Only after the request is made can the sending state then offer to deliver temporary custody.[89] If these requirements are met and the receiving state then "refuse[s] or fail[s] to accept temporary custody," the prisoner has the right under the UAD to move for dismissal.[90]

Mr. Slaughter failed to perfect the necessary first step in this process. His argument thus presupposes that he properly requested final disposition of his charges, which, as the Court explained, he did not. Mr. Slaughter is not entitled to the protections and remedies of the UAD, including dismissal, unless and until his rights under the UAD vest. Mr. Slaughter's rights did not vest under UAD section 2542 because he did not cause to be delivered to the Court actual notice of his request under UAD section 2542. Therefore, the Court has no reason or basis to dismiss the indictment under UAD section 2544 because, in this instance, the UAD – including UAD section 2544 – does not apply.

B. WHETHER THE STATE VIOLATED SECTION 2543 OF THE UAD BY FAILING TO BRING MR. SLAUGHTER TO TRIAL WITHIN 120 DAYS OF HIS ARRIVAL IN DELAWARE

In the alternative, Mr. Slaughter moves for dismissal of the indictment under UAD section 2543. UAD section 2543 offers an alternative basis for Mr. Slaughter to seek dismissal because disposition of the charges under UAD section 2543 is initiated by the State, not the prisoner.[91] Because Mr. Slaughter did not initiate the request for final disposition of the charges, Mr. Slaughter has no notice obligations under UAD section 2543.[92] So, if the UAD applies at all, Mr. Slaughter's second argument is not necessarily precluded by the Court's ruling on his first argument.

Mr. Slaughter argues that the State violated UAD section 2543 because it failed to bring him to trial within 120 days of his arrival in Delaware. Mr. Slaughter relies on *Mauro* to argue

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[89] *Id.*
[90] *Id.* § 2544(c).
[91] *See id.* § 2543(a).
[92] *See id.*

that the State triggered the 120-day window in UAD section 2543 when it issued the detainer and a "written request for temporary custody" via the Governor's Warrant. The State contests the applicability of *Mauro* and the 120-day provision on the basis that the Governor's Warrant does not qualify as a "written request for temporary custody." The Court need not resolve the question of whether *Mauro* and the 120-day time limit in UAD section 2543 applies to Mr. Slaughter's case.[93] Mr. Slaughter, through counsel, waived the right to a trial within 120 days by requesting a trial date outside the 120-day window. Therefore, even if the State triggered UAD section 2543, Mr. Slaughter waived the speedy trial protections under UAD section 2543, and may not now invoke those protections to request dismissal of his case.

1. **The State did not violate section 2543 of the UAD by failing to bring Mr. Slaughter to trial within the statutory timeframe because Mr. Slaughter waived the right to a trial within 120 days**

In *New York v. Hill*,[94] the United States Supreme Court addressed the issue of waiver of IAD rights. In *Hill*, the State of New York lodged a detainer against a prisoner, and the prisoner then filed a request for final disposition of his charges under the IAD.[95] After the State of New York procured custody of the prisoner, the court scheduled a conference to set a date for trial.[96] At the conference, the prosecutor suggested a May 1 trial date.[97] Defense counsel agreed to the trial date.[98] The May 1 trial date fell outside the 180-day deadline for bringing the defendant to trial.[99] The defendant thereafter filed a motion to dismiss based on the state's failure to bring

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[93] At the October 14, 2016 hearing on the Second Motion, the Court heard argument from both parties as to whether a governor's warrant qualifies as a "written request for temporary custody" for purposes of triggering UAD section 2543 and applying *Mauro*. The Court need not address this issue in its decision as the Court is relying on an alternative basis for denying Mr. Slaughter's motion to dismiss.
[94] 528 U.S. 110 (2000).
[95] *Hill*, 528 U.S. at 112.
[96] *Id.*
[97] *Id.* at 113.
[98] *Id.*
[99] *Id.*

him to trial within 180 days.[100]

The United States Supreme Court held that defense counsel's agreement to a trial date outside the IAD period barred the defendant from seeking dismissal on the ground that trial did not occur within that period.[101] The court reasoned that the defendant forfeited his claim to a trial within 180 days by "willingly accepting treatment inconsistent with the IAD's time limits."[102] To reach a contrary result would "enable defendants to escape justice by willingly accepting treatment inconsistent with the IAD's time limits, and then recanting later on."[103]

While the defendant himself did not agree to the trial date, the *Hill* court made clear that defense counsel can waive certain non-fundamental rights on behalf of his client.[104] One of these non-fundamental rights is trial scheduling.[105] Therefore, when this type of waiver occurs, the defendant is deemed bound by the acts of his lawyer.[106]

The Delaware Supreme Court in *Bruce v. State*[107] expanded on the decision in *Hill*. The *Bruce* court explained that the holding in *Hill* contemplated waiver only when the defendant requests or agrees to a government request for a continuance that is inconsistent with the IAD's time limits.[108] However, the *Bruce* court held that where a defendant requests a continuance

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[100] *Id.*
[101] *Id.* at 110.
[102] *Id.* at 118.
[103] *Id.*
[104] *Id.* at 115 (citing *Taylor v. Illinois*, 484 U.S. 400, 417–18 (1988) ("Although there are basic rights that the attorney cannot waive without the fully informed consent of the client, the lawyer has – and must have – full authority to manage the conduct of the trial.")).
[105] *Hill*. 528 U.S. at 115.
[106] *Id.* (citing *Link v. Wabash Railroad Co.*, 370 U.S. 626, 634 (1962)).
[107] 781 A.2d 544 (2001).
[108] *Bruce*, 781 A.2d at 549; *see also Brown v. Wolff*. 706 F.2d 902, 907 (9th Cir. 1983) (finding a waiver if the prisoner "affirmatively requests to be treated in a manner contrary to the procedures prescribed by the IAD" and explaining that mere silence is ordinarily insufficient to waive a defendant's IAD rights); *Ward v. Com.*, C.A. No. 2000-CA-000186, 2001 WL 282708, at *5 (Ky. Ct. App. Mar. 23, 2001) (applying its interpretation of *Hill* "that a defendant implicitly waives the IAD's time limits where he or his counsel agrees to a trial date outside those limits"); *People v. Jones*, 495 N.W.2d 159, 160 (Mich. Ct. App. 1992) (finding a waiver if the prisoner "either expressly or impliedly, agrees or requests to be treated in a manner contrary to the terms of the IAD"); *Drescher v. Super. Ct.*, 218 Cal.App.3d 1140, 1148 (Cal. Ct. App. 1990) (finding a waiver if there is a "showing of record that the defendant or his attorney freely acquiesced in a trial date beyond the speedy trial period").

within the IAD's time limits, the 180-day limit is tolled rather than waived completely.[109]

Pursuant to the holding in *Hill*, the Court finds that Mr. Slaughter is barred from seeking dismissal on the ground that his trial did not occur within 120 days. The Court held an office conference on November 18, 2014. At that conference, the Court asked counsel for both parties whether the case could be tried within one year of indictment as mandated by the Delaware Supreme Court. Both parties responded that it could not. Counsel for Mr. Slaughter then requested a trial date in March or April of 2016, well beyond the 120-day window. Counsel for Mr. Slaughter explained that:

> The reason I say that is, after we finish with the Paladin Club case, the defendants are Rivers and Benson, for the record. My understanding is this is a pretty voluminous record based case because there's already been a capital murder prosecution. And our mitigation people and experts are going to have a lot to go through, as will we. So, I want to give us a little wiggle room in early 2016 to focus, preparing solely for this. So, that's why I'm asking for March or April.[110]

Based on this request, the Court scheduled trial for April 5, 2016. Since the office conference, counsel for Mr. Slaughter requested that the Court continue the trial due to additional scheduling conflicts. In his request to continue trial, counsel for Mr. Slaughter represented that his client would not be prejudiced by the later trial date.[111] Trial is now scheduled for January 24, 2017.

The conduct of Mr. Slaughter falls squarely within the conduct deemed by the *Hill* and *Bruce* courts to constitute a waiver. Mr. Slaughter requested a trial date outside the 120-day window in UAD section 2543. After the initial request, Mr. Slaughter again requested that the Court continue the trial. By requesting a trial date outside the 120-day window not once, but twice, Mr. Slaughter has repeatedly accepted treatment inconsistent with the UAD's timelines. He may not now seek dismissal based on the State's failure to timely bring him to trial.

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[109] *Bruce*, 781 A.2d at 550.
[110] Tr. of Nov. 18, 2014 Office Conference at 4–5.
[111] *See* Aug. 7, 2015 Letter from the Court to Chief Justice Strine.

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Mr. Slaughter argues that he only requested a trial date outside the 120-day window because the State represented at the office conference that this was a Governor's Warrant case – i.e., that Mr. Slaughter had been brought to Delaware on the Governor's Warrant and not by way of the UAD. Mr. Slaughter's counsel also represented that the State did not mention that a detainer had been issued — the necessary first step in any case implicating the UAD. Therefore, Mr. Slaughter argues that he had no reason to request a trial within 120 days because he did not know that the UAD was implicated in his case.

The Court is not persuaded by Mr. Slaughter's argument. A waiver of rights under the UAD need only be voluntary.[112] It need not be knowingly or intelligently made.[113] The reason for this distinction is that the UAD is a statutory, not constitutional, mechanism:

> While a waiver of statutory speedy trial rights need not comport with the standards applicable to a waiver of basic constitutional rights — that is, an intentional relinquishment or abandonment of a right or privilege adequately understood by the defendant — a waiver of statutory rights must still be voluntary. Voluntariness in this context requires a showing of record that the defendant or his attorney freely acquiesced in a trial date beyond the speedy trial period.[114]

It is clear that Mr. Slaughter voluntarily waived his speedy trial rights because he requested a trial date outside the 120-day window. Therefore, Mr. Slaughter is barred from seeking dismissal of his charges on the basis that his trial did not occur within 120 days after his in arrival in Delaware.

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[112] *See Yellen v. Cooper*, 828 F.2d 1471, 1474 (10th Cir. 1987); *Jones*, 495 N.W.2d at 161; *Drescher*, 218 Cal.App.3d at 1148.
[113] *See Yellen*, 828 F.2d at 1474; *Jones*, 495 N.W.2d at 161; *Drescher*, 218 Cal.App.3d at 1148.
[114] *Drescher*, 218 Cal.App.3d at 1148; *see also Yellen*, 828 F.2d at 1474 ("The concerns behind the enactment of the IAD are not of the truth-seeking kind that would normally prompt application of the constitutional standard of waiver, and therefore, the 'knowing and intelligent' standard is not the appropriate test for determining whether or not there has been a waiver of IAD rights."); *Jones*, 495 N.W.2d at 161 ("Because the rights afforded to defendants pursuant to the IAD are statutory and not constitutional, federal courts have required that a waiver of rights under the IAD need only meet the test of voluntariness, and need not be knowingly and intelligently made.").

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2. **Any failure by the State to bring Mr. Slaughter to trial within 120 days constitutes harmless error**

Even if Mr. Slaughter did not waive the protections of UAD section 2543, the Court finds that the State's failure to bring Mr. Slaughter to trial within 120 days constitutes harmless error. It is unlikely that Mr. Slaughter's trial could have been scheduled within the 120-day window even if Mr. Slaughter had requested it. As of the office conference on November 18, 2014, forty days of the 120-day time period had already elapsed. This meant that, in order to comply with the UAD's timelines, Mr. Slaughter's trial had to begin by March 18, 2015.

Based on the representations made by the parties at the office conference, a trial by March 18, 2015 was highly improbable. The State and Mr. Slaughter's counsel noted that this murder trial would require time and extensive preparation.[115] Mr. Slaughter's counsel also informed the Court that he was handling another complex murder trial.[116] Rather than rush to trial, it is likely that counsel for the State or Mr. Slaughter would have instead requested a continuance for "good cause shown" under UAD section 2543. Alternatively, the Court could have determined on its own that starting the trial by March 18, 2015 could visit prejudice on Mr. Slaughter. Due to the complexity of the case and counsel's scheduling conflicts, the Court would have been well within its discretion in granting a continuance, thereby tolling the 120-day window.[117]

Had the scheduling proceeded as the Court outlines above, Mr. Slaughter would still not have any valid argument in favor of dismissal. Any claim for dismissal under the UAD would fail because requesting a continuance in order to prepare for trial is a reasonable continuance

[115] Tr. of Nov. 18, 2014 Office Conference at 4–5.
[116] *Id.*
[117] *See State v. Onapolis*, 541 S.E.2d 611, 615 (W.Va. 2001) (finding that defense counsel's request to continue the trial to review discovery and prepare for trial constituted a necessary and reasonable continuance for good cause shown that tolled the IAD's speedy trial clock); *Scherrer v. Martinez*, 479 S.W. 3d 755, 757 (Mo. Ct. App. 2016) (finding it to be "good cause shown in open court," and upholding the trial court's decision to grant a continuance, where defense counsel requested more time to prepare the case due to its complexity).

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within the meaning of the UAD.[118] Additionally, any claim for dismissal based on an ineffective assistance of counsel claim would fail because it is well within the right of a trial attorney to request a continuance to prepare for trial.[119] Therefore, the Court can envision no scenario in which Mr. Slaughter would have a cognizable basis to assert a violation of his speedy trial rights under the UAD.

Moreover, the Court does not find that Mr. Slaughter's rights have been meaningfully affected by the State's failure to bring him to trial within 120 days. The UAD's aim is to protect prisoners' rights by ensuring the expeditious disposition of the charges underlying a detainer.[120] This is important because a detainer affects the rights of prisoners in various ways, including a prisoner's right to participate in training and rehabilitation programs.[121] The Court also recognizes a situation where a prisoner, who finished serving his sentence in one jurisdiction, may be held beyond that sentence pending the disposition of the charges underlying a detainer in another jurisdiction. In this situation, states must be expeditious in their handling of detainers so that the prisoner is not forced to sit in prison when he is otherwise eligible for release.

The Court notes that these policy concerns are entirely absent in Mr. Slaughter's case. In fact, at the October 14, 2016 hearing on the Second Motion, Mr. Slaughter admitted that the UAD's policy concerns are not implicated in his case.[122] Mr. Slaughter has not been deprived of the benefit of participating in rehabilitation or training programs. In addition, Mr. Slaughter is not being detained beyond his sentence while he awaits disposition of the present charges. Mr.

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[118] *Bruce*, 781 A.2d at 550 (explaining that the public defender's request for time to prepare a defense constitutes a continuance for good cause shown rather than a waiver of the UAD's time limit).
[119] *State v. Walker*, 201 S.W.3d 841, 850 (Tx. Ct. App. 2006) ("It is possible, as Walker suggests, that counsel was ineffective for failing to request a dismissal. However, it is equally possible that counsel agreed to continue Walker's trial setting beyond the 180-day deadline because counsel was continuing to investigate the case, identify witnesses, and/or develop a defensive strategy for trial.").
[120] 11. *Del. C.* § 2540.
[121] *Mauro*, 436 U.S. at 359.
[122] Tr. of Oct. 14, 2016 Hr'g. 26–27.

Slaughter is a convicted murderer. He is serving a life sentence in Georgia and is not eligible for release should he be acquitted of the charges in Delaware. While the State has been less than competent in its attempts to obtain custody of Mr. Slaughter, he did not sit in prison awaiting extradition to Delaware while the State did nothing. The State made every effort to act upon its detainer. Thus, any error in failing to try Mr. Slaughter in 120 days has not resulted in any meaningful deprivation of his rights.

V. CONCLUSION

The Court recognizes that this case has not been handled perfectly by the parties. Mr. Slaughter erred in failing to perfect his request under UAD section 2542 by causing notice of his request to be delivered to the Court. The State erred in rejecting Mr. Slaughter's request by operating under the misconception that the UAD did not apply to capital crime charges. However, this does not mean that Mr. Slaughter has been denied any fundamental rights. The Court has diligently worked to resolve the issues in Mr. Slaughter's case. The Court has entertained three separate motions to dismiss and heard argument on each of these motions. The Court has carefully considered all arguments and timely issued its oral and written decisions. Moreover, the parties have been able to otherwise proceed through the pre-trial process with full access to the Court. Accordingly, for all the foregoing reasons, the Court will **DENY** the motions to dismiss.

IT IS SO ORDERED.

/s/ Eric M. Davis
Eric M. Davis, Judge

COLLINS & ASSOCIATES

ATTORNEYS

Patrick J. Collins | Colleen E. Durkin | Matthew C. Buckworth

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November 14, 2016

The Honorable Eric M. Davis
Superior Court of Delaware
New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, DE 19801

RE: State v. Jason Slaughter
ID No. 1207010738

Dear Judge Davis,

This letter pertains to Mr. Slaughter's Second Motion to Dismiss, which Ms. Woloshin and I refer to as the *Mauro* motion, to distinguish it from the first Motion to Dismiss, which pertains more directly to dismissal under the Interstate Agreement on Detainers (IAD).[1] The Court convened a hearing on the *Mauro* motion to dismiss on October 14, 2016. The transcript of that hearing is attached as Exhibit A. At the hearing, this Court instructed that the parties should "feel free" to submit legal authority bearing on questions the Court raised in the motion. But at the time of the hearing, Your Honor had not yet decided whether decision on this motion should be stayed pending the post hearing briefing in *State v. Brown and Harris*, the murder case before President Judge Jurden, which presents the same legal issues.

As such, this submission pertains only to three questions raised by the Court during oral argument. If the Court decides briefing is necessary, we will submit a full brief.

[1] The IAD in Delaware is codified at 11 *Del. C.* §§ 2540-2550.

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Background

The defense contention rests on the holding in *United States v. Mauro*,[2] a case which the *Brown/Harris* prosecutors sent to Judge Jurden on August 5, 2016, noting that it may have applicability to that case. I represent both Mr. Harris and Mr. Slaughter, so after reviewing *Mauro*, or specifically the "*Ford* portion" of *Mauro*, I filed the Second Motion to Dismiss in Mr. Slaughter's case on August 23, 2016. The State filed a response; the defense filed a reply. We argued the motion on October 14, 2016.

The Parties' Positions

Without reiterating the pleadings, the gist of the defense position is a simple equation arising out of *Mauro*: State lodges a detainer *plus* State sends a non-IAD written request for custody *equals* dismissal if trial does not occur within 120 days of arrival in Delaware. The State does not dispute that essential holding of *Mauro*. Instead, the State relies on a waiver argument: it contends that the defense's agreement to a trial date outside the 120-days meets the "reasonable or necessary continuance for good cause shown" provision[3] so the motion may not be granted.

In the pleadings, the defense asserted that it did not discuss detainers and time limits at the scheduling conference because the State represented to us that it was a Governor's Warrant case. As the State confirmed:

> MS. NORRIS: So, when the State says to Mr. Collins, "this is a Governor's warrant case," it is a governor's warrant case.
>
> The thing that we were all blissfully ignorant about was the applicability of *Mauro* to Governor's warrant cases and triggering a timeline and a deadline.
>
> The State never represented it was anything other than a Governor's warrant case because that's what it was.
>
> We didn't know there was potentially a 120-day timeline because we hadn't found *Mauro*;
>
> The defense didn't know that there was potentially a 120-day deadline; they hadn't found *Mauro*;
>
> And Your Honor has said neither did you.[4]

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[2] 468 U.S. 340 (1978).
[3] *See, 11 Del. C.* §2543(c).
[4] *Tr.* at 46-47.

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Answers to Questions Posed by the Court

1. "Why weren't all claims under IAD made at the same time as that motion; and if not, does it matter?"[5]

"That motion" refers to the first motion to dismiss, filed March 31, 2015. It pertains to the State's failure to get Mr. Slaughter to trial within 180 days as required pursuant to a prisoner's request for disposition under the IAD. The motion has recently been renewed due to new revelations by the State. The instant motion, filed August 23, 2016, pertains to the unique scenario of the implications on the 120-day time limit after the State lodges a detainer and then subsequently sends a written request for custody.

The "why" is reflected in the record. It is well established that the movant did not know about *Mauro* until August 5, 2016. In an ideal world, the defense would have filed an omnibus motion to dismiss on March 31, 2015, but it did not play out that way. So, the defense filed a second motion on a wholly separate legal footing than the first.

No, it does not matter. The defense can find no authority for the proposition that once a motion to dismiss is filed on one ground, that the movant is estopped from ever filing any other meritorious motion to dismiss. To the contrary: Delaware courts strongly favor resolving issues on their merits.[6] Moreover, had the defense not filed the second motion, the result after trial would have been: (1) being reduced to plain error review on any direct appeal, and (2) a finding of ineffective assistance of counsel in any future postconviction proceeding. Finally, the State has not raised this issue nor do they have any claim of prejudice arising out of two separate motions being filed. In each, the State has had ample opportunity to respond.

Other than the fact of a regrettable impact on judicial economy, the case is no differently situated than had the two motions been combined into one motion with two separate grounds for dismissal.

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[5] *Tr.* at 17.

[6] *Alban Tractor Co. v. Land Preparation Specialists, Inc.*, 2001 WL 914008, at *3 (Del. Super. Ct. July 30, 2001).

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2. Is a Governor's warrant a written request under the IAD?[7]

We believe the question is more properly framed as "Is a Governor's warrant a written request for custody under *Mauro*?" because that is the pertinent issue here. Plenty of cases hold that a Governor's warrant,[8] ***when there has been no detainer lodged,*** does not implicate the IAD at all.[9] This is because prisoners who were delivered on Governor's warrants seek relief under the IAD; they are inevitably disappointed unless the State first lodged a detainer.

An *ad prosequendum* writ is issued when federal authorities want to obtain custody pursuant to 28 U.S. Code § 2254. A Governor's warrant is issued when state authorities want to obtain custody to the Uniform Criminal Extradition Law.[10] Both are written demands for the immediate delivery of a prisoner.[11] They are the functional equivalents of each other; the only difference between that one is issued in federal cases and the other is used in State cases.

The term "written request for custody" is situationally defined. In a pure IAD case—detainer lodged followed by State use of the IAD to bring defendant to Delaware—the meaning is defined by statute.[12] In a hybrid case—detainer lodged, then State use of a *different* method to bring defendant to Delaware—*Mauro* controls. In *Mauro,* the Government contended that the *ad prosequendum* writ was not a written request for custody. *Mauro* provides the meaning of "written request for temporary custody" *after* the State lodges a detainer:

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[7] *Tr.* at 39.

[8] The term Governor's warrant is also referred to as an Executive Agreement and an Extradition Warrant, and refers to authority vested in the governors of signatory states to the Uniform Criminal Extradition Act, codified in Delaware as 11 *Del. C.* § 2501-2530.

[9] *See, e.g., Bailey v. Shepherd,* 584 F.2d 858 (8th Cir. 1978)(an extradition warrant is the demand for immediate custody of a prisoner, not implicating IAD issues); *State v. Roberson,* 897 P.2d 443, 445 (Wash. Ct. App. 1995)(neither writs of habeas *ad prosequendum* nor Governor's warrants are detainers, but rather are demands for the immediate custody of a prisoner).

[10] Codified in Delaware as 11 *Del. C.* §§2501-2530.

[11] *Krohne v. Peterson,* 74 F.3d 1246 (TABLE), 1996 WL 19452 at *3 (9th Cir. 1996).

[12] *See, 11 Del. C.* §2543(a).

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> We do not accept the Government's narrow reading of this provision; rather we view Art. IV(c) as requiring commencement of trial within 120 days *whenever the receiving State initiates the disposition of charges underlying a detainer it has previously lodged against a state prisoner.*[13]
>
> Because at that point the policies underlying the Agreement are fully implicated, we see no reason to give an unduly restrictive meaning to the term "written request for temporary custody." It matters not whether the Government presents the prison authorities in the sending State with a *piece of paper* labeled "request for temporary custody" or with a writ of habeas corpus *ad prosequendum* demanding the prisoner's presence in federal court on a certain day; in either case the United States is able to obtain temporary custody of the prisoner.[14]

As *Mauro* instructs, the definition of "written request for custody" should be interpreted broadly *after* the prosecution has lodged a detainer. Since the Governor's warrant is the functional equivalent of the *ad prosequendum* writ, the same holding applies. The Governor's warrant is a piece of paper and it is a request for temporary custody. Moreover, it qualifies as document in which the State "initiates the disposition of charges underlying a detainer it has previously lodged."

The equivalency of the two methodologies comes up in cases in which the prisoner unsuccessfully seeks the benefits of the IAD when there was no prior detainer lodged. As the Eighth Circuit explained:

> Unlike detainers, and like the federal writ of habeas corpus *ad prosequendum*, an extradition warrant is a demand for immediate custody of a prisoner to stand trial on outstanding charges. This demand for immediate custody tends to insure the expeditious disposition of outstanding charges and simply does not create the kinds of problems which the Agreement was enacted to solve. Accordingly, we conclude that the Agreement does not prevent the

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[13] *Mauro*, 436 U.S. at 363-64 (emphasis added).

[14] *Id.* at 361 (emphasis added).

use of traditional extradition procedures, *at least where no detainer has been lodged in connection therewith.*[15]

Given the foregoing, the answer to the Court's question is: a Governor's warrant is *not* a written request under the IAD, but it *is* a written request under *Mauro* if a detainer was previously lodged.

3. "The question is, and this is what I need, is there any authority to the proposition that a court, looking at a situation similar to what we have, would say, if it had been brought up, I would have granted cause; I would have granted cause for it.[16]

"Do you agree with Ms. Norris that I can use Bruce as a harmless error and say I would have granted the continuance if it had been raised because of the complexity of the case?"[17]

Before answering the question, it may be useful to stake out the parties' positions. The State asserted *Bruce v. State*[18] for the proposition that an appellate court can find harmless error when "if it had been brought up"[19] the continuance would have been granted. The State asserted, "however, the court goes on to say that it would have been for good cause shown, the court, and its harmless error."[20] The defense answered the Court's question, "No…because we are well outside the 120 days now, and there is no relation back provision in the statute."[21]

The State misapprehends *Bruce*. The central holding of *Bruce* is that "where a defendant requests a continuance that is consistent with the time limits under the statute, the 180-day limit is tolled for the duration of the delay rather than waived completely."[22] In *Bruce*, the public defender requested a delay to a date within the 180 days because due to uncertainties about representation, he was not prepared.

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[15] *State ex. rel. Bailey v. Shepard,* 584 F.2d 858, 862 (8th Cir. 1978)(emphasis added); *See also, Prince v. Heath*, 2012 WL 2422563, at *3 (S.D.N.Y. June 27, 2012).
[16] *Tr.* at 55.
[17] *Tr.* at 66.
[18] 781 A.2d 544 (Del. 2001).
[19] *Tr.* at 55.
[20] *Tr.* at 56.
[21] *Tr.* at 67.
[22] *Bruce* at 549-550.

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Then, at a scheduling hearing, the court granted a State request, over defense objection, to continue the trial outside the 180 days due to witness unavailability. The defense then filed a motion to dismiss.[23] The Supreme Court held that the scheduling conference was both in open court and set forth good cause—State witnesses being unavailable.[24] As such, the harmless error doctrine was not applied in *Bruce.*

Although the harmless error doctrine contemplates appellate review, this Court's question can be posed as: On a motion to dismiss on IAD grounds, can the trial court find that it *would have* found good cause shown in open court and deny the motion, even though no application was made at the time of scheduling? Although Delaware courts have not had occasion to address this question, other courts uniformly hold that the continuance must be requested within the statutory time frame.

In *Commonwealth v. Fisher*,[25] the prosecutor sought a continuance on the 181st day. The trial court refused to dismiss, finding that any continuance sought before dismissal was sufficient. The Pennsylvania Supreme Court found that the trial judge "freighted the statute with considerations of prejudice and the lack thereof, emanations which we fail to perceive and accordingly refuse to adopt."[26] Instead, the court held, "we read this enactment to provide that the action of continuing the matter must be determined at or prior to the expiration of the 180-day period prescribed in the statute."[27] Other courts have followed suit. In *State v. Patterson*,[28] the South Carolina Supreme Court held, "we read the enactment to provide that any requested continuance may be granted only at or prior to the expiration of the 180-day period prescribed in the statute."[29] Maryland courts have held that the provisions in its IAD statute are "self-executing" and that a motion for a continuance had to be "*made and granted* within the prescribed 180 days to effectively halt the running of the period and thereby to preclude dismissal."[30] Similarly, Georgia courts have held that when no tolling and no continuance

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[23] *Id.* at 549.
[24] *Id.* at 551.
[25] 301 A.2d 605 (Pa. 1973). *Accord Com. v. Thornhill,* 601 A.2d 842 (Pa. Super. Ct. 1992).
[26] *Id.* at 607.
[27] *Id.*
[28] 256 S.E. 2d 361 (S.C. 1979).
[29] *Id.* at 363.
[30] *Dennett v State,* 311 A.2d 437, 440 (Md. Ct. App. 1973).

requests are demonstrated in the record, the IAD requires dismissal with prejudice.[31]

This rationale does not change when it is the prosecution bringing the defendant in for trial, implicating the 120-day limit. As the court in *State v. Willoughby*[32] held:

> We agree that the purposes and goals of the IAD would be subverted if a continuance of the time period within which a defendant must be tried under the IAD could be retroactively granted. Accordingly, we conclude that once the time period within which Defendant was required to be tried under the IAD had lapsed, Judge Tsukiyama lacked authority to grant the continuance of Defendant's trial.[33]

As the great weight of authority in other jurisdictions demonstrates, when no continuance is requested at all, or when it comes outside the statutory time frame of 120 or 180 days, dismissal is the remedy. These cases comport with the policy that the time limit is a "prophylactic measure designed to induce compliance in other cases."[34]

The only outlier that appears is a New Jersey case, *State v. Lippolis*.[35] In that case, the prosecutor accepted an offer of custody, but was informed by Pennsylvania authorities that they were unaware when Lippolis would be available for trial.[36] Then a clerk in the prosecutor's office found out that Lippolis was in fact in New Jersey and was available; the Pennyslvania official never informed the clerk as promised.[37] The prosecutor in New Jersey was unaware of Lippolis' return until receiving a motion to dismiss for failure to try the case within 180 days. He filed a cross-motion for continuance, contending that the time period was tolled by the defendant's unavailability for trial.[38] Ruling in the defendant's favor, the trial judge relied on another case that held, "once the 180-day period has expired

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[31] *Duchac v. State*, 259 S.E. 2d 740, 741 (Ga.Ct. App. 1979).
[32] 927 P.2d 1379 (Haw. Ct. App. 1996)
[33] *Id.* at 1387.
[34] *McBride v. United States*, 393 A.2d 123, 129 (D.C. Ct. App. 1978), *citing Dennett* at 441.
[35] 262 A.2d 203 (Mem.) (N.J. 1970).
[36] *State v. Lippolis*, 244 A.2d 531, 533 (N.J. Super. Ct. 1968).
[37] *Id.*
[38] *Id.*

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without trial of the indictment (or previous grant of a continuance thereof for good cause) the Act in mandatory language dictates its dismissal with prejudice."[39]

The New Jersey Appellate Division affirmed,[40] noting that "a continuance is the adjournment or postponement of an action *pending in a court to a subsequent date*.[41] The court held, "every consideration geared to the effective implementation of the policy of the act conduces toward reaffirmation of the rule of *Mason*."[42] Nevertheless, the dissent asserted that the prosecutor's untimely cross-motion should be heard, "because the statute does not expressly limit the time within which a continuance may be heard to 180 days."[43] In a *per curiam* opinion, the New Jersey Supreme Court reversed, "for the reasons expressed in the dissenting opinion."[44]

Other jurisdictions have acknowledged *Lippolis*, but have declined to follow it.[45] It appears to be confined to its facts, which contemplate the tolling implications of a defendant being in the receiving State but the sending State not so advising. The significant majority of jurisdictions require that any continuance requests must be made at or before the expiration of the applicable IAD deadline.

As to the Court's question, no authority can be found for the proposition that a court can *sua sponte* decide after the fact that good cause would have been shown and apply a harmless error standard to the question to save the indictment. Nor does the plain language of the statute contemplate such a finding.

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[39] *Id.* at 443, *citing State v. Mason*, 218 A.2d 158, 163 (N.J. App. Div. 1966).
[40] *State v. Lippolis*, 257 A.2d 705 (N.J. App. Div. 1969).
[41] *Id.* at 709 (emphasis added).
[42] *Id.*
[43] *Id.* at 711.
[44] *State v. Lippolis*, 262 A.2d 203 (Mem.) (N.J. 1970).
[45] *See, Fisher* at 606; *Patterson* at 418; *Hoss v. State*, 292 A.2d 48, 53 (Md. Ct. App. 1972)(dismissing indictment for lack of good cause shown; defendant was convicted of first degree murder in Pennsylvania); *Dennett v. State*, 311 A.2d 437, 441 (Md. Ct. App. 1973)(declining to follow *Lippolis* but citing the policy rational of the reversed opinion).

We believe the foregoing responds to the questions posed by the Court at oral argument. Should Your Honor have further questions or desire full briefing, Ms. Woloshin and I are available at the call of the Court.

Respectfully,

Patrick J. Collins

PJC/raj

cc: Criminal Prothonotary
Colleen Norris, Esquire
Cari Chapman, Esquire
Phillip Casale, Esquire
Jason Slaughter

ASA

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November 14, 2016

The Honorable Eric M. Davis
Superior Court of Delaware
New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, DE 19801

RE: State v. Jason Slaughter
ID No. 1207010738

Dear Judge Davis,

Please accept this letter as a renewal of Mr. Slaughter's first Motion to Dismiss, originally filed on March 31, 2015, due to the revelation of new information bearing on the motion. As this motion has been extensively litigated, I will attempt to state our case succinctly. If the Court would like formal briefing, we will certainly draft and file a submission. As the following explains, Mr. Slaughter's renewed motion should be granted in light of the new information received.

Summary of the Proceedings through December 22, 2015

The defense contends that Mr. Slaughter did everything required of him under 11 *Del. C.* § 2542(b) to effectuate a request under the IAD for disposition of his Delaware charges. The Georgia prison warden then failed to comply with his responsibilities under 2542(b), because he sent two copies of Forms I-IV to the State and none to the Clerk of the Superior Court. This occurred despite the instructions on the form instructing Warden Chatman to send a copy to the clerk of the court which has jurisdiction. He did at least send the correct forms, one of which was Form IV, Offer of Temporary Custody.

After *Pittman v. State*, our General Assembly modified our IAD statute to add a section (g) to §2542:

> (g) Written notice shall not be deemed to have been caused to be delivered to the prosecuting officer and the appropriate court of this

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> State in accordance with subsection (a) of this section until such notice or notification has actually been received by the appropriate court and by the appropriate prosecuting attorney of this State, the prosecuting attorney's deputy, an assistant or any other person empowered to receive mail on behalf of said attorney.

Although the outcome of *Pittman* has been superseded by statute, two important holdings of our Supreme Court still pertain: (a) "the prisoner has no supervisory powers and the official has no discretion under the Act;"[1] and (b) "the burden of compliance with the procedural requirements of the IAD rests upon the party states and their agents; the prisoner, who is to benefit by this statute, is not to be held accountable for official administrative errors which deprive him of that benefit."[2]

The State conceded at the hearing that they did not know that the forms were not sent to the Court.[3] So there is no possibility that the State was running out the clock because of the Georgia Warden's mistake. The State's position is that the 180 day time period never even began because the Court never received notice. The State further asserts that it initiated the Governor's Warrant process to bring Mr. Slaughter to Delaware, because the Georgia prison officials told the State that the IAD does not apply to capital murder cases.[4] The record establishes that the Governor's Warrant was executed long after the expiration of the 180-day time limit imposed by Mr. Slaughter's request for disposition under the IAD.

Consequently, the State never sent Form VII back to Georgia. Form VII is entitled Prosecutor's Acceptance of Temporary Custody Offered with an Inmate's Request for Disposition of a Detainer. This form is important to the motion because it *requires* the certification of a Superior Court judge. So if the State wanted to accept Georgia's offer, it *could not have happened* without the express notice to and approval of the Court.

The IAD at §2544(c) provides that if the prosecutor refuses or fails to accept temporary custody of the prisoner, or the trial is not had within the applicable time limits, the Court *shall* dismiss the case with prejudice. The defense argued that the notice requirement of §2542(g) is effectuated by the Court receiving *actual* notice via Form VII, just as it would have been had the warden not botched his statutory

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[1] 301 A.2d 509, 513 (Del. 1973).
[2] *Id.* at 514.
[3] *Tr.* at 25.
[4] *Tr.* at 31.

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duties. In fact, *State v. Anthony* holds exactly that: "the Court was so *notified* on March 3, 1995. *See* Form VII, Agreement on Detainers."[5] By signing Form II, Mr. Slaughter complied with his obligations. By sending Forms I-IV twice to the State, but not to the Clerk, Warden Chatman failed in his. By not completing Form VII, the State deprived the Court of notice, and also made it clear it was not acting on Mr. Slaughter's request for disposition.

This Court was not persuaded by the defense's arguments. It denied our motion on July 30, 2015. The defense then obtained the *Anthony* file from the Prothonotary and moved for reargument. The Court denied this as well, on December 22, 2015. In doing so, this Court helpfully summarized its reasons for dismissing the motion:

(a) Georgia had notified the State that the IAD did not apply in a capital murder charge and that the State would need to obtain a Governor's Warrant to bring Mr. Slaughter to Delaware, and that Georgia notified the State of this prior to the expiration of the 180 day deadline under the IAD; and,

(b) that while the State had received notice from Mr. Slaughter under the IAD, the Court, as it must, never received actual notice of Mr. Slaughter's request under the IAD.

New Developments

In connection with our *other* Motion to Dismiss, I asked Ms. Norris if I could review Mr. Slaughter's entire extradition file to be sure I had everything. In preparing the file for me, she made a discovery. Ms. Norris learned that it was actually Delaware's Extradition Supervisor, Ron Mullin, who informed Georgia that the IAD did not apply to capital cases, not the other way around. Ms. Norris informed the Court of this development by letter on October 27, 2016. So as pertains to that issue, the facts are actually the exact opposite of the established record.

Argument

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[5] *State v. Anthony*, 1995 WL 1918899, at *1 (Del. Super. Ct. Aug. 21, 1995)(emphasis added).

The first reason for the Court's denial of the Motion to Dismiss was based on a flawed record and is no longer applicable. But the new revelation has important implications for the second part of the Court's reasoning as well.

The record now establishes that the Department of Justice affirmatively refused to accept Georgia's offer of temporary custody of Jason Slaughter within the meaning of §2544(c), this Court must dismiss the case. In other words, this development implicates the "refuses or fails to accept the offer of temporary custody" provision rather than the "trial within 180 days" provision. The result is dismissal with prejudice by operation of the statute. It does not matter if the clerk received notice; one way or the other, the State refused Georgia's offer. Just as it was not Mr. Slaughter's fault that the warden failed to send the initial forms to the Court, it is not Mr. Slaughter's fault that the DOJ communicated incorrect information to the Georgia prison authorities. The bottom line is that the State triggered an automatic dismissal by refusing to accept custody.

Moreover, the State's refusal of the offer affects the analysis of the notice issue. Section 2542(g) states, in relevant part, that written notice shall not be deemed to have been received "until such notice or notification has actually been received by the appropriate court and by the appropriate prosecuting attorney of this State..." Nothing in that clause requires the notice to flow directly from the warden to the court. Notice or notification is equally effectuated by any actual notice. Form VII is such notice, because it *requires* the Court's approval. The State does not get the prisoner unless they file Form VII and a Superior Court judge certifies it. The State, by refusing to accept the offer of custody, caused Form VII not to be filed. Had the State filed Form VII, the only difference in the equation would have been that the clock on the 180 days would have begun on that date instead of November 5, 2013.

The State's refusal of Georgia's offer of custody requires dismissal of the indictment with prejudice. As such, we renew our March 31, 2015 Motion to Dismiss and respectfully request that this Court effectuates the plain meaning of the statute and enters such an order. Ms. Woloshin and I are available should Your Honor have any questions.

Respectfully,

Patrick J. Collins

PJC/raj

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cc: Criminal Prothonotary
Colleen Norris, Esquire
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Phillip Casale, Esquire
Jason Slaughter

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October 27, 2016

Honorable Eric M. Davis
Superior Court of Delaware
New Castle County Courthouse
~~500 N. King St. Suite 10400~~
Wilmington, DE 19801

Re: State v. Jason Slaughter
ID No: 1207010738

Dear Judge Davis,

There have been several arguments raised on the issue of Extradition and the Interstate Act on Detainers (IAD) in this case. On July 30, 2015, the Court had oral argument on the first Motion to Dismiss filed by Slaughter. At the hearing the State made representations to the Court about information provided in the State's Extradition file.

Specifically, there was a letter referenced (See Exhibit A) from the Georgia prison notifying an employee of the Department of Justice, "Inmate Slaughter was notified that with his Capital Murder charge he cannot file for IAD. A Governor's Warrant will have to be issued to bring him back to Court" [in Delaware]. The Court inquired if the State knew why that letter was sent and the basis for the misinformation. At the time of the hearing I replied that I did not know. That is no longer accurate and this letter is being sent to correct the record.

Last Friday I had an opportunity to review the entire original Extradition file on Slaughter prior to Mr. Collins coming to the office to review and copy materials. This was the first time I saw the original file and not copies. Additionally, it was the first time I saw the *outside jacket of the files*. Upon review I found a handwritten notation on the file jacket written by Ron Mullin, Extradition Supervisor at that time, that he had **explained to the Georgia Prison caseworker that Slaughter could not request return under IAD and a governor's warrant was necessary.** This is obviously incorrect information and it is the reason the letter was sent from the Georgia prison.

Immediately upon discovery the State notified Mr. Collins and gave him copies of all documents in the files as well as the outside jacket notations. We then had a discussion about what course of action the State would take in light of this information. My understanding is that Slaughter will be filing a new Motion addressing this discovery and renewing the request for dismissal.

We further had discussions about the fruitfulness of the one to two day hearing scheduled next week in light of the motion. The State is scheduled to bring several witnesses in from out of town on Tuesday for the hearing. There was a disagreement about whether the State should affirmatively request a continuance to allow the defense time to address this information. Although the State disagrees about whether it should seek a continuance, we do agree that this potentially case dispositive issue was just disclosed to the defense and they do have the right to address it before the Court.

Therefore, we seek the guidance of the Court and request an office conference or teleconference before the hearing to address these issues.

Respectfully Submitted,

Colleen K. Norris
Deputy Attorney General

Cc: Patrick Collins, Esquire
Natalie Woloshin, Esquire
Criminal Prothonotary

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 1207010738
	)	
JASON SLAUGHTER	)	
	)	

SECOND MOTION TO DISMISS

Jason Slaughter, through the undersigned counsel, hereby moves this Court for an Order dismissing the indictment. In support of this motion, Mr. Slaughter states as follows:

By way of an executive summary, this motion asserts that by lodging a detainer against Mr. Slaughter in October 2013, the State triggered the applicability of the Interstate Agreement on Detainers. Pursuant to a United States Supreme Court case, *United States v. Mauro,* recently found and disclosed by the State in a separate pending murder case, the lodging of the detainer set in motion the 120-day statutory time limit to try Mr. Slaughter. As he was brought to Delaware in November 2014, that limit has long since passed and the case must be dismissed.

This is a separate legal ground for dismissal than the one previously litigated and decided by this Court.

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Background and Relevant Procedural History

1. This is, as of very recently, a noncapital Murder First Degree case.[1] The State indicted Jason Slaughter on July 16, 2012, charging him with First Degree Murder and other charges. All charges arise out of an incident that occurred on December 14, 2007, in which it is alleged that Mr. Slaughter killed Christopher Masters.

2. At the time of indictment, Mr. Slaughter was an inmate awaiting trial in Georgia. He was convicted on August 15, 2013, and is currently serving a life plus 15 year sentence imposed by the Georgia court. The State lodged a detainer with the Georgia Department of Corrections on October 4, 2013.[2] Georgia acknowledged the detainer and sent back Mr. Slaughter's request for disposition of his charges pursuant to the Interstate Agreement on Detainers (IAD).[3]

3. Rather than use the Interstate Agreement on Detainers (IAD) to bring Mr. Slaughter to Delaware, the State instead used an Executive Agreement (Governor's Warrant) to obtain custody of Mr. Slaughter. Governor Markell signed it on July 23, 2014 and Governor Deal signed it on July 28, 2014. Mr. Slaughter

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[1] *See, Rauf v. State,* --- A.3d. ---, 2016 WL 4224252 (Del. 2016).
[2] Exhibit A.
[3] Exhibit B. For purposes of this motion, the fact that Mr. Slaughter sought disposition of his charges by way of the IAD is not relevant. The relevant act is the State's lodging of a detainer.

arrived in Delaware on November 18, 2014 and was housed at the James T. Vaughn Correctional Center.

The State finds *United States v. Mauro*

5. *State v. Harris,* 1108002195, is a murder case with similar extradition issues and one defense attorney in common. The assigned judge is President Judge Jurden. On August 4, 2016, the State wrote to Judge Jurden, explaining that although the defense had not brought it up, the IAD may have application to the Harris case. The State cited *United States v. Mauro*,[4] a United States Supreme Court case. A review of *Mauro* as applied to the facts of Mr. Slaughter's case prompts this motion to dismiss.[5]

Law Applicable to This Motion

The Interstate Agreement on Detainers (IAD)

6. The Interstate Agreement on Detainers provides a means for inmates in the custody of one jurisdiction (the "sending state") to be delivered to another jurisdiction (the "receiving state") for the disposition of pending criminal charges. It has been adopted by 48 states, the United States, and the District of Columbia.

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[4] 436 U.S. 340 (1978).

[5] The letter is attached as Exhibit C. Despite extensive research on the IAD, the undersigned counsel had never heard of *Mauro* before receiving the State's letter. As such, the State's commendable candor to the tribunal is appreciated.

7. The purpose of the IAD is "to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints."[6] Our General Assembly enacted the IAD in 1970[7] and with the exception of one amendment not relevant to this motion, it has remained unaltered since then.

8. The IAD provides both a means for an inmate to seek disposition of charges in another state, and for a prosecuting authority to cause the delivery of the inmate to their state for prosecution of untried charges. The latter scenario is germane here. After a detainer has been lodged, the sending state must honor the receiving state's "written request for temporary custody" of the inmate.[8] The DOJ's ability to bring the prisoner to Delaware for trial, however, is not without its limitations. One limitation is that if the defendant's case is not tried or otherwise disposed of before the defendant is return to the sending state, the case must be dismissed with prejudice. But the limitation relevant here is that the trial "must be commenced within 120 days"[9] from the day the inmate arrived in Delaware's custody. The trial court, upon application and a hearing with the defendant and counsel present, may grant an enlargement of this time period. The enlargement

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[6] 11 *Del. C.* § 2540.
[7] 11 *Del. C.* §§ 2540-2550.
[8] 11 *Del. C.* § 2543(a).
[9] 11 *Del. C.* § 2543(c).

may be granted if the defendant seeks it, thereby waiving the time limit, or if the defendant acquiesces to the State's request.[10]

9. If the trial is not had within 120 days, "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."[11]

***The Applicability of* United States v. Mauro.**

10. *United States v. Mauro*[12] is a 1978 Supreme Court case holding that once an IAD member files a detainer, it is then bound by the provisions of the IAD. It was a consolidated appeal resulting in two different outcomes dependent upon whether the government in the receiving state had lodged a detainer prior to making its request for temporary custody:

a. The Mauro Case. No detainer was ever lodged against Mauro,[13] who was serving a New York State sentence at the time of indictment on federal contempt charges. He was brought to federal custody, not on a detainer, but on a writ of habeas corpus *ad prosequendum*.[14] Mauro was sent back to state prison due to overcrowding in the federal jail, then brought back on another writ. Mauro sought

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[10] *New York v. Hill*, 528 U.S. 110, 114 (2000).
[11] 11 *Del. C.* § 2544(c).
[12] 436 U.S. 340 (1978).
[13] The similarly situated codefendant is left out of this narrative for clarity and brevity.
[14] *Id.* at 1839.

dismissal of his federal indictment because he had originally been sent back to New York without ever being tried on the federal case, which required dismissal under the IAD.[15] Mauro's federal case was dismissed, because the district court held that the writ of habeas corpus *ad prosequendum* was a detainer within the meaning of the IAD.[16] The Second Circuit affirmed, holding that a writ entitles the inmate to the protections of the IAD.[17]

The Supreme Court reversed, holding that a writ of habeas corpus *ad prosequendum* is not a detainer within the meaning of the IAD:

> Because in No. 76–1596 the Government **never filed a detainer against Mauro and Fusco, the Agreement never became applicable** and the United States was never bound by its provisions. The Court of Appeals therefore erred in affirming the dismissal of the indictments against the respondents.[18]

b. The Ford Case. Federal authorities arrested Ford on two outstanding warrants. But he was sent to Massachusetts to await trial on state charges. While there, the US Attorney lodged a pre-indictment detainer against him.[19] Then Ford was convicted in Massachusetts and brought to federal custody by way of a writ. Many postponements ensued; he was even sent back to Massachusetts for a time,

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[15] *Id.*
[16] *Id.* at 1840.
[17] *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976).
[18] *Mauro*, 436 U.S. at 361 (emphasis added).
[19] *Id.* at 347.

at his request. Then the federal prosecutor issued another writ and brought him to federal custody. He was tried and convicted.[20]

On appeal he argued that his case should have been dismissed with prejudice because he was not tried within the IAD-mandated 120 days.[21] The government on appeal conceded that Ford was subject to a detainer (the one lodged with Massachusetts) and then was obtained by a request (the writ) within the meaning of the IAD.[22] As such, applying the IAD, the Second Circuit Court of Appeals reversed and remanded Ford's case for a dismissal with prejudice.[23] Adopting the same reasoning, the Supreme Court affirmed.[24]

11. Ultimately, *Mauro* holds that when a receiving state IAD member lodges a detainer, it subjects itself to the provisions of the IAD—even if the IAD is not used to ultimately bring the defendant to the receiving state. And the converse is true: when no detainer is lodged, then writs and other means are not subject to the provisions of the IAD.

Argument: This case must be dismissed under *Mauro*.

12. This case presents precisely the same scenario as Ford's case in the *Mauro* decision. The State lodged a detainer against Mr. Slaughter on October 4,

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[20] *Id.* at 347-348.
[21] He also argued the case should have been dismissed when he was sent back to Massachusetts.
[22] *United States v. Ford*, 550 F.2d 732, 736 (2d Cir. 1977).
[23] *Id.* at 743-744.
[24] *Mauro*, 436 U.S. at 364-365.

2013. That subjected the State to the provisions of the IAD, and in particular, the 120-day time limit set forth in 11 *Del. C.* § 2544(c). Then the State used a Governor's Warrant to bring Mr. Slaughter to Delaware on November 18, 2014. Once Mr. Slaughter got to Delaware, the State had 120 days to resolve or try the case. The State did not do so, nor did they seek an extension by way of a hearing in open court. On March 18, 2015, the time expired for the State to bring Mr. Slaughter to trial. This sequence of events leads inexorably to the conclusion that this Court "shall enter an order dismissing the [the indictment] with prejudice, and any detainer based thereon shall cease to be of any force or effect."[25]

13. It is clear that the State was unaware at the time it lodged the detainer that it was triggering the IAD. Had the State been aware of *Mauro* at the time, it would have likely not lodged the detainer that set the IAD in motion. Nevertheless, neither *Mauro* nor the IAD is ambiguous, and the phrase "shall enter an order dismissing [the indictment] with prejudice" must be given its plain meaning and effect.[26]

WHEREFORE, for the foregoing reasons, Jason Slaughter respectfully requests that this Court enter an order of dismissal.

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[25] 11 *Del. C.* § 2544(c).

[26] *See, e.g., Ryan v. State*, 791 A.2d 742, 743 (Del. 2002)("It is settled law that, if a statute is unambiguous, no interpretation is necessary and the plain meaning of the language in the statute controls.").

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Attorneys for Jason Slaughter

Dated: August 23, 2016

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 1207010738
	)	
JASON SLAUGHTER	)	
	)	

ORDER

This day of , 2016, the foregoing Second Motion to Dismiss having been presented and considered by the Court, **IT IS HEREBY ORDERED** that the motion is **GRANTED.**

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The Honorable Eric M. Davis

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
	)	
v.	)	ID No. 1207010738
	)	
JASON SLAUGHTER	)	

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MOTION TO DISMISS

Jason Slaughter, through the undersigned counsel, moves this Court for an order dismissing his case pursuant to 11 *Del. Code* Chapter 25, Subsection II. In support of this motion, Mr. Slaughter states as follows.

Background

1. Jason Slaughter was indicted on July 16, 2012 on the charges of Murder First Degree and Possession of a Firearm During the Commission of a Felony. These charges arise from an incident in which Christopher Masters was killed on December 14, 2007.

2. Mr. Slaughter was convicted of Murder First Degree in the state of Georgia on August 15, 2013, and is serving a sentence of life plus 15 years.

3. This is a capital case. Trial is scheduled for April 5, 2016.

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