No. 00-492

In the Supreme Court of the United States

STATE OF ALABAMA, PETITIONER

v.

MICHAEL HERMAN BOZEMAN

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a one-day transfer of a federal prisoner to state custody for purposes of arraignment, without completing the trial on the state charges, violates Article IV(e) of the Interstate Agreement on Detainers and requires dismissal of the state charges.

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INTEREST OF THE UNITED STATES

This case involves the construction of the Interstate Agreement on Detainers (IAD), a congressionally authorized interstate compact to which the United States is a party. The question presented is whether Article IV(e) of the IAD requires the dismissal of the state charges against respondent with prejudice because he was transferred from federal custody to state custody for arraignment and returned to federal custody one day later without completing his state trial. As a party to the compact, the United States has an interest in its correct interpretation and application. In addition, the United States has an interest in being able to accommodate a State's request for temporary cus-

tody of a federal prisoner in connection with a state prosecution that may not be completed before the prisoner is returned. Finally, issues similar to the present one have arisen in federal prosecutions, although Congress has enacted special laws to address the case in which the federal government obtains custody of a state prisoner from the State in connection with a federal prosecution and returns the prisoner to state custody before trial has been completed, see 18 U.S.C. App. 2, § 9.

STATEMENT

1. The Compact Clause of the United States Constitution, Art. I, § 10, Cl. 3, provides that States may enter into agreements and compacts with one another, but only with "the Consent of Congress." Pursuant to that authority, Congress in 1934 authorized the States to enter into agreements, including the Interstate Agreement on Detainers (IAD), to regulate the apprehension and prosecution of criminals. See Crime Control Consent Act of 1934, ch. 406, 48 Stat. 909 (4 U.S.C. 112(a)); *Cuyler* v. *Adams*, 449 U.S. 433, 441-442 & n.9 (1981). Since the IAD's promulgation, 48 States have entered into it. *Carchman* v. *Nash*, 473 U.S. 716, 719 (1985). For example, the IAD is codified as part of Alabama Law as Ala. Code §§ 15-9-80 *et seq*. (1995). The United States became a party to the IAD in 1970, see Interstate Agreement on Detainers Act, Pub. L. No. 91-538, 84 Stat. 1397, as amended, Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7059, 102 Stat. 4403, and the IAD is codified as a matter of federal law in 18 U.S.C. App. 2.[1]

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[1] Before the United States became a party to the IAD, the government employed the writ of habeas corpus ad prosequendum to obtain custody of state prisoners in order to proceed with

Detainers are ordinarily employed when one State seeks to bring charges against a prisoner in another State's custody. *New York* v. *Hill*, 528 U.S. 110, 111-112 (2000).[2] As this Court has explained, a "detainer is 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." *Carchman*, 473 U.S. at 719. Articles IV and V of the IAD provide the mechanisms through which one jurisdiction may, for purposes of criminal prosecution, obtain temporary custody of a prisoner incarcerated by another jurisdiction. Under Article IV, a State that has lodged a detainer against a prisoner may, by written notice, request temporary custody or availability of the prisoner. IAD, Art. IV(a). Once that State has received custody of the prisoner, it must try him within 120 days, subject to reasonable continuances for good cause shown in open court. IAD, Art. IV(c). Article V(e) provides that, "[a]t the earliest practicable time consonant with the purposes of" the IAD, "the prisoner shall be returned to the sending State."

Article IV(e), known as the anti-shuttling provision, provides that, "[i]f trial is not had on any indictment, information, or complaint contemplated hereby prior to

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federal prosecutions. This Court has held that, notwithstanding Congress's adoption of the IAD, the federal government may continue to employ that writ to obtain custody of state prisoners. See *United States* v. *Mauro*, 436 U.S. 340, 360-361 (1978).

[2] The IAD defines the term "State" as including not only the various States and Commonwealths that compose the Union, but also the United States of America, the District of Columbia, Puerto Rico, and any territory or possession of the United States. IAD, Art. II(a). Throughout this brief, we use the term "State" in the same sense.

the prisoner's being returned to the original place of imprisonment pursuant to article V(e)" of the IAD, "such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." The anti-shuttling provision is meant "to protect the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions." *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988).

2. In June of 1995, respondent Michael Herman Bozeman was arrested in Covington County, Alabama, on federal charges, including conspiracy to possess methamphetamine with intent to distribute it in violation of 21 U.S.C. 846. On November 3, 1995, respondent appeared before the United States District Court for the District of Georgia, and pleaded guilty to those charges. He was sentenced to 75 months of imprisonment, to be followed by four years of supervised release; the term of imprisonment was later reduced to 36 months, but the term of supervised release was left unchanged.

In September of 1996, a Covington County, Alabama, grand jury indicted respondent on various shooting charges, including two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. Respondent had committed those offenses in June of 1995, before he was arrested on federal charges. The Covington County District Attorney sent a request to the Federal Bureau of Prisons in Atlanta, asking that a detainer be placed against respondent under the IAD. Bureau of Prisons officials responded by stating that the detainer had been filed pursuant to the District

Attorney's request. Respondent apparently received and signed, on November 4, 1996, a notice that advised him of the detainer, notified him of the untried indictments, and informed him that he had the right under Article III of the IAD to request prompt disposition of the charges against him. Respondent was later transferred from the Federal Penitentiary in Atlanta to a federal facility in Marianna, Florida. Pet. 5. Marianna is in northwestern Florida, near the Alabama border, approximately 80 miles (as the crow flies) from the county seat of Covington County, which is the city of Andalusia.[3]

On January 8, 1997, the District Attorney requested temporary custody of respondent from Bureau of Prisons officials in Marianna, Florida, indicating that respondent was needed for arraignment and appointment of counsel on the shooting charges. The written request stated that respondent would be picked up on January 15, 1997, and returned the next day, on January 16, 1997. It was not until January 23, 1997, however, that respondent was made available to and placed in the temporary custody of Covington County authorities, who transported him to Covington County. The next day, January 24, 1997, respondent received appointed counsel, was arraigned on the shooting charges, and transferred back to federal custody in Marianna, Florida. Pet. App. 17-18, 28; Pet. 5-6.

On the day of arraignment, respondent's pro se motion to dismiss the indictment, which claimed that there had been a violation of the IAD, was filed. (Respondent apparently had earlier been transferred

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[3] The driving distance between Marianna, Florida, and Andalusia, Alabama, is approximately 110 miles. We are advised that the estimated travel time is two hours and ten minutes.

for arraignment on separate drug charges, which were later dismissed, and returned to federal authorities before being indicted on the shooting charges. See note 4, *infra*.) Appointed counsel stated that there were possible questions on that issue, and asked to reserve the issue for post-arraignment consideration; the trial court granted the motion. Apparently, respondent did not object to being returned to federal custody following the arraignment, and he was so returned. Pet. 6.

On February 21, 1997, respondent's counsel filed a motion to dismiss the untried charges. Article IV(e) of the IAD, he argued, compelled dismissal because respondent had been brought to Covington County under the IAD, but had been returned to his original place of incarceration without having been tried. Shortly thereafter, on February 27, 1997, respondent was transferred back into the custody of Covington County officials to stand trial on the shooting charges. He was tried that day, and the jury unanimously found him guilty of all charges the next day, February 28, 1997. Pet. 7.

Following his conviction, respondent renewed the motion to dismiss. After a hearing, the trial court denied the motion. The only issue before it, the trial court stated, was whether Article IV of the IAD had been violated. Pet. App. 27. The trial court found that, because respondent had been "brought to Covington County * * * to attend to short pre-trial matters, not anticipated to require his extended presence," it "made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed." *Id.* at 28. "That course," the court explained, "appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in

federal prison. He certainly would not receive much rehabilitation in a county jail." *Ibid.* "[M]any prison inmates," the court continued, "don't care to stay in our county jail for two or three months pending trial." *Ibid.*

The court therefore found that "there was a failure of proof that" respondent's transfer had "interfered with [his] participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge." Pet. App. 28.[4] Instead, the court found that the transfer was "wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs." *Id.* at 29. The court therefore held that there had been no violation of the IAD, and it declined to dismiss the charges.

3. The Alabama Court of Criminal Appeals affirmed. Pet. App. 15-26. The court began by noting that the federal courts of appeals were divided on whether a one-day transfer between a sending and a receiving jurisdiction, without resolution of the pending charges, violates Article IV(e) of the IAD. *Id.* at 21. The posi-

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[4] The trial court's opinion speaks of "transfers" in the plural because, before being transferred to Covington County on the shooting charges, respondent was once transferred to Covington County in connection with state drug charges that were later dismissed. See Pet. 4 n.2. The Court of Criminal Appeals concluded that, because the shooting charges were not pending at the time respondent was transferred to Covington County and then returned to federal custody in connection with the drug charges, the IAD could not be read as requiring dismissal of the shooting charges based on that earlier transfer. The IAD, the court explained, only applies to "untried indictments," and there was no untried indictment charging the shooting offenses when respondent was transferred and returned in connection with the drug charges. See Pet. App. 16-17. Respondent has not sought further review of that holding.

tion of the courts finding no violation, the Court of Criminal Appeals concluded, was more persuasive in light of paragraph 1 of Article IX of the IAD, which states that the agreement "shall be liberally construed so as to effectuate its purposes." *Ibid.* In this case, the court noted, the transfers did not interfere with the purpose of the IAD. *Ibid.* To the contrary, the court of appeals observed that respondent had failed (until appeal) to claim that he had suffered any prejudice from the transfer. *Id.* at 21-22.[5] Keeping a prisoner "for trial, rather than returning him immediately after arraignment," the court explained, often would "interfere[] with [the prisoner's] legitimate interest in participating in the program of rehabilitation in which he was enrolled;" in contrast, brief removal and "prompt return * * * after arraignment" did not have that effect. *Id.* at 23 (quoting *Sassoon* v. *Stynchombe*, 654 F.2d 371, 375 (5th Cir. 1981), and *State* v. *Sassoon*, 242 S.E.2d 121, 123 (Ga. 1978)). Based on that reasoning and the record before it, the court held that respondent's "brief transfer in January 1997 for arraignment * * * and return to federal custody the following day did not violate Article IV(e) of" the IAD. *Id.* at 26.

4. The state supreme court reversed, with three justices dissenting. Pet. App. 1-14. The majority

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[5] On appeal, respondent apparently "made a conclusory assertion that his transfers interfered with his ability to aid in his defense." Pet. App. 22 n.2. The Court of Criminal Appeals noted that the argument had not been timely raised before appeal, *id.* at 21-22, and declined to address it, *id.* at 22 n.2. See also *id.* at 12 (dissenting opinion) (Respondent "does not argue on appeal that he was prejudiced by the transfer back to federal custody before his trial."); *id.* at 12 n.9 (noting that "the record does not contain "evidence to support" the assertion of prejudice). See also *id.* at 7-10 (state supreme court decision reversing without finding prejudice).

reasoned that, under the text of the IAD, there is no exception for technical violations of Article IV(e). Instead, the majority stated, the IAD unambiguously requires that, whenever the prisoner is returned to the sending jurisdiction before trial, any untried charges in the receiving jurisdiction must be dismissed. *Id.* at 8.

The court did not dispute that, in individual cases, a one day trip might cause no more than "minimal interruption of the rehabilitative process." Pet. App. 7 (quoting *United States* v. *Sorrell*, 413 F. Supp. 138 (E.D. Pa. 1976), aff'd, 562 F.2d 227 (3d Cir. 1977), cert. denied, 436 U.S. 949 (1978)). The court concluded, however, that the IAD was not drafted to deal with "an individual situation, but rather [to be] an agreement of national scope." *Ibid.* Given the tremendous distances between and within States, the court continued, transfers could require trips measuring hundreds of miles and create more than minimal disruption. *Id.* at 8. The legislature could have, the court continued, "stepped beyond the confines of the text of the compact and included limitations in the statute expressly allowing 'technical' violations to occur. However, it * * * did not do so. This Court will not interject its interpretation of what the Legislature should have done." *Ibid.*

Three justices dissented, and a fourth recused herself because she had been a member of the Court of Criminal Appeals when that court considered the case. Pet. App. 10-14. The dissenting justices stated that a technical violation of the IAD does not require the dismissal of charges with prejudice. A majority of federal courts of appeals, they pointed out, had concluded that a one-day transfer like the one at issue here was not a material violation of the Act. Indeed, they noted, transferring the prisoner back to the sending institution promptly will often be more consonant with

the Act's purposes, because it enables the prisoner to participate in rehabilitation programs that he would otherwise miss. *Id.* at 12.

SUMMARY OF ARGUMENT

The Supreme Court of Alabama erroneously held that even a technical and wholly harmless defect in a temporary transfer under the Interstate Agreement on Detainers requires dismissal of an indictment with prejudice.

A. The IAD seeks to minimize the negative impact that detainers can have on a prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated. Article IV(e), the anti-shuttling rule, serves that goal by protecting "the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions." *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988). Consistent with that purpose, the overwhelming majority of federal courts of appeals have reached the common sense conclusion that Article IV(e) of the IAD is not materially violated when a prisoner's confinement is briefly interrupted by transfer to another jurisdiction for purposes of arraignment if the prisoner is returned to the original place of confinement within a day and his participation in rehabilitation programs is unaffected. Those courts have observed that a contrary, inflexible construction of the statute would undermine the IAD's express goals. The rapid return of a prisoner to the original place of confinement minimizes any interruption of the prisoner's participation in rehabilitative programs. In contrast, requiring the prisoner to remain in what may be lengthy custody in the receiving State would prevent the prisoner from participating in rehabili-

tation programs at his original place of confinement, forcing him instead to spend an extended period in a local pre-trial detention facility where, as here, such programs are often unavailable.

B. The Supreme Court of Alabama held that the plain language of the IAD compelled it to require dismissal because of the one-day transfer of custody in this case. In particular, that court reasoned that, because the IAD does not contain an express exception for "technical" or "*de minimis*" breaches, excusing such errors would be tantamount to judicial legislation. Pet. App. 8. That conclusion, however, is inconsistent with the principle of *de minimis non curat lex*—"the law cares not for trifles"—which, this Court has held, "is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Dep't of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). In fact, the reasoning adopted by the Alabama Supreme Court in this case is virtually indistinguishable from the line of argument this Court rejected in *Wrigley*. It is also inconsistent with the similar and universally accepted principle of criminal procedure that harmless errors—errors that do not affect substantial rights—cannot be noticed. Nothing in the IAD indicates that it was meant to abrogate the well-settled *de minimis* principle or the doctrine of harmless error. To the contrary, applications of those principles in this context would be wholly consistent with the statutory purpose of minimizing, rather than exacerbating, the potentially disruptive effect that pending charges in another jurisdiction can have.

ARGUMENT

ARTICLE IV(e) OF THE INTERSTATE AGREEMENT ON DETAINERS IS NOT VIOLATED BY A BRIEF INTERRUPTION OF CONFINEMENT THAT DOES NOT AFFECT SUBSTANTIAL RIGHTS

In *Wisconsin Department of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992), this Court held that "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." In criminal procedure, the similar view that non-prejudicial errors shall be disregarded finds expression in the related and universally accepted principle of harmless error, under which a conviction may not be set aside unless the error complained of affected the defendant's substantial rights. In this case, the Supreme Court of Alabama erroneously declined to construe Article IV(e) of the Interstate Agreement on Detainers in light of those background principles of law. To the contrary, that court held that, even if the alleged violation of the IAD is wholly trivial, causes no injury to the substantial rights of the prisoner, and actually benefits the interests of the prisoner that the IAD was meant to protect, the "plain language" of Article IV(e) requires that the harsh remedy of dismissal with prejudice be imposed and the criminal defendant must be permitted to escape prosecution for his crimes. Because that result is not compelled by the statutory language, is inconsistent with the background principles that all federal enactments are deemed to accept, and defeats the purposes Article IV(e) of the IAD is

designed to serve, this Court should reverse the judgment below.

A. The Vast Majority Of Federal Courts Have Correctly Concluded That *De Minimis* Transfers Do Not Offend The IAD

The IAD seeks to minimize the negative impact that the lodging of a detainer can have on a prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated. In proposing the legislation that became the IAD, the Council of State Governments observed that an inmate who has a detainer against him often confronts great uncertainty about his future and, as a result, "frequently does not respond to" rehabilitation efforts. Council of State Governments, *Suggested State Legislation, Program for 1957*, at 74 (1956). In addition:

> [A prisoner subject to a detainer] often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. * * * Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated.

Ibid. See also *Carchman* v. *Nash*, 473 U.S. 716, 719-720 (1985).

The IAD was drafted to minimize such interference with rehabilitation programs and "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints." IAD, Art. I. To that end, Articles IV and V of the IAD provide (among other things) procedures for the temporary transfer of

custody of a prisoner from the jurisdiction where he is incarcerated to the jurisdiction filing the detainer for prompt resolution of the charges on which the detainer is based. To minimize the time the prisoner must spend away from his original place of incarceration, Article IV(c) requires States that request temporary custody of a prisoner for purposes of trial to begin the trial within 120 days of obtaining custody. And Article V(e) of the IAD requires that, "[a]t the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State." See also *New York* v. *Hill*, 528 U.S. 110, 118 n.3 (2000).[6]

To ensure that repeated transfers between jurisdictions do not interfere with the prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated, the IAD contains the provision at issue in this case, Article IV(e), which is known as the "anti-shuttling" provision. Article IV(e) states:

> If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of

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[6] In addition, under Article III(a) of the IAD, the *prisoner* can demand prompt resolution of the charges underlying any detainer lodged against him. Upon such a request, the prisoner must be brought to trial within 180 days, subject to reasonable continuances for good cause shown in open court in the presence of the prisoner or his counsel. IAD, Art. III(a). Failure to try the prisoner within the applicable statutory period requires dismissal of the indictment, with prejudice. IAD, Art. V(c). See generally *Hill*, 528 U.S. at 112. But see 18 U.S.C. App. 2, § 9(1) (providing that, where federal charges are at issue, dismissal can be with or without prejudice).

> any further force or effect, and the court shall enter an order dismissing the same with prejudice.

IAD, Art. IV(e). Article IV(e) is "meant to protect the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions," *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988), and "prevent[s] prisoners from being abused by the lodging of detainers and transfer to a requesting state unaccompanied by an intent or ability to try the individual," 134 Cong. Rec. 32,703 (1988). See also *United States* v. *Taylor*, 861 F.2d 316, 319 (1st Cir. 1988) ("[T]he requirement * * * primarily was designed to avoid the shuttling of prisoners back and forth between institutions in different states or in distant parts of the same state.").

Consistent with that purpose, the overwhelming majority of federal courts of appeals—including the First, Second, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits—have concluded that Article IV(e) of the IAD is not materially violated by a brief interruption in confinement for purposes of arraignment when the prisoner is returned to the original place of confinement within a day and his participation in rehabilitation programs is unaffected. Absent a material violation, those courts hold, the sanction of dismissal with prejudice is improper. See *United States* v. *Daniels*, 3 F.3d 25, 27 (1st Cir. 1993) ("[A] brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD."); *United States* v. *Roy*, 771 F.2d 54, 60 (2d Cir. 1985) (no violation necessitating dismissal where prisoner was out of state custody overnight), cert. denied, 475 U.S. 1110 (1986); *Sassoon* v.

Stynchombe, 654 F.2d 371, 375 (5th Cir. 1981) (no violation when prisoner's return to federal penitentiary, after five day absence for arraignment, "allowed him to participate in the extensive rehabilitative education program available there"); *United States* v. *Taylor*, 173 F.3d 538, 542 (6th Cir.) ("[W]e agree with the 'common sense' approach applied by a majority of the circuits."), cert. denied, 528 U.S. 987 (1999); *Roy*, 830 F.2d at 636 (no violation when prisoner's "overnight stay" in federal custody was not a "real interruption of [his] state incarceration and * * * he was not deprived of any privilege at the state institution as a result"); *Baxter* v. *United States*, 966 F.2d 387, 389 (8th Cir. 1992) ("[A]rticle IV(e) of the IADA does not apply when a prisoner is removed from a state prison for a few hours to be arraigned, plead, and be sentenced in federal court without ever being held at any other place of imprisonment and without interrupting the prisoner's rehabilitation in the state prison."); *United States* v. *Johnson*, 953 F.2d 1167, 1171 (9th Cir.) (concluding that one-day transfers did not violate the IAD absent some injury to the prisoner's opportunity to participate in prison programs), cert. denied, 506 U.S. 879 (1992). See also *United States* v. *Taylor*, 947 F.2d 1002, 1004 (1st Cir. 1991) ("[W]e rely on * * * the single day interruption of the state confinement, and the manifest lack of injury."), cert. denied, 504 U.S. 991 (1992).

A contrary, inflexible construction of the statute would be at war with the IAD's express goals. The rapid return of a prisoner to the original place of confinement following a single-day absence for arraignment, those courts have noted, minimizes any interruption of the prisoner's participation in rehabilitative programs. *Roy*, 830 F.2d at 636 ("one-day interruption"

of confinement "quite obviously 'pose[s] no threat to a prisoner's rehabilitation sufficient to constitute a violation of the Agreement'"); *Daniels*, 3 F.3d at 27 ("brief interruption in state custody poses no threat to the prisoner's rehabilitation efforts"). In contrast, requiring the prisoner to remain in the custody of the charging State—precluding his return to the original place of confinement upon threat of dismissal—during the sometimes lengthy period between arraignment and trial would force the prisoner to remain in a local pre-trial detention facility, where rehabilitation services are often unavailable, for an extended period of time. As one court of appeals has explained:

> [If] a prisoner could not be returned safely to his original place of imprisonment * * * , the [receiving jurisdiction] would be forced to keep the prisoner in its custody throughout the period necessary for final resolution of the * * * charges; to do otherwise would risk dismissal of the indictment for technical noncompliance with the Agreement. This practice would frequently result in incarceration for several weeks or months in local jails, often in disadvantageous 'holdover' status, thereby unnecessarily interrupting the rehabilitation of the prisoner and bringing about the very evil that the Agreement was enacted to prevent.

Roy, 771 F.2d at 60. Accord *Taylor*, 861 F.2d at 319 ("[R]equiring the [receiving State] to retain custody of appellant until his trial would conflict with the Agreement's goal that a prisoner be able to pursue his original rehabilitation program with as little interruption as possible."); *Sassoon*, 654 F.2d at 375 (retaining prisoner "for trial, rather than returning him immediately after arraignment" would have "interfered

with [the prisoner's] legitimate interest in participating in the program of rehabilitation in which he was enrolled"); *Daniels*, 3 F.3d at 28 ("such interruptions may be advantageous to a defendant").

Congress, in fact, reached precisely the same conclusion, and it amended the federal statutes implementing the IAD to clarify Article IV(e) as a result. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7059, 102 Stat. 4403. In particular, responding to the decisions of the two courts of appeals that had parted company from the rest on this issue, Congress in 1988 amended 18 U.S.C. App. 2 by adding a new Section 9. Section 9(1) provides that dismissals of federal charges for violations of the Act can be made with or without prejudice, depending on the circumstances. 18 U.S.C. App. 2, § 9(1). And Section 9(2) essentially codifies the position taken by the majority of federal courts of appeals, declaring that "it *shall not be a violation* of the agreement on detainers if prior to trial the prisoner is returned to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing." 18 U.S.C. App. 2, § 9(2) (emphasis added).[7]

The legislative history of that amendment notes that, when a prisoner is transferred between federal and state authorities for a brief period, the "sanction" of dismissal for returning the prisoner before trial "makes

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[7] Congress, of course, did not attempt to unilaterally amend the IAD itself, or the various state laws adopting and implementing it. As a result, 18 U.S.C. App. 2, § 9, operates only with respect to the disposition of federal charges where a violation of the IAD is alleged; it does not by its terms directly control the disposition of state charges.

little sense," because such a transfer often will be within "the same state, perhaps across the street, for trial." 134 Cong. Rec. 32,703 (1988). If the two locations are sufficiently close and the interruption of confinement brief, Congress observed, permitting the prisoner to return to the original institution of confinement following arraignment "is clearly not harmful to the prisoner and ought not to lead to the drastic remedy of dismissal." *Ibid.* To the contrary, permitting the prisoner to continue his residence in the original place of confinement following arraignment "frequently is for the prisoner's benefit" because it "may enable him or her to resume participation in * * * rehabilitative programs whereas, if retained in [the receiving jurisdiction's] custody, the prisoner might have to be lodged in a * * * jail-type institution for a protracted time without comparable treatment or facilities." *Ibid.*

The same considerations exist in this case as well. Respondent, who was serving a multi-year sentence in a federal penitentiary in Marianna, Florida, was briefly placed in the custody of Covington County officials, transported a relatively short distance (a drive of approximately two hours) to Covington County, Alabama, for purposes of arraignment, and then sent back to his original place of confinement, all within a 24-hour period. Respondent has not shown that the brief, one-day interruption in federal custody interfered with his participation in rehabilitative programs. And the procedure may well have accrued to his benefit. Rather than having to spend a month awaiting trial in a local Covington County jail, respondent returned to the federal facility with which he was familiar. As the trial court observed, the transfer was "conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison," since

he "certainly would not receive much rehabilitation in a county jail." Pet. App. 28. Indeed, respondent nowhere claims that he would have preferred to stay in the Covington County jail. The trial court, which was most familiar with local conditions, noted that such a preference would be somewhat unusual. "[M]any prison inmates," the court explained, "don't care to stay in our county jail for two or three months pending trial." *Ibid.*

B. The Decision Below Is Inconsistent With Fundamental Principles Of Statutory Construction

The Supreme Court of the State of Alabama did not disagree with the above considerations. It concluded, however, that the result reached by the overwhelming majority of federal courts of appeals could not be reconciled with the IAD's language. Under the IAD, the court stated, any untried charges must be dismissed with prejudice "[i]f trial is not had" on them "prior to the prisoner's being returned to the original place of imprisonment." Pet. App. 4, 8. We disagree with that analysis of the IAD.

The Supreme Court of Alabama's supposedly "plain text" construction of the IAD overlooks the background legal principle, which should be found applicable to a compact such as the IAD, that in the absence of a *material* breach of the relevant proscription, no remedy may be imposed—*de minimis non curat lex*. Indeed, one can often fairly say that, absent a material breach and resulting injury, there has been no breach at all.[8]

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[8] See, *e.g.*, *General Carbon Co.* v. *OSHA*, 860 F.2d 479, 487 (D.C. Cir. 1988) (where violation is "*de minimis*," it "means not only that no penalty is imposed * * * but also that the violation need not be abated"). Thus, in the law of torts, the absence of a material injury to the plaintiff defeats any cause of action for negligence. W. Page Keeton, *Prosser and Keeton on Torts* § 30, at

As the Court explained in *Wrigley*, 505 U.S. at 231, "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept."

The Alabama Supreme Court's reasoning in this case cannot be reconciled with that principle. That court reasoned that, because the IAD does not contain an express exception for "technical" or "*de minimis*" breaches, excusing such errors would be tantamount to judicial legislation. Pet. App. 8. But *Wrigley* holds the opposite to be true: That absent an indication of contrary intent, the maxim of *de minimis non curat lex*—that the law does not recognize insignificant errors—is part of the "background of legal principles against which all enactments," including the IAD, "are adopted, and which all enactments," including the IAD, "are deemed to accept." Indeed, the reasoning adopted by the Alabama Supreme Court in this case is virtually indistinguishable from the line of argument this Court rejected in *Wrigley*. In *Wrigley*, the State asserted that the "plain language of the statute bars * * * recognition of a *de minimis* exception, because" no such exception was expressly provided for. 505 U.S. at 231.

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165 (5th ed. 1984). And, in the law of contracts, one party's failure of performance cannot justify the dramatic remedy of excusing the other party's performance unless the breach is "material," or "goes to the root or essence of the contract." See 2 E. Allan Farnsworth, *Farnsworth on Contracts* § 8.16, at 442 (1990); 15 Richard A. Lord, *Williston on Contracts* § 44:55, at 231-232 (4th ed. 2000); 4 Arthur L. Corbin, *Corbin on Contracts* § 946, at 809, 811 (1951). See also *Mobil Oil Exploration & Producing S.E., Inc.* v. *United States*, 120 S. Ct. 2423, 2440-2441 (2000); *id.* at 2449 (Stevens, J., dissenting).

Here, the Alabama Supreme Court declined to excuse *de minimis* infractions because there is no "limitation[] in the statute expressly allowing 'technical' violations to occur." Pet. App. 8. This Court rejected the State's "plain language" argument in *Wrigley* because the *de minimis* principle is deemed accepted by "every statute" absent a contrary indication. The Court should for the same reasons reject the Alabama Supreme Court's "plain language" argument here. [9]

That result is particularly appropriate in light of the fact that the rule against cognizance of non-prejudicial defects finds universal application through the criminal procedure doctrine of harmless error, under which courts will not vacate or reverse convictions unless the asserted error affected the defendant's substantial

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[9] This Court has construed other federal statutes restricting the scope of permissible government conduct, including Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 *et seq.*—the principal federal wiretapping statute— in a manner consistent with that principle. For example, the Court has rejected the contention that "every failure to comply fully with any requirement provided in Title III would render the interception of wire or oral communications 'unlawful'" within the meaning of Title III so as to require the suppression of the evidence so obtained. *United States* v. *Donovan*, 429 U.S. 413, 433 (1977) (quoting *United States* v. *Chavez*, 416 U.S. 562, 574-575 (1974)). Instead, the Court held, the exclusionary rule applies where the requirement of Title III that was allegedly violated serves a "substantive" and "central" role in the statutory purpose of preventing "unwarranted use of wiretapping or electronic surveillance." *Chavez*, 416 U.S. at 578. See *Donovan*, 429 U.S. at 433-434 ("[S]uppression is required only for a 'failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device.'") (quoting *United States* v. *Giordano*, 416 U.S. 505, 527 (1974)).

rights. See *Chapman* v. *California*, 386 U.S. 18, 22 (1967) ("All 50 States have harmless-error statutes or rules."). The Federal Rules of Criminal Procedure, for example, provide that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Fed. R. Crim. P. 52(a). See also 28 U.S.C. 2111. The Alabama Rules of Appellate Procedure similarly provide that "[n]o judgment may be reversed or set aside * * * unless * * * the error complained of has probably injuriously affected substantial rights of the parties." Ala. R. App. P. 45. The harmless error doctrine, this Court has explained, "is essential to preserve the 'principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.'" *Arizona* v. *Fulminante*, 499 U.S. 279, 308 (1991) (quoting *Delaware* v. *Van Arsdall*, 475 U.S. 673, 681 (1986)).

Nothing in the text of the IAD or its history suggests that it was meant to preclude application of the principle of *de minimis non curat lex*, or to eliminate the application of the related doctrine of harmless error. To the contrary, on its face, the IAD, including Article IV(e), is silent with respect to those doctrines. Last Term, this Court confronted similar silence in the IAD with respect to the effect of waiver or forfeiture of the speedy-trial right provided by that Act. See *Hill*, 528 U.S. at 114 ("No provision of the IAD prescribes the effect of a defendant's assent to delay on the applicable time limits."). In light of that silence, the Court concluded that the rights provided by the IAD are, like almost all other rights of a criminal defendant, subject

to waiver. *Id.* at 663-664.[10] The Court should similarly hold that the purported violations of Article IV(e) at issue here, like almost all other procedural errors in the criminal process, are subject to the *de minimis* principle and thus the rule that they cannot form the basis of relief unless they affect substantial rights.[11]

The rule of liberal construction provided by the IAD itself, as well as the IAD's legislative history, both support that result. Article IX of the IAD, which the Alabama Supreme Court's opinion did not mention, states that the "agreement shall be liberally construed *so as to effectuate its purposes*." IAD, Art. IX (emphasis added). Construing the IAD as abrogating the *de minimis* and harmless error principles would, as the above discussion attests, undermine the IAD's purpose. See pp. 15-20, *supra*. The anti-shuttling provision is designed to prevent transfers and re-transfers between

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[10] Indeed, the Court explained that, even though it was possible to draw a "negative implication" from the statutory text, that implication was "not clear enough to constitute the 'affirmative indication' required to overcome the ordinary presumption that waiver is available." *Hill*, 528 U.S. at 116.

[11] That is not to say that Congress implicitly intends to exempt from the scope of all of its criminal laws those violations that might be argued to be "relatively trivial." See *United States* v. *Wells*, 519 U.S. 482, 498 (1997). The question is one of the intent of the drafters. In construing criminal laws, this Court has made clear that "the first criterion in the interpretive hierarchy" is "a natural reading of the full text." *Id.* at 490; see *Salinas* v. *United States*, 522 U.S. 52, 57 (1997) ("Courts in applying criminal laws generally must follow the plain and unambiguous meaning of statutory language."). In the present context, however, involving application of a procedural regime governing prisoners who face charges in another jurisdiction, application of the *Wrigley* principle is consistent with the purpose of the IAD, and there is no countervailing indication that it should not be applied.

different States from disrupting the prisoner's participation in rehabilitation and training programs in the institution in which he is incarcerated. Where, as here, the prisoner is removed from federal custody for only a day, is transferred a relatively moderate distance for arraignment, and promptly returned with no apparent interruption of his participation in rehabilitative programs, the transfer poses no threat to that purpose. The contrary rule, in contrast, would. Under it, a prisoner would have to be kept away—for the sometimes lengthy period between arraignment and trial—from the institution to which he had become accustomed and from any training and rehabilitation programs there in which he might be enrolled; the prisoner, moreover, would likely end up confined in a pre-trial facility that offers no such programs. See pp. 16-20, *supra*; Pet. App. 28 (explaining that, in this case, respondent "certainly would not receive much rehabilitation in a county jail"). There is no warrant for reading the IAD in a manner that is inconsistent with settled background principles, when the result is to contradict the statute's underlying purpose. See *Roy*, 771 F.2d at 60 ("Construing the Agreement to have been violated in [such] circumstances * * *, thereby precipitating serious interruption of rehabilitative programs, would not comport with the requirement that the Agreement should be 'liberally construed so as to effectuate its purposes.' Art. IX."). That is especially true where, as here, such a construction would provide criminal defendants with a windfall, a result the IAD was supposed to avoid. See Council of State Governments, *supra*, at 76-77 (agreement "gives [the defendant] no greater opportunity to escape just conviction"); S. Rep. No. 1356, 91st Cong., 2d Sess. 2 (1970) ("The agreement gives the

prisoner no greater opportunity to escape a conviction.").

"Whether a particular activity is a *de minimis* deviation from a prescribed standard must, of course, be determined with reference to the purpose of the standard." *Wrigley*, 505 U.S. at 232. In this case, there can be little doubt that any violation of the IAD was *de minimis* and did not affect respondent's "substantial rights." Respondent was out of the federal prison for only a day; there is no evidence that his participation in federal training programs was affected; and the local Covington County, Alabama, jail where respondent would have had to remain for the month between arraignment and trial absent his prompt return could offer him none of the programs and services available in the federal facility to which he had become accustomed. We do not mean to suggest that the *de minimis* principle or harmless error rule would excuse repeated and vexing transfers between jurisdictions, transfers between distant institutions, or return after an extended period in the custody of the receiving State. But returning a prisoner to a federal facility after an overnight stay with the charging State not only imposes no injury on the prisoner, but serves his interests and those the IAD seeks to protect. Under such circumstances, the *de minimis* principle and harmless error doctrine preclude application of the harsh sanction of dismissal with prejudice.

CONCLUSION

Accordingly, the judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

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APPENDIX

1. The Compact Clause of the United States Constitution, Art. 1, § 10, Cl. 3, provides:

> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

2. Section 2111 of Title 28 of the United States Code provides:

§ 2111. Harmless error

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

3. The Interstate Agreement on Detainers Act, Title 18 of the United States Code Appendix 2, provides as follows:

§ 1. Short title

This Act may be cited as the "Interstate Agreement on Detainers Act".

§ 2. Enactment into law of Interstate Agreement on Detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States

on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the following form:

"The contracting States solemnly agree that:

"ARTICLE I

"The party States find that charges outstanding against a prisoner, 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. Accordingly, it is the policy of the party States and the purpose of this agreement 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. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III

hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, com-

missioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided*

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

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing 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 as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the execu-

tive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made 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.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is

unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement

and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

§ 3. Definition of term "Governor" for purposes of United States and District of Columbia

The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

§ 4. Definition of term "appropriate court"

The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

§ 5. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

§ 6. Regulations, forms, and instructions

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

§ 7. Reservation of right to alter, amend, or repeal

The right to alter, amend, or repeal this Act is expressly reserved.

§ 8. Effective Date

This Act shall take effect on the ninetieth day after the date of its enactment.

§ 9. Special Provisions when United States is a Receiving State

Notwithstanding any provision of the agreement on detainers to the contrary, in a case in which the United States is a receiving State—

(1) any order of a court dismissing any indictment, information, or complaint may be with or without prejudice. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: The seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice; and

(2) it shall not be a violation of the agreement on detainers if prior to trial the prisoner is returned

> to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing.

4. Federal Rule of Criminal Procedure 52 provides:

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

5. Alabama Rule of Appellate Procedure 45 provides:

Rule 45. Error without injury.

> No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties.