No. 23-351

IN THE

Supreme Court of the United States

RAMI A. AMER,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

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

2. Whether a defendant has been "brought to trial" under Article III(a) of the Interstate Agreement on Detainers when jury selection begins.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
INTRODUCTION	1
STATEMENT OF THE CASE	3
A. The IAD.	3
B. The Proceedings Below.	6
REASONS FOR DENYING THE PETITION	15
I. Certiorari Is Not Warranted To Review When Petitioner Was "Brought To Trial."	16
II. Certiorari Is Not Warranted To Review If Petitioner Was "Unable To Stand Trial."	22
CONCLUSION	30

TABLE OF AUTHORITIES

CASES Page(s)

Birdwell v. Skeen,
983 F.2d 1332 (CA5 1993) 26, 27

Bowie v. State,
816 P.2d 1143
(Okla. Crim. App. 1991)..... 12, 17, 18

Branch v. Smith,
538 U.S. 254 (2003)..... 29

Carchman v. Nash,
473 U.S. 716 (1985)..... 4, 19

Commonwealth v. Montione,
526 U.S. 1098 (1999)..... 25

Commonwealth v. Montione,
720 A.2d 738 (Pa. 1998)..... 25

Crist v. Bretz,
437 U.S. 28 (1978)..... 22

Cuyler v. Adams,
449 U.S. 433 (1981)..... 4

Diaz v. State,
50 P.3d 166 (Nev. 2002)..... 25

Dillon v. State,
844 S.W.2d 139 (Tenn. 1992)..... 26

Fex v. Michigan,
507 U.S. 43 (1993)..... 5

Fuente v. State,
549 So. 2d 652 (Fla. 1989) 28

Gomez v. United States,
490 U.S. 858 (1989)..... 21

TABLE OF AUTHORITIES—Continued

Page(s)

Hopt v. Utah,
110 U.S. 574 (1884)..... 22

Jones v. State,
813 P.2d 629 (Wyo. 1991) 26

Lewis v. United States,
146 U.S. 370 (1892)..... 21, 22

Neal v. United States,
558 U.S. 1093 (2009)..... 25

New Jersey v. Amer,
297 A.3d 364 (N.J. 2023)
.....1, 6-15, 17-21, 24, 27-29

New Jersey v. Amer,
272 A.3d 1264 (N.J. App. Div. 2022). 1, 6-11, 24

New York v. Hill,
528 U.S. 110 (2000)..... 3-5

Peterson v. United States,
141 S. Ct. 132 (2020)..... 25

Stroble v. Anderson,
587 F.2d 830 (CA6 1978) 26

State v. Batungbacal,
913 P.2d 49 (Haw. 1996)..... 25

State v. Bjorkman,
199 A.3d 263 (N.H. 2018) 12, 17, 18, 20-22

State v. Brown,
953 A.2d 1174 (N.H. 2008) 25

State v. Masselli,
202 A.2d 415 (N.J. 1964) 5

TABLE OF AUTHORITIES—Continued

Page(s)

United States v. Cephas,
937 F.2d 816 (CA2 1991) 26

United States v. Dawn,
900 F.2d 1132 (CA7 1990) 26

United States v. Ellerbe,
372 F.3d 462 (CADC 2004) 6, 25

United States v. Johnson,
953 F.2d 1167 (CA9 1992) 25-26

United States v. Neal,
36 F.3d 1190 (CA1 1994) 25

United States v. Odom,
674 F.2d 228 (CA4 1982) 21

United States v. Peterson,
945 F.3d 144 (4th Cir. 2019) 25, 29

United States v. Powell,
469 U.S. 57 (1984) 21

United States v. Rodriguez,
63 F.3d 1159 (CA1 1995) 21

United States v. Sawyers,
963 F.2d 157 (CA8 1992) 26

United States v. Stayton,
791 F.2d 17 (CA2 1986) 19

CONSTITUTION

U.S. Const. art. I, § 10, cl. 3 3

TABLE OF AUTHORITIES—Continued

STATUTES Page(s)

28 U.S.C. § 1257(a) 1

Interstate Agreement on Detainers, Articles I-XV, N.J. Stat. Ann. § 2A:159A-1 to -15 ..... 1-6, 8-24, 26-30

Art I, N.J. Stat. Ann. § 2A:159A-1 4

Art. III, N.J. Stat. Ann. § 2A:159A-3 ..... 5, 6, 11, 14, 18, 22, 24, 27

Art. III(a), N.J. Stat. Ann. § 2A:159A-3(a)...5, 6, 9, 11, 12, 15, 20, 22, 24, 27

Art. IV, N.J. Stat. Ann. § 2A:159A-4..... 5, 6, 22

Art. IV(a), N.J. Stat. Ann. § 2A:159A-4(a)..... 5

Art. IV(c), N.J. Stat. Ann. § 2A:159A-4(c) 5, 6, 22

Art. V, N.J. Stat. Ann. § 2A:159A-5 ..... 5, 9

Art. V(c), N.J. Stat. Ann. § 2A:159A-5(c) . 5

Art. VI, N.J. Stat. Ann. § 2A:159A-6 ..... 3, 9, 14, 18, 22-24, 26-29

Art. VI(a), N.J. Stat. Ann. § 2A:159A-6(a)..... 6, 13, 27-29

Art. VI(b), N.J. Stat. Ann. § 2A:159A-6(b)..... 29

Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174 ..... 12, 14, 21, 27

TABLE OF AUTHORITIES—Continued

RULES Page(s)

N.J. Ct. R. 3:25-4(i)(3)(A) to (C) 14

Fed. R. Crim. P. 43(a)(2) 21

Sup. Ct. R. 10..... 17

COURT FILINGS

Brief for the United States in opposition, *Peterson v. United States*, Nos. 19-1037 and 19-8000 (May 14, 2020) 25-27

OTHER AUTHORITIES

Brought to Trial & *Commence*, *Black's Law Dictionary* (4th ed. 1968)..... 21

Stephen E. Arthur & Robert S. Hunter, 1 Fed. Trial Handbook: Criminal (2023)..... 19

OPINIONS BELOW

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

JURISDICTION

The judgment of the New Jersey Supreme Court was entered on July 3, 2023. Pet. App. 1a-26a. Petitioner sought certiorari on September 29, 2023. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

INTRODUCTION

Petitioner asks this Court to take up two questions under the Interstate Agreement on Detainers (IAD). Because the court below ruled against him on each of those independent questions, certiorari is appropriate only if both warrant review. Neither does.

Petitioner was indicted in New Jersey for a series of burglaries. While the indictments were pending, he began serving a state prison sentence in Pennsylvania for similar offenses and he requested disposition of his New Jersey charges under the Interstate Agreement on Detainers. Consistent with the IAD's terms, Petitioner was transferred to New Jersey, which then had 180 days to bring him to trial—until August 22, 2018. The State did just that: it started jury selection in Petitioner's trial on July 24. But due to the trial court's August obligations, the jury was sworn in and opening statements began on September 13.

The court below rejected Petitioner's claim that his speedy-trial rights under the IAD were violated.

Petitioner contended that the State had violated his rights because he was not "brought to trial" until September 13, 2018, the date the jury was sworn in—weeks after the August 22, 2018 deadline. But as the New Jersey Supreme Court explained, that failed for two reasons. For one, Petitioner had been "brought to trial" on July 24, 2018, when jury selection began. For another, even if Petitioner had not been "brought to trial" until September 13, 2018, the IAD's clock had been tolled for 53 days that summer, while the trial court took briefing, heard argument, and adjudicated Petitioner's two pretrial motions seeking to suppress consequential physical evidence and a statement to the police. The tolling had pushed the deadline to October 13, 2018—well after the jury in Petitioner's trial had been sworn in.

This Court should decline Petitioner's invitation to review the two independent theories on which his IAD claim was rejected. Initially, there is no basis to grant certiorari to consider whether Petitioner was "brought to trial" on July 24, when jury selection began, or September 13, when the jury was sworn in. The question whether the trial commences for IAD purposes at jury selection or jury swearing in involves no split: all three state high courts to consider the issue hold defendants are "brought to trial" when jury selection begins. This issue also rarely arises: in the 68 years in which States have been parties to the IAD, this question has only been resolved by three state high courts and *zero* U.S. courts of appeals. Nor does the issue carry practical importance: in the vast majority of cases, the daylight between the start of jury selection and jury swearing in will be a matter of days, at most.

The separate question whether the IAD's 180-day clock should have been tolled in Petitioner's case also does not merit review. Article VI of the IAD tolls that deadline for any period in which the defendant is "unable to stand trial." Petitioner primarily dedicates his Petition to alleging a split among lower courts regarding whether Article VI applies exclusively to instances in which a trial cannot proceed because of the defendant's physical or mental disability, or applies as well—as the court below found—to other facts that prevent trial from going forward, like a pretrial motion. While there is some minor dispute on this issue, this is a poor vehicle to consider the issue. After all, the issue of tolling is not outcome determinative, since Petitioner was brought to trial within the original 180 days. Moreover, this Court has recently and repeatedly denied petitions pressing this question, and for good reason. The split Petitioner cites is stale: only two courts have ever sided with Petitioner, and none has taken his view in more than 30 years. And the issue has no practical importance, because a separate provision of the IAD also authorizes trial courts to toll this same 180-day deadline, for the same period of time, to allow courts to resolve the same pretrial motions.

STATEMENT OF THE CASE

A. The IAD.

The Interstate Agreement on Detainers "is a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." *New York v. Hill*, 528 U.S. 110, 111 (2000). "As 'a congressionally sanctioned interstate compact' within the Compact Clause of the U.S. Constitution, Art. I, § 10, cl. 3, the

IAD is a federal law subject to federal construction." *Id.* (quoting *Carchman v. Nash*, 473 U.S. 716, 719 (1985)); see also *Cuyler v. Adams*, 449 U.S. 433, 442 (1981). New Jersey, which adopted the IAD in 1958, codified its terms at N.J. Stat. Ann. § 2A:159A-1 to -15, representing Articles I-XV of the interstate compact.

The IAD exists to mitigate practical problems that can arise when a prisoner in one jurisdiction is facing charges in another jurisdiction. As the drafters of the IAD found, situations in which one jurisdiction wishes to prosecute a prisoner detained in another State "cannot properly be had in the absence of cooperative procedures." N.J. Stat. Ann. § 2A:159A-1 (Art I.). Indeed, before passage of the IAD, it was at times difficult to ensure that States could proceed with their "charges outstanding against a prisoner" in another State, and to ensure "speedy trial of persons already incarcerated in other jurisdictions." *Id.* Those practical problems, in turn, "produce[d] uncertainties which obstruct[ed] programs of prisoner treatment and rehabilitation." *Id.*; see also *Carchman*, 473 U.S., at 719-20 (same). The States—and later Congress—enacted the IAD "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." *Id.*; see also *Carchman*, 473 U.S., at 720 (same).

A member "State seeking to bring charges against a prisoner in another State's custody begins the process by filing a detainer, which is a request by the State's criminal justice agency that the institution in which the prisoner is housed hold the prisoner for the agency or notify the agency when release is imminent." *Hill*,

528 U.S. at 112. Once that happens, the IAD establishes the process for "transfer of temporary custody of [the] prisoner by the State of imprisonment, called the 'sending' State, to the State which lodged [the] detainer, called the 'receiving' State." *State v. Masselli*, 202 A.2d 415, 417 (N.J. 1964).

As relevant here, Article III allows a prisoner facing a detainer in another State to request "a final disposition to be made of the indictment" pending against him in the receiving State. N.J. Stat. Ann. § 2A:159A-3(a). If he does so, then that prisoner "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." *Id.* The 180-day period starts once the written notice and request have "been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer." *Fex v. Michigan*, 507 U.S. 43, 52 (1993).[1]

The consequence of failing to satisfy the IAD's time limitation is severe: dismissal. Under Article V of the IAD, if a prisoner is not brought to trial in the 180-day time frame, "the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice." N.J. Stat. Ann. § 2A:159A-5(c).

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[1] As this Court has explained, the "resolution of the charges can also be triggered by the charging jurisdiction, which may request temporary custody of the prisoner for that purpose." *Hill*, 528 U.S., at 111; see also N.J. Stat. Ann. § 2A:159A-4(a) (Article IV, describing the process for requests by a receiving State). "In such a case, 'trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state.'" *Hill*, 528 U.S., at 111; see also N.J. Stat. Ann. § 2A:159A-4(c).

But for that reason, the timeline set forth in Article III is "far from absolute." *United States v. Ellerbe*, 372 F.3d 462, 468 (CADC 2004). Instead, the IAD recognizes two exceptions to the 180-day window to bring prisoners to trial. First, under Article III(a), the court with jurisdiction over the prosecution "may grant any necessary or reasonable continuance" "for good cause shown in open court, the prisoner or his counsel being present." N.J. Stat. Ann. § 2A:159A-3(a); see also *id.* § 2A:159A-4(c) (same good-cause provision for transfers governed by Article IV). Second, under Article VI(a), the running of the IAD's time period "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." *Id.* § 2A:159A-6(a).

B. The Proceedings Below.

1. In 2017, the State of New Jersey (the State) issued two indictments charging Petitioner Rami Amer with a series of burglary, theft, and criminal mischief offenses relating to his role in a series of "smash and grab" burglaries in November 2016.[2] Pet. App. 4a, 27a, 64a-65a. Petitioner, who began serving a sentence in Pennsylvania for similar offenses while these indictments were pending, requested the final disposition of his New Jersey charges under the IAD. See Pet. App. 31a, 64a. The State of New Jersey received his request on February 23, 2018; under Article III of the IAD, the State had until August 22, 2018 to bring him to trial. See Pet App. 5a, 31a, 64a, 71a.

[2] The State subsequently consolidated these two indictments into one superseding indictment, which the Grand Jury returned on June 6, 2018, charging Petitioner with thirty-seven counts. See Pet. App. 4a, 31a, 65a, 72a-73a, 75a.

The trial court entered a scheduling order in May 2018 to allow for the filing and resolution of pretrial motions. Pet. App. 31a. Petitioner filed two suppression motions on May 21, 2018. *Id.* In one motion, Petitioner sought to suppress evidence found in his vehicle after his November 2016 arrest. Pet. App. 5a. In the other, Petitioner sought to suppress his statement to police following the arrest. *Id.* While Petitioner's motions were timely filed, his letter briefs supporting the two suppression motions were submitted after the trial court's deadline. Pet. App. 31a.

The trial court proceeded to resolve those suppression motions. In accordance with the scheduling order, the court heard argument on both motions on June 29, 2018. See Pet. App. 32a, 73a, 75a. On July 13, 2018—just fifty-three days after Petitioner filed the motions to suppress—the trial court issued a written order and twenty-one-page opinion denying the two suppression motions. See Pet App. 5a, 34a, 73a, 75a.

The trial court executed a trial management order just four days later, on July 17, 2018. Pet. App. 36a. The court's order set July 23, 2018, as the date for the final pre-trial conference. See Pet. App. 36a. The court explained that he "anticipate[d] selecting a jury" that morning, and anticipated that counsel would present opening statements thereafter. *Id.* The court added that "[c]ounsel must have witnesses available so as to utilize the entire trial day." *Id.*

But at that July 23 conference, Petitioner filed an additional motion seeking to bar the State from eliciting certain testimony at trial. *Id.* The judge decided to resolve the motion and so he rescheduled jury selection for the next day. *Id.* The judge noted jury selection would continue the following week, but the

court would need to "take a break and then pick back up in September." *Id.* No party objected. *Id.*

Jury selection began on July 24, 2018. Pet. App. 5a, 36a. The same day, the judge addressed further scheduling with the parties. The court explained that jury selection would conclude the next day, on July 25, and the parties would return to court again the next week, on July 31. See Pet. App. 5a-6a, 36a. But the court explained there would need to be "a break in the trial" in light of the "judge's obligations" as the duty judge for pretrial-detention matters during that window, as well as his "planned vacation in August, [and] defense counsel's vacation scheduled for early September." Pet. App. 6a. As a result, "after July 31, the trial would resume on September 13, 2018." *Id.*

When jury selection resumed the next day, defense counsel argued for the first time that the IAD required the trial to begin by August 22, 2018. Pet. App. 6a, 79a-80a. Although counsel acknowledged Petitioner's trial "is commencing … within 180 days, and so, that part is met," Pet. App. 81a, he argued that Petitioner's rights under the IAD were still being violated because the trial court was "put[ting] off" opening statements for too long after jury selection. Pet. App. 6a, 81a.

The trial court disagreed, finding—as the State argued—that trial had commenced with jury selection. See Pet. App. 6a, 81a-83a. The trial court also noted that he would further consider whether the IAD's 180-day deadline had been tolled for the fifty-three days in which Petitioner's suppression motions were pending, which the State had also argued. See *id.*

The next day, on July 26, 2018, the judge issued a written opinion on this issue. Pet. App. 40a, 74a-78a. As he had the previous day, the judge concluded that

the "'[t]rial commenced on July 24, 2018 with jury selection,' well within the 180-day timeframe under the IAD." Pet. App. 40a, 75a. And in this opinion, the court confirmed that Petitioner's IAD argument failed for a second, independent reason too: the 180-day deadline tolled for the period in which Petitioner's suppression motions were pending. Consistent with the language in Article VI, the court found Petitioner was "unable to stand trial" during that fifty-three-day period "due to the filing and pendency of [his] pretrial motions." Pet. App. 40a, 78a. Moreover, the "delay attributable to disposition of [Petitioner's] motions" also qualified as "good cause" to toll under Article III(a) of the IAD. See Pet App. 40a, 77a-78a. For either or both reasons, the IAD clock was tolled from May 21, 2018, when Petitioner's pretrial motions were filed, to July 13, 2018, when the motions were resolved. *Id.*

The parties returned to court on July 31, 2018, and completed jury selection. Pet. App. 7a.

The court then issued another opinion on the IAD question in September. During the break in proceedings, Petitioner had sent a pro se letter dated August 28, 2018, indicating that he was demanding dismissal of his charges under Article V of the IAD, based on the alleged failure to satisfy the 180-day clock. Pet. App. 41a. Upon returning from the break, the court treated that letter as a motion to dismiss the indictment, filing a written order and opinion denying that motion. Pet. App. 7a, 41a, 64a-73a.

The judge reiterated many of the findings from his July 26 opinion. Pet. App. 41a. Once again, the court concluded that the trial began within the 180-day period, regardless of any tolling, because "[j]ury selection began on July 24, 2018." Pet. App. 73a. The court acknowledged there was a break in trial proceedings

after jury selection, but he reiterated the reason why: "[t]he court was unavailable to try any case in August due to its assigned duties" to handle pretrial-detention adjudications vicinage-wide that month, and because of his and defense counsel's "scheduled vacation[s]" in August and September, respectively. *Id.*

But the court concluded again that, regardless, the IAD deadline had also been tolled by the pending suppression motions. The trial court found that it was appropriate to toll the 180-day clock for fifty-three days, the period of time between the filing of the suppression motions and their resolution. *Id.* As that "would move the maximum date of August 22nd to October 14," then no matter whether one "consider[ed] either July 24th or September 13th as the commencing date of trial, either is within the tolled 180-[d]ay statutory period." *Id.* In short, the "trial has commenced within the statutory 180-[d]ay period, as that period has been tolled, for good cause." *Id.*

The trial proceedings then resumed on September 13, 2018. Pet. App. 8a, 42a. During the course of the ensuing trial, the State "introduced over one hundred exhibits" and called "over one dozen witnesses." Pet. App. 42a. On October 4, 2018, the jury convicted Petitioner of the following: thirteen counts of third-degree burglary; one count of third-degree theft by unlawful taking; five counts of fourth-degree theft by unlawful taking; eight counts of fourth-degree criminal mischief; and one count of fourth-degree attempted theft by unlawful taking. Pet. App. 8a, 43a. The jury acquitted Petitioner of four counts of burglary. *Id.* The trial court sentenced Petitioner "to an aggregate sixteen-year term of incarceration, to run consecutively to the term of incarceration that he was serving for his Pennsylvania offenses." *Id.*

2. Petitioner appealed his conviction and sentence to the Superior Court of New Jersey, Appellate Division. See Pet. App. 27a-63a. The Appellate Division—New Jersey's intermediate appellate court—affirmed. The court held that Petitioner had waived his right to demand the trial begin within 180 days of February 23, 2018, which disposed of his challenge. Pet. App. 49a. The court also agreed with the trial court that "the period between the filing of [Petitioner]'s suppression motions and their resolution several weeks later tolled the time under the IAD for [Petitioner] to be brought to trial." Pet. App. 50a. In a footnote, the Appellate Division declined to address Petitioner's additional argument that he had not been "brought to trial" when jury selection commenced. See Pet. App. 51a, n.7.

3. The New Jersey Supreme Court granted certification and unanimously affirmed as modified. See Pet. App. 3a. The court disagreed that Petitioner waived his arguments. Pet. App. 3a, 15a-16a. But the unanimous court held that Petitioner's IAD argument failed for two independent reasons: he was brought to trial when jury selection began within 180 days (Pet. App. 23a-25a) and the 180-day clock was tolled in any event while Petitioner's two suppression motions were pending before the trial court (Pet. App. 16a-22a).

As to the former, the New Jersey Supreme Court explained that Petitioner was "brought to trial" under Article III within 180 days, regardless of tolling. The question, the court explained, was "whether a defendant is 'brought to trial'" under Article III(a) "when jury selection commences, as the State argues and the Appellate Division determined, or when the jury is sworn and jeopardy attaches, as defendant contends." Pet. App. 23a. The court reasoned that, "as a general rule," the State was right: a defendant is "'brought to

trial'" under Article III(a) "when jury selection begins." Pet. App. 25a. The court noted that "[j]ury selection is not a pretrial proceeding, but a critical stage of the trial itself." Pet. App. 24a. Indeed, "[f]ederal decisions consistently hold that under the Speedy Trial Act, trial begins with voir dire." *Id.* (collecting cases). There was no reason the IAD would be different.

The court noted that available precedent was in accord. To be sure, the issue infrequently arose: the parties and the court could identify only two other appellate decisions resolving the issue, and none by any federal court of appeals. See Pet. App. 23a. But those two decisions squarely supported the New Jersey court's decision, relying as well on (1) the IAD's plain text; (2) the role of jury selection as part of the trial itself; and (3) the interpretations of the federal Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174. See Pet. App. 23a-24a (discussing *State v. Bjorkman*, 199 A.3d 263, 267-69 (N.H. 2018), and *Bowie v. State*, 816 P.2d 1143, 1147 (Okla. Crim. App. 1991)).

That said, the New Jersey Supreme Court did put limits on its holding. After identifying the general rule that a defendant is "brought to trial" for IAD purposes when jury selection begins, the court warned that trial courts were not "authorize[d] … to schedule jury selection far in advance of the trial's remaining stages in an effort to circumvent the IAD." Pet. App. 25a. The court recognized that "scheduling conflicts or witness availability issues, among other considerations, may prevent a trial court from continuing a trial immediately after a jury is selected," but the court also "caution[ed] trial judges to avoid prolonged recesses between voir dire and the presentation of evidence when the IAD's speedy trial provisions apply." *Id.*

Separately, the court also determined that the 180-day deadline was tolled during the pendency of Petitioner's suppression motions. See Pet. App. 16a-22a. The court noted that the IAD's 180-day clock is tolled during any period in which the defendant is "unable to stand trial." Pet. App. 16a. The question was thus "whether Congress intended the term 'unable to stand trial' in Article VI(a) to denote only prisoners whose physical or mental condition renders them unable to stand trial, or whether it envisioned that the term would apply to a broader range of settings." *Id.*

The court found that "familiar principles of statutory construction" provided a straightforward answer. *Id.* Adopting the reasoning of an overwhelming majority of federal and state appellate courts, the court held that "a defendant who has filed a pretrial motion in an IAD case should be considered 'unable to stand trial.'" Pet. App. 22a; see Pet. App. 18a-20a (collecting cases). The court held that this result followed from the IAD's text. For one, the IAD's drafters "could have expressly stated that the phrase 'unable to stand trial' … applies only to circumstances involving a physical or mental incapacity to stand trial," but "did not do so." Pet. App. 17a; see *id.* (noting it is not a court's place "to impose limiting language that appears nowhere in the IAD"). For another, while a "defendant awaits disposition of his suppression motions, he is 'unable to stand trial'" too in a real sense. Pet. App. 21a. After all, "a criminal trial ordinarily will not proceed while a pretrial motion is pending," Pet. App. 20a, since the ultimate resolution "of a pretrial motion to suppress such as the motions at issue here may have a profound—if not dispositive—impact on a defendant's prosecution and any plea negotiations," Pet. App. 21a.

The IAD's structure bolstered that conclusion. As the court explained, a separate provision of the IAD already made clear the agreement altogether excluded "'any prisoner adjudged to be mentally ill.'" Pet. App. 17a. In other words, individuals with certain mental conditions were not covered by Article III anyway and thus did not need tolling under Article VI. *Id.* So it "simply does not make sense" to interpret Article VI as applying exclusively to physical and mental conditions when prisoners who are mentally ill are already entirely excluded from the IAD anyway. *Id.*

Continuing to rely on the lopsided majority of federal and state courts, the New Jersey Supreme Court also identified other reasons the IAD did not support Petitioner's cramped interpretation. For one, federal and state courts had long construed other speedy trial laws to toll their deadlines while defendant's pretrial motions are pending. See Pet App. 18a, 21a (noting that its decision "harmonizes" the IAD with the federal Speedy Trial Act as well). And this approach—in those speedy-trial contexts as under the IAD—"avoids creating an incentive for defendants to saddle district courts with innumerable" pretrial motions, aiming to "wait[] out the" IAD's clock. Pet. App. 18a-19a.

But the New Jersey Supreme Court again put certain additional limits on its courts, "to ensure that defendants in cases governed by the IAD will not be subjected to inordinate trial delays when they file motions with the trial court." Pet. App. 22a. The court emphasized that New Jersey's court rules "governing excludable time for speedy trial purposes" already limit the amount of time that can be excluded for the pendency of a pretrial motion. Pet. App. 21a-22a (citing N.J. Ct. R. 3:25-4(i)(3)(A) to (C) (generally

limiting excludable time to 90 days)). The court found that the State's trial judges are likewise bound by "the same limitations on tolling of time periods due to the pendency of pretrial motions" in IAD cases, too. Pet. App. 22a.

The New Jersey Supreme Court found these principles resolved this case. The court explained that Petitioner was "brought to trial" when "jury selection began on July 24, 2018"—that is, before his initial 180-day clock ran on August 22, 2018. Pet. App. 25a. And in any event, the court noted that because Petitioner was "unable to stand trial" for the fifty-three days his suppression motions were pending, the IAD deadline had shifted from August 22, 2018, to October 13, 2018. *Id.* So Petitioner was brought to trial "well in advance of the deadline set by [the IAD], as tolled." Pet. App. 26a. The court also noted that, "[i]n light of [its] ruling, [it] need not reach the question whether the trial court granted a 'necessary or reasonable continuance' based on 'good cause shown in open court, the prisoner or his counsel being present.'" Pet. App. 26a n.8 (quoting N.J. Stat. Ann. § 2A:159A-3(a)).

This petition for certiorari followed.

REASONS FOR DENYING THE PETITION

This case does not warrant certiorari. The holding below that Petitioner's speedy-trial rights under the IAD were not violated rests on two independently sufficient bases: that he was "brought to trial" within the IAD's 180-day deadline when jury selection in his trial began, and that the IAD's 180-day deadline was tolled while his pretrial suppression motions were pending. To avoid issuing an advisory opinion, this Court could grant certiorari in this case only if it believes that both questions presented are worthy of review.

Neither is. The question regarding when Petitioner was "brought to trial" for IAD purposes implicates no split, rarely arises, has little practical importance, and involves no error below. And the question whether the IAD's clock was correctly tolled when Petitioner was "unable to stand trial" does not warrant certiorari either: this Court has repeatedly and recently denied petitions raising this question; this is a poor vehicle in which to consider it; and the split that Petitioner cites is stale, not clearly entrenched, and of little to no practical importance. This Court should deny certiorari.

I. Certiorari Is Not Warranted To Review When Petitioner Was "Brought To Trial."

There is no reason for this Court to review whether Petitioner was "brought to trial" under the IAD within the initial 180 days. Petitioner claims that this Court should grant certiorari to evaluate whether a trial begins when a jury is selected or when that jury is sworn in. But there is no split on this issue among any court, let alone federal courts of appeals or state high courts. The question also scarcely arises: notwithstanding the IAD's seven-decade history, Petitioner and the lower court identified just *three* published opinions by state high courts addressing the subject (including the decision below), and none by any federal circuit. And the question has limited practical importance. There will hardly ever be significant time between selecting and swearing in the jury, and the three courts with which Petitioner disagrees have warned that they would not tolerate delays. Nor are the three decisions erroneous, let alone so troubling that they justify a splitless grant on this rarely-occurring question.

1. Petitioner's first problem is that he does not and cannot allege any split on this question.

As the New Jersey Supreme Court emphasized below, the two other courts to have considered the question have unanimously concluded that defendants are "brought to trial" within the IAD's 180-day limit when jury selection in their trial begins. See Pet. App. 23a-24a (discussing *State v. Bjorkman*, 199 A.3d 263 (N.H. 2018), and *Bowie v. State*, 816 P.2d 1143 (Okla. Crim. App. 1991)). As the court below, *Bjorkman*, and *Bowie* have all concluded, this result follows inexorably from the simple fact that "jury selection is part of the trial process" itself. Pet. App. 23a; see *Bjorkman*, 199 A.3d, at 267-69; *Bowie*, 816 P.2d, at 1147. Moreover, as the court below highlighted, no other state high court has addressed the question, and no federal circuit has addressed it either. Pet. App. 23a. In short, there is unanimity among the only three opinions on point.

Petitioner does not and cannot allege any contrary split. Consistent with Rule 10, Petitioner spills much ink arguing that the ruling below "perpetuates a conflict among the lower courts." Pet. 12. But as the Petition itself makes clear, that alleged conflict is entirely on the *other* question presented—that is, whether the IAD's 180-day clock should have been tolled based on Petitioner's pretrial suppression motions, not whether the IAD was satisfied when jury selection in his trial began in the first 180 days. Compare Pet. 12-17 (alleging a conflict regarding when defendants are "unable to stand trial"), with Pet. 19-21 (identifying no conflict on when a defendant has been "brought to trial" under the IAD); accord Pet. 11. Indeed, the only cases the Petition cites addressing the time in which defendants are brought to trial are

Bjorkman and *Bowie*, the very cases the court below cited. Pet. 21. Far from alleging a split, Petitioner simply contends that all three cases to consider this issue are "unpersuasive." *Id.*

Nor can Petitioner overcome this lack of a split by contending that this question is "closely related" to his *other* question presented, on which there is a conflict. Pet. 11, 19. In reality, these are two distinct questions. One asks whether, under Article III of the IAD, a defendant has been "brought to trial" at the point when the jury is selected or when it is sworn in. The other asks whether, under Article VI, a defendant is "unable to stand trial"—*tolling* the IAD's speedy-trial clock—if pretrial motions are pending. These questions thus involve different provisions of the IAD, different textual requirements, and different relevant facts. Compare Pet. 20-21 (arguing Petitioner was not "brought to trial" when jury selection began), with Pet. 17-19 (arguing Petitioner's pretrial motions could not render him "unable to stand trial"); see Pet. App. 16a-22a & 23a-25a (court below treating these two issues as separate, and relying on different precedents in resolving each). Identifying a split over *one* of the two grounds on which Petitioner seeks review is insufficient to justify granting review over the other, independent basis on which his claim was denied below.

2. This splitless question is also of profoundly little practical importance.

Initially, the question when a defendant in an IAD case is "brought to trial" hardly ever arises. Although Petitioner says that his questions presented are both "important and recurring" and "affect numerous criminal defendants," Pet. 21, that is not the case. The IAD was drafted in 1956, and New Jersey signed the

Compact in 1958. See *Carchman*, 473 U.S., at 719. But notwithstanding the IAD's 68-year pedigree, neither the court below nor Petitioner found a case resolving this question in *any* federal circuit. See Pet. App. 23a (noting "federal courts of appeals have not yet addressed th[is] question"); accord Pet. 21. And despite its widespread adoption, only three state high courts have had reason to address this either—including the court below. See Pet. App. 23a; Pet. 21. A question that arises as few as three times over 68 years, and which generated no conflict among the lower courts, is not one that demands this Court's attention.

There is a good reason why this question so rarely arises: it has little practical application. The question boils down to whether a defendant is "brought to trial" when jury selection begins or when the jury is sworn in. But as a practical matter, there will rarely be much if any time between the two. Swearing in jurors is the step that immediately follows jury selection. See, e.g., Stephen E. Arthur & Robert S. Hunter, 1 Fed. Trial Handbook: Criminal § 15:28 (2023) ("Upon completion of jury selection, the jury must be sworn."). And while there may be days, or even a week, between the two, absent unusual circumstances there will not typically be more. See *United States v. Stayton*, 791 F.2d 17, 20 (CA2 1986) (noting usual expectation "that the swearing of the jury and the presentation of the case will follow soon after voir dire"). Because the question presented matters only where the IAD's clock runs out in the few days (or fewer) between the start of jury selection and the jury swearing in, it is unsurprising that only three courts have resolved the issue.

Although Petitioner claims this issue is important because courts and the States will "abuse" this rule, Pet. 22, that concern is groundless. For two reasons,

there is no reason to believe that courts or States will seek to manipulate the IAD by picking a jury and then delaying the remaining trial proceedings by weeks or months. For one, the courts that have confirmed a defendant has been "brought to trial" when the jury selection process begins have also expressly found such delays would be categorically impermissible. See, *e.g.*, Pet. App. 25a (holding trial courts may not "schedule jury selection far in advance of the trial's remaining stages in an effort to circumvent the" IAD's deadlines, and refusing to allow "prolonged recesses between voir dire and the presentation of evidence" in IAD cases); *Bjorkman*, 199 A.3d, at 269 (finding "any improper delay in trial proceedings would contravene the IAD's purpose of securing a speedy trial for prisoners"). For another, in the rare cases where delay is necessary—*e.g.*, if (as here) a trial court is unavailable to hold the trial given its other commitments—the issue is still of no practical importance because the same facts would constitute "good cause" to toll the IAD's 180-day clock regardless. See N.J. Stat. Ann. § 2A:159A-3(a) (Art. III(a)). There is thus no basis to believe a debate over whether the defendant's trial begins with jury selection or with jury swearing in will impact many cases, and in practice, it has not.

3. Finally, Petitioner points to no error of such profound magnitude to justify granting review of a splitless issue, decided by only three state high courts (and no circuits), that has limited practical impact. Instead, all three lower courts interpreted the IAD correctly.

A defendant has been "brought to trial" under the IAD when jury selection begins. As a general matter, a defendant has been "brought to trial" when his trial "commence[s]"—*i.e.*, when his trial's "first act" occurs.

Brought to Trial & Commence, *Black's Law Dictionary* (4th ed. 1968). As the court below explained, that step is jury selection. See Pet. App. 24a ("Jury selection is not a pretrial proceeding, but a critical stage of the trial itself."); *Gomez v. United States*, 490 U.S. 858, 873 (1989) (a "trial commences at least from the time when the work of empanelling the jury begins" (quoting *Lewis v. United States*, 146 U.S. 370, 374 (1892)); *United States v. Powell*, 469 U.S. 57, 66 (1984) (noting "trials generally begin with voir dire"); Fed. R. Crim. P. 43(a)(2) (requiring defendant's presence at "every trial stage, including jury impanelment").

Although this issue scarcely arises under the IAD, courts construing the federal Speedy Trial Act consistently hold the same. See *Bjorkman*, 199 A.3d, at 267-68 (collecting decisions from the First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits confirming that a trial "commences" under the STA "on the day the jury is empaneled, even if not sworn" (quoting *United States v. Rodriguez*, 63 F.3d 1159, 1164 (CA1 1995)); see Pet. App. 23a (same). That matters not only because speedy-trial provisions are generally read in pari materia, see *United States v. Odom*, 674 F.2d 228, 231 (CA4 1982), but because these decisions confirm the broad understanding that trials naturally begin with jury selection.

Petitioner's contrary argument that the IAD's use of "brought to trial" is really a "term of art" that refers to the date on which the jury is sworn in and jeopardy attaches, Pet. 20, fails for four reasons. First, Petitioner supplies no evidence from dictionaries or treatises to suggest that "brought to trial" was a contemporaneous term of art, and offers no evidence that the IAD drafters were relying on or aware of three state cases from 1899, 1921, and 1922. See *id.* Second,

this Court's pre-IAD cases reasoned that "trial commences at least from the time when the work of empanelling the jury begins." *Lewis*, 146 U.S., at 374 (quoting *Hopt v. Utah*, 110 U.S. 574, 578 (1884)). Third, there is no reason to believe "brought to trial" was a specialized term of art. The IAD's drafters used "brought to trial" to describe when a trial begins in Article III interchangeably with the phrase "trial shall be commenced" in Article IV—the latter of which Petitioner never suggests carries a specialized and atypical meaning. See N.J. Stat. Ann. § 2A:159A-3(a) (a defendant "shall be brought to trial within 180 days"); *id.* § 2A:159A-4(c) ("trial shall be commenced within 120 days"). And finally, the date jeopardy attaches is irrelevant to a speedy-trial dispute. The "reason for holding that jeopardy attaches when the jury is empaneled and sworn lies in the need to protect the interest of an accused in retaining a chosen jury." *Crist v. Bretz*, 437 U.S. 28, 35 (1978). The function of a speedy-trial statute is "wholly different": to "assure[] prisoners that the disposition of their out-of-state charges is forthcoming, an objective that begins at jury selection." *Bjorkman*, 199 A.3d, at 269.

II. Certiorari Is Not Warranted To Review If Petitioner Was "Unable To Stand Trial."

There is likewise no reason for this Court to review whether the court below properly tolled the IAD's 180-day clock for the time it took to brief, argue, and adjudicate Petitioner's pretrial suppression motions. This question, the overwhelming focus of the Petition, asks whether the defendant is "unable to stand trial" while these pretrial motions were pending, or whether Article VI of the IAD only covers tolling when the defendant has a physical or mental disability. But this is a poor vehicle to consider the issue: the tolling

question is not outcome determinative, because Petitioner was in fact brought to trial within the original 180 days. In any event, this question does not warrant review. This Court has denied other petitions raising this question, and nothing has changed since. The underlying split is both insufficiently entrenched and stale; indeed, no court has adopted Petitioner's approach in over three decades. And most importantly, it has no practical importance: courts that take Petitioner's view limiting tolling under Article VI's "unable to stand trial" provision nevertheless find that pretrial motions can justify tolling under another IAD provision instead.

1. This Court should deny this Petition because it is a poor vehicle for resolving the issue.

Most notably, the question is not outcome determinative in Petitioner's case. As laid out above, the question is whether the initial deadline to bring Petitioner to trial—August 22, 2018—should be tolled during the 53 days it took to resolve his two suppression motions. But Petitioner was "brought to trial" when jury selection began on July 24, 2018, almost one month before expiration of the original 180-day deadline. Said another way, even if the IAD's deadline was never tolled until Article VI, his conviction would still stand.

That vehicle problem is fatal. If this Court were to grant certiorari to address the meaning of "unable to stand trial" alone, its opinion would be entirely advisory in Petitioner's case. In other words—as Petitioner admits—this Court can only review this question if it *also* decides the separate question when the trial commences under the IAD. See Pet. 23. As laid out above, however, that separate splitless and rarely-arising issue does not warrant certiorari. And

even if this Court did grant the two separate questions, if this Court ultimately agrees with all three lower courts that Petitioner was "brought to trial" within the first 180 days, any comments it provides regarding tolling under Article VI would be dicta. If Petitioner is correct that the meaning of Article VI's "unable to stand trial" tolling provision is genuinely "important and recurring," Pet. 21, this Court can address the issue in a case where it need not also grant the distinct "brought to trial" question—*i.e.*, in a case in which tolling was genuinely necessary for compliance with the IAD's deadline.

Were that not enough, there is another reason that the question is not likely outcome-determinative here. Not only does the IAD toll its 180-day clock when the defendant is "unable to stand trial," but Article III of the IAD permits courts to grant "necessary and reasonable continuances" of the 180-day clock when they have "good cause" to do so. N.J. Stat. Ann. § 2A:159A-3(a). And below, the trial court and the Appellate Division held that Petitioner's pretrial suppression motions supplied good cause. See Pet. App. 50a-51a (Appellate Division holding that because "the judge listed, heard, and decided defendant's suppression motions within weeks of their filing," the panel would "decline to conclude the judge abused his discretion in finding there was 'good cause' to extend the 180-day period under the IAD"); see also Pet. App. 77a-78a (trial court decision). While the state high court did not reach that issue, see Pet. App. 26a n.8 (noting it "need not reach" the "good cause" issue given its other holdings rejecting Petitioner's claim), that argument is another reason why the interpretation of Article VI of the IAD will have no impact on Petitioner's case.

2. Even were this Petition a good vehicle, this issue does not warrant certiorari. Notably, this question has been recently and repeatedly denied. And for good reason: the asserted split is stale, is not entrenched, and lacks real-world impact.

As an initial matter, this Court has repeatedly and recently denied review of this question. See, e.g., *Peterson v. United States*, 141 S. Ct. 132 (2020); *Neal v. United States*, 558 U.S. 1093 (2009); *Commonwealth v. Montione*, 526 U.S. 1098 (1999). In *Peterson*, to take the most recent example, the petitioner raised the same issue and alleged the same split. See Brief for the United States in opposition, *Peterson v. United States*, Nos. 19-1037 and 19-8000 (May 14, 2020). But as the United States explained, there was no need to review the issue: the lower court disagreement at the time was "neither entrenched nor significant enough to warrant certiorari." *Id.*, at 9. And nothing has changed subsequently to warrant certiorari now; indeed, "the disagreement has grown even more stale since." *Id.*

The same result is justified here. The overwhelming majority of lower courts to consider the issue—at least fourteen federal courts of appeals and state high courts (including the court below)—have rejected Petitioner's argument that he is only "unable to stand trial" if he has a physical or mental disability. See *United States v. Peterson*, 945 F.3d 144, 154-55 (4th Cir. 2019) (emphasizing a "clear majority" adopt this view); *State v. Brown*, 953 A.2d 1174, 1181-82 (N.H. 2008); *United States v. Ellerbe*, 372 F.3d 462, 468 (CADC 2004); *Diaz v. State*, 50 P.3d 166, 167-68 (Nev. 2002); *Commonwealth v. Montione*, 720 A.2d 738, 740-41 (Pa. 1998), *State v. Batungbacal*, 913 P.2d 49, 55-56 (Haw. 1996); *United States v. Neal*, 36 F.3d 1190, 1210 (CA1 1994); *United States v. Johnson*, 953 F.2d

1167, 1172 (CA9 1992); *United States v. Sawyers*, 963 F.2d 157, 162 (CA8 1992); *Dillon v. State*, 844 S.W.2d 139, 142-43 (Tenn. 1992); *United States v. Cephas*, 937 F.2d 816, 819-22 (CA2 1991); *Jones v. State*, 813 P.2d 629, 631-32 (Wyo. 1991); *United States v. Dawn*, 900 F.2d 1132, 1136 (CA7 1990).

Petitioner claims that decisions from the Fifth and Sixth Circuits demonstrate "an entrenched and recognized conflict" on this question, Pet. 11, but this split is stale, not especially entrenched, and of limited importance. Indeed, Petitioner cites only two decisions in support of its approach to Article VI: *Stroble v. Anderson*, 587 F.2d 830 (CA6 1978), and *Birdwell v. Skeen*, 983 F.2d 1332 (CA5 1993). This is unusually powerful proof that a split is stale—no court has sided with Petitioner's view in over 30 years. This Court has denied multiple petitions since. See *supra* at 25.

There are good reasons why. As the United States detailed in *Peterson*, the Fifth and Sixth Circuits' positions do not appear to be entrenched. See U.S. *Peterson* Brief, at 16-19. *Stroble*, for its part, was a habeas corpus decision that primarily considered whether the state courts had followed the IAD's procedures in finding "good cause" to toll a prosecution. See 587 F.2d, at 831-34, 838-40. Its short discussion of Article VI's "unable to stand trial" standard says only that "[t]his record does not disclose any determination by the state courts that appellant was 'unable' to stand trial," and adds that "there is no showing in this record that he was physically or mentally disabled." *Id.*, at 838. But *Stroble* provides no legal analysis to explain the statutory bounds of the IAD's "unable to stand trial" requirement. *Id.* And neither *Stroble* nor *Birdwell* considered the argument—relied on across multiple subsequent circuit and state

high court decisions—that interpreting Article VI's tolling provision to include pretrial motions would properly "harmonize[] the IAD with the federal Speedy Trial Act." Pet. App. 18a; U.S. *Peterson* Brief, at 18 (same). Notably, neither the Fifth nor Sixth Circuits have had occasion to reconsider the question in the wake of so many other state high court and circuit decisions now rejecting their view.

Finally, but crucially, the purported conflict makes little difference on the ground. As explained above, the IAD establishes two different tolling regimes—one for periods during which the defendant is unable to stand trial (under Article VI) and one for periods in which a trial court finds "good cause" to grant a necessary and reasonable continuance (Art. III). Compare N.J. Stat. Ann. § 2A:159A-6(a), *with id.* § 2A:159A-3(a). That is key, because even in the circuits where defendants are "able to stand trial" while pretrial motions are pending, judges can find that those very same motions offer good cause to grant a continuance of the very same length. *Birdwell* could hardly have been clearer about this: the Fifth Circuit explained that trial courts could "grant a reasonable or necessary continuance so that ... the State could prepare a response" to a defendant's pretrial motion and "so that [the trial court] could adequately review and rule upon the motion." 983 F.2d, at 1341 n.23 (recognizing such continuance "will toll the 180-day period"). There is thus no reason to worry that "defendants who are identically situated in all respects except the jurisdiction in which their charges are pending could face drastically different outcomes." Pet. 21-22. While the provisions courts cite may differ, the result across

jurisdictions in cases exactly like this one would ultimately be the same.[3]

3. Finally, the decision below correctly rejected Petitioner's argument that he could be found "unable to stand trial" under the IAD "only when he has a physical or mental disability that prevents him from being tried." Pet. 18. As the court below explained, the IAD's text includes no such limitation. Pet. App. 17a. To the contrary, the IAD's drafters "chose general language in Article VI(a), without limiting the term 'unable to stand trial' to settings involving prisoners with debilitating physical or mental conditions," and it would be inappropriate for a court to "impose limiting language that appears nowhere in the IAD." *Id.* That is, under Article VI's plain language, "a defendant may be unable to stand trial for reasons other than physical or mental disability." *Fuente v. State*, 549 So. 2d 652, 656 (Fla. 1989) (collecting examples). And as the court laid out, this case fits easily within that approach. No one disputes that "a criminal trial ordinarily will not proceed while a pretrial motion is pending." Pet. App. 20a. After all, the "grant or denial of a pretrial motion to suppress

[3] Nor is there any reason to fear that the ruling below will open the door "for abuse" or "excessive delay." Pet. 22. Although the court below rejected Petitioner's argument that pretrial motions never allow for tolling under Article VI, the court took care to add safeguards to address his practical concerns. The New Jersey Supreme Court specifically cautioned that trial courts across the State could not allow delays resulting from a defendant's motion practice that go beyond the State's own restrictive timelines under relevant state laws. Pet. App. 21a-22a; see *supra* at 14-15. As a result, while the court below gave prosecutors and trial courts "sufficient time to develop a thorough record and carefully decide pretrial motions," swift state schedules nevertheless protect the "defendant's interest in a speedy trial." Pet. App. 22a.

such as the motions at issue here may have a profound—if not dispositive—impact on a defendant's prosecution." Pet. App. 21a. But since Petitioner's trial could not start until his motions were resolved, he was unable to stand trial while "await[ing] disposition of his suppression motions." *Id.*

The court below noted other compelling reasons to conclude Article VI's use of "unable to stand trial" was not limited to instances of physical or mental disability. For one, Article VI(b) already stated that the IAD "shall not apply to any person who is adjudged to be mentally ill." N.J. Stat. Ann. 2A:159A-6(b). And "[i]t simply does not make sense that [the IAD's drafters] would limit the 'unable to stand trial' language of Article VI(a) to prisoners whose physical or mental conditions render them unable to stand trial, but entirely exclude any prisoner 'adjudged to be mentally ill.'" Pet. App. 17a. For another, interpreting Article VI to encompass motion-related tolling avoids inconsistencies with other speedy-trial provisions. Pet. App. 18a-19a; see also, *e.g.*, *Branch v. Smith*, 538 U.S. 254, 281 (2003) (courts "interpret statutes ... in the context of the corpus juris of which they are a part, including later-enacted statutes"). Last, this approach "avoids creating an incentive for defendants to saddle district courts with innumerable pretrial motions in hopes of manufacturing delays and waiting out the … clock"—a result incongruous with the IAD's functioning. Pet. App. 18a-19a (quoting *Peterson*, 945 F.3d, at 155).

Petitioner's response falls short. Petitioner identifies no compact text or even drafting history supporting its cramped view of Article VI. Instead, Petitioner again contends that "unable to stand trial" was a term of art. Pet. 17-19. As before, however, Petitioner offers no dictionaries or treatises defining

the words in this limited way; he only cites a smattering of lower court cases. Pet. 18-19. Most obviously, the cases Petitioner cites confirm that persons who are physically or mentally incapable of standing trial *are* "unable to stand trial," but none suggest, let alone hold, that these are the *only* kinds of defendants who are unable to stand trial. In any event, Petitioner provides no evidence to suggest the drafters considered these cases or adopted them as the exclusive construction of the IAD, without specifying that limit in the text. More is needed to support such a cabined and atextual reading.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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