

1       IN THE SUPREME COURT OF THE UNITED STATES  
2       - - - - - x  
3       STATE OF ALABAMA,                       :  
4                               Petitioner,       :  
5               v.                               : No. 00-492  
6       MICHAEL HERMAN BOZEMAN.               :  
7       - - - - - x  
8   Washington, D.C.  
9   Tuesday, April 17, 2001  
10               The above-entitled matter came on for oral  
11       argument before the Supreme Court of the United States at  
12       11:07 a.m.  
13       APPEARANCES:  
14       SANDRA JEAN STEWART, ESQ., Assistant Attorney General,  
15               Montgomery, Alabama; on behalf of the Petitioner.  
16       JEFFREY A. LAMKEN, ESQ., Assistant to the Solicitor  
17               General, Department of Justice, Washington, D.C.;  
18               on behalf of the United States, as amicus curiae,  
19               supporting Petitioner.  
20       MARK JOHN CHRISTENSEN, ESQ., Andalusia, Alabama; on  
21               behalf of the Respondent.  
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P R O C E E D I N G S

[11:07 a.m.]

CHIEF JUSTICE REHNQUIST: We'll hear argument  
next in number 00-492, Alabama versus Bozeman.

Ms. Stewart.

ORAL ARGUMENT OF SANDRA JEAN STEWART  
ON BEHALF OF THE PETITIONER

MS. STEWART: Mr. Chief Justice, may it please  
the Court:

We are here today not because a possibly  
innocent man was unjustly convicted nor are we here  
because he was possibly denied a constitutional right nor  
are we even here because he possibly was denied one of the  
rudimentary demands of a fair trial. We are simply here  
today to resolve whether or not a guilty man should escape  
his just punishment as a result of a technical violation  
of a statute.

Specifically, the question presented here is  
whether or not Michael Bozeman is entitled to have his,  
was entitled to have his indictment dismissed with  
prejudice as a result of a one-day transfer from Federal  
custody into State custody for purposes of arraignment and  
appointment of counsel.

QUESTION: Well, that's the clear provision of  
Article IV(e) of the Interstate Agreement, here, on

1 Detainments. It couldn't be more clearly provided in  
2 there that the court shall enter an order dismissing with  
3 prejudice an indictment or complaint if he isn't tried  
4 immediately.

5 MS. STEWART: Clearly the language, when it's  
6 read in isolation, seems to indicate that the indictment  
7 must be dismissed with prejudice --

8 QUESTION: Yeah, that's what it says.

9 MS. STEWART: -- but the language simply can't  
10 be read in isolation. It has to be read against the  
11 background principle of harmless error, which was in  
12 existence at the time the IAD was passed.

13 QUESTION: Well, I would think you maybe ought  
14 to just seek an amendment of the agreement. It's just  
15 clear.

16 MS. STEWART: Well, there's a question whether  
17 or not the parties to the agreement can actually amend the  
18 agreement. This is not a -- this is an interstate compact  
19 involving 48 different states.

20 QUESTION: Can Alabama just get out of it any  
21 time they want? How does that work?

22 MS. STEWART: They would have to go to their  
23 legislature and repeal participation.

24 QUESTION: But the State could through this  
25 legislature just withdraw from the whole country?

1 MS. STEWART: Yes, according to the act itself,  
2 it could withdraw from the whole Act itself, but to do so  
3 it would have to give up certain rights that are bestowed  
4 upon it in the Act that are very beneficial to the States  
5 in disposing of detainers.

6 QUESTION: Supposing there was an effort to  
7 amend this provision, if it proves that you're wrong about  
8 the -- how could it be done? Could Congress alone do it?

9 MS. STEWART: Congress could not unilaterally  
10 change the provision of the compact.

11 QUESTION: Congress did it, didn't it, for  
12 Federal prisoners?

13 MS. STEWART: Congress did do it in Section 9 of  
14 the Agreement, but when Congress passed the original  
15 Agreement in Section 7, they reserved to themselves the  
16 right to amend the agreement. Other States, specifically  
17 Alabama, do not have such a reservation clause in the  
18 Agreement, which would make it more difficult certainly to  
19 amend the Agreement. Now, there are some other States that  
20 have amended the Agreement unilaterally, but it's not been  
21 challenged whether or not that was permitted --  
22 permissible under the Agreement itself.

23 QUESTION: Well, you shouldn't sign agreements  
24 that say this then if you don't intend to abide by it. It  
25 just couldn't be clearer. It just says if trial is not

1 had, the information or complaint shall not be of any  
2 further force and effect, and the court shall enter an  
3 order dismissing. Why did your State sign that, adopt  
4 that if it wasn't prepared to abide by it.

5 MS. STEWART: Well, the State adopted the  
6 Agreement partially -- certainly because of the benefits  
7 to it, but it also adopted the Agreement against the  
8 background principle that harmless errors shouldn't apply.

9 QUESTION: I do not know a background principle  
10 that overcomes the explicit mandate of a statute, shall  
11 enter an order dismissing the same. Do you have cases that  
12 simply don't talk about where the implied effect of a  
13 provision in most cases is to cause dismissal of the suit,  
14 we won't let it happen when there's been no substantial  
15 prejudice, that I can understand, but here you have  
16 language that is categorically mandatory.

17 MS. STEWART: No, Your Honor, I do not have a  
18 case where this Court has specifically held harmless error  
19 applicable where there is a specific type of remedy such  
20 as this contained within the Agreement.

21 QUESTION: Isn't there a broader problem? And I  
22 have the same difficulty, I guess, with the Government's  
23 de minimis argument, and that is, it's true there is a --  
24 there is a, as you put it, a sort of background principle  
25 of the harmless error doctrine, and there's a background

1 de minimis, but I don't think that there is a background  
2 to the effect that these either/or of these doctrines may  
3 be used to excuse an intentional and systematic series of  
4 violations of the statute, and it seems to me that that is  
5 what you are arguing for. You're saying not only would we  
6 move the person for two days for an arraignment here, we  
7 will continue to do it or we should be entitled to  
8 continue to do it, and even though that's a technical  
9 violation of the statute, we would in each case be excused  
10 on harmless error. Do you know of any instance in which  
11 harmless error or de minimis, for that matter, has been  
12 used in effect to excuse a systematic violation of the  
13 statute?

14 MS. STEWART: I do not know of a case where that  
15 has been done. However, I would say, number one, that an  
16 intentional violation act would certainly, whether or not  
17 it was intentional, would be a part of the harmless error  
18 analysis, and here I don't think there was an intentional  
19 act whatsoever. I think the prosecutor simply misread the  
20 Act and dropped the ball, and as a result Mr. -- if this  
21 Court holds that dismissal is required, then of course  
22 then the result, the purposes of this Act have not been  
23 maintained --

24 QUESTION: But I thought you were making a  
25 broader argument, and that is that this sort of transfer

1     should be allowed.  It is -- I mean, I can certainly see  
2     the value of making this transfer so that somebody who is  
3     not willing to waive arraignment can at least get counsel  
4     appointed and get the ball rolling toward prosecution, and  
5     I thought you were making the broader argument, not merely  
6     that this was a one-time mistake, but that for the good  
7     reasons that support this procedure, we ought as a general  
8     matter to apply harmless error whenever it occurs.

9                 MS. STEWART:  Mr. Justice Souter, I am making  
10    the broader argument that harmless error should apply to a  
11    statute unless there's an indication of an intent contrary  
12    to it that says that harmless error should not apply, and  
13    it's my position that this statute does not indicate such  
14    an intent that harmless error should not apply.

15                QUESTION:  How do we know it's harmless?

16                MS. STEWART:  Excuse me?

17                QUESTION:  How do we know it's harmless? What's  
18    the point of Article VI?  It's hard to -- what is it  
19    contemplating?  There's a person in another State, you  
20    want to try him.  Now, you're not supposed to bring him  
21    out of that State until you're ready to go to trial?  How  
22    does it normally work?

23                MS. STEWART:  Normally Article IV works that you  
24    bring the prisoner over and you have 120 days within which  
25    to try him.



1                   QUESTION:  So you're going to put him in the  
2   county jail?

3                   MS. STEWART:  Right.

4                   QUESTION:  But you have the indictment before  
5   you get him, is that right?

6                   MS. STEWART:  That's correct.

7                   QUESTION:  So what's he coming for, just the  
8   trial?

9                   MS. STEWART:  Under the Act, that is the  
10   purposes, he's supposed to -- if you read the language in  
11   its technical, in its -- on its face, then, yes, that  
12   seems to be the only purpose which you can bring him to.

13                  QUESTION:  The only reason that a State -- Joe  
14   Smith is in California.  Now, you're going to use this  
15   Act, you're bringing him, you're under this Act in Article  
16   VI, you don't even want to see him until you're ready to  
17   go to trial, is that the theory of it?

18                  MS. STEWART:  That seems to be the theory, if  
19   you read it, on its face.

20                  QUESTION:  But now might you sometimes --

21                  MS. STEWART:  But certainly, no --

22                  QUESTION:  -- have to see him in Alabama before  
23   you go to trial?

24                  MS. STEWART:  I'm sorry, I didn't understand.

25                  QUESTION:  How do trials work in that State?

1 Don't you sometimes have to see a defendant before he goes  
2 to trial?

3 MS. STEWART: Absolutely. And that is why this  
4 individual was brought to Alabama, to have the appointment  
5 of counsel.

6 QUESTION: So this must come up all the time, I  
7 mean, you bring a person into the State, we say it's not,  
8 we're not ready for trial yet, but we're going to the  
9 arraignment or we're going to have a hearing on  
10 suppression or a lot of things.

11 MS. STEWART: Certainly.

12 QUESTION: All right. So what are they thinking  
13 in this, there might be lots of instances where there are  
14 days that pass between bringing him into the State and  
15 trying him, and what's supposed to happen in that time?  
16 Are you supposed to always keep him in a county jail, even  
17 if you're in Maryland, and in fact the other prison  
18 happens to be two feet away in Virginia?

19 MS. STEWART: And the State of Alabama's  
20 position is, no, you don't always have to keep them there.

21 QUESTION: But that's what it says. So what are  
22 they thinking?

23 MS. STEWART: I think that's not what it says.  
24 I think that there's enough ambiguity in the statute that  
25 is not required that you keep them there until trial.

1                   QUESTION: Well, you said the prosecutor dropped  
2 the ball, I think candidly, which leads to Justice  
3 Breyer's question. If everything had gone right here, he  
4 would have stayed in the county jail and not, and would  
5 not be returned to the original place where we get can get  
6 him then in a minute, he could probably be returned some  
7 other place.

8                   MS. STEWART: Right.

9                   QUESTION: But at least not to the original  
10 place until the trial's complete?

11                  MS. STEWART: Right.

12                  QUESTION: Or unless I get a waiver?

13                  MS. STEWART: Yes.

14                  QUESTION: Can he be brought to another State  
15 for questioning just to meet with police officials?

16                  MS. STEWART: Certainly.

17                  QUESTION: Or is it just a court proceeding?

18                  MS. STEWART: Certainly he can be brought to  
19 another State just for questioning or for other purposes,  
20 but the position of Mr. Bozeman is that under the Act you  
21 can only bring him for trial. The position of the State  
22 is that, no, there are other reasons you can bring him  
23 under detainer to Alabama.

24                  QUESTION: But that, we don't really need to  
25 resolve that here?

1 MS. STEWART: No, that's not the question that's  
2 presented today, Justice Kennedy.

3 QUESTION: The reason I ask is the only sense I  
4 can make out of it, given the realities, is this is some  
5 kind of prophylactic rule, and the prophylactic rule would  
6 be, we know it's nutty in a lot of circumstances, but  
7 nonetheless the only way to get the States to move off the  
8 dime is to insist that they try him before they send him  
9 back, even if the jail's next door to the prison he came  
10 from. Now, if it's a prophylactic rule, you don't have a  
11 de minimis violation.

12 MS. STEWART: And certainly this Act was passed,  
13 this remedial legislation, it was passed specifically to  
14 address certain problems that occurred as a result of  
15 detainers, there being no formal procedures, and there  
16 being no way to bring an inmate into a State and have the  
17 detainers disposed of, and to do so in such a way that it  
18 didn't interfere with the rights to rehabilitation, that's  
19 the specific purposes behind this Act. Article IX of the  
20 Act specifically says that it should be construed in such  
21 a way as to effectuate those purposes, and to construe  
22 this Act as requiring dismissal of the indictment is not  
23 going to effectuate those purposes.

24 QUESTION: Well, but on that point, I thought  
25 that was a persuasive argument that both you and the

1 Government make. They are interested in the  
2 rehabilitation, so they should send him back to the  
3 Federal prison. But why can't that be achieved by just  
4 asking for a waiver from the man because he would  
5 presumably agree with you in the normal case?

6 MS. STEWART: Supposedly you could, you know,  
7 theoretically you certainly could ask for a waiver, but  
8 that is not what happened in this case, and it shouldn't  
9 be required that you ask for a waiver in order to --

10 QUESTION: Why not? I mean, if everybody is  
11 fully informed about the statute and the procedures, why  
12 couldn't that interest be adequately protected by saying,  
13 counsel, here's the problem, we can't try this fellow for  
14 another 30 days, so we'd rather -- we can either let him  
15 stay here in the county jail or go back to his regular  
16 rehabilitation program and then give the person the  
17 choice.

18 MS. STEWART: We could give the person the  
19 choice, but certainly again that could just simply lead to  
20 more litigation, and whether or not he understood what he  
21 was waiving and what right he had, and also we have to get  
22 him here practically in Alabama, the practical way, you  
23 have to get the person into Alabama before you can appoint  
24 counsel. There are ways to appoint counsel in advance of  
25 bringing the person to Alabama, but the practicalities --

1                   QUESTION: Well, but that just means that  
2     instead of a 24-hour turnaround, make it 48 hours, so you  
3     appoint counsel, give them time to consult with counsel,  
4     and then decide whether to go ahead with the trial before  
5     you send him back or send him back and let him continue  
6     the Government program. I would think very often the  
7     prisoner would say, yes, it makes more sense to go back,  
8     but assuming I guess he lived in Alabama, didn't he?  
9     That's part of the problem.

10                  MS. STEWART: Yes, he did, Justice Stevens.  
11     Certainly that's one way that this Act could be  
12     implemented, but the State's position is that that's not  
13     required under the Act because simply the transfer did not  
14     violate --

15                  QUESTION: Well, it's clearly required if you  
16     read it literally, but you're sort of saying for this  
17     reason we should not read it literally and therefore it's  
18     not required.

19                  MS. STEWART: Right.

20                  QUESTION: Yeah.

21                  MS. STEWART: And of course this Court, at the  
22     time that this case was decided and at the time we were  
23     talking about whether or not Mr. Bozeman, whether his  
24     rights had been violated by the transfer, this Court had  
25     not decided New York v. Hill and decided whether or not

1 waiver applied to the Act, and similarly the argument made  
2 there was that because the Act said that it shall be, that  
3 if there's a violation of the 120-day provision that the  
4 Act shall be -- or the indictment shall be dismissed with  
5 prejudice, that waiver shouldn't apply because and that  
6 the Act specifically should say whether it should or  
7 shouldn't.

8 QUESTION: There was an enormous difference, Ms.  
9 Stewart, between that case and this one, and that is the  
10 defendant did something that caused -- the defendant was  
11 sitting right there, and agreed to something, here the  
12 defendant hasn't agreed to anything at all. So it's one  
13 thing to say a defendant can't say, yeah, go ahead and try  
14 me and then the trial date comes and he says, uh-huh, it's  
15 too late. Here the defendant didn't do one thing.

16 MS. STEWART: I think there is a significance in  
17 that that case involved waiver, but it's not for the  
18 purposes of the argument that I'm making which is that the  
19 IAD was silent on whether or not waiver principles applied  
20 to it, just as it's silent as to whether or not harmless  
21 error principles apply to it. This Court held that  
22 because it was silent and because the general principle,  
23 there's a presumption that waiver applies that waiver  
24 should apply there. Similarly, I'm arguing that because  
25 harmless error is, there's a presumption that it applies

1 to statutes as well as to constitutional errors that it  
2 should apply in this case.

3 QUESTION: It seems it would apply then in every  
4 case, and here was a prosecutor who made a perfectly  
5 reasonable choice were it not for this IAD to say, we're  
6 going to turn him around in 24 hours, just want to arraign  
7 him and send him back, but the literal reading of this  
8 cuts the other way, and if you don't hold prosecutors to  
9 that literal reading, then every case would be harmless,  
10 and must, shall would have no teeth at all.

11 MS. STEWART: I don't think that every case  
12 would result in harmful error. Certainly in this case is  
13 a perfect example where there was no harm -- I'm sorry, I  
14 got that back --

15 QUESTION: I'm saying there would be --

16 MS. STEWART: Certainly there are cases where  
17 there would be harm to the defendant by the transfer, for  
18 instance in Alabama there are like 2600 inmates involved  
19 in drug programs, and there's currently a waiting list of  
20 800. Under the I -- if an inmate were transferred to  
21 another jurisdiction for a single day or maybe two days,  
22 he wouldn't lose his place in line to become involved in  
23 this program, so if he was transferred for the entire  
24 period, say, to a Federal jurisdiction to await trial, he  
25 would lose his place and lose his opportunity to



1 participate in those programs, which could specifically  
2 prevent him from participating --

3 QUESTION: But we're talking about a one-day  
4 turnaround. We're talking about -- I'm saying that this  
5 practice of saying it's convenient for us to bring the  
6 person up without the clock ticking on when we have to  
7 start the trial, so bring him up, arrange arraignment,  
8 send him right back. And it seems to me that every case  
9 like that would be harmless error and not -- and then you  
10 have the words of the statute and then simply not  
11 enforced.

12 MS. STEWART: I do think that there is a  
13 situation where you could bring somebody just for one day  
14 and there could be harm to them, if they weren't involved  
15 specifically, say, it was the time to take a GED, for  
16 instance, was that day, and they couldn't take it as a  
17 result, and it wouldn't be given for, you know, another  
18 year or something along that lines, it would be harm to  
19 the defendant, so there could be harm from a single day  
20 transfer.

21 QUESTION: Well, on that, even in this case  
22 illustrates the particular day, first it was one day, then  
23 another day, so it doesn't seem that the particular day is  
24 what's at issue. It's the idea of can we get this person  
25 here for a purpose other than trial, then send him back,

1 and not keep him here long term until the trial.

2 MS. STEWART: That is certainly one of the  
3 issues that is encompassed. If the Court has no further  
4 questions, I would like to save the remainder of my time  
5 for rebuttal.

6 QUESTION: Very well, Ms. Stewart.

7 Mr. Lamken, we'll hear from you.

8 ORAL ARGUMENT OF JEFFREY A. LAMKEN

9 ON BEHALF OF THE UNITED STATES,

10 AS AMICUS CURIAE SUPPORTING THE PETITIONER

11 MR. LAMKEN: Mr. Chief Justice, and may it  
12 please the Court:

13 As the majority of Federal courts have held, a  
14 brief interruption in a prisoner's confinement does not  
15 require dismissal of the State indictment against the  
16 prisoner under Article IV(e) of the Interstate Agreement  
17 on Detainers. Those decisions are correct, and the rule  
18 of de minimis is of particular --

19 QUESTION: Why would a long interruption be  
20 worse?

21 MR. LAMKEN: Pardon?

22 QUESTION: Why would a long interruption be  
23 worse?

24 MR. LAMKEN: There are two reasons, Your Honor.  
25 First, a long interruption would often cause the prisoner

1 to lose his place in programs and then he would also, may  
2 lose his priority --

3 QUESTION: That's the -- the interruption part  
4 wouldn't. I mean, if he was in the county jail for a  
5 month or a year and then they sent him back, the sending  
6 back wouldn't cause any problem.

7 MR. LAMKEN: That's correct, Your Honor. Our  
8 view is that the interruption is what is de minimis in  
9 this case, and when the interruption is merely for an  
10 overnight period, it does not cause a disruption in the  
11 inmate's participation in programs of rehabilitation in  
12 the original institution of confinement. If there was a  
13 long period of interruption, in contrast, the inmate would  
14 have to start over in the programs or could possibly lose  
15 his place as priority of the programs, depending on the  
16 institution, so we believe that, yes, in fact, there could  
17 be a longer interruption that would cause harm to the --

18 QUESTION: But if your rationale is to protect  
19 the interests of the prisoner, why isn't the waiver the  
20 solution?

21 MR. LAMKEN: In an ideal world, yes, they would  
22 get waivers, but in our experience this situation arises  
23 because of miscommunications. For example, in a case  
24 called United States v. Taylor, the United States Marshal  
25 Service placed a detainer on the prisoner, and the United

1 States attorney's office was not aware of that detainer.  
2 Consequently, when they obtained custody of the prisoner,  
3 they said -- the magistrate specifically asked, is there a  
4 detainer on this prisoner? And the U.S. attorney said,  
5 no. They sent the prisoner back, not realizing that --

6 QUESTION: But we can't make the law take care  
7 of miscommunication within the United States Department of  
8 Justice, can we? We've got to assume everybody knows  
9 what's going on?

10 MR. LAMKEN: Of course, Your Honor, but the rule  
11 of de minimis that when the event is so insubstantial in  
12 relationship to the purposes of the statute, the law does  
13 not take cognizance of it, and a single overnight  
14 transfer, like the one at issue here, is insubstantial in  
15 relationship to the purposes of the prohibition, and that  
16 purpose is to ensure rehabilitation of the prisoner and  
17 the prisoner's participation in the rehabilitation  
18 program.

19 QUESTION: Yeah, but to the extent you rely on  
20 the interests of the prisoner, it seems to me that  
21 interest is totally protected by a simple requirement that  
22 he can waive because he would presumably have counsel to  
23 advise him, listen, you're better off if you go back and  
24 continue your program. I just don't understand why the  
25 waiver isn't a complete answer.

1                   MR. LAMKEN: Your Honor, it's not a complete  
2 answer for two reasons. First, one, oftentimes prisoners  
3 would prefer that there is a mistake and that they  
4 actually got sent back and the indictment be dismissed,  
5 and second, there is an interest in the institution, the  
6 sending institution in receiving the prisoner back because  
7 it's the State's interest to ensure that its prisoners are  
8 undergoing the rehabilitation programs that they are  
9 providing, and when the prisoner is away for an undue  
10 period of time, such as the sometimes lengthy period  
11 between arraignment and trial, they are not participating  
12 in those numerous programs, and it is to the State's  
13 detriment, and so in that sense, although we often rely on  
14 the prisoner as in the context of waiver to --

15                   QUESTION: Was this the essential rationale for  
16 the Act, that the prisoner have these correctional  
17 programs or was it more the thought that a State should be  
18 entitled to impose its punishment for retribution  
19 purposes?

20                   MR. LAMKEN: The Act has twin purposes, and the  
21 two purposes are, one, to set up a system of an  
22 expeditious system whereby States could obtain prisoners  
23 from other jurisdictions and exact their punishment or  
24 impose the penalties prescribed by law, and the other  
25 purpose was to ensure that while they were doing that it

1 did not unduly interfere with the State that had the  
2 prisoner in its confinement and its programs of  
3 rehabilitation, so it should have been --

4 QUESTION: Would the Act have been complied with  
5 here if the prisoner, instead of being returned to  
6 Florida, the Florida prison, had gone to some other prison  
7 because it says he has to be returned to the original  
8 place of imprisonment?

9 MR. LAMKEN: Your Honor, if one were to read the  
10 language quite literally, they could have sent him to a  
11 Federal institution, for example, in some other part of  
12 Alabama, and it would not have invoked the literal  
13 language of the statute, and dismissal would not have been  
14 required.

15 QUESTION: Have there been any cases on that?

16 MR. LAMKEN: No, it is a rather poorly drafted  
17 agreement in that respect, but because it is an agreement,  
18 because it is --

19 QUESTION: Or they could just send him across  
20 the street to the Federal prison for a couple months, and  
21 there would be no problem.

22 MR. LAMKEN: I --

23 QUESTION: If that's not where he originally  
24 came from.

25 MR. LAMKEN: That's not where he originally came

1 from, and that situation occurs, for example, where the  
2 United States marshals retain custody of a high security  
3 prisoner, as they have the right to do, when they have  
4 concerns that the State may not have appropriate  
5 facilities, that they would retain that prisoner  
6 potentially in another location other than that one of  
7 original confinement. It is not a well-drafted agreement,  
8 but it is at its core a contract, an agreement among the  
9 States, and for that reason the sometimes more flexible  
10 terms of construction applicable to contracts, such as  
11 breach and performance, are applicable here, given the  
12 harsh consequences of a violation, complete frustration of  
13 the State's efforts to enforce its criminal law, we  
14 believe that the rule of de minimis is of particular force  
15 in this context. It seems unlikely that the States meant  
16 to abrogate the principle of de minimis in light of that  
17 harsh consequence. In addition --

18 QUESTION: Why wouldn't the same argument have  
19 applied to the United States, but you got a special  
20 provision.

21 MR. LAMKEN: Indeed, when Congress enacted that  
22 special provision, the courts were divided 4-2 in favor of  
23 that, the rule of de minimis or something similar to it.  
24 Four different circuits had held that in a single  
25 overnight transfer or a very short-term transfer that did

1 not interfere with the purposes of the Act, did not  
2 require dismissal with prejudice, there were two courts of  
3 appeals that were to the contrary, and Congress therefore  
4 stepped in with a different rule and amended the Act as it  
5 was entitled to do under Article -- under Section 7 of the  
6 implementing legislation.

7 QUESTION: But States couldn't replicate that  
8 because they all have to be bound by the same, is that so  
9 or don't you know what is the answer to that?

10 MR. LAMKEN: The Fourth Circuit has addressed  
11 that issue in a case called Bush v. Muncie, and it's not a  
12 matter of any clarity, but it appears that it would be  
13 somewhat difficult for a State to unilaterally amend its  
14 implementing legislation without withdrawing unless it, as  
15 Congress did in Section 7, had expressly reserved that  
16 right, and then if it had, if it did enact the provision  
17 that was inconsistent with the Agreement, there would be  
18 an issue among the States as to whether or not those  
19 States were willing to give that amending State the  
20 benefits of the Agreement, notwithstanding its departure  
21 in some degree.

22 QUESTION: Wouldn't the easy way to do it,  
23 though, simply be to -- for the States that wanted to at  
24 least to enter into a new pact sort of in the nature of a  
25 codicil, and put that before Congress in the contract



1 clause -- the compact clause, and at least as among those  
2 States that agreed to the amendment, I would suppose there  
3 would be no impediment to applying the same rule that the  
4 United States has. I mean, that wouldn't be all that  
5 tough.

6 MR. LAMKEN: Oh, for 48 states to arrive at the  
7 Agreement, to pass it as implementing legislation in each  
8 of those 48 states and to get Congress to pass on the  
9 compact is a somewhat arduous, although it is potentially  
10 viable prospect. However, we believe that just as Congress  
11 resolved, in effect, a 4-2 circuit conflict in favor of  
12 the rule of de minimis and in favor of permitting these  
13 returns, we believe that this Court could take cognizance  
14 of the rule of de minimis as well and rule that because a  
15 single overnight transfer is so unlikely to interfere with  
16 the purposes of the Act that it falls within the rule of  
17 de minimis and therefore should not result in harsh  
18 consequence of complete frustration of the State's efforts  
19 to enforce its criminal laws. That result would --

20 QUESTION: What's your best case from this  
21 Court?

22 MR. LAMKEN: Best case from this Court on de  
23 minimis or --

24 QUESTION: Your de minimis proposition.

25 MR. LAMKEN: The case we cited on the first page

1 of our argument section is Wrigley, but Wrigley cites  
2 about six other people.

3 QUESTION: I didn't think that was it. What's  
4 your next best case?

5 MR. LAMKEN: Next best case would probably be  
6 Portland v. Retail Druggists Association, and the next  
7 case after that would probably be Anderson v. Yungkau.  
8 Those cases all involved intentional conduct that was in  
9 violation of a specific prohibition, but in each of those  
10 cases this Court contemplated that because the conduct  
11 itself was of de minimis proportion in relation to the  
12 Act's purposes and the realities of the marketplace in one  
13 case and the realities of the hospital industry in  
14 another, it could be excused under the rule of de minimis.

15 QUESTION: Justice Souter pointed out, though,  
16 this is a remedial system, and you're asking us to really  
17 alter the design of the system.

18 MR. LAMKEN: We don't believe it's a fundamental  
19 alteration in the design of the system, it is simply a  
20 recognition that there are some applications that are so  
21 far removed from the purpose and so insubstantial and  
22 some, in fact, that are so insubstantial in light of the  
23 purpose that they fall within the well recognized rule of  
24 de minimis and therefore should not be considered  
25 violations of --

1                   QUESTION: But Mr. Lamken, you're really asking  
2   us for across-the-board approval of we could bring the  
3   person up for a reason other than trial, legitimate  
4   reason, to arraign the person, to be interrogated or  
5   whatever, a special purpose unrelated to trial, and yet  
6   the statute doesn't make any room for this, and I had --  
7   Ms. Stewart was speaking and she said the prosecutor made  
8   a mistake. Here it took mistakes on both ends, the  
9   sending of the person. Is there no effort to communicate  
10  to the States and to all the Federal authorities that this  
11  compact as presently drawn says when you send them, they  
12  stay until the trial is over?

13                  MR. LAMKEN: This is, in fact, a trap for the  
14  unwary, but the Federal government does not have a way of  
15  knowing whether or not the individual was being brought,  
16  for example, back merely to plead guilty, in which case it  
17  would take overnight -- it would cost a new trial.

18                  QUESTION: But the communication was, we want  
19  him for 24 hours.

20                  MR. LAMKEN: Correct, and in fact if he were  
21  pleading guilty and that were the arranged -- the  
22  agreement was trial, 24 hours would have sufficed to  
23  complete the trial within the meaning of the statute.  
24  Thank you, Mr. Chief Justice.

25                  QUESTION: Thank you, Mr. Lamken.

1 Mr. Christensen, we'll hear from you.

2 ORAL ARGUMENT OF MARK JOHN CHRISTENSEN

3 ON BEHALF OF THE RESPONDENTS

4 MR. CHRISTENSEN: Mr. Chief Justice, and may it  
5 please the Court:

6 All courts that have taken up the issue of the  
7 Interstate Agreement on Detainers have recognized the  
8 mandatory language, the only issue to be resolved is  
9 whether or not that language is given effect. Ms. Stewart  
10 stated that one of the reasons that Alabama joined the IAD  
11 was because there were certain benefits to the State, and  
12 I believe that there's a sort of implied consent doctrine  
13 that's at issue here that if the State joins the IAD and  
14 the prosecutor takes the initiative to place a detainer,  
15 because that's the only way that this Act is activated, is  
16 by the placing of a detainer, then they have to be bound  
17 by what the statute says. It's quite, quite clear,  
18 there's no room for any real discretion in here.

19 QUESTION: What's the purpose of the harmless  
20 error provision in the compact itself?

21 MR. CHRISTENSEN: Justice Souter, I don't  
22 believe that harmless error can apply to a situation like  
23 this where the statute is so explicit not only in what is  
24 prohibited but in the consequences if one violates that.

25 QUESTION: But do you get that from the text of

1 the harmless error provision itself?

2 MR. CHRISTENSEN: There is no harmless error  
3 provision in the IAD. Am I misunderstanding your  
4 question?

5 QUESTION: Well, maybe I'm misunderstanding.  
6 I'm sorry, I'm reading Rule 52, which comes at the end of  
7 the appendix. That was my mistake.

8 MR. CHRISTENSEN: Yes, Your Honor.

9 QUESTION: Withdraw the question.

10 MR. CHRISTENSEN: I will go on and state some of  
11 the reasons that I don't believe that harmless error does  
12 apply. The IAD uses a sanction of dismissal with  
13 prejudice in three separate places. I simply cannot  
14 believe that the legislative bodies that have adopted this  
15 merely overlooked this sanction. I believe that it says  
16 this is an important issue. Harmless error, even if one  
17 were to concede for the purposes of argument that it  
18 applied, it would be the State's burden to show that  
19 something that is so substantial within this statute, a  
20 right that is stated three separate places is -- that  
21 there was no prejudice, and that's -- I'm uncomfortable  
22 with all these Federal courts that presume that a short  
23 transfer is harmless.

24 QUESTION: Well, what happens if the State of  
25 Alabama picks up the prisoner at the Federal facility and

1 starts a three hour journey, but after half an hour there  
2 is a big snowstorm and it has to go back?

3 MR. CHRISTENSEN: That might be applicable in  
4 other States, Justice Kennedy, it's probably not in  
5 Alabama, but --

6 QUESTION: No, a tornado.

7 MR. CHRISTENSEN: A hurricane, perhaps. I think  
8 there, that might be a unique situation where, where you  
9 might have a legitimate argument that we didn't complete  
10 this.

11 QUESTION: Act of God is a different exception  
12 than de minimis and a different exception than harmless  
13 error?

14 MR. CHRISTENSEN: Certainly.

15 QUESTION: God doesn't act in de minimis ways?

16 MR. CHRISTENSEN: Yes, it would not be de  
17 minimis and perhaps not harmless.

18 QUESTION: What if they return him to another  
19 facility, they take him away from the -- this was in -- in  
20 Florida, but --

21 MR. CHRISTENSEN: He was in Florida, yes.

22 QUESTION: Suppose they took him next to Marion,  
23 Ohio. That's not the original place of imprisonment.

24 MR. CHRISTENSEN: Well, I think that liberally  
25 construing the statute as Article IX calls for means

1     returning him to the original jurisdiction, not just to  
2     the original --

3             QUESTION: Well, you live by the sword and you  
4     know what else you do, if you're going to believe in  
5     strict construction here. There's a kind of liberal  
6     construction in favor of the prisoner?

7             MR. CHRISTENSEN: Yes.

8             QUESTION: Where -- have we said that or --

9             MR. CHRISTENSEN: Numerous courts have said that  
10    this is remedial, it benefits the prisoner and ought to be  
11    construed in favor of the prisoner. The council on State  
12    governments also has stated this although it was a number  
13    of years after it originally proposed the legislation.

14            QUESTION: What's the authority of the council  
15    of State Governments as to interpreting a written  
16    document?

17            MR. CHRISTENSEN: It's somewhat weaker than most  
18    legislative bodies or so on, but it is the group that  
19    originally proposed the legislation and originally drafted  
20    it. It's the source of the IAD which has been adopted in  
21    nearly every State, there are 48 states plus the Federal  
22    government that have adopted this.

23            QUESTION: And what was the position that the  
24    council of State Governments took, that it should be  
25    liberally construed to accomplish its beneficent ends or

1 something like that?

2 MR. CHRISTENSEN: Liberally construed in favor  
3 of the prisoner as a remedial statute.

4 QUESTION: But of course it had more purposes  
5 than one, did it not? I mean, I don't think you would  
6 find a whole lot of States signing onto it if it did  
7 nothing but benefit prisoners.

8 MR. CHRISTENSEN: Yes, Mr. Chief Justice, it  
9 also benefits the States, and that's what Ms. Stewart  
10 acknowledged in that it provides them with an expedited  
11 mechanism for getting prisoners without going through  
12 lengthy extradition procedures. It is of benefit to them,  
13 and that's why I mentioned this implied consent, that if  
14 they go through, join this agreement, go through the  
15 procedures to get the person and are enjoying those  
16 benefits, they also have to live by what --

17 QUESTION: Yes, and that's true of prisoners,  
18 too, I suppose, responding to Justice Kennedy's  
19 hypothetical, they return him to the original  
20 jurisdiction.

21 MR. CHRISTENSEN: And in fact most cases from  
22 all jurisdictions that refer to Article III where it is  
23 the prisoner who initiates the transfer, they have to  
24 follow the procedures quite strictly or they don't, do not  
25 get the benefits. It's -- part of my argument has been



1     that what's fair for one side --

2                   QUESTION:  Sauce for the goose is sauce for the  
3     gander?

4                   MR. CHRISTENSEN:  Precisely.

5                   QUESTION:  He doesn't actually literally, if you  
6     take, if you were a literalist, and you look at (e), it  
7     doesn't say where it begins to run.  It says if trial is  
8     not had on any indictment.  It doesn't say -- well, I  
9     mean, when if not trial?  It just doesn't say.  So we have  
10    quite a lot of flexibility as to what we might read in  
11    there.  I take it that they want to us say, in any  
12    instance where imprisonment in the original State is  
13    significantly interrupted, then if.  All right, so what's  
14    your candidate for when it starts to run?  You want to say  
15    in Justice Kennedy's hypothetical, if subject to a  
16    detainer the prisoner puts one foot out the door and  
17    immediately runs back, then if trial is not had before he  
18    ran back, I mean, how do we fill in that?  That's a total  
19    blank.

20                  MR. CHRISTENSEN:  Well, that running back would  
21    be the waiver, which Justice Stevens had proposed as --

22                  QUESTION:  But my question is, what triggers  
23    (e)?  (E) doesn't say what triggers it.

24                  MR. CHRISTENSEN:  The trigger is the change, the  
25    temporary custody pursuant to a detainer.  If temporary

1 custody is taken by the receiving State and --

2 QUESTION: All right, now, what they want to do  
3 is just say you're right, if significant temporary custody  
4 where significant is interpreted in light of the purposes  
5 of the law, that's what they want to do, and so literalism  
6 isn't going to help because neither literally is there.

7 MR. CHRISTENSEN: Well, the legislative bodies  
8 that have adopted this have made a legislative  
9 determination here. There's no room for discretion in the  
10 statute. They say --

11 QUESTION: I'm sorry, my question is, what  
12 language says that you said if and your language was what?  
13 If there is an interruption. It doesn't say that in (e).  
14 There is no language in (e), if there is an interruption.  
15 You're making up the whole thing to read into it. By the  
16 way, I think you're right, something like that must be  
17 read into it, but literally where you get the words,  
18 you're reading into it.

19 MR. CHRISTENSEN: My wording is in IV(e), prior  
20 to being returned, there must be a trial prior to being  
21 returned to the --

22 QUESTION: I know prior to being returned, but  
23 once what, prior to being returned? Once he sets a foot  
24 out the door? There is nothing there that tells us when  
25 (e) begins to run. Once what? Once he leaves? Once he

1 leaves any day? Once he leaves to visit his grandmother?  
2 It's obviously not that. It's something.

3 MR. CHRISTENSEN: I believe that you have to  
4 read it in context, you have to go up to --

5 QUESTION: Yes, exactly.

6 MR. CHRISTENSEN: -- (c), where --

7 QUESTION: You have to read it in context, and  
8 now my question is what are the words that you're reading  
9 in in context?

10 MR. CHRISTENSEN: From IV(c), the arrival of the  
11 prisoner in the receiving State.

12 QUESTION: All right, maybe that's it. I can  
13 read those, but you don't want to say -- okay, maybe  
14 that's the answer.

15 MR. CHRISTENSEN: I think so. I think also  
16 since we are on the time period that's contained in IV(e),  
17 the 120 days, I believe that that also militates against a  
18 finding of harmless error or a requirement that one has to  
19 show prejudice. Certainly 120 days is in the vast majority  
20 of cases is going to be nowhere near what the  
21 constitutional speedy trial requirement would be.

22 QUESTION: May I ask you, if your reference to  
23 the arrival of the prisoner in the receiving state in  
24 subparagraph (c) is that your response to Justice  
25 Kennedy's hypothetical, too, about the hurricane or the

1 snowstorm in Alabama. But you have to arrive before --

2 MR. CHRISTENSEN: Justice Stevens, I believe  
3 that it has to be that if they cross the State line that  
4 --

5 QUESTION: Well, but there are many cases in  
6 which the Federal prison is right across the street from  
7 the State prison.

8 MR. CHRISTENSEN: Yes, and there is a special  
9 provision in the IAD for that, Justice Kennedy, where the  
10 Federal Government can maintain custody of a prisoner and  
11 merely make them available for trial without turning over  
12 the temporary custody. That's not the situation here, but  
13 that -- in those cases, that would be a perfectly good,  
14 logical ending, keeping with the statute.

15 QUESTION: Could there have been an argument  
16 here that there was, I don't know, continuous constructive  
17 custody by the Federal government?

18 MR. CHRISTENSEN: No, he was in the custody of  
19 the heriff of Covington County.

20 QUESTION: Because they delivered him over to  
21 those --

22 MR. CHRISTENSEN: Yes, sir. Now, if they had  
23 wanted to send a Federal marshal with him, that would have  
24 been one of the prerogatives of the Federal Government as  
25 a sending State in this situation. That's not available

1     when it's a State-to-State transfer, but it is when the  
2     Federal Government is the sending State.

3             I would like to talk about the Federal circuits  
4     because I'm, even though I concede that there is a  
5     majority that have said something to the effect that a  
6     brief transfer doesn't harm a prisoner's rehabilitation,  
7     but I find that those statements are in many cases are  
8     dicta or not persuasive, and these cases all tend to be  
9     somewhat incestuous also in that they rely upon one  
10    another. The earliest is a Chico case from the Second  
11    Circuit which would not have --

12            QUESTION: Mr. Christensen, can I ask you,  
13    before you get on to that, why one couldn't read the  
14    statute as has been proposed by the appellant to say the  
15    don't return until trial is over kicks in only when the  
16    transportation is for purposes of trial, that is the Act  
17    simply does not apply to bringing somebody in for pretrial  
18    matters.

19            MR. CHRISTENSEN: I would disagree with that,  
20    Justice Ginsburg, because the Act itself says that it  
21    applies when there's a detainer and someone has been  
22    brought in for purposes of prosecution. Now, if you've  
23    placed a detainer on someone for questioning or as a  
24    witness in another case, the Interstate Agreement on  
25    Detainers does not apply to that because it only applies

1 to detainers that are based on untried indictments,  
2 informations, and complaints, but I simply --

3 QUESTION: Well, how could -- how could this  
4 have been done?

5 MR. CHRISTENSEN: An arraignment is certainly  
6 part of a prosecution.

7 QUESTION: This very case, here's the prosecutor  
8 says I want him here for one day. To avoid this trap of  
9 it, is there a procedure, State-to-State for bringing  
10 somebody up for purpose other than trial?

11 MR. CHRISTENSEN: Certainly. You can have a  
12 hearing and ask the prisoner to waive. If he waives -- in  
13 fact, this Court in United States versus Mauro, which is  
14 the first IAD case that this Court has dealt with, the  
15 Court clearly agreed with the idea that Ford had waived  
16 the antishuttling provision. He had not waived the speedy  
17 trial provision, and so this Court affirmed the dismissal  
18 of his indictment, and I would also point out that that  
19 was without any requirement that he had been prejudiced by  
20 this and he was brought to trial within about five months  
21 of having been transferred into the receiving State, which  
22 is just over the 120 days, so I would suggest to this  
23 Court that you have dealt with this issue of prejudice  
24 before and resolved it in favor of the prisoners.

25 QUESTION: I don't really see, still, the theory

1 of (e). I mean, what are they trying to do? Once the  
2 person gets out, you know, once you take the prisoner in  
3 for a preliminary proceeding or something, it interferes  
4 with his rehabilitation in the initial prison more rather  
5 than less to keep him in the State.

6 MR. CHRISTENSEN: Well, and that's a presumption  
7 that is perhaps intuitive but one that I'm not convinced  
8 is borne out by the facts, and in the record below here  
9 there simply is nothing. That issue was not dealt with.

10 QUESTION: I'm asking for your experience as a  
11 criminal lawyer.

12 MR. CHRISTENSEN: Mr. Bozeman has informed me  
13 that he lost his position as a barber in the prison at  
14 Mariana because of the one day transfer, so he was  
15 prejudiced, although that's not in the record below. The  
16 State below --

17 QUESTION: That's not what I mean. I don't mean  
18 in this case. I mean in your general experience, having  
19 looked at all these statutes, what's your view of what the  
20 theory of this thing is? How is it really supposed to work  
21 because intuitively I'd think that a person who comes from  
22 a preliminary hearing, the longer he stays away, the worse  
23 things are, but this provision seems to force the State to  
24 keep him away.

25 MR. CHRISTENSEN: Well, no more than 120 days,

1 Justice Breyer, and again I mentioned the short time  
2 periods that are involved here. It envisions, I believe,  
3 those time periods because they're sufficient to take care  
4 of all pretrial matters within that time. He's sitting  
5 there, he gets it taken care of, and of course Article I,  
6 in stating the purposes, says that the purpose is to  
7 resolve detainers. Bring someone in for arraignment, send  
8 him back, the detainer is still there, and the harm caused  
9 by the detainer is still there, and that is --

10 QUESTION: But if you're bringing somebody in  
11 just for trial, presumably you're going to get counsel  
12 appointed if he's indigent only at the time he's brought  
13 in for trial, and is that going to be enough time for  
14 counsel to prepare?

15 MR. CHRISTENSEN: Well, again, with the 120 days  
16 there is a provision that continuances can be granted for  
17 good cause shown. Now, in the antishuttling clause, there  
18 is no parallel construction there with the State. There's  
19 no provision that we're going to shuttle you over your  
20 objection. However, the Federal Government provision  
21 would allow that by reading the Federal amendment, the  
22 Article IX, which says if there's a hearing and the court  
23 orders that you're sent back, that's not a violation, but  
24 that's only applying to the Federal Government as a  
25 receiving State. It's not in the main body of the IAD,



1 and I think that that is significant in terms of the  
2 statutory construction. In fact, I think it would be to  
3 run rough shod over the text to simply ignore it.

4 QUESTION: Well, I did have the same question as  
5 the Chief Justice. It seemed to me that earlier the  
6 prisoner sees his new State counsel and begins working on  
7 the case and then the more time before the case starts,  
8 the better off the prisoner is.

9 MR. CHRISTENSEN: The more time to confer with  
10 his counsel or? I certainly would think that. In this  
11 case there was very little opportunity to confer with  
12 counsel.

13 If I could turn back to these Federal cases, the  
14 Chico case, Mr. Chico was transferred for arraignment,  
15 transferred back, and then transferred back to plead  
16 guilty. He did not appeal. He made no objection to the  
17 transfer. He was transferred pursuant to a writ of habeas  
18 corpus ad prosequendum rather than as a detainer. This  
19 was before this Court had dealt with Mauro. Then when he  
20 had a probation violation, he filed a petition for writ of  
21 habeas corpus asking that the IAD be recognized. In Reed  
22 v. Farley, this Court has held that habeas corpus is not  
23 something that can be used to recognize violations of the  
24 IAD, so that would simply not apply.

25 This case is then cited as justification in

1 another Second Circuit case, the Roy case, Mr. Roy had so  
2 many detainers from so many different jurisdictions that I  
3 feel quite certain that the Second Circuit was looking for  
4 any reason whatsoever to keep from excusing him. Mr. Roy  
5 had another case in the Seventh Circuit which referred to  
6 the Second Circuit case and to the Chico case, and in fact  
7 the same transfer was complained about in the Second  
8 Circuit and in the Seventh and the Second Circuit cases.

9           The Taylor case that Mr. Lamken mentioned does  
10 say that a brief transfer doesn't happen, but the prisoner  
11 there asked to be transferred back to State custody.  
12 There's quite clearly a waiver, although the Court for  
13 some inexplicable reason doesn't seem to reach that.  
14 That's a First Circuit case. The Fifth Circuit Sassoon  
15 case is also was raised on habeas corpus, and in fact it  
16 was raised on habeas corpus in the State courts. Mr.  
17 Sassoon had not appealed the issue following his  
18 conviction.

19           Sixth Circuit Taylor case, many of these people  
20 for some unknown reason seem to be named Taylor, the court  
21 there held that since he was held in a jail and hadn't  
22 been transferred to a prison yet, that there was no  
23 violation, and then adds, and besides, all these other  
24 courts hold that quick, temporary transfers do not violate  
25 the IAD. It mentions Article IX of the Federal amendment

1 in a footnote but doesn't rely on it. I find it somewhat  
2 inexplicable that these courts have this Federal amendment  
3 available to them, but it's evidently not being used  
4 because none of the opinions that I've found have done  
5 more than mention it in a footnote.

6 QUESTION: Well, were these Federal prisoners?

7 MR. CHRISTENSEN: Yes, sir.

8 QUESTION: So they could get, the State could  
9 get, the Government could get the advantage of the Federal  
10 amendment?

11 MR. CHRISTENSEN: Yes, all these are cases where  
12 the United States was the receiving State. The Eighth  
13 Circuit Baxter case mentions this but it's again citing  
14 Chico, Taylor, and Roy, but it really resolves the issue  
15 on the fact that Mr. Baxter was transferred by writ of  
16 habeas corpus ad prosequendum before a detainer had been  
17 lodged, so it really doesn't add to the argument other  
18 than to saying, yes, us, too, and the Ninth Circuit  
19 Johnson case simply comes down saying well, we've looked  
20 through and this is what the majority thinks, and we think  
21 that also.

22 I would also point out that another reason I  
23 believe this cannot be de minimis or harmless error is  
24 that we tend to focus in on the phrase, the Court shall  
25 enter an order dismissing with prejudice, but there's also

1 a self-executing clause in there, it seems that by the  
2 transfer itself, ex operi operato, the indictment becomes  
3 without further effect. Now, that is something that I  
4 believe that it requires an objection prior to trial to  
5 preserve that, just like any sort of defect in an  
6 indictment would require, yet it's not something that you  
7 can apply harmless error or de minimis analysis to.

8 If the -- it seems somewhat redundant to have,  
9 then having the court enter a ruling dismissing the charge  
10 but I believe that that's to prevent the prosecutor from  
11 coming back and reindicting on these same charges, and it  
12 also recognizes that there really is no indictment,  
13 self-executing clauses being somewhat difficult to enforce  
14 otherwise.

15 I would also point out, it's not very difficult  
16 for the States to follow these rules. It's laid out quite  
17 clearly. In this particular case, as I have set out in  
18 the red brief, the prosecutor had ample opportunity to  
19 know what the statute said and to follow the rules. She  
20 even had notice from Mr. Bozeman himself who had filed a  
21 pro se motion objecting to a prior transfer that said the  
22 IAD requires dismissal. It's -- to excuse that is simply,  
23 I believe, would be saying that a prosecutor can do  
24 whatever he or she pleases and that they hope to be able  
25 to get away with it by claiming that it's harmless.

1           As a practical matter, a trial court judge is  
2 almost always going to rule that an error is harmless.  
3 He's going to rule against the prosecutor unless there is  
4 some real teeth given to the wording of the statute.

5           QUESTION: Against the prosecutor or against the  
6 defendant?

7           MR. CHRISTENSEN: Against the defendant. Well,  
8 it is a sanction, I suppose, against the prosecutor and  
9 they understandably don't like that because it's so rare  
10 that that happens, and as a defense lawyer, it gives me  
11 that small bit of cheer to occasionally have the upper  
12 hand. And also, this statute provides a bright line. I  
13 think that there are going to be endless hearings on  
14 whether or not harm has taken place if this Court rules  
15 that harmless error can apply. If you rule that the  
16 strict language applies, the Court needn't -- merely see,  
17 has there been a transfer, and if so, has there been a  
18 waiver.

19           QUESTION: I'm not sure what the harm consists  
20 of if we had to look for harmless error, what would we  
21 look for? Losing a job as a barber?

22           MR. CHRISTENSEN: I think that it would be  
23 something along the lines of rehabilitation, even though  
24 this purpose of the IAD is to resolve detainers, I think  
25 the background behind that is that detainers interfere

1 with rehabilitation. Thank you.

2 QUESTION: Thank you, Mr. Christensen.

3 Ms. Stewart, you have three minutes remaining.

4 REBUTTAL ARGUMENT OF SANDRA JEAN STEWART

5 ON BEHALF OF THE PETITIONER

6 MS. STEWART: Thank you, Mr. Chief Justice.

7 Just a few points. I wanted to point out, the respondent  
8 has conceded that there are some exceptions to the actual  
9 wording of section, of Article IV(e), he has conceded that  
10 the language is not that clear and that there might have  
11 to be some construction of that statute in order to make  
12 it effectuate its purposes.

13 Also, it's very important to point out that the  
14 agreement was not just for the benefit of the prisoner  
15 here, this agreement was entered into for the benefit of  
16 the party States as well as for the benefit of the  
17 prisoner, and that purpose is specifically stated in  
18 Article I, and it is one of the purposes that needs to be  
19 considered in determining whether or not a harmless error  
20 analysis should apply.

21 In response to Justice Stevens' question about  
22 waiver and whether or not we could just have the prisoner  
23 waive, I think it's important to point out that the  
24 respondent has argued that one of the problems with  
25 implementing harmless error is it would lead to additional

1 litigation in the trial courts, and I would point out that  
2 if we have a hearing every time we need to determine  
3 whether or not the prisoner wants to waive the right, then  
4 again we're going to have additional litigation, so either  
5 way we're going to come up with additional litigation.

6 In answer to Justice Breyer's question about  
7 what's the purpose behind Article IV(e), I think it's  
8 simply meant to implement Article IV(c), and it's a way to  
9 bring the prisoner over, and we need to have him here,  
10 dispose of the charges, and bring him back, but I don't  
11 think the purpose is to give the prisoner some sort of  
12 benefit, some sort of way to have the charges disposed of  
13 short of a trial.

14 Finally, Mr. Bozeman made no argument below  
15 about harm and that he suffered any harm, so it should not  
16 be considered here, and if this Court has no further  
17 questions, I thank you.

18 CHIEF JUSTICE REHNQUIST: Thank you, Ms.  
19 Stewart.

20 The case is submitted.

21 (Whereupon, at 12:03 p.m., the case in the  
22 above-entitled matter was submitted.)  
23  
24  
25