The Burger Court Opinion Writing Database

United States v. Mauro

436 U.S. 340 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 23, 1978

Re: 76-1596 United States v. Mauro and Fusco
77-52 United States v. Ford

Dear Harry:

I see no reason not to change the order of these two cases on the argument list and will do so.

Regards,

WEB

Mr. Justice Blackmun

cc: The Conference
The Clerk of the Court

Wm. Brennan
Oct 77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1978

Dear Bill:

Re: 76-1596 U.S. v. Mauro and Fusco

77-52 U.S. v. Ford

Please join me in your opinion.

Note small suggestions for pages 2 and 4, which I attach.

Regards,

WEB

Mr. Justice Rehnquist

cc: The Conference

or indeed even supports, that result, but rather because the "purposes of the Agreement and the reasons for its adoption by Congress" supposedly lead to that result. *Ante*, p. 19. One certainly may find it necessary to resort to interpretative aids other than the language of the statute when difficult questions of construction arise. I would have thought, however, that one would *first* turn to the language of the statute before resorting to such extra-statutory interpretative aids. See *United States* v. *Kahn*, 415 U. S. 143, 151 (1974).

The reason, indeed the necessity for, the Court's pursuing the opposite course in this case is readily apparent, however. The language of the Agreement simply does not support the Court's conclusion. The Agreement speaks only of "requests" for custody. In the writ in the instant case, on the other hand, the warden of the Massachusetts Correctional Institution at Walpole was "HEREBY COMMANDED to have the body of RICHARD THOMSON FORD . . . before the Judges of our District Court" on a date certain. App. 8. The warden at M. C. I. Walpole would no doubt be surprised to hear that the United States had only "requested" the custody of his prisoner.

But even if the language of the Agreement were broad enough to encompass a writ of habeas corpus, it seems to me that for the same reasons that the Court does not consider a writ to be a "detainer" it cannot view a writ as a request. The writ has a long history, of which Congress must have been aware when it enacted the Agreement. It is inconceivable to me that Congress intended to include the writ in the operation of the Agreement, and thereby make new and different conditions flow from its use, simply by use of the phrase "written request for temporary custody." In fact, the intimations to the contrary in the legislative history. The reports of both the House and Senate Judiciary Committees suggest that Congress did not intend the procedures estab-

detainer against a prisoner and then securing his custody by use of the writ or how this process allows the Government "to circumvent its obligations under the Agreement . . . ." *Ante*, p. 20. The Court correctly recognizes that the primary purpose of the Agreement was to provide a solution to the problems encountered by prisoners and prison systems as a result of the lodging of detainers. *Ante*, pp. 14, 17–18. Upon the mere filing of a detainer by the United States, however, the prisoner clearly has the right under the Agreement to request speedy disposition of the underlying charges if he so desires. *Ante*, p. 9. The Government in no way excuses itself from this obligation by later using a writ of habeas corpus to secure the prisoner's custody. But by the same token, when the Government chooses *not* to take advantage of the remaining procedures specified in the Agreement after it files a detainer, I see nothing in the Agreement to suggest that the Government is still bound by all of the conditions which attach when it does choose to take full advantage of those procedures. Neither do I see anything in this procedure which precipitates any of the problems the Agreement was intended to alleviate. And to the extent any of the concerns expressed by the Court relate to the possibility of pretrial delay, the Federal Speedy Trial Act of 1974, 18 U. S. C. § 1361 (1970 ed. Supp. V), which creates specific time limits within which all federal defendants must be tried, must lessen if not totally dissipate those concerns.

Neither can I shrug off as cavalierly as the Court the Government's arguments with respect to other related language of the Agreement. The Government argues that since Art. IV (a) gives the Governor of a sending State the opportunity to disapprove the receiving State's "request," the term "request" cannot include the writ of habeas corpus, with which a State clearly has no right to refuse to comply. The Court responds that this provision was meant to do no more than preserve existing rights and if the States did not previously have the right to refuse writs, then this provision can-

A Governor who failed to comply would be in contempt of a federal court.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 23, 1978

RE: Nos. 76-1596 United States v. Mauro & Fusco and
72-52 United States v. Ford

Dear Chief:

I agree with Harry's memorandum of this date in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1978

RE: Nos. 76-1596 and 77-52 United States v. Mauro & Fusco
and Richard Thompson Ford

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1978

Re: No. 76-1596 - U. S. v. Mauro and Fusco
No. 77-52 - U. S. v. Ford

Dear Chief,

I agree with Harry's suggestion that the presently scheduled order of arguments next Monday in these cases be reversed.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Wm Brennan
OCT 77

J

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 13, 1978

Re: Nos. 76-1596 and 77-52, U.S. v. Mauro

Dear Byron,

I am glad to join your opinion for the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 4-12-78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76–1596 AND 77–52

United States, Petitioner,
76–1596 *v.*
John Mauro and John Fusco.

United States, Petitioner,
77–52 *v.*
Richard Thompson Ford.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

In 1970 Congress enacted the Interstate Agreement on Detainers Act, 18 U. S. C. App., pp. 1395–1398 (1976), joining the United States and the District of Columbia as parties to the Interstate Agreement on Detainers (Agreement).[1] The Agreement, which has also been enacted by 46 States, is designed "to encourage the expeditious and orderly disposition of . . . charges [outstanding against a prisoner] and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints." Art. I. It prescribes procedures by which a member State may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction. In either case, however, the provisions of the Agreement are triggered only when a "detainer" is filed with

[1] The Interstate Agreement on Detainers Act contains eight sections. Section 2 sets forth the Agreement as adopted by the United States and by other member jurisdictions. Provisions of the Agreement will be referred to herein by their original article numbers, as set forth in § 2 of the enactment of Congress.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 22

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 5/11/78

Nos. 76–1596 AND 77–52

United States, Petitioner,
76–1596 *v.*
John Mauro and John Fusco.

United States, Petitioner,
77–52 *v.*
Richard Thompson Ford.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

In 1970 Congress enacted the Interstate Agreement on Detainers Act, 18 U. S. C. App., pp. 1395–1398 (1976), joining the United States and the District of Columbia as parties to the Interstate Agreement on Detainers (Agreement).[1] The Agreement, which has also been enacted by 46 States, is designed "to encourage the expeditious and orderly disposition of . . . charges [outstanding against a prisoner] and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints." Art. I. It prescribes procedures by which a member State may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction. In either case, however, the provisions of the Agreement are triggered only when a "detainer" is filed with

[1] The Interstate Agreement on Detainers Act contains eight sections. Section 2 sets forth the Agreement as adopted by the United States and by other member jurisdictions. Provisions of the Agreement will be referred to herein by their original article numbers, as set forth in § 2 of the enactment of Congress.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 76-1596, United States v. Mauro, and No. 77-52, United States v. Ford (to be considered at June 1, 1978 Conference)

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(1) No. 76-6559, Scallion v. United States -- Petition was obtained from state custody pursuant to a federal writ of habeas corpus ad prosequendum on December 17, 1973. At the re quest of his counsel, petitioner was then returned to state pr A second writ of habeas corpus was later issued in order to ob petitioner's presence for trial, which commenced on September 1974. Following his conviction, petitioner contended before t CA 5 that his indictment should have been dismissed by the DC cause he was returned to state custody prior to the dispositio his federal charges and because he was not brought to trial wi in 120 days of his initial arrival in the federal district. A the first claim, the CA held that petitioner was estopped, hav requested the return to state custody. With regard to the spe trial claim, the court held that the Interstate Agreement on Detainers was not applicable because no federal detainer had e been filed against petitioner. Because this disposition is co sistent with our holding in Mauro, I will vote to deny cert.

(2) No. 77-206, Kenaan v. United States -- Without a federal detainer ever being filed, petitioner was obtained fro state custody pursuant to a federal ad prosequendum writ. On occasions prior to the commencement of his federal trial, he w returned to state prison. Upon petitioner's motion, the DC di missed his indictment on the ground that Art. IV(e) of the Int state Agreement had been violated. The CA 1 reversed, holding a writ ad prosequendum does not by itself constitute a "detainer" within the meaning of the Agreement; thus in this case the pro- visions of the Agreement were not applicable. This being correct under Mauro, I will vote to deny.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 23, 1978

Re: Nos. 76-1596 and 77-52, United States v. Mauro and Fusco, United States v. Ford

Dear Chief:

I think Harry is correct in his suggestion here.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Wm Brennan
Oct 77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 18, 1978

Re: No. 76-1596 - U. S. v. Mauro and Fusco
No. 77-52 - U.S. v. Ford

Dear Byron:

Please join me.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 23, 1978

Dear Chief:

The first cases for next week are: No. 76-1596, United States v. Mauro and Fusco, and No. 77-52, United States v. Ford.

You may recall that in January we denied a motion to consolidate the two cases for argument.

The Clerk has placed the Mauro - Fusco case first because, I suppose, it has the lower number. For me, it would make a lot more sense to have the Ford case argued first. This is because if the Government prevails in Ford the issues in Mauro - Fusco disappear. I, for one, would like to focus on the Ford issues first.

I am sending copies of this note to the Conference so that if anyone else has a similar reaction he may advise you. I am assuming that it is not too late to reverse the order of the cases' arguments if the Conference so chooses.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Wm Brennan
2/77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 19, 1978

Re: No. 76-1596 - United States v. Mauro and Fusco
No. 77-52 - United States v. Ford

Dear Byron:

Please join me.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 23, 1978

No. 76-1596 U.S. v. Mauro and Fusco
No. 77-52 U.S. v. Ford

Dear Chief:

I concur in Harry's suggestion.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Wm Brennan
OCT 77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1978

No. 76-1596 U.S. v. Mauro and Fusco
No. 77-52 U.S. v. Ford

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 23, 1978

Re: Nos. 76-1596 and 77-52 - United States v. Mauro and Fusco; and United States v. Ford

Dear Chief:

I agree, for the reasons stated in Harry's letter to you of February 23rd, that it would make more sense to have Ford argued before Mauro-Fusco.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

Wm Brennan
OCT 77

J

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. J
Mr.
Mr.
Mr.

Circulated: 1978

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76–1596 AND 77–52

United States, Petitioner,
76–1596 *v.*
John Mauro and John Fusco.

United States, Petitioner,
77–52 *v.*
Richard Thompson Ford.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST, concurring in part and dissenting in part.

I agree with the Court's conclusion in No. 76–1596 that a writ of habeas corpus *ad prosequendum* is not a detainer within the meaning of the Interstate Agreement on Detainers. As the Court observes, *ante,* p. 18, "the issuance of *ad prosequendum* writs by federal courts has a long history, dating back to the First Judiciary Act. We can therefore assume that Congress was well aware of the use of such writs by the Federal Government to obtain state prisoners and that when it used the word 'detainer,' it meant something quite different than a writ of habeas corpus *ad prosequendum.*" Indeed, there is simply nothing in the language or legislative history of the Agreement to indicate that Congress intended to cut back in any way on the scope and use of the writ. But for these very reasons I cannot agree with the result in No. 77–52.

I am first struck by the Court's interesting approach to statutory construction, the significance of which cannot be lost on even the most casual reader. The Court considers *ad prosequendum* writs to be "written requests for temporary custody" not because the language of the Agreement compels,

P. 1, 4

STYLISTIC CHANGES

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr Justice Rehnquist

Circulated: _____

Recirculated: MAY 15 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 76–1596 AND 77–52

United States, Petitioner,
76–1596 *v.*
John Mauro and John Fusco.

United States, Petitioner,
77–52 *v.*
Richard Thompson Ford.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, concurring in part and dissenting in part.

I agree with the Court's conclusion in No. 76–1596 that a writ of habeas corpus *ad prosequendum* is not a detainer within the meaning of the Interstate Agreement on Detainers. As the Court observes, *ante,* p. 18, "the issuance of *ad prosequendum* writs by federal courts has a long history, dating back to the First Judiciary Act. We can therefore assume that Congress was well aware of the use of such writs by the Federal Government to obtain state prisoners and that when it used the word 'detainer,' it meant something quite different than a writ of habeas corpus *ad prosequendum.*" Indeed, there is simply nothing in the language or legislative history of the Agreement to indicate that Congress intended to cut back in any way on the scope and use of the writ. But for these very reasons I cannot agree with the result in No. 77–52.

I am first struck by the Court's interesting approach to statutory construction, the significance of which cannot be lost on even the most casual reader. The Court considers *ad prosequendum* writs to be "written requests for temporary custody" not because the language of the Agreement compels,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 13, 1978

Re: 76-1596 - United States v. Mauro and Fusco
77-52 - United States v. Thompson

Dear Byron:

Please join me.

Respectfully,

Mr. Justice White

Copies to the Conference