No. 07-10441

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2007

JOHNNIE CORLEY,
PETITIONER,

- VS -

UNITED STATES OF AMERICA,
RESPONDENT

CERTIFICATE OF SERVICE

DAVID L. McCOLGIN hereby certifies:

That he is a member of the Bar of the Supreme Court of the United States.

That on August 13, 2008, the Petitioner's Reply Memorandum in the above-entitled case was sent by Federal Express Overnight Delivery properly addressed to the Clerk of the Supreme Court of the United States.

That copies of reply memorandum were served on the following individuals at the address shown below:

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Dated this 13th day of August, 2008.

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UNITED STATES OF AMERICA,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY MEMORANDUM

Reasons for Granting the Writ

The United States argues that voluntariness is the sole criterion for admissibility of a confession under 18 U.S.C. § 3501(a). The United States further argues that the six-hour time limitation in § 3501(c) merely narrows the circumstances under which delay in presentment of the defendant to a magistrate judge may alone justify a finding of involuntariness. But this argument is contrary to the language of § 3501(c), which makes plain that the six-hour time limitation of § 3501(c) applies only to statements that the court has determined are "voluntary." Thus, § 3501(c) does not address inadmissibility due to involuntariness, but instead, inadmissibility due to delay in presentment. If voluntariness were the sole criterion for admissibility, then § 3501(c) would be superfluous since voluntary confessions would by definition be admissible, regardless of whether they were taken within or outside the six-hour safe harbor. This Court should grant the petition so as to resolve the well-settled circuit split on

this issue and to make clear that § 3501 should not to be interpreted in a manner that renders the six-hour time limitation in subsection (c) meaningless.

The United States also argues that the circuit split on this issue of statutory interpretation does not merit this Court's review in light of the number of cases that have raised this issue in recent years. But the United States overlooks the fact that this issue is an important one affecting every federal case in which there is a confession taken after arrest and before presentment. A confession may be by far the most important evidence in a case. Both law enforcement and the courts need to know whether § 3501(c) establishes a bright-line rule regarding delay beyond the six-hour time period, or if instead admissibility of a confession depends only on voluntariness. Mr. Corley's case is an ideal vehicle for resolving the circuit split on this issue since his confession was the only evidence linking him to the robbery, and the delay in presentment was principally for the purpose of securing a confession and was therefore unreasonable. This case thus neatly illustrates the different results that flow from the different interpretations of the statute.

1. Section 3501(c) is superfluous unless it is interpreted to mean that voluntary confessions taken outside the six-hour time limitation are inadmissible if there was unreasonable delay in presentment.

Section 3501(c) provides that a confession "shall not be inadmissible solely because of delay" in presentment "if such confession is found by the trial judge to have been made voluntarily and . . . given . . . within six hours" of arrest. 18 U.S.C. § 3501(c). This "time limitation" does not apply if the delay in presentment beyond six hours is "found to be reasonable" in view of available transportation and the distance to the magistrate. *Id.* Subsection (c) thus eliminates unreasonable delay in presentment as a basis for suppression as

long as the confession is given within six hours of arrest. In other words, it creates a six-hour exception to the *McNabb-Mallory* rule that post-arrest confessions taken before presentment should be suppressed if there was unreasonable delay in presentment. *See McNabb v. United States*, 318 U.S. 332 (1943); *Mallory v. United States*, 354 U.S. 449 (1957); Fed. R. Crim. P. Rule 5(a).

The United States's argument that voluntariness is the sole criterion for admissibility under § 3501(a) renders subsection (c) superfluous. *See* Brief in Opp. at 9. Since the confessions covered by the six-hour safe harbor in subsection (c) are by definition "made voluntarily," this six-hour time limitation would make no difference if the United States were correct – such voluntary statements would be admissible even if given outside the six-hour time period. The United States tries to breath significance into subsection (c) by arguing that under this subsection, if the confession occurs outside the six-hour safe harbor of § 3501(c), "delay in presentment may in some circumstances justify a finding of involuntariness, either alone (in cases where the delay is extraordinarily long and oppressive) or in conjunction with other factors set forth in Section 3501(b)." Brief in Opp. at 11. But the language of the statute cannot support this strained interpretation. Section 3501(c) uses the word "inadmissible," not the word "involuntary," as would be required for the United States's interpretation – "a confession . . . shall not be *inadmissible* solely because of delay . . ." The six-hour time limitation, moreover, only applies to confessions "found by the trial judge to have been made voluntarily." § 3501(c). The statute thus clearly anticipates that *voluntary* confessions falling outside the six-hour time limitation will be "inadmissible" under the *McNabb-Mallory* rule if there was unreasonable delay

in presentment.[1] This Court should grant the writ so as to make clear that § 3501(c) should be interpreted so as not to render it superfluous.

2. The Circuit split regarding the interpretation of § 3501(c) is an important one that requires resolution by this Court.

As the United States acknowledges, the circuit split on the issue presented here is genuine and well-settled. This Court previously found the issue worthy of certiorari in *United States v. Alvarez-Sanchez*, 511 U.S. 350 (1994), but did not reach it only because the Court resolved the case on a separate threshold issue. *Id.* at 356; Brief in Opp. at 12-15. The United States argues, however, that the number of cases addressing § 3501(c) since *Alvarez-Sanchez* suggests that the issue presented here "does not arise with great frequency" and therefore does not warrant review. Brief in Opp. at 17-18.

The number of cases addressing this issue cited in the United States's brief, Mr. Corley's petition, and the Third Circuit's opinion, however, is hardly insignificant and demonstrates that this vexing issue continues to trouble the courts. Brief in Opp. at 12-17; Pet. 13-15; *United States v. Corley*, 500 F.3d 210, 216-19 (3d Cir. 2007). These reported cases, moreover, hardly represent the universe of cases in which the issue has arisen and been decided in the district

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[1] At oral argument in *United States v. Alvarez-Sanchez*, 511 U.S.350 (1994), in which this Court considered but ultimately did not resolve the issue presented here, the United States conceded that its interpretation would require rewriting § 3501(c) at least by adding the word "otherwise," evidently before the word "voluntarily." Transcript of Oral Argument, 1994 WL 665079 p. 8 (March 1, 1994) ("[I]n order to make it fit better with the balance of the statute, what we do, quite candidly, is to read subsection (c) as if it said, and it otherwise can be --"). To support the United States's interpretation, however, subsection (c) would have to be rewritten still further. Subsection (c) would have to provide that a confession made after arrest "shall not be *deemed involuntary* solely because of delay . . . if such confession is found by the trial judge to have been made *otherwise* voluntarily and . . . if such confession was . . . given by such person within six hours" of arrest. § 3501(c) (italics indicating substituted or added words).

courts, since many such pre-trial rulings on motions to suppress evidence do not result in written or reported opinions. Also, instead of appealing the issue, many defendants in such cases negotiate guilty pleas, and as a result the issue is not brought to the circuits.

The United States fails to recognize, moreover, the critical role confessions play in criminal cases and the unsurpassed importance attached to them by judges and jurors. *See Miranda v. Arizona*, 384 U.S. 436, 442 (1966) ("[A]dmissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, . . ."). In light of this critical role, it is especially important that both federal law enforcement and the courts have a consistent and clear interpretation of § 3501(c). *See Corley*, 500 F.3d at 229 (Sloviter, J., dissenting) (observing that the interpretation of § 3501(c) "is important not only to Corley, but to all arresting officers operating in this circuit"). In any case in which a confession is secured following arrest but before presentment, law enforcement and the courts need to know whether delay alone past the six-hour time limit can be a basis for finding the confession inadmissible, or whether admissibility depends only on the difficult to define concept of voluntariness. As this Court has noted, the multi-factor voluntariness test codified in § 3501(b) is difficult "for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Dickerson v. United States*, 530 U.S. 428, 444 (2000). And as *amicus* accurately observes, having a bright-line six-hour rule regarding the length of permissible delay "'conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness.'" Brief of National Association of Criminal Defense Lawyers as *Amicus* in Support of Petitioner, at 5 (quoting *Minnick v. Mississippi*, 498 U.S. 146, 151 (1990)).

The United States also suggests in passing that the requirement of *Miranda* warnings "largely protect[s] against the abuses at which *McNabb* and *Mallory* were originally aimed." Brief in Opp. at 18. But *Miranda* warnings do nothing to protect against delay in presenting the defendant to a neutral magistrate. Rather, the opposite is true – delay in presentment vitiates the value of *Miranda* warnings by serving as a tool for their circumvention. The longer the delay, the more likely the defendant will feel pressured to waive *Miranda*. *See Corley*, 500 F.3d at 218 ("[T]he longer the delay continues, the more likely it becomes that the arrested person will feel improper pressure to confess."); *see also Schneckloth v. Bustamonte*, 412 U.S. 218, 247 (1973) ("[T]he nature of custodial surroundings produce an inherently coercive situation."). And a defendant could well believe that the assertion of any rights under *Miranda* would seem uncooperative and would only result in a further delay of the appearance before a neutral magistrate. Thus, the *McNabb-Mallory* rule, rather than duplicating the protection afforded by *Miranda*, is in fact a necessary complement to *Miranda* that prevents unreasonable delay from vitiating the very rights *Miranda* protects.

The United States argues in addition that the Third Circuit did not determine whether this was a case in which application of the bright-line six-hour rule would have even made a difference. Brief in Opp. at 18. The United States is incorrect. The Third Circuit found it necessary to address this difficult issue of statutory interpretation precisely because its interpretation made all the difference in the outcome. As the Circuit stated, "Because we believe that the first contention [that the confessions were inadmissible under § 3501(c)] is governed by our decision in *Government of Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974), and we discern no error in the District Court's determination that Corley's confessions were voluntary,

the delay in presenting [Mr. Corley] to a federal magistrate judge beyond that provided by 18 U.S.C. § 3501(c) will not result in suppressing his confessions." *Corley*, 500 F.3d at 212 (emphasis added).

It was undisputed in Mr. Corley's case that his written confession, taken over 26 hours after his arrest, was well outside the six-hour time limit of § 3501(c), and the majority noted that the district court's conclusion that the oral confession was within the six-hour time limit "is contrary to the text of the statute." *Id.* at 220 n.7. Thus, the majority found that both confessions were outside the time-limit. The majority also did not disagree with the dissent's conclusion that "apparently the only reason[] for the delay following Corley's hospital discharge" was that the officers "wanted to question him about his participation in this bank robbery. . . ." *Id.* at 237 (Sloviter, J. dissenting). Since, as the majority stated, the "paradigm of 'unnecessary delay' is when it is solely for the purpose of eliciting a confession," *id.* at 214, it is plain that the majority would have ordered suppression of the confessions had it adopted the interpretation of § 3501(c) urged by the dissent and Mr. Corley – that statements taken outside the six-hour safe harbor are inadmissible if there was unnecessary delay in presentment.

In conclusion, certiorari is warranted to resolve a well-settled circuit split over the interpretation of an important federal statute that controls the admissibility of the most damning of evidence – confessions. The circuit split is entrenched, and there is no likelihood that the circuits will resolve their opposing interpretations without this Court's intervention. This case presents the perfect vehicle for resolving the split because, although Mr. Corley's confessions were voluntary, they were plainly outside the six-hour time limit of § 3501(c) and Mr. Corley's presentment was unnecessarily delayed. The facts thus illuminate well the dueling

interpretations of § 3501, and the interpretation that is applied determines the outcome of the case. The courts and federal law enforcement need this important criminal justice issue resolved, and this is an ideal case for resolving it.

CONCLUSION

For the foregoing reasons, petitioner, Johnnie Corley, requests that this Honorable Court grant a writ of certiorari and review the judgment of the court of appeals.

Respectfully submitted,

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