NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES

ADAM CHRISTOPHER SHEAFE,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS - NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Interstate Agreement on Detainers applies when the State, in which the federal district sits, filed a detainer and the federal government obtained the Petitioner's presence pursuant to a writ of habeas corpus ad prosequendum, and whether the writ allowed the government to circumvent the obligations that the IAD imposes and violate the purpose of the IAD?

2. Whether the District Court abused its discretion in holding that, if the Interstate Agreement on Detainers did apply, such agreement was not violated as good cause existed for three continuances beyond the 120-day deadline?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Adam Sheafe respectfully petitions for a writ of certiorari to review the judgement of the U.S. Court of Appeals for the Ninth Circuit in case number 18-10424.

OPINIONS BELOW

The Memorandum Opinion of the Ninth Circuit Court of Appeals is unpublished and can be found at 18-10424. Pet. App. 1a. The relevant trial court proceedings and orders are unpublished and can be found at CR 16-0438-001- TUC-RCC. Pet. App. 1b.

JURISDICTION

The opinion of the U.S. Court of Appeals for the Ninth Circuit was issued on December 19, 2019. Pet. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The Interstate Agreement on Detainer's Act is located at 18 U.S.C. app. II, § 1 et seq.

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings

On March 2, 2016, a Tucson grand jury returned an indictment charging Adam Sheafe ("Sheafe") and his wife, Jane Sheafe (J. Sheafe), with conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349; two counts of bank fraud, in violation of 18 U.S.C. § 1344; and two counts of aggravated identity theft, in

violation of 18 U.S.C. § 1028A.[1] Following a four-day trial, Sheafe was found guilty of all six counts.[2] On November 1, 2018, the court sentenced Sheafe to 70 months in prison on the bank fraud counts, and a consecutive 24 months in prison on the identity theft counts, to be followed by five years of supervised release. The court also ordered Sheafe to pay $519,199.76 in restitution.[3]

B. Statement of Facts

1. Sheafe's Convictions

Sheafe opened merchant accounts at BBVA Compass Bank and the Bank of America. He used the accounts to process fraudulent unauthorized credit card charges, obtaining a total of $519,199.76.[4]

2. Sheafe's Transfer to Federal Court

As the lower court noted, the facts regarding Sheafe's transfer to federal court were not in dispute. The sequence of events was:

January, 2016:	Sheafe was serving a state prison sentence in Nevada.
1/27/16	Pima County, Arizona filed a detainer with the Nevada Department of Corrections under the Interstate Agreement on

[1]CR 3. "CR" refers to the Clerk's Record, followed by the document number(s). "EH" and "SH" refers to the Reporter's Transcript of the Evidentiary Hearing and/or "Status Hearing" followed by the date and page number(s); "TT" refers to the Trial Transcript followed by the day of Trial (1, 2, or 3) and page number(s).

[2]CR 127.

[3]CR 156.

[4]See CR 3, 156.

	Detainers Act relating to three pending state felony cases in Arizona. (The cases involved charges of (1) burglary, theft of property, theft of means of transportation, and criminal damage; (2) aggravated assault domestic violence, kidnaping domestic violence, and endangerment; and (3) burglary, theft of property, and theft of means of transportation.[5]
3/2/16	A federal grand jury indicted Sheafe on bank fraud and identity theft charges.
4/9/16	The United States applied to the U.S. District Court for a writ of habeas corpus ad prosequendum to obtain Sheafe from the Nevada Department of Corrections.
4/14/16	After the forms for a transfer pursuant to the Interstate Agreement on Detainers were completed, Pima County sent a letter to Nevada Department of Corrections accepting temporary custody of Sheafe. The letter stated that Arizona would take custody of defendant sometime between May 30 and June 3, 2016.
4/15/16	The United States Marshals took custody of defendant pursuant to the writ of habeas corpus ad prosequendum.
4/26/16	Sheafe made his initial appearance in U.S. District Court in

[5]CR 95, p. 18.

Pima County, Arizona.[6]

3. The Continuances

On June 3, 2016, the court designated this case as complex based on the amount of discovery presented, the number of witnesses involved, and the time needed for the defense to decipher the nature of various bank transactions among individuals charged and uncharged.[7]

Sheafe acknowledges that he did not object to any continuances until October 11, 2017. On September 19, 2017, a new attorney from the Federal Public Defender's Office substituted into the case for codefendant Jane Sheafe ("J. Sheafe").[8] The substitution was necessary because the prior attorney had left the Public Defender's Office.[9] At that time, the scheduled trial date was November 7, 2017.[10] The new attorney moved for a continuance in open court because he had just met J. Sheafe a week prior and had not yet finished reviewing the disclosure.[11] Sheafe objected to the continuance.[12] The court granted a continuance to January 9,

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[6]CR 108, pp. 1-2; CR 95, p. 32.

[7]CR 32, 35.

[8]CR 78.

[9]RT 10/11/17, p. 4.

[10]CR 54.

[11]RT 10/11/17, p. 5.

[12]RT 10/11/17, p. 6.

2018, "[b]ecause new counsel is involved in the case."[13]

On November 14, 2017, counsel for J. Sheafe advised the court that he needed to have J. Sheafe evaluated by a 'battered woman syndrome' expert because she stated that her husband was very abusive to her during the course of the time span of the indictment.[14] Counsel for J. Sheafe indicated he would need a continuance to get this evaluation done.[15] Sheafe objected to any continuance.[16] The court did not continue the case at that point as the court wanted more information regarding how long it would take to get J. Sheafe evaluated.[17]

On December 4, 2017, the court set a status conference for January 9, 2018, the scheduled trial date. The parties understood that the trial possibly would not go forward on that date.[18] On January 9, 2018, counsel for J. Sheafe advised the court that the expert had finished interviewing J. Sheafe, but needed at least two more weeks to finish the report. He explained that the expert was delayed due to an illness. Counsel for J. Sheafe asked, in open court, for another hearing in 30 days.[19] Sheafe objected.[20]

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[13]RT 10/11/17, pp. 6-7.

[14]RT 11/14/17, p. 4.

[15]RT 11/14/17, p. 5.

[16]RT 11/14/17, pp. 5-6.

[17]RT 11/14/17, p. 9.

[18]CR 88.

[19]RT 1/9/18, p. 4.

[20]RT 1/9/18, p. 4.

The court explained to Sheafe that he needed to make sure that his codefendant was adequately provided for by counsel. The court set a status conference/trial date of February 6, 2018.[21]

At the hearing on February 6, 2018, the following exchange occurred in open court:

[The Prosecutor]:	I think it's time for us – I think it's time for us to move for some justice, so we're going to go for a firm trial date.
THE COURT:	All right.
[The Prosecutor]:	And it looked like March 20th is a good day for everyone. I'm just being facetious. I know – that's a tough day for you, I know.
THE COURT:	It's not a tough day for me. I just can't do two trials at the same time. That's all.
[The Prosecutor]:	So we're looking at sometime in the summertime. That would be best.
[Counsel for Defendant]:	Sure, if we could avoid July. July is bad for me, but if we can do it in June.
THE COURT:	When in June?
[Counsel for Defendant]:	I've got basically the whole month.
THE COURT:	Let's do it the first week in June.[22]

The court set a trial date of June 1, 2018.[23] Neither Sheafe nor defense counsel objected to that date.[24] Sheafe's trial began on June 4, 2018.[25] June 1, 2018 was a Friday. The minute entry reflects that the trial actually was set for June 5, 2018.[26] The district court subsequently accelerated the trial date and scheduled jury selection to

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[21]RT 1/9/18, p. 5.

[22]RT 2/6/18, pp. 3-4.

[23]RT 2/6/18, p. 4.

[24]RT 2/6/18, pp. 3-5.

[25]CR 124.

[26]CR 92.

begin on June 4, 2018.[27] On April 26, 2018, the government moved to dismiss the case against J. Sheafe without prejudice, based on newly discovered evidence from her counsel.[28] The court granted the motion on May 10, 2018.[29] On June 6, 2018, the government called J. Sheafe as a witness against Sheafe at his trial.[30]

4. Sheafe's Motion to Dismiss

On March 19, 2018, Sheafe filed a motion to dismiss the indictment based on a violation of the Interstate Agreement on Detainers ("IAD").[31] Specifically, Sheafe claimed that he was not brought to trial within the 120-day time limit set by Article IV(c) of the IAD.[32]

Following a hearing, the magistrate judge recommended to the district court that the motion be denied.[33] The magistrate judge, relying on United States v. Mauro, 436 U.S. 340 (1978), concluded that the IAD did not apply because Sheafe's presence in federal court was obtained pursuant to a writ of habeas corpus ad prosequendum.[34] Moreover, the magistrate judge held that even if the IAD applied, the 120-day time

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[27]CR 114.

[28]CR 105.

[29]CR 110.

[30]CR 128.

[31]CR 95.

[32]CR 95, pp. 11-13.

[33]CR 108.

[34]CR 108, pp. 3-4.

limit was not violated because the continuances were for good cause.[35] The district court, after conducting an independent review, adopted "the Magistrate Judge's well-reasoned opinion."[36]

REASONS FOR GRANTING THE WRIT

A. The Interstate Agreement on Detainers Applies to Sheafe's case.

This Court should grant the writ to provide guidance to the lower courts regarding the applicability of the Interstate Agreement on Detainers ("IAD"). Based on the decision of the District Court, which was upheld by the Ninth Circuit, the lower courts are incorrectly applying the IAD's purpose as set forth in the Act and United States v. Mauro, 436 U.S. 340, 98 S.Ct. 1834 (1978).

The District Court, by Order[37] adopted the Report and Recommendations[38] after the Hearing of April 20, 2018. The Report and Recommendation incorrectly stated that the Supreme Court addressed the "exact issue" presented in the present case in United States v. Mauro, 436 U.S. 340, 98 S.Ct. 1834 (1978).[39] This misunderstanding of the distinction between the present case and Mauro resulted in a violation of the clear warning, set forth both in the IAD and affirmed in Mauro, that courts must interpret the IAD broadly and not permit the government to circumvent the obligations that the

[35]CR 108, pp. 4-5.

[36]CR 113.

[37] District Court Order of May 10, 2018

[38]CR 108

[39]see R&R, CR108 p. 2.

IAD imposes. The IAD explicitly instructs that "[t]his agreement shall be liberally construed so as to effectuate its purpose." 18 U.S.C. app. II, § 2, Art. IX. That purpose is to protect defendants from prolonged exposure to the negative consequences of a detainer. Mauro, 436 U.S. at 353, 359-60, 98 S.Ct. at 1843044, 1846-47 ("[b]ecause a detainer remains lodged against a prisoner without any action being taken on it, he is denied certain privileges within the prison, and rehabilitation may be frustrated.") ; see also 18 U.S.C. app. II, § 2 Art. I (recognizing that detainers "obstruct programs of prisoner treatment and rehabilitation").

Mauro acknowledged the IAD's strong language expressing its intent that the statute be broadly applied and warned that courts should not permit the government "to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the Agreement intended to arise from such action." 43 U.S. at 364, 98 S.Ct. at 1849.

These interpretations of the IAD shed light on the clear distinction between the present case and Mauro. There, the defendant was not subject to any detainer at all, and therefore the court's conclusion that a writ of habeas corpus ad prosequendum is not a detainer, was dispositive. Because there was no detainer, the defendant was not subject to the negative consequences of a detainer, and the IAD did not apply. In this case, however, it is undisputed that the state of Arizona had filed a detainer against Sheafe, in January 2016,[40] and thus, Sheafe had been subject to that Pima County detainer for nearly two and a half years while in Federal custody (in Pima County,

[40]see R&R, p. 1.

Arizona). Unlike the defendant in Mauro, even after Sheafe was convicted in the present case, he still was not able to take advantage of the rehabilitative services normally available to a prison inmate. He was still subject to Arizona's detainer and at the conclusion of this case was transferred to the custody of the State of Arizona to face three felony indictments, rather than to a prison where such services would be available. Unlike the Mauro defendant, Sheafe had been subject to a detainer for two and a half years, which the IAD clearly sought to guard against.

The IAD is a compact entered into by 48 states, the federal government, and the District of Columbia, that is meant to establish procedures for the expeditious resolution of one jurisdiction's outstanding charges against a prisoner who is in the custody of another jurisdiction. New York v. Hill, 528 U.S. 110, 111, 120 S.Ct. 659 (2000). The IAD is located at 18 U.S.C. app. II, § 1 et seq., and its purpose is succinctly stated in the agreement. The IAD expressly recognizes that outstanding charges, detainers based on untried indictments, and difficulties in securing speedy trial for people incarcerated in other jurisdictions "obstruct programs of prisoner treatment and rehabilitation." 18 U.S.C. app. II, § 2, Article I.

In United States v. Mauro, this Court reviewed in some detail the negative consequences that lengthy detainers impose on individuals serving prison sentences. See generally id. at 353, 359-60, 98 S.Ct. at 1843-44, 1846-47. It concluded that "[b]ecause a detainer remains lodged against a prisoner without any action being taken on it, he is denied certain privileges within the prison, and rehabilitation efforts may

be frustrated." Id. at 360, 98 S.Ct. at 1847. In recognition of these negative consequences, the IAD provides that 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. 18 U.S.C. app. II, § 2, Article I.

In order to effectuate this policy, when an inmate is transferred from a jurisdiction where he is serving a sentence ("the sending state") to a jurisdiction where an indictment is pending ("the receiving state"), the IAD imposes time lines within which the receiving state must try him. The time limits differ depending on whether the inmate or the receiving state has requested his transfer. If the inmate requested the transfer, the receiving state must try him within 180 days of his arrival there. 18 U.S.C. app. II, § 2, art. III(a). If, on the other hand, the receiving state requests the transfer, it must try him within 120 days of his arrival. "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…" 18 U.S.C. app. II, § 2, art. IV(c) [emphasis added]. Extensions of the 120-day deadline can be granted "for good cause shown in open court, the prisoner or his counsel being present." Id.

In Alabama v. Bozeman, this Court summarized that the IAD "basically (1) gives a prisoner the right to demand a trial within 180 days; and (2) gives a State the right to obtain a prisoner for purposes of trial, in which case the State (a) must try the prisoner within 120 days of his arrival, and (b) must not return the prisoner to his 'original place of imprisonment' prior to that trial." 533 U.S. 146, 151, 121 S.Ct. 2079,

2083 (2001). If trial is not commenced within the applicable time limit, the IAD calls for dismissal of the indictment. "The plain language of the IAD expressly mandates dismissal of an indictment in only three circumstances," one of which is "[i]f a prisoner is not brought to trial within the time periods proscribed by Articles III and IV." United States v. Lualemaga, 280 F.3d 1260, 1263-64 (9th Cir. 2002). The IAD's express language requires that if the receiving state does not meet the applicable time limit, "the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice…" 18 U.S.C. app. II, § 2, Art. V(c).

In Mauro, supra, this Court reviewed three underlying cases that raised questions about the applicability of the IAD when, as in the present case, the Government has secured a state prisoner's presence in federal court by using a writ of habeas corpus ad prosequendum. In the first two Mauro cases, the Government did not file a detainer prior to the writ of habeas corpus, but in the third case it did, and the court's analysis in those differing circumstances is instructive.

The instant case at bar is, in a sense, a hybrid of the Mauro cases, because while it seems the federal government did not file a detainer with the Nevada Department of Corrections, the location where the Federal District sits, Pima County, Arizona did so file, and the federal writ of habeas corpus that secured Sheafe's presence in the District Court followed directly on the heels of Arizona's detainer and interceded in his imminent transfer there. In the two Mauro cases where no detainer had been filed, the court concluded that a writ of habeas corpus on its own "is not a detainer for purposes

of [the IAD]," and therefore does not trigger Article IV's 120-day time limit. 436 U.S. at 361, 98 S.Ct. at 1848. (emphasis added).

In concluding that a writ of habeas corpus alone does not trigger the provisions of the IAD, the court reasoned that "[w]hen the United States obtains state prisoners by means of a writ of habeas corpus ad prosequendum, the problems that the [IAD] seeks to eliminate do not arise; accordingly, the Government is in no sense circumventing the Agreement by means of the writ." Id. at 361, 98 S.Ct. at 1847-48.

That analysis fails in the present case because there was a detainer in place. Refusing to apply the provisions of the IAD in this case circumvents the purpose of the agreement. Mauro's reasoning in the underlying case where a detainer was filed is even more instructive. There, the Government filed a detainer by means of an arrest warrant, followed by a writ of habeas corpus to secure the inmate's transfer to federal court. "Once the Federal Government lodges a detainer against a prisoner with state prison officials," the Court wrote, "the Agreement by its express terms becomes applicable and the United States must comply with its provisions." Id. at 361-62, 98 S.Ct. at 1848.

Mauro's analysis here echoes its previous concern about the Government circumventing its obligations under the IAD. The court wrote that the IAD must not be interpreted in a manner that "would permit the United States to circumvent its obligations under the Agreement." Id. at 362, 98 S.Ct. at 1848. This Court re-emphasized the importance of this principle yet again later in the opinion, noting that "[a]ny other reading of this section would allow the Government to gain the advantages

of lodging a detainer against a prisoner without assuming the responsibilities that the Agreement intended to arise from such action. Id. at 364, 98 S.Ct. at 1849. Mauro's clear concern that United States should not be permitted take advantage of special circumstances to shirk its obligations under the IAD is grounded in the language of the agreement itself: "This agreement shall be liberally construed so as to effectuate its purposes." 18 U.S.C. app. II, § 2, Art. IX.

The Ninth Circuit similarly recognized that the IAD must be interpreted so as to enforce its specific purpose. In Snyder v. Sumner, 960 F.2d 1448 (9th Cir. 1992), an inmate was transferred from one state to another, then on the 120th day after his arrival in the receiving state, the sending state paroled his prison sentence. His trial in the receiving state did not begin until more than 300 days after that, and the issue was whether the IAD's requirements still apply after an inmate has been paroled in the sending state. Showing the same concern as the Supreme Court for Article IX's dictate that the IAD be construed liberally to effectuate its purpose, the Ninth Circuit concluded that the IAD applies even after inmate's is paroled from prison, because to do otherwise "would undermine the purpose of the IAD[]." Id. at 1453. The court was wary that allowing parole in the sending state to terminate the receiving state's obligations under the IAD "would give every receiving state a way to bypass the requirements of the IAD. A state could simply request that the sending state put the detained prisoner on parole at day 120. This is clearly the kind of abuse the IAD was intended to avoid."

To find the government exempt from the IAD in this case simply because it did

not file its own detainer would similarly circumvent the purpose of the agreement and give a clear method for avoiding the IAD's requirements in cases with inmates facing charges in both state and federal courts. The state could file the detainer, then the federal government could then step in and execute a writ of habeas corpus, and then the defendant would have no further recourse under the IAD. He would not be able to enforce the IAD against the federal government, because they did not file the detainer, and he also would not be able to enforce it against the state, because the federal government took custody of him. It is clear that the IAD's 120-day time limit must apply in this case in order to effectuate the purpose of the Agreement.

B. The Interstate Agreement On Detainers Was Violated.

The Government asserted that J. Sheafe went through three lawyers from the Public Defender's Office due to the retirement of the first lawyer and a transfer out of state for the second.[41] The Government asserted Sheafe did not object to these continuances until the continuance request of October 11, 2017 (and those that followed).[42] The Government went on to further assert that the third (and then current) counsel for the co-defendant had raised a potential new defense of "battered wife syndrome" and needed more time to complete medical diagnosis of the codefendant.[43] The October 11, 2017 continuance of the November 7, 2017 Trial, (which Sheafe objected to), and those continuances that followed, which Sheafe objected

[41]EH 4/20/18, p. 12

[42]EH 4/20/18, pp. 12,13

[43]EH 4/20/18, p 13

to, amounted to a 7-month delay till trial commenced on June 4, 2018.[44] The Government conceded that the actual time that passed was beyond that required under the IAD. [45]

On 4/20/18 at the hearing, the Government asserts that the October 11, 2017 continuance was "...clearly done in the interest of justice...". [46] The Government reiterates this position with "... there's a continuance, and the judge found in the interest of justice..." [47] However, these both seem to misquote the record. The District Court Judge did not find nor hold on October 11, 2017 that the continuance was "in the interests of justice.[48] Neither does the Government nor co-defendant's counsel assert this was for "the interests of justice," nor anything similar nor to that effect. The Government sets out the issue to the court as "(I) think there is going to be a motion to continue, because new counsel has been appointed to Ms. Jane Sheafe, and so I know Mr. Fidel's going to oppose. Walter (co-defendant's counsel) wishes to have a continuance, and I think the Government's going to acquiesce and agree to a continuance because Walter is new to the case."[49]

In ruling, the court noted "(B)ecause there's new counsel now involved in the

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[44]EH 4/20/18, p. 23

[45]EH 4/20/18, p. 14, 16

[46]EH 4/20/18, p. 17

[47]EH 4/20/18, p. 18

[48]SH 10/11/17, pp. 1-9

[49]SH 10/11/17, p.4 ln 12-18

case, the Court's going to grant the motion to continue over the objection of Mr. Fidel and Mr. Sheafe." [50] The entire nine-page transcript of the October 11, 2017 hearing where the co-defendant's verbal motion to continue trial is granted over Sheafe's objection, the words "interest of justice" are never mentioned nor discussed, nor anything along those lines. In closing, the court sets the trial for January 9, 2018 and makes mention of time with "(A)ll right. January the 9th is golden in my book. Waive time as far as Mr. Goncalves is concerned (co-defendant's counsel), and it's over the objection of the defendant Adam Sheafe." [51] No mention of any time being waived or stayed as to Sheafe.

Next there was a Status Hearing November 14, 2017, where the court made inquiry if the January 9, 2018 firm trial date was still a firm trial date.[52] Co-defendant's counsel then informed the Court that he would require that an expert to evaluate the co-defendant for battered woman syndrome and he did not think it could be done in the 2-months then existing before trial. [53] The Court noted again Sheafe's objection, and the Court declined to grant or deny the continuance, but instead wished to see if the evaluation of the co-defendant could be accomplished without moving the trial date.[54] Again, neither the Government nor co-defendant made the motion nor the

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[50]SH 10/11/17, p.6 line 24 - p. 7 line 2

[51]SH 10/11/17 p.6 line 16-19

[52]SH 11/14/17, p.3

[53]SH 11/14/17, p.5

[54]SH 11/14/17, p.9

Court, made any mention at all regarding interests of justice or waiver of time as to Sheafe.[55] The Court reset for an additional status hearing on December 4, 2017.[56] On December 4, 2017 the Court affirmed the January 9, 2018 trial date.[57] On January 9, 2018, the Co-Defendant moved again for a trial continuance, which was granted again over Defendant's objection and reset for February 6, 2018.[58] On February 6, 2018 the trial was again reset, for June 6, 2018.[59] The Trial did commence in June, 2018.

The starting point for the IAD's time limits is straightforward. "[O]nce the defendant has been received by the receiving state, the 120-day clock starts to run." Snyder v. Sumner,960 F.2nd 1448 (9th Cir. 1992) at 1453. Thereafter courts calculating the passage of time under the IAD must consider the history and nature of trial continuances. The Snyder decision includes a helpful timeline of that case and analytical framework to determine which time periods are excluded from the IAD time limit. See id. at 1450-51, 1454-56. A defendant's request for a continuance tolls the IAD time limit. Id. at 1454.

Additionally, "if the petitioner explicitly agreed to the continuance, our decisions suggest that he waived his rights under the IAD." Id. at 1456, quoting Johnson v. Stagner, 781 F.2d 758, 763 (9th Cir. 1986). Sheafe first appeared in court for his initial

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[55]See SH 11/14/17

[56]SH 11/14/17, p.9

[57]CR 88

[58]CR 90

[59]CR 92

appearance in this case on April 26, 2016, and using the Snyder analysis, the first 56 days between the initial appearance and the original trial date count towards the 120-day IAD time limit.

Sheafe had already been in federal custody for 11 days by that point, beginning when the Marshals arrested him on April 15, which brings the total to 67 days. The time period between the original trial date, June 21, 2016, and November 7, 2017 is excluded, as Sheafe either did not oppose, or in one instance requested, those continuances. Sheafe did, however, object to the continuance of the November 7, 2017 trial date, and all further continuances. It is notable that the principal reason for the co-defendant's request for a continuance of the November trial date was because Counsel was new to the case.[60] Later at the review hearing after this continuance had been granted, Co-defendant in November 2017 returned to ask to continue the new January 9, 2018 trial date.[61] The new reason for the new continuance was to investigate a possible defense of "battered woman syndrome," which would be antagonistic to Sheafe.

The November 7, 2017 trial date was continued to January 9, 2018, which is 63 days. That period, combined with the initial 67 days, amounted to 130 days since Sheafe's arrival in federal custody, and the subsequent continuance to June 5, 2018, added an additional 147 days, bringing the total to 277, more than doubling even the 180-day limit that would be applicable under Article III of the IAD if Sheafe had

[60]SH 10/11/17

[61]RH 11/14/17

initiated his transfer from the Nevada Department of Corrections. Moreover, it appears that during the intervening months, the co-defendant had reached a plea agreement with the government, pursuant to which she would cooperate in the government's case and testify against Sheafe.

In the adopted R&R[62], the conclusion that even if the IAD applies, good cause existed to extend the IAD's stringent 120-day deadline is in error.[63] The R&R correctly stated that the IAD authorizes "any necessary or reasonable continuances" of the IAD timeline "for good cause showing," 18 U.S.C. app. II, § 2, art. IV(c), but the statute and the cases interpreting it do not provide any significant guidance as to what constitutes good cause. Brown v. Wolff, 706 F.2d 902, 906 (9th Cir. 1983).

In the present case, the adopted R&R correctly noted that Mr. Sheafe joined in all but three continuances of his original trial date from June 21, 2016 until its commencement date of June 4, 2018,[64] but those three continuances to which Mr. Sheafe did object resulted in a delay that was well-beyond the IAD's time limit. This fact is also undisputed, as the government agreed at hearing that minimally 210 days had elapsed for purposes of IAD calculation.[65] The remedy for violation of the IAD's strict timelines is dismissal of the indictment, 18 U.S.C. app. II, § 2, Art. V(c), which may be either with or without prejudice when the federal government is the

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[62]CR 108.

[63]See CR108, p. 4.

[64]see R&R, p. 2.

[65]EH 4/20/18, p. 14, 16

prosecuting agency. 18 U.S.C. app. II, § 9(1).

The adopted R&R erred in concluding that the court's decisions to grant continuances of Sheafe's trial date from November 2017 until June 2018 amounted to a finding of good cause. The record for each of the hearings is absent any discussion, analysis or even a mention of 'good cause', 'interests of justice', 'waiver of time' or anything similar. If 'good cause' can be inferred, as the ruling suggests, in every continuance without an actual such holding, then the IAD would be meaningless. Every continuance would be excluded time, absent an explicit ruling that the court was granting a continuance despite the absence of good cause for such continuance.

Sheafe opposed those continuances, which in the end were based on his co-defendant's wish to investigate a defense that could have been averse to Sheafe, and those efforts resulted in her reaching an agreement with the government to testify as a witness against him. The fact that Sheafe did not request a severance is inapposite because there were insufficient grounds to request a severance at the time of the continuances.[66]

At that time the co-defendant had expressed only that she was investigating a defense that could potentially have been antagonistic, but that she was seeking the opinion of an expert witness who was conducting an assessment. This Court has articulated a general rule that "mutually antagonistic defenses are not prejudicial per se," Zafiro v. United States, 506 U.S. 534, 538 (1993), and that severances are appropriate "only if there is a serious risk that a joint trial would compromise a specific

[66]See Adopted R&R, CR 108, p. 5.

trial right of one of the defendants or prevent the jury from making a reliable judgment about guilt or innocence." Id. at 539. In the present case, the mere possibility of a mutually antagonistic defense based on undeveloped facts did not rise to that level – it was simply a theory that never came to fruition.

Sheafe objected to the six-month continuance of his trial date from November 2017 to its commencement date of June 4, 2018. The government used that time to turn Sheafe's co-defendant into a witness against him and dismiss her case. While there was a strong argument that the continuance was supported by a finding of good cause for her, it is hard to argue that this amounted to good cause for extending the IAD deadline as it related to Sheafe.

CONCLUSION

For the forgoing reasons, the petition for writ of certiorari should be granted.

RESPECTFULLY SUBMITTED this February 12, 2020.

Law Office of Stephanie K. Bond. P.C.

s/Stephanie K. Bond
STEPHANIE K. BOND
Attorney for Petitioner

APPENDIX

Court of Appeal's Memorandum Decision. 1a

Report and Recommendation from the U.S. District Court Magistrate. 2a

Order from the U.S. District Court Judge. 3a

Judgement from the U.S. District Court 4a

NOT FOR PUBLICATION

FILED

DEC 19 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES, Plaintiff-Appellee, v. ADAM CHRISTOPHER SHEAFE, Defendant-Appellant.	No. 18-10424 D.C. No. 4:16-cr-00438-RCC-JR-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Argued and Submitted December 10, 2019
Pasadena, California

Before: WARDLAW and LEE, Circuit Judges, and KENNELLY,** District Judge.

A jury convicted Adam Christopher Sheafe of one count of conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349, two counts of bank fraud in violation of 18 U.S.C. § 1344, and three counts of aggravated identity theft in violation of 18 U.S.C. § 1028A. Sheafe appeals the district court's refusal to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Matthew F. Kennelly, United States District Judge for the Northern District of Illinois, sitting by designation.

dismiss his indictment with prejudice due to an alleged violation of the Interstate Agreement on Detainers Act (IAD), 18 U.S.C. app. 2. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Because the United States obtained custody of Sheafe from the State of Nevada pursuant to a writ of habeas corpus *ad prosequendum*, the IAD did not apply to the federal proceedings against him. *United States v. Mauro*, 436 U.S. 340, 361 (1978). Nor did the detainer lodged by the State of Arizona on unrelated charges trigger the IAD with respect to the United States. *See* 18 U.S.C. app. 2 § 2, art. IV(a) (an officer of a receiving State "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 . . . ." (emphasis added)); *id.* § 2, art. V(d) (temporary custody "shall be only for the purpose of permitting prosecution on the charge or charges . . . which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction"); *Mauro*, 436 U.S. at 359–62 (explaining the rationale for the IAD's application to detainers and not to writs of habeas corpus *ad prosequendum*).

Accordingly, the district court correctly denied Sheafe's motion to dismiss the indictment based on an alleged violation of the IAD.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiff, vs. Adam Christopher Sheafe, Defendant.	CR16-438-TUC-RCC(JR) **REPORT AND RECOMMENDATION**

On March 19, 2018, Defendant filed a Motion to Dismiss Indictment for Violation of Interstate Agreement on Detainers (Doc. 95). The Government filed a Response on March 26, 2018 (Doc. 96) and the Defendant filed a Reply on April 4, 2018 (Doc. 97). The Motion was heard by Magistrate Judge Rateau on April 19, 2018. Having considered the matter, the Magistrate Judge recommends that Defendant's Motion be DENIED.

I. UNDISPUTED FACTS

On January 27, 2016, while the Defendant was serving a state prison sentence in Nevada, the Pima County Attorney's Office filed a detainer with the Nevada Department of Corrections pursuant the Interstate Agreement on Detainers (IAD), 18 U.S.C. App. II, § 1, et seq. The Defendant was under indictment on three felony cases in Arizona. On

March 8, 2016, Nevada acknowledged receipt of the detainer and provided information to Pima County about the Defendant's location and inmate status. On April 14, 2016, the administrative details of the transfer were complete and Pima County sent a letter to Nevada accepting temporary custody of the Defendant under the IAD.

Meanwhile, on March 2, 2016, the Defendant, along with his co-defendant and wife, Jane Sheafe, were indicted by a Federal Grand Jury and charged with Conspiracy to Commit Bank Fraud, Bank Fraud, and Aggravated Identity Theft. (Doc 3). On April 7, the Government filed an Application for Writ of Habeas Corpus Ad Prosequendum (Writ) with this Court. (Doc 21). The Writ was granted on April 11, 2016, and on April 15, 2016, the U.S. Marshals Service took custody of the Defendant and transported him to Federal Court where he had an initial appearance on April 26, 2016.

Trial was originally scheduled for June 21, 2016. It is now scheduled for June 5, 2018. Defendant agreed to all but three of the continuances.

II. THE IAD

The IAD is a compact entered into by 48 States (Louisiana and Mississippi are the exceptions), the federal government, and the District of Columbia to establish procedures for resolution of one jurisdiction's outstanding charges against a prisoner or inmate who is in the custody of another jurisdiction. *New York v. Hill*, 528 U.S. 110, 111 (2000). The purpose of the IAD is to minimize the adverse impact of a foreign prosecution on the rehabilitative programs of the confining jurisdiction. *United States v. Johnson*, 953 F.2d 1167, 1170 (9th Cir. 1992).

When an inmate is transferred from a jurisdiction where he is serving a sentence

("the sending state") to a jurisdiction where an indictment is pending ("the receiving state"), the IAD imposes time limits within which the receiving state must bring the prisoner to trial. The time limits differ depending on whether it is the inmate or the receiving state that requested the transfer. If the inmate requested the transfer, the receiving state must try him within 180 days of his arrival. 18 U.S.C. app. II, § 2, art. III(a). If the receiving state requested the transfer, it must try the inmate within 120 days of his arrival. 18 U.S.C. app. II, § 2, art. IV(c).

The IAD timeline is not absolute and a court, upon good cause showing, may grant any necessary or reasonable continuances. 18 U.S.C. App. II, § 2, article IV(c). This '"necessary or reasonable continuance' provision is, by clear implication, the sole means by which the prosecution can obtain an extension of the time limits over the defendant's objection." *Hill*, 528 U.S. at 116. The IAD does not define "good cause." *Brown v. Wolff*, 706 F.2d 902, 906 (9th Cir. 1983). Nor do the various legislative histories of the original drafting of the IAD by the Joint Committee on Detainers. *Id.*

III. ANALYSIS

Defendant contends that his indictment must be dismissed because he has not been tried within 120 days of the federal government taking custody of him. The Government argues that the IAD does not even apply to Defendant's case because it secured Defendant's transfer by means of a Writ rather than a federal detainer. Defendant counters that interpreting the provisions of the IAD in this manner, creates a loophole that permits the Government to avoid the IAD's strict time limits.

The Supreme Court addressed this exact issue in *United States v. Mauro*, 436 U.S.

340 (1978). While warning that the government should not circumvent the IAD by means of a writ, the Court nonetheless ruled that a writ of habeas corpus ad prosequendum, like the one filed in this case, is *not* a detainer within the meaning of the IAD. *Mauro*, 436 U.S. at 349. Defendant is not entitled to relief on this ground because he was transferred from Nevada to federal custody in Arizona pursuant to a writ not a federal detainer. *See also United States v. Moore*, 822 F.2d 35, 37 (8th Cir.1987) (The IAD is inapplicable when the government secures the presence of a state prisoner by means of a writ of habeas corpus ad prosequendum without filing a detainer.); *Baxter v. United States*, 966 F.2d 387 (8th Cir.1992) (same).

Even assuming the IAD applies to this case, the Government argues it has not violated the IAD's stringent 120-day time limit because the trial continuances were based on "good cause" which made it "necessary and reasonable" to continue the trial. The Court agrees.

At the hearing on October 11, 2017, defense counsel for the co-defendant explained that he had only been assigned the case a couple of weeks ago, had only met Ms. Sheafe the week prior and had not even finished reviewing the disclosure with her. Based on this representation, the District Court continued the trial over Defendant's objection. (Doc. 101.)

At another hearing on November 14, 2017, counsel for the co-defendant explained that the week prior he discovered that Ms. Sheafe would need to be evaluated by a battered woman syndrome professional or expert. Counsel for the Defendant again objected noting that the case was almost two years old and the Defendant was in custody.

Counsel also explained that to the extent the battered syndrome issue casts aspersions against his client, he may need to request a severance. The District Court again continued the trial over Defendant's objection. (Doc. 102.) The Defendant never did file a motion to sever defendants.

Finally at a status hearing before the District Court on January 9, 2018, counsel for Ms. Sheafe explained that his client had been interviewed by a medical professional but that the doctor got the flu and needed an additional two weeks to finish writing the report. Counsel requested that a status conference be scheduled in 30 days to determine whether the case would proceed to trial or whether his client would accept a plea agreement. Over Defendant's objection the District Court again continued the trial. (Doc. 103.)

It appears that at each of the hearings, the District Court considered the reasons set forth by co-counsel as well the objections made by the Defendant. Based on those considerations, the District Court found good cause to grant the continuances. Thus, even if the IAD were found to apply, the 120 day time limit was not violated.

IV. RECOMMENDATION FOR DISPOSITION BY THE DISTRICT JUDGE

Based on the foregoing, the Magistrate Judge recommends that the District Court, after an independent review of the record, **DENY** Defendant's Motion to Dismiss Indictment for Violation of Interstate Agreement on Detainers (Doc. 95).

This Recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court's judgment. However, the parties shall have fourteen (14) days from the date of service of a copy of

this recommendation within which to file specific written objections with the District Court. *See* 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. No replies are permitted without leave of court. If any objections are filed, this action should be designated case number: **CR 16-438-TUC-RCC**. Failure to timely file objections to any factual or legal determination of the Magistrate Judge may be considered a waiver of a party's right to de novo consideration of the issues. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Dated this 27th day of April, 2018.

Honorable Jacqueline M. Rateau
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Adam Christopher Sheafe,

Defendant.

No. CR-16-00438-TUC-RCC (JR)

ORDER

This Court has made an independent review of the Report and Recommendation filed by the Magistrate Judge, the objection filed by the defendant and the official transcript of the proceedings in this case. The Court finds that the Magistrate Judge's well-reasoned opinion (Doc. 108) is adopted. Therefore the Motion to Dismiss Indictment for Violation of Interstate Agreement on Detainers (Doc. 95) is DENIED as to defendant Adam Christopher Sheafe only.

The trial date of June 5, 2018 at 9:30 a.m. before Chief Judge Raner C. Collins is AFFIRMED.

Dated this 10th day of May, 2018.

Honorable Raner C. Collins
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America

v.

Adam Christopher Sheafe

USM#: 58804-408

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

No. CR-16-00438-001-TUC-RCC (JR)

Louis S. Fidel (CJA)
Attorney for Defendant

THERE WAS A VERDICT OF guilty on 6/7/2018 as to Counts 1, 2, 3, 4, 5 and 6 of the Indictment.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 18, U.S.C. §1349, Conspiracy to Commit Bank Fraud, a Class B Felony offense, as charged in Count 1 of the Indictment, Title 18, U.S.C. §1344, Bank Fraud, a Class B Felony offense, as charged in Count 2 of the Indictment, Title 18, U.S.C. §1344, Bank Fraud, a Class B Felony offense, as charged in Count 3 of the Indictment, Title 18, U.S.C. §128(A), Aggravated Identity Theft, a Class E Felony offense, as charged in Count 4 of the Indictment, Title 18, U.S.C. §128(A), Aggravated Identity Theft, a Class E Felony offense, as charged in Count 5 of the Indictment and Title 18, U.S.C. §128(A), Aggravated Identity Theft, a Class E Felony offense, as charged in Count 6 of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **SEVENTY (70) MONTHS**, as to Counts 1, 2 and 3 of the Indictment, to run concurrently with one another and consecutive to Counts 4, 5 and 6 of the Indictment, with credit for time served; and a term of **TWENTY FOUR (24) MONTHS,** as to Counts 4, 5 and 6 of the Indictment, to run concurrently with one another and consecutive to Counts 1, 2 and 3 of the Indictment, with credit for time served.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIVE (5) YEARS**, as to Counts 1, 2, 3, 4, 5 and 6 of the Indictment, said counts to run concurrently.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: All property, real or personal, constituting, or derived from, proceeds the defendant obtained directly or indirectly as a result of the violations of Title 18, United States Code, Sections 1344 and 1349.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: $600.00 **FINE:** WAIVED **RESTITUTION:** $519,199.76

The defendant shall pay a special assessment of $600.00 which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay restitution to the following victim(s) in the following amount(s):

BBVA Compass
Attn: SOS Lockbox
P.O. Box 674291
Dallas, Texas 75267-4291
in the amount of $468,500.65

Banc of America Merchant Services
Attn: Legal Department
150 North College Street, NC1-028-15-01
Charlotte, North Carolina 28255
in the amount of $50,699.11.

The restitution amount of $519,199.76, shall be paid at a rate of at least $100.00 per month to commence 60 days after release from custody.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than $25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of $600.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Counts 1, 2, 3, 4, 5 and 6 of the Indictment.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of

sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4) You must answer truthfully the questions asked by your probation officer.
5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If

notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13) You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

1) You must participate as instructed by the probation officer in a program of substance abuse treatment (outpatient and/or inpatient) which may include testing for substance abuse. You must contribute to the cost of treatment in an amount to be determined by the probation officer.

2) You must submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

3) You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

4) You must participate in a mental health assessment and follow any directions by the probation officer or treatment provider, which may include taking prescribed medication. You must contribute to the cost of treatment in an amount to be determined by the probation officer.

5) You must cooperate in the collection of DNA as directed by the probation officer.

THE DEFENDANT IS ADVISED OF DEFENDANT'S RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL IN WRITING WITHIN 14 DAYS OF ENTRY OF JUDGMENT.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons and recommends the defendant be placed in an institution in or near Southern Arizona. The Court further recommends the defendant participate in the Bureau of Prisons' 500 Hour Residential Drug Abuse Treatment Program.

Date of Imposition of Sentence: **Thursday, November 01, 2018**

Dated this 2nd day of November, 2018.

Honorable Raner C. Collins
United States District Judge

RETURN

I have executed this Judgment as follows: _____, the institution

defendant delivered on _____ to _____ at _____

designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

_____ By: _____

United States Marshal Deputy Marshal