Smith v. Hooey: Underrated But Unfulfilled

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The Sixth Amendment right to a speedy trial applies to prosecutions in the federal courts and to state prosecutions through the Fourteenth Amendment Due Process Clause.[1] This constitutional right is probably the least favorite of the Bill of Rights, because it would satisfy most defendants if the government never—promptly or otherwise—disposed of their pending charges. One group of persons, though, who may regard the right to a speedy trial as important are convicted defendants currently serving sentences, but who have pending charges brought against them by other states or the federal government. For them, denying the right to speedy disposition of their pending charges can seriously interfere both with the nature and length of their incarceration.

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1. Klopfer v. North Carolina, 386 U.S. 213, 222–23 (1967).

While *Smith v. Hooey* received no attention from the general public, corrections officials and the American prison population at the time hoped that it symbolized more certainty in sentencing and correctional programs for men and women who return to society after prison life.[2] Although the decision has had a partial benefit for prisoners through the near-unanimous ratification of the Interstate Agreement on Detainers (IAD),[3] the Supreme Court and lower courts have refused to extend the decision to include all prisoners who live with the uncertainty of pending charges.[4]

I. THE POLICY FAVORING PROMPT DISPOSITION OF CHARGES

Undoubtedly, there is a public interest in protection from recidivist criminals who deserve imprisonment for a maximum period of time. There is also a public concern for effective correctional treatment of inmates not serving life sentences so that they can return to their communities as useful citizens. When an inmate is serving a sentence in one jurisdiction and is charged in another (either with additional crimes or parole or probation violations), public protection and inmate rehabilitation can succeed by resolving the other charges quickly.

The reality is otherwise. The prosecuting authority in the other state is often satisfied to file a detainer against the inmate and wait until the end of the current sentence before pursuing the additional or revocation charge. The latter approach usually makes effective correctional treatment during the first sentence more difficult. As the former Director of the Federal Bureau of Prisons noted:

> [I]t is in their effect upon the prisoner and our attempts to rehabilitate him that detainers are most corrosive. The strain of having to serve a sentence with the uncertain prospect of being taken into the custody of another state at the conclusion interferes with the prisoner's ability to take maximum advantage of his institutional opportunities. His anxiety and depression may leave him with little inclination toward self-improvement.[5]

While the detainer is pending, the inmate may be ineligible for some correctional programs requiring a lower security classification. Worse, sometimes prosecutors never pursue the new charge, producing neither effective treatment nor prolonged incarceration.

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2. 393 U.S. 374 (1969).

3. Interstate Agreement on Detainers Act, 18 U.S.C. app. at 1520 (2000).

4. *See*, *e.g.*, Carchman v. Nash, 473 U.S. 716, 734 (1985) (holding the IAD inapplicable to revocation detainers); Moody v. Daggett, 429 U.S. 78, 89 (1976) (holding that defendant has no right to speedy parole revocation hearing for lodged but unserved detainer).

5. James V. Bennett, *"The Last Full Ounce,"* FED. PROBATION, June 1959, at 20–22.

In addition to the harmful effect of detainers on security classification, multijurisdictional offenders are more likely to serve longer prison terms than if they had committed the same offenses in one jurisdiction. The sentencing judge in the first state is "apt to view the violation of its laws in isolation and demand full satisfaction, while if all the offenses were tried together, the court, in fixing the sentence, could more easily consider the relation of the particular criminal to the entire series of offenses."[6] Another harmful effect of detainers is that parole boards automatically deny parole to inmates with detainers or at least consider the detainer as a negative factor in the parole-granting process.[7] Moreover, an inmate aware of an unfiled charge may decide not to prepare a parole plan because notice of the new charge will arrive at the prison eventually.

II. THE LEGAL DEVELOPMENT OF DETAINERS

More than a generation before *Smith v. Hooey*, lawmakers began to express concern about crime control in a mobile society. In the Crime Control Consent Act of 1934, Congress endorsed state "agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies . . . ."[8] Congress recognized the need for effective crime control without jurisdictional impediments, as well as its authority to legislate in this area:

> The rapidity with which persons may move from one State to another, those charged with crime and those who are necessary witnesses in criminal proceedings, and the fact that there are no barriers between the States obstructing this movement, makes it necessary that one of two things shall be done, either that the criminal jurisdiction of the Federal Government shall be greatly extended or that the States by mutual agreement shall aid each other in the detection and punishment of offenders against their respective criminal laws.[9]

A Joint Committee on Detainers met in 1948 to discuss the legislative need for standards to ensure the return of inmates wanted for trial or revocation proceedings elsewhere. With the Council of State Governments serving as the secretariat for the Committee, it called for cooperation

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6. Note, *The Detainer: A Problem in Interstate Criminal Administration*, 48 COLUM. L. REV. 1190, 1192 (1948).

7. *See* Note, *Convicts—The Right to a Speedy Trial and the New Detainer Statutes*, 18 RUTGERS L. REV. 828, 835 (1964).

8. 4 U.S.C. § 112(a) (2000).

9. S. REP. NO. 1007 (1934); H.R. REP. NO. 1137 (1934).

among judges, the police, and prosecuting officials.[10] Two years later, the Committee discussed a draft of an interstate additional charge detainer compact.[11]

The IAD is an interstate compact to facilitate the speedy disposition of new charges by one jurisdiction against a prisoner who is serving a sentence in another jurisdiction. Prior to its enactment, there was no mechanism to obtain custody of a prisoner before her term of imprisonment ended in another state. Under the IAD, when a charging jurisdiction files a detainer against a prisoner elsewhere, she must be promptly notified of the detainer and of her right to demand trial.[12] There are two ways for the new charges to be resolved under the IAD. First, the detainer process can be initiated upon demand of the prisoner, who must then be brought to trial within 180 days after she has demanded a trial.[13] The IAD may also be instituted upon demand of the prosecutor, who must bring the prisoner to trial within 120 days after she is returned to the jurisdiction where the charges are pending.[14] Failure to hold a trial within these periods will result in dismissal of the charge, unless an appropriate court has granted a continuance.[15]

Before *Smith v. Hooey*, the prejudicial effect of denying a speedy trial to a person imprisoned in another jurisdiction and the beneficial effects of the IAD were well understood among scholars and correctional officials.

> A convict is subject to the anxiety of a pending charge, and his defense is equally jeopardized by bringing him to trial after serving a long sentence when his witnesses may be unavailable. In fact, prejudice to the convict's defense may be increased because an imprisoned defendant "is less able on that account to keep posted as to the movements of his witnesses, and their testimony may be lost during his continual confinement." Moreover, to deny speedy trial to a defendant already serving a sentence inflicts upon him an additional punishment not levied by the formal judicial process.[16]

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10. LESLIE W. ABRAMSON, CRIMINAL DETAINERS 91–92 (1979).

11. One proposed section for the IAD, providing that all detainers must be filed before the sentence was imposed on the first charge (apparently to make it possible for the court to impose concurrent sentences), was ultimately rejected as too restrictive because of the difficulty in completing investigations in time to decide whether to charge before sentencing in the first case. In addition, the proposal could result in detainers being filed even if the inmate received an adequate sentence in the first case. ABRAMSON, *supra* note 10, at 92.

12. Interstate Agreement on Detainers Act, 18 U.S.C. app. § 2, art. III(c) (2000).

13. *Id.* art. III(a).

14. *Id.* art. IV(c).

15. *Id.* arts. IV(e), V(c).

16. Note, *The Lagging Right to a Speedy Trial*, 51 VA. L. REV. 1587, 1607 (1965) (quoting Arrowsmith v. State, 175 S.W. 545, 546 (Tenn. 1915)).

In addition, if a criminal charge remains pending until a sentence elsewhere is completed, the possibility of concurrent sentencing is lost.[17] However, even with this ongoing dialogue among scholars and correctional officials, the lower courts were split on the speedy trial requirement.[18]

Despite the understanding about why a detainer mechanism was needed, by 1969 the IAD had been adopted by fewer than half the states. It took the Supreme Court's call in *Smith v. Hooey* for good faith, diligent efforts to speedily prosecute inmates in other jurisdictions for state legislatures and Congress to act quickly to adopt the IAD as a means of implementing the Court's mandate.

III. THE FACTUAL BACKGROUND OF *SMITH V. HOOEY*

In March 1960, Richard M. Smith was serving a federal sentence in Leavenworth, Kansas when he and a codefendant were indicted by a Texas state grand jury for theft by false pretext.[19] Six weeks later, Smith's prison warden received notification from Texas that a state arrest warrant was pending.[20] The notice also inquired about Smith's minimum release date, which the warden determined to be January 1970.[21]

As early as November 1960, Smith sent a pro se motion for a speedy trial to the Texas trial court.[22] As the trial judge acknowledged, for the next six years Smith "by various letters, and more formal so called 'motions', . . . asked either for a speedy trial or dismissal of the indictment."[23] The last of his motions to dismiss was apparently filed in

17. Bennett, *supra* note 5, at 20–22; Paul M. Schindler, *Interjurisdictional Conflict and the Right to a Speedy Trial*, 35 U. CIN. L. REV. 179, 182–83 (1966); Note, *Effective Guaranty of a Speedy Trial for Convicts in Other Jurisdictions*, 77 YALE L.J. 767, 770 (1968).

18. *Compare* State v. Heisler, 390 P.2d 846, 848 (Ariz. 1964) (endorsing a speedy trial right for the incarcerated inmate in another jurisdiction), *and* Barker v. Mun. Court, 415 P.2d 809, 815 (Cal. 1966), *and* Richerson v. State, 428 P.2d 61, 66 (Idaho 1967), *with* Ford v. Presiding Judge, 167 So. 2d 166 (Ala. 1964) (no obligation to provide a speedy trial), *and Ex parte* Schechtel, 82 P.2d 762, 765 (Colo. 1938), *overruled by* Watson v. People, 700 P.2d 544, 548 (Colo. 1985), *and* Petition of Norman, 184 A.2d 601, 601–02 (Del. 1962), *and* Evans v. Mitchell, 436 P.2d 408, 412 (Kan. 1968).

19. Brief for the Petitioner at 4–5 n.1, Smith v. Hooey, 393 U.S. 374 (1969) (No. 198).

20. *Id*. at 5 n.2.

21. *Id*.

22. *Id*. at 5 n.3.

23. *Id*. at 5 n.4.

April 1967, but as usual the trial court failed to rule. A year later, Smith sought a writ of mandamus from the Texas Court of Criminal Appeals, which lacked jurisdiction over such matters, but which forwarded the motion to the Texas Supreme Court.[24] That court quickly denied his petition, relying on its own precedent that a state has no obligation to provide a speedy trial to a defendant who is in the custody of another sovereign.[25] In August 1967, Smith filed a petition for certiorari, which was granted ten months later.[26]

Charles Alan Wright, a leading authority on the federal courts and a Professor of Law at the University of Texas Law School, represented Richard Smith in the United States Supreme Court.[27] In his brief, Professor Wright powerfully noted that, under Texas law, Smith's legal rights were a function of his location.

> If petitioner [Smith] had been at large for the last eight-and-a-half years, and his requests for a trial had been refused, it could hardly be doubted that he would have been denied his constitutional right. If he had been in custody in a Texas prison on some other state charge, the fact of that custody would not relieve the prosecuting authorities from their duty to give him a speedy trial. This is explicitly recognized in Texas . . . as it is by most jurisdictions.[28]

IV. THE SUPREME COURT'S DECISION IN *SMITH V. HOOEY*

Justice Potter Stewart delivered the opinion of a unanimous Court, first noting the traditional purposes of the constitutional speedy trial guarantee: "[1] to prevent undue and oppressive incarceration prior to trial, [2] to minimize anxiety and concern accompanying public accusation and [3] to limit the possibilities that long delay will impair the ability of an accused to defend himself."[29] He then described the added burdens for a prisoner who has pending charges in another jurisdiction.

> At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from "undue and oppressive incarceration prior to trial." But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least

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24. *Id*. at 5 n.5.

25. *Id*. at 5. The Texas Supreme Court relied on *Cooper v. State*, 400 S.W.2d 890, 892 (Tex. 1966), where the United States Bureau of Prisons's willingness to make Cooper available for trial was of no significance to the Texas Supreme Court. In *Lawrence v. State*, 412 S.W.2d 40 (Tex. 1967), the court reaffirmed *Cooper*.

26. Brief for the Petitioner, *supra* note 19, at 5–6; Smith v. Hooey, 392 U.S. 925 (1968).

27. Smith v. Hooey, 393 U.S. 374, 374 (1969).

28. Brief for the Petitioner, *supra* note 19, at 8.

29. *Smith*, 393 U.S. at 378 (quoting United States v. Ewell, 383 U.S. 116, 120 (1966)).

> partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.
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> And while it might be argued that a person already in prison would be less likely than others to be affected by "anxiety and concern accompanying public accusation," there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large . . . .
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> . . . .
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> Finally, it is self-evident that "the possibilities that long delay will impair the ability of an accused to defend himself" are markedly increased when the accused is incarcerated in another jurisdiction. Confined in a prison, perhaps far from the place where the offense covered by the outstanding charge allegedly took place, his ability to confer with potential defense witnesses, or even to keep track of their whereabouts, is obviously impaired. And, while "evidence and witnesses disappear, memories fade, and events lose their perspective," a man isolated in prison is powerless to exert his own investigative efforts to mitigate these erosive effects of the passage of time.[30]

When a prisoner demands a speedy trial by the charging jurisdiction, that sovereign has "a constitutional duty to make a diligent, good-faith effort to bring him before the . . . court for trial."[31] The charging jurisdiction's lack of authority to compel the defendant's return for trial does not excuse the obligation to grant her a speedy trial. To achieve the letter of the holding, the Court also stressed increased cooperation between the states and between the states and the federal government.[32] While the Court emphasized the need for prosecutors to make a "diligent, good-faith effort" to bring defendants elsewhere to trial, it did not mandate prosecutors to file detainers as soon as they became aware of the defendant's location. The prosecutor could avoid the IAD's intended effect by not filing a detainer until the defendant's custodian was about to release her, because the IAD lacks a timely filing requirement.

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30. *Id.* at 378–80 (quoting Bennett, *supra* note 5, at 21).

31. *Id.* at 378. The holding means that the four-part balancing test of *Barker v. Wingo* applies to Sixth Amendment speedy trial analysis for prisoners charged in another jurisdiction. 407 U.S. 514, 530 (1972). The *Barker* factors are the length of the delay from the earlier of arrest or indictment until trial, the reason for the delay, whether the defendant demanded a speedy trial, and prejudice to the defendant as a result of the delay. *Id.*

32. *Smith*, 393 U.S. at 381–82 (quoting Barber v. Page, 390 U.S. 719, 723 (1968)).

V. THE LEGISLATIVE REACTION TO *SMITH V. HOOEY*

Smith v. Hooey is an example of an underrated Supreme Court decision because fewer than half of the states had ratified the IAD before 1969.[33] Seizing on the Court's speedy trial mandate and the Court's encouragement for interjurisdictional cooperation, within ten years every state but Louisiana and Mississippi had enacted the IAD.[34] Increasingly, more prisoners could use the IAD to demand speedy resolution of additional charges in other jurisdictions because both the custodial state and the charging state were IAD signatories.[35] Of comparable importance, when Congress considered and approved the IAD for federal and District of Columbia prosecutions in 1970,[36] it clearly stated that the authority for the IAD originated in the 1934 Crime Control Consent Act.[37] Eleven years after *Smith*, the Court clearly ruled that the "construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question."[38] The Court also appeared to say that even though a particular interstate agreement is not one that requires congressional consent under the Compact Clause, Congress "transforms the States' agreement into federal law under the Compact Clause" if Congress has authorized the agreement and the subject of the agreement is an appropriate subject for congressional legislation.[39]

VI. THE JUDICIAL AFTERMATH

Having elevated the IAD to an available remedy for vindicating speedy trial rights as well as to a federal question, it was natural for later litigants to seek Supreme Court expansion of the IAD's scope.[40] However,

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33. *See* H.R. REP. NO. 91-1018, at 3 (1970); S. REP. NO. 91-1356, at 3 (1970).

34. *See, e.g.*, CAL. PENAL CODE §§ 1389–1389.8 (West 2000); FLA. STAT. ANN. § 941.45 (West 2006); N.Y. CRIM. PROC. LAW § 580.20 (McKinney 1995).

35. *See, e.g.*, Zimmerman v. Superior Court, 56 Cal. Rptr. 226, 231 (Ct. App. 1967).

36. Interstate Agreement on Detainers Act, Pub. L. No. 91-538, 84 Stat. 1397 (1970), *reprinted in* 18 U.S.C. app. at 1520 (2000).

37. *See* H.R. REP. NO. 91-1018, at 3 (1970); S. REP. NO. 91-1356, at 3 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4864, 4866.

38. Cuyler v. Adams, 449 U.S. 433, 438 (1981).

39. *Id*. at 440.

40. Since *Cuyler*, the Supreme Court has decided other IAD-related cases. *See* Alabama v. Bozeman, 533 U.S. 146, 151–52 (2001) (holding violation of the IAD's prohibition on returning an individual transferred to another jurisdiction for trial to the sending State before trial is completed requires dismissal of charges); New York v. Hill, 528 U.S. 110, 115 (2000) (holding right to trial within the 180-day period may be waived by counsel without the defendant's express consent); Fex v. Michigan, 507 U.S. 43, 52 (1993) (holding 180-day period under the IAD does not begin until a prisoner's request for final disposition is delivered to the court and prosecutor); Carchman v. Nash, 473 U.S. 716, 734 (1985) (holding revocation detainers are outside the scope of the IAD).

the Court balked at opportunities to expand the rights of prisoners to dispose of other types of pending charges, disregarding the rationales for prompt disposition it found so compelling in *Smith*. The litigants should have foreseen the Court's reluctance to expand the IAD to revocation detainers.

Just as Smith's untried charges potentially thwarted his—and his warden's—interests in his rehabilitation, *revocation* detainers equally harm prisoners, depriving them of possible concurrent sentences, complicating their treatment programs, and increasing the difficulties of defending the revocation allegations. The Court had previously held that due process requires prompt hearings to revoke probation or parole, but the triggering mechanism for that right was taking the probationer or parolee into custody.[41] Seven years after *Smith*, in an *intra*jurisdictional context, the Court held that a federal parolee, who was imprisoned for a federal crime committed while on parole, was not constitutionally entitled to a speedy parole revocation hearing when a parole violator warrant was issued and lodged as a detainer with the institution of his confinement but not served on him for ten years.[42]

If the Court was disinterested in giving speedy disposition status to a parole violation detainer *within* the same legal system, it was highly unlikely that it would be willing to extend the reach of the IAD to revocation detainers across state borders.[43] Following *Smith v. Hooey*, only one legislature expressly amended the IAD to apply to revocation detainers,[44] and lower court cases indicated that the IAD, without

41. Morrissey v. Brewer, 408 U.S. 471, 487–88 (1972).

42. Moody v. Daggett, 429 U.S. 78, 80–81, 86 (1976).

43. Courts have restricted the application of the IAD in four ways. First, the IAD does not require that a detainer be filed within a certain time or at all. *See, e.g.*, State v. Ayers, 143 P.3d 251, 265 (Or. App. 2006). Second, the IAD does not require dismissal of the untried charge when an inmate's custodian fails to promptly notify the prosecuting officials of the charging state about the inmate's request for final disposition of the charges. *See, e.g.*, Odhinn v. State, 82 P.3d 715, 722–23 (Wyo. 2003). Third, the IAD does not apply to a person in pretrial confinement, awaiting a disposition of his charges, because he is not "serving a term of imprisonment." *See, e.g.*, United States v. Paige, 332 F. Supp. 2d 467, 472 (D.R.I. 2004) (collecting cases recognizing that the IAD is inapplicable to pretrial detainees); Painter v. State, 848 A.2d 692, 701 (Md. App. 2004). Finally, the IAD does not apply to inmates who have been convicted in another jurisdiction but not yet sentenced. *See, e.g.*, State v. Bates, 689 N.W.2d 479, 481 (Iowa App. 2004) (collecting cases).

44. In 1976, the Kentucky General Assembly amended the IAD, providing in section 440.455 of the Kentucky Code: "All provisions and procedures of KRS 440.450 shall be construed to apply to any and all detainers based on unheard, undisposed of, or

legislative amendment, was inapplicable to revocation detainers. The broad view was that the IAD applied to any inmate "who is serving a term of imprisonment," while the narrow interpretation confined the IAD to inmates with "any untried indictment, information, or complaint," thereby excluding pending revocation charges from the IAD's coverage.[45]

In *Carchman v. Nash*, the Supreme Court addressed whether the scope of the IAD included parole and probation violation detainers, as well as additional charges.[46] The Court held that the IAD does not apply to revocation charges, even though the Court's definition of a detainer covered the revocation context.[47] Turning the *Smith* rationale on its head, the Court noted that delay before revocation would actually be advantageous to the prisoner and the court that hears the revocation charge. First, delaying the revocation hearing provides more information about the prisoner's progress toward rehabilitation. Second, the uncertainties associated with an additional charge detainer are greatly reduced for revocation detainers, because the revoked prisoner is often sentenced to serve the full term of the suspended sentence.[48] Because the Court did not view the effect of a revocation detainer as being as severe as an additional charge detainer, it was unnecessary for the Court to interpret the IAD language broadly to include revocation charges.

VII. CONCLUSION

Smith v. Hooey recognized that an inmate in another jurisdiction needs to be protected by the right to a speedy trial even more than other defendants. When the Court confirmed what both corrections professionals and inmates had known about the effects of pending charges, most states enacted the IAD. As suddenly as the Court had appeared willing to consider speedy disposition rights for all inmates with pending charges, it soon restricted its concern about delay to untried charges under the IAD.

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unresolved affidavits and warrants charging violations of the terms of probation and parole." S.B. 356, 1976 Gen. Assem., Reg. Sess. (Ky. 1976). In 1990, five years after *Carchman v. Nash*, 473 U.S. 716 (1985), the Kentucky legislature repealed KRS 440.455. KY. REV. STAT. ANN. § 440.455 (repealed 1990).

45. *See, e.g.*, Clipper v. State, 455 A.2d 973, 975 (Md. 1983), *superseded by statute*, MD. CODE ANN. § 645A(a)(2)(i), *as recognized in* Smith v. State, 694 A.2d 182 (1997); Padilla v. State, 648 S.W.2d 797, 798 (Ark. 1983); State v. Knowles, 270 S.E.2d 133, 134 (S.C. 1980); Suggs v. Hopper, 215 S.E.2d 246, 247 (Ga. 1975).

46. *Carchman*, 473 U.S. at 719.

47. A detainer is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." *Id.* (citing Cuyler v. Adams, 449 U.S. 433, 436 n.3 (1981)). Article I of the IAD is clear that it applies to all situations in which an inmate faces pending charges in another jurisdiction.

48. *Id.* at 732–33.

More than three decades later, the only remedy for inmates and corrections professionals would be an unlikely, explicit extension of the IAD's scope to include revocation charges.