

ALITO, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 07–10441

JOHNNIE CORLEY, PETITIONER *v.* UNITED STATES

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

[April 6, 2009]

JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

Section 3501(a) of Title 18, United States Code, directly and unequivocally answers the question presented in this case. After petitioner was arrested by federal agents, he twice waived his *Miranda*<sup>1</sup> rights and voluntarily confessed, first orally and later in writing, that he had participated in an armed bank robbery. He was then taken before a Magistrate Judge for an initial appearance. The question that we must decide is whether this voluntary confession may be suppressed on the ground that there was unnecessary delay in bringing petitioner before the Magistrate Judge. Unless the unambiguous language of §3501(a) is ignored, petitioner’s confession may not be suppressed.

I

Section 3501(a) states: “In any criminal prosecution brought by the United States . . . , a confession . . . shall be admissible in evidence if it is voluntarily given.”

Applying “settled principles of statutory construction,” “we must first determine whether the statutory text is plain and unambiguous,” and “[i]f it is, we must apply the

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<sup>1</sup>See *Miranda v. Arizona*, 384 U. S. 436 (1966).

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statute according to its terms.” *Carcieri v. Salazar*, 555 U. S. \_\_\_, \_\_\_ (2009) (slip op., at 7). Here, there is nothing ambiguous about the language of §3501(a), and the Court does not claim otherwise. Although we normally presume that Congress “means in a statute what it says there,” *Connecticut Nat. Bank v. Germain*, 503 U. S. 249, 253–254 (1992), the Court today concludes that §3501(a) *does not* mean what it says and that a voluntary confession may be suppressed under the *McNabb-Mallory* rule.<sup>2</sup> This supervisory rule, which requires the suppression of a confession where there was unnecessary delay in bringing a federal criminal defendant before a judicial officer after arrest, was announced long before 18 U. S. C. §3501(a) was adopted. According to the Court, this rule survived the enactment of §3501(a) because Congress adopted that provision for the sole purpose of abrogating *Miranda* and apparently never realized that the provision’s broad language would also do away with the *McNabb-Mallory* rule. I disagree with the Court’s analysis and therefore respectfully dissent.

## II

### A

The Court’s first and most substantial argument invokes “the antisuperfluosity canon,” *ante*, at 12, under which a statute should be read, if possible, so that all of its provisions are given effect and none is superfluous. *Ante*, at 9–12. Section 3501(c) provides that a voluntary confession “shall not be inadmissible solely because of the delay” in bringing the defendant before a judicial officer if the defendant is brought before a judicial officer within six hours of arrest. If §3501(a) means that a voluntary confession may never be excluded due to delay in bringing the

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<sup>2</sup>See *McNabb v. United States*, 318 U. S. 332 (1943), and *Mallory v. United States*, 354 U. S. 449 (1957).

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defendant before a judicial officer, the Court reasons, then §3501(c), which provides a safe harbor for a subset of voluntary confessions (those made in cases in which the initial appearance occurs within six hours of arrest), is superfluous.

Canons of interpretation “are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such ‘interpretative canon[s] are] not a license for the judiciary to rewrite language enacted by the legislature.’” *United States v. Monsanto*, 491 U. S. 600, 611 (1989) (quoting *United States v. Albertini*, 472 U. S. 675, 680 (1985)). Like other canons, the antisuperfluousness canon is merely an interpretive aid, not an absolute rule. See *Connecticut Nat. Bank*, 503 U. S., at 254 (“When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete’”). There are times when Congress enacts provisions that are superfluous, and this may be such an instance. Cf. *id.*, at 253 (noting that “[r]edundancies across statutes are not unusual events in drafting”); *Gutierrez de Martinez v. Lamagno*, 515 U. S. 417, 445–446 (1995) (SOUTER, J., dissenting) (noting that, although Congress “indulged in a little redundancy,” the “inelegance may be forgiven” because “Congress could sensibly have seen some practical value in the redundancy”).

Moreover, any superfluity created by giving subsection (a) its plain meaning may be minimized by interpreting subsection (c) to apply to confessions that are otherwise voluntary. The Government contends that §3501(c), though inartfully drafted, is not superfluous because what the provision means is that a confession is admissible if it is given within six hours of arrest and it is *otherwise* voluntary—that is, if there is no basis other than prepresentment delay for concluding that the confession was coerced. Read in this way, §3501(c) is not superfluous.

The Court rejects this argument on the ground that

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“Congress did not write the statute that way,” *ante*, at 10, and thus, in order to adhere to a narrow reading of §3501(c), the Court entirely disregards the unambiguous language of §3501(a). Although §3501(a) says that a confession is admissible if it is “voluntarily given,” the Court reads that provision to mean that a voluntary confession may not be excluded on the ground that the confession was obtained in violation of *Miranda*. To this reading, the short answer is that Congress *really* did not write the statute that way.

As is true with most of the statutory interpretation questions that come before this Court, the question in this case is not like a jigsaw puzzle. There is simply no perfect solution to the problem before us.

Instead, we must choose between two imperfect solutions. The first (the one adopted by the Court) entirely disregards the clear and simple language of §3501(a), rests on the proposition that Congress did not understand the plain import of the language it used in subsection (a), but adheres to a strictly literal interpretation of §3501(c). The second option respects the clear language of subsection (a), but either accepts some statutory surplusage or interprets §3501(c)’s reference to a voluntary confession to mean an otherwise voluntary confession. To my mind, the latter choice is far preferable.

## B

In addition to the antisuperfluosity canon, the Court relies on the canon that favors a specific statutory provision over a conflicting provision cast in more general terms, *ante*, at 11, but that canon is inapplicable here. For one thing, §3501(a) is quite specific; it specifically provides that if a confession is voluntary, it is admissible. More important, there is no other provision, specific or general, that conflicts with §3501(a). See *National Cable & Telecommunications Assn., Inc. v. Gulf Power Co.*, 534 U. S.

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327, 335–336 (2002) (“It is true that specific statutory language should control more general language *when there is a conflict between the two*. Here, however, there is no conflict” (emphasis added)). Subsection (c) is not conflicting because it does not authorize the suppression of any voluntary confession. What the Court identifies is not a conflict between two statutory provisions but a conflict between the express language of one provision (§3501(a)) and the “negative implication” that the Court draws from another (§3501(c)). *United States v. Alvarez-Sanchez*, 511 U. S. 350, 355 (1994). Because §3501(c) precludes the suppression of a voluntary confession based solely on a delay of less than six hours, the Court infers that Congress must have contemplated that a voluntary confession could be suppressed based solely on a delay of more than six hours. The Court cites no authority for a canon of interpretation that favors a “negative implication” of this sort over clear and express statutory language.

### C

The Court contends that a literal interpretation of §3501(a) would leave the prompt presentment requirement set out in Federal Rule of Criminal Procedure 5(a)(1) “without any teeth, for . . . if there is no *McNabb-Mallory* there is no apparent remedy for delay in presentment.” *Ante*, at 15. There is nothing strange, however, about a prompt presentment requirement that is not enforced by a rule excluding voluntary confessions made during a period of excessive prepresentment delay. As the Court notes, “[t]he common law obliged an arresting officer to bring his prisoner before a magistrate as soon as he reasonably could,” *ante*, at 1, but the *McNabb-Mallory* supervisory rule was not adopted until the middle of the 20th century. To this day, while the States are required by the Fourth Amendment to bring an arrestee promptly before a judicial officer, see, e.g., *County of Riverside v. McLaughlin*,

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500 U. S. 44, 56 (1991), we have never held that this constitutional requirement is backed by an automatic exclusionary sanction, see, *e.g.*, *Hudson v. Michigan*, 547 U. S. 586, 592 (2006). And although the prompt presentment requirement serves interests in addition to the prevention of coerced confessions, the *McNabb-Mallory* rule provides no sanction for excessive prepresentment delay in those instances in which no confession is sought or obtained.

Moreover, the need for the *McNabb-Mallory* exclusionary rule is no longer clear. That rule, which was adopted long before *Miranda*, originally served a purpose that is now addressed by the giving of *Miranda* warnings upon arrest. As *Miranda* recognized, *McNabb* and *Mallory* were “responsive to the same considerations of Fifth Amendment policy” that the *Miranda* rule was devised to address. *Miranda v. Arizona*, 384 U. S. 436, 463 (1966).

In the pre-*Miranda* era, the requirement of prompt presentment ensured that persons taken into custody would, within a relatively short period, receive advice about their rights. See *McNabb v. United States*, 318 U. S. 332, 344 (1943). Now, however, *Miranda* ensures that arrestees receive such advice at an even earlier point, within moments of being taken into custody. Of course, arrestees, after receiving *Miranda* warnings, may waive their rights and submit to questioning by law enforcement officers, see, *e.g.*, *Davis v. United States*, 512 U. S. 452, 458 (1994), and arrestees may likewise waive the prompt presentment requirement, see, *e.g.*, *New York v. Hill*, 528 U. S. 110, 114 (2000) (“We have . . . ‘in the context of a broad array of constitutional and statutory provisions,’ articulated a general rule that presumes the availability of waiver, . . . and we have recognized that ‘the most basic rights of criminal defendants are . . . subject to waiver’”). It seems unlikely that many arrestees who are willing to waive the right to remain silent and the right to the assistance of counsel during questioning would balk at waiving

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the right to prompt presentment. More than a few courts of appeals have gone as far as to hold that a waiver of *Miranda* rights also constitutes a waiver under *McNabb-Mallory*. See, e.g., *United States v. Salamanca*, 990 F. 2d 629, 634 (CADDC), cert. denied, 510 U. S. 928 (1993); *United States v. Barlow*, 693 F. 2d 954, 959 (CA6 1982), cert. denied, 461 U. S. 945 (1983); *United States v. Indian Boy X*, 565 F. 2d 585, 591 (CA9 1977), cert. denied, 439 U. S. 841 (1978); *United States v. Duwall*, 537 F. 2d 15, 23–24, n. 9 (CA2), cert. denied, 426 U. S. 950 (1976); *United States v. Howell*, 470 F. 2d 1064, 1067, n. 1 (CA9 1972); *Pettyjohn v. United States*, 419 F. 2d 651, 656 (CADDC 1969), cert. denied, 397 U. S. 1058 (1970); *O’Neal v. United States*, 411 F. 2d 131, 136–137 (CA5), cert. denied, 396 U. S. 827 (1969). Whether or not those decisions are correct, it is certainly not clear that the *McNabb-Mallory* rule adds much protection beyond that provided by *Miranda*.

## D

The Court contends that the legislative history of §3501 supports its interpretation, but the legislative history proves nothing that is not evident from the terms of the statute. With respect to §3501(a), the legislative history certainly shows that the provision’s chief backers meant to do away with *Miranda*,<sup>3</sup> but the Court cites no evidence that this was all that §3501(a) was intended to accomplish. To the contrary, the Senate Report clearly says that §3501(a) was meant to reinstate the traditional rule that a

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<sup>3</sup>At argument, the Government conceded “that section (a) was considered to overrule *Miranda* and subsection (c) was addressed to *McNabb-Mallory*.” See Tr. of Oral Arg. 38. It is apparent that the attorney for the Government chose his words carefully and did not concede, as the Court seems to suggest, that subsection (a) was intended to do no more than to overrule *Miranda* or that subsection (c) was the only part of §3501 that affected the *McNabb-Mallory* rule.

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confession should be excluded only if involuntary, see S. Rep. No. 1097, 90th Cong., 2d Sess., 38 (1968) (Senate Report), a step that obviously has consequences beyond the elimination of *Miranda*. And the Senate Report repeatedly cited *Escobedo v. Illinois*, 378 U. S. 478 (1964), as an example of an unsound limitation on the admission of voluntary confessions, see Senate Report 41–51, thus illustrating that §3501(a) was not understood as simply an anti-*Miranda* provision. Whether a majority of the Members of the House and Senate had the *McNabb-Mallory* rule specifically in mind when they voted for §3501(a) is immaterial. Statutory provisions may often have a reach that is broader than the specific targets that the lawmakers might have had in mind at the time of enactment.

The legislative history relating to §3501(c) suggests nothing more than that *some Members* of Congress may mistakenly have thought that the version of §3501 that was finally adopted would not displace the *McNabb-Mallory* rule. As the Court relates, the version of §3501(c) that emerged from the Senate Judiciary Committee would have completely eliminated that rule. See *ante*, at 12–13. Some Senators opposed this, and the version of this provision that was eventually passed simply trimmed the rule. It is possible to identify a few Senators who spoke out in opposition to the earlier version of subsection (c) and then voted in favor of the version that eventually passed, and it is fair to infer that these Senators likely thought that the amendment of subsection (c) had saved the rule. See 114 Cong. Rec. 14172–14175, 14798 (1968). But there is no evidence that a majority of the House and Senate shared that view, and any Member who took a few moments to read subsections (a) and (c) must readily have understood that subsection (a) would wipe away all non-constitutionally based rules barring the admission of voluntary confessions, not just *Miranda*, and that subsection (c) did not authorize the suppression of any voluntary confessions.

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The Court unjustifiably attributes to a majority of the House and Senate a mistake that, the legislative history suggests, may have been made by only a few.

## E

Finally, the Court argues that under a literal reading of §3501(a), “many a rule of evidence [would] be overridden in case after case.” *Ante*, at 12. In order to avoid this absurd result, the Court says, it is necessary to read §3501(a) as merely abrogating *Miranda* and not the *McNabb-Mallory* rule. There is no merit to this argument.<sup>4</sup>

The language that Congress used in §3501(a)—a confession is “admissible” if “voluntarily given”—is virtually a verbatim quotation of the language used by this Court in describing the traditional rule regarding the admission of confessions. See, e.g., *Haynes v. Washington*, 373 U. S. 503, 513 (1963) (“In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort.” (quoting *Wilson v. United States*, 162 U. S. 613, 623 (1896))); *Lyons v. Oklahoma*, 322 U. S. 596, 602 (1944); *Ziang Sung Wan v. United States*, 266 U. S. 1, 15 (1924); *Bram v. United States*, 168 U. S. 532, 545 (1897). In making these statements, this Court certainly did not mean to suggest that a voluntary confession must be admitted in those instances in which a standard rule of evidence would preclude admission, and there is no reason to suppose that Congress meant any such thing either. In any event, the Federal

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<sup>4</sup>Contrary to the Court’s suggestion, cases in which one of the standard Rules of Evidence might block the admission of a voluntary confession would seem quite rare, and the Court cites no real-world examples. The Court thus justifies its reading of §3501, which totally disregards the clear language of subsection (a), based on a few essentially fanciful hypothetical cases that, in any event, have been covered since 1975 by the Federal Rules of Evidence.

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Rules of Evidence now make it clear that §3501(a) does not supersede ordinary evidence Rules, including Rules regarding privilege (Rule 501), hearsay (Rule 802), and restrictions on the use of character evidence (Rule 404). Thus, it is not necessary to disregard the plain language of §3501(a), as the Court does, in order to avoid the sort of absurd results to which the Court refers.

For all these reasons, I would affirm the decision of the Court of Appeals, and I therefore respectfully dissent.