No. _____

In The
Supreme Court of the United States

PABLO JAVIER ALEMAN,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under the Interstate Agreement on Detainers ("IAD"), MD. CODE ANN., CORR. SERVS. § 8-401 *et seq*., does the receiving state have the authority to commit a person for treatment after the person pleads guilty to a crime but is found to be not criminally responsible, or does Article V of the IAD, MD. CODE ANN., CORR. SERVS. § 8-407, which provides, in part, that "[t]he temporary custody referred to in this Agreement shall be only for the purpose of permitting prosecution on the charge," require the receiving state to return the person to the sending state to complete his sentence?

2. Under the IAD, is a person who is found not criminally responsible in the receiving state "adjudged to be mentally ill" within the meaning of Article VI(b) of the IAD, MD. CODE ANN., CORR. SERVS. § 8-408(b), which provides that "[n]o provision of this Agreement, and no remedy made available by this Agreement, shall apply to any person who is adjudged to be mentally ill," such that the IAD does not require that the person be returned to the sending state to complete his sentence?

STATEMENT OF RELATED PROCEEDINGS

1. Court of Appeals of Maryland, No. 60, September Term 2019, *Pablo Javier Aleman v. State of Maryland*, June 30, 2020.

2. Court of Special Appeals of Maryland, Nos. 823 and 2021, September Term 2018, *Pablo Javier Aleman v. State of Maryland*, September 25, 2019.

3. Circuit Court for Baltimore County, No. 03-C-18-006040, *State of Maryland v. Pablo Javier Aleman*, July 20, 2018.

4. Circuit Court for Baltimore County, No. K-16-6061, *State of Maryland v. Pablo Javier Aleman*, June 13, 2018.

5. Circuit Court for Baltimore County, No. K-16-6061, *State of Maryland v. Pablo Javier Aleman*, May 31, 2019.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Pablo Javier Aleman, by counsel, Piedad Gomez, Assistant Public Defender, Office of the Public Defender for the State of Maryland, respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland entered on June 30, 2020 in *Pablo Javier Aleman v. State of Maryland,* 230 A.3d 97 (Md. 2020).

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 230 A.3d 97. Pet. App. 1-45. The opinion of the Court of Special Appeals of Maryland is reported at 217 A.3d 72. Pet. App. 46-71.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on June 30, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The IAD, MD. CODE ANN., CORR. SERVS. §§ 8-401 to 8-417 (2001, 2018 Repl. Vol.), is reproduced in its entirety in the appendix. Pet. App. 88-96. The IAD is a congressionally-sanctioned interstate compact within Art. I, §10 of the United States Constitution. *Cuyler v. Adams*, 449 U.S. 433 (1981). The federal enactment of the IAD is at 18 U.S.C. App. § 2.

STATEMENT OF THE CASE

This appeal involves the interpretation and application of the Interstate Agreement on Detainers ("IAD"), and whether the receiving state has the authority

to commit a prisoner who has been found not criminally responsible and in need of treatment, or must instead return him to the sending state.

1. Statutory framework.

The IAD "is a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." *New York v. Hill*, 528 U.S. 110, 111, (2000) (citations omitted); *see* MD. CODE ANN., CORR. SERVS. ("CS") § 8-401 *et seq*. (Pet. App. 88-96); 18 U.S.C. App. § 2 (2000). The IAD "is based on a legislative finding that 'charges outstanding against a prisoner . . . and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." *Carchman v. Nash*, 473 U.S. 716, 719-20 (1985). "Accordingly, the purpose of the [IAD] is '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.'" *Id*. at 720.

Article V(d) of the IAD details the temporary custody arrangement between the sending and receiving states, and provides, in relevant part, that "[t]he temporary custody referred to in this Agreement shall be only for the purpose of permitting prosecution on the charge . . . ." CS § 8-407(d). Article V(e) of the IAD provides, "[a]t the earliest practicable time consonant with the purposes of this Agreement, the prisoner shall be returned to the sending state." CS § 8-407(e). Article VI(b) of the IAD states, "[n]o provision of this Agreement, and no remedy

made available by this Agreement, shall apply to any person who is adjudged to be mentally ill." CS § 8-408(b). Article IX of the IAD provides that the IAD "shall be liberally construed so as to effectuate its purposes." CS § 8-411.

There is no dispute that if Petitioner "had been either acquitted or convicted of the Maryland charges, he would be promptly returned to Ohio under the IAD." Pet. App. 24. "The question in this case," as articulated by the Court of Appeals, "is whether a verdict of not criminally responsible requires a different result." *Id*.

2. Factual background.

The controlling facts are not in dispute. On March 17, 2016, Petitioner fatally stabbed his former landlord at the latter's home in Baltimore County, Maryland. Pet. App. 18. Petitioner was charged with first degree murder and a warrant was issued for his arrest. Before he was arrested on these charges, however, he fled the state. *Id*. at 19. On March 29, 2016, Petitioner drew a knife and threatened a police officer who had approached him as he walked on the side of Interstate 75 in the State of Ohio. *Id*. The officer shot Petitioner and apprehended him. Petitioner was convicted in Ohio of "felonious assault" on the officer and was sentenced to eleven years in prison. *Id*. While incarcerated in Ohio, Petitioner initiated the process for his return to Maryland pursuant to Article III of the IAD, to face his Maryland murder charges. *Id*. He was transferred from Ohio to Maryland on November 17, 2016. *Id*.

Once in Maryland, Petitioner entered a plea of not criminally responsible. Pet. App. 20. He pled guilty to second degree murder on February 23, 2018, and

elected to have criminal responsibility decided by a jury. At the trial on criminal responsibility, forensic psychiatrists admitted as experts by the prosecution and the defense opined that Petitioner suffered from schizoaffective disorder. *Id*. at 21. On May 31, 2018, following a three-day trial, a jury found Petitioner not criminally responsible. *Id*.

On June 4, 2018, the circuit court entered an order committing Petitioner to the Department of Health pursuant MD. CODE ANN., CRIM. PROC. ("CP") § 3-112. Pet. App. 21. On June 6, 2018, Petitioner filed a Petition for Habeas Corpus in the Circuit Court for Baltimore County in which he challenged his continued confinement in the county detention center after the circuit court had signed an order committing him to the Department of Health. The Court of Appeals summarized the dispute:

> [Petitioner] argued that the Maryland jury's determination that he was not criminally responsible . . . placed him outside the purview of the IAD, pursuant to Article VI(b) of the IAD, and, accordingly, that he should not be returned to Ohio's custody. The State opposed the petition, arguing that the IAD required his return to Ohio.

Id. at 22. Following a hearing on June 13, the circuit court concluded "that the IAD required Mr. Aleman's return to Ohio," and denied the relief sought in the habeas petition. *Id*.

Petitioner immediately noted an appeal to the Court of Special Appeals and, additionally, asked the circuit court to stay his return to Ohio pending his appeal. Pet. App. 22. "The Circuit Court granted that request, staying its order committing [Petitioner] to the Department of Health, as well as the denial of his habeas corpus

petition and his return to Ohio, with the result that [Petitioner] remained in the county detention center pending the disposition of his appeal." *Id*.

On June 18, 2018, Petitioner filed a second Petition for Writ of Habeas Corpus, seeking to compel his transfer to the Department of Health pending his appeal to the Court of Special Appeals from the denial of his initial habeas corpus petition. Pet. App. 23. After the petition was heard and denied on July 20, 2018, Petitioner noted another appeal to the Court of Special Appeals. *Id*. The two appeals were consolidated in the Court of Special Appeals. *Id*.

3. Appellate proceedings.

On appeal, Petitioner argued that the Interstate Agreement on Detainers did not preclude his commitment to the Department of Health, and that having been found not criminally responsible, he had been "adjudged to be mentally ill" within the meaning of Article VI(b) of the IAD, CS § 8-408(b), which provides that "[n]o provision of this Agreement . . . shall apply to any person who is adjudged to be mentally ill," so that the IAD no longer required his immediate return to the sending state. Pet. App. 54. Following oral argument the intermediate appellate court requested supplemental briefs on the role the Supremacy Clause in Article VI, Clause 2 of the United States Constitution would play if it found that Maryland's commitment statute conflicted with the IAD. In affirming the judgment of the circuit court, the Court of Special Appeals held that under the IAD Maryland "acquired only temporary custody over Mr. Aleman," which was "strictly limited to prosecuting the charges against him," (Pet. App. 59), and therefore, "never had[]

sufficient custodial rights over Mr. Aleman to" commit him after he was found not criminally responsible. *Id*. at 62.

The Court of Special Appeals further concluded that because Article VI(b) of the IAD "speaks in the present tense with the phrase 'who *is* adjudged *to be* mentally ill,'" it applies "only to cases of mental illness that exist at the time the IAD has been invoked," and not to a person "adjudged to have been mentally ill at the time the crime had been committed," such as when a person is found not criminally responsible. Pet. App. 63-64 (emphasis in original). It further reasoned that Petitioner does not fall within the meaning of this provision because (1) he "either did not plead an insanity defense [in Ohio], or if he did, it was unsuccessful[;]" and (2) he had been found competent to stand trial in Maryland. *Id*. at 66.

The Court of Appeals affirmed the decision of the Court of Special Appeals in *Aleman v. State*, 230 A.3d 97 (Md. 2020). Pet. App. 1-45. In a 5-2 opinion, the Court adopted the reasoning of the intermediate appellate court and held that "Maryland does not have the requisite jurisdiction over [Petitioner] to commit him to the Department of Health," because under the IAD "Maryland obtained temporary custody of [Petitioner] for the sole purpose of resolving the pending murder charge underlying the detainer." *Id*. at 31. It further held that the phrase, in Article VI(b), "is adjudged to be mentally ill," means a person who "currently suffers from a mental illness," such as "when the prisoner is found to be incompetent to stand

trial," as distinguished from a person who "was not criminally responsible due to mental illness at the time of the crime in question." *Id*. at 32-33.

Judge Joseph M. Getty filed a dissenting opinion which was joined by Judge Shirley M. Watts. Applying this Court's holding in *Jones v. United States*, 463 U.S. 354, 366 (1983), that an "'insanity acquittal,' . . . 'supports an inference of continuing mental illness,'" Judge Getty reasoned:

> It follows, then, that Mr. Aleman is "adjudged to be mentally ill" pursuant to CS § 8-408(b). The jury's not criminally responsible verdict undoubtedly means that Mr. Aleman suffered from a mental illness severe enough to lead him to commit a crime. Because a person whose mental illness drives him or her "to commit a criminal act is likely to remain ill and in need of treatment," *Jones*, 463 U.S. at 366, 103 S.Ct. 3043, the illness is continuing in nature. It stands to reason that given this understanding, Mr. Aleman's mental illness—clearly established at the time of the crime—continues through and beyond the not criminally responsible verdict.
>
> Therefore, I would reverse the judgment of the Court of Special Appeals and hold that Maryland possesses the requisite jurisdiction to commit Mr. Aleman to an MDH facility and that a not criminally responsible verdict necessitates the application of the tolling provision contained in CS § 8-408(b).

Pet. App. 44-45.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals addresses an important issue of interpretation and application of federal law – the Interstate Agreement on Detainers – which has not been, but should be, settled by this Court. The issue, specifically, is whether under the IAD, once a person has been convicted of a crime but found not criminally responsible for its commission and in need of treatment, the receiving state may commit him under its laws, or rather must immediately

return him to the sending state to complete his sentence. This Court should also grant review because the reasoning of the Court of Appeals conflicts with this Court's decision in *Jones v. United States*, 463 U.S. 354 (1983), and other decisions of this Court.

I. THIS CASE PRESENTS AN IMPORTANT QUESTION INVOLVING THE APPLICATION OF THE INTERSTATE AGREEMENT ON DETAINERS WHICH HAS NOT PREVIOUSLY BEEN ADDRESSED BY THIS COURT.

The IAD, as an interstate compact, is in essence a federal statute and thus its construction is a matter of federal law. *Reed v. Farley*, 512 U.S. 339, 347 (1994) ("While the IAD is indeed state law, it is a law of the United States as well."). This Court has itself addressed the IAD on occasion. *E.g., New York v. Hill,* 528 U.S. 110 (2000) (addressing whether a defendant's express agreement to a trial date beyond the 180-day period required by the IAD constitutes a waiver of his right to trial within such period)*; Reed*, 512 U.S. at 347 (addressing whether a prisoner may enforce a violation of the IAD in a federal habeas corpus action); *Fex v. Michigan*, 507 U.S. 43, 47 (1992) (interpreting "the meaning of the phrase, in Article III (a), 'within one hundred and eighty days after he shall have caused to be delivered'"); *Carchman v. Nash*, 473 U.S. 716 (1985) (addressing whether a probation-violation charge is a detainer); *Cuyler v. Adams*, 449 U.S. 433 (1981) (addressing the relationship between the IAD and the Uniform Criminal Extradition Act).

The important issue presented by this case is whether under the IAD, the receiving state may commit an individual who has been found not criminally responsible and in need of treatment. Petitioner, who was transferred to Maryland

under the IAD, has been found not criminally responsible and in need of commitment. The Court of Appeals has held, however, that "Maryland does not have the requisite jurisdiction over [Petitioner] to commit him to the Department of Health," because under the IAD "Maryland obtained temporary custody of [Petitioner] for the sole purpose of resolving the pending murder charge underlying the detainer." Pet. App. 31. Thus, it has concluded, "Maryland was obligated to return [Petitioner] to Ohio once that charge was resolved – whatever that resolution happened to be." *Id*. Although the decision below is the first in the nation to address the receiving state's authority to commit a person found not criminally responsible, this Court should address this issue, because it is difficult to reconcile the lower court's judgment with various provisions of the IAD and the special responsibilities that arise from a jurisdiction's custody over a mentally ill person who poses a danger to himself or others.

The IAD does not require the immediate return of the prisoner to the sending state upon prosecution of the charges. Article V(d) of the IAD provides that "[t]he temporary custody referred to in this Agreement shall be only for the purpose of permitting prosecution on the charge . . . ." CS § 8-407(d). Subsection (e), however, provides for the return of the prisoner to the sending state "[a]t the earliest practicable time consonant with the purposes of this Agreement." CS § 8-407(e).

The overriding purpose of the IAD is to promote "prisoner treatment and rehabilitation." CS § 8-403. In discussing the "recommended principles" the drafters of the IAD stated: "Every effort should be made to cooperate in planning effective

rehabilitation programs for the prisoner." *See* Council of State Governments, Suggested Legislation Program for 1957, p. 75 (1956, reprinted 1972). *See also Cuyler*, 449 U.S. at 449 ("The legislative history of the [IAD] emphasizes that a primary purpose of the [IAD] is to protect prisoners against whom detainers are outstanding.").

The prisoner's rehabilitation is advanced by committing him in the receiving state, where he has been found not criminally responsible and in need of treatment. Returning him to the sending state does not address his need for treatment. Prison facilities are not equipped to rehabilitate people suffering from severe mental disorders. "[A]cross the nation, many prison mental health services are woefully deficient, crippled by understaffing, insufficient facilities, and limited programs. All too often seriously ill prisoners receive little or no meaningful treatment. They are neglected, accused of malingering, [and] treated as disciplinary problems." Human Rights Watch, Ill-Equipped: U.S. Prisons and Offenders with Mental Illness 1-5 (2003), https://www.hrw.org/reports/2003/usa1003/usa1003.pdf. The result is a cycle of punishment that exacerbates the inmate's mental illness. Terry Kupers, M.D., *Prison Madness*, Preface xvii (1999) (observing that mentally disordered prisoners "withdraw into their cells, where isolation worsens their symptoms" while "[o]thers strike out and wind up in 'the hold,' where they are even less likely to receive adequate psychiatric attention, and where the sensory and social deprivation make them even more rageful and delusional"). This Court should grant review to address

whether under the IAD, the receiving state has the authority to commit a prisoner who has been found not criminally responsible and in need of treatment.

II. THE DECISION BELOW CONFLICTS WITH *JONES V. UNITED STATES*, 463 U.S. 354 (1983), AND OTHER DECISIONS OF THIS COURT.

The Court of Appeals' restrictive interpretation of the phrase, in Article VI(b), "any person who is adjudged to be mentally ill," to mean a person who "*currently* suffers from a mental illness," but not a person who "was not criminally responsible due to mental illness at the time of the crime in question," (Pet. App. 32-33), marks a substantial departure from this Court's repeated recognition that an individual found not criminally responsible "is likely to remain ill," and that his commitment "rests on his continuing illness and dangerousness." *Jones,* 463 U.S. at 366, 369. It further conflicts with this Court's recognition that statutes involving "areas fraught with medical and scientific uncertainties . . . must be especially broad and [that] courts should be cautious not to rewrite [such] legislation[.]'" *Id*. at 370 (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974)). The latter admonition by this Court has particular force in the context of the IAD, which by its express terms, "shall be liberally construed so as to effectuate its purposes." CS § 8-411.

In 1957, when the Council of State Governments created a draft version of the IAD, all jurisdictions recognized the insanity defense. *See* Daniel J. Nusbaum, *The Craziest Reform of Them All: A Critical Analysis of the Constitutional Implications of Abolishing the Insanity Defense*, 87 CORNELL L. REV. 1509, 1518 (2002) ("Prior to 1979, every jurisdiction had an extrinsic defense of insanity."). *See*

Kahler v. Kansas, -- U.S. --, 140 S.Ct. 1021, 1050 (2020) (Ginsburg, J., dissenting) (observing that the insanity defense "embodies a fundamental precept of our criminal law and . . . stretches back, at least, to the origins of our Nation"). In light of the longstanding history of the insanity defense, it is illogical that such a broadly written provision would not include a person who, in the receiving state, has been found not criminally responsible, and is therefore "likely to remain ill." *Jones*, 463 U.S. at 366 ("[T]he insanity acquittal supports an inference of continuing mental illness. It comports with common sense to conclude that someone whose mental illness was sufficient to lead him to commit a criminal act is likely to remain ill and in need of treatment."); *Foucha v. Louisiana*, 504 U.S. 71, 76 (1992) (reiterating that from a verdict of not guilty by reason of insanity "it could be properly inferred that at the time of the verdict, the defendant was still mentally ill and dangerous and hence could be committed"). *See also Lynch v. Overholser*, 369 U.S. 705, 717 (1962) (quoting S. Rep. No. 1170, 84th Cong., 1st Sess. 13 (1955) ("Where accused has pleaded insanity as a defense to a crime, and the jury has found that the defendant was, in fact, insane at the time the crime was committed, it is just and reasonable in the Committee's opinion that the insanity, once established, should be presumed to continue and that the accused should automatically be confined for treatment until it can be shown that he has recovered.").

The reasoning of the Court of Appeals that "Maryland was obligated to return [Petitioner] to Ohio once that charge was resolved – whatever that resolution happened to be," (Pet. App. 31), further conflicts with this Court's recognition of the

special responsibilities that attach to a verdict that a defendant is not criminally responsible:

> We hold that when a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society.

Jones, 463 U.S. at 370. Under the Court of Appeals' decision in this case, the government would have had no interest at all in the continued commitment of the insanity acquittee in *Jones*, because its prosecutorial powers would, by definition have been exhausted upon the finding of not guilty by reason of insanity.

The application of *Jones* in *United States v. Sahhar*, 56 F.3d 1026 (9th Cir.) *cert. denied*, 516 U.S. 952 (1995), highlights the problem with the Court of Appeals' myopic focus on the fact that the prisoner's charges in the receiving state have been resolved. *Sahhar* involved the extended commitment of a person found incompetent to stand trial. The court in *Sahhar* rejected the contention that the government's legitimate interest in commitment could last no longer than the maximum sentence for which the defendant had been indicted. In upholding the defendant's "potentially indefinite commitment" against a substantive due process challenge, the court explained that "civil commitment of a dangerous and mentally ill person [was justified] because he was in federal custody, not because he was in pretrial custody. *The fact that an indictment is no longer in place is irrelevant to the governmental interests at stake*." *Id*. at 1029 (emphasis added). The court identified the federal government's "substantial" interests in "treating Sahhar's mental illness

and protecting him and society from his potential dangerousness," *id*. at 1028-29, and concluded that – as in *Jones* – the defendant's "confinement rest[ed] on his continuing illness and dangerousness." *Sahhar*, 56 F.3d at 1029 (quoting *Jones*, 463 U.S. at 369).

CONCLUSION

The Court of Appeals' reasoning misperceives the special responsibilities that arise where a defendant is found not criminally responsible and in need of treatment, by equating the latter to a situation where the defendant is convicted and sentenced. It simply cannot be that the receiving state's custodial responsibility for the mentally ill person comes to an abrupt end solely because his charges have been resolved. The decision of the Court of Appeals conflicts with the plain language of the IAD and with decisions of this Court, including *Jones*. The Court should grant review to address whether, under the IAD, the receiving state may commit a person who has been found not criminally responsible and in need of treatment, or must return him to the sending state to complete his sentence.

Respectfully submitted,

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