



# Federal Domestic Violence and Stalking Crimes Case Law

**Revised 2017**

Toll Free: (800) 903-0111, prompt 2  
Direct: (703) 312-7922  
Fax: (703) 312-7966  
Email: ncffc@bwjp.org  
Web: [www.fullfaithandcredit.org](http://www.fullfaithandcredit.org)

This document is for informational purposes only. Nothing contained in this document is intended as legal advice to any person or entity. Please independently verify the information found in this document.

This project is supported by Grant No. 2016-TA-AX-K052 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women.

## TABLE OF CONTENTS

NOTE: For your convenience, hyperlinks are located on each page number in this Table of Contents.  
For faster access, please select the page number you would like to view.

<b>INTERSTATE DOMESTIC VIOLENCE .....</b>	<b>8</b>
<b>SECOND CIRCUIT (Connecticut, New York, and Vermont).....</b>	<b>8</b>
United States v. Gluzman, 154 F.3d 49 (2nd Cir. 1998).....	8
United States v. Frank, 8 F.Supp.2d 253 (S.D.N.Y. 1998). ....	8
<b>THIRD CIRCUIT (Delaware, New Jersey, Pennsylvania, Virgin Islands).....</b>	<b>9</b>
Talik v. Thomas, 2014 U.S. Dist. Lexis 150378 (2014), cert. denied, 136 S. Ct. 515 (2015).....	9
Talik v. Warden Lewisburg USP, 621 F. App'x 94 (2015), cert. denied, 136 S. Ct. 515 (2015). ....	9
United States v. Noble, 251 F. App'x 792 (3d Cir. Pa. 2007). ....	9
<b>FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia) .....</b>	<b>10</b>
Falice v. United States, 2014 U.S. Dist. Lexis 161294 (2014).....	10
Satcher v. Oddo, 2016 U.S. Dist. Lexis 85270 (2016), aff'd, 673 F. App'x 361 (4th Cir. 2017). ....	10
United States v. Anderson, No. 17-4022, 2017 WL 2781539 (4th Cir. June 27, 2017). ....	10
United States v. Barnette, 211 F.3d 803 (4th Cir. 2000). ....	11
United States v. Beahm, 27 F. App'x 171 (4th Cir. Va. 2001) (per curiam), cert. denied, 536 U.S. 914 (2002). .....	11
United States v. Bowe, 309 F.3d 234 (4th Cir. N.C. 2002).....	11
United States v. Owens, 2015 U.S. Dist. Lexis 144176 (2015).....	12
<b>Fifth CIRCUIT (Louisiana, Mississippi, Texas).....</b>	<b>12</b>
United States v. Blackthorne, 378 F.3d 449 (5th Cir. Tex. 2004).....	12
United States v. Hornsby, 88 F.3d 336 (5th Cir. 1996). ....	12
United States v. Lankford, 196 F.3d 563 (5th Cir. 1999), cert. denied, 196 F.3d 563 (5th Cir. 1999). ....	13
<b>SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee) .....</b>	<b>13</b>
United States v. Jacobs, 244 F.3d 503 (6th Cir. 2001). ....	13
<b>SEVENTH CIRCUIT (Illinois, Indiana, Wisconsin) .....</b>	<b>14</b>
United States v. Larsen, 615 F.3d 780 (7th Cir. 2010), cert. denied, 562 U.S. 1077 (2010).....	14
United States v. Young, 316 F.3d 649 (7th Cir. 2002). ....	15
<b>EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota) .....</b>	<b>15</b>
United States v. Douglas, 646 F.3d 1134 (8th Cir. 2011).....	15
United States v. Thomas, No. 8:00CR120, 2000 U.S. Dist. LEXIS 13908 (D. Neb. Sept. 21, 2000). ....	16

<b>NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands).....</b>	<b>16</b>
United States v. Meza, No. 15CR3175 JM, 2017 WL 1371102 (S.D. Cal. Apr. 7, 2017).....	16
<b>ELEVENTH CIRCUIT (Alabama, Georgia, Florida).....</b>	<b>16</b>
United States v. Miers, 686 F. App'x 838 (11th Cir. 2017). .....	16
<b>INTERSTATE DOMESTIC VIOLENCE – CAUSING TRAVEL.....</b>	<b>17</b>
<b>FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia) .....</b>	<b>17</b>
United States v. Bailey, 112 F.3d 758 (4th Cir. 1997), cert. denied, 522 U.S. 896, 118 S. Ct. 240 (1997).....	17
United States v. Bowe, 257 F.3d 336 (4th Cir. 2001). .....	17
United States v. Caskey, 2014 U.S. Dist. Lexis 124733 (2014), aff'd, 636 F. App'x 376 (8th Cir. 2016).....	18
United States v. Faulls, 2016 U.S. App. Lexis 8325 (2016). .....	18
United States v. Helem, 186 F.3d 449 (4th Cir. 1999), cert. denied, 528 U.S. 1053 (1999). .....	19
United States v. Hendren, No. 98-4397, 1999 U.S. App. LEXIS 3947 (4th Cir. March 11, 1999) (Unpublished). .....	19
United States v. Howell, 472 F. App'x 245, 246 (4th Cir. 2012) (Unpublished).....	20
United States v. Howell, 584 F. App'x 108 (2014) (unpublished).....	20
United States v. Hurley, 454 F. App'x 175, 176 (4th Cir. 2011) (Unpublished). .....	20
Ross v. O'Donnell, 2014 U.S. Dist. Lexis 102934 (2014). .....	20
<b>SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee) .....</b>	<b>21</b>
United States v. Baggett, 251 F.3d 1087 (6th Cir. 2001), cert. denied, 534 U.S. 1167 (2002).....	21
United States v. Jacobs, 244 F.3d 503 (6th Cir. 2001). .....	22
United States v. Page, 167 F.3d 325 (6th Cir. 1999), cert. denied, 528 U.S. 1003 (1999).....	22
United States v. Sensmeier, No. 99-6069, 2001 U.S. App. LEXIS 1699 (6th Cir. 2001).....	22
<b>EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota) .....</b>	<b>23</b>
Darden v. United States, 2005 U.S. Dist. LEXIS 37759 (D.S.D. Sept. 1, 2005).....	23
United States v. Cree, 166 F.3d 1270 (8th Cir. 1999). .....	23
United States v. Memarian, 371 F. App'x 711 (8th Cir. 2010) (per curiam) (unpublished).....	24
United States v. Neuzil, 405 F. App'x 80 (8th Cir. 2010) (per curiam) (unpublished). .....	24
United States v. Sarff, 13 F. App'x 467 (8th Cir. Minn. 2001) (unpublished), cert. denied, 534 U.S. 1148 (2002). .....	24
United States v. Sickinger, 179 F.3d 1091 (8th Cir. 1999). .....	24
<b>NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands).....</b>	<b>25</b>
United States v. Dowd, 417 F.3d 1080 (9th Cir. Mont. 2005), cert. denied, 546 U.S. 1069 (2005). .....	25

<b>ELEVENTH CIRCUIT (Alabama, Georgia, Florida) .....</b>	<b>25</b>
United States v. Miers, 686 F. App'x 838 (11th Cir. 2017). ....	25
<b>INTERSTATE STALKING .....</b>	<b>26</b>
<b>FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico).....</b>	<b>27</b>
Sayer v. United States, 2015 U.S. Dist. Lexis 110536 (2015). ....	27
United States v. Ackell, No. 15-CR-123-JL, 2016 WL 6407840 (D.N.H. Oct. 28, 2016).....	27
United States v. Ackell, No. 15-CR-123-01-JL, 2017 WL 2913452 (D.N.H. July 7, 2017). ....	28
United States v. Bennett, 103 F. App'x 409 (1st Cir. 2004) (unpublished opinion).....	28
United States v. Crawford, No. 00-CR-59-B-S, 2001 WL 185140 (D. Me. Jan. 26, 2001). ....	29
United States v. Lee, 790 F.3d 12 (2015).....	29
United States v. Sayer, 748 F.3d 425 (1st Cir. 2014). ....	30
United States v. Walker, 665 F.3d 212 (1st Cir. P.R. 2011), cert. denied, 132 S. Ct. 2713 (2012).....	30
<b>SECOND CIRCUIT (Connecticut, New York, Vermont) .....</b>	<b>30</b>
United States v. Curley, 639 F.3d 50 (2d Cir. N.Y. 2011). ....	31
United States v. Humphries, No. 12 CR. 347 RWS, 2013 WL 5797116 (S.D.N.Y. Oct. 28, 2013).....	31
United States v. Jordan, S.D.N.Y.2008, 591 F.Supp.2d 686.....	31
United States v. Nagel, 2011 U.S. Dist. LEXIS 101311 (E.D.N.Y. Sept. 9, 2011).....	32
United States v. Ull, 370 F. App'x 225 (2d Cir. N.Y. 2010) (Unpublished). ....	32
<b>THIRD CIRCUIT (Delaware, New Jersey, Pennsylvania, Virgin Islands).....</b>	<b>32</b>
United States v. Casile, CRIM.A. 09-668, 2010 WL 3835006 (E.D. Pa. Sept. 30, 2010). ....	32
United States v. Fullmer, 584 F.3d 132 (3d Cir. 2009).....	33
United States v. Matusiewicz, 84 F.Supp. 3d 363 (2015). ....	33
United States v. Schlamming, 2006 U.S. Dist. LEXIS 28919 (D.N.J. May 12, 2006). ....	34
Walsh v. George, No. 1:14-CV-1503, 2015 WL 404125 (M.D. Pa. Jan. 29, 2015), aff'd, 650 F. App'x 130 (3d Cir.), cert. denied, 137 S. Ct. 591 (2016), reh'g denied, 137 S. Ct. 1141 (2017).....	34
<b>FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia) .....</b>	<b>34</b>
United States v. Cassidy, 814 F. Supp. 2d 574 (D. Md. 2011), appeal dismissed (Apr. 11, 2012). ....	34
United States v. Grooms, No. 3:15-MJ-00025, 2015 WL 1982097 (S.D.W. Va. Apr. 29, 2015).....	35
United States v. Shrader, 716 F. Supp. 2d 464 (S.D.W. Va. 2010). ....	35
United States v. Shrader, 675 F.3d 300, 310 (4th Cir. 2012). ....	36
Shrader v. United States, 2015 U.S. Dist. Lexis 175349 (2015). ....	36
Shrader v. United States, 2016 U.S. Dist. Lexis 8170, No. 1:09-CR-0027, 2016 WL 299036 (S.D.W. Va. Jan. 25, 2016), appeal dismissed, 668 F. App'x 494 (4th Cir. 2016), cert. denied, 137 S. Ct. 1448 (2017). ....	37
United States v. Wills, 234 F.3d 174 (4th Cir. 2000).....	37

United States v. Wills, 346 F.3d 476 (4th Cir. 2003).....	37
United States v. Young, 202 F.3d 262, table, No. 98-4742, 1999 U.S. App. LEXIS 32721 (4th Cir. Dec. 16, 1999) (Unpublished).....	38
United States v. Young, 248 F.3d 260 (4th Cir. 2001), cert. denied, 533 U.S. 961 (2001). .....	38
<b>FIFTH CIRCUIT (Louisiana, Mississippi, Texas) .....</b>	<b>39</b>
United States v. Conlan, 786 F.3d 380 (5th Cir. 2015). .....	39
<b>SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee) .....</b>	<b>40</b>
Hopson v. Commonwealth Attorney's Office, No. 3:12CV-744-M, 2013 WL 1411234 (W.D. Ky. Apr. 8, 2013) .....	40
United States v. Moonda, 347 F. App'x 192 (6th Cir. 2009). .....	40
United States. v. Al-Zubaidy, 283 F.3d 804 (6th Cir. 2002), cert. denied, 536 U.S. 948 (2002). .....	40
United States v. Bowker, 372 F.3d 365 (6th Cir. 2004). .....	41
United States. v. Ruggles, No. 98-5477, 2000 U.S. App. LEXIS 5847 (6th Cir. March 24, 2000).....	42
Hopson v. Commonwealth Attorney's Office, 2013 U.S. Dist. LEXIS 49991, (W.D. Ky. Mar. 29, 2013). .....	42
<b>EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota) .....</b>	<b>43</b>
United States v. Hobgood, 868 F.3d 744 (8th Cir. 2017).....	43
Petrovic v. United States, 2015 U.S. Dist. Lexis 136753, WL 5853178 (2015). .....	43
United States v. Petrovic, 701 F.3d 849 (8th Cir. 2012). .....	43
United States v. Rettinger, 2006 U.S. Dist. LEXIS 90251 (D.N.D. 2006).....	44
United States v. Vollmer, 1 F. App'x 573 (8th Cir. 2001) (Unpublished Opinion), cert. denied, 534 U.S. 861 (2001). .....	44
<b>NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands).....</b>	<b>45</b>
United States v. Bell, 303 F.3d 1187 (9th Cir. 2002).....	45
United States v. Bodkins, 274 F. App'x 294 (4th Cir. 2008). .....	45
United States v. Breeden, 149 F. App'x 197 (4th Cir. Va. 2005), cert. denied sub nom. Carpenter v. United States, 546 U.S. 1192 (2006). .....	45
United States v. Gagnon, 2006 U.S. Dist. LEXIS 65695, 2006 WL 2642610 (W.D. Va. 2006). .....	46
United States v. Grob, 625 F.3d 1209 (9th Cir. 2010). .....	46
United States v. Infante, 782 F. Supp. 2d 815 (D. Ariz. 2010). .....	46
United States v. Osinger, 753 F.3d 939 (9th Cir. 2014). .....	46
United States v. Sullivan, 2016 U.S. Dist. Lexis 1233 (2016). .....	47
United States v. Veal, 138 F. App'x 902 (9th Cir. 2005) (unpublished).....	47
<b>ELEVENTH CIRCUIT (Oklahoma, Kansas, New Mexico, Colorado, Wyoming, Utah) .....</b>	<b>47</b>
United States v. Moreland, 207 F. Supp. 3d 1222 (N.D. Okla. 2016). .....	47

<b>INTERSTATE VIOLATION OF PROTECTION ORDER .....</b>	<b>48</b>
<b>FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico).....</b>	<b>49</b>
United States v. Brown, 74 F. Supp. 2d 44 (D. Me. 1999) aff'd, 295 F.3d 152 (1st Cir. 2002).....	49
United States v. Fiume, 708 F.3d 59 (1st Cir. 2013). ....	49
United States v. Nedd, 262 F.3d 85 (1st Cir. 2001). ....	49
<b>SECOND CIRCUIT (Connecticut, New York, and Vermont).....</b>	<b>50</b>
United States v. Casciano, 124 F.3d 106 (2d Cir. 1997).....	50
United States v. Curley, 639 F.3d 50 (2d Cir. N.Y. 2011). ....	50
United States v. Popson, 234 F.3d 1263 (2d Cir. 2000) (Unpublished Opinion). ....	50
United States v. Von Foelkel, 136 F.3d 339 (2nd Cir. 1998). ....	50
<b>SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee) .....</b>	<b>51</b>
United States v. Jacobs, 244 F.3d 503 (6th Cir. 2001). ....	51
United States v. Young, 208 F.3d 216, table, No. 98-6081, 2000 U.S. App. LEXIS 2443 (6th Cir. Feb. 15, 2000) (per curiam) (unpublished).....	52
Hopson v. Commonwealth Attorney's Office, 2013 U.S. Dist. LEXIS 49991 (W.D. Ky. Mar. 29, 2013). ....	52
<b>EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) .....</b>	<b>52</b>
United States v. Wright, 128 F.3d 1274 (8th Cir. 1997), cert. denied, 523 U.S. 1053 (1998). ....	52
<b>NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands).....</b>	<b>53</b>
United States v. Hermundson, No. 97-10497, 2000 U.S. App. LEXIS 643 (9th Cir. Jan. 14, 2000). ....	53
United States v. Veal, 138 F. App'x 902 (9th Cir. Cal. 2005). ....	53
<b>ELEVENTH CIRCUIT (Alabama, Georgia, Florida).....</b>	<b>53</b>
United States v. James, 2016 U.S. Dist. Lexis 19399 (2016). ....	53
<b>INTERSTATE VIOLATION OF A PROTECTION ORDER – CAUSING TRAVEL .....</b>	<b>54</b>
<b>FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico).....</b>	<b>54</b>
United States v. Robinson, 433 F.3d 31 (1st Cir. Me. 2005). ....	55
United States v. Teeter, 257 F.3d 14 (1st Cir. Me. 2001). ....	55
<b>FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia) .....</b>	<b>55</b>
United States v. Hendren, No. 98-4397, 1999 U.S. App. LEXIS 3947 (4th Cir. March 11, 1999) (unpublished). ....	55
United States v. Powell, 62 F. App'x 543 (4th Cir. N.C. 2003). ....	56
United States v. Romines, No. 96-4838, 1998 U.S. App. LEXIS 4648 (4th Cir. March 13, 1998) (per curium).56	56
<b>SEVENTH CIRCUIT (Illinois, Indiana, Wisconsin) .....</b>	<b>56</b>
Edwards v. Edwards, 2006 U.S. Dist. LEXIS 57971 (S.D. Ill. Aug. 17, 2006). ....	56

**EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota) .....57**

United States v. Thomas, No. 8:00CR120, 2000 U.S. Dist. LEXIS 13908 (D. Neb. Sept. 21, 2000). ..... 57

Precedents are constantly changing. Please independently verify the information found in this document. If you have a correction or update, please contact us.

## **INTERSTATE DOMESTIC VIOLENCE**

**For conduct occurring October 1, 2013 and after:**

**18 U.S.C. § 2261(a)(1) makes it a federal crime for a person to travel between states, or within the special maritime or territorial jurisdiction of the United States, or to enter or leave Indian country or is present with the intent to kill, injure, harass or intimidate a spouse, intimate partner or dating partner when in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.**

**For conduct occurring January 6, 2006 to September 30, 2013:**

**18 U.S.C. § 2261(a)(1) makes it a federal crime for a person to travel between states, or within the special maritime or territorial jurisdiction of the United States, or to enter or leave Indian country with the intent to kill, injure, harass or intimidate a spouse, intimate partner or dating partner when in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.**

**For conduct occurring between October 28, 2000 and January 5, 2006:**

**18 U.S.C. § 2261(a)(1) makes it a federal crime for a person to travel in interstate or foreign commerce or to enter or leave Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and to, in the course of or as a result of such travel, commit or attempt to commit a crime of violence against the spouse or intimate partner.**

**For conduct occurring before October 28, 2000:**

**18 U.S.C. § 2261(a)(1) makes it a federal crime to travel across state or tribal lines with the intent to injure, harass or intimidate a spouse or intimate partner and, in the course of, or as a result of, such travel, intentionally commit a crime of violence causing bodily injury to such spouse or intimate partner.**

## **SECOND CIRCUIT (Connecticut, New York, and Vermont)**

*United States v. Gluzman*, 154 F.3d 49 (2nd Cir. 1998).

Rita Gluzman and her co-conspirator drove from New Jersey to her husband's New York apartment where they murdered him. Gluzman was convicted of interstate domestic violence. Gluzman appealed, but the 2nd Circuit affirmed her conviction. In her appeal, Gluzman argued that the statute targets non-commercial activity, although it was enacted under the Commerce Clause. The 2nd Circuit rejected this argument, relying on the reasoning they used in the Von Foelkel case decided earlier in the year. 136 F.3d 339 (2d Cir. 1998).

**Key Issue: Commerce Clause.**

*United States v. Frank*, 8 F.Supp.2d 253 (S.D.N.Y. 1998).

In this capital case, Frank was charged with kidnapping his girlfriend, Shaneika Price, transporting her across state lines, and murdering her by setting fire to a car after he had locked her in the trunk. Among other charges, Frank was charged with violations of 18 U.S.C. §§ 2261(a)(1) and (a)(2). Frank brought numerous challenges

against the indictment, including that the provisions are unconstitutional. Citing *United States v. Lopez*, 514 U.S. 549 (1995), Frank argued that Congress exceeded its power under the Commerce Clause when it enacted the VAWA. As applied to him, Frank claimed that the provisions are unconstitutional, since his case "involves the bare crossing of state lines." The Court rejected Frank's arguments, finding that the VAWA represents a valid exercise of Congress's Commerce Power. The court held that Congress may rationally have decided that domestic violence is a problem of national importance, with a significant effect on interstate commerce. In addition, with respect to the claim that the VAWA is unconstitutional as applied to this case, the court noted that courts consistently have upheld federal criminal statutes that regulate the crossing of state lines by persons or things in a manner incident to some criminal activity. The court also rejected Frank's claim that he could not be prosecuted for violation of the federal kidnapping statute and the VAWA offenses, because "kidnapping . . . is merely a more general, lesser included version of the domestic violence offense involving murder." The court held that the causes of action differ in their required elements (e.g., interstate domestic violence requires an intimate partner relationship while kidnapping does not, and kidnapping requires proof of "holding," while interstate domestic violence does not).

**Key Issues: Commerce Clause; Relationship to Other Offenses.**

### **THIRD CIRCUIT (Delaware, New Jersey, Pennsylvania, Virgin Islands)**

*Talik v. Thomas*, 2014 U.S. Dist. Lexis 150378 (2014), cert. denied, 136 S. Ct. 515 (2015).

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. In 2008, petitioner entered a guilty plea for violation of interstate violence resulting in death, under 18 U.S.C. § 2261(a)(1) and (b)(1). Petitioner can pursue a 28 U.S.C. § 2241 petition only when he shows that the remedy under 28 U.S.C. § 2255 would be "inadequate or ineffective to test the legality of his detention. Under *Cradle v. United States ex rel. Miner*, 290 F.2d 536, 538 (3d Cir. 2002), it is the inefficacy of the remedy, not a personal inability to utilize it, that is determinative. The Court denied the § 2255 motion. Talik filed a writ for habeas corpus under 28 U.S.C. § 2241. The U.S. Court of Appeals for the Third Circuit stated that the simple inability to "meet the stringent gatekeeping requirements" does not allow the petitioner to proceed with a § 2241 motion. Once a petitioner fails to improperly challenge a federal conviction or sentence under § 2241, the petition must be dismissed for lack of jurisdiction. *Jackson v. Shartle*, 535 F. App'x. 87 (3d Cir. 2013). The petition for writ of habeas corpus was dismissed.

**Key Issues: sentencing.**

*Talik v. Warden Lewisburg USP*, 621 F. App'x 94 (2015), cert. denied, 136 S. Ct. 515 (2015).

Talik plead guilty to interstate domestic violence resulting in death, in violation of 18 U.S.C. §§ 2261(a)(1) and (b)(1). The court denied his motion under 28 U.S.C. § 2255 and dismissed his appeal in *United States v. Talik*, 425 F. App'x 235 (4<sup>th</sup> Cir. Apr. 26, 2011). Talik then filed an application requesting permission to file a motion under 28 U.S.C. § 2255. In the petition, petitioner argued that he was convicted and sentenced to crimes neither charged and/or proven beyond a reasonable doubt. However, Talik's allegations did not fit within the class of circumstances where a § 2255 motion would be inadequate or ineffective to challenge the legality of the detention. The Court concluded that the appeal presented no substantial question. It affirmed the District Court's judgment.

**Key Issues: sentencing.**

*United States v. Noble*, 251 F. App'x 792 (3d Cir. Pa. 2007).

Joseph Noble had an argument with his wife Joanne, after which she left the marital home to live with her sister. A few days later, he told Joanne that their children were sick and she accepted to meet him. Then, he picked her up and put her into his car and sped away. He dismantled her cell phone, told her not to tell anyone where they were and forced her to have intercourse with him in a hotel in New Jersey. He then drove back to Pennsylvania, where he learned that the police had been alerted, dropped off Ms. Noble and the children at a lawyer's office and was apprehended. He was charged under 18 U.S.C. § 1201 and 18 U.S.C. §2261(a) (1). A grand jury found him guilty of the first, but not the second charge. He appealed under the first conviction, alleging that some facts about Ms. Noble, including her marijuana arrest, should have been made known to the jury. The Court found his raised points irrelevant to the defense and the sentence was affirmed.

**Key Issues:** Domestic Abuse, kidnapping, insufficiency of evidence.

#### **FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia)**

*Falice v. United States*, 2014 U.S. Dist. Lexis 161294 (2014).

A jury convicted petitioner of concurrent life sentences for violations of 18 U.S.C. § 2261(a), 2261(b) and 2266, and one count of using or carrying a firearm in relation to murder in violation of 18 U.S.C. § 924(c)(1), 924(j) and 1111. Petitioner attacked the validity of his criminal judgment. He failed to demonstrate that he received the required authorization to proceed with another collateral attack on his judgment. The Court did not have jurisdiction to consider the merits of the successive 28 U.S.C. § 2255 motion. The petitioner's "Motion hearing for review of sentence" was denied.

**Key Issues:** Sentencing.

*Satcher v. Oddo*, 2016 U.S. Dist. Lexis 85270 (2016), *aff'd*, 673 F. App'x 361 (4th Cir. 2017).

A Superseding Indictment charged the Petitioner with interstate domestic violence resulting in death, in violation of 18 U.S.C. § 2261(a)(1); interstate stalking, in violation of 18 U.S.C. § 2261A; and three other counts. Petitioner raised two grounds for relief. First, Petitioner alleged that the federal government usurped its function under the Tenth Amendment because the state of Maryland maintained criminal statutes that covered his conduct. *Bond v. United States*, 134 U.S. 2077, (2014). The second allegation stipulated that the Supreme Court decision, *Rosemond v. United States*, 134 U.S. 1240 (2014), rendered petitioner legally innocent of the aiding and abetting charges. Petitioner did not file his objections within the 14 day required period. Failure to timely file resulted in the waiver of the right to appeal from the judgment of the court.

**Key Issues:** sentencing, failure to timely file.

*United States v. Anderson*, No. 17-4022, 2017 WL 2781539 (4th Cir. June 27, 2017).

Anderson pleaded guilty to interstate stalking and then appealed his sentence as unreasonable. As part of his argument, he claimed that the victim did not suffer severe emotional harm, based on her conduct after his indictment. The Court reminded him that, regardless of the false assumptions upon which he relied in making his claim, the offense requires only that his conduct "would be reasonably expected to cause substantial emotional distress" to the victim. Anderson also argued that the statute is unconstitutionally overbroad and vague. The Court noted that overbreadth challenges are disfavored and used only as a last resort. It relied on its decision in *United States v. Shrader*, 675 F.3d 300, 310–12 (4th Cir. 2012), to reject Anderson's vagueness challenge under plain error review.

**Key Issue:** Severe Emotional Distress; Overbreadth; Vagueness.

*United States v. Barnette*, 211 F.3d 803 (4th Cir. 2000).

Robin Williams lived with Aquilia Barnette for a little over a year in Roanoke, Virginia. After the relationship ended, Barnette moved in with his mother in Charlotte, North Carolina. A few weeks later, Barnette appeared at the apartment he had shared with Robin, smashed the windows, and threw a firebomb through a window. Robin was hospitalized for the injuries she sustained. Roanoke police issued an arrest warrant and notified the Charlotte Police Department, but the Charlotte P.D. did not arrest Barnette. Several weeks later, Barnette purchased a shotgun and sawed off the stock and barrel. He shot and killed a man at an intersection in Charlotte, and used his car to drive to Roanoke, Virginia. He drove to Robin's mother's house, where Robin was living. Barnette cut the phone wires to the house, kicked in the door, chased Robin out of the house, and caught her. She escaped, but as she tried to return to the house, he shot her twice. Robin Williams died from the injuries. Barnette was indicted and convicted of 11 charges, including two counts of violating § 2261(a)(1), and was sentenced to death. He appealed, contending that there were errors in the guilt and sentencing phase. In one of the issues he raised on appeal, Barnette contended that the "intimate partner" element of the § 2261(a)(1) had not been met, since Miss Williams had not cohabited with Barnette "as a spouse." However, the court held that the relationship met the intimate partner definition, since they had dated and then moved in together. Although Barnette and Robin Williams' relationship was not that of husband and wife, it was "like" that of husband and wife, and thus was sufficient for purposes of the statute. The 4th Circuit affirmed the conviction, but vacated the death sentence and remanded for a new sentencing hearing. **Key Issue:**

**Relationship Requirement.**

*United States v. Beahm*, 27 F. App'x 171 (4th Cir. Va. 2001) (per curiam), *cert. denied*, 536 U.S. 914 (2002).

Wesley Kevin Beahm pled guilty to violating 18 USC 2261(a) (1), (b) (1) and 18 U.S.C.A. § 924(j) (1) ("use of a firearm in a crime of violence resulting in first degree murder"). He was sentenced to life imprisonment. He appealed his conviction, stating that he should have had been able to withdraw his guilty plea and challenge his sentence, despite his plea agreement waiver of those rights. The court found that the lower court had correctly applied the relevant law on the matters and that the plea and the waiver were binding.

**Key Issues: Plea agreements, sentencing.**

*United States v. Bowe*, 309 F.3d 234 (4th Cir. N.C. 2002).

Riddick Bowe attempted to force his estranged wife and children to travel with him from North Carolina to Maryland. During the trip, he slapped and stabbed his wife. He was then arrested and indicted under 18 U.S.C. § 2261(a) (2). He entered into a plea agreement to be sentenced to 18-24 months in prison with 3 years supervised release and not to seek a downward departure. At the sentencing hearing, he sought a downward departure due to diminished mental capacity, which was granted (four years' probation). The government appealed, alleging that Bowe had breached his plea agreement. The court agreed, sentenced Bowe to 18 months of jail and credited him with the 18 months he had already served on probation during the government's appeal on the basis of double jeopardy. The government again appealed, stating that the application of the time already served was an incorrect application of the double jeopardy clause and that probation could not be equivalent to actual imprisonment. Bowe contended that the government had lost its right to appeal based on the plea agreement. The court decided that Bowe's breach of the plea agreement allowed the government to appeal, that the double jeopardy clause could not assign a less severe type of punishment and vacated the lower court's ruling, while remanding for sentencing.

**Key Issues: Sentencing, Double Jeopardy, plea agreements.**

*United States v. Owens*, 2015 U.S. Dist. Lexis 144176 (2015).

The defendant was charged with Interstate Domestic Violence in violation of 18 U.S.C. § 2261(a)(1), (b)(2) and Discharge of a firearm during and in relation to a crime of Violence in violation of 18 U.S.C § 924(c)(1)(A)(iii). The defendant's wife had been with the Chabot's in their home. Both the defendant's wife and Mr. Chabot were shot in the middle of the night. At the time, the defendant allegedly fled the home. A while later, police officers saw the defendant at a gas station with what appeared to be blood on his shirt. The Defendant argued that: 1) the indictment should be dismissed on double jeopardy grounds; 2) Officer Dyer's touch of the Defendant's vehicle in his driveway was unconstitutional; 3) the search warrant lacked probable cause on its face, and 4) he was entitled to a *Franks* hearing to contest each search warrant issued in this matter because of alleged false statements and material omissions contained in affidavits supporting the warrants. *Heath v. Alabama*, 474 U.S. 82, 88 (1985) states "when a defendant in a single act violates the peace and dignity of two sovereigns by breaking the laws of each, he has committed two distinct offenses." However, the exception in *Bartkus v. Illinois* applies only where "one sovereign so thoroughly dominates or manipulates the prosecutorial machinery of another that the latter retains little or no volition in its own proceedings." (359 U.S. 121, 124 (1959)). The fact that two sovereigns cooperated in conducting an investigation is insufficient to invoke the limited scope. The defendant did not provide sufficient evidence to meet the *Bartkus* rule. *United States v. Jones*, 132 U.S. 945, 181 (2012) and *Florida v. Jardines*, 133 U.S. 1409, 195 (2013) established that a search occurs for Fourth Amendment purposes when: 1) the government physically intrudes on a constitutionality protected area for the purposed of obtaining information or 2) the government violates a person's reasonable expectation of privacy. The Defendant's second argument had been rejected because driveways were not seen as within the home's curtilage, unlike the front porch in *Jardines*, 133 U.S. 1409. In *Jones*, 132 US. 951, held that "an attempt... to obtain information" constitutes a search. The Court found that in the Defendant's case, no officer placed their hands on the defendant's car to determine whether it had been driven recently. For the following reasons, the Court denied all of the defendant's motions; motion to dismiss; Motion to suppress search warrants and; Motion to suppress search of vehicle in driveway.

**Key Issues: Motion to Suppress, Fourth Amendment.**

#### **FIFTH CIRCUIT (Louisiana, Mississippi, Texas)**

*United States v. Blackthorne*, 378 F.3d 449 (5th Cir. Tex. 2004).

Allen Blackthorne and Danny Rocha conspired to kill Blackthorne's ex-wife, Bellush, using the services of Sammy Gonzales and Joey del Toro. Blackthorne was convicted to two life sentences under 18 U.S.C. §§1958 and 2261(a) (1) and 2(b). He appealed his conviction under the grounds that new evidence had been discovered. More specifically, he wanted a new trial because del Toro claimed to have no intent to kill Bellush until after he traveled to Florida (therefore negating the intent element combined with interstate travel) and that del Toro was under the influence of cocaine during some key planning meetings. The Court found that neither of these facts were particularly relevant to Blackthorne's conviction as he, the principal conspirator, caused del Toro to travel, satisfying the statutory elements and would not change the outcome of the trial substantially.

**Key Issues: New evidence, intent of conspirators.**

*United States v. Hornsby*, 88 F.3d 336 (5th Cir. 1996).

The Defendant, Michael Wayne Hornsby, was indicted for kidnapping his ex-girlfriend, and for interstate domestic violence. He pled guilty to violating 18 U.S.C. § 2261, in exchange for the dismissal of the kidnapping charge. The Defendant was sentenced to 5 years imprisonment and appealed. He raised three challenges to his

sentencing. First, he asserted that the District Court should not have taken into account his status as a career offender. Second, he claimed that his sentence should not have run consecutively with his prior state sentence. Third, he asserted that the kidnapping guidelines were erroneously applied during sentencing.

However, the Court of Appeals disagreed. First, the Court found that the use of the kidnapping guideline was appropriate because it was the guideline that most closely fit the criminal conduct. Additionally, the Court of Appeals held that the District Court properly took into account the Defendant's status as a career offender, because his record contained two prior instances of violence when the crime was committed. Finally, the Court of Appeals held that the District Court did not err in ordering consecutive sentences because the Defendant was already on parole during the commission of the crime. Finally, the Court of Appeals rejected the Defendant's claim that this was a violation of Due Process. The Court of Appeals affirmed the sentence.

**Key Issue: Sentencing, Career Offender.**

*United States v. Lankford*, 196 F.3d 563 (5th Cir. 1999), cert. denied, 196 F.3d 563 (5th Cir. 1999).

Lankford forced his wife into his car at gunpoint, and handcuffed her to the gear shift lever. He told her he was going to drive them from Kansas to Oklahoma, where they were going to work things out. After checking them into a motel room for the night, where Lankford sexually assaulted his wife, he drove her back to Kansas.

Lankford was convicted of violating § 2261(a)(1), kidnapping in violation of 18 U.S.C. § 1201, and one count of using or carrying a firearm to commit the crimes of violence in violation of 18 U.S.C. § 924(c). On appeal, Lankford made several arguments, including that § 2261(a)(1) is unconstitutional because Congress exceeded its power under the Commerce Clause when enacting it, and that the statute punishes conduct that is purely intrastate, private, and noncommercial, and that it has no substantial effects on interstate commerce. The 5th Circuit rejected this argument and held that the statute is constitutional because it falls within the first of three broad categories under which Congress may regulate that were identified in *United States v. Lopez* (514 U.S. 549 (1995)): The use of interstate transportation routes through which persons and goods move. Moreover, the court stated, it has long been held that Congress may forbid the use of channels of interstate commerce for injurious purposes.

**Key Issue: Commerce Clause.**

## SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee)

*United States v. Jacobs*, 244 F.3d 503 (6th Cir. 2001).

Lauretta Jacobs obtained a protection order against her husband, Elisha Jacobs, in 1996, and subsequently moved from Kentucky to Indiana. One month later, the defendant called Lauretta and told her that she should come to his parents' home in Kentucky so he could give her some money to assist with living expenses. When Lauretta arrived, the defendant immediately accosted her and punched her in the face, injuring her mouth and damaging her teeth. Armed with a shotgun and a knife, the defendant forced Lauretta into his truck, and drove her into Tennessee. The next day, the defendant returned Lauretta to Kentucky, where she received treatment for her injuries, and reported the incident to the police. The defendant was then arrested and held on bond until his bond was reduced in April 1997. After his release, the defendant traveled from Kentucky to Lauretta's home in Indiana. He turned off the electricity to her home, restored the power a few minutes later, and then knocked on the front door. Lauretta did not open the door, and the defendant crashed through a closed window, brandishing a gun. The defendant dragged Lauretta by her hair out of her home, across cornfields, and a barbed wire fence, injuring her bare leg. Lauretta eventually escaped and was discovered along the highway and taken to a hospital. The defendant pled guilty in Indiana state court to abducting Lauretta in Indiana, and

was sentenced to 15 years in state prison. He was then charged in a federal indictment with four counts related to the Tennessee abduction: Kidnapping, interstate domestic violence in violation of 2261(a)(2), use of a deadly weapon during a crime of violence, and interstate violation of a protective order, in violation of 2262. The indictment also contained three counts related to the Indiana abduction: Interstate domestic violence in violation of 2261(a)(1), possession of a firearm while subject to a protection order in violation of 922(g)(8), and use of a deadly or dangerous weapon during a crime of violence. The defendant was found guilty on all seven counts and sentenced to 70 months on six counts, to run concurrently with any sentence imposed on any other matter, and 300 months for the convictions for use of a deadly weapon during a crime of violence, to run consecutively with any other sentence. The defendant appealed the sentence, but the 6th Circuit affirmed.

**Key Issue: Joinder.**

### **SEVENTH CIRCUIT (Illinois, Indiana, Wisconsin)**

*United States v. Larsen*, 615 F.3d 780 (7th Cir. 2010), cert. denied, 562 U.S. 1077 (2010).

Teri Jendusa-Nicolai went to her ex-husband Larsen's home in Wisconsin to pick up their two daughters. When she came into the home, Larsen beat her with a baseball bat. He then bound her with duct tape, removed her pants, put her in a snow filled garbage can. He drove to a self-storage facility in Illinois, where he left her (still in the can) in an unheated storage locker. During the drive to Illinois, Jendusa-Nicolai was able to place three calls on her cell phone, one to her husband and two to law enforcement, before David Larsen noticed she had freed her hands and took her phone. As a result of her calls, law enforcement searched Larsen's home without a warrant and arrested Larsen, who denied knowledge of Jendusa-Nicolai's whereabouts. The next day law enforcement searched Larsen's wallet, and found business cards from the storage facility. They contacted the storage facility, and found Jendusa Nicolai alive, but suffered a miscarriage three days later and had to have her toes removed due to frostbite. Larsen was convicted in the U.S. District Court for the Eastern District of Wisconsin, following a bench trial, of kidnapping in violation of 18 U.S.C. § 1201(a)(1) and interstate domestic violence, in violation of 18 U.S.C. 2261(a)(2) and (b)(2). The district court sentenced Larsen to life in prison for the kidnapping charge (above the federal sentencing guidelines) and to ten years for the interstate domestic violence charge. The district court cited Jendusa-Nicolai's miscarriage as an aggravating factor not considered by the sentencing guidelines. On appeal, Larsen argued that the Interstate Domestic Violence Act was unconstitutional under the Commerce Clause, because the violence was local, non-economic and failed to substantially effect interstate commerce. Larsen also argued that his conviction for both kidnapping and interstate domestic violence violated the Double Jeopardy Clause, that the warrantless search of his home was not valid under the emergency doctrine (exigent circumstances) and that his sentence was improperly based on the occurrence of Jendusa-Nicolai's miscarriage. The Seventh Circuit affirmed the district court, finding that the Interstate Domestic Violence Act was valid under the Commerce Clause, because Congress had the ability to regulate "the use of channels or instrumentalities of, or persons in, interstate commerce." The Seventh Circuit also found that conviction under both kidnapping and interstate domestic violence did not constitute Double Jeopardy, because the crimes have different requisite elements; kidnapping requires the "holding" of the victim, whereas interstate domestic violence does not. The court did not consider Larsen's invalid warrantless search argument, because the court considered the admission of the evidence obtained harmless, given the overwhelming evidence against Larsen. The court also found Larsen's above guidelines life sentence was not unreasonable, even if based on Jendusa-Nicolai's miscarriage, because the district court was not unreasonable in linking Larsen's assault to the miscarriage and considering the miscarriage as an aggravating factor not considered by the sentencing guidelines. Further the district court did not abuse its discretion, given the brutality of Larsen's crime.

**Key Issues: Commerce Clause, Double Jeopardy, Warrantless Search, Sentencing.**

*United States v. Young*, 316 F.3d 649 (7th Cir. 2002).

After kidnapping his long-term girlfriend across state lines and abusing her and threatening her life for days, Young was charged with and convicted of interstate domestic violence, in violation of 18 U.S.C. §§ 2261(a)(1) and (b)(3). Young's girlfriend made a series of statements regarding the events surrounding the kidnapping and abuse to police, the grand jury, and others, but at trial she recanted her story about the abuse and kidnapping. On appeal, Young argued, among other things, that the district court abused its discretion by admitting testimony from the government's expert regarding common patterns among domestic abuse victims. During the trial, after the victim's recantation, the government treated the victim as a hostile witness and introduced her grand jury testimony, in which she affirmed the details of crime. The government called Dr. Ann Wolbert Burgess, a psychiatric mental health nurse specializing in crime victims, as an expert to explain Patrick's recantation. Dr. Burgess stated that victims of domestic violence commonly recant their accusations and have a limited ability to perceive means of escape. She also testified that the victim had exhibited this not uncommon behavior pattern. In forming her opinion, Dr. Burgess had reviewed law enforcement reports describing confrontations between the victim and Young, the victim's grand jury testimony, the Order of Protection the parties obtained against Young, the criminal history report, letters between the parties, the defense counsel's notes of an interview with the victim, and recordings of telephone conversations between Young and the victim while in pre-trial detention. Dr. Burgess also spent over an hour interviewing the victim personally. The Seventh Circuit assessed the admissibility of this testimony by reference to the standards in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 593-94 (1993). Young argued that Dr. Burgess' methodology was not reliable because: a) Dr. Burgess formed her opinion before meeting with the victim; b) Dr. Burgess reached her conclusion about the victim based upon "anecdotal" evidence of other battered women; and c) Dr. Burgess did not interview the victim's friends and family. The court rejected all of these arguments, finding that in light of the Daubert standards, as well as decisions assessing the admissibility of expert testimony on "battered woman syndrome," Dr. Burgess' testimony was properly admitted, especially because it was "highly probative as to why [the victim] recanted on the stand in light of her earlier statements."

**Key Issue: Expert Testimony on DV.**

**EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)**

*United States v. Douglas*, 646 F.3d 1134 (8th Cir. 2011).

James Douglas went to his wife, Jessica's work location in Missouri and persuaded her to run an errand with him. When she got into her car with him, he pulled a gun. While driving, James punched Jessica in the mouth and eye, and fired the gun through the open window of the car, in front of her face. Law enforcement responded to Jessica's place of employment because of a suspicious person report. They noticed Jessica was missing and found a letter James had written to her. They also found James' truck in the parking lot, with a ski mask and duct tape inside. While driving, James made Jessica call her mother to tell her she had left with James voluntarily. Jessica was later able to call her mother back and describe the actual events. James took Jessica to a motel in Mississippi, where he had her call law enforcement to tell them she had left voluntarily; law enforcement was able to determine from the conversation that James was armed. Law enforcement used Jessica's cellular phone data to locate the motel and arrested James later that day. Officers found a pistol in James' vehicle. James plead guilty in the U.S. District Court for the Eastern District of Missouri to a charge of interstate domestic violence, in violation of 18 U.S.C. § 2261(a)(1), and a charge of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). In determining his sentence, the district court applied a cross-reference to kidnapping, and sentenced him to 120 month's incarceration in relation to the interstate domestic

violence charge and to 60 months incarceration in relation to being a felon in possession of a firearm. On appeal, James challenged the cross-reference to kidnapping used in calculating his sentence in relation to the interstate domestic violence conviction. He argued that if a cross-reference should have been used at all, it should have been for aggravated battery instead of kidnapping. The Eighth Circuit affirmed the district court, finding that because James did not object to the facts of the Presentence Report, the district court could base its cross-reference determination on those undisputed facts, which supported the application of a cross-reference to kidnapping.

**Key Issue: Sentencing.**

*United States v. Thomas*, No. 8:00CR120, 2000 U.S. Dist. LEXIS 13908 (D. Neb. Sept. 21, 2000).

The FBI obtained an arrest warrant alleging that Thomas committed interstate domestic violence and violated a protection order. Thomas was indicted for kidnapping, interstate domestic violence (18 U.S.C. § 2261), and interstate violation of a protection order. Thomas filed a motion to dismiss, contending that Congress exceeded its powers under the Commerce Clause when it enacted §§ 2261 and 2262. The district court disagreed, relying on numerous cases decided by federal appellate courts, and denied the motion to dismiss.

**Key Issue: Commerce Clause.**

**NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands)**

*United States v. Meza*, No. 15CR3175 JM, 2017 WL 1371102 (S.D. Cal. Apr. 7, 2017).

Defendant, Meza, was charged with murder of an intimate partner in Mexico. He filed a motion to dismiss count 1 of a superseding indictment on March 29, 2017, which charged Meza with violation of § 2261(a)(1). Meza argued that the statute exceeds Congressional authority under the Commerce Clause. The Court disagreed. Citing *United States v. Clark*, 435 F.3d 1100 (9th Cir. 2006), *United States v. Lankford*, 196 F.3d 563 (5th Cir. 1999), and *United States v. Gluzman*, 154 F.3d 49, 50 (2d Cir. 1998), it found that Congress has the power to enact § 2261 to regulate interstate commerce, and even greater authority to regulate foreign commerce. Thus, Meza's motion to dismiss was denied because he did not make an adequate showing that Congress exceeded its authority to regulate interstate and foreign commerce when it enacted § 2261.

**Key Issue: Congressional Authority.**

**ELEVENTH CIRCUIT (Alabama, Georgia, Florida)**

*United States v. Miers*, 686 F. App'x 838 (11th Cir. 2017).

Defendant was convicted of kidnapping and interstate domestic violence. He appealed, claiming, *inter alia*, that the district court erred in its instruction to the jury and that such instruction misrepresented the law. The jury instruction read: "The Government must prove that the Defendant possessed the intent to kill, injure, harass or intimidate [the victim] concurrently with the interstate commerce. But the Government does not have to prove that this intent was the significant or predominant reason that the Defendant crossed state lines. In other words, the Government only has to prove that the Defendant traveled in interstate commerce and, while doing so, intended to kill, injure, harass or intimidate [the victim]." The Court found that the plain language of the statute "does not require the Defendant's intent be the significant and predominant reason for the travel." See *United States v. Al-Zubaidy*, 283 F.3d 804, 809 (6th Cir. 2002)(interpreting identical language in 18 U.S.C. § 2261A to mean only that the defendant must have intended to harass or injure at the time he crossed the state line). Thus, the Court held that the jury instruction was proper.

**Key Issue: Jury Instructions; Intent.**

## **INTERSTATE DOMESTIC VIOLENCE – CAUSING TRAVEL**

**For conduct occurring January 6, 2006 and after:**

**18 U.S.C. § 2261(a)(2) makes it a federal offense to cause a spouse, intimate partner, or dating partner to travel in interstate (cross state lines) or foreign commerce to enter or leave Indian country by force, coercion, duress, or fraud, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.**

**For conduct occurring October 28, 2000 to January 5, 2006:**

**18 U.S.C. § 2261(a)(2) makes it a federal offense to cause a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and to, in the course of, as a result of, or to facilitate such conduct or travel, commit or attempt to commit a crime of violence against that spouse or intimate partner.**

**For conduct occurring prior to October 28, 2000:**

**18 U.S.C. § 2261(a)(2) makes it a federal offense to cause a spouse or intimate partner to cross state or tribal land lines by force, coercion, duress or fraud, and in the course of, or as a result of that conduct, intentionally commit a crime of violence causing injury to the person's spouse or intimate partner.**

## **FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia)**

*United States v. Bailey*, 112 F.3d 758 (4th Cir. 1997), cert. denied, 522 U.S. 896, 118 S. Ct. 240 (1997).

Bailey was convicted of interstate domestic violence in violation of 18 U.S.C. § 2261(a)(2), and kidnapping (18 U.S.C. § 1201(a)(1)). Christopher Bailey assaulted his wife in their home in West Virginia on November 26, 1994, causing a serious head injury and profuse bleeding. Bailey put her in his car trunk and began driving. Over a period of six days, Bailey drove through West Virginia, South Carolina, and Kentucky, finally taking her to a Corbin, Kentucky emergency room on December 1. Sonya's condition was extremely critical when she arrived at the hospital, and she remains paralyzed and unable to care for herself. Bailey was arrested at the emergency room, and was subsequently charged and convicted. He appealed, and the 4th Circuit affirmed. On appeal, Bailey challenged the constitutionality of § 2261(a)(2), claiming that it is an unconstitutional exercise of Congress's power under the Commerce Clause. The court rejected this argument and held that the statute is constitutional, stating: "Transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the Commerce Clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained and is no longer open to question."

**Key Issue: Commerce Clause.**

*United States v. Bowe*, 257 F.3d 336 (4th Cir. 2001).

Bowe, a former world heavyweight boxing champion, abducted his wife, Judy, and children from their North Carolina home. En route by car to his home in Maryland, Bowe displayed a flashlight, duct tape, pepper spray,

and handcuffs to his wife, stating that “I came prepared.” He also told her that if he had found Judy with another man he would have killed them both. During the trip, Bowe stabbed his wife with a knife, piercing the heavy jacket she wore and drawing blood. Bowe was arrested in Virginia, after Judy managed to alert others in a restaurant that she was being abducted. Bowe was named in a one-count indictment for violating 2261(a)(2). He pled guilty pursuant to a plea bargain in which he agreed not to seek a departure from the agreed sentence range (18 to 24 months) under the federal sentencing guidelines. Nonetheless, at sentencing Bowe’s counsel offered evidence of his diminished capacity and argued that he should receive treatment in lieu of punishment by incarceration. The district court found that Bowe indeed suffered from a diminished capacity and was eligible for a five-level downward departure, resulting in a term of 30 days in a community confinement center. The court found that the stab wound was accidental and that Bowe’s conduct was not violent and did not create a substantial threat of violence. On appeal, the Fourth Circuit reversed, finding that the district court committed clear error in finding that Bowe’s conduct was not violent and that it did not involve a serious threat of violence. It also held that the district court lacked discretion to depart downward based upon diminished capacity under such circumstances. The Fourth Circuit remanded the matter with instructions that the district court decide whether the plea agreement should be set aside because Bowe violated its express provisions, or whether Bowe should be required to comply with the agreement and not seek a departure from the agreed-upon sentencing range.

**Key Issue: Sentencing.**

*United States v. Caskey*, 2014 U.S. Dist. Lexis 124733 (2014), *aff’d*, 636 F. App’x 376 (8th Cir. 2016). Caskey was charged with kidnapping in violation of 18 U.S.C. § 1201(a), and interstate domestic violence in violation of 18 U.S.C. § 2261(a)(2), (b)(3), and (b)(4). The defendant pleaded guilty to kidnapping. The United States Probation Office charged the defendant and recommended a category VI sentence. The defendant objected to the sentencing of 350 months to life imprisonment. The Court overruled the defendant’s objections. The government bears the burden of proof, if the satisfied “preponderance of the evidence of facts” requirement is shown. The use of a dangerous weapon is a two-level enhancement that applies when a dangerous weapon is used during a commission of a kidnapping offense. U.S.S.G. § 2A4.1(b)(3). Caskey used a screwdriver, during the crime. The court concluded that the testimony of the victim had been sufficient enough to prove the preponderance of the evidence. The court found that at sentencing, the Court can apply the two-level enhancement.

**Key Issue: Sentencing, preponderance of the evidence.**

*United States v. Faulls*, 2016 U.S. App. Lexis 8325 (2016).

Faulls was convicted of interstate domestic violence in violation of 18 U.S.C. § 2261(a)(2) and (b)(4); 18 U.S.C. § 1201(a)(1) and; 18 U.S.C. § 924(c). The defendant on appeal argued that his counsel had been ineffective. The Court affirmed the lower court’s ruling. The violence in the case came following the separation of the defendant and his wife. Faulls confronted his wife with a gun one night. She tried leaving their home. When she was able to leave, he followed her and hit her car with his truck. After the incident, Lori, Faull’s wife, moved to a different state. Faulls found her location. He saw Lori and ordered her into his car. When she got in the car, she spotted a shotgun in the backseat. One night, Faulls and Lori went to a bar. Once Faulls became intoxicated, Lori fled to the police station.

Faulls’s first argument notes that his attorney denied him effective assistance of counsel, after the attorney did not properly cross-examine the bartender. The Court declined the claim. There was no inconclusive evidence of ineffective assistance on the face of this record. The Court also determined whether the district court correctly

required Faulls to register as a sex offender based on his conviction for interstate domestic violence. During the kidnapping of Lori, Faulls tried to have sex with her. She said no but eventually feared for her life. The defendant asserted that a sex offense should be relevant in part as a criminal offense that “has an element involving a sexual act or sexual conduct with another.” 42 U.S.C. § 16911(1), (5)(A)(i), (iii). The government argued that the domestic violence conviction satisfied that definition. The elements of interstate domestic violence include: 1) the defendant and victim are spouses or intimate partners; 2) the defendant caused the victim to travel in interstate commerce by force, coercion, duress, or fraud; 3) the defendant, in the course of or to facilitate such travel, committed a crime of violence against the victim; 4) the defendant committed such acts knowingly and willfully. 18 U.S.C. § 2261(a)(2). The Court agreed with the government’s conclusion but not the reasoning. However, the Court found that the district court did not err nor did the trial court. The defendant had shown domination over the victim, and a motive for committing the offenses.

**Key Issue: Sentencing.**

*United States v. Helem*, 186 F.3d 449 (4th Cir. 1999), cert. denied, 528 U.S. 1053 (1999).

Charles Helem beat and choked his wife, Denise, until she lost consciousness. When she regained consciousness, Helem told her that they had to leave town because he did not want anyone to see his wife in her current condition. Denise Helem was afraid to object, and the defendant helped her to the car. Helem drove from Maryland through Virginia, checked into a motel in North Carolina, and finally drove Denise to a hospital. Helem was convicted of violating § 2261(a)(2). On appeal, the defendant argued that his conviction should be reversed because § 2261(a)(2) does not reach acts of violence that occur before interstate travel begins. The Fourth Circuit disagreed and affirmed his conviction, relying heavily on Judge Moore’s opinion in the Page case decided by the 6th Circuit. 167 F.3d 325 (6th Cir. 1999). The language of the statute requires injury to occur “in the course of or as a result of” the crossing of a state line or entering or leaving Indian country. This language is much broader than “during” or “after,” which Congress could have chosen to use in the statute, but did not. The defendant’s beating Ms. Helem into a state of semi-consciousness enabled him to cause her to cross state lines in an attempt to evade the law and allowed him to maintain control over her during the forced travel.

**Key Issue: Timing of Abusive Acts.**

*United States v. Hendren*, No. 98-4397, 1999 U.S. App. LEXIS 3947 (4th Cir. March 11, 1999) (Unpublished).

Hendren and the victim lived together for approximately six years, during which time Hendren physically abused the victim and threatened to kill her if she ever left him. The victim filed a domestic violence complaint and received a protection order against Hendren. Approximately one week after filing the complaint, the victim got into her car to go to work. Hendren, who had been hiding inside the car, pointed a loaded .38 caliber pistol at her head and threatened to kill her. He also showed her what he claimed to be a bomb and threatened to detonate the bomb and kill both of them. Hendren ordered the victim to drive to his house, where he tied her up and handcuffed her. After again threatening to kill the victim and her family, Hendren ordered the victim to accompany him to Virginia. Over the next approximately 8 hours, Hendren drove them from North Carolina into southern Virginia, and repeatedly threatened to kill the victim, various family members, and himself if she did not come back to him. The victim, convinced that her only hope for survival was to make Hendren believe that she would resume their relationship, assured him that she would go back with him. Hendren then drove the victim back to North Carolina and dropped her off at a mall in their home town. Hendren was convicted pursuant to his guilty pleas of kidnapping, carjacking, interstate domestic violence, interstate violation of a protection order, and using a firearm during a crime of violence. He appealed, alleging various sentencing errors. The 4th Circuit affirmed, finding no reversible error.

**Key Issue: Sentencing.**

*United States v. Howell*, 472 F. App'x 245, 246 (4th Cir. 2012) (Unpublished).

The Defendant, Raunie Paul Howell, was convicted of violating 18 U.S.C. § 1201(a)(1) and 18 U.S.C. § 2261(a)(2). Howell appealed by challenging the testimony provided by one of the state's witnesses, a nurse who was called to testify yet not disclosed as an expert. The Court of Appeals reviewed the District Court's ruling for abuse of discretion, and found that although there was error, it was harmless because "the judgment was not substantially swayed by the error." The judgment of the district court was affirmed.

**Key Issues: Harmless Error, Witness.**

*United States v. Howell*, 584 F. App'x 108 (2014) (unpublished).

John Wayne Howell pled guilty to one count of conspiracy to commit interstate domestic violence in violation of 18 U.S.C. § 371 and 18 U.S.C. § 2261(a)(2). The defendant argued that he received ineffective assistance of counsel. The *Strickland v. Washington* ineffective assistance of counsel argument requires that counsel's performance be deficient, and the deficient performance prejudiced the defense. (466 U.S. 668 (1984)). The court found no misconduct. The Court affirmed the lower court's judgment.

**Key Issues: ineffective assistance of counsel, plea agreement.**

*United States v. Hurley*, 454 F. App'x 175, 176 (4th Cir. 2011) (Unpublished).

Hurley was convicted of one count of interstate domestic violence in violation of 18 U.S.C. § 2261(a)(2). Hurley appealed the decision arguing that the evidence was insufficient to support his conviction, and that the court erred in admitting evidence of a prior bad act without allowing Hurley to admit evidence of the victim's violent nature. The Court of Appeals found that his wife's testimony of the violent act was sufficient evidence of the violation of 18 U.S.C. § 2261, and the jury was the correct party to determine the credibility of the individuals involved. Second, the Court of Appeals determined that the evidence admitted by the court was appropriate because the evidence of a prior bad act was part of the story explaining the events of the night. Additionally, the Court of Appeals determined that the court correctly denied the admission of the victim's violent nature because the evidence provided by Hurley were not frequent enough to establish a pattern that was consistent.

**Key Issues: Insufficiency of Evidence and Admissibility of Evidence.**

*Ross v. O'Donnell*, 2014 U.S. Dist. Lexis 102934 (2014).

Pro Se Plaintiff met with defendant, the vice president of a uniform and supply company, at a Denny's restaurant in Pennsylvania. She agreed to purchase stolen "invoices" from Plaintiff. After the FBI began to investigate, the Defendant offered the plaintiff \$200,000 to "keep her name out of it." Both agreed. However, the Plaintiff became angry at the ongoing investigation against her, and not the defendant. The plaintiff arranged for an individual to send defendant threatening messages, until the defendant paid her \$20,000. Upon release from prison, the Plaintiff continued to send the defendant threatening messages and post vengeful comments and photographs on Facebook. Ross plead guilty to interstate stalking in violation of 18 U.S.C. 2261(a)(2). Ross argued that her complaints were based on Federal substantive law. However, the court found that the plaintiff did not correctly argue any claim under 18 U.S.C. § 1983. Even if the argument had been correctly construed, her *Bivens* claim lacked merit. (*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (2001). Plaintiff could not establish that she acted "under color of law" when she participated in a "willful...joint

activity" with the federal government or its agents. Ross's claim lacked subject matter jurisdiction so the court remanded the action in its entirety.

**Key Issues: federal law, subject matter jurisdiction.**

#### **SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee)**

*United States v. Baggett*, 251 F.3d 1087 (6th Cir. 2001), cert. denied, 534 U.S. 1167 (2002).

Baggett, a long-distance trucker, severely assaulted his wife, Catherine, in his truck during a trip from California to Tennessee. When he was not physically abusing her, he forced her to stay in the sleeper compartment of the truck and controlled her movements. Catherine eventually was found in a restroom by a third party, and she was taken to a hospital for treatment. During trial, at the close of the government's case-in-chief, defense counsel moved for a judgment of acquittal. The district court reserved decision on the motion until close of all the proof, at which point Defense counsel renewed the motion. After hearing argument from counsel outside the presence of the jury, the district court decided to grant Defendant's motion for judgment of acquittal on both counts. The court stated: "As I said before it is -- it is abundantly clear that -- that the government has made out a case of domestic battery, domestic violence, but I don't believe that the proof has made out a case of interstate domestic violence under the federal statute which does require the forcing or causing a partner to cross state lines by force or having this conduct occur as a result of this travel. In this case the violence was really incidental to interstate travel." The district court subsequently took action that implicated double jeopardy concerns (not discussed here), but ultimately on appeal the Sixth Circuit had jurisdiction to review the district court's decision to grant the motion for judgment of acquittal, which required the court of appeals to assess whether the evidence was sufficient to support the jury's guilty verdict with respect to the interstate domestic violence charge. The district court had found that the government "failed to prove an essential element of the crime, to wit, that the Defendant 'by force, threats, coercion or duress caused the victim to cross state lines.'" The district court also found that the government "failed to prove that the transportation of the victim was against her will, or that she was seized, confined, etc. against her will." Sixth Circuit reversed, finding that Baggett had admitted that the assaults in question occurred in two states, contradicting his argument that he and his wife reconciled while still in Oklahoma, and thus that the interstate element of the offense could not be proved. The court also pointed to the testimony of the witness who found Catherine Baggett, who testified that the victim had told her that she had been beaten before arriving in Tennessee, as well as in Tennessee. The examining doctor's testimony also supported the finding that Catherine was beaten in more than one state, in that he reported that she was assaulted multiple times over a twenty-four-hour period, and that the assaults occurred in more than one location. In addition, the Sixth Circuit found that the evidence supported a finding that Catherine was "subject to actual or threatened force of such a nature as to induce a well-founded fear of impending death or serious bodily harm from which there is no reasonable opportunity to escape." According to the court, "the jury was not required to conclude from the mere fact that Mrs. Baggett begged Defendant not to put her out of his truck that she did not wish to escape. To the contrary, the trial transcript indicates that Mrs. Baggett thought Defendant was 'just going to sit me out of the truck but he was not going to stop.' The jury could infer from that testimony that Mrs. Baggett feared Defendant was going to eject her from a moving vehicle. In any event, Mrs. Baggett also testified that she was unable to outrun Defendant at that time, given her injuries, and that she would have run away from Defendant if she had been able. This evidence demonstrates that, at the time of Defendant's assaults, Mrs. Baggett was a 'non-consenting participant in the interstate travel.'"

**Key Issue: Required Elements of the Offense.**

*United States v. Jacobs*, 244 F.3d 503 (6th Cir. 2001).

Lauretta Jacobs obtained a protection order against her husband, Elisha Jacobs, in 1996, and subsequently moved from Kentucky to Indiana. One month later, the defendant called Lauretta and told her that she should come to his parents' home in Kentucky so he could give her some money to assist with living expenses. When Lauretta arrived, the defendant immediately accosted her and punched her in the face, injuring her mouth and damaging her teeth. Armed with a shotgun and a knife, the defendant forced Lauretta into his truck, and drove her into Tennessee. The next day, the defendant returned Lauretta to Kentucky, where she received treatment for her injuries, and reported the incident to the police. The defendant was then arrested and held on bond until his bond was reduced in April 1997. After his release, the defendant traveled from Kentucky to Lauretta's home in Indiana. He turned off the electricity to her home, restored the power a few minutes later, and then knocked on the front door. Lauretta did not open the door, and the defendant crashed through a closed window, brandishing a gun. The defendant dragged Lauretta by her hair out of her home, across cornfields, and a barbed wire fence, injuring her bare leg. Lauretta eventually escaped and was discovered along the highway and taken to a hospital. The defendant pled guilty in Indiana state court to abducting Lauretta in Indiana, and was sentenced to 15 years in state prison. He was then charged in a federal indictment with four counts related to the Tennessee abduction: Kidnapping, interstate domestic violence in violation of 2261(a)(2), use of a deadly weapon during a crime of violence, and interstate violation of a protective order, in violation of 2262. The indictment also contained three counts related to the Indiana abduction: Interstate domestic violence in violation of 2261(a)(1), possession of a firearm while subject to a protection order in violation of 922(g)(8), and use of a deadly or dangerous weapon during a crime of violence. The defendant was found guilty on all seven counts and sentenced to 70 months on six counts, to run concurrently with any sentence imposed on any other matter, and 300 months for the convictions for use of a deadly weapon during a crime of violence, to run consecutively with any other sentence. The defendant appealed the sentence, but the 6th Circuit affirmed.

**Key Issue: Sentencing.**

*United States v. Page*, 167 F.3d 325 (6th Cir. 1999), cert. denied, 528 U.S. 1003 (1999).

Derek Page attacked and brutally beat Carla Scrivens, his ex-girlfriend, until she was unable to walk, then carried her to his car. Page drove her around for several hours, crossing from Ohio into West Virginia and Pennsylvania, where he finally dropped her off at a hospital. Page was convicted of violating § 2261(a)(2). 18 U.S.C. § 2261(a)(2). In Page's post-verdict motion for a judgment of acquittal, he argued that there was insufficient evidence to support the verdict because the statute does not reach violence that occurs before travel begins. The district court rejected this argument. On appeal, the Sixth Circuit, sitting en banc, was equally divided (8 favored affirming the district court's decision and join in the concurring opinion; seven members would reverse and join in Kennedy's dissent; one justice would also reverse, and wrote a separate dissenting opinion) and thus affirmed the conviction. In her concurring opinion, Justice Moore rejected the argument, saying that the beating was an "integral part of the forcible transportation" and was "precisely what enabled Page to force Scrivens to travel across state lines" because it allowed Page to maintain control over Scrivens during the forced transportation. Page's threats during the trip to Pennsylvania constituted a "crime of violence" for purposes of the statute, and they resulted in "bodily injury" to the extent that they kept Scrivens from receiving medical treatment sooner and aggravated her preexisting injuries. The additional pain and loss of blood were "bodily injury" for purposes of the statute.

**Key Issue: Timing of Abusive Acts.**

*United States v. Sensmeier*, No. 99-6069, 2001 U.S. App. LEXIS 1699 (6th Cir. 2001).

Fred Sensmeier began an intimate relationship with Alicia Wilson, and moved into Alicia's apartment in Southaven, Mississippi. Alicia testified at trial that the defendant beat her four times within an 18-month period. Alicia evicted the defendant from her apartment in July 1998. They attempted to reconcile later that year, and went out together on October 4, 1998 and again on October 6. After dinner on October 6, the defendant went with Alicia to her apartment. The defendant became enraged upon finding signs that other men had been in the apartment, and attempted to assault Alicia. She locked herself in her room and called the police. The defendant broke the door, but then fled on foot after Alicia called the police. Alicia, who drove a truck for a living, gathered some belongings, including a pistol, and left in her truck to travel to Atlanta, Georgia to deliver a load of cargo. The defendant then called Alicia on her mobile phone and told her that he left his keys in her apartment, and asked to retrieve them. Alicia refused, and the defendant threatened that he would break into her home, steal or destroy all of her property, and kill her dog. Alicia testified that she agreed to pick up the defendant out of fear for the safety of her property and her dog. After picking up the defendant, the defendant turned the truck's engine off. Alicia started the truck's engine up again, but the defendant turned the truck's engine off again and pulled the keys out of the ignition. Alicia then attempted to exit the truck, but the defendant shut the door on her leg and began to choke her. She lost consciousness; upon regaining consciousness, the defendant was beating her with his fist. The defendant then got into the driver's seat and drove the truck two miles from Southaven, pulled over, and began beating her again. Alicia got her pistol and attempted to shoot him, but the gun did not fire, Alicia testified, because the defendant had removed the bullets. The defendant then drove them across the Mississippi River into Arkansas, and continued to threaten and beat her once they were in Arkansas. The defendant drove them to his apartment in West Memphis, Arkansas, and hit Alicia while they were in the apartment. He then drove them back to Tennessee, where Alicia called her dispatcher, who in turn called the police. The defendant was subsequently indicted on two counts of interstate domestic violence (§ 2261(a)(2)), two counts of kidnapping in violation of 18 U.S.C. § 1201(a), and interstate theft of a motor vehicle (18 U.S.C. § 2314). The defendant was tried and convicted of one count of interstate domestic violence and one count of kidnapping. The defendant appealed his conviction under the kidnapping charge. The 6th Circuit affirmed the conviction.

**Key Issue: No Legal Issue Re: § 2261(a)(2).**

#### **EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)**

*Darden v. United States*, 2005 U.S. Dist. LEXIS 37759 (D.S.D. Sept. 1, 2005).

Bernard Darden pled guilty to interstate domestic violence in violation of 18 U.S.C. 2261(a) (2). He was sentenced to 120 months of custody followed by three years of supervised release. He requested that his sentence be changed because 18 U.S.C. 2261 was abrogated and repealed. The court found that the statute had not been abrogated and that Mr. Darden was not entitled to appeal his sentence because of the waiver included with the plea agreement.

**Key Issues: Statute validity, waiver.**

*United States v. Cree*, 166 F.3d 1270 (8th Cir. 1999).

Mitchell Dean Cree dragged his wife from her car in front of her home, which was located on Indian trust land in North Dakota. He beat and kicked her, and forced her back into her car at knifepoint. Cree drove her to an abandoned house off tribal land, where he sexually assaulted her, and then returned her to her house. Cree's wife sustained serious injuries as a result of the attack. Cree was convicted of interstate domestic violence, kidnapping, and assault resulting in serious bodily injury. Cree appealed to the 8th Circuit, arguing ineffective assistance of counsel and improper sentencing. The 8th Circuit affirmed the lower court's judgment.

**Key Issue: Sentencing.**

*United States v. Memarian*, 371 F. App'x 711 (8th Cir. 2010) (per curiam) (unpublished).

Shawn Memarian plead guilty to cyber-stalking, in violation of 18 U.S.C. § 2261A(2)(B)(i) in the U.S. District Court for the Western District of Missouri. The district court sentenced Memarian to 24 months incarceration, 3 years supervised release and ordered \$3,550 in restitution be paid to his victim. On appeal, Memarian challenged the sentence and restitution award. He also challenged conditions of his supervised release, prohibiting him from acquiring additional credit card debt and consuming alcohol. The Eight Circuit found no abuse of discretion or error on the part of the district court and affirmed its judgment.

**Key Issue: Sentencing.**

*United States v. Neuzil*, 405 F. App'x 80 (8th Cir. 2010) (per curiam) (unpublished).

While in Iowa, Robert Neuzil called his estranged wife in Minnesota, and told her to put their children in the basement of the residence, because he was going to come and kill her and her family. Neuzil's wife contacted law enforcement and Neuzil was apprehended en route to Minnesota, with a loaded handgun, three rifles, ammunition and two knives in his vehicle. A later search of his residence revealed additional firearms and explosive devices. Neuzil pleaded guilty to three counts of possessing unregistered firearms in the U.S. District Court for the Northern District of Iowa. Charges of interstate stalking in violation of 18 U.S.C. §§ 2261A(2)(A), (B), and 2261(b)(3) were dismissed by the government. Neuzil was sentenced to 120 months incarceration for each weapons charge. On appeal, Neuzil argued procedural sentencing error and that his sentence was unreasonable. The Eighth Circuit affirmed the district court, finding no procedural error or abuse of discretion. **Key Issue: Sentencing.**

*United States v. Sarff*, 13 F. App'x 467 (8th Cir. Minn. 2001) (unpublished), cert. denied, 534 U.S. 1148 (2002).

James Warren Sarff forced his former wife from Minnesota to Mexico, shook her head, causing a stroke then choked her until she was unconscious. He was convicted of violating 18 U.S.C. 1201 and three counts of 18 U.S.C. 2261(a) (2). He was sentenced to 180 months in prison on Count 1, 60 months in prison on Count 2, 120 months in prison on Count 3, and 180 months in prison on Count 4. Sarff claimed that the government had insufficient evidence to convict him of causing a life-threatening injury and that the court should not have applied an upward departure because of his criminal history. The appellate court affirmed the sentence.

**Key Issues: Sentencing.**

*United States v. Sickinger*, 179 F.3d 1091 (8th Cir. 1999).

Michael Sickinger arrived at his girlfriend's place of employment in Missouri, and choked and beat her, breaking numerous bones. Sickinger dragged her to his car, and drove her into Illinois. Sickinger was arrested in Illinois after his car was stopped by an Illinois police officer. He was convicted in the Eastern District of Missouri and appealed on several grounds, including that conviction and sentencing on both interstate domestic violence and kidnapping constitutes double jeopardy in violation of the 5th Amendment. Sickinger failed to raise this argument in the district court and thus did not preserve the issue, but the court briefly examined it. The court found that since the crimes require proof of at least one fact that the other statute does not, double jeopardy was not implicated. Sickinger's conviction was affirmed, but Sickinger was successful on a sentencing argument, and the case was vacated and remanded for resentencing.

**Key Issue: Double Jeopardy.**

## **NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands)**

*United States v. Dowd*, 417 F.3d 1080 (9th Cir. Mont. 2005), cert. denied, 546 U.S. 1069 (2005).

Matthew Evans Dowd and Janna Johnson had been romantically involved for some time after meeting in Montana. Dowd became involved with drugs and convicted for drug-related crimes while Johnson moved to Colorado. They later reunited in Colorado, with Ms. Johnson being unaware of Dowd's undischarged drug-related sentences. Shortly after their reunion, they began to fight and Mr. Dowd abused and threatened Ms. Johnson, forcing her to drive with him from Colorado to Montana to Utah and back to Montana over a period of several months. During those months, Ms. Johnson was beaten, raped, choked and threatened, while Mr. Dowd kept control of the keys to the car by tying string around the key, enabling him to pull it out of the ignition whenever he wanted to. Finally, in Montana, Ms. Johnson attempted to escape. After the ensuing altercation, Mr. Dowd left her for dead in embankment and she was able to go to a friend's house and hide. Mr. Dowd was apprehended, convicted under 18 U.S.C. § 2261(a) (2) and sentenced to 127 months in jail and 144 months for a previously undischarged sentence for his drug-related conviction.

Dowd appealed his conviction, stating that he did not satisfy the requisite element of force or coercion because Ms. Johnson had several opportunities to escape, which she did not use. He also stated that the District Court should not have sentenced him to 127 months served consecutively with his first sentence instead of a concurrent sentence. He also challenged the enhancement based on sexual abuse, stating that evidence did not support a finding of sexual assault beyond a reasonable doubt. The Court affirmed his sentence, first finding that opportunities to escape should be examined from the victim's point of view, and as such, Mr. Dowd's pattern of threats and psychological and physical abuse would be sufficient to support a finding that Ms. Johnson did not feel capable of escaping. Additionally, the Court stated that force or coercion does not necessitate constant physical supervision. Second, the Court found that the District Court properly evaluated the factors weighing for and against concurrent sentences and decided that the purposes of sentencing were better served by consecutive sentences. Third, the Court held that the jury had found sexual assault by itself as it had been charged in the indictment. Therefore, the sentence was affirmed.

**Key Issues: Willingness of the victim, elements of coercion, evidence, court and jury discretion.**

## **ELEVENTH CIRCUIT (Alabama, Georgia, Florida)**

*United States v. Miers*, 686 F. App'x 838 (11th Cir. 2017).

Defendant was convicted of kidnapping and interstate domestic violence. He appealed, claiming, *inter alia*, that the district court erred in its instruction to the jury and that such instruction misrepresented the law. The jury instruction read: "The Government must prove that the Defendant possessed the intent to kill, injure, harass or intimidate [the victim] concurrently with the interstate commerce. But the Government does not have to prove that this intent was the significant or predominant reason that the Defendant crossed state lines. In other words, the Government only has to prove that the Defendant traveled in interstate commerce and, while doing so, intended to kill, injure, harass or intimidate [the victim]." The Court found that the plain language of the statute "does not require the Defendant's intent be the significant and predominant reason for the travel." See *United States v. Al-Zubaidy*, 283 F.3d 804, 809 (6th Cir. 2002)(interpreting identical language in 18 U.S.C. § 2261A to mean only that the defendant must have intended to harass or injure at the time he crossed the state line). Thus, the Court held that the jury instruction was proper.

**Key Issue: Jury Instructions; Intent.**

**INTERSTATE STALKING-**

**For conduct occurring October 1, 2013 and after:**

**18 U.S.C. § 2261A(1)** creates a federal crime of stalking where a person travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that places that person in reasonable fear of the death of, or serious bodily injury to themselves or an immediate family member, or causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to that person or their immediate family member.

**18 U.S.C. § 2261A(2)** makes it a federal crime for a person, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of or serious bodily injury to a person or their immediate family member, or causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person or their immediate family member.

**For conduct occurring January 6, 2006 to September 30, 2013:**

**18 U.S.C. § 2261A(1)** creates a federal crime of stalking where a person travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enter or leave Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or place under surveillance with intent to kill, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person or a member of their immediate family or the spouse or intimate partner of that person.

**18 U.S.C. § 2261A(2)** makes it a federal crime for whoever with intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass or intimidate, or cause substantial emotional distress, or place in reasonable fear of death or serious bodily injury a person in another State or within the a special maritime or territorial jurisdiction of the United States; to use the mail, any interactive computer service, or any facility of interstate commerce to engage in a course of conduct that causes substantial emotional distress or places such person in reasonable fear of the death of, serious bodily injury to, that person or a person of that person's immediate family or that person's intimate partner.

**For conduct occurring between October 28, 2000 and January 5, 2006:**

**18 U.S.C. § 2261A(1)** creates a federal crime of stalking where a person travels in interstate or foreign commerce or within a special maritime or territorial jurisdiction of the United States, or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a

**result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the person's immediate family, or the spouse or intimate partner of that person.**

**18 U.S.C. § 2261A(2) makes it a crime to use the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places a person in another State, tribal, special maritime, or territorial jurisdiction in reasonable fear of death or serious bodily injury to the person, a member of the person's immediate family, or a spouse or intimate partner of that person, with the intent to kill or injure that person.**

**For conduct occurring before October 28, 2000:**

**Section 2261A makes it a federal crime for a person to travel across a state line or within the special maritime and territorial jurisdiction of the U.S. with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in reasonable fear of death or serious bodily injury to, that person or a member of that person's immediate family.**

#### **FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)**

*Sayer v. United States*, 2015 U.S. Dist. Lexis 110536 (2015).

Petitioner claimed ineffective assistance of counsel, under 28 U.S.C § 2255. His claims focused on council's decision to address 18 U.S.C § 2265A, which doubled the penalty for a cyberstalking offence at sentencing, under 18 U.S.C. § 2261A when the offender has a prior conviction for a stalking or domestic violence offence. In May 2011, Sayer was charged with violating 18 U.S.C. § 2261A(2)(A) and § 2261(b)(5). In July 2011, Petitioner was indicted on two counts, in violation of 18 U.S.C. § 2261A(2)(B), § 2261(b)(5) and § 2265A. The other count was for identity theft. Petitioner moved the court for an evidentiary hearing. The Court recommended that the petitioners 28 U.S.C § 2255 motion and certificate of appealability should be denied.

**Key Issues: ineffective assistance of counsel.**

*United States v. Ackell*, No. 15-CR-123-JL, 2016 WL 6407840 (D.N.H. Oct. 28, 2016).

Ackell was indicted for cyberstalking and moved to dismiss the indictment for failure to recite facts that show the required "course of conduct." He also challenged the constitutionality of the statute as facially overbroad in violation of the First Amendment and as unduly vague in violation of the First and Fifth Amendments. The Court held that the indictment was not unconstitutional because it recited sufficient facts to notify Ackell of the conduct for which he was charged. The Court ordered a Bill of Particulars to assist Ackell in preparing defense related to particular days and times. To analyze whether the statute is facially overbroad (the 2013 version), the Court looked to two tests established by the Supreme Court: that "no set of circumstances exist under which the statute would be valid," or, that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472–73 (2010). The Court found that Ackell failed to demonstrate such overbreadth of any provision of the statute based on either definition and that it is therefore not facially overbroad. The Court then considered whether the statute is overbroad relative to its intended applications. It considered the scope of the statute, along with the activities it might encompass, and found that it is not overbroad. Quoting *United States v. Williams*, 553 U.S. 285, 293 (2008), it found, "[t]he 'mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge.'" A vagueness challenge must include an as-applied challenge because, without claiming the statute is impermissibly vague as applied to the defendant, such defendant lacks standing to challenge on such grounds. Ackell does not include an as-applied challenge and thus lacks standing to assert the claim. Therefore, the Court denied Ackell's motions to dismiss the indictment.

**Key Issue: Sufficiency of indictment; overbreadth; vagueness.**

*United States v. Ackell*, No. 15-CR-123-01-JL, 2017 WL 2913452 (D.N.H. July 7, 2017).

Ackell was convicted of one count of stalking in violation of § 2261A(2) and moved for a judgment of acquittal, claiming, *inter alia*, that the statute is unconstitutional. Ackell claimed that it violates the First Amendment as applied to him because his alleged criminal actions were wholly protected speech. He distinguishes *Sayer*, *Petrovic*, *Osinger*, and *Matusiewicz* by pointing out that those cases involved actions by the defendant. In contrast, *his* “wrongdoing” was only speech. The Court disagreed and found that Ackell’s storing of photographs of the victim, threatening to share the photographs, and sending the photos to the victim’s boyfriend constituted actions, which are unprotected by the First Amendment. It also found that, even if Ackell’s actions amounted only to speech, they were unprotected speech based on his intent to harass and intimidate the victim. The court then addressed Ackell’s facial overbreadth challenge. It noticed the intent and “course of conduct” requirements and reviewed Ackell’s earlier case examining the issue. See *Ackell*, No. 15-CR-123-JL, 2016 WL 6407840 at 19 (D.N.H. Oct. 28, 2016). The Court found that increasing the number of examples in which protected speech could be criminalized by the statute does not prove it overbroad.

**Key Issue: First Amendment; Overbreadth.**

*United States v. Bennett*, 103 F. App'x 409 (1st Cir. 2004) (unpublished opinion).

In January 2002, Bennett was convicted of a misdemeanor crime of domestic violence against his wife. Bennett's wife subsequently fled with her children from California to a relative's home in Maine. Bennett was released thereafter from prison on the condition that he have no contact with his wife, and his wife subsequently phoned him to tell him that she and the children were in Maine. During the course of this conversation, she provided Bennett with her Maine address. Bennett's wife subsequently obtained a protection order from a Maine court and told Bennett by phone that he should stay out of Maine because the marriage was finished. Nevertheless, Bennett left California for Maine after having told two friends that he planned to save his marriage. On the way, Bennett stopped in Utah and acquired his father's handgun, claiming that he needed protection. Bennett then traveled across the country with the gun, and on the night that he arrived in Maine, state troopers observed him driving past the place where his wife had been staying. The troopers stopped Bennett, served him with the Maine protection order, and told him to leave. Bennett's wife then took the family to a local shelter, and Bennett was arrested the next day near the children's school. Police found a gun and ammunition in the back of Bennett's truck. He was subsequently charged in a two-count indictment with interstate stalking under 18 U.S.C. § 2261A(1) and possession of a firearm after having been convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). Bennett proffered a guilty plea to the § 2261A(1) charge, but the district court judge refused to accept the plea because Bennett did not state that he was guilty of the crime (that is, that he crossed jurisdictional lines to “cause harm.”). Bennett thereafter pled guilty to the §922(g)(9) count and was found guilty at a bench trial of the § 2261A(1) count (before a different judge). At the bench trial, the judge’s finding of guilt appeared to be based upon his travel across jurisdictional lines to harass or intimidate, not to commit harm (injure or kill)—the basis on which the initial judge refused to accept the guilty plea. Bennett appealed, arguing, among other things, that the initial judge erred as a matter of law when he refused to accept the guilty plea on the § 2261A(1) charge, and that the second judge erred as a matter of law in finding Bennett guilty of that charge. As to the first argument, the First Circuit noted that before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea, and that the colloquy between Bennett and the judge suggested that Bennett denied having had an intent to harass or intimidate, as well as an intent to injure or kill, when he crossed jurisdictional lines. The court found that the definition of “harm” in the statute is not confined to adverse physical effects such as physical injury or

death, but that there also is a mental harm component. The court ruled that “Bennett’s denial of any intention to harm together with his assertion of ‘pure love’ suggested a denial of all culpable intent, especially since these responses came immediately after having been asked specifically about his intent to harass or intimidate.” Thus, the court ruled that the judge had not erred in refusing to accept the plea because it lacked a factual basis. The First Circuit also rejected Bennett’s argument that the second judge erroneously found him guilty of the § 2261A(1) count. It understood Bennett’s argument to be that the second judge’s findings were inconsistent with those of the first judge. The court disagreed, finding the argument to be “incorrectly premised on the notion that [the second judge] ‘found that the elements of the [criminal] statute were not met.’ [The second judge] did not so find; rather, he found that Bennett had not admitted such elements.”

**Key Issue: Required Elements of the Offense.**

*United States v. Crawford*, No. 00-CR-59-B-S, 2001 WL 185140 (D. Me. Jan. 26, 2001).

The Defendant, Kenneth Crawford, filed a Motion to Dismiss an indictment against him for violating 18 U.S.C. § 2261A, and challenged the constitutionality of the statute through the Commerce Clause. The Defendant attempted to distinguish 18 U.S.C. § 2261A, which prohibits interstate stalking, from 18 U.S.C. §§ 2262(a)(1) and 2262, which prohibit the interstate violation of a protection order and interstate domestic violence. The Defendant claimed that 18 U.S.C. § 2261A was uniquely flawed because, unlike the other statutes, it required no overt, criminal act. The actus reus was travelling across state lines. Furthermore, the Defendant claimed that the statute was in contradiction of *Caminetti v. United States*. However, the court rejected this argument, and ruled that the statute was valid. The Court ruled that the Defendant’s interpretation of *Caminetti* was faulty, and that because 18 U.S.C. § 2261A required the act of “causing reasonable fear of death or serious bodily injury to another,” the actus reus was more than mere travel. The court denied the Defendant’s Motion to Dismiss.

**Key Issue: Commerce Clause, Overt Act, Constitutional Challenge.**

*United States v. Lee*, 790 F.3d 12 (2015).

Benjamin Lee was convicted of two counts of interstate stalking with the intent to harm after violating 18 U.S.C. §§ 2261(A), 2261(b)(5). The victims were his estranged wife, Tawny Lee and her boyfriend, Timothy Mann. The relationship between the Defendant and Tawny included an extended pattern of verbal and physical abuse. After Tawny left the Defendant, he emailed her 300 times and contacted many of her relatives. Tawny interpreted one of the emails to be a threat. The Defendant claimed that his behavior could be explained by his medication. Additionally, the Defendant’s sister claimed that between July and August 2012, he made numerous threats against Tawny and Timothy. In September 2012, a car matching the description of one the Defendant had borrowed from his brother was spotted driving past the house where Tawny and Timothy Mann lived multiple times. The Defendant was stopped by a state trooper in Maine and a search of the car revealed five firearms, two knives, duct tape, plastic bags, handcuffs, and maps of Tawny’s residence. Additionally, the Defendant claimed that he found the layout of Tawny’s house after searching on his computer and possessed a camera with pictures of the house. The Defendant was sentenced to 100 months in prison, as well as three years of supervised release. He appealed his conviction and sentence. The Defendant challenged the admission of certain evidence, the sufficiency of evidence, and the fairness of his sentence. First, the Defendant challenged the admission of past abuse of Tawny. However, the District Court allowed it because it helped determine whether Tawny’s fear of the Defendant at the time of his arrest was reasonable. Secondly, the Defendant challenged the timing of the trial. Third, the Defendant challenged the fairness of his sentencing. The First Circuit Court reviewed the District Court’s ruling for abuse of discretion and after finding none, affirmed.

**Key Issue: Sufficiency of Evidence, Admission of Evidence, Sentence.**

*United States v. Sayer*, 748 F.3d 425 (1st Cir. 2014).

The Defendant, Shawn Sayer, was convicted of cyber-stalking Jane Doe and was sentenced to 5 years imprisonment. The Defendant appealed the conviction and sentencing. The court rejected his appeals and affirmed judgment. The Defendant and Jane Doe were in a romantic relationship, which she ended. For the next four years, the Defendant stalked and harassed Doe, who obtained a protection order against him. Then, the Defendant placed unauthorized ads on Craigslist claiming that Doe was willing to engage in sexual acts, which resulted in multiple men showing up at her house. Due to the harassment, Doe changed her routine, and eventually changed her name and place of residence. The Defendant later placed videos of himself and Doe engaged in sexual activity on multiple pornographic websites. The Defendant also created a profile on Facebook with her name that contained explicit pictures, as well as a MySpace profile with links to pornographic videos featuring Doe. After the police obtained a warrant, they searched the Defendant's house and found computers without hard drives as well as a camera with explicit pictures. The Defendant continued to create fake online accounts with Doe's name and chat to men and encourage them to find Doe. This resulted in as many as 6 men showing up at Doe's home in a single night on multiple occasions. The Defendant was charged with violating 18 U.S.C. § 2261A(2)(A) and 18 U.S.C. § 1028(a)(7).

The Defendant pled not guilty and brought raised three constitutional arguments: that 18 U.S.C. § 2261A(2)(A) was wrongly applied, overbroad, and void for vagueness. The Court rejected all three challenges. First, the Court rejected the applied challenge because none of the behavior that the Defendant engaged in was protected by the First Amendment. Second, the Court ruled that the Defendant failed to show that statute was substantially overbroad. Third, the Court rejected the Defendant's argument that the statute violated his Fifth Amendment right to due process because of vagueness. Finally, the Defendant brought challenged his sentencing. The court rejected this argument as well and affirmed the conviction and sentencing of the district court.

**Key Issues: Cyberstalking, Constitutional challenge, First Amendment, Fifth Amendment, Overbroad, Void for Vagueness, Applied Challenge.**

*United States v. Walker*, 665 F.3d 212 (1st Cir. P.R. 2011), cert. denied, 132 S. Ct. 2713 (2012).

Appellant and his wife Amy lived together in Michigan with their son before she took a job as a court reporter in Puerto Rico. The couple's son remained with his father. As time went on, appellant began threatening Amy though email, threatening to harm her, and denying her access to her son. These emails were sent though the son's account. The son testified that his father had written the emails. Soon afterwards, the appellant told his brother he would blow his son's head off. Disturbed, the appellant's brother told Amy about this, and she applied for and received custody. After this, the appellant continued to send numerous emails to Amy, threatening to hurt her and their son. The appellant also told a friend that he had spoken to a fellow inmate about having Amy killed. After a twelve-day trial, a jury convicted the appellant on the interstate stalking count, four cyberstalking counts, and one "threatening letter" count under 18 U.S.C. §§ 2261A(1)-(2), 876(c). On appeal, the appellant argued insufficiency of the evidence, reversible error in denying a change of venue, and error in evidentiary rulings by the U.S. District Court for the District of Puerto Rico. In regards to the evidentiary error argument, the Court of Appeals stated that the defendant's own alleged threat was not inadmissible hearsay. The court denied all of these appeals and upheld the conviction.

**Key Issue: Insufficiency of Evidence Admissibility of Evidence.**

## SECOND CIRCUIT (Connecticut, New York, Vermont)

*United States v. Curley*, 639 F.3d 50 (2d Cir. N.Y. 2011).

Appellant Defendant Curley was charged with the crimes of interstate stalking and violation of a protection order under 18 U.S.C. §§ 2261A and 2262(a)(1). He had threatened to kill his wife, and had told her that he knew of a secret place where he could kill her. He served her with divorce papers, accusing her of infidelity, and after that, placed a GPS device on her car. In 2006, the wife, Linda, was in an accident in New Jersey, and the owner of the repair shop in the same state discovered the GPS device. Curley drove to the repair shop from New York, and lied about his identify to the owner. The owner of the repair shop made a notation about the device, which Curley attempted to change. At this point, the owner reported the situation to the police. At Curley's trial, the district court allowed evidence that a) Curley had been threatening Linda for some time, b) that Curley's brother has abused Linda at an earlier time, and c) that Curley had been involved in a traffic stop with an allegedly stolen vehicle. Curley was convicted crimes of interstate stalking and violation of a protection order under 18 U.S.C. §§ 2261A and 2262(a)(1). He appealed, arguing that evidence was inappropriately admitted. The court of appeals agreed, holding that the evidence about Curley's brother and the prior bad act involving the allegedly stolen car were inadmissible. The court vacated the conviction.

**Key Issue: Insufficiency of Evidence Admissibility of Evidence.**

*United States v. Humphries*, No. 12 CR. 347 RWS, 2013 WL 5797116 (S.D.N.Y. Oct. 28, 2013).

In 2008, the Defendant, Dean Humphries, began contact with Victim 1 after she posted on his blog. The two remained in contact online until January 2009 when Victim 1 attempted to discontinue communication following a disagreement. The Defendant continued to attempt to contact Victim 1 online and also set up online accounts through e-mail and Facebook in her name. Additionally, he made death threats, which caused the Victim to develop severe anxiety problems. The Defendant continued to make threats of violence to Victim 1. Over the course of three years, the Defendant sent Victim 1 over 1,000 emails.

The Defendant was arrested and found guilty of cyberstalking and threatening communications, in violation of 18 U.S.C. § 875(c) and 18 U.S.C.A § 2261A(2). He was sentenced to five years in prison followed by thirty-six months of supervised release and was allowed to run his 30 months' imprisonment sentences for Count 1 and Count 2 concurrently. The Court advised that he receive treatment for his mental issues. The conditions of the Defendant's supervised release were: not to commit any crime, not to illegally own any controlled substance or firearm, and to cooperate with his probation officer. Additionally, the Defendant was ordered to submit to any searches requested by his probation officer and to the monitoring of his activities on the computer. The Defendant was also ordered refrain from contacting Victim 1 or any of her associates. The terms of his sentence were subject to adjustment at a later hearing.

**Key Issues: Cyberstalking, Sentencing.**

*United States v. Jordan*, S.D.N.Y.2008, 591 F.Supp.2d 686.

In July 2007 the Defendant, Joseph Ray Jordan, met Thenault, and the two became romantically involved. However, the Defendant began to verbally and physically abuse Thenault, and the abuse escalated to the point where feared for her life and she left. The Defendant began to threaten and harass her. He called Thenault several times, and spoke to her in a manner that she believed to be threatening. Additionally, the Defendant placed ads online for sex that caused numerous men to show up where Thenault was staying. The Defendant's behavior also caused other members of Thenault's family to fear for their safety. After his arrest and indictment, the Defendant was convicted of transmitting threatening communications as well as witness tampering. On appeal, he raised the following issues: that he was wrongly denied the right to self-representation, that his

sentence was not adequately supported by the evidence, and that his attorney made poor decisions concerning strategy.

Regarding the charge that he violated 18 U.S.C. § 2261A(2), the Defendant claimed that there was insufficient evidence that he had the requisite mens rea. He asserted that his intent was merely to win the victim back after their relationship ended. However, the Court found that the Defendant failed to meet his burden and had not demonstrated that the evidence was insufficient to sustain his conviction. The Court denied the Defendant's motion to set aside the verdict and dismiss or to alternatively grant a new trial.

**Key Issues: Sufficiency of Evidence, Intent.**

*United States v. Nagel*, 2011 U.S. Dist. LEXIS 101311 (E.D.N.Y. Sept. 9, 2011).

Nagel was convicted of stalking a victim under 18 U.S.C. § 2261A(2). The woman appears to have been a performer of some kind. Nagel came to the set of her program on more than one occasion, and she became alarmed. He also sent her letters begging her to reply to him, and continuously voicing his desire to meet here. Here, the judge writes about the factors taken into consideration when imposing a sentence for a violation of 18 U.S.C. § 2261A(2). He includes deterrence and safety, and notes that sentencing should always take into account the seriousness of interstate stalking.

**Key Issue: Sentencing.**

*United States v. Ull*, 370 F. App'x 225 (2d Cir. N.Y. 2010) (Unpublished).

Ull appeals from a conviction sentencing her to 18 months in prison for two counts of stalking by means of interstate travel and the use of the mails in violation of 18 U.S.C. §§ 2261A(1) and 2261A(2). Ull harassed her victim, sending over 1400 letters, messages, and emails. She argued that the district court had failed to take her mental state into account when sentencing her, and that the district court should have "downwardly departed" based on her mental state. The appellate court found her arguments without merit and confirmed the decision of the district court.

**Key Issue: Sentencing.**

### **THIRD CIRCUIT (Delaware, New Jersey, Pennsylvania, Virgin Islands)**

*United States v. Casile*, CRIM.A. 09-668, 2010 WL 3835006 (E.D. Pa. Sept. 30, 2010).

Casile was indicted by a grand jury for a violation of 18 U.S.C. § 2261A. Casile then filed a Motion for Acquittal, Motion for New Trial, and a Motion to Supplement based on four main arguments. First, Casile argued that 18 U.S.C. § 2261A was not intended to apply to his conduct because his travel was merely incidental and not substantially related to the intimidation of the victim. The court dismissed this argument, determining that "the Court may apply a statute to hold a defendant liable for any conduct covered by the plain language of the text", finding no requirement that the interstate travel be substantially related to the intimidation.

Second, Casile argued that the Government did not show the requisite intent at the time of the interstate travel, or the connection between the interstate travel and the intimidation. In order to establish a statutory violation of 18 U.S.C. § 2261A, the government must show "(1) the defendant traveled in interstate commerce as charged in the indictment; (2) the defendant traveled in interstate commerce with the intent to harass or intimidate the victim; and (3) in the course of or as a result of such travel, the victim was placed in reasonable fear of the death

of or serious injury to himself or a member of his immediate family.” The court dismissed Casile’s argument determining that a rational juror could infer that Casile’s intent was to harass or intimidate the victim.

Third, Casile argued that the government erred in presenting the evidence that varied from the indictment. The court determined that no variance occurred because the facts presented during the trial matched the crime alleged in the indictment.

Last, Casile motioned for a new trial because he claims that the court failed to give his proposed theory of defense instruction. The court noted that the proposed theory of defense instruction is only entitled instruction when it “(1) correctly states the law; (2) is supported by the evidence; (3) is not part of the charge; and (4) is necessary to prevent the defendant from being denied a fair trial.” The court did not use Casile’s instruction because it included an incorrect statement of the law.

**Key Issue: Post-Verdict Motions.**

*United States v. Fullmer*, 584 F.3d 132 (3d Cir. 2009).

An animal rights organization (Stop Huntingdon Animal Cruelty) and three associated individuals were convicted for conspiracy to commit stalking and substantive stalking. The defendants published a newsletter that released the addresses of Huntingdon directors, resulting in the vandalization of personal property and assault of three individuals involved with the company. In order to prove stalking, “the government must establish (1) Defendants used a facility of interstate commerce; (2) to engage in a course of conduct with the intent to place a person in reasonable fear of death or serious bodily injury either to that person or to a partner or immediate family member; and (3) the course of conduct actually put that person in reasonable fear of death or serious bodily injury to himself or his partner or immediate family member.

One of the defendants argued that the government failed to meet the second requirement because he only intended to harass and embarrass, not to put the individuals in fear of bodily injury. The court determined that the actions of the defendants went beyond harassment, with the use of terror tactics involving physical attacks.

Another defendant argued that the alleged threats were not communicated to the targets, and therefore there was insufficient evidence to show that the target’s fear was reasonable. The court quickly rejected this argument because the defendant personally stood outside of one of the targets houses threatening, “to burn it down.”

Finally, another defendant argued that because he only updated the website with the addresses, he had a lack of personal involvement in the stalking. The court pointed out that he was only charged with aiding and abetting the stalking, not as the principal, therefore rejecting his argument.

**Key Issues: Insufficiency of Evidence, Requisite Intent.**

*United States v. Matusiewicz*, 84 F.Supp. 3d 363 (2015).

The Defendant’s Motion to Dismiss the Indictment was dismissed. Amy Gonzalez stood trial for cyberstalking and conspiracy in connection with the murder of her sister-in-law, Ms. Belford. The defendant argued that her first and fifth amendment rights were violated. One claim asserted that the “overboard” cyberstalking statute violated her first amendment rights. The defendant argued the unconstitutionality of 18 U.S.C. § 2261A. She stated that it criminalized speech based on the effects that speech had on others, which disregarded the first amendment. Gonzalez asserted that her speech was protected expression. To succeed, the law in question must

frequently intrude into areas of protected speech. Therefore, the evidence that the defendant used to claim a violation did not meet the requirements of the “right to free speech.”

The defendant claimed that her indictment violated her fifth amendment due process rights. She asserted that statutes, 18 U.S.C. § 2261A(1), and 18 U.S.C § 2261A(2)(A) and (B), were unconstitutionally vague. However, the term “stalking” does not provide sufficient notice of what constitutes criminal conduct and risks enforcement. A statute is void on vagueness if it: 1) “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conducts it prohibits”; or 2) “authorizes or … encourages arbitrary and discriminatory enforcement.” *United States v. Stevens*, 533 F.3d 218, 249 (3d. Cir. 2008). The statute (§ 2261A) requires the Government to prove the “intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person.” 18 U.S.C. § 2261A(2). A person must be found by a jury to react the same way as a reasonable person. The judge stated that a reasonable person in this case would have observed the conduct as a violation of the statute. The Motion to Dismiss was denied.

**Key Issues: First Amendment, Fifth Amendment.**

*United States v. Schloering*, 2006 U.S. Dist. LEXIS 28919 (D.N.J. May 12, 2006).

Defendant was unable to stand trial for an 18 U.S.C. 2261A violation because he is mentally ill and incompetent. The state wants to force him to take medication to treat his schizophrenia so that he can stand trial, but he claims that it is a violation of his privacy interests under the Fifth and Fourteenth Amendments. The Court holds that the charges against him are not sufficiently serious to constitute a legitimate state interest. *Sell v. United States*, 539 U.S. 166 (2003). Forcing him to undergo medication to the point where he would be competent would require detaining him for longer than he could be sentenced if convicted, and that his parents will place him in treatment if he is released, minimizing any dangers to society. The government’s motion to force defendant to be medicated is denied.

**Key Issue: Forced Medication of a Mentally Ill Defendant.**

*Walsh v. George*, No. 1:14-CV-1503, 2015 WL 404125 (M.D. Pa. Jan. 29, 2015), *aff’d*, 650 F. App’x 130 (3d Cir.), *cert. denied*, 137 S. Ct. 591 (2016), *reh’g denied*, 137 S. Ct. 1141 (2017).

Plaintiff brought several claims against the United States and other defendants under the Constitution and multiple federal statutes, including a violation of 18 U.S.C. § 2261A. The plaintiff claims he was placed under illegal surveillance and stalked on two occasions. The claim was dismissed because “18 U.S.C. § 2261A does not provide a private right of enforcement.” The defendants filed a motion to dismiss and the motion was granted. Plaintiff was not granted leave to amend.

**Key Issues: Private Right of Enforcement.**

#### **FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia)**

*United States v. Cassidy*, 814 F. Supp. 2d 574 (D. Md. 2011), *appeal dismissed* (Apr. 11, 2012).

Defendant was indicted by a grand jury on one count of interstate stalking under 18 U.S.C. § 2261A(2)(A) when he used a computer service to cause emotional distress to a person in another state by posting messages on internet websites such as twitter. 18 U.S.C. § 2261A(2)(A) is meant to make it a crime, “to use the mail or any facility of interstate or foreign commerce to engage in a course of conduct with the intent to place a person in reasonable fear of the death of, or serious bodily injury to that person.” The provision specifically includes “interactive computer service” as a means that could be used to violate the provision.

The defendant motions to dismiss the indictment because he claims that the section is in violation of the First Amendment because it is overly broad and unconstitutionally vague, as well as unconstitutional as applied to the defendant. The court determined that “a content-based restriction on protected speech must survive strict scrutiny.” The court determined that a restriction is considered content-based when a restriction exists because of the effect the speech has on the audience. When applying this definition to Cassidy’s situation, the court determined that 18 U.S.C. § 2261A is a content-based restriction, “because it limits speech on the basis of whether that speech is emotionally distressing” to another.

After determining the restriction was content-based, the court determined that the restriction did not pass the strict scrutiny test because the government was not able to show that the restriction “is necessary to serve a compelling state interest.” The court determined that because the restriction was merely meant to protect the listener, the right to expression prevails and the individual can protect herself by not looking at the tweets or blog posts. Because of this determination, the court granted the motion to dismiss and did not address the defendant’s other motions.

**Key Issue: First Amendment Right to Free Speech.**

*United States v. Grooms*, No. 3:15-MJ-00025, 2015 WL 1982097 (S.D.W. Va. Apr. 29, 2015).

Kevin LaShawn Grooms, Jr. was charged with violating 18 U.S.C. § 2261A(2)(A) at a preliminary hearing. The United States argued that the case was eligible for a detention hearing because it qualified as a crime of violence under the Bail Reform Act. Moreover, the District Court found that there was a significant risk that the defendant would attempt to flee and obstruct justice. The Defendant challenged this claim and asserted that in order to qualify as a “crime of violence” there must be the element of force or threat of force. Furthermore, the defendant claimed that 18 U.S.C. § 2261A(2)(A) could be violated without the individual “having been in the physical presence of the victim and without committing any purposeful, violent, or aggressive act.”

The court used the categorical approach and determined that the type of offense committed by the defendant fit within the definition of a “crime of violence” set forth in the Bail Reform Act. In its analysis, the court took into account the type of offense committed by the Defendant, the likelihood that the Defendant committed the crime, threats made against the victim, the Defendant’s criminal history, the Defendant’s ties to the community, and the danger that the Defendant would pose to members of the community if he were released. The court ordered the detention of the Defendant for the safety of the victim and the community, and to ensure that the Defendant would appear in court at the appointed time.

**Key Issue: Bail Reform Act, Crime of Violence, Force.**

*United States v. Shrader*, 716 F. Supp. 2d 464 (S.D.W. Va. 2010).

The Defendant, Thomas Creighton Shrader, and “DS” were in a romantic relationship, which she ended. Afterward, the Defendant murdered the man he believed DS was romantically involved with, as well as her mother. The Defendant proceeded to harass DS and her family for years. The Defendant was charged with violating 18 U.S.C. § 2261A(2) as well as possessing a firearm while a felon. The Defendant filed a motion requesting access to DS’ medical records. He claimed this was relevant to determine whether he caused her “substantial emotional distress,” which was an element of the conviction under 18 U.S.C. § 2261A(2). Although the subpoena was granted, it was later quashed.

On review, the District Court determined that the information Shrader sought was protected by psychotherapist-patient privilege. Additionally, the District Court ruled that denying the Defendant the right to access this information was not a violation of the Confrontation clause contained in the Sixth Amendment. Moreover, the District Court found that the subpoena was oppressive and unnecessary because whether DS suffered “substantial emotional distress” could still be proven in the absence of the medical records. Therefore, the District Court affirmed the Judge’s decision to quash the subpoena.

**Key Issue: Substantial emotional distress, psychotherapist-patient privilege, Sixth Amendment.**

*United States v. Shrader*, 675 F.3d 300, 310 (4th Cir. 2012).

Shrader was sentenced to life in prison for the murder of DS’s mother and another person in relation to his stalking of DS. He was released from prison in 1993 and from parole in 1999. In 2008, he began stalking DS again, despite her having taken many precautions to protect herself. In 2010, he was convicted of new stalking counts, among other things. The district court denied his challenges and he appealed. He claimed § 2261A(2) is impermissibly vague because “harass” and “intimidate” are not clearly defined and because the intent element is unclear. The Court found that the ordinary meaning of “harass” and “intimidate” are sufficient to put the Defendant on notice and that the scienter requirement of the statute mitigates against vagueness. Shrader also claims the statute is unconstitutionally vague because it does not specify whether all acts in the prohibited “course of conduct” must be committed with the requisite intent. The Court held that the specific intent element refers to the conduct as a whole, rather than to each specific act. It also held that such ambiguity did not render the statute unconstitutionally vague.

**Key issue: Vagueness.**

*Shrader v. United States*, 2015 U.S. Dist. Lexis 175349 (2015).

Shrader had been charged in a Criminal Complaint, with conduct in violation of 18 U.S.C. § 2261A(2)(A). Shrader sent his ex-girlfriend a threatening letter through UPS. In the motion to dismiss, Shrader asserted that the District Court had no jurisdiction to issue and arrest warrant or hold a trial because the crime did not take place in West Virginia. He also claims that he received ineffective assistance of counsel, during the trial. Movant notes that his trial attorney failed to correctly represent him because the attorney did not move the Court to exclude all of his actions that occurred prior to the enactment of 18 U.S.C. § 2261A(2) under *ex post facto* and due process laws. The second superseding Indictment contained allegations of harassment during the late 1970’s until early 1990. Movant would send letters to victim, he would called her parents, and tried suing her for breach of promising to marry her. The *mens rea* in commission of the alleged crime existed. However, the movant’s trial attorney did not fail to claim *ex post facto* or due process. His conduct occurred on October 2009 in violation of 18 U.S.C. § 2261A(2), after the statute’s enactment.

Shrader argued that his appellate attorney did not: 1) challenge the venue and jurisdiction of the District Court; 2) challenge the District Court’s ACCA enhancement; 3) address incorrect information in the Presentence report; and 4) make a unit of prosecution argument in requesting review of the Supreme Court. The court found no basis for the first two claims. Regarding the third claim, the movant did not identify what information could have been incorrect. The movants fourth claim lacked merit. The Fourth Circuit found that 18 U.S.C. § 2261A(2) made the victim the unit of prosecution, rather than the course of conduct. The movant did not correctly argue ineffective assistance of counsel or prove that his multiple claims should have been reviewed by the Court. The magistrate judge recommended that the Court deny the movants motion under 28 U.S.C. § 2255.

**Key Issue: ineffective assistance of counsel.**

*Shrader v. United States*, 2016 U.S. Dist. Lexis 8170, No. 1:09-CR-0027, 2016 WL 299036 (S.D.W. Va. Jan. 25, 2016), *appeal dismissed*, 668 F. App'x 494 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 1448 (2017).

The United States had charged the Petitioner with violations of 18 U.S.C. § 2261A(2) and being a felon in possession of a firearm under 18 U.S.C. § 921(a)(20). After the petitioner filed a Notice of Appeal, he presented six arguments in appealing his conviction and sentence. After his request for a new trial had been denied by the Supreme Court, petitioner filed a motion for a new trial under Fed. Rule of Crim. Pro. § 33. The court refused a new trial. By standing order, the Petitioner's 28 U.S.C. § 2255 motion had been referred to a magistrate judge. Shrader objected to his conviction on thirty-one separate grounds and raised thirteen separate claims of ineffective assistance of counsel. The court agreed with the Magistrate Judge. Petitioner's claims were denied.

**Key Issue: ineffective assistance of counsel.**

*United States v. Wills*, 234 F.3d 174 (4th Cir. 2000).

Appeal by the United States of the district court's order dismissing Count I of its indictment against Christopher Andaryl Wills under the Federal Kidnapping Act (18 U.S.C. § 1201(a)(1)). The United States alleged that Andaryl Wills burglarized Zabiulah Alam's home in Virginia. After returning home at approximately 2:00 a.m. on April 4, 1998, Alam found Wills inside of his apartment. Wills fled, but was soon arrested and charged by the Fairfax County police with burglary. Alam testified during a preliminary hearing on June 15, 1998 and identified Wills as the person who burglarized his home. The court found probable cause to believe Wills committed the burglary, and referred the case to the state grand jury. In the meantime, Wills was released on bond. In its indictment, the United States alleged that on or around June 17, 1998, Wills left a flyer at Alam's Virginia home advertising a job opportunity. Alam called the cell phone number listed on the flier to inquire about the job. On June 24, 1998, Wills phoned his brother (who was in a Virginia state prison, where his phone calls were routinely recorded by prison authorities), and indicated that he was "getting ready to hurt" Alam. On June 25, Alam agreed to meet an unknown person at Union Station in Washington, DC that day for a job interview. Alam drove from Virginia to Union Station in Washington, DC. On or around June 26, 1998, Wills told his brother on the phone that his business was taken care of. Alam's car was found on July 28, 1998 in Temple Hills, Maryland. Alam was not seen alive since June 25, 1998. The Fairfax County Commonwealth's Attorney's Office never prosecuted Wills for burglarizing Alam's apartment. A grand jury in the Eastern District of Virginia returned an indictment charging Wills with one count of interstate stalking (18 U.S.C. § 2261A) and one count of kidnapping under 18 U.S.C. § 1201(a)(1). Prior to trial, Wills filed a motion to dismiss the kidnapping count. The district court dismissed the kidnapping charge on February 15, 2000. The 4th Circuit vacated the order of the district court dismissing the kidnapping charge, and remanded the case to the district court for further proceedings.

**Key Issue: No § 2261A Legal Issue.**

*United States v. Wills*, 346 F.3d 476 (4th Cir. 2003).

Wills was convicted of interstate stalking resulting in death, in violation of 18 U.S.C. § 2261A, as well as kidnapping resulting in death. Wills appealed, arguing, among other things, that the indictment was insufficient, that the court improperly instructed the jury on the interstate stalking count, and that the government presented insufficient evidence to convict him of interstate stalking. Regarding the challenge of the indictment, the Fourth Circuit rejected Wills argument that the district court erred in failing to dismiss the interstate stalking count of the indictment for insufficiency of the alleged facts to support the offense charged. Wills claimed that the facts alleged in the indictment were insufficient to support the fear element of interstate stalking. The Fourth Circuit refused to review the sufficiency of the evidence supporting the indictment, citing circuit precedent holding that courts lack authority to make such a review, even when a mistake was made. The Fourth

Circuit also rejected Wills' jury instruction argument, in which he claimed that the district court erred in instructing the jury on the interstate stalking count by failing to instruct that the government must prove that Wills traveled from Washington, D.C., to Fairfax County, Virginia and placed the victim in fear in Virginia as a result of Wills' acts in Virginia. Wills argued that the instructions allowed the jury to find that the victim was placed in fear as a result of the victim's own travel to Washington, D.C., not as a result of Wills' travel from Washington, D.C., to Fairfax County, Virginia. Wills also argued that the instructions allowed him to be convicted of interstate stalking based on interstate travel outside of the time frame specified in the indictment. The Fourth Circuit found that the instructions clearly indicated the period of the alleged travel and twice stated that Wills traveled in interstate commerce from Washington, D.C. to Virginia. Furthermore, the court found that the jury instruction tracked the language of both the interstate stalking statute and of the indictment and that nothing suggested that the interstate travel element could be satisfied by the victim's travel or by Wills' travel outside the alleged time period. Finally, as to Wills' claim that the government presented insufficient evidence to convict him of interstate stalking resulting in death, he argued (1) that the government failed to establish the interstate travel requirement of § 2261A because it presented evidence that only the victim, not Wills, traveled across state lines, (2) that it failed to present sufficient evidence that Wills intended to injure or harass the victim, and (3) that it failed to present evidence that the victim was placed in fear of death or serious bodily injury. The Fourth Circuit disagreed on all accounts, finding that the jury heard ample evidence that Wills' stalking activities involved his travel from Washington, D.C. to Virginia, that Wills' statements introduced at trial were sufficient to establish his intent to harm the victim, and that his various statements also could allow the jury to reasonably conclude that the victim experienced fear prior to his death.

**Key Issues: Required Elements of the Offense; Sufficiency of Indictment; Sufficiency of Evidence.**

*United States v. Young*, 202 F.3d 262, table, No. 98-4742, 1999 U.S. App. LEXIS 32721 (4th Cir. Dec. 16, 1999) (Unpublished).

Young's former girlfriend (with whom he had a child) obtained protection orders in both the District of Columbia, where she worked, and Maryland, where she resided. Despite the orders, Young repeatedly threatened, harassed, and stalked his former girlfriend. On one occasion, he called her several times at home and work early in the morning to tell her he wanted to meet her at her office building at noon. She reluctantly agreed. During the meeting, she repeatedly asked Young to leave, which he finally did after she accepted the ring that she had previously returned to him. Young was convicted of interstate stalking. On appeal, Young contended that the evidence was insufficient to support his conviction under the statute because there was no direct evidence that Young crossed a state line to visit his ex-girlfriend. The Fourth Circuit agreed that although there was no direct evidence that he crossed the state line to visit her, there was sufficient circumstantial evidence to support it, since he had to cross from Maryland, where he worked, to get to his former girlfriend's office building in the District of Columbia, and it was clear that he set up the meeting in D.C. to give her the ring. Young also raised a number of other issues, including that his victim could not have been placed in reasonable fear of death or serious bodily injury, the statute violates the Tenth Amendment because it intrudes into an area traditionally reserved to the states, the statute is unconstitutionally vague on its face and as applied to him, and that the statute violates due process by criminalizing thoughts or intentions. The Fourth Circuit rejected all of these arguments and affirmed his conviction.

**Key Issues: Required Elements of the Offense; 10th Amendment; Vagueness; Due Process.**

*United States v. Young*, 248 F.3d 260 (4th Cir. 2001), cert. denied, 533 U.S. 961 (2001).

Nathan Dante Young drove Diana Medina from her home in Clinton, Maryland, to her sister's residence in Washington, DC on September 9, 1997. When they arrived, Diana's sister, Vanida, walked up to the passenger

side window of Young's car and noticed that there was a gun on the dashboard. After Vanida asked about the gun, Young stashed it out of sight. Diana and Young watched part of a movie with Vanida, then all three decided to go for lunch. As they got into Young's car, Vanida accidentally knocked over a brown paper bag filled with five boxes of bullets. They returned to Vanida's house and finished watching the movie. Later on, Young agreed to drop Diana off at her place of employment in Clinton, Maryland. The next morning, Young's rental car was found engulfed in flames 3/4 of a mile from his grandmother's home in Prince George's County, Maryland. Three days later, Diana's body was found off of I-66 in Fauquier County, Virginia. She had been shot ten times with a Bersa .380 caliber automatic pistol. Young was convicted of interstate stalking (18 U.S.C. § 2261A), interstate kidnapping, and two counts of causing the death of a person through the use of a firearm during and in relation to a crime of violence (18 U.S.C. § 924(c)). The district court sentenced Young to life imprisonment on each count. Young appealed, making several evidentiary issue arguments, and contending that the government failed to prove that Young violated § 924(c). The 4th Circuit rejected all of these arguments, and affirmed the lower court's judgment.

**Key Issue: Evidentiary Issues.**

#### FIFTH CIRCUIT (Louisiana, Mississippi, Texas)

*United States v. Conlan*, 786 F.3d 380 (5th Cir. 2015).

Joshua Conlan was convicted of interstate stalking television reporter "JMP" and her husband "JP." The Defendant raised ten issues on appeal, however judgment was affirmed by the circuit court. The Defendant and JMP were romantically involved when they were teenagers. Several years later, the Defendant attempted to initiate contact and after JMP indicated that she wanted to cut off communication, the Defendant began sending her messages that were overtly sexual and threatening via email, text, phone, and social media. The Defendant also had face-to-face contact with the victim, her family, and colleagues. Later, the Defendant drove to the house where JP and JMP resided. JP called the police and the Defendant was arrested. The police found phones that the Defendant had been using to contact JMP, the laptop the Defendant used to search JMP, and a loaded handgun and riot stick.

The Defendant was indicted for violating 18 U. S.C. § 2261A and challenged the conviction on multiple grounds. First, the Defendant challenged the sufficiency of evidence used by the jury to establish the mens rea element. Secondly, the Defendant claimed the statute was unconstitutionally vague because it did not specifically define "harass" and "intimidate." However, the court found that the Defendant's challenge failed because those terms are easily understandable and the statute's scope was narrow enough to preclude arbitrary enforcement. Additionally, the Defendant claimed that his sentence violated the Double Jeopardy Clause. However, the court rejected this claim because his sentence was due to the fact that he had multiple victims, he was not punished multiple times for the same offense. Additionally, the court found that the Defendant did not show there was plain error in his sentencing. The Defendant also claimed that the evidence recovered by the police after his arrest should have been suppressed. However, the District Court ruled that under the Plain View Doctrine, the computer and phones were properly seized. Additionally, the officers had probable cause at the time the items were taken. Additionally, the Court of Appeals found that the District Court properly denied the Defendant's motion to suppress the evidence. The Defendant also claimed that the District Court abused its discretion when it allowed his attorney to withdraw. However, since there was a "reasonable likelihood" that the Defendant had created a "personal conflict of interest" when he threatened his former attorney, the Court of Appeals found there was no abuse of discretion. The Defendant also challenged other aspects of his trial and sentencing, but the Court of Appeals found no abuse of discretion and affirmed the judgment of the District Court.

**Key Issues: Double Jeopardy, Plain View Doctrine, Sufficiency of Evidence, Void for Vagueness.**

## SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee)

*Hopson v. Commonwealth Attorney's Office*, No. 3:12CV-744-M, 2013 WL 1411234 (W.D. Ky. Apr. 8, 2013)

The Plaintiff, DeAndre Hopson, filed a complaint against thirteen defendants pursuant to 18 U.S.C. § 2261A, pro se. The Plaintiff sought punitive damages, monetary damages, medical expenses, attorney's fees, and damages for the "infliction of extreme emotional disturbance." The court ruled that since 18 U.S.C. § 2261A is a criminal statute, it does not provide a civil remedies or support private causes of action. Additionally, the Plaintiff attempted to invoke Diversity Jurisdiction, but failed. The court dismissed the action for failure to state a claim for which relief can be granted.

**Key Issue: Private Right of Action, Failure to State a Claim.**

*United States v. Moonda*, 347 F. App'x 192 (6th Cir. 2009).

The Defendant, Donna J. Moonda, was charged with violating 18 U.S.C. § 2261A and 2, 18 U.S.C. §1958, and 18 U.S.C. § 924(j) following the murder of her husband by her lover at her direction. The Defendant was convicted of interstate stalking, murder-for-hire, and using a firearm during the commission of a crime. The Defendant appealed the conviction, and claimed that there was insufficient evidence to prove that she had the requisite mens rea during the commission of the crime. Additionally, the Defendant argued that the district court abused its discretion and that there was insufficient evidence to support other convictions. The Defendant claimed that because her purpose in travelling across jurisdictional lines was to view a house, she could not be properly charged under 18 U.S.C. § 2261A.

However, Court of Appeals rejected this argument and ruled that the statute did not require that the Defendant's sole purpose was to commit the offense, as long as the Defendant possessed the intent at the time of travel. Additionally, the Court of Appeals found that there was evidence that the Defendant directed her lover to cross jurisdictional lines for the purpose of killing her husband. In short, the Court of Appeals found that the Defendant's claim failed because there was evidence that when she crossed state lines, she had the intent required by the interstate stalking statute. Finally, the Court of Appeals ruled that the district court had not abused its discretion, and that there was sufficient evidence to support all her convictions. The Court of Appeals affirmed judgment.

**Key Issue: Sufficient Evidence, Intent, Abuse of Discretion.**

*United States. v. Al-Zubaidy*, 283 F.3d 804 (6th Cir. 2002), cert. denied, 536 U.S. 948 (2002).

Al-Zubaidy and Aathra Al-Shimary, were married in Saudi Arabia and moved to Illinois two years later. Al-Zubaidy severely abused Aathra throughout their marriage. While the couple was living in Nebraska, Aathra obtained a divorce from Al-Zubaidy, and she and their children moved back to Illinois. Al-Zubaidy followed Aathra to Illinois and continued to threaten and harass her. To escape Al-Zubaidy, Aathra moved to Detroit, Michigan, where her parents and younger brother lived. Almost immediately, Al-Zubaidy began making a series of threatening calls to Aathra's father. During the calls, Al-Zubaidy threatened to kill Aathra, her children, and her parents. Al-Zubaidy moved to Detroit within a few days to a week after Aathra had moved, and he continued his threatening calls and on one occasion threatened Aathra's father in person. Eventually, Al-Zubaidy learned Aathra's address and began harass and assault her. Al-Zubaidy was charged with one count of interstate stalking under section 2261A. He waived jury trial and was found guilty by the district court and sentenced to a prison term of 46 months. Al-Zubaidy appealed the conviction, arguing that there was

insufficient evidence that he had formed the intent to injure or harass Aathra when he traveled across state lines and that section 2261A exceeds Congress's authority under the Commerce Clause. The Sixth Circuit rejected Al-Zubaidy's first challenge, finding that the evidence supported a finding that Al-Zubaidy had the requisite intent when he followed Aathra to Detroit, even though the most severe abuse did not occur until nearly two months after his first arrival in Detroit. The Sixth Circuit held that under the totality of the circumstances, Al-Zubaidy's professed motive of reconciliation was minimized relative to its intention to "kill, injure, harass, or intimidate" her. Moreover, the appellate court found that the threatening calls to Aathra's father, which began only a few days after the move, were sufficient to support the conviction, because the statute also criminalizes threats that cause reasonable fear of the death or serious bodily injury to a member of the target's immediate family. The Sixth Circuit also rejected Al-Zubaidy's Commerce Clause argument, noting that it had already upheld the constitutionality of sections 2261 and 2262. The court found that section 2261A likewise was a permissible exercise of Congress' authority to regulate the use of the channels of interstate commerce to prevent "the spread of any evil or harm to the people of other states from the state of origin."

**Key Issues: Required Elements of the Offense; Commerce Clause.**

*United States v. Bowker*, 372 F.3d 365 (6th Cir. 2004).

Among other charges, Bowker was charged with one count of interstate stalking, in violation of 18 U.S.C. § 2261A(1), and one count of cyber stalking, in violation of 18 U.S.C. § 2261A(2). He had engaged in a long and intense pattern of stalking by phone, email, and written correspondence of a television news reporter, Tina Knight, while both were in Ohio and, later, while he remained in Ohio and Knight had moved to West Virginia. Bowker was found guilty on all counts after a jury trial, and he appealed to the Sixth Circuit. He alleged, among other things, that the indictment was defective, that §§ 2261A(1) and (2) are vague and overbroad, that his motion for a judgment of acquittal should have been granted, and that the trial court should not have allowed an FBI stalking expert to testify during sentencing. Regarding the challenge of the indictment, the Sixth Circuit found that it provided Bowker with fair notice of the conduct with which he was being charged because it specifically referenced the specific dates and locations of the offenses, as well as the means used to carry them out (travel, internet, and telephone). In addition, the court rejected Bowker's argument that the indictment was defective because it did not charge him with making direct threats against Knight and therefore should have contained a statement of facts and circumstances surrounding the alleged indirect threats he made against her, such as an explanation of the parties' relationship. The court found that all of the statutory elements were properly alleged, including the intent to cause a reasonable fear of death or serious bodily harm, and that Bowker's relationship with Knight was not relevant to the alleged illegality of his conduct. As to the over breadth challenge, the Sixth Circuit rejected Bowker's assertions. The court found it is difficult to imagine what constitutionally-protected political or religious speech would fall under the statutory prohibitions and noting that "most, if not all, of these laws' legal applications are to conduct that is not protected by the First Amendment." Regarding the vagueness challenge, the court found that §§ 2261A(1) and (2) provide sufficient notice of their respective prohibitions because citizens need not guess what terms such as "harass" and "intimidate" mean. Citing precedent, the court ruled that the lack of a specific definition in the statute of those terms is not fatal, given that the meanings of these terms "can be ascertained fairly by reference to judicial decisions, common law, dictionaries, and the words themselves because they possess a common and generally accepted meaning." Regarding Bowker's claim that his motion for judgment of acquittal should have been granted, the Sixth Circuit rejected Bowker's argument that the government did not prove that the "result of" Bowker's travel from Ohio to West Virginia in July, 2001, was to put Knight in reasonable fear of her life or bodily injury, because Knight did not learn of Bowker's travels until August 2001, after he had completed his travel. The court found that Knight learned of Bowker's travel to West Virginia because he sent her numerous photographs informing her that he had been in the state the preceding month. Accompanying the photographs

was the statement, "Take the photos out to read the backs of them. Send me an E-mail address. It keeps me long distance, you know what I mean." The court found that this statement clearly indicated that Bowker would continue to communicate with Knight, unless she provided him with her email address. The court further found that "the jury was entitled to infer that this statement, combined with the photographs of Bowker at various locations in West Virginia, was intended to intimidate Knight by showing her that Bowker had traveled to her state and would do so in the future. The statute did not require the government to show that Bowker actually intended to harass or intimidate Knight during his travels only that the result of the travel was a reasonable apprehension of fear in the victim." Finally, as to Bowker's challenge to the trial court's admission of testimony by an FBI stalking expert during the sentencing phase, the Sixth Circuit ruled that the court had not abused its discretion. His testimony was relevant to the court's application of two aspects of the sentencing guidelines.

**Key Issues: Sufficiency of Indictment; Vagueness; Over breadth; Required Elements of the Offense; Expert Testimony Re: Stalking.**

*United States v. Ruggles*, No. 98-5477, 2000 U.S. App. LEXIS 5847 (6th Cir. March 24, 2000).

Ruggles had a long history of violent and abusive behavior towards his wife, Angela, culminating in the events of 1997. In April 1997, he traveled from Florida to Kentucky, where Angela and their three children were living, and told her he was taking them to Carter Caves in Kentucky. Once they were all in his vehicle, he instead headed to Florida. Angela testified that she would not have gone with him had she known he was taking them to Florida. Near the Florida state line, he told her she could either turn herself in to the authorities for kidnapping and theft charges he had filed against her in Florida, prostitute herself for him, or leave the children with him and walk back to Kentucky. Angela stayed with him because she did not want to leave the children. In Florida, Ruggles forced Angela to engage in sex acts with himself and another man. Angela later took the car and fled to Kentucky with the children. In May, Ruggles again drove from Florida to Kentucky to find her, and threatened two of Angela's sisters and one of her co-workers with death unless they revealed Angela's whereabouts. In June, Ruggles falsified documents, which led to the issuance of a Florida arrest warrant for Angela. Ruggles again traveled from Florida to Kentucky where he put up "wanted" posters for Angela in the town she was living in, and offered \$100 to anyone who would turn her over to authorities. In July, while living at a domestic violence shelter, Angela was confronted by Ruggles at a gas station, who acknowledged that he was subject to a protection order. He harassed her and tried to force her out of the car she was in, and was arrested at the scene. Ruggles was convicted by a jury on one count of interstate domestic violence (§ 2261(a)(2)) for the April incidents, two counts of interstate stalking (§ 2261A) for the May and June events, and one count of interstate violation of a protection order (§2262(a)(1)) for the July incident at the gas station. He was sentenced to 87 months in prison and three years of supervised release. Ruggles appealed, and his conviction was affirmed. On appeal, Ruggles contended that the evidence was insufficient and that no reasonable trier of fact could have found him guilty, and that §§ 2261 and 2261 are an unconstitutional exercise of congressional authority. The court found his first argument to be without merit; the court examined the facts and the corresponding statute Ruggles was convicted under, and found that the evidence presented was sufficient to support the guilty verdict. In terms of his constitutional challenge to the statutes, Ruggles failed to raise the issue in the lower court, so the 6th Circuit was precluded from reviewing it.

**Key Issue: Sufficiency of Evidence.**

*Hopson v. Commonwealth Attorney's Office*, 2013 U.S. Dist. LEXIS 49991, (W.D. Ky. Mar. 29, 2013).

Plaintiff DeAndre Hopson filed a complaint against thirteen Defendants, alleging, among other crimes, that they committed interstate stalking pursuant to 18 U.S.C. § 2261A, and seeking monetary relief from each Defendant. Plaintiff alleged that one of the Defendants, Ruth Ann Spencer, reported to other Defendants location of the hospitals and names of the doctors Plaintiff visited, so that the doctors would refuse the treatment, and medical

insurance companies would not pay for the services. Alleged crimes were committed with regard to hospitals in Georgia, Indiana and New Albany. Plaintiff also alleged that the Defendant, Ruth Ann Spencer, threatened to kill his children. The Court concluded that it lacked federal jurisdiction over the matter, as 18 U.S.C. § 2261A did not provide for a private cause of action or civil remedies. The court also lacked diversity jurisdiction, because the Plaintiff and all Defendants resided in Kentucky. Because allegations of the complaint were totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion, the Court dismissed the case.

**Key issues:** Private cause of action; Subject matter jurisdiction.

#### **EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)**

*United States v. Hobgood*, 868 F.3d 744 (8th Cir. 2017).

Hobgood conditionally pleaded guilty to interstate stalking and appealed the district court's denial of his motion to dismiss the indictment. Among other things, he argued that the statute as applied to him constitutes an impermissible content-based restriction of free speech. The district court disagreed and said that Hobgood's speech was "speech integral to criminal conduct," which is unprotected, because it was speech integral to extortion. In Hobgood's appeal, he claims that, because he was not charged with extortion, the speech in connection with extortion cannot be classified as "speech integral to criminal conduct." But the Court reasoned that it must consider the nature of the conduct in question in order to accurately determine whether the statute may be applied to Hobgood's conduct. As a result, it held that Hobgood's speech was not protected by the First Amendment because it was "speech integral to criminal conduct."

**Key Issue:** First Amendment; protected speech.

*Petrovic v. United States*, 2015 U.S. Dist. Lexis 136753, WL 5853178 (2015).

A Grand Jury indicted Petrovic on four counts of interstate stalking and harassment in violation of protective orders under 18 U.S.C § 2261A(2)(A), two counts of extortionate threat under 18 U.S.C. § 875 (d), one count of interstate stalking with a dangerous weapon under 18 U.S.C. § 2261A(1) and one count of interstate violation of a protection order under 18 U.S.C. § 2262(a)(1). Petitioner raised an ineffective assistance of counsel claim under 28 U.S.C § 2255. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) requires that both parts of a claim be proven by the defendant. The first part requires a "showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. The second prong requires the movant to show that he was prejudiced by counsel's error, and "that 'there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Petitioner claimed that trial counsel was ineffective because he did not object when the Court "superimposed his own personal character thoughts as to the mind and thoughts of alleged victim, and ex-wife of Petitioner." Ground two of the ineffective assistance of counsel claim set out a failure to call witnesses, to present evidence at trial, among other things. The Court found that Petitioner failed to satisfy the prejudice prong of *Strickland*. The court found the 28 U.S.C § 2255 motion facially invalid. Therefore, petitioner failed to establish that he was entitled to a hearing and failed to present any basis upon which the Court should grant relief.

**Key Issues:** ineffective assistance of counsel.

*United States v. Petrovic*, 701 F.3d 849 (8th Cir. 2012).

The Defendant, Jovica Petrovic, was convicted of interstate stalking and interstate extortionate threat. He was sentenced to eight years' imprisonment and appealed. The Defendant challenged his sentence, conviction, and the sufficiency of the evidence. The Court of Appeals rejected all his claims and affirmed. The Defendant and M.B. were in a relationship that began in 2006, led to marriage, and resulted in divorce. During the course of the relationship, the Defendant amassed sexual pictures of M.B., as well as numerous text messages with sensitive information about her. The Defendant also secretly recorded sexual encounters with M.B. When she attempted to end their relationship on May 28, 2009, the Defendant threatened to expose their sexual encounters and the sensitive information contained in the text messages. However, M.B. chose to permanently end the relationship. Afterward, the Defendant began to send out cards which contained inappropriate pictures of M.B. and links to a website about M.B which contained numerous naked and sexual images of M.B., along with sensitive information from the text messages. The website also contained personal information about M.B. and her family members, including contact information and social security numbers. The Defendant also sent pictures of M.B. engaging in sexual activity to her work and her family. Furthermore, the Defendant made multiple unwanted calls to M.B. while she was working and intimidated her on multiple occasions. He was arrested on July 19, 2010 and charged with violating 18 U.S.C. § 2261A2(A), we well as 18 U.S.C. § 875(d).

On appeal, the Defendant claimed that 18 U.S.C. § 2261A(2)(A) violated his First Amendment right to freedom of speech. He brought facial and applied challenges to the statute, which both failed. The Defendant claimed that the statute failed the O'Brien test. However, the Court of Appeals ruled that because the communications were not protected speech, the test was unnecessary. Additionally, the Court of Appeals applied the Coplin test and determined that the statute was not viewpoint discrimination. Therefore, the Court of Appeals ruled that the statute was not unconstitutional as applied. In assessing the facial challenge, the Court of Appeals found that the statute was not overbroad. The Defendant did not show that "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." The Court of Appeals also rejected the Defendant's claim that there was insufficient evidence to support his conviction. The Court of Appeals affirmed judgment.

**Key Issues: First Amendment, Constitutional Challenge, Freedom of Speech, Overbreadth, Insufficient Evidence.**

*United States v. Rettinger*, 2006 U.S. Dist. LEXIS 90251 (D.N.D. 2006).

Defendant, a non-Indian, was charged with entering an Indian reservation with the intent to harass and stalk the victim, in violation of 2261A. Defendant contended that 2261A was unconstitutional because it was overbroad since it could apply to actions committed by a non-Indian against a non-Indian on Indian land—over which the state had exclusive jurisdiction, and violated the Tenth Amendment because it divests North Dakota of its prosecutorial rights. The court found that the "over breadth" doctrine relates only to First Amendment free-speech rights, and that 2261A criminalizes conduct, not speech. As to Defendant's claim that 2261A divested North Dakota of rights in violation of the Tenth Amendment, the court ruled the statute valid under the Commerce Clause, further noting that since the state retains full power to prosecute any of its laws due to dual sovereignty, there was no Tenth Amendment violation.

**Key Issues: Over breadth Doctrine; Tenth Amendment.**

*United States v. Vollmer*, 1 F. App'x 573 (8th Cir. 2001) (Unpublished Opinion), cert. denied, 534 U.S. 861 (2001).

Vollmer pleaded guilty to violating section 2261A (prior to the VAWA 2000 amendment). On appeal, he argued that the provision is unconstitutional because it punishes defendants for merely harboring a threatening intent

in the course of interstate travel. The Eighth Circuit rejected the argument, noting that the statute requires that the defendant's travel actually place the intended victim or an immediate family member in fear of harm.

**Key Issue: Required Element of the Offense.**

**NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands)**

*United States v. Bell*, 303 F.3d 1187 (9th Cir. 2002).

Bell, who had a long history of anti-government and anti-tax activities, was indicted on five counts of interstate stalking and related activity, including under section 2261A. Among other activities, Bell had traveled from his home in Washington State to two properties in Oregon that Bell believed were owned by government agents. At one location, Bell stole mail and subsequently posted an email message threatening the son of the person he believed to be an IRS agent. Bell also sent a threatening fax to the IRS agent. Bell was convicted on two of the five counts after a six-day jury trial. He appealed the conviction to the Ninth Circuit, arguing that the district court: (1) Improperly denied him new court-appointed counsel, (2) failed to properly instruct the jury on the requisite intent elements of the convicted counts, and (3) omitted instructions on the "course of conduct" requirement of section 2261A(2)(B). The Ninth Circuit rejected Bell's first two arguments, but agreed that the omission of the course of conduct element was error. The appellate court found, however, that the error was harmless because it was clear beyond a reasonable doubt that a rational jury would have convicted the Bell even absent the error.

**Key Issues: Jury Instructions; Required elements of the Offense.**

*United States v. Bodkins*, 274 F. App'x 294 (4th Cir. 2008).

Defendant Plunkett was accused of hiring Defendant Bodkins to murder Tyree Wimbush. They were convicted under 18 U.S.C. 2261A, and appealed. They claim that the third element, "fear of death or serious bodily injury" was not met. Defendants argue that Wimbush voluntarily approached the vehicle on the night of July 22 to conduct a drug deal. If he had been in fear for his life, he would not have approached the vehicle in such a manner. The Court rules that the fear element of §2261A requires only that, for some period of time, the victim was placed in reasonable fear of death or serious bodily injury. *United States v. Wills*, 346 F.3d 476 (4th Cir. 2003). Since Wimbush was shot during the course of events leading to this case, the fear element was satisfied and the fact that he approached the vehicle willingly is of no consequence.

**Key Issue: Fear of Death or Bodily Injury.**

*United States v. Breeden*, 149 F. App'x 197 (4th Cir. Va. 2005), cert. denied sub nom. *Carpenter v. United States*, 546 U.S. 1192 (2006).

Defendants claim the Government did not provide sufficient evidence to prove they traveled in interstate commerce "with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person." 18 U.S.C. § 2261A. Breeden and Carpenter claim the government did not present any evidence that they intended to harm Hester before they left Washington, D.C.; rather, they claim the Government only proved that they were going to rob drug dealers. The Court holds that trial testimony about statements that the defendants made before leaving to collect money from the victim was enough to establish intent. Defendants also claim that they did not put the victim in reasonable fear of death or serious bodily injury. The Court notes that he saw Carpenter's shotgun and had enough time to grab the barrel. This is enough to demonstrate that he

had a reasonable fear of death or serious bodily injury sufficient to satisfy the requirement of 18 U.S.C. § 2261A. *United States v. Wills*, 346 F.3d 476 (4th Cir. 2003).

**Key Issue: Intent, Fear of Death or Bodily Injury.**

*United States v. Gagnon*, 2006 U.S. Dist. LEXIS 65695, 2006 WL 2642610 (W.D. Va. 2006).

Defendant Gagnon was charged with interstate stalking in violation of 18 U.S.C. 2261A when he left his home in Alabama to travel to New York to stalk an actress that he had previously sent threatening letters to. He is a paranoid schizophrenic and was off his medication. He went back on his medication during the course of the trial, causing his condition to stabilize, so the judge ordered his release. The state appealed. The District Court says that since the defendant is only stable when on his medication, and since he could stop taking it at any time as he has in the past, releasing him was improper. He is ordered to be detained pending trial.

**Key Issue: Detention of Stalker Pending Trial.**

*United States v. Grob*, 625 F.3d 1209 (9th Cir. 2010).

Defendant-appellant Jeffrey Grob pleaded guilty to one count of cyberstalking in violation of 18 U.S.C. § 2261A (2)(B). The sentencing court included his prior conviction of misdemeanor criminal mischief when calculating the sentencing guidelines. On appeal, Grob contended that the inclusion of the misdemeanor criminal mischief was erroneous under U.S.S.G. § 4A1.2(c) because misdemeanor criminal mischief was similar to disorderly conduct – an enumerated exception – and that his prior conviction was not similar to the instant offense of cyberstalking. The court agreed holding that while criminal mischief could be dissimilar to disorderly conduct, in Grob's circumstance it was not. The court further found that disorderly conduct is not a similar offense to cyberstalking and therefore Grob's prior offense was improperly included in determining his sentence. The court reversed and remanded for resentencing.

**Key Issue: Sentencing.**

*United States v. Infante*, 782 F. Supp. 2d 815 (D. Ariz. 2010).

The Defendant, Ricardo Infante, went on a date with L.B. after they met at Arizona State University. After L.B. communicated that she was not interested in pursuing a romantic relationship, the Defendant contacted her via email and Facebook. Additionally, he sent her flowers and gifts, and called her multiple times. L.B. claimed that the Defendant's actions caused her to "substantial emotional distress." The Defendant was arrested and after the preliminary hearing, he filed for dismissal. The Defendant claimed that the Government failed to meet its burden and did not show that he possessed the requisite mens rea for a proper conviction under 18 U.S.C. 2261A. The court agreed and dismissed the complaint. According to 18 U.S.C. § 2261A, the issue was not whether a reasonable person would believe that L.B.'s actions were harassment, but whether L.B.'s "intent and purpose" was to harass the victim. The complaint was dismissed without prejudice.

**Key Issue: Intent.**

*United States v. Osinger*, 753 F.3d 939 (9th Cir. 2014).

The Defendant, Christopher Osinger, became involved with V.B. after a friend introduced them. The relationship lasted for 9 months, until V.B. learned that the Defendant was still married and ended it. The Defendant attempted to speak with her multiple times, but V.B. was not interested in rekindling their relationship. She moved to California and did not provide the Defendant with her new address. Afterward, V.B. received text messages from the Defendant, which she interpreted as "a threat." Later, she was informed that a Facebook

page had been created which contained graphic pictures of her. Some of V.B.'s co-workers also emailed nude pictures of her. The Defendant was convicted of violating 18 U.S.C. §§ 2261A(2)(A) and 2261(b)(5) and appealed.

The Defendant brought facial and applied challenges, which the court rejected after incorporating the reasoning from *United States v. Petrovic* and *United States v. Shrader*. The court found that the statute was not facially invalid because it was not overly vague and provided notice of the prohibited conduct. Additionally, the court ruled that the Defendant's applied challenge failed because the speech was unprotected by the First Amendment and he had prior notice that his conduct would expose him to criminal liability. The Court of Appeals affirmed the judgment of the District Court regarding the Defendant conviction and sentencing.

**Key Issues: First Amendment, Constitutional Challenge, Notice.**

*United States v. Sullivan*, 2016 U.S. Dist. Lexis 1233 (2016).

The defendant motioned the court to dismiss, vacate or correct his sentence under 28 U.S.C. § 2255. Sullivan argued ineffective assistance of counsel. However, the defendant expressly waived his right to appeal so that argument could not be raised. A two-part test is used to determine whether a defendant received ineffective counsel under *Premo v. Moore*, 562 U.S. 115, 121 (2011). The defendant must prove deficient counsel and the deficient performance prejudiced the defense. The errors have to be serious that the representation "fell below an objective standard of reasonableness" under the prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). The result of the proceeding must be shown to be different, if counsel would have been effective. Before the plea phase, the defendant was charged in a Criminal Complaint in violation of 18 U.S.C. § 875(c), and § 2261A(2)(A). The government proved the defendant's intent to committed the crimes. Sullivan was indicted in violation of 18 U.S.C. § 875 and 18 U.S.C. §§ 2261A(2)(A), 2261(b)(5). After the plea agreement, the defendant agreed to waive the indictment and plead guilty with Making a Threatening Communication in violation of 18 U.S.C. § 875(c). The court found that defense counsel did not commit errors that would have substantially hinder the defendant's case.

**Key Issue: ineffective assistance of counsel.**

*United States v. Veal*, 138 F. App'x 902 (9th Cir. 2005) (unpublished).

Veal argued there was insufficient evidence to convict on 2261A grounds. He traveled across state lines to visit a child's school, and delivered a note addressed to the child's teacher, along with the child's picture and a pair of children's socks. The child expressed fear that Veal might either kidnap or kill her. The Ninth Circuit concluded that these facts were sufficient for a rational trier of fact to conclude that Veal engaged in interstate travel with the intent to kill, injure, harass, or intimidate a minor child, and in doing so, placed the child in a reasonable fear of death or serious bodily injury, thus meeting the interstate stalking requirements of 2261A.

**Key Issue: Sufficient Evidence.**

## **ELEVENTH CIRCUIT (Oklahoma, Kansas, New Mexico, Colorado, Wyoming, Utah)**

*United States v. Moreland*, 207 F. Supp. 3d 1222 (N.D. Okla. 2016).

Defendant was charged with cyberstalking and appealed. He claimed the statute was overbroad, unconstitutionally vague on its face, unconstitutionally vague as applied to him, and the indictment was insufficient because it included immediate family members of the victim as additional victims of the crime. Moreland claims the statute is overbroad and "wrongly infringes on free speech" because it could be applied liberally to include heckling a comedian or critical commentary. Citing *United States v. Brune*, 767 F.3d 1009,

1018 (10th Cir. 2014), the Court found that a mere possibility of infringing on protected speech is not sufficient to find a statute overbroad on its face. The Court also noted that the scienter requirement, as established in *United States v. Sayer*, 748 F.3d 425 (1st Cir. 2014), protects against infringement of protected speech. It pointed out the Supreme Court's holdings that criminal statutes may proscribe speech that's made with knowledge that it will be understood as threatening, as well as threats for which the speaker does not actually intend to carry out the violence threatened.

Moreland argues the statute is vague on its face because it does not define "harass" or "substantial emotional distress." But, as addressed in *Shrader* and *Osinger*, the statute's specific intent requirement mitigates against misapplication. As applied to Moreland, the Court found that Moreland's conduct went well beyond political engagement with a public figure, as he contended, and constituted a "true threat."

Moreland's final argument is that the indictment should be dismissed because charges include the language, "and [the victim's] immediate family." The statute makes clear that the victim is the person whom the defendant intends to harass and threaten. In this case, Moreland did not send any message to the victim's family, but the victim forwarded Moreland's messages to her family to make them aware of her situation. Thus, the Court held that the charging language should be struck as it relates to the inaccurate language.

**Key Issues: Overbreadth; Vagueness; Family of Victim; Charging Language**

## **INTERSTATE VIOLATION OF PROTECTION ORDER**

**For conduct occurring October 1, 2013 and after:**

**18 U.S.C. §2262(a)(1) makes it is a federal crime to travel in interstate or foreign commerce, or enter or leave Indian country or be present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct.**

**For conduct occurring January 6, 2006 to September 30, 2013:**

**18 U.S.C. §2262(a)(1) makes it is a federal crime to travel in interstate or foreign commerce, or enters or leave Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct.**

**For conduct occurring between October 28, 2000 and January 5, 2006:**

**18 U.S.C. § 2262(a)(1) makes it a federal offense to travel in interstate or foreign commerce, or enter or leave Indian country with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct.**

**For conduct occurring before October 28, 2000:**

**18 U.S.C. § 2262(a)(1) makes it a federal offense to travel across state or tribal lines with the intent to violate a protection order and subsequently engage in conduct that violates the order either in the issuing state or in another state.**

**FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)**

*United States v. Brown*, 74 F. Supp. 2d 44 (D. Me. 1999) aff'd, 295 F.3d 152 (1st Cir. 2002).

The Defendant, Steven K. Brown, was indicted and charged with interstate stalking, interstate violation of a protection order, and kidnapping his wife, in violation of 18 U.S.C. § 2261A, 18 U.S.C. § 2262, and 18 U.S.C. §1201. Two people died as a result of the crime. When the Defendant decided to plead guilty, the court addressed the issue of whether the deaths would be viewed as elements of particular crimes or as factors considered at sentencing. The Court ruled that the fact that death resulted was a factor that would be considered at sentencing, rather than an element of: kidnapping, interstate violation of a protection order, or interstate stalking.

**Key Issue: Element of offense, Factor in Sentencing.**

*United States v. Fiume*, 708 F.3d 59 (1st Cir. 2013).

The Defendant, Jason P. Flume, was convicted of assaulting his wife, who was granted a protection order against him. The Defendant was subsequently convicted of violating 18 U.S.C. § 2262(a)(1) after he traveled across jurisdictional lines with the intent to violate the protection order. The Defendant appealed his sentence, claiming that it was unjust because violating the protection order was a necessary element for his conviction. The Court of Appeals determined as a matter of first impression that a two-level upward adjustment was permissible and did not punish the Defendant for the same offense multiple times, or violate of the Double Jeopardy Clause. The Court of Appeals rejected the Defendant's arguments and upheld his sentence.

**Key Issue: Two-level upward adjustment, Double Jeopardy, Required Element of the Offense.**

*United States v. Nedd*, 262 F.3d 85 (1st Cir. 2001).

Peter Nedd, a man with a history of mental illness, met Chantelle Carpenter and her parents, Richard and Andrea in Boston, Massachusetts. He became obsessed with Chantelle, called her and sent her gifts. Later, he moved to New York and continued to call and send letters and gifts, which became progressively more threatening. Years later, he came back to Boston and continued to pursue Chantelle. At that point, Chantelle's parents sent her into hiding and obtained a temporary restraining order against Nedd. Nedd later returned to New York. He then left four violent messages on the Carpenters' phone from New York. He was charged with four counts of making interstate threats and for violating a restraining order under 18 U.S.C. 2262. Nedd requested that the five counts be made into one group because the primary victim was Richard Carpenter whereas the prosecution requested that the counts be grouped into three groups, one per victim. The Court found that the offenses should have grouped by the offense applicable to each subset of victims rather than split to apply to each of the victims. However, because the same result would have been obtained with the different groupings, the sentence was upheld.

**Key Issues: Sentencing and grouping.**

## **SECOND CIRCUIT (Connecticut, New York, and Vermont)**

*United States v. Casciano*, 124 F.3d 106 (2d Cir. 1997).

Susan Keezer obtained an ex parte protection order in Massachusetts against Michael Casciano, whom she had dated briefly. After Keezer moved to New York to attend school, Casciano continued his pattern of harassment through emails, telephone calls, and appearances in her classes. He was arrested by municipal police, and was subsequently charged with and convicted for violating 18 U.S.C. § 2262(a)(1). At trial, the issue of whether the order was valid was left to the jury (there was some question as to whether Casciano was personally served, but Keezer's testimony revealed that he knew about the order). On appeal, Casciano argued several issues, including that he was denied due process because he did not receive notice and an opportunity to be heard, and that the judge should not have left the issue of the order's validity to the jury. The Sixth Circuit held that the issue of whether a protection order is valid is an issue to be decided by the judge, and, after examining the Massachusetts statutory service requirements and case law, determined that "imperfect service does not automatically invalidate a judicial order or decision when the defendant has actual notice of the pending legal action and no prejudice accrued." Since there was ample evidence that Casciano had actual notice of the order and there was no showing that he suffered any prejudice from the imperfect service, his due process rights had not been violated, and his conviction under the statute was affirmed.

**Key Issue: Due Process (notice).**

*United States v. Curley*, 639 F.3d 50 (2d Cir. N.Y. 2011).

Appellant Defendant Curley was charged with the crimes of interstate stalking and violation of a protection order under 18 U.S.C. §§ 2261A and 2262(a)(1). He had threatened to kill his wife, and had told her that he knew of a secret place where he could kill her. He served her with divorce papers, accusing her of infidelity, and after that, placed a GPS device on her car. In 2006, the wife, Linda, was in an accident in New Jersey, and the owner of the repair shop in the same state discovered the GPS device. Curley drove to the repair shop from New York, and lied about his identify to the owner. The owner of the repair shop made a notation about the device, which Curley attempted to change. At this point, the owner reported the situation to the police. At Curley's trial, the district court allowed evidence that a) Curley had been threatening Linda for some time, b) that Curley's brother has abused Linda at an earlier time, and c) that Curley had been involved in a traffic stop with an allegedly stolen vehicle. Curley was convicted crimes of interstate stalking and violation of a protection order under 18 U.S.C. §§ 2261A and 2262(a)(1). He appealed, arguing that evidence was inappropriately admitted. The court of appeals agreed, holding that the evidence about Curley's brother and the prior bad act involving the allegedly stolen car were inadmissible. The court vacated the conviction.

**Key Issue: Admissibility of Evidence; Insufficient Evidence.**

*United States v. Popson*, 234 F.3d 1263 (2d Cir. 2000) (Unpublished Opinion).

Popson, who had pled guilty to a violation of section 2262(a)(1), appealed a judgment ordering him to pay \$20,000 to the victim pursuant to the federal restitution provision in 18 U.S.C. § 2264. The Second Circuit found that restitution to the victim is mandatory, and that her request for expenses relating to relocation was reasonable.

**Key Issue: Restitution.**

*United States v. Von Foelkel*, 136 F.3d 339 (2nd Cir. 1998).

Von Foelkel traveled from Florida to New York with the intention of violating a Florida protection order that was incorporated in a Florida divorce decree. The Florida order prohibited Von Foelkel from making credible threats of violence and repeated harassment. Von Foelkel violated the Florida order in New York, where his former wife was living at the time. Von Foelkel was convicted of violating § 2262(a)(1). In a post-trial motion, Von Foelkel argued that the Florida protection order was invalid and therefore unenforceable because (1) the term of a protection order cannot exceed one year under either Florida or New York law, (2) the order violates public policy because it deprives him of all contact with his child, and (3) enforcement of the order violates due process because he had no opportunity to contest the order's provisions. The court found these arguments to be without merit and denied the motion. In terms of the order's validity, the court said that it is irrelevant whether the Florida order is valid in New York; in order to be found guilty of interstate violation of a protection order, the defendant need only violate that portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury. A full faith and credit analysis is not needed here because the order need only be valid in Florida to support the conviction. The court found that, as a matter of law, the Florida order was valid and enforceable on the dates charged in the indictment, because an injunction for protection incorporated into a divorce decree is not subject to the one-year limitation for separately issued injunctions. The due process argument also failed because Von Foelkel was provided with notice and an opportunity to be heard, but failed to appear on the trial date. On appeal to the 2nd Circuit, Von Foelkel argued that § 2262 violates the Commerce Clause and the 10th Amendment. The court disagreed and affirmed. The statute is a valid exercise of Congress' power under the Commerce clause because it criminalizes only those violations of protection orders that involve the use of the channels and instrumentalities of interstate commerce. Although the statute does not regulate commercial activity per se, the Supreme Court has held that is within Congress's authority to keep the channels of interstate commerce free from immoral and injurious uses. As a validly enacted statute under the Commerce Clause, it does not violate the 10th Amendment.

**Key Issue: Validity of Predicate Protection Order; Due Process (notice); Commerce Clause; 10th Amendment.**

#### **SIXTH CIRCUIT (Kentucky, Michigan, Ohio, Tennessee)**

*United States v. Jacobs*, 244 F.3d 503 (6th Cir. 2001).

Lauretta Jacobs obtained a protection order against her husband, Elisha Jacobs, in 1996, and subsequently moved from Kentucky to Indiana. One month later, the defendant called Lauretta and told her that she should come to his parents' home in Kentucky so he could give her some money to assist with living expenses. When Lauretta arrived, the defendant immediately accosted her and punched her in the face, injuring her mouth and damaging her teeth. Armed with a shotgun and a knife, the defendant forced Lauretta into his truck, and drove her into Tennessee. The next day, the defendant returned Lauretta to Kentucky, where she received treatment for her injuries, and reported the incident to the police. The defendant was then arrested and held on bond until his bond was reduced in April 1997. After his release, the defendant traveled from Kentucky to Lauretta's home in Indiana. He turned off the electricity to her home, restored the power a few minutes later, and then knocked on the front door. Lauretta did not open the door, and the defendant crashed through a closed window, brandishing a gun. The defendant dragged Lauretta by her hair out of her home, across cornfields, and a barbed wire fence, injuring her bare leg. Lauretta eventually escaped and was discovered along the highway and taken to a hospital. The defendant pled guilty in Indiana state court to abducting Lauretta in Indiana, and was sentenced to 15 years in state prison. He was then charged in a federal indictment with four counts related to the Tennessee abduction: Kidnapping, interstate domestic violence in violation of 2261(a)(2), use of a deadly weapon during a crime of violence, and interstate violation of a protective order, in violation of 2262. The indictment also contained three counts related to the Indiana abduction: Interstate domestic violence in violation of 2261(a)(1), possession of a firearm while subject to a protection order in violation of 922(g)(8), and

use of a deadly or dangerous weapon during a crime of violence. The defendant was found guilty on all seven counts and sentenced to 70 months on six counts, to run concurrently with any sentence imposed on any other matter, and 300 months for the convictions for use of a deadly weapon during a crime of violence, to run consecutively with any other sentence. The defendant appealed the sentence, but the 6th Circuit affirmed.

**Key Issue: Sentencing.**

*United States v. Young*, 208 F.3d 216, table, No. 98-6081, 2000 U.S. App. LEXIS 2443 (6th Cir. Feb. 15, 2000) (per curiam) (unpublished).

James Young and Ashley Young were married for three years and resided in Arkansas. Ashley left Young in 1997 because Young physically abused her, and moved in with her father in Memphis, Tennessee. Ashley filed a complaint for separate maintenance, and also requested that a restraining order be issued against Young. The court issued a pre-signed mutual restraining order enjoining both parties from “doing or attempting to do, or threatening to do, any act of injuring, maltreating, vilifying, molesting, or harassing” one another. Young was served with the order and summons on December 18, 1997. Young later traveled from Arkansas to Tennessee, and arrived at the home of Ashley’s parents, where she was residing. He shouted profanities at the house, waved a loaded gun at the residence, and pointed it at one of the windows. Young was arrested at the scene. He was indicted for interstate violation of a protection order (§ 2262(a)(1)), convicted, and sentenced to 21 months’ incarceration and three years of supervised release. Young appealed, and the 6th Circuit affirmed. In his appeal, Young argued that the protection order was not an order within the meaning of 18 U.S.C. § 2261(a)(1), and that there was insufficient evidence as to his intent at the time he crossed from Arkansas into Tennessee. Regarding his first argument, he contended that the protection order does not meet the requirements of the statute because it was not issued by a “court,” but, rather, was issued by a “clerk.” The court rejected this argument because although the order was simply automatically issued by the clerk of the court as part of her duties, it was still a court-issued order. The court also found his argument that there was insufficient evidence to establish his intent to violate the protection order when he crossed the state line to be without merit. A reasonable jury could have found that he intended to cross from Arkansas into Tennessee with the requisite intent, given the proof presented that established Young’s travel on or about January 3, 1998, Young’s past violent and threatening behavior towards Ashley, the presence of a handgun and ammunition in Young’s truck, and his behavior on the 4th of January.

**Key Issues: Validity of Predicate Order; Required Elements of the Offense.**

*Hopson v. Commonwealth Attorney's Office*, 2013 U.S. Dist. LEXIS 49991 (W.D. Ky. Mar. 29, 2013).

Plaintiff DeAndre Hopson filed a complaint against thirteen Defendants, alleging, among other crimes, that Ruth Ann Spencer violated two domestic violence orders in the last three month, issued to protect the Plaintiff, thus violating 18 U.S.C. § 2262(a)(1). The Court concluded that there was no indication that Congress intended to create a private cause of action under 18 U.S.C. § 2262(a)(1). The Court thus lacked federal jurisdiction over the matter. The court also lacked diversity jurisdiction, because the Plaintiff and all Defendants resided in Kentucky. Because allegations of the complaint were totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion, the Court dismissed the case.

**Key issues: Private cause of action; Subject matter jurisdiction.**

## EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota)

*United States v. Wright*, 128 F.3d 1274 (8th Cir. 1997), cert. denied, 523 U.S. 1053 (1998).

Michelle Lempka obtained a protection order from a Nebraska court against Larry Wright. The order prohibited Wright from harming, harassing, or coming near Ms. Lempka. He violated the order on May 23, 1996, when he traveled from Omaha, Nebraska, to Lempka's residence in Council Bluffs, Iowa, and entered onto the premises; on or about June 29, when he again traveled from Nebraska to Iowa and threw a brick through Lempka's window; and on or about July 7, when he followed Lempka from Omaha to Iowa on I-80. Wright was indicted on three counts of violating 18 U.S.C. § 2262(a)(1). Wright filed a motion to dismiss, alleging that the statute is an unconstitutional exercise of Congress's Commerce Clause power, and that the district court therefore lacked subject matter jurisdiction. The district court granted the motion to dismiss because the statute contains neither an implicit or explicit requirement that any person or thing actually move in interstate commerce, but simply criminalizes domestic violence or the violation of a protection order when the conduct involves crossing a state line. The 8th Circuit reversed, holding that the statute is constitutional, and remanded. The court relied on numerous 8th Circuit and Supreme Court case precedents that have held that crossing state lines is interstate commerce regardless of whether any commercial activity is involved.

**Key Issue: Commerce Clause.**

**NINTH CIRCUIT (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Marianna Islands)**

*United States v. Hermundson*, No. 97-10497, 2000 U.S. App. LEXIS 643 (9th Cir. Jan. 14, 2000).

While subject to a protection order, Hermundson kidnapped his wife at knife point and drove her from Arizona across the state line. He was convicted of kidnapping in interstate commerce (18 U.S.C. § 1201(a)(1)) and of violating § 2262(a)(1). On appeal, Hermundson contended that violation of the protection order was complete in Arizona, and that the evidence was therefore insufficient that he crossed a state line with the intent to engage in conduct that would violate the order. The court rejected this argument because the offense of kidnapping continued during and after the crossing of the state line, and the fact that he crossed the state line with the intention to continue the kidnapping is sufficient.

**Key Issue: Required elements of the Offense.**

*United States v. Veal*, 138 F. App'x 902 (9th Cir. Cal. 2005).

Danny William Veal was convicted under, among other statutes, 18 U.S.C. 2262. He then challenged his conviction, alleging that not enough evidence existed to establish a pattern of behavior. The Circuit Court found that Veal's visit to the school where the child protected by an order attended and visit to the workplace of the child's mother (also protected by the protection order) constituted an attempt to contact the people protected by the order and as such, was a violation of the protection order. In addition, the Court found that this was sufficient evidence, when combined with evidence that he had crossed a state line, to establish a pattern of behavior. His sentence was upheld.

**Key Issues: Evidence.**

**ELEVENTH CIRCUIT (Alabama, Georgia, Florida)**

*United States v. James*, 2016 U.S. Dist. Lexis 19399 (2016).

William Brian James was charged pursuant to 18 U.S.C. § 2262(a)(1) in violation of an Alabama protection order. James reported to an off-shore work assignment when he received notice of a hearing. James did not attend the hearing but his counsel was present. The judge extended the order, rather than ordering a new one. The order

was not transferred to domestic court to consolidate it for further adjudication with a pending divorce petition. James requested a determination of the validity of the underlying protection order as an element of the offence. In that instance, the government had to prove to a jury beyond a reasonable doubt at trial. The allegations stated that the process in which the order had been issued did not meet federal constitutional due process requirements. It would not be entitled to full faith and credit in another jurisdiction. In *Lewis v. United States*, 445 U.S. 55, 65 (1980), the Supreme Court upheld federal criminal statutes that penalize activity by person's subject to underlying criminal convictions "despite the fact that the predicate felony may be subject to collateral attack on constitutional grounds." The plain text of 18 U.S.C. § 2266(5) states that "the term 'protection order' includes any injunction, restraining order, any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communicating with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action... so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection." In James' case, the ex parte order fell within that scope. Pertaining to the second allegation, James's reading of 18 U.S.C. § 2262(a)(1) was superfluous. The protection order needed to be enforceable under the laws of the state issued. The crossing of state lines is criminalized in 18 U.S.C. § 2262(a)(1). Therefore, James's motion for pretrial determination is granted in part and denied in part.

**Key Issues: full faith and credit, notice.**

## **INTERSTATE VIOLATION OF A PROTECTION ORDER – CAUSING TRAVEL**

**For conduct occurring January 6, 2006 and after:**

**18 U.S.C. §2262(a)(2) makes it a federal offense to cause a person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued.**

**For conduct occurring October 28, 2000 to January 5, 2006:**

**18 U.S.C. § 2262(a)(2) makes it a federal offense to cause another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of the protection order that prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued.**

**For conduct occurring before October 28, 2000:**

**18 U.S.C. § 2262(a)(2) makes it a federal offense to cause a spouse or intimate partner to cross a state or tribal land lines by force, coercion, duress or fraud, and in the course of or as a result of that conduct, intentionally commit an act that injures the person's spouse in violation of a valid protection order issued by a state.**

## **FIRST CIRCUIT (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)**

*United States v. Robinson*, 433 F.3d 31 (1st Cir. Me. 2005).

Anthony Robinson served a short sentence for a domestic assault charge until 2004 in the state of Washington. After his release, a protective order was entered against him prohibiting him from contacting his wife. Shortly thereafter, he and Ms. Robinson fled to Maine with their two children, where Mr. Robinson was apprehended and charged with violating 18 U.S.C. § 2262. He pled guilty to the charge and was sentenced to a five year sentence after the prosecution requested and was granted a two level enhancement and Mr. Robinson's request for a reduction for acceptance of responsibility was denied. The District Court could only sentence him to five years, even with the enhancements because that was the maximum sentence allowed by the statute.

Mr. Robinson appealed the sentence, but the Circuit Court upheld the sentence. First, the Court decided that the enhancements were appropriate due to Mr. Robinson's past behavior (sending letters, violent physical abuse, threats, etc...), which served to establish a pattern of behavior and also because of his past convictions serving as a basis for a criminal history enhancement. The Court also rejected Mr. Robinson's contentions of acceptance of responsibility due to his threatening letters to Ms. Robinson during his most recent incarceration. The Court also rejected the argument that this was a victimless crime because Ms. Robinson had willingly accompanied Mr. Robinson to Maine because the current incident plainly fit into a pattern of behavior meant to be prohibited by statute.

**Key Issues: Sentencing.**

*United States v. Teeter*, 257 F.3d 14 (1st Cir. Me. 2001).

Patricia Teeter accompanied Steven Brown from New York to Maine, where Brown's ex-wife resided. Teeter and Brown spent an afternoon spying on Brown's ex-wife, Deborah Brown, and her family, while formulating a plan for abducting Ms. Brown. That evening, Ms. Teeter lured two of Ms. Brown's friends and family members out to Mr. Brown, where he proceeded to question and kill them. After this, Ms. Teeter attempted to lure Ms. Brown, who escaped but was later caught by Mr. Brown, abused and taken to New York. Ms. Teeter was charged with several violations, including aiding and abetting violations of 18 U.S.C. §2261A and 18 U.S.C. 2262. Ms. Teeter entered into a plea agreement stating that she would not appeal. The Court found that waivers were allowable in most circumstances and affirmed the lower court's sentence.

**Key Issues: Waiver, plea agreements, sentencing.**

#### **FOURTH CIRCUIT (Maryland, North Carolina, South Carolina, Virginia, West Virginia)**

*United States v. Hendren*, No. 98-4397, 1999 U.S. App. LEXIS 3947 (4th Cir. March 11, 1999) (unpublished).

Hendren and the victim lived together for approximately six years, during which time Hendren physically abused the victim and threatened to kill her if she ever left him. The victim filed a domestic violence complaint and received a protection order against Hendren. Approximately one week after filing the complaint, the victim got into her car to go to work. Hendren, who had been hiding inside the car, pointed a loaded .38 caliber pistol at her head and threatened to kill her. He also showed her what he claimed to be a bomb and threatened to detonate the bomb and kill both of them. Hendren ordered the victim to drive to his house, where he tied her up and handcuffed her. After again threatening to kill the victim and her family, Hendren ordered the victim to accompany him to Virginia. Over the next approximately 8 hours, Hendren drove them from North Carolina into southern Virginia, and repeatedly threatened to kill the victim, various family members, and himself if she did not come back to him. The victim, convinced that her only hope for survival was to make Hendren believe that she would resume their relationship, assured him that she would go back with him. Hendren then drove the

victim back to North Carolina and dropped her off at a mall in their home town. Hendren was convicted pursuant to his guilty pleas of kidnapping, carjacking, interstate domestic violence, interstate violation of a protection order, and using a firearm during a crime of violence. He appealed, alleging various sentencing errors. The 4th Circuit affirmed, finding no reversible error.

**Key Issue: Sentencing.**

*United States v. Powell*, 62 F. App'x 543 (4th Cir. N.C. 2003).

Powell was sentenced to serve 240 months' imprisonment for violating 18 U.S.C. §1201, followed by a 60 month sentence for violating 18 U.S.C. § 2262. The statutory maximum under 18 U.S.C. §1201 is life imprisonment and 60 months is the maximum under 18 U.S.C. §2262, therefore Powell's sentence was not a violation of the guidelines and was affirmed.

**Key Issues: Sentencing, subsequent sentences.**

*United States v. Romines*, No. 96-4838, 1998 U.S. App. LEXIS 4648 (4th Cir. March 13, 1998) (per curium).

William Romines was subject to a 1995 order of protection that he consented to, and which prohibited Romines from abusing or threatening to abuse his wife or committing any acts of violence against her. Romines appeared at the house at which his wife had been residing since they separated. His wife, who was on the porch when he arrived, attempted to go into the house, but Romines grabbed her and forced his way into the house where he severely beat her. He then picked up their baby and headed toward the front door. When his wife tried to stop him, he choked her until she nearly lost consciousness, and told her he could kill her if he wanted to. He took her car keys, and when his wife attempted to take the baby and run away, Romines grabbed the baby and put him in her car. Romines' wife testified that she got into the car because she didn't believe she had a choice. Once in the car, Romines threatened her with a knife, and drove from Knoxville, Tennessee, into Virginia, where he was arrested. Romines was convicted of kidnapping, interstate transportation of a stolen vehicle, and interstate violation of a protection order (§ 2262(a)(2)). The 4th Circuit affirmed the conviction. On appeal, Romines challenged the sufficiency of the evidence to sustain his conviction under § 2262(a)(2), because the victim testified that she willingly left with him. The court found this argument to be without merit because Romines had their son and she feared for his safety. Romines also argued that there was no evidence that any violence occurred in Virginia, or that Romines had any intention of harming his wife in Virginia. The court also rejected this contention because the statute does not require that the victim be harmed after the crossing of the state line; “[r]ather, the evidence presented by the prosecution was sufficient to show that Romines injured the victim in the course of forcing her to cross from Tennessee into Virginia, by beating, choking, and threatening her and her son with violence.”

**Key Issues: Sufficiency of Evidence; Required Elements of the Offense; Timing of Abuse.**

## **SEVENTH CIRCUIT (Illinois, Indiana, Wisconsin)**

*Edwards v. Edwards*, 2006 U.S. Dist. LEXIS 57971 (S.D. Ill. Aug. 17, 2006).

Rochelle Edwards, as part of a custody battle with her ex-husband James Sullivan Edwards obtained two separate orders of protection against Mr. Edwards in Minnesota, several years after the divorce. Afterwards, Ms. Edwards filed a complaint stating that Mr. Edwards had kidnapped at least one of their children. A day later, Mr. Edwards filed for temporary custody of the children. Finally, Ms. Edwards moved closer to Mr. Edwards' residence in Illinois, but Mr. Edwards would not allow her to see one of their children. Because of this, Ms. Edwards filed a report, requesting enforcement of her protection order in Illinois and to have her son returned

to her. The sheriff's office did not enforce this order, even after a local court registered the Minnesota order of protection. Ms. Edwards stated that the District Court had jurisdiction under several statutes, including 18 U.S.C. §2262. The Court held that VAWA did not allow federal courts to force state officers to act in a certain manner. Therefore, as there was no jurisdiction, her action was dismissed.

**Key Issues: Jurisdiction, State Powers.**

#### **EIGHTH CIRCUIT (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)**

*United States v. Thomas*, No. 8:00CR120, 2000 U.S. Dist. LEXIS 13908 (D. Neb. Sept. 21, 2000).

The FBI obtained an arrest warrant alleging that Thomas committed interstate domestic violence and violated a protection order. Thomas was indicted for kidnapping, interstate domestic violence (18 U.S.C. § 2261), and interstate violation of a protection order. Thomas filed a motion to dismiss, contending that Congress exceeded its powers under the Commerce Clause when it enacted §§ 2261 and 2262. The district court disagreed, relying on numerous cases decided by federal appellate courts, and denied the motion to dismiss.

**Key Issue: Commerce Clause.**