

ORIGINAL

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PROCEEDINGS BEFORE

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**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: UNITED STATES, Petitioner v. PEDRO ALVAREZ-
SANCHEZ

CASE NO: No. 92-1812

PLACE: Washington, D.C.

DATE: Tuesday, March 1, 1994

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 UNITED STATES, :

4 Petitioner :

5 v. : No. 92-1812

6 PEDRO ALVAREZ-SANCHEZ :

7 - - - - -X

8 Washington, D.C.

9 Tuesday, March 1, 1994

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 1:00 p.m.

13 APPEARANCES:

14 MIGUEL A. ESTRADA, ESQ., Assistant to the Solicitor

15 General, Department of Justice, Washington, D.C.; on
16 behalf of the Petitioner.

17 CARLTON F. GUNN, ESQ., Los Angeles, California; on behalf
18 of the Respondent.

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1 PROCEEDINGS

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in Number 92-1812, the United States v. Pedro Alvarez-
5 Sanchez.

6 ORAL ARGUMENT OF MIGUEL A. ESTRADA

7 ON BEHALF OF THE PETITIONER

8 MR. ESTRADA: Thank you, Mr. Chief Justice, and
9 may it please the Court:

10 Respondent was taken into custody on narcotics
11 charges by California sheriffs on a Friday afternoon in
12 August 1988 during the execution of a search warrant at
13 his home. Because counterfeit currency was found during
14 that Friday search, the State authorities contacted the
15 United States Secret Service on Monday morning.

16 Respondent was questioned by Secret Service
17 agents late on Monday morning, and he admitted to
18 knowingly possessing the counterfeit currency. The Secret
19 Service agents then took him into custody on a Federal
20 counterfeiting charge. After writing a complaint and
21 booking respondent on that charge, the agents were
22 informed by the Clerk of the Federal Court that there was
23 no more room on the presentment calendar for the
24 magistrate that day, and were instructed to bring
25 respondent back before the magistrate on Tuesday. That is

1 what they did.

2 The district --

3 QUESTION: And there's nothing in the record, I
4 take it, to indicate that the State officers deliberately
5 delayed in calling the Federal people into the case.

6 MR. ESTRADA: There's nothing in the record to
7 indicate that they were doing this any later than -- any
8 other way that they would otherwise have done, Justice
9 Kennedy, and there is no indication at all that anyone
10 waited over the weekend for any other reason than the fact
11 that it was the weekend.

12 The district court found respondent's confession
13 voluntary and admitted it at his trial. Respondent was
14 convicted, but the Ninth Circuit reversed, holding that
15 the confession should have been suppressed under 18 U.S.C.
16 section 3501.

17 Section 3501 has three subsections that are
18 relevant to the Ninth Circuit's analysis of the case.
19 Subsection (a) provides that if the trial judge finds that
20 if a confession was voluntarily made, she must admit it in
21 evidence, subsection (b) provides that in determining the
22 issue of voluntariness, the trial judge must considered
23 all the circumstances surrounding the giving of the
24 confession, including, among others, any delay in
25 presentment, and subsection (c) precludes the district

1 court from suppressing a confession solely because of
2 delay if the confession was voluntary and was made within
3 6 hours of the defendant's arrest.

4 The Ninth Circuit thought, or concluded, that
5 subsection (c) required suppression of respondent's
6 confession. It reasoned that the negative implication of
7 subsection (c) is that a confession made more than 6 hours
8 after the defendant's arrest may be suppressed solely
9 because of delay, even if it is voluntary and therefore
10 mandatorily admissible under subsection (a).

11 QUESTION: How did the Ninth Circuit majority
12 deal with subsection (a)?

13 MR. ESTRADA: The Ninth Circuit indicated that
14 it had to, in effect, carve an exception to subsection (a)
15 in order to give meaning to the negative implication from
16 subsection (c), and in light of its conclusion that any
17 confession that falls outside of the 6-hour safe harbor
18 may be suppressed because of delay, the Court then went on
19 to hold that the confession in this case fell outside of
20 the 6-hour safe harbor because it was given more than
21 6 hours after the arrest by the California authorities on
22 Friday, rather than by the Federal authorities on Monday.

23 Now, in our view, the Ninth Circuit was wrong to
24 start the 6-hour clock running with the State arrest, and
25 in any event, the Ninth Circuit was wrong to conclude that

1 a negative implication from subsection (c) should override
2 an express affirmative statement in subsection (a).

3 QUESTION: Mr. Estrada, if we were to decide
4 that the arrest or detention that starts the time clock
5 running is really only one involving Federal officials,
6 then does that end the case? We wouldn't then have to
7 decide the meaning of the 6-hour limitation.

8 MR. ESTRADA: That is right, Your Honor. We can
9 win this case either by your holding that the 6-hour clock
10 starts ticking with the Federal detention, or by the Court
11 holding that the negative implication of subsection (c)
12 does not trump the affirmative statement of subsection
13 (a).

14 QUESTION: Now, do you concede that the
15 language, any law enforcement agency, can indeed refer to
16 State agencies in the event they are acting on behalf of
17 the Federal Government --

18 MR. ESTRADA: Yes, we do, Your Honor.

19 QUESTION: -- in making a Federal arrest?

20 MR. ESTRADA: We concede that there are many
21 circumstances in which State officers will enforce Federal
22 law under any set of circumstances, and in circumstances
23 when State officers are taking someone into custody for a
24 Federal crime, for example, or are acting for the Federal
25 agents rather than to enforce the State's own laws.

1 QUESTION: But the arrest that triggers it has
2 to be one that gives rise to the need to take someone to a
3 Federal magistrate --

4 MR. ESTRADA: That is right.

5 QUESTION: -- is that your position?

6 MR. ESTRADA: The gist of our claim, of our view
7 in this case is that subsection (c) is directed to a
8 period of delay between the defendant's being taken into
9 custody for a Federal offense and his being taken in front
10 of a Federal magistrate under Rule 5(a).

11 That was the subject of this Court's supervisory
12 rule under the McNabb-Mallory line of cases, and is
13 actually how subsection (c) reads. Subsection (c) speaks
14 of delay in bringing the defendant before a magistrate
15 authorized to set bail for Federal offenses.

16 QUESTION: The trouble is that that limitation
17 would not allow in -- would not make the rule apply when
18 the State officers are acting as the cat's paw for the
19 Federal officers.

20 That is to say, so long as it's a genuine arrest
21 for a State crime, and there's no anticipation that he's
22 going to be drawn before a Federal magistrate, the Federal
23 officers can, working hand-in-glove with the State
24 officers, induce them to hold the prisoner for too long
25 without presenting him --

1 MR. ESTRADA: I agree that the -- that
2 subsection (c) would not apply in those circumstances, and
3 the reason for that would be that in the circumstances
4 that you have described, Justice Scalia, the State
5 officers would not in fact be acting as a cat's paw for
6 the Federal agents.

7 If the State officers are in fact acting to
8 enforce their own laws rather than serving merely as the
9 paw for the Federal agents --

10 QUESTION: Well, not merely. I mean, in my
11 hypothetical, they are acting as the cat's paw of the
12 Federal officers for the purpose of getting a confession
13 to a Federal crime --

14 MR. ESTRADA: If --

15 QUESTION: -- but the arrest is for a State
16 crime.

17 MR. ESTRADA: Well, if it is a bona fide State
18 arrest --

19 QUESTION: Right.

20 MR. ESTRADA: -- and there are questions of
21 mixed motive everywhere in the law, but if in fact when
22 you deal with it on those terms you find that there was in
23 fact a bona fide crime, and a bona fide State arrest, I
24 would agree with you, and I think that that is in fact a
25 desirable result, because one of the things that we want

1 to do as a policy matter is to encourage cooperation
2 between law enforcement officers in States with the
3 Federal Government.

4 It is only when the action is to evade, and only
5 to evade, the requirements of Rule 5(a) that we think it
6 is appropriate to consider the fact that the defendant has
7 been taken into custody as the act of the Federal
8 Government, and in making that point, we point not only to
9 the text of subsection (c) that, of course, speaks to
10 delay in bringing the defendant in front of a Federal
11 judge, but also to the history and the background that
12 preceded the statute.

13 Under any view of the legislative history,
14 section 3501 was intended at least to limit and narrow the
15 McNabb-Mallory rule. We say overrule, but at least under
16 any view, to limit and narrow. There was a background of
17 case law before this statute that said that State arrests
18 would not be considered Federal for these purposes unless
19 the defendant affirmatively demonstrated that the Federal
20 agents in effect used the State as a cat's paw to evade
21 Rule 5, and --

22 QUESTION: Can you give us an example of what,
23 in your estimation, would be a cat's paw case?

24 MR. ESTRADA: Sure.

25 QUESTION: It isn't the one that Justice Scalia

1 gave.

2 MR. ESTRADA: No. It is a case in which there
3 is no law enforcement interest for the State in taking the
4 person into custody, a case like, for example, Anderson,
5 in which there might have been some State law enforcement
6 interest, but it's clear from the facts that that is in
7 fact not what is going on, or a case in which the conduct
8 at issue is not even a crime under State law, and
9 nonetheless the person is picked up solely at the instance
10 of the Federal officers to allow the officers a period of
11 time to question the defendant without complying with
12 Rule 5(a).

13 So one of the examples is a case in which there
14 is in fact no law that allows the State to do what it is
15 doing, so there is in fact a clear inference, hopefully
16 supported by other facts, that all that is going on is
17 that the Federal agents are using the State to do their
18 bidding.

19 QUESTION: That would be a fairly rare
20 situation, would it not, that the State police arrest
21 someone when there's no basis under State law for
22 arresting them?

23 MR. ESTRADA: We hoped that that would be so,
24 Mr. Chief Justice. I think that that is the view that the
25 Second Circuit took of your case Anderson in the Coppola

1 case. I mean, that is to say the Second Circuit read
2 Coppola as being the case that I just -- the Second
3 Circuit read Anderson, excuse me, as being the case that I
4 just posited to Justice Ginsburg and this Court affirmed,
5 so yes, while that would be a rare circumstance, we're not
6 saying that this is something that does happen or indeed
7 should happen any more frequently than that.

8 QUESTION: Mr. Estrada, I should know the answer
9 to this question, but I don't. Are most State officials,
10 or officials in most States empowered to make an arrest if
11 they see a Federal -- if they become aware of a Federal
12 offense being committed in their presence or what-not,
13 even though there is no State offense implicated in the
14 action?

15 MR. ESTRADA: Yes. Yes, and those --

16 QUESTION: So on your test, there would still be
17 a State interest, I take it, if they made that kind of an
18 arrest and said, you know, we're just going to hold him
19 for the Feds.

20 MR. ESTRADA: Yes, but in that case the clock
21 would start ticking from the point when they took it upon
22 themselves solely to enforce Federal law, and we're not
23 asking that --

24 QUESTION: So there's a case in which it
25 wouldn't be a -- I guess it wouldn't be the classic cat's

1 paw, but the clock would still start running at the moment
2 of the arrest.

3 MR. ESTRADA: Sure. I mean, we're not saying
4 that the only case in which we get tagged with the conduct
5 of the State is a case in which we have wilfully procured
6 the State. We do recognize that there are many
7 circumstances in which State officers would undertake to
8 enforce Federal law, and we would want them to do so, but
9 if that is all they're doing, once they have taken on the
10 burden to enforce Federal law, they have to comply with
11 Federal law throughout, including Rule 5(a), so that if a
12 State officer, as we say in our brief, stops me and finds
13 out that I have a Federal warrant out for -- for my
14 arrest, but that there's nothing wrong with my car, or
15 there is no other State reason to hold me, if he exercises
16 his right to take me into custody on the basis of the fact
17 that I have a Federal warrant, he has to comply with
18 Federal law and take me to a judge under Rule 5(a). We're
19 certainly not saying that the only circumstance that gives
20 rise to the State conduct being tagged to us is the
21 typical cat's paw.

22 QUESTION: Does he take them -- you say he takes
23 them to a judge's -- he's arrested -- he's a State
24 officer.

25 MR. ESTRADA: Yes.

1 QUESTION: He's arrested him for a Federal
2 crime. He takes him to a Federal judge?

3 MR. ESTRADA: Yes. Yes, Justice Scalia. If he
4 wants to take someone into custody for a -- for a Federal
5 crime, he has to take all of the duties that come with
6 taking somebody into custody by -- for a Federal crime,
7 and those include taking him in front of a Federal judge
8 under Rule 5(a).

9 It may be that he's ignorant of those, but if in
10 fact he was undertaking to further the Federal interest
11 and fails to see to it through to the end by taking him to
12 the judge, we see nothing unfair in our being tagged with
13 that time.

14 QUESTION: Does this happen, you have State
15 officers coming before Federal magistrates regularly?

16 MR. ESTRADA: Sometimes. Not frequently. The
17 text of Rule 5, if I recall, actually speaks of a person
18 making an arrest, rather than a Federal agent making an
19 arrest, and it contemplates a broad range of possible
20 instances of conduct, including the old notion of a
21 citizen's arrest, for example.

22 QUESTION: What if a State officer arrests
23 somebody for both State and Federal offenses? Does he
24 have to come before a State magistrate for the State
25 offenses and a Federal magistrate for the Federal offense?

1 MR. ESTRADA: Well, I think, under our view, if
2 he takes someone into custody for a State offense, his
3 duty is to his employer, and he does that first, and
4 anyone who then wants to go in and charge the person with
5 a Federal offense would have to take -- to go into the
6 State's domain, as it were, take him into custody, and
7 take him to a Federal judge, but we would not consider
8 that a Federal arrest, even though it is a mixed motive
9 type situation.

10 Because if there is in fact good reason for
11 holding the person under State law and that reason is
12 intended to be acted on by the State officer, we haven't
13 yet come to the point where we think of the employees of
14 the State as being there solely for the purpose of doing
15 our bidding, and we understand that they have to comply
16 with State law, and that that's all that they should be
17 expected to do.

18 QUESTION: May I ask you a question? In your
19 reference to Rule 5(a), it refers to an officer making an
20 arrest under a warrant, and you say that would include a
21 State officer, I gather.

22 MR. ESTRADA: I would think so, Justice Stevens.

23 QUESTION: But in the rule -- in 18 U.S.C.
24 3501(c), when it refers to custody of any law enforcement
25 officer, you think that means just Federal officer?

1 MR. ESTRADA: No. We think that in subsection
2 (c) it could be a state officer --

3 QUESTION: Oh, I see.

4 MR. ESTRADA: But because of the context, only
5 when acting to enforce Federal law.

6 QUESTION: I see.

7 MR. ESTRADA: Our point is that if a State
8 officer undertakes to take someone into custody for a
9 Federal crime, he is enforcing State law, and he falls
10 under the terms of subsection (c) and starts the 6-hour
11 clock running.

12 Of course, the prerequisite for that is that he
13 be enforcing Federal law, because we think that even
14 though the section doesn't limit the identity of the
15 officer who acts, it does limit the subject matter of what
16 he's acting on, and by highlighting delay, and since one
17 can rarely be late for any sort of appointment one hasn't
18 made, the statute very clearly indicates that is making
19 reference to an event that gives rise to a duty to take
20 someone in front of a Federal judge and, in our view, that
21 is only an arrest for a Federal crime, and as we say, that
22 is also consistent with the historical background of the
23 rule.

24 As to our second point, even if it were true
25 that an arrest for a State offense starts the 6-hour clock

1 running, we think it would be wrong to conclude that a
2 confession made more than 6 hours after the arrest
3 necessarily must be suppressed. It is not the case with
4 safe harbors that if your ship wanders out of one of them
5 it is automatically sunk.

6 Subsection (c) says that suppression is
7 precluded if the confession is voluntary and made within 6
8 hours of delay -- made within 6 hours of the arrest,
9 excuse me, solely on the basis of delay, but it says
10 nothing about any confessions, and we think that those are
11 left to generally applicable principles of law, including
12 subsection (a), which mandates that all voluntary
13 confessions must be admitted.

14 QUESTION: If a confession --

15 QUESTION: I don't --

16 QUESTION: -- is made within 6 hours, but there
17 is a charge of involuntariness, is time a factor that the
18 judge may consider?

19 MR. ESTRADA: Yes. Under subsection (b), as we
20 read the three subsections, subsection (a) says that the
21 sole test is voluntariness. Subsection (b) says you may
22 consider delay as one factor, and subsection (c) in
23 effect, even though it is somewhat complicated, we
24 concede, says that in determining subsection -- the
25 question under subsection (b), the court should not let

1 delay of less than 6 hours tip the balance in favor of
2 involuntariness.

3 QUESTION: Well, it really doesn't say that. I
4 don't see how (c) is a safe -- maybe you can explain how
5 (c) can be a safe harbor when it's only made a safe harbor
6 if the confession is voluntary.

7 MR. ESTRADA: Well --

8 QUESTION: And the confession isn't voluntary if
9 one of the problems with it is that there was too much
10 time elapsing between arrest and arraignment. I don't see
11 how you ever get to -- it's perfectly circular. It really
12 is.

13 MR. ESTRADA: There is no seamless way of
14 construing this statute, Justice Scalia, and we recognize
15 that. I think that there are many less charitable things
16 that one could say about subsection (c) than what you just
17 said, but in order to make it fit better with the balance
18 of the statute, what we do, quite candidly, is to read
19 subsection (c) as if it said, and it otherwise can be --

20 QUESTION: Or otherwise --

21 MR. ESTRADA: Which I think is consistent with
22 what Congress was trying to get at, and in that connection
23 I should point out that the clause, if it is voluntary,
24 was in the bill that came out of committee and went onto
25 the floor, so that to the extent that every party in front

1 of the court concedes that that bill was designed to do
2 away with the McNabb-Mallory rule for good --

3 QUESTION: Look at Justice Stevens when you say
4 this, Mr. Estrada, would you?

5 MR. ESTRADA: -- is that --

6 QUESTION: Don't look at me when you're talking
7 about --

8 MR. ESTRADA: Well, Justice Scalia, you asked me
9 the last question, and I'm hoping that he won't ask any.

10 (Laughter.)

11 MR. ESTRADA: No, but to the extent, Justice
12 Scalia, and Justice Stevens, that every party before the
13 Court concedes that the bill that came out of committee
14 was clearly intended to do away with McNabb-Mallory for
15 good, the structural problems with the bill were already
16 present at the time that the bill came onto the floor, and
17 in fact, with Senator Scott's change on the floor, it
18 makes a little bit more sense now than it did as it came
19 out of the committee.

20 Conceding that the prose of subsection (c) is
21 less than what might be called limpid, the key in trying
22 to get an understanding of what Congress was trying to do,
23 we think, is to -- is to understand that from the outset,
24 the subsection that was carrying all of the water to
25 overrule McNabb-Mallory was subsection (a) and not

1 subsection (c).

2 Subsection (a) -- excuse me -- said, if it is
3 voluntary, you must let it in. Subsection (b) says,
4 consider delay. Subsection (c) in effect is a tool to
5 keep judges from overvaluing or overrating delay in making
6 the judgment in (b), or in (b)(1), and once you understand
7 that subsection (c) was related to the McNabb-Mallory
8 problem but was not -- but that it was not itself the
9 vehicle for overruling McNabb-Mallory, one sees what the
10 problem that Senator Scott has with it.

11 As it came out onto the floor, it said, you may
12 not consider delay as the tipping factor, or as the one
13 factor that would make something involuntary, ever. His
14 point is, I can think of cases in which, if you have an
15 extremely long delay, that factor will be the factor that
16 will make a confession involuntary.

17 What we do is, we put a limit on subsection (c)
18 to say that after a period of 6 hours, a district judge is
19 free to consider delay as a factor, as a full factor, and
20 maybe even as the principal factor.

21 Is it elegant? No, but we do think that it
22 makes sense out of every subsection of the statute to the
23 extent that the statute can be made sense of.

24 Now -- and one of the things that we point to in
25 giving that construction to the subsection is the

1 overriding impetus for every subsection of the statute.
2 If you step back and look at the statute, what the statute
3 in effect says is, don't suppress because of X, don't
4 suppress because of Y, don't suppress because of Z, and
5 one has to work really hard with the language of the
6 statute and practically ignore all of the legislative
7 history in order to get out of the statute a rule that
8 says, suppress, and by the way, it's mandatory, and that
9 is our sole point as to subsection (c).

10 If there are no further questions, I would like
11 to reserve the remainder of my time for rebuttal.

12 QUESTION: I just want to -- perhaps you did
13 cover this with Justice O'Connor, but you -- really in
14 your cert petition you raised one question, which was the
15 question about the State custody, as I understand it, and
16 it is your position if we answer that question in your
17 favor we don't reach this rather tricky question.

18 MR. ESTRADA: That is right.

19 QUESTION: Yes.

20 MR. ESTRADA: Thank you, Justices.

21 QUESTION: Thank you, Mr. Estrada. Mr. Gunn.

22 ORAL ARGUMENT OF CARLTON F. GUNN

23 ON BEHALF OF THE RESPONDENT

24 MR. GUNN: Thank you, Mr. Chief Justice, and may
25 it please the Court:

1 I will start, perhaps, by addressing the time
2 limitation point, just because the questions were just
3 focused on that. I think the main problem with the
4 Government's argument, Your Honors, is it basically does
5 have to insert that word that it basically suggested
6 inserting into subsection (c). It would have to insert
7 the word "otherwise" in front of "voluntary" to make it
8 have any sense.

9 Worse, Your Honors, it seems to me that that
10 then creates an impossible scenario for a court to have to
11 engage in. Voluntariness is a case-specific inquiry. How
12 can you inquire into something, whether something is
13 otherwise voluntary? How can you take some circumstance
14 out, and have a court inquire into whether it would have
15 been voluntary without that circumstance?

16 QUESTION: Because you have a legal mind. I
17 mean, that's what legal minds do.

18 MR. GUNN: But you have a legal mind, Your
19 Honor, I think that's focusing on the impact of certain
20 circumstances on this defendant in that case. Whether in
21 fact that defendant's will is overborne is not probable
22 cause, where it's what a reasonable person would have
23 thought based on these facts. It's whether in fact this
24 defendant's will was overborne.

25 There is actually --

1 QUESTION: Well, how do you read section (c)?
2 What does it mean to you? It does nothing at all, then,
3 under your analysis, right?

4 MR. GUNN: Well, no, I think it does do
5 something, Your Honor. There's three aspects of the plain
6 language that I think fairly clearly, as clearly as you
7 can get anything out of this statute, established that it
8 retains a limited McNabb-Mallory type rule.

9 One, they refer -- they use the word -- they
10 talk about inadmissibility, not involuntariness.

11 Second, they use the word, solely because of
12 delay. They don't talk about because of delay that makes
13 a confession involuntary.

14 Third, Your Honor and this, I think, makes the
15 statute more than just a negative pregnant -- more than
16 just a negative implication statute. The "provided"
17 paragraph refers to the time limitation contained in this
18 subsection.

19 They are saying this is an affirmative
20 limitation on something, and what they're saying, in
21 essence, is that this is a time limitation on the period
22 of interrogation, which is exactly -- I know the Court
23 doesn't want to look as carefully at the legislative
24 history as Justice Stevens might, but that's exactly the
25 way Senator Scott and Senator McLelland characterized it

1 on the floor of the Senate.

2 I also want to --

3 QUESTION: Mr. Gunn --

4 MR. GUNN: Yes, Your Honor.

5 QUESTION: -- you say the Government does
6 violence to subsection (c) in its interpretation. You
7 certainly have to do some violence to subsection (a) to
8 get where you're going.

9 MR. GUNN: You have to read an excep -- you have
10 to read subsection (c) as a specific statute that controls
11 over and creates an exception to the general in subsection
12 (a).

13 But Your Honor, I'd ask the Court to consider, I
14 think the Government has to concede there's at least some
15 exceptions to the literal language in subsection (a)
16 anyway. Consider the rules of evidence. Certainly the
17 Government I assume would concede that the confession, to
18 be admissible, has to be relevant.

19 QUESTION: Well, I don't think 3501 was intended
20 to cover the entire waterfront. I think it was dealing,
21 as I suspect you would agree with McNabb-Mallory.

22 MR. GUNN: Correct, but by its literal language,
23 Your Honor, especially given the broad definition of
24 confession in subsection (e), it does cover the waterfront
25 any time there's a confession, and my point is that you

1 have to concede that its literal language is limited by
2 the rules of evidence, for example. Then it makes even
3 more sense to concede that it's limited by the language of
4 a subsection in the very same section.

5 QUESTION: Well, I think you have some
6 difficulty with that point, when you have a statute that's
7 addressed to the McNabb-Mallory rule and it's talking
8 about admissibility for delay under various circuits. You
9 have one categorical statement, and it does seem to me
10 categorical, notwithstanding the fact you say there would
11 have to be an exception, that it shall be admissible, and
12 you're saying that is going to be limited by what comes
13 after. I'm not saying that's totally unreasonable, but
14 you're having to take liberties with the statute the same
15 way the Government does.

16 MR. GUNN: We're having to treat subsection (c)
17 as a more specific statute that creates a limitation to
18 the general in subsection (a). I think it frankly makes
19 more sense, Your Honor, to find a limitation within the
20 very same statute, than it does to have to reach outside
21 to other rules of evidence and so on, so -- but you're
22 right, Your Honor, there is definitely a tension, albeit
23 perhaps even an inconsistency, between subsection (a) and
24 subsection (c), but under our interpretation, subsection
25 (a) still has an impact and still has some meaning.

1 Under the Government's interpretation, unless
2 you insert a totally new word, "otherwise," and then
3 engage in this hypothetical fact-specific discussion,
4 under their approach subsection (c), the phrase "if the
5 confession was given within 6 hours of arraignment"
6 becomes totally superfluous.

7 QUESTION: Would your construction require the
8 exclusion of any statements that would have been
9 admissible under the McNabb-Mallory doctrine?

10 MR. GUNN: Not as to the issue of delay versus
11 voluntariness, Your Honor. As to the issue of State
12 custody, our position is no, but it depends on how you
13 read the pre-3501 case law in this working arrangement
14 type rule, and perhaps I can step to address that issue,
15 because I would agree with the Government that the Court
16 doesn't need to reach the issue of the effective delay, if
17 in fact the Court rules against us on the State custody
18 being included issue.

19 I wanted to begin by addressing an issue that I
20 wasn't able to address in my brief because I didn't read
21 it in the Government's opening brief, and it's a
22 concession they make in their reply brief that I think is
23 very important.

24 They concede in their reply brief that some
25 arrests by State officers are included, and I just wanted

1 to point out two things about that concession.

2 QUESTION: Where is the concession in the reply
3 brief?

4 MR. GUNN: Your Honor, I believe it's on page 2
5 of the reply brief. It actually begins on page 1. It's a
6 paragraph -- the second paragraph in their reply brief.
7 The second sentence, they indicate, "We have never
8 claimed, however, that arrests by State officers cannot be
9 arrests under section 3501(c). They then go on to say,
10 the test is whether it is "for a violation of Federal
11 law," and they then go on to use the example of the
12 officer who initially stops for a traffic offense and then
13 finds a Federal warrant and arrests on that.

14 Your Honor, I think that concession raises two
15 very significant problems with the Government's position
16 and interpretation of this statute: 1) it's very
17 problematic to create that subjective state of mind type
18 of test, and in fact somewhat inconsistent with this
19 Court's approach to Fourth Amendment law, though here
20 we're not talking about the Fourth Amendment.

21 Second, Your Honor, it poses all sorts of line-
22 drawing problems, some of which might even start getting
23 the Government close to the facts of this case. What if
24 the officer is arresting for both the State charge and the
25 Federal charge? What if the officer is arresting for a

1 single offense on the facts that could be charged under
2 State law or Federal law?

3 QUESTION: Let me just pause after your first
4 hypothetical. It would seem to me that your opponent said
5 that would be a Federal arrest if it's on a Federal
6 charge.

7 MR. GUNN: Well, what I heard him say, Your
8 Honor, and I may have heard him wrong, I heard him say if
9 it was on both a State offense and a Federal offense that
10 then it would be State's.

11 QUESTION: Oh, I misunderstood.

12 MR. GUNN: But that's not crystal clear to me
13 that that's the way it should be. What if it's for what
14 we call a dual prosecution offense? A common example
15 would be bank robbery. It could be charged either as bank
16 robbery under 18 U.S.C. section 2113(a), or robbery under
17 California Penal Code section 211.

18 QUESTION: I would think that would be rather
19 clear. If a State officer is arresting for something that
20 is both a State and a Federal crime, you'll assume he's
21 arresting for the State crime.

22 MR. GUNN: What if the standard practice in that
23 district and his plan is to let the FBI take the man to
24 Federal court, and the first thing he's going to do when
25 he gets to the police station is call the FBI? I mean --

1 QUESTION: Well, you call those line-drawing
2 problems, or they're evidentiary problems. I don't know
3 that it's so difficult to draw the line.

4 MR. GUNN: Well, I mean, then, the example I --
5 he takes him to the police station. Does it depend on
6 whether he writes Penal Code 211 on the booking sheet, or
7 2113(a)?

8 I -- it strikes me that some problems are going
9 to arise in determining that, Your Honor. Now, if the
10 plain language of the statute required that result, you'd
11 be stuck, and you'd have to interpret it as the plain
12 language, but the plain language doesn't require that
13 result, Your Honor. The plain language refers to "arrest
14 or other detention in the custody of any law enforcement
15 officer," not a Federal law enforcement officer, not
16 custody for a Federal offense, not arrest for a Federal
17 offense --

18 QUESTION: No, but it goes on to say it shall
19 not be inadmissible because of delay in bringing such
20 person before a magistrate or other officer empowered to
21 commit persons charged with offenses against laws of the
22 United States.

23 MR. GUNN: Correct, Your Honor.

24 QUESTION: It makes no sense, unless you're
25 talking about a Federal offense.

1 MR. GUNN: In its reply brief, the Government
2 focuses on that word "delay," Your Honor.

3 The definition -- I looked up the definition of
4 "delay" in Webster's. "Delay," at least one of the
5 definitions is "cause to occur more slowly." I would
6 submit that when a Federal -- a State officer, as in this
7 case, arrests someone, plans to call the Secret Service to
8 see if they want to prosecute the person, and then waits
9 48 hours to call the Secret Service, those 48 hours he
10 waited caused the Federal arraignment to take place 48
11 hours more slowly, because he --

12 QUESTION: And that would violate this provision
13 even if he took the individual before a State magistrate
14 promptly?

15 MR. GUNN: Well, Your Honor, then the question
16 that arises -- I think that's a difficult question.

17 QUESTION: Oh, it's not at all, not the way you
18 interpret it.

19 MR. GUNN: Well, one way it poses a difficult
20 policy problem, but I don't think the statute necessarily
21 demands that, Your Honor. It depends on how you construe
22 the word "delay."

23 The statute is focused on delay that's caused by
24 law enforcement officers, not delay that's caused by the
25 court system or State court procedures, and you could not

1 apply it in the situation where there's a State
2 arraignment, because the delay there would at least
3 generally be caused by the State court's need to have the
4 person first and process him.

5 So it wouldn't be delay that was caused by the
6 officers, and I think you can construe this statute in
7 context to refer to delay caused by law enforcement
8 officers, not delay caused by the courts.

9 QUESTION: What would be the policy virtue of
10 that? Presumably the purpose of the rule is to deter
11 Federal officers from extended delay that might lead to
12 putatively coerced confessions.

13 MR. GUNN: I think, Your Honor, that that's not
14 the sole purpose of the law. I think it's a little
15 broader than that. I think the purpose is to deter also
16 State officers who are acting on behalf of or helping
17 Federal officers either with a Federal officer's request
18 or without their request.

19 If we think about the purposes of this statute,
20 and of course to some extent it goes back to the purposes
21 of the McNabb-Mallory rule and the purposes some of the
22 Congressmen talked about in the legislative history.

23 It seems to me the purpose is of two basic
24 types. One purpose is to have a bright line rule that
25 says, we're not going to allow confessions after this

1 time. Then you don't have to inquire when a defendant
2 says one thing happened during the 48 hours and the police
3 say another thing. You don't have to inquire about how
4 this particular defendant was affected by the delay.

5 Another purpose, Your Honor -- another set of
6 purposes that applies as much, frankly, to innocent
7 suspects as guilty suspects, maybe even more, is all the
8 interests and principles our society has in getting people
9 to court promptly.

10 QUESTION: If we go back to I guess what is
11 called the legislative history of 5(a), it appears that it
12 wasn't in the interest of suspects at all, it was to
13 prevent marshalls from piling up mileage by taking someone
14 to a distant magistrate.

15 MR. GUNN: Well, Your Honor, that's not what the
16 legislative history of 3501 I don't think shows 3501 was
17 for. The Government quotes a law review article in a
18 footnote in its brief that says that looked like the
19 purpose of the original arraignment rules that were
20 construed in McNabb, but in 3501, Your Honor, what you
21 have is you have some Congressman --

22 QUESTION: Well, I thought we were talking about
23 Rule 5(a).

24 MR. GUNN: I'm really focusing more on 18 U.S.C.
25 3501, Your Honor.

1 QUESTION: And whereabouts is the language that
2 we're talking about, about taking before a Federal
3 officer?

4 MR. GUNN: Your Honor, in 3501(c) the language
5 I've been focusing on begins on the fifth line, or the end
6 of the fourth line. It talks about "arrest or other
7 detention in the custody of any law enforcement officer or
8 law enforcement agency shall not be inadmissible
9 solely" --

10 QUESTION: Where is that in one of the briefs?

11 MR. GUNN: I'm sorry, Your Honor. Page 3 of the
12 Government's brief.

13 QUESTION: Thank you.

14 MR. GUNN: That is the statute. I apologize.

15 It talks about arrest or other detention in the
16 custody of any law enforcement officer or agency, and then
17 it talks about because of delay in bringing such person
18 before a magistrate. I think the words we need to focus
19 on are "any law enforcement officer," and "delay in
20 bringing." What I'm suggesting is --

21 QUESTION: Well, I would think you'd have to
22 focus on what it is that triggers the operation of the
23 statute, to wit, an arrest for an offense that requires
24 presentation --

25 MR. GUNN: You're right. I think, Your Honor --

1 QUESTION: -- before the magistrate.

2 MR. GUNN: -- it's the phrase "arrest or other
3 detention in the custody of any law enforcement officer or
4 agency." I think you're right, Your Honor.

5 But those purposes, the purposes -- the purposes
6 underlying this statute of getting people to court quickly
7 and the purposes that were spoken about by the Congressmen
8 during the debate, you don't have any contact with family
9 or friends while you're detained incommunicado before
10 going to court. You don't have a chance to get bail. You
11 don't have a chance to have a magistrate consider whether
12 there's probable cause. You don't have counsel to start
13 checking into the case for you.

14 All those purposes, all those goals are advanced
15 just as much by a statute that encourages State officers
16 who are helping Federal officers to contact the Federal
17 officers quickly, so I think in terms of the purposes and
18 policies underlying this statute, Your Honor, that those
19 are advanced by focusing on State officers as well as
20 Federal officers, and the much more workable rule, the
21 much better in context reading, I would submit, is to
22 focus on the type of arraignments, or the type of charge.

23 QUESTION: Then how would your interpretation of
24 the rule resolve the question where the State officer
25 arrests on a State law bankrupt -- bank robbery charge,

1 excuse me, but there's also a possible Federal bankruptcy
2 charge that could be brought -- Federal bank robbery
3 charge.

4 MR. GUNN: I think, Your Honor, in that case it
5 would depend on whether he's arraigned on the bank --
6 Federal bank robbery charge, or whether he's arraigned on
7 the State robbery charge.

8 QUESTION: Well, what if he's arraigned on both
9 of them.

10 MR. GUNN: Well, then, Your Honor, I think you
11 get a difficult question, and it depends on how you
12 construe the word "delay."

13 QUESTION: So your solution really doesn't avoid
14 the evidentiary problems or the line drawing, does it?

15 MR. GUNN: I think it does, Your Honor,
16 because --

17 QUESTION: Oh, I thought you just said that this
18 was a difficult question under your solution.

19 MR. GUNN: It's a difficult question of
20 interpreting the statute, not a difficult question on the
21 facts. The question then becomes one for this Court, and
22 frankly you don't need to reach it on the facts of this
23 case, because there was no State arraignment, and the
24 State officers gave priority to the Federal interest, but
25 if you did want to reach it to have a complete

1 interpretation of the statute, it would turn on whether
2 you interpret the word "delay" in this statute as
3 including delay caused only by law enforcement officers,
4 or whether you also include delay caused by State court
5 procedures in the State court system.

6 QUESTION: Well, you may have a statutory
7 argument on your side, but I certainly don't think that
8 your solution commends itself by reason of its simplicity.

9 MR. GUNN: Well, Your Honor, there's three
10 possible situations that would arise factually. One would
11 be where there's only a State arraignment, one would be
12 where there's only a Federal arraignment, and one would be
13 where there's both.

14 Under my approach, if there's only a Federal
15 arraignment the statute applies from the time of State
16 arrest. If there's only a State arraignment, the statute
17 does not apply. If there's both, then this Court -- it's
18 not presented by the facts of this case, but this Court
19 would have to decide how it interprets delay.

20 QUESTION: Well, what if the State officers
21 detain someone -- arrest someone, detain him for 12 hours,
22 16, and decide there isn't enough evidence here to bring
23 him in on the State charge because one element of the
24 State crime we can't prove, but it's not so with the
25 Federal crime, so let's get the Feds over here?

1 Now, the would have -- he wouldn't have been
2 arraigned.

3 MR. GUNN: Correct.

4 QUESTION: Under your rule, State custody there
5 is charged against the Federal?

6 MR. GUNN: I would say so, Your Honor. You
7 might have -- you might have a situation arise on rare
8 occasions where the State officers could establish that
9 they never even envisioned the possibility of Federal
10 charges until some place down the road, and then that --

11 QUESTION: So they would be interrogated as to
12 whether they envisioned the Federal charges or not?

13 MR. GUNN: Maybe, but I think that would arise
14 in only very rare occasions, Your Honor. I mean, most of
15 the time, as in this case, the officers who arrested
16 Mr. Alvarez knew about the State crime, they knew about
17 the Federal crime at the same time, the detective in
18 charge of the investigation in this case -- and frankly,
19 it depends, I suppose on how you construe "working
20 arrangement," but frankly, I would say under any
21 construction of working arrangements that's reasonable
22 under this statute, it should apply here, maybe even under
23 the Government's concession.

24 The officers here arrest, they know about a
25 State offense, they know about a Federal offense. They

1 plan on calling the Secret Service. That's their
2 department policy. They call the Secret Service. They
3 let the Secret Service come. They are acting only as
4 secondary law enforcement authorities, because they're
5 going to let the Secret Service take Mr. Alvarez if the
6 Secret Service wants to. The Secret Service wants to.
7 The Secret Service takes him.

8 QUESTION: But they booked the defendant on the
9 State charge only.

10 MR. GUNN: The record -- their -- the only
11 record -- well --

12 QUESTION: Or am I incorrect about that?

13 MR. GUNN: That's what the detective says in his
14 declaration. That's what the district court said in its
15 initial facts. The issue wasn't really litigated in the
16 district court below in this case because under the
17 controlling Ninth Circuit law, it didn't matter, so I
18 don't -- you certainly don't have a factual finding on any
19 issue that there was any reason to contest.

20 QUESTION: Is there a booking sheet or something
21 in the appendix there?

22 MR. GUNN: I don't believe so, Your Honor.
23 There's not in the joint appendix, and I don't believe
24 there was ever one put into the record below.

25 But Your Honor, then you get into a really

1 difficult line-drawing situation that arises if the
2 Government -- does whether or not he's arrested for a
3 Federal offense depend on whether they write that charge
4 on a booking sheet as opposed to what they did here, where
5 they decided to give --

6 QUESTION: Well, I assume any officer knows why
7 he is holding a defendant, a suspect.

8 MR. GUNN: Well, he may be --

9 QUESTION: He's being held on a charge.

10 MR. GUNN: Correct, but he may be holding a
11 suspect, Your Honor, only because that's their way of
12 being able to hold him until the Secret Service can come
13 and decide if they want to take him, which was in fact
14 what the detective in charge said his plan and intent was
15 in this case.

16 One thing I did want to make the point to this
17 Court about is, if this Court decides that there is just a
18 working arrangement -- if this Court decides there is a
19 working arrangement requirement which was not a
20 requirement under the Ninth Circuit case law on which this
21 case was litigated in the district court, I would submit
22 the matter has to at least be remanded for us to inquire
23 into what this detective was thinking, and what his intent
24 was.

25 You do have him saying basically in his

1 declaration that he was not going to pursue the State
2 charges unless the Federal authorities weren't interested,
3 and I would submit that that at least should fit within
4 the context of this statute, even if you're going to read
5 the words, "any law enforcement officer and delay" in
6 context.

7 QUESTION: May I give you a hypothetical and see
8 what -- what if a State officer arrests a man in
9 possession of a stolen car, and after he's in State
10 custody they plan to prosecute him for the State offense.

11 They find the car has crossed the State line, so
12 they call in a Federal officer and say you can question
13 him if you want, and the Federal officer questions him,
14 gets a confession, but in the meantime the State decides
15 to prosecute and they keep him in jail for 6 or 8 months,
16 and then at the expiration of that period the Federal
17 Government decides it will also prosecute for the Federal
18 offense. Is the Federal confession admissible?

19 MR. GUNN: Your Honor, I think that's a
20 difficult question that I was suggesting to Justice
21 Rehnquist this Court could resolve but doesn't have to on
22 the facts of this case.

23 There's two ways to approach that question, and
24 I think we prevail under either way of approaching it,
25 Your Honor, and it depends on how you construe the word

1 "delay" in the statute.

2 A reasonable construction would be to construe
3 it only as delay caused by law enforcement officers, and I
4 think in the hypothetical Your Honor just suggested, the
5 delay would really be a result of the State court system
6 and State authorities wanting to and having an interest in
7 prosecuting the defendant.

8 QUESTION: Plus the decision of the Federal
9 Government not to make up its mind about what to do with
10 him until -- they've no hurry on it and no pressure. He's
11 just going to spend the next 6 months in State custody
12 anyway, so they just don't have to make a decision.

13 MR. GUNN: Correct, but at least in part the
14 delay is from the State court system --

15 QUESTION: Yes.

16 MR. GUNN: -- and State prosecutors deciding to
17 pursue the charges and needing to have the defendant there
18 for the trial, et cetera, and once he's been arraigned in
19 State court, then he's no longer in a state of
20 nonarraigned custody, so to speak, which --

21 QUESTION: But do you think delay in bringing
22 such a person before a magistrate or other officer can
23 include delay in bringing him before the State magistrate,
24 is that it? In other words, they were prompt, and did
25 everything promptly, but just took a long time to get to

1 the Federal system. I'm not quite clear on -- I'm not
2 sure I understand your position.

3 MR. GUNN: All right, Your Honor. I think what
4 I'm suggesting is the -- in your hypothetical, I would
5 submit that at least one appropriate reading of the
6 statute -- I mean, one could also argue that delay means
7 delay, and it doesn't matter, and it applies. You don't
8 need to decide that here.

9 But the other approach, if you're worried about
10 the policy implications of that, is to construe -- I think
11 the delay in that case could properly be considered to be,
12 or attributed as delay due to the State courts and State
13 prosecution situation, and then the delay would not be
14 delay attributable to law enforcement officers, and I
15 think you can read this statute in context to focus on
16 delay attributable to law enforcement officers, and that's
17 certainly the overriding purpose, is delay that they
18 caused, not delay that the courts caused by their
19 legitimate procedures of having a trial and so on and so
20 forth.

21 QUESTION: So you're adding some words to the
22 statute, too.

23 MR. GUNN: Well, Your Honor, I don't think
24 there's any way to take this --

25 QUESTION: We don't know what delay means, is

1 one part of the problem.

2 MR. GUNN: To -- I mean, the easiest way, the
3 plain language approach, Your Honor, would be to say,
4 that's delay, and the statute prohibits -- remember the
5 costs here are not that great. All you're saying are, the
6 officers, if they don't get to him within 6 hours, have to
7 arraign him first. They can still interview him
8 afterwards.

9 Now, the Government may come back and respond
10 and say, well, his attorney won't let him talk, but if his
11 attorney won't let him talk, then that's something our
12 society as a general rule respects.

13 So the cost of this statute applies. There's
14 some great benefits in terms of the interest in prompt
15 arraignment that I've described, and in terms of having a
16 bright line rule. There's -- the costs are relatively
17 minimal. The costs are simply, you have to arraign
18 someone before you interview them. Frankly, Your Honor,
19 there's also a concern, if you draw this line between
20 State and Federal custody, or custody for a Federal
21 offense, whatever that means, you create an amazing way of
22 officers evading this statute, even when there's not a so-
23 called working arrangement.

24 For example, the State officers in this case had
25 a standard policy of contacting Federal officials when

1 counterfeit money is found, but that's not a working
2 arrangement, under the Government's version.

3 I went back and read the transcript, Your Honor,
4 of the testimony of the Secret Service agent in this case.
5 I believe it's in the Joint Appendix at page 26. I've got
6 that page wrong, Your Honor.

7 QUESTION: Did the Ninth Circuit rely on that at
8 all?

9 MR. GUNN: No, Your Honor. The Ninth Circuit
10 just relied on longstanding Ninth Circuit case law that
11 said State custody is included, and I've looked back in
12 the history of the statute for that, and I haven't found
13 any case that really analyzes the issue extremely
14 carefully. Similarly, the cases the Government cites
15 really don't analyze the issue very carefully, either.

16 But what the Secret Service agent, Your Honor,
17 did testify to in this case that I wanted to bring to this
18 Court's attention, and it raises another problem of
19 evasion, is, he said, "Whenever a person is taken" -- this
20 is at, I'm sorry, Joint Appendix, page 26. He testified
21 that when a person is taken into custody by an outside
22 agency, meaning not the Secret Service, that an agent is
23 sent to the particular agency where they meet with
24 investigators and discuss the case with them, and then he
25 testified, "In this case, as in all cases, I then

1 interviewed the suspect in this case."

2 It sounds to me what this agent is saying is,
3 he's developed a policy that always evades 3501(c). He
4 does the interview before he takes the person into
5 custody.

6 Suppose he had gotten a call from the law
7 enforcement officer, the State officer who said, we've got
8 to arraign this man by Tuesday, and we've got him in
9 custody for counterfeiting, and he said, and he thought to
10 himself, well, he might be more likely to talk to me if
11 he's sat in jail 24 hours longer. I'll go over Tuesday
12 morning.

13 Under the Government's interpretation of the
14 statute, 3501(c) doesn't apply, and you create -- by
15 construing the statute to eliminate State custody, you
16 create a situation where that sort of thing can happen,
17 and I think that's more damaging and more something the
18 drafters of this statute wanted to avoid, than just
19 someone having to go to court in some cases and arraign a
20 person more promptly and interview them afterwards.

21 QUESTION: Isn't it true, though, that there may
22 be a fair number of cases in which a person is in State
23 custody and there may be something like counterfeit money
24 or possession of a weapon or something that might justify
25 a Federal prosecution but also might not, in which it

1 would be reasonable to say, well, the FBI or Treasury
2 ought to go over and interview the fellow, take a
3 statement from him, and then decide what to do without
4 having done the interview. Under your view, he must
5 immediately charge him on the Federal offense and not
6 charge him at all, assuming he's not going to repeat his
7 statement later.

8 MR. GUNN: And assuming you -- yes, assuming
9 you'd want to interview him before arraignment. The other
10 option, though, is to wait for the State proceedings to
11 take their course, to wait for --

12 QUESTION: Normally you'd catch someone like --
13 I mean, I can understand a routine procedure which would
14 involve a prompt interview to get out the facts, whatever
15 the Federal interest is, and not necessarily have an
16 overriding interest in immediate prosecution. It's a
17 tricky problem.

18 MR. GUNN: It is, Your Honor, but the statute --
19 what it does is, it gives the State officers an incentive
20 to avoid that situation by calling the Federal officers
21 promptly.

22 You have the same situation arise, Your Honor,
23 if, for example, the Drug Enforcement Administration
24 arrested on drug charges and found counterfeit money, and
25 they don't deal with counterfeit money, so they call the

1 Secret Service.

2 The Secret Service might end up being -- losing
3 the opportunity to interrogate if the DEA was negligent or
4 lax in contacting them promptly, but that's an arrest by a
5 Federal agency, and I would think 3501(c) even under the
6 Government's interpretation would apply there, so you're
7 always going to have that situation where you want a
8 statute that encourages the initial arresting officers, if
9 they're going to pass the investigation on to someone
10 else, to call those people that they're going to pass it
11 on to promptly.

12 QUESTION: So you say the primary addressee of
13 this 310 -- whatever it is, is really the State officer --

14 MR. GUNN: The primary --

15 QUESTION: -- and might not be --

16 MR. GUNN: I'm sorry.

17 QUESTION: What you're saying is that this --
18 your reading of the statute puts pressure on the State
19 officer to contact the Federal officer promptly, and yet
20 this is a code directed to Federal officers, not State
21 officers.

22 MR. GUNN: It's a code directed I think, Your
23 Honor, to the Federal courts, and the way Federal courts
24 are to use evidence in their courts. I think it's
25 arrested to -- it's directed to Federal officers, and, I

1 would submit, at the very least State officers who are
2 acting on behalf of Federal officers even when the Federal
3 officers haven't specifically requested that, which is
4 what we have here.

5 QUESTION: Thank you, Mr. Gunn.

6 MR. GUNN: Thank you, Your Honor.

7 QUESTION: Mr. Estrada, you have 4 minutes
8 remaining.

9 REBUTTAL ARGUMENT OF MIGUEL A. ESTRADA

10 ON BEHALF OF THE PETITIONER

11 MR. ESTRADA: Thank you, Mr. Chief Justice.
12 Only a couple of points.

13 First, the concession that counsel read in our
14 reply brief on the merits was made also in our reply brief
15 at the cert stage, and we merely repeated it in our reply
16 brief on the merits because he made the same argument in
17 his brief on the merits that he made in his opposition.

18 At page 1 through 2 of our reply brief on the
19 cert stage, we deal with his argument of any law
20 enforcement officer with the following:

21 "That claim, however, is irrelevant to our
22 submission. We do not content that arrests by State
23 officers cannot qualify under section 3501(c). Our
24 contention, instead, is that the arrest, whether by
25 Federal or State officers, must be for a violation of

1 Federal law. Only such an arrest can sensibly be viewed
2 as imposing upon the arresting officer the duty to 'bring
3 such person before a magistrate or other officer empowered
4 to commit persons charged with offenses against the laws
5 of the United States.'"

6 That is from our reply brief at the petition
7 stage.

8 Our second point is that the basis for a person
9 having been taken into custody is often litigated in State
10 and Federal courts, because claims that the arrest was
11 made without probable cause are a means for seeking the
12 suppression of physical evidence seized at the time the
13 person was taken into custody, and as a result of that, as
14 a matter of routine in Federal court, officers, State and
15 Federal, are called on to explain what the basis for their
16 conduct was at the time when it was taken, i.e., what law
17 they thought was -- what law they thought there was
18 probable cause to believe was being violated.

19 Unless the Court has any other questions, we
20 will rest on our briefs.

21 CHIEF JUSTICE REHNQUIST: Thank you,
22 Mr. Estrada.

23 The case is submitted.

24 (Whereupon, at 1:59 p.m., the case in the above-
25 entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of :

UNITED STATES, Petitioner v. PEDRO ALVAREZ-SANCHEZ

CASE NO: 92-1812

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Am. Mani. Federico

(REPORTER)

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