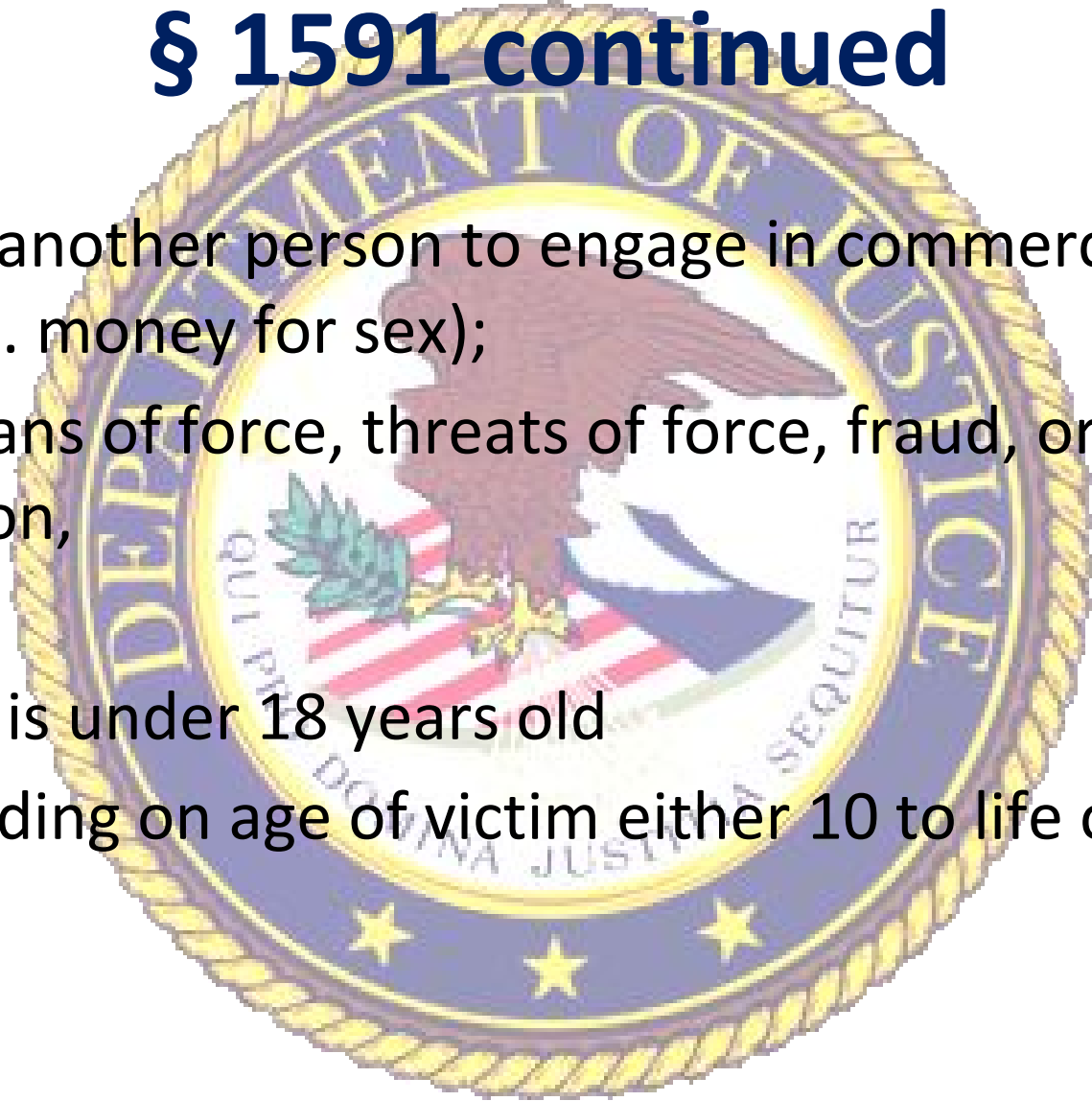
# Primary Statute

## Sex Trafficking (18 U.S.C. § 1591)

- In or affecting interstate commerce
  - crossing state lines
  - use of phones, internet, pagers to conduct business
  - use of condoms manufactured out of state
- Recruits, entices, harbors, transports, provides, obtains a person by any means, *or* benefits financially or receiving anything of value from participating in venture engaged in such acts;

## § 1591 continued

- Cause another person to engage in commercial sex act (i.e. money for sex);
- By means of force, threats of force, fraud, or coercion,  
or,
- Victim is under 18 years old
- Depending on age of victim either 10 to life or 15 to life

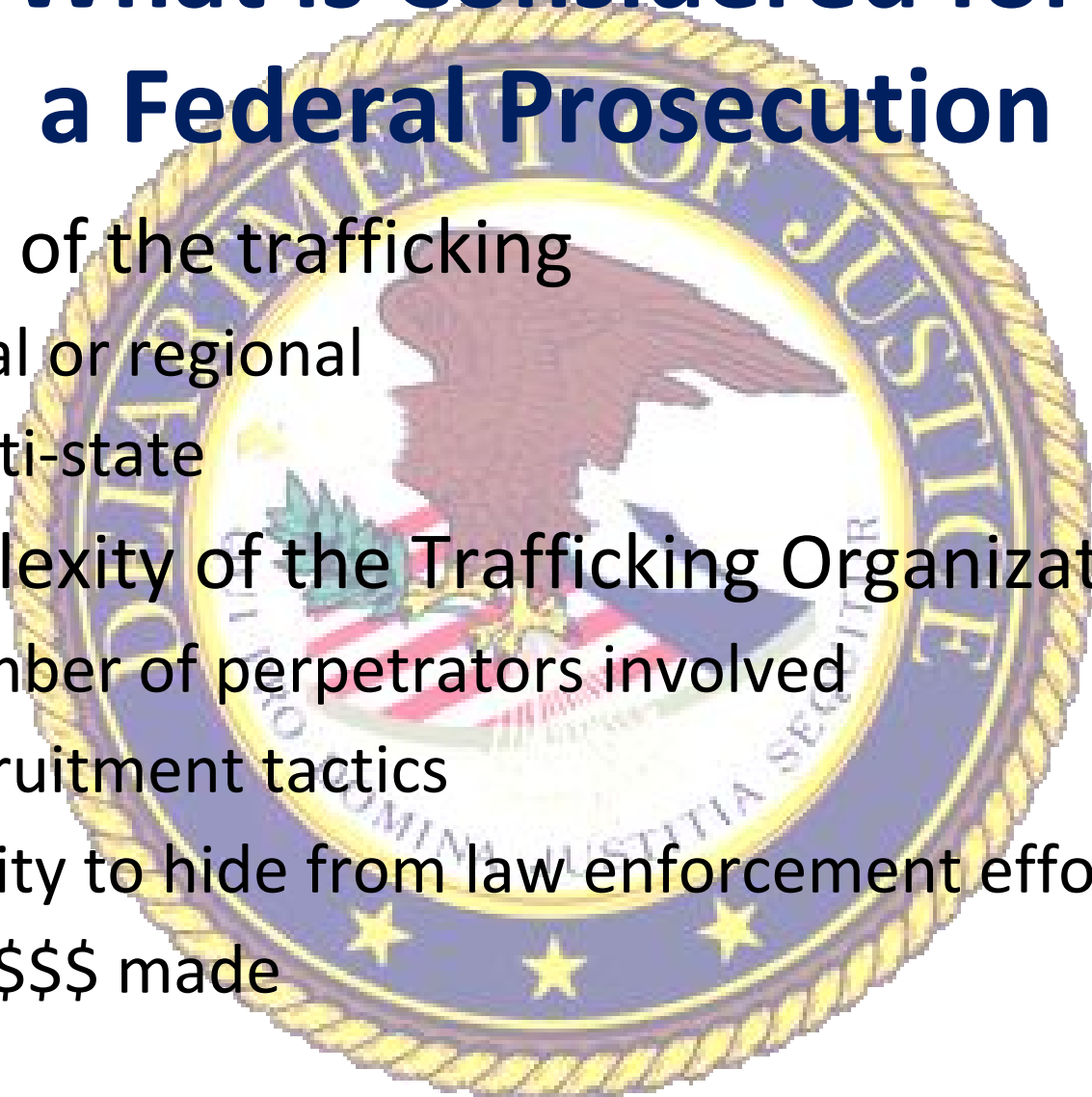


# Other Statutes We Look At

- Using Mail or Computer to Induce Minor to Engage in Prostitution, 18 U.S.C. § 2422
  - Using a means of interstate commerce
  - Knowingly persuades, induces, entices, or coerces
  - Any individual who has not reached 18 yrs of age
  - Engage in prostitution or any sexual activity that a person can be charged with a criminal offense
  - 10 years to life in prison

# What is Considered for a Federal Prosecution

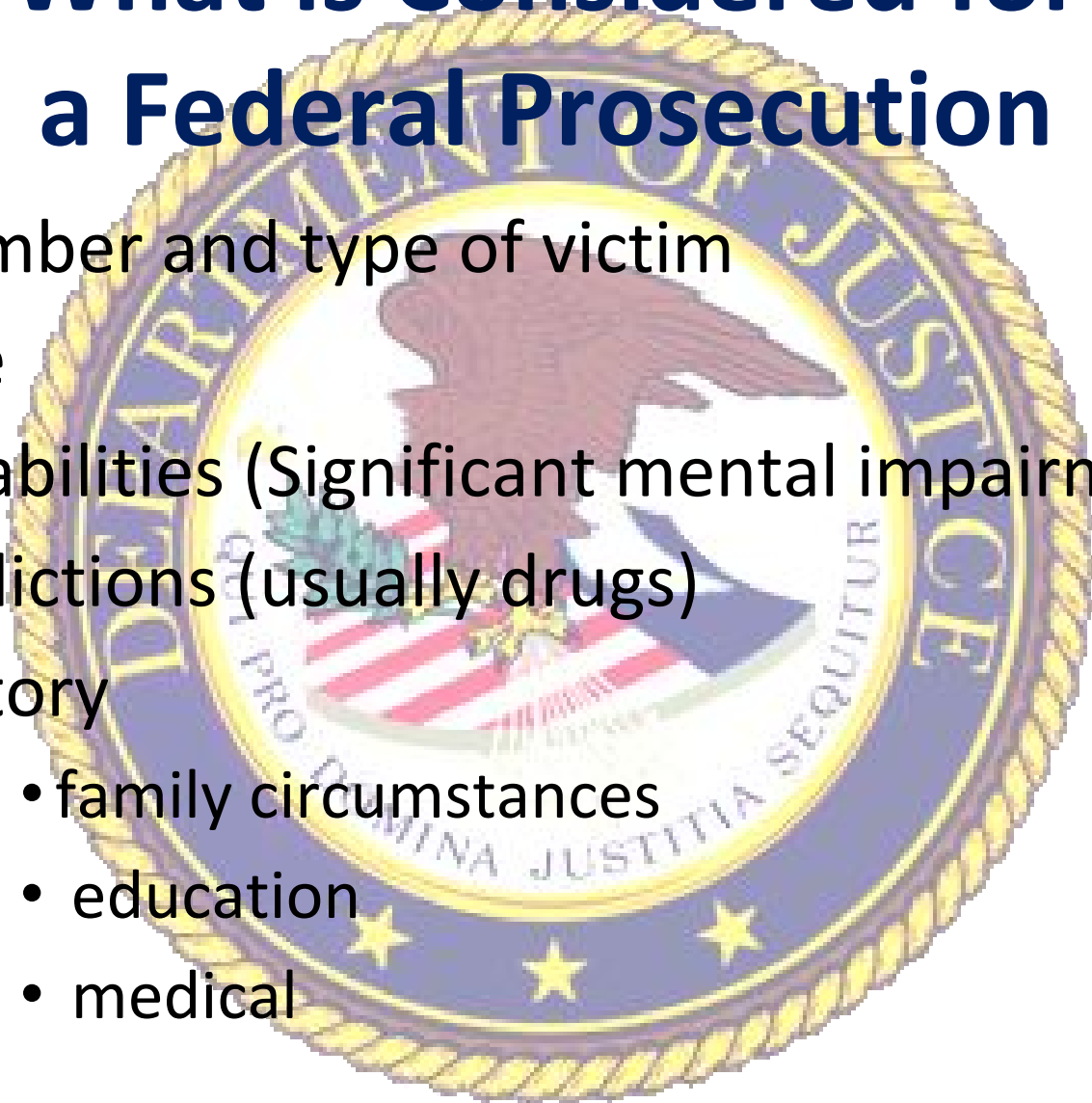
- Scope of the trafficking
  - Local or regional
  - Multi-state
- Complexity of the Trafficking Organization
  - Number of perpetrators involved
  - Recruitment tactics
  - Ability to hide from law enforcement efforts
  - \$\$\$\$\$\$ made





# What is Considered for a Federal Prosecution

- Number and type of victim
- Age
- Disabilities (Significant mental impairment)
- Addictions (usually drugs)
- History
  - family circumstances
  - education
  - medical



## Transporting a Minor

- Interstate Transportation of Minor for Any Unlawful Sexual Activity, 18 U.S.C. § 2423(a)
  - Knowingly transports individual less than 18
  - Interstate commerce
  - To engage in prostitution or any sexual act that can be charged as a criminal offense



# Travel to Engage in Sex with a Minor

- Travel with Intent to Engage in Illicit Sexual Conduct with Minor, 18 U.S.C. § 2423(b)
  - We hold that a defendant may be convicted of violating 2423(b) if he or she travels in interstate commerce with the purpose of engaging in criminal sexual conduct with a person believed to be a minor regardless of whether such person is actually a minor. *U.S. v. Hicks* 457 F.3d 838 (2006)
- Penalty-up to thirty years

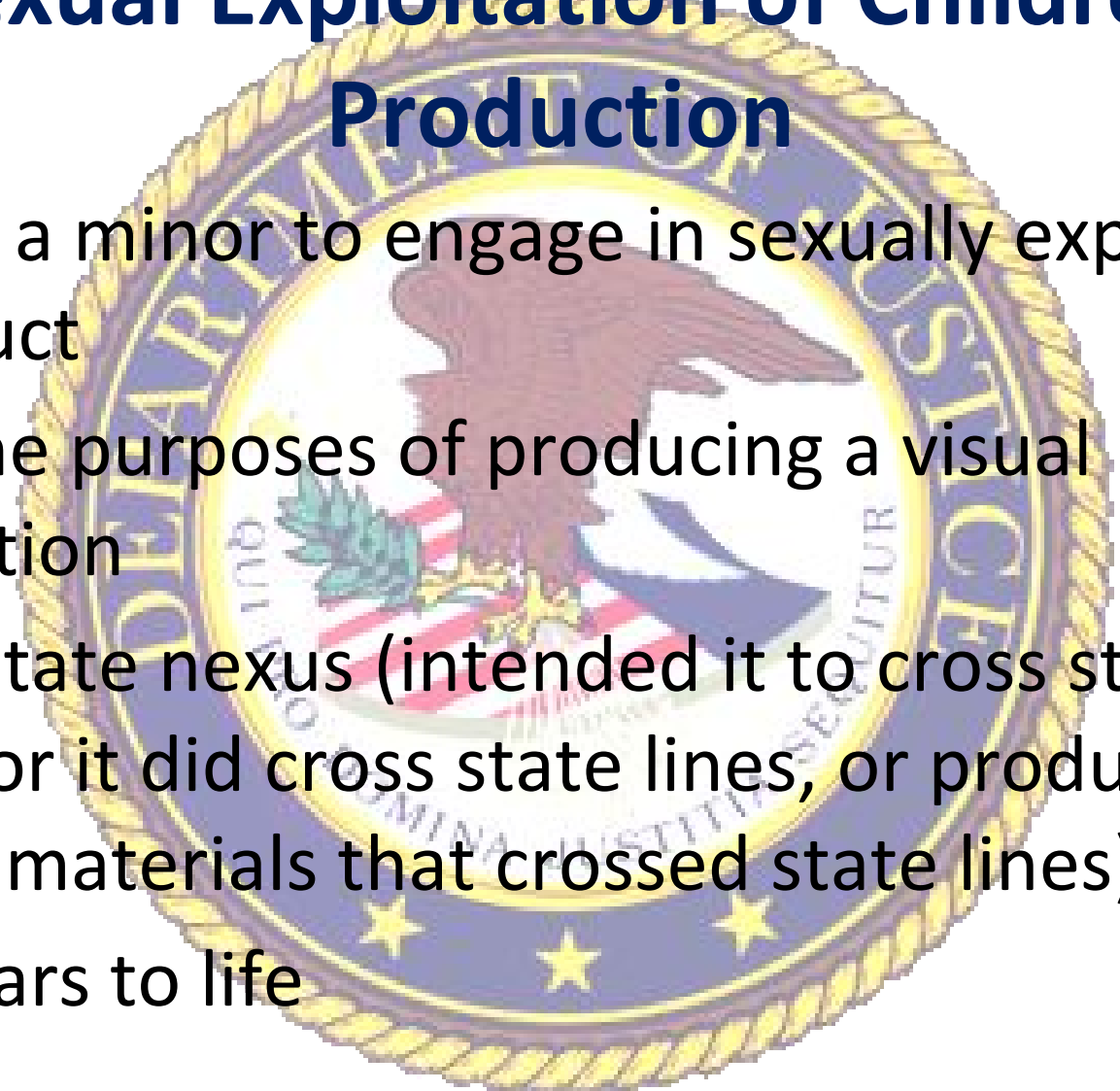
# ***U.S. v. Stringer*** 739 F.3d 391

8<sup>th</sup> Cir. 2014

- The term “minor” is defined by Title 18, United States Code, Section 2256(1) as “any person under the age of eighteen years.” Section 2256(1) provides no exception for emancipated persons. G.R. was a “minor” within the meaning of the statute, regardless of her emancipated status, and the district court acted within its discretion in concluding that evidence of emancipation would “confuse the jury and lend itself to perhaps a jury nullification issue.”

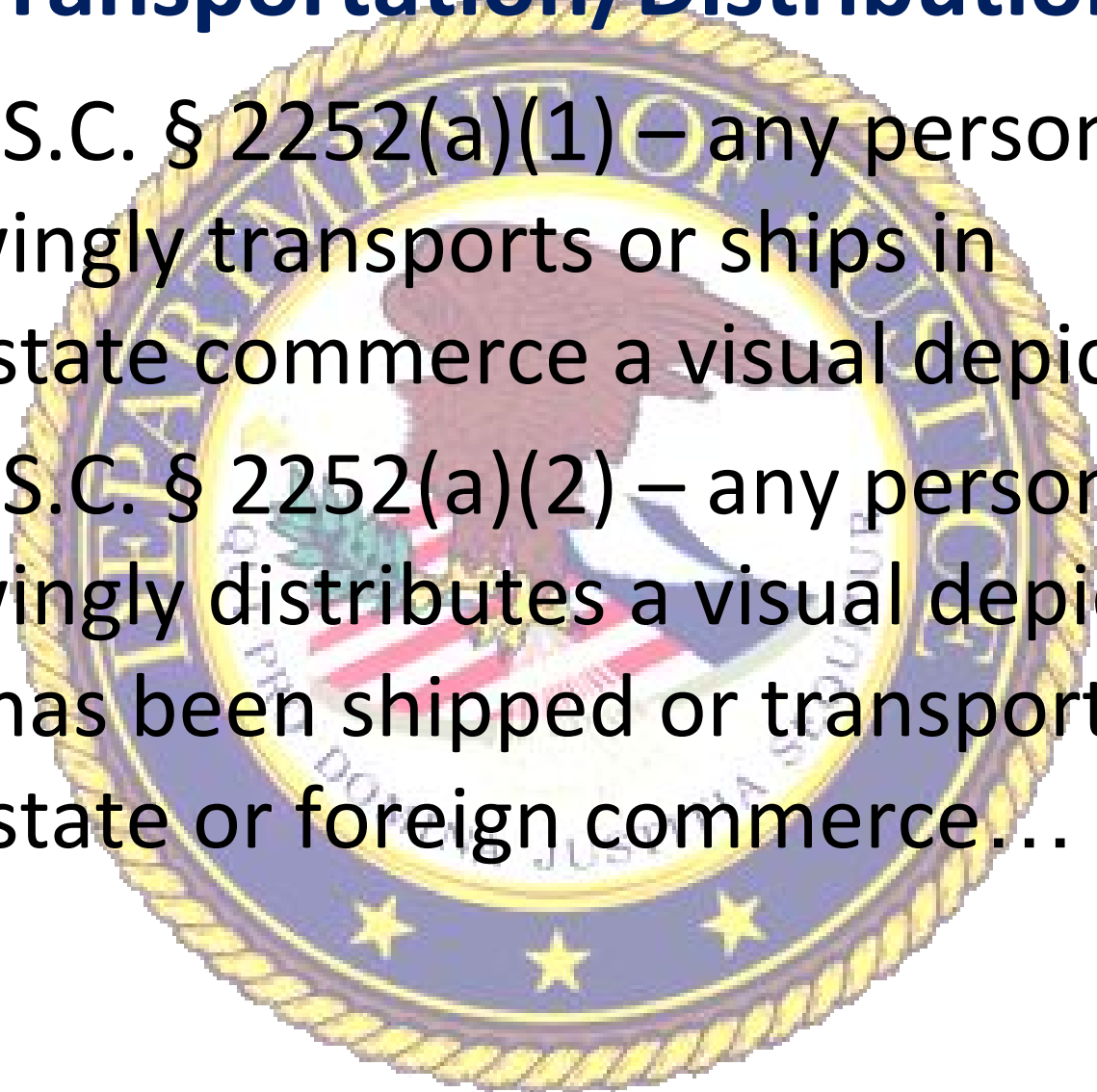
# Sexual Exploitation of Children Production

- Using a minor to engage in sexually explicit conduct
- For the purposes of producing a visual depiction
- Interstate nexus (intended it to cross state lines or it did cross state lines, or produced using materials that crossed state lines)
- 15 years to life



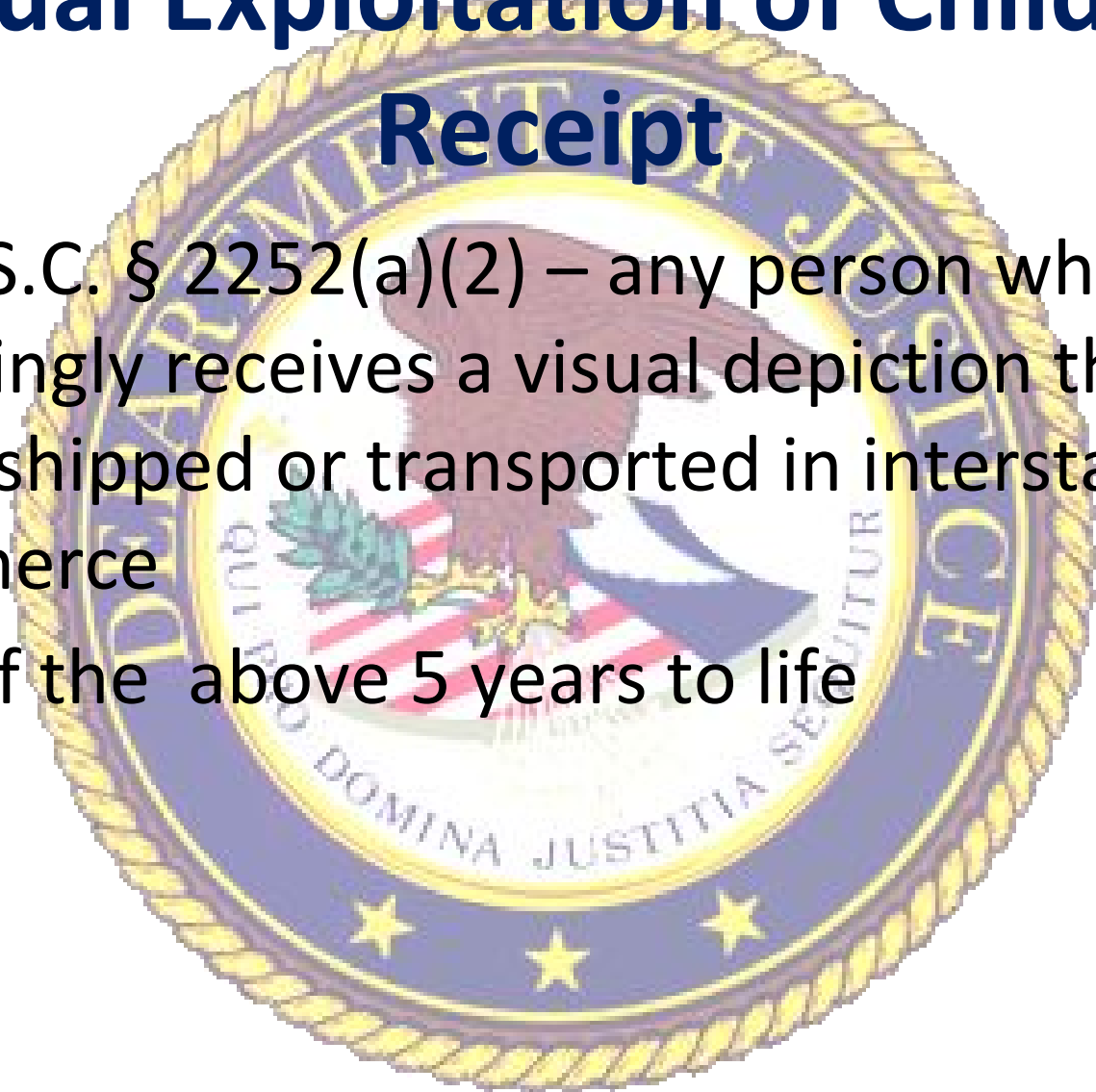
# Sexual Exploitation of Children Transportation/Distribution

- 18 U.S.C. § 2252(a)(1) – any person who knowingly transports or ships in interstate commerce a visual depiction...
- 18 U.S.C. § 2252(a)(2) – any person who knowingly distributes a visual depiction that has been shipped or transported in interstate or foreign commerce...



# Sexual Exploitation of Children Receipt

- 18 U.S.C. § 2252(a)(2) – any person who knowingly receives a visual depiction that has been shipped or transported in interstate commerce
- Any of the above 5 years to life



# Sexual Exploitation of Children Possession

- 18 U.S.C. § 2252(a)(4)(B) – any person who knowingly possesses one or more [visual depictions]...that has been mailed or shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or shipped or transported by any means including by computer.
  - Up to 10 yrs less than 12 up to 20 years



# Lascivious

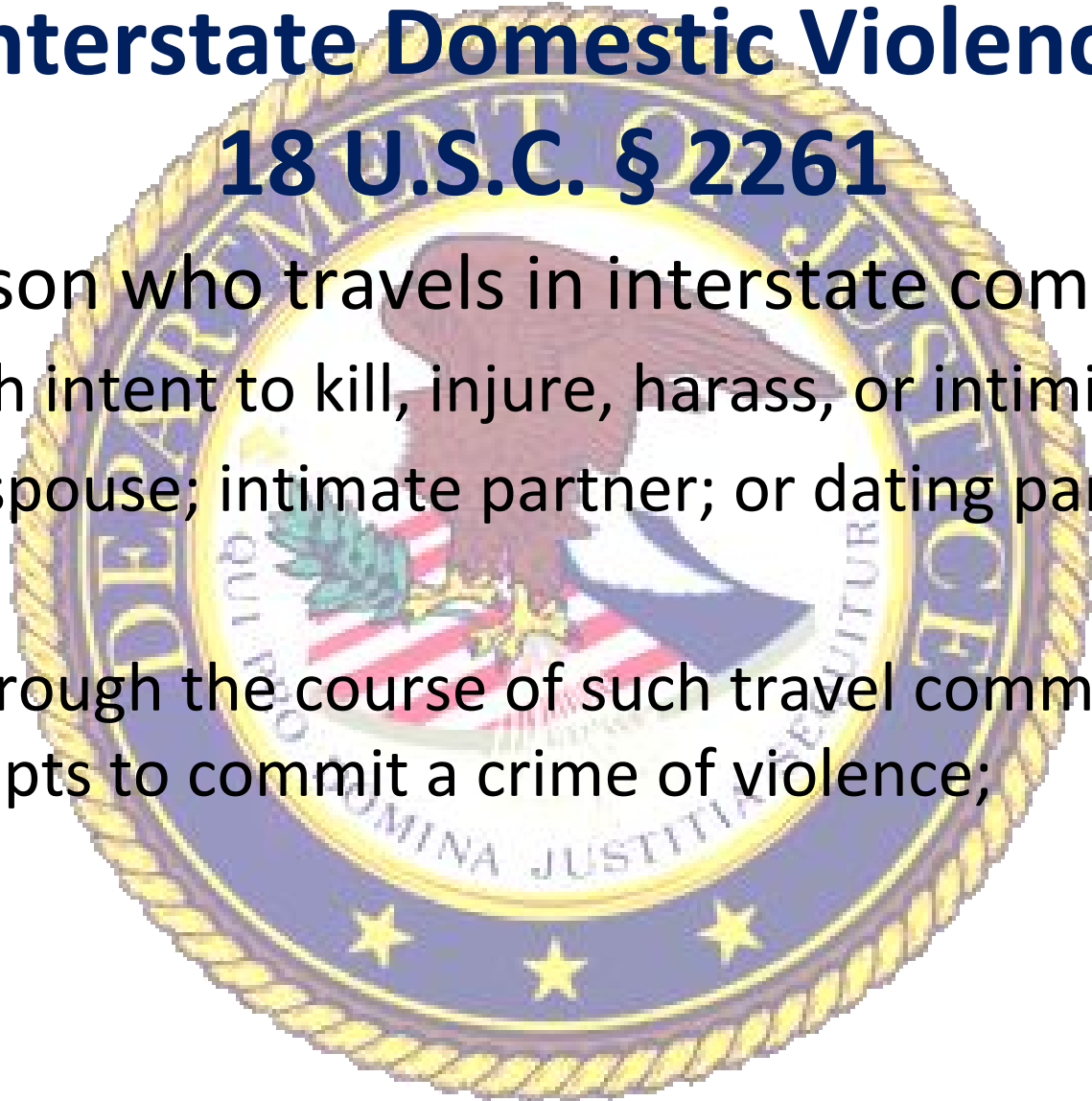
*U.S. v. Johnson*, 639 F.3d 433 (8<sup>th</sup> Cir. 2011)

(1) whether the focal point of the picture is on the minor's genitals or pubic area; (2) whether the setting of the picture is sexually suggestive; (3) whether the minor is depicted in unnatural poses or inappropriate attire considering the minor's age; (4) whether the minor is fully or partially clothed or is nude; (5) whether the picture suggests sexual coyness or a willingness to engage in sexual activity; and (6) whether the image is intended to elicit a sexual response in the viewer.

# Interstate Domestic Violence

## 18 U.S.C. § 2261

- A person who travels in interstate commerce:
  - With intent to kill, injure, harass, or intimidate  
A spouse; intimate partner; or dating partner
- Or
- Through the course of such travel commits or attempts to commit a crime of violence;

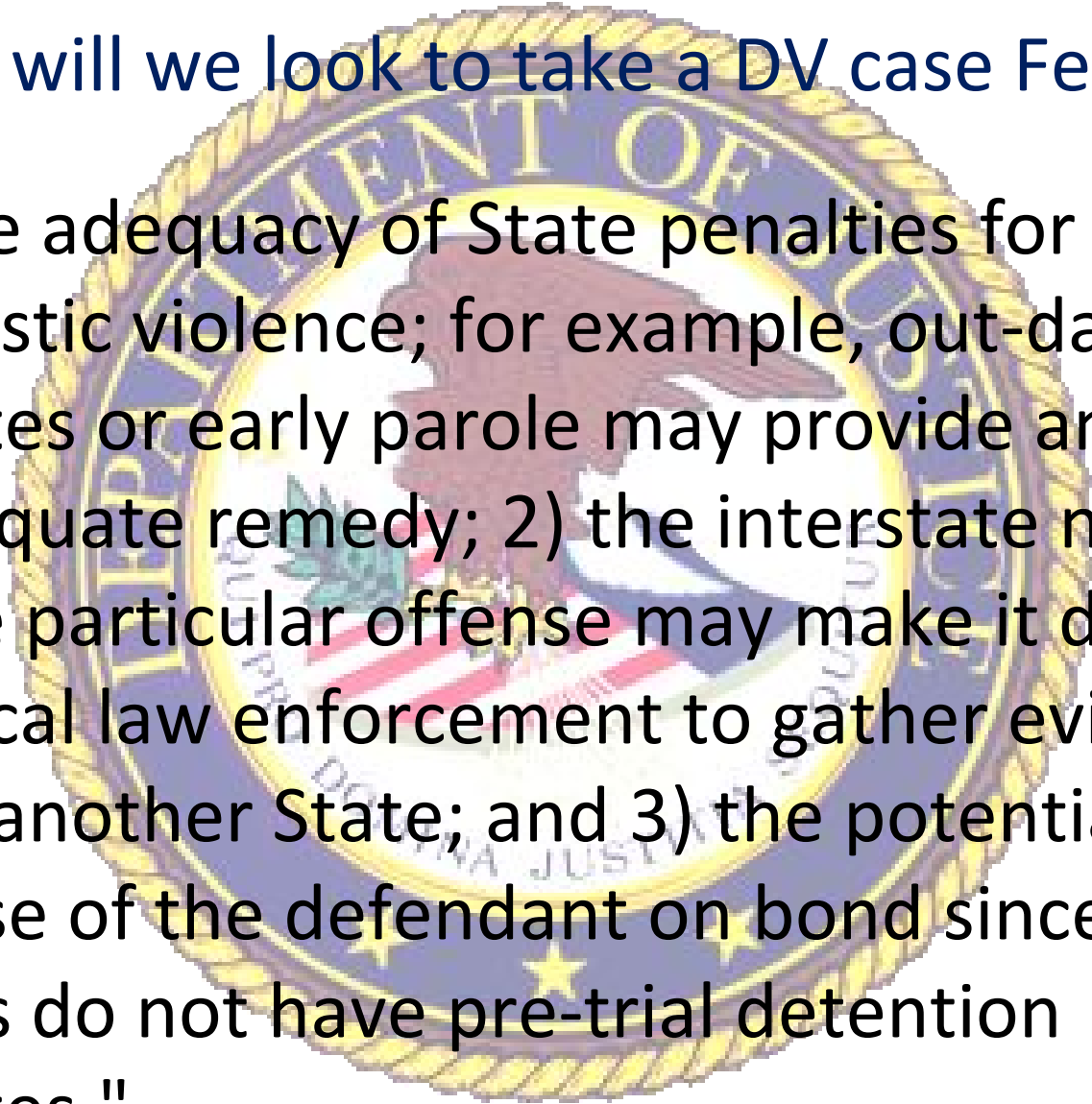


## Penalty

- Life or any term of years, if death of the victim results
- 20 years if permanent disfigurement or life threatening bodily injury to the victim results
- 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- There is a mandatory minimum sentence of one year if the crime was committed in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other similar order.

## When will we look to take a DV case Federal?

- 1) the adequacy of State penalties for domestic violence; for example, out-dated statutes or early parole may provide an inadequate remedy; 2) the interstate nature of the particular offense may make it difficult for local law enforcement to gather evidence from another State; and 3) the potential release of the defendant on bond since some States do not have pre-trial detention statutes."



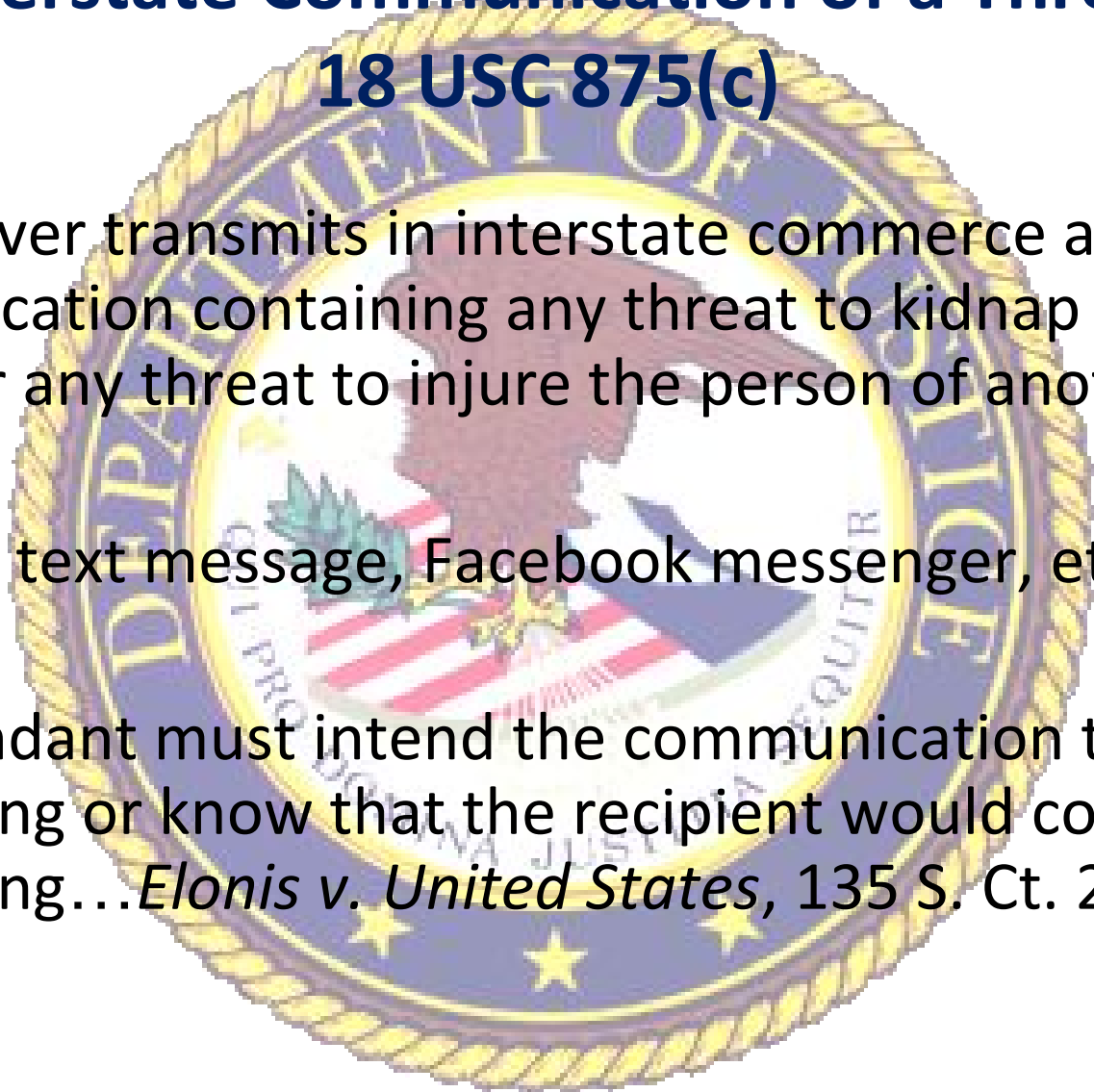
# Interstate Communication of a Threat

## 18 USC 875(c)

Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another...

Email; text message, Facebook messenger, etc.

the defendant must intend the communication to be threatening or know that the recipient would consider it threatening...*Elonis v. United States*, 135 S. Ct. 2001 (2015)



## General thoughts

- 1) To the best of your ability, know your client's criminal history
- 2) Post *Gall v. United States*, 552 U.S. 38 (2007), criminal history points matter, maybe more than before
- 3) If your client is on federal supervision, you may not want to enter that plea bargain to the state infraction

# FINALLY

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