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United States v. Villamonte-Marquez: Burial at Sea for the Fourth Amendment, 17 J. Marshall L. Rev. 545 (1984)

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UNITED STATES v. VILLAMONTE-MARQUEZ:*
BURIAL AT SEA FOR THE FOURTH
AMENDMENT?

Drug smuggling into the United States has generated controversy over fourth amendment standards governing searches at sea.¹ The fourth amendment to the Constitution guarantees protection against unreasonable searches and seizures.² In *United States v. Villamonte-Marquez*,³ the Supreme Court interpreted a statute that provides for vessel⁴ registration inspections⁵ at sea.⁶ In doing so, the Court sanctioned investigatory

* 103 S. Ct. 2573 (1983).

1. There are basically three divisions of waters of the seas: internal waters, territorial waters, and the high seas. The internal waters are located inland from the coast. The territorial waters extend three nautical miles from the coastline. The United States claims territorial sovereignty within this three mile area. The high seas are those waters beyond the territorial waters. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122-23 (1923). See also Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51, 56-58 (1977). "The term 'customs waters' means, . . . the waters within four leagues of the coast of the United States." 19 U.S.C. § 1401(j) (1976). One maritime league is equal to three nautical miles. C. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 88 (6th ed. 1967).

2. U.S. CONST. amend. IV 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 persons or things to be seized.

Id.

3. 103 S. Ct. 2573 (1983).

4. "The word 'vessel' includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft." 19 U.S.C. § 1401(a) (1982).

5. All American vessels of at least five tons used for commercial purposes must submit to periodic inspections by the Coast Guard and keep a certificate of inspection on the vessel at all times. 46 U.S.C. §§ 399, 400 (1976). Smaller American vessels are required to have a state-issued identification number displayed on the boat at all times subject to inspection. 46 U.S.C. § 1470 (1982). Foreign vessels are required to carry a manifest that must be available for inspection. 19 U.S.C. § 1439 (1982).

6. 19 U.S.C. § 1581(a) (1982) [hereinafter referred to as section 1581(a)] provides:

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* or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act, [19 U.S.C. § 1701 et. seq.], or at any other authorized place, without as well as within his district, and *examine the manifest* and *other documents and papers* and examine, inspect, and *search the vessel* or vehicle and *every part thereof* and any

stops and searches conducted by customs officers of foreign⁷ and domestic vessels without reasonable suspicion of illegal activity and without explicit qualification regarding the location of the vessel.⁸ The Court held that this practice was not contrary to the fourth amendment standards that govern searches and seizures.⁹

On March 6, 1980, customs officers¹⁰ stopped and boarded the *Henry-Morgan II*.¹¹ The ship was anchored eighteen nautical miles inland on the Calcasieu River.¹² The officers informed

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.

Id. (emphasis added).

7. Section 1581(a) applies to foreign vessels. See *supra* note 5. The protections of the fourth amendment are also applicable to foreign vessels and aliens. *Reid v. Covert*, 354 U.S. 1 (1957). See also *United States v. Cadena*, 585 F.2d 1252, 1262 (5th Cir. 1978) (fourth amendment protection applies to any vessel or alien subject to prosecution of American laws). *Accord* *United States v. Toscanino*, 500 F.2d 267, 280 (2d Cir. 1974) (fourth amendment applies to American law enforcement activities abroad). *But see* *United States v. Williams*, 617 F.2d 1063, 1093 (5th Cir. 1980) (Roney, J., concurring) (indicating foreign vessels on the high seas do not have constitutional protection).

8. 103 S. Ct. at 2573.

9. *Id.* at 2582.

10. The United States customs officers were accompanied by several Louisiana state police officers. 103 S. Ct. at 2577. Louisiana state law authorizes state police officers to make similar registration inspections to those authorized in section 1581(a). Compare LA. REV. STAT. ANN. § 34:851.14 (West 1964) with 19 U.S.C. § 1581(a) (1976). The Louisiana statute does not, however, authorize searches but provides that "[a] state police officer has the authority to stop and board any vessel for the purpose of . . . requiring appropriate proof of identification therefrom, examining the certificate of numbers issued . . . or in the absence of such certificate require appropriate proof of identification of the owner or operator of the vessel. . . ." LA. REV. STAT. ANN. § 34:851.14 (West 1964). The defendants argued that because the state police officers searched their ship, and were not authorized to do so, this act constituted an unreasonable search and seizure. Brief for Respondents at 10, *United States v. Villamonte-Marquez*, 103 S. Ct. 2573 (1983).

11. 103 S. Ct. at 2576. Head Customs Officer Wilkins decided to board the *Henry-Morgan II* for two reasons. First, he did not recognize the boat's home port, Basilea, as being a home port in the United States. It was subsequently discovered that the home port of Basilea is located in Switzerland. *Id.* The vessel's registration documents indicated that the ship was registered in France. *Id.* Second, after an unsuccessful attempt to communicate with the crew, Officer Wilkins concluded that the vessel was foreign because a crew member appeared unable to understand English. *United States v. Villamonte-Marquez*, 652 F.2d 481, 483 (5th Cir. 1981).

12. 103 S. Ct. at 2576. The Calcasieu River Ship Channel is a waterway connecting the gulf of Mexico with Lake Charles, Louisiana. Lake Charles is a designated Customs Port of Entry for the Houston, Texas Region. All vessels traveling between Lake Charles and the Gulf of Mexico must pass through the channel. *Id.* The Calcasieu River Ship Channel is also known as the Lake Charles Ship Channel. *United States v. Villamonte-Marquez*, 652 F.2d 481, 483 n.1 (5th Cir. 1981), *rev'd*, 103 S. Ct. 2573 (1983).

the crew that they were conducting a registration inspection and requested the ship's registration papers.¹³ After boarding to conduct the purported¹⁴ registration inspection, the officers commenced a more thorough search of the ship and found approximately 5,800 pounds of marijuana on board.¹⁵

The crew was arrested and charged with conspiring to import marijuana,¹⁶ importing marijuana,¹⁷ and conspiring to possess marijuana with the intent to distribute.¹⁸ They were subsequently convicted in the United States District Court for the Western District of Louisiana.¹⁹ The Court of Appeals for the Fifth Circuit reversed the convictions on the grounds that the stopping and searching of the *Henry-Morgan II* was "unreasonable" in the absence of reasonable suspicion of illegal activity.²⁰

13. Villamonte-Marquez, 103 S. Ct. at 2577.

14. On March 5, 1980, Customs Patrol Officer Harrison received information from a reliable informant that there were two loads of marijuana on two separate ships in the area. The informant could not describe the vessels or their location. *United States v. Villamonte-Marquez*, 652 F.2d 481, 482 (5th Cir. 1981), *rev'd*, 103 S. Ct. 2573 (1983).

15. 103 S. Ct. at 2577. While examining the *Henry-Morgan II*'s registration papers, Officer Wilkins stated that he smelled burning marijuana. After a further inspection of the vessel, Wilkins observed defendant Villamonte-Marquez sitting on several bales of marijuana. *Id.* An officer's visual or olfactory observations are usually the best evidence to suggest probable cause in drug cases. *Wales, Probable Cause to Arrest or Search in Drug Cases*, 1 SEARCH & SEIZURE L. REP. no. 5 (1974). See *United States v. Bowman*, 487 F.2d 1229 (10th Cir. 1973) (probable cause established when customs officers smelled burning marijuana); *Fumagalli v. United States*, 429 F.2d 1011 (9th Cir. 1970) (sighting brick shaped kilos of marijuana). *Cf. Harris v. United States*, 390 U.S. 234, 236 (1968) (upholding admission of evidence in "plain view" where officer acts lawfully). In *Harris*, the Court upheld the seizure of an automobile when its registration card fell within the "plain view" of a police officer as he opened the door of an impounded vehicle. *Id. But see Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The *Coolidge* Court warned that in "plain view" cases, the police officer must have had prior justification for the intrusion in the course of which he comes inadvertently across evidence incriminating the accused. *Id.* at 456. For a discussion of the applicability of the "plain view" doctrine, see Comment, *Development in the Law of Warrantless Auto Searches*, 16 WILLAMETTE L.J. 677 (1980).

16. 21 U.S.C. § 963 (1976) (current version at 21 U.S.C. § 963 (1982)).

17. 21 U.S.C. § 952(a) (1976) (current version at 21 U.S.C. § 952(a) (1982)).

18. 21 U.S.C. § 841(a)(1) (1976) (current version at 21 U.S.C. § 841(a)(1) (1982)).

19. *United States v. Villamonte-Marquez*, No. 80-20012-01/02 (W.D. La. Dec. 21, 1981).

20. *United States v. Villamonte-Marquez*, 652 F.2d 481, 488 (5th Cir. 1981). For other Fifth Circuit decisions concerning vessel searches, see *United States v. D'Antignac*, 628 F.2d 428 (5th Cir. 1980) (incorporated the reasonable suspicion standard in section 1581(a) to uphold a search made at night in coastal waters), *cert. denied*, 450 U.S. 967 (1981); *United States v. Serrano*, 607 F.2d 1145 (5th Cir. 1979) (upheld a search of a vessel traveling

The United States Supreme Court reversed the decision of the Fifth Circuit Court of Appeals.²¹ This decision resolved a conflict which had existed among the circuits concerning the issue of fourth amendment guarantees for searches conducted at sea.²² The Court addressed the question of whether the practice of stopping and boarding vessels by customs officers, acting pursuant to statutory authority and without reasonable suspicion of illegal activity,²³ violated the fourth amendment.²⁴ The Court held that 19 U.S.C. §1581(a) [section 1581(a)], which authorized

at night without navigational lights), *cert. denied*, 445 U.S. 965 (1980); *United States v. Castro*, 596 F.2d 674 (5th Cir. 1979) (upheld a search of a vessel traveling without documentation), *cert. denied*, 444 U.S. 963 (1980); *United States v. Whitmire*, 595 F.2d 1303 (5th Cir. 1979) (speeding through a "no wake" zone generated a reasonable suspicion of illegal activity), *cert. denied*, 448 U.S. 906 (1980).

21. 103 S. Ct. at 2577.

22. Compare *United States v. Glen-Archila*, 677 F.2d 809 (11th Cir.), (requiring a reasonable suspicion before stopping and boarding a vessel), *cert. denied*, 103 S. Ct. 165 (1982); and *Blair v. United States*, 665 F.2d 500 (4th Cir. 1981) (reasonable suspicion standard); and *United States v. Piner*, 608 F.2d 358 (9th Cir. 1979) (reasonable suspicion standard); with *United States v. Hilton*, 619 F.2d 127 (1st Cir.) (authorizing customs officers to stop and board a vessel without a reasonable suspicion of illegal activity), *cert. denied*, 449 U.S. 887 (1980); and *United States v. Williams*, 617 F.2d 1063 (5th Cir. 1980) (suspicionless boardings); and with *United States v. Glaziou*, 402 F.2d 8 (2d Cir.) (requiring customs officers to have a mere suspicion of illegal activity before stopping a vessel), *cert. denied*, 393 U.S. 1121 (1969).

23. The concept of "reasonable suspicion" is based upon the totality of the circumstances. Police officers must have a particularized and objective basis for suspecting that the person stopped is engaged in illegal activity. *United States v. Cortez*, 449 U.S. 411, 417 (1978). See *United States v. Jackson*, 652 F.2d 244 (2d Cir.) (defendant's avoidance of police coupled with fact that he fit description of robber), *cert. denied*, 454 U.S. 1057 (1981). The Supreme Court has offered guidelines as to what factors should be considered to determine reasonable suspicion: the proximity to the border; the usual pattern of traffic; independent information from informants; the driver's behavior; the number and behavior of the occupants in the vehicle; and the aspects of the vehicle itself. *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975).

24. 103 S. Ct. at 2575. The Court also addressed the question of whether the case was moot because the defendants had been deported subsequent to the issuance of the mandate by the Court of Appeals vacating their convictions and indictments. The Court concluded that because the grand jury returned valid indictments, deportation did not render the case moot. *Id.* at 2575-76. The Court noted that there is the possibility that the defendants, who are now free could be extradited and imprisoned for their crimes, or if they re-enter the country, they would be subject to arrest and imprisonment for their convictions. *Id.* In dissent, Justice Brennan argued that the government could not seek appellate review because it had voluntarily terminated the litigation. *Id.* at 2583. According to the Federal Rules of Criminal Procedure, the Government may "by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate." FED. R. CRIM. P. 48(a). Brennan contended that the Government's failure to secure an immediate review of the interlocutory order barred its motion to reinstate the defendant's convictions. *Villamonte-Marquez*, 103 S. Ct. at 2582-83 (Brennan, J., dissenting).

customs officers to stop and board any vessel at anytime and at any place in the United States in order to examine its registration papers, was constitutional.²⁵ Accordingly, the Court concluded that the customs officers' acts of stopping and boarding the *Henry-Morgan II* were consistent with the fourth amendment.²⁶

The Court began its analysis by examining the historical background of section 1581(a). Justice Rehnquist, writing for the majority,²⁷ noted that the lineal ancestor to this statute, the Act of August 4, 1790,²⁸ had been enacted by the same Congress that had promulgated the fourth amendment.²⁹ Justice Rehnquist reasoned that, because the predecessor of section 1581(a) and the fourth amendment were both enacted by the First Congress, the First Congress did not consider suspicionless vessel boardings and searches contrary to the fourth amendment. In support of its conclusion, the Court noted that prior case law³⁰

25. 103 S. Ct. at 2578.

26. *Id.* at 2582.

27. *Id.* at 2575 (Burger, C.J., White, Blackmun, Powell, O'Connor, J.J., joined in the majority opinion; Brennan, J., filed a dissenting opinion, in which Marshall, J., joined, and in Part I of which Stevens, J., joined).

28. The majority relied on section 31 of the Act to reach its holding. *Id.* For a complete text of section 31, see *infra* note 52. Section 31 and section 48 of the Act of 1790 were re-enacted without substantial change in 1799. Section 31 was re-enacted as ch. 22, § 54, 1 Stat. 668 (1799) and section 48 became ch. 22, § 67, 1 Stat. 677 (1799). For a complete text of section 48, see *infra* note 55. In 1866, Congress revised the Act and incorporated both sections into one statute. This statute authorized customs officers to board any vessel "if it shall appear" that a violation of the laws of the United States had been committed. Ch. 201, § 2, 14 Stat. 178 (1866). Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51, 67-69 (1977). In 1922, Congress revised the statute, deleting the reasonable suspicion standard, in order to enforce duty collection on the high seas. *Maul v. United States*, 274 U.S. 501, 528-29 (1927). See also *United States v. Lee*, 274 U.S. 559, 560 (1927) (citing history of Tariff Act of 1922).

29. 103 S. Ct. at 2582. The *Villamonte-Marquez* Court's reliance on the "impressive historical pedigree" of section 1581(a) is possibly ill-founded because the First Congress also passed other bills and statutes which were subsequently found unconstitutional. See TAYLOR, *TWO STUDIES IN CONSTITUTIONAL INTERPRETATION* 25 (1969). For an excellent discussion of how the historical background of the fourth amendment offers little help in addressing modern problems, see Dix, *Means of Executing Searches and Seizures as Fourth Amendment Issues*, 67 MINN. L. REV. 89, 140-43 (1982). Accord *Camara v. Municipal Court*, 387 U.S. 523 (1967). In *Camara*, the Court rejected a similar historically-based argument previously relied on in *Frank v. Maryland*, 359 U.S. 360 (1959), finding that the individual's right to be free from searches for evidence to be used in criminal prosecutions should not be based upon historical impulses behind the fourth amendment. Accordingly, the individual's right to be free from unreasonable searches and seizures must be judged in a modern context. *Id.* at 365-66.

30. *United States v. Ramsey*, 431 U.S. 606, 616-17 (1977) (upheld a search of several airmailed envelopes where a customs officer had reason to suspect they contained drugs); *Boyd v. United States*, 116 U.S. 616, 623 (1866)

had determined that a similar customs search statute³¹ was in harmony with the prohibitions of the fourth amendment.³² Hence, the Court analogized that the enactments of 1790 are similarly consonant with the amendment.³³

In finding that this search procedure was within the construction of the fourth amendment, the Court rejected the contention that land search standards should govern marine searches.³⁴ The Court emphasized that the distinction between a vessel located in waters which offer ready access to open sea and an automobile on a principal highway within the boarder area³⁵ is more than sufficient to require different fourth amend-

(holding an act of Congress unconstitutional based on earlier congressional acts).

31. Act of July 31, 1789, ch. 5, § 43, 1 Stat. 29 (provided for the regulation of the collection of duties by customs officers who had "reason to suspect" a violation).

32. 103 S. Ct. at 2578-79. See also *Carroll v. United States*, 267 U.S. 132, 150 (1925) (citing the Act of July 31, 1789, with its reasonable suspicion standard, to support the Court's holding).

33. 103 S. Ct. at 2578.

34. *Id.* at 2579. The defendants argued that the fourth amendment land standards should apply to vessels located near the border. Brief for the Respondents at 15, *United States v. Villamonte-Marquez*, 103 S. Ct. 2573 (1983). For a discussion of the border area and its functional equivalent at sea, see *infra* note 35. Stops and searches of automobiles conducted at the border need not be based upon a reasonable suspicion of illegal activity. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). See also *United States v. Ramsey*, 431 U.S. 606, 616 (1977) (searches of vehicles along the border are reasonable by virtue of the fact that vehicles are able to cross the border). For a more detailed explanation of the need to conduct suspicionless searches in the border area, see *infra* note 63. Suspicionless stops and searches may also be conducted at the functional equivalent of the border if it can be proved with reasonable certainty that the vehicle had crossed the border. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). The *Almeida-Sanchez* Court defined the functional equivalent of the border as wherever the permissible scope of intrusiveness of a routine border search may be. *Id.* at 273. Stops and searches made by officers on roving patrol away from the border must be based on a reasonable suspicion of illegal activity. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

35. The term "border" refers to the actual borderline as well as its functional equivalent. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973) (refused to extend the border 20 miles from the actual borderline). For a definition of the functional equivalent of the border, see *supra* note 34. See also Hermann, *Recent Developments in the Law of Border Searches*, 9 SEARCH & SEIZURE L. REP. 73 (1982) (Part I of a two part article discussing Supreme Court's policy concerning border searches). See generally Note, *Almeida-Sanchez and its Progeny: The Developing Border Zone Search Law*, 17 ARIZ. L. REV. 214 (1975) (defining functional equivalency concept). In a maritime context, the border extends 4 leagues (12 nautical miles) from the coastline. 19 U.S.C. § 1401(j) (1976). See also Note, *High on the Seas: Drug Smuggling, the Fourth Amendment, and Warrantless Searches at Sea*, 93 HARV. L. REV. 725, 735 (1980) (discussion of border searches on the seas) [hereinafter cited as Note, *High on the Seas.*].

ment standards.³⁶ The Court stated that customs officers cannot maintain permanent border checkpoints³⁷ in order to observe every vessel entering United States waters.³⁸ Vessels can move in any direction, at any time, and do not have to follow any established "avenue" of travel. Thus, the attempted analogy to land searches conducted in the border area was inappropriate according to the Court.³⁹

In addition to distinctions in the nature of travel, the Court found that the difference in the motive for registration of vessels and that of automobiles justify suspicionless boardings.⁴⁰ This conclusion was reached by weighing the government's interest against the individual's fourth amendment interests.⁴¹ The principal motive behind vessel registration laws is to protect the public by regulating participation in trade, enforcing environmental laws, collecting duties, and regulating imports and exports.⁴² The government, therefore, has a legitimate interest in boarding a vessel to inspect its registration documents.⁴³ The Court decided, on the other hand, that the individual's interest is merely in the right to make "free passage without interruption."⁴⁴ After weighing these interests, the Court concluded that

36. 103 S. Ct. at 2580. For a detailed discussion concerning the application of different fourth amendment standards based on the factual differences between vessels and automobiles, see *infra* notes 67-75 and accompanying text.

37. A checkpoint is a fixed station along the border or its functional equivalent where customs officials can search the vehicle and its occupants. *United States v. Martinez-Fuerte*, 428 U.S. 543, 559 (1976). For a discussion concerning the border and its functional equivalent, see *supra* note 35.

38. 103 S. Ct. at 2580.

39. *Id.* at 2579-80.

40. *Id.* at 2580. The Court noted that there is not a comparable uniform licensing system for vessels. *Id.*

41. A balancing of interests is an accepted method of fourth amendment analysis. Note, *The Fourth Amendment Afloat: Customs Searches, Drug Smuggling, and the Balancing Test in the Fifth Circuit*, 68 GEO. L.J. 1035, 1045 (1980). See *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (balancing test used to hold random automobile stop unreasonable); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (balancing test used to hold suspicionless border search reasonable); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878-84 (1975) (balancing test used to hold stop of automobile away from the border unreasonable unless there is a reasonable suspicion of illegal activity); *Terry v. Ohio*, 392 U.S. 1 (1968) (balancing test used to hold a stop and frisk of a suspect reasonable); *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967) (balancing test used to hold warrantless administrative search unreasonable).

42. 103 S. Ct. at 2581.

43. See Note, *High on the Seas*, *supra* note 35, at 738-50. See generally Annot., 40 A.L.R. FED. 402 (1978) (discussing government's authority to inspect vessels outside territorial waters).

44. 103 St. Ct. at 2581 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 557-58 (1976)). Individuals who are lawfully in the United States have the right to make "free passage without interruption" or search unless a law

the government's interest in assuring compliance with registration requirements was greater than any resultant intrusion on an individual's fourth amendment interest.⁴⁵

The Court's reasoning in *Villamonte-Marquez* is not persuasive. In the area of search and seizure, the Court's primary objective has been to eliminate the exercise of standardless and unconstrained discretion on the part of law enforcement officers.⁴⁶ Nevertheless, for the first time in the history of the fourth amendment, the Court has permitted "completely random seizure and detention of persons"⁴⁷ on private property, with no corresponding limitation placed on the government official's discretion.⁴⁸

The Court's holding fails for three reasons. First, the statutory history of section 1581(a) belies the Court's interpretation of section 1581(a). Secondly, the difference in the nature of travel between a vessel and an automobile does not justify a deviation from the fourth amendment search and seizure standards usually afforded to the individual. Finally, the government's interest in promoting safety on American waterways by way of registration inspections does not outweigh the individual's right to be free from unreasonable searches and seizures.

The *Villamonte-Marquez* Court reasoned that, because the First Congress had enacted the Act of August 4, 1790, the predecessor to section 1581(a), the statute is not inconsistent with the fourth amendment and must, therefore, be constitutional.⁴⁹ The history of section 1581(a), however, refutes the Court's reliance on the intent of the First Congress. The statute cannot be presumed to be constitutional in the manner the Court has determined.

Aware of the colonists' hatred toward England's suspicionless vessel search statute,⁵⁰ the 1790 Congress enacted a

enforcement officer has reason to suspect the individual is engaged in illegal activity. *Carroll v. United States*, 267 U.S. 132, 154 (1925).

45. 103 S. Ct. at 2581-82.

46. *Delaware v. Prouse*, 440 U.S. 648, 661 (1979). See also *Camara v. Municipal Court*, 387 U.S. 523, 532 (1967) (complete discretion of police officers undermines the purpose of the fourth amendment).

47. 103 S. Ct. at 2585 (Brennan, J., dissenting). "Random" or "arbitrary" stops conducted by officials in the field are stops made in the absence of articulable facts which lead to a reasonable suspicion. These stops are not made pursuant to a systematic pattern of activity designed to reduce the possibility of singling out an individual for special treatment. Saltzburg, *The Reach of the Bill of Rights Beyond the Terra Firma of the United States*, 20 VA. J. INT'L L. 741, 750 n.49 (1980).

48. 103 S. Ct. at 2585.

49. See *supra* notes 27-33 and accompanying text.

50. In 1862, the British Parliament enacted a customs statute similar to section 1581(a). This statute authorized the examination of ships, vessels

less intrusive search statute which still ensured the collection of duties on cargo entering the United States.⁵¹ Section 31 of the 1790 Act,⁵² upon which the *Villamonte-Marquez* Court relied,⁵³ authorized customs officers to board a vessel in order to conduct a registration inspection; the statute, however, did not require any reasonable suspicion of a violation prior to the boarding.⁵⁴ Section 48 of the same Act⁵⁵ authorized customs officers to

and persons on board to find articles sought to be imported or exported without appropriate duties having been paid. Its purpose was to control colonial smuggling. As late as 1761, the colonists were being subjected to this arbitrary power and vigorously denounced its application. When the colonists gained their independence, they took the opportunity to provide against unreasonable searches and seizures in their declaration of rights. Stengel, *The Background of the Fourth Amendment to the Constitution of the United States*, 3 U. RICH. L. REV. 278, 293-95 (1969). See also N. LASSON, HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT 67-72 (1937) (portraying England's use of general writs of assistance in customs searches of vessels as a factor contributing to the American Revolution).

51. See Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51, 66-70 (1977). Alexander Hamilton, the first Secretary of the Treasury, realizing the extent of the discretionary power conferred upon customs officers under the Act of August 4, 1790, wrote:

[Customs officers] cannot be insensible that there are some prepossessions against it, that the charge with which they are entrusted is a delicate one, and that it is easy by mismanagement to produce serious and extensive clamour, disgust and alarm. They will keep in mind that their countrymen are free men, and, as such, are impatient of every thing that bears the least mark of domineering spirit. They will, therefore, refrain, with the most guarded circumspection, from whatever has the appearance of haughtiness, rudeness, or insult.

Id. at 70, quoting UNITED STATES COAST GUARD BOARDING MANUAL 1-1 (CG-253, 1972).

52. Section 31 provided:

That it shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue cutters . . . to go on board ships or vessels in any part of the United States, or within four leagues of the coast thereof, if bound for the United States, whether in or out of their respective districts, for the purpose of demanding the manifest aforesaid, and examining and searching the said ships or vessels; and the said officers respectively shall have free access to the cabin, and every other part of the ship or vessel.

Act of August 4, 1790, ch. 35, § 31, 1 Stat. 164. (emphasis added). (Current version at 19 U.S.C. § 1581(a) (1976)). For the text of section 1581(a), see *supra* note 6.

53. 103 S. Ct. at 2578 n.4.

54. See *supra* note 52.

55. Section 48 provided:

That every collector, naval officer and surveyor, or other person specifically appointed by either of them for that purpose, shall have full power and authority to enter any ship or vessel in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize and secure any such goods, wares, or merchandise.

Act of August 4, 1790, ch. 35, § 48, 1 Stat. 170 (emphasis added) (current version at 19 U.S.C. § 1581(a) (1976)). For the text of section 1581(a), see *supra* note 6.

board and search any vessel in which customs officers had "reason to suspect" that goods subject to duties were being concealed.⁵⁶

The application of section 31 or of section 48 depended upon the jurisdictional location of the vessel. Section 31 restricted suspicionless searches to vessels which were both⁵⁷ within 12 nautical miles of the coast and had the intent to be "bound for the United States."⁵⁸ Section 48, in contrast, authorized searches without regard to location or entry into the country.⁵⁹ According to the maxims of statutory construction,⁶⁰ sections 31 and 48 must be construed so as to be in harmony. Consequently, section 48, with its express requirement of reasonable suspicion, applied to vessels located away from the border area, whereas section 31, which had no corresponding requirement,

56. *Id.*

57. Section 31's phrase "within four leagues of the coast thereof, if bound for the United States", was deleted from section 1581(a). *See supra* note 6. One commentator suggests that this is because smugglers would always claim that they were not bound for the United States if they were searched outside of the United States' territorial waters but within four leagues of the coast. Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51, 68 (1977).

The *Villamonte-Marquez* Court noted that the phrase "if bound for the United States" qualifies only the phrase "within four leagues of the coast". 103 S. Ct. at 2578 n.4. In dissent, Justice Brennan argued that the phrase "if bound for the United States" qualified the phrases "within four leagues of the coast" and "in any part of the United States". This reasoning resulted in the interpretation that section 31 authorized customs officers to board and search vessels in the internal border area waters. The phrase "in any part of the United States" was intended to mean that customs officers could wait to search the ship when it reached port, subsequent to being spotted in the border area. Since the *Henry-Morgan II* was not spotted until it was passed the border area, the *Villamonte-Marquez* Court incorrectly relied on section 31. *Id.* at 2586 n.7 (Brennan, J., dissenting). For a discussion of the border area and its functional equivalent at sea, *see supra* note 35.

58. *See supra* note 52. *See also* Church v. Hubbart, 6 U.S. 187 (2 Cranch) (1804) (limited section 31's application to vessels within 12 miles of the coast); United States v. Williams, 617 F.2d 1063, 1098 n.10 (5th Cir. 1980) (Rubin, J., concurring) (discussing the application of section 31 and section 48).

59. *See supra* note 55 and accompanying text. *See also* Carroll v. United States, 267 U.S. 132, 151 (1925) (discussing the applicability of section 48); United States v. Williams, 617 F.2d 1063, 1098 n.10 (5th Cir. 1980) (Rubin, J., concurring).

60. Where a statute contains both general and specific provisions, the sections must be read to harmonize all provisions of the act. E. CRAWFORD, THE CONSTRUCTION OF STATUTES 265-66 (1940). *See also* F. McCAFFEREY, STATUTORY CONSTRUCTION 37 (1953); Morton v. Mancari, 417 U.S. 535, 551 (1974) (courts should not pick and choose among provisions).

Accordingly, section 31 was intended to be a border search statute, while section 48, which has no location requirement, was intended to apply to vessels located away from the border. *Villamonte-Marquez*, 103 S. Ct. at 2580 n.7 (Brennan, J., dissenting).

applied only to vessels located in the border area.⁶¹

The *Henry-Morgan II* was not searched in the border area.⁶² Because section 31 was intended to apply only to vessels located in the border area,⁶³ the Court was incorrect to rely on that section as a means of determining the intent of the First Congress for interpreting section 1581(a). The Court should have, instead, looked to section 48 of the Act, with its expressed reasonable suspicion standard, in order to determine the true intent of the First Congress concerning searches conducted away from the border.

Historically, the Supreme Court has interpreted the Act of August 4, 1790, and its progeny to require customs officers to have, at a minimum, a reasonable suspicion of illegal activity before conducting a search beyond the border area.⁶⁴ This standard was first established in *Carroll v. United States*.⁶⁵ The *Car-*

61. *Id.* (arguing that the phrase "in any part of the United States" meant that once customs officers spotted a vessel in the border area, they could follow the ship to its port and then search it). See *supra* note 57. See also *Carroll v. United States*, 267 U.S. 132, 151 (1925) (addressing the applicability of the reasonable suspicion standard found in progeny of section 48). In *Carroll*, the Supreme Court interpreted a lineal descendant of the Act of August 4, 1790, the Act of March 3, 1815, to require customs officers to have at least a reasonable suspicion of illegal activity before conducting a search within the United States but beyond the border area. *Id.* See also *United States v. Williams*, 617 F.2d 1063, 1098 n.10 (5th Cir. 1980) (Rubin, J., concurring). See generally Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51, 59-68 (1977) (discussing the history of customs searches).

62. 103 S. Ct. at 2585 n.6 (Brennan, J., dissenting). The *Henry-Morgan II* was stopped and searched eighteen miles inland from the coast and six miles away from the border area. *Id.* at 2577. For a discussion of the border and its functional equivalent at sea, see *supra* notes 34 and 35.

63. See *supra* notes 57 and 61 and accompanying text. Suspicionless border searches are distinguishable from searches pursuant to criminal investigations requiring probable cause for a number of reasons. First, because the individual crossing the border belongs to a class whose members frequently violate certain laws in the process of entering, the fact of his crossing is by itself some evidence that he may be violating some law. Second, because the individual crossing the border is on notice that certain types of searches are likely to be made, his expectation of privacy is lessened. Third, because personal searches at the border are administered to a class not deemed unworthy, such searches lack the quality of insult felt by an individual signaled out for search. Note, *Border Searches and the Fourth Amendment*, 77 YALE L.J. 1007, 1012 (1968).

64. *United States v. Lee*, 274 U.S. 559 (1927) (requiring probable cause to uphold a vessel search 12 miles beyond the borderline); *Maul v. United States*, 274 U.S. 501 (1927) (requiring probable cause to uphold a vessel search 34 miles from the borderline); *Carroll v. United States*, 267 U.S. 132 (1925) (requiring probable cause to uphold an automobile search 16 miles from the border).

65. 267 U.S. 132 (1925). The Supreme Court decided this case during the Prohibition era. *Id.* This reflects the view that the Court considered an individual's fourth amendment rights superior to the needs of law enforcement even in times of national unrest. Stetter, *Coast Guard Boardings of*

roll Court, cognizant of the broad language of the statute, recognized the need to require safeguards against arbitrary abuse by law enforcement officers.⁶⁶

The *Villamonte-Marquez* Court, however, discarded these safeguards, contending that the factual differences between vessels located in waters offering ready access to the open sea and automobiles on principal highways in the border area are sufficient to require different search standards.⁶⁷ The Court's main reason for discarding land-based precedents⁶⁸ is that no reasonable discretion-limiting feature, such as permanent checkpoints, would be practical in a maritime setting.⁶⁹ The boarding of the *Henry-Morgan II*, however, took place in a river channel, which must be transversed by all vessels moving between Lake Charles⁷⁰ and the open sea.⁷¹ The Channel bears a strong resemblance to a highway in which a Border Patrol could set up permanent check points.⁷²

In addition to the above-stated similarity, the practice of randomly stopping vessels in order to check their registration documents is analogous to the random investigatory stops of individuals in automobiles.⁷³ Both procedures require the vehicle operators to alter their course of travel and be subjected to a search. Additionally, private boats have been viewed as analogous to private homes,⁷⁴ thus being accorded greater fourth amendment protection.⁷⁵

Suspected Drug Smuggling Vessels on the High Seas and the Fourth Amendment: United States v. Streifel, 3 CARDOZO L. REV. 607, 621-22 (1982).

66. 267 U.S. at 150-51.

67. 103 S. Ct. at 2580.

68. See *supra* note 34.

69. 103 S. Ct. at 2580.

70. See *supra* note 12.

71. *Id.*

72. 103 S. Ct. at 2589 (Brennan, J., dissenting).

73. See *Delaware v. Prouse*, 440 U.S. 648 (1979) (random auto stop); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (roving border patrol); *Terry v. Ohio*, 392 U.S. 1 (1968) (stop and frisk); see generally 3 W. LAFAVE, SEARCH AND SEIZURE § 9.2(f), (g) (1978).

74. Several cases have held that the reasonable expectation of privacy may be stronger on a vessel. A vessel is far more likely to serve as the temporary residence of the owner or crew than an automobile. See *United States v. Cadena*, 588 F.2d 100, 101 (5th Cir. 1979) (boat equivalent to a home). But see *United States v. Whitaker*, 592 F.2d 826 (5th Cir.), (cars and boats accorded the same treatment), *cert. denied*, 444 U.S. 950 (1979).

75. The sanctity of a private dwelling is ordinarily afforded the most stringent fourth amendment protections. *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) (some individualized suspicion necessary to constitute permissible search and seizure); *Payton v. New York*, 445 U.S. 573 (1981) (physical entry into a home is the chief evil against which the fourth amendment is directed); *See v. City of Seattle*, 387 U.S. 541 (1967) (search of home presumptively unreasonable if conducted without a search warrant).

The fourth amendment is meant to protect people, not places.⁷⁶ Permitting searches which are not tested by appropriate factual grounds for suspicion, or by any objective standard which governs the exercise of discretion, "invites intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches."⁷⁷ The proscriptive purpose of the fourth amendment imposes a standard of reasonableness upon the exercise of discretion by law enforcement officials.⁷⁸ The *Villamonte-Marquez* Court, however, ignored this principle by sanctioning a discretionary search because it was conducted in connection with an administrative inspection.⁷⁹ The *Villamonte-Marquez* holding conflicts with the Court's previous warnings against standardless or unconstrained discretion.⁸⁰

The Supreme Court's recent decisions on administrative searches⁸¹ require that some standards be imposed as a means of safeguarding against unrestrained discretion by law enforcement officers in their selection of places to be searched.⁸² In *Delaware v. Prouse*,⁸³ for example, the Court was called upon to determine the constitutionality of a discretionary search based solely upon the power to conduct routine administrative inspections. The *Prouse* Court held that stopping and searching a vehicle in order to conduct an administrative search is "unreasonable" unless the officer has reason to suspect a viola-

76. *Katz v. United States*, 389 U.S. 347 (1967). The *Katz* court found that "what [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* at 351-52.

77. *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

78. *Camara v. Municipal Court*, 387 U.S. 523, 539 (1967).

79. 103 S. Ct. at 2582.

80. *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973). The Supreme Court has relaxed the fourth amendment standards for closely regulated industries. See *United States v. Biswell*, 406 U.S. 311 (1972) (approval of a warrantless inspection of a locked storeroom of a fire arms dealer during business hours); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (warrantless inspection of a federally licensed liquor dealer permitted by statute). *But see* *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (refusal to extend the relaxed standards to other government industries).

81. An administrative search is a routine inspection of a class of persons or businesses in order to secure compliance with various regulations or statutes. Rothstien, *Administrative Searches and the Fourth Amendment*, 2 SEARCH & SEIZURE L. REP. no. 9 (1975).

82. See *Delaware v. Prouse*, 440 U.S. 648 (1979) (requiring officers to have reasonable suspicion of noncompliance with automobile regulations before stopping and searching); *Camara v. Municipal Court*, 387 U.S. 523 (1967) (requiring warrant to search apartment for housing code violations); *See v. City of Seattle*, 387 U.S. 541 (1967) (requiring warrant to search commercial warehouse for fire code violations).

83. 440 U.S. 648 (1979).

tion of the law.⁸⁴ The *Prouse* Court also held that the requirement of reasonable suspicion provides the government with an adequate means of guarding the individual's interest without subjecting him to arbitrary intrusions.⁸⁵

The potential for abuse of discretion in conducting administrative searches may be especially acute in a maritime setting.⁸⁶ Customs officers perform dual roles as safety regulators and as general criminal law enforcers. The availability of authority to conduct an alleged safety inspection may invite an abuse of that power.⁸⁷ In fact, customs officers have openly admitted that they regularly use administrative search powers as a guise to conduct searches for contraband.⁸⁸ The Supreme Court has traditionally held that "pretext searches"⁸⁹ are unconstitutional abuses of the fourth amendment.⁹⁰ Nevertheless, the *Villamonte-Marquez* Court permitted customs officers to board and search the *Henry-Morgan II* for contraband under the guise of

84. *Id.* at 663.

85. *Id.* at 654.

86. *United States v. Whitmire*, 595 F.2d 1303, 1313 (5th Cir. 1979), *cert. denied*, 448 U.S. 906 (1980). *See also* Note, *supra* note 41, at 1049 (administrative search doctrine should not be applied to pleasure boats). *Cf.* *United States v. Cadena*, 585 F.2d 1252, 1263 n.23 (5th Cir. 1978) (no reason to perform safety and documentation checks on foreign vessels).

87. Note, *High on the Seas*, *supra* note 35, at 743.

88. One example of the manner in which law enforcement agents have abused their power to conduct suspicionless searches for contraband is "Operation Stopgap." Under "Operation Stopgap," the Customs Department combined efforts with the Coast Guard, the Drug Enforcement Agency, the State Department, the Immigration and Naturalization Service, and the armed forces to stop the importation of drugs. A coast guard officer, involved with the operation, described a typical boarding of a vessels as follows:

If we suspect a ship of carrying narcotics, and it doesn't stop we fire a warning shot with the biggest gun available to make the biggest splash. Then we board, usually with five men in a smaller boat, well armed. We say we are operating under the law . . . *It's a subterfuge.* We say we are running a check for compliance with U.S. law. Or we say: 'We are authorized under umpty-umpty-ump of the government something, and we board.'

Note, *High on the Seas*, *supra* note 35, at 738 n.70, *quoting* Boston Globe, Sept. 17, 1978, at 7 (Parade Magazine) (statement of Commander John Steeper, U.S.C.G., Head of General Law Enforcement Section) (emphasis added).

89. Pretext searches are those in which the searching officer pretends to be searching for one, legally sufficient, reason; but is, in fact, found to be searching for another, legally insufficient, reason. Burkoff, *Pretext Searches*, 9 SEARCH & SEIZURE L. REP. 25 (1982).

90. *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (administrative search should be limited to the scope necessary to fulfill the regulatory purpose); *Abel v. United States*, 362 U.S. 217 (1960) (restricted administrative search warrant to purpose for which issued). *See generally* 3 W. LAFAVE, SEARCH & SEIZURE, §§ 9.4(f), 10.8(b) (1978) (criticizing pretext searches).

an administrative search.⁹¹

The permissibility of this practice must be judged by balancing the individual's fourth amendment interests against the promotion of a legitimate government interest.⁹² The individual's reasonable expectation of privacy is protected by the fourth amendment.⁹³ The fourth amendment was designed to protect the individual from arbitrary intrusions, even at the cost of diminishing the effectiveness of law enforcement.⁹⁴ The prohibition against unreasonable searches and seizures does not disappear because the individual is on a vessel subject to government regulations.⁹⁵

The *Villamonte-Marquez* Court, on the contrary, held that the government's interest in assuring compliance with registration requirements outweighed the individual's fourth amendment interest.⁹⁶ The Court justified this conclusion by stating that the intrusion "involved only a brief detention where officials come aboard, visit public areas of the vessel, and inspect documents."⁹⁷ The actual language of section 1581(a), however, is much broader.

Section 1581(a) permits customs officers to "search the vessel" and "every part thereof", "and [to] use all force necessary to compel compliance."⁹⁸ Despite the Court's limited interpretation, the statute still addresses itself to an unrestrictive search. The individual's constitutional guarantee against unreasonable searches and seizures is an indispensable right;⁹⁹ it should not be ignored merely to assure compliance with vessel registration requirements, particularly when the statute involved would permit an unlimited search once it had been commenced.

If the Court's concern really is for maintaining compliance with vessel registration requirements, less intrusive alternatives

91. 103 S. Ct. at 2582.

92. *See supra* note 41.

93. *Katz v. United States*, 389 U.S. 347, 350 (1967). For a complete text of the fourth amendment, see *supra* note 2.

94. *See Almeida-Sanchez v. United States*, 413 U.S. 266, 273-75 (1973) (needs of law enforcement must give way to constitutional safeguards); *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting) (arbitrary searches violative of constitutional rights).

95. *Cf. Delaware v. Prouse*, 440 U.S. 648, 662-63 (1979) (constitutional protections do not disappear because automobile subject to state regulation); *United States v. Martinez-Fuerte*, 428 U.S. 543, 559 (1976) (routine checkpoints subject to post-stop judicial review). *But cf. Cady v. Donbrowski*, 413 U.S. 433, 441 (1973) (warrantless search of an automobile may be justified by public safety concerns).

96. 103 S. Ct. at 2582.

97. *Id.* at 2581.

98. *See supra* note 6 and accompanying text.

99. *See supra* note 94 and accompanying text.

are available. An effective means of protecting both the individual's interests and the government's interests would be to prohibit random searches at sea and, instead, permit vessel searches under a mandatory dockside inspection program.¹⁰⁰ Alternatively, customs officers could conduct inspections at sea alongside the vessel without boarding it.¹⁰¹ In addition, courts could exclude all evidence obtained during pretext registration inspections.¹⁰²

Obviously, the most effective method to assure compliance with vessel registration requirements would be to require that every vessel entering American waters be searched. Because there simply are not enough resources to implement such a policy,¹⁰³ however, the most practical solution would be to require customs officers to have at least a reasonable suspicion of non-compliance with registration requirements before stopping the vessel at sea. This standard, recognized internationally,¹⁰⁴ should be the "touchstone for judging searches at sea."¹⁰⁵ To require customs officers to have a reasonable suspicion before boarding a vessel would serve to protect the individual's interests with little cost to law enforcement.¹⁰⁶

100. See Comment, *The Fourth Amendment: Rusting on the High Seas?*, 34 MERCER L. REV. 1537, 1562 (1983) (dockside inspection program favorable alternative to pretext searches). Cf. *Villamonte-Marquez*, 103 S. Ct. at 2589 (Brennan, J., dissenting) (fixed checkpoints in territorial waters would satisfy the Government's needs); *Klutz v. Beam*, 374 F. Supp. 1129 (W.D. N.C. 1973) (suggesting periodic inspection program as opposed to broad state inspection statute).

101. 103 S. Ct. at 2590 (Brennan, J., dissenting).

102. Note, *High on the Seas*, *supra* note 35, at 745. Cf. *Amsterdam, Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 437-38 (1974) (applying exclusionary rule to evidence obtained during a stop and frisk arrest). *But see Terry v. Ohio*, 392 U.S. 1, 13 (1968) (exclusionary rule does not apply to legitimate police activity).

103. There are several practical difficulties in policing the seas: the extensive physical area covered by the ocean; the lack of exact territorial boundaries; and the impracticability of stopping every vessel at a set boundary. In addition, the intrusion upon the individual's privacy interest is minimal. *United States v. Freeman*, 579 F.2d 942, 946 (5th Cir. 1978). See also *United States v. Williams*, 617 F.2d 1063, 1087-88 (5th Cir. 1980) (enumerating other practical difficulties of policing the seas).

104. Article 22 of the Convention on the High Seas requires a reasonable suspicion of illegal activity before stopping and boarding a vessel. Convention on the High Seas, Sept. 30, 1962, art. XXII, Para. 1, 13 U.S.T. 2312, T.I.A.S. No. 5200. See also Convention for the Prevention of Smuggling of Intoxicating Liquors, May 22, 1924, United States-Great Britain, 43 Stat. 1761 art. II, para. 2 (requiring a reasonable suspicion before seizing a vessel).

105. *United States v. Williams*, 617 F.2d 1063, 1089 (5th Cir. 1980).

106. It would not be burdensome to require the law enforcement officers to have a reasonable suspicion before boarding a vessel because vessels carrying contraband tend to demonstrate articulable grounds for identifying violators. *United States v. Brignoni-Ponce*, 422 U.S. 873, 883 (1975). See, e.g., *United States v. D'Antignac*, 628 F.2d 428 (5th Cir. 1980) (erratic movements

In conclusion, the *Villamonte-Marquez* Court's rejection of the reasonable suspicion standard is not supported by the legislative history of section 1581(a) and the controlling case law. For the first time in the history of the fourth amendment, the Court has permitted random searches without providing safeguards against abuse. The *Villamonte-Marquez* Court was less than straightforward in its analysis; in actuality, it was seeking to curb drug smuggling, even at the expense of violating the fourth amendment. The Court's failure to define the scope and limitations of suspicionless searches made pursuant to section 1581(a) weakens the individual's protection against unreasonable searches and seizures. This constitutionally protected right has traditionally been superior to the interests of law enforcement. The choice between protecting the individual's fourth amendment rights and satisfying the needs of law enforcement is clear. Unfortunately, the *Villamonte-Marquez* Court chose to bury the individual's fourth amendment rights at sea.

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of shrimping vessel out of shrimping season), *cert. denied*, 450 U.S. 967 (1981); *United States v. Serrano*, 607 F.2d 1145 (5th Cir. 1979), (traveling at night without navigation lights); *United States v. Whitmire*, 595 F.2d 1303 (5th Cir. 1979) (speeding through a "no wake" zone), *cert. denied*, 445 U.S. 965 (1980).

