

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Docket No. 00-CR-22-B-S
	)	
DAVID A. THIEDE,	)	
	)	
Defendant	)	

**ORDER ON DEFENDANT’S PETITION FOR WRIT OF HABEAS CORPUS**

Before the Court is Defendant’s Petition for a Writ of Habeas Corpus ad prosequendum. For the reasons stated below, the Court GRANTS Defendant’s Petition.

**I. BACKGROUND**

Defendant Donald Thiede (“Thiede”) was indicted on one count of bank robbery and one count of conspiracy to commit bank robbery on April 11, 2000. The indictment alleges that Thiede, along with his co-defendant Donald Turner, robbed Northeast Bank in Augusta, Maine, on or about January 3, 2000. To date, Thiede has not been arraigned on the indictment because he remains in custody in Florida where he is awaiting trial on separate state bank robbery charges.

The trial on Thiede’s Florida charges is scheduled to begin on February 13, 2001. However, at a conference of counsel, Mr. Bradford, Mr. Thiede’s attorney in this federal case, represented that the Florida trial may be continued because of ongoing discovery, as well as trial scheduling conflicts. Apparently, if the trial is continued, it would not begin until sometime in April 2001.

While Thiede is being held in Florida awaiting trial, the federal prosecutor handling this case has lodged a detainer against Thiede with the Florida authorities. The

Government’s position is that the Court should await disposition of the Florida charges before bringing Thiede to Maine for proceedings on the pending indictment. In stark contrast, Thiede, through his Petition, asks to be arraigned on his federal case as soon as possible in order to “commence the running of the Speedy Trial Act time period, thus ensuring that this matter does not become stale.” (Def. Pet. for Writ of Habeas Corpus at 1 (Docket #5).)

## II. DISCUSSION

The controversy brought to light by Defendant’s Petition juxtaposes the provisions of the Interstate Agreement on Detainers (“IAD”), 18 U.S.C. app. 2 § 1 et seq.,<sup>1</sup> with the Court’s power to grant writs of habeas corpus. See 28 U.S.C. § 2241. Generally speaking, a federal prosecutor may obtain the presence of a defendant currently held in state custody by either a writ or a detainer.<sup>2</sup> However, if a prosecutor files a detainer and then petitions for and obtains a writ, the Supreme Court has held that the presence of the detainer binds the United States to comply with the various provisions of the IAD. See United States v. Mauro, 436 U.S. 340, 349 (1978). Comparatively, if the United States does not file a detainer and simply obtains the presence of a defendant by a writ of habeas corpus ad prosequendum that is issued by a federal district court, the United States need not comply with the provisions of the IAD. See id.

This case raises a unique situation: although the Government has explicitly chosen to file a detainer and thereby to be bound by the IAD, Defendant seeks to proceed

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<sup>1</sup> Throughout this order, the Court’s citations to the various provisions of the IAD will refer to their original article numbers. See United States v. Mauro, 436 U.S. 340, 344 n.1 (1978) (explaining the use of similar method of citation).

<sup>2</sup> A more detailed explanation of both writs and detainers may be found in the Supreme Court’s opinion in United States v. Mauro, 436 U.S. 340, 349-59 (1978).

by writ.<sup>3</sup> Arguably, once the detainer was filed, the most appropriate means for Thiede to request disposition of the pending federal charges was through the procedure laid out in Article III of the IAD. Pursuant to Article III, a prisoner may request “final disposition” of any pending matter that serves as the basis for a detainer.<sup>4</sup> See Art. III(b). After a prisoner makes a written request for final disposition, Article V of the IAD calls for the state currently holding the Defendant to deliver him to the temporary custody of the authorities who filed the detainer, thereby allowing for disposition of the pending indictment. See Art. V(a). The Court could construe Defendant’s Petition as a request for final disposition under the IAD’s provisions. Pursuant to these provisions, a defendant “shall be brought to trial within one hundred and eighty days” of delivering a request for final disposition to the prosecuting officer and the Court. Art. III(a).

Alternatively, the Court might take Defendant’s Petition for a writ of habeas corpus at face value and ignore the IAD provisions because, although a decision to proceed under the IAD clearly binds the prosecutor who files a detainer, it is not clear that such a decision binds the court or the defendant. Regardless of how the Court construes Defendant’s Petition in light of the IAD, it is clear to this Court that Mr. Thiede is entitled to have his federal case move forward expeditiously. The pending indictment was handed down by the Grand Jury more than nine months ago. The allegations in the indictment relate to an incident that occurred over a year ago. Under these circumstances, with no definite trial date set on the Florida charges, the Court concludes

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<sup>3</sup> While it is usually the U.S. Attorney, rather than the defendant, who files a petition for writ of habeas corpus ad prosequendum, the Court has found nothing that suggests a defendant cannot petition for such a writ.

<sup>4</sup> Pursuant to Article III, subsection (c) of the IAD, a prisoner is supposed to receive prompt notice of any detainer and his right to make a request for a final disposition of the indictment on which the detainer is based. See Art. III(c). In this case, neither Defendant’s attorney nor the Assistant U.S. Attorney was able to assure the Court that such notice has been provided to Mr. Thiede.

that the Defendant is entitled to be brought before this Court so that proceedings related to the current federal charges may proceed.<sup>5</sup>

### III. CONCLUSION

The Court hereby GRANTS Defendant's Petition for a Writ of Habeas Corpus ad prosequendum. The Court, therefore, ORDERS that the Clerk issue a Writ of Habeas Corpus directing the Florida authorities to release Mr. Thiede to the custody of the United States Marshal so that he may be brought before this Court as soon as possible for arraignment and disposition of the pending case.

SO ORDERED.

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George Z. Singal  
United States District Judge

Dated on this 16<sup>th</sup> day of January 2001.

DAVID A THIEDE (1)	J. BRADFORD COFFEY, ESQ.
defendant	[COR LD NTC]
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<sup>5</sup> Assuming the United States does not withdraw its detainer against Mr. Thiede, the Court is prepared to comply with the IAD's provisions requiring both that Mr. Thiede be brought to trial before he is returned to state custody and that Mr. Thiede be brought to trial within 120 days of his arrival in federal custody. See Art. IV(c) & (e). Therefore, if necessary, the Government as well as the defense should be prepared to bring this case to trial so that Mr. Thiede may be returned to Florida "at the earliest practicable time." Art. V(e).