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INTRODUCTION

Christopher Wills nearly "committed the [proverbial] perfect crime"[1]—twice. First, Wills burglarized a Virginia home, but the homeowner, Zabiuflah Alam,[2] caught Wills in the act. Wills escaped that night, but police later arrested him and charged him with the burglary.[3] Before Wills's grand jury hearing, however, Alam, the star witness in the case,[4] mysteriously disappeared. As a result, the prosecution had to dismiss the burglary charges against Wills. Investigators later determined that Wills had committed a second

1. Brooke A. Masters, *Missing Witness Case in Jeopardy; Prosecutors Appeal Rejection of Charge*, WASH. POST, Sept. 29, 2000, at B1 (quoting prosecutors from the U.S. Attorney's Office, Alexandria, Virginia).

2. The district and circuit courts both spell the victim's name "Zabiuflah Alam," United States v. Wills, 234 F.3d 174 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001); United States v. Wills, No. 99-396-A, 2000 U.S. Dist. LEXIS 3674, at *1 (E.D. Va. Mar. 17, 2000). Several newspaper articles, however, spell the victim's name "Zebiullah Alam," *See, e.g.*, Brooke A. Masters, *Md. Man Convicted of Luring, Killing Witness*, WASH. POST, Oct. 2, 2001, at B2; Siobhan Roth, *Crossing the Line to Nail Suspects*, LEGAL TIMES, June 25, 2001, at 9.

3. Alam identified Wills at a preliminary hearing. The court then referred the case to the state grand jury. After the preliminary hearing, Wills was released on bond. *See Wills*, 234 F.3d at 175.

4. The homeowner, Zabiuflah Alam, was the only person who could connect Wills to the burglary. Masters, *supra* note 2.

crime, luring Alam away from Virginia under false pretenses, through the false promise of a job interview in Washington, D.C.[5] Alam was never seen again. Prosecutors were stymied by Alam's disappearance; they had no body, no DNA, and no fingerprints.[6] They lacked adequate evidence for a kidnapping or murder charge against Wills under state law and had nothing with which to charge him under federal law.[7] Should a person who burglarizes, kidnaps, and murders escape punishment because of inadequate state and federal laws? Had the United States Circuit Court of Appeals for the Fourth Circuit not split with the Fifth Circuit and adopted a different

5. Police traced Alam's disappearance to a help-wanted flier left for him at his apartment complex two days after Wills's preliminary hearing. *See* Masters, *supra* note 2. The flier advertised a job with full benefits and gave a cellular phone number as the contact. *See Wills*, 234 F.3d at 175. The number was to a cellular phone acquired by Christopher Wills on the same day Alam received the flier. *Id.* Subsequently, Alam called the number and set up an interview in Washington, D.C. *Id.* In the interim, Wills made several phone calls to his brother, a prisoner in a Virginia state prison. *Id.* at 176 n.2. In these phone calls, which were recorded by prison officials as a routine matter, Wills stated, "I'm trying to get this dude, man! If I don't my ass is grass," and "I'm hitting him with the drew out move ... I already got the fliers out and everything so I'm just waiting, you know, for them to get it and call." Brief for the United States of America at 5–6, United States v. Wills, 234 F.3d 174 (4th Cir. 2000) (No. 00-4257) [hereinafter Appellant's Brief]. The day after the "interview," Wills told his brother that business had been "takin' care of." *See Wills*, 234 F.3d at 176. Zabiuflah Alam has not been seen since. His car was found in Maryland a little over one month after his supposed "interview" and disappearance. Appellant's Brief, *supra*, at 7.

6. *See* Masters, *supra* note 2.

7. Wills's conduct evaded local kidnapping and murder prosecution in both Virginia and Washington, D.C. due to technical reasons relating to venue. *See* Appellant's Brief, *supra* note 5, at 32 n.14. In addition, each jurisdiction alone lacked the evidence necessary for a kidnapping charge, as Virginia only had the fliers and phone conversations as evidence, and Washington, D.C. had virtually no evidence at all. Even if the two jurisdictions shared this largely circumstantial evidence, they still lacked enough physical evidence to prosecute Wills under their laws. *See also* E-mail from Vincent L. Gambale, Assistant United States Attorney, United States Attorneys Office, to Author (June 4, 2002, 06:15:15 EST) (on file with the North Carolina Law Review) (stating that the "federal kidnapping statute gave [prosecutors] the hook [they] needed to indict in the [Eastern District of Virginia] where, under our theory of the crime, the federal kidnapping commenced" and that "there was even some question that the [Eastern District of Virginia] had jurisdiction."). At the conclusion of the case, the jury did find enough evidence to convict Wills of kidnapping under the Federal Kidnapping Act. *See* Masters, *supra* note 2. The adequacy of the evidence in the prosecution of Wills is not at issue in this Comment. Instead, this Comment discusses whether the federal courts had the *jurisdiction* to hear this case at all, under the language of the Federal Kidnapping Act. Whether or not the jury found Wills guilty, the important point is that a federal jury had the opportunity to hear the case and come to its own conclusion.

interpretation of the Federal Kidnapping Act,[8] Christopher Wills may have done just that.[9]

The Federal Kidnapping Act, 18 U.S.C. § 1201(a), states, in relevant part, that:

> (a) Whoever unlawfully seizes, confines, inveigles,[10] decoys,[11] kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when – (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began; . . . shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.[12]

In *United States v. Wills*, the Fourth Circuit interpreted the Act to find federal jurisdiction for kidnappings in which the victim is lured *unaccompanied* across state lines under false pretenses. In these situations, the victim is not in the physical presence of the kidnapper or his accomplices until arriving in the second state.[13] The Fifth Circuit, the only other federal appellate court to address this specific issue, held that "the entirely voluntary act of a victim in crossing a state line even though it is induced by deception" is not within the

8. *See* 18 U.S.C. § 1201(a) (2000); *Wills*, 234 F.3d at 179 (interpreting the Act to include situations where the victim travels unaccompanied across state lines).

9. Though Wills was only prosecuted under the Federal Kidnapping Act, the Act encompasses kidnapping resulting in death. 18 U.S.C. § 1201. Where the kidnapping results in the victim's death, the kidnapper may be punished either by death or life imprisonment. *Id.* The jury hearing the Wills case deliberated between the death penalty and life imprisonment and sentenced Wills to life in prison without the possibility of parole. *Defendant Who Killed Witness Gets Life*, WASH. POST, Oct. 5, 2001, at B2. Because the jury deliberated between these two sentences, clearly Wills was punished for both the acts of kidnapping and murder, as there is no option for the death penalty where the kidnapping did not result in the victim's death. *See* 18 U.S.C. § 1201.

10. The term "inveigles" is defined as "enticing, cajoling, or tempting the victim, usually through some deceitful means such as false promises." United States v. Macklin 671 F.2d 60, 66 (2d Cir. 1982) (citations omitted). "Inveigles" also means to "obtain by cajolery," WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 641 (ed. 1984), or "to lure or entice through deceit or insincerity." BLACK'S LAW DICTIONARY 829 (7th ed. 1999).

11. The term "decoys" means "to entice (a person) without force." BLACK'S LAW DICTIONARY 419 (7th ed. 1999).

12. 18 U.S.C. § 1201(a).

13. *See Wills*, 234 F.3d at 179 (applying this rationale and finding that Wills's actions to lure Alam to Washington, D.C. were enough to create federal jurisdiction in that case).

scope of the Act.[14] The key difference between the Fourth and Fifth Circuit interpretations is that the Fourth Circuit found that the jurisdictional component of the Act is satisfied when the kidnapper inveigles and decoys the victim to cross state lines prior to any physical accompaniment, whereas the Fifth Circuit did not. This Comment argues that the Fourth Circuit's interpretation is the better one. Expanding the Federal Kidnapping Act to include the Fourth Circuit's interpretation accords with the plain text reading of the statute, conforms to Congress's intent and purpose behind the Act, and furthers public policy.

This Comment examines the interpretation of the Federal Kidnapping Act in *United States v. Wills* and its resulting expansion of federal jurisdiction. It also assesses the wisdom of expanding federal jurisdiction to include kidnapping cases where the kidnapper does not physically accompany the victim across state lines. Part I analyzes the split between the Fourth and Fifth Circuits in light of the Federal Kidnapping Act's origin, evolution, text, and case law. The Fourth Circuit's rationale, along with other reasons for the split, are developed in Part II. Part III then discusses the potential problems with the Fourth Circuit's interpretation of the Federal Kidnapping Act. This Comment argues that the text, purpose, and rationale for the statute warrant the interpretation asserted in *United States v. Wills*. Despite some of the potential problems with expanding federal jurisdiction under the Act, the new interpretation should be upheld.

I. BEHIND THE SCENES OF THE FEDERAL KIDNAPPING ACT

A. The Origin of the Statute and Interpretations of its Text

The Federal Kidnapping Act, often called the Lindbergh Law,[15] was enacted in the wake of the kidnapping of the twenty-month-old son of Charles Lindbergh, the famous aviator.[16] At the time of the

14. United States v. McInnis, 601 F.2d 1319, 1327 (5th Cir. 1979). Though prosecutors in *McInnis* argued the Fourth Circuit's interpretation, the court found that jurisdiction under the Federal Kidnapping Act precluded a charge of kidnapping where a victim traveled unaccompanied across state lines, even when induced by deception. *Id.* at 1327. *See infra* notes 31–39 and accompanying text.

15. *Amendments to the Federal Kidnaping Statute: Hearings Before the Subcomm. on Crime of the House Comm. of the Judiciary*, 93d Cong. 20 (1974) [hereinafter *Hearings*] (memorandum of Richard E. Israel, American Law Division).

16. Lindbergh's son was kidnapped from his New Jersey nursery on March 1, 1932. Over the next two months, the kidnappers sent the Lindberghs thirteen ransom notes. The Lindberghs paid $50,000 to get their son back, to no avail. Their son's body was found four and a half miles from the Lindbergh home. The coroner determined a blow to

kidnapping, the Federal Bureau of Investigation lacked jurisdiction to intervene in state matters.[17] Federal agencies could not offer their services to the State of New Jersey, the state in which the kidnapping occurred, until President Franklin Roosevelt authorized their involvement.[18]

Mere months after the Lindbergh kidnapping, Congress passed the Federal Kidnapping Act.[19] The Act made it illegal for one to "knowingly transport [ ] in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away and held for ransom or reward."[20] Forty years later, Congress amended the Federal

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the skull caused the death about two months earlier. Eventually, through the Federal Bureau of Investigation's role as the coordinating agency, Bruno Richard Hauptmann was indicted for the fraud and murder, tried, and sentenced to death. *See* Federal Bureau of Investigation, *The Lindbergh Kidnapping*, *at* http://www.fbi.gov/fbinbrief/historic/famcases/lindber/lindbernew.htm (last visited May 5, 2002) [hereinafter *FBI Lindbergh Case*]. The Lindbergh case was the first to involve a federal agency in the crime of kidnapping. For a thorough discussion of the Lindberghs, the kidnapping, and the ensuing trial, see Horace L. Bomar, Jr., *The Lindbergh Law*, 1 LAW & CONTEMP. PROBS. 435, 436 (1934); The Honorable Steven Limbaugh, *The Case of* New Jersey v. Bruno Richard Hauptmann, 68 U.M.K.C. L. REV. 585 (1999). Many websites also discuss the Lindbergh kidnapping in great detail. *See, e.g.*, Russel Aiuto, *Lindbergh, at* http://www.crimelibrary.com/lindbergh/lindmain.htm (last visited May 5, 2002) (describing the kidnapping in various chapters following the initial web page); *Lindy Truth Website, at* http://members.aol.com/lindytruth/ (last visited May 5, 2002) (offering a forum for the Lindbergh kidnapping and ensuing trial); *The Kidnapping Index: Charles Lindbergh.com, at* http://www.charleslindbergh.com/kidnap/index.asp (last visited May 5, 2002) (providing a list of links about the people and events related to the kidnapping).

17. *See FBI Lindbergh Case*, *supra* note 16; *Crime of the Century: The Lindbergh Kidnapping Hoax*, *at* http://crime.about.com/library/weekly/aa110199a.htm (last visited May 5, 2002).

18. Using a presidential directive, President Franklin D. Roosevelt centralized all work on the Lindbergh case in the Department of Justice. *See FBI Lindbergh Case*, *supra* note 16.

19. At the time, the legislation was commonly referred to as the Lindbergh Act. Throughout this Comment, the statute will be primarily referred to as the Federal Kidnapping Act or Act. The Act was enacted on June 22, 1932. *Hearings*, *supra* note 15, at 20 (memorandum of Richard E. Israel, American Law Division). Congress had the power to enact this legislation under the Commerce Clause, U.S. CONST. art. I, § 8, cl. 13. Through this power, Congress may regulate persons or articles in interstate commerce. U.S. v. Lopez, 514 U.S. 549 (1995). Thus, the Federal Kidnapping Act is valid because it regulates a kidnapped person transported in interstate commerce.

20. 18 U.S.C. § 408(a) (1932) (current version at 18 U.S.C. § 1201 (2000)); *see also Hearings*, *supra* note 15, at 20 (memorandum of Richard E. Israel, American Law Division) (discussing the original enactment in 1932). Two years later, Congress amended the statute to encompass kidnappings for any reason, not just ransom or reward, except in cases of parental kidnappings. 18 U.S.C. § 408(a) (1934) (current version at 18 U.S.C. § 1201 (2000)) (adding the words "or otherwise" after "for ransom or reward"). The Federal Kidnapping Act specifically excludes kidnapping of a victim under eighteen by the victim's parent (not including someone whose parental rights have been terminated by a

Kidnapping Act so that today it applies to "(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by parent thereof, when – (1) the person is willfully transported in interstate or foreign commerce."[21]

The *Wills* case addressed whether the act of a victim traveling unaccompanied across state lines with subsequent physical abduction constituted a violation of the Federal Kidnapping Act.[22] To establish a violation of the Act, the prosecution must establish "1) the victim was seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away; 2) the victim was held; and 3) federal jurisdiction."[23] The district court in *Wills* found that the facts of the case did not meet the jurisdictional requirement of the Federal Kidnapping Act because the kidnapper did not exert direct, physical control over Alam until after he crossed state lines.[24] The issue on appeal was whether the prosecution established federal jurisdiction.[25]

The Federal Kidnapping Act does not address the *Wills* scenario, in which the victim is lured outside his home state and then physically kidnapped in the second state. Courts may interpret this omission in two different ways: 1) the Act does not cover this scenario at all; or 2) accompaniment is not a requirement of the statute. Although numerous cases have interpreted the Federal Kidnapping Act to encompass only situations in which the kidnapper has some physical

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court order), grandparent, brother, sister, aunt, uncle, or a person with legal custody of the victim. 18 U.S.C. § 1201(g)–(h) (2000) (citing a special rule for offenses involving children). The instances excepted by the Federal Kidnapping Act are covered by the Parental Kidnapping Prevention Act. 28 U.S.C. § 1738A (1999).

21. 18 U.S.C. § 1201. The *Wills* case first arose in a Virginia district court under this statutory language.

22. *Wills* is distinguishable from *McInnis* because in *Wills* the interstate travel and later exertion of physical control over the victim actually took place, whereas in *McInnis* neither occurred; the court dealt only with the *conspiracy* to kidnap. United States v. McInnis, 601 F.2d 1319, 1321 (5th Cir. 1979).

23. United States v. Wills, 234 F.3d 174, 177 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001). After the 1972 amendment, federal jurisdiction is no longer an element of the crime of kidnapping per se, but it is a necessary requirement to invoke the federal kidnapping statute.

24. *See* United States v. Wills, No. 99-396-A, 2000 U.S. Dist. LEXIS 3674, at *3–4 (E.D. Va. Mar. 17, 2000). The court found that including luring victims to travel unaccompanied across state lines in the Federal Kidnapping Act "would be an unprecedented expansion of the [Act], as well as unsupported by the language of the statute." *Id.* at *4. The court cited a holding in *United States v. Hughes*, 716 F.2d 234 (4th Cir. 1983), that federal jurisdiction exists *after* a kidnapped person is transported across state lines. *Wills*, 2000 U.S. Dist. LEXIS 3674, at *6 (citing *Hughes*, 716 F.2d at 238 in its discussion of the elements of kidnapping under the Federal Kidnapping Act).

25. *See Wills*, 234 F.3d at 176.

control over the victim prior to crossing state lines, *Wills* adopted the second interpretation.[26] Recognizing the conflict it created with the Fifth Circuit's decision in *United States v. McInnis*,[27] the Fourth Circuit found in *Wills* that the kidnapper "willfully caus[ing] unaccompanied travel over state lines is sufficient to confer jurisdiction."[28] Though courts have discussed the interpretation and application of the Federal Kidnapping Act many times before *Wills*,[29] the Fifth Circuit in *McInnis* was the only court to specifically address the issue of whether the Act encompasses the victim's unaccompanied travel across state lines.[30]

The Fifth Circuit Court of Appeals in *McInnis* examined prior case law and found significant that in cases holding that the jurisdictional requirement of the Act had been met, "interstate travel ... occurred after some significant and unlawful step had been taken toward the commission of the federal offense."[31] The problem in *McInnis* was that the physical seizure, that is, the unlawful activity, occurred after the interstate transportation.[32] In that case, two people attempted to deceive the victim into voluntarily crossing from the United States into Mexico, and then planned to have Mexican police kidnap and murder the victim. According to the Fifth Circuit court, merely inducing someone to travel across state lines under false

26. *See, e.g.*, Eidson v. United States, 272 F.2d 684, 687 (10th Cir. 1959) (requiring the victim to cross state lines in custody of the kidnapper). *Cf.* United States v. Boone, 959 F.2d 1550, 1555–56 (11th Cir. 1992) (discussing the outer limits of the statutory interpretation of the Federal Kidnapping Act). In *Boone*, the court found that even though the victim was willing to cross state lines due to the kidnapper's deception, the fact that the kidnapper was in a position to use force prior to crossing state lines was enough to constitute a kidnapping under the Act. *Id.* at 1556. The presence of the kidnapper is not required, however, when co-conspirators are present. *See, e.g.*, United States v. Jackson, 978 F.2d 903, 910 (5th Cir. 1992) (finding that the kidnapper is liable even if the co-conspirators transported the victim); United States v. Hoog, 504 F.2d 45, 50 (8th Cir. 1974) (finding the kidnapping occurred where the aider and abettor transported the victim).

27. 601 F.2d 1319 (5th Cir. 1979). The court details the kidnap/murder plot of the victim Noe Villanueva by his ex-wife and the district attorney for Hidalgo County, Texas. Neither the kidnapping nor the murder ever occurred, but the prosecutors charged the defendants with conspiracy to kidnap under the Federal Kidnapping Act. *Id.* at 1321.

28. *Wills*, 234 F.3d at 179.

29. See the interpretive notes and decisions following the Federal Kidnapping Act, 18 U.S.C. § 1201 (2000) for a list and discussion of such cases.

30. See *supra* note 27 for discussion of the facts of the *McInnis* case.

31. *McInnis*, 601 F.2d at 1326 (citing Pereira v. United States, 347 U.S. 1 (1954) (receiving a fraudulent check); United States v. Levine, 457 F.2d 1186 (10th Cir. 1972) (establishing an illegal business); United States v. Leggett, 269 F.2d 35 (7th Cir. 1959) (stealing a car)).

32. *Id.*

pretenses did not constitute an unlawful activity.[33] *McInnis*, however, did not rely specifically on the statutory text, but upon previous courts' interpretations of the text.[34]

The *McInnis* court analyzed the text and history of the Act and found that statutory silence on unaccompanied interstate travel indicated its exclusion from the Act.[35] The court found that the kidnapper's unlawful control over a person and subsequent interstate travel forms the basis for federal jurisdiction under the Federal Kidnapping Act.[36] Overall, the court could not justify extending the Act to encompass a case where a victim voluntarily traveled unaccompanied across state lines[37] because the court required strict construction of criminal statutes.[38] The court would not stretch the statute to allow prosecution where the violation of state law would otherwise go unpunished. But, as discussed below,[39] the text of the statute does not support a finding that the interstate travel must occur after the kidnapper exerts physical control over the victim.

B. The Fourth Circuit's New Interpretation

In departing from the rationale in *United States v. McInnis*, the Fourth Circuit court in *Wills* relied upon the plain text of the statute, or, rather, the *absence* of text in the statute.[40] According to the court, "[t]he plain language of the Act does not require that the defendant accompany, physically transport, or provide for the physical transportation of the victim."[41] The Act only states that the person must be "willfully transported in interstate or foreign commerce."[42] In support of this argument, the Fourth Circuit cited *United States v. Jackson*,[43] which noted that the Act "does not require that the defendant move the victim or that the defendant know that the victim

33. *See id.* (stating that luring the victim into Mexico with a decoy was not intended unlawful interference).

34. *See* cases cited *infra* note 64.

35. *McInnis*, 601 F.2d at 1324–27.

36. *See id.* at 1326.

37. *Id.* at 1327.

38. *Id.* (citing United States v. Enmons, 410 U.S. 396, 411 (1973); United States v. Dudley, 581 F.2d 1193, 1197 (5th Cir. 1978)).

39. *See infra* Part II.A.

40. United States v. Wills, 234 F.3d 174, 176 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001).

41. *Id.* at 178.

42. 18 U.S.C. § 1201(a)(1) (2000).

43. 978 F.2d 903, 910–11 (5th Cir. 1992).

will be moved in interstate commerce."[44] In addition, the kidnapping statute does not expressly discuss accompaniment. Even though the kidnapper often accompanies the victim across state lines, that fact does not elevate the circumstance of accompaniment to an element of the crime.[45]

The Fourth Circuit court noted that the statute includes "kidnappings accomplished through physical, forcible means and also by nonphysical, nonforcible means."[46] The Act specifically names the two nonphysical means: inveiglement and decoy.[47] The Fourth Circuit court responded to the claim in *McInnis* that inveiglement and decoy require physical accompaniment; it recognized that while most kidnappers accompany their victims in interstate travel,[48] the cases using inveiglement and decoy as a basis for the crime did not make accompaniment a mandatory requirement for the kidnapping under the Act.[49]

The Fourth Circuit also held that Wills's actions met the elements of the statute because Wills "willfully transported" Alam by luring him across state lines through the false promise of a job interview in Washington, D.C.[50] According to the court, Wills willfully caused interstate travel, and the fact that the victim was unaccompanied did not render Wills's actions insufficient to confer jurisdiction.[51]

Wills differs from *McInnis* not only in its outcome, but also because of several factual distinctions.[52] One distinction is that the

44. *Wills*, 234 F.3d at 175 n.1 (quoting *Jackson*, 978 F.2d at 910–11). This statement, however, was made in reference to the scenario in *Jackson* where the kidnapper did not actually transport the victim but the co-conspirators took the victim across state lines.

45. In interpreting criminal statutes, "[w]e should not read such laws so as to put in what is not readily found there." United States v. Hood, 343 U.S. 148, 150 (1952).

46. *Wills*, 234 F.2d at 177.

47. *Id.* at 177–78 (citing United States v. Macklin, 671 F.2d 60, 65–66 (2d Cir. 1982)).

48. *Id.* at 178.

49. *See id.* at 177 (citing United States v. Stands, 105 F.3d 1565, 1576 (8th Cir. 1997) (finding sufficient evidence to hold the kidnapper liable because of his inveigling or decoy); *Jackson*, 978 F.2d at 910–11 (finding federal jurisdiction even where the co-conspirator took the victim across state lines not in the presence of the kidnapper); United States v. Hughes, 716 F.2d 234, 238–39 (4th Cir. 1983) (holding a kidnapping occurred where a man tricked a thirteen-year-old girl into accompanying him across state lines and subsequently assaulted her); *Macklin*, 671 F.2d at 65–66 (luring the victim is enough to establish inveiglement or decoy); United States v. Hoog, 504 F.2d 34, 51 (8th Cir. 1974) (holding that inducing accompaniment through false pretenses is inveiglement or decoy)).

50. *Wills*, 234 F.3d at 178–79; *see supra* note 5.

51. *Wills*, 234 F.3d at 179. The court relied on the language of the Act to conclude that the fact that Alam could have seen through Wills's kidnapping plan or simply could have decided not to pursue the job opportunity is irrelevant in establishing jurisdiction.

52. *See* Appellant's Brief, *supra* note 5, at 30 n.12.

victim in *McInnis* traveled unaccompanied across state lines, but the kidnapper never met him or exerted any physical control over him;[53] whereas in *Wills*, the victim was met by the kidnapper, held, and murdered after the victim crossed state lines. Another distinction is that the court did not find a motive in the *McInnis* case.[54] Wills, on the other hand, had a clear motive—to escape a burglary charge. Yet another distinction is that the defendants in *McInnis* were charged with conspiracy to kidnap,[55] while Wills was charged with kidnapping resulting in the victim's death.[56] Perhaps in part because of these factual distinctions, but certainly for the reasons discussed below, the Fourth Circuit in *United States v. Wills* split from the Fifth Circuit and found jurisdiction under the Federal Kidnapping Act where the victim voluntarily crossed state lines prior to the physical act of kidnapping.

II. UNDERSTANDING WHY THE FOURTH CIRCUIT FOUND FEDERAL JURISDICTION IN *UNITED STATES V. WILLS*

There are several different reasons that explain why the Fourth Circuit expanded the interpretation of the Federal Kidnapping Act to include situations where the victim travels unaccompanied across state lines and then is physically kidnapped in the second state. The court relied primarily upon a plain text reading of the statute, and it also relied upon the congressional intent and purpose of the Act in 1932 and in 1972.[57] Aside from textual and historical support, policy

53. United States v. McInnis, 601 F.2d 1319, 1320 (5th Cir. 1979).

54. *Id.* at 1320 n.2.

55. *Id.* at 1321.

56. *Wills*, 234 F.3d at 175.

57. Another principle of statutory interpretation, aside from the plain text reading and examination of legislative history, is the "rule of lenity." The rule of lenity mandates that courts construe vague or ambiguous criminal statutes in favor of the defendant. *See* Lawrence M. Solan, *Law, Language and Lenity*, 40 WM. & MARY L. REV. 57, 58 (1998) (quoting NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 59.03 (5th ed. 1992)). However, today the courts, particularly the Rehnquist Court, take a narrow approach to the rule of lenity and typically use it only where "reasonable doubt persists about a statute's intended scope even *after* resort to the 'language and structure, legislative history, and motivating policies of the statute.' " *Id.* at 111 (quoting the majority opinion in United States v. R.L.C., 503 U.S. 291, 297 (1992)). Neither the Fourth Circuit in *Wills* nor the Fifth Circuit in *McInnis* discuss the rule of lenity in their interpretations of the Federal Kidnapping Act. Other law review articles have discussed the rule of lenity at length and this Comment does not intend to do so. It is sufficient to say that this Comment argues that no reasonable doubt remains after an examination of the plain text and legislative history of the Federal Kidnapping Act, *see infra* Part II.A–B, therefore, it is unnecessary to reexamine the issues surrounding the rule or analyze the Act under the rule of lenity.

reasons also support the *Wills* court's interpretation: one role of the federal government is to protect the public, and it is essential to prevent kidnappers from escaping prosecution under similar circumstances in the future.

A. A Plain Text Reading of the Statute

A plain text reading of the Federal Kidnapping Act supports the statutory interpretation advanced in *Wills*. In particular, it is the *absence* of text that supports a finding of federal jurisdiction where the victim travels unaccompanied across state lines prior to the physical holding. Three issues arising from a plain text reading of the Act resolve in favor of the *Wills* decision. The first is whether the two nonphysical methods of kidnapping described by the Act require a physical component. The second issue is how to interpret the statutory phrase "is willfully transported." The third is discerning the meaning of the change in the statutory language from the original enactment to the language after the 1972 amendment.

A plain text reading of the Federal Kidnapping Act does not require a physical method of kidnapping. The statute includes seven methods of kidnapping.[58] Two of these methods, "inveigles" and "decoys," are non-physical methods.[59] The Act does not expressly mandate physical accompaniment; the text does not require any combination of physical and nonphysical means, and the nonphysical means have no additional physical requirements. Instead, it groups together all seven methods of kidnapping, without any distinction among them.[60] The nonphysical terms, "inveigles" and "decoys," appear within the middle of the other physical kidnapping methods,[61] suggesting that they should be treated the same as the other five physical methods of kidnapping. Of the seven methods of kidnapping set forth in the Federal Kidnapping Act, the text advances no reason as to why the two nonphysical methods should need an additional physical element, while the other five physical methods are acceptable on their own.[62] The Supreme Court expressly stated that

58. The term "kidnapping" is defined as "[s]eizes, confines, inveigles, decoys, kidnaps, abducts, or carries away." 18 U.S.C. § 1201(a) (2000).

59. *Wills*, 234 F.3d at 177. These methods of kidnapping are expressly prohibited under the Federal Kidnapping Act. *See* United States v. Hughes, 716 F.2d 234, 238–39 (4th Cir. 1983). See *supra* notes 10 and 11 for definitions of these terms.

60. *See* 18 U.S.C. § 1201(a).

61. *Id.*

62. One possible reason is that because five of the seven methods are inherently physical, a presumption arises that all of the methods require some sort of physical element. The plain text of the Act, however, does not support this interpretation because,

the "holding" requirement of the statute "implies an unlawful physical *or mental* restraint" or confinement accomplished through "force, fear, *or deception.*"[63] The Fourth Circuit, among others, has explicitly prohibited kidnappings accomplished by decoy and inveiglement.[64]

While some physical aspect of kidnapping often accompanies inveigling and decoying, and though prior cases relying on the inveiglement and decoy provisions to obtain jurisdiction under the Act also relied on physical accompaniment,[65] the statute does not require a physical element for the inveigling and decoying methods of kidnapping.[66] The commonplace instance of accompaniment does not make it an element of the crime of kidnapping.[67] "Inveigles" and "decoys" are both defined as luring or enticing a person through some trick or fraud or temptation; all the definitions exclude the use of physical means or force.[68] These definitions illustrate that the use of force is unnecessary to establish a kidnapping charge, therefore, physical, forceful accompaniment is not required to find a violation of the Federal Kidnapping Act.

Unlike the interpretation of the kidnapping statute in *Wills*, which takes advantage of the "inveigling" and "decoying" methods of kidnapping, the *McInnis* court interprets these methods as requiring

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again, the text does not expressly require a physical method of kidnapping.

63. Chatwin v. United States, 326 U.S. 455, 460 (1946) (emphasis added). The kidnapping statute is designed to encompass "every possible variety of kidnapping." *Id.* at 463.

64. *Hughes*, 716 F.2d at 238–39 (finding a violation of the kidnapping statute where the kidnapper enticed his victim to enter his vehicle through misrepresentations and then exerted physical control over her after crossing state lines); *see also* United States v. Stands, 105 F.3d 1565, 1576 (8th Cir. 1997) (holding the kidnapper liable for a kidnapping accomplished through inveiglement and decoy); United States v. Macklin, 671 F.2d 60, 64 (2d Cir. 1982) (same).

65. *See* United States v. Boone, 959 F.2d 1550, 1556 (11th Cir. 1992) (finding a kidnapping where the victim willingly crossed state lines through deception because the kidnapper physically accompanied the victim and "remained in a position where he could use force to ensure the kidnapping and transporting . . . would take place"); *Hughes*, 716 F.2d at 239 (finding that the physical presence of the kidnapper turned inveigling into a kidnapping through the kidnapper's exercise of control over the victim's actions); *see also* Eidson v. United States, 272 F.2d 684, 687 (10th Cir. 1959) (finding sufficient facts for a violation of the Act when the kidnapper crosses state lines with the victim).

66. *See* United States v. Wills, 234 F.3d 174, 177–78 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001).

67. *See id.*; *see also supra* note 45 and accompanying text.

68. Inveigling is "enticing, cajoling, or tempting the victim, usually through some deceitful means such as false promises," *Macklin*, 671 F.2d at 66 (citations omitted), and decoys is "entic[ing] (a person) without force," BLACK'S LAW DICTIONARY 419 (7th ed. 1999).

forcible, physical control over the victim prior to the interstate transportation.[69] This construction of the statute implies that inveigling and decoying also require a physical component, an interpretation unwarranted by the statute and also prohibited by the principles of statutory construction.[70] The Fourth Circuit avoids the problems of statutory interpretation created in *McInnis* through its straightforward, plain text interpretation of the language of the statute.

Several courts have upheld convictions under the Act employing the inveiglement and decoy methods of kidnapping.[71] *United States v. Hughes*[72] is illustrative. In *Hughes*, a man used false pretenses to lure a young girl into his car and subsequently crossed state lines. Once inside the second state, the kidnapper assaulted his victim. The concurring judge in *Hughes* stated that "the statute requires not more than that the intent to kidnap be formed, or be present, and the kidnapping occur (if it has not already occurred) some time during the journey that involves the crossing of a state line."[73] The facts of *Wills* clearly fit into the scenario discussed in *Hughes*: Wills formed the intent to kidnap prior to the kidnapping, and the kidnapping occurred, through inveiglement and decoy, sometime before or while the victim crossed from Virginia into Washington, D.C. Prior case law supports the interpretation of the text that relies on nonphysical methods of kidnapping, "inveiglement" and "decoy," to support violations of the Federal Kidnapping Act. Therefore, those methods should not be read out of the statute, as the Fifth Circuit court's ruling would suggest.

Another textual issue concerns the phrase "is willfully transported." The Federal Kidnapping Act establishes jurisdiction

69. *See* United States v. McInnis, 601 F.2d 1319, 1326 (5th Cir. 1979).

70. *See, e.g.*, Kawaauhau v. Geiger, 523 U.S. 57, 62 (1998) (hesitating to adopt an interpretation of a statute that makes another part of the statute superfluous); United States v. Childress, 104 F.3d 47, 52 (4th Cir. 1996) (recognizing that courts must read statutory provisions so that no part of the statute is superfluous); Virginia v. Browner, 80 F.3d 869, 876 (4th Cir. 1996) (stating that a court cannot interpret a statute to reduce a part of the statute to mere surplusage).

71. *See, e.g.*, United States v. Stands, 105 F.3d 1565, 1576 (8th Cir. 1997) (finding evidence sufficient to prove that the kidnapper inveigled or decoyed the victim in violation of the Act); United States v. Boone, 959 F.2d 1550, 1555 (11th Cir. 1992) ("The Federal Kidnapping Act remains applicable to kidnappings accomplished solely by 'seduction of victims,' *i.e.*, by the inveigling or decoying of kidnapping victims."); United States v. Hoog, 504 F.2d 45, 51 (8th Cir. 1974) (finding that victims are inveigled or decoyed under the Act when the kidnapper induces them through false pretenses).

72. 716 F.2d 234 (4th Cir. 1983).

73. *Id.* at 242 (Widener, J., concurring).

for the crime in five instances; the relevant instance here is when "the person is willfully transported in interstate or foreign commerce."[74] In *Wills*, the district court found that "is willfully transported" means that someone else is doing the transporting, that is, the victim is not transporting himself.[75] But if Congress intended to exclude self-transportation and require physical accompaniment across state lines, it easily could have required that the victim be "willfully transported by the kidnapper,"[76] instead of merely saying "is willfully transported."[77] Willful transportation can be accomplished without physical accompaniment. The Fourth Circuit found that Wills "willfully transported" Alam by luring him across state lines by leaving the flier, securing the cellular phone, and arranging the Washington, D.C. interview.[78] Wills's actions sufficiently conferred jurisdiction under the Act, despite the fact that Wills did not accompany his victim across state lines.[79]

The original language of the Act stated, "[w]hoever knowingly transports in interstate or foreign commerce, any person *who has been* unlawfully seized, confined, inveigled, decoyed . . . and held for ransom or reward or otherwise."[80] Today the language states, "[w]hoever unlawfully seizes . . . a person . . . *when* – (1) the person is willfully transported in interstate or foreign commerce."[81] The change is critical because the original language of "who has been" means that there must be a method of kidnapping (such as seizure) and a holding prior to the interstate transportation.[82] After the amendments to the text in 1972, this "has been" requirement was

74. 18 U.S.C. § 1201(a)(1) (2000). The other four ways to gain jurisdiction are when the kidnapping is "within the special maritime and territorial jurisdiction of the United States," § 1201(a)(2), when it is within the United States' special aircraft jurisdiction, § 1201(a)(3), when the victim is internationally protected, a foreign official, or an official guest, § 1201(a)(4), or when the person is kidnapped while performing special duties as an officer or employee of the federal government, § 1201(a)(5).

75. *See* United States v. Wills, No. 99-396-A, 2000 U.S. Dist. LEXIS 3674, at *14 (E.D. Va. Mar. 17, 2000). The *Wills* district court argues that Congress could have used the phrasing "whenever a person is inveigled or decoyed to travel across state lines" to clarify that the statute intends to encompass situations where the victim travels across state lines without the kidnapper's physical interference. *Id.*

76. United States v. Wills, 234 F.3d 174, 178 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001).

77. 18 U.S.C. § 1201(a)(1).

78. *Wills*, 234 F.3d at 178–79; *see supra* note 5.

79. *Wills*, 234 F.3d at 179.

80. 18 U.S.C. § 408(a) (1932) (emphasis added).

81. 18 U.S.C. § 1201(a) (2000) (emphasis added).

82. *See* United States v. Hughes, 716 F.2d 234, 242 (4th Cir. 1983) (Widener, J., concurring).

eliminated, thus strongly supporting that kidnapping and holding are no longer required prior to the interstate transportation. Instead, federal jurisdiction exists anytime the victim is transported in interstate commerce, at anytime during the commission of the crime of kidnapping.[83] Contrary to the text of the Act after 1972, the *McInnis* court found that the unlawful exercise of physical control over the victim must be complete before the victim crosses state lines.[84] Again, this interpretation does not follow the plain text of the Act. The term "when" in the current text of the Act is used "not in its temporal sense—i.e., 'at the time that'—but rather in its categorical sense—i.e., 'in cases where.' "[85] The current language of the Act supports the interpretation that the interstate transportation may occur at anytime during the kidnapping, not only after the victim is in the physical company of the kidnapper.

The foregoing textual analysis illustrates that a better reading of the Federal Kidnapping Act does not find physical accompaniment to be a requirement under the statute. The Act does not demand a physical element in either the method of kidnapping or transportation across state lines. Thus, as long as the victim is willfully transported, physical accompaniment is not necessary to establish jurisdiction. These plain text arguments help explain why the Fourth Circuit expanded the federal courts' jurisdiction under the Federal Kidnapping Act.

B. Congressional Intent and Purpose

The new interpretation adopted in *Wills*, finding federal jurisdiction where the kidnapping victim is lured to travel unaccompanied across state lines, adheres to both the pre- and post-1972 Amendment purpose of the Federal Kidnapping Act. The Fourth Circuit claimed that one can infer congressional intent from the plain text of the statute, which does not require the kidnapper to physically accompany the victim during interstate transportation.[86] The court also mentioned that Congress did not intend to "[reward]

83. *See id.*; *see also* Appellant's Brief, *supra* note 5, at 29.

84. *See* United States v. McInnis, 601 F.2d 1319, 1326 (5th Cir. 1979).

85. United States v. Seals, 130 F.3d 451, 462 (D.C. Cir. 1997) (reasoning that the syntax and structure of the provision dictated this result and prevents words in the provision from being superfluous).

86. United States v. Wills, 234 F.3d 174, 178 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001).

the kidnapper simply because he is ingenious enough to conceal his true motives from his victim."[87]

Congress's purpose in enacting the Federal Kidnapping Act in 1932 was to redress the growing crime of interstate kidnapping;[88] accordingly, the Act focused not upon the kidnapping itself, but on the interstate aspect of the kidnapping.[89] The Senate Report stated that:

> The purpose of this proposed legislation is to assist the States in stamping out the growing menace of kidnaping. Kidnapers often seize a person in one State and transport him into another State. The police officers of the first State have no authority to follow into the second State but are compelled to rely wholly on the efforts of the police officers of the second State.[90]

With this legislation, Congress sought to combat the crime of kidnapping more effectively by enabling federal law enforcement to pursue kidnappers across state borders, something the states could not do.[91]

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87. *Id.* (quoting *Hughes*, 716 F.2d at 239).

88. *See Hearings*, *supra* note 15, at 28 (memorandum of Richard E. Israel, American Law Division).

89. *Id.* at 21 (memorandum of Richard E. Israel, American Law Division). Some commentators contend that laws such as the Lindbergh Act were merely a reaction to public outcry, not an attempt to enable states to prosecute these crimes. *See* Michael A. Simons, *Prosecutorial Discretion and Prosecution Guidelines: A Case Study in Controlling Federalization*, 75 N.Y.U. L. REV. 893, 904 (2000) (noting that the Federal Kidnapping Act illustrates federalization based upon public outcry).

90. *Hearings*, *supra* note 15, at 21 (memorandum of Richard E. Israel, American Law Division) (quoting the Senate Report).

91. *See id.* (memorandum of Richard E. Israel, American Law Division) (discussing the comments of Rep. Sumners and Rep. Homer Hoch regarding the purpose of the legislation in 75 Cong. Rec. 13292 (1932)); *see also* Model State Computer Crimes Code, *Why is it a STATE Computer Crimes Code (isn't federal law better?)?*, University of Dayton School of Law Cybercrimes Seminar, *at* http://cybercrimes.net/99MSCCC/Ques5.html (last visited May 5, 2002) (on file with the North Carolina Law Review) (discussing how federal law has been used to address new criminal problems). At this time, organized violence had created a kidnapping epidemic in which kidnappers targeted the wealthy for ransom, as in the Lindbergh case. *See, e.g.*, Chatwin v. United States, 326 U.S. 455, 462–63 (1946) (discussing the background of the Federal Kidnapping Act). These kidnappers took advantage of a system in which no coordination existed between federal and state law enforcement authorities; kidnappers snatched a person in one state and then moved him to another and yet another state, knowing that police in the original jurisdiction had no authority to act in the state where the victim was confined and concealed. *Id.* at 463. *See also* Hugh A. Fisher & Matthew F. McGuire, *Kidnapping and the So-called Lindbergh Law*, 12 N.Y.U. L. REV. 646, 653 (1934) (discussing the ease of interstate kidnapping due to lack of state coordination and communication).

The decision in *Wills* is faithful to Congress's original purpose for enacting the federal law.[92] Where states could not prosecute kidnappers, Congress sought to provide a federal avenue of relief.[93] The *Wills* case addressed exactly this situation; federal courts offered successful prosecution of a kidnapper where states could not do so.[94] Allowing federal jurisdiction in such cases is consistent with the original congressional intent and purpose behind the Act.

Forty years after creating the Act, Congress changed the focus of the Act to the offense of kidnapping, instead of transportation in interstate commerce.[95] The 1972 amendment to the Federal Kidnapping Act made the interstate travel portion of the Act a basis of federal jurisdiction instead of a component of the substantive crime.[96] The Senate Report concerning the 1972 amendment stated, "in lieu of the sole jurisdictional base of transportation in interstate or foreign commerce," federal jurisdiction exists when there is interstate transportation, U.S. maritime and territorial jurisdiction, special aircraft jurisdiction, or where the victim is a foreign official.[97] These

92. *See generally supra* Part II.B. (discussing the purpose behind the Federal Kidnapping Act when it was originally enacted and then the purpose after the 1972 Amendment).

93. *See Hearings*, *supra* note 15, at 21 (memorandum of Richard E. Israel, American Law Division) (citing the Senate Report at 1 and 2 and the debate between Representative Sumners and Representative Homer Hoch in 75 Cong. Rec. 13292 (1932)).

94. "Now, two cases [*Wills* and *Lentz*, *see infra* notes 113–21 and accompanying text] that were beyond the reach of local authorities are making their way toward trial thanks to federal prosecutors' novel interpretation of a rarely invoked criminal statute-kidnapping leading to death." Roth, *supra* note 2, at 9. Again, the Federal Kidnapping Act encompasses both kidnappings resulting in death and those that do not result in death. 18 U.S.C. § 1201 (2000). See *supra* note 7 for reasons why states could not prosecute Wills, i.e., lack of physical evidence.

95. *See* S. REP. NO. 92-1105 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4316, 4317–18, 4322–23; *Hearings*, *supra* note 15, at 28 (memorandum of Richard E. Israel, American Law Division).

96. *See* United States v. Hughes, 716 F.2d 234, 242 (4th Cir. 1983) (Widener, J., concurring) ("[W]e interpreted the 1972 amendments as separating the crime of kidnapping from the federal jurisdictional bases of prosecution."). Prior to the 1972 amendment, the Act stated, "(a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise . . . shall be punished . . . ." 18 U.S.C. § 1201(a) (1970). The 1972 Amendment removed the words "knowingly transports in interstate or foreign commerce, any person" from the substantive portion of the Act, which describes the seven methods of kidnapping, and made transportation in interstate or foreign commerce one of the several ways to establish federal jurisdiction under the Act. 18 U.S.C. § 1201(a) (1972). See *supra* note 74 and *infra* note 97 and accompanying text for the bases of federal jurisdiction after the 1972 amendment.

97. S. REP. NO. 92-1105, *reprinted in* 1972 U.S.C.C.A.N. 4316, 4326–27; *see* United States v. Lewis, 662 F.2d 1087, 1089 (1981) (discussing the legislative history of the 1972

textual changes illustrate congressional intent to focus on the crime of kidnapping itself and to expand federal jurisdiction in kidnapping cases beyond the limited instances envisioned when Congress initially passed the Act.

The new interpretation also adheres to the purpose of the Act after the 1972 Amendment: protecting against the kidnapping itself. Where Congress intended kidnapping to be the thrust of the Act,[98] kidnappers should be prosecuted under the Act, whether the victim traveled accompanied or unaccompanied across state lines. Therefore, interpreting the Act to include unaccompanied interstate travel comports with the intent that kidnappers should be prosecuted in federal courts, as long as the jurisdictional basis of interstate travel is present. Even unaccompanied travel is enough to supply that basis of jurisdiction where the kidnapper has exercised sufficient control over the victim, prior to interstate transport, to support a finding that the kidnapper willfully transported the victim.

Despite the arguments that support the Fourth Circuit's interpretation of congressional purpose, the *Wills* district court interpreted Congress's intent differently. The district court stated that Congress intended to end interstate kidnappings and that the law "was not motivated by a desire to create a new catch-all federal offense which subjects individuals to federal prosecution whenever there is illegal behavior coupled with interstate travel."[99] The Fourth Circuit's interpretation, however, does not create a new "catch-all federal offense." Instead, the interpretation coincides with the specific purposes behind the Act in both 1932 and 1972. In 1932, Congress wanted to provide an avenue of relief where states were unable to prosecute kidnappings.[100] Under the *Wills* interpretation, the Act does just that. Following the 1972 amendment, the primary purpose was to protect against the crime of kidnapping,[101] and again, the Act offers this protection through the Fourth Circuit's interpretation in *Wills*. Overall, the new interpretation of the Federal Kidnapping Act complies with Congress's intent and purpose behind the Act.

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amendments and the relevant Senate Report).

98. *See supra* notes 95–96 and accompanying text. Congress changed the interstate transportation element of the crime from a substantive element to a jurisdictional element.

99. United States v. Wills, No. 99-396-A, 2000 U.S. Dist. LEXIS 3674, at *16 (E.D. Va. Mar. 17, 2000) (citing United States v. Toledo, 985 F.2d 1462, 1466 (10th Cir. 1993)).

100. *See Hearings*, *supra* note 15, at 21 (memorandum of Richard E. Israel, American Law Division) (quoting the 1932 Senate Report, which stated that the purpose of the Act is to help states stamp out the growing menace of kidnapping).

101. *See* S. REP. NO. 92-1105, *reprinted in* 1972 U.S.C.C.A.N. 4316, 4322–23.

C. *Federal Role in Protecting the Public*

The Fourth Circuit's interpretation is also supported by the argument that federal courts have a role in protecting the public in cases in which state law cannot protect citizens against crime.[102] By passing the Federal Kidnapping Act, Congress intended to help states in "stamping out the growing menace of kidnaping"[103] and evidenced its belief that the crime of kidnapping could be dealt with more effectively by federal law enforcement.[104] Federal jurisdiction allows federal law enforcement authorities to pursue kidnappers across state borders, where state jurisdiction ends.[105] Congress intended the Act to have a broad scope for federal prosecution of kidnappings where states could not do so, as long as the kidnapping fit into one of the enumerated categories for federal jurisdiction.[106]

The Fourth Circuit encompasses Maryland, North Carolina, South Carolina, Virginia, and West Virginia. Of those five states, only Maryland's and West Virginia's kidnapping statutes explicitly cover kidnappings where the victim moves outside of the state.[107] The statutes of the other three Fourth Circuit states remain silent on the subject of interstate transportation.[108] Because three of the five states in the Fourth Circuit's jurisdiction do not punish kidnappings that originate in their state and then cross into another, the federal laws and courts should offer protection.[109] They can provide protection

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102. For a discussion of the reasons why the *Wills* case could not be prosecuted in state court, see *supra* note 7.

103. *Hearings*, *supra* note 15, at 21 (memorandum of Richard E. Israel, American Law Division) (citing the Senate Report at 1 and 2).

104. *See id.* (memorandum of Richard E. Israel, American Law Division) (discussing the point of the debate between Representative Sumners and Representative Homer Hoch in 75 Cong. Rec. 13292 (1932)); *see also* Model State Computer Crimes Code, *supra* note 91 (discussing how federal law has been used to address new criminal problems).

105. *See Hearings*, *supra* note 15, at 21 (memorandum of Richard E. Israel, American Law Division).

106. *Id.* at 28 (memorandum of Richard E. Israel, American Law Division). This intended broad scope is evidenced by the creation of new areas of federal jurisdiction in the 1972 amendment.

107. The Maryland statute makes a felony "kidnapping and forcibly or fraudulently carrying or causing to be carried *out of or within this State* any person." MD. ANN. CODE art. 27, § 337 (2001) (emphasis added). The West Virginia statute includes "transport[ing] *into or out of this state or within this state*" in its felony definition of kidnapping. W. VA. CODE § 61-2-14a(a) (2001) (emphasis added).

108. N.C. GEN. STAT. § 14-39 (2002) (specifying "remove from one place to another"); S.C. CODE ANN. § 16-3-910 (Law. Co-op. 2000) (failing to mention kidnapping where the victim moves outside South Carolina); VA. CODE ANN. § 18.2-47 (Michie 2001) (mentioning "transports" but not transports out of the state).

109. The Maryland and West Virginia statutes suggest that those states would not require federal protection because they already would have jurisdiction over cases such as

through a broad interpretation of federal jurisdiction under the Act and through vigorous prosecution.

Inadequate state jurisdiction may permit a kidnapper to escape prosecution. Christopher Wills would have escaped punishment if the Fourth Circuit had not split from the Fifth Circuit. Wills could not be prosecuted under state law,[110] so prosecutors had to turn to federal courts or let Wills go free. *Wills* illustrates the benefit of federal jurisdiction over cases of unaccompanied interstate travel. Surely Congress did not intend to "[reward] the kidnapper simply because he is ingenious enough to conceal his true motives from his victim."[111] If states cannot protect citizens from such crimes,[112] sound public policy requires some other form of relief. The new interpretation of the Federal Kidnapping Act in *Wills* supports the federal role in protecting the public where states cannot do so.

D. *Preventing Kidnappers from Escaping Prosecution Under Similar Circumstances in the Future*

Another policy reason supporting the Fourth Circuit's decision in *Wills* is that the new interpretation will prevent kidnappers from escaping prosecution under similar circumstances in the future. The instance of a kidnapping victim traveling unaccompanied across state lines has only arisen in the courts once before *Wills*.[113] A possibility exists that prosecutors never pursued other cases of unaccompanied interstate travel because they did not interpret the Federal Kidnapping Act to include those cases.[114] The new interpretation of the Act offers greater opportunities for prosecution and less opportunities for kidnappers to go free. Christopher Wills is not the

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Wills. While these states may not need the help of federal jurisdiction, they may benefit from the option. The remaining states do require federal protection in cases to which their statutes do not reach. The focus of this Comment is whether federal courts have jurisdiction in cases where the victim travels unaccompanied across state lines prior to falling under the physical control of the kidnapper, not whether states also have jurisdiction in these matters.

110. *See supra* note 7; *see also* Masters, *supra* note 2 (discussing the inadequacy of physical evidence available to prosecute Wills); Roth, *supra* note 2, at 9.

111. United States v. Wills, 234 F.3d 174, 178 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001) (quoting United States v. Hughes, 716 F.2d 234, 239 (4th Cir. 1983)).

112. These states are certainly North Carolina, South Carolina, and Virginia. Depending on the factual scenario, Maryland and West Virginia may be able to protect themselves. *See supra* notes 107 and 109 and accompanying text.

113. United States v. McInnis, 601 F.2d 1319 (5th Cir. 1979) (hearing a case in which the victim traveled unaccompanied across state lines).

114. Another possibility is that some of the states had statutes encompassing these situations.

only person who could have escaped prosecution because of the lack of evidence and inadequacy of state laws; another kidnapper, Jay Lentz, also could have escaped trial under circumstances similar to those in the *Wills* case.[115]

Prosecutors could not address the disappearance of Doris Lentz until the Fourth Circuit paved the way in *United States v. Wills*.[116] The prime suspect in Doris Lentz's disappearance was her ex-husband, Jay Lentz.[117] The couple went through a bitter divorce and custody battle, and Doris Lentz filed several abuse and harassment complaints against her ex-husband.[118] Ms. Lentz, a Virginia resident, disappeared in April 1996, and her blood-spattered car was discovered one week later in Washington, D.C.[119] Unable to turn to state law because of a lack of evidence for a state charge and because of the interstate aspect of the kidnapping, prosecutors looked to federal law. Prosecutors could arrest and charge Jay Lentz with the interstate kidnapping of Doris Lentz under the Federal Kidnapping Act only after the Fourth Circuit decision in *Wills* opened up federal jurisdiction to include kidnappers who lure victims across state lines before exerting physical control over them.[120]

The *Lentz* case presents the precise scenario that the *Wills* court wanted to protect against in its decision expanding the scope of federal jurisdiction for kidnappings. The *Lentz* case is the first that is based upon the interpretation of the Federal Kidnapping Act adopted by the Fourth Circuit in *Wills*.[121] The Fourth Circuit's interpretation of the Federal Kidnapping Act enables the prosecution of more cases with circumstances similar to those in *Wills* and *Lentz*.

III. POTENTIAL PROBLEMS WITH THE NEW INTERPRETATION

Although this Comment identifies many strong rationales for the Fourth Circuit interpretation, the new approach may be subject to criticism. Such criticisms include the traditional arguments against federalization of state functions and arguments that the new

115. *See* Roth, *supra* note 2, at 9.

116. *See id.* (crediting the Fourth Circuit's new interpretation of the Federal Kidnapping Act with moving the *Wills* and *Lentz* cases toward trial).

117. *See id.*

118. *See id.*

119. *See id.*

120. *See* Brooke A. Masters, *Federal Death Penalty Sought in Va. Case: Husband Charged in Disappearance*, WASH. POST, Aug. 30, 2001, at B5. Jay Lentz was arrested in May 2001, and he is currently awaiting trial. *Id.*

121. The *Lentz* case is scheduled to go to trial in September 2002. Brooke A. Masters, *Alexandria, Courthouse Brace for Trying Times*, WASH. POST, Mar. 13, 2002, at B1.

interpretation stretches the Act too far to permit federal prosecution of purely intrastate kidnapping.[122] But these negative aspects are minimal when compared to the benefits of the court's expansion of federal jurisdiction and are insufficient to invalidate the court's decision in *Wills*.

Federalization occurs when federal jurisdiction is expanded to encompass criminal prosecutions that could be heard in state courts.[123] Technically, one can view the decision in *Wills* as extending federal court jurisdiction to a criminal prosecution that could be maintained in state court.[124]

One argument based in federalism is that federal law enforcement resources are inadequate to enforce broad federal criminal laws.[125] This inadequacy is illustrated by the sheer number of federal law enforcement agencies dedicated to enforcing federal criminal laws: there are over fifty agencies whose primary purpose is to enforce federal criminal laws and over one hundred agencies providing supplemental support, and all of them require funds to operate.[126] In addition, the increasing number of federal criminal statutes has correspondingly increased the federal criminal case load.[127] Opponents also argue that criminal law federalization may deplete the judiciary's resources.[128] The number of criminal cases

122. *See* Roth, *supra* note 2, at 9 (quoting Lentz's defense attorney as stating that "by removing the requirement of accompaniment, the court is permitting purely intrastate kidnapping to be prosecuted under the Federal Kidnapping Act").

123. *See* Thomas E. Baker, *A View to the Future of Judicial Federalism: "Neither Out Far Nor In Deep,"* 45 CASE W. RES. L. REV. 705, 742 (1995) (citing WILLIAM W. SCHWARZER & RUSSELL R. WHEELER, ON THE FEDERALIZATION OF THE ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE 1 (Fed. Jud. Ctr. Ed., 1994)).

124. *See supra* note 7. This intrusion could happen in states whose statute encompasses kidnappings where the victim is transported into or out of that state.

125. *See* Kathleen F. Brickey, *Criminal Mischief: The Federalization of American Criminal Law*, 46 HASTINGS L.J. 1135, 1146 (1995) (discussing the "snowballing effect" of enforcing federal criminal laws). In recent years, there has been sharp criticism against the federalization of criminal law from judges, practitioners, scholars, and many others. *See* Simons, *supra* note 89, at 895–97.

126. *See* Sara Sun Beale, *Legislating Federal Crime and Its Consequences: Federalizing Crime: Assessing the Impact on the Federal Courts*, 543 ANNALS AM. ACAD. POL. & SOC. SCI. 39, 44 (1996). Police officers, prosecutors, public defenders, court reporters, trial judges, probation officers, appellate judges, prisons, and parole boards, to mention but a few of the necessities of federal law enforcement, all require funding. *See id.*

127. *See id.* Between 1980 and 1992, the number of federal criminal prosecutions rose by seventy-eight percent. *Id.*

128. Chief Justice Rehnquist has expressed his opposition to Congress's federalization in the 1990s because of its effect of "taxing the Judiciary's resources and affecting its budget needs" and the threat that it will "change entirely the nature of our federal system." Simons, *supra* note 89, at 895 (quoting William H. Rehnquist, *The 1998 Year-End Report of the Federal Judiciary, Third Branch*, Jan. 1999, at 2; William H. Rehnquist,

assigned to each federal judge, however, has actually declined from 239 per judge in 1934 to 91 cases per judge in 1999.[129] This minor expansion of federal jurisdiction in the Federal Kidnapping Act is unlikely to place an excessive burden on federal courts and federal resources; most likely, the impact on workload will be negligible.[130]

A second argument is that federalization tips the balance of power in favor of the federal government, thereby undercutting the benefits of separation of powers.[131] Federalizing crime lessens state control over prosecuting kidnapping offenses. In addition, states serve as "laboratories of experimentation" that help identify the most effective state laws.[132] But the expansion of the Federal Kidnapping Act does not limit local decisionmaking control or accountability. The new interpretation only provides the opportunity for a federal forum. The Act addresses instances of interstate transportation, an area over which some states do not have jurisdiction.[133] The new interpretation still is rooted in interstate transportation and does not cover intrastate kidnappings; that area remains under state control.

Most importantly, no true federalism concern exists where a federal criminal law addresses conduct beyond the territorial reaches of state laws.[134] Because states do not have jurisdiction beyond their borders, a federal law against interstate kidnapping is necessary and concerns an area in which prosecution cannot be maintained in state court. Therefore, the expansion of such a law should not be subject to concerns based in federalism.

Another potential criticism of the new interpretation of the Federal Kidnapping Act is that it may be stretched to encompass extreme scenarios that Congress originally did not intend the Act to cover. In *Chatwin v. United States*,[135] the Court concluded that "[a]

Remarks on the Federalization of Criminal Law, Address Before the American Law Institute (May 11, 1998) in 11 FED. SENTENCING REP. 132 (1998)).

129. *See id.* at 910, 913. The low occurred in 1980 with fifty-seven cases per judge. *Id.* at 913.

130. Consider that only one case (*Lentz*) has arisen in the aftermath of *Wills*.

131. *See* Model State Computer Crimes Code, *supra* note 91.

132. *Id.* For example, Maryland's kidnapping statute addresses instances where the kidnapper moves the victim both within the state and beyond state lines. The statute addresses situations where the kidnapper is "carrying or causing to be carried out of or within this State any person." MD. ANN. CODE art. 27, § 337 (2001).

133. Unlike the other Fourth Circuit states, Maryland and West Virginia have statutes providing for prosecution in those instances. *See supra* notes 107 and 109.

134. *See* Steven D. Clymer, *Unequal Justice: The Federalization of Criminal Law*, 70 S. CAL. L. REV. 643, 652–53 (1997). Again, this applies to those states whose statutes do not cover interstate kidnapping.

135. 326 U.S. 455 (1946). In *Chatwin*, a sixty-eight year old man convinced a fifteen-

loose construction of the statutory language conceivably could lead to the punishment of anyone who induced another to leave his surroundings ... state lines subsequently being traversed."[136] The Court then espoused the "absurdity of such a result"[137] because it may result in unfair punishment to the inducer.[138] Punishment of the inducer is precisely the result in the *Wills* case, as Christopher Wills was punished for inducing Zabiuflah Alam to leave his home and subsequently cross state lines. But as evidenced in the *Wills* case, punishing a kidnapper for inducing a victim to leave his home and cross state lines is not absurd. The kidnapper in *Wills* killed his victim, whereas the *Chatwin* Court found the situation absurd because the kidnapper in that case only married his underage victim.[139] Where an inducement leads to kidnapping and murder, the Act should punish the inducer.[140]

Another criticism is that the new interpretation of the Act allows it to encompass solely intrastate kidnappings.[141] If the victim crosses state lines without the presence of the kidnapper, the entire kidnapping essentially takes place in the second state. The kidnapper exerts control over the victim and commits the physical component of the crime of kidnapping in the second state. The court in *Wills*, however, did not find federal jurisdiction based on this scenario. Instead, it viewed the issue of control as broader than mere physical coercion. It found that Wills exerted control over Alam in Virginia, before Alam crossed state lines,[142] by setting up the devices used to

year-old girl to run away to another state and enter into a "celestial marriage" with him. *Id.* at 457–58.

136. *Id.* at 463.

137. *Id.* at 464.

138. *Id.* at 464–65. The Court refers to such inducement in the context in which the person who is induced to leave his surroundings performs some illegal or innocent act that would benefit the person who induced him to leave. The Court does not expand upon this idea, but examples of unfair punishment to a person inducing another to leave his or her surroundings may include inducing someone to come to another state for a date or a party. The Court claims that such a loose construction not only will lead to unfair punishment, but also to blackmail. *Id.* at 465. The Court fails to explain how blackmail could result from a loose construction of the statutory language of the Act. A possible meaning is an "immoral" situation such as when a married woman crosses state lines to have an affair and her husband alleges interstate kidnapping against her lover, claiming the kidnapper lured his wife. Any such attempt to use this understanding would be thwarted by the "unlawfulness" requirement and the requirement that the victim did not consent.

139. *See id.* at 463–64; *see also supra* note 136.

140. Inadequate evidence existed to charge Wills with murder, so the court had to turn to the Federal Kidnapping Act or let Wills go free. *See supra* note 7.

141. *See supra* note 122.

142. United States v. Wills, 234 F.3d 174, 178–79 (4th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001).

lure Alam into Washington, D.C., including placing the flier at Alam's apartment, acquiring a cellular phone, and setting up the interview.[143] Wills's actions showed that he "willfully transported" his victim, as defined under the Federal Kidnapping Act.[144] Accordingly, federal courts would not have jurisdiction over intrastate kidnappings if the kidnapper did not exert sufficient control over the victim in the originating state. The kidnapper must willfully transport the victim to confer federal jurisdiction over the crime.

Finally, the new interpretation also may be criticized for its potentially over-broad effects on Internet meetings. People often meet initially over Internet chat rooms; later many of them choose to meet in person.[145] The concern is that convincing an Internet acquaintance to leave his or her state for a meeting will be considered a kidnapping under the Act. People frequently misrepresent themselves or their circumstances—for example, their appearance or intentions—in convincing the other person to meet.[146] The elements of "willful transportation," "inveigles" or "decoys," and federal jurisdiction may be present in such a scenario, but they are not enough. For these actions to be considered a federal kidnapping, the element of "holding" is also required.[147] When Christopher Wills lured Alam across state lines, this "holding" was present, unlike in instances of typical Internet meetings. Thus, the new interpretation actually may be beneficial with respect to the Internet because it allows federal prosecution of kidnappings facilitated through the

143. *Id.*

144. *Id.*

145. For example, cyber-dating is an increasing phenomenon and there are many online dating websites. The frequency of Internet meetings leading to in-person meetings is evidenced by the fact that in one year there have been seventy-five weddings of couples who met through one online dating website. *See* Lee Hickling, *Love at First Click? Cyber-Dating Can Lead to Healthy Romantic Relationships*, *at* http://www.drkoop.com/news/stories/2001/feb/13_romance.html?ptp=true (Feb. 13, 2001) (on file with the North Carolina Law Review) (quoting romance coach, Leslie Karsner, for UDate.com).

146. An example of this phenomena appears in *United States v. Romero*, 189 F.3d 576, 578 (7th Cir. 1999), *cert. denied*, 529 U.S. 1011 (2000) (describing how a thirty-six-year-old man posed as a fifteen-year-old and then as a twenty-year-old to lure a young boy into running away with him).

147. 18 U.S.C. § 1201(a) (2001) (criminalizing the act of kidnapping "and hold[ing] for ransom or reward or otherwise"); *Wills*, 234 F.3d at 177 (discussing the elements required to prove a violation of the Federal Kidnapping Act and describing the "holding" element as one that need not involve ransom or reward). The elements are "that: 1) the victim was seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away; 2) the victim was held; and 3) federal jurisdiction." *Id.* (footnote omitted). Possible "holdings" that would qualify an Internet meeting as a kidnapping include luring victims across state lines and subsequently holding them for sexual abuse, holding a minor against his will, or even holding someone for ransom. *Id.*

Internet if the elements of the crime are fulfilled, particularly if someone is held against her will.

CONCLUSION

The United States Circuit Court of Appeals for the Fourth Circuit correctly interpreted the Federal Kidnapping Act in *United States v. Wills*. The *Wills* case concerned a man who potentially could have gone unpunished for burglary, kidnapping, and murder if the court had not found federal jurisdiction. Not only is the new interpretation appropriate based on the facts of the *Wills* case, it is the correct interpretation for all future interstate kidnapping cases.

The new interpretation of the Act allows federal jurisdiction to include kidnapping cases where the kidnapper does not physically accompany the victim across state lines. This interpretation is consistent with the plain text and the purpose of the Act. Policy factors, such as the importance of the federal role in protecting the public and preventing kidnappers from escaping prosecution under similar circumstances in the future, also support this interpretation. Now a forum exists for prosecution of interstate kidnapping, which prevents kidnappers from escaping punishment.

The weight of the evidence illustrates that the new interpretation does not actually expand federal jurisdiction at all. The new interpretation is merely the best interpretation of the statute, according to the text, purpose, and reasoning behind the Act. Because of the Fourth Circuit's interpretation of the Federal Kidnapping Act, Christopher Wills was unable to commit the perfect crime, and the federal courts brought him to justice.[148]

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148. Wills could have been sentenced to death for the kidnapping and killing of Alam but was sentenced to life in prison without the possibility of parole. *See Defendant Who Killed Witness Gets Life*, *supra* note 9.