IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee	)	BRIEF ON BEHALF OF APPELLANT
v.	)	Crim. App. Dkt. No. 202300286
Eric C. BABBITT, Logistics Specialist Second Class (E-5) U.S. Navy Appellant	)	USCA Dkt. No. 25-0220/NA

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ISSUES PRESENTED

I.

WHETHER THE COMMONWEALTH OF VIRGINIA'S REQUEST TO THE NAVY TO KEEP APPELLANT CONFINED IN VIRGINIA SO THAT THE COMMONWEALTH COULD RECEIVE CUSTODY OF APPELLANT IN ORDER TO TRY HIM FOR PENDING CRIMINAL CHARGES CONSTITUTED A DETAINER, THUS TRIGGERING THE NAVY'S REQUIRED COMPLIANCE WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT.

II.

WHETHER THE LOWER COURT ERRED BY RELYING ON AN IRRELEVANT CAPIAS WARRANT THAT IS NOT IN THE RECORD TO CONCLUDE THE NAVY DID NOT HAVE A DUTY TO COMPLY WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT.

III.

WHETHER THE SENTENCE INTERRUPTION PROVISION OF ARTICLE 14, UCMJ, CAN BE INVOKED AFTER A DETAINER HAS BEEN FILED.

IV.

IF THE NAVY DID NOT COMPLY WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT, WHAT REMEDY IS THIS COURT AUTHORIZED TO PROVIDE APPELLANT?

Statement of Statutory Jurisdiction

The Navy-Marine Corps Court of Criminal Appeals had jurisdiction under Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (2018),

because Appellee's approved sentence included a dishonorable discharge. This Court has jurisdiction under Article 67(a)(2), UCMJ, 10 U.S.C. § 867(a)(2) (2024).

Statement of the Case

A military judge sitting as a general court-martial convicted Appellant, pursuant to his pleas, of attempted sexual abuse of a child by indecent exposure, sexual abuse of a child by indecent conduct, and assault consummated by a battery on a child under sixteen years-old, in violation of Articles 80, 120b, and 128, UCMJ. 10 U.S.C. § 880, 920b, 928 (2018). The Military Judge sentenced Appellant to thirteen years of confinement, reduction to pay grade E-1, total forfeitures of pay and allowances, and a dishonorable discharge. After sentencing, the Appellant moved to withdraw from the Plea Agreement and for the Military Judge to set aside the Findings and Sentence. The Military Judge denied the motion. The Convening Authority approved the findings and sentence, and the Military Judge entered the judgment into the Record.

Appellant raised three assignments of error at the lower court and the court heard oral argument. The lower court affirmed the findings and sentence and Appellant moved for reconsideration. The lower court denied Appellant's Motion for Reconsideration.

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Statement of Facts

A. The United States charged Appellant with violations of the Uniform Code of Military Justice for his misconduct with neighborhood children in base housing.

In 2019, Appellant lived in military housing, where he inappropriately touched an eight-year-old girl and pulled down the shorts and underwear of a nine-year-old girl. (J.A. 3.) Charges were first preferred against Appellant in June 2022. (J.A. 43.)

B. Before those Charges were referred, Appellant committed additional misconduct and was investigated and arrested by civilian police in Petersburg, Virginia. Trial Counsel began correspondence with the Commonwealth's attorney.

In 2022, Appellant no longer lived in military housing and instead lived in Petersburg, Virginia. (J.A. 43.) At the end of July 2022—while the pending military charges were yet to be referred—the Petersburg Police Department received a report that Appellant was engaging in sexual, online conversation with, and was attempting to meet in person, someone Appellant believed to be a child under the age of twelve. (J.A. 35, 43.) A civilian magistrate issued a search warrant for Appellant's home and devices. (J.A. 43.)

On July 27, 2022, police officers arrested Appellant after finding child pornography while executing the search. (J.A. 43.) The Commonwealth of Virginia confined Appellant and charged him with child pornography offenses. (J.A. 43, 44.)

On July 28 and 29, 2022, and August 4, 2022, military Trial Counsel discussed the status of the cases with the Commonwealth's attorney. (J.A. 43.)

C. Through the U.S. Marshals, Appellant's command put a detainer on Appellant so that after he was released on bail, he was put in pretrial confinement with the military.

Meanwhile, the Convening Authority "withdrew" the military charges—this was later corrected as a dismissal of charges. (J.A. 44.) Shortly afterwards, on August 3, 2022, the Convening Authority signed a pretrial confinement order because he believed Appellant would be released on bail. (J.A. 28.) Between August 16 and August 18, 2022, Appellant's command contacted the United States Marshals to assist in putting a detainer in place with the civilian jail, and with ensuring that Appellant's command would be contacted once he made bail. (J.A. 28–29.)

Appellant posted bail on August 22, 2022, and was immediately placed in military pre-trial confinement. (J.A. 44.)

D. Military Charges for Appellant's 2019 abuse of children and his 2022 attempted indecent communications with a child were referred in November 2022.

Charges were preferred against Appellant on September 9, 2022. (J.A. 28.) This included the original charges from the investigation into Appellant's 2019 abuse of children on military housing, and Charges for some of his July 2022

misconduct. (J.A. 28.) The Charges were referred in November 2022, and Appellant was arraigned.

E. Enclosures to a Motion summarize that the Commonwealth's charges for child pornography were "reinitiated via direct indictment" in December 2022 and a "capias" was issued.

In a Motion Response, the United States included as an enclosure email correspondence between the military Trial Counsel and prosecutors for the Commonwealth of Virginia; the emails stated the Commonwealth of Virginia "Nolle Prossed" its first charges against Appellant. (J.A. 48.) Charges for possession of child pornography were "reinitiated via direct indictment" filed on December 7, 2022. (J.A. 48, 51.) Another enclosure states that on December 15, 2022, a "capias" was issued. (J.A. 46, 51–66.) The capias warrant was not included in the Record of Trial.

A separate enclosure included an email between the prosecutors for the Commonwealth and military that discussed whether a "global plea" in the military was acceptable to the Commonwealth. (J.A. 48–49.) Ultimately, Appellant faced no charges at court-martial for the child pornography offenses handled by Virginia. (J.A. 46.)

F. Appellant agreed to plead guilty to some Charges and the civilian and military prosecutors again discussed Appellant's cases.

In July 2023, Appellant entered a Plea Agreement with the Convening Authority. (J.A. 42.) The Agreement contained a provision that the Convening

Authority would recommend Appellant serve confinement in Fort Leavenworth, Kansas, or Miramar, California, if he was eligible. (J.A. 38.) Appellant pled guilty on August 1, 2023. (J.A. 13, 84.)

After the plea hearing, military Trial Counsel and civilian prosecutors again exchanged emails. On August 2, 2023, a civilian prosecutor replied to an email from Trial Counsel. (J.A. 81.) The Assistant Commonwealth's Attorney wrote: "Thank you very much for this information. If you could hold off on sending him out of state so that we can get him served on our indictments and tried, that would be best . . ." (J.A. 81.)

Trial Counsel replied that she "had details on how we can get [Appellant] into your custody pending your trial." (J.A. 80.) The Trial Counsel later wrote the civilian prosecutors that Appellant could be transferred to the Commonwealth pending his civilian trial and that their office "would need to submit a written transfer request" and advised that she would later send the points of contact and "what needs to be in the request." (J.A. 79.)

Appellant, she explained, would be "released from the brig in Chesapeake to your custody with a detainer from us. If he bonds out on new charges, he'll go back into prison with the Navy. He's headed to Leavenworth." (J.A. 79.) She also said that "[i]f he's kept in jail pending trial, you can have jurisdiction over him until your trial is over and his sentence is served. His sentence from the Navy will

be tolled until he is returned to our custody." (J.A. 79.) She concluded by asking whether that was something their office would support and stating that she could start routing the paper work; Appellant would be "held here in Chesapeake for as long as needed to get him transferred to you." (J.A. 79.)

The civilian prosecutors replied that they wanted to prosecute before Appellant was sent to Leavenworth. (J.A. 77.)

In an August 8, 2023, letter to Navy Personnel Command, the Commanding Officer of Region Legal Service Office Mid-Atlantic requested that Appellant not receive any permanent change of station orders. (J.A. 84.) The letter explained that "several further charges against [Appellant] are pending service by the State of Virginia and likely pending preferral by the Region Legal Service Office (RLSO) Mid-Atlantic . . . . [Virginia] has expressed their desire to request transfer of Appellant to their custody in relation to their charges." (J.A. 84.) The letter further stated that "RLSO Mid-Atlantic respectfully requests any Permanent Change of Station (PCS) orders not be executed at this time and [Appellant] remain in Virginia until the State of Virginia serves charges against [Appellant] and his transfer to their custody is approved." (J.A. 84.)

In an endorsement to the letter, the Commander, Navy Region Mid-Atlantic, recommended "approval of the request to delay the execution of Permanent Change of Station [o]rders of [Appellant] until a custody transfer to the

Commonwealth of Virginia is finalized per Section 0613 [of the JAGMAN]." (J.A. 87.)

G. Appellant moved to withdraw from the Plea Agreement, alleging the Commanding Officer committed unlawful command influence and breached the Agreement by failing to send a timely recommendation that Appellant be confined in Leavenworth and causing Appellant to be held in Chesapeake, Virginia, instead.

About a month after sentencing, Appellant moved to withdraw from his Plea Agreement. (J.A. 67.) Appellant alleged that the Convening Authority breached the Agreement by not timely recommending Appellant be transferred to Leavenworth. (*See* J.A. 70.) In its Response, the United States explained that earlier in 2023, the Naval Criminal Investigative Service identified additional child victims and crimes not covered by either Virginia's pending indictments or by the Charges before the court-martial. (J.A. 67.)

Appellant had been provided the additional investigative material and engaged in plea agreement negotiations for a "global plea" that would cover the newly discovered crimes, the pending Virginia indictments for child pornography, and the current military charges. (J.A. 68.) During the negotiations, Appellant was "repeatedly told . . . that the Commonwealth of Virgina intended to move forward with the pending indictments for possession of child pornography." (J.A. 68.) The indictments had not been served on Appellant. (J.A. 68.)

The Response also explained that the Commonwealth's Attorneys emailed Trial Counsel on August 7, 2023, "indicating the Commonwealth's intent to request [Appellant] be transferred to the Commonwealth custody for the duration of his civilian trial." (J.A. 68.) Trial Counsel acted as a liaison between the Commonwealth, the Convening Authority and the Personnel Command to ensure a "smooth" custody transfer to Virginia, which included "routing a request that [Appellant's] orders be held pending approval of the transfer request from the [Commonwealth]." (J.A. 68.)

Appellant's subsequent orders assigned him to Naval Consolidated Brig Chesapeake, "with follow on to Charleston and the [Fort Leavenworth Disciplinary Barracks]." (J.A. 68.) The orders were to be executed when Appellant was released from the Commonwealth and returned to military custody. (J.A. 68.)

The Response enclosures included emails between Navy Corrections personnel and brig staff that indicated: (1) an agreement would be signed "once the [Region Legal Service Office] receives the request from the [C]ommonwealth;" (2) that Personnel Command was expecting to receive "documentation from the Commonwealth;" and (3) that Appellant would remain at Chesapeake "for possible transfer of custody to the Commonwealth of Virginia." (J.A. 92.)

H. The Military Judge denied Appellant's Motion to Withdraw.

The Military Judge denied Appellant's Motion to Withdraw from the Plea Agreement. (J.A. 25.)

I. In January and February 2024, Appellant submitted Prisoner Request forms that quoted the Interstate Agreement on Detainers.

Starting on January 11, 2024, Appellant submitted Prisoner Request forms discussing the Interstate Agreement on Detainers Act. (J.A. 114–16, 118–20.) These were addressed to the legal officer, a named individual, and "P&R" and "P&S." (J.A. 114–16, 118–20.)

Appellant received a Response from the brig's legal advisor that stated his delivery to civilian authorities was "being facilitated via a Capias and NOT a detainer, therefore, Article 14, UCMJ (10 U.S.C. § 814) applies." (J.A. 117.) The Response stated that "a Capias is a warrant and the IADA is not applicable to your case." (J.A. 117.)

J. A Delivery Agreement in February states delivery was conducted in accordance with Article 14.

An Assistant Commonwealth Attorney signed an Appellant's Delivery Agreement. (J.A. 113.) The Agreement states that delivery was conducted in accordance with Article 14, UCMJ; although the body of the Agreement stated that "Naval Consolidated Brig Charleston is responsible to have [Appellant] ready to be turned over to the custody of the civil authorities of the Commonwealth of Virginia

on February 15, 2024," the date by the signature is February 15, 2023. (J.A. 113.) The United States concurs with Appellant that the 2023 date is a scrivener's error.

K. The lower court affirmed the Findings and Sentence after Appellant argued that the Navy unlawfully increased the severity of Appellant's Sentence by failing to comply with the Interstate Agreement on Detainers Act and that Article 14 was repealed by implication.

Appellant argued before the Navy Marine Corps Court of Criminal Appeals that the Navy had unlawfully increased the severity of Appellant's Sentence by failing to comply with the Interstate Agreement on Detainers Act. (*See* J.A. 123.)

He also argued that Article 14(b), UCMJ, was "repealed by implication under the facts of this case" and therefore the Navy erred in relying on its sentence interruption provisions. (*See* J.A. 123.) Appellant asked that the court "order compliance with the sentence as adjudged." (Appellant Br. at 29, Apr. 19, 2024.)

The lower court determined that Appellant had not challenged the adjudged Sentence and instead requested the court "order compliance with the sentence as adjudged." (J. A. 11.) The lower court explained that Appellant's claim that "the execution of any Navy confinement that occurs beyond Appellant's adjudged term of confinement will constitute an additional term of confinement" was "unripe, inchoate, and purely speculative." (J.A. 11.)

The lower court did not know whether Appellant would be convicted in Virginia, what his sentence would be, when he would return to military control, or when he would be released from military confinement after returning to military

control. (J.A. 11.) The court did not find that communications between the Commonwealth's attorney and the military prosecutors "to be a detainer within the meaning of the Act." (J.A. 11.) The court also rejected Appellant's contention that the Interstate Agreement on Detainers Act repealed Article 14, UCMJ. (J.A. 11.) The court affirmed the Findings and Sentence. (J.A. 12.)

Summary of Argument

Appellant was transferred to Virginia's custody under Article 14, UCMJ. The ongoing correspondence, including discussions about between the Commonwealth's attorney and military Trial Counsel did not amount to a detainer, which must be filed with the correctional institution. The endorsements show that the Region Legal Service Office was contemplating additional charges for misconduct that was discovered in January, 2023, and that was part of the reason Appellant was held in Chesapeake. Therefore, neither the actions of the Commonwealth nor Appellant required the transfer be made under the Interstate Agreement on Detainers Act instead of Article 14.

The lower court did not err by relying on a capias warrant that is not in the Record to conclude that the Navy did not have a duty to comply with the Interstate Agreement on Detainers Act. In fact, the lower court did not rely on the capias warrant, which was only mentioned in a footnote, in reaching their findings. Regardless, the Record reveals that a capias warrant was issued. And before the

lower court, Appellant moved to attach a document that revealed the brig legal advisor told Appellant that his transfer to Petersburg, Virginia, was "being facilitated via a Capias and NOT a detainer;" Appellant's complaint that the lower court considered the document is invited error. Nothing in the Record contradicts that a capias was used to effect Appellant's transfer from Naval custody to Virginia.

The sentence interruption provision of Article 14 is not in conflict with the Interstate Agreement on Detainers Act. There was no detainer here, so the Act did not apply.

The lower court rightly determined that it could only address errors in the Findings or Sentence and Appellant's claim did not amount to an error with the Sentence and, moreover, the claim was inchoate as Appellant has not shown when he will be released from military custody. The Record currently does not contain any documents regarding Appellant's return to military custody, the outcome of his civilian trial, or whether he received pre-trial confinement credit. Further, the only remedy the Interstate Agreement on Detainers Act contemplates is dismissal of charges in the receiving state. Appellant does not show that he made any claims regarding the Interstate Agreement on Detainers Act before the civilian court, where he could have alleged the only remedy contemplated in the Act, which is the dismissal of charges in the receiving state. And Appellant has not filed a habeas

petition before the lower court. Accordingly, this Court cannot provide relief.

Argument

I.

MILITARY PRISONERS CAN BE TRANSFERRED UNDER ARTICLE 14 OR THE INTERSTATE AGREEMENT ON DETAINERS ACT. THE EMAIL EXCHANGES BETWEEN THE ASSISTANT COMMONWEALTH ATTORNEY AND THE MILITARY TRIAL COUNSEL DID NOT AMOUNT TO A DETAINER AND THE NAVY WAS NOT REQUIRED TO EFFECT THE TRANSFER UNDER THE INTERSTATE AGREEMENT ON DETAINERS ACT.

A. The standard of review is de novo.

Matters of statutory interpretation are reviewed de novo. *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.A.F. 2023).

B. Service members may be transferred under Article 14, UCMJ.

"Article 14, UCMJ, provides authority to honor requests for delivery of Service members serving a sentence of a court-martial." Manual of the Judge Advocate General (JAGMAN), JAGINST 5800.7G, w/ch. 1, Section 0613(a) (Feb. 11, 2022). Article 14 itself does not list procedural requirements but instead calls on the Secretary concerned to prescribe regulations.

C. The Interstate Agreement on Detainers Act can also be used to transfer service members. It may be invoked by a State or by a prisoner, but a detainer filed with the custodial state is a prerequisite for either.

"Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act (IADA)." Manual of the Judge Advocate General (JAGMAN), JAGINST 5800.7G, w/ch. 1, Section 0613(a) (Feb. 11, 2022). The Interstate Agreement on Detainers Act prescribes procedures by which a member state can 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. *United States v. Mauro*, 436 U.S. 340, 343 (1978).

In sum, "the Agreement basically (1) gives a prisoner the right to demand trial within 180 days; and (2) gives a States the right to obtain a prisoner for purposes of trial, in which case the State (a) must try the prisoner within 120 days of his arrival, and (b) must not return the prisoner to his 'original place of imprisonment' prior to that trial." *Alabama v. Bozeman,* 533 U.S. 146, 151 (2001).

Regardless of whether the member State or the appellant initiates the request, "the provisions of the Agreement are triggered only 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. Detainers must be "based on untried indictments, informations, or complaints." Interstate Agreement

on Detainers, Art. I. There can be no violation of the Interstate Agreement on Detainers Act absent a detainer.

To obtain custody, the receiving state must also file an "appropriate request" with the sending State. Interstate Agreement on Detainers, Art. IV; *Mauro*, 436 U.S. at 343.

If a prisoner wants to initiate disposition of the charges, he must give or send a written notice and request for final disposition to the warden, commissioner of corrections, or other official having custody of him. Interstate Agreement on Detainers, Art. III (b).

D. The Interstate Agreement on Detainers is inapplicable because there was no "detainer" filed with the United States. By the plain language of the statute, neither the informal discussion between prosecutors nor the Commonwealth of Virginia's capias warrant meet the definition of a detainer filed under the Interstate Agreement on Detainers Act.

A fundamental rule of statutory construction is that "the plain language of a statute will control unless it leads to an absurd result." *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012). Whether a statute is plain or ambiguous "is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). "Where Congress does not furnish a definition of its own, we generally seek to afford a statutory term its ordinary or

natural meaning." *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, 594 U.S. 382, 388 (2021) (internal quotation and citation removed).

1. The Interstate Agreement on Detainers Act requires a detainer be filed with the confinement institution by the requesting State.

While the Act does not define detainer, the House and Senate reports define a detainer as "a notification filed with the institution in which a prisoner is serving a sentence advising that he is wanted to face pending criminal charges in another jurisdiction." *Mauro*, 436 U.S. at 359 (quoting H. R. Rep. No. 91-1018, p. 2 (1970); S. Rep. No. 91-1356, p. 2 (1970)); *see Carchman v. Nash*, 473 U.S. 716, 719 (1985) (detainer "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent."); *New York v. Hill*, 528 U.S. 110, 112 (2000) ("A State seeking to bring charges against a prisoner in another State's custody begins the process by filing a detainer, which is a request by the State's criminal justice agency that the *institution in which the prisoner is housed* hold the prisoner for the agency or notify the agency when release is imminent.") (emphasis added).

More recently, the Court described a detainer as "*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) (emphasis added).

2. The Commonwealth of Virginia emails are not a "detainer" under the Interstate Agreement on Detainers Act because they were not directed to the confinement institution. The capias warrant is also not a detainer.

In *United States v. Fulford,* 825 F.2d 3, 10 (3rd Cir. 1987), the appellant, while serving a term of state imprisonment in Texas, was delivered to Pennsylvania for its pending state charges. *Id*. at 5−6. A federal arrest warrant was served while the appellant was confined in Pennsylvania. *Id*. at 10. The appellant argued that Pennsylvania violated the Interstate Agreement on Detainers Act. *Id*. The court rejected his claim. *Id*. The court explained that an arrest warrant is not a detainer—arrest warrants are "directed to the arrestee and not to the institution in which he is confined, [so] a warrant cannot fairly be construed [as the required statutory] notice to the institution's officials." *Id.* at 11.

Here, Appellant fails to show that any "detainer" under the Interstate Agreement on Detainers Act was filed at the military brig. There is no evidence in the Record that the Virginia prosecutors ever contacted Naval Consolidated Brig Charleston, where Appellant was being held after he was convicted.

Further, an arrest warrant is not a detainer. *Fulford*, 825 F.2d 3 at 10. There is also no evidence in the Record that the capias warrant here was addressed to Naval Consolidated Brig Charleston, where Appellant was being held after he was

convicted. (Appellant Mot. Attach, App. B at 4; J.A. 117); *see Fulford*, 825 F.2d 3 at 10. Therefore, like *Fulford*, Appellant fails to show he was entitled to invoke the Interstate Agreement on Detainers Act. *See id*.

Appellant errs when he states "regardless of which Navy personnel received the detainer, they were obligated to comply with and enforce the IADA." (Appellant Br. at 12, Nov. 19, 2025.) Appellant's claim puts the cart before the horse: a detainer has to be filed with the institution in which Appellant is confined before Navy personnel are obligated to enforce the Detainer Act. *See Fulford*, 825 F.2d at 10.

3. The informal discussion between the prosecutors do not amount to a "filed" detainer.

The House and Senate reports' definition since adopted by the Court require that the detainer be "filed." *Mauro*, 436 U.S. at 359 (quoting H. R. Rep. No. 91-1018, p. 2 (1970)). The primary definition of the verb "file" in *Black's Law Dictionary* is "[t]o deliver a legal document to the court clerk or record custodian for placement into the official record." *Black's Law Dictionary* 660 (8th ed. 2004); *see e.g. Artuz v. Bennett*, 531 U.S. 4, 8 (2000) ("An application is 'filed' as the term is commonly understood, when it is delivered to, and accepted by, the appropriate court officer for placement into the official record.") (citing *United States v. Lombardo*, 214 U.S. 73, 76 (1916), *Black's Law Dictionary* 642 (7th ed. 1999)). Another definition that could apply is "to record or deposit something in

an organized retention system or container for preservation and future reference." *Black's Law Dictionary* 660 (8th ed. 2004).

Neither definition encompasses the informal email communications here. First, the context of the emails themselves never indicate that Virginia intended the correspondence be a filing—"placement into the official record"—or a detainer. (J.A. 81); *Black's Law Dictionary* 660 (8th ed. 2004). The emails were part of an ongoing conversation that occurred over the course of more than a year that also, as indicated in the emails, involved phone calls and possibly face-to-face meetings. (J.A. 75–81.) Thus, the emails were not "filed" and therefore could not be a detainer. *See United States v. Booher*, 752 F.2d 105, 106 (4th Cir. 1985) (court found writ sent to prison before delivery was not detainer in part because "there was no indication on the face of the writ that Virginia intended the writ to be treated as a detainer.")

That "filing" a detainer is more formal and official than an email back-and-forth discussion between prosecutors is also supported by the context of the statute. Once a detainer is filed, a custody official must promptly inform the prisoner of the "source and contents of any detainer lodged against him and shall also inform him of his right make a request for final disposition of the indictment . . . on which the detainer is based." Interstate Agreement on Detainers Act, Art. III (c). But based on the emails between prosecutors, there would be little content to provide a

prisoner to inform him: the tone is conditional instead of directive ("if you hold off on sending him out of state so that we can get him served on our indictments and tried, that would be best"), the specific charges and indictments are not included in the correspondence nor are there any other details, and the Virginia prosecutors were not corresponding with any correctional officials who would inform Appellant. (J.A. 75–81; *see infra* C.3 (discussing *United States v. Fulford,* 825 F.2d 3 (3rd Cir. 1987)); *see also Bozeman*, 533 U.S. at 148 (detainer "a legal order" that requires custody state hold individual).

Further, the point of a detainer is an official hold that prevents prison officials from inadvertently releasing an appellant without notifying the State seeking custody. *See Carchman*, 473 U.S. at 719; *Bozeman*, 533 U.S. at 148. If emails between prosecutors amounted to a "filed" detainer, it would undercut the purpose of a detainer as something required to inform custodial officials, who in turn inform the prisoner.

4. Appellant errs by arguing a detainer is any informal request. Nothing in the emails constitutes a detainer and the Virginia prosecutors do not even use the word "detainer".

Courts reject Appellant's argument that detainers are not held to any formal standard. (Appellant Br. at 11.) In *United States v. Mauro*, 436 U.S. 430 (1978)—the case cited by Appellant for the Appellant's contention that the definition of detainer is broad enough to encompass informal, unfiled communications—the

Court rejected the appellant's argument that the definition of a detainer was "broad enough to include within its scope a federal writ of habeas corpus *ad prosequendum*." (Appellant Br. at 11 (citing *Mauro*, 436 U.S. at 358–59).)

In *United States v. Ray*, 899 F.3d 852 (10th Cir. 2018), appellant first claimed his arrest—at a residential facility within the community-corrections program—was a detainer based on the absence of a statutory definition of detainer and the definition broad definition of the term "detainer" in *Black's Law Dictionary*. *Id.* at 857. The court rejected appellant's claim because "the Supreme Court has defined detainer on multiple occasions to mean something specific in the context of the [Detainer Act]." *Id.* The court reasoned that an arrest is not a notification filed with the institution in which a prisoner is serving a sentence and thus was not "within the Supreme Court's binding definition of a detainer." *Id.* at 858; *see also Fulford*, 825 F.2d 3 (arrest warrant not detainer because directed to individual prisoner, not correctional facility).

The *Ray* appellant's second argument about why a detainer existed was based on a form "used to explain the reasons an offender is in custody" and included as a reason "pending federal charges." *Id.* The form was completed by a parole liaison for the state's community-corrections program, who submitted it to the state's department of corrections. *Id.* The parole liaison twice used "some iteration of the words 'felony detainer.'" *Id.* at 859. Appellant argued that this

was evidence the federal government had lodged a detainer. *Id.* But the liaison later testified that the federal agent he communicated with before completing the form had never used the word "detainer" and had not instructed him to hold the appellant; the court found there was no detainer. *Id.*

The *Ray* court also rejected appellant's claim that a telephone conversation between the liaison and a federal agent amounted to a detainer. *Id. (citing United States v. Trammel,* 813 F.2d 946, 949 (7th Cir. 1987) (refusing to classify phone call plus subsequent notation in jail records that marshal would pick up appellant and "bring the writ along" as detainer partly as "would serve only to inhibit informal courtesy notifications of a kind that save time and trouble on both ends, expedite the procedures, and contribute in small but meaningful ways to the intergovernmental comity that is among the expressed purposes of the IAD itself.").

Nowhere in the Commonwealth's emails is the word "detainer;" only one email mentions a detainer and it is from the Navy Trial Counsel and explains that the Navy will issue a detainer if the Appellant is transferred to Virginia's custody to ensure Appellant is returned to the Navy at the end of Virginia's custody. (J.A. 79.) This type of detainer—from the Navy to the Virginia correctional facility—would be unnecessary if the Virginia prosecutors understood their communication to trigger the Interstate Agreement on Detainers because under the Agreement a

receiving state is already obligated to return a prisoner to the sending state at completion of the receiving state's prosecution. Interstate Agreement on Detainers, Art. V(e). *See Booher*, 752 F.2d at 106.

Another indication the correspondence does not amount to a detainer is that the emails fail to mention the specific criminal charges or the indictment Virginia issued against Appellant, the existence of which is a prerequisite for a detainer under the Interstate Agreement on Detainers Act. *See Carchman v. Nash*, 473 U.S. at 727 ("By its terms, however, Article III does not apply to all detainers, but only those based on 'any untried indictment, information, or complaint.'").

Further, the overall tone and context of the email militate against classifying them as a detainer. The emails from the Commonwealth prosecutors are not a directive. *See Bozeman,* 533 U.S. at 148. Instead, the Commonwealth prosecutor states, "*If you could* hold off on sending him out of state [to enable service of indictments and trial]. . . that would be best." (J.A. 81.) The Navy prosecutor replies with assurance that there is a way to make the transfer happen and asks if this is something the Commonwealth's office "would support." (J.A. 79.) The Navy prosecutor then indicates that she will request to put Appellant's transfer "on hold," and Appellant's court-martial sentence would be tolled. Thus, the only indication in the Record is that an Article 14 transfer is contemplated by the

prosecutors, and there was no detainer or plan to transfer under the Interstate Agreement on Detainers. (J.A. 79).

As in *Ray*, Appellant fails to show the communication amounted to a detainer. Instead, they were the type of "informal courtesy notifications of a kind that save time and trouble on both ends" that do not fit the definition of a detainer in the specific context of the Interstate Agreement on Detainers. *See Ray*, 899 F.3d at 859.

5. The Navy-generated documents requesting Appellant be held in Virginia rather than transferred to Leavenworth are based on the additional victims and the Region Legal Services Office's interest in additional charges—in addition to Virginia's interest in serving its indictments and prosecuting.

The correspondence to Naval Personnel Command also does not amount to a detainer and further undercuts Appellant's claim that the emails between prosecutors were a detainer. First, although the Navy Trial Counsel's letter requests to hold Appellant's permanent change of station orders "pending a request for custody transfer from the Commonwealth of Virginia," the attachments to the email do not contain any Commonwealth documents. (J.A. 83.) Second, one of the two endorsements mentions not only the pending service of Virginia charges, but also additional charges from the Region Legal Service Office for "additional misconduct." (J.A. 84.) While the same endorsement states that "Virginia has expressed their desire to request transfer of custody in relation to their charges,"

this language is not the certainty a detainer requires, and the word "detainer" itself is never mentioned. (J.A. 83–87.)

Thus, Appellant fails to show he was entitled to invoke the Interstate Agreement on Detainers Act.

II.

THE LOWER COURT DID NOT RELY ON THE CAPIAS WARRANT. REGARDLESS, THOUGH THE WARRANT IS NOT IN THE RECORD, IT IS DISCUSSED IN THE RECORD. EVEN IF IT WAS IMPROPER TO CONSIDER THE CAPIAS WARRANT, APPELLANT CAUSED THE ERROR BY ATTACHING THE BRIG LEGAL ADVISOR'S STATEMENT THAT HIS TRANSFER WAS PURSUANT TO A CAPIAS WARRANT. FURTHER, THE LOWER COURT CORRECTLY FOUND A CAPIAS WARRANT DOES NOT TRIGGER THE INTERSTATE AGREEMENT ON DETAINERS ACT.

A. Invited error is reviewed de novo.

Whether appellant invited error is a question of law which is reviewed de novo. *United States v. Martin*, 75 M.J. 321, 325 (C.A.A.F. 2016).

B. Invited error precludes review.

"The doctrine of invited error has deep historical roots in the criminal justice system." *United States v. Noriega-Perez*, 792 Fed. Appx. 672, 674 (11th Cir. 2019). The doctrine "stems from the common sense view that where a party invites the trial court to commit error, he cannot later cry foul on appeal." *Id.* (*citing United States v. Brannan*, 562 F.3d 1300, 1306 (11th Cir. 2009)); *see also*

Johnson v. United States, 318 U.S. 189, 200–01 (1943) ("we cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at trial be reopened to him."). "The invited error doctrine prevents a party from 'creat[ing] error and then tak[ing] advantage of a situation of his own making [on appeal].'" *Martin*, 75 M.J. at 325 (citations omitted).

"Invited error does not provide a basis for relief." *Id*. (quoting *United States v. Raya*, 45 M.J. 251, 254 (C.A.A.F. 1996)). Like waiver, "once it is determined that a defendant invites error, an appellate court will not review an error invited by a defendant." *Noriega-Perez*, 792 Fed. Appx. at 675 (internal quotations and citation removed).

C. In *Martin*, the appellant was precluded from complaining about the admission of evidence he introduced.

In *Martin*, the Court held that the invited error doctrine precluded the appellant from complaining about the government eliciting "human lie detector" testimony on re-direct examination when defense first elicited it on cross-examination. 75 M.J. at 327. There, the victim and her husband attended a party where they both later went to sleep in a guest room. *Id*. at 323. The victim testified that she awoke to the appellant inserting his finger in her vagina, but when she tried to wake her husband, he told her to stop and let him sleep. *Id*. The

husband could not recall what happened that evening after going to sleep and had told law enforcement it was possible he could have touched his wife. *Id*.

On cross-examination, *Martin* defense counsel elicited from the husband that he was "not convinced" of his wife's allegation at the time because "it didn't make . . . much sense." *Id.* at 324. Trial counsel, on redirect, questioned the husband about whether he believed his wife. *Id.* The husband testified that he believed her and explained why. *Id.*

The *Martin* court found that the trial defense counsel's cross-examination, which focused on the husband's doubts about his wife's truthfulness, led to the elicitation of the testimony. *Id*. Because the defense first elicited the human lie detector evidence on cross, they opened the door to the government's redirect eliciting "the same type of testimony on the same evidentiary point." *Id.* at 327. The defense invited the error and there was no basis to grant relief. *Id*. at 327.

D. Appellant should be precluded from complaining about the lower court's consideration of a document he attached to the Record. Appellant invited the alleged error because the document states the transfer was conducted on the basis of a capias warrant.

Here, the Record of Trial includes evidence of a capias warrant. In Response to Appellant's Motion for Pre-Trial Confinement Credit, the United States submitted a Commonwealth of Virginia document that recorded a "True Bill-Capias Issued" against Appellant in December 2022. (J.A. 46, 51–66.) The United States submitted the same enclosure later in Response to Appellant's post-

trial Motion to Withdraw from the Plea Agreement. (J.A. 70.) These documents in the Record of Trial demonstrate the existence of a capias warrant. Admittedly, nothing in the Record of Trial proves that Appellant's transfer was effected by it.

Then on appeal, Appellant moved the Service Court to attach several documents. (Appellant Mot. Attach., *United States v. Babbitt*, No. 202300286, 2025 CCA LEXIS 138 (N-M. Ct. Crim. App. Mar. 31, 2025).) Appellant moved to attach an Article 14 delivery Agreement and "Prisoner Requests ICO [Appellant]." (Appellant Mot. Attach. at 1.) In the Prisoner Requests, Appellant appeared to quote portions of the Interstate Agreement on Detainers Act.[1] (J.A. 114–20.)

Appellant moved to attach a February 2024 "Prisoner Request" that has a "remarks" section that is filled in, and includes the notation: "Capias Warrant *Not detainer*." (Appellant Mot. Attach, Appx. B at 3 (italics added); J.A. 116.) The next page is the Brig's Response to the Prisoner Requests. (Appellant Mot. Attach, Appx. B at 4; J.A. 117.)

The typed Response reads: "Your delivery to civilian authorities in Petersberg, VA, is being facilitated via a Capias and *NOT a detainer*, therefore, Article 14, UCMJ (10 U.S.C. § 814) applies. The Capias has been staffed and

[1] Appellant's handwriting is difficult to read but Appellee assumes for the purposes of this Brief, mainly based on the legal advisor's response, that he accurately quoted sections of the Detainer Act and tried to invoke it. The Prisoner Request forms also indicate they were originally two-sided. The documents Appellant attached to the Record did not contain the second side.

reviewed by the Office of Legal Counsel, Navy Personnel Command who confirmed that a Capias is a warrant and the [Detainer Act] is not applicable to your case." (Appellant Mot. Attach, Appx. B at 4 (italics added); J.A. 117.) The Response went on to inform Appellant that his sentence would be interrupted until his return to military custody; it was signed by the legal adviser at the Charleston Brig. (Appellant Mot. Attach, Appx. B at 4; J.A. 117.)

Because Appellant himself moved to attach the only document in the Record that states the capias warrant, and not a detainer, was the basis for the transfer, he cannot now complain that the lower court considered and accepted it for that very issue. (J.A. 111; Appellant Br. at 17.) As in *Martin,* Appellant here raised a specific issue and introduced material that addressed it. This Court should decline to consider this invited error. (See Appellant Br. at 16, Nov. 19, 2025); *Martin*, 75 M.J. at 327.

E. Appellant errs in stating that the lower court relied on a capias warrant to find the Interstate Agreement on Detainers Act inapplicable. Instead, the lower court found there was no detainer.

The lower court characterized Appellant's argument that the Navy had increased Appellant's sentence by ignoring the Interstate Agreement on Detainers Act as "rest[ing] on dubious foundations" for three reasons: (1) the argument was "unripe, inchoate, and purely speculative" as Appellant's Virginia charges were still unresolved at the time of oral argument; (2) the communications between the

Commonwealth and Navy prosecutors did not "constitute a 'detainer' within the meaning of the Act; and (3) Article 14 was not repealed by the Act "in this case or otherwise." (J.A. 11.) The court's footnote stating that "Appellant was eventually delivered to the civilian authorities as a result of a capias warrant" does not appear to factor into its analysis—which explains why it is merely mentioned in a footnote and discussed nowhere else. (J.A. 11.)

Appellant appears to presume that by mentioning the capias warrant in a footnote, the Court adopted the legal advisor's analysis as recorded in her response to Appellant's Prisoner Request. (Appellant Br. at 17–18.) This is yet another layer of speculation and is contradicted by the Opinion's analysis section. (J.A. 11.) The lower court did not err.

III.

THERE WAS NO DETAINER HERE SO THE DETAINER ACT DOES NOT APPLY. BUT EVEN ASSUMING A DETAINER, ARTICLE 14 IS USED TO EFFECT THE TRANSFER UNLESS THE STATE OR APPELLANT INVOKES THE INTERSTATE AGREEMENT ON DETAINERS ACT.

A. The standard of review is de novo.

The proper application of confinement credit is a question of law; questions of law are reviewed de novo. *United States v. Leese*, No. 25-0024, 2025 CAAF LEXIS 440, *6–7 (C.A.A.F. June 4, 2025). Matters of statutory interpretation are reviewed de novo. *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.A.F. 2023).

B. Because there was no detainer here, the Interstate Agreement on Detainers Act does not apply.

Appellant cannot invoke the Interstate Agreement on Detainers Act if there is no detainer. (*See* supra. I.)

C. In *Fisher v. Commander*, the lower court determined an agreement under Article 14 is the primary instrument for delivering military prisoners to state authorities.

In *Fisher v. Commander*, 56 M.J. 691 (N-M. Ct. Crim. App. 2001) (overruled on other grounds), the court considered whether an appellant was delivered to state authorities under Article 14 or the Interstate Agreement on Detainers Act. *Id.* at 693. The petitioner filed for writs of habeas corpus, error coram nobis, and mandamus based on his claim that he was being held past his sentence completion because his court-martial sentence had continued to run when he was transferred to state custody. *Id.*

The court held that the appellant's delivery had been accomplished under Article 14 and therefore his court-martial sentence had been interrupted. *Id.* The court found determinative two phrases from the Manual of the Judge Advocate General: (1)"the legal authority for delivery of military prisoners to state officials is grounded in Article 14, UCMJ, and 'although seldom utilized,' the [Detainers Act];" and (2) "When a request for custody does not invoke the [Detainers Act], delivery of custody *shall* be governed by Article 14, UCMJ." *Id.* at 694 (emphasis in original). The court found that because the Detainer Act had to be invoked, it

"clearly implies that the military article is the instrument of choice for delivery of a military prisoner to state authorities." *Id*. Further, under JAGMAN § 613(b), transfers under the Act occurred only when there was a "request under the Act" by either state authorities or the prisoner. Because neither party had invoked the Act, the appellant's transfer was conducted under Article 14. *Id.* The court denied the writ.

Here, although Appellant's Prisoner Request forms invoked the Detainer Act, there was no detainer in place when he submitted the Requests. (*See* supra, Section I.) "It is the lodging of a detainer, not a request for custody that triggers the IADA." *Davila v. State*, 623 S.W. 3d 1, 8 (Tex. App. 2020) (*citing Mauro,*436 U.S. at 343–44 ("[T]he provisions of the Agreement are triggered *only* when a 'detainer' is filed . . . ; to obtain temporary custody, the receiving State must *also* file an appropriate 'request' with the sending State." (emphases added).).

D. The Detainer Act coexists with the Extradition Act and other ways that jurisdictions obtain prisoners from one another.

1. The *Cuyler* Court found that based on the language of the Detainer Act, when a state requests a transfer under Article IV, Extradition Act rights are still available to him.

In *Cuyler v. Adams*, 449 U.S. 433 (1981), the Court considered the relationship between the Interstate Agreement on Detainers and the Uniform Criminal Extradition Act—specifically whether a prisoner is entitled to a right to a

pretransfer hearing as required by the Extradition Act when they were transferred under the Detainer Act. *Id.* at 435. Although both Acts "establish procedures for the transfer of a prisoner in one jurisdiction to the temporary custody of another jurisdiction," only the Extradition Act grants a right to a "pretransfer hearing" at which the prisoner is informed of the custody request, a right to counsel, and the right to challenge the request. *Id.* at 444. The Court held that the language and structure of the Detainers Act did not impede the exercise of rights under the Extradition Act when the receiving state made the transfer request. *Id.* While a prisoner requesting transfer under Article III waived other rights, the language of Article IV—applicable when the receiving state requests transfer—preserved Appellant's rights under other statutes. *Id.* at 445–46. The *Cuyler* court based the decision in part on the statement in Article IV (d) that "[n]othing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery . . ." *Id.* at 446.

2. In *Millsap*, the Eighth Circuit clarified that if a government secures custody of a state prisoner through a writ of habeas corpus ad prosequendum before a detainer is lodged, the Interstate Agreement on Detainers Act is not implicated.

The *Millsap* appellant was serving state charges and facing federal charges when a federal magistrate issued a writ of habeas corpus ad prosequendum to secure his appearance in federal court. *United States v. Millsap*, 115 F. 4th 861, 869 (8th Cir. 2024). At the same time, the magistrate issued an order to lodge

detainer. *Id.* The Marshals Service transferred appellant to federal custody using the writ for his initial appearance, and appellant remained in federal custody. *Id.* After the initial appearance, where appellant was ordered detained in federal custody, the Marshals Service transmitted the detainer to the state department of correction. *Id.* After Appellant's federal trial was delayed for more than 120 days, he moved to dismiss his indictment under Article IV of the Detainer Act. *Id.*

The *Millsap* court found that the Detainer Act "does not apply when the federal government secures custody of a state prisoner through a writ of habeas corpus ad prosequendum before a detainer is lodged." *Id.* The United States did not obtain custody of appellant with a detainer—because he was already in federal custody when the detainer was filed with the state correctional facility. *Id.* at 870. The detainer had no effect, so the Detainer Act did not apply. *Id.*

3. Unlike the Detainer Act, Article 14 does not preserve Appellant's rights under other transfer-enabling statutes.

Here, unlike the Detainer Act, Article 14 does not reference, and thereby does not preserve, a prisoner's rights under other statutes. *See Cuyler* at 449 U.S. at 445–46. As the *Fisher* court correctly concluded, Article 14 is the primary means for transferring military prisoners. *Fisher*, 56 M.J. at 694. Article 14 does not preserve transfer rights under other statutes; thus, when a transfer is conducted under Article 14, the Interstate Agreement on Detainers Act and the rights it contains are inapplicable. An exception to this would only occur when—before

the Article 14 request—a detainer was properly filed and Appellant properly invoked his rights under the Detainer Act.

Therefore Appellant errs when he surmises that an Article 14 request for transfer itself is a detainer, and thus Appellant can invoke the Detainer Act after the Article 14 request is made. As in *Millsap*, if an Appellant is transferred using something other than a detainer, the Detainer Act does not apply. By implication, the other means enabling the transfer—a writ or Article 14 request—are not themselves a detainer. Regardless, here there was no detainer, and Appellant's invocation of the Act has no effect where there is no detainer.

E. Appellate courts analyze whether there is a statutory repeal by implication based on whether there is an irreconcilable conflict between statutes or if the later statute covers the whole subject of the earlier one.

Absent a clearly expressed congressional intention, an "implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute." *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (quotations and citations omitted); *see Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976). "It is, of course a cardinal principle of statutory construction that repeals by implication are not favored." *Id*. (quotations and citations omitted).

F. Article 14 is not in irreconcilable conflict with the Interstate Agreement on Detainers Act because Article 14 applies only to courts-martial, it does not impact most litigation under the Act, the Uniform Code covers broader subjects than the Act, and the two statutes can coexist because prisoners must invoke their rights under the Interstate Agreement on Detainers Act.

In *Radzanower*, the Supreme Court held that "It is not enough to show that the two statutes produce differing results when applied to the same factual situation, for that no more than states the problem." 426 U.S. at 155. "[W]hen two statutes are capable of coexistence, it is the duty of the courts . . . to regard each as effective." *Id*. (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

There, the Court determined if enactment of the Securities Exchange Act of 1934 repealed the National Bank Act of 1878, despite the latter having a narrower venue provision for lawsuits against national banking associations. *Id*. at 149–150. The Court found no "irreconcilable conflict" between the two acts and that they were "capable of coexistence." *Id*. 155–56.

The *Radzanower* Court reasoned that: (1) the venue provisions had different basic purposes, where the Securities Exchange Act provision helps regulate dealings with securities and the National Bank Act provision protects the banks from burdensome litigation, (2) litigation under the National Bank Act would have no impact on the vast majority of litigation under the Securities Exchange Act; and (3) the intention of the legislatures is not "clear and manifest" because the two acts cover mostly different subjects. *Id*. at 155–58.

Here, Appellant claims that the difference in sentence calculations under the two statutes constitutes an irreconcilable difference, but this conflicts with *Radzanower*. (Appellant Br. at 32); *see* 426 U.S. at 155–58. First, like *Radzanower*, Article 14 serves a different basic purpose than the Interstate Agreement on Detainers Act. Congress intended for the Uniform Code, including Article 14, to apply only to members of the armed forces and to court-martial proceedings. *See* Articles 2, 3, UCMJ, 10 U.S.C. §§ 802, 803. On the other hand, the Interstate Agreement on Detainers is a multilateral agreement solely intended to "encourage the expeditious and orderly disposition" of criminal charges between the party states, including the United States and its territories. Interstate Agreement on Detainers, Art. I, II.

Second, there would be no impact on most cases under the Act because Article 14 only applies to military members that underwent court-martial and, unlike Article 14, prisoners must affirmatively invoke their rights under the Act. Interstate Agreement on Detainers, Art. III(d). Third, Congress' intention to repeal Article 14 is not "clear and manifest" because, aside from delivery of prisoners, Article 14 and the Act mostly cover different subjects.

Moreover, Appellant asserts that Article 14 and the Interstate Agreement on Detainers Act produce a different result because the "requirements" of one are

merely "allowances" in another. (Appellant Br. at 20.) Appellant thus concedes that he fails the test laid out in *Radzanower*. *See* 426 U.S. at 155.

Ultimately, if Appellant, or any prisoner, never invoked the Interstate Agreement on Detainers Act, despite it being his or her right, than Article 14 would control, which show that the two statutes are not in "irreconcilable conflict." The statutes are "capable of coexistence." *Id*.

Therefore, Appellant's reliance on *Radzanower* is inapt because it relies on an incomplete application of the Supreme Court's holding. (Appellant Br. at 30.)

IV.

THIS COURT IS NOT AUTHORIZED TO PROVIDE A REMEDY BASED ON LACK OF COMPLIANCE WITH THE INTERSTATE AGREEMENT ON DETAINERS ACT HERE, WHERE THE NAVY WAS THE SENDING PARTY; THE ACT ONLY PROVIDES A REMEDY IN THE RECEIVING STATE. AND NOTHING IN THE RECORD INDICATES THE AMOUNT OR OUTCOME OF APPELLANT'S VIRGINIA CUSTODY.

A. The standard of review is de novo.

This Court reviews questions of law de novo. *Leese*, 2025 CAAF LEXIS 440 at *6–7. This Court reviews de novo the scope of a court's authority. *See United States v. Lopez*, No. 24-0226, 2025 CAAF LEXIS 735, *18 (Sept. 2, 2025) (citing *United States v. Williams*, 85 M.J. 121, 124 (C.A.A.F. 2024) ("This Court

'reviews de novo whether a CCA acted outside the scope of its Article 66 authority.").

B. The Detainer Act provides only one remedy: the dismissal of an indictment in the receiving state if Appellant is not brought to trial within the required timeframe.

1. A lower court may grant appropriate relief but remains bound to statutory remedies.

In *Lopez*, this Court considered whether the lower court awarded a permissible remedy when an appellant served more time in confinement than his sentence allowed because the trial counsel failed to inform the brig that the convening authority had reduced appellant's sentence. 2025 CAAF LEXIS 735, at *1. When the appellant served the extra confinement, he was beyond his end of active service date and could receive no pay. *Id.* at *4. The appellant requested the bad conduct discharge be set aside as a remedy for the illegal confinement. *Id.* at *7. Instead, the lower court granted appellant pay and allowances for the extra time he served—despite that he was not entitled to any pay because his service had expired. *Id.*

This Court found that the lower court's decision to grant appellant "pay that he was never entitled to falls outside the scope of its Article 66, UCMJ, authority to grant appropriate relief" for post-trial processing error. *Id.* at *20. It held "[t]he authority granted under Article 66(d)(2), UCMJ, does not turn the lower courts into courts of equity that can award financial damages to right any wrong when that

relief is not otherwise statutorily authorized." *Id.* at *21. The lower court had erred in granting the remedy and the case was returned to the lower court for a new review. *Id.*

2. Under the Interstate Agreement on Detainers Act, the only remedy available is dismissal of charges in the receiving state.

The Detainer Act awards a remedy in the following circumstances: first, whether the prisoner or state requests transfer for disposition of charges, where the prisoner is transferred back to the sending state before the final disposition of charges. Art. III (d), Art. IV(e). The second is when either the appropriate authority in the receiving refuses or fails to accept temporary custody of the prisoner or fails to bring the prisoner to trial within the applicable timeframes. Art. V(c). In both instances, the remedy for the government's failure is dismissal of the untried indictment, information, or complaint with prejudice. Art. III(d), Art. IV(e), Art. V(c).

In *United States v. Koon*, 139 F. 4th 966 (8th Cir. 2025), the appellant made a good faith effort to exercise his right to speedy, final disposition of charges under the Detainer Act, but due to his confinement facility's error, the receiving jurisdiction's prosecutors never received his request. *Id.* at 969. The district court dismissed his charges with prejudice. *Id.* The Eighth Circuit found the lower court erred because although appellant complied with the Detainer Act, the receiving jurisdiction had not received the request. *Id.* at 970. Although this violated "the

spirit of the Act," the remedy of dismissal was not available. *Id.; see also United States v. Adcock*, 65 M.J. 18, 23 (C.A.A.F. 2007) (not all legal violations result in individually enforceable remedies).

Here, Appellant moves this Court to "set aside 581 days of Appellant's sentence as incorrect in law, or set aside the entire sentence and order a sentence rehearing." (Appellant Br. at 25.) Even if some error occurred, neither remedy is available under the statute; Appellant's request is at most one for equitable relief, which this Court cannot provide. *See Lopez*, 2025 CAAF LEXIS 735, at *21; *Koon*, 139 F. 4th at 970.

C. This Court has considered if a sentence runs under *Mooney*, but that was because there was an error in the convening authority's action. Here the findings and sentence are correct in law and fact.

This Court has jurisdiction under Article 67 to act "with respect to the findings and sentence." *United States v. White,* 54 M.J. 469, 472 (C.A.A.F. 2001). This encompasses authority to ensure that the severity of the adjudged and approved sentence has not been unlawfully increased by prison officials, and to ensure that the sentence is executed in a manner consistent with Article 55 and the Constitution. *Id.* The burden is on appellant to establish a "clear record" of both "the legal deficiency in administration of the prison and the jurisdictional basis for action." *Id*.

In contrast, judicial review of disputes about good time credit occurs only upon application for an extraordinary writ, not on direct review of the sentence. *See United States v. Spaustat,* 57 M.J. 256, 263 (C.A.A.F. 2001).

In *United States v. Mooney*, 77 M.J. 252 (C.A.A.F. 2018), the appellant was first tried and convicted by the federal district court. *Id.* at 253. While serving that sentence, the military obtained custody of, tried, and sentenced appellant. *Id.* at 254. The appellant was returned to civilian custody to complete his sentence and the convening authority attempted to defer appellant's military confinement so that it would run consecutively with the civilian federal sentence instead of concurrently. *Id.* at 255. On appeal, appellant alleged that the convening authority had no authority to interrupt his court-martial sentence. *Id.* at 253

The court held that the convening authority had erred. The convening authority's action was contrary to "the comprehensive statutory scheme for deferring and interrupting sentences under Articles 14, 57 and 57a." *Id.* at 257. The court determined the confinement had begun to run when it was adjudged and set aside the convening authority's action. *Id.*

Likewise, in *United States v. Bramer*, 45 M.J. 296 (C.A.A.F. 1996), the court considered whether an appellant's sentence continued to run after appellant was transferred to civilian custody. There, too, the convening authority action purported to defer appellant's confinement so that it would run consecutively with

state confinement. The court found the convening authority's action ultra vires because no statute or regulation at the time allowed for such an action. *Id.* at 297, 299.

But in Appellant's case, there is no mistake in the Convening Authority Action or in the Entry of Judgment. The Findings and Sentence as reflected in the Entry of Judgment remain correct in law and fact. And Appellant makes no allegation of violations of Article 55 or the Eighth Amendment. *See White*, 54 M.J. at 472. Appellant did not file a writ at the lower court requesting it direct the confinement facility to credit his civilian confinement. *See Spaustat,* 57 M.J. at 263 (judicial review of disputes about good time credit occurs only on application for extraordinary writ, not on direct review of sentence). Finally, Appellant fails to establish a "clear record" of both "the legal deficiency in administration of the prison and the jurisdictional basis for action" because there is nothing in the Record before this Court supporting his claim that he spent 581 days in Virginia's custody before being returned to military custody. *See White*, 54 M.J. at 472.

Thus, there is no remedy this Court can provide to Appellant.

Conclusion

The United States respectfully requests that this Court affirm the findings and sentence as adjudged.

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1. This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 10,482 words.

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I certify that I delivered the foregoing to the Court and served a copy on opposing counsel on December 30, 2025.

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