No. 03-127

In the Supreme Court of the United States

ALVIN GLENN TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record

CHRISTOPHER A. WRAY
Assistant Attorney General

DANIEL S. GOODMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether petitioner's "amended" motion under 28 U.S.C. 2255, which was filed more than one year after his conviction became final and which raised a claim that was unrelated to the claims in his original motion, is untimely.

2. Whether the lower courts erred in denying petitioner's "amended" motion under 28 U.S.C. 2255 on the ground that it raised a claim that had already been raised and rejected on direct appeal.

3. Whether, if the claim is properly presented by petitioner's "amended" motion under 28 U.S.C. 2255, the Interstate Agreement on Detainers Act applied to petitioner while he was being held in a county jail pending transfer to the State's Department of Corrections for imprisonment on a parole violation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

In the Supreme Court of the United States

No. 03-127

ALVIN GLENN TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals denying petitioner's motion under 28 U.S.C. 2255 (Pet. App. 3a-7a) is not officially reported, but is available at 59 Fed. Appx. 58. The earlier opinion of the court of appeals denying petitioner relief on direct review (Pet. App. 19a-30a) is reported at 173 F.3d 538, cert. denied, 528 U.S. 987 (1999) (No. 99-5101).

JURISDICTION

The judgment of the court of appeals was entered on February 5, 2003. A petition for rehearing was denied on April 22, 2003 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on July 21, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted on one count of committing an armed robbery affecting commerce, in violation of 18 U.S.C. 1951; and one count of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. 922(g) and 924(e). He was sentenced to life imprisonment on the Hobbs Act charge, pursuant to the "three strikes" statute, 18 U.S.C. 3559(c); and to a consecutive term of 424 months of imprisonment on the felon-in-possession charge, pursuant to the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e). On direct appeal, the court of appeals affirmed petitioner's sentence and conviction, Pet. App. 19a-30a, and this Court denied certiorari. 528 U.S. 987 (1999).

On November 7, 2000, petitioner filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. 2255. On August 7, 2001, petitioner filed an "amended" motion under Section 2255, in which he added a claim that state and federal authorities failed to comply with the Interstate Agreement on Detainers Act, Pub. L. No. 91-538, 84 Stat. 1397, 18 U.S.C. App. 1 *et seq.* (IAD). The district court denied the claims raised by petitioner in his original and amended motion under Section 2255, but granted a certificate of appealability limited to the IAD issue raised by the amended motion. Pet. App. 8a-18a. The court of appeals affirmed the denial of petitioner's 2255 motion. *Id.* at 3a-7a.

1. On October 9, 1995, petitioner committed the armed robbery of a gas station in Memphis, Tennessee. Petitioner fled the gas station in a vehicle and, after the robbery was reported, the police gave chase. Petitioner

was apprehended after a physical struggle with police and after he unsuccessfully attempted to shoot a police officer. Police recovered from petitioner a loaded pistol, along with the money that he had stolen from the gas station. Pet. App. 21a; Gov't 1997 C.A. Br. 4-9.[1]

2. At the time of the robbery, petitioner was on parole in connection with a prior Tennessee conviction. After his arrest for the robbery and assault, petitioner was confined at the Shelby County Jail, a temporary holding facility for pretrial detainees. He remained in the Shelby County Jail after a state court revoked his parole on January 12, 1996, while awaiting transfer to a state correctional facility. Pet. App. 23a; Gov't 1997 C.A. Br. 18.

On February 27, 1996, a federal grand jury indicted petitioner on charges stemming from the armed robbery. The next day, federal authorities lodged a detainer against petitioner with state authorities and, on March 20, 1996, the United States Marshal delivered petitioner from the Shelby County Jail to the federal district court in Memphis, pursuant to a writ of habeas corpus ad prosequendum. After appearing before a federal magistrate in Memphis, petitioner was returned to the Shelby County Jail. Pet. App. 24a; Gov't 1997 C.A. Br. 18. Between March 20, 1996, and April 4, 1996, petitioner was transferred from the Shelby County Jail to the federal court and then back to the county jail four separate times. On April 4, 1996, petitioner pleaded

---

[1] "Gov't 1997 C.A. Br." refers to the government's brief in petitioner's direct appeal to the Sixth Circuit (6th Cir. No. 97-5795); "1997 C.A. J.A." refers to the Joint Appendix that was filed in that appeal; and "2002 C.A. J.A." refers to the Joint Appendix that was filed in petitioner's appeal from the denial of his Section 2255 motion (6th Cir. No. 02-5311).

"not guilty," the federal court set a trial date and entered an order of detention pending trial, and petitioner was again returned to the Shelby County Jail. Pet. App. 24a; Gov't 1997 C.A. Br. 18-19.

On April 18, 1996, petitioner was transferred to a Tennessee Department of Corrections facility to begin serving his parole violation sentence. After petitioner had been transferred from the county jail where pretrial detainees are temporally housed to the state correctional facility, the United States Marshal lodged a new detainer with the Tennessee Department of Corrections. On June 20, 1996, petitioner appeared before the federal district court pursuant to a writ of habeas corpus ad prosequendum. After that hearing, petitioner was remanded to federal custody pending his trial. Pet. App. 24a; Gov't 1997 C.A. Br. 19.

3. On October 25, 1996, petitioner moved to dismiss the federal indictment, alleging that the government had violated Article IV(e) of the IAD by returning him to state custody after his brief appearances in federal court. 1997 C.A. J.A. 38-42. The IAD (18 U.S.C. App. 2, Art. IV(a)) applies to persons who are "serving a term of imprisonment in any party State." 18 U.S.C. App. 2. Article IV(e) of the IAD states, in pertinent part: "If trial is not had on any indictment * * * contemplated hereby prior to the prisoner's being returned to the original place of imprisonment * * * , such indictment * * * shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." 18 U.S.C. App. 2. When the United States is the "receiving State," dismissal may be "with or without prejudice." 18 U.S.C. App. 9(1). The district court denied petitioner's motion to dismiss the indictment, rejecting his IAD claim. See 1997 C.A. J.A. 20-27.

4. The court of appeals affirmed. Pet. App. 19a-30a. The court first held that the protections of the IAD, which do not apply unless an individual is serving a "term of imprisonment," did not apply to petitioner's temporary detention in the Shelby County Jail pending his transfer to a state penitentiary for permanent incarceration. *Id.* at 24a-27a. In addition, the court concluded that, even if the IAD applied when petitioner was temporarily held in the county jail, petitioner's same-day transfers from that jail to the federal court to attend pretrial proceedings did not violate the IAD's anti-shuttling provision. *Id.* at 27a-29a.

Petitioner filed a petition for a writ of certiorari (No. 99-5101), in which he presented his IAD claims to this Court. On November 8, 1999, this Court denied that petition. 528 U.S. 987.

5. On November 1, 2000, petitioner filed a Section 2255 motion. 2002 C.A. J.A. 5-10. Nine months later, on August 7, 2001, petitioner filed an "amended" Section 2255 motion, in which he "incorporate[d] the original argument submitted to the Sixth Circuit Court of Appeals" that "State and Federal authorities violated his constitutional right" by failing to comply with "Articles IV and V" of the IAD. *Id.* at 11-12. The amended motion referred to this Court's decision in *Alabama* v. *Bozeman*, 533 U.S. 146, 149 (2001). In *Bozeman*, the Court held that Article IV(e) of the IAD requires the dismissal of criminal charges when a defendant who is serving a term of imprisonment is returned to the original place of imprisonment before trial, even when, as in *Bozeman*, "the interruption of the initial imprisonment last[s] for only one day." *Id.* at 149. See 2002 C.A. J.A. 12.

6. On September 13, 2001, the district court issued an order denying in part petitioner's original Section

2255 motion and certifying that no appeal of that order could be taken in good faith. 2002 C.A. J.A. 15-31. At the same time, however, the district court ordered the government to respond to the IAD claim raised in petitioner's amended Section 2255 motion. *Id.* at 30-31. After the government filed its response, the district court denied petitioner's amended Section 2255 motion. Pet. App. 8a-18a.

The district court explained that on direct appeal the Sixth Circuit had "held that the IAD was not implicated because [petitioner] had not begun serving his 'term of imprisonment' in a 'correctional institution' while he was being held at the [Shelby County] Jail." Pet. App. 11a. Although the court recognized that, under *Davis* v. *United States*, 417 U.S. 333, 342-346 (1974), there may be circumstances in which a defendant may raise "an issue that had been decided against him on direct appeal" in light of "an intervening change in the law," the court found that the "factual situation in *Davis*" is "far more compelling than that at issue here." Pet. App. 12a-13a. In addition, although the district court declined to adopt a blanket rule that "IAD claim[s] may not be raised in a § 2255 motion" (*id.* at 12a), the court noted that it had "been unable to locate a single Sixth Circuit decision granting relief to a defendant on an IAD claim in a § 2255 proceeding, let alone a § 2255 proceeding in which the defendant is unable to demonstrate prejudice." *Id.* at 15a.[2]

The district court further held that, even if petitioner's IAD claim were cognizable in this Section 2255 proceeding, petitioner "would still not be entitled to

---

[2] The district court "expressly d[id] not reach the issue of whether the Supreme Court's decision in *Bozeman* is retroactively applicable to cases on collateral review." Pet. App. 16a n.3.

relief on this claim." Pet. App. 15a. The court explained that nothing in *Bozeman* affected the court of appeals' first basis for rejecting petitioner's IAD claim on direct appeal, *i.e.*, "that [petitioner] had not begun serving his 'term of imprisonment' in a 'correctional institution' while he was being held at the Jail," *ibid.*, and that the protections of the IAD therefore did not apply to petitioner at that time. In addition, the court explained, nothing in the Sixth Circuit's decision on petitioner's direct appeal indicated that "it would have granted relief to [petitioner] on his IAD claim had the decision in *Bozeman* been available to it." *Ibid.* As a result, the district court concluded that under the law-of-the-case doctrine, it lacked authority to revisit the court of appeals' holding that the IAD did not apply to petitioner. *Id.* at 15a-16a.

The district court granted petitioner a certificate of appealability on his renewed IAD claim. Pet. App. 17a. The court explained that an appeal would permit the court of appeals to determine whether a statutory claim under the IAD is cognizable in a Section 2255 motion. *Ibid.* In addition, the court noted, it would provide the court of appeals an opportunity to reconsider its prior decision in the case. *Ibid.*

7. The court of appeals affirmed. Pet. App. 3a-7a. The court phrased the issue certified for appeal as follows: "Did the district court err in rejecting [petitioner's] claim that he was entitled to the relief requested on the holding of *Alabama v. Bozeman*, 533 U.S. 146 (2001)?" Pet. App. 4a. The court noted that its prior opinion in this case had "clearly stated that [petitioner's] pre-trial detention in the [Shelby County] Jail did not constitute a 'term of imprisonment' within the meaning of the IAD so that the 'anti-shuttling' provisions of the IAD were not triggered." *Id.* at 5a.

Furthermore, the court explained, this Court's decision in *Bozeman* "did not touch upon in any way the Sixth Circuit's interpretation of 'term of imprisonment' in this context." *Id.* at 6a. As a result, the court concluded that, under the law-of-the-case doctrine, "the district court properly held that it was not free to revisit the Sixth Circuit's prior refusal to invoke the IAD in response to [petitioner's] temporary, pre-trial residence at the Shelby County Jail." *Id.* at 7a.

ARGUMENT

1. Petitioner renews (Pet. 9-21) the argument that he made in his previous petition for certiorari in this case (No. 99-5101) that the government violated the IAD when it transferred him between the Shelby County Jail and the federal courthouse in Memphis for pretrial proceedings. That argument is less certworthy in its current procedural posture than it was when the Court denied certiorari with respect to petitioner's previous petition.

a. Petitioner's amended Section 2255 motion—in which he raised his IAD claim for the first time in this post-conviction proceeding—is untimely and therefore barred. A federal prisoner's motion for post-conviction relief under Section 2255 "is subject to a one-year time limitation that generally runs from 'the date on which the judgment of conviction becomes final.'" *Clay* v. *United States*, 123 S. Ct. 1072, 1075 (2003) (quoting 28 U.S.C. 2255, para. 6(1)). When a federal defendant files a direct appeal and pursues it to this Court, his conviction becomes final when the Court denies the petition or issues a decision on the merits. See *id.* at 1077 n.4. This Court denied petitioner's original petition for certiorari on November 8, 1999 (528 U.S. 987), and his conviction became final on that date. Petitioner thus

had one year from that date to file a Section 2255 motion. As discussed, petitioner filed a timely Section 2255 motion on November 1, 2000, but that motion did not include any IAD claim. 2002 C.A. J.A. 5-10. Petitioner's subsequent attempt in August 2001 to "amend" that Section 2255 petition, by raising a claim under the IAD that is unrelated to the four claims presented in his timely Section 2255 petition, was not timely.

In general, a motion to amend a Section 2255 petition filed after the expiration of the one-year limitation period established by Section 2255, para. 6(1), may be deemed to have been filed within that one-year limitation period only if the claim in the proposed motion "relates back" to the petitioner's original Section 2255 motion under Rule 15(c) of the Federal Rules of Civil Procedure. See *Davenport* v. *United States*, 217 F.3d 1341, 1345-1346 (11th Cir. 2000) (citing cases), cert. denied, 532 U.S. 907 (2001); see also *United States* v. *Hicks*, 283 F.3d 380, 387-388 (D.C. Cir. 2002); *United States* v. *Saenz*, 282 F.3d 354, 355-356 (5th Cir. 2002); *United States* v. *Espinoza-Saenz*, 235 F.3d 501, 504-505 (10th Cir. 2000). A claim or defense raised in an amended pleading relates back to the original pleading only when that claim or defense "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(2). "The fact that amended claims arise from the same trial and sentencing proceeding as the original motion does not mean that the amended claims relate back for purposes of Rule 15(c)." *United States* v. *Pittman*, 209 F.3d 314, 318 (4th Cir. 2000); accord *Hicks*, 283 F.3d at 388; *Davenport*, 217 F.3d at 1345-1346; *Espinoza-Saenz*, 235 F.3d at 505; *United States* v. *Thomas*, 221 F.3d 430, 436 (3d Cir. 2000); *United States*

v. *Duffus*, 174 F.3d 333, 337-338 (3d Cir.), cert. denied, 528 U.S. 866 (1999); *United States* v. *Craycraft*, 167 F.3d 451, 457 (8th Cir. 1999).

Petitioner's "amended" Section 2255 motion does not relate back to his original motion. The IAD claim raised in the amended motion is distinct from the claims raised in his original motion. Because the district court should simply have rejected petitioner's "amended" Section 2255 motion as untimely, the posture of this case is particularly unsuited for further review.

The district court did not disagree with that analysis. Rather, the district court, after explaining that petitioner's amended motion was filed after expiration of the one-year statute of limitations, believed that it was appropriate to consider the amended motion on its merits, because the added claim referred to this Court's intervening decision in *Bozeman*. 2002 C.A. J.A. 30-31. As the courts below concluded, however, *Bozeman* does not entitle petitioner to relief under the IAD, because, as the Sixth Circuit held on direct appeal, petitioner was not serving a "term of imprisonment" triggering the IAD when petitioner was being temporarily held in the county jail. See Pet. App. 6a, 15a.

In *Bozeman*, this Court held that the anti-shuttling provision in Article IV(e) of the IAD—which requires dismissal when a prisoner is returned to his "original place of imprisonment" before "trial" in the receiving State was "had"—applies when a prisoner is returned to the sending State for a period as short as a day. *Bozeman*, 533 U.S. at 148-149 (quoting Article IV(e) of the IAD). The threshold IAD issue in this case, by contrast, is whether the IAD—and the anti-shuttling provision construed in *Bozeman*—applied at all to petitioner when he was confined in the county jail waiting transfer to the state correctional facility. As discussed

above, that question turns on whether petitioner was serving a "term of imprisonment" for purposes of the IAD when he was housed at the county jail, a question not addressed by *Bozeman*.

b. Under paragraph 8 of 28 U.S.C. 2255, a second or successive motion by a federal prisoner must be certified by a court of appeals panel "as provided in section 2244" to contain either new evidence that establishes a defendant's innocence or a new rule of constitutional law that applies retroactively. Because petitioner's amended Section 2255 motion does not relate back to petitioner's timely Section 2255 motion, the amended motion should have been considered, if at all, as a second Section 2255 motion. Under 28 U.S.C. 2244(b)(3), before a second or successive Section 2255 application may be filed in the district court, a petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the application. The court of appeals may authorize the filing of such a second or successive Section 2255 motion only if the motion either contains new evidence that establishes the defendant's innocence or sets forth a new rule of constitutional law that applies retroactively. 28 U.S.C. 2255, para. 8. Petitioner did not obtain authorization to file his second Section 2255 motion. Nor could he satisfy the requirements for such a second or successive motion. Those considerations also counsel in favor of denying certiorari.

c. The court of appeals correctly held that "the Sixth Circuit's prior refusal to characterize [petitioner's] Shelby County Jail time as an IAD 'term of imprisonment' foreclosed to him that avenue of relief." Pet. App. 6a. As this Court recognized in *Kaufman* v. *United States*, 394 U.S. 217, 227 n.8 (1969), courts may decline to review a claim under Section 2255 when that

claim was raised and resolved on direct appeal. Furthermore, it is "well settled" in the courts of appeals "that a § 2255 motion may not be employed to relitigate an issue that was raised and considered on direct appeal absent highly exceptional circumstances." *Jones* v. *United States*, 178 F.3d 790, 796 (6th Cir.), cert. denied, 528 U.S. 933 (1999); see, *e.g.*, *United States* v. *Sanin*, 252 F.3d 79, 83 (2d Cir.), cert. denied, 534 U.S. 1008 (2001); *United States* v. *Wiley*, 245 F.3d 750, 752 (8th Cir. 2001), cert. denied, 534 U.S. 1083 (2002); *United States* v. *Nyhuis*, 211 F.3d 1340, 1343 (11th Cir. 2000), cert. denied, 531 U.S. 1131 (2001); *United States* v. *DeRewal*, 10 F.3d 100, 105 n.4 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). Petitioner has not provided any reason for the Court to deviate from that well-settled practice here.

The law-of-the-case doctrine, as the court of appeals explained, also prevented petitioner from relitigating in this Section 2255 proceeding an issue that was litigated and decided against him in his direct appeal. See Pet. App. 6a-7a. Under the law-of-the-case doctrine, "when an issue is once litigated and decided, that should be the end of the matter." *United States* v. *United States Smelting Ref. & Mining Co.*, 339 U.S. 186, 198 (1950). The prior "decision should continue to govern the same issues in subsequent stages in the same case." *Arizona* v. *California*, 460 U.S. 605, 618 (1983). The law-of-the-case doctrine is vital to "promot[ing] the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *Christianson* v. *Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (quoting 1B James W. Moore, et al., *Moore's Federal Practice* ¶ 0.404[1], at 118 (1984)).

Petitioner provides no reason why the law-of-the-case doctrine does not apply to the "term of imprison-

ment" issue that he seeks to renew in his untimely second Section 2255 motion. This Court's intervening decision in *Bozeman* does not permit petitioner to relitigate the threshold IAD claim in this case. As explained above, although the Court in *Bozeman* held that Article IV(e) may bar further proceedings even if a prisoner's imprisonment is interrupted only for a day, see 533 U.S. at 149, "[t]he *Bozeman* decision * * * did not touch upon in any way the Sixth Circuit's [prior] interpretation of 'term of imprisonment' in this context." Pet. App. 6a; see *id.* at 15a-16a, 25a-26a.

d. On the merits, the court of appeals correctly held that petitioner was not yet serving his "term of imprisonment" for purposes of the IAD, because he was temporarily being held in a county jail pending his transfer to a state penitentiary. Pet. App. 6a-7a; see *id.* at 24a-27a. All of the federal courts of appeals, and a majority of the state courts of last resort, that have considered the issue, have adopted the Sixth Circuit's approach in this case. See, *e.g.*, *Crooker* v. *United States*, 814 F.2d 75, 77-78 (1st Cir. 1987); *United States* v. *Wilson*, 719 F.2d 1491, 1494-1495 & n.1 (10th Cir. 1983); *United States* v. *Harris*, 566 F.2d 610, 613 (8th Cir. 1977); *State* v. *Hargrove*, 45 P.3d 376, 379-384 (Kan.), cert. denied, 537 U.S. 982 (2002); *State* v. *Wade*, 772 P.2d 1291, 1294 (Nev. 1989); *Dorsey* v. *State*, 490 N.E.2d 260, 264 (Ind. 1986), overruled on other grounds, *Wright* v. *State*, 658 N.E.2d 563 (Ind. 1995). See also *Runck* v. *State*, 497 N.W.2d 74, 81-82 (N.D. 1993) (the IAD does not apply to a defendant held in a temporary facility pending his transfer to a correctional institution, so long as the length of his stay is not influenced by the existence of the detainer). Those decisions extend the well-established rule that the IAD does not apply to pretrial detainees. See, *e.g.*, *United States* v. *Glasgow*,

790 F.2d 446, 448 (6th Cir. 1985), cert. denied, 475 U.S. 1124 (1986); *United States* v. *Reed*, 620 F.2d 709, 711 (9th Cir.), cert. denied, 449 U.S. 880 (1980).

Although no federal court of appeals has held that the IAD applies to a convicted defendant temporarily housed in a local jail, two state courts of last resort have reached that conclusion. *Felix* v. *United States*, 508 A.2d 101, 103-108 (D.C. 1986) (rejecting IAD claim on other grounds); *Hughes* v. *District Court*, 593 P.2d 702, 705 (Colo. 1979). But the narrow conflict of authority that exists on this issue does not warrant this Court's review. Even if it did, this case would be a singularly ill-suited vehicle in which to attempt to address such a conflict. As discussed above, for several different reasons, petitioner's IAD claim is both untimely and procedurally barred.

2. Petitioner argues (Pet. 21-26) that this Court should review the more general question whether a prisoner who timely objects to an alleged violation of the IAD and has exhausted his direct appeals can ever seek relief under 28 U.S.C. 2255. That issue is not properly presented in this case, because, as explained above, petitioner did not properly preserve his IAD claim by filing it in a timely Section 2255 motion. In addition, as set forth above, because petitioner had not yet begun serving his "term of imprisonment," the IAD did not yet apply to petitioner, and thus petitioner did not have an IAD claim to preserve.

In any event, as petitioner observes, *Reed* v. *Farley*, 512 U.S. 339 (1994), "is often cited for the proposition that collateral review under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 is not available for IAD violations." Pet. 22. See *Reed*, 512 U.S. at 359 (Scalia, J., concurring) ("Since the present petitioner raised his IAD claim on direct appeal * * * , his federal habeas claim could

have been rejected on the ground that the writ ordinarily will not be used to readjudicate fully litigated statutory claims."); see also *id.* at 352 (plurality opinion) ("a state court's failure to observe [a provision of the IAD] is not cognizable under § 2254 when the defendant registered no objection * * * and suffered no prejudice attributable to [that failure]"); *id.* at 354 (majority opinion) ("Where the petitioner—whether a state or federal prisoner—failed properly to raise his claim on direct review, the writ is available only if the petitioner establishes 'cause' for the waiver and shows 'actual prejudice resulting from the alleged . . . violation'") (quoting *Wainwright* v. *Sykes*, 433 U.S. 72, 84 (1977)).

Petitioner suggests that *Reed* "leaves open the possibility that under the proper circumstances, collateral review would be appropriate to correct a court's refusal to enforce the IAD." Pet. 22. But even if that were so, the lower courts in this case did not "refuse" to enforce the IAD. Rather, they held that the IAD was not applicable to petitioner, because he had not yet begun serving his "term of imprisonment" while he was in the county jail. Pet. App. 6a, 11a. Moreover, the district court declined to reach the broader question whether an IAD claim may ever be raised in a Section 2255 motion (*id.* at 12a-15a), and instead held that petitioner's particular IAD claim is "not cognizable on a § 2255 motion." *Id.* at 15a. In any event, petitioner has cited no conflict of authority in the courts of appeals as to whether, or under what circumstances, a statutory claim under the IAD is ever cognizable in a Section 2255 motion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

CHRISTOPHER A. WRAY
Assistant Attorney General

DANIEL S. GOODMAN
Attorney

SEPTEMBER 2003