No.

In the Supreme Court of the United States

RAMI A. AMER, PETITIONER

v.

NEW JERSEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a defendant is always "unable to stand trial" under Article VI(a) of the Interstate Agreement on Detainers while a pretrial motion is pending.

2. Whether a defendant has been "brought to trial" within 180 days of his request for final disposition of charges under Article III(a) of the Interstate Agreement on Detainers at the point when jury selection begins.

RELATED PROCEEDINGS

Superior Court of New Jersey, Law Division, Gloucester County:

State v. *Amer*, No. 18-6-460 (Sept. 4, 2018) (judgment)

Superior Court of New Jersey, Appellate Division:

State v. *Amer*, Crim. No. A-3047-18 (Mar. 31, 2022)

Supreme Court of New Jersey:

State v. *Amer*, Crim. No. A-9-22-86950 (July 3, 2023)

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Rami Amer respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey in this case.

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey (App., *infra*, 1a-26a) is reported at 297 A.3d 364. The opinion of the Superior Court of New Jersey, Appellate Division (App., *infra*, 27a-63a), is reported at 272 A.3d 1264. The opinions of the trial court (App., *infra*, 64a-73a, 74a-78a) are not reported. The bench ruling of the trial court (App., *infra*, 79a-86a) is not reported.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 3, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATUTORY PROVISIONS INVOLVED

Article III(a) of the Interstate Agreement on Detainers, codified in New Jersey at N.J. Stat. Ann. § 2A:159A-3(a), provides:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that 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.

Article VI(a) of the Interstate Agreement on Detainers, codified in New Jersey at N.J. Stat. Ann. § 2A:159A-6(a), provides:

> In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is

unable to stand trial, as determined by the court having jurisdiction of the matter.

STATEMENT

Petitioner requested a final disposition of charges pending against him in New Jersey while he was incarcerated in Pennsylvania. A compact known as the Interstate Agreement on Detainers required that petitioner be "brought to trial" in New Jersey within 180 days of his request, excluding any days when he was "unable to stand trial." In an apparent effort to avoid violating the Agreement, the trial court conducted voir dire within 180 days but did not begin the trial for another six weeks because the judge had vacation and other plans. By the time the jury was sworn and jeopardy attached, more than 200 days had elapsed since petitioner's request for a prompt disposition of his charges.

Petitioner objected to the delay and moved to dismiss the indictment. The trial court denied petitioner's request, concluding that the 180-day deadline should be tolled while pretrial motions were pending and that he had been brought to trial at the point when voir dire began.

The New Jersey Supreme Court affirmed. After acknowledging a conflict among federal courts of appeals and state courts of last resort, the New Jersey Supreme Court held that a defendant is always "unable to stand trial" under Article VI(a) while a pretrial motion is pending. The court further held that a defendant has been "brought to trial" under Article III(a) at the point when jury selection begins, even if the jury is not sworn and opening statements do not occur for another six weeks.

In reaching those holdings, the New Jersey Supreme Court ignored the settled historical meaning of the phrases "unable to stand trial" and "brought to trial." When the Agreement was drafted and entered into force,

a defendant was unable to stand trial only if he was physically or mentally unable to do so. Moreover, a defendant had not been brought to trial until the jury had been sworn and jeopardy had attached.

Both questions presented are important ones of federal law. Because there is an intractable conflict on the first question and because this case is an excellent vehicle in which to resolve both of them, the petition for a writ of certiorari should be granted.

A. Background

The Interstate Agreement on Detainers is a compact that establishes procedures for the resolution of one State's outstanding charges against a prisoner of another State. Before the adoption of the Agreement, "there were several means by which States could obtain prisoners from other jurisdictions, none of which was entirely satisfactory." *United States* v. *Mauro*, 436 U.S. 340, 355 n.23 (1978). A common one was the practice of filing detainers. See *ibid.* "A detainer is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." *Carchman* v. *Nash*, 473 U.S. 716, 719 (1985).

Some prosecutors engaged in a practice of filing detainers based on "untried criminal charges that had little basis." *Nash*, 473 U.S. at 729. "Even though unsubstantiated, the detainers would have a detrimental effect on the prisoner's treatment." *Id.* at 730. Prisoners subject to a detainer are often "denied certain privileges within the prison, and rehabilitation efforts may be frustrated." *Mauro*, 436 U.S. at 360. A director of the Bureau of Prisons explained that, in his experience, "the presence of a detainer automatically guaranteed that the inmate would

be held in close custody and denied training and work experiences." *Id.* at 359 (citation omitted); see *Nash*, 473 U.S. at 730 n.8. And "[t]hese detainers often would be withdrawn shortly before the prisoner was released," thereby escaping judicial scrutiny. *Nash*, 473 U.S. at 729-730.

In 1957, the Council of State Governments proposed the Interstate Agreement on Detainers. See *Mauro*, 436 U.S. at 350-351. "As a congressionally sanctioned interstate compact within the Compact Clause of the United States Constitution, the [Agreement] is a federal law subject to federal construction." *New York* v. *Hill*, 528 U.S. 110, 111 (2000) (internal quotation marks and citation omitted). New Jersey enacted the Agreement in 1958. See 1958 N.J. Sess. Law Serv. Ch. 12 (Apr. 18, 1958). The federal government and all of the States except Louisiana and Mississippi have now entered into the Agreement. See *Hill*, 528 U.S. at 111; Council of State Governments, *Agreement on Detainers* <tinyurl.com/csg-iad-members> (last visited Sept. 29, 2023).

Article III of the Agreement "provides the prisoner with a procedure for bringing about a prompt test of the substantiality of detainers placed against him by other jurisdictions." *Nash*, 473 U.S. at 730 n.6 (internal quotation marks and citations omitted). "After a detainer has been lodged against him, a prisoner may file a 'request for a final disposition to be made of the indictment, information, or complaint'" under Article III(a). *Hill*, 528 U.S. at 112 (citation omitted). A prisoner "shall be brought to trial within 180 days after he shall have caused to be delivered" his formal request. N.J. Stat. Ann. § 2A:159A-3(a) (Art. III(a)). If the defendant has not been "brought to trial" within 180 days, the indictment must be dismissed with prejudice. *Id.* § 2A:159A-5(c) (Art. V(c)).

"Resolution of the charges can also be triggered by the charging jurisdiction" by "request[ing] temporary custody of the prisoner for that purpose." *Hill*, 528 U.S. at 112. Under Article IV, "trial shall be commenced within 120 days of the arrival of the prisoner in the receiving State." N.J. Stat. Ann. § 2A:159A-4(c) (Art. IV(c)). If the defendant is not "brought to trial" within 120 days, the charges must be dismissed with prejudice. *Id.* § 2A:159A-5(c) (Art. V(c)).

The deadlines in Articles III and IV may be extended in two circumstances. First, under Articles III(a) and IV(c), the trial court may "grant any necessary or reasonable continuance" if "good cause [is] shown in open court" and "the prisoner or his counsel [are] present." N.J. Stat. Ann. §§ 2A:159A-3(a), 2A:159A-4(c). Second, under Article VI(a), the 180-day period is "tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." *Id.* § 2A:159A-6(a).

B. Facts And Procedural History

1. In 2017, a New Jersey grand jury indicted petitioner for several non-violent burglaries. Because petitioner was incarcerated in Pennsylvania, New Jersey lodged a detainer against him. Petitioner invoked the Agreement and requested a final disposition of the New Jersey charges. New Jersey received petitioner's request on February 23, 2018, triggering a trial deadline of August 22, 2018. App., *infra*, 5a.

On May 21, petitioner signed a pretrial memorandum, rejecting a plea offer and demanding a trial. Petitioner also filed notices of motions to suppress evidence obtained from a warrantless search. The trial court held a hearing on June 29, and denied petitioner's motions to suppress

from the bench at the hearing, with a written opinion on July 13. App., *infra*, 32a-34a.

On July 17, the trial court entered a trial management order providing that jury selection would begin in the morning of July 23, with "opening thereafter." App., *infra*, 36a. On July 23, the court postponed trial until the next day. *Id.* at 5a. The judge also announced that, after three days, he would "take a break and then pick back up in September" because he was "unavailable in August" due to a "vacation" and a "criminal justice reform" assignment. *Id.* at 36a, 38a. The court did not enter a continuance for good cause in open court. *Id.* at 36a-40a.

2. On July 25, petitioner objected to the delay on the ground that the 180-day period under the Agreement would expire on August 22, 2018, before trial began. App., *infra*, 6a. Petitioner argued that "we're read[y] in August and we ask—we don't accede to—object to any undue, unnecessary delay." *Id.* at 81a.

The prosecution made two arguments in response. First, it argued that, as long as jury selection started before August 22, the Agreement would be satisfied. App., *infra*, 37a. Second, it argued that any days when defense motions were pending should be "excluded from the 180 days." *Id.* at 37a-38a.

The trial court denied petitioner's motion from the bench on July 25. App., *infra*, 82a-83a. The court concluded that it was "commencing" the trial and "getting it started" "within the statutory framework" of the Agreement at the point when jury selection began. *Id.* at 82a. The court also stated that, because a case "cannot be tried when there's a dispositive motion that's pending," it would "look into the question of tolling." *Id.* at 82a-83a.

Later that day, during jury selection, petitioner's counsel had a colloquy with the trial court regarding when to deliver opening statements and call witnesses. The

trial court suggested that "we'll start openings when we return." App., *infra*, 85a. Petitioner's counsel agreed, saying that "at this point" he "concede[d]" that the trial should not begin until after the judge's vacation. *Ibid.*

On July 26, the trial court entered a written order concluding that the 180-day deadline had been "tolled" from May 21 (when petitioner filed his suppression motions) until July 13 (when the trial court issued its opinion). App., *infra*, 77a-78a. The court reasoned that petitioner "was unable to stand trial due to the filing and pendency of pretrial motions." *Id.* at 78a.

On August 28, petitioner again moved to dismiss the indictment on the ground that he had not been brought to trial within 180 days. The trial court denied the motion. App., *infra*, 41a-42a. It acknowledged that "the maximum date within which the trial must commence [was] August 22, 2018." *Id.* at 71a. But the court concluded that trial started when "[j]ury selection began on July 24, 2018," even though "[o]pening statements [were] scheduled to commence September 13th." *Id.* at 73a. The court further concluded that "[t]he period of 54 days during the pendency of [d]efendant's suppression motion[s] tolled the 180-[d]ay statutory clock from August 22nd to October 14th." *Ibid.* The court thus determined that "either [July 24 or September 13] is within the tolled 180-[d]ay statutory period." *Ibid.*

Petitioner's trial began on September 13. App., *infra*, 42a. The jury returned a guilty verdict on most of the charges on October 4. *Id.* at 43a. The court sentenced petitioner to 16 years of imprisonment, along with restitution and a fine. *Id.* at 43a, 63a.

3. The Appellate Division of the Superior Court of New Jersey affirmed petitioner's convictions and remanded for resentencing, concluding (as is relevant here) that

there was no violation of the Agreement. App., *infra*, 27a-63a.

The Appellate Division first determined, sua sponte, that petitioner had waived his rights under the Agreement. App., *infra*, 49a-50a. The court based that determination on defense counsel's concession that witnesses should not be called before the judge's vacation—a concession made after the trial court had already rejected the argument that the proposed schedule would violate the Agreement. *Id.* at 50a.

As is relevant here, the Appellate Division proceeded to reject petitioner's argument on the merits. It held that petitioner was "unable to stand trial" while his pretrial motions were pending because those motions tolled the 180-day deadline under the Agreement. App., *infra*, 48a-50a. The court also concluded that the trial court's written orders constituted a "continuance" under the Agreement. *Id.* at 50a-51a. The court did not reach the question whether petitioner had been "brought to trial" when jury selection began. *Id.* at 51a n.7.

4. After granting discretionary review, the New Jersey Supreme Court affirmed. App., *infra*, 1a-26a. As a threshold matter, the court concluded that petitioner had not waived his rights under the Agreement because "it was the trial judge, not defense counsel, who expressed a preference for delaying the State's presentation of testimony until trial resumed in September." *Id.* at 16a. The court did not address whether there had been a continuance for purposes of the Agreement. *Id.* at 26a n.8.

The New Jersey Supreme Court nevertheless affirmed the judgment below on the ground that there had been no violation of the Agreement. App., *infra*, 11a-26a. On the question of tolling, the New Jersey Supreme Court noted that this Court "has yet to directly address the precise question whether the 180-day time period of Article

III of the [Agreement] is tolled during the pendency of pretrial motions." *Id.* at 18a. The New Jersey Supreme Court further recognized that federal courts of appeals and state courts of last resort have divided on the question. *Id.* at 18a-20a. The court agreed with the decisions holding that a defendant is automatically "unable to stand trial" while a pretrial motion is pending, although it limited tolling in the circumstances where state-court rules limit tolling of the speedy-trial clock. *Id.* at 20a, 22a. The court reasoned that, "as a practical matter, a criminal trial ordinarily will not proceed while a pretrial motion is pending," with the result that the defendant is "unable to stand trial" for purposes of Article VI(a) of the Agreement while he "awaits disposition of his * * * motions." *Id.* at 20a.

The New Jersey Supreme Court further held that petitioner was "brought to trial" at the point when jury selection began. App., *infra*, 23a-25a. The court reasoned that "[j]ury selection is not a pretrial proceeding, but a critical stage of the trial itself." *Id.* at 24a. Although the court noted that its "general rule" did not "authorize trial courts to schedule jury selection far in advance of the trial's remaining stages" or permit "prolonged recesses between voir dire and the presentation of evidence," it did not adopt a specific rule to that effect. *Id.* at 25a.

REASONS FOR GRANTING THE PETITION

This case presents two issues of enormous importance to incarcerated defendants subject to interstate detainers. *First*, the New Jersey Supreme Court held that a defendant who is physically and mentally capable of standing trial is nonetheless categorically "unable to stand trial" for purposes of the Interstate Agreement on Detainers while a pretrial motion is pending. *Second*, the court held that a defendant has been "brought to trial" at the point when jury selection begins, regardless of

whether the jury is sworn and jeopardy attaches within 180 days.

There is an entrenched and recognized conflict among the federal courts of appeals and the state courts of last resort on the first question presented. The Fifth and Sixth Circuits have held that only physical or mental disability triggers tolling under the Agreement. By contrast, seven federal courts of appeals and seven state courts of last resort, including the court below, have held that pretrial motions categorically render a defendant unable to stand trial. The First Circuit and two state supreme courts have adopted an intermediate position, holding that a pretrial motion causes a defendant to be unable to stand trial only if the motion actually caused the trial date to be delayed. The Fifth and Sixth Circuits correctly recognized the established meaning of "unable to stand trial" from the time of the Agreement's drafting and entry into force, but petitioner would prevail even under the intermediate approach.

In the decision below, the New Jersey Supreme Court also resolved the closely related question whether a defendant has been "brought to trial" at the point when jury selection begins, even if the jury is not sworn and jeopardy does not attach until 180 days have elapsed. The New Jersey Supreme Court held that only jury selection must begin within 180 days. That holding is incorrect, because it was clear at the time of the Agreement's drafting and entry into force that the phrase "brought to trial" referred to the swearing of the jury and attachment of jeopardy.

Both questions presented are exceptionally important. This Court has explained the importance of the Agreement in protecting the rights of incarcerated defendants. The decision below opens two loopholes in the requirement that a State promptly dispose of pending charges

upon a defendant's request. The Court should grant review to provide guidance on both questions.

A. The Decision Below Perpetuates A Conflict Among The Lower Courts And Is Incorrect

1. The decision below implicates a deep and acknowledged conflict among federal courts of appeals and state courts of last resort as to whether a pending pretrial motion causes a defendant to be "unable to stand trial" within the meaning of Article VI(a) of the Agreement. The Fifth and Sixth Circuits have held that only physical or mental disability causes a defendant to be unable to stand trial. Like the lower court here, the First, Second, Fourth, Seventh, Eighth, Ninth, and D.C. Circuits, as well as six state courts of last resort, have held that a pretrial motion always renders a defendant unable to stand trial. The First Circuit and the supreme courts of Florida and New Hampshire have held that a pretrial motion causes a defendant to be unable to stand trial only if the motion actually delayed the trial date. The resulting conflict warrants this Court's review.

a. The Fifth and Sixth Circuits have held that a defendant is "unable to stand trial" only if he is physically or mentally incapable of standing trial.

In *Birdwell* v. *Skeen*, 983 F.2d 1332 (1993), the Fifth Circuit held that only physical or mental disability—not a pretrial motion—tolls the 180-day period in Article III(a). Following the defendant's request for disposition of his charges, he filed motions that were pending for more than three weeks. See *id.* at 1334. The defendant's trial began 197 days after his request for disposition. See *id.* at 1334-1335. After he was convicted, he obtained habeas relief in federal district court on the ground that the trial court had failed to comply with the Agreement. See *id.* at 1335.

The Fifth Circuit agreed that the defendant was entitled to relief. The Fifth Circuit rejected the State's argument that the defendant was "unable to stand trial" within the meaning of Article VI(a) "on the days on which he filed motions, the days on which the court held hearings on those motions, and the interim periods between those events." 983 F.2d at 1340. The Fifth Circuit explained that the phrase "unable to stand trial" had been "consistently and only used by federal courts to refer to a party's physical or mental ability to stand trial" before the enactment of the Agreement. *Id.* at 1340-1341 (footnote omitted). The court further noted that "a blanket rule that allows periods between motions and rulings thereon to render defendants unable to stand trial under Article VI might encourage abuse" either by a prosecutor, who "might be tempted to delay preparing a response for invalid reasons," or by a trial judge, who might "delay ruling upon motions because of heavy dockets." *Id.* at 1341 n.23.

In *Stroble* v. *Anderson*, 587 F.2d 830 (1978), cert. denied, 440 U.S. 940 (1979), the Sixth Circuit likewise concluded that a defendant was able to stand trial because there had been "no showing * * * that he was physically or mentally disabled." *Id.* at 838. The defendant had arrived in Michigan following a request from the State, which triggered the 120-day deadline under Article IV for him to be "brought to trial." See *id.* at 832. The defendant was tried on one charge 103 days later, but before his trial began on the second charge, he sought federal postconviction review. See *id.* at 831-832. By the time the defendant was tried for the second offense, 173 days had passed since he arrived in Michigan. See *id.* at 832. The defendant sought federal postconviction review of his second conviction. See *ibid.*

The Sixth Circuit granted habeas relief. It held that the 120-day period should not be tolled under Article

VI(a) while the defendant's first habeas petition was pending, because he was not "physically or mentally disabled." 587 F.2d at 838. The Sixth Circuit observed that, because the Agreement's tolling provision "was written as a protective measure for a transferred prisoner," it "cannot appropriately be turned from a shield for the defendant into a sword for the prosecution." *Ibid.*

b. Like the New Jersey Supreme Court, the Second, Fourth, Seventh, Eighth, Ninth, and D.C. Circuits, as well as six other state courts of last resort, have held that a pending pretrial motion categorically causes a defendant to be unable to stand trial.

For example, in *United States* v. *Ellerbe*, 372 F.3d 462 (D.C. Cir. 2004), the defendant requested disposition of federal charges while serving a sentence in Virginia. See *id.* at 463-464. Because of "his penchant for frivolous motions and his erratic stance on legal representation," the defendant was not tried for a year. *Id.* at 468. The defendant sought dismissal of the charges for failure to comply with the Agreement, but the D.C. Circuit held that the defendant was "unable to stand trial" during "those periods of delays caused by the defendant's own actions." *Ibid.* According to the D.C. Circuit, the defendant's "obstructive conduct throughout the period from arraignment to trial" meant that he could not "complain of the many delays his conduct caused." *Id.* at 469; see *State* v. *Tejeda*, 171 A.3d 983, 994 (R.I. 2017); *United States* v. *Winters*, 600 F.3d 963, 970-971 (8th Cir.), cert. denied, 562 U.S. 908 (2010); *Commonwealth* v. *Montione*, 720 A.2d 738, 741 (Pa. 1998), cert. denied, 526 U.S. 1098 (1999); *State* v. *Batungbacal*, 913 P.2d 49, 56 (Haw. 1996); *Dillon* v. *State*, 844 S.W.2d 139, 142 (Tenn. 1992), cert. denied, 507 U.S. 988 (1993); *Jones* v. *State*, 813 P.2d 629, 632 (Wyo. 1991); *United States* v. *Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988); *Cobb* v. *State*, 260 S.E.2d 60, 64 (Ga. 1979).

The Second, Fourth, and Ninth Circuits have specifically held that a defendant is "unable to stand trial" whenever one of the enumerated bases for tolling in the Speedy Trial Act applies.* The Fourth Circuit recently adhered to that interpretation in *United States* v. *Peterson*, 945 F.3d 144 (2019), cert. denied, 141 S. Ct. 132 (2020). It explained that "periods excludable under the [Speedy Trial Act] should also toll the clock under the [Agreement] where possible." *Id.* at 154. While acknowledging that the tolling provisions of the Agreement and the Speedy Trial Act "have slightly different wordings," the Fourth Circuit concluded that they have "broadly harmonious aims" and that, "[t]o bring [Article VI(a)] into conformity" with the Speedy Trial Act, Article VI(a) should be read to exclude "those periods of delays caused by the defendant's own actions." *Id.* at 154-155 (citation omitted); see *United States* v. *Collins*, 90 F.3d 1420, 1427 (9th Cir. 1996); *United States* v. *Cephas*, 937 F.2d 816, 819 (2nd Cir. 1991), cert. denied, 502 U.S. 1037 (1992).

c. The First Circuit and the supreme courts of Florida and New Hampshire have taken an intermediate position. In those jurisdictions, a pretrial motion may render a defendant unable to stand trial. But those courts toll the relevant period under the Agreement only if the trial date

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* The Speedy Trial Act contains a list of sixteen "periods of delay" that "shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence." 18 U.S.C. 3161(h). That list includes "[a]ny period of delay resulting from other proceedings concerning the defendant, including * * * delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. 3161(h)(1)(D). Notably, the list separately enumerates "[a]ny period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial." 18 U.S.C. 3161(h)(4).

is delayed because of the pretrial motion or for any other reason attributable to the defendant.

The First Circuit has recognized that a pretrial motion may, but does not always, toll the deadline for trial under the Agreement. As a general matter, the First Circuit agreed with those courts that "have held that a defendant waives the [limitation period under the Agreement] during the time it takes to resolve matters raised by him." *United States* v. *Taylor*, 861 F.2d 316, 321 (1988). But the First Circuit further recognized that "it might be inappropriate to characterize the court's delay in rendering a decision as time in which 'the prisoner is unable to stand trial.'" *Ibid.* Accordingly, "where a defendant timely advises the court that he or she is claiming protections under the [Agreement] *and* the court takes more time than is necessary to resolve the defendant's pretrial motions, then the delay may not be fully excluded from the 120-day clock." *United States* v. *Neal*, 36 F.3d 1190, 1210 (1st Cir. 1994), cert. denied, 519 U.S. 1012 (1996).

The New Hampshire Supreme Court has adopted a similar standard. In *State* v. *Brown*, 953 A.2d 1174 (N.H. 2008), the trial court granted a continuance from March 10 to September 25. See *id.* at 1178. The defendant filed a motion to dismiss during the continuance that was denied on October 25. See *id.* at 1178-1179. Before the end of the continuance, however, the trial court "*sua sponte* determined that [the court's] calendar would not accommodate a September trial and scheduled the trial for November 13." *Id.* at 1179 (internal quotation marks omitted). Based on those facts, the New Hampshire Supreme Court declined to toll the 180-day period beyond September 25 (the trial date that the court sua sponte rescheduled), because "the defendant's filing of his motion to dismiss did not 'occasion' the period of delay from September 25 to November 13." *Id.* at 1182.

For its part, the Florida Supreme Court has also refused to toll a trial deadline under the Agreement on a similar ground. In *Vining* v. *State*, 637 So. 2d 921, cert. denied, 513 U.S. 1022 (1994), the Florida Supreme Court concluded that the 120-day period under Article IV should not be tolled despite the filing of a pretrial motion. See *id.* at 925. The court reasoned that "the original trial date of January 22, 1990, was set at [the] arraignment on September 7, 1989," and "never changed," despite the defendant's pretrial motions. *Ibid.* The court thus concluded that no delay could be "attributed to [the defendant's] motion practice." *Ibid.*

d. In short, the federal courts of appeals and state courts of last resort are intractably divided as to whether a defendant is "unable to stand trial" because a pretrial motion is pending. The Fifth and Sixth Circuits have held that only a physical or mental disability renders a defendant unable to stand trial. Seven courts of appeals and seven state courts of last resort (including the New Jersey Supreme Court here) have held that a pretrial motion categorically renders a defendant unable to stand trial. And the First Circuit and two state supreme courts have held that a pretrial motion causes a defendant to be unable to stand trial only if the delay is attributable to the motion.

2. The New Jersey Supreme Court erred by holding that a pretrial motion causes a defendant to be "unable to stand trial." Under its established meaning, the phrase "unable to stand trial" refers to a physical or mental disability. Here, it is undisputed that petitioner was at all times physically and mentally able to stand trial.

a. An approved interstate compact is both a "contract" and a "federal statute." *Alabama* v. *North Carolina*, 560 U.S. 330, 351 (2010). As a "law of the Union," its interpretation is exclusively a matter of federal law. *Cuyler* v. *Adams*, 449 U.S. 433, 438 n.7 (1981). "[J]ust as

if a court were addressing a federal statute," *New Jersey* v. *New York*, 523 U.S. 767, 811 (1998), it should "begin by examining the express terms of the [c]ompact as the best indication of the intent of the parties." *Tarrant Regional Water District* v. *Herrmann*, 569 U.S. 614, 628 (2013).

Under those interpretive rules, the established common-law usage of the Agreement's terms at the time of drafting and entry into force is controlling. See *New Jersey* v. *Delaware*, 552 U.S. 597, 610-611 (2008). A court cannot "redefine" a compact's words if they had a "longstanding meaning" when they were used. *Montana* v. *Wyoming*, 563 U.S. 368, 387 (2011).

b. Under the established meaning of the Agreement at the time of its drafting and entry into force, a defendant is "unable to stand trial" only when he has a physical or mental disability that prevents him from being tried. As the Fifth Circuit noted, that phrase "was consistently and only used by federal courts to refer to a party's physical or mental ability to stand trial throughout the fifteen years prior to Congress' enacting the [Interstate Agreement on Detainers Act] in 1970." *Birdwell*, 983 F.2d at 1340-1341 (footnote omitted); see *id.* at 1341 n.22 (collecting cases). Indeed, at least as early as the turn of the century and continuing through the 1950s, dozens of judicial opinions used the phrases "unable to stand trial" and "able to stand trial" when considering whether to grant a continuance because of a defendant's mental or physical inability to stand trial. See, *e.g.*, *Lipscomb* v. *State*, 25 So. 158, 159 (Miss. 1899); *Roberts* v. *State*, 204 S.W. 866, 867 (Tex. Crim. App. 1918); *Turner* v. *Commonwealth*, 231 S.W. 519, 520 (Ky. 1921); *State* v. *Lowman*, 133 S.E. 457, 458 (S.C. 1926); *People* v. *Syjut*, 17 N.W.2d 232, 234 (Mich. 1945); *Higgins* v. *United States*, 205 F.2d 650, 653 (9th Cir. 1953); *Kaplan* v. *United States*, 241 F.2d 521, 522 n.3 (5th Cir. 1957). The New Jersey Supreme Court failed to

identify any pre-1957 decision referring to a defendant who filed a pretrial motion as "unable to stand trial."

The New Jersey Supreme Court instead reasoned that only an expansive definition of "unable to stand trial" would avoid making Article VI(a) redundant with the provision stating that the Agreement does not "apply to any person who is adjudged to be mentally ill." App., *infra*, 15a (quoting N.J. Stat. Ann. § 2A:159A-6(b)). But that other provision serves the additional function of precluding the transfer of a mentally ill defendant from one State to another. See, *e.g.*, *State* v. *Beauchene*, 541 A.2d 914, 917 (Me. 1988). The two provisions are thus not redundant.

As the Fifth and Sixth Circuits have explained, the phrase "unable to stand trial" had an established meaning when the Agreement was drafted and came into force. Because that "historical meaning controls," *George* v. *McDonough*, 142 S. Ct. 1953, 1963 (2022), and petitioner was never physically or mentally disabled, the decision below is erroneous.

c. Even under the intermediate interpretation adopted by the First Circuit and the supreme courts of New Hampshire and Florida, the decision below is still incorrect. Petitioner's motions did not cause trial to be delayed beyond the August 22 deadline. To the contrary, his motions were decided on the scheduled return date, June 29, see App., *infra*, 33a-34a, and did not prevent trial from beginning by August 22. Instead, the reason for the delay was the additional two weeks before the trial court issued its opinion on the denial of those motions and the trial judge's unavailability for six weeks due to vacation and other plans. For that reason as well, the decision below is incorrect.

3. The New Jersey Supreme Court also answered the closely related question whether a defendant has been

"brought to trial" at the point when jury selection begins, even if the jury has not been sworn and jeopardy has not attached. By looking to the beginning of jury selection, the New Jersey Supreme Court misinterpreted an important provision of the Agreement.

The plain language of the Agreement, read in light of its historical context, indicates that petitioner was not "brought to trial" at the point when the trial court began jury selection. Before the Agreement was drafted and came into force, numerous state statutes required that defendants be "brought to trial" within a particular timeframe. Many of those statutes were modeled after the English Habeas Corpus Act of 1679, which required trial within "two terms." See, *e.g.*, *People* v. *Den Uyl*, 31 N.W.2d 699, 703 (Mich. 1948); *State* v. *Keefe*, 98 P. 122, 125-126 (Wyo. 1908); *State* v. *Kuhn*, 57 N.E. 106, 107 (Ind. 1900); *Dillard* v. *State*, 46 S.W. 533, 534 (Ark. 1898); *State* v. *Conrow*, 35 P. 240, 241 (Mont. 1893); *In re Edwards*, 10 P. 539, 542 (Kan. 1886); *Ex parte McGehan*, 22 Ohio St. 442, 444 (1872); *Ex parte Donaldson*, 44 Mo. 149, 152 (1869). Other statutes instead used a specific number of days or months. See, *e.g.*, *People* v. *Emblen*, 199 N.E. 281, 283 (Ill. 1935) (four months); *Yule* v. *State*, 141 P. 570, 571 (Ariz. 1914) (60 days); *In re Murphy*, 34 P. 834, 835 (Wash. 1893) (same); *People* v. *Camilo*, 11 P. 128, 128 (Cal. 1886) (same).

Under those statutes, the phrase "brought to trial" was a term of art that referred to the time when a jury was sworn and jeopardy attached. For example, in *People* v. *Hawkins*, 59 P. 697 (1899), the California Supreme Court held that a defendant could not move to dismiss the indictment for a violation of the speedy-trial statute after he had already been "brought to trial." *Id.* at 697. The court noted that the defendant moved to dismiss only after the jury had been "impaneled and sworn to try the

case," which meant that "legal jeopardy" had "attached" because the jury had been "charged with his deliverance." *Ibid.* At that point, the court reasoned, the defendant had been "brought to trial" within the meaning of the speedy-trial statute, and any objection had been forfeited. *Ibid.*; see *State* v. *Test*, 211 P. 217, 218 (Mont. 1922); *King* v. *State*, 201 P. 99, 100 (Ariz. 1921).

In reaching a contrary conclusion, the decision below relied on two modern cases. But neither discussed the historical meaning of "brought to trial." See *State* v. *Bjorkman*, 199 A.3d 263, 267-268 (N.H. 2018); *Bowie* v. *State*, 816 P.2d 1143, 1147 (Okla. Ct. Crim. App. 1991). For that reason, those cases are unpersuasive.

Under the established meaning of the phrase, petitioner was not "brought to trial" within the 180-day period. The jury was selected on July 24 and 25, but it was not sworn (and jeopardy did not attach) until September 13. App., *infra*, 5a-6a, 10a n.2; see *State* v. *Lynch*, 399 A.2d 629, 635 (N.J. 1979). Petitioner was thus not brought to trial within 180 days. Review is warranted on that related question as well.

B. The Questions Presented Are Exceptionally Important And Warrant The Court's Review In This Case

The questions whether a defendant is always "unable to stand trial" under the Agreement while a pretrial motion is pending and whether a defendant has been "brought to trial" when jury selection begins are important and recurring ones warranting this Court's review.

1. Resolution of both questions would affect numerous criminal defendants. The correct interpretation of the Agreement could make the difference between a lengthy sentence and dismissal with prejudice. Without this Court's intervention, defendants who are identically situ-

ated in all respects except the jurisdiction in which their charges are pending could face drastically different outcomes.

Defendants in New Jersey and other jurisdictions that automatically toll the limitations periods under the Agreement are also at risk for abuse. As the Fifth Circuit has observed, "[p]rosecutors might be tempted to delay preparing a response for invalid reasons, knowing that that delay, though unreasonable and unnecessary, will not count" under the Agreement. *Birdwell*, 983 F.2d at 1341 n.23. For their part, trial courts might be encouraged to "delay ruling upon motions because of heavy dockets." *Ibid.* And defendants might be disincentivized from filing meritorious motions or might be otherwise prejudiced. Indeed, automatically tolling the clock while a defense motion is pending could force a defendant to "feel restricted in litigating his case simply because he is fearful that it will effectuate a tolling of his demand to be brought to trial" under the Agreement. *Diaz* v. *State*, 50 P.3d 166, 169 (Nev. 2002) (Rose, J., dissenting).

Those incentives undermine one of the core purposes of the Agreement. This Court has long recognized that "[t]he adverse effects of detainers" were part of what "prompted the drafting and enactment of the Agreement." *Mauro*, 436 U.S. at 360. Permitting excessive delay, as the decision below does, will thwart the ability of the defendant to "clear his record of detainers." *Nash*, 473 U.S. at 730.

2. This case is an ideal vehicle to address the questions presented. The New Jersey Supreme Court was squarely presented with, and answered, both questions. That court also acknowledged the conflict concerning the meaning of "unable to stand trial" in Article VI(a). See App., *infra*, 18a-20a & n.6.

Under Article III(a) of the Agreement, the State was obligated to bring petitioner to trial by August 22, 2018. Although jury selection commenced on July 24, the jury was not sworn—and jeopardy did not attach—until September 13. By answering both questions presented in the State's favor—holding that petitioner's motions tolled the deadline and that petitioner was "brought to trial" at the point when jury selection commenced—the New Jersey Supreme Court upheld petitioner's conviction.

* * * * *

This case presents two important questions concerning the Interstate Agreement on Detainers. A whopping nineteen federal courts of appeals and state courts of last resort have now addressed the first question presented, and as to both questions, the decision below ignores the settled historical usage of the key phrases used in the Agreement. Further review is necessary to ensure that the Agreement accomplishes its purpose of protecting the rights of incarcerated defendants through the timely disposition of pending charges.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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