QUESTION PRESENTED

> Whether 18 U.S.C. § 3501 – read together with Fed. R. Crim. P. Rule 5(a), *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957) – requires that a confession taken more than six hours after arrest and before presentment be suppressed if there was unreasonable or unnecessary delay in bringing the defendant before the magistrate judge.

Several United States Courts of Appeals have addressed this issue and have issued conflicting decisions, and the panel in this case was split two to one on the issue.

This Court granted certiorari to consider the issue in *United States v. Alvarez-Sanchez*, 511 U.S. 350 (1994), but then resolved the case on a separate "threshold" ground and expressly left open "the subtle questions of statutory construction concerning the safe harbor set out in § 3501(c)." *Id.* at 356.

TABLE OF CONTENTS

TABLE OF CONTENTS CONTINUED

APPENDICES:

TABLE OF AUTHORITIES

FEDERAL CASES **PAGE**

FEDERAL STATUTES **PAGE**

MISCELLANEOUS **PAGE**

No._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2007

JOHNNIE CORLEY,
PETITIONER

- VS. -

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit rendered in this case on August 31, 2007. The Third Circuit denied petitioner's petition for rehearing on November 16, 2007.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, which is reported at *United States v. Corley*, 500 F.3d 210 (3d Cir. 2007), is attached in the Federal Reporter format as Appendix A. The Third Circuit's denial of rehearing is attached as Appendix B. The opinion of the district court denying the motion to exclude statements is attached as Appendix C.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The judgment and opinion of the Court of Appeals was entered on August 31, 2007. The Court of Appeals denied rehearing on November 16, 2007. On February 5, 2008, this Court granted petitioner's application for a 60-day extension, and directed that the petition be filed on or before April 14, 2008. This petition is timely filed on that date. *See* Sup. Ct. R. 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3501 provides as follows:

> **(a)** In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.
>
> **(b)** The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.
>
> The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.
>
> **(c)** In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made

> voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided,* That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.
>
> **(d)** Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.
>
> **(e)** As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

Federal Rule of Criminal Procedure 5(a) provides as follows:

> (a) In General.
>
> (1) Appearance Upon an Arrest.
>
> (A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

(B) A person making an arrest outside the United States must take the defendant without unnecessary delay before a magistrate judge, unless a statute provides otherwise.

STATEMENT OF THE CASE

A. Proceedings Below

On November 20, 2003, Johnnie Corley was charged in an indictment with conspiracy to commit armed bank robbery (18 U.S.C. § 371, count one), armed bank robbery (18 U.S.C. § 2113(d), count two), and use and carrying of a firearm in furtherance of a drug trafficking crime (18 U.S.C. § 924(c), count three). (App. 16-17).[1] Following a hearing on Mr. Corley's motion to suppress statements, the district court denied the motion. A jury trial was held September 27-28, 2004, and Mr. Corley was convicted on counts one and two, and acquitted on count three. (App. 20, 424-25). On December 21, 2004, Mr. Corley was sentenced to 170 months' imprisonment, five years' supervised release, a fine of $1000, restitution in the amount of $47,532.76, and a special assessment of $200. (App. 9, 21, 481-86). Mr. Corley timely appealed his conviction, and the United States Court of Appeals for the Third Circuit affirmed his conviction on August 31, 2007. The Court of Appeals denied a petition for rehearing on November 16, 2007.

B. Statement of Facts

On June 16, 2003, the Norsco Federal Credit Union in Norristown, Pennsylvania, was robbed by three men. The only evidence introduced at trial identifying Mr. Corley as a participant in the robbery consisted of two statements law enforcement obtained from Mr. Corley more than six hours after his arrest, and before he was brought to a federal magistrate. Mr. Corley did not see the magistrate until nearly 30 hours after his arrest. The issue raised in this petition is whether these statements were taken in violation of Mr. Corley's right to prompt

[1] "App." refers to the Appendix on appeal filed in the Third Circuit in this case.

appearance before a federal magistrate upon arrest.

Mr. Corley was arrested at 8:00 a.m. on September 17, 2003, after federal and state law enforcement identified him as a suspect in the bank robbery. Officers arrested him on an outstanding bench warrant from state court. During the arrest, Mr. Corley resisted and had a physical altercation with an FBI agent. As a result, he was placed under federal arrest for assault on a federal officer and taken to a local police station for processing. At 11:45 a.m., he was taken from the police station to a hospital in Philadelphia, where he was admitted at 12:12 p.m. He received five sutures and was discharged at 3:20 p.m. *Corley*, 500 F.3d at 212-13 (majority); 232-33 (Sloviter, J., dissenting).

Mr. Corley was next brought to the FBI office in Philadelphia, arriving at 3:30 p.m. Although the FBI offices are located in the same building as the federal magistrate judges' courtrooms and chambers, he was not presented to a federal magistrate judge. Instead, he was kept in the FBI offices for interrogation regarding the bank robbery. By this point, 7 ½ hours had already elapsed since his arrest. *Id.* at 212 (majority), 233 (Sloviter, J. dissenting). As Judge Sloviter observed, the only apparent reason for the delay in presentment following the hospital discharge was the agents' desire to question Mr. Corley. *Id.* at 237 (Sloviter, J., dissenting).

At 5:07 p.m. – still without being presented to a magistrate judge, and after being informed he was under arrest for assault on a federal officer and under investigation for bank robbery – Mr. Corley signed a waiver of rights form. He confessed shortly afterwards, but when asked to put his confession in writing, said that he was tired and asked to continue the following day. The interrogation resumed at 10:30 a.m. on September 18. Mr. Corley signed a written confession soon afterwards. He finally appeared before a federal magistrate judge to be informed

of his rights at 1:30 p.m. – 29 ½ hours after his arrest. *Id.* at 212.

The district court judge found that both the oral and written statements were voluntary and denied the motion to suppress the statements. (See District Court opinion attached as Appendix C). The district court also found that the oral statement was made within six hours of the arrest. On appeal, however, the majority did not dispute that both statements were outside the six-hour period and that the district court erred in this regard. *Id.* at 220 n.7 (majority); 232 (Sloviter, J., dissenting).[2]

C. The majority and dissenting opinions

The panel majority affirmed the district court's ruling on the ground that it was bound by the prior ruling of the Third Circuit in *Gov't of Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974), that voluntary statements are admissible even if they were obtained outside the six-hour time period in § 3501(c) as a result of unreasonable delay.

The majority reasoned that *Gereau* provided a "plausible" reading of the six-hour rule in 18 U.S.C. § 3501(c). *Corley*, 500 F.3d at 217. The majority interpreted § 3501(c) as "merely instruct[ing] trial courts that the inherently coercive effect of a lengthy delay in presentment is not sufficient, *standing alone*, to render a confession involuntary where the delay is either less than six hours or 'reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.'" *Id.* at 218. As the court in *Gereau* read § 3501, the admissibility of all confessions, whether made within or outside the six-hour period, hinges on whether the statement was "voluntary." *Id.* at 217. The *Corley*

[2] As Judge Sloviter noted, "Even were the time spent receiving medical treatment excluded in calculating the expiration of the safe-harbor period, the confession would nonetheless fall outside that period." *Corley*, 500 F.3d at 233 n.24 (Sloviter, J., dissenting).

majority observed, however, that the Second, Ninth and D.C. Circuits have concluded that this interpretation not only renders the six-hour rule in § 3501 "superfluous," but is contrary to the legislative history. *Id.* at 219. The majority then noted the strength of these arguments:

> Our dissenting colleague cogently argues that the Second, Ninth and D.C. Circuits have the better of the argument regarding the proper interpretation of § 3501. Were we writing on a clean slate, we might agree. As explained above, however, our Court has already resolved these issues in *Gereau*.

Id. Further undermining *Gereau*, the *Corley* majority also noted that *Gereau* itself was based on Second and Ninth Circuit precedent that "those Circuits have since repudiated." *Id.*. The majority acknowledged that this "may be a reason to revisit *Gereau en banc*." *Id.* at 219-20.

Judge Sloviter, in dissent, explained that § 3501 must be read in the context of this Court's decisions in *McNabb v. United States*, 318 U.S. 332 (1943) and *Mallory v. United States*, 354 U.S. 449 (1957), as well as Rule 5(a) of the Federal Rules of Criminal Procedure. In *McNabb*, the Court established an exclusionary rule under which a confession must be suppressed if obtained in violation of a defendant's statutory right upon arrest to be taken immediately before a committing officer. 318 U.S. at 345-47. The requirement of immediate presentment was then codified in Rule 5(a), which requires that an arrested person be taken before the magistrate judge "without unnecessary delay." In *Mallory*, the Court made clear that unnecessary delay alone, as a violation of Rule 5(a), could be the basis for suppression. 354 U.S. at 454-55. This exclusionary rule became known as the *McNabb-Mallory* rule. *See Corley*, 500 F.3d at 229-31 (Sloviter, J., dissenting).

Against this backdrop, § 3501(c) must be read as having "'only excised the first six hours after arrest or detention from the scope of the *McNabb-Mallory* exclusionary rule.'" *Id.* at 232

(Sloviter, dissenting) (quoting *United States v. Superville*, 40 F. Supp. 2d 672, 683 (D.V.I. 1999)). Judge Sloviter thus concluded that since the delay in the instant case was outside the six-hour period allowed under § 3501(c) and lacked any legitimate basis, the *McNabb-Mallory* rule required suppression of Mr. Corley's statements. *Id.* at 238 (Sloviter, J., dissenting).

REASONS FOR GRANTING THE WRIT

> This Court should grant certiorari to resolve the split in the circuits over whether statements taken more than six hours after arrest and before presentment should be suppressed under the *McNabb-Mallory* exclusionary rule and 18 U.S.C. § 3501 if there was unreasonable or unnecessary delay in presenting the defendant to a federal magistrate.

Mr. Corley's case presents an excellent vehicle for this Court to resolve a deep split in the circuits regarding an important question of statutory construction in federal criminal practice: the applicability of the *McNabb-Mallory* exclusionary rule in light of 18 U.S.C. § 3501. The circuits are currently split five to three on this issue, and the Third Circuit panel in this case was itself split two to one. The panel majority questioned, but ultimately felt bound by, the circuit's prior decision in *Gereau*.

This Court, moreover, previously granted certiorari in a case raising this issue. In *United States v. Alvarez-Sanchez*, 511 U.S. 350 (1994), the Court took note of the § 3501 issue raised here, but the Court ultimately did not need to reach it because a "threshold inquiry" disposed of the case – the Court determined that since the defendant there was not under arrest for a *federal* offense, the provisions of § 3501 were not triggered. *Id.* at 358. Thus, the Court concluded that it "need not address subtle questions of statutory construction concerning the safe harbor set out in § 3501(c), or resolve any tension between the provisions of that subsection and those of § 3501(a). . . ." *Id.* at 356. In a concurring opinion, Justice Ginsburg expressly noted the division in authority on the issue. *Id.* at 361 & n.* (1994) (Ginsburg, J., concurring) (writing separately "to emphasize that we do *not* decide today a question on which the Courts of Appeals remain divided: the effect of § 3501(c) on confessions obtained more than six hours after an arrest on

federal charges").

The issue is especially important because it is one that potentially arises in every federal criminal case in which a statement is taken after arrest. It is untenable to lack a consistent federal rule regarding the admissibility of such critical evidence. Likewise, it is untenable for federal law enforcement agents to have inconsistent rules to apply in federal districts across the country regarding how quickly they must present a defendant to a magistrate following arrest and the taking of a statement. The time is ripe for this Court to resolve the issue, and this case factually presents an ideal vehicle for doing so.

A. The *McNabb-Mallory* exclusionary rule and 18 U.S.C. § 3501

This Court has long recognized the defendant's right to prompt presentment before a judicial officer following arrest. The Court first addressed the issue in *McNabb v. United States*, 318 U.S. 332 (1943), in which federal officers held the defendants in custody and interrogated them for several days before bringing them to a judicial officer. *Id.* at 334-38. The Court ruled that procuring the defendants' confessions in this manner violated their statutory right to be presented promptly to the nearest judicial officer, and the confessions had to be excluded. *Id.* at 344-46. Three years later, the *McNabb* ruling became embedded in the Federal Rules of Criminal Procedure with the adoption of Rule 5(a), requiring that federal officers take an arrested person before a judicial officer "without unnecessary delay." Fed. R. Crim. P. 5(a).

The Court next addressed the issue of presentment delay in *Upshaw v. United States*, 335 U.S. 410 (1948). *Upshaw* made clear that delay in presentment for the purpose of procuring a confession is "unnecessary delay" in violation of Rule 5(a), and requires exclusion under *McNabb*. *Upshaw*, 335 U.S. at 414. The Court reiterated this exclusionary rule in *Mallory v.*

United States, 354 U.S. 449 (1957), holding again that admission of a defendant's statement taken in violation of Rule 5(a) is improper. *Id.* at 453. The Court emphasized that the prohibition on "unnecessary delay" means that any delay in presentment "must not be of a nature to give opportunity for the extraction of a confession." *Id.* at 455. This exclusionary rule has become known as the "*McNabb-Mallory* exclusionary rule." *Corley*, 500 F.3d at 214.

Congress responded in 1968 to the *McNabb-Mallory* exclusionary rule, and also to the rule of *Miranda v. Arizona*, 384 U.S. 436 (1966) (requiring that warnings be given to those in custody), with the passage of 18 U.S.C. § 3501. *See Dickerson v. United States*, 530 U.S. 428, 436 (2000) (observing that § 3501 was intended to overrule *Miranda*). Subsections (a) and (b) of § 3501 address the *Miranda* rule, and subsection (c) addresses the *McNabb-Mallory* rule. The key statutory language is as follows:

> (a) In any criminal prosecution . . . a confession . . . shall be admissible in evidence if it is voluntarily given. . . .
>
> (b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the given confession . . . .
>
> (c) In any criminal prosecution . . . a confession made . . . while such person was under arrest or other detention . . . shall not be inadmissible solely because of delay in bringing such person before a magistrate . . . if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay . . . beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate . . . .

18 U.S.C. § 3501 (emphasis added). Section 3501(c), thus creates a six-hour "safe harbor" – any statements taken during the first six hours after arrest are not inadmissible solely because of delay in presentment. The question raised here is whether § 3501 completely eliminated the *McNabb/Mallory* exclusionary rule, or whether it just excised the first six hours after arrest from the scope of this rule.

B. The circuit split regarding the applicability of the *McNabb-Mallory* rule in light of 18 U.S.C. § 3501 is entrenched and will not be resolved without this Court's intervention.

In addition to the Third Circuit, the First, Sixth, Eighth and Tenth Circuits have ruled that § 3501 completely eliminates the *McNabby-Mallory* exclusionary rule. These circuits hold that voluntariness is the sole criterion for admissibility, and unnecessary delay alone cannot be a basis for exclusion of statements, regardless of how long after the arrest the statements are made. *See United States v. Beltran*, 761 F.2d 1, 8 (1st Cir. 1985); *United States v. Christopher*, 956 F.2d 536, 538-39 (6th Cir. 1991); *United States v. Bear Killer*, 534 F.2d 1253, 1256-57 (8th Cir. 1976); *United States v. Glover*, 104 F.3d 1570, 1583 (10th Cir. 1997). In these five circuits, accordingly, the *McNabb/Mallory* exclusionary rule no longer exists, and federal law enforcement agents can unreasonably delay presentment of a defendant to a federal magistrate, so long as there is no evidence that the delay rendered any confession during that time involuntary.[3]

The Second, Ninth and D.C. Circuits have taken the opposite position, holding that unreasonable delay alone can be a basis for exclusion of a confession if the confession was taken outside the six-hour "safe harbor" provided in Section 3501(c). *See United States v. Perez*, 733

[3] As Judge Sloviter observed, "[t]he courts have generally equated 'unnecessary' to 'unreasonable.'" *Corley*, 500 F.3d at 236 (Sloviter, J., dissenting). Rule 5(a) bars "unnecessary delay," while § 3501(c) uses "reasonable" as the standard. *Id.*

F.2d 1026, 1031 (2d Cir. 1984); *United States v. Alvarez-Sanchez*, 975 F.2d 1396, 1402-03 (9th Cir. 1991), *rev'd on other grounds*, 511 U.S. 350 (1994); *United States v. Robinson*, 439 F.2d 553, 563-64 (D.C. Cir. 1970). Thus, in these three circuits the *McNabb-Mallory* rule still applies if the confession was obtained more than six hours after arrest. Federal agents in these circuits cannot unreasonably delay presenting the defendant to a magistrate without risking exclusion of the confession based on the delay alone. The Seventh Circuit has taken a similar approach, holding "that a district judge retains discretion to exclude a confession where there is delay in excess of six hours," but that the exercise of that discretion depends on a number of factors, including "the deterrent purpose of the exclusionary rule." *United States v. Gaines*, 555 F.2d 618, 623-24 (7th Cir. 1977).[4]

The panel majority, following *Gereau*, ruled that voluntariness is the sole ground for suppression under Section 3501(a) and that Section 3501(c) can plausibly be read as simply narrowing the circumstances under which unreasonable delay alone can warrant a finding of involuntariness. *Corley*, 500 F.3d at 217. But as the Second Circuit persuasively explains, if Congress had intended voluntariness to be the sole ground for suppression, the statute would have been worded differently:

---

[4] *See also United States v. Superville*, 40 F. Supp. 2d 672, 681-83 (D.V.I. 1999) (holding *McNabb-Mallory* exclusionary rule remains fully applicable to confessions taken outside the six-hour period); *United States v. Wilbon*, 911 F. Supp. 1420, 1426 (D.N.M. 1995) (holding that § 3501 "provides two independent bases for excluding confessions at trial: (1) voluntariness; and (2) unreasonable delay as carefully delineated in subsection (c)"). Wigmore supports a similar interpretation of § 3501(c), asking, "What . . . is the status of confessions obtained without arraignment after a six-hour delay, not within the proviso? Is it the intent of Congress that as to these the *McNabb-Mallory* 'delay per se invalidates' approach still exists? Probably so, because if the intent were otherwise no time limits at all would have been included in the enactment." 3 Wigmore, *Evidence* § 862(a) at 623 (Chadbourn rev.1970).

> Congress, in subsection (c), specifically used the term "inadmissible solely because of delay." If voluntariness were the only basis upon which admissibility turned under § 3501, then the statute would have contained language to the effect that "a confession shall not be deemed *involuntary* solely because of delay." In view of the fact that Congress coupled the word "inadmissible" with "delay," the meaning of subsection (c) must be that delay may serve as the basis for a separate, independent exclusionary remedy.

United States v. Perez, 733 F.2d 1026, 1031 (2d Cir. 1984) (emphasis in original).

Making a similar point, Judge Sloviter in her dissent observes that the majority's interpretation entirely fails to address the use of "and" in Section 3501(c): "If voluntariness is all, I ask the majority, how does it explain the 'and' which explicitly makes admissibility of a confession dependent on *both* voluntariness and presentment within six hours of arrest?" *Corley*, 500 F.3d at 235-36 (Sloviter, J., dissenting). The Third Circuit's interpretation of § 3501, under which admissibility depends only on voluntariness, would render § 3501(c) superfluous. *Id.* at 235; *Perez*, 733 F.2d at 1031.

As Judge Sloviter concludes, accordingly, in passing § 3501, Congress was not overruling *McNabb* or *Mallory*, but instead was excising the first six hours after arrest from the scope of the *McNabb-Mallory* exclusionary rule. *Corley*, 500 F.3d at 232 (Sloviter, J., dissenting). In view of the deep and entrenched division in the circuits over this issue, only this Court's review can bring uniformity to the interpretation of this important federal statute.

C. The admissibility of confessions in federal criminal trials under § 3501 is a critically important issue on which the federal courts should have a uniform stance.

As this Court stated in *McNabb*, "[j]udicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards

of procedure and evidence." 318 U.S. at 340. Since a confession is the most damning evidence against a defendant, the standards for admissibility of confessions set out in § 3501 should be given uniform interpretation in federal courts across the country. It makes no sense for the admissibility of such evidence to depend on the circuit in which the defendant is prosecuted. Federal law enforcement agents should be held to the same standard throughout the country regarding the securing of confessions and the requirement that defendants be presented to a federal magistrate without unnecessary delay. Thus, the issue presented here, on which the circuits are clearly divided, is an especially important one that merits resolution by this Court.

D. This case presents an ideal vehicle for resolution of the circuit split.

This case presents in stark relief the § 3501 issue that has split the circuits. There are no disputes regarding the essential facts. Unlike the defendant in *Alvarez-Sanchez*, there is no question but that Mr. Corley was under federal arrest, and thus the provisions of § 3501 were triggered. *See Alvarez-Sanchez*, 511 U.S. at 358. There are also no disputes over the timing of the arrest, the two statements, or the intervening events. The second statement was plainly outside the six-hour safe harbor, and as Judge Sloviter observes, "[t]he majority chooses not to dispute Corley's argument that the District Court erred in concluding that the agent's [first] interrogation was within that six-hour safe-harbor period." *Corley*, 500 F.3d at 232 (Sloviter, dissenting).

The record makes clear, moreover, that the only reason for the delay in presenting Mr. Corley to the magistrate following his medical treatment was the agents' desire to question him and extract a confession. *Id.* at 237 (Sloviter, J., dissenting) (citing App. 78, 92). This case thus fits the paradigm of "unnecessary delay" set out by this Court in *Mallory*, 354 U.S. at 455

(holding that the phrase "without unnecessary delay" means that "the delay must not be of a nature to give opportunity for the extraction of a confession"). *See Corley*, 500 F.3d at 214 (under *McNabb-Mallory* rule, "the paradigm of 'unnecessary delay' is when it is solely for the purpose of eliciting a confession").

Lastly, the confession provided truly critical evidence, since there was no other evidence linking Mr. Corley to the robbery. *Id.* at 229 n.17 (Sloviter, J., dissenting). Accordingly, this case very neatly presents the question whether a statement should be excluded under § 3501(c) and the *McNabb-Mallory* rule if it is outside the six-hour period and the delay in presentment was unreasonable or unnecessary.

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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