SUPREME COURT OF THE UNITED STATES

No. 93–5418

ORRIN S. REED, PETITIONER *v.* ROBERT FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June 20, 1994]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I join all the Court's opinion except Part II, and the last paragraph of Part IV (which incorporates some of the analysis of Part II). I thus agree that the "fundamental defect" test of *Hill* v. *United States*, 368 U. S. 424, 428 (1962), is the appropriate standard for evaluating alleged statutory violations under both §§2254 and 2255, see *ante*, at 13–15, but I disagree with what seems to me (in Part II) too parsimonious an application of that standard.

This Court has long applied equitable limitations to narrow the broad sweep of federal habeas jurisdiction. See *Withrow* v. *Williams*, 507 U. S. ___, ___ (1993) (slip op., at 1–7) (SCALIA, J., concurring in part and dissenting in part). One class of those limitations consists of substantive restrictions upon the type of claim that will be entertained. *Hill*, for example, holds that the claim of a federal statutory violation will not be reviewed unless it alleges "a fundamental defect which inherently results in a complete miscarriage of justice [o]r an

omission inconsistent with the rudimentary demands of fair procedure." 368 U. S., at 428. Most statutory violations, at least when they do not occur "in the context of other aggravating circumstances," are simply not important enough to invoke the extraordinary habeas jurisdiction. *Id*., at 429. See also *United States* v. *Timmreck*, 441 U. S. 780, 783–785 (1979).

Although JUSTICE GINSBURG concludes that an unobjected-to violation of the Interstate Agreement on Detainers Act (IAD), 18 U. S. C. App. §2, is not "`a fundamental defect which inherently results in a complete miscarriage of justice [o]r an omission inconsistent with the rudimentary demands of fair procedure,'" she declines to decide whether that judgment would be altered "[i]f a state court, presented with a timely request to set a trial date within the IAD's 120-day period, nonetheless refused to comply with Article IV(c)," *ante*, at 8–9. To avoid the latter question, she conducts an analysis of how petitioner waived his IAD rights. See *ante*, at 11–12. The issue thus avoided is not a constitutional one, and the avoiding of it (when the answer is so obvious) may invite a misunderstanding of the *Hill* test. The class of procedural rights that are *not* guaranteed by the Constitution (which includes the Due Process Clauses), but that nonetheless *are* inherently necessary to avoid "a complete miscarriage of justice," or numbered among "the rudimentary demands of fair procedure," is no doubt a small one, if it is indeed not a null set. The guarantee of trial within 120 days of interjurisdictional transfer unless good cause is shown—a provision with no application to prisoners involved with only a single jurisdiction or incarcerated in one of the two States that do not participate in the voluntary IAD compact—simply cannot be among that select class of statutory rights.

As for *Hill* and *Timmreck*'s reservation of the question whether habeas would be available "in the

context of other aggravating circumstances," that seems to me clearly a reference to circumstances *that cause additional prejudice to the defendant*, thereby elevating the error to a fundamental defect or a denial of rudimentary procedural requirements—*not* a reference to circumstances that make the trial judge's behavior more willful or egregious. I thus think it wrong to suggest that if only petitioner had not waived his IAD speedy trial rights by failing to assert them in a timely fashion, "aggravating circumstances" might exist. See *ante*, at 9, 11. That says, in effect, that "aggravating circumstances" which can entitle a mere statutory violation to habeas review may consist of the mere fact that the statutory violation *was not waived*. Surely that sucks the life out of *Hill*.[1] Nor do I accept JUSTICE GINSBURG's suggestion that an interest in uniform interpretation of the IAD might counsel in favor of habeas review in a nonwaiver situation. See *ante*, at 9. I see no reason why this Court's direct review of state and federal decisions will not suffice for that purpose, as it does in most other contexts. Cf. *Cuyler* v. *Adams*, 449 U. S. 433, 442 (1981). More importantly, however, federal habeas jurisdiction was not created with the intent, nor should we seek to give it the effect, of altering the fundamental disposition that *this Court*, and not individual federal district judges, has appellate jurisdiction, as to

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[1]Many courts, including the Indiana Supreme Court in evaluating this petitioner's claim, see *Reed* v. *State*, 491 N. E. 2d 182, 185 (Ind. 1986), have held that a prisoner's waiver of the 120-day limit will prevent violation of the IAD, or will preclude the remedy of dismissal with prejudice. See, *e.g.*, *United States* v. *Odom*, 674 F. 2d 228 (CA4 1982). Perhaps, therefore, JUSTICE GINSBURG's effort to decide the jurisdictional issue on as narrow a ground as possible has caused her to decide the merits.

federal questions, over the supreme courts of the States.

If there was ever a technical rule, the IAD's 120-day limit is one. I think we produce confusion by declining to state the obvious: that violation of that technicality, intentional or unintentional, neither produces nor is analogous to (1) lack of jurisdiction of the convicting court, (2) constitutional violation, or (3) miscarriage of justice or denial of rudimentary procedures. It is no basis for federal habeas relief.

In addition to substantive limitations on the equitable exercise of habeas jurisdiction, the Court has imposed procedural restrictions. For example, a habeas claim cognizable under §2255 (the correlative of §2254 for federal prisoners), such as a constitutional claim, will not be heard if it was procedurally defaulted below, absent a showing of cause and actual prejudice. See *United States* v. *Frady*, 456 U. S. 152, 167–168 (1982). And claims will ordinarily not be entertained under §2255 that have already been rejected on direct review. See *Kaufman* v. *United States*, 394 U. S. 217, 227, n. 8 (1969); see also *Withrow*, 507 U. S., at ___ (slip op., at 7–9) (SCALIA, J., concurring in part and dissenting in part) (collecting cases showing that lower courts have uniformly followed the *Kaufman* dictum). Together, these two rules mean that "a prior opportunity for full and fair litigation is normally dispositive of a federal prisoner's habeas claim." *Ibid*.

Although this procedural limitation has not been raised as a defense in the present case, I note my view that, at least where mere statutory violations are at issue, a prior opportunity for full and fair litigation precludes a state-prisoner petition no less than a federal-prisoner petition. As the Court today reaffirms, "`§2255 was intended to mirror §2254 in

operative effect.'" *Ante*, at 14, quoting *Davis* v. *United States*, 417 U. S. 333, 344 (1974). Cf. *Frady*, 456 U. S., at 166. Otherwise a prisoner, like petitioner, transferred from federal to state prison under the IAD would have three chances to raise his claim (state direct, state habeas, and §2254) while a prisoner transferred from state to federal prison under the IAD would have only one. Since the present petitioner raised his IAD claim on direct appeal in the Indiana courts and on state habeas review, 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.