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**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Eric C. BABBITT, Logistics Specialist Second Class
United States Navy, Appellant

No. 25-0220
Crim. App. No. 202300286

Argued February 24, 2026—Decided September 10, 2026

Military Judges: Hayes C. Larson (arraignment),
Donald R. Ostrom (motions), Ryan J. Sears (trial),
and Mishonda M. Mosley (post trial)

For Appellant: *Lieutenant Jesse B. Neumann*, JAGC,
USN (argued).

For Appellee: *Major Mary Claire Finnen*, USMC (ar-
gued); *Colonel Iain D. Pedden*, USMC, *Commander*
John T. Cole, JAGC, USN, and *Brian K. Keller*, Esq.
(on brief); *Captain Jacob R. Carmin*, USMC.

Judge SPARKS delivered the opinion of the Court,
in which Chief Judge MAGGS and Judge HARDY
joined. Judge HARDY filed a separate concurring
opinion. Judge OHLSON filed a dissenting opinion,
in which Judge JOHNSON joined.

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Judge SPARKS delivered the opinion of the Court.

This case arises out of the conviction by military judge alone of Logistics Specialist (E-5) Eric C. Babbitt (Appellant), pursuant to his pleas, of one specification of attempted sexual abuse of a child by indecent exposure, one specification of sexual abuse of a child by indecent conduct, and one specification of assault consummated by battery of a child in violation of Articles 80, 120b, and 128, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 880, 920b, 928 (2018). Appellant was sentenced to a dishonorable discharge, thirteen years of confinement, reduction to grade E-1, and forfeiture of all pay and allowances. The convening authority approved the findings and sentence and the military judge entered the judgment into the record. The United States Navy-Marine Corps Court of Criminal Appeals (CCA) affirmed the findings and sentence. *United States v. Babbitt*, No. NMCCA 202300286, 2025 CCA LEXIS 138, at *16, 2025 WL 957524, at *6 (N-M. Ct. Crim. App. Mar. 31, 2025) (unpublished).

Appellant asks this Court to consider three issues related to a request from the Commonwealth of Virginia to serve indictments upon and try Appellant in the Commonwealth of Virginia state court system after he had been sentenced on the above charges.

- 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.

In addition, this Court specified the following issue:

- IV. If the Navy did not comply with the Interstate Agreement on Detainers Act, what remedy is this court authorized to provide Appellant?

For reasons that we will explain, we answer granted issue IV by holding that this Court is not authorized to provide any substantive remedy to Appellant for the alleged violation of his rights under the Interstate Agreement on Detainers Act (IADA). Because we are unable to provide a remedy, we further hold that granted issues I, II, and III, which concern the merits of Appellant's claim, are moot. We therefore affirm the judgment of the CCA.

I. Background

The charges against Appellant stemmed from sexual contact with two young girls living in his neighborhood and inappropriate online communication with a law enforcement officer posing as a ten-year-old girl. *Babbitt*, 2025 CCA LEXIS 138, at *2-3, 2025 WL 957524, at *1. On July 27, 2022, the Petersburg, Virginia, Police Department arrested Appellant and held him in a civilian jail. Less than a month later, he was transferred to Navy custody and put in pretrial confinement. *Id.* at *2, 2025 WL 957524, at *1. On August 1, 2023, Appellant pled guilty to assault consummated by a battery on one child (by exceptions and substitutions), sexual abuse (indecent conduct) of another child, and attempted sexual abuse (indecent exposure) of his online contact, and the multiple remaining charges were dropped. *Id.* at *3, 2025 WL 957524, at *1. The plea agreement contained a provision that, within ten days, the convening authority would recommend in writing that Appellant be transferred to a military prison facility with a nonviolent sex offender treatment program. *Id.* at *4-5, 2025 WL 957524, at *2. The convening authority did not make the recommendation within ten days. Instead, the Navy received a request from the Commonwealth of Virginia to transfer Appellant to the custody of the state to

face child pornography charges there.¹ *Id.* at *5, 2025 WL 957524, at *2. The Commonwealth of Virginia prosecutor emailed the Navy prosecutors asking them to “hold off on sending [Appellant] out of state so that we can get him served on our indictments and tried.” The relevant sections of the Navy’s response included:

Bottom line is—[Appellant] can be transferred to Commonwealth custody pending his civilian trial.

Your office would need to submit a written transfer request Once approved [Appellant] will be released from the brig in Chesapeake to your custody with a detainer from us. If he bonds out on the new charges, he’ll go back into prison with the Navy. He’s headed to Leavenworth.

If 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.

Is this something your office would support? . . .
He can be held here in Chesapeake for as long as needed to get him transferred to you.

The civilian prosecutors replied that they wanted to prosecute Appellant before he was sent to Leavenworth.

The Commanding Officer of the Region Legal Service Office requested to hold Appellant post-conviction in the Naval Brig in Chesapeake, Virginia, pending his transfer to the Commonwealth of Virginia and possible further charges by the military. Over a month after sentencing, the convening authority did recommend that Appellant serve his confinement at Naval Consolidated Brig, Miramar, San Diego, California, or the Military Correctional Complex, Fort Leavenworth, Kansas. *Id.* at *5-6, 2025 WL 957524, at *2.

On January 11, 2024, upon the advice of counsel, Appellant filed a prisoner request asking for notification of all detainees and transfers to face trial pursuant to the IADA.

¹ In December 2022, the Commonwealth of Virginia had indicted Appellant on multiple child pornography related charges.

The Navy brig legal officer denied his request, informing Appellant that his delivery to authorities in the Commonwealth of Virginia was facilitated by a capias warrant and not a detainer. Appellant was transferred to the custody of the Commonwealth of Virginia on February 15, 2024. The delivery agreement identified delivery to the Commonwealth of Virginia “in accordance with Article 14, UCMJ” and agreed that the Navy would be informed of the outcome of the trial and that Appellant “will be immediately returned to the custody of the U.S. Navy . . . to serve out the remainder of his sentence.” Appellant claims he was returned to Navy custody 581 days later, though there is no documentation in the record to support this fact because all of this occurred after the conclusion of his court-martial.

CCA Opinion

Appellant argued before the CCA that the Navy’s violation of the IADA increased the length of his sentence and that, under the facts of his case, Article 14, UCMJ, was “repealed by implication” because it conflicted with the IADA. *Babbitt*, 2025 CCA LEXIS 138, at *14, 2025 WL 957524, at *5 (internal quotation marks omitted). The lower court characterized Appellant’s argument that the Navy had increased Appellant’s sentence by failing to adhere to the IADA as “dubious.” *Id.*, 2025 WL 957524, at *5. It determined that (1) the argument was “unripe, inchoate, and purely speculative” since Appellant’s Commonwealth of Virginia charges were still unresolved at the time; (2) the communications between the Commonwealth of Virginia and Navy prosecutors did not qualify as a detainer; and (3) Article 14 was not repealed by the IADA “in this case or otherwise.” *Id.*, 2025 WL 957524, at *5.

II. Discussion

The Interstate Agreement on Detainers Act

The IADA is a compact entered into by nearly every state and territory as well as the United States itself. *United States v. Greer*, 21 M.J. 338, 339-40 (C.M.A. 1986) (quoting *Carchman v. Nash*, 473 U.S. 716 (1985)). The

IADA applies to the military. *Id.* The relevant sections are outlined below.

Article I conveys the purpose of the IADA. It states that “detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation.” 18 U.S.C. app. § 2, art. I (1970). The goal of the agreement is “to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints.” *Id.*

Under Article III of the IADA, once a detainer has been lodged, the prisoner has the right to be informed of the detainer by the official who has custody of him, to request final disposition of untried charges against him, and to be brought to trial within 180 days. 18 U.S.C. app. § 2, art. III(a)(c). To take advantage of the IADA speedy trial right, the prisoner must submit written notice of his desire for speedy disposition of the new charges. *Greer*, 21 M.J. at 340. If the trial does not take place prior to the return of the prisoner to the original place of imprisonment, the court of the receiving state must dismiss the charges with prejudice. 18 U.S.C. app. § 2, art. III(d).

Article IV of the agreement lays out procedures through which the receiving party may request temporary custody or availability of a prisoner from the authorities in the sending state. 18 U.S.C. app. § 2, art. IV(a). The requirements include a provision that the prisoner must be brought to trial within 120 days and cannot be returned to the sending state until final disposition of his charges in the receiving state. 18 U.S.C. app. § 2, art. IV(c)-(e). If the prisoner is returned before the final disposition, the charges in the receiving state must be dismissed with prejudice. 18 U.S.C. app. § 2, art. IV(e).

Article V provides that:

During the continuance of temporary custody or
while the prisoner is otherwise being made

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available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

18 U.S.C. app. § 2, art. V(f).

Article IX states that the IADA “shall be liberally construed so as to effectuate its purposes.” 18 U.S.C. app. § 2, art. IX.

Additional Law

Article 14, UCMJ, 10 U.S.C. § 814 (2018), provides guidelines, specific to the military, for delivery of offenders to civil authorities. It states that:

Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

Both the Code of Federal Regulations (C.F.R.) and the Dep’t of the Navy, Judge Advocate General Instr. 5800.7G, Manual of the Judge Advocate General, ch. 6, para. 0613 (Feb. 14, 2022) (JAGMAN), discuss the role of the IADA and its interplay with Article 14, UCMJ. 32 C.F.R. § 720.12(a) states that:

Article 14, UCMJ (10 U.S.C. 814), provides authority to honor requests for delivery of members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate

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Agreement on Detainers Act (18 U.S.C. app. 9, hereinafter “the Act”), which applies to the Federal agency holding the prisoner. The Department of the Navy, as an agency of the Federal Government, shall comply with the Act.

32 C.F.R. § 720.12(b) outlines the procedure for implementing the IADA. 32 C.F.R. § 720.12(c) provides that when a request for custody does not invoke the IADA, delivery into custody is governed by Article 14, UCMJ, and the C.F.R.

JAGMAN para. 0613a. similarly states that:

Article 14, UCMJ, provides authority to honor requests for delivery of Service members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act (IADA), 18 U.S.C. Appendix §§ 1-9, which applies to the federal agency holding the prisoner. The [Department of the Navy], as an agency of the Federal Government, must comply with the IADA.

A description of the provisions of the IADA follows, including that “[t]he IADA provides that courts-martial sentences continue to run during temporary custody.” JAGMAN para. 0613b. JAGMAN para. 0613c. states that “[w]hen a request for custody does not invoke the IADA, delivery of custody will be governed by Article 14, UCMJ Unlike delivery under the IADA, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.”

The Supreme Court has defined 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.” *United States v. Mauro*, 436 U.S. 340, 359 (1978) (internal quotation marks omitted) (citation omitted). This definition was not derived from the IADA itself but from the House and Senate reports related to the creation of the IADA. *Id.* In *Alabama v. Bozeman*, the Supreme Court further 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.” 533 U.S. 146, 148 (2001).

Arguments

Appellant argues that, when the Commonwealth of Virginia requested that he remain in the state to face charges, it was the equivalent of filing a detainer and the Navy was legally obligated to comply with the subsequent IADA requirements, including informing him of the Commonwealth of Virginia detainer and his IADA speedy trial right. He contends that, because the Government did not allow his sentence to continue to run while he was in the custody of the Commonwealth of Virginia, he will serve an extra 581 days of confinement. In addition, Appellant argues that any transfer request made under Article 14, UCMJ, meets the definition of a detainer, thereby invoking the IADA. Because the IADA and Article 14, UCMJ, are in direct conflict under the circumstances, the mandatory and specific nature of the IADA means that it should prevail.

The Government counters that nothing in the circumstances surrounding the request by the Commonwealth of Virginia required that the transfer be made under the IADA instead of Article 14, UCMJ. They claim that Commonwealth of Virginia authorities were required to file a detainer directly with the institution in which Appellant was confined, in this case the Navy Consolidated Brig, Charleston, to trigger the IADA. They also argue that the informal email communication between prosecutors did not constitute the required formal “filing” of a detainer, pointing out that none of the emails even contain the word “detainer” or contained any information about the charges or indictment. The Government further claims that an Article 14, UCMJ, request for transfer is not automatically a detainer. The two are separate modes of prisoner transfer that can coexist because the military-specific Article 14, UCMJ, is far narrower in scope.

Appellant requests that this Court set aside 581 days of his confinement as incorrect in law or, alternatively, remand to the CCA to calculate and award the proper confinement credit. The Government argues that the only remedy contemplated by the IADA is dismissal of charges in the receiving state.

Analysis

The issues raised by Appellant present important questions about how the IADA applies in the military, including the threshold questions of what constitutes a detainer and what constitutes lodging a detainer under the IADA. Do we look for guidance from the individual states? From other federal government entities like the Federal Bureau of Prisons, the various Offices of the United States Attorneys or the District of Columbia courts? Is the intent of the parties involved in the prisoner transfer relevant at all? We also recognize a clear tension between Article 14, UCMJ, and the IADA but question whether this Court would need to intervene in a manner so extreme as to abrogate Article 14, UCMJ, to reconcile the two statutes.²

These are important questions. Yet, we are constrained by the record in this case in any effort to adequately examine and determine the answers to the issues presented. We are not compelled to resolve the above questions based on this record, when Appellant has not shown he can secure a remedy from this Court or from the CCA, even if there was a violation of the IADA.

The IADA itself includes remedies under two circumstances. The first is if the prisoner is returned to the sending state before the final disposition of charges in the receiving state. 18 U.S.C. app. § 2, art. III(d), art. IV(e). The second is if the receiving state does not accept custody of the prisoner or does not bring the prisoner to trial in a timely manner. 18 U.S.C. app. § 2, art. V(c). In both

² Though this Court will not rule on the tension between Article 14, UCMJ, and the IADA, we invite the legislature to further clarify how to best reconcile them.

instances, the remedy is dismissal with prejudice of the untried indictment, information, or complaint by the receiving state. 18 U.S.C. app. § 2, art. III(d), art. IV(e), art. V(c). This Court obviously has no jurisdiction to award these Commonwealth of Virginia state court remedies.

Appellant does not take issue with the sentence adjudged by the military judge. Nothing indicates that he believes or urges this Court to hold that the sentence itself is unlawful. Instead, Appellant requests a remedy for something that could potentially happen once he has served his sentence, at which point he claims that he will have served 581 additional days. Appellant cites this Court's statements in *United States v. White*, 54 M.J. 469 (C.A.A.F. 2001). In *White*, we recognized that:

Our statutory authority is to act "with respect to the findings and sentence." This grant of authority encompasses more than authority merely to affirm or set aside a sentence. It also includes 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. at 472. In *United States v. Gay*, we took this provision a step further and determined that the CCA had authority to grant sentence appropriateness relief for post-trial confinement conditions that were not a violation of the Eighth Amendment of the U.S. Constitution or Article 55, UCMJ, 10 U.S.C. § 855. 75 M.J. 264, 265 (C.A.A.F. 2016).

However, given the posture of Appellant's complaint, our case law on resolving issues of post-trial confinement conditions is not entirely applicable. For instance, a key determinant in such cases is whether the appellant exhausted his administrative remedies before invoking judicial intervention. *White*, 54 M.J. at 472. This means the Court must have evidence that an appellant invoked the prisoner grievance system at the facility where he is currently being held. *Id.* at 472-73. However, no prison would be positioned to decide whether Appellant was held under

a detainer. That is purely a legal issue. In addition, this Court has stated that an appellant must show that he has petitioned for relief under Article 138, UCMJ, 10 U.S.C. § 938. *White*, 54 M.J. at 472 (citing *United States v. Miller*, 46 M.J. 248, 250 (1997)). Appellant makes no mention of whether he attempted to avail himself of the Article 138, UCMJ, process and appeal to a superior commissioned officer. *See id.* at 473. Again, there are questions about whether this avenue would even be applicable to him under the circumstances.

Most significantly, any remedy due to Appellant would be purely speculative because right now he has not incurred any legally cognizable harm. In cases such as *White* and *Gay*, the appellant seeking relief for post-trial complaints was being actively harmed or had been actively harmed by some aspect of confinement conditions. In *White*, the appellant asserted numerous complaints about his prison conditions and access to drug treatment. 54 M.J. at 470-71. In *Gay*, the appellant claimed he was being unfairly held in solitary confinement. 75 M.J. at 265-66; *see also United States v. Erby*, 54 M.J. 476, 477 (C.A.A.F. 2001) (addressing the appellant's complaints about numerous aspects of his alleged mistreatment while in confinement); *United States v. Pena*, 64 M.J. 259, 265 (C.A.A.F. 2007) (reviewing the appellant's complaint about being forced to participate in a mandatory supervised release program). In contrast, Appellant predicts he will serve an additional 581 days at the end of his sentence, but he does not complain of any current harm. Any violation of his rights is purely speculative. Nowhere in the authority granted to the appellate courts under Article 66, UCMJ, 10 U.S.C. § 866 (2018), and Article 67, UCMJ 10 U.S.C. § 867 (2018), and nowhere in our case law, is this Court or are the CCAs given license to provide a remedy when an appellant is not suffering any actual harm.

We conclude that even if Appellant's rights were violated under the IADA, this Court and the CCA would be unable to provide a remedy. At this point, any harm Appellant might suffer is speculative and nothing in the record

as it exists supports Appellant's claim of 581 additional days served.³

III. Conclusion

The decision of the United States Navy-Marine Corps Court of Criminal Appeals is affirmed.

³ We have not decided the merits of Appellant's claim that he has been or will be improperly denied confinement credit for the days that he spent in the custody of the Commonwealth of Virginia. Instead, we have decided only that we lack authority to provide a remedy as the issue is presented to us in this direct appeal from his court-martial. Therefore, nothing in this opinion should preclude Appellant from seeking review of the merits of his claim in an administrative forum or in another court that may have authority to consider the claim and provide a remedy. *See, e.g., Valois v. Commandant, USDB-Fort Leavenworth*, 638 F. App'x 796, 798 (10th Cir. 2016) (reviewing on the merits a claim by a prisoner that the U.S. Disciplinary Barracks did not correctly calculate his good time credits).

Judge HARDY, concurring.

I agree with Judge Sparks that we lack the authority to provide Appellant any relief in this case, and I join Judge Sparks's opinion in full. Even under *United States v. White*, 54 M.J. 469, 472 (C.A.A.F. 2001), and its progeny, this Court does not have the authority to grant Appellant relief when he has not incurred any legally cognizable harm. *United States v. Babbitt*, __ M.J. __, __ (12-13) (C.A.A.F. 2026). I also agree with Judge Sparks that there is clear and unresolved tension between the Interstate Agreement on Detainers Act (IADA), 18 U.S.C. app. § 2, and Article 14, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 814 (2018). Nothing in this Court's decision should prevent or discourage Appellant from pursuing his IADA claim in an appropriate forum.

I write separately only to reiterate my belief that this Court's caselaw granting ourselves the authority to "ensure that the severity of the adjudged and approved sentence has not been unlawfully increased by prison officials," *White*, 54 M.J. at 472, was wrongly decided because it contradicts both the text of Article 67, UCMJ, 10 U.S.C. § 867 (2018), and the Supreme Court's decision in *Clinton v. Goldsmith*, 526 U.S. 529, 535 (1999). See *United States v. Pullings*, 83 M.J. 205, 214-22 (C.A.A.F. 2023) (Hardy, J., concurring in the judgment). In my view, Congress has never granted this Court any authority to adjudicate servicemembers' claims arising from issues related to their post-conviction confinement. Nevertheless, even under this Court's controlling precedents, I agree with Judge Sparks's resolution of this case.

As I explained in *Pullings*, this Court is a legislatively created Article I court of "narrowly circumscribed jurisdiction." 83 M.J. at 215 (internal quotation marks omitted) (citation omitted). With respect to sentences, Congress has only authorized us to act with respect to the "sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals." Article 67(c)(1)(A), UCMJ. Appellant does not challenge the lawfulness of his sentence as adjudged at his court-martial and affirmed by the United States Navy-Marine Corps Court of Appeals (CCA). Instead, Appellant argues that he

will eventually serve 581 days of confinement more than is legally permitted due to the Navy's refusal to comply with the IADA, and he essentially seeks an equivalent amount of confinement credit (in the form of sentence reassessment by the CCA) for his time spent in state custody. Appellant may be correct, but this claim is beyond this Court's authority to adjudicate or remedy.

But even if this Court granted Appellant the remedy he seeks and ordered the CCA to reassess and reduce his sentence by 581 days, that remedy would not extinguish Appellant's IADA claim. Appellant would still have every right to pursue his IADA claim—and the same 581 days of confinement credit—in a different forum. As a result, the CCA could reduce Appellant's adjudged military sentence by 581 days, but—if Appellant is correct that the IADA requires that he receive credit for his time spent in state custody—he would still be legally entitled to 581 days of *additional* confinement credit for that time. Such an outcome reinforces that this Court is not the proper forum to entertain Appellant's IADA claim. Accordingly, I agree that the decision of the CCA should be affirmed.

Judge OHLSON, with whom Judge JOHNSON joins, dissenting.

In the midst of Appellant serving a military prison sentence, the Commonwealth of Virginia lodged a detainer in this case telling the Navy to “hold off on sending [Appellant] out of state so that we can get him served on our indictments and tried.” Naval authorities complied and later turned Appellant over to these civilian authorities for prosecution, which resulted in Appellant’s conviction in state court. Under the Interstate Agreement on Detainers Act (IADA), Appellant was entitled to have his ongoing military prison sentence continue to “run” during the significant amount of time he spent in civilian custody. And under applicable precedent, this Court has the authority—indeed, the responsibility—to at least remand this case to the United States Navy-Marine Corps Court of Criminal Appeals (CCA) to ensure that Appellant receives this relief in a timely manner. Because the majority holds to the contrary, I respectfully dissent.

I. The Interstate Agreement on Detainers Act

The IADA controls this case. The IADA is a congressionally sanctioned compact to which the Commonwealth of Virginia and the United States (to include the United States military) are parties.¹ The IADA provides “uniform procedures for lodging and executing a detainer.” *Alabama v. Bozeman*, 533 U.S. 146, 148 (2001). While the IADA does not itself define what constitutes a “detainer,” this Court has described it as “a notification filed with the institution in which a prisoner is incarcerated, advising that the prisoner is pending criminal charges in another jurisdiction and asking the institution either to hold the prisoner or to notify the jurisdiction when release of the prisoner is imminent.” *United States v. Greer*, 21 M.J. 338, 340 (C.M.A. 1986) (citation modified). This aligns with the Supreme Court’s characterization of detainers as “informal aid[s] in interstate and intrastate criminal administration.” *United*

¹ See 18 U.S.C. app. § 2, art. II; Va. Code Ann. § 53.1-210 (2026).

States v. Mauro, 436 U.S. 340, 358 n.25 (1978) (internal quotation marks omitted) (quoting *Pitts v. North Carolina*, 395 F.2d 182, 187 (4th Cir. 1968)).

In light of their informality, detainers “may be lodged against a prisoner on the initiative of a prosecutor or law enforcement officer” and “merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial.” *Id.* at 358. As can be seen then, a communication from a prosecutor or a law enforcement officer need not contain any magic words or attain any specific level of formality in order to be considered a detainer under the IADA. Rather, the standard is one of notice, with the question being whether a communication effectively places officials on notice that the requesting state desires a prisoner for prosecution. *Accord Stewart v. Bailey*, 7 F.3d 384, 389 (4th Cir. 1993) (noting “that the drafters of the [IADA] intended ‘detainer’ to possess a general, not a technical, meaning”).

Once a detainer is lodged “against a prisoner . . . the [IADA] by its express terms becomes applicable and the United States must comply with its provisions.” *Mauro*, 436 U.S. at 362. Importantly, this includes *the mandate* that “time being served on the [prisoner’s original] sentence shall continue to run” for the duration of “temporary custody or while the prisoner is otherwise being made available for trial.” 18 U.S.C. app. § 2, art. V(f). Of note, the IADA itself also directs that its provisions “*shall be liberally construed so as to effectuate its purpose.*” *Id.* art. IX (emphasis added).

II. The Facts of the Instant Case

During his court-martial, Appellant pleaded guilty to a number of offenses and was sentenced to thirteen years of confinement. Appellant initially was sent to the Naval Consolidated Brig in Chesapeake, Virginia. However, in the plea agreement in this case, the convening authority agreed to recommend placing Appellant in a different correctional facility outside of the Commonwealth of Virginia where Appellant would have access to certain treatment programs.

The day after Appellant’s sentence began, the Commonwealth of Virginia authorities emailed the Navy telling them to “hold off on sending [Appellant] out of state so that we can get him served on our indictments and tried.” Naval authorities readily acquiesced to this written request from the Commonwealth of Virginia, replying: “[Appellant] can be held . . . for as long as needed to get him transferred” for trial on state charges. Appellant was then held for several months in the Chesapeake Naval Consolidated Brig—during which he filed a written request invoking the IADA and seeking disposition of the state charges—before finally being delivered to the Commonwealth of Virginia authorities.

After Appellant was tried and convicted in state court, Appellant was returned to Navy custody 581 days later to finish his military sentence. As noted above, the IADA explicitly provides that under such circumstances, a convicted servicemember is entitled to have his military sentence “run” during the time he is in the temporary custody of civilian authorities. In this case, however, the Navy insists that Appellant’s military sentence was “interrupted”—and thus did not “run”—for the nearly two years of Appellant’s temporary custody in the Commonwealth of Virginia. In other words, the Navy’s position is that the time Appellant spent being detained/incarcerated by the Commonwealth of Virginia does not count towards Appellant’s military sentence. As will be shown, however, the Navy is wrong.

III. Applying the IADA to the Facts of this Case

The email from the Commonwealth of Virginia prosecutor to the Navy constituted a detainer. The Commonwealth of Virginia authorities specifically and unequivocally requested in writing that the Navy hold Appellant in the Chesapeake Naval Consolidated Brig so that they could gain custody of him and try him on pending state charges. Indeed, this notice caused the Navy to delay Appellant’s planned transfer to a different out-of-state military correctional facility so that they instead could turn him over to the Commonwealth of Virginia for prosecution. Moreover, the detainer here (by delaying Appellant’s enrollment in the treatment program provided in his plea agreement)

resulted in the exact “obstruct[ion of] programs of prisoner treatment and rehabilitation” which prompted the IADA’s passage. *Greer*, 21 M.J. at 340 (internal quotation marks omitted) (quoting 18 U.S.C. app. § 2, art. I).

Thus, the written communication from the Commonwealth of Virginia clearly served as a detainer, bringing the IADA into effect. The CCA below erred in concluding otherwise. *United States v. Babbitt*, No. NMCCA 202300286, 2025 CCA LEXIS 138, at *15, 2025 WL 957524, at *5 (N-M. Ct. Crim. App. Mar. 31, 2025) (unpublished). And under the IADA, Appellant is entitled to the equivalent of military “confinement credit” for the significant amount of time he spent in civilian custody while in the midst of serving his Navy prison sentence.

IV. Relief for Appellant

Because the IADA applies to this case, this Court’s precedent provides the authority to ensure Appellant receives the relief that the IADA mandates. In *United States v. White*, this Court held that our review authority under Article 67, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867:

encompasses more than authority merely to affirm or set aside a sentence. It also includes 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.²

54 M.J. 469, 472 (C.A.A.F. 2001). This Court’s most recent treatment of *White*, in *United States v. Guinn*, explained this holding as follows:

It is clear . . . that the *White* Court concluded that under Article 67(c), UCMJ, we have two distinct responsibilities: (1) to ensure that the severity of the adjudged and approved sentence has not been unlawfully increased by prison officials; and (2) to ensure that the sentence is executed in a manner

² Article 55, UCMJ, 10 U.S.C. § 855 (2024), prohibits cruel and unusual punishment.

consistent with Article 55, UCMJ, and the Eighth Amendment.

81 M.J. 195, 200 (C.A.A.F. 2021) (footnotes omitted).

Consistent then with the first prong of *White*, the Navy cannot effectively increase Appellant’s adjudged and approved sentence by refusing to implement the IADA *mandate* that “time being served on [Appellant’s original military] sentence shall continue to run” for the duration of “temporary [state] custody or while the prisoner is otherwise being made available for [state] trial.” 18 U.S.C. app. § 2, art. V(f). Moreover, under the controlling precedent of *White*, this Court has the authority to prevent this abuse of power. Accordingly, this Court may grant relief itself, as the record is presently sufficient to do so. At a minimum, remand to the CCA—which “has the authority but also *the duty* to ensure that the severity of an adjudged and approved sentence has not been *unlawfully increased by prison officials*,” *Guinn*, 81 M.J. at 200—is warranted for correct application of the law and to grant Appellant appropriate relief. And yet, a majority of this Court declines to do so for reasons that are not persuasive.

V. Contrary Views

A. The Separate Concurring Opinion

In his concurring opinion, Judge Hardy writes that “*White*, 54 M.J. at 472, was wrongly decided because it contradicts both the text of Article 67, UCMJ, . . . and the Supreme Court’s decision in *Clinton v. Goldsmith*, 526 U.S. 529, 535 (1999).” He ultimately concludes that “this Court does not have the authority to grant Appellant relief.” *United States v. Babbitt*, __ M.J. __, __ (1) (C.A.A.F. 2026) (Hardy, J., concurring) (citations omitted).

I am sympathetic to Judge Hardy’s concern. In fact, I authored the majority opinion in *Guinn* which states: “[I]t certainly may be argued that this Court’s precedents regarding the scope of a CCA’s responsibilities under Article 66(c) are not properly predicated on the plain language of that statute.” 81 M.J. at 204. But despite this open invitation to challenge the holding in *White*, the Government declined to do so here. Instead, the Government acknowledged *White* and argued its requirements were not met

here. Further, *White* was decided after *Goldsmith*, so it cannot be said that *Goldsmith* effectively abrogated *White*.³ Accordingly, *White* remains controlling precedent, and the application of its holding to the instant case dictates that this Court has the authority to ensure that Appellant receives the sentencing relief to which he is entitled.

B. The Majority Opinion

The majority concludes that “Appellant has not shown he can secure a remedy from this Court or from the CCA, even if there was a violation of the IADA.” *Babbitt*, __ M.J. at __, __ (10).⁴ But before addressing this position, I note at

³ Moreover, the *White* Court fairly noted that:

Goldsmith involved an amendment to a statute outside the UCMJ that eased restrictions on the authority to discharge officers administratively under a statute not within this Court’s jurisdiction. By contrast, the present case involves the imposition of punishment under the UCMJ in a case that is before us under the direct review procedure established by Congress.

54 M.J. at 472.

⁴ The majority also gives passing mention to the Code of Federal Regulations (C.F.R.) and raises the specter of a “clear tension between Article 14, UCMJ, [10 U.S.C. § 814 (2024),] and the IADA.” *Babbitt*, __ M.J. at __ (10). However, it then punts on this issue and “invite[s] the legislature to further clarify how to best reconcile them.” *Id.* at __ (10 n.2). Because neither the majority nor the separate concurring opinion rest on the provisions of the C.F.R., there is no need to address this issue at length here. Suffice it to say that if the IADA and the C.F.R. conflict, it is the statute (i.e., the IADA) and not the regulation (i.e., the C.F.R.) that must prevail. *See, e.g., Manhattan Gen. Equip. Co. v. Commissioner*, 297 U.S. 129, 134 (1936) (“A regulation which . . . operates to create a rule out of harmony with the statute, is a mere nullity.”). Similar guidance in Dept of the Navy, Judge Advocate General Instr. 5800.7G, Manual of the Judge Advocate General ch. 6, para. 0613 (Feb. 14, 2022) (JAGMAN), referenced by the Government and the lead opinion, likewise cannot supplant the provisions of the IADA. And as the relatively more recent and specific statute, the IADA’s “simplified and uniform rules” properly govern Appellant’s

the outset that in *Mauro*, the Supreme Court explicitly cautioned courts against allowing parties to the IADA “to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the [IADA] intended to arise from such an action.” 436 U.S. at 364 (footnote omitted). And in my view, the majority fails to heed that warning.

The majority contends that “any remedy due to Appellant would be purely speculative because *right now he has not incurred any legally cognizable harm*.” *Babbitt*, __ M.J. at __ (12) (emphasis added). But that is an easy thing to say for someone who is not facing the very real prospect of being wrongfully required to serve almost two additional years in prison. A governmental threat of illegal detention surely inflicts the present harm of mental anguish, at least where the Government insists it will occur and has the ability and motive to make it happen. Indeed, this Court’s predecessor already directly addressed this point in *United States v. Larner*, where it found remediable error when appellate action “had the practical effect of subjecting the appellant to possible incarceration for . . . over 6 months longer than possible under the adjudged sentence” because “by causing the appellant to be exposed to the possibility of this eventuality, the court’s action actually increased the impact of the sentence adjudged.” 1 M.J. 371, 373 (C.M.A. 1976). Here, the present harm to Appellant is readily remediable by ordering the time of Appellant’s Commonwealth of Virginia custody to be credited against his military sentence, as required by the legally binding IADA.

Today, the majority denies direct review of the harm the Government has inflicted. Rather, the judges denying relief seem to envision collateral litigation outside the military courts as Appellant’s sole route, as urged by the Government and the CCA below.⁵ Given the highly deferential

transfer here rather than Article 14. *Mauro*, 436 U.S. at 355 (internal quotation marks omitted).

⁵ Unlike civilians, Appellant may be barred from civil remedies for any illegal detention in light of the *Feres* doctrine. See *United States v. Lopez*, 86 M.J. 139, 151 (C.A.A.F. 2025) (Johnson, J., dissenting in part and in the judgment) (first citing

nature of such review, however, Appellant's prospects are at best unclear. *See, e.g., Fulgham v. Crow*, 838 F. App'x 355, 359 (10th Cir. 2020) (unpublished) (denying habeas relief because "assum[ing] that an IADA violation occurred, [the prisoner] has not alleged any prejudicial error that qualifies as a fundamental defect which inherently results in a complete miscarriage of justice" (citation modified)). This is a thin reed on which to rest nearly two years of Appellant's life. Even should he prevail, forcing Appellant through collateral review to enforce the IADA when the statutory mandate may be properly applied on direct review is a perplexing and pointless exercise.

Instead, it is evident that, at a minimum, the correct course of action here is remand to the CCA for imposition of a remedy, with authority to conduct a *DuBay*⁶ hearing to fill in any perceived gaps in the record.

VI. Conclusion

Appellant's case is the precise type governed by the IADA, consistent with the statute's text and purpose. A contrary reading makes the IADA a dead letter for our servicemembers. The Government's assertion that Appellant's sentence was tolled during his Commonwealth of Virginia custody consequently contravenes IADA requirements. Because the IADA—properly construed—governs Appellant's transfer and its violation is remediable either in this Court or below, I respectfully dissent.

Feres v. United States, 340 U.S. 135 (1950), and then citing *Schnitzer v. Harvey*, 389 F.3d 200, 203 (D.C. Cir. 2004)). And assuming habeas review is the only vehicle for Appellant's claim, this will necessarily be heard outside the military courts once his court-martial is final and his punitive discharge executed. *United States v. Adams*, 86 M.J. 292, 294 (C.A.A.F. 2025) (per curiam).

⁶ *United States v. DuBay*, 17 C.M.A. 147, 37 C.M.R. 411 (1967).