TREATING A VESSEL LIKE A HOME FOR PURPOSES OF CONDUCTING A SEARCH

Millions of mariners plying United States coastal and inland waters may be unaware that under current statutory and decisional law, their vessels may be boarded and inspected at will by Coast Guard and customs officers. Two recent United States Supreme Court cases indicate the Court is prepared to go one step further and authorize the full warrantless search of a vessel subsequent to a lawful, random boarding, even in the absence of an articulable suspicion of wrongdoing. This Comment argues that the creation of a new "maritime safety and document inspection" exception to the fourth amendment's warrant requirement and probable cause standard would be an unprecedented and unjustified infringement on the constitutional rights of individual mariners. Because a mariner's home is often his vessel, this Comment proposes that a warrant should be required to search a vessel's living areas when it reasonably appears the vessel is being used as a home.

INTRODUCTION

An individual's right to be free from unreasonable searches and seizures is a basic tenet of the United States Constitution. The constitutionally preferred method of conducting searches and seizures is judicial review of contemplated police actions and issuance of a search warrant before a search is conducted. Searches conducted without prior judicial approval are unreasonable per se under the

1. The Fourth Amendment to the United States Constitution provides:
   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.
   U.S. Const. amend. IV.
   The judicial warrant has a significant role to play in that it provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer "engaged in the often competitive enterprise of ferreting out crime."
   Id. (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)).
fourth amendment except in a few specific, well-established exceptions to the warrant requirement.  

Recently, government efforts to prevent the smuggling of illegal drugs into this country by sea have been significantly expanded. 4 The success of these efforts has resulted in a dramatic increase in smuggling-related arrests and seizures of property and drugs, 5 producing numerous cases involving the constitutionality of maritime searches and seizures. 6

Absent a border crossing, 7 the circuits disagree about fourth amendment requirements in the maritime context. 8 In an attempt to resolve this conflict, the United States Supreme Court recently considered two cases involving the random boarding and warrantless search of a vessel 9 on domestic waters 10 by law enforcement officers conducting a routine document check.

United States v. Villamonte-Marquez 11 involved the constitutionality of a customs agent’s “suspicionless” boarding of a forty-foot

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4. See Los Angeles Times, June 18, 1983, § I, at 1, col. 4 (report of June 17, 1983 Washington press conference given by Vice President George Bush to announce the formation of five additional narcotics interdiction task forces enlisting the services of the Air Force, Army, Navy, and the CIA in the war on international trafficking).

5. The task forces mentioned supra note 4 are patterned after the highly successful “Operation Florida,” which has resulted in a “marked increase” in smuggling-related arrests and $4.5 billion in drug seizures since its inception in February, 1982. Id. at 20, col. 3.

6. See, e.g., cases cited infra notes 8, 23.

7. The maritime border search cases are discussed infra note 23.

8. See, e.g., United States v. Freeman, 579 F.2d 942, 945 (5th Cir. 1978) (not even a “modicum of suspicion” required to either stop or search vessels within the three-mile limit); United States v. Williams, 544 F.2d 807, 810-11 (5th Cir. 1977) (vessels “presumed to bear persons or cargo subject to customs enforcement procedures” may be searched without warrant, probable cause, or suspicion, but not every vessel in American waters is subject to customs scrutiny); United States v. Stanley, 545 F.2d 661, 665 (9th Cir. 1976) (absent probable cause or consent, search based solely on statute authorizing document checks “is unreasonable if it sweeps more broadly than the Fourth Amendment allows.”)

9. The term “[v]essel’ includes every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.” 46 U.S.C. § 1452(2) (1971). This Comment addresses only those vessels that serve as an actual (temporary or permanent) dwelling for their operators. See infra text accompanying notes 124-140.

10. The term “domestic waters” means all waters within the three-mile limit, the functional equivalent of the international border in maritime cases. United States v. Whitmire, 595 F.2d 1303, 1307 (5th Cir. 1979).

sailboat on inland waters leading to the open sea. The agent boarded
to conduct a document check pursuant to 19 U.S.C. section
1581(a). The Court held the boarding was “reasonable” under the
fourth amendment, even though the agent lacked a reasonable suspi-
cion of criminal activity prior to boarding. The validity of the ves-
sel’s subsequent search was not contested, and the Court did not ad-
dress the issue.

The same day Villamonte-Marquez was decided, the Court issued a
per curiam memorandum decision in Florida v. Casal dismissing
the writ of certiorari as “improvidently granted” because the judg-
ment below rested on “independent and adequate state grounds.”
In Casal, Chief Justice Burger wrote a concurring opinion emphasiz-
ing that the Court had decided that Florida law, not federal law nor
any Supreme Court decision, was responsible for the “untoward re-
sult” in the case. Burger’s statements imply that probable cause is
not required to justify the full warrantless search of a vessel subse-
duent to a lawful, random boarding for routine document check, al-
though neither the Supreme Court nor the circuit courts have yet

12. The statute provides in relevant part:
Any officer of the customs may at any time go on board of any vessel or vehicle
at any place in the United States or within the customs waters . . . and examine
the manifest and other documents and papers and examine, inspect, and search
the vessel or vehicle and every part thereof and any person, trunk, package, or
cargo on board, and to this end may hail and stop such vessel or vehicle, and use
all necessary force to compel compliance.

14. In Villamonte-Marquez, the Court was concerned only with the “more narrow
issue” of the constitutionality of the “suspicionless boarding of the vessel for a documen-
tation inspection.” Id. at 2575, n.2, 2577, n.3.
15. Id. at 2574.
16. Id. at 2577.
17. See State v. Casal, 410 So. 2d 152, 155-56 ( Fla. 1982).
squarely confronted the issue. 18

Recognizing the Burger Court's search and seizure decisions as part of a "continuing evisceration of Fourth Amendment protections against unreasonable searches and seizures," 19 Chief Justice Burger's statements in Casal indicate the Court may soon create a new "maritime safety and document inspection" exception to the fourth amendment's probable cause standard and warrant requirement. 20 Considering the Villamonte-Marquez Court's literal interpretation of 19 U.S.C. section 1581(a), the Court appears willing to grant Coast Guard and customs officials the authority to randomly board and fully search any vessel at any time anywhere in the United States without a warrant or reasonable suspicion of criminal activity.

This Comment discusses the constitutional standards that should govern the warrantless search of the private areas of a vessel by officers conducting a routine safety and document inspection. 21 This Comment suggests the Court should refrain from creating a new "maritime safety and document inspection" exception to fourth amendment requirements. Absent a reasonable suspicion of a law violation, the Court should restrict warrantless searches of the private areas of a vessel to the legitimate scope of safety and document inspections, 22 or to situations falling within the border search 23 or


20. At least one district court has taken this approach to maritime searches and seizures. See United States v. Whitmore, 536 F. Supp. 1284, 1288 (D.C. Me. 1982).


22. The record in United States v. Piner, 608 F.2d 358 (9th Cir. 1979), established, by affidavit of a Coast Guard commander, that the standard safety inspection of a pleasure vessel consists of the following:

1. Stopping and boarding of the boat.
2. Checking boat registration papers and personal identification of the boat owner.
3. Inspecting the boat for number, condition and storage of life jackets and fire extinguishers.
4. Inspecting the engine for backfire flame arrester, closed compartments for proper ventilation ducts, and bilges for spilled oil or fuel to prevent explosion and fire.

Id. at 359.

23. The "border search" exception to the warrant requirement and probable cause standard of the fourth amendment is the exception most widely applied in the maritime
other well-established exceptions to the warrant requirement. When it reasonably appears a vessel is being used as a home, the vessel’s living areas should be entitled to the same guarantees against warrantless entry and search that the fourth amendment gives to conventional residences. Therefore, this Comment proposes that a search warrant should be required to search the living areas of a vessel when it reasonably appears the vessel’s operators are using it as a home.

Villamonte-Marquez

Villamonte-Marquez involved the validity of the boarding of a forty-foot sailboat, the Henry Morgan II, by a customs agent and a Louisiana State Police officer, while anchored in a Louisiana ship channel eighteen miles inland from the Gulf Coast. Acting on an informant’s tip that two vessels operated by foreigners were in the area waiting to offload marijuana, the officers were patrolling the channel when they saw the Henry Morgan II rock violently in the wake of a passing freighter. The officers approached the vessel to determine if she and her crew were unharmed, spotted a man on deck, and asked him twice if he was unharmed. The man merely raised his hands and shrugged his shoulders in response to the officers’ inquiries. Because the officers were looking for a vessel oper-
ated by foreigners, because the man on deck appeared unable to understand English, and because the officers did not recognize the home port of the *Henry Morgan II* as a home port of the United States, the officers boarded the vessel for a document check pursuant to 19 U.S.C. section 1581(a).

While examining the vessel's documents, the officers smelled the odor of burning marijuana. One of the officers looked through an open hatch and saw burlap-wrapped bales of what later proved to be bulk marijuana. The vessel's crew was arrested. A subsequent search of the *Henry Morgan II* yielded some 5,800 pounds of marijuana. At trial, defendants' motion to suppress the marijuana as the fruit of an illegal search and seizure was denied; the crew of the *Henry Morgan II* was convicted of possession and importation of marijuana with the intent to distribute. On appeal, the Fifth Circuit Court of Appeals reversed the convictions, holding that the initial boarding of the vessel in the absence of a reasonable suspicion of a law violation offended the fourth amendment.

The United States Supreme Court reversed, holding that the boarding of the *Henry Morgan II* for a document check pursuant to section 1581(a) was "reasonable" and therefore consistent with the fourth amendment, even in the absence of reasonable suspicion. Based on the legislative history of section 1581(a), the inherent factual differences between vessels and vehicles, and the limited scope of the intrusion on fourth amendment interests compared to the substantial governmental interests involved, the Court concluded that suspicionless boardings of vessels for document checks on inland waters leading to the open sea are constitutionally permissible.

The following analysis of the holding and rationale in *Villamonte-Marquez* is designed to determine whether the Court's reasoning

31. *Id.*
32. 103 S. Ct. at 2577.
33. *Id.*
34. The constitutionality of the warrantless search of the vessel was not contested; the defense conceded the existence of probable cause and exigent circumstances once the officers boarded the vessel and smelled marijuana. 652 F.2d at 484.
35. *Id.* at 484.
36. *Id.* at 488.
37. 103 S. Ct. at 2582.
38. See *infra* text accompanying notes 46 to 66.
39. See *infra* text accompanying notes 67 to 98.
40. See *infra* text accompanying notes 99 to 113.
41. Burger, C.J., and Justices White, Blackmun, Powell, and O'Connor, joined Justice Rehnquist in the majority opinion. Justices Brennan and Marshall dissented. Justice Stevens joined only in Part I of the dissent written by Justice Brennan, and would have dismissed the case as moot because the respondents had already been deported. 103 S. Ct. at 2575, 2582.
42. *Id.* at 2582.
would conceivably justify the full warrantless search of a vessel subsequent to a section 1581(a) boarding, even in the absence of consent,\textsuperscript{43} probable cause,\textsuperscript{44} or circumstances falling within the existing exceptions to the fourth amendment's warrant requirement.\textsuperscript{46}

**History of Section 1581(a)**

Section 1581(a) is a direct descendant of a similar statute enacted by the First Congress.\textsuperscript{46} Although the Villamonte-Marquez Court acknowledged "'no Act of Congress can authorize a violation of the Constitution,'"\textsuperscript{47} the Court, citing longstanding precedent,\textsuperscript{48} held that suspicionless vessel boardings are not prohibited by the fourth amendment because the historical antecedent of section 1581(a) was written by the same Congress that wrote the Bill of Rights.\textsuperscript{49} The Court reasoned that the founding fathers did not consider search and seizure activity of this kind to be "unreasonable"; therefore, suspicionless vessel boardings are not embraced by the fourth amendment's prohibition against "unreasonable searches and seizures."

As the Court noted,\textsuperscript{50} however, the ancestor statute was enacted "to provide more effectually for the collection of the duties imposed by law on goods, wares, and merchandise imported into the United States, and on the tonnage of ships or vessels."\textsuperscript{61} Apparently, the tariff and customs act of August 4, 1790, was intended to be a revenue act, designed solely to help fill the coffers of the new-born republic in the aftermath of the Revolutionary War. The legislative history of section 1581(a) does not clearly support an interpretation that the framers intended the ancestor statute to serve as a modern license for Coast Guard and customs agents to board and search vessels on domestic waters at will to compel compliance with all Untied States law, not just the customs laws.\textsuperscript{52}

\begin{itemize}
  \item \textsuperscript{43} Consent freely given justifies a warrantless search. See 2 LaFave, supra note 23, § 8.1 (1978).
  \item \textsuperscript{44} The existence of probable cause to believe a crime is being or has been committed will justify a warrantless search. See 1 LaFave, supra note 23, § 3.1 (1978).
  \item \textsuperscript{45} See cases cited supra note 3.
  \item \textsuperscript{46} Act of Aug. 4, 1790, ch. 35, § 31, 1 Stat. 145, 164 (repealed 1799).
  \item \textsuperscript{47} 103 S. Ct. at 2578 (quoting Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973)).
  \item \textsuperscript{48} Boyd v. United States, 116 U.S. 616 (1886).
  \item \textsuperscript{49} 103 S. Ct. at 2578-79. Justice Rehnquist's majority opinion in United States v. Ramsey, 431 U.S. 606, 616-19 (1977), was cited to support this argument. Id.
  \item \textsuperscript{50} 103 S. Ct. at 2577.
  \item \textsuperscript{51} Act of Aug. 4, 1790, ch. 35, 1 Stat. 145 (repealed 1799).
  \item \textsuperscript{52} The vast majority of vessels using United States' domestic waters today are undocumented pleasure vessels which are exempt from customs regulation. See infra note
\end{itemize}
Close study of section 1581(a) reveals the original statute was applicable to vessels within the twelve-mile limit only "if bound to the United States." Arguably, the Act was merely a border search statute. Though the boarding officers were permitted access to every part of the vessel to search for concealed dutiable goods, neither the warrantless search of persons or closed containers on board, nor the seizure of the vessel itself, was authorized.

Congress did not authorize suspicionless boardings of vessels regardless of whether there had been a border crossing until the height of Prohibition. In 1922, the Sixty-Seventh Congress made two changes in the statute: first, the right to board and search vessels inside the twelve-mile limit was no longer restricted to inbound vessels; and second, the statute was amended to give customs officers the right to seize vessels found to be in violation of customs laws. In 1935, the statute was further amended to include suspicionless boardings and searches to examine "other documents and papers" as well as the cargo manifest.

The history of section 1581(a) indicates the current statute has

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94; see also 19 U.S.C. § 1441(3) (1982), which provides that "undocumented American pleasure vessels not engaged in trade nor in any way violating the customs or navigation laws of the United States and not having visited any hovering vessel" are not required to "make entry at the customhouse."

53. The Act of Aug. 4, 1790, ch. 35, § 31, 1 Stat. 145, 164 (repealed 1799), provided in part:

That it shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue cutters herein after mentioned, to go on board of ships or vessels in any part of the United States, or within four leagues of the coast thereof, if bound to the United States, whether in or out of their respective districts, for the purposes of demanding the manifests aforesaid, and of examining and searching the said ships or vessels . . . .

54. 103 S. Ct. at 2586, n.7 (Brennan, J., dissenting).


56. Id. The statute prescribed certain procedures to be followed subsequent to boarding:

[I]t shall be the duty of said officer to take a particular account of every such box, trunk, cask or package, and the marks, if any there be, and a description thereof; and if he shall judge proper to put a seal or seals on every such box, chest, trunk, cask or package; and such account shall be by him forwarded to the collector of the district to which such ship or vessel is bound. And if upon arrival at her port of entry, the boxes, trunks, chests, casks or packages so described, or any of them shall be missing, or if the seals put thereon be broken, the master . . . of such ship or vessel shall forfeit and pay for every such box, trunk, chest, cask or package so missing, or of which the seals shall be broken, two hundred dollars.

Id. (emphasis added).

57. The eighteenth amendment to the Constitution was enacted January 28, 1919.

See 40 Stat. 1941.

58. The Tariff Act of 1922, ch. 356, § 581, 42 Stat. 858, 979, made a third major change in the statute by expanding the scope of searches pursuant to manifest inspections to include searches of persons. See Maul v. United States, 274 U.S. 501, 528-29 (1927) (Brandeis and Holmes, JJ., concurring).

been expanded far beyond the intentions of the founding fathers. The original statute limited suspicionless boardings and searches of vessels to inspections of inbound vessels to ensure all dutiable goods on board were listed on the ship’s manifest. During Prohibition, however, the statute was significantly expanded “to discover and prevent intended smuggling.”\textsuperscript{60} Seizures of vessels were authorized for the first time, as were warrantless searches of persons and closed containers. Today, as in the 1920’s and ’30’s, “the need to deter or apprehend smugglers is great.”\textsuperscript{61} Reacting to this need, the Supreme Court has held the descendant of the original act now authorizes the random boarding of all vessels on United States waters to compel compliance with all United States law.

Although neither the Supreme Court nor the circuit courts have held suspicionless searches of a vessel’s private areas are similarly authorized, the broad language of section 1581(a)\textsuperscript{62} and recent dicta by the Chief Justice\textsuperscript{63} make such a holding foreseeable. However, because the act as modernly interpreted and applied bears slight resemblance to the ancestor statute, the Court should reexamine the “impressive historical pedigree”\textsuperscript{64} of section 1581(a) to determine whether the First Congress “clearly authorized”\textsuperscript{65} the full warrantless search of a vessel on domestic waters absent a border crossing or reasonable suspicion of a law violation. Regardless of the founding fathers’ intent, such a search should be held unconstitutional because “neither longstanding congressional authorization nor widely prevailing practice justifies a constitutional violation.”\textsuperscript{66}

\textit{Inherent Differences Between Vessels and Vehicles}

The inherent difference between vessel navigation on inland waterways and vehicular traffic on highways is perhaps the strongest justification given by the \textit{Villamonte-Marquez} Court for treating suspicionless boardings of vessels for safety and document checks differently from random stops of vehicles for license and registration checks.\textsuperscript{67} Unlike vehicles, vessels can travel in any direction; vessels

\begin{itemize}
\item \textsuperscript{61} \textit{United States v. Villamonte-Marquez}, 103 S. Ct. 2573, 2582 (1983).
\item \textsuperscript{62} \textit{See supra} note 12.
\item \textsuperscript{63} \textit{See supra} text accompanying notes 15-18.
\item \textsuperscript{64} \textit{United States v. Villamonte-Marquez}, 103 S. Ct. 2573, 2577-78 (1983).
\item \textsuperscript{65} \textit{Id.}
\item \textsuperscript{66} \textit{United States v. Martinez-Fuerte}, 428 U.S. 543, 566, n.19 (1975).
\item \textsuperscript{67} Such stops are unconstitutional except when at least a reasonable suspicion
\end{itemize}
need not follow roads as vehicles must do. The constitutionally preferred alternatives to random stops such as roadblocks and fixed checkpoints are impractical on waterways leading to the open sea, "since boats cannot come to a complete stop and line up behind each other on the water as cars can on roads."

Other preferable alternatives to random stops such as annual dockside inspections are similarly impractical because safety and equipment regulations generally apply to vessels only when in use. Requiring Coast Guard officers to have a reasonable suspicion of noncompliance with safety regulations prior to boarding would arguably frustrate the regulatory scheme, because most safety and equipment violations can only be detected once the vessel is boarded. In Villamonte-Marquez, the Court concluded this lack of a practical alternative to random boardings justifies treating vessels different from vehicles to accomplish the "obviously essential" government interests in enforcing maritime safety and document regulations.

However, practical alternatives to completely random boardings and searches exist which counterbalance any unique law enforcement problems presented by the maritime context. Though it may be impossible to erect roadblocks at sea, maritime checkpoint operations have been successful. As illustrated by United States v. Watson and United States v. Harper, systematic inspections of all vessels under a prescribed length at established checkpoints on well-traveled sea lanes are an effective method of maritime law enforcement. Furthermore, as noted in Villamonte-Marquez, maritime com-

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68. United States v. Villamonte-Marquez, 103 S. Ct. 2573, 2580 (1983); State v. Casal, 410 So. 2d 152, 155 (Fla. 1982).
72. State v. Casal, 410 So. 2d 152, 155 (Fla. 1982).
73. United States v. Watson, 678 F.2d 765, 772 (9th Cir.), cert. denied, 103 S. Ct. 451 (1982); United States v. Piner, 608 F.2d 358, 359-60 (9th Cir. 1979).
74. United States v. Watson, 678 F.2d 765, 772 (9th Cir.), cert. denied, 103 S. Ct. 451 (1982); accord, United States v. Piner, 608 F.2d 358, 364 (9th Cir. 1979) (Kennedy, J., dissenting).
75. 103 S. Ct. at 2582.
76. See 3 LAFAVE, supra note 23, § 10.5(i), at 111 (Supp. 1983).
77. 678 F.2d 765, 766 (9th Cir.), cert. denied 103 S. Ct. 451 (1982) (suspicionless boarding of pleasure vessel on high seas pursuant to administrative plan to board and inspect all vessels under 200 feet in length found in specific "windows" or "corridors" at established points in the Pacific held constitutional).
78. 617 F.2d 35, 38 (4th Cir. 1980) (nondiscretionary stop and boarding of all vessels under 250 feet in length passing checkpoint in Caribbean sea lanes upheld).
merce on inland United States waters eventually funnels into rivers and canals, which are similar to roads and make a roadblock approach more practical.  

Checkpoint operations are preferable to roving patrol stops because they are not made at "the will and the whim of the officer in the field," thereby minimizing the "grave danger of abuse of discretion" by law enforcement officers. Checkpoint operations are less intrusive on fourth amendment interests because operators of vessels so boarded do not have "any sense of being singled out arbitrarily, as would the occupants of a car plucked from the stream of traffic."  

The viability of less-intrusive, nondiscretionary maritime checkpoint operations obviates the Villamonte-Marquez Court's concern that "vessels having ready access to the open sea need never come to harbor," thereby avoiding fixed checkpoints at various ports. The existence of practical alternatives to completely random boardings and searches of vessels makes the inherent differences between vessels and vehicles alone insufficient to justify treating vessels different from vehicles for purposes of enforcing safety and document regulations.

Different Systems of Prescribed Outward Markings

Another justification given by the Villamonte-Marquez Court for treating suspicionless boardings of vessels different from random stops of vehicles is that police officers patrolling a highway can tell if a vehicle is in compliance with state vehicle registration laws just by looking at the vehicle's license plate and registration stickers. The Court said "the numerals displayed by undocumented American boats, are marked on the vessel at the instance of the owner," and "no comparable 'license plates' or 'stickers' are issued by the United States or by States to vessels."

This distinction is inaccurate in some states, however. In Califor-
nia and Florida, for example, every vessel using state waters is required to be numbered.\textsuperscript{88} Both states compel vessel owners to attach clearly visible numbers to each side of the bow.\textsuperscript{89} Both states also issue vessel registration stickers, which must be clearly visible and attached to the bow along with the identification numbers.\textsuperscript{80}

Vessels registered in either California or Florida need not be boarded to ascertain compliance with state vessel registration requirements. In California, Florida, and states with comparable regulatory schemes, the boarding of a vessel on waters of the state in which it is registered,\textsuperscript{81} solely for the purposes of conducting a document check, should be permitted only when, based on observations of the vessel's exterior markings, a reasonable suspicion of noncompliance with documentation regulations exists.

Complexity of Federal Vessel Documentation Regulations

The \textit{Villamonte-Marquez} Court reasoned that different fourth amendment standards for random stops of vehicles and suspicionlessboardings of vessels are further justified because federal vessel documentation regulations are "more extensive and more complex than the typical state requirements for vehicle licensing."\textsuperscript{82} However, though "vessels engaged in certain trades must obtain special licenses,"\textsuperscript{83} the vast majority of vessels using domestic United States waters are undocumented pleasure vessels that are, by definition, exempt from federal documentation requirements.\textsuperscript{84}

The extent and type of federal vessel documentation requirements fail to justify random boardings of undocumented vessels for document checks. Except where the operators of a vessel are engaged in certain highly-regulated industries such as fishing, salvaging, dredg-

\begin{itemize}
  \item \textsuperscript{88} \textit{See} \textsc{cal. veh. code} § 9850 (West Supp. 1984); \textit{see} \textsc{fla. stats. ann.} § 327.10 (West Supp. 1983).
  \item \textsuperscript{89} \textsc{cal. veh. code} § 9853.2 (West Supp. 1984); \textsc{fla. stats. ann.} § 327.10 (West Supp. 1983).
  \item \textsuperscript{90} \textsc{cal. veh. code} § 9853.4 (West Supp. 1984); \textsc{fla. stats. ann.} § 327.11(7) (West Supp. 1983).
  \item \textsuperscript{91} California state waters are defined as "all waters of the state except waters beyond three nautical miles of any shore of the state." \textsc{cal. harb. & nav. code} § 775.5(i) (Deering Supp. 1983).
  \item \textsuperscript{92} 103 \textsc{s. ct. at 2580-81.}
  \item \textsuperscript{93} \textit{id.}
  \item \textsuperscript{94} \textit{see} \textsc{46 u.s.c.} § 1452(3) (1979). As of July 29, 1983, there were 554,141 undocumented vessels registered in California alone, excluding rowboats, canoes, and vessels less than 8 feet long propelled solely by sail. (Telephone interview with the \textit{vessels division} of the \textit{california department of motor vehicles}, Sacramento, California, September 8, 1983). California registers pleasure craft and commercial vessels up to 30 feet long as undocumented vessels. The state will also register pleasure craft up to 155 feet long and commercial vessels over 30 feet in length if the \textit{coast guard} certifies in writing that the vessel does not require federal documentation. \textsc{cal. veh. code} § 9840(g) (West Supp. 1984).
\end{itemize}
ing, or towing, boardings and searches of undocumented vessels using domestic waters should be authorized only where there exists a reasonable suspicion based on articulable facts that the vessel has or is violating navigation or other laws, is subject to customs scrutiny, or is not in compliance with state vessel documentation regulations.

Scope of the Intrusion

The Villamonte-Marquez Court said maritime safety and document inspections constitute “only a modest intrusion” on fourth amendment interests because they normally involve only a brief detention of the vessel while officers board, examine documents, and inspect public areas of the vessel. The Court upheld the suspicionless boarding of the Henry Morgan II on the grounds that “the nature of the governmental interest in assuring compliance with documentation requirements, particularly in waters where the need to deter or apprehend smugglers is great, are substantial; the type of intrusion made in this case, while not minimal, is limited.”

The Court’s emphasis on the objective government need to control maritime smuggling insufficiently addressed the nature of the subjective intrusion involved in vessel boarding cases. This subjective intrusion, “the generating of concern or even fright on the part of lawful travelers,” although not dispositive, provides guidance in properly balancing “the government’s interest in enforcing its laws against the individual’s interest in his dignity and privacy.”

To effectuate vessel boardings, the Coast Guard is statutorily authorized to use “all necessary force” to compel compliance with all

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95. See United States v. Villamonte-Marquez, 103 S. Ct. 2573, 2581 (1983).
98. See supra notes 88-90.
99. 103 S. Ct. at 2582.
100. Id. In the case of the Henry Morgan II, the intrusion was considered further limited because the vessel was a foreign vessel; foreign vessels are subject to customs scrutiny and a greater degree of federal regulation than are domestic vessels. Id. at 2581.
101. Id. at 2582.
102. See United States v. Piner, 608 F.2d 358, 361 (9th Cir. 1979).
105. United States v. Stanley, 545 F.2d 661, 667 (9th Cir. 1976).
United States law. Boarding parties for standard Coast Guard safety and document inspections typically consist of three officers armed with either a shotgun or M-16 automatic rifle in addition to sidearms. The command of "'heave to, we're coming aboard" from an approaching Coast Guard cutter replete with 50-caliber machine gun might understandably frighten and concern the Sunday sailor.

Routine Coast Guard boardings for safety and document inspections are clearly a "possibly unsettling show of authority," constituting a significant subjective intrusion on fourth amendment interests of individual mariners. The weight of this subjective intrusion must be properly balanced against objective government needs when determining whether a particular police practice is permissible under the fourth amendment.

**Suspicionless Vessel Searches Under the Fourth Amendment**

In *Villamonte-Marquez*, the Supreme Court's balancing test was flawed because the majority ignored the mariner's reasonable expectation of privacy when evaluating the scope of the intrusion involved in maritime search and seizure situations. The *Villamonte-Marquez* Court's emphasis on objective government needs overlooked the significant subjective intrusiveness of routine vessel boardings; as a result, inordinate weight was given to governmental interests at the expense of individual fourth amendment rights. Before the suspicionless search of the private living areas of a vessel using domestic waters can be upheld under the fourth amendment, the Su-

107. See supra note 22.
110. Id.
113. United States v. Finer, 608 F.2d 358, 361 (9th Cir. 1979).
115. The First Circuit has authorized a suspicionless search of the closed forward compartment of a vessel for spilled fuel as within the legitimate scope of a safety inspection. See United States v. Arna, 630 F.2d 836, 842 (1st Cir. 1980). By comparison, the Fifth Circuit, sitting en banc, has held that the Coast Guard must have at least a reasonable suspicion that contraband will be found before conducting a warrantless search of "private" areas of the vessel's hold (United States v. Williams, 617 F.2d 1063, 1087 (5th Cir. 1980); however, nine judges of that court would have held that there is no legitimate privacy interest in any part of a vessel's hold. Id. at 1087 n.25.
116. Mariners on the high seas have a lesser expectation of privacy than mariners using domestic waters because of the expanded government interests in policing the high
preme Court must properly balance the mariner's reasonable expectation of privacy against the government need to control maritime smuggling.

The Villamonte-Marquez Court compared suspicionless vessel boardings to random vehicle stops and concluded the inherent factual differences between vessels and vehicles justify treating vessels differently from vehicles for purposes of conducting a safety and document check. If the constitutionality of suspicionless vessel searches is to be determined by comparing them to warrantless vehicle searches, then the factual differences between vessels and vehicles should also justify treating vessels different from vehicles for purposes of conducting a search.

Warrantless automobile searches have traditionally been justified on the ground there is a constitutional difference between houses and cars: first, automobiles are inherently mobile and can be moved from a jurisdiction before a warrant can be obtained; and second, the public nature of automobile travel lowers the individual's reasonable expectation of privacy in the vehicle's interior. However, the exigent circumstance of vehicle mobility may fail to justify a warrantless automobile search where there is no danger the vehicle will be moved before a warrant can be obtained. Recognizing that the primary justification for the automobile exception to the warrant requirement is no longer vehicle mobility, the Court has held "the answer lies in the diminished expectation of privacy which surrounds the automobile."

The Villamonte-Marquez Court compared vessels to vehicles because vessels, like vehicles, are inherently mobile. Though conceivably providing a measure of justification for treating suspicionless searches of vessels like warrantless searches of vehicles, this exigency of mobility would be but one factor to be balanced against the


117. See, e.g., Comment, supra note 3.
122. 103 S. Ct. at 2573-75.
123. See Comment, supra note 3, at 460-61.
individual’s reasonable expectation of privacy in a maritime search and seizure situation.

The main factor diminishing the expectation of privacy in a vehicle is that the basic function of an automobile is the provision of transportation; that is, vehicles “seldom serve as one’s residence or as the repository of personal effects.”124 By comparison, the primary function of a vessel is often the provision of living quarters, whether on a temporary or permanent basis. As the Fifth Circuit Court of Appeals said in United States v. Cadena,125 “the ship is the sailor’s home. There is hardly the expectation of privacy even in the tailored limousine or the stereo-equipped van that every mariner or yachtsman expects aboard his vessel.”126

The notion that “a man’s home is his castle” is as old as the common law.127 Accordingly, the Supreme Court has traditionally acknowledged “the fourth amendment has drawn a firm line at the entrance to the house.”128 Homes are generally inviolate from warrantless entry and search, except in situations where emergency circumstances such as fire,129 pursuit of a fleeing felon,130 or imminent destruction of evidence131 are of sufficient magnitude to justify entry without a warrant. People who stay temporarily in hotels and motels are afforded these same protections against warrantless entry and search.132 “A sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man’s castle.”133

No less than a guest in a hotel room, a mariner aboard a vessel should be entitled to protection against warrantless searches of temporary living quarters. Though vessels are inherently mobile like vehicles, they have many of the privacy characteristics of homes. Moreover, the danger a vessel will be moved before a warrant can be obtained is remote in situations where the vessel has been stopped

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125. 588 F.2d 100 (5th Cir. 1979).
126. Id. at 101.
127. See, e.g., Semayne’s Case, 5 Co. Rep. 91a, 91b; 77 Eng. Rep. 194, 195 (1620), cited in Amicus Curiae Brief at 7, People v. Carney, 34 Cal. 3d 597 (1983) [hereinafter cited as Amicus Brief] (on file with the SAN DIEGO LAW REVIEW). This Comment’s thesis is an application to the maritime context of the holding and rationale in Carney, the argument set forth in the Amicus Brief, and the research and analysis of Carney’s attorneys embodied in their Petition for Hearing After Decision and Opinion by the Court of Appeal [hereinafter referred to as Petition] (on file with the SAN DIEGO LAW REVIEW).
and boarded by armed Coast Guard officers for a routine safety and document inspection. In such a situation the issue is not the vessel's mobility, but whether the vessel's occupant has manifested a reasonable expectation of privacy in the vessel's interior.

Mariners have a greater expectation of privacy than motorists. Accordingly, vessels are entitled to greater protection against warrantless entry and search than are vehicles. There is a constitutional difference between vessels and vehicles because vessels, unlike most vehicles, often serve as a dwelling for their operators. The living areas of a vessel should be given the same protections against warrantless entry and search that the fourth amendment gives to conventional residences, because a vessel, as much as a house, provides a sanctuary from unreasonable government intrusion. The fact that a vessel is not fixed to land should not diminish its fourth amendment status as a home. Therefore, whenever the outward appearance of a vessel would lead a reasonable person to believe it is being used as a residence, a search warrant should be required to search the vessel's living areas.

**CONCLUSION**

Recent cases indicate the Supreme Court is ready to give government agents carte blanche to board and search any vessel at any time anywhere in the United States to compel compliance with all United States law. Such an awesome grant of power would be a miscarriage of the founding fathers' intentions, induced by a visceral reaction to the unique law enforcement problems presented by the recent upsurge in maritime smuggling.

Safety and document inspections should not be a license for Coast Guard and custom officials to randomly board and search undocumented vessels on domestic waters. Examinations of public areas of

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134. See supra text accompanying notes 106 to 111.
135. For example, a mariner who has closed the curtains on windows of the vessel's living areas so that its contents are not exposed to public view has manifested a reasonable expectation of privacy therein. See United States v. Williams, 630 F.2d 1322, 1326 (9th Cir. 1980) (motor home case), cited in People v. Carney, 34 Cal. 3d 597, 609-10 (1983); see also Amicus Brief, supra note 127, at 13-14, fn.11; Petition, supra note 127, at 10 (all involving motor homes).
136. In People v. Carney, 34 Cal. 3d 597 (1983), the California Supreme Court held that a motor home is not subject to the movable vehicle exception to the warrant requirement when it reasonably appears the vehicle serves as living quarters. Id. at 610.
138. See cases and materials cited supra notes 127, 135.
vessels boarded for safety and document inspections should be restricted to the legitimate scope of such inspections. In states with vessel documentation regulations like those of California and Florida, vessel boardings on home state waters for document checks should be permitted only when there exists a reasonable suspicion based on articulable facts that the vessel is not registered according to law. Except where a vessel's operators are engaged in certain highly regulated activities, boardings and searches of vessels on domestic waters should be authorized only on a showing of reasonable suspicion of criminal activity.

The Supreme Court should refrain from further limiting fourth amendment protections by recognizing a new “maritime safety and document inspection” exception to both the probable cause standard and the warrant requirement. The warrant requirement “is not an inconvenience to be somehow ‘weighed’ against the claims of police efficiency.”139 Because the living areas of a vessel are not generally exposed to public view, they are entitled to greater protection against warrantless entry and search than, for example, the passenger compartment of an automobile. The constitutionality of domestic maritime searches and seizures should depend on whether the individual mariner has manifested a reasonable expectation of privacy in the vessel's interior.

"A man's home is his castle," and "the ship is the sailor's home."140 When it reasonably appears that the operators of a vessel are using it as a home, the vessel should be given the same protection against entry and search that the fourth amendment gives to conventional residences. Therefore, absent a border crossing, emergency circumstances, or a situation falling within an existing and applicable exception to the warrant requirement, a warrant should be required to search a vessel's living areas.

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140. United States v. Cadena, 588 F.2d 100, 101 (5th Cir. 1979).