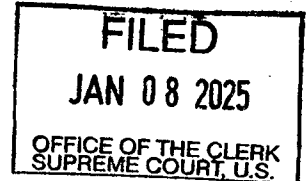


24-6920

±No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL



Bobby B. Kirkendoll

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bobby Kirkendoll

(Your Name)

F.C.I. Texarkana - P.O. Box 7000

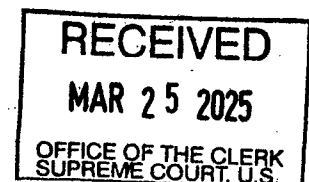
(Address)

Texarkana, TX 75505

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION PRESENTED:

WHETHER THE INTERSTATE AGREEMENT DETAINERS ACT (IAD) 18 U.S.C. App § 2 PROVIDES AN EXCEPTION CLAUSE UNDER V(g) PROVIDING DUE PROCESS PROTECTIONS FOR PETITIONER WHO WAS AWAITING TRIAL PROCEEDINGS IN A SENDING STATE THAT DID NOT ADOPT THE IAD, CAUSING THE UNITED STATES TO VIOLATE IAD AND PETITIONER'S DUE PROCESS?

1. Whether V(g) of the Interstate Agreement Detainers Act IAD, 18 U.S.C. § App is an exception clause for all Non-Party States, which provides Due Process Protections for a Petitioner who is awaiting trial proceedings in the Non-Party State. As the United States is bound by the IAD in its entirety, including V(g), would the United States have subsequently violated the IAD and the Petitioner's Due Process
2. If the Federal Government can only use U.S.C. 2241(c)(5) for temp. purposes with Louisiana does it trigger IAD Art V(g) and must follow its provision or should it wait until Louisiana completes its process first, and if not, what was its extraordinary circumstances? Did it violate the Petitioner's Due Process by not sending the Petitioner back prior to its disposition and sentencing?
3. If Louisiana can be a Sending State to the U.S. Government, who is a party to the IAD, does that mean V(g) is applicable?
4. Was Louisiana considered as a "Sending State" for the purpose of IAD Art. V(g)?

5. Does the failure to Louisiana to adopt the IAD allow the Federal Government to be able to use its discretion to issue "the Writ of Habeas Corpus" under extraordinary circumstances with it should not be exercised otherwise except for a Petitioner's special showing ... ; Under IAD temporary custody is it the same as 2241(c)(5) when used by the U.S. according to "Mauro"?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

#### RELATED CASES CITED

1. 515 F.2d 437 - Moore v. Deyoung
2. Ex Parte Royall
3. Braden v. 30th J.C.C. of Kentucky - 410 U.S. 484
4. Fay v. Noia - 372 U.S. 391
5. Cook v. Hart - 146 U.S. 183
6. Parker v. Ellis, Supra at 582, n.8, 4 L.Ed 2d at 969
7. Ex Parte Baez - 177 U.S. 378
8. U.S. ex Rel Rivera v. Reeuves - 246 F. Supp 599
9. 5:19-cr-231
10. U.S v Mauro, 98 SCT 1834, 56 LED2D 329, 436 U.S. 340
11. Huffman v. Pursue, Ltd. - 420 U.S. 592
12. New Orleans Public Service, INC. v. Council of the City of New Orleans - 491 U.S. 350, 369
13. Frank v. Mangum - 237 U.S. 237 U.S. 309, 328, 59 L.Ed 969, 980, 35 Sup.Ct.
14. Covell v. Heyman, 111 U.S. 176, 28 L. Ed. 390, 4 Sup. Ct. Rep. 355
15. Ableman v. Booth, 21 How. 506, 16 L. Ed. 169
16. Ponzi , 258 U.S. 254

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6. Parker v. Ellis, Supra at 582, n.8, 4 L.Ed 2d at 969 .....
7. Ex Parte Baez - 177 U.S. 378 .....
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13. Frank v. Mangum - 237 U.S. 237 U.S. 309, 328, 59 L.Ed 969, 980, 35 Sup.Ct.
14. Covell v. Heyman, 111 U.S. 176, 28 L. Ed. 390, 4 Sup. Ct. Rep. 355 ...
15. Ableman v. Booth, 21 How. 506, 16 L. Ed. 169 .....
16. Ponzi .....

## STATUTES AND RULES

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2241 (c)(5) Temporary Custody Device (Governing by Habeas Corpus Procedure)	
Rule of Comity See Ex. 3(1) and (2) .....	
Statutory Interpretation .....	
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Due Process Protection See Ex.2 and 3 .....	
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CITATION OF THE OPINIONS AND ORDERS EXECUTED IN THIS CASE:

Kirkendoll v. FCI-Texarkana, 2024 US DIST LEXIS 66646 (Feb 26, 202 )

United States District Court, 5th Circuit .....

Kirkendoll v FCI-Texarkana, 2024 US DIST LEXIS 65465 (April 10, 2024)

United States District Court, 5th Circuit .....

Bobby B. Kirkendoll v. Warden, FCI-Texarkana, No. 24-40356 (December 5, 2024).

United States Court of Appeals for the Fifth Circuit. ....

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix F to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from the Federal Courts:

The opinion of the United States court of appeals appears at Appendix B to the petition and is unpublished.

The opinion of the United States district court appears at Appendix F to the petition and is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 5, 2024.

☒ No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## JURISDICTION OF THIS COURT

This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1), 28 U.S.C. § 1651, and the United States Constitution.

## CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

I.A.D.Art. V(g) Violation in Question

2241 (c)(5) Temporary Custody Device (Governing by Habeas Corpus Procedure)

Younger Abstention Doctrine See EX. 2 and 3

Rule of Comity See Ex. 3(1) and (2)

Statutory Interpretation

Statutory Construction

Due Process Protection See Ex.2 and 3

Presumption of Innocence See Ex.4

Principal of Federalism

## STATEMENT OF THE CASE

While the Petitioner was detained pending trial in the state of Louisiana the Government requested Petitioner from the State of Louisiana via a Writ of Habeas Corpus Ad Prosequendum. Once in Federal Custody via the Writ of Habeas Corpus Ad Prosequendum, Petitioner was forced into a plea agreement to the Federal charges due to the violation of the Interstate Agreement Detainers Act (IAD) by being informed that a failure to accept the plea would negate any further negotiations pending. Thus, Petitioner agreed to a plea with the Federal Government due to a failure by the Federal Government to abide by the provision of the IAD under Article V(g). (See sentencing transcripts Criminal No. 19-CR-00231)

Petitioner invokes in this Writ of Certiorari request that Article V(g) of the IAD has a clause that provides Due Process for States who refuse to adopt the IAD which the Government violated when requesting Petitioner via a Habeas Corpus Ad Prosequendum and the State violated by providing Petitioner to the Federal Government because they are a "Sending State" for the purpose of IAD Art V(g).

Petitioner was not in "custody" for the purpose of Habeas Corpus Ad Prosequendum where Petitioner was in trial proceedings in the State of Louisiana because he had not been sentenced to a term of imprisonment by the State of Louisiana when he was transferred to the Federal Government for his trial proceedings that concluded in his plea agreement which should be considered improvident or without jurisdiction. There was "not" an extraordinary circumstance.

Petitioner invokes that the question presented to this Honorable Court has never been answered by this Court nor any District Court, and the decision of the Court of Appeals of the Fifth District did not apply the law of the case regarding IAD. This case is one of first impression and there is no case law in the Fifth Circuit Courts dealing with IAD Art. V(g) causing the lower Courts to rely on inapplicable law regarding petitioner request for "statutory interpretation" of IAD Art. V(g) not other provisions of the IAD that may fit their interpretation, however erroneous, as applied to Petitioner.



## REASONS FOR GRANTING THE PETITION

Petitioner argues that I.A.D. Art. 5(g) of the I.A.D. is an exception clause; for "all purposes other than" and clearly leaving out the language "party states."

Petitioner clearly understands that Louisiana did not adopt the I.A.D. because if they did then they would be a "party state" operating under I.A.D. under Art. III or IV.

Congress knew that, not all states would adopt I.A.D. so it is the Petitioner's belief based on statutory construction, (Barnhart v. Sigmon Coal Co. Inc. 534 U.S. 438), that Congress purposely left out the language "party states" in I.A.D. Art. 5(g) and clearly stated "for all other purposes..."

I.A.D. Art. III and IV of the Interstate Agreement on Detainees relates to persons who are serving a term of imprisonment. The Petitioner was not serving a term of imprisonment at the time the Federal Government requested the Petitioner (see Exhibit A for dates) via a "Writ of Habeas Corpus Ad Prosequendum. Limitation for it's application towards its use is under Habeas Corpus.

Habeas Corpus, "with respect to state prisoners, it is only in the post-trial setting that exhaustion has been mandated by statute 2241(c). Federal Courts have pre trial habeas corpus jurisdiction. Jurisdiction without exhaustion should not be exercised at the pre-trial state unless extraordinary circumstances are present.....the district Court should exercise its "pre-trial" habeas jurisdiction ONLY if Petitioner makes a special showing of that

need for such adjudication and has exhausted state remedies. (515 F.2d 437 Moore v. DeYoung).

As an important fact, Petitioner did not request or file a "habeas corpus" to the Federal Government, rather the Federal Government violated I.A.D. being a party to, and bound by, I.A.D. Art. 5(g) demanding petitioner to remain in Federal Custody until final disposition. (See Exhibit A) Ex Parte Royall; Braden v 30th Judicial Circuit Court of Kentucky 410 U.S. 484, 35 L.Ed.2d.443; Fay v. Noia, 372 U.S. 391, 9L.Ed.2d.837; Cook v. Hart 146 U.S. 183...36L.Ed.934.

Pursuant to Habeas Corpus 2241(c) as the lower court has hung one of these issues on, (See Exhibit B) the Petitioner was "in custody by the State of Louisiana." On the surface, it may appear Petitioner could be "in custody" by the State of Louisiana, but for an on-going State Court proceeding. (See Exhibit A).

Under the circumstances for this Petitioner, the "Habeas Corpus ad Prosequendum" could not lie to derail those proceedings. (See Braden 410 U.S. 484).

Which is what gave way to an injury to Petitioner.

"Once the Federal jurisdiction has attached in the District Court, it is not defeated by release of the prisoner prior to completion of proceedings on such application."

The province of a "Writ of Habeas Corpus," shaped to guarantee the most

fundamental of all rights, is to provide an effective and speedy instrument by which "judicial inquiry may be had into the legality of the detention of a person." If there has been, or will be, an unconditional release from custody "before" inquiry can be made into the legality of detention, It has been held that there is no habeas corpus jurisdiction. See Parker v Ellis, Supra, at 582, n.8, 4 L.Ed.2d at 969 (Warren C.J. Dissenting). Ex parte Baez, 177 U.S. 378; U.S. ex Rel Rivera v. Reeves, 246 F Supp 599.

Again, it is important to note, Petitioner was not serving a term of imprisonment while being held at Caddo Correctional Center with the ability to make bond or have a trial to prove his innocence.

Congress has provided a statute dealing with this particular subject matter for transferring custody or jurisdiction of a prisoner. It is I.A.D. Congress was aware of Habeas Corpus ad Prosequendum 2241(c) and that all states may not adopt I.A.D. so in its wisdom to provide procedure to prevent conflict and to ensure due process protection under its legislation of I.A.D. Art. 5(g) "For all purposes other than for which temporary custody (2241(c)5) as provided in [that] agreement is exercised, the prisoner (a person incarcerated) shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state (not just a party state) but all states. If Congress intended for this section to only include party states, it could have used the language "party state" rather than "sending state" because the United States consists of 50 states not just 48 states who adopted I.A.D. The United States is bound by this agreement. Federal law trumps state law.

The Petitioner argues that I.A.D Art. 5(g) is an exception clause to aid in

fair dealings in all states that can be a "sending state" regardless of the party states in which "temporary custody" (2241(c)5) is exercised. So, as stated by this lower court analysis, Louisiana is a sending state, not a party state. "Other parts of I.A.D. Art. 5 uses party state," (See cite district cases), but that is not the issue. The issue is particularly about I.A.D. Art. 5(g) being an exception clause.

The lower courts, however, have refused to answer the question now humbly presented here, but averted to other unsupported claims that are irrelevant or inapplicable to the interpretation of this statute,

A court must trust that Congress intended a statute to mean what it says. The Petitioner prays that this Honorable Court will follow this posture.

The Fifth Cir., among other courts, concluded that Louisiana is "not a party state" because Louisiana has not adopted I.A.D. and that the U.S. is not bound by I.A.D. However, when Congress legislates, it legislates for all 50 states and Federal law trumps state law, and risk judges legislating from the bench. When I.A.D. was enacted it become law.

Under the marginal analysis, because the Petitioner was being held at Caddo Corrections Center (CCC), he was "in custody" of the State of Louisiana, but upon closer inspection, he was merely detained and presumed innocent until a judgement by a court, after trial, if convicted.

Therefore, not "in custody" for Habeas Corpus purpose, which requires a person to be under a Court's judgement, conviction or sentence. As stated by

lower courts "Louisiana's failure to adopt I.A.D." (See Cited Cases) However, under I.A.D. Art 5(g), Congress provided a due process protection "remain in custody and subject to the jurisdiction of the sending state." See Case 5:23-cv-00142, Document 6, pg.3.

The Petitioner is not claiming protections under I.A.D. Art. III or IV, which requires a person to be serving a term of imprisonment and includes the language "party state," nor is he using other parts of I.A.D. Art. 5, in which the lower Courts adhere to. The Petitioner aver to the fact that I.A.D. Art. 5(g) do not have the (necessary language) party state to allow the lower Courts to include [it] in the meaning. Petitioner also aver that I.A.D. Art. 5(g) applies to non-party states and the use of "all other purposes as temporary custody is exercise," is 2241(c)(5). Therefore, I.A.D. Art. 5(g) applies to all "sending states" whether or not they are a party state.

Section 5 of the I.A.D. states: "All Courts, departments, agencies, officers, and employees of the United States and the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party states in enforcing the agreement and effecting its purpose."

Thus, under Section 5 the U.S. and it's officers are bound by the provision of the I.A.D. It does not make an exception that the U.S. is only bound to I.A.D. via only states that adopt I.A.D. Under this section the U.S. is bound by I.A.D., notwithstanding Louisiana's failure to adopt I.A.D.

The use of comity between these two party's was in complete violation of

Petitioner's Constitutional Rights of Due Process and the Younger abstention doctrine (See exhibit 2 and 3) which shows the standard in process.

The **power and discretion** to practice **COMITY** in the federal system is vested in the Attorney General (see, Footnote below)\*

\*The federal government may suggest that Kirkendoll lacks standing to challenge the (A.G.) decision to receive him into custody " **to inquire into the legality of his detention** ". It may attempt to rely on Ponzi; 258 U.S. 254, quoting " The exercise of jurisdiction over a prisoner "who has violated " the law of more than one sovereignty and the priority of prosecution of the prisoner is solely a question of comity between the sovereignties which, is not subject to attack by the prisoner".

It must be remembered and enforced, that Ponzi was serving a term of imprisonment before the habeas corpus (2241(c)) was issued. This **Petitioner** was awaiting trial, merely detained, bail ready, presume innocent, and there does Not exist a violation for one or more sovereignties cases.

## CONCLUSION

Article V(g) of the I.A.D. states:

For all purpose other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the Sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law. (emphasis added).

As shown, Petitioner was merely detained in Louisiana which activated IAD Article V(g) by Louisiana not adopting IAD, this meets the "for all purposes other than" mentioned within the IAD.

In other words, if any non-party state chooses to not adopt IAD, then the provision of Article V(g) qualifies as an exception clause and Due Process protection for those detained in Louisiana the "Sending State." Although the Petitioner was in "custody," he was not in "custody" for the purpose of IAD or 2241(c) because he was not convicted, sentenced, or under a judgement of Court. The United States is bound by the Article V(g) of the IAD even if Louisiana does not adopt IAD if the person requested for trial by the United States has not completed his process in the primary jurisdiction.

Furthermore, Petitioner urges that Article V(g) of the IAD is ambiguous and

its meaning is uncertain and doubtful or is reasonably susceptible to more than one interpretation for which the Petitioner asks this Honorable Court to decide upon whether Article V(g) of the IAD protects the Petitioner's Due Process by United States Constitution until trial proceedings are finalized in Louisiana. This could have changed the probable cause of the Federal Indictment. The Petitioner urges that the IAD Art. V(g) cannot be interpreted any other way. It is admitted by the Lower Court that the language "party state" does not appear in Article V(g) (5:23-CR-142 Id at 3), but this does nothing for the Petitioner's claim except sidestep the issue of the fact that on its face it says "the sending state" and as applied to the Petitioner; Louisiana is a non-party to IAD but Louisiana is a sending state. The Statute of Congress did not say "subject to the jurisdiction of the (party state)".

When the Federal Government requested that the Petitioner, (Exhibit A, 5:19-CR-231 pg. 2) "remain in Federal Custody until the disposition of the case," it exceeded its authority and is a direct violation of IAD Art. V(g).

The Supreme Court has not decided any cases on IAD Art. V(g) as an exception clause, which would make this case one of first impression. Law and justice would require this statutory interpretation to be decided to prevent constitutional violations and deprivation of statutory rights allowing lower courts to legislate from the bench.



## Relief Requested

The Petitioner hereby requests that this Honorable Court declare that the United States was bound by Article V(g) of IAD contrary to the law of the 5th Circuit which relies on its application based on other parts of IAD. The Petitioner requests IAD Art V(g) be declared an exception clause that includes all 50 sending states. The Petitioner requests the benefit of any ambiguities involved. The Petitioner requests immediate release from prison and all responsibilities associated with the Federal Government's Due process violation and a certificate of innocence because if it is declared that the Petitioner is correct in his statutory interpretation or the process was a violation, it affects the jurisdiction, the power to act, and where such power is lacking, then there is no federal crime.

The Petitioner requests that Louisiana be declared a sending state with the obligation to have kept the Petitioner in custody and subject to its Jurisdiction and held accountable for not signing the IAD by following and explaining their extraordinary circumstances and ensure due process prevention of 2241(c)(5) violations.

Finally, the Petitioner requests that all charges be dismissed for lack of jurisdiction with prejudice.