Nos. 12-223 & 12-230

In The Supreme Court of the United States

LINCOLN D. CHAFEE, in his capacity as the Governor of the State of Rhode Island,

Petitioner,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

JASON W. PLEAU,

Petitioner,

v.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF EXTRADITION OFFICIALS IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The National Association of Extradition Officials (NAEO) is a non-profit corporation formed and operating to organize, educate, train and support extradition officials in the respective states and territories in the United States, to exchange information, to develop effective practices, procedures and policies related to interstate and international rendition, and to enable such officials to become personally acquainted, thus promoting cooperation in securing uniformity in the adoption and interpretation of laws and procedures related to interstate and international rendition. The First Circuit majority's decision in *United States* v. *Pleau*, 680 F.3d 1 (1st Cir. 2012), that the Interstate Agreement on Detainers (IAD) is not to be interpreted as it is written, as it applies to one signatory, threatens not only that uniformity, but also makes IAD extraditions more difficult as the signatories will no longer be assured what to expect, at least when dealing with this particular signatory.[2] The NAEO has an interest in this Court establishing clear rules for extradition for everyone to follow.

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[1] Under Rule 37.2 of the Rules of the United States Supreme Court, timely notice of intent to file this brief was provided to the parties, and all parties have consented to the filing. No counsel for a party authored the brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief.

[2] Interstate Agreement on Detainers Act, Pub. L. No. 100-960 § 7059, 102 Stat. 4403 (1988) (codified at 18 U.S.C. App. 2).

ARGUMENT

THE FEDERAL GOVERNMENT IS BOUND BY THE TERMS OF THE INTERSTATE AGREEMENT ON DETAINERS

> "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." *United States* v. *Pleau*, 680 F.3d 1, 18 (1st Cir. 2012) (Torruella, J., dissenting).

Even though this action supports the criminal defendant in this case and opposes an extradition, the NAEO is filing this amicus brief supporting the petitions – simply because, in the long run, the judicial system will function better if the federal government is held to its contractual obligations, just like any other signatory under the IAD. Rather than be as detailed as either petition or even the amicus brief filed by the National Governor's Association, this amicus brief will highlight a few main points as to why this case deserves plenary consideration. First, the majority's decision cannot be reconciled with either *United States* v. *Mauro*, 436 U.S. 340 (1978), or *Alabama* v. *Bozeman*, 533 U.S. 146 (2001). Second, undermining the integrity of the IAD not only restores to a significant degree the uncertainty that the IAD was meant to solve, but it unjustifiably allows the federal government to disrupt state prosecutions. Third, the majority's concerns about the IAD allowing

an inmate to be permanently immune from prosecution are overblown.

First, the majority's decision cannot be reconciled with either *Mauro* or *Bozeman*. As this Court reiterated in *Corley* v. *United States*, 556 U.S. 303, 314 (2009), "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." The majority's conclusion that, unlike any other IAD signatory, the federal government does not have to abide by the language of Article IV(a) that the Governor may veto an IAD extradition not only violates this rule, but cannot be reconciled with this Court's decision in *Mauro*.

In one of the cases reviewed in *Mauro* [*Ford*], the federal government filed a detainer against a state inmate and then extradited him through a writ of habeas corpus *ad prosequendum*. *Mauro*, 436 U.S. at 347. It then took a rather long time to bring the defendant to trial. This Court first concluded that, although the federal government may still use the writ of habeas corpus *ad prosequendum*, when it files a detainer, it is bound by the IAD. *Id.* at 349. After all, as this Court noted, it was the United States Attorney General who had asked Congress to become an IAD signatory. *Id.* at 353. When the government claimed that the IAD's provisions concerning receiving jurisdictions do not apply to it, this Court responded that the IAD itself draws no distinctions between the United States and any other signatory. *Id.* at 355.

Yet, drawing such a distinction is precisely what the majority in the present case did. Article IV(a) contains the following language:

> That there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

Nothing in this section or anywhere else in the IAD says that this provision does not apply to one of the signatories, the federal government. Instead, throughout, it assumes that every signatory is equal. As *Mauro* pointed out, the United States is included within the IAD's definition of "state." *Mauro*, 436 U.S. at 355.

Rather than addressing the IAD's specific language, the majority merely said that it cannot mean what it says merely because the Supremacy Clause means that the federal government is not bound by its contractual obligations in this instance. *Pleau*, 680 F.3d at 6-7. Yet, in *Mauro*, this Court specifically rejected such an argument:

> First, the Government notes that under Art. IV(a) there is to be a 30-day waiting period after the request is presented during which the Governor of the sending State may disapprove the receiving State's request. Because a writ of habeas corpus *ad prosequendum* is a federal-court order, it

> would be contrary to the Supremacy Clause, the United States argues, to permit a State to refuse to obey it. We are unimpressed. The proviso of article IV(a) does not purport to augment the State's authority to dishonor such a writ. As the history of the provision makes clear, it was meant to do no more than preserve previously existing rights of the sending States, not to expand them. If a State has never had authority to dishonor an *ad prosequendum* writ issued by a federal court, then this provision could not be read as providing such authority. Accordingly, we do not view the provision as being inconsistent with the inclusion of writs of habeas corpus *ad prosequendum* within the meaning of written requests.

Mauro, 436 U.S. at 363.

This language cannot be read to mean precisely the opposite of what it says, that the Supremacy Clause means that this provision does not apply to the federal government after all. This provision does not by itself allow a governor to dishonor a writ of habeas corpus *ad prosequendum*. If the government had not filed a detainer against Pleau, nothing in the IAD allows anyone in Rhode Island to dishonor the writ. But, according to *Mauro*, because a detainer was filed, the IAD's requirements have to be followed. These requirements include a governor's veto power (something that Congress did not take issue with when the federal government became a signatory). Allowing the federal government to be excused from

its contractual obligations "would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the Agreement intended to arise from such an action." *Mauro*, 436 U.S. at 364. The majority never explains how this language does not apply in the present case.

In addition, this decision cannot be reconciled with *Bozeman*, *supra*, either. In *Bozeman*, the defendant was serving time in a federal prison in Florida when an Alabama county – that was about 80 miles and three counties away – picked him up through the IAD. After arraigning him, the county sent him back to the federal prison and then later brought him back to stand trial. *Bozeman*, 533 U.S. at 151-52. Despite the fact that the defendant could not show that he was somehow even remotely prejudiced by the IAD's antishuttling provision being violated, this Court (without a single dissent) agreed with the Alabama Supreme Court and concluded that the IAD means what it says. The antishuttling provision requires a dismissal if violated. Nothing in the IAD provides any exception for a "minor" violation, even one without prejudice. *Id.* at 153-56.

If Alabama is bound by what the IAD says, then all other signatories are too. Nothing in the IAD somehow exempts the federal government from any provision. Article IV(a) gives a State's governor the right to disallow a transfer. The compact means what it says. Whoever signs is bound.

Second, the majority's decision compromises the integrity of the IAD. Both this Court's decision in *Mauro*, 436 U.S. 353, and the Sixth Circuit's decision in *Ridgeway* v. *United States*, 558 F.3d 357, 361 (6th Cir. 1977), *cert. denied*, 436 U.S. 946 (1978), outline the problems that existed in the system before the IAD was enacted, problems that have, to a large extent, abated since then. Now, at the very least, everyone knows that the IAD means what it says. Should the majority's reasoning prevail, however, no one will really know just what it means. No one knows just what other "common sense" approach either a government or defendant will take that will add or subtract from the agreement. The system works as well as it does now simply because the parties know what to expect. The majority's decision (and analysis) clouds matters.

Third, the majority's conclusion that following what the IAD says would make a defendant permanently immune from federal prosecution overstates the situation. *Pleau*, 680 F.3d at 7. Not only will Pleau likely be released from prison someday, but the federal government may not have to wait that long. Governor Chafee will probably cease being Rhode Island's governor long before Pleau is released from the Rhode Island prison. Nothing prevents the federal government from invoking the IAD after his successor is sworn in.

In addition, the conjecture that this particular provision may make an inmate "permanently" immune from prosecution is not a situation unique to

the federal government. Nothing in the majority's opinion strikes this provision from the IAD. It merely says that it does not apply to the federal government. In other words, it does not apply to the prosecutor who is prejudiced the least by it. Virtually all federal crimes may be prosecuted by a State. Here, Rhode Island has already prosecuted Pleau for these crimes. Thus, the federal government's interest here is nothing more than its apparent dissatisfaction with the penalty. On the other hand, very few state offenses can be prosecuted in other States. (Many cannot be prosecuted by the federal government either.) Should the prisoner's state's governor reject another State's request, that State is simply "out of luck" (until either a new governor is sworn in or the inmate is released from prison). The NAEO fails to see how the federal government's interest in seeking a higher penalty is more important than a State's interest in obtaining a conviction in the first place. At the very least, the NAEO fails to see how the federal government's interest in seeking a higher penalty means that the IAD is not to be interpreted as it is written and the State's interest in obtaining a conviction carries no weight on how the IAD is interpreted (as in *Bozeman*).

At the very least, this Court should grant the petitions to sort out this area. One commentator to this case makes a strong argument for why this issue is important enough for this Court's attention. He specifically points out that the majority's decision "strengthened the Supremacy Clause and undermined

provisions of the Interstate Agreement of Detainers." Castellano, "*First Circuit Allows Production of Defendant for Death Penalty Prosecution*," 2012 Emerging Issues 6472 (6/25/12), 1. The comment itself points out that the decision "is significant legally because it makes inroads on Supreme Court precedent holding that once the government lodges a detainer under the IAD to obtain a prisoner, it is bound by the terms of that compact." *Id.* Castellano later specifies: "As such, the decision appears to limit the scope of the *Mauro* decision." *Id.* at 3. "The majority's interpretation of this language as dispositive had the effect of limiting the import of the other portions of the *Mauro* decision." *Id.*

Castellano's most important point comes in dealing with the majority's analysis itself:

> Moreover, the Court's reliance on the Supremacy Clause was more abstract than grounded in specific precedent. The majority cites only civil rights cases in this regard, a far cry from the specific situation in which the federal government found itself in *Pleau*. In *Pleau*, after all, the Attorney General was seeking to extract a state prisoner for federal prosecution, not to protect the rights of state citizens. Moreover, as, again, the dissent points out, once Congress adopts an interstate compact, it has the full force of federal law, so that the conflict is arguably no longer between state and federal law, but between two federal laws.

Castellano, at 3.

The IAD, as an interstate compact, is federal law subject to federal construction. *Cuyler* v. *Adams*, 449 U.S. 433, 442 (1981). Therefore, saying that the federal government does not have to comply with all of the provisions is, at least on its face, somewhat disingenuous. This Court should grant the petitions if for no other reason than to help clarify this area of the law.

CONCLUSION

ACCORDINGLY, amicus curiae National Organization of Extradition Officials respectfully request that this Court grant these two *certiorari* petitions.

Dated: October 12, 2012

Respectfully submitted,

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