No. 07-10441

IN THE

Supreme Court of the United States

JOHNNIE CORLEY,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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May 19, 2008

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.

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit corporation with membership of more than 10,000 attorneys and 28,000 affiliate members in all fifty states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

The NACDL was founded in 1958 to promote research in the field of criminal law, to advance knowledge of the law in the area of criminal practice, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's objectives are to ensure the proper administration of justice and appropriate application of criminal statutes in accordance with the United States Constitution. Consistently advocating for the fair and efficient administration of criminal justice, members of the NACDL have a keen interest in assuring that 18 U.S.C. § 3501(c) continues to provide adequate protection for arrested individuals through the operation of the six-hour "safe harbor" constructed therein.

REASONS FOR GRANTING THE PETITION

In the broad experience of the NACDL's members, two problems arise from the Third Circuit's reading

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[1] Pursuant to Rule 37, *amicus curiae* state that both parties have consented to the filing of this brief, and that no party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2(a) *amicus curiae* certifies that timely notice was made to the counsels of record for both parties.

of § 3501(c). First, it introduces confusion and uncertainty in situations of presentment delay, given the unreliability of a "voluntariness" standard. Like other bright-line rules, § 3501(c) provides guidance to officers, courts, and attorneys in the form of a structure for decisionmaking. The Third Circuit's reading is in conflict with that of the Courts of Appeals for the Second, Ninth, and District of Columbia Circuits, and this disparity in interpretation increases the likelihood of disparate treatment of arrested individuals. Second, the Third Circuit "'reads subsection (c) out of the statute.'" *United States* v. *Alvarez-Sanchez*, 975 F.2d 1396, 1400 (9th Cir. 1992) (quoting *United States* v. *Perez*, 733 F.2d 1026, 1031 (2d Cir. 1984)), *rev'd on other grounds*, 511 U.S. 350 (1994). Review by this Court is necessary to restore the meaning of § 3501(c) to that which the statutory language supports and which Congress intended.

ARGUMENT

I. THE VITAL NEED FOR A BRIGHT-LINE RULE.

Section 3501(c)'s bright-line rule gives guidance to law enforcement, courts, and counsel regarding the length of permissible delay between arrest and presentation to a magistrate. If less than six hours elapses, the delay is generally insufficient to warrant exclusion and the court proceeds to voluntariness analysis. 18 U.S.C. § 3501(c); see *Alvarez-Sanchez*, 975 F.2d at 1399 ("The clear effect of [§ 3501(c)] is to create a six-hour 'safe harbor' during which a confession will not be excludable on the basis of the *McNabb-Mallory* rule."); *Perez*, 733 F.2d at 1035 (interpreting § 3501 to remove delays of less than six hours from the scope of *McNabb-Mallory*). Con-

versely, if more than six hours elapses, the resulting confession is likely inadmissible under *McNabb-Mallory*[2] unless the delay was reasonable due to transportation necessities. See *Perez*, 733 F.2d at 1031, 1035 (interpreting § 3501(c) to provide that a delay of more than six hours (that is not found reasonable) is an independent basis for excluding a confession, to be evaluated using the *McNabb-Mallory* rule). Reading § 3501(c) as it is written thus allows many cases falling into the latter category to be resolved in accordance with the established logical framework as opposed to an ad hoc voluntariness analysis.

A. Voluntariness Alone Invites Confusion And Uncertainty.

Giving effect to § 3501(c) mitigates the complex and uncertain task of determining voluntariness. The statutory test for determining voluntariness states that "the trial judge . . . shall take into consideration all of the circumstances surrounding the giving of the confession," and then provides a list of five factors[3]

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[2] The *McNabb-Mallory* rule arises from *McNabb* v. *United States*, 318 U.S. 332 (1943), and *Mallory* v. *United States*, 354 U.S. 449 (1957), and requires courts to exclude confessions made by a defendant after an unreasonable delay between arrest and presentment. The Court in *McNabb* and *Mallory* crafted this exclusionary rule to enforce Federal Rule of Criminal Procedure 5(a), which prohibits "unnecessary delay" in bringing the defendant to a magistrate.

[3] Those factors are:

> (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 "need not be conclusive." 18 U.S.C. § 3501(b). In *United States* v. *Dickerson*, 530 U.S. 428 (2000), the Court observed that the totality-of-the-circumstances voluntariness test codified in § 3501(a) is difficult both "for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Id.* at 444.

The United States itself acknowledged the difficulty and risks of inconsistency in applying the voluntariness test and vigorously argued that a voluntariness test alone was insufficient to protect a defendant's privilege against self-incrimination in the "inherently coercive" custodial context. Brief for the United States at 36-38, *Dickerson*, 530 U.S. 428 (No. 99-5525), *available at* 2000 WL 141075.[4] Yet, this is the only test the Third Circuit has recognized in considering the admissibility of confessions obtained after a delay in presentment. *United States* v. *Corley*, 500 F.3d 210, 217 (3d Cir. 2007).

> 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."

18 U.S.C. § 3501(b).

[4] The United States argued:

> If *Miranda* warnings are not required, the result will be uncertainty for the police and an additional volume of litigation focusing on the totality-of-the-circumstances voluntariness standard. . . . As demonstrated by the thirty pre-*Miranda* confession cases decided by this Court under the due process test, the totality-of-the-circumstances voluntariness test is more difficult and uncertain in application than *Miranda*. Its many variables would complicate the task of law enforcement in assessing what procedures would reliably secure admissible confessions.

Brief for the United States at 38, *Dickerson*, 540 U.S. 428 (No. 99-5525) (internal citations and parenthetical omitted).

Litigating voluntariness in every case where the defendant challenges the admissibility of a confession would create a burden on the courts, in addition to fostering uncertainty among law enforcement officials and defense lawyers as to which confessions are likely to be excluded. See *id.* at 229 (Sloviter, J., dissenting) (noting that this issue "is important not only to Corley but to all arresting officers operating in this circuit" (footnote omitted)); see also *supra* n.4 If delay is but one factor within the voluntariness analysis, it further complicates an already complex determination: a delay over the statutory six hours would clearly weigh against voluntariness, but it would be unclear what other circumstances might compensate for such a delay. The result can only be confusion and inconsistency, and attempts by both sides to take advantage of that uncertainty.

B. Section 3501(c)'s Six-Hour Rule Provides Clarity And Consistency.

In contrast, § 3501(c)'s six-hour rule "conserves judicial resources which would otherwise be expended in making difficult determinations of voluntariness." In a closely analogous context, this Court has noted that this sort of presumption offers "clear and unequivocal" guidelines. *Edwards* v. *Arizona*, 451 U.S. 477 (1981) (invocation of right to counsel requires officers to cease questioning altogether, subject to certain exceptions such as defendant reinitiation); *Minnick* v. *Mississippi*, 498 U.S. 146, 151 (1990) (confirming the bright-line rule established in *Edwards* and reiterating its value in "conserv[ing] judicial resources which would otherwise be expended in making difficult determinations of voluntariness").

Bright-line rules provide clear, consistent guidance for law enforcement, reducing the likelihood of constitutional rights violations. As then-Solicitor

General Seth Waxman noted in oral argument for *United States* v. *Dickerson*, "one of the benefits that this Court has explained as recently as in *Minnick* and in *Moran* . . . for law enforcement and for the administration of justice generally[,] is the provision of rules that are easily applied and understood." Tr. of Oral Argument at 18, *Dickerson*, 530 U.S. 428, *available at* 2000 WL 486733. This Court has noted that bright-line rules are valuable precisely because they "can be readily applied by the police and the courts to a large variety of factual circumstances." Brief of the United States at 34 & n.24, *Dickerson*, 530 U.S. 428 (citing *Arizona* v. *Roberson*, 486 U.S. 675, 681 (1988); *Colorado* v. *Spring*, 479 U.S. 564, 577 n.9 (1987); *Moran* v. *Burbine*, 475 U.S. 412, 425 (1986); *Berkemer* v. *McCarty*, 468 U.S. 420, 432 (1984); *Fare* v. *Michael C.*, 442 U.S. 707, 718 (1979); *New York* v. *Quarles*, 467 U.S. 649, 664 (1984) (O'Connor, J., concurring in the judgment and dissenting in part)). By clearly demarcating the limits of permissible administration in the arrest context, bright-line rules like the six-hour "'safe harbor'" in § 3501(c), see *Alvarez-Sanchez*, 975 F.2d at 1399, create "'eas[y]'" and "'clear guid[es]'" for law enforcement in the complex arena of criminal procedure, Brief of the United States at 34 & n.24, *Dickerson*, 530 U.S. 428.

Other bright-line rules are effective and, like the *Miranda* rule, supported by both sides of the courtroom aisle. By hewing to such guidelines, individual rights are protected from intentional and unintentional violations and lawful convictions are upheld. See*, e.g.*, *United States* v. *Robinson*, 414 U.S. 218, 235 (1973) (creating a bright-line rule allowing for searches of individuals and the grabbing area incident to arrest); *Chambers* v. *Maroney*, 399 U.S.

42, 50-52 (1970) (creating a bright-line rule allowing searches of automobiles without a warrant as long as probable cause exists); *cf. Michigan* v. *Tucker*, 417 U.S. 433, 443 (1974) (noting that *Miranda* rules "help police officers conduct interrogations without facing a continued risk that valuable evidence would be lost").

The six-hour rule of § 3501(c) has the additional imprimatur of Congress. The Third Circuit's decision in this case to give no effect to the safe-harbor provision creates not only a division with the circuits but also extends its supervisory powers in a manner that patently contravenes congressional will. See *Perez*, 733 F.2d at 1035 (finding that § 3501(c) expressed Congress's clear intention to limit application of the *McNabb-Mallory* rule only in situations of unreasonable pre-arraignment delays of less than six hours or reasonable delays of more than six hours).

II. AS A MATTER OF STATUTORY CONSTRUCTION § 3501 SHOULD BE INTERPRETED TO GIVE EFFECT TO THE § 3501(C) DELAY PROVISION.

In this case, even the Third Circuit majority admitted that "[w]ere we writing on a clean slate, we might agree [that the Second, Ninth, and D.C. Circuit Courts have the better of the argument regarding the proper interpretation of § 3501]." *Corley,* 500 F.3d at 219. The majority, however, felt constrained by a prior Third Circuit precedent, *Government of the Virgin Islands* v. *Gereau*, 502 F.2d 914 (3d Cir. 1974). *Corley,* 500 F.3d at 219-20. *Gereau*, however, relied on Second and Ninth Circuit cases that have since been rejected. *Id.* at 219-20 & n.6 (citing *United States* v. *Superville*, 40 F. Supp. 2d 672, 689 & nn.25-26 (D.V.I. 1999)).

As the Second Circuit has explained, Congress enacted the various subsections in § 3501 after *Miranda*, *McNabb*, and *Mallory* to alter the rules the Court crafted in those cases. *Perez*, 733 F.2d at 1032. Although subsequently held unconstitutional, *Dickerson*, 530 U.S. at 432, § 3501(a) was originally intended to address *Miranda* by providing that a determination of voluntariness was sufficient for admissibility in the absence of *Miranda* warnings. Likewise, Congress enacted § 3501(c) to change the *McNabb-Mallory* rule. Significantly, the initial draft of the bill lacked the six-hour safe harbor, and would have entirely overruled *McNabb-Mallory*. However, concern that the proposed rule would allow interrogations to go on indefinitely prompted the addition of the six-hour limitation on the Senate Floor. *Perez*, 733 F.2d at 1033 (citing 114 Cong. Rec. 14,184-86). This history demonstrates that § 3501(c) as enacted was meant to operate as a limitation on, but not a repudiation of, *McNabb-Mallory*'s prohibition of undue delay in presentment.

Although the text of § 3501(a), read in isolation, does suggest that admissibility of confessions is based only on voluntariness, such an interpretation "'reads subsection (c) out of the statute.'" *Alvarez-Sanchez*, 975 F.2d at 1400 (quoting *Perez*, 733 F.2d at 1031). Section 3501(c) provides, in relevant part, that a confession "shall not be inadmissible solely because of delay . . . if such confession is found by the trial judge to have been made voluntarily *and* . . . if such confession was *made or given by such person within six hours* immediately following his arrest or other detention" (subject to the reasonable delay for transportation exception). Section 3501(c) does not establish a presumption in favor of admissibility for confessions made by suspects within six hours of

arrest. Instead, it eliminates unreasonable delay as a potential reason to suppress a confession if given within six hours; it removes those confessions from the scope of the *McNabb-Mallory* rule. The logical corollary is that confessions uttered after six hours remain within the *McNabb-Mallory* rule and are thus inadmissible on the basis of delay except where the delay was reasonably incurred in transporting the defendant to the nearest magistrate. See *Corley*, 500 F.3d at 235-36 (Sloviter, J., dissenting).

This reading is further supported by Congress's choice of the term "inadmissible" rather than "involuntary" to explain the result from a delay over six hours. *Perez*, 733 F.2d at 1031. If § 3501(c) merely modified the other two sections, a delay longer than six hours would be a factor making the confession "involuntary." Because Congress instead drafted the statute so that such a delay is a factor making the confession "inadmissible," § 3501(c) provides an independent basis for finding the delayed confession inadmissible. *Perez*, 733 F.2d at 1031.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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