

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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WASHINGTON, D.C. 20543

DKT/CASE NO. 84-5059

TITLE PATRICK RAMIREZ, Petitioner v. INDIANA

PLACE Washington, D. C.

DATE March 19, 1985

PAGES 1 thru 47



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IN THE SUPREME COURT OF THE UNITED STATES

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PATRICK RAMIREZ,	:
	:
Petitioner	:
	:
v.	: No 84-5059
	:
INDIANA	:
	:
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Washington, D.C.

Tuesday, March 19, 1985

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:06 a.m.

APPEARANCES:

KENNETH FRANCIS RIPPLE, ESQ., Notre Dame, Indiana; on behalf of the Petitioner.

WILLIAM EARL DAILY, ESQ., Deputy Attorney General of Indiana, Indianapolis, Indiana; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. Ripple, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF KENNETH FRANCIS RIPPLE, ESQ.,  
ON BEHALF OF THE PETITIONER

MR. RIPPLE: Mr. Chief Justice, and may it please the Court:

This case is here on writ of certiorari to the court of appeals of the State of Indiana. It presents a single question with respect to the interpretation of the Interstate Agreement on Detainers. The Court must decide whether Indiana could try the petitioner on a charge which was not mentioned in the detainer used to obtain his temporary and limited custody from the penal authorities of the State of Michigan.

The facts of this case are complicated, and I would like to state very succinctly the essence of our position on that question before I spend a good deal of time on the facts, which I think are difficult to grasp.

In essence, our submission is that this question can be answered by a straightforward of the IAD. The trial court of the receiving state -- in this case Indiana -- only has authority to try a prisoner on those charges mentioned in the detainer or on those charges which arise out of the same transaction as those



1 charges mentioned in the detainer. For all other  
2 purposes the sending state -- in this case the State of  
3 Michigan -- retains both custody and jurisdiction of the  
4 prisoner.

5 QUESTION: Mr. Ripple, in that connection,  
6 where is your client now?

7 MR. RIPPLE: My client at the present time is  
8 in Westphal Correctional Institution in Indiana.

9 QUESTION: So he has not been returned to  
10 Michigan to continue his sentence there.

11 MR. RIPPLE: No, Your Honor, he has not. And  
12 this might be a good time for me to inform the Court of  
13 several factors I was going to bring up later, probably  
14 in the --

15 QUESTION: In that connection, let me ask you,  
16 is Michigan unsympathetic to Indiana's position here?  
17 Why should Michigan want him back?

18 MR. RIPPLE: Michigan -- if I may give you  
19 these facts first, I think they will partially --

20 QUESTION: I know what the facts are.

21 MR. RIPPLE: -- answer your -- answer your --

22 QUESTION: I know what the facts are.

23 MR. RIPPLE: Well, Michigan could --  
24 Michigan's Governor had a right to make a determination  
25 in this case before he sent the petitioner across the

1 line to stand charges, to stand trial on the Diazepam  
2 charges. That right is given to the Governor of  
3 Michigan --

4 QUESTION: But Michigan isn't complaining  
5 here, is it?

6 MR. RIPPLE: Michigan is not complaining  
7 here. It is -- and one would not expect in the direct  
8 appeal of the criminal case that Michigan could be the  
9 complainant. Whether Michigan has complained to the  
10 authorities of Indiana is not in the record, and we  
11 don't know whether they have or have not.

12 QUESTION: Why should they complain?

13 MR. RIPPLE: They should complain because the  
14 Interstate Agreement in fact was violated.

15 QUESTION: But Indiana has the obligation and  
16 the expense of taking care of your client, not Michigan.

17 MR. RIPPLE: That's correct.

18 QUESTION: They got rid of him.

19 MR. RIPPLE: But Michigan and the other states  
20 of the Union must in fact live with the uncertainty of  
21 knowing that Indiana will not abide by this agreement as  
22 it was set up.

23 The facts, Mr. Justice, if I may give them to  
24 you at this time, because I think they are not of  
25 record. They are after the --

1 QUESTION: You think I don't know them.

2 MR. RIPPLE: I am not sure, sir, but I believe  
3 it's my obligation to formally inform the Court of --

4 QUESTION: You say they are facts not of  
5 record?

6 MR. RIPPLE: They are subsequent to trial, but  
7 I think pertinent to the disposition of the case, and I  
8 think, therefore, I have an obligation to inform the  
9 Court of them.

10 After trial on June 6, 1930 -- 1982, the  
11 petitioner was in fact paroled into the custody of the  
12 State of Indiana and was incarcerated by the State of  
13 Indiana. On the second -- I'm sorry -- on February  
14 19th, 1984, Michigan in fact discharged the petitioner  
15 from his sentence to incarceration in the State of  
16 Michigan. He therefore continued his incarceration in  
17 the State of Indiana. He is due for release on April  
18 24th of the current year, but will be subject to  
19 probation for one additional year.

20 I am indebted to my colleagues from the state  
21 for helping me obtain that information, and I thought I  
22 had a duty to the Court to mention that to you.

23 Again, our basic position is that for all  
24 purposes other than the charges mentioned in the  
25 detainer, the prisoner remains subject to the

1 jurisdiction of the sending state; that therefore, in  
2 this case the trial court in Indiana was without  
3 authority to try the petitioner on the Diazepam charges  
4 and, as a result, its judgment of conviction is void.

5 Now, the facts of the case are difficult to  
6 get a grasp on because they cover a long period of  
7 time. And I suggest to the Court it would be helpful if  
8 the following factors were kept in mind as I go through  
9 them.

10 First of all, Indiana has incrementally  
11 recognized the correctness of the straightforward  
12 approach I have just suggested. Indeed, the basic error  
13 in this proceeding, now admitted by Indiana, could have  
14 very easily been corrected at an earlier stage in these  
15 proceedings.

16 We are only here today because despite its  
17 confession of error, the State of Indiana refuses to  
18 give up the product of its earlier overreaction: the  
19 void conviction of the petitioner. We submit that this  
20 reluctance of the State of Indiana is indeed contrary to  
21 their own best interests as signatories to the  
22 Interstate Agreement on Detainers.

23 Now, we have set forth the operative facts in  
24 summary fashion on pages 2 and 3 of our brief and in  
25 more plenary fashion at pages 3 through 8. The facts



1 involve what we in Indiana call two criminal causes.  
2 The first cause, Section 424, involves three charges of  
3 dealing with a controlled substance called Diazepam.  
4 The second cause, Cause 470, deals with delivery of  
5 marijuana.

6 Now, the underlying events with respect to the  
7 first of those causes, the Diazepam cause -- that's the  
8 cause we contend he should not have been tried upon --  
9 took place over a three-month period in early 1979. And  
10 the petitioner was arraigned on those charges in April  
11 of 1979.

12 Now, as we've noted in some detail in our  
13 brief at page 4, he initially pleaded guilty -- not  
14 guilty to those charges, and then later attempted to  
15 plead guilty pursuant to a plea agreement. But the  
16 trial judge refused to accept the plea agreement,  
17 because he considered the plea to be improvident. The  
18 trial was set eventually for March 1980 but later  
19 continued.

20 Before trial was had on that first Diazepam  
21 cause, the one which is in question here, the petitioner  
22 was arraigned in May of 1980 on the second cause, the  
23 marijuana cause. The underlying events with respect to  
24 that cause took place in December 1979, almost 12 months  
25 after the underlying events for the first cause, and

1 therefore, there is no question that they were not in  
2 any way related crimes, and no one has contended that.

3 In November 1980, after he had been arraigned  
4 on both causes but not tried on either, the petitioner  
5 was incarcerated by the State of Michigan pursuant to an  
6 unrelated felony charge. In March 1981, after he had  
7 been in Michigan incarceration for several months, the  
8 prosecutor from Howard County, Indiana mailed to the  
9 warden of the prison in Jackson, Michigan a detainer  
10 which indicated that he wished to bring the petitioner  
11 to trial on two counts of dealing in marijuana.

12 Now, if I may anticipate a question at this  
13 point, it ought to be noted that one of the followup  
14 documents which was sent to Michigan to obtain temporary  
15 custody of the petitioner several months after the  
16 actual detainer was filed erroneously listed the cause  
17 number for the Diazepam counts, and said the petitioner  
18 was wanted on three counts of dealing in marijuana.

19 Now, at trial the State of Indiana contended  
20 that this in fact was an independent detainer with  
21 respect to the Diazepam counts. The court of appeals of  
22 Indiana in its opinion -- and you'll note this at the  
23 Joint Appendix page 168 -- said that no reasonable  
24 factfinder could reach that conclusion. And I note that  
25 the State of Indiana has in fact dropped that contention

1 at this point.

2 So in short, having been told that he was  
3 going to return to Indiana to stand trial on two counts  
4 of delivery of marijuana, the petitioner waived his  
5 rights under Article 4 of the IAD, came across the  
6 border and -- in the custody of Indiana authorities.

7 He came across on July 21st, 1981 from Jackson  
8 prison in Indiana over to Howard County, city of Kokomo  
9 in Indiana. That's northcentral Indiana. On July 23rd  
10 he did file with the court a suggested plea bargain with  
11 respect to the Diazepam cause on the ground, but later  
12 withdrew it, and he filed a motion to dismiss on the  
13 ground that he had been brought across the border  
14 unwittingly with respect to the Diazepam charges.

15 QUESTION: Mr. Ripple, what if he hadn't  
16 agreed voluntarily to leave Michigan? I suppose he  
17 could have been brought against his will over.

18 MR. RIPPLE: Under Article 4 of the Interstate  
19 Agreement, Mr. Justice White, he had the right to  
20 request a hearing under the Uniform Extradition Act, and  
21 he also had a right to request that the Governor of  
22 Michigan not honor the extradition request, which --

23 QUESTION: Well, nevertheless, he could have  
24 been -- if these procedures -- if they'd gone through  
25

1 the right procedures, he could have been extradited --

2 MR. RIPPLE: If they had gone through the  
3 correct procedures.

4 QUESTION: All right. Suppose that had  
5 happened, and then the same thing happened at trial. Do  
6 you think the Governor could have treated that later  
7 second paper as a request for extradition?

8 MR. RIPPLE: On the Diazepam charges? No,  
9 Your Honor, I do not believe so because, as the court of  
10 appeals of Indiana stated, it simply did not put either  
11 the prisoner or the Governor on notice that in fact he  
12 was wanted on those charges. As a matter of fact, if I  
13 may invite your attention to Defense Exhibits 4 and 5 in  
14 the record, Michigan later by letter verified that their  
15 understanding was -- the Michigan authorities were under  
16 the understanding that only the delivery of marijuana  
17 charges were at issue, that they did not know anything  
18 about these Diazepam causes.

19 I believe --

20 QUESTION: Mr. Ripple, assuming there's a  
21 violation of the requirements of the IAD, I think the  
22 more difficult question is what's the remedy, because  
23 the IAD is silent on what you do about it. So a mistake  
24 was made. Now what do we have to do?

25 The IAD expressly provides for dismissal in



1 some circumstances -- a violation of time for trial  
2 limits, for example -- but is certainly silent as to any  
3 remedy here. And secondarily, even if dismissal were  
4 somehow appropriate, why in the world should it be with  
5 prejudice? I just think -- I'm concerned about those  
6 aspects.

7 MR. RIPPLE: No. Justice O'Connor, first of  
8 all, your question really has two parts to it. It is  
9 our submission that Section -- that Sections 5(d) and  
10 5(g) of the Interstate Agreement do in fact indicate  
11 exactly what the remedy ought to be, and that is, the  
12 judgment is void and therefore cannot stand.

13 In its brief in the court of appeals of  
14 Indiana, although not in this Court, the State of  
15 Indiana did note the lack of remedial language in  
16 Section 5(g). But I submit we really ought not to  
17 expect that there would be remedial in 5(g).

18 The drafters of the IAD, like the drafters of  
19 any statute, do their work against a general  
20 jurisprudence. When you say that a court has no  
21 jurisdiction, it is well understood in our law that in  
22 fact its handiwork is void; it has no effect.

23 QUESTION: Or you might say they did their  
24 work against the Ker and Frisbie cases in that case.

25 MR. RIPPLE: I think, Mr. Justice Rehnquist,

1 that an entire reading of the Interstate Agreement on  
2 Detainers, especially Article I, indicates that they  
3 were aware of Ker and Frisbie and in fact were trying to  
4 establish a system substantially different from Ker and  
5 Frisbie that would bring a certain amount of certainty  
6 and comity to an area which otherwise would not be  
7 governed by Ker and Frisbie.

8 QUESTION: Well, but there is a certain amount  
9 of waste motion involved here if we sustain your claim.  
10 There's no charge that the trial was in any way unfair.  
11 If we sustain your claim and say that -- your client's  
12 claim and say that the judgment in Indiana was void,  
13 he's returned to Michigan. The charges in Indiana are  
14 outstanding. Indiana can again request extradition, and  
15 he'll be extradited and tried again when there's no  
16 complaint that his first trial was unfair.

17 MR. RIPPLE: I think there are two points that  
18 need to be made on this. First of all, that remedy is  
19 not unknown in our law. That's standard practice, for  
20 instance, under the Uniform Act to secure the attendance  
21 of witnesses. If a person has immunity to be in a  
22 jurisdiction to testify at a criminal trial and you  
23 serve -- and you process on him that you shouldn't, that  
24 process is void, the proceedings are void. He has a  
25 chance to return to the state from whence he came, and

1 you extradite him again.

2 It's wasted judicial energy, but it's wasted  
3 judicial energy because of the error of the state.  
4 Indeed, in this case, as I indicated earlier, the state  
5 -- we were in a position at trial to remedy this in a  
6 very easy sort of way, and indeed, if our position here  
7 is upheld, this will be remedied very easily in the  
8 future.

9 In reading through the entire motion to  
10 dismiss you will notice that both counsel for the  
11 accused at trial and counsel for the state at trial both  
12 suggested an alternate remedy to the trial judge at  
13 trial; that in fact he could have severed the two causes  
14 at trial, proceeded with the marijuana cause, and  
15 permitted both the petitioner and the State of Michigan  
16 to exercise their rights under the IAD. It would have  
17 amounted to at most a 31-day lapse of time, and they  
18 could have tried the man on this second charge again.

19 Now, if I may return just for a moment --

20 QUESTION: May I interrupt before you do? In  
21 one of Justice O'Connor's questions she raised the  
22 question whether the judgment was with prejudice or not;  
23 and I had not understood that the judgment was void,  
24 that you were taking the position that it would bar  
25 further prosecution.

1 MR. RIPPLE: We have, Mr. Justice, in this  
2 case because it has gone on for so long and because the  
3 facts of the situation have changed, we have a rather  
4 unusual circumstance.

5 Our position is, number one, that the judgment  
6 of conviction is void because it was entered by a court  
7 which had no authority to act with respect to that  
8 cause. If this had happened, for instance, at the court  
9 of appeals of Indiana level, it may well have been  
10 proper to reverse the conviction, require that Indiana  
11 send the man back to Michigan, and that the Interstate  
12 Agreement on Detainers in fact be followed.

13 Here we don't have that option, because he's  
14 been discharged in Michigan. We submit that under those  
15 circumstances, at the very least Michigan needs to -- or  
16 rather Indiana needs to retry the petitioner. This  
17 conviction cannot stand. But we also submit since this  
18 is in fact a -- the situation has changed not at our  
19 hands -- we timely raised this at trial -- but at the  
20 hands of the state which overreacted at trial, that  
21 indeed this ought to be dismissed with prejudice at this  
22 point.

23 QUESTION: Well, do you mean so that he  
24 couldn't ever be tried?

25 MR. RIPPLE: Yes, Your Honor, in this



1 particular case.

2 QUESTION: Well, it's just hard to understand  
3 why you think that should occur. I mean what is unfair  
4 here about letting the matter proceed again?

5 MR. RIPPLE: We submit that that is at least  
6 the minimum that ought to occur. The conviction cannot  
7 stand. The judgment must be reversed. That we submit  
8 there are two alternatives which the court ought to  
9 consider with respect to what happens at that point.  
10 Assuming that that question --

11 QUESTION: These are very serious charges, and  
12 I just wondered what in the world would justify a  
13 dismissal with prejudice.

14 MR. RIPPLE: Well, it may very well be  
15 impossible for the man to get a fair trial at this  
16 point, to defend himself at this point, among other  
17 points, Justice O'Connor.

18 If I may return to your question for just a  
19 moment, because I don't think I completely answered it,  
20 with respect to why there's no remedial actual remedy  
21 spelled out here, but there is for the other -- in other  
22 areas of the IAD, my submission is we would not expect  
23 it here, because the general jurisprudence indicates  
24 that a court without authority has a void judgment.

25 That's not true in the other areas where a

1 remedy is actually spelled out. In those areas we're  
2 dealing with the thou shalt nots of the IAD. But the  
3 general jurisprudence really gives no answer and where  
4 one would expect the drafters to have to specify exactly  
5 what they did mean.

6 QUESTION: Mr. Ripple, will you spell out for  
7 me wherein your client has suffered prejudice other than  
8 not having a formalistic procedure to follow? He knew  
9 of the pending charge in Indiana, the more serious one.  
10 He had pleaded not guilty to it. And presumably even on  
11 your alternative suggestion, he could go back to  
12 Michigan and redo it all over again.

13 I suppose what you're saying is is he was  
14 prejudiced because the State of Michigan and its  
15 Governor didn't have the opportunity listen to him and  
16 reach a contrary conclusion; and that's a pretty weak  
17 reed on which to lean, isn't it?

18 MR. RIPPLE: He was also prejudiced by being  
19 charged -- by being tried by a court which did not have  
20 authority to enter a judgment of conviction against him  
21 and give him a consecutive sentence with respect to the  
22 charge. That indeed was prejudice as well. And indeed,  
23 in other areas of the law we acknowledge the fact that a  
24 party can be prejudiced that way. In World-Wide  
25 Volkswagen against Woodson the Court indicated, for

1 instance, that a defendant might in fact not be subject  
2 unwillingly to the civil jurisdiction, even if it was  
3 not fundamentally unfair to that defendant if indeed  
4 interstate federalism concerns had been violated by the  
5 court's exercise of jurisdiction.

6 We all at times depend on legal process which  
7 perhaps was not developed exclusively for our benefit.  
8 Here this was clearly developed for his benefit, as well  
9 as for the State of Michigan's benefit, and for the  
10 benefit of the interstate system. And it is on that  
11 ground that this particular jurisdictional -- that this  
12 particular really immunity existed for him from the  
13 exercise of the court's jurisdiction at that point.

14 QUESTION: Well, this is a little different  
15 from World-Wide Volkswagen in the sense that you can see  
16 that Indiana had some jurisdiction over him, for the  
17 lesser charge in any event.

18 MR. RIPPLE: It had jurisdiction over him for  
19 the lesser charge.

20 QUESTION: So you're giving them partial  
21 jurisdiction.

22 MR. RIPPLE: That's correct. And as we  
23 pointed out in our brief -- I believe it's at page 23,  
24 if I'm not mistaken -- we are not claiming that there  
25 was no residual jurisdiction with respect to the

1 Diazepam charge. We are contending that at the time  
2 this court attempted to exercise this jurisdiction, it  
3 was prevented from doing so by virtue of the Interstate  
4 Agreement on Detainers which says you will not exercise  
5 your normal criminal jurisdiction under these  
6 circumstances.

7 QUESTION: What is the factual answer to all  
8 this? Was a prosecutor's blunder, do you think, or was  
9 Indiana purposefully deceiving you?

10 MR. RIPPLE: We make no claim that there was  
11 purposeful deception by the State of Indiana ab initio.  
12 We feel that Indiana is more at fault here for having  
13 perpetuated the problem at trial by taking what we  
14 suggest was an unreasonable position during the motion  
15 to dismiss.

16 Indeed, if the trial -- if the state had  
17 acknowledged in the trial court what it now  
18 acknowledges, that there was a violation of the IAD, we  
19 wouldn't be faced with the delicate task of talking  
20 about a remedy for this particular accused today. The  
21 trial judge could have severed these causes. He could  
22 have proceeded. He could have tried the marijuana  
23 cause. He could have tried the Diazepam cause about a  
24 month later. There would not have been a problem.

25 Section 5(b) and Section 5(g), we submit, when



1 they are read together clearly indicate what the result  
2 ought to be. This prisoner in effect was on loan from  
3 the State of Michigan, on loan for a very temporary and  
4 specific purpose, and the jurisdiction of the State of  
5 Indiana was limited by the terms of that law.

6 In fact, we know -- it's our reading of the  
7 state's brief that they really do not dispute that  
8 reading of the statute; thus, in effect, narrowing even  
9 further the difference between us. The state's concern  
10 at this point seems to be in maintaining this particular  
11 conviction, and we submit that's an understandable but  
12 rather shortsighted goal.

13 The State of Indiana, like every other state  
14 in the Union, has an overwhelming interest in seeing  
15 that the Interstate Agreement on Detainers is in fact  
16 observed according to its expressed terms. Indiana  
17 joined this compact for the same reason the other 47  
18 states did: to accommodate the daily interreaction of  
19 state governments in this very important area of the  
20 interstate rendition of prisoners.

21 As this Court pointed out in its past cases in  
22 this area, the IAD protects not only the criminally  
23 accused; it also protects the federal system. It  
24 protects our interstate federalism. Whatever the  
25 longterm vitality of the Ker-Frisbie rule might be in

1 other contexts -- and in a footnote in our brief we  
2 suggested that it's not entirely compatible with some of  
3 the later holdings of this Court -- you don't need to  
4 reach that question today. It's clear that here in this  
5 area the states intended to adopt a far more cooperative  
6 approach.

7 The states don't need the kind of flexibility  
8 which Indiana has suggested. It is indeed unusual, we  
9 suggest, that the State of Indiana stands here alone  
10 today. We don't see an amicus brief from the other  
11 states of the Union saying this is how we want this  
12 interstate compact administered.

13 QUESTION: Well, 'of course, Michigan isn't  
14 here with an amicus brief either.

15 MR. RIPPLE: They are not, and I don't think  
16 you would expect, Mr. Justice, that they would be here  
17 in support of the criminal --

18 QUESTION: Well, on your basis I would expect  
19 them to be here.

20 MR. RIPPLE: Well, we would respectfully, I  
21 think, disagree on that point.

22 For that reason, Your Honors, we submit that  
23 the judgment of the court of appeals of Indiana ought to  
24 be reversed.

25 CHIEF JUSTICE BURGER: Mr. Daily.

1 ORAL ARGUMENT OF WILLIAM EARL DAILY, ESQ.,  
2 ON BEHALF OF THE RESPONDENT

3 MR. DAILY: Mr. Chief Justice, and may it  
4 please the Court:

5 Indiana did not solicit amicus participation  
6 in this brief, and I apologize for that. But I am  
7 certain that as in other cases --

8 QUESTION: Thank you very much for --

9 QUESTION: You don't have to apologize for  
10 that.

11 (Laughter.)

12 MR. DAILY: Michigan, in answer to another  
13 question, promptly paroled the defendant in this case  
14 after his conviction in Indiana, I presume so as not to  
15 have to pay for his upkeep during his incarceration. He  
16 has not -- if a remedy is a retrial in this case, I'm  
17 not certain that he can be returned to Michigan  
18 involuntarily. Michigan has no longer a claim on him,  
19 and he is a resident, a long-time resident of Howard  
20 County, Indiana. He apparently just want to Michigan  
21 for a drug deal, was caught and convicted there.

22 The petition in this case contends that we  
23 have somehow -- that the court of appeals in Indiana  
24 somehow decided that his intepretation of the second  
25 document is correct. I don't read that in the opinion

1 of the court of appeals of Indiana. The court of  
2 appeals did hold that there was a violation of the  
3 Interstate Agreement on Detainers. I don't find in  
4 there a holding that the second document sent to  
5 Michigan is not a detainer within the meaning of the  
6 interstate agreement on detainers. And we contend that  
7 it is a detainer within that agreement.

8 The agreement does not define detainer. A  
9 detainer is simply any document which puts the holding  
10 state on notice that the prisoner is wanted in another  
11 state for trial on a criminal judge. The second  
12 document sent to Michigan, entitled "Request for  
13 Temporary Custody" on 4-24, fulfills that test for a  
14 detainer. Therefore, we maintain there was a detainer  
15 sent to Michigan on 4-24; therefore, Article 4(d),  
16 relied upon entirely by the petitioner, does not apply  
17 in this case.

18 The Kansas Supreme Court in a case entitled  
19 State v. Clark, and referred to in our brief, addressed  
20 that very issue and held that a request for temporary  
21 custody in the absence of some other document is a  
22 detainer. We have a detainer in this case.  
23 Unfortunately, the detainer, the request for temporary  
24 custody, used the word "marijuana" rather than "Schedule  
25 4 controlled substance." But it did refer to the proper



1 cause number, the proper counts; it did inform the  
2 holding institution that Indiana wanted this gentleman  
3 back for trial in Indiana.

4 The consequence for filing that request for  
5 temporary custody is that it triggers the speedy trial  
6 provisions of the Interstate Agreement on Detainers, and  
7 that's exactly the purpose for the adoption of the  
8 Interstate Agreement, to provide for incarcerated  
9 prisoners a method to obtain their speedy trial rights  
10 under the Constitution.

11 We provided that. We have given the defendant  
12 here the benefit, the intended benefit of the Interstate  
13 Agreement on Detainers. Had we not tried him after  
14 getting custody back under 424, he would then have been  
15 entitled to the remedies provided by the statute. If we  
16 had not tried him within 120 days, he was entitled to  
17 discharge with prejudice. If we had sent him back to  
18 Michigan in order for this procedure that's talked  
19 about, the hearing procedure, if we sent him back to  
20 Michigan, the no return provision of the Interstate  
21 Agreement on Detainers says we cannot try him  
22 thereafter. He is entitled to dismissal with prejudice.

23 So the prosecutor here is faced with a  
24 terrible decision. If the request for temporary custody  
25 is a detainer, and he sends him back to Michigan, he is

1 forever precluded from trying that defendant. In that  
2 sort of catch-22 position, I think the prosecutor did  
3 the only thing he could do. He proceeded to trial on  
4 Cause number 424.

5 If we assume for a moment that the defendant  
6 is right and that the court of appeals did say that this  
7 is not a detainer -- I don't find that there, but if  
8 they said it's not a detainer on 424, we then must  
9 examine Article 5(d) to see if it provides what the  
10 petitioner says.

11 QUESTION: Counsel, they didn't say it wasn't  
12 a detainer, but they did that its presence on the 424  
13 charges was obtained outside the agreement. Didn't they  
14 say that?

15 MR. DAILY: And Indiana acknowledges that  
16 there has been a violation of the Interstate Agreement  
17 on Detainers, but it is not the failure to file a  
18 detainer in 424.

19 QUESTION: I see.

20 MR. DAILY: It is putting incorrect  
21 information on the detainer. And there is a violation  
22 by Michigan in failing to notify the defendant that a  
23 detainer had been filed.

24 QUESTION: What was the violation by Indiana?

25 MR. DAILY: Indiana's violation, although it

1 doesn't specifically require the receiving state to be  
2 notified of the exact nature of the charge against him,  
3 I think it could be held to be a violation of the  
4 agreement to incorrectly notify the holding state as to  
5 the nature of the charge.

6 Michigan's violation is much more clear.  
7 There was no indication, no notice to the defendant that  
8 he was wanted on charge 424 in Indiana.

9 QUESTION: But you do acknowledge there was a  
10 violation by Indiana.

11 MR. DAILY: Yes, Your Honor, we do, clearly.

12 If there was a detainer, Article 5(d) doesn't  
13 apply, and the Indiana court had clear jurisdiction to  
14 try the defendant on Cause number 424 the drug charge  
15 with no problem. If it's not a detainer, as maintained  
16 by the petitioner, then we need to examine Article 5(d)  
17 of the Interstate Agreement on Detainers.

18 That article has eight paragraphs, those  
19 numbered paragraphs or lettered paragraphs (a) through  
20 (h). Each deal with a different aspect of the  
21 Interstate Agreement on Detainers. The petitioner has  
22 lifted out the first sentence of 5(d), but 5(d), in  
23 order to be understood, must be read as a whole.

24 The first sentence provides that temporary  
25 custody shall be only for the purpose of permitting

1 prosecution on the untried charges which form the basis  
2 for the detainer. And if it stopped there, the  
3 petitioner's position would be much stronger. But the  
4 second sentence of Article 5(d) I think explains the  
5 purpose for it. It goes on to say that except for his  
6 attendance at court and while being transported to or  
7 from any place where his presence may be required, the  
8 prisoner shall be held in jail. That is the purpose for  
9 that first clause, to ensure that the prisoner is held  
10 in jail and returned to the sending state after his  
11 trial in the receiving state. And that interpretation  
12 coincides exactly with the expressed purposes of the  
13 Interstate Agreement on Detainers.

14 The final provision of the Interstate  
15 Agreement on Detainers, Article 9(1), indicates that the  
16 agreement is to be liberally construed so as to  
17 effectuate its purposes. If you liberally construe  
18 Article 5(d), you do not come to the conclusion reached  
19 by the petitioner in this case.

20 The purposes --

21 QUESTION: Counsel, I'm confused about one  
22 thing. What is the routine in these? Suppose you have  
23 a proper Indiana conviction. Does he serve that one  
24 first, or does he go back to Michigan and finish out his  
25 sentence there?



1 MR. DAILY: One of the benefits that  
2 petitioner has in this case and that prisoners have  
3 under the Interstate Agreement on Detainers is that they  
4 can, unless the court indicates otherwise, serve these  
5 sentences concurrently. So that in this case the  
6 petitioner, rather than having to delay his sentence on  
7 424 until he'd been sent back to Michigan, and if we  
8 could have brought him back, then brought him back and  
9 tried him, he had the benefit of being able to serve  
10 concurrently both his Michigan and Indiana sentences.

11 QUESTION: Where would he serve them?

12 MR. DAILY: Ordinarily he would be returned to  
13 the sending state. He would have gone back to Michigan  
14 first to serve out his term there, and then come to  
15 Indiana.

16 QUESTION: That's the way I thought you read  
17 the statute, and yet that didn't happen in this case.

18 MR. DAILY: Because immediately after  
19 sentencing in Indiana, the Michigan authorities paroled  
20 him, said we don't want him back, in effect.

21 QUESTION: Well, I assume the Indiana judge  
22 could have sentenced him to a consecutive sentence, in  
23 which case he would have gone back to Michigan to fill  
24 that term and come back to Indiana, right?

25 MR. DAILY: That's true. That could have

1 happened. It did not in this case.

2 There is no expression of concern in the  
3 purposes for which this agreement was adopted which  
4 relates to the number of crimes for which a prisoner can  
5 be tried when he's brought back to a state.

6 QUESTION: I take it that when Michigan  
7 decided to parole him, they were aware that he was up on  
8 another drug charge.

9 MR. DAILY: The Michigan authorities were well  
10 aware that he had been convicted and sentenced in  
11 Indiana at the time of the parole hearing in Michigan.

12 QUESTION: It seems rather extraordinary.

13 MR. DAILY: That he would be paroled?

14 QUESTION: Yes.

15 MR. DAILY: If he were not paroled, he would  
16 be still maintained at the expense of Michigan in  
17 Michigan prisons.

18 QUESTION: That's my next question. This was  
19 just a matter of economics? Let Indiana take care of --

20 MR. DAILY: I have no way of being sure of the  
21 thought processes behind the Michigan parole authority's  
22 decision, but I very much assume that their prison  
23 system is as crowded as ours, and they were very happy  
24 to turn him over to Indiana for custody.

25 QUESTION: Well, it seems like there's a

1 certain accounting approach to bringing someone back to  
2 Indiana, trying them for an offense, and then sentencing  
3 them to a concurrent sentence to one which they're  
4 already serving in Michigan. It clears the books, but --

5 MR. DAILY: That's certainly one of the  
6 reasons for the Interstate Agreement on Detainers, so  
7 that prisoners can get rid of pending charges, and  
8 unless they are sentenced to consecutive sentences, they  
9 can serve them out concurrently rather than  
10 consecutively. But the prisoners get the benefit of  
11 that provision, assuming there's not a consecutive  
12 sentence imposed by the second state.

13 QUESTION: Well, was the sentence imposed by  
14 the Indiana court here consecutive?

15 MR. DAILY: No, it was not. It was -- there  
16 was a consecutive sentence, but there was a two-year  
17 sentence for the marijuana charge and a five-year  
18 sentence for the drug charge in Indiana, but those  
19 sentences were to be served concurrently with the  
20 Michigan sentences. There's no indication otherwise.

21 QUESTION: There's a lot easier way of  
22 clearing the books than getting the fellow back and  
23 trying him and sentencing to a concurrent. They could  
24 just dismiss the charges, if his likely sentence in  
25 Indiana was going to be no more than what it was in

1 Michigan.

2 MR. DAILY: Well, in this case it turned out  
3 it be -- it turned out to be more than the Michigan  
4 sentence. He has since his conviction served in Indiana.

5 If Article 5(d) could be read as limiting the  
6 number of crimes for which the prisoner can be tried  
7 while in temporary custody, it's the State of Michigan  
8 which should be asserting that. Article 5(d) was  
9 enacted for the benefit of Michigan, not the benefit of  
10 the prisoner. If the prisoner is released from custody  
11 in the receiving state, if we do anything with the  
12 prisoner, the receiving state not permitted by Article  
13 5(d), Michigan has the right to go to court and seek a  
14 remedy, a relief.

15 Michigan has not done that. If Michigan were  
16 sitting at that table arguing in this case, I would be  
17 in very bad trouble, assuming that there's not a  
18 detainer in this case. But Michigan is not there, and  
19 Michigan is not asserting its rights, and there is  
20 nothing in this agreement which appears to transfer from  
21 Michigan its right to the defendant.

22 This Court in past cases has looked at  
23 interstate agreements and applied contract law or treaty  
24 law. If you apply that law and you say was this an  
25 intended third-party beneficiary, I don't think you



1 could find anything in the agreement that indicates that  
2 this is an intended third-party beneficiary who is  
3 intended to have the rights to assert Michigan's claim  
4 here. Obviously --

5 QUESTION: Well, is there no claim at all on  
6 the part of the defendant, that I thought was being  
7 asserted, to have his right to argue in Michigan the  
8 appropriateness of the disposition of Michigan to send  
9 him off in response to the detainer?

10 MR. DAILY: No, because the petitioner in this  
11 case is asserting a different violation of the  
12 Interstate Agreement on Detainers. That argument has  
13 not been raised by the petitioner. That argument could  
14 be raised had he adopted that approach, I think. But in  
15 this case the argument is based on total lack of  
16 jurisdiction in the Indiana court.

17 QUESTION: Well, it seems to me it's related  
18 that there is no jurisdiction until there's a proper  
19 extradition, and there wasn't a proper extradition on  
20 these charges, and that the defendant has some right to  
21 a proper extradition proceeding under the IAD. I mean  
22 at least that's how I understand the article.

23 MR. DAILY: That may be true, but then the  
24 remedy in that case is perhaps the civil remedy that --  
25 the petitioner here is pursuing a civil remedy through

1 the U.S. district court for the Southern District of  
2 Indiana. And if there is a remedy, I think it is  
3 fashioned in that proceeding rather than in this one.

4 If we assume for the same of argument that  
5 Article 5(d) was intended to benefit the petitioner --

6 QUESTION: You mean there's a 1983 action  
7 ahead --

8 MR. DAILY: Yes, Your Honor, there's a 1983 --

9 QUESTION: -- against Indiana?

10 MR. DAILY: There's a 1983 action. The  
11 Seventh Circuit has -- the action was originally  
12 dismissed by the district court. The Seventh Circuit  
13 has reversed that dismissal and sent it back for further  
14 proceedings, apparently finding that there is a civil  
15 remedy of some sort for the petitioner in this case.

16 QUESTION: What would happen if we were to  
17 agree that dismissal is appropriate but without  
18 prejudice? What would happen at that point?

19 MR. DAILY: Presumably the defendant would be  
20 retried. The facts in this case are overwhelming, and  
21 he would be reconvicted, resentenced. He has served all  
22 but one month of his presumed sentence.

23 QUESTION: I suppose because Michigan has  
24 already paroled him, he would not have to be sent back  
25 to Michigan. You could just refile on the spot.

1           MR. DAILY: I don't know that we can send him  
2 back to Michigan. They have no claim on him, and if he  
3 is released, we can't force him to go back.

4           QUESTION: Yes. That's my inquiry.

5           MR. DAILY: The petitioner asserts that by  
6 adopting this agreement the state has somehow waived its  
7 right to bring prisoners into a state illegally. Of  
8 course, the state doesn't have a right to bring  
9 prisoners into a state illegally, but under the  
10 Ker-Frisbie cases, even though the state violates a  
11 federal law, the state can try that defendant, and the  
12 conviction should be affirmed.

13           The Frisbie v. Collins case is extremely  
14 relevant to this case. In that case the defendant was  
15 arguing that we have a new law, a new federal law which  
16 changes the Ker doctrine. And this new law says that  
17 you can't kidnap someone from one state -- that's the  
18 Federal Kidnapping Act that was adopted by Congress --  
19 and the defendant in the Frisbie-Collins said because of  
20 this new statute, you can't kidnap me from Illinois and  
21 take me into another state and try me in the other state.

22           That's pretty much the argument here. You  
23 cannot violate the federal law, grab me in Michigan,  
24 bring me back and try me.

25           Justice Black rejected that argument and held

1 that there's nothing -- he want on to hold that there's  
2 nothing in the Constitution that requires a court to  
3 permit a guilty person, rightfully convicted, to escape  
4 justice because he was brought to trial against his will.

5 I think if you insert in that sentence, change  
6 "Constitution" to "Interstate Agreement on Detainers,"  
7 you came to the same result. There's nothing, there is  
8 nothing in the Interstate Agreement on Detainers that  
9 requires a court to permit a person, guilty person  
10 rightfully convicted, to escape justice because he was  
11 brought to trial against his will.

12 A federal law is a federal law, and whether it  
13 is the Federal Kidnapping Act or whether it's --

14 QUESTION: But the submission is that he was  
15 brought to trial by a court that didn't have any  
16 jurisdiction to bring him to trial.

17 MR. DAILY: There's nothing, I submit, in the  
18 Interstate Agreement on Detainers which says the  
19 receiving -- the court in Indiana has no jurisdiction.  
20 It does say in 5(e) and 5(g) that jurisdiction remains  
21 in the sending state. But a person can be within the  
22 jurisdiction of two states or two jurisdictions at the  
23 same time. There is nothing that says even though  
24 jurisdiction remains in Michigan for certain purposes  
25 that jurisdiction is not also in the Indiana court.



1 QUESTION: So you just think that the way to  
2 decide this case is just follow Frisbie.

3 MR. DAILY: Exactly, Your Honor.

4 QUESTION: And that Indiana's violation will  
5 just have to be left to history to cure.

6 MR. DAILY: Or the civil action pending in the  
7 district court.

8 QUESTION: But there's just no remedy  
9 otherwise.

10 MR. DAILY: Well, the remedy lies in the civil  
11 action.

12 QUESTION: Well, what do you do? You sue them  
13 for having convicted me illegally? That's a very  
14 strange suggestion.

15 MR. DAILY: I don't suggest that. In fact,  
16 I'm --

17 QUESTION: What does the 1983 case -- what  
18 does it allege?

19 MR. DAILY: It's a strange case, Your Honor.  
20 It was brought against -- strange case. It's pending  
21 here on cert, and I wish you'd take a look at it.

22 (Laughter.)

23 MR. DAILY: The Seventh Circuit -- the case  
24 was brought against the officers who went to Michigan  
25 and brought him back. Now, I would assume that those

1 officers, since the petitioner has agreed that he was  
2 brought back validly under 470, it would be hard to  
3 state a claim against them. But he is claiming that  
4 once he gave them notice of the fact that he was going  
5 to be tried on something other than 470, they had some  
6 duty to grab him out of jail and take him back to  
7 Michigan.

8 He's also suing the administrator of the  
9 Interstate Agreement on Detainers. Now, the Seventh  
10 Circuit sent this back to trial, so I present it to you  
11 with that understanding.

12 QUESTION: Well, we don't generally get oral  
13 argument on petitions for --

14 MR. DAILY: Well, I get all excited about that  
15 one.

16 (Laughter.)

17 MR. DAILY: I get excited about that one and  
18 since the Indiana --

19 QUESTION: Yes, but if your view of that case  
20 is correct, you're in effect saying there isn't any real  
21 remedy unless you find a remedy in this case.

22 MR. DAILY: No. I'm sorry, Your Honor. There  
23 may be a remedy. I don't think it's against the  
24 officers who transported him.

25 QUESTION: But what -- I'm a little puzzled

1 about what it would be. I've shared Justice White's  
2 puzzlement about this.

3 MR. DAILY: Well, I think the remedy here may  
4 be the same as the remedy in Frisbie v. Collins.

5 QUESTION: But there's nothing, isn't it?

6 MR. DAILY: Is there -- that's not discussed  
7 in Frisbie v. Collins. Certainly the remedy in that  
8 case was not to retry the defendant.

9 QUESTION: But the only damage to this person  
10 that he's been convicted, and yet you're saying the  
11 conviction is valid. I don't know how you can get  
12 damage for being validly convicted of something you did.

13 MR. DAILY: Well, if this Court wants to --

14 QUESTION: I just --

15 MR. DAILY: I understand that, Your Honor, and  
16 it's a concern here with me, too; that a wrong has been  
17 committed for which there may not be a remedy. But the  
18 remedy -- the wrong in Frisbie v. Collins was a  
19 kidnapping rather than here a --

20 QUESTION: Well, I understand that, but  
21 arguably isn't there a difference that here if you have  
22 -- perhaps one could read the Interstate Agreement on  
23 Detainers to be a surrender by each of the contracting  
24 states of some element of jurisdiction it would  
25 otherwise possess. It, in effect, has agreed not to

1 exercise jurisdiction in certain classes of cases. You  
2 didn't have that element in the Frisbie situation.

3 MR. DAILY: That -- and I think that is the  
4 heart of the petitioner's argument, that there has been  
5 some surrender of a right here to try the defendant. I  
6 don't find that in the express language of the  
7 Interstate Agreement on Detainers. I don't find that in  
8 the purposes. If you go to the legislative purposes for  
9 which the agreement was adopted, I don't find it there  
10 either. I don't --

11 QUESTION: Even if there were such a  
12 surrender, perhaps the only person -- the only party you  
13 could claim violation of would be the state of Michigan.

14 MR. DAILY: That was --

15 QUESTION: -- rather than the defendant.

16 MR. DAILY: Yes. I argued that, and I still  
17 maintain that it's Michigan right to ensure a prompt  
18 return of the prisoner that's relevant here.

19 I also want to present one more point to Your  
20 Honor on that question that you asked. If violation of  
21 federal kidnapping law does not trigger some sort of  
22 retrial, I don't think breach of a promise to abide by  
23 the Interstate Agreement on Detainers triggers --  
24 triggers that retrial remedy. In other words --

25 QUESTION: But the detainer statute says



1 specifically who shall have jurisdiction, in quotes,  
2 jurisdiction in the kidnapping statute, doesn't it?

3 MR. DAILY: That's true. The -- but the --

4 QUESTION: Well, that's the only point we've  
5 been arguing here.

6 MR. DAILY: Well, the Interstate Agreement on  
7 Detainers says that jurisdiction is in Michigan. It  
8 doesn't deny that jurisdiction can be in other courts.  
9 This defendant --

10 QUESTION: For all other purposes. That's  
11 pretty strong language.

12 MR. DAILY: But if read with the following  
13 sentence, I think it indicates a different intent on the  
14 part of the parties to the agreement.

15 QUESTION: "The prisoner shall be deemed to  
16 remain in the custody of and subject to the jurisdiction  
17 of the sending state," period. That's the other  
18 sentence.

19 MR. DAILY: That's (g), I'm sorry. I'm  
20 talking about 5(d). (g) merely provides that if he  
21 escapes while in Indiana, he's subject to trial in  
22 Michigan for escape. I don't think it goes to any of  
23 the arguments relevant here. It certainly doesn't --

24 QUESTION: But it says --

25 MR. DAILY: Well, it certainly doesn't say

1 that Indiana doesn't have jurisdiction. Jurisdiction  
2 had vested in the Indiana court. Clearly he had been  
3 arraigned. He had entered a plea in the Indiana court.  
4 Jurisdiction was there. I don't find anything in the  
5 Interstate Agreement that says we yanked jurisdiction  
6 out of Indiana.

7 QUESTION: Well, your argument is that  
8 Michigan should raise this.

9 MR. DAILY: Certainly.

10 QUESTION: Well, it seems to me that anybody  
11 has a right to be tried by a court of competent  
12 jurisdiction.

13 MR. DAILY: Well, I guess the question then is  
14 whether the Indiana court has jurisdiction, and I  
15 maintain that it does.

16 QUESTION: And the other side says no.

17 MR. DAILY: That's correct, and that's why  
18 we're here.

19 This Court has acknowledged that granting new  
20 trials is an extreme remedy, and it doesn't always  
21 comport with the interest of sound judicial  
22 administration. That's a quote from Jackson v. Dence  
23 filed in an amicus brief that I apologized for in  
24 yesterday's Black v. Romano case.

25 We are looking here at something that comports

1 with the interest of sound judicial administration, and  
2 I think the concerns addressed or expressed from the  
3 bench earlier are valid here. Sound judicial  
4 administration does not require a retrial in this case.  
5 The agreement doesn't require it, and sound judicial  
6 administration does not.

7 I don't want to leave without addressing the  
8 question of whether or not there is a here an interstate  
9 compact. That's one of the most important aspects in  
10 this case. I want to present here an opportunity to  
11 reconsider Cuyler v. Adams.

12 In 1978 Mr. Justice Powell wrote, "At this  
13 late date we are reluctant to accept this invitation to  
14 circumscribe modes of interstate cooperation that do not  
15 enhance state power to the detriment of federal  
16 supremacy." That was in U.S. Steel v. Multistate Tax  
17 Commission.

18 They found there, the Court found there no  
19 compact, no interstate compact because there was no  
20 enhancement of state power to the detriment of federal  
21 supremacy. I think had that test been applied in Cuyler  
22 v. Adams, there would have been a different result.

23 The Cuyler Court, quoting from a law review  
24 article by Justice Frankfurter, said -- began by noting  
25 that the traditional role of the Compact Clause was to

1 give Congress supervisory power over cooperative state  
2 action that might otherwise interfere with the full and  
3 free exercise of federal authority.

4 I think if you had applied that test to  
5 determine whether the Interstate Agreement on Detainers  
6 interfered with the full and free exercise of federal  
7 authority, you would have come to a different result.

8 The test actually adopted by this Court in  
9 Cuyler used the language "appropriate for federal  
10 legislation." I submit that under the Commerce Clause  
11 and the 14th Amendment and certain other provisions of  
12 the Constitution, there's very little that's not  
13 appropriate in some sense, appropriate for federal  
14 legislation.

15 That's a very broad test. Appropriate for  
16 federal legislation covers a great many things which do  
17 not and have not traditionally been considered to be  
18 interstate compacts. In this case had this agreement  
19 merely been between Indiana and Michigan, it is still, I  
20 submit, in the analysis of Cuyler v. Adams appropriate  
21 for federal legislation. The fact that 47 other states  
22 have entered into it doesn't change the nature of the  
23 agreement or the nature of the compact.

24 The finding of a broad Compact Clause  
25 application in Cuyler v. Adams leads the states into a



1 precarious situation. Any agreement that we enter into  
2 with another state, whether we intend it to be so or  
3 not, becomes an interstate compact if in some sense it's  
4 appropriate for federal legislation.

5 I don't think that was intended by the Compact  
6 Clause, and I would request this Court to reconsider the  
7 ruling in Cuyler v. Adams. The only response by the  
8 petitioner to that is stare decisis, but stare decisis  
9 has never and should never prevent this Court from  
10 examining a case which appears to me to be clearly wrong.

11 Although the petitioner will not admit it, the  
12 violation of the statute here worked to his benefit. He  
13 was tried sooner than he would have been had he been  
14 sent back to Michigan, if that could have been done. He  
15 then began serving his term here sooner than he would  
16 ordinarily have done. He is due for release next month  
17 rather than several months or several years in the  
18 future, which would have been the case had the agreement  
19 not been used as it was intended for the speedy  
20 disposition of pending criminal charges.

21 Article 9(1), I refer to again, indicates the  
22 agreement is to be liberally construed so as to  
23 effectuate its purposes. The constructions proposed by  
24 the petitioner do not effectuate the purpose of the  
25 Interstate Agreement on Detainers. The express terms of

1 the Interstate Agreement on Detainers do not entitle the  
2 petitioner to a new trial.

3 To paraphrase Justice Black one more time,  
4 there is nothing in the Interstate Agreement on  
5 Detainers that requires a court to permit a guilty  
6 person, rightfully convicted, to escape justice.

7 Thank you.

8 CHIEF JUSTICE BURGER: Do you have anything  
9 further, Mr. Ripple?

10 ORAL ARGUMENT OF KENNETH FRANCIS RIPPLE, ESQ.,

11 ON BEHALF OF THE PETITIONER +- REBUTTAL

12 MR. RIPPLE: Please, Mr. Chief Justice.

13 Mr. Chief Justice, may it please the Court:

14 Very briefly, we believe there's a single  
15 theme in Indiana's approach to this case: a lack of  
16 acknowledgement of its federal responsibility. It  
17 argues to the empty chair of Michigan in this direct  
18 criminal appeal that it had the responsibility towards  
19 seeing -- was indeed conducted in accordance with the  
20 Interstate Agreement --

21 QUESTION: Mr. Ripple, what would really be  
22 the purpose of setting aside, having this conviction set  
23 aside? Certainly I can't see how it is going to help  
24 your client. I would suppose it would just be a signal  
25 to the states to turn square corners in the future.

1 MR. RIPPLE: I think he would at least have  
2 the opportunity to be tried by a court which had  
3 jurisdiction, and that might be very important to him if  
4 Indiana elects not to try him in light of the habitual  
5 statute in Indiana should he ever be in trouble with the  
6 law again.

7 And as you suggest, Mr. Justice White, it is  
8 important to the law that we prevail in this case  
9 certainly. There is one message --

10 QUESTION: There are other ways of doing that  
11 besides setting aside the criminal conviction, I suppose.

12 MR. RIPPLE: And you could permit new trial,  
13 and Indiana would have to bear that responsibility.

14 QUESTION: The Indiana officials who made the  
15 mistakes, or the Michigan people who made the mistakes  
16 could be fired or they could be -- they will learn what  
17 their duties are. They'll learn how to do their job.

18 MR. RIPPLE: Although we submit that's  
19 impossible in the context of this case, that indeed a  
20 1983 remedy would not be -- it would not make the  
21 petitioner whole.

22 Uncertainty is what Indiana argues here for,  
23 uncertainty for the sending state. It will never again  
24 know why it is sending someone across the border.  
25 Uncertainty for the prisoner. He won't know whether to

1 waive his rights or not, because he doesn't know what's  
2 going to happen to him when he gets across the line.  
3 And uncertainty for every other state in the union and  
4 the federal government, because they no longer will know  
5 whether or not the states will abide by the agreement  
6 they freely entered into here.

7 In short, Indiana argues for wax teeth for  
8 this agreement; and we respectfully submit that it is in  
9 the best interests of the State of Indiana that our  
10 position on the law prevail here.

11 Thank you, Mr. Chief Justice.

12 CHIEF JUSTICE BURGER: Thank you, gentlemen.  
13 The case is submitted.

14 (Whereupon, at 11:58 a.m., the case in the  
15 above-entitled matter was submitted.)  
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-5059 - PATRICK RAMIREZ, Petitioner v. INDIANA

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