No. 12-223

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

BRIEF OF *AMICI CURIAE* STATES OF NEW MEXICO, ALASKA, GEORGIA, HAWAII, IOWA, KANSAS, AND OHIO IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

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*.

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INTEREST OF *AMICI CURIAE*[1]

The Attorneys General of the states first developed the Interstate Agreement on Detainers ("IAD" or "Agreement") in 1948 as part of a group known as the Joint Committee on Detainers. *United States v. Mauro*, 436 U.S. 340, 349 & n.16 (1978). Later, the Attorneys General were members of—and chaired—the Committee of State Officials on State Legislation, which issued the draft version of the Agreement in 1956. Council of State Governments, SUGGESTED STATE LEGISLATION PROGRAM FOR 1957, at 74-86 (1956). Continuing their efforts, the state Attorneys General were the primary "moving force" behind the 1970 passage of the Interstate Agreement on Detainers Act, Pub. L. No. 91-538, 84 Stat. 1397 (1970) ("Detainers Act" or "Act"), 18 U.S.C. app. 2. 116 Cong. Rec. 38841 (1970) (statement of Sen. Hruska).

The state Attorneys General therefore have a vested interest in ensuring that the IAD is enforced as the states and the Federal Government agreed. More specifically, the Attorneys General have a vested interest in ensuring that—as both the House Report and the Senate Report declared—"a Governor's *right* to refuse to make a prisoner available is preserved." H.R. Rep. No. 91-1018, p. 2 (1970) (emphasis added); S. Rep No. 91-1356, p. 2 (1970) (emphasis added). If the court of appeals decision is left standing, federal prosecutors will be able to ignore this essential right of state sovereignty, contrary to Congress's mandate.

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[1] Pursuant to Supreme Court Rule 37.2, *amici* provided counsel of record for all parties with timely notice of the intent to file this brief.

ARGUMENT

Through the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, the United States became a party to the IAD. And as this Court confirmed in *United States v. Mauro*, 436 U.S. 340 (1978), "the United States is a party to the Agreement as both a sending and a receiving State. . . . 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 354, 361-62. One of the IAD's provisions is Article IV(a), which authorizes the Governor of the state with custody of a prisoner to "disapprove the request for temporary custody or availability." 18 U.S.C. app. 2 §2, art. IV(a).

The en banc First Circuit nonetheless held that Article IV(a) does not apply to the Federal Government, at least where the Federal Government obtains a writ of habeas corpus *ad prosequendum* ordering state officials to surrender the prisoner. The First Circuit reached its counter-intuitive conclusion by finding the plain language of Article IV(a) overridden by 28 U.S.C. §2241(c)(5), which codified the common-law writ of habeas corpus *ad prosequendum*. The court reasoned that the federal habeas statute gave the Federal Government the power to compel states to turn over prisoners. "Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, the habeas statute . . . overrides any contrary position or preference of the state . . . ." Pet. App. 10a. Finding that "State interposition to defeat federal authority vanished with the Civil War," the court stated —in regard to the Detainers Act—that "[o]ne can hardly imagine Congress . . . empowering a state governor

to veto a federal court habeas writ . . . ." Pet. App. 10a, 13a.

The First Circuit's reasoning is deeply troubling to the *amici* states for two reasons. ***First***, the First Circuit gave the back of its hand to the limits Our Federalism place on the power of the Federal Government to issue orders to state officials. This Court has several times indicated that the Federal Government may only obtain custody of a state prisoner while he is serving an ongoing state sentence as a matter of comity. More recent opinions, such as *Printz v. United States*, 521 U.S. 898 (1997), have reaffirmed that the Supremacy Clause is not a warrant to disregard structural federalism limits on congressional power. Construing 28 U.S.C. §2241(c)(5) as authorizing federal officials to *compel* state officials to surrender prisoners for federal prosecution raises serious constitutional questions and would change the longstanding understanding of federal power in that area. The constitutional-doubt doctrine and the clear-statement rule of *Gregory v. Ashcroft*, 501 U.S. 452 (1991), therefore require that Article IV(a) of the Agreement be enforced against the United States and that §2241(c)(5) be construed as authorizing federal officials only to *request* that states surrender prisoners.

Second, under the First Circuit's decision, the states and the Federal Government are no longer equal parties to the Agreement. The Federal Government may refuse a state's request for custody of a prisoner, but a state may not refuse the Federal Government's request. Nothing in the Detainers Act, the Agreement, or the law of interstate agreements supports that result. When the Federal Government joins an interstate agreement, it is bound by the compact in the same

manner as the states unless the agreement expressly limits how it applies to the Federal Government. Although Congress has amended the Detainers Act, it has not amended the operation of Article IV(a); and the Agreement—in contrast to some others—does not place reservations on how that provision applies when the federal government is the receiving "State." The states and the Federal Government are therefore on equal footing when it comes to Article IV(a): It applies to both sovereigns, fully and equally.

I. The First Circuit's Construction of the IAD and the Federal Habeas Statute Conflicts With the Constitutional-Doubt Doctrine and the *Gregory v. Ashcroft* Clear-Statement Rule.

The underpinning of the First Circuit's holding is its assertion that the writ of habeas corpus *ad prosequendum*, codified at 28 U.S.C. §2241(c)(5), empowers the Federal Government to compel state officials to hand over state prisoners for federal prosecution. As far as the First Circuit is concerned, the Federal Government's possession of that power is "patent," a simple application of the Supremacy Clause. Pet. App. 10a. It is anything but.

Federalism principles announced as early as *Ex parte Bollman*, 8 U.S. (4 Cranch) 75 (1807), and as recently as *Printz v. United States*, 521 U.S. 898 (1997), make it highly questionable whether the Federal Government may force an unwilling Governor to surrender custody of a prisoner serving a state sentence so he can stand trial under federal law. At the very least, construing §2241(c)(5) as granting the Fed-

eral Government that power, and construing the Detainers Act as not giving Governors the right to refuse, raise serious constitutional questions. It also would upset the usual federal-state balance, for the practice has long been for the Federal Government to obtain custody of state prisoners as a matter of comity only. The First Circuit's decision therefore runs afoul of both the constitutional-doubt doctrine and the *Gregory v. Ashcroft* clear-statement rule.

1. The Constitution does not give the Federal Government *carte blanche* to command state officials to act. Section 5 of the Fourteenth Amendment empowers Congress to enforce against the states the provisions of Section 1 of the Fourteenth Amendment. And federal laws of general applicability may include states among the regulated entities. See *Reno v. Condon*, 528 U.S. 141, 151 (2000). But the Federal Government is on far shakier constitutional ground when it attempts under an Article I power to compel states—and only states—to act.

In *Printz*, this Court confirmed that the Supremacy Clause does not override structural federalism limits on congressional power.

> "[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." The great innovation of this design was that "our citizens would have two political capacities, one state and one federal, *each protected from incursion by the other*[.]"

521 U.S. at 920 (citations omitted) (emphasis added). For that reason, the Court found that the Federal Government may not "command state or local officials to assist in the implementation of federal law," *id.* at 927,

or even "require[ ] state or local officers to provide only limited, non-policymaking help in enforcing that law." *Ibid.* (quotation marks omitted). Applying that rule, the Court held that Congress could not conscript state officers to conduct background checks of prospective gun owners even though Congress unquestionably possesses authority under the Commerce Clause to regulate the sale of handguns. The First Circuit's blithe assertion that "State interposition to defeat federal authority vanished with the Civil War," Pet. App. 10a, ignores the still-extant limits on federal power.

2. There is ample reason to believe those limits apply to demands by the Federal Government that state officers hand over prisoners serving state sentences so that they could be prosecuted for federal offenses. As this Court has noted, "[f]oremost among the prerogatives of sovereignty is the power to create and enforce a criminal code." *Heath v. Alabama*, 474 U.S. 82, 93 (1985). Indeed, "the power of a State to pass [criminal] laws means little if the State cannot enforce them." *McCleskey v. Zant*, 499 U.S. 467, 491 (1991). Here, the Federal Government seeks to disrupt a state's enforcement of its criminal laws not to protect the defendant's constitutional rights, but so that it may institute its own prosecution. Early congressional enactments and this Court's decisions confirm that the Federal Government's demand approaches, if it does not cross, the constitutional line.

The Act of September 23, 1789, 1 Stat. 96, "recommended to the legislatures of the several States to pass laws" that would require state jails to hold federal prisoners at federal expense. As *Printz* observed, "[s]ignificantly, the law issued not a command to the

States' executive, but a recommendation to their legislatures." 521 U.S. at 909. The "enactments of the early Congresses . . . contain no evidence of an assumption that the Federal Government may command the States' executive power in the absence of a particularized constitutional authorization"; indeed, "they contain some indication of precisely the opposite assumption." *Ibid.*

The first time this Court addressed the various habeas writs, *Ex parte Bollman*, 8 U.S. (4 Cranch) 75 (1807), it ruled that a federal court may not use the writ of habeas corpus *ad respondendum* to obtain a state court prisoner. Chief Justice Marshall, writing for the Court, explained that "state courts are not, in any sense of the word, inferior courts, except in the particular cases in which an appeal lies from their judgment to this court . . . . They are not inferior courts, because they emanate from a different authority, and are creatures of a distinct government." *Id.* at 97.

The Court amplified that point in *Ponzi v. Fessenden*, 258 U.S. 254 (1922), when it held that a state could obtain custody of a federal prisoner when the U.S. Attorney General consented. The Court explained that the prisoner "may not complain if one sovereignty waives its *strict right to exclusive custody* of him for vindication of its laws." *Id.* at 260 (emphasis added). Federal and state courts may "fulfill their respective functions without embarrassing conflict" not by compulsion but through "a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure." *Id.* at 259.

To be sure, as the First Circuit noted, *Ponzi* dealt with a state effort to obtain a federal prisoner and not (as here) the reverse. Still, not a word of the Court's

opinion suggested that its broad assertions about the "sovereignty's" "strict right to exclusive custody" applied only to one of the two sovereigns in question. To the contrary, the Court at all times treated the two sovereigns as equal. Indeed, it went on to say that "[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 litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, . . . before the other court shall attempt to take it for its purpose." *Id.* at 260. The Court's language plainly covers both sovereigns, not merely those instances when a *federal* court had initial "control" of the "person or property." See also *Ex parte Johnson*, 167 U.S. 120, 125 (1897) (recognizing "the settled doctrine of this court that a court having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction is exhausted," and declaring that "no other court has the right to interfere with such custody or possession").

Given the Court's treatment of the issue in *Bollman* and *Ponzi*, it is hardly surprising that the Court has declined to hold that the Federal Government has the power to order state officials to give up prisoners for federal prosecution. The Court expressly left open the issue in *Carbo v. United States*, 364 U.S. 611, 621 n.20 (1961) ("In view of the cooperation extended by the New York authorities in honoring the writ [of habeas corpus *ad prosequendum*], it is unnecessary to decide what would be the effect of a similar writ absent such cooperation."). And in *Puerto Rico v. Branstad*, 483 U.S. 219 (1987), the Court expressly noted the possible Tenth Amendment barrier to the practice. After holding that federal courts may compel state

authorities to comply with writs of mandamus issued under the Extradition Act, which implements the Extradition Clause, the Court sounded a cautionary note: "Because the duty is directly imposed upon the States by the Constitution itself, there can be no need to weigh the performance of the federal obligation against the powers reserved to the States under the Tenth Amendment." *Id.* at 228. Section 2241(c)(5), in contrast to the Extradition Act, does not enforce a "duty . . . directly imposed upon the States by the Constitution." See also *Condon*, 528 U.S. at 151 (leaving open whether Congress can "regulate[ ] the States exclusively").

2. Our point is not that this Court has definitively held that the Constitution denies the Federal Government the power to compel state officers to surrender state prisoners serving state sentences so that they may be prosecuted for federal offenses. The point, rather, is that any federal law purporting to grant federal authorities that power would raise the most serious of constitutional questions. Yet the First Circuit construed 28 U.S.C. §2241(c)(5) as granting the Federal Government just that power, without even attempting to assess whether the statute can fairly be construed not to reach that far.

It is well established that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). Title 28 U.S.C. §2241(c)(5) does not expressly declare that state officials must surrender prisoners for federal

trial even over a Governor's objection. Congress amended the provision in 1948 to encompass the writ of habeas corpus *ad prosequendum* by adding the words "at trial" to it. Certainly those two words do not express any such intent.

Further, the United States' position must fail even if one concluded that Congress in §2241(c)(5) intended to exercise a purported power to compel state officials to surrender prisoners. That is because the constitutional-doubt doctrine also requires that the Detainers Act be construed so as to avoid this serious constitutional problem. Article IV(a) of the IAD (which is incorporated in the Act) expressly declares that a Governor may decline a request for a prisoner. It creates no exceptions for requests by the United States. Rather, as this Court found in *Mauro*, "the United States is a party to the Agreement as both a sending and a receiving State," and "[o]nce 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." 436 U.S. at 354, 361-62.

As discussed in § II, *infra*, the far better reading of the Detainers Act is that Article IV(a) applies when the Federal Government lodges a detainer, even if the Federal Government later obtains a writ of habeas corpus *ad prosequendum*. At the very least, the Act could fairly be read that way—which means a court's "duty" under the constitutional-doubt doctrine is to read it that way. *Jones v. United States*, 526 U.S. 227, 239 (1999) (quotation marks omitted). By failing to do so, the First Circuit committed a serious error on a very significant issue, one that merits this Court's review.

3. For similar reasons, the First Circuit's decision also contravenes the rule established in *Gregory v. Ashcroft* that when Congress wishes to "upset the usual constitutional balance of federal and state powers[,] . . . it must make its intention to do so unmistakably clear in the language of the statute." 501 U.S. at 460 (quotation marks omitted). Neither the Detainers Act nor §2241(c)(5) expresses in "unmistakably clear . . . language" the intention to change the longstanding practice under which the Federal Government has obtained custody of state prisoners based on comity, not compulsion. (Nor does the legislative history indicate any such intent. Not a word of it suggests that Congress intended to encroach on states' sovereign prerogatives. See H. R. Rep. No. 80-308 (1947); S. Rep. No. 80-1559 (1948).)

The First Circuit asserted that it is "patent" that "a state has never had authority to dishonor an *ad prosequendum* writ issued by a federal court." Pet. App. 10a (quotation marks omitted). Yet several federal courts have found that a state cannot be required to surrender prisoners pursuant to *ad prosequendum* writs, ruling that states need only relinquish prisoners as a matter of comity. See, *e.g.*, *McDonald v. Ciccone*, 409 F.2d 28, 30 (8th Cir. 1969) ("The release by state authorities, however, is achieved as a matter of comity and not of right"); *United States ex rel. Moses v. Kipp*, 232 F.2d 147, 150 (7th Cir. 1956) ("In spite of the terminology of the writ, the consent of Michigan authorities was necessary to obtain the custody of" the prisoner.); *Stamphill v. Johnston*, 136 F.2d 291, 292 (9th Cir. 1943) (the state "could not be required to surrender [the prisoner] to the custody of the United States marshal for trial in the federal court"); *Lunsford v. Hudspeth*, 126 F.2d 653, 655 (10th Cir. 1942). And

the courts issued these rulings before the Detainers Act formally codified the refusal right. The First Circuit failed to cite any examples of federal courts overriding the objection of state officials, and failed to show any historical practice of federal courts obtaining state prisoners over states' objection.[2]

As this Court noted in *Younger v. Harris*, 401 U.S. 37 (1971), there is a "longstanding public policy against federal court interference with state court proceedings," which is grounded in "Our Federalism." *Id.* at 43, 44. "What the concept does represent," stated the Court, is that "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.* at 44. The First Circuit's interpretation of the Detainers Act and §2241(c)(5) stands in opposition to that tradition and therefore must be rejected under the *Gregory v. Ashcroft* clear-statement rule.

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[2] Indeed, in 1957, the Federal Government stated in an amicus brief to the Ninth Circuit that (as paraphrased by the Ninth Circuit), "since the court of one sovereign thus has possession of the res and has the power to proceed and adjudicate, neither the courts nor the officers of another sovereign have authority forcibly to remove the res." *Strand v. Schmittroth*, 251 F.2d 590, 598 (9th Cir. 1957) (citing amicus brief of United States Attorney for the Southern District of California).

II. The First Circuit's Decision Undermines Congress's Intent in the Detainers Act to Treat the Federal Government and the States Equally.

Under the plain terms of the Detainers Act, the Federal Government may decline to surrender a federal prisoner to a requesting state. Article IV(a) expressly authorizes "the Governor of the sending State" to "disapprove the request for temporary custody," and Section 3 of the Act provides that "[t]he term 'Governor' as used in the agreement on detainers shall mean with respect to the United States, the Attorney General . . . ." Neither the Federal Government, nor the First Circuit in its opinion, has ever suggested otherwise. Under the First Circuit's holding, therefore, the IAD is now a one-sided agreement: The states may ask, but may not compel, the Federal Government to surrender prisoners; the Federal Government need not ask, but can compel, states to surrender prisoners. Nothing in the text or history of the Detainers Act or the law of interstate agreements supports that result.

1. As already discussed, Article IV(a) does not contain an exception to a Governer's right to refuse when the Federal Government is the "Receiving State." And several other provisions of the Detainers Act confirm that cooperation and comity, not compulsion, are its *modus operandi*. Article I of the Agreement explains that "proceedings with reference to such charges and detainers . . . cannot properly be had in the absence of cooperative procedures," and that "[i]t is the further purpose of this agreement to provide such cooperative procedures." To achieve that objective, Section 5 of the Act directs "[a]ll courts, departments, agencies, officers, and employees of the United States . . . to coope-

rate . . . with all party States in enforcing the agreement and effectuating its purpose."

Were there any ambiguity about how the IAD applies to the Federal Government, this Court resolved it in *Mauro*. The Court found that "Congress did enact the Agreement into law in its entirety, and it placed no qualification upon the membership of the United States." 436 U.S. at 356. The Court continued, "[t]here is no reason to assume that Congress was any less concerned about the effects of federal detainers filed against state prisoners than it was about state detainers filed against federal prisoners." *Ibid.* In short, the Act drew no "distinction between the extent of the United States' participation in the Agreement and that of the other member States." *Id.* at 355.

In 1988, Congress amended the Detainers Act by adding a provision, Section 9, titled "Special Provisions when United States is a Receiving State." This is the only provision of the Act that specifies different treatment for the United States. It merely provides that a court order dismissing a United States indictment "may be with or without prejudice" and that the United States does not have to comply with the anti-shuttling rule of Article IV(e). The provision—added after *Mauro* and after the Second Circuit held in *United States v. Scheer*, 729 U.S. 164 (2d Cir. 1984), that the Federal Government must honor Article IV(a)'s refusal right—says nothing about the United States' obligation to abide by a Governor's disapproval of a request for a prisoner, further confirming that the United States is not "[s]pecial" in that regard.

The legislative history of the Detainers Act, as originally enacted, supports that conclusion. First, both the House Report and the Senate Report declared that

"a Governor's *right* to refuse to make a prisoner available is preserved." H.R. Rep. No. 91-1018, p. 2 (1970) (emphasis added); S. Rep No. 91-1356, p. 2 (1970) (emphasis added). The context of that statement only increases its import. Twenty-five states were already members of the Agreement. The Reports were explaining that the Governors' right to refuse "is preserved" *even upon the Federal Government's joining the Agreement* as well.

Second, there is no other indication that Congress intended to make the Federal Government first-class members, and the states second-class members, of the Agreement. As this Court observed in *Mauro*, when the bill's sponsor spoke in favor of the Agreement on the floor of the Senate he did not even hint at the possibility that the United States would be treated differently than the other member states—as "one would expect had" that been his intent. *Id.* at 355 (citing 116 Cong. Rec. 38840 (1970) (statement of Sen. Hruska)).

2. The First Circuit's decision also conflicts with basic principles of interstate compact construction. When Congress approves an interstate compact, it transforms the compact into federal law. *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). As with any federal law, the plain language is the strongest evidence of a compact's meaning and courts lack the power to add provisions. *Alabama v. North Carolina*, 130 S. Ct. 2295, 2312-2313 (2010). Those principles apply with special force when it comes to interstate compacts, "given the federalism and separation-of-powers concerns" that arise from courts "rewrit[ing] an agreement among sovereign States, to which the political branches consented." *Ibid.*

Those principles do not evaporate when the Federal Government participates in an interstate compact. To the contrary, the "federalism and separation-of-powers concerns" that require courts to apply interstate compacts as written apply even more strongly when the Federal sovereign joins the agreement. The Detainers Act both approved the IAD, thereby converting it into federal law, and added the Federal Government as a member party. The political branches at the federal level consented to the IAD and to the Federal Government joining the IAD as an equal, but not superior, member.

To our knowledge, the United States has only signed as an equal party four interstate agreements, showing the great care taken before the Federal Government chooses to place itself on an equal footing with the 50 states. The other three Agreements to which the United States is a formal signatory are: (1) the Delaware River Basin Compact, Pub. L. No. 87-328, 75 Stat. 688 (1961) (establishing a regional multipurpose water resources regulatory agency); (2) the Susquehanna River Basin Compact, Pub. L. No. 91-575, 84 Stat. 1509 (1970) (modeled on the Delaware River Basin Compact); and (3) the National Crime Prevention and Privacy Compact Act of 1998 (NCPPCA), Pub. L. No. 105-251, §§211-217, 112 Stat. 1870 (1998) (codified at 42 U.S.C. §§14611-14616) (organizing an electronic information sharing system among the federal government and the States to exchange criminal history records).

In each of these other compacts, Congress imposed conditions and reservations when it needed to limit the compacts' impact on other federal laws. See, *e.g.*, Delaware River Basin Compact, Article 15 ("Reserva-

tions"), particularly §§15.1(k) ("[N]othing contained in this Act or in the Compact shall be construed as superseding or limiting the functions, under any other law, . . . of any other officer or agency of the United States, relating to water pollution"), 15.1(l); Susquehanna River Basin Compact, Section II ("Reservations"), particularly §§2(j), (r); NCPPCA, 42 U.S.C. §14614 ("Effect on other laws," providing, *inter alia*, that nothing in the Compact "shall affect the obligations and responsibilities of the FBI" with respect to the Privacy Act of 1974, or "interfere in any manner with" other specified federal laws).

The Detainers Act, even as amended in 1988, does not protect the force of any preexisting federal laws, including the writ of habeas corpus *ad prosequendum*. In its present form, the Act gives the Federal Government "special" treatment in only two limited respects, as explained above; it otherwise left the states and the Federal Government on equal footing. Having activated the Agreement, "it clearly would permit the United States to circumvent its obligations under the Agreement" for the federal government to reap the Agreement's rewards, but disregard its obligations. *Mauro*, 436 U.S. at 362. This Court's intervention is necessary to ensure that the United States abides by its freely entered obligation to subject itself to Article IV(a), and to ensure that the states remain equal partners in the Agreement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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