No. 00-492

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Writ of Certiorari to the
Supreme Court of Alabama

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Does transfer of federal custody to state custody for one day for purposes of arraignment, and transfer back to federal custody before the disposition of outstanding charges, a technical violation of the Interstate Agreement on Detainers, require dismissal of pending charges, even when there is no harm to the prisoner either alleged or demonstrated?

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The decision of the Alabama Court of Criminal Appeals is unpublished. (Pet. App. 15–26.) The decision of the Alabama Supreme Court is not yet reported, but can be found at 2000 WL 429936. (Pet. App. 1–14.)

STATEMENT OF JURISDICTION

The decision of the Alabama Supreme Court reversing Bozeman's convictions was entered on April 21, 2000. An application for rehearing was overruled on June 30, 2000. (Pet. App. 30.) The State filed a petition for a writ of certiorari on September 28, 2000. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The following provisions of the Interstate Agreement on Detainers Act, also referred to as the Uniform Mandatory Disposition of Detainers Act, which is codified in Alabama in Sections 15-9-80 through 15-9-88 of the Code of Alabama 1975 (set out in full at Pet. App. 32–47):

Article I.

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in

securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

. . . . .

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdic-

tion of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the

arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

. . . . .

Article IX.

1. This agreement shall be liberally construed so as to effectuate its purposes. . . .

Section 2111 of Title 28 of the United States Code:

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

Rule 45 of the Alabama Rules of Appellate Procedure:

> No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected the substantial rights of the parties.

STATEMENT OF THE CASE

This case arises out of the transfer of custody of Michael Bozeman between federal authorities and state authorities in Covington County, Alabama, and involves the application of the Interstate Agreement on Detainers (IAD), to which both the federal government and the State of Alabama are parties.

A. Relevant Events Occurring Prior To Trial

1. Facts On Which The Underlying Convictions Are Based

Michael Herman Bozeman was extremely jealous when it came to his ex-wife, and he continually harassed and threatened her. (Record 23–33, 46–49, 51–59, 79–82.) Around midnight, on June 14, 1995, after drinking almost two quarts of Lord Calvert whiskey, Bozeman and Jeff Anderson drove around the City of Opp, Alabama, in Anderson's van. (Record 126–28.) Bozeman brought with him a .22 caliber rifle that he had a reputation for keeping in his possession at all times. (Record 25, 129–30.) At Bozeman's instruction, Anderson drove by the townhouse of Bozeman's former wife, Carmen Yvonne Bozeman. (Record 132–33.) When they approached the townhouse, Bozeman stuck his .22 caliber rifle out of the window and fired shots into the bedroom of the residence, where his former wife was sleeping. (Record 33–36, 133–40.) Fortunately, Ms. Bozeman was not hit by the gunfire. (Record 36.)

Bozeman then directed Anderson to drive to the residence of Bozeman's former sister-in-law, Linda Weed. (Record 133–34.) Again, Bozeman stuck the

.22 rifle out of the van window and opened fire on the residence. (Record 133–40.) Ms. Weed was not at home at the time of the shooting. (Record 59–60.)

Bozeman then ordered Anderson to drive to the home of Melton Williams, a man who had recently begun dating Bozeman's former wife. (Record 134, 141.) Bozeman repeatedly shot into the bedroom of Mr. Williams's residence, where Mr. Williams was sleeping, (Record 83–85, 86, 180), and into Mr. Williams's vehicles, (Record 85–86, 180). Mr. Williams was also fortunate that he was not hit by the gunfire.

2. Facts Surrounding Bozeman's Transfers Between Federal Custody And State Custody

On June 15, 1995, the day after the shooting incidents, Bozeman was arrested on a federal charge of intimidating a witness, and he was placed in the county jail in Covington County, Alabama, by federal authorities.[1] (App. 54–55, 60, 66.) On June 16, 1995, he was also arrested on federal charges of conspiracy to possess with the intent to distribute methamphetamine and his custody was transferred to federal authorities, but he was placed in the county jail in Montgomery County, Alabama. (App. 23, 62–63; Record 102.)

In September of 1995, while Bozeman was in federal custody, he was indicted by a Covington

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[1] The record does not reflect whether these charges were related to the shooting incidents underlying this case.

County Grand Jury for the unlawful possession or receipt of a controlled substance, all stemming from conduct that occurred in May of 1995. (Case No. CC-95-350) (App. 62–64.) Temporary custody of Bozeman was obtained from the federal authorities by Covington County authorities in November 1995 for the specific purpose of arraignment on the state drug charge, and Bozeman was arraigned and appointed counsel on that charge. (App. 62–64, 95–98.) After his arraignment and before disposition of the state drug charge, Bozeman was returned to the custody of the federal authorities. (App. 66–67.) In June of 1996, the state drug charge was dismissed. (App. 66–67.) At no time before his state drug charge was dismissed did Bozeman raise any allegations that his transfer from federal custody to state custody and back to federal custody violated the Interstate Agreement on Detainers.

Thereafter, on September 20, 1996, Bozeman was indicted in Covington County under state law on two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. (Case No. 97-16) (App. 4–9, 61–62.) These charges are the charges arising from the June 14, 1995, incident in which Bozeman fired into the homes of his ex-wife, his former sister-in-law, and his ex-wife's boyfriend. They are also the charges that form the basis of the detainer in this case.

On October 10, 1996, the Covington County District Attorney requested that a detainer be placed on Bozeman so that he could be arraigned in Covington County on the shooting charges. (App. 64, 100–02.) The Covington County District Attorney

specifically requested that Bozeman be made available for his upcoming arraignment on the shooting charges and requested that all necessary forms be mailed to her for completion and returned to the proper federal authorities in sufficient time for the State permissibly to obtain Bozeman. (App. 100–02.) The federal authorities in Atlanta responded that a detainer had been filed on Bozeman pursuant to the District Attorney's "October 29, 1996" request. (App. 64–65.) The record contains a notice to Bozeman of untried indictments and the right to request disposition of the charges in the shooting cases pursuant to Article III of the IAD, which he signed on November 4, 1996, and which acknowledges his receipt of the notice. (App. 34–36.)

Because Bozeman had been transferred from the Atlanta Federal Penitentiary to the federal prison in Marianna, Florida, the Covington County District Attorney's request for a detainer did not reach Bozeman until January of 1997. (App. 64–66.) On January 8, 1997, the District Attorney sent a letter and temporary custody form to the federal prison authorities in Marianna, Florida. (App. 98–100.) The letter and form indicated that Bozeman was needed for arraignment and appointment of counsel in the shooting case, case number CC-97-16, and that Bozeman would be picked up on January 15, 1997 and returned to federal authorities one day later, on January 16, 1997. (App. 98–99.) It was not until January 23, 1997, however, that temporary custody of Bozeman was transferred from federal authorities to Covington County authorities. (App. 56–57, 58, 67.) The next day, January 24, 1997, Bozeman was arraigned on the shooting charges and custody of Bozeman was transferred back to the federal authorities. (App. 26–31, 67.)

3. Facts Concerning Bozeman's Assertions That The IAD Had Been Violated

On the day he was brought to Covington County for arraignment, Bozeman filed a pro se motion to dismiss his indictment in which he asserted as grounds for dismissal violations of Articles IV(e) and V(e) of the Interstate Agreement on Detainers. (App. 18–25.) In that motion, Bozeman did not allege that the IAD would be violated if he were returned to federal custody before he was tried on the pending charges, but instead claimed that the IAD had already been violated when he was transferred in November 1995 for arraignment on the state drug charge. (App. 18–25.) Bozeman argued that, because the State had failed to dispose of the shooting charges in 1995 when he was brought back to Covington County, the IAD required that the shooting charges be dismissed. (App. 18–25.) When Bozeman was brought back for arraignment on the drug charge in November 1995, however, the shooting indictments had not yet been returned by the Covington County Grand Jury and, as to those charges, there were no "untried indictments, informations or complaints which form[ed] the basis of [that] detainer or detainers." *See* Article V(d) of the IAD. (App. 4–9, 61–62.)

Bozeman was arraigned on the shooting charges on January 24, 1997. (App. 26–31.) At that arraignment, appointed counsel for Bozeman indicated that there were some possible questions about whether the IAD had been properly followed and he requested permission to further investigate and research that issue. (App. 27.) At the time of that discussion, there had been no violation of the IAD as to the pending charges; specifically, Bozeman had not yet been returned to federal custody. Neither defense counsel

nor Bozeman informed the trial judge at that time that a return of Bozeman to federal custody before he was tried on the pending charges would result in a violation of the IAD, nor did they object to his return to federal custody. (App. 27–31.) Instead, counsel for Bozeman agreed to file any motions objecting to violations of the IAD at some later time. (App. 27.) Bozeman was returned to federal custody that same day. (App. 26–31, 67.)

Approximately one month later, on February 21, 1997, counsel for Bozeman filed Defendant's Motion To Dismiss, requesting that the indictment against Bozeman charging him with the several shooting violations be dismissed. (App. 32–36.) In support of his motion, Bozeman alleged that Article IV(e) of the IAD required dismissal of the indictment because he had been brought to Covington County to face the shooting charges and he had thereafter been returned to his original place of incarceration prior to being tried on the shooting charges. (App. 32–33.) In that motion, Bozeman did not allege that he was prejudiced in any way by the violation of the IAD. On February 25, 1997, Bozeman filed a Memorandum Brief In Support Of Defendant's Motion To Dismiss, again alleging violations of the IAD. (App. 37–42.) Bozeman did not allege any prejudice in that memorandum either.

On February 27, 1997, Bozeman was again released from federal custody to the custody of Covington County officials, this time for a trial on the shooting charges. (App. 57, 67–68, 86–87.) Before the trial began, the court held an in-chambers discussion regarding Bozeman's motions to dismiss on the grounds that the IAD had been violated. (App. 45–47.) Again, Bozeman failed to allege that he had been

prejudiced in any way by his previous one-day transfer. The trial court denied the motions to dismiss at that time so that the trial could proceed, but it reserved to Bozeman the right to put on testimony and evidence in support of his motions after the completion of the trial and specifically reserved to him the right to raise the issue by post-trial motion. (App. 45–47.)

Bozeman's trial proceeded on February 27, 1997, well within 120 days of Bozeman's first arrival in Covington County for arraignment on the pending shooting charges on January 24, 1997. The jury convicted Bozeman on all five counts of the indictment on February 28, 1997. (App. 114–15; Record 192–93.) At the conclusion of the trial, the trial court ordered that Bozeman remain in the custody of Covington County officials until the questions raised on the IAD were resolved and until sentencing was completed. (App. 48–49.)

On March 12, 1997, a hearing was held on Bozeman's motions to dismiss his indictment based on alleged violations of the IAD. (App. 53–84.) At that hearing, Bozeman did not present any testimony or make any argument that he was harmed in any way by the one-day transfer from federal custody to Covington County custody and back to federal custody. (App. 53–84.)

On April 25, 1997, Bozeman filed a Renewal Of Defendant's Motion To Dismiss in which he again asserted violations of the IAD. (App. 109–10.) In this motion, Bozeman added to his prior arguments concerning the IAD an assertion that Article V(e) was being violated by the failure to return him to federal custody "at the earliest possible time consonant with the purposes of the agreement." In this motion,

Bozeman argued that the failure to return him to federal custody was prejudicing him because, by failing to return him, "the State is interfering with the rehabilitation which would be taking place if Defendant were in a federal penitentiary. This is clearly contrary to the spirit of IAD." (App. 110.) This was the first time that Bozeman had alleged any prejudice from a violation of the IAD, and this allegation had nothing to do with his prior one-day transfer of custody.

On May 16, 1997, the Covington County Circuit Court judge denied Bozeman's motions to dismiss the indictment in a written order. (Pet. App. 27–29.) The judge found that the only issue before him was whether Article IV of the IAD had been violated. (Pet. App. 27.) Finding that the goals of the IAD had been met and that Bozeman had failed to demonstrate any prejudice, the trial judge denied the motions to dismiss. (Pet. App. 28–29.) Specifically, the trial judge found, in pertinent part:

> It seems to me that defendant was brought to Covington County on both the above mentioned occasions to attend to short pre-trial matters, not anticipated to require his extended presence. It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in a county jail.

. . . . .

> To paraphrase another court, at the hearing of this matter there was a failure of proof that the short transfers to Covington County interfered with defendant's participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge, and no dismissal is appropriate. The transfers involved in this case appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government. . . .

(App. 28–29.)

Bozeman was sentenced on May 21, 1997 to five concurrent ten-year sentences, those sentences to run consecutively to the federal sentence that Bozeman was then serving. (App. 116–19.) Also on May 21, 1997, Bozeman filed a Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial, in which he again asserted violations of the IAD by his failure to be tried on the shooting charges before being returned to the custody of federal officials. (App. 11–12.) It was in this post-trial, post-decision motion that Bozeman, for the first time, alleged prejudice from his one-day transfer. (App. 111–12.) Bozeman made the conclusive allegation that the one-day transfer denied him the opportunity adequately to consult with counsel prior to trial. (App. 111–12.)

B. The Alabama Court of Criminal Appeals

Bozeman timely appealed to the Alabama Court of Criminal Appeals. Among the issues raised in his brief was the argument that his January 1997 one-day transfer from federal officials to state officials and back to federal officials, without disposing of the pending indictment, violated the Interstate Agreement on Detainers. Noting that the transfer of Bozeman in this case did not interfere with the purposes of the IAD and that Bozeman had asserted no prejudice from the transfers until his appeal, and even then only perfunctorily so, the Alabama Court of Criminal Appeals rejected Bozeman's argument and affirmed Bozeman's convictions. *Bozeman v. State*, CR-96-1611, mem. op. at 4, 6 (Ala. Crim. App. May 8, 1998) (Pet. App. 19, 21–22, 26). Bozeman's application for rehearing in that court was overruled on June 19, 1998. (Pet. App. 31.)

C. The Supreme Court of Alabama

Bozeman applied to the Alabama Supreme Court for certiorari, which it granted on February 19, 1999. In his petition for a writ of certiorari, Bozeman's sole issue was his argument that there had been a violation of the Interstate Agreement on Detainers requiring dismissal of his indictment. On April 21, 2000, the Alabama Supreme Court, in a per curiam, 5 to 3 decision, reversed Bozeman's convictions, holding that the violation of the IAD required dismissal of Bozeman's indictment. *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000). (Pet. App. 1–10.) In doing so, the Alabama Supreme Court refused to consider the State's argument that Bozeman had not demonstrated any harm from the technical

violation of Article IV(e) of the IAD. *Id*. at 8. The Court also held that its conclusion was "consistent with the purpose of the Act to protect a prisoner's constitutional right to a fair and speedy trial," but in no way explained how the one-day technical violation of the IAD impacted, affected, or even implicated Bozeman's right to a fair or speedy trial. *Id*. at 8.

The State filed an application for rehearing emphasizing that the technical violation of the IAD did not require dismissal of the indictment because the purposes of the Act had not been defeated and that the court had erred in failing to apply a harmless error analysis to the issue. On June 30, 2000, the court rejected the State's rehearing application.

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SUMMARY OF THE ARGUMENT

The Interstate Agreement on Detainers (IAD) is an interstate compact within the Compact Clause of the United States Constitution and it is, therefore, subject to federal interpretation and federal law. Although Bozeman was tried in an Alabama court on Alabama charges and he appealed to the Alabama Supreme Court, the supreme court did not apply its harmless error rule because state law was allegedly preempted by federal law. Unfortunately, the supreme court erred by failing to apply the harmless error rule as a matter of federal law.

When Alabama enacted the IAD, the harmless error rule was firmly established as a part of federal law: it existed at common law, had been enacted as a federal statute, held applicable to most constitutional errors, held applicable to statutory violations, and held applicable on collateral review of convictions. In case after case, this Court has asserted a preference for application of the harmless error rule. It is against this backdrop that the Court must decide if harmless error applies to violations of the IAD.

Both case law from this Court and federal statutory law mandate that any error be reviewed to determine whether the error resulted in prejudice, whether that error is a constitutional error or a violation of a statute. The purposes behind the IAD also support a determination that harmless error applies to a violation of its provisions. In this case, where no harm contemplated by the IAD occurred from the technical one-day violation of Article IV(e) of the IAD, and where dismissal of the indictment would result in a windfall not contemplated by the Agreement, this Court should find that dismissal of the indictment was not

mandated in this case. The Alabama Supreme Court refused to apply the harmless error rule; its judgment should be reversed and Bozeman's shooting convictions should be reinstated.

ARGUMENT

A. When Analyzed in the Historical Setting in Which the IAD Was Passed, Harmless Error Was Meant to Apply to Violations of the IAD That Do Not Affect Substantial Rights.

The Interstate Agreement on Detainers is an agreement between 48 states, including the State of Alabama, the District of Columbia, Puerto Rico, the Virgin Islands, and the federal government. *Carchman v. Nash*, 473 U.S. 716, 719 (1985). "The [IAD] was drafted in 1956 by the Council of State Governments," *id*., and was adopted in 1978 by the State of Alabama, where it is now codified at sections 15-9-80 through 15-9-88 of the Code of Alabama 1975. (Pet. App. 32–47) The overriding purpose of the IAD is to encourage the expeditious and orderly disposition of untried indictments and to encourage the determination of the proper status of any and all detainers based on such charges, in order to eliminate uncertainties that obstruct programs designed to treat and rehabilitate prisoners. *See* Article I of the IAD. Alabama joined the IAD to meet the concerns expressed in the Agreement. 1978 Ala. Acts 590.

Michael Bozeman was tried in an Alabama circuit court in February of 1997 and convicted of crimes in violation of Alabama statute, specifically section 13A-11-61 of the Code of Alabama 1975. (App. 4–7, 114–

15.) He appealed those state convictions to the Alabama appellate courts where, ordinarily, those courts would apply the state harmless error rule to identified errors before determining reversal was necessary. *See* Rule 45 of the Alabama Rules of Appellate Procedure ("No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case . . . for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties."). In this case, however, the Alabama Supreme Court, recognizing that the IAD was a federal law subject to federal construction, did not apply the harmless error rule of Rule 45 because the court felt that that state law was preempted by federal law in this context. *See Ex parte Bozeman*, No. 1971759, 2000 WL429936, at *2 (Ala. Apr. 21, 2000). (Pet. App. 6) In fact, this Court has specifically held that, because the IAD "was intended to be a grant of consent under the Compact Clause, and because the subject matter of the Act is an appropriate subject for congressional legislation, . . . the Detainer Agreement is a congressionally sanctioned interstate compact the interpretation of which presents a federal question." *Cuyler v. Adams*, 449 U.S. 433, 442 (1981) (footnote omitted).

When the IAD was developed and enacted, the harmless error rule was deeply entrenched in federal jurisprudence. The idea that errors that did not affect the verdict should not result in reversal of convictions existed at common law. *See generally* 1 Wigmore, *Evidence* § 21 (Tillers rev. 1983); *see also*, *O'Neal v. McAninch*, 513 U.S. 432, 437 (1995) (referring to the "original common-law harmless-error" rule). In 1919,

Congress enacted the first federal harmless error statute, the predecessor to section 2111 of Title 28 of the United States Code, in response to widespread criticism that some appellate courts were reversing cases based on mere technical errors that did not affect the substantial rights of the parties, leading to inconsistent results in cases. *Kotteakos v. United States*, 328 U.S. 750, 757–62 (1946). In *Kotteakos*, the Court, assessing the federal harmless error statute and its application, held that it applied to more than mere technical errors and specifically applied to resolution of issues involving violations of federal statutes. 328 U.S. at 757–62. Thereafter, in *Chapman v. California*, 386 U.S. 18 (1967), the Court developed a harmless error rule to apply to constitutional errors, finding that, even though section 2111 was not meant to and did not apply to constitutional issues, harmless error analysis was the rule rather than the exception and should apply to constitutional errors. A harmless error rule was also developed to apply on collateral proceedings. *See Brecht v. Abrahamson*, 507 U.S. 619 (1993). In case after case, this Court has asserted a preference for application of harmless error analysis to errors that do not affect the substantial rights of the parties.

Moreover, all 50 states have harmless error rules, *see*, *Chapman v. California*, 386 U.S. at 22, including Alabama, Rule 45, Ala.R.App.P., demonstrating that the States as well as this Court have a preference for application of the rule to errors that do not affect the substantial rights of the parties.

The IAD was passed against this long history of a preference for the application of the rule of harmless error. This Court must now determine whether, in enacting the IAD, Congress intended the rule not to

apply to its provisions. *See*, *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975) (look to historical backdrop concerning award of attorneys' fees to determine whether Congress intended award of attorneys' fees where statute silent on matter); *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983) (same); *Bob Jones University v. United States*, 461 U.S. 574 (1983) (look to historical background concerning charitable purpose tax exemption). The only sensible and reasonable interpretation is that harmless error does apply to the IAD.

B. Harmless Error Analysis Is Applicable To The Evaluation Of Errors Involving Both The Constitution And Federal Statutes, Like The IAD.

As noted, in *Cuyler v. Adams*, 449 U.S. 433, 442 (1981), this Court held that the IAD is subject to federal interpretation. Because the IAD is subject to federal interpretation and federal law, those cases addressing the issue of harmless error involving the Constitution and federal statutes control. The Supreme Court of Alabama, therefore, erred when it failed to apply a rule of harmless error in this case.

"The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, . . . and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) (internal citation omitted); *accord*, *Rose v. Clark*, 478 U.S. 570, 577 (1986). Harmless error rules recognize the

necessity for preserving society's interest in the administration of criminal justice and the general rule that remedies should be tailored to the injury suffered. *Rushen v. Spain*, 464 U.S. 114, 117–18 (1983) (*citing United States v. Morrison*, 449 U.S. 361 (1981)).

In *Kotteakos v. United States*, 328 U.S. 750 (1946), this Court noted the purpose behind the federal harmless error rule: "to substitute judgment for automatic application of rules; to preserve review as a check upon arbitrary action and essential unfairness in trials, but at the same time to make the process perform that function *without giving men fairly convicted the multiplicity of loopholes which any highly rigid and minutely detailed scheme of errors, especially in relation to procedure, will engender* and reflect in a printed record." *Id*. at 759–60 (emphasis added). The Court continued that the federal harmless error rule came down to "a very plain admonition: 'Do not be technical, where technicality does not really hurt the party whose rights in the trial and in its outcome the technicality affects.' " *Id*. at 760.

In *Chapman v. California*, 386 U.S. 18 (1967), this Court held that the harmless error rule applies not only to statutory violations, like those in *Kotteakos*, but it also applies to federal constitutional errors. Noting that none of the state federal harmless error rules nor the federal harmless error rule distinguished between federal constitutional errors and statutory errors, the Court concluded that there were some constitutional errors which could be so unimportant and insignificant that they could be deemed harmless, not requiring automatic reversal of the conviction. *Id*. at 22. In reaching its conclusion, the Court noted that the harmless error rules of the various states and the federal rule served a very useful purpose in that they

blocked setting aside convictions for small errors that had little, if any, likelihood of changing the result of the trial. *Id*. This Court has recognized and applied the harmless error rule in myriad circumstances involving constitutional error. *See*, *e.g.*, *Neder v. State*, 527 U.S. 1 (1999) (where jury instructions failed to submit materiality issue, an element of the offense, to jury for consideration); *Arizona v. Fulminante*, 499 U.S. 279 (1991) (introduction at trial of coerced confession); *Pope v. Illinois*, 481 U.S. 497 (1987) (erroneous jury instruction on standard to be applied in determining whether material obscene); *Rose v. Clark*, 478 U.S. 570 (1986) (*Sandstrom* error); *Connecticut v. Johnson*, 460 U.S. 73 (1983) (*Sandstrom* error); *Hopper v. Evans*, 456 U.S. 605 (1982) (failure to give lesser included offense jury instruction in capital case); *United States v. Morrison*, 449 U.S. 361 (1981) (denial of Sixth Amendment right to counsel); *Oregon v. Hass*, 420 U.S. 714 (1975) (compulsory self-incrimination); *Coleman v. Alabama*, 399 U.S. 1 (1970) (denial of right to counsel at preliminary hearing); *Harrington v. California*, 395 U.S. 250 (1969) (*Bruton* error).

In addition to applying the harmless error rule in the very important area of constitutional analysis, this Court has also applied the harmless error rule to issues involving violations of federal statutes. *See, e.g.*, *Peguero v. United States*, 526 U.S. 23, 27–29 (1999) (violation of Rule 32(a)(2) of Federal Rules of Criminal Procedure); *United States v. Montalvo-Murillo*, 495 U.S. 711, 716–22 (1990) (violation of Rule 6 of Federal Rules of Criminal Procedure and 18 U.S.C. §§6002, 6003); *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255–56 (1988) (violation of Bail Reform Act of 1984, 18 U.S.C. § 3142 (e)); *United States v. Lane*, 474 U.S. 438 (1986) (violation of Rule 8 of the Federal Rules of Criminal Procedure); *Kotteakos v. United*

States, 328 U.S. 750 (1946) (violations of federal statutes concerning indictments and conspiracies).

In *United States v. Lane*, 474 U.S. 438 (1986), this Court noted that, since *Chapman v. California*, 386 U.S. 18 (1967), it had made it consistently clear that " 'it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations.' " 474 U.S. at 445 (internal quotation marks omitted). Finding that "the argument for applying harmless-error analysis is even stronger" in situations involving violations of statutes which "are not themselves of constitutional magnitude," the Court held that a violation of Rule 8 of the Federal Rules of Criminal Procedure did not require reversal under the facts of that case. 474 U.S. at 446. The Court went on to note that "[i]t is difficult to see any logic in the argument that although the harmless-error rule may be applicable to constitutional violations, it should not be applied to violations of mere procedural rules." *Id*. at 446 n. 9. This Court also noted the lack of logic in an argument that harmless error analysis can be applied to constitutional error but not to violations of statutes in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988), where it held: "It would be inappropriate to devise a rule permitting federal courts to deal more sternly with nonconstitutional harmless errors than with constitutional errors that are likewise harmless."

In *Brecht v. Abrahamson*, 507 U.S. 619 (1993), this Court answered the question of whether harmless error applies to collateral proceedings under section 2254 of Title 28 of the United States Code, despite Congress's failure to address the matter in the habeas corpus statute, in the affirmative. The Court, noting that the habeas corpus statute was silent on the

application of the harmless error rule or the specific standard of harmless error review required, 507 U.S. at 631, and that it was generally reluctant to draw inferences where Congress had failed to act, 507 U.S. at 632, nonetheless fashioned a harmless error rule to apply on collateral review. In reaching its conclusion, the Court held:

> In the absence of any express statutory guidance from Congress, it remains for this Court to determine what harmless-error standard applies on collateral review of petitioner's . . . claim. We have filled the gaps of the habeas corpus statute with respect to other matters, . . . and find it necessary to do so here. As always, in defining the scope of the writ, we look first to the considerations underlying our habeas jurisprudence, and then determine whether the proposed rule would advance or inhibit these considerations by weighing the marginal costs and benefits of its application on collateral review.

Id. at 633 (internal citations omitted).

Just as the habeas corpus statute was silent on the issue of whether harmless error applied to its provisions, the IAD is silent on that issue. Even though the IAD is silent on this issue, however, this Court should, as it did in *Brecht*, find that the harmless error rule applies because application of the harmless error rule to the IAD would best advance the purposes of the IAD, the costs to the prisoner would be nil, and the benefits to society great.

Moreover, in construing the IAD, this Court must do so against this historical backdrop establishing a preference for the application of harmless error. In case after case, this Court has emphasized that, in construing statutes that are silent as to the application of firmly rooted legal principles, the statute must be interpreted in a way that is most consistent with those established principles. *See, e.g., Beck v. Prupis*, 120 S. Ct. 1608, 1615–17 (2000) (RICO interpreted against backdrop of "well-established common-law civil conspiracy principles"); *United States v. A Parcel of Land*, 507 U.S. 111, 127–29 (1993) (forfeiture provisions of Comprehensive Drug Abuse Prevention and Control Act interpreted against backdrop of common law forfeiture rules); *Wyatt v. Cole*, 504 U.S. 158, 163–64 (1992) (whether qualified immunity available defense for private defendant in §1983 action determined against backdrop of common law tort immunity); *Moskal v. United States*, 498 U.S. 103, 108–19 (1990) (construing term "falsely made" in 18 U.S.C. §2314 against backdrop of common law definition); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975) (construing whether party entitled to attorneys' fees under Mineral Land Leasing Act or National Environmental Policy Act of 1969 against backdrop of common law right to attorneys' fees). There is nothing in the IAD to indicate that the drafters of that legislation meant to change the established precedent concerning harmless error. Construing the IAD against this backdrop, harmless error should apply to its provisions.

Other opinions from the Court bolster the conclusion that harmless error applies to the IAD. In *Reed v. Farley*, 512 U.S. 339 (1994), a majority of this Court held that a violation of the 120-day rule of Article IV(c) of the IAD is not cognizable in a federal

habeas corpus action brought under 28 U.S.C. § 2254 where the petitioner neither objected at the time his trial date was set, nor suffered any prejudice as a result of the commencement of his trial beyond the 120 days set in the rule. The IAD provides that violation of the 120-day rule, like violation of the anti-shuffling provision at issue here, requires dismissal of the indictment with prejudice. Referring to the statutory violation in that case as an "unwitting judicial slip," Justice Ginsburg found that the violation in that case "ranke[d] with the nonconstitutional lapses we have held not cognizable in a postconviction proceeding." 512 U.S. at 349. Moreover, Justice Scalia, in his concurring opinion, also rejected the availability of habeas review for violation of Article IV(c) of the IAD. Addressing the issue of whether habeas review should be available to the procedural violation in that case, Justice Scalia wrote:

> The class of procedural rights that are not guaranteed by the Constitution (which includes the Due Process Clause), but that nonetheless are inherently necessary to avoid a 'complete miscarriage of justice,' or numbered among 'the rudimentary demands of fair procedure,' is no doubt a small one, if it is indeed not a null set. The guarantee of trial within 120 days of interjurisdictional transfer unless good cause is shown — a provision with no application to prisoners involved with only a single jurisdiction or incarcerated in one of two States that do not participate in the voluntary IAD compact — simply cannot be among that select class of statutory rights.
>
> . . . . .

> If there was ever a technical rule, the IAD's 120-day limit is one.

Id. at 357–58.

Much like the 120-day rule of Article IV(c), the anti-shuffling provision of Article IV(e) is a technical rule. And just as habeas should not be available to review such a violation because it is a mere procedural rule, the harmless error rule should be available to review a claim of error under that provision.

In *New York v. Hill*, 120 S. Ct. 659 (2000), this Court addressed the issue of whether a prisoner could waive violation of the 180-day provision of Article III(a) of the IAD by merely complying with a trial date set beyond the 180-day period and found that he could. In rejecting Hill's argument, this Court noted that no provision of the IAD specifically addressed the issue of waiver, *id*. at 663, but it nonetheless found that waiver applied because of the general rule that presumes the availability of waiver. Likewise, while no provision of the IAD specifically addresses the issue of harmless error, the general rule that presumes that harmless error analysis of a given error is appropriate should apply in the instance case.

Based on this Court's long precedent, harmless error analysis should be applied to violations of the IAD. The failure of the Alabama Supreme Court to follow this precedent constitutes reversible error.

C. The Purposes Behind The IAD Also Support A Finding That A Harmless Error Analysis Should Be Applied To Violations Of The IAD.

Article IV(e) of the IAD provides that an indictment should be dismissed, with prejudice, if a prisoner is returned to a sending state before resolution of pending charges. The literal language of this provision seems to preclude application of harmless error to it, but in fact does not. This provision must be read in conjunction with other provisions of the IAD; specifically, it must be read in conjunction with those provisions that outline the purposes for which the IAD exists. *See* Article IX of the IAD ("This agreement shall be liberally construed so as to effectuate its purposes."). *See also, Cuyler v. Adams*, 449 U.S. 433, 449–50 (1981) (Court looked to "the purpose of the Detainer Agreement, as reflected in the structure of the Agreement, its language, and its legislative history," to determine whether IAD had been violated); *Bob Jones University v. United States*, 461 U.S. 574, 586 (1983) (court should go beyond literal language of statute if reliance on language defeats purposes of statute). Read as a whole, the Agreement itself also supports application of the harmless error rule.

Unlike many statutes, the reasons for the IAD and the purposes behind it are clearly stated within the legislation. Article I of the IAD states that the Agreement was based on a finding that "charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." "Accordingly, its purpose is to encourage the expeditious disposition of

such charges and to provide cooperative procedures among member States to facilitate such disposition." *United States v. Mauro*, 436 U.S. 340, 351 (1978).

In *United States v. Mauro*, this Court further elaborated on the purposes behind the IAD, noting that the problems resulting in adoption of the IAD included the serious disadvantages prisoners under detainer were subjected to, including more onerous conditions of incarceration, precluding their participation in work assignments, activities, and rehabilitation programs, and creating uncertainties about the length of their sentences. *Id*. at 359–60. The Court concluded that "[t]he adverse effects of detainers that prompted the drafting and enactment of the Agreement are thus for the most part the consequence of the lengthy duration of detainers. Because a detainer remains lodged against a prisoner without any action being taken on it, he is denied certain privileges within the prison, and rehabilitation efforts may be frustrated." *Id*. at 360. *See also*, *Carchman v. Nash*, 473 U.S. 716, 719–20, 729–30 (1985); *Cuyler v. Adams*, 449 U.S. 433, 448–49 (1981).

In enacting the IAD, the member States included a clear statement of the purposes behind the IAD and included a clear statement that the Agreement was to be liberally construed to effectuate those purposes. Many of the federal appellate courts addressing this issue have found that the purposes of the IAD would not be served by dismissal of an indictment because of a technical violation of Article IV(e) of the Agreement and they have held dismissal was not warranted under such circumstances. *United States v. Daniels*, 3 F.3d 25, 27–28 (1st Cir. 1993) (finding the purposes of the IAD were not violated by two brief, same-day transfers and dismissal of indictment therefore was not

required); *United States v. Roy*, 771 F.2d 54, 59–60 (2d Cir. 1985) (one-day interruption of state prison confinement by transfer to federal custody for motion hearing posed no threat to prisoner's rehabilitation sufficient to require dismissal of indictment under IAD); *Sassoon v. Stynchombe*, 654 F.2d 371, 374–75 (5th Cir. 1981) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."); *United States v. Taylor*, 173 F.3d 538 (6th Cir.) (finding that purposes of IAD not violated by six brief, same-day transfers and dismissal of indictment not, therefore, required), *cert. denied*, 120 S. Ct. 448 (1999); *United States v. Roy*, 830 F.2d 628, 635–37 (7th Cir. 1987) (stressing that the IAD should be construed to effectuate its overall intent, dismissal of indictment not warranted despite one-day transfer), *cert. denied*, 484 U.S. 1068 (1988); *Baxter v. United States*, 966 F.2d 387, 389–90 (8th Cir. 1992) (returned to custody the same day, no violation of IAD because no violation of purposes of IAD); *United States v. Johnson*, 953 F.2d 1167, 1170–71 (9th Cir.) (one-day transfer not violation of IAD because no evidence that purposes of IAD not met), *cert. denied*, 506 U.S. 879 (1992). In rejecting the prisoners arguments in those cases, the federal appellate courts held that, despite the technical violation of the statute and the literal language of the relevant provisions, the Agreement was not violated because of the purposes behind the IAD. In doing so, those courts relied on the "well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute . . . ." *Bob Jones University v. United States*, 461 U.S. 574, 586 (1983); *see also, Dickerson v. New Banner Institute*, 460 U.S.

103, 110 (1983); *United States v. Bryan*, 339 U.S. 323, 337–38 (1950).

In the case before this Court, no tenable claim can be made that the purposes behind the IAD were violated. Bozeman has not established any plausible or cognizable prejudice from his one-day transfer. He has not alleged that his right to a speedy trial was denied. Nor could he: Bozeman was tried well within the 120-day period provided in Article IV(c) of the Agreement. Moreover, he has not alleged that the one-day transfer led to any denial of participation in a federal rehabilitation program, any denial of privileges he would have otherwise received, or it affected his sentence in any way. The purposes behind the IAD simply would not be vindicated by dismissing Bozeman's indictment.

Nor, critically, did Congress exempt the IAD from application of the harmless error. Had the participants in the IAD intended the harmless error rule, customarily applicable to most constitutional errors and errors violating statutes and rules, not apply, surely they would have said so in the statute. Otherwise, "[o]n the hearing of *any* appeal or writ of certiorari in *any* case, the court *shall* give judgment without regard to errors or defects which do not affect the substantial rights of the parties." 28 U.S.C. § 2111 (emphasis added). In this case, no substantial right of Bozeman's was affected. Therefore, the harmless error rule applies.

D. When A Harmless Error Analysis Is Applied To The Facts Presented In This Case, Dismissal Of The Indictment Is Not Warranted.

"Mere 'technical errors' which do not 'affect the substantial rights of the parties' are not sufficient to set aside a jury verdict in an appellate court." *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943). In this case, any error in transferring custody of Bozeman for one day from federal custody to state custody and back to federal custody was, at most, a technical violation of Article IV(e) of the IAD. Dismissal of his indictment was not, therefore, warranted.

In this case, Bozeman failed to present any evidence that he was harmed by the brief one-day transfer that occurred in this case. He failed to demonstrate that *any* of the purposes behind the IAD were frustrated by his one-day transfer; specifically, he failed to show that his right to a speedy trial was frustrated, that he was denied any rehabilitation to which he was entitled, or that his sentence was negatively affected in any way.

The prosecutor in this case, shortly after the indictment was returned on September 20, 1996, sought to have Bozeman returned to Covington County, Alabama from federal custody so that he could be tried on the outstanding charges. (App. 64, 100–02) He was brought back to Covington County for arraignment and was arraigned and returned to federal custody the next day. (App. 26–31, 56–58, 67) Despite his obvious knowledge of the provisions of the IAD, including the anti-shuffling provisions (App. 18–25), Bozeman did not inform the trial judge that, if he were returned to federal custody before trial, his rights under the IAD would be violated, and he did not object

to his return to federal custody when he was returned (App. 26–31). Moreover, he specifically agreed to have the IAD issues that he had already raised resolved at a future time. (App. 27) It was approximately one month later, just before he was returned to Covington County for trial, that Bozeman first objected to his temporary transfer, and even then he failed to allege that he had been prejudiced by the transfer. (App. 32–36, 37–42) Bozeman was then tried on February 27–28, 1997, within 34 days of his initial transfer to Alabama.

Not only did Bozeman fail to allege any harm from his temporary one-day transfer, he appeared to acquiesce in it. In the light of these facts and the specific purposes behind the IAD, Bozeman should not be granted the windfall that dismissal of the indictment would grant him in this case. "This Court has frequently articulated the 'great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided.' " *Brock v. Pierce County*, 476 U.S. 253, 260 (1986) (*citing United States v. Nashville, C. & St. L.R. Co.*, 118 U.S. 120 (1886)). " 'Reversal for error regardless of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs the public to ridicule it.' " *Johnson v. United States*, 520 U.S. 461, 470 (1997) (internal citation omitted). Considering the character of the proceeding at stake here — a criminal trial involving convictions for violent felony offenses — and the relation of the error asserted to that proceeding — a mere technical, procedural violation not resulting in any harm to Bozeman — this Court should weigh the balance in favor of the State of Alabama and against Bozeman, finding that any error in the violation of Article IV(e) of

the IAD in this case was harmless error. *Kotteakos v. United States*, 328 U.S. 750, 762 (1946).

Finally, while this Court does not generally apply a harmless error analysis in the first instance, *see, e.g.*, *Carella v. California*, 491 U.S. 263, 266–67 (1989); *Pope v. Illinois*, 481 U.S. 497, 504 (1987); *Moore v. Illinois*, 434 U.S. 220, 232 (1977), it has done so, *see, e.g.*, *United States v. Hasting*, 461 U.S. 499, 509–12 (1983); *Chapman v. California*, 386 U.S. 18, 24–26 (1967), and should do so in this case. The Alabama Supreme Court was asked to do the analysis, but chose not to do so. This Court should, therefore, address the harmless error argument advanced by the State of Alabama in this case and should find that the technical violation of Article IV(e) in this case was harmless error.

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CONCLUSION

The judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

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