NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Wash-ington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 91–7873

WILLIAM FEX, PETITIONER *v.* MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

[February 23, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

This case arises out of a "detainer," which is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent. Indiana and Michigan, along with 46 other States, the District of Columbia, and the United States, are parties to the Interstate Agreement on Detainers (IAD). See Ind. Code §35–33–10–4 (1988); Mich. Comp. Laws §780.601 (1979); Pub. L. 91–538, 84 Stat. 1397–1403, 18 U. S. C. App. §2; 11 U. L. A. 213–214 (Supp. 1992) (listing jurisdictions). Two provisions of that interstate agreement give rise to the present suit: Article III and Article V(c), which are set forth in the margin.[1]

---

[1]Title 18 U. S. C. App. §2 contains the full text of the IAD, and we refer to its provisions by their original article numbers, as set forth there. Article III of the IAD provides in relevant part as follows:

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting

On February 29, 1988, petitioner was charged in Jackson County, Michigan, with armed robbery, possession of a firearm during a felony, and assault with intent to murder. At the time, he was held in connection with unrelated offenses at the Westville Correctional Center in Fort Wayne, Indiana. The Jackson County Prosecuting Attorney therefore lodged a detainer against him. On September 7, 1988, the Indiana correctional authorities informed petitioner of the detainer, and he gave them his request for final

---

officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which

disposition of the Michigan charges. On September 22, the prison authorities mailed petitioner's request; and on September 26, 1988, the Jackson County Prosecuting Attorney and the Jackson County Circuit Court received it. Petitioner's trial on the Michigan charges began on March 22, 1989, 177 days after his request was delivered to the Michigan officials and 196 days after petitioner gave his request to the Indiana prison authorities. 439 Mich. 117, 118, 479 N. W. 2d 625 (1992) *(per curiam)*.

---

the detainer is based."

Article V(c) of the IAD provides, in relevant part:

"[I]n the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III . . . hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect."

Prior to trial, petitioner moved for dismissal with prejudice pursuant to Article V(c) of the IAD, on the ground that his trial would not begin until after the 180–day time limit set forth in Article III(a). The trial court denied the motion, reasoning that the 180–day time period did not commence until the Michigan prosecutor's office received petitioner's request. App. 36. Petitioner was convicted on all charges except assault with intent to murder, but his conviction was set aside by the Michigan Court of Appeals, which held that "the commencement of the 180–day statutory period was triggered by [petitioner's] request for final disposition to the [Indiana] prison officials." *Id.*, at 39. The Supreme Court of Michigan summarily reversed. 439 Mich. 117, 479 N. W. 2d 625 (1992) *(per curiam)*. We granted certiorari. 504 U. S. ___ (1992).

The outcome of the present case turns upon the meaning of the phrase, in Article III(a), "within one hundred and eighty days after he shall have caused to be delivered." The issue, specifically, is whether, within the factual context before us, that phrase refers to (1) the time at which petitioner transmitted his notice and request (hereinafter simply "request") to the Indiana correctional authorities; or rather (2) the time at which the Michigan prosecutor and court (hereinafter simply "prosecutor") received that request.

Respondent argues that no one can have "caused something to be delivered" unless delivery in fact occurs. That is self-evidently true,[2] and so we must

[2]Not, however, to the dissent: "The fact that the rule for marking the start of the 180–day period is written in a fashion that contemplates actual delivery . . . does not mean that it cannot apply if the request is never delivered." *Post*, at 3. Of course it vastly understates the matter to say that the provision is "written in a fashion that contemplates actual

reject petitioner's contention that a prisoner's transmittal of an IAD request to the prison authorities commences the 180–day period even if the request gets lost in the mail and is never delivered to the "receiving" State (*i.e.*, the State lodging the detainer, see Article II(c)). That still leaves open the textual possibility, however, that, *once delivery has been made,* the 180 days must be computed, not from the date of delivery but from the date of transmittal to the prison authorities. That is the only possibility the

---

delivery," as one might say *Hamlet* was written in a fashion that contemplates 16th-century dress. Causation of delivery is the very condition of this provision's operation—and the dissent says it does not matter whether delivery is caused.

The dissent asserts that "the logical way to express the idea that receipt must be perfected before the provision applies would be to start the clock 180 days `after he has caused the request *to have been delivered*.'" *Post*, at 1. But that reformulation changes the meaning in two respects that have nothing to do with whether receipt must be perfected: First, by using the perfect indicative ("after he has caused") rather than the future perfect ("after he shall have caused"), it omits the notion that the "causing" is to occur not merely before the statutory deadline, but *in the future*. Second, by using the perfect infinitive ("to have been delivered") rather than the present ("to be delivered"), it adds the utterly fascinating notion that the receipt is to occur before the causing of receipt. The omission of futurity and the addition of a requirement of antecedence are the only differences between saying, for example, "after he shall have found the hostages to be well treated" and "after he has found the hostages to have been well treated." In both cases good treatment must be established, just as under both the statutory text and the dissent's reformulation delivery must be established.

balance of our discussion will consider; and for convenience we shall refer to it as petitioner's interpretation.

Respondent places great reliance upon the provision's use of the future perfect tense ("*shall have caused* to be delivered"). It seems to us, however, that the future perfect would be an appropriate tense for both interpretations: The prisoner's transmittal of his request to the warden (if that is the triggering event), or the prosecutor's receipt of the request (if that is the triggering event) is to be completed ("perfected") at some date in the future (viewed from the time of the IAD's adoption) before some other date in the future that is under discussion (expiration of the 180 days). We think it must be acknowledged that the language will literally *bear* either interpretation—*i.e.*, that the crucial point is the prisoner's transmittal of his request, or that it is the prosecutor's receipt of the request. One can almost be induced to accept one interpretation or the other on the basis of which words are emphasized: "shall have *caused* to be delivered" *versus* "shall have caused to be *delivered*."[3]

Though the text alone is indeterminate, we think resolution of the ambiguity is readily to be found in

---

[3]The dissent contends that the phrase "he shall have caused" puts the focus "on the prisoner's act, and that act is complete when he transmits his request to the warden." *Post*, at 1. It is not evident to us that the act of "causing to be delivered" is complete before delivery. Nor can we agree that, unless it has the purpose of starting the clock running upon transmittal to the warden, the phrase "he shall have caused" is "superfluous." *Ibid.* It sets the stage for the succeeding paragraph, making it clear to the reader that the notice at issue is a notice which (as paragraph (b) will clarify) the prisoner is charged with providing.

what might be called the sense of the matter, and in the import of related provisions. As to the former: Petitioner would have us believe that the choice of "triggers" for the 180–day time period lies between, on the one hand, the date the request is received by the prosecutor and, on the other hand, the date the request is delivered to the warden of the prison. In fact, however, while the former option is clearly identified by the textual term "delivered," there is no textual identification of a clear alternative at the other end. If one seeks to determine the moment at which a prisoner "caused" the later delivery of a properly completed request, nothing in law or logic suggests that it must be when he placed the request in the hands of the warden. Perhaps it was when he gave the request to a fellow inmate to deliver to the warden—or even when he *mailed* it to the warden (Article III(b) provides that the request "shall be given *or sent* by the prisoner to the warden" (emphasis added)). It seems unlikely that a legislature would select, for the starting point of a statute of limitations, a concept so indeterminate as "caused." It makes more sense to think that, as respondent contends, delivery is the key concept, and that paragraph (a) includes the notion of causality (rather than referring simply to "delivery" by the prisoner) merely to be more precise, anticipating the requirement of paragraph (b) that delivery be made *by the warden* upon the prisoner's initiation.

Another common-sense indication pointing to the same conclusion is to be found in what might be termed (in current political jargon) the "worst-case scenarios" under the two interpretations of the IAD. Under respondent's interpretation, it is possible that a warden, through negligence or even malice, can delay forwarding of the request and thus postpone the starting of the 180–day clock. At worst, the prisoner (if he has not checked about the matter for half a year) will not learn about the delay until

several hundred days have elapsed with no trial. The result is that he will spend several hundred additional days under detainer (which entails certain disabilities, such as disqualification from certain rehabilitative programs, see *United States* v. *Mauro*, 436 U. S. 340, 359 (1978)), and will have his trial delayed several hundred days.[4] That result is bad, given the intent of the IAD. It is, however, no worse than what regularly occurred before the IAD was adopted, and in any event cannot be entirely avoided by embracing petitioner's view that transmittal to the warden is the measuring event. As we have said, the IAD unquestionably requires *delivery*, and only after that has occurred can one entertain the possibility of counting the 180 days from the transmittal to the warden. Thus, the careless or malicious warden, under petitioner's interpretation, may be unable to *delay* commencement of the 180–day period, but can *prevent it entirely*, by simply failing to forward the request. More importantly, however, the worst-case scenario under petitioner's interpretation produces

---

[4]There is no substance to the dissent's assertion that one of the "reason[s] for the IAD's creation" was to prevent the inmate from being "deprived of an opportunity to obtain a sentence to run concurrently with the sentence being served at the time the detainer is filed." *Post*, at 5 (citations and internal quotations omitted). Since the IAD does not *require* detainers to be filed, giving a prisoner the opportunity to achieve concurrent sentencing on outstanding offenses is obviously an accidental consequence of the scheme rather than its objective. Moreover, we are unaware of any studies showing that judges willing to impose concurrent sentences are *not* willing (in the same circumstances) to credit out-of-state time. If they are (as they logically should be), the opportunity of obtaining a concurrent sentence would ordinarily have zero value.

results that are significantly worse: If, through negligence of the warden, a prisoner's IAD request is delivered to the prosecutor more than 180 days after it was transmitted to the warden, the prosecution will be precluded before the prosecutor even knows it has been requested. It is possible, though by no means certain, that this consequence could be avoided by the receiving State court's invocation of the "good-cause continuance" clause of Article III(a)[5]—but it seems to us implausible that such a plainly undesirable result was meant to be avoided only by resort to the (largely discretionary) application of that provision. It is more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial.

Indications in the text of Article III confirm, in our view, that the receiving State's receipt of the request starts the clock. The most significant is the provision of Article III(b) requiring the warden to forward the prisoner's request and accompanying documents "by registered or certified mail, return receipt requested." The IAD thus provides for documentary evidence of the date on which the request is delivered to the officials of the receiving State, but requires no record

---

[5]Some courts have held that a continuance must be requested and granted before the 180–day period has expired. See, *e.g.*, *Dennett* v. *State*, 19 Md. App. 376, 381, 311 A. 2d 437, 440 (1973) (citing *Hoss* v. *State*, 266 Md. 136, 143, 292 A. 2d 48, 51 (1972)); *Commonwealth* v. *Fisher*, 451 Pa. 102, 106, 301 A. 2d 605, 607 (1973); *State* v. *Patterson*, 273 S. C. 361, 363, 256 S. E. 2d 417, 418 (1979). But see, *e.g.*, *State* v. *Lippolis*, 107 N. J. Super. 137, 147, 257 A. 2d 705, 711 (App. Div. 1969), rev'd, 55 N. J. 354, 262 A. 2d 203 (1970) *(per curiam)* (reversing on reasoning of dissent in Appellate Division). We express no view on this point.

of the date on which it is transmitted to the warden (assuming that is to be considered the act of "causing"). That would be peculiar if the latter rather than the former were the critical date. Another textual clue, we think, is the IAD's apparent indifference as to the manner of transmittal to the warden: Article III(b) says only that the request "shall be *given or sent* by the prisoner to the warden" (emphasis added). A strange nonchalance, if the giving or sending (either one) is to start the 180 days. Petitioner avoids this difficulty by simply positing that it is the warden's *receipt*, no matter what the manner of giving or sending, that starts the clock—but there is simply no textual basis for that; surely the "causing" which petitioner considers central occurs upon the giving or sending.

Petitioner makes the policy argument that "[f]airness requires the burden of compliance with the requirements of the IAD to be placed entirely on the law enforcement officials involved, since the prisoner has little ability to enforce compliance," Brief for Petitioner 8, and that any other approach would "frustrate the higher purpose" of the IAD, leaving "neither a legal nor a practical limit on the length of time prison authorities could delay forwarding a [request]," *id.*, at 20. These arguments, however, assume the availability of a reading that would give effect to a request that is never delivered *at all*. (Otherwise, it remains within the power of the warden to frustrate the IAD by simply not forwarding.) As we have observed, the textual requirement "shall have caused to be delivered" is simply not susceptible of such a reading. Petitioner's "fairness" and "higher purpose" arguments are, in other words, more appropriately addressed to the legislatures of the contracting States, which adopted the IAD's text.

Our discussion has addressed only the second question presented in the petition for writ of certiorari; we have concluded that our grant as to the

first question was improvident, and do not reach the issue it presents. We hold that the 180–day time period in Article III(a) of the IAD does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him. The judgment of the Supreme Court of Michigan is affirmed.

It is so ordered.