No. 12-

In The
Supreme Court of the United States

LINCOLN D. CHAFEE, IN HIS CAPACITY AS GOVERNOR OF THE STATE OF RHODE ISLAND,
Petitioner,

v.

UNITED STATES OF AMERICA, *ET AL.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Twice this Court has noted, but not decided, the question whether, as a matter of constitutional federalism, the United States may use a writ of habeas corpus *ad prosequendum* to seize a state prisoner out of state custody while his state sentence is still being served. *See United States v. Mauro*, 436 U.S. 340, 363 & n.28 (1978); *Carbo v. United States*, 364 U.S. 611, 621 n.20 (1961). That open question has produced a split in the circuits and a sharp division in the en banc First Circuit here over the proper coordinated operation of two federal statutes, the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, and the habeas corpus statute, 28 U.S.C. § 2241. The question presented is:

Whether, after initiating a custody request for a state prisoner under the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, the federal government may nullify the State's exercise of its statutory right to disallow that custody request by resort to a writ of habeas corpus *ad prosequendum*.

PARTIES TO THE PROCEEDING

Petitioner Lincoln D. Chafee, in his capacity as Governor of the State of Rhode Island, was the intervenor-appellant-petitioner in the court of appeals.

The United States of America was the plaintiff in the district court and appellee-respondent in the court of appeals.

Jason Pleau was the defendant in the district court and appellant-petitioner in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lincoln D. Chafee, in his capacity as Governor of the State of Rhode Island, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The en banc opinion of the court of appeals (App., *infra*, 1a-47a) is reported at 680 F.3d 1 (2012). The vacated panel decision of the court of appeals (App.,

infra, 48a-82a) is no longer reported. The district court decision (App., *infra*, 83a-91a) is unreported, but is available at 2011 WL 2605301.

JURISDICTION

The en banc court of appeals entered its judgment on May 7, 2012. App., *infra*, 1a. On July 30, 2012, Justice Breyer extended the time for filing a petition for a writ of certiorari to and including August 21, 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are reproduced at App., *infra*, 104a-120a.

STATEMENT OF THE CASE

This case involves the interplay of two federal statutes and the circuit conflict that has arisen from efforts to reconcile their overlapping operation. More specifically, the courts of appeals have offered contradictory answers to a question previously reserved by this Court: whether, notwithstanding its statutory obligations under the Interstate Agreement on Detainers Act ("Detainers Act"), 18 U.S.C. app. 2, the United States may use the specialized writ of habeas corpus *ad prosequendum*, 28 U.S.C. § 2241(c)(5), to force a State to surrender control over a state prisoner while that prisoner is still serving a lawfully imposed state sentence. That question implicates not only the operation of two important federal statutes invoked thousands of times annually,

but also foundational principles of constitutional federalism.

In *United States v. Mauro*, 436 U.S. 340 (1978), this Court ruled that the Detainers Act "preserve[d] previously existing rights of the sending States" to refuse to make a prisoner available in response to a custody request sought through a writ of habeas corpus *ad prosequendum*, *id.* at 363 & n.28, but left open what the scope of that pre-Detainers Act right was, *id.* This Court similarly left open the question of the States' ability to resist a custody request in the form of an *ad prosequendum* writ in *Carbo v. United States*, 364 U.S. 611 (1961), *id.* at 621 n.20. At the time of *Carbo*, the courts of appeals were uniform in holding that, as a matter of federalism, such inter-sovereign requests for the custody of an individual already serving a state sentence must be addressed as a matter of comity.

This Court's decision in *Mauro* and, in particular, the continued lack of definitive resolution by this Court of the States' ability to decline federal requests made through *ad prosequendum* writs has led to a sharp division in circuit authority. As exemplified by the en banc majority's and dissent's diametrically opposed readings of the same language in *Mauro*, the courts of appeals have issued contradictory holdings concerning the ability of the United States to use the *ad prosequendum* writ to override a State's disallowance of a request for custody—a right that is textually guaranteed to the States by the Detainers Act. The majority here, along with the Third and Fourth Circuits, have held that *Mauro* actually answered the very question it reserved. In those

circuits, the United States can use the writ of habeas corpus *ad prosequendum* to override a custodial State's exercise of its statutory right to deny custody to a requesting State. The dissent below agreed with the Second Circuit, however, that *Mauro* left that question open, and further recognized that nothing in the text of the Detainers Act or in the constitutional structure of dual sovereignty permits the United States to disregard its statutory obligations or to nullify the States' long-recognized right—a right expressly preserved in the interstate compact the United States joined—by resort to an *ad prosequendum* writ.

Only this Court can resolve that circuit conflict over what *Mauro* means and can definitively determine the law governing States' obligations to accede to *ad prosequendum* writs used by the United States. This Court's intervention is critical to bring uniformity to the meaning of an interstate compact to which 48 States and the United States are parties and which superintends the operation of thousands of detainers annually.

1. The Detainers Act is a federal statute codifying an interstate compact, the Interstate Agreement on Detainers ("Compact"), that "prescribes procedures by which a member State may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in

another jurisdiction." *Mauro*, 436 U.S. at 343.[1] A detainer is "a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." *Alabama v. Bozeman*, 533 U.S. 146, 148 (2001).

Prior to the Compact, the States employed varied, ad hoc, and unpredictable systems for implementing detainers that had "produce[d] uncertainties which obstruct[ed] programs of prisoner treatment and rehabilitation." 18 U.S.C. app. 2 § 2, art. I. The Compact substituted in their place a uniform, "simple and efficient means of obtaining prisoners from other States." *Mauro*, 436 U.S. at 355 n.23; *see* 18 U.S.C. app. 2 § 2, art. I ("[T]he purpose of this agreement [is] to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers."). The Compact also reduced detainers' interference with "'proper sentencing, as well as proper correctional treatment'" and rehabilitation programs in the custodial State. *Mauro*, 436 U.S. at 360.

In 1970, Congress enacted the Detainers Act, 18 U.S.C. app. 2, which joined the United States as a full and equal party to the Compact. Recognizing the many advantages arising from "'this vitally needed system of simplified and uniform rules for the disposition of pending criminal charges and the

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[1] The only two States not to have joined are Louisiana and Mississippi.

exchange of prisoners'" between sovereign jurisdictions, *Mauro*, 436 U.S. at 355 (quoting 116 Cong. Rec. 38840 (1970) (statement of Sen. Hruska)), Congress defined the United States as a party "State" to the Compact. 18 U.S.C. app. 2 § 2, art. II(a) ("'State' shall mean a State of the United States [and] the United States of America[.]"). In so doing, Congress "enact[ed] the Agreement into law in its entirety, and it placed no qualification upon the membership of the United States." *Mauro*, 436 U.S. at 356.

The Detainers Act's provisions are triggered "when a 'detainer' is filed with the custodial (sending) State by another State (receiving) having untried charges pending against the prisoner." *Mauro*, 436 U.S. at 343. Upon lodging of a detainer, Article IV of the Act generally "gives a State the right to obtain a prisoner for purposes of trial," *Bozeman*, 533 U.S. at 151, through the submission of a "written request for temporary custody" to the State in which the prisoner is incarcerated. The Act, however, expressly permits the Governor of the custodial State 30 days in which to "disapprove the request for temporary custody or availability." 18 U.S.C. app. 2 § 2, art. IV(a).

If the sending State agrees to surrender custody of its prisoner, the receiving State must commit to "try the prisoner within 120 days of his arrival" and not to "return the prisoner to his 'original place of imprisonment' prior to that trial." *Bozeman*, 533 U.S. at 151. While the prisoner is held by the receiving State, he is simultaneously "deemed to remain in the custody of and subject to the jurisdiction of the sending State." 18 U.S.C. app. 2 § 2, art. V(g).

Article VII of the Detainers Act provides for centralization of information regarding the processing of detainers within each State, facilitating information exchange and expediting administration of transfer requests. 18 U.S.C. app. 2 § 2, art. VII.

The rights and guarantees embodied in the Detainers Act's "cooperative procedures" are designed to minimize the disruption that a receiving State's detainer and trial processes cause to the custodial State's execution of its own criminal sentence and rehabilitative efforts. 18 U.S.C. app. 2 § 2, art. I. In joining the Compact, Congress directed federal officials to "cooperate" with the States "in enforcing the agreement and effectuating its purpose." *Id.* § 5.

2. Pursuant to 28 U.S.C. § 2241, federal courts are authorized to issue writs of habeas corpus, including not only the "Great Writ *** for an inquiry into the cause of restraint," but also lesser writs like the writ of habeas corpus *ad prosequendum*. *Carbo*, 364 U.S. at 615. The *ad prosequendum* writ is issued when it "is necessary to bring [a prisoner] into court *** for trial." 28 U.S.C. § 2241(c)(5). Such writs contrast with the now-simplified detainer process under the Detainers Act. A detainer may be issued by a prosecutor without resort to court order, and it can be used to place a "hold" on a prisoner without, as is the case with a writ, demanding an immediate transfer of custody. *Mauro*, 436 U.S. at 358.

Once the United States activates the Detainers Act by lodging a detainer, a subsequent writ of habeas corpus *ad prosequendum* is deemed a

"'written request for temporary custody'" subject to the provisions of the Act. *Mauro*, 436 U.S. at 362.

3. In September 2010, the State of Rhode Island sentenced Jason Pleau to 18 years' imprisonment for probation and parole violations related to the robbery and murder in Rhode Island of David Main, which occurred in a parking lot outside of a bank. App., *infra*, 3a-4a, 50a-51a. Rhode Island also charged Pleau with state murder and robbery counts for that same crime, to which he offered to plead guilty and accept a State sentence of life in prison without parole—Rhode Island's harshest penalty. *Id.* at 17a-18a n.9; *see* R.I. GEN. LAWS § 11-23-2 (2010).

In November 2010, the federal government lodged a detainer against Pleau with Rhode Island prison officials "[p]ursuant to the provisions of the Interstate Agreement on Detainers Act[.]" App., *infra*, 122a. The next month, the federal government indicted Pleau for charges arising from the same crime for which state murder and robbery charges were already pending. Specifically, Pleau was federally charged with "robbery affecting interstate commerce," use of a firearm during a crime of violence, death resulting, and related charges, for having shot an individual "who was on his way to [a] bank." *Id.* at 50a-51a.

The United States then presented a written request to Rhode Island prison officials for a temporary transfer of custody over Pleau under Article IV of the Detainers Act. App., *infra*, 128a-131a. Because the United States indicated that it was contemplating the death penalty for Pleau,

Governor Chafee exercised Rhode Island's statutory right under Article IV(a) of the Detainers Act to disapprove the transfer of custody, based on the State's longstanding opposition to the death penalty. *Id.* at 132a-133a.

4. To override Rhode Island's exercise of its statutory right under the Detainers Act, the United States petitioned for a writ of habeas corpus *ad prosequendum* in the United States District Court for the District of Rhode Island. The United States "concede[d] in its petition," and the district court agreed, that the Detainers Act would continue to govern the United States' exercise of temporary custody over Pleau. App., *infra*, 89a & n.4. The district court nevertheless ordered Rhode Island to surrender Pleau to the United States in contravention of the Governor's Article IV(a) decision. *Id.* at 90a-91a.

5. Pleau both appealed and petitioned the Court of Appeals for a writ of prohibition to bar enforcement of the *ad prosequendum* writ. App., *infra*, 5a.

The court of appeals originally granted a stay of the writ of habeas corpus *ad prosequendum* and allowed the Governor to intervene as an appellant-petitioner. App., *infra*, 18a.

The panel subsequently both reversed the district court and granted a writ of prohibition. App., *infra*, 72a-74a. Recognizing at the outset that the case raised questions "'of great public importance, and [was] likely to recur,'" *id.* at 56a, *see id.* at 60a-61a,

the court held that, "once the federal government has put the gears of the [Detainers Act] into motion, it is bound by the [Act's] terms, including its express reservation of a right of refusal to the governor of the sending state," *id.* at 50a.

The panel noted that "[i]t is uncontroversial that a governor may block a prisoner's transfer to a receiving state other than the United States" under Article IV(a) of the Detainers Act, and that the Act applies Article IV(a) "with equal force to the United States." App., *infra*, 71a. Accordingly, "the United States certainly cannot base its claim for custody of Pleau on a blatant attempt to sidestep the [Detainers Act]—a federal law that the United States itself invoked when it filed a detainer with the state of Rhode Island." *Id.* at 72a. "Holding the United States to an agreement that was accepted by Congress" and that the Executive Branch chose to "invoke[] *** to gain custody of Pleau," the court concluded, "neither violates the Supremacy Clause nor upsets the post-Civil War balance of power between the states and the federal government." *Id.* at 73a n.9. Judge Boudin dissented. *Id.* at 75a-82a.

6. a. The United States petitioned for rehearing en banc, arguing that the Detainers Act's grant of a right of refusal to custodial States was an "empty shell" with no operative force. *See* United States' Pet. for Panel Rehearing and Rehearing En Banc, at 7, *United States v. Pleau*, No. 11-1775 (1st Cir. Nov. 9, 2011) (U.S. Reh'g Pet.). A sharply divided en banc court of appeals reversed. App., *infra*, 1a-47a.

By a vote of 3 to 2, a majority held that the United States, after choosing to invoke the Detainers Act's provisions and continuing to seek temporary custody within its framework, could nevertheless employ the *ad prosequendum* writ to bypass the custodial State's exercise of its own rights under the Detainers Act. App., *infra*, at 9a-14a. In so holding, the majority acknowledged this Court's holding in *Mauro* that, once the United States invokes the Detainers Act, it cannot use the *ad prosequendum* writ to circumvent the Act's time limits for trial. *Id.* at 8a (citing *Mauro*, 436 U.S. at 361-364). The majority nonetheless read *Mauro* as rejecting any limits on the federal government's "authority to compel a state to surrender a prisoner" pursuant to an *ad prosequendum* writ. *Id.* at 9a. The majority reasoned that, under the Supremacy Clause, the habeas statute trumps the State's exercise of its rights under another federal statute, the Detainers Act. *Id.* at 10a-12a. The majority deemed it "patent" that a State lacked the authority to refuse an *ad prosequendum* writ, even if that right is itself codified in federal law, because the "Supremacy Clause operates in only one direction." *Id.* at 10a, 11a. It recognized, however, that the Second Circuit had come to the opposite conclusion on this same question. *Id.* at 12a.

b. Judges Torruella and Thompson dissented. They explained that the express terms of federal law empower the Governor to refuse a "'written request for temporary custody or availability,'" and that *Mauro* held that an *ad prosequendum* writ issued after the United States files a detainer constitutes just such a "'written request.'" App., *infra*, 15a-16a.

In the dissent's view, the majority's invocation of the Supremacy Clause was misplaced because Rhode Island exercised its right to disapprove custody under Article IV(a) of the Detainers Act, which "is a *federal statute*, just like the habeas statute is a *federal statute*," and thus "the issue here is how two *federal statutes* interact, a determination in which the Supremacy Clause plays no part." *Id.* at 21a.

The dissent further emphasized *Mauro*'s holding that the United States is "*fully* bound by *all* the provisions of the" Detainers Act. App., *infra*, at 30a. The dissent pointed out that *Mauro* did not in any way reject "the possibility that a state could disobey an *ad prosequendum* writ that was treated as a request for custody." *Id.* at 35a-36a. *Mauro* merely rejected the United States' argument that treating an *ad prosequendum* writ as a written request under the Agreement would present a Supremacy Clause problem. *Id.* at 36a. In so doing, the dissent noted, this Court had expressly reserved the question of whether and to what extent States could disapprove a custody request in the form of an *ad prosequendum* writ, since the Detainers Act preserved and retained whatever pre-Act authority the States had in that regard. *Id.* at 35a-37a (citing *Mauro*, 436 U.S. at 363 & n.28).

The dissent noted, moreover, that the majority's decision conflicted with the law of the Second Circuit, which was "clearly favorable to Governor Chafee's position." App., *infra,* at 39a-40a (citing *United States v. Scheer*, 729 F.2d 164, 170 (2d Cir. 1984)). Finally, the dissent concluded that the "consequences of allowing the United States to avoid its obligations

under a validly-enacted compact are surely graver than the consequences of allowing Rhode Island's justice system to prosecute Pleau." *Id.* at 39a.

7. The en banc court of appeals divided by the same 3 to 2 vote in denying the Governor's and Pleau's joint request to stay issuance of the mandate, a request also denied by this Court. On May 30, 2012, the United States took custody of Pleau and is holding him pursuant to the continued operation of the *ad prosequendum* writ. On June 18, 2012, the United States filed a Notice of Intention to Seek the Death Penalty against Pleau. App., *infra*, 140a-147a.

REASONS FOR GRANTING THE WRIT

The federal government wants to have its cake and eat it too, enjoying all the benefits of the Detainers Act's expedited and harmonized processes for detainers, while invoking the *ad prosequendum* writ to avoid its obligations and responsibilities codified in federal law. The circuits are as split as the en banc first Circuit was in its decision here over whether *Mauro* and the Supremacy Clause allow the federal government to nullify a sovereign State's exercise of rights that Congress has textually preserved under federal law.

It is an odd conception of federal supremacy that would license the United States to use one federal statute (the habeas corpus law) to escape expressly binding provisions of another federal statute (the Detainers Act). But if that is what this interstate compact now means—and if the Supremacy Clause means the United States never has the same

contractual obligation to keep its word as the States do—then Governor Chafee and Rhode Island, along with the Governors of the 47 other State signatories to the Compact, need to know that now. If the United States is not the equal partner that Congress promised it would be, then the States will need to adjust their compact and contractual commitments accordingly. *See* Br. of *Amici Curiae* Nat'l Governors Assoc. and Council of State Gov'ts in Support of Intervenor Lincoln D. Chafee Seeking Reversal of the District Court's Decision, *United States v. Pleau*, No. 11-1775 (1st Cir. Feb. 16, 2012). The current regime, in which the meaning and operation of the Detainers Act and the habeas statute differ from State to State and circuit to circuit, is untenable. Equally unpalatable is the Executive Branch's and en banc majority's complete disregard of the States' statutory, Compact, and historic rights with respect to prisoners in state custody serving properly imposed state criminal sentences—a disregard that is wholly incompatible with the Constitution's federalist system of *dual* sovereignty.

I. THE EN BANC COURT'S DECISION TREADS HEAVILY ON BASIC PRINCIPLES OF FEDERALISM.

As a result of their contradictory readings of *Mauro*, and their sharply opposed understandings of the intersected operation of two federal statutes, the courts of appeals have produced conflicting rules of law governing the role of *ad prosequendum* writs under the Detainers Act. There can be only one rule for how post-detainer writs of habeas corpus *ad*

prosequendum are treated under federal law. And only this Court can settle that question.

But before addressing that inconsonance in the law, it is worth taking stock at the outset of what exactly the United States is doing here, now with the blessing of the court of appeals, and how the United States' and court's position stands principles of constitutional federalism on their head. There is, after all, no dispute that the plain text of a federal statute that Congress made binding on the United States authorizes the Governors of signatory States to "disapprove the request for temporary custody" submitted under the Detainers Act. 18 U.S.C. app. 2 § 2, art. IV(a).

Indeed, the United States has never disputed that *it* has the power under the Detainers Act to do exactly what Governor Chafee did here and to deny States' requests for custody under this same provision. *See* 18 U.S.C. app. 2 § 2, art. IX, § 3 (defining the U.S. Attorney General as the "Governor" for purposes of the United States' role under the Compact).

Nor does the United States dispute that Article IV(a) means exactly what it says and thus Governors "may disapprove" custody requests by every other signatory State to the compact, besides the federal government. 18 U.S.C. app. 2 § 2, art. IV(a).

Nonetheless, the en banc First Circuit adopted the United States' view that the Supremacy Clause gives it a "one way" ticket out of that express contractual agreement with the States, App., *infra*, 11a, even

though Congress has codified that commitment in federal law. Thus, the United States, as a latecomer to this Compact—and having joined without any qualification on Article IV(a)—nonetheless insists that something in the Supremacy Clause allows the Executive Branch to override Congress's judgment and to pop in and out of adherence to the law as it sees fit, taking all the quid and avoiding all the quo of an inter-sovereign agreement.

The Supremacy Clause has never meant any such thing. And it would turn federalism principles inside out to read that Clause as licensing the Executive Branch to break Congress's word to the States, or as speaking in any way to how the overlapping operation of two federal statutes should be resolved. Forty-eight States—including Rhode Island, who joined the Compact in 1974, after the United States had already signed on in full to the Detainers Act, *see* R.I. GEN. LAWS § 13-13-1 *et seq.* (2010)—entered into the Compact on the ground that its text meant exactly what it said, and that the United States was the equal partner that Congress said it would be.

The 48 States have now been told by three circuits that the United States always has the upper hand; that Congress's codification of its promises in the United States Code is illusory; that the protections statutorily afforded to States are just an "empty shell," *see* U.S. Reh'g Pet., *supra*, at 7; and that the Constitution allows the United States' Executive Branch to pick and choose those parts of the Detainers Act with which it will and will not comply, heedless of the countervailing *statutory* rights of the States. Except, that is, in the Second Circuit, which

has adopted the opposite position from the First Circuit in enforcing the Detainers Act and its gubernatorial disallowance provision. *See United States v. Scheer*, 729 F.2d 164, 170 (2d Cir. 1984); *see also* App., *infra*, 12a, 39a-43a (majority and dissenting judges note the Second Circuit's contrary decision).

If the rules of federalism are to change that dramatically, then the States are entitled to this Court's definitive judgment on that question, so that they will have much needed certainty on the rules of contracting with the United States and will know when rights given to States under federal statutes can be unilaterally nullified by the efforts of the Executive Branch. That, at a minimum, is the type of "important [question] of federalism and comity" that warrants resolution by this Court. *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523 (1986).

II. THE EN BANC MAJORITY WIDENED A SPLIT BETWEEN THE CIRCUITS CONCERNING A QUESTION THAT THIS COURT HAS TWICE LEFT OPEN.

In presuming that the Supremacy Clause permits the federal government to override a State's exercise of its federal statutory rights under the Detainers Act by resorting to an *ad prosequendum* writ, the First Circuit has answered (wrongly) a question twice left unresolved by this Court, and has done so in conflict with the decision of another court of appeals on the same question. The circuits' division on the rules of law governing *ad prosequendum* writs, moreover, is

rooted in their equally conflicting readings of this Court's decision in *Mauro*. Given the interests at stake, the time has come for this Court to answer that open question, to clarify *Mauro*'s meaning, and to harmonize the law for the 48 States that are party to the interstate compact codified by the Detainers Act.

1. Twice this Court has reserved the question of whether a State can decline a custody demand by the United States when made through a writ of habeas corpus *ad prosequendum*.

In *Mauro,* a case arising under the Detainers Act, this Court carefully reserved the question of whether a federal writ of habeas corpus *ad prosequendum* could be used to compel production of a State prisoner. *Mauro* held that, if the United States first triggers the Act by filing a detainer under its provisions, the subsequent use of an *ad prosequendum* writ will be deemed a "'written request for temporary custody' within the meaning of Art. IV of the Agreement." 436 U.S. at 361. "Once the Federal Government lodges a detainer against a prisoner with state prison officials, the Agreement by its express terms becomes applicable and the United States must comply with its provisions." *Id.* at 361-362. To rule otherwise, the Court concluded, "clearly would permit the United States to circumvent its obligations under the Agreement." *Id.* at 362.

In so holding, this Court was "unimpressed" by the United States' argument that treating *ad prosequendum* writs as requests for custody under the Detainers Act would violate the Supremacy

Clause because it would allow Governors, under Article IV(a), to refuse to obey such writs. *Mauro*, 436 U.S. at 363. This Court responded that Article IV(a) simply "preserve[d] previously existing rights of the sending States." *Id.* at 363; *see id.* at 363 n.28 (citing legislative history that the provision *"retained"* or *"preserved"* a "Governor's right to refuse to make the prisoner available []on public policy grounds[]").

The Court then observed that, "*[i]f* a State has never had authority to dishonor an *ad prosequendum* writ issued by a federal court, then [Article IV(a)] could not be read as providing such authority." *Mauro*, 436 U.S. at 363 (initial emphasis added). The Court did not, however, opine further on the correct answer to that "if" question. The Court thus left open, for the second time, the question of what sovereign authority, if any, the States possessed to protect their right to exclusive custody of their own prisoners. *See Carbo*, 364 U.S. at 621 n.20 (recognizing and declining to answer the question of what effect a federal *ad prosequendum* writ would have "absent [State] cooperation," in a case arising prior to the Detainers Act).[2]

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[2] This portion of the *Mauro* Court's ruling arose in deciding the consolidated case, *United States v. Ford,* No. 77-52. In the portion of the opinion dealing with defendant Mauro, the Court held that the federal government's freestanding use of an *ad prosequendum* writ did not trigger any of the Detainers Act's provisions. *Mauro*, 436 U.S. at 357-361.

2. *Mauro*'s double-negative and conditional phrasing of this unanswered question has generated substantial doctrinal confusion and contradictory rulings among the circuits both about the scope of *Mauro*'s holding and the proper resolution of its unanswered question.

The en banc majority in this case ignored *Mauro*'s conditional "if" and declared "patent" the United States' plenary authority to force a State to surrender custody of a prisoner serving a state sentence. App., *infra*, at 10a. In so ruling, the First Circuit expanded a circuit split, joining the Third and Fourth Circuits in holding that a federal *ad prosequendum* writ obtained by the United States automatically vetoes a Compact State's right to choose to retain custody of its own prisoner, the plain language of the Detainers Act notwithstanding.

In *United States v. Bryant*, the Fourth Circuit held that "an individual state *** does not have authority and is not empowered by the Act to reject a [post-detainer] federal writ of habeas corpus ad prosequendum that serves as" a written request for custody. 612 F.2d 799, 802 (4th Cir. 1979) (citing *Mauro*, 436 U.S. at 363), *cert. denied*, 446 U.S. 919 (1980). In the Fourth Circuit's view, the Detainers Act's "thirty-day period *** does not apply to federal writs of habeas corpus ad prosequendum that follow[] detainers," 612 F.3d at 802, and on that basis, the court found no error in a prisoner transfer for indictment made prior to the close of Article IV(a)'s 30-day window for a Governor's decision, *id*.

The Third Circuit likewise has rendered Article IV(a)'s provision for gubernatorial denial of a custodial transfer request irrelevant by ruling that "the Governor of Ohio had no authority to refuse the request by the United States for custody of Graham." *United States v. Graham*, 622 F.2d 57, 59 (3d Cir.), *cert. denied*, 449 U.S. 904 (1980). The Third Circuit based its ruling on what it deemed to be a "clear statement by the Supreme Court [in *Mauro*] that, in enacting Article IV(a), Congress did not intend to confer on state governors the power to disobey [post-detainer] writs issued by federal courts as 'written requests for custody' under the Act." *Id.*; *accord Trafny v. United States*, 311 F. App'x 92, 96 (10th Cir. 2009) (stating, based on *Mauro*, that Article IV "did not expand the authority of a sending state to dishonor [a post-detainer] *ad prosequendum* writ issued by a federal court," and concluding that States "never had such authority" because the Supremacy Clause subordinated the governor's right to refuse transfer to the federal habeas statute, which it viewed as the "pertinent United States law").

In contrast, the First Circuit dissent, together with the Second Circuit, read *Mauro* as holding exactly the opposite, establishing that any post-detainer *ad prosequendum* writ is deemed a "written request" under the Detainers Act, and therefore subject to all of its provisions, including Article IV(a)'s preservation of the States' historic ability to decline such a surrender of custody. In *United States v. Scheer*, 729 F.2d 164 (2d Cir. 1984), the federal government lodged a detainer with California officials, but then obtained custody over the defendant through a writ of habeas corpus *ad*

prosequendum, id. at 165. The defendant sought dismissal of his federal indictment because, *inter alia*, he was transferred before expiration of Article IV(a)'s 30-day window for petitioning the Governor to disapprove the transfer. *Id.* at 170. In opposition, the United States advanced the precise position endorsed by the First Circuit majority, and the Third and Fourth Circuits: Article IV(a) left the States no authority to disallow a post-detainer custody request by the United States in the form of an *ad prosequendum* writ, because the writ trumped the Detainers Act. *Id.*

The Second Circuit roundly rejected this argument. "[E]mploying [this] rationale," the Second Circuit reasoned, "would be treating the federal government's participation in the [Detainers Act] on a different footing than that of the States." *Scheer*, 729 F.2d at 170. Such disparate treatment, according to the court, would violate *Mauro*'s holding that, "once a detainer has been lodged *** it triggers the procedural rules of the Act so that the later filing of a writ of *habeas corpus ad prosequendum* is simply equivalent to a 'written request for temporary custody' and may not be used as a basis for the federal government to avoid its obligations" under Article IV. *Id.* (citing *Mauro*, 436 U.S. at 362). "[T]he historic power of the writ seems unavailing," the Second Circuit concluded, "once the government elects to file a detainer in the course of obtaining a state prisoner's presence for disposition of federal charges." *Id.*

Accordingly, had Rhode Island's immediate geographic neighbor, Connecticut, exercised its rights

under Article IV(a) of the Detainers Act, the outcome would have been the opposite of what happened here: the United States would have had to seek resolution of its custodial request in full compliance with the Detainers Act and through the channels of inter-sovereign comity that governed such matters historically, rather than through compulsion. *See, e.g.*, *McDonald v. Ciccone*, 409 F.2d 28, 30 (8th Cir. 1969) (State relinquishment of state prisoner to *ad prosequendum* writ is "a matter of comity and not of right."); *Stamphill v. Johnston*, 136 F.2d 291, 292 (9th Cir. 1943) ("There is no doubt that the state of Oklahoma *** could not be required to surrender [a prisoner] to the custody of the United States marshal for trial in the federal court[.]"). Thus only geographic lines allowed the United States in this case to pick and choose the Detainers Act provisions it wanted to comply with and cast aside those it disfavored.[3]

The Fifth Circuit, for its part, has recognized that *Mauro*'s conditional language leaves open the very question that the en banc majority and its sister circuits claim *Mauro* resolves. In *United States v. Hill*, 622 F.2d 900 (1980), that court lamented that "[t]he Supremacy Clause difficulty was circumambulated by [*Mauro*'s] utilizing conditional

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[3] After explicitly considering at length and rejecting the federal government's merits argument, the Second Circuit then denied Scheer's motion to dismiss on the alternative "ground," that Scheer had waived the right the court had just recognized for gubernatorial rejection of a federal custodial request under the Detainers Act. *Id*. at 170-171.

language," *id.* at 907 n.18. The Fifth Circuit further noted the resulting difficulties and uncertainty in the law: "Unfortunately for the states and federal prosecutors, *** [*Mauro*'s] discussion does not inform them whether governors are free to delay or deny obedience to the writ." *Id.*

Thus, the circuits are deeply divided on two issues: First, there is stark disagreement over what this Court's decision in *Mauro* says about the Detainers Act's preservation of the States' authority, under basic tenets of federalism, to retain custody of their own prisoners who are still serving duly imposed state sentences. Second, and as a result, the circuits are divided on the substantive legal question of whether Article IV(a) of the Detainers Act has any operative force when, after initiating the Detainers Act, the United States obtains a writ of habeas corpus *ad prosequendum* to nullify the custodial State's ability to exercise its federal statutory right of declination.

Both the en banc majority and the dissent acknowledged the Second Circuit's contrary conclusion. App., *infra*, 12a, 39a-40a. And the Fifth Circuit plainly reads *Mauro* as leaving open, *see Hill*, 622 F.2d at 907 n.18, the very question that the majority here deemed "patent[ly]" closed, App., *infra*, 10a.

The federal government, too, admits the conflict. In advising its own prosecutors on implementation of the Detainers Act, the United States has expressly noted the disagreement between the Third and Second Circuits as to whether a State has "the right

to disapprove a request issued in the form of a writ of habeas corpus ad prosequendum by a Federal court even when a detainer has been previously lodged."[4]

Particularly because the root source of this inter-circuit conflict in the substantive law governing the Detainers Act is lower court confusion over the meaning of *Mauro*, only this Court can bring the needed uniformity to the law and ensure that a federal statute—in particular, an interstate compact—operates consistently across State and circuit lines. After all, the whole point of an interstate compact is evenhanded treatment of all signatory States and evenhanded operation of the Compact nationally. The United States—or at least its Executive Branch—after signing on in full to this Compact, has thrown that rule of equal footing out the window, and the circuit conflict has eliminated uniformity in the Compact's and federal statute's operation. Whatever the answer, the 48 States need and are entitled to have uniform meaning restored to the Detainers Act and its codification of their Compact.

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[4] Dep't of Justice, U.S. Attorney's Manual § 534 (1997), http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00534.htm.

III. WHETHER THE DETAINERS ACT PRESERVED THE STATES' HISTORIC RIGHT TO DISALLOW A FEDERAL TRANSFER REQUEST MADE THROUGH AN *AD PROSEQUENDUM* WRIT IS AN EXCEPTIONALLY IMPORTANT QUESTION THAT MERITS THIS COURT'S REVIEW.

1. This Court's review is warranted because, at the behest of the United States, the en banc First Circuit has rendered inoperative as an unconstitutional violation of the Supremacy Clause an express provision of federal law, which is itself the product of a carefully bargained-for interstate compact. The States crafted and adopted the Interstate Agreement on Detainers as an interstate compact because of the pressing need for a cooperative, stable, and evenhanded mechanism to address, with sensitivity and mutual respect, the frequently recurring issue of multi-state demands for the custody of individuals already in the criminal detention of one State. That thousands of detainers are filed annually by criminal authorities under the Compact attests to the importance of this agreement. *See* Br. for the United States at 10 n.6, *United States v. Pleau*, No. 11-1775 (1st Cir. July 13, 2011) (reporting data).[5]

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[5] *See also* Mark Motivans, U.S. Dep't of Justice, Bureau of Justice Statistics, *Federal Justice Statistics 2009 – Statistical Tables*, Table 1.6 (Jan. 2012), http://bjs.ojp.usdoj.gov/content/pub/pdf/fjs09st.pdf (BJS Table 1.6).

But like any negotiated agreement, the Compact embodies trade-offs and compromises between the interests of custodial and requesting States. The Compact is thus a product of balanced and negotiated compromise under which no one party has the upper hand. All parties give a little, but gain more. And, importantly, when Congress joined the United States to the Compact, it enacted those balanced terms and "cooperative procedures" into federal law without any limitation on the States' express Article IV(a) right to disallow a request for temporary custody. The United States thus is a full party to the Detainers Act "as both a sending and a receiving State," *Mauro*, 436 U.S. at 354, with no "distinction between the extent of the United States' participation in the Agreement and that of the other member States," *id.* at 355. Quite the opposite, Congress "enacte[d] the Agreement into law in its entirety, *** plac[ing] no qualification upon the membership of the United States." *Id.* at 356.

Tellingly, *after* the Second Circuit's decision in *Scheer*, Congress adopted two qualifications to the United States' participation, but left the United States' unreserved acceptance of Article IV(a)'s disallowance clause unmodified.[6]

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[6] *See* Detainers Act, Pub. L. No. 100–960, § 7059, 102 Stat. 4403 (1988) (codified at 18 U.S.C. app. 2 § 9) (adding "Special Provisions when United States is a Receiving State," which provide that court orders dismissing United States' indictments for failure to comply with the Agreement may be "with or without prejudice," and repealing the United States'

The United States, however, has upset that critical balance and discarded Congress's calibrated judgment by insisting—with the blessing of the en banc First Circuit majority and two circuits—that the Supremacy Clause somehow constitutionally entitles it to the benefits of the Compact without the obligations. Even when the United States chooses to proceed under the Detainers Act, the federal government insists, and the First Circuit agreed, that the United States is only bound to respect the States' interests when it chooses to. And that is so even though Congress committed the United States *in federal law* to a position of even footing, mutual compromise, and unqualified adherence to the provision at issue.

The Supremacy Clause does not give the federal government an *a la carte* option for compliance with its statutory and contractual obligations. This Court has long held that "[t]he benefit and the burden of [a government contract] clause *** must hang together." *Stone, Sand & Gravel Co. v. United States*, 234 U.S. 270, 278 (1914). Likewise, the United States may not unilaterally change the rules of the game without breaching its contractual obligations. *See, e.g.*, *Mobil Oil Exploration & Producing Se., Inc. v. United States*, 530 U.S. 604, 618-619 (2000) (federal government breached contract when it changed rules for oil exploration plan approval); *United States v. Winstar Corp.*, 518 U.S. 839, 870-871 (1996) (plurality opinion) (federal government breached

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obligation to comply with the anti-shuttling rule of Article IV(e)).

contract when it repudiated promised regulatory treatment of certain assets).

In any event, whether the Executive Branch can singlehandedly upheave a negotiated interstate compact and federal statute in this manner is a profoundly important question the prompt resolution of which is critical not only to Rhode Island, but to the 47 other State signatories to the Compact. The ability of the United States to declare after the fact, whenever a State seeks to exercise its rights under the express and unqualified terms of a compact and federal statute, that those promises are "an empty shell" is of vital importance to the States not only with respect to this Compact, but also for all other state-federal contractual relationships. If the First, Third and Fourth Circuits are right, and the Second Circuit is wrong—if there is some unwritten Supremacy Clause escape hatch embedded in all such contracts with the United States no matter what Congress says—the States need to know that now.

The importance of detainers to the United States itself, moreover, cannot be overstated. The federal government seeks approximately 11,900 detainers annually. *See* BJS Table 1.6. The United States also causes nearly 2,000 *ad prosequendum* writs to be issued annually. Br. for the United States at 10 n.6., *United States v. Pleau*, No. 11-1775 (1st Cir. July 13, 2011) (reporting data and surmising that the numbers might be understated). That is why the United States itself agreed that the question presented here is of "exceptional importance" when it sought rehearing en banc in the First Circuit. *See* United States' Pet. for Panel Rehearing and

Rehearing En Banc, *supra*, at 1. The United States also confessed that the Detainers Act is of great benefit to the United States because, "[w]ithout detainers the government would have to devise a new and potentially cumbersome system for keeping track of state inmate release dates" for the thousands of state prisoners the United States seeks through the detainer system each year, and that "there would be a substantial risk that some inmates would slip through the cracks and vanish." *Id.* at 14.

But it is just as important to the States that the United States uphold its half of the bargain for those benefits it enjoys with respect to the detainers lodged under the Detainers Act, rather than claim all the benefits of the system while unilaterally absolving itself of any responsibility to respect the States' exercise of their rights under the same law. Now, with the en banc court having ruled squarely that Article IV(a)'s statutory right of gubernatorial disallowance is meaningless—indeed, constitutionally invalid under the Supremacy Clause—only this Court can restore to the Compact equal status for all signatories and evenhandedness to its operation; and only this Court can ensure that the law means what it says. That is all that Rhode Island and the 47 other signatories ask. *See* Br. of *Amici Curiae* Nat'l Governors Assoc. and Council of State Gov'ts in Support of Intervenor Lincoln D. Chafee, *supra*, at 12-14.

2. The court of appeals' decision not only rewrites the terms of a federal law codifying an interstate compact, but also casts aside settled precedent applying the *ad prosequendum* writ in a manner that

accords with principles of federalism. The weight of historic authority, in fact, squarely answers the question that *Mauro* and *Carbo* left open in favor of comity and state-federal cooperation, and in no way endorses a Supremacy Clause trump card as the First Circuit supposed. App., *infra*, 10a.

First, the court of appeals overlooked that the writ of habeas corpus *ad prosequendum* is one of the lesser writs of habeas corpus, and those writs have long been recognized as an efficient device to foster the effective operation of co-equal courts in the Nation's system of dual sovereignty. Such lesser writs serve not as the means to challenge the legality of detention, as the Great Writ does, but merely as devices to facilitate, consistent with principles of federalism and comity, the exercise of concurrent jurisdiction. Given their specialized role, this Court explained, when affirming the First Judiciary Act's authorization of customary writs like the *ad prosequendum* writ, that state courts are "not inferior courts" with respect to such writs. *Ex Parte Bollman*, 8 U.S. (4 Cranch) 75, 97 (1807). Then, and today, "States are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees." *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008).

Second, historic precedent recognized that, in managing the challenges arising under a system of concurrent jurisdiction by dual sovereigns, "[t]he chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation

into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose." *Ponzi v. Fessenden*, 258 U.S. 254, 260 (1922); *see also Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 370 (1872) ("Where a State court and a court of the United States may each take jurisdiction, the tribunal which first gets it holds it to the exclusion of the other, until its duty is fully performed and the jurisdiction invoked is exhausted: and this rule applies alike in both civil and criminal cases."). While *Ponzi* involved a state court's authority to issue a writ of habeas corpus *ad prosequendum* against the federal government, its language was unequivocal: although state and federal courts "coexist in the same space, they are independent." 258 U.S. at 261. Accordingly, to allow an *ad prosequendum* writ to displace State sovereignty over execution and enforcement of their sentences would threaten a State's "administration of a discrete criminal justice system [which is one of] the basic sovereign prerogatives States retain." *Oregon v. Ice*, 555 U.S. 160, 168 (2009).

Third, consistent with those basic principles of constitutional federalism, courts had repeatedly held, prior to the Compact's adoption, that a State's release of a prisoner in its custody to the federal government under a federal *ad prosequendum* writ was "achieved as a matter of comity and not of right." *McDonald*, 409 F.2d at 30; *see, e.g.*, *United States ex rel. Moses v. Kipp*, 232 F.2d 147, 150 (7th Cir. 1956) (Federal district court "could not have compelled the State of Michigan to surrender Moses after he had been incarcerated in that state for violation of a Michigan

law, *** the consent of Michigan authorities was necessary to obtain the custody of Moses."); *Stamphill*, 136 F.2d at 292 ("There is no doubt that the state of Oklahoma, having first acquired jurisdiction over the appellant, was entitled to retain him in custody until he had finished his sentence and could not be required to surrender him to the custody of the United States marshal for trial in the federal court for an offense committed in violation of federal law."); *Lunsford v. Hudspeth*, 126 F.2d 653, 655 (10th Cir. 1942) (waiver of the "right [of] exclusive jurisdiction *** is a matter addressed solely to the discretion of the sovereignty"); *accord* Larry W. Yackle, *Taking Stock of Detainer Statutes,* 8 LOY. L.A. L. REV. 88, 96 (1975) ("[A] federal court cannot compel a state to give up custody of a state prisoner in order that he may be tried for a federal offense.").[7]

That States *could* dishonor the writ, moreover, is evidenced by the fact that state officials *did* occasionally decline to cooperate. *See Gordon v. United States*, 164 F.2d 855, 860 (6th Cir. 1947) (Ohio prison warden refused to produce co-defendants for trial despite issuance of a federal *ad prosequendum* writ); *United States v. Perez*, 398 F.2d 658, 660 (7th Cir. 1968) (Arkansas penitentiary warden would not comply with the federal writ).

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[7] *But see United States v. Scallion*, 548 F.2d 1168, 1173 n.7 (5th Cir. 1977) (acknowledging that *Carbo* left the question open, and disagreeing, in dicta, with cases holding that states honor the federal writ as a matter of comity), *cert. denied*, 436 U.S. 943 (1978); *Trafny v. United States*, 311 F. App'x 92, 96 (10th Cir. 2009) (States "never had *** authority" to refuse transfer when sought by *ad prosequendum* writ.).

This comity regime, under which the States as co-equal sovereigns could retain custody of their prisoners to vindicate their own criminal sentences even after a federal request was made via an *ad prosequendum* writ, is the historic practice that the Detainers Act "preserve[d]," *Mauro*, 436 U.S. at 363, but the First Circuit erased. And while "[t]he proviso of Art. IV(a) does not purport to augment the State's authority to dishonor [an *ad prosequendum*] writ," *id.*, it most certainly cannot be read, as the First Circuit majority did, to *diminish* the States' pre-enactment authority.

Judicial precedent confirming this comity regime makes sense, moreover, given the Nation's unique federalism structure. Dual sovereignty means that both the United States and the States have independent systems of criminal law and a substantial independent interest in enforcing those laws and preventing future criminal activity within their respective jurisdictions. Those cases treating inter-sovereign demands for custody of an individual as a matter of comity and cooperation between the State and federal governments properly balance *both* sovereigns' substantial interests in enforcing their criminal laws. The First Circuit, by contrast, put all the weight on the federal side of the scale. That is how the court concluded that a federal writ is all that is needed to seize a state prisoner who is serving a state sentence out of state custody and to vitiate that State's right to enforce and vindicate its own criminal judgment. There is no balance in a system like that.

3. The First Circuit traded in that half century of precedent respecting federalism for a Supremacy

Clause phantasm. Petitioner in this case enforced a right afforded the State under the plain and unqualified text of a *federal statute* that *Congress* made binding on the United States. Whether that more specific federal statutory directive should control over the general provisions of the federal habeas corpus statute is a question about which the Supremacy Clause says nothing.

Likewise, the Supremacy Clause does not relieve the federal government from its contractual commitments. The "'United States are as much bound by their contracts as are individuals.'" *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181, 2189 (2012) (quoting *Lynch v. United States*, 292 U.S. 571, 580 (1934)); *see Sinking Fund Cases*, 99 U.S. 700, 719 (1878) (same). The authority of the federal government to enter into binding agreements not only does not derogate federal sovereignty, but is "'the essence of sovereignty' itself." *Winstar*, 518 U.S. at 884 (quoting *United States v. Bekins*, 304 U.S. 27, 51-52 (1938)). When the federal government obligates itself by contract, it "yield[s] [its] freedom of action in particular matters in order to gain the benefits which accrue." *Bekins*, 304 U.S. at 52. In so doing, it must take the bitter with the sweet.

Finally, holding the federal government to its word "furthers 'the Government's own long-run interest as a reliable contracting partner in the myriad workaday transaction of its agencies.'" *Ramah Navajo Chapter*, 132 S. Ct. at 2190 (quoting *Winstar*, 518 U.S. at 883). In dealing with co-equal sovereigns, it is all the more important that the United States act reliably. Interstate compacts are

important tools of cooperative federalism, necessary for the management of complex problems that arise in a system of dual sovereignty. Such cooperative agreements serve as "the legislative means" of "adapting to our Union of sovereign States the ageold treaty-making power of independent sovereign nations." *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 279 n.5 (1959).

In making the considered decision to join the United States as a coequal party to the Compact, and having formalized this agreement through passage of the Detainers Act, Congress has plainly recognized the longstanding authority of the States in this sphere and obligated the United States to adhere to the Compact when it invokes its procedures. Because federal law thus binds the federal prosecutors' hands, the Supremacy Clause offers no release and, indeed, "it clearly would permit the United States to circumvent its obligations under the Agreement" for the federal government to be able to reap the compact's rewards, but disregard its obligations. *Mauro*, 436 U.S. at 362.

If left standing, the ruling below would condone the federal government's contravention of the express terms of the Detainers Act, putting at risk not only the continued viability of a recognized and cost-effective system for governing prisoner transfers between state and federal jurisdictions, but also threatening States' willingness, going forward, to contract as peers with the federal government. The implications are far-reaching, jeopardizing not only other federal-state compacts, but also the exercise of Congress's power under the Spending Clause. *See*

National Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2602 (2012) (opinion of Roberts, C.J, joined by Breyer and Kagan, JJ.) ("Spending Clause legislation [is] much in the nature of a *contract*."). When the federal government knowingly and voluntarily contracts with the States as co-equals and Congress codifies that commitment in federal law, requiring the Executive Branch to keep its word both respects principles of constitutional federalism and fully comports with the Supremacy Clause.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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