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Federal Jurisdiction over Juveniles: Who Decides

Alicia K. Embley

Federal Jurisdiction Over Juveniles: Who Decides?

United States v. Juvenile Male J.A.J.[1]

I. INTRODUCTION

Because of the increase in the number and severity of violent crimes committed by juveniles, public demand for harsher penalties and proceedings for young offenders also increases each year.[2] Congress has responded to the public outcry by enacting numerous pieces of legislation that mandate federal juvenile accountability. This legislation represents a drastic departure from the federal government's traditional policy of leaving juvenile justice affairs to the states.

One of the many congressional acts in the past decades confers federal jurisdiction upon prosecution of juveniles who commit serious violent or drug related crimes if the United States Attorney certifies that the case involves "a substantial federal interest."[3] The various courts of appeals are split on the question of "who ultimately decides?" Does the United States Attorney make the ultimate decision, or do the courts have the authority to review when the decision is contested? As the conflict among the circuits and within the Missouri Eastern District Court reveals, this question is open to divergent interpretations.

II. FACTS AND HOLDING

In the fall of 1996, seventeen year-old J.A.J. was arrested for possession of 1.31 grams of crack cocaine, .94 grams of marijuana, .24 grams of codeine, a .25 caliber semi-automatic handgun, and six rounds of ammunition.[4] A federal grand jury indicted J.A.J. on five counts of juvenile delinquency.[5]

The United States Attorney certified that J.A.J. was a juvenile, that a substantial federal interest in the case existed, and that the offenses justified federal jurisdiction pursuant to 18 U.S.C. § 5032.[6] J.A.J. moved to dismiss for

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1. 134 F.3d 905 (8th Cir.), *cert. denied*, 118 S. Ct. 2388 (1998).

2. Between the 1988 and 1994, the rate of juvenile arrests for violent crimes increased more than 50% before declining in 1995 and 1996. *See* HOWARD N. SNYDER ET AL., JUVENILE OFFENDERS AND VICTIMS: 1996 UPDATE ON VIOLENCE 14 (1996); Fox Butterfield, *After a Decade, Juvenile Crime Begins to Drop*, N.Y. TIMES, Aug. 9, 1996, at A1 (2.9% decline in 1995); *U.S. Reports Sharp Drop In Violent Youth Crime*, N.Y. TIMES, Oct. 3, 1997, at A13 (9.2% decline in 1996).

3. 18 U.S.C. § 5032 (1994 & Supp. II 1996).

4. *Juvenile Male J.A.J.*, 134 F.3d at 905-06.

5. *Id.* at 906. Juvenile delinquency is defined as "violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult . . . ." 18 U.S.C. § 5032 (1994 & Supp. II 1996).

6. United States v. Juvenile Male J.A.J., 134 F.3d 905, 906 (8th Cir.), *cert. denied*,

lack of federal jurisdiction.[7] The Federal District Court for the Eastern District of Missouri dismissed J.A.J.'s motion "with reluctance."[8] The district court explained that although the state interest appeared to outweigh any federal interest, once the United States certified that the prosecution of a juvenile represented a substantial federal interest, "the Court can't look behind it to make [the United States] prove that they have this interest."[9] J.A.J. pled guilty to all five charges of juvenile delinquency, and the court sentenced him to two concurrent sentences of two years probation.[10]

On appeal to the Eighth Circuit Court of Appeals, J.A.J. contested the United States Attorney's certification that a substantial federal interest warranted the exercise of federal jurisdiction.[11] The Eighth Circuit affirmed, holding that a United States Attorney's certification that the prosecution of a juvenile represents a substantial federal interest pursuant to 18 U.S.C. § 5032 is an unreviewable act of prosecutorial discretion.[12]

III. LEGAL BACKGROUND

A. The Historical Development of Federal Juvenile Justice Legislation

Prior to the close of the eighteenth century, children who committed state and federal crimes were subject to the same punishment and proceedings as adult offenders.[13] Progressive reformers, however, endorsed the notion that rehabilitation, rather than punishment, prevents juvenile delinquents from becoming adult offenders.[14] By 1945, all state jurisdictions had created juvenile court systems that reflected the reformists' philosophy.[15]

Until the last several decades, the federal government played a small role in developing juvenile justice policies.[16] The increase in the rate and severity of

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118 S. Ct. 2388 (1998).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *See* Joseph F. Yeckel, *Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice*, 51 WASH. U. J. URB. & CONTEMP. L. 331, 334 (1997).

14. *See id.* at 335; *see also* Gordon A. Martin, Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 65-67 (1992).

15. Yeckel, *supra* note 13, at 335. To promote the idea of juvenile protection over punishment, juvenile court proceedings were held in private, juvenile records were expunged once a juvenile reached the age of majority and juveniles were released upon rehabilitation. Yeckel, *supra* note 13, at 335-36.

16. *See* Yeckel, *supra* note 13, at 338; *see also* United States v. Juvenile Male #1, 86 F.3d 1314, 1320 (4th Cir. 1996) (stating that "[p]rior to the 1984 amendments, § 5032

juvenile crimes in the late twentieth century led Congress to fashion a more active federal juvenile justice system.[17] At the same time, Congress continued to legislate by balancing society's need to be protected from crime with society's desire to protect its juveniles.

In 1974, Congress passed the Federal Juvenile Justice and Delinquency Prevention Act ("1974 Act").[18] The 1974 Act amended previous legislation by changing the definition of a juvenile,[19] adding the requirement of judicial approval before the government may prosecute juveniles as adults, placing limits on the number of offenses for which courts may try juveniles as adults, and providing for federal prosecution of juveniles when the state would not or could not exercise jurisdiction over a juvenile offender.[20]

In 1984, Congress amended the 1974 Act with the passage of the Comprehensive Crime Control Act ("1984 Act").[21] The 1984 Act mandated that juveniles be tried as adults in some cases and authorized federal prosecution of juveniles for violent crimes or serious drug offenses if the Attorney General[22] certified that the case held "a substantial federal interest."[23] The 1984 Act granted the federal government a wider basis for invoking jurisdiction by adding a new basis upon which the federal government could proceed against a juvenile offender.[24] Restrictions, however, continued to apply; the provision was limited

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embodied a clear preference for having juvenile criminal matters handled in the state courts").

Congress enacted the Federal Juvenile Delinquency Act ("FJDA") in 1938, but the FJDA only applied to a very small group of juvenile offenders: those under the age of eighteen who were not surrendered to state officials or charged with offenses punishable by life imprisonment or death. *See* United States v. Juvenile K.J.C., 976 F. Supp. 1219, 1221 (N.D. Iowa 1997); Federal Juvenile Delinquency Act of 1938, ch. 486, 52 Stat. 764 (1938) (repealed, but provisions are contained in 18 U.S.C. §§ 5031-5037 (1994 & Supp. II 1996)).

17. Yeckel, *supra* note 13, at 333.

18. Federal Juvenile Justice & Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended in scattered sections of 18 U.S.C. and 42 U.S.C.).

19. A "juvenile" is defined as "a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under [the Act] for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday." 18 U.S.C. § 5031 (1994).

20. *See Juvenile K.J.C.*, 976 F. Supp. at 1221 (citing 18 U.S.C. §§ 5031-5032 (1994 & Supp. II 1996)); *see also* S. REP. NO. 93-1011 (1974).

21. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976 (1984) (codified as amended in scattered sections of 18-19 U.S.C., 21 U.S.C., 28-29 U.S.C. and 42 U.S.C.).

22. The authority to certify on behalf of the Attorney General is delegated to the appropriate United States Attorney. 28 C.F.R. § 0.57 (1998).

23. United States v. Juvenile K.J.C., 976 F. Supp. 1219, 1222 (N.D. Iowa 1997).

24. *See* 18 U.S.C. § 5032 (1994 & Supp. II 1996). Although the current version

to serious violent felonies and drug-related offenses.[25] In other words, Congress continued to endorse the "essential concepts" of the 1974 Act: that juvenile delinquency matters should generally be left to the states, and that the federal government should assert control over a juvenile proceeding only when an older juvenile engages in serious criminal conduct.[26]

The latest amendment to the 1974 Act occurred in 1994, when Congress passed the Violent Crime Control and Law Enforcement Act.[27] This legislation responded to gang violence and the growing number of violent juvenile crimes.[28] The Violent Crime Control and Law Enforcement Act authorized the prosecution of juveniles as young as thirteen for certain serious felonies, including first and second degree murder, attempted murder, and bank robbery.[29]

The current provision of the law governing proceedings against juvenile offenders asserts that the United States may not proceed against a juvenile in federal court

> unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or [is among certain specified drug and firearm offenses], and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.[30]

Once federal jurisdiction is obtained, juveniles are subject to delinquency proceedings unless the district court determines that transfer of the juvenile for

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of the law can be read to compel certification of a substantial federal interest in all cases, legislative history reveals that the "substantial federal interest" inquiry was not intended to supplement the first and second categories as well as become a component of the third. United States v. Juvenile No. 1, 118 F.3d 298, 303 n.6 (1997) (citing S. REP. NO. 98-225, at 389 (1983)).

25. *Juvenile No. 1*, 118 F.3d at 303 n.6 (citing S. REP. NO. 98-225, at 389 (1983)).

26. S. REP. NO. 98-225, at 386 (1983).

27. Violent Crime Control & Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (codified as amended in scattered sections of 15-16 U.S.C., 18 U.S.C., 21 U.S.C. and 42 U.S.C.).

28. Yeckel, *supra* note 13, at 344.

29. 18 U.S.C. § 5032 (1994 & Supp. II 1996).

30. 18 U.S.C. § 5032 (1994 & Supp. II 1996).

adult prosecution is "in the interests of justice,"[31] or unless the district is required to transfer the juvenile to adult status.[32]

One of the most troublesome aspects of the 1984 amendments involves the court's role in the "substantial federal interest" inquiry. Is the prosecutor's "substantial federal interest" determination subject to judicial review?

B. The Majority Position and Analysis—A Substantial Federal Interest Certification is Not Subject to Judicial Review

A majority of circuit courts have held that the prosecutor's "substantial federal interest" determination is final and therefore not subject to judicial review.[33] *United States v. Juvenile No. 1* outlines many of the majority's

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31. 18 U.S.C. § 5032 (1994 & Supp. II 1996). To determine whether the transfer of a juvenile to adult status is in the "interest of justice," courts evaluate the following factors:

> [T]he age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

18 U.S.C. § 5032 (1994 & Supp. II 1996).

32. 18 U.S.C. § 5032 (1994 & Supp. II 1996). Pursuant to Section 5032, a district court must transfer a juvenile to adult status when:

> (1) the juvenile committed the act underlying the charged offense after his sixteenth birthday; (2) the charged offense is a felony that has as an element the use of physical force or by its nature involves the risk of physical force, or is an offense specifically enumerated in the paragraph; and (3) the juvenile has previously been found guilty of a crime that would satisfy factor (2).

United States v. Juvenile K.J.C., 976 F. Supp. 1219, 1223 n.8 (N.D. Iowa 1997) (citing Impounded (Juvenile R.G.), 117 F.3d 730, 732 (3d Cir. 1997)).

33. *See* United States v. Jarrett, 133 F.3d 519, 541 (7th Cir. 1998) (holding that "courts cannot review the substantive basis of the Attorney General's certification of a 'substantial federal interest'"); *In re* Sealed Case, 131 F.3d 208, 215 (D.C. Cir. 1997) (holding that courts may only review a certification to "determine its presence and whether it facially supports . . . jurisdiction"); United States v. Juvenile No. 1, 118 F.3d 298, 300 (5th Cir. 1997) (holding that the Attorney General's "substantial federal interest" is not judicially reviewable); Impounded (Juvenile R.G.), 117 F.3d 730, 737 (3d Cir. 1997) (holding that courts have no jurisdiction to review the substantive basis of an Section 5032 certification, but that courts may review the certification determination for technical defects, for whether a crime is one of violence and for whether the certification was made in bad faith); United States v. I.D.P., 102 F.3d 507, 511 (11th Cir. 1996) (holding that "in the absence of purely formal error on the face of the certification or proof of bad faith on the part of the government, . . . certifications made in accord with Section 5032 customarily 'must be accepted as final'"). *But see* United States v. Juvenile #1, 86 F.3d 1314, 1319 (4th Cir. 1996) (holding that certification is reviewable); United States v. Juvenile Male, 923 F.2d 614, 617 (8th Cir. 1991) (holding that certification is

arguments and underlying rationales.[34] The Fifth Circuit first examined the text and structure of 18 U.S.C. § 5032 and concluded that the text does not contain any provision allowing judicial review of the Attorney General's certification.[35] In contrast, however, Section 5032 explicitly authorizes judicial review of the Attorney General's motion to transfer a juvenile to an adult proceeding.[36] Moreover, *Juvenile No. 1* recognizes that Section 5032 neither defines the term "substantial federal interest" nor provides standards to guide the inquiry of the Attorney General's certification.[37] To the contrary, Section 5032 enumerates specific factors for courts to consider in determining whether transfer of a juvenile is in the interests of justice.[38]

The court explained that when "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[39] In other words, if Congress intended various sections of a statute to have identical meanings, it presumably would have expressed this intent in the statute's wording.

In addition, the court believed that Congress's omission of the definition and criteria for judicial review of "substantial federal interest" demonstrated intent to leave the matter solely to the discretion of federal prosecutors.[40] As support, the court noted that the United States Attorneys' Manual uses "substantial federal interest" extensively to guide prosecutors in rendering decisions on whether to prosecute a defendant in federal court.[41] *Juvenile No.*

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subject to judicial review for compliance with Section 5032 and is necessary to confer federal jurisdiction); United States v. Male Juvenile, 844 F. Supp. 280, 284 (E.D. Va. 1994) (holding that courts may review certification decisions for more than mere compliance with Section 5032). Some courts that follow the majority rule of substantive nonreviewability do allow judicial review when the defendant alleges that the charged offense was not a "crime of violence," the government filed a certification in bad faith or the government failed to formally comply with Section 5032.

34. 118 F.3d 298 (5th Cir. 1997).

35. *Id.* at 304.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 305 (citing Russello v. United States, 464 U.S. 16, 23 (1983)).

40. *Id.*

41. *Id.* (citing U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-27.230(A) (1993)). The Manual states that in determining whether the government attorney should decline prosecution because of lack of a substantial federal interest, the attorney should weigh all relevant factors, including:

> (1) [f]ederal law enforcement priorities; (2) [t]he nature and seriousness of the offense; (3) [t]he deterrent effect of prosecution; (4) [t]he persons' culpability in connection with the offense; (5) [t]he person's history with respect to criminal activity; (6) [t]he person's willingness to cooperate in the investigation or prosecution of others; and (7) [t]he probable sentence or other

I agreed with the Supreme Court in *Wayte v. United States* in stating that the factors that federal prosecutors must weigh in deciding whether to exercise federal jurisdiction over a defendant are "not readily susceptible to the kind of analysis the courts are competent to undertake."[42]

The Third Circuit provided additional evidence of the judiciary's inability to define the contours of the types of behavior that should command the attention of federal courts.[43] Referring to the attempt by the Committee on Long Range Planning for the Federal Courts to define what constitutes a substantial federal interest, the Third Circuit stated that the Long Range Plan "ultimately adopted provisions that are quite broad, and scarcely provide the calipers for making the kind of determination for which the [minority view] would call."[44]

The Fifth Circuit also examined the legislative history of Section 5032. Senate Report 98-225 explains that the addition of the "substantial federal interest" and "crime of violence" categories adopts the recommendation of the United States Attorney General that the federal government acquire original jurisdiction over federal crimes by juveniles.[45] Furthermore, the report states that the addition is "substantially the same as" some of the Criminal Code Reform legislation approved by the Senate Committee on the Judiciary in 1981.[46] With respect to this legislation, the committee states that "[t]he Committee intends" and "believes it is necessary to afford the Attorney General [the] authority" to consider factors set forth in a different section of the statute to determine the existence of a "sufficient Federal interest."[47]

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consequences if the person is convicted.

U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-27.230(A) (1993).

42. United States v. Juvenile No. 1, 118 F.3d 298, 306 (5th Cir. 1997) (citing Wayte v. United States, 470 U.S. 598, 607 (1985)). *See also* Heckler v. Chaney, 470 U.S. 821, 830 (1985) (stating that even when Congress has not affirmatively precluded judicial review, "[it] is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion").

43. Impounded (Juvenile R.G.), 117 F.3d 730, 736 n.8 (3d Cir. 1997).

44. *Id. See also* COMMITTEE ON LONG RANGE PLANNING, JUDICIAL CONFERENCE OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FED. COURTS, Rec. 4a, at 22-30 (1995).

45. *Juvenile No. 1*, 118 F.3d at 306 (citing S. REP. NO. 98-225, at 389 (1984)).

46. *Impounded (Juvenile R.G.)*, 117 F.3d at 736 n.8 (citing S. REP. NO. 98-225, at 389 (1984)).

47. United States v. Juvenile No. 1, 118 F.3d 298, 306-07 (5th Cir. 1997) (citing S. REP. NO. 97-307, at 57 (1981)). The factors that prosecutors should consider in determining the existence of a "sufficient federal interest" include:

> [T]he gravity of the Federal offense as compared to the State or local offense, the relationship of the offense to another Federal offense committed by the accused, and the relative likelihood of prompt and effective investigation and prosecution by Federal, State or local authorities in light of available resources and the nature and scope of the criminal activity involved.

Id. at 307.

The Fifth Circuit believed, as does the Eleventh Circuit, that the report highlights Congress's intent to immunize the Attorney General's "substantial federal interest" decision from judicial review.[48] This reasoning is deduced from the list of factors in the statute that a court must examine in making an "interest of justice inquiry," as compared to the reference to a different portion of the statute to determine whether a "sufficient federal interest" exists.[49]

In *United States v. I.D.P.*, the Eleventh Circuit addressed many of the same arguments as *United States v. Juvenile No. 1*, but primarily analyzed case precedent in its discussion of judicial reviewability of certifications.[50] Holding that certification decisions are final in the absence of formal error or proof of bad faith, *I.D.P.* first recognized that courts are not always granted the power of judicial review.[51] Unreviewable executive decisions in connection with law enforcement matters are commonplace within our system of government.[52] These instances include a United States Attorney's determination that the public interest requires a witness be compelled to testify,[53] a United States Attorney's certification that a proceeding is against a person thought to have participated in organized crime,[54] and certification by a United States Attorney that interlocutory appeal is not being taken for reasons of delay.[55]

The Eleventh Circuit also discussed *Gutierrez de Martinez v. Lamagno*,[56] a case where the Supreme Court analyzed the question of "who decides" in the context of scope of employment certification under the Westfall Act.[57] Under the Westfall Act, if the Attorney General certifies that a defendant-employee was acting within the scope of her employment, the United States is substituted as a defendant in a civil action,[58] and the case proceeds under the Federal Tort Claims Act.[59] The Supreme Court expressly concluded that certification was subject to judicial review for two reasons, the first being that the Attorney General herself

48. *Id.* at 307. *See also* United States v. I.D.P., 102 F.3d 507, 512-13 (11th Cir. 1996).

49. *Juvenile No. 1*, 118 F.3d at 303, 305.

50. *I.D.P.*, 102 F.3d at 510-13.

51. *Id.* at 511.

52. *Id.* (holding that certification by Attorney General is not reviewable), *cert. denied*, 423 U.S. 857 (1975). This case was decided prior to the addition of the "substantial federal interest" category.

53. Ullmann v. United States, 350 U.S. 422, 431-34 (1956).

54. United States v. Singleton, 460 F.2d 1148, 1153-55 (2d Cir. 1972), *cert. denied*, 410 U.S. 984 (1973).

55. United States v. Comiskey, 460 F.2d 1293, 1297-98 (7th Cir. 1972).

56. 515 U.S. 417, 427 (1995).

57. United States v. I.D.P., 102 F.3d 507, 513 n.6 (11th Cir. 1996). For the full text of the Westfall Act, see 28 U.S.C. § 2679(d)(1) (1994).

58. *I.D.P.*, 102 F.3d at 513 n.6.

59. *Lamagno*, 515 U.S. at 427.

urged review.[60] Second, when the prosecutor certifies that an employee acted within the scope of her employment, the certification disposes of the controversy.[61] When the United States becomes the defendant, a case may fall under an exception to the government's waiver of immunity.[62] Therefore, a prosecutor has an "incentive" to certify that a federal employee was acting within the scope of her employment because the employee and the United States may both be shielded against liability. The plaintiff, however, is left without a remedy. *I.D.P.* stated that neither of these circumstances exists in a "substantial federal interest" determination.[63]

The Federal Circuit Court for the District of Columbia, following the majority view, declared that review by the judicial branch of such "executive decisions" is a violation of the separation of powers doctrine.[64] The court stated that requiring review "assumes that only judges can discern the meaning of statutes, a view that is at odds with our three-part constitutional structure," for the Constitution mandates that the Executive "take Care that the Laws be faithfully executed."[65] The court added that the Executive is faced with defendants who violate both state and federal laws and has developed expertise to make decisions on whether to prosecute.[66] Why is the Executive less capable of reading, interpreting, and applying statutes than the courts?[67] To the contrary, the court believed that "[t]here is nothing nugatory about congressional efforts to provide guidance to the Executive directly via statutory language."[68]

Finally, the majority claims that their position has congressional support, as both Houses of Congress are currently considering legislation that would amend 18 U.S.C. § 5032 to clarify that "substantial federal interest" certifications are not subject to judicial review.[69] The House of Representatives passed a version of the legislation,[70] and "the Senate is actively deliberating about another version."[71]

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60. *I.D.P.*, 102 F.3d at 513 n.6.

61. *Id.*

62. Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 427 (1955).

63. United States v. I.D.P., 102 F.3d 507, 513 n.6 (11th Cir. 1996). The court explained that, unlike *Lamagno*, the Attorney General did not urge review and had no incentive to certify. *Id.* Furthermore, the decision to certify was not determinative of a transfer decision, and therefore did not dispose of the juvenile's appeal. *Id.*

64. *In re* Sealed Case, 131 F.3d 208, 215 (D.C. Cir. 1997).

65. *Id.* (citing U.S. CONST. art. II, § 3).

66. *Id.*

67. *Id.*

68. *Id.*

69. Impounded (Juvenile R.G.), 117 F.3d 730, 733 n.2 (3d Cir. 1997).

70. *Id. See also* Juvenile Crime Control Act of 1997, H.R. 3, 105th Cong. § 101 (1997).

71. *Juvenile R.G.*, 117 F.3d at 733 n.2. *See also* Violent and Repeat Juvenile Offender Act of 1997, S. 10, 105th Cong. § 102(a) (1997).

C. *The Minority Position and Analysis—A Substantial Federal Interest Certification is Subject to Judicial Review*

A slight minority of courts take a different approach and conclude that certification based upon a "substantial federal interest" is subject to judicial review.[72] These courts rely heavily upon the maxim that lack of a specific provision in regard to judicial review of executive action is in and of itself no bar to review.[73] In fact, there is a "strong presumption that Congress intends judicial review."[74] This presumption is rebutted only by evidence revealing that Congress intended to preclude judicial review.[75]

According to the Supreme Court in *Gutierrez de Martinez v. Lamagno*, the presumption of judicial review is difficult to rebut because courts must accept that Congress's silence authorizes executive decisions "without any judicial check."[76] Furthermore, *Lamagno* believed that denial of the power to review "cast[s] Article III judges in the role of petty functionaries,"[77] assigned to only "rubber-stamp work."[78]

The courts in the minority, such as the Fourth Circuit, also rely on the history of the 1984 amendments to Section 5032 to support their holdings. Before these amendments, Section 5032 "embodied a clear preference" for state courts to handle juvenile matters, emphasizing rehabilitative rather than punitive measures.[79] Federal courts would get involved only when the state either would not, could not, or should not handle the case, from a juvenile's perspective.[80]

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72. *See* United States v. Juvenile Male #1, 86 F.3d 1314 (4th Cir. 1996); United States v. Juvenile Male, 923 F.2d 614 (8th Cir. 1991); United States v. Male Juvenile, 844 F. Supp. 280 (E.D. Va. 1994).

73. *See Juvenile Male #1*, 86 F.3d at 1317; *Juvenile Male*, 923 F.2d at 617; *Male Juvenile*, 844 F. Supp. at 281.

74. *Juvenile Male #1*, 86 F.3d at 1319-20 (citations omitted). *See also* Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 670 (1986) (holding that Congress did not provide the Secretary of Health and Human Services with absolute non-reviewable authority to promulgate Medicare distribution regulations); Abbott Labs. v. Gardner, 387 U.S. 136, 140 (1967).

75. *See* Gutierrez de Martinez v. Lamagno, 515 U.S. 417, 424 (1995) (holding that Congress did not provide the Secretary of Health, Education and Welfare with non-reviewable authority to promulgate prescription drug labeling regulations) (citing *Abbott Labs.*, 387 U.S. at 140).

76. *Lamagno*, 515 U.S. at 426.

77. *Id.*

78. *Id.* at 429.

79. United States v. Juvenile Male #1, 86 F.3d 1314, 1320 (4th Cir. 1996).

80. *Id.*

The addition of the "substantial federal interest" prong, however, expanded the possibility of invoking federal jurisdiction.[81]

Nonetheless, the minority circuit courts emphasize that the focus of Section 5032 remains rehabilitative and embodies a preference for treatment at the state level.[82] To support this contention, *Juvenile Male No.1* looked to Senate Report 98-225, which states in part that "[t]he essential concepts of the [1974 Act] are that juvenile delinquency matters should generally [be] handled by the States and that criminal prosecution of juveniles offenders should be reserved for only those cases involving particularly serious conduct by older juvenile. The Committee continues to endorse these concepts . . . ."[83] Therefore, judicial review is necessary to ensure that the traditional role of federalism is properly preserved in the area of juvenile crime.[84]

By requiring certification by the Attorney General, minority courts also believe that Congress stressed the importance of *careful* consideration with respect to the decision to place a juvenile under federal jurisdiction.[85] In a concurring opinion in *Impounded (Juvenile R.G.)*, Judge Weis contrasts this to a federal prosecutor's decision to indict an adult who also violated state law.[86] In such a situation, the prosecutor enjoys essentially unfettered discretion.[87] Judge Weis asserted that Congress inserted the certification requirement with respect to juvenile prosecutions to remind prosecutors of the important state interest in prosecuting juveniles in state courts.[88]

Judge Weis also contrasted the experience and expertise of federal judges to that of federal prosecutors. He explained that because federal courts carry diverse caseloads, they are more familiar with the "complexities of federalism."[89] Therefore, Congress necessarily would grant the judiciary the final word in cases involving federalism concerns, rather than leaving the final decision to local United States Attorneys. To prove the validity of this assumption, Judge Weis referred to a predecessor bill[90] that contained a provision barring judicial review of certifications.[91] This provision was

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81. *Id.*

82. *Id.*

83. *Id.* at 1320 n.9 (quoting S. REP. NO. 98-225, at 386 (1984)).

84. *Id.* at 1321. *See also* Impounded (Juvenile R.G.), 117 F.3d 730, 739 (3d Cir. 1997) (Weis, J., concurring) (stating that judicial review is necessary to insure that principles of federalism are not "jeopardized by overzealous federal prosecution").

85. *Juvenile R.G.*, 117 F.3d at 740 (Weis, J., concurring).

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *See* Criminal Code Reform Act of 1981, S. 1630, 97th Cong. (1981); *see also* S. REP. NO. 97-307 (1981).

91. Impounded (Juvenile R.G.), 117 F.3d 730, 741 (3d Cir. 1997) (Weis, J., concurring).

removed, revealing congressional intent to reject the proposal to prohibit judicial review of certification decisions.[92]

The minority of courts that uphold judicial review of certification decisions believe that federal courts have the duty and expertise to review such determinations. These courts rely not only on the presumption that Congress intends judicial review, but also on legislative history and precedent.

IV. INSTANT DECISION

The Eighth Circuit Court of Appeals determined that the sufficiency of the United States Attorney's certification pursuant to 18 U.S.C. § 5032 is not subject to judicial oversight because of the discretionary nature of the Attorney's decision.[93] Although the court recognized that executive actions are presumptively subject to judicial review, the court implied that executive decisions regarding whether to prosecute overcome the presumption and rest entirely within prosecutor discretion.[94]

The Eighth Circuit also examined the "text and structure" of Section 5032 to determine Congress's intent regarding judicial review of the Attorney's certification that federal prosecution serves a substantial federal interest.[95] The court stated that to determine intent, courts must examine the statute in its entirety as well as other facts "that may illuminate Section 5032's purpose," such as financial incentives for certification, whether a decision to certify is dispositive of the controversy, and whether the statute provides meaningful standards against which to review the Attorney's certification decision.[96]

In analyzing the structure and text of Section 5032, the court signaled a distinction between a United States Attorney's motion to transfer a juvenile to adult court and the Attorney's certification of a substantial federal interest.[97] The motion to transfer is expressly subject to judicial review and the provision contains specific standards for review, whereas the Attorney's decision to certify contains no provision indicating whether judicial review is allowed and no standard against which a court may evaluate the Attorney's decision.[98] The court stated that Congress's decision to allow judicial review of transfers but not of certification of a substantial federal interest is "powerful evidence that judicial review of the latter is barred."[99] Furthermore, Congress's decision to provide

92. *Id.*

93. United States v. Juvenile Male J.A.J., 134 F.3d 905, 906-07 (8th Cir.), *cert. denied*, 118 S. Ct. 2388 (1998).

94. *Id.* at 909.

95. *Id.* at 907.

96. *Id.* at 907.

97. *Id.* at 908.

98. *Id.*

99. *Id.*

standards for judicial review of transfers, but not for substantial federal interest certification decisions, is fatal to the argument for reviewability.[100]

The court further noted that while Congress did not provide standards for courts to use in evaluating the existence of a substantial federal interest, the Department of Justice provided such standards for prosecutors.[101] These standards address when prosecutors should decline to prosecute adult offenders for lack of a substantial federal interest—exactly the type of determination vested in the executive, not the judicial, branch.[102]

The court explained that the Attorney General and the United States Attorneys require broad discretion to enforce federal laws because a statute designates them as the President's delegates.[103] This designation requires that they aid the President in his constitutional responsibility to faithfully execute the laws.[104]

Finally, concurring with Chief Judge Wilkinson, who disagreed with the Fourth Circuit's finding of reviewability, the court foresaw the possibility of interbranch conflict and judicial inefficiency.[105] If certification of a substantial federal interest was subject to judicial review, a district court may not only repudiate the Attorney General's policy determination by subjectively deciding that the case does not merit federal jurisdiction, but may also be required to re-evaluate the government's reasons for invoking federal jurisdiction in potentially every juvenile proceeding in federal court.[106]

V. COMMENT

The decision reached by the Eighth Circuit Court of Appeals is clearly in step with the mainstream judicial response to the issue, but the result is less than satisfying. Like the majority of federal circuit courts, this court relies on the statutory language and nature of the certification decision to hold that certification of a substantial federal interest is not subject to judicial review. However, legislative history and statutory interpretation reveal convincing grounds to permit judicial review of the certification decision.

The Senate Report that accompanies the criminal legislation acknowledges the need to leave criminal prosecution of juveniles to the states, unless the states are incapable of asserting control over the juvenile, or unless the need to assert federal jurisdiction is "based on a finding that the nature of the offense or the

100. *Id.*
101. *Id.* at 908-09.
102. *Id.* at 909.
103. *Id.*
104. *Id.*
105. *Id.* at 909 n.3.
106. *Id.* at 909.

circumstances of the case give rise to special federal concerns."[107] Not only must prosecutors be hesitant to assert federal jurisdiction, but courts must supervise prosecutor certification determinations so that federal jurisdiction is not needlessly or carelessly invoked. If courts fail to review certification decisions, "[e]venhanded administration of criminal justice would suffer whenever the choice between charging a defendant in federal or state court would depend . . . on the relative ambitions of federal and state prosecutors who share dual jurisdiction."[108]

The report lists several examples of offenses that fall under the classification of involving a "substantial federal interest." These offenses include an assault on, or assassination of, a federal official, aircraft hijacking, a kidnapping where state boundaries are crossed, a major espionage or sabotage offense, participation in large-scale drug trafficking, or significant and willful destruction of federal property.[109] Furthermore, the Committee on Long Range Planning of the Judicial Conference of the United States recommends clear standards against which a "substantial federal interest" can be measured.[110] Crimes dissimilar to these offenses cannot concern a "substantial federal

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107. *See* S. REP. NO. 98-225, at 386 (1984); *see also* FEDERAL COURTS STUDY COMM., REPORT OF THE FED. STUDY COMM. 160 (1990) (stating that "[b]oth the principles of federalism and the long term health of the federal judicial system require returning the federal courts to their proper, limited role in dealing with crime").

108. Douglas E. Abrams, *Crime Legislation And the Public Interest: Lessons From Civil RICO*, 50 SMU L. REV. 33, 81 (1996).

109. S. REP. NO. 98-225, at 389 (1984).

110. In its Proposed Long Range Plan, the Judicial Conference Committee recommended:

> Congress should allocate criminal jurisdiction to the federal courts only in relation to the following five types of offenses:
>
> (a) The proscribed activity constitutes an offense against the federal government itself or against its agents, or against interests unquestionably associated with a national government; or Congress has evinced a clear preference for uniform federal control over this activity . . . .
>
> (b) The proscribed activity involves substantial multinational or international aspects. . . .
>
> (c) The proscribed activity, even if focused within a single state, involves a complex commercial or institutional enterprise most effectively prosecuted by use of federal resources or expertise . . . .
>
> (d) The proscribed activity involves serious, high-level or widespread state or local government corruption, thereby tending to undermine public confidence in the effectiveness of local prosecutors and judicial systems to deal with the matter . . ..
>
> (e) The proscribed activity, because it raises highly sensitive issues in the local community, is perceived as being more objectively within the federal system . . . .

COMMITTEE ON LONG RANGE PLANNING, JUDICIAL CONFERENCE OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FED. COURTS, Rec. 4a, at 22-30 (1995).

interest." Despite the majority view that Congress failed to provide the courts with standards against which to evaluate a prosecutor's certification decision, the examples in the Senate Report, as well as those recommended by the Committee, serve as "helpful guideposts" to which the courts may refer in reviewing certification determinations.[111]

Furthermore, there is no indication that Congress intended these guideposts to instruct prosecutors' decisions, but not the courts'.[112] To the contrary, the legislative history explicitly states that "the Federal government will continue to defer to State authorities for less serious juvenile offenses," thus indicating an intent to limit the federal prosecutor's authority in the juvenile delinquency setting.[113] This is an area in which Congress reasonably could expect the courts' perspective to be more objective than that of the United States Attorneys.[114]

In addition, the majority of circuits deny review of the certification process based on the reasoning that courts are ill-suited to determine what may or may not constitute a "substantial federal interest."[115] These courts imply that United States Attorneys are better able to apply Section 5032 despite the absence of standards, but that courts are unable to cope with the task of review in similar circumstances.[116]

VI. CONCLUSION

One of Congress's recent responses to the rise in violent juvenile crime is embodied in the 1984 legislation that imposes federal jurisdiction upon juveniles who commit serious violent or drug related crimes if the United States Attorney certifies that the case involves "a substantial federal interest." Although the majority of circuit courts hold that United States Attorneys should make the final decision based upon the language, structure, and history of 18 U.S.C. § 5032, ultimately these factors weigh in favor of the minority position-that certification of a substantial federal interest is subject to judicial review. Until the United States Supreme Court resolves the question, however, the external and internal division among the circuits will continue.

ALICIA K. EMBLEY

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111. Impounded (Juvenile R.G.), 117 F.3d 730, 741 (3d Cir. 1997) (Weis, J., concurring).

112. *Id.*

113. S. REP. NO. 98-225, at 386 (1984).

114. *Impounded (R.G.)*, 117 F.3d at 741 (Weis, J., concurring).

115. United States v. Juvenile No. 1, 118 F.3d 298, 306 (5th. Cir. 1997) (citing Wayte v. United States, 470 U.S. 598, 607 (1985)).

116. Impounded (Juvenile R.G.), 117 F.3d 730, 741 (3d Cir. 1997) (Weis, J., concurring).