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### Something Seems Fishy - The Application of the Fourth Amendment to Coast Guard Searches of Vessels: United States v. Boynes Note

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Something Seems Fishy—The Application of the Fourth Amendment to Coast Guard Searches of Vessels: *United States v. Boynes*

On February 1, 1995, two United States Coast Guard officers patrolling the Red Hook Harbor in the U.S. Virgin Islands noticed a suspicious substance coming from the overboard bilge discharge fitting of the ferry boat MONA QUEEN.<sup>1</sup> The Coast Guard collected a sample of the substance as it flowed into the vessel's wake.<sup>2</sup> Later that morning, with the consent of Captain Clifford Boynes, the officers boarded the MONA QUEEN as part of its investigation of the pollution incident involving the vessel.<sup>3</sup> During that investigation, the officers discovered a large amount of oil on the deck of the engine room as well as a fuel tank leak in the engine room;<sup>4</sup> however, they were unable to take any samples from the engine room at that time.<sup>5</sup> As a result of these discoveries, the officers revoked the MONA QUEEN'S certificate of inspection and ordered Captain Boynes to bring the vessel to the Coast Guard Marine Safety Detachment Office that afternoon for further inspection.<sup>6</sup> That afternoon, Boynes arrived without the MONA QUEEN, explaining that she was undergoing repairs in Nanny Cay, a shipyard in the British Virgin Islands.<sup>7</sup> The officers instructed Boynes to cease all repairs and meet them at the MONA QUEEN the next morning so that they could take a sample of the substances in the engine room.<sup>8</sup> When the officers arrived at Nanny Cay the next morning, neither Captain Boynes nor any another agent for the MONA QUEEN was present.<sup>9</sup> Although no one consented to the search and no search warrant had been obtained, the officers boarded the MONA QUEEN and proceeded to gather evidence.<sup>10</sup>

Subsequently, Boynes and Interisland, the shipowner, were indicted in the United States District Court for the District of the

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1. *See* *United States v. Boynes*, 149 F.3d 208, 210 (3d Cir. 1998).
  2. *See id.*
  3. *See id.*
  4. *See id.*
  5. *See id.*
  6. *See id.*
  7. *See id.*
  8. *See id.*
  9. *See id.*
  10. *See id.*

Virgin Islands for knowingly discharging oil in violation of federal law.<sup>11</sup> Boynes and Interisland filed a motion to suppress the evidence gathered by the Coast Guard officers' warrantless search of the MONA QUEEN.<sup>12</sup> Considering the search to be in violation of the Fourth Amendment, the district court upheld the motion and ordered the evidence suppressed.<sup>13</sup> The district court conceded that there may have been probable cause to justify warrantless evidence gathering during the first search of the engine room; however, this probable cause dissipated when the officers terminated the search; therefore, the second warrantless search was not proper.<sup>14</sup> The United States Court of Appeals for the Third Circuit held that the search was valid and reversed the suppression order.<sup>15</sup> *United States v. Boynes*, 149 F.3d 208 (3d Cir. 1998).

The Fourth Amendment regulates governmental searches and seizures performed on U.S. citizens.<sup>16</sup> It 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.<sup>17</sup>

The Fourth Amendment was a reaction to the broad authority of the British Crown to search the businesses and homes of American Colonists for goods in violation of British tax law.<sup>18</sup> It was designed to protect the privacy of citizens against the compulsory production of incriminating evidence.<sup>19</sup>

As a general rule, the Fourth Amendment requires the government to procure a warrant in order to perform a search.<sup>20</sup> The warrant requirement provides a more reliable safeguard against improper searches than the hurried judgment of a law enforcement

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11. See 33 U.S.C. §§ 1319(c)(2)(A), 1321(b)(3) (1994).

12. See *Boynes*, 149 F.3d at 210. This was a joint motion that also contained a request that Boynes' statement at the Marine Safety Detachment Office be suppressed. See *id.* The district court denied that part of the motion. See *United States v. Varlack Ventures*, Nos. 1996-229, 1996-230, 1997 WL 530272, at \*11 (D.V.I. Aug. 20, 1997).

13. See *Varlack Ventures, Inc.*, 1997 WL at \*10 (holding that there were no exigent circumstances waiving the warrant requirement because the vessel had been stopped and taken out of service).

14. See *id.* at \*8.

15. See *Boynes*, 149 F.3d at 212.

16. See U.S. CONST. amend. IV.

17. *Id.*

18. See 68 AM. JUR. 2D *Searches and Seizures* § 1 (1993).

19. See *id.*

20. See *id.* § 60.

officer “engaged in the often competitive enterprise of ferreting out crime.”<sup>21</sup> There is an exception to the warrant requirement when both probable cause and exigent circumstances exist.<sup>22</sup> For example, courts have recognized an “automobile exception” to the warrant requirement when there is probable cause to search; exigent circumstances are inferred because the mobility of a vehicle makes obtaining a warrant impracticable.<sup>23</sup> Another reason for the exception is that the courts have found a diminished expectation of privacy in regards to automobiles.<sup>24</sup> The automobile exception has been held to apply to vessels.<sup>25</sup>

Much of the jurisprudence concerning searches of vessels has dealt with the authority of the Coast Guard and Customs to board vessels to perform safety and documentation inspections.<sup>26</sup> Courts have held that 14 U.S.C. § 89(a) authorizes the Coast Guard to perform routine documentation and safety checks aboard ships without any suspicion of wrongdoing and without a warrant.<sup>27</sup>

In *United States v. Williams*,<sup>28</sup> the United States Court of Appeals for the Fifth Circuit held that Coast Guard officers must have reasonable suspicion before they can search any “private” area of the hold of a vessel on the high seas or international waters.<sup>29</sup> *Williams* dealt with the Coast Guard’s search of a Panamanian vessel, the

21. *Johnson v. United States*, 333 U.S. 10, 14 (1948).

22. *See* 68 AM. JUR. 2D *Searches and Seizures* § 69 (1993).

23. *See* 79 C.J.S. *Searches and Seizures* § 84 (1995); *see also* *Carroll v. United States*, 267 U.S. 132, 151 (1925); *Chambers v. Maroney*, 399 U.S. 42, 48 (1970); *Cady v. Dombrowski*, 413 U.S. 433, 439-43 (1973).

24. *See* *United States v. Chadwick*, 433 U.S. 1, 12 (1976), *overruled on other grounds by* *California v. Acevedo*, 500 U.S. 565 (1982).

25. *See, e.g.,* *United States v. Weinrich*, 586 F.2d 481, 492 (5th Cir. 1978); *United States v. Bain*, 736 F.2d 1480, 1488 (11th Cir. 1984).

26. *See* 14 U.S.C. § 89(a) (1988). The statute provides in part:

The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship’s documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance.

*Id.*

27. *See, e.g.,* *United States v. Hilton*, 619 F.2d 127, 130-31, 1980 AMC 2865, 2868-69 (1st Cir. 1980), *cert. denied*, 449 U.S. 887 (1980); *United States v. Elkins*, 774 F.2d 530, 533 (1st Cir. 1985); *United States v. Hillstrom*, 533 F.2d 209, 210, 1976 AMC 1589, 1590 (5th Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977); *United States v. Odom*, 526 F.2d 339, 342, 1976 AMC 51, 54 (5th Cir. 1976).

28. 617 F.2d 1063, 1980 AMC 2550 (5th Cir. 1980).

29. *See id.* at 1087, 1980 AMC at 2579.

PHGH, one hundred miles east of the Yucatan Peninsula.<sup>30</sup> After surveying suspicious activity aboard the PHGH for several hours, the Coast Guard received permission from the Panamanian government to board and search the vessel.<sup>31</sup> When the Coast Guard boarded the PHGH, they attempted to locate her official registration number.<sup>32</sup> Not locating the number in the engine room, an officer opened the hatch to the cargo hold and discovered over twenty thousand pounds of marijuana.<sup>33</sup> The *Williams* court upheld the legitimacy of this search, holding that a vessel's cargo hold was a non-private area,<sup>34</sup> and that the Coast Guard was authorized to look into any non-private area of a foreign or American ship regardless of whether there was reasonable suspicion of criminal activity.<sup>35</sup> Nevertheless, the court stated that even assuming *arguendo* that the cargo hold was private, the search was justified on the grounds that the Coast Guard had reasonable suspicion that the PHGH was engaged in criminal behavior.<sup>36</sup>

The *Williams* court also held that these kinds of searches on the high seas should not require a search warrant because "the mobility and anonymity of persons aboard vessels at sea require that the government be able to exercise effective control when an opportunity is presented."<sup>37</sup> The court noted the administrative problems of securing a warrant from an American court to search a vessel on the high seas, far away from any courthouse or magistrate.<sup>38</sup> The *Williams* court criticized the notion that the government should be required to prove exigent circumstances for every warrantless search, as such a requirement would weaken the Coast Guard's ability to combat illicit activities such as drug smuggling.<sup>39</sup> The First Circuit has followed the *Williams* approach, recognizing that the Coast Guard can perform extended searches on the high seas without a warrant and without the need to demonstrate exigent circumstances.<sup>40</sup>

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30. *See id.* at 1070, 1980 AMC at 2552.

31. *See id.*, 1980 AMC at 2553.

32. *See id.* at 1070-71, 1980 AMC at 2553.

33. *See id.* at 1070, 1980 AMC at 2553.

34. *See id.* at 1084, 1086, 1980 AMC at 2575, 2577.

35. *See id.* at 1086, 1980 AMC at 2577-78.

36. *See id.* at 1085, 1980 AMC at 2575-76.

37. *Id.* at 1087, 1980 AMC at 2579 (quoting James S. Carmichael, *At Sea with the Fourth Amendment*, 32 U. MIAMI L. REV. 51 (1977)).

38. *See id.* at 1072-73, 1980 AMC at 2580.

39. *See id.* at 1087-88, 1980 AMC at 2580.

40. *See United States v. Elkins*, 774 F.2d 530, 533-34 (1st Cir. 1985) (holding that reasonable suspicion is needed for a search to extend beyond a standard section 89(a) document and safety inspection); *United States v. Hilton*, 619 F.2d 127, 133, 1980 AMC 2865, 2869-70 (1st

The Eleventh Circuit has held that probable cause is needed in order for Coast Guard officers to perform a "stem to stern" search.<sup>41</sup> For example, in *United States v. Lopez*,<sup>42</sup> Coast Guard officers sighted a ship, the C & E, travelling toward the Florida coast.<sup>43</sup> The officers noted that the vessel was riding low in the water as if she were carrying heavy cargo.<sup>44</sup> The officers subsequently boarded the vessel to perform a document and safety search.<sup>45</sup> In doing so, they noted several suspicious things about the vessel and her crew.<sup>46</sup> One of the two crewmembers identified himself, but could not spell his surname when asked.<sup>47</sup> Both crewmembers stated that they were resident aliens, but neither was able to produce a green card.<sup>48</sup> One officer noted three feet of unaccounted space while conducting the initial safety search of the vessel.<sup>49</sup> When he tapped the space, there was a "dead thud" as if it contained something.<sup>50</sup> The C & E was taken to the Islamorada Coast Guard base, where a search of the cargo hold revealed several bales of marijuana.<sup>51</sup> The United States Court of Appeals for the Eleventh Circuit found that the suspicious circumstances surrounding the ship and crew amounted to sufficient probable cause to justify a warrantless search.<sup>52</sup> The court, although requiring a higher standard than the *Williams* reasonable suspicion standard, made no mention of the need for exigent circumstances.<sup>53</sup>

In another Eleventh Circuit case, *United States v. Roy*,<sup>54</sup> Coast Guard officers detected the TRI-DIVE, a vessel suspected of carrying contraband, forty-five miles off the coast of Jamaica.<sup>55</sup> The officers

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Cir. 1980) (holding that no reasonable suspicion is needed for a standard section 89(a) document and safety search but once officers extend the search, probable cause is required).

41. See, e.g., *United States v. Roy*, 869 F.2d 1427, 1990 AMC 1518 (11th Cir. 1989); *United States v. Lopez*, 761 F.2d 632 (11th Cir. 1985); *United States v. Boza*, 741 F.2d 1382 (11th Cir. 1984); *United States v. Andreu*, 715 F.2d 1497 (11th Cir. 1983).

42. 761 F.2d 632 (11th Cir. 1985).

43. See *id.* at 633-34.

44. See *id.* at 634.

45. See *id.*

46. See *id.*

47. See *id.*

48. See *id.*

49. See *id.*

50. *Id.*

51. See *id.* at 633.

52. See *id.* at 637. The court defined probable cause as "whether there were facts and circumstances known to law enforcement officials which could have warranted their reasonable belief that a crime had been or was being committed." *Id.* at 636.

53. See *id.* (stating that even though the search did not take place on the high seas, probable cause was necessary to justify the warrantless search).

54. 869 F.2d 1427, 1990 AMC 1518 (11th Cir. 1989).

55. See *id.* at 1428, 1990 AMC at 1518.



boarded the vessel and searched for two hours but no contraband was found.<sup>56</sup> However, the captain and crewmen gave suspiciously conflicting statements as to how long they had been aboard the vessel.<sup>57</sup> The officers also noticed fresh caulking around the pontoon spaces, but the captain admitted to having caulked only around the windows.<sup>58</sup> After departing the vessel, as the officers were debriefing, they realized that they had overlooked a pontoon compartment.<sup>59</sup> They returned to the TRI-DIVE to inspect that compartment and found it contained bales of marijuana.<sup>60</sup> The *Roy* court held that the second search was not a valid continuation of a section 89(a) document and safety search (which carries no requirement of suspicion of wrongdoing), but was justified on grounds of probable cause.<sup>61</sup>

In *United States v. Cardona-Sandoval*,<sup>62</sup> the United States Court of Appeals for the First Circuit followed the Eleventh Circuit in requiring probable cause for a "stem to stern" search.<sup>63</sup> In that case, the Coast Guard encountered a suspicious-looking fishing vessel allegedly travelling from Colombia to St. Maarten.<sup>64</sup> The Coast Guard boarded and conducted a document and safety inspection but discovered no contraband.<sup>65</sup> However, the vessel suspiciously changed course after the Coast Guard officers left the vessel.<sup>66</sup> During their debriefing, the officers decided that they had not adequately searched the vessel, particularly the space around a newly constructed shower.<sup>67</sup> The Coast Guard returned and searched this space for five hours with a crowbar, but found no contraband.<sup>68</sup> Nevertheless, the Coast Guard, on the grounds that the vessel had suspiciously changed course and originated from a known drug country (Colombia) and as a result of deteriorating sea conditions, decided to take the vessel to the Roosevelt Roads Naval Base in

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56. *See id.*

57. *See id.*

58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.* at 1431, 1990 AMC at 1518.

62. 6 F.3d 15 (1st Cir. 1993).

63. *See id.* at 24 (citing *United States v. Lopez*, 761 F.2d 632, 636-37 (11th Cir. 1985); *United States v. Andreu*, 715 F.2d 1497 (11th Cir. 1983)).

64. *See id.* at 17-18. The Coast Guard asserted that its suspicions were raised due to the messy state of the boat, a newly constructed shower, walls that appeared to be thicker than normal, and a large water tank. *See id.* at 18.

65. *See id.* at 18.

66. *See id.* at 19.

67. *See id.*

68. *See id.*

Puerto Rico to continue its search dockside.<sup>69</sup> There, Navy divers and a narcotics detection dog searched the vessel to no avail.<sup>70</sup> The Coast Guard then cut through the vessel's deck with a chainsaw and tore down the ceiling and walls, but contraband was still not found.<sup>71</sup> The officers eventually found cocaine in two wooden beams that ran the length of the vessel.<sup>72</sup>

The *Cardona-Sandoval* court recognized that there was a diminished expectation of privacy aboard ships,<sup>73</sup> and that the Coast Guard generally has a broad license to conduct warrantless searches.<sup>74</sup> Nevertheless, the court noted that Coast Guard searches must comport with the Fourth Amendment.<sup>75</sup> The "relative intrusiveness of a search must be justified by a corresponding level of suspicion supported by specific facts gathered by investigating officials."<sup>76</sup> The court found that the first boarding was a standard section 89(a) document and safety search, requiring no suspicion of wrongdoing.<sup>77</sup> Further, the second boarding and drilling into the shower area was justified by the *Williams* standard of reasonable suspicion.<sup>78</sup> The court found however, that any "legally sustainable suspicion" dissolved with the Navy divers and detection dog search in Puerto Rico.<sup>79</sup> Thus, the "destructive stem to stern search" carried out in Puerto Rico was not founded upon probable cause and therefore improper.<sup>80</sup> Accordingly, the court ordered the suppression of the incriminating evidence.<sup>81</sup> Hence, even though the Coast Guard has been granted a broad license to conduct warrantless searches, *Cardona-Sandoval* points out that this license is not limitless.

There is a third line of cases that seems to require both probable cause and exigent circumstances in order for Coast Guard officers to

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69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.* During this time, the vessel's crewmembers and captain had been detained in a "large locked room [that] resembled a cage." *Id.* at 20.

73. *See id.* at 21 (citing *United States v. Green*, 671 F.2d 46, 53, 1983 AMC 1665, 1674 (1st Cir. 1982); *United States v. Hilton*, 619 F.2d 127, 131, 1980 AMC 2865, 2870 (1st Cir. 1980)).

74. *See id.* at 23.

75. *See id.*

76. *Id.*

77. *See id.* at 23-24 (discussing reasonable suspicion standard).

78. *See id.* at 24.

79. *Id.*

80. *Id.*

81. *See id.*

perform warrantless searches.<sup>82</sup> One early example of this approach is the United States Court of Appeals for the Fifth Circuit's decision *United States v. Cadena*.<sup>83</sup> *Cadena* involved a sting operation on the high seas where Drug Enforcement Administration (DEA) agents arranged an at-sea purchase of marijuana from Cadena, the master of the LABRADOR.<sup>84</sup> When a Coast Guard vessel intercepted the LABRADOR that evening, Cadena refused to heed all signals to heave to.<sup>85</sup> The vessel stopped and allowed officers to board only after the Coast Guard fired its machine guns and cannon.<sup>86</sup> The *Cadena* court ruled that the warrantless search was justified because the Coast Guard had probable cause to believe there was contraband on board the LABRADOR.<sup>87</sup> The *Cadena* court also noted that exigent circumstances were manifest in the defendant's attempt to flee from the Coast Guard.<sup>88</sup> The *Cadena* court, in dictum, noted that "[i]n general, warrantless searches are unlawful even if made with probable cause."<sup>89</sup> The court went on to say that "exceptional circumstances" will justify a warrantless search on the high seas.<sup>90</sup> That view, however, does not represent the current approach in the Fifth Circuit.<sup>91</sup> The *Williams* case specifically noted its disapproval with the *Cadena* court's emphasis on the need for a warrant and the need for the government to litigate the exigent circumstances issue.<sup>92</sup>

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82. See, e.g., *United States v. Lingenfelter*, 997 F.2d 632 (9th Cir. 1993); *United States v. Cadena*, 585 F.2d 1252, 1979 AMC 1934 (5th Cir. 1978), *overruled on other grounds by* *United States v. Michelena-Orovio*, 719 F.2d 738 (5th Cir. 1983); *United States v. Weinrich*, 586 F.2d 1481 (5th Cir. 1978); *United States v. Bain*, 736 F.2d 1480 (11th Cir. 1974).

83. 585 F.2d 1252, 1979 AMC 1934 (5th Cir. 1978).

84. See *id.* at 1255-56, 1979 AMC at 1934.

85. See *id.* at 1256, 1979 AMC at 1936.

86. See *id.*

87. See *id.* at 1263, 1979 AMC at 1947.

88. See *id.*

89. *Id.* at 1262, 1979 AMC at 1946. The *Cadena* court elected not to consider whether warrantless section 89(a) searches of foreign vessels on the high seas were lawful. See *id.* at 1263 n.23, 1979 AMC 1947 n.23.

90. *Id.* at 1262, 1979 AMC at 1946.

91. See *United States v. Williams*, 617 F.2d 1063, 1078 n.18, 1980 AMC 2550, 2565 n.18 (5th Cir. 1980) (disapproving of the *Cadena* language requiring warrants for maritime searches as a general rule).

92. See *id.* at 1078, 1980 AMC at 2564-65. The *Cadena* court's specific holding that probable cause and exigent circumstances will justify a search still stands. See, e.g., *United States v. Weinrich*, 586 F.2d 481, 492-93 (5th Cir. 1978). The *Weinrich* court held similarly to *Cadena* but contained no *dicta* requiring, as a general rule, probable cause and exigent circumstances for maritime searches. See *id.* at 492-94. The *Williams* court disagreed with the *Cadena* decision, but upheld the *Weinrich* decision. See *Williams*, 617 F.2d at 1078, 1980 AMC at 2564-65.

In *United States v. Bain*,<sup>93</sup> the United States Court of Appeals for the Eleventh Circuit held that a warrantless search of a docked vessel was justified by both probable cause and exigent circumstances.<sup>94</sup> In that case, U.S. Customs officers received a call from an informant concerning suspicious activity aboard the defendant's boat, the PRINCESS DEAN II.<sup>95</sup> The Customs officers boarded the vessel and requested to inspect the vessel's customs documents.<sup>96</sup> The officers considered it suspicious that there were no customs papers aboard the vessel.<sup>97</sup> One officer asked a crewman to bring the vessel's captain up on deck.<sup>98</sup> However, the captain did not appear for several minutes and the officer became concerned that the crewman and captain were destroying evidence or collecting weapons.<sup>99</sup> The officer went below deck and witnessed a member of the crew placing a package into her purse before coming up on deck.<sup>100</sup> The officer on deck looked in her purse and found methaqualone pills (quaaludes).<sup>101</sup> In addition, marijuana residue was found in the bathroom.<sup>102</sup> The Customs officers then searched the vessel, finding additional incriminating evidence of the defendant's narcotics smuggling operation.<sup>103</sup> The *Bain* court held that the Customs officials were not required to have a warrant or a suspicion of wrongdoing to board the ship and perform a document inspection.<sup>104</sup> The court further held that the officers' lawful observations aboard the ship created probable cause that criminal activity was occurring on the vessel.<sup>105</sup> Furthermore, the court found that exigent circumstances were present because the officers had "reasonable fears" that the defendants were destroying evidence or gathering weapons below the deck.<sup>106</sup> The *Bain* court also recognized that the mobility of the vessel contributed to the exigent

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93. *United States v. Bain*, 736 F.2d 1480, 1488 (11th Cir. 1984).

94. *See id.* at 1488.

95. *See id.* at 1482.

96. *See id.* at 1482-83.

97. *See id.* at 1483.

98. *See id.*

99. *See id.*

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.* at 1487-88 (citing *United States v. Villamonte-Marquez*, 462 U.S. 579, 580-81, 593 (1983)). Similar to the Coast Guard, the Customs Office has a federal statute that authorizes searches of vessels for identification purposes. *See* 19 U.S.C. § 1581(a) (1994). The *Villamonte-Marquez* Court held that section 1581(a) identification searches require no warrant or suspicion of wrongdoing. *See Villamonte-Marquez*, 462 U.S. at 580-81.

105. *See Bain*, 736 F.2d at 1488.

106. *See id.*

circumstances, even though the captain and crewmen had been rounded up and the vessel was docked.<sup>107</sup>

In *United States v. Lingenfelter*,<sup>108</sup> the defendant contested the DEA's warrantless search of a boat. The DEA had procured a warrant to search the defendant's warehouse, where they uncovered a supply of Thai marijuana.<sup>109</sup> Soon thereafter, DEA agents noticed the defendant aboard the drydocked ASMARA.<sup>110</sup> The vessel matched a drawing of a boat that the agents had found in the defendant's briefcase.<sup>111</sup> The agents questioned employees of the boatyard who nervously stated that the defendant had ordered that the ASMARA be placed into drydock and her waterline repainted.<sup>112</sup> This information led the agents to believe that the defendant was attempting to conceal that the ASMARA had arrived with a heavy load on board.<sup>113</sup> Additionally, the ASMARA was not registered with the Coast Guard and did not contain any registration information on her bow.<sup>114</sup> The agents boarded the vessel and found charts indicating that the ASMARA had recently returned from Thailand.<sup>115</sup> A few days later, the agents learned that the defendant had given instructions to put the boat back in the water.<sup>116</sup>

Wary that the defendant might flee, the DEA agents performed a thorough search of the vessel, uncovering incriminating documents and two kilograms of marijuana.<sup>117</sup> The United States Court of Appeals for the Ninth Circuit upheld the search because there was probable cause to believe that the vessel had transported contraband<sup>118</sup> as well as exigent circumstances.<sup>119</sup> Among the factors that contributed to a finding of probable cause were the repainting of the ASMARA's waterline, the nervousness of the boatyard employees, and the vessel's lack of a proper registration.<sup>120</sup> The court found exigent circumstances pursuant to the automobile exception coupled

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107. *See id.*

108. 997 F.2d 632 (9th Cir. 1993).

109. *See id.* at 635.

110. *See id.*

111. *See id.*

112. *See id.*

113. *See id.*

114. *See id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.* at 640 (analogizing to *United States v. Johnson*, 572 F.2d 227, 234 (9th Cir. 1978), to hold that absent a belief that a ship contains contraband, a search can be justified if there is probable cause to believe it has transported contraband).

119. *See id.* at 640.

120. *See id.*

with the information that the boat was to be placed back into the water.<sup>121</sup>

In the noted case, the main assertion of the government on appeal was that the Fourth Amendment would not apply to a search of a vessel in the British Virgin Islands, a foreign territory.<sup>122</sup> The *Boynes* court took note of the thorny issue of searches in foreign countries,<sup>123</sup> but sidestepped it by assuming that the Fourth Amendment would apply.<sup>124</sup> In applying the Fourth Amendment, the court found that both probable cause and exigent circumstances were present and justified the warrantless search.<sup>125</sup> The court defined probable cause “in terms of facts and circumstances ‘sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.’”<sup>126</sup> The court held that the officers possessed probable cause because they witnessed the discharge of a dark substance from the MONA QUEEN’S bilge outlet as well as the large amount of oil in her engine room.<sup>127</sup> There is an issue of whether it was necessary for the *Boynes* court to apply the higher Fourth Amendment standard when there is a clear trend in the courts to use the more lenient reasonable suspicion standard of section 89(a) for searches of vessels. As to the exigent circumstances issue, the *Boynes* court held that “[t]he seaworthiness of the MONA QUEEN gave rise to the risk of flight,” thus justifying a warrantless search of the vessel.<sup>128</sup> Generally, it can be said that a court will uphold a search unless it is truly outrageous.<sup>129</sup>

Courts that follow the *Williams* approach do not even mention the need for exigent circumstances and only require reasonable suspicion for a search of a vessel’s private areas. The *Lopez*, *Roy*, and *Cardona-Sandoval* courts required probable cause for “stem to stern” searches but did not mention exigent circumstances. With several

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121. *See id.*

122. *See* United States v. Boynes, 149 F.3d 208, 209 (3d Cir. 1998).

123. *See* Reid v. Covert, 354 U.S. 1 (1957) (holding that the Bill of Rights applies to U.S. citizens in foreign countries); *see also* United States v. Cadena, 585 F.2d 1252, 1262, 1979 AMC 1934, 1944 (5th Cir. 1978) (holding that the Fourth Amendment is applicable to both U.S. and foreign citizens once they become subject to criminal prosecution). *But see* United States v. Verdugo-Urquidez, 494 U.S. 259, 270 (1990) (holding that *Reid* only extended the protections of the Fifth and Sixth Amendments to U.S. citizens in foreign countries, although two of the six justices in the majority declined to join in with this reasoning completely).

124. *See* *Boynes*, 149 F.3d at 211.

125. *See id.* at 209.

126. *Id.* at 211 (quoting Gerstein v. Pugh, 420 U.S. 103, 111 (1975)).

127. *See id.* at 211-12.

128. *Id.* at 212.

129. *See, e.g.*, United States v. Cardona-Sandoval, 6 F.3d 15 (1st Cir. 1993).

courts ignoring the exigent circumstances exception to the warrant requirement, there is a question of whether the *Boynes* court even needed to analyze the issue. The *Boynes* court was wise to employ the exigent circumstances exception to the Fourth Amendment's warrant requirement because the cases that make no mention of exigent circumstances can often be distinguished due to the fact that they involved searches on the high seas.<sup>130</sup> Moreover, as the *Williams* court noted, there are jurisdictional problems with requiring a warrant for searches on the high seas.<sup>131</sup> Furthermore, the *Williams* court was concerned about hindering law enforcement on the high seas by requiring the government to litigate the issue of exigent circumstances.<sup>132</sup>

The line of cases that analyzed boat searches under a more rigid construction of the Fourth Amendment dealt with searches of docked boats.<sup>133</sup> Arguably, to justify a search of a docked boat, there should have to be more than probable cause or reasonable suspicion. Searches of docked boats do not carry the dangerous possibilities of searches upon the high seas. Therefore, it was appropriate for the *Boynes* court to analyze the search under classic Fourth Amendment grounds.

There is still the issue of whether the *Boynes* court's analysis was correct: were probable cause and exigent circumstances truly present? In this case, perhaps more so than the cases involving narcotics smuggling, there is a very strong argument that the officers had probable cause. The Coast Guard officers in this case had probable cause because they witnessed and collected a polluting fluid flowing from the defendant's boat.<sup>134</sup> On this issue, *Boynes* is most like *Cadena*, where the defendant had unloaded marijuana onto an undercover government vessel before the search.<sup>135</sup> Here, as in *Cadena*, the officers had direct evidence of the defendant's wrongdoing before the vessel was searched. In the other drug smuggling cases, all the officers had to establish probable cause or

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130. See *United States v. Cardona-Sandoval*, 6 F.3d 15, 17-18 (1st Cir. 1993); *United States v. Roy*, 869 F.2d 1427, 1428, 1990 AMC 1518 (11th Cir. 1989); *United States v. Lopez*, 761 F.2d 632, 633 (11th Cir. 1985); *United States v. Williams*, 617 F.2d 1063, 1070, 1980 AMC 2550, 2552 (5th Cir. 1980); *United States v. Elkins*, 774 F.2d 530, 532 (1st Cir. 1976).

131. See *Williams*, 617 F.2d at 1072-73, 1078 n.18, 1087-90, 1980 AMC at 2555-56, 2565 n.18, 2579-80 (discussing futility of requiring a warrant for searches on the high seas).

132. See *id.* at 1087-88, 1980 AMC at 2579-80 (disapproving of the rule requiring the government to litigate the issue of exigent circumstances for searches on the high seas).

133. See *United States v. Lingenfelter*, 997 F.2d 632, 635 (9th Cir. 1993); *United States v. Bain*, 736 F.2d 1480, 1482 (11th Cir. 1974).

134. See *Boynes*, 149 F.3d at 210.

135. See *Cadena*, 585 F.2d at 1255-1256, 1979 AMC at 1936.

reasonable suspicion were factors such as the appearance of the ship, the behavior of those on board the ship, whether the ship was on the DEA list of suspect ships, and other circumstantial factors. The presence of direct evidence in the hands of the Coast Guard officers in this case creates a compelling argument that a prudent man could believe that the defendants "had committed or [were] committing an offense."<sup>136</sup>

The *Boynes* court held that there were exigent circumstances simply because the docked MONA QUEEN was seaworthy, creating the risk of flight.<sup>137</sup> In the two Fifth Circuit cases that analyzed a search under the Fourth Amendment, the search occurred on the high seas, making exigent circumstances more plausible.<sup>138</sup> In *Lingenfelter*, the court found exigent circumstances because the officers had been told that the drydocked boat was about to be placed back on the water, enabling a possible getaway.<sup>139</sup> However, in *Bain*, the court found exigent circumstances for the search of a docked vessel because the officers were fearful that the defendants, while below deck, were destroying evidence or gathering weapons.<sup>140</sup> While the *Boynes* court was not incorrect in applying the automobile/vessel exception to the warrant requirement, it could have employed the facts of the case to make a stronger argument. For instance, the court could have mentioned the fact that the officers were afraid that the ship would be repaired and the evidence lost. Another factor would have been that Captain Boynes did not cooperate by meeting them at the boat. The court could have considered this lack of cooperation to mean that the captain and the ship's other agents could be trying to get rid of the evidence. Perhaps the court should have been less cursory with this issue.

In sum, the *Boynes* decision was correct. The *Boynes* court applied the higher Fourth Amendment standard, but its holding was not overly broad. The court did not hold that the requirements of probable cause and exigent circumstances would always be necessary for searches upon vessels. By considering both probable cause and exigent circumstances, the *Boynes* court employed a high standard in analyzing its search, but left open the question of whether lower standards could also be applied. The court prudently applied the

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136. *Boynes*, 149 F.3d at 211.

137. *See id.* at 212.

138. *See, e.g., Cadena*, 585 F.2d at 1256, 1979 AMC at 1936; *United States v. Weinrich*, 586 F.2d 481, 492 (5th Cir. 1979).

139. *See United States v. Lingenfelter*, 997 F.2d 632, 640-41 (9th Cir. 1993).

140. *See United States v. Bain*, 736 F.3d 1480, 1482 (11th Cir. 1974).



Fourth Amendment, sidestepping the tricky issues of whether the Fourth Amendment applies to vessels in foreign countries or whether section 89(a) justified the search. While the *Boynes* court did not resolve any of these muddled questions concerning maritime searches, it stayed on a straight doctrinal path in order to arrive at a sound holding.

Lucy Jewel