

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARCUS MILLSAP,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

May a prosecutor and/or Court evade the provisions of the Interstate Agreement on Detainers Act (“IADA”) by obtaining custody of a prisoner through a writ of habeas corpus ad prosequendum first, and then maintaining custody of the prisoner via a detainer?

RELATED PROCEEDINGS

United States v. Millsap, No. 23-2396 (8th Cir.

Jun 11, 2024)

United States v. Millsap, No. 4:17cr-293 (E.D.

Ark. May 24, 2023)

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PETITION FOR A WRIT OF CERTIORARI

Marcus Millsap respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The decision of the Court of Appeals for the Eighth Circuit is available at 115 F.4th 861 and reprinted in the Appendix to the Petition (“Pet. App.”) at 1. The district court’s order denying petitioner’s motion to dismiss based on a violation of the IADA is unpublished.

JURISDICTION

The decision of the Eighth Circuit was issued on September 3, 2024. Pet. App. 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

This case involves the IADA codified at 18 U.S.C. App. 2, §§ 1-9 and Ark. Code Ann. §§ 16-95-101 to 107.

STATEMENT OF THE CASE

This case arises from Marcus Millsap's federal convictions following a district court's denial of his motion to dismiss the indictment against him pursuant to the speedy-trial provisions of the IADA. The Eighth Circuit affirmed and found the IADA did not apply to Millsap's case—and thus that the IADA's speedy-trial provisions were not violated—because Millsap was brought into federal custody from state prison on a writ rather than a detainer, despite Millsap then remaining in federal custody pursuant to a detainer for more than two years before being brought to trial. The Eighth Circuit

misconstrued this Court's decision in *United States v. Mauro*, 436 U.S. 340 (1978), by erroneously finding the IADA did not apply to Millsap.

The case presents the question of whether prosecutors and courts may sidestep the IADA by bringing a defendant in another jurisdiction's custody into custody on a writ and then keeping him there on a detainer. This Court must decide in Appellant's favor to avoid the IADA becoming a nullity; to preserve the purposes of the IADA; and to correct the application of its decision in *Mauro*.

A. The IADA.

The IADA states in relevant part, "In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State." 18 U.S.C. App. 2, § 2, art. IV(c). Arkansas

and the United States each is a party "State" under the Agreement. *Id.* at § 2, art. II(a).

Once a prosecutor obtains the presence of a prisoner, "trial shall be commenced within [120] days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." *Id.* at § 2, art. IV(c). The indictment shall be dismissed if the prisoner is not brought to trial within the 120-day period. *Id.* at § 2, art. V(c).

The IADA "shall be liberally construed as to effectuate its purposes" *Id.* at § 2, art. IX. The IADA's purposes are "to ensure prompt disposition of outstanding charges in order to implement a prisoner's right to a speedy trial and to prevent

interference with his participation in treatment and rehabilitation programs.” *Rhodes v. Schoen*, 574 F.2d 968, 969 (8th Cir. 1978). The IADA is “meant to prevent the government from gaining advantages against a defendant by lodging a detainer against him without assuming the responsibilities arising from that action.” *Gallimore v. State*, 944 P.2d 939, 942 (Okla. 1997) (citing *Mauro, supra*).

Once the Federal Government lodges a detainer against a prisoner with state prison officials, the Agreement by its express terms becomes applicable and the United States must comply with its provisions. Once a detainer has been lodged, the United States has precipitated the very problems with which the Agreement is concerned. *Mauro*, 436 U.S. at 361-362.

For the IADA to apply, the defendant must be “subject to a term of imprisonment” rather than mere pretrial custody. *See United States v. Pardue*, 363 F.3d 695 (8th Cir. 2004). The provisions of the IADA are triggered when a detainer is filed with the custodial (sending) state by the receiving jurisdiction having untried charges pending against the prisoner. *Mauro*, 436 U.S. at 343. And once a detainer has been lodged, the United States has precipitated the very problems with which the IADA is concerned. *Id.* at 361-362.

B. The District Court.

On February 5, 2019, Marcus Millsap was indicted and charged with conspiracy to violate the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, attempted murder in aid of racketeering, and drug conspiracy. At the time he

was serving a term of imprisonment in the Arkansas Department of Correction (“ADC”).

Millsap was brought into federal custody from ADC by a writ of habeas corpus ad prosequendum filed on February 12, 2019. He appeared for arraignment on the indictment on February 19, 2019. That same day, the district court entered an order to lodge a detainer directing the USMS to file a detainer with the appropriate custodial authority keeping Millsap in federal custody until his federal charges were resolved. Pet. App. 3. The detainer was filed against Millsap with the ADC on February 25, 2019. Pet. App. 3. The detainer noted the “notice and speedy trial requirements of [IADA] APPLY to this Detainer because the Detainer is based on pending Federal criminal charges which have not yet been tried.” Pet. App. 19.

Millsap was never returned to State custody.

On March 19, 2020, Millsap filed a motion to dismiss the indictment against him under the speedy-trial provisions of the IADA, which the district court denied. Pet. App. 4.

Millsap's jury trial began on September 8, 2021, and he was found guilty of all charges on September 24, 2021.

On May 24, 2023, the district court sentenced Millsap to concurrent terms of life imprisonment for RICO and the drug conspiracy and 10 years for attempted murder.

C. The Eighth Circuit Opinion.

Millsap appealed, and the Eighth Circuit affirmed. Pet. App. 3-6. Millsap argued that the IADA applied and that the district court erred by

denying his motion to dismiss based on the Act's speedy-trial provisions.

The Eighth Circuit held the IADA does not apply “when the federal government secures custody of a state prisoner through a writ of habeas corpus ad prosequendum before a detainer is lodged.” Pet. App. 4-5 (citing *Mauro*, 436 U.S. at 361-362).

The Eighth Circuit concluded the IADA never applied to Millsap because the federal government obtained custody through a writ rather than a detainer, and that the “detainer delivered later to the state authorities thus ‘served no purpose’ and was ‘meaningless’ because Millsap was ‘already in federal custody pursuant to the writ.” Pet. App. 5. (quoting *United States v. Woods*, 775 F.2d 1059, 1060-1061 (9th Cir. 1985)).

The Eighth Circuit looked only to how United States acquired custody of Millsap—by writ or detainer—rather than how Millsap was made to remain in federal custody for years before his trial: “The United States did not acquire custody of Millsap by means of a detainer, so the Agreement did not apply.” Pet. App. 6.

REASONS FOR GRANTING THE WRIT

The Eighth Circuit incorrectly applied this Court’s holding in *Mauro* and in doing so eviscerated the IADA. By prioritizing the order in which the writ and detainer were filed rather than the detainer’s impact—keeping Millsap in federal pretrial custody for several years instead of serving time in state prison with rehabilitation programs, the United States, the district court, and the Eighth Circuit circumvented the IADA and rendered it

essentially meaningless. To uphold the fundamental purpose of the IADA, this Court must clarify the applicability of *Mauro* in cases where a prisoner is brought into a receiving jurisdiction on a writ, remains there on a detainer, and is never returned to the sending jurisdiction, and find that the IADA applies in such cases such as Millsap's.

I. WRITS VS. DETAINERS.

There are two ways the United States may obtain custody of a state prisoner. First, by a writ of habeas corpus ad prosequendum, which allows the issuing court to “obtain temporary custody of a prisoner” to bring them to federal court proceedings. *Mauro*, 436 U.S. at 362. The nature of the writ is such that the sending state retains full jurisdiction over the prisoner since the prisoner is only “on loan” to the

prosecuting jurisdiction. *Flick v. Blevins*, 887 F.2d 778, 781 (7th Cir. 1989).

The other way is by lodging a detainer, a request to the institution where a prisoner is incarcerated asking the institution either to hold the prisoner for the requesting agency or to notify the agency when the prisoner's release is imminent. *Mauro*, 436 U.S. at 358. Unlike a writ, a detainer is not a temporary measure.

In *Mauro*, this Court held that a writ of habeas corpus ad prosequendum is not a "detainer" for purposes of the IADA. 436 U.S. at 361. This Court's reasoning was clear: such writs are immediately executed and do not cause the problems associated with detainers, such as the lengthy duration of outstanding charges against a defendant, which the IADA seeks to address. *Id.* at 360-361.

This Court noted the IADA’s protections are not invoked when no detainer is filed and a writ alone is used because unlike a detainer, the writ will “run its course” and is not operative in the long term. *Id.* at 370 n. 26. The writ never ran its course here because a detainer was lodged almost immediately after Millsap entered federal custody pursuant to the writ.

Mauro did not address the situation here, where Millsap was brought from state custody into federal custody on a writ, remained in federal pretrial custody for more than two years while awaiting trial on a detainer, and *never* returned to state custody.

**II. THE EIGHTH CIRCUIT
MISINTERPRETED *MAURO* AND
MISAPPLIED IT TO MILLSAP’S
CIRCUMSTANCES.**

The Eighth Circuit misinterpreted *Mauro* by finding it stands for the proposition that the IADA is not triggered when the federal government secures

custody of a state prisoner through a writ before a detainer is lodged. Pet. App. 5-6. *Mauro* did not address such a factual scenario; it only addressed whether a writ function as a detainer.

This Court must grant certiorari to correct the Eighth Circuit's misinterpretation of its caselaw and to ensure proper application of the IADA.

In the usual course of events, a writ habeas corpus ad prosequendum is temporary. *United States v. Kelly*, 661 F.3d 682, 686 (1st Cir. 2011) (citing *Mauro*, 436 U.S. at 362). It runs its course and is no longer active. *Id.* As subsequent courts have observed, the brief interruptions caused by court appearances pursuant to writs do not substantially affect a prisoner's ability to take part in rehabilitative programs. *See, e.g., United States v. Roy*, 830 F.2d 628, 636 (7th Cir. 1987) (one-day

interruption of state imprisonment “posed no threat to a prisoner’s rehabilitation sufficient to constitute a violation of the [IADA].”); *Sweeney v. State*, 704 N.E.2d 86, 97 (Ind. 1998).¹

That is not what happened here. Millsap was brought from ADC into federal custody on a writ, then immediately detained there on a detainer. He remained in federal pretrial custody for more than two years before trial, and more than four before sentencing. Millsap was held in pretrial detention in a county jail devoid of any meaningful rehabilitation processes. This is exactly what the IADA was enacted to prevent. *See Mauro*, 436 U.S. at 359.²

¹ “[B]ecause a Writ requires immediate action, it is valid only for a short period of time. On the other hand, a detainer may remain lodged against the prisoner for a lengthy period of time, even for the span of the prisoner's sentence.”

² “Furthermore, the prisoner was often deprived of the ability to take advantage of many of the prison's programs aimed at rehabilitation, merely because there was a detainer lodged against him. This problem was noted by the Director of the

Mauro did not condition application of the IADA on whether the prisoner entered receiving custody on a writ or a detainer, just that a writ is not a detainer for purposes of the Act. *Mauro*, 436 U.S. at 361. The Eighth Circuit misconstrued and misapplied *Mauro* accordingly.

Once a detainer is lodged, the prior issuance of a writ cannot insulate the United States from the requirements of the IADA during all subsequent demands for production of the prisoner in connection with the prosecution of the federal charges. *United States v. Roy*, 771 F.2d 54, 58-59 (2d Cir. 1985).

Federal Bureau of Prisons, who in 1959 stated that he ‘remember[ed] the day when the presence of a detainer automatically guaranteed that the inmate would be held in close custody and denied training and work experiences in more relaxed situations, such as the farm, which frequently represent a valuable resource in treating prisoners and testing their progress.’”

Regardless of when a detainer is filed, the fact of its filing and its effect in keeping the prisoner in the receiving jurisdiction's pretrial custody triggers the IADA. Rather than focusing solely on the order in which the documents are filed, courts must consider whether the inmate *remained* in the receiving jurisdiction's custody as a result of the detainer.

Millsap remained in federal custody for more than four years in pretrial federal custody pursuant to the detainer awaiting the completion of his federal case. The IADA applied accordingly.

III. THE EIGHTH CIRCUIT IMPROPERLY RELIED ON *UNITED STATES V. WOODS* IN RULING AGAINST MILLSAP.

In denying Millsap's IADA claim, the Eighth Circuit cited *Woods, supra*. The Eighth Circuit reasoned that, like in *Woods*, when a detainer is not lodged until after a writ, the detainer is meaningless

because the prisoner is already in federal custody, and thus the IADA does not apply. Pet. App. 5-6.

However, Millsap's case is factually and legally distinct from *Woods*. Woods was brought into federal custody pursuant to the writ and a detainer was mistakenly filed afterwards. *Woods*, 775 F.2d at 1060. Woods was returned to state custody after his arraignment, just a few days later. *Id.* The detainer was not meaningless because it was filed *after* the writ; it was meaningless because Woods was not actually detained in federal custody pursuant to it.

Millsap, by contrast, was *never* returned to the ADC after being brought into federal court on a writ, and was then detained under a federal detainer for four years while his case was pending. Pet. App. 5. He was held by the federal government for over four years, deprived of the rehabilitation and programs

he would have received in Arkansas state prison.

It does not matter that the detainer was filed after the writ. Millsap was moved from ADC to federal custody, where he remained for more than four years under a detainer. This Court must clarify *Mauro's* application to the circumstances of this case.

IV.PROTECTING THE INTEGRITY AND FUTURE OF THE IADA: ADDRESSING POLICY CONCERNS.

The IADA is rooted in the need to mitigate the harmful effects of detainers on prisoners and ensure the fair and timely administration of justice. The IADA was first promulgated by the Council of State Governments in 1957 and was adopted by Congress in 1970. *Stroble v. Anderson*, 587 F.2d 830, 834 (6th Cir. 1978). It has been enacted by 48 states, the District of Columbia, and the federal government. *Cuyler v. Adams*, 449 U.S. 433, 435 n.1 (1981).

The purpose of the IADA is to encourage the prompt and orderly disposition of charges and to determine the proper status of any and all detainees based on untried indictments, informations, or complaints. 18 U.S.C. App. 2, § 2, art. I. The IADA's purposes are "to ensure prompt disposition of outstanding charges in order to implement a prisoner's right to a speedy trial and to prevent interference with his participation in treatment and rehabilitation programs." *Rhodes*, 574 F.2d at 969. The IADA is "meant to prevent the government from gaining advantages against a defendant by lodging a detainer against him without assuming the responsibilities arising from that action." *Gallimore*, 944 P.2d at 942 (Okla. 1997) (citing *Mauro*, *supra*). Yet the Eighth Circuit's opinion allows receiving jurisdictions to reap the benefits of detainees without

bearing the responsibilities the IADA imposes for using them.

The IADA is designed to protect prisoners from the negative impacts of detainers. It is meant to be a safeguard against the anxiety, uncertainty, and the denial of access to rehabilitative programs that detainers often cause. *State v. Bjorkman*, 199 A.3d 263, 267 (N.H. 2018).

But the Eighth Circuit's opinion gives prosecutors and courts a blueprint for how to have their cake and eat it too. By simply dragging defendants from state prisons to federal court with a writ, and then keeping them in federal custody for years under a detainer, prosecutors and courts will circumvent the IADA, evading all of the protections it affords to prisoners like Millsap.

The Eighth Circuit's opinion allows prosecutors and courts to circumvent the IADA by bringing state prisoners into federal custody through writs and then keeping there with detainers filed shortly after they arrive in federal custody. If left uncorrected, all of the issues the IADA was designed to address will reappear or become exacerbated. This Court must grant certiorari to correct this misapplication of law and preserve the protections the IADA provides.

The IADA is supposed "to prevent prosecutorial abuses of the detainer that potentially allow a prisoner to languish in a separate jurisdiction under the constant but uncertain threat of further prosecution." *United States v. Kurt*, 945 F.2d 248, 251 (9th Cir. 1991). However, that is precisely what happened to Millsap in this case.

This Court must grant certiorari to ensure that prosecutors and courts cannot circumvent and nullify the IADA in the manner permitted by the Eighth Circuit, and to correct the Eighth Circuit's misinterpretation and misapplication of *Mauro*.

This Court must grant certiorari accordingly.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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