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Michael J. Devine

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NOTES


I. INTRODUCTION

The past decade witnessed a dramatic increase in drug smuggling from the sea. Law enforcement agencies countered by increasing efforts to stem the flow of illegal drugs into the United States. A significant volume of arrests for criminal drug trafficking resulted. The subsequent prosecution of offenders transferred a portion of the government's battle against drug smuggling into the courts. The six federal circuits having coastal territory within their jurisdictions have split over how broadly federal law enforcement authority may be exercised without violating the fourth amendment. Two statutes form the basis of federal maritime law enforcement authority: 19 U.S.C. § 1581(a) which allows customs agents to board and inspect vessels.


2. Id. at 103.

3. 3 W. LaFave, Search and Seizure § 10.5, at 130 & nn. 239-241 (Supp. 1984); Note, The Fourth Amendment: Rusting on the High Seas?, 34 Mercer L. Rev. 1537, 1538 (1983). The fourth amendment 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.

   U.S. CONST. amend. IV.

4. 19 U.S.C. § 1581(a) (1982). The statute 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 . . . and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.
within the customs waters\textsuperscript{6} and anywhere in the United States; and 14 U.S.C. § 89(a)\textsuperscript{7} which allows the United States Coast Guard to enforce United States laws aboard American vessels on the high seas as well as in American waters.\textsuperscript{8} Both statutes grant broad discretion and power to law enforcement agents in the field. The Supreme Court of the United States addressed the scope of this authority and the constitutionality of § 1581(a) in United States v. Villamonte-Marquez.\textsuperscript{9}

The Court faced the sole issue of whether the boarding of vessels for document and safety inspections\textsuperscript{10} in inland waters\textsuperscript{11} by customs

\textit{Id.}

5. \textit{Id.} 19 U.S.C. § 1401(a) (1982) defines “vessel” as “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.”

6. 19 U.S.C. § 1401(j) (1982) defines customs waters as a band of waters surrounding the United States 12 miles wide measured from the actual coast, or its equivalent baseline as defined in the statute, to an imaginary line 12 miles directly off the coast. \textit{Id.}

7. 14 U.S.C. § 89(a)(1982). The statute provides authority for the Coast Guard to: 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, [Coast Guard] 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, inspect, and search the vessel and use all necessary force to compel compliance.

\textit{Id.}


10. All United States vessels with propulsion machinery are required either to carry federal documentation or to have a state issued certificate of number. 46 U.S.C. §§ 1466-67, 1469(a) and 1470 (1982); 46 U.S.C.A. §§ 12101-309 (West Supp. 1983). \textit{See Villamonte-Marquez}, 103 S. Ct. at 2580-81. Generally, a document and safety inspection does not permit an overall search of a vessel. The inspection is limited to the cabin and area where documents are kept, the compartment where the beam number of the vessel can be verified, and the places where safety equipment is required. For a discussion of the permissible scope of document and safety inspections see 3 LAFAVE, \textit{supra} note 2, § 10.8(f), at 157-59. \textit{See also infra} notes 114-116 and accompanying text.

officers\textsuperscript{12} under authority of § 1581(a),\textsuperscript{13} without any suspicion of wrongdoing is "reasonable" under the fourth amendment.\textsuperscript{14} The Court reversed the decision of the Fifth Circuit Court of Appeals, holding that such boardings are permitted by the fourth amendment.\textsuperscript{15}

This note focuses first, on showing that the unique circumstances of the maritime environment, combined with the historical background of § 1581(a),\textsuperscript{16} justify the Court's decision in Villamonte-Marquez;\textsuperscript{17} and second, on considering its prospective ramifications. Although the fourth amendment generally requires both a finding of probable cause and a warrant for a search to be reasonable,\textsuperscript{18} a very limited number of narrow exceptions to these requirements exists.\textsuperscript{19} The warrantless and suspicionless boarding and inspection of a vessel in an inland waterway, however, does not fit precisely within any one of these previously identified "specifically established and well delineated exceptions"\textsuperscript{20} to the requirements for a warrant and probable cause.\textsuperscript{21} The Court in Villamonte-Marquez developed a separate mari-

\textsuperscript{12} Coast Guard officers are also "customs officers" under 19 U.S.C. § 1401(i) (1982) and 19 U.S.C. § 1709(b) (1982). Coast Guard officers, when enforcing a law, are deemed to be agents of the establishment responsible for administering that law. 14 U.S.C. § 89(b) (1982).

\textsuperscript{13} 19 U.S.C. § 1581(a) (1982).

\textsuperscript{14} Villamonte-Marquez, 103 S. Ct. at 2575, 2577 n.3 (1983). The Court, however, rejected a significant mootness question in order to reach the issue of the validity of 19 U.S.C. § 1581(a) (1982). Id. at 2575-76 n.2. See also id. at 2582-84 (Brennan, J., dissenting).

\textsuperscript{15} Villamonte-Marquez, 103 S. Ct. at 2582.


\textsuperscript{17} Villamonte-Marquez, 103 S. Ct. at 2578-79 & n.4. The Court's use of historical background is consistent with previous Supreme Court decisions giving great weight to statutes passed by the First Congress. See infra notes 47-53 and accompanying text.

\textsuperscript{18} U.S. CONST. amend. IV.


\textsuperscript{20} Katz v. United States, 389 U.S. 347, 357 (1967).

\textsuperscript{21} The lack of a precise fit into previous exceptions and the ruling of Delaware v. Prouse, 440 U.S. 648, 661-63 (1978), caused uncertainty and the split of opinion in the Courts of Appeal because after Prouse there were two possible results in the Villamonte-Marquez situation. Either the maritime environment factors would permit the broad discretion granted under the wording of 19 U.S.C. § 1581(a) (1982), or the land-based rationale of Prouse would prohibit suspicionless boardings and require that officers have at least a "reasonable suspicion" of a law violation or that the vessel came from the customs waters.
time exception\textsuperscript{22} which met the balancing test of fourth amendment reasonableness by a combination of the administrative inspection rationale\textsuperscript{23} and the border search doctrine,\textsuperscript{24} applied to the unique circumstances of the maritime environment.\textsuperscript{25} The combination of two usually distinct rationales for warrantless searches logically created a resulting whole greater than either of the parts: the maritime exception granted broader authority than either the administrative inspection rationale or the border search doctrine alone.

## II. FACTS

On March 6, 1980, customs officer Wilkins, accompanied by a Louisiana state police officer, boarded the sailboat HENRY MORGAN II under authority of 19 U.S.C. § 1581(a)\textsuperscript{27} to inspect the vessel’s documentation.\textsuperscript{28} The HENRY MORGAN II was anchored in the Calcasieu River Ship Channel, a north-south waterway connecting the Gulf of Mexico with Lake Charles, Louisiana.\textsuperscript{29} Customs Patrol Officer Wilkins had received some information provided by a reliable informant concerning possible drug smuggling by foreign vessels in the area.\textsuperscript{30} Although he suspected that the sailboat was foreign,\textsuperscript{31} he had neither probable cause nor a reasonable suspicion of a law violation before boarding the vessel.\textsuperscript{32} Once aboard, the officer smelled burning marijuana and observed bales of marijuana through an open hatch.\textsuperscript{33}

\textit{See} 3 LAFAVE \textit{supra} note 2, § 10.8(f), at 159-60. Additionally, the result of Villamonte-Marquez was not readily foreseeable. \textit{See id.} at 160-61.

22. 103 S. Ct. at 2582. \textit{See also} United States v. Whitmire, 595 F.2d 1303, 1306-07 (5th Cir. 1979) (recognizing effect of the distinct maritime environment), \textit{cert. denied} 448 U.S. 906 (1980).

23. \textit{See infra} notes 46-53 and accompanying text.

24. \textit{See infra} notes 70-73 and accompanying text.


29. Id.

30. United States v. Villamonte-Marquez, 652 F.2d 481, 482-83 (5th Cir. 1981), rev’d 103 S. Ct. 2573 (1983). The informant could neither describe the vessels, nor give their exact locations. \textit{Id.}

31. Officer Wilkens felt that the vessel was foreign because the person on board did not appear to understand English and the homeport “Basilea,” painted on the vessel, was not known to be an American port. The occupant subsequently produced foreign papers during the document inspection. \textit{Id.}


33. \textit{Id.}
Officer Wilkins then arrested the two men on board, respondents Villamonte-Marquez and Hamparian. A subsequent search revealed approximately 5,800 pounds of marijuana.\textsuperscript{34} A jury found the defendants guilty of various charges relating to possession and importation of marijuana with intent to distribute.\textsuperscript{35} The Court of Appeals for the Fifth Circuit reversed, finding the boarding of the HENRY MORGAN II “not reasonable under the Fourth Amendment” because the officers boarded without a reasonable suspicion of a law violation.\textsuperscript{36} The Supreme Court granted certiorari and, in a six to three decision, held that because of the special circumstances of the maritime environment and the lack of practical alternatives, the customs officers’ actions were reasonable and, therefore, did not violate the fourth amendment.\textsuperscript{37}

\section*{III. Analysis}

The administrative boarding of the vessel clearly fell within the authority of § 1581(a).\textsuperscript{38} The “plain view” doctrine justified the subsequent search.\textsuperscript{39} The only question remaining was whether the suspicionless boarding of a vessel in inland waters for a document and safety inspection met the criteria for an exception to the warrant and probable cause requirements of the fourth amendment.\textsuperscript{40}

\subsection*{A. The Administrative Inspection Rationale}

1. Historical Basis of § 1581(a)\textsuperscript{41}

Authority to search for stolen goods, contraband, or goods hidden to avoid paying customs duties has historically been considered in a different light than searches for private papers when the person, vehicle, or vessel is reasonably suspected of having crossed the border.\textsuperscript{42}

\textsuperscript{34} Id.
\textsuperscript{37} Villamonte-Marquez, 103 S. Ct. at 2582.
\textsuperscript{39} Villamonte-Marquez, 103 S. Ct. at 2577 n.3.
\textsuperscript{40} Id. at 2578.
Also, the search of moving vehicles or vessels for goods subject to forfeiture has been recognized as a valid exception to the requirement for a warrant because of exigent circumstances. Consequently, because of the inherent mobility of ships and the prospective haven of the open sea, no serious contention exists that warrants should be required in order to board vessels for a document inspection under authority of § 1581(a). To require a warrant under these circumstances would only result in a "formalistic exercise." Entirely different and more difficult issues, however, involve how far inland these boardings may be conducted and the validity of the authority to board without probable cause.

The customs officers' authority to conduct warrantless inspections and searches stems from the first customs statute. The First Congress enacted this statute only two months before it proposed the Bill of Rights containing the fourth amendment's prohibition against unreasonable searches and seizures. The statute's historical background, therefore, provides a strong indication that the First Congress did not consider such searches unreasonable. It then passed the direct lineal ancestor of § 1581(a) to enforce these customs laws. The language of the statute has remained largely unchanged. What was


44. Villamonte-Marquez, 103 S. Ct. at 2580 (1983).
46. United States v. Arra, 630 F.2d 836, 842 (1st Cir. 1980); United States v. Whitmire, 595 F.2d 1303, 1306-07 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980).
47. Act of July 31, 1789, ch. 5, 1 Stat. 29 (repealed 1790).
48. United States v. Ramsey, 431 U.S. 606, 616-17 (1977) (reaffirming Boyd v. United States, 116 U.S. 616, 623 (1886)). The Ramsey Court also reaffirmed the rule of Carroll v. United States, 267 U.S. 132, 149 (1925): "The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." Ramsey, 413 U.S. at 616-19 & n.14 (quoting Carroll, 267 U.S. at 149).
considered reasonable at the time the fourth amendment was adopted receives great weight in applying the fourth amendment today.\textsuperscript{51} The early cases concerning boarding and search of vessels support this historical construction by implication since the courts apparently assumed the constitutionality of the boarding: the controversy usually concerned whether the government had sufficient justification to seize\textsuperscript{52} the vessel and its cargo.\textsuperscript{53}

By enacting the first customs statute\textsuperscript{54} and its first modification,\textsuperscript{55} Congress established a system of documentation for all sizeable American vessels and also regulated their movement in trade and fishing.\textsuperscript{56} Congress revised and expanded the system in 1793:\textsuperscript{57} the same basic framework remains today.\textsuperscript{58} The regulations have become even more pervasive throughout the maritime industry for nearly all vessels of any type, whether used commercially or for pleasure.\textsuperscript{59} Recreational boats can also be used commercially: inspection of the documents provides the only viable method of distinguishing pleasure vessels from commercial.\textsuperscript{60} Additionally, pleasure vessels are usually not required to clear customs so the document inspection provides the only means of verifying that a vessel is not avoiding customs duties by posing as a


\textsuperscript{52} Although for fourth amendment analysis the boardings are "seizures," United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975), the use of the word "seizure" in the maritime context connotes a legal taking of the vessel rather than a brief detention, BLACK'S LAW DICTIONARY 1219 (5th ed. 1979), because of the frequent exercise of in rem jurisdiction in admiralty law. See also 19 U.S.C. § 1594 (1982). For purposes of this note, therefore, the boardings will be referred to either as an inspection or a detention.

\textsuperscript{53} See Maul v. United States, 274 U.S. 501, 503-04 (1927); id. at 524 (Brandeis, J., concurring) (expressing view that there was "no limitation upon the right of the sovereign to seize without a warrant vessels registered under its laws"); United States v. Lee, 274 U.S. 559, 563 (1927). For an excellent review of the early law of at sea searches and Coast Guard jurisdiction, see Carmichael, supra note 8, at 55-59 (1977).

\textsuperscript{54} Act of July 31, 1789, ch. 5, 1 Stat. 29 (repealed 1790).

\textsuperscript{55} Act of Sept. 1, 1789, ch. 11, § 22, 1 Stat. 60 (repealed 1792).

\textsuperscript{56} Id. American vessels over 20 tons were required to enroll and be licensed. Id. at 60-61. Vessels over 5 tons were required to be licensed. Id. at 61. Owners of domestic vessels were to paint the name and home port on the stern. Id. at 56.

\textsuperscript{57} Act of Feb. 18, 1793, ch. 8, 1 Stat. 305 (repealed 1799).

\textsuperscript{58} Brief of the United States at 17, Villamonte-Marquez, 103 S. Ct. at 2573.


\textsuperscript{60} Villamonte-Marquez, 103 S. Ct. at 2580-81 & nn. 5-6 (1983).
pleasure vessel. The term "maritime industry" would perhaps be more appropriately labeled "a narrow area of regulatory concern" rather than an "industry." The comprehensive nature of the federal documentation and safety regulations for American vessels, however, does meet the description of a pervasively regulated industry, providing the basis of the administrative inspection exception to the requirements for a warrant and probable cause.

2. Validity of Warrantless Administrative Inspections Based on Less than Probable Cause.

Beginning with Camara v. Municipal Court, the Supreme Court held that a lesser standard existed for administrative inspections in pervasively regulated industries than the "probable cause" standard used in criminal cases, provided that valid statutory authority for the inspections existed. When the legislature determined that a valid government interest justified the need for inspections in a pervasively regulated industry, it could then substitute reasonable legislative standards. Gradually but reluctantly the Court permitted inspections without a warrant. The Court also considered whether obtaining a warrant would provide any additional notice or protection to the person being inspected, and whether it would create an unnecessary burden on the inspecting officials in view of the "implied consent" of persons engaged in an industry subject to pervasive regulation.

In Marshall v. Barlow's, Inc., the Court rejected a warrantless inspection program based on the "implied consent" theory apparently because the program covered a large cross-section of many businesses rather than a narrowly defined area needing special requirements and regulations. The Court distinguished Barlow's in Donovan v. Dewey, which established the current standard for deciding the validity of a warrantless inspection under the administrative inspection

62. See infra text accompanying notes 71-73.
64. Id. at 534-35.
66. Camara, 387 U.S. at 532-33 (retaining warrant requirement).
70. Id. at 313-15.
rationale. The Court in *Dewey* outlined three criteria for a warrantless inspection without probable cause:

1. Congress must reasonably determine that warrantless searches are necessary to further a regulatory scheme;
2. the federal regulatory presence must be sufficiently comprehensive and defined, such that
3. persons engaged in that industry cannot help but be aware that their property will be subject to inspections undertaken for specific purposes.

The facts of *Villamonte-Marquez* met the criteria:

1. Congress determined that warrantless searches were necessary to further the regulatory scheme by enacting § 1581(a), and the circumstances of the maritime environment made this determination reasonable;
2. historically pervasive documentation and safety regulation for vessels exists in the maritime industry, such that
3. persons who operated vessels with American registration or in American waters reasonably knew that their documentation was subject to surprise inspection by the customs and the Coast Guard.

The defendants in *Villamonte-Marquez* and in other courts of appeals cases raised the argument that customs or Coast Guard officers boarded the vessel under a pretext of making the document and safety inspections when their actual purpose encompassed searching for illicit drugs, thereby tainting the boarding. This argument failed to recognize that customs enforcement cannot be readily separated from other documentation enforcement concerns without destroying the whole maritime documentation and regulatory system.

72. *Id.* at 598-606. See also 3 LAFAVE, supra note 2. § 10.2.
73. *See Dewey*, 452 U.S. at 600-03.
75. *See Villamonte-Marquez*, 103 S. Ct. at 2582.
77. 46 U.S.C.A. §§ 12101-122 (West Supp. 1983). *See C. CHAPMAN, PILOTING, SEAMANSHIP AND SMALL BOAT HANDLING* 34, 587, 598 (1971). Considering the extent of the regulations in the maritime area, a ship or boat owner "cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Dewey*, 452 U.S. at 600. The Mine Safety and Health Act required inspection of all mines, and defined the frequency of inspection, and the standards for inspections were set forth in Title 30 of the Code of Federal Regulations. *Id.* at 604-05.
79. *See* United States v. Warren, 578 F.2d 1058, 1065 (5th Cir. 1978) cert. denied.
more, following the pretext theory would produce the nonsensical result of subjecting only law-abiding persons to the intrusion of the inspection while granting greater rights to suspected offenders.\textsuperscript{80} If the criteria for conducting an inspection were valid when the officers have no suspicion at all, then their suspicion of a criminal offense should not invalidate the inspection because there was no greater intrusion. If suspicions exist, however tenuous, of a violation of the statutory scheme, there would be all the more reason to conduct the inspection.\textsuperscript{81} As long as the inspection meets the statutorily authorized criteria, the inspection fulfills the fourth amendment's "reasonableness" requirement.\textsuperscript{82} The crux of the matter revolves around whether the concerns of the statutory scheme encompass suspicion of drug smuggling. Since foreign vessels are required to meet documentation requirements under customs statutes,\textsuperscript{83} determination of a vessel's nationality falls within the ambit of the statutory scheme. Importing a cargo of contraband remains a commercial activity. \textit{Villamonte-Marquez} involved first, a vessel possibly carrying cargo without being licensed for commercial activity\textsuperscript{84} and second, its prospective avoidance of reporting to customs and paying customs duties. Both of these concerns are valid documentation considerations.

\textsuperscript{80} \textit{Villamonte-Marquez}, 103 S. Ct. at 2577 n.3.

\textsuperscript{81} In \textit{Villamonte-Marquez} the Supreme Court limited its decision to the narrow issue of whether a document inspection could be conducted without any suspicion of wrongdoing at all. \textit{Villamonte-Marquez}, 103 S. Ct at 2575 & n.2. Information from a reliable informant, however, created a suspicion that a vessel in the area was a foreign vessel attempting to smuggle illegal drugs. United States v. Villamonte-Marquez, 652 F.2d 481, 482-83 (1981), rev'd, 103 S. Ct. 2573 (1983). The regulatory scheme encompasses such concerns. \textit{See infra} notes 63a-63c and accompanying text. Foreign vessels may only transit United States waters with appropriate documentation, 46 U.S.C. §§ 104, 313-15 (1982), and are subject to inspection while in the customs waters. 19 U.S.C. § 1581(a) (1982). The customs laws require manifests and proper licenses for various activities and provide enforcement authority and penalty provisions. \textit{See generally} 19 U.S.C. §§ 1581-1626 (1982).

\textsuperscript{82} \textit{Villamonte-Marquez}, 103 S. Ct. at 2577 n.3; United States v. Arra, 630 F.2d 836, 846 (1st Cir. 1980); Scott v. United States, 436 U.S. 128, 135-39 (1978) (objective assessment of officers conduct appropriate for fourth amendment analysis). The courts of appeals have uniformly followed \textit{Scott} in rejecting the "pretext" argument. Reply Brief for the United States at 2, \textit{Villamonte-Marquez}, 103 S. Ct. 2573.

\textsuperscript{83} 19 U.S.C. § 1431 (1982). Some licensed yachts may not have to clear customs and carry a manifest but they are prohibited from carrying either merchandise or passengers for pay and their status may be verified by inspection of their documents. \textit{See} 46 U.S.C. § 104 (1982); 46 U.S.C.A. § 12109 (West Supp. 1983).

\textsuperscript{84} \textit{See} 19 U.S.C. §§ 1431-1460, 1584 (1982).
Furthermore, since illegal commercial or income producing activities enjoy no special status in federal tax law,\(^85\) logical consistency requires no advantage be accorded to importation of contraband.

Yet, because "no act of Congress can authorize a violation of the constitution,"\(^86\) room still exists to question the validity of the broad scope of authority given to field officers under the statute. The amount of discretion granted by the clear wording of § 1581(a)\(^87\) is greater than ever recognized under the administrative inspection rationale.\(^88\) Section 1581(a) authorized customs officers to search any vessel at any time. The Court's concern in Barlow's, that persons would be subject to the "unbridled discretion" of law enforcement officers,\(^89\) weighed against the legitimate need for document inspection in the maritime environment rendering the balancing test extremely close. Furthermore, the ruling of Delaware v. Prouse\(^90\) apparently favored tipping the scales against the validity of the document and safety inspections if the inspections were supported only by the administrative inspection rationale.\(^91\) Similar to Villamonte-Marquez in that pervasive regulation existed, Prouse differs because it involved the stop of a motor vehicle on land where roads are clearly defined, and because it did not

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85. James v. United States, 366 U.S. 213 (1961) (embezzled money considered as income). As in the area of federal income tax, the law should properly be amoral for vessel inspections and licensing. Whether a vessel is foreign or domestic has no real bearing on the authority to board and check a vessel's status; it need only be in the United States or within the customs waters. 19 U.S.C. § 1581(a) (1982). Congress requires American vessels to be properly licensed and foreign vessels to clear customs and have a manifest if carrying a cargo. See supra notes 62a-63b. Whether a vessel is used exclusively for pleasure or carrying a cargo, contraband or not, if it is traveling within the customs waters then it is subject to licensing requirements and customs inspections. 46 U.S.C.A. §§ 12101-309 (West Supp. 1983); 46 U.S.C. §§ 104, 313-15 (1982). See generally 19 U.S.C. §§ 1581-1626 (1982). Logically then, under the regulatory scheme, officers may determine, by document inspection, if what appears to be a pleasure vessel is carrying a cargo, and if so, whether the vessel is properly licensed to do so.

86. Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973). See also Villamonte-Marquez, 103 S. Ct. at 2578.


88. See, e.g., Dewey, 452 U.S. at 603-05 (forcible entry prohibited and discretion of government officials limited); Barlow's, 436 U.S. at 313-15 (OSHA inspection program rejected because of "unbridled discretion" given to field officers); United States v. Biswell, 406 U.S. 311, 316-17 (1972) (limited to specific commercial establishments in a narrowly defined industry); Colonade Catering Corp. v. United States, 397 U.S. 72, 75-77 (1970) (limited to specific commercial establishments in a narrowly defined industry); Camara, 387 U.S. at 532-33 (requiring warrants). See also Villamonte-Marquez, 103 S. Ct. at 2585 n.6 (Brennan, J., dissenting).

89. Barlow's, 436 U.S. at 323.


91. Id. at 661-63. See also 3 LAFAVE, supra note 2, § 10.8(f) at 160-61.
occur near the border.\textsuperscript{92}

\section*{B. \textit{Border Search Doctrine}}

The applicability of the border search doctrine to \textit{Villamonte-Marquez} was also at issue because of the proximity of the Calcasieu ship channel to the border,\textsuperscript{93} and because of the broad language of § 1581(a), which authorized inspections not only at the ocean border, but also nine miles beyond the border and anywhere within the United States.\textsuperscript{94} The border search doctrine states that at the border or its functional equivalent,\textsuperscript{95} law enforcement officers may detain and search without either probable cause or a "reasonable suspicion" of a law violation.\textsuperscript{96}

Border searches are not justified by exigent circumstances, but instead are "reasonable simply by virtue of the fact that they occur at the border."\textsuperscript{97} In land-based cases, the doctrine is strictly limited to the border or its functional equivalent.\textsuperscript{98} The Supreme Court has found warrantless stops by a checkpoint operation on less than probable cause valid if held for a sufficiently limited and legitimate purpose.\textsuperscript{99} Despite the broad authority of § 1581(a)\textsuperscript{100} the fourth amendment would invalidate a comparable intrusion if applied to a vehicle stopped on land away from the border.\textsuperscript{101}

In \textit{Villamonte-Marquez}, the vessel was not located at the border. It was anchored in the ship channel, not at the port of Lake Charles, the designated customs port of entry which might be considered a

\begin{itemize}
  \item \textsuperscript{92} \textit{Villamonte-Marquez}, 103 S. Ct. at 2579-80.
  \item \textsuperscript{93} 19 U.S.C. § 1581(a) (1982).
  \item \textsuperscript{94} \textit{Id.} For the text of 19 U.S.C. § 1581(a) (1982) and a discussion of the included waters see \textit{supra} notes 3, 5, and 7. The end of the territorial sea is the actual border and the customs waters extend nine miles beyond that line. United States v. Whitmire, 595 F.2d 1303, 1307 (5th Cir. 1979), \textit{cert. denied}, 448 U.S. 906 (1980).
  \item \textsuperscript{95} Almeida-Sanchez v. United States, 413 U.S. 266, 272-73 (1973). A functional equivalent of the border can be, for example, an airport receiving international nonstop flights, or an established checkpoint station near the border at a point marking the confluence of two roads extending from the border. \textit{Id} at 273.
  \item \textsuperscript{96} \textit{Id.} United States v. Ramsey, 431 U.S. 606, 618-22 (1977).
  \item \textsuperscript{97} United States v. Ramsey, 431 U.S. 606, 616 (1977).
  \item \textsuperscript{98} United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975); Almeida-Sanchez v. United States, 413 U.S. 266, 273-75 (1973).
  \item \textsuperscript{99} United States v. Martinez-Fuerte, 428 U.S. 543, 556-62 (1976); \textit{See also} Delaware v. Prouse, 440 U.S. 648, 656-57 (1979) (recognizing the validity of warrantless stops at a checkpoint operation).
  \item \textsuperscript{100} 19 U.S.C. § 1581(a) (1982).
  \item \textsuperscript{101} \textit{See} Delaware v. Prouse, 440 U.S. at 658-63; \textit{Villamonte-Marquez}, 103 S. Ct. at 2579.
\end{itemize}
functional equivalent of the border. The ocean border consists of an imaginary line on the sea, and ships are highly mobile and capable of crossing rapidly at any point. Similar factors in a land-based setting, however, have been held insufficient to justify general application of the border search doctrine away from the border. The Villamonte-Marquez maritime exception, therefore, does not fit clearly within any previous line of cases holding warrantless searches to be valid without probable cause. Since a fourth amendment intrusion existed without clear precedent to follow, the balancing test used by the Court in Prouse must be applied to the individual circumstances to determine the constitutionality of the government intrusion.

C. Determining the "Reasonableness" of Random Boardings for Document and Safety Inspections.

The Villamonte-Marquez maritime exception fits best into the administrative inspection rationale, yet Prouse, an analogous land-based case, held similar governmental action unconstitutional. Prouse held that when government agents act within an exception to the warrant requirement, the fourth amendment issue rests on balancing the intrusion on the individual's fourth amendment rights against legitimate government interests. Only the unique circumstances of the maritime environment coupled with the sailboat's proximity to the literally liquid ocean border distinguish Villamonte-Marquez from Prouse. Accordingly, the best way to analyze the

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102. 103 S. Ct. at 2576, 2579 (1983).
103. United States v. Freeman, 579 F.2d 942, 946 (5th Cir. 1978).
106. The discretion granted in Villamonte-Marquez is greater than that recognized in any previous administrative inspection case, including Donovan v. Dewey, 452 U.S. 594. See supra note 64. In land-based cases, the border search doctrine does not apply away from the border. Delaware v. Prouse, 440 U.S. at 661-63. Also the "stop and frisk" doctrine, Terry v. Ohio, 392 U.S. 1 (1968), does not normally apply since usually no comparable danger of concealed weapons to threaten the apprehending ship exists, absent a war or other highly unusual circumstances.
108. See supra notes 73-77 and accompanying text.
109. Prouse, 440 U.S. at 663.
110. The boarding of vessels in most circumstances will be within a valid exception to the requirement for a warrant. See supra notes 43-44 and accompanying text.
111. Prouse, 440 U.S. at 654.
112. See Villamonte-Marquez, 103 S. Ct. at 2582; United States v. Whitmire, 595 F.2d 1303, 1307 (5th Cir. 1979) (the true border is an imaginary line three miles offshore), cert. denied, 448 U.S. 906 (1980).
Villamonte-Marquez holding is by comparing it to the Prouse decision to see whether factors exist in the maritime context which outweigh the fourth amendment concerns expressed by the Court in Prouse. Such an analysis reveals that the only concerns which invalidated the random stop of the automobile in Prouse were the availability of practical and effective alternatives to the action taken, the expectation of privacy that an individual has in his automobile, and the inapplicability of the border search doctrine.\(^\text{113}\)

1. The Lack of Practical Alternatives

Along the coast of the United States, at the edge of the territorial sea, the border consists of an imaginary line which cannot be marked by a physical barrier. The short twelve mile band of ocean over which the United States exercises general customs enforcement jurisdiction can be traversed rapidly anywhere along thousands of miles of coastline.\(^\text{114}\) Additionally, outward appearance rarely alone indicates whether a vessel came from a foreign port or the high seas, or if it had contact with a foreign vessel.\(^\text{115}\) So it would be extremely difficult, if not impossible, to stop and inspect vessels at the border,\(^\text{116}\) and no place exists that could practically serve as a functional equivalent of the border. While vessels eventually may enter inland waters where traffic could be funneled through a checkpoint, such a system would be ineffective.\(^\text{117}\) The increased danger of collisions and groundings to the majority of law-abiding ships and crews would also make such a practice foolish and costly as well as ineffective.\(^\text{118}\)

\(^{113}\) Villamonte-Marquez, 103 S. Ct. at 2580; Prouse, 440 U.S. at 655-63.

\(^{114}\) See United States v. Whitmire, 595 F.2d 1303, 1314-15 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980); United States v. Freeman, 579 F.2d 942, 946 (5th Cir. 1978).

\(^{115}\) Villamonte-Marquez, 103 S. Ct. at 2581 n.6 (1983); United States v. Whitmire, 595 F.2d 1303, 1314-15 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980).

\(^{116}\) See supra notes 103-04 and accompanying text.

\(^{117}\) See supra notes 103-04 and accompanying text.

\(^{118}\) A "roadblock" in a major ship channel would be somewhat hazardous at the best of times, and highly dangerous with heavy traffic and large ships. See A. Knight, MODERN SEAMANSHIP § 9.20 (15 ed. 1977). Large ships are difficult to stop and, in restricted waters, must stay within a narrow channel or run aground. Id. Even small vessels are constantly affected by wind, tide and current and cannot merely park by the side of the
Distinctions based either on the nationality of a vessel or its use would be impractical. Visual observation alone rarely provides enough information to determine either a vessel's nationality or its operational status. The United States has valid interests both in regulating the movement of foreign vessels in United States waters and in enforcing the customs laws. Identification of vessels is necessary to achieve those objectives. Inspection of vessels at the dock does not present a viable alternative either. Ships with illegal cargoes may offload smuggled goods or contraband long before tying up at a pier, and smaller vessels often remove their safety equipment when moored to prevent theft.

The avoidance of customs laws, albeit of great importance, is only one of the underlying concerns in the maritime regulatory scheme. The scheme also encompasses vessel safety, traffic management, and pollution control which must be enforced within all United States waters, not just at the border. Boardings to enforce these regulations are necessary because vessels have no license plates, and ships' markings do not provide the majority of the information contained in the ship's documents. Nor is all safety equipment likely to be visible from another ship. A license plate system, although theoretically possible, would be expensive to initiate and maintain, and would discourage.

road in safety. C. CHAPMAN, supra note 77 at 402-05. Most vessels would have to anchor if there were any delay at all, and this operation itself is time consuming and not without danger for larger vessels. See KNIGHT at §§ 5.8-5.10; CHAPMAN at 89-112. The combination of danger and ineffectiveness make such a practice impractical. To attempt a roadblock in the territorial sea or the customs waters would have similar problems. It would interfere with the normal flow of traffic, increasing the danger of collision, could be easily avoided, see supra note 89, and, to people aboard a ship, would look no different from a random stop. See infra notes 132-34 and accompanying text.

119. See Villamonte-Marquez, 103 S. Ct. at 2580.
120. Id. at 2580-81. See also United States v. Whitmire, 595 F.2d 1303, 1314 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980). U.S. CONST. art. I, § 8, cl. 3 ("To regulate Commerce with foreign Nations. . .") is the source of Congress's power to enforce the customs laws and expresses a legitimate interest of the government.
121. United States v. Piner, 608 F.2d 358, 359-60 (9th Cir. 1979). See also Villamonte-Marquez, 103 S. Ct. at 2580.
122. Villamonte-Marquez, 103 S. Ct. at 2581. See also supra notes 49 & 54-59 and accompanying text.
123. Villamonte-Marquez, 103 S. Ct. at 2580, 2581 & n.6. Depending on whether a vessel is federallly documented, or state documented, or has no propulsion machinery, it may have a federal beam number, an exterior state issued number, or no markings at all. 46 U.S.C.A. §§ 12101-12309 (West Supp. 1983). Villamonte-Marquez is therefore distinguishable from Prouse, 440 U.S. 648, because there is no license plate system available to provide easy access to the necessary information. Villamonte-Marquez, 103 S. Ct. at 2580. Vessels' exterior markings do not provide sufficient data. Nor are ships subject to an international marking system as are airplanes. Instead, each country specifies its own marking requirements. Id.
age foreign commerce. Additionally, a license plate system could not realistically be enforced even against United States vessels because they may stay away from American ports for years.

Formulating an effective system of regulation properly rests with the legislature. Congress enacted the current system authorizing boardings for document and safety inspection. As long as the legislature chooses a constitutional method, the availability of less intrusive means does not make a search or inspection unreasonable.\textsuperscript{124} Additionally, in considering the validity of a fourth amendment intrusion, the Court has a duty to be equally concerned with upholding proper constitutional actions of law enforcement officers as well as protecting an individual's rights.\textsuperscript{125} Villamonte-Marquez, then, is distinguishable from Prouse: The lack of practical alternatives to boardings, because of the maritime environment, properly received strong weight in the Court's decision.\textsuperscript{126}

2. The Diminished Expectation of Privacy in a Vessel

The individual's reasonable expectation of privacy provides one key element in balancing an individual's fourth amendment interest against the amount of government intrusion permitted.\textsuperscript{127} In Villamonte-Marquez, the balance turned on three determinations: first, whether vessels were inherently different in their use so as to have a lesser privacy interest than family cars; second, whether there was an unreasonable intrusion into a protected area, considering what areas

\begin{itemize}
  \item \textsuperscript{124} Cady v. Dombrowski, 413 U.S. 433, 447 (1973). Not since the Lochner era, Lochner v. New York, 198 U.S. 45 (1905), has the Supreme Court engaged in substantive due process analysis in considering economic choices of the legislature. See G. GUNTHER, CONSTITUTIONAL LAW, 517-18, 533-44 (10th ed. 1980). Substantive due process will be applied only where a Constitutionally protected individual right has been affected. See id. at 541-44. Here, although the fourth amendment right to be free from unreasonable searches is implicated, protection from a valid administrative inspection extends only to places in which a person has both a subjective and an objectively reasonable expectation of privacy. Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). In a ship, only the private areas of the crew's quarters would qualify. See infra note 139. The government has a legitimate interest in inspecting the documents and safety equipment. Villamonte-Marquez, 103 S. Ct. at 2581. It would make little sense to expend great amounts for little, if any, improvement in enforcement of the system. Many vessels rarely navigate in U.S. waters and Congress has not chosen to enact a license plate system. Id. at 2581 & n. 5. Furthermore, the United States could not require foreign vessels to comply with a license plate system since by international agreement each country takes responsibility for regulating its own vessels. See Convention on the High Seas, supra note 8, at Art. 5.
  \item \textsuperscript{125} United States v. Ventresca, 380 U.S. 102, 111-12 (1965).
  \item \textsuperscript{126} Villamonte-Marquez, 103 S. Ct. at 2580-82.
  \item \textsuperscript{127} Katz v. United States, 389 U.S. 347, 351-52 (1967) (One's reasonable expectation of privacy is the "touchstone" of fourth amendment analysis). See also id. at 361 (Harlan, J., concurring).
\end{itemize}
may be viewed during a document and safety inspection; and third, whether the legitimate objectives of the government to conduct the boardings were sufficient to justify the resulting intrusion.\textsuperscript{128}

As to the first factor, people do not normally hop in the family boat to go to the store. People do not generally use even small pleasure boats in the same way they use family cars. Ships, therefore, should not be viewed in the same light as automobiles. The courts have found the automobile to have special status as a pervasive and necessary mode of travel.\textsuperscript{129} Unlike the situation in \textit{Prouse}, the boarding of ships for document inspections does not constitute a new encroachment by the government. Ships and boats have been subject to document and inspection requirements at least since 1790.\textsuperscript{130} Logically, therefore, the expectation of privacy in a vessel is less than that in the family car.\textsuperscript{131} Another distinction from \textit{Prouse} exists. The approach of Coast Guard vessels does not generate the fear produced in the average person unexpectedly stopped or approached by the police. Recreational boaters and persons familiar with the sea customarily expect and rely on aid from Coast Guard vessels in facing the hazards of maritime travel.\textsuperscript{132} Customs vessels do not have the same lifesaving mission as the Coast Guard;\textsuperscript{133} but the "fear" factor does not rise to the same level in the maritime environment. Ships are handled differently, moving as they do in waters which are less restricted than city streets. An approaching customs vessel would look the same whether its officers intended to board a vessel or merely to continue toward its destination. Furthermore, because no fixed roadways exist at sea, a

\textsuperscript{128} \textit{Villamonte-Marquez}, 103 S. Ct. at 2580-82. See also \textit{Prouse}, 440 U.S. at 656-63.

\textsuperscript{129} \textit{Prouse}, 440 U.S. at 662-63; State v. Casal, 410 So.2d 152, 155 (Fla. 1982).

\textsuperscript{130} See supra notes 35, 40-45 and accompanying text.

\textsuperscript{131} See \textit{United States v. Whitmire}, 595 F.2d 1303, 1312 (5th Cir. 1979), \textit{cert. denied}, 448 U.S. 906 (1980); State v. Casal, 410 So.2d 152, 154-55 (Fla. 1982). The sailor's expectation of privacy is discussed \textit{infra} notes 136-37 and accompanying text. The special status accorded a motor vehicle because of its pervasive use is noted in \textit{Prouse}, 440 U.S. at 662-63.

\textsuperscript{132} Search and rescue at sea is one of the primary duties of the United States Coast Guard. 14 U.S.C. § 2 (1982). \textit{Compare} \textit{United States v. Whitmire}, 595 F.2d 1303, 1313 (5th Cir. 1979), \textit{cert. denied}, 448 U.S. 906 (1980) (Coast Guard vessel a welcome sight as distinguished from the fear produced by police officers on land) \textit{with Prouse}, 440 U.S. at 657 (police approach results in fear), and \textit{U.S. v. Ortiz}, 422 U.S. 891, 894 (1975) (approach of police causes fear). Additionally, officers in charge of all vessels at sea, including customs vessels, are required by law to render aid at sea, and failure to do so constitutes a felony with a possible maximum sentence of two years imprisonment and a $1000 fine. 46 U.S.C.A. § 2304 (West Supp. 1983).

\textsuperscript{133} 19 U.S.C. § 1455 (1982) (customs officers' duties do not include search and rescue); 14 U.S.C. § 2 (1982) (search and rescue at sea is a primary duty of the United States Coast Guard).
"roadblock" located offshore would look no different than a random stop to persons aboard a ship.\textsuperscript{134}

The second factor concerns whether specific parts of the ship should be protected because individuals possess a legitimate expectation of privacy in private areas.\textsuperscript{135} Although an argument exists that a sailor's ship is his home and that he is entitled to an expectation of privacy in the whole vessel,\textsuperscript{136} the more realistic view limits the interest to the private areas and living quarters of the vessel.\textsuperscript{137} Since the justification for the inspection is the enforcement of document and safety regulations, its scope should be limited to viewing those areas that either contain documents and safety equipment or that must be viewed to verify the validity of the ship's documents.\textsuperscript{138} The crew of a ship generally has no privacy interest in the cargo hold;\textsuperscript{139} the owner of the vessel has none in those areas which must be viewed to conduct a document and safety inspection, such as the cabin where documents

\begin{itemize}
\item \textsuperscript{134} See United States v. Watson, 678 F.2d 765, 768 (9th Cir. 1982), cert. denied, 103 S. Ct. 451 (1982).
\item \textsuperscript{135} See supra note 127. For a discussion of the extent of a document and safety inspection see supra note 11.
\item \textsuperscript{136} United States v. Cadena, 588 F.2d 100, 101 (5th Cir. 1979).
\item \textsuperscript{137} United States v. Whitmire, 595 F.2d 1303, 1312-13 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980); United States v. Williams, 589 F.2d 210, 214 (5th Cir. 1979). But see 3 LAFAVE supra note 3, § 10.8(f) at 164-65.
\item \textsuperscript{138} United States v. Warren, 578 F.2d 1058 (5th Cir. 1978), cert. denied, 446 U.S. 956 (1981) further addressed the Coast Guard's authority to conduct warrantless inspections without probable cause on the high seas. Although the issue of the amount of discretion authorized by 14 U.S.C. § 89(a) (1982) is beyond the scope of this note, at least the same amount of discretion would logically be permissible, based on the United States' obligation to the rest of the world to enforce international standards of safety and laws aboard American vessels on the high seas. See infra note 156 and accompanying text. The limitation imposed by the requirement to meet the standard substituted by the regulatory scheme would still exist. Stopping a tanker proceeding at 25 knots far from any border without some basis of suspicion appears unreasonable. See United States v. Williams, 617 F.2d 1063, 1085-89 (5th Cir. 1980) (en banc); United States v. Serrano, 607 F.2d 1145, 1147 (5th Cir. 1979), cert. denied, 445 U.S. 965 (1980). Courts have held, however, that the Coast Guard's authority to board and search on the high seas is plenary. See United States v. Whitaker, 592 F.2d 826, 830 (5th Cir. 1979). United States v. Warren, 578 F.2d 1058, 1064-65 & n.4 (5th Cir. 1978), cert. denied, 446 U.S. 956 (1981). Since no other nation or authority may exercise jurisdiction over United States vessels on the high seas, the right to board and search may be the only practicable means for the United States as a sovereign to exert sufficient power and control over vessels flying its flag. See supra note 124.
\item \textsuperscript{139} United States v. Williams, 589 F.2d 210, 214 (5th Cir. 1979). Mere legitimate presence in a vessel does not create a fourth amendment privacy interest. Rakas v. Illinois, 439 U.S. 128, 148-50 (1978) (passengers in vehicle lacked standing for a fourth amendment challenge because they had no expectation of privacy in the glove compartment or under the seat, and rights of a third person had no bearing on the passengers' rights). See also United States v. Whitmire, 595 F.2d 1303, 1312 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980).
\end{itemize}
are stored and the engine room and other compartments which are required to have safety equipment. Consistent with the basic principle that "the fourth amendment protects people, not places" protection only extends to places in which a person has a reasonable expectation of privacy. Logic would not allow invalidation of a search because law enforcement officers observe a law violation such as the contraband observed in Villamonte-Marquez. The settled rule provides that officers making a valid intrusion under a recognized exception to the warrant requirement may seize incriminating evidence which unexpectedly comes into "plain view." The doctrine clearly applies when an agent properly boarding a vessel to conduct a document inspection smells burning marijuana and sees bales of marijuana on deck.

The final factor encompasses whether the government's need to conduct the activity in question is sufficient to justify the intrusion. The various objectives of the regulatory scheme such as customs enforcement, vessel safety, and pollution prevention are clearly legitimate. Unlike Prouse, the method chosen reasonably effects the government objective and, as noted above, no practical alternatives to the current inspection requirements exist.

3. The Combination of the Administrative Inspection and the Border Search Rationales Permit the Maritime Exception's Broad Grant of Discretion

In applying the fourth amendment balancing test to the maritime exception, a combination of factors from both the administrative inspection rationale and the border search doctrine weigh in favor of the exception's validity. The maritime regulatory scheme meets the test of being a pervasively regulated industry; the exigencies of a

140. See supra notes 74-77 and accompanying text. Foreign vessels are also subject to document requirements and inspections. See supra notes 83-85. For a discussion of the scope of a document and safety inspection see infra notes 156-61 and accompanying text.
142. Id. at 361 (Harlan, J., concurring).
144. See Villamonte-Marquez, 103 S. Ct. at 2573, 2577 & n.3.
145. Id. at 2581. See also supra notes 49, 54-59 and accompanying text.
146. See supra text accompanying notes 114-25.
147. In Prouse, the Court found random spot check in question not to be sufficiently productive so as to justify the intrusion. Prouse, 440 U.S. at 659. In contrast, the document and safety inspection remains the only effective means available in the maritime area. Villamonte-Marquez, 103 S. Ct. at 2580-81. See supra notes 114-25 and accompanying text.
148. See supra notes 74-77 and accompanying text.
ship's mobility justify inspections without warrants; and Congressional authorization under § 1581(a) stands undisputed. Thus the Court properly applied the administrative inspection rationale to the Villamonte-Marquez document and safety inspection. Furthermore, although the border search doctrine may not be the primary justification for the document and safety inspections, the customs concerns and the ease of border crossings in the maritime area highlight both the law enforcement agencies' need to inspect and the lack of viable alternatives. The combination of the two underlying rationales creates a stronger exception, resulting in the maritime exception's broad grant of authority. The grant of broad discretion "requires caution in fourth amendment analysis, but it is not invariably fatal to the constitutionality of an intrusion." The long coastline of the United States and the practical concerns of enforcing the document and regulatory scheme in the maritime environment dictates the need for this broad authority. Even though the authority granted by § 1581(a) is broad, however, it is not without limitations.

IV. LIMITS OF THE § 1581(A) MARITIME EXCEPTION

The Court in Villamonte-Marquez specifically limited its holding

149. See supra notes 117-18 and accompanying text.
151. Villamonte-Marquez, 103 S. Ct. at 2578. But see supra note 86 and accompanying text.
152. Villamonte-Marquez, 103 S.Ct. at 2580-82. Justice Brennan, dissenting, suggests that laws controlling maritime smuggling can be adequately enforced by using a "reasonable suspicion" standard and cites some successful prosecutions based on cases in which a "reasonable suspicion" existed. Id. at 2590 n.11 (Brennan, J., dissenting). Justice Brennan's suggestion, however, fails to take into account that violations of the document and safety regulations often do not generate observable factors which would create a reasonable suspicion. See 3 LaFave supra note 3, § 10.8(f) at 163-64. Furthermore, he did not consider the number and effect of violations which would not be detected if a reasonable suspicion standard were adopted. Id.
153. United States v. Whitmire, 595 F.2d 1303, 1313 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980). Although a broad grant of power to law enforcement officials may result in some abuses, reason forbids acting on the belief that such power will automatically be used and abused to the fullest extent possible. Nor are the courts powerless to act upon any abuses which may occur. Evidence obtained by unreasonable searches may be inadmissible under the exclusionary rule. See Mapp v. Ohio, 367 U.S. 643 (1961). Moreover, injured parties may file a claim against the officers themselves. 42 U.S.C. § 1983 (1982). See also Bivens v. Six Unknown Agents, 403 U.S. 388 (1971) (allowing § 1983 claims against federal agents).
154. United States v. 146,157 Gallons of Alcohol, 3 F.Supp. 450, 455-56 (D.N.J. 1933). See also Carmichael, supra note 8, at 101-03.
to the narrow issue of the boarding of a vessel for a document and safety inspection.\[^{156}\] This holding does not permit an overall search of the vessel. It only allows an inspection which is limited to the cabin and area where documents are kept, the compartment where the beam or identification number of the vessel can be verified, and the places where the safety equipment is required. The beam number is usually found in the hold of a vessel,\[^{157}\] rather than in the crew or passenger quarters, so a document inspection does not subject protected privacy areas to a general search.\[^{158}\] Additionally, most American pleasure craft are not federally documented, and bear only a state-issued number displayed on the exterior of the hull.\[^{159}\] Neither the statute nor Villamonte-Marquez, therefore, authorizes an overall search of the vessel.\[^{160}\] Any search beyond the permissible scope of the document and safety inspection would be invalid; its fruits would be subject to the exclusionary rule\[^{161}\] unless the search can be independently justified otherwise.\[^{162}\]

Finally, the Court's emphasis in Villamonte-Marquez on the ship's ready access to the open sea and the lack of practical alternatives implied a limit on the exception.\[^{163}\] The maritime exception rationale weakens as the vessel moves away from the open sea, thereby becoming less capable of ocean travel or contact. A reasonable suspicion standard seems required, at least where viable alternatives to a warrantless inspection exist.\[^{164}\] Ordinarily the further inland a vessel is, the less likely it made any border crossing or contact. It then follows that the border search justification would receive less weight

\[\begin{align*}
156. & \quad \text{Villamonte-Marquez, 103 S. Ct. at 2577 n.3.} \\
157. & \quad \text{Reply Brief of the United States at 12, Villamonte-Marquez, 103 S. Ct. 2573. See also 46 U.S.C.A. § 12116 (West Supp. 1983).} \\
158. & \quad \text{United States v. Odom, 526 F.2d 339 (5th Cir. 1976). See also United States v. Whitmire, 595 F.2d 1303, 1312-13, 1315 (5th Cir. 1979), cert. denied, 448 U.S. 906 (1980).} \\
159. & \quad \text{46 U.S.C.A. § 12305 (West Supp. 1983).} \\
160. & \quad \text{Villamonte-Marquez, 103 S. Ct. at 2575, 2577 n.3 (validity of suspicionless boarding for document inspection was sole issue presented). The authority approved by Villamonte-Marquez is logically limited to the scope of a document and safety inspection. Id. at 2582 ("type of intrusion made in this case, while not minimal, is limited."). For a discussion of the scope of a document inspection see supra notes 138-42 and accompanying text.} \\
161. & \quad \text{Mapp v. Ohio, 367 U.S. 643 (1961).} \\
162. & \quad \text{Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971). This limitation may not be significant, however. In small boats a boarding may bring the whole interior of the boat into plain view, and in larger vessels the extent of safety equipment may allow viewing a significant part of the ship on a suspicionless basis.} \\
163. & \quad \text{See Villamonte-Marquez, 103 S. Ct. at 2580, 2582.} \\
164. & \quad \text{See id. See also United States v. Williams, 544 F.2d 807 (5th Cir. 1977) (warrantless search of a houseboat held invalid).}
\end{align*}\]
since the government's need to protect itself would not apply. The federal regulatory scheme, however, encompasses many areas such as navigation, vessel safety, and pollution control which do not depend on proximity to the border and may properly justify inspection of vessels far inland without reliance on the border search doctrine. This reasoning would indicate that the Court may decide that the landward limit of the maritime doctrine should be the full extent of the navigable waters of the United States, the farthest reach of federal jurisdiction over the inland waters.

V. CONCLUSION

The intrusion of a short detention of a vessel and an inspection of its documents and safety equipment is justified under the balancing test of fourth amendment "reasonableness." The justification rests on (1) the need for an effective documentation and safety inspection program to enforce the overall regulatory scheme; (2) the lack of viable alternatives; (3) the historically broad authority of Congress in regulating foreign commerce; and (4) the magnitude of the government's vital interest in enforcing document requirements, particularly in waters where the threat of smuggling is great. Villamonte-Marquez established no new powers for law enforcement officers beyond the authority granted under § 1581(a), and will probably not affect current enforcement procedures significantly, if at all. As a strong six to three decision, however, it removed most of the doubts about the validity of customs and Coast Guard authority for suspicionless boardings of ships.

Should a challenge to the Coast Guard's analogous statutory authority, 14 U.S.C. § 89(a), arise under similar circumstances, little doubt exists that the Court would reach a similar decision as long as the boarding begins properly as a document and safety inspection.

165. The border search doctrine is limited to the border or its functional equivalent. See supra note 73. See, e.g., United States v. Williams, 544 F.2d 807 (5th Cir. 1977).
166. See Villamonte-Marquez, 103 S. Ct. at 2581. See also supra notes 49, 54-59, & 79 and accompanying text.
167. 33 C.F.R. § 2.05-25 (1983) defines the navigable waters of the United States.
168. Id. at § 2.05-30. See also G. Gilmore & C. Black, THE LAW OF ADML. & N. 99 (2d ed. 1975).
169. See Villamonte-Marquez, 103 S. Ct. at 2582. See also supra notes 78-89 and accompanying text.
171. See supra note 91 and accompanying text.
173. See supra note 138.
If anything, the rationale for upholding 14 U.S.C. § 89(a)\(^{174}\) is stronger because of the long-standing recognition of the rights and duties of sovereigns concerning their vessels on the high seas.\(^{175}\) Also, recent Congressional legislation increased Coast Guard authority against drug smuggling by closing a loophole in its high seas authority, thereby indicating continued support of the established objectives and practices in the drug interdiction effort.\(^{176}\) As broad as this authority seems, however, limits exist, particularly in waters well away from coastal areas. The right of freedom of navigation generally prohibits stopping foreign vessels on the high seas,\(^{177}\) and the best interests of the United States favor avoiding disruption of merchant vessel voyages without some basis of suspicion.

\textit{Villamonte-Marquez} also reflects the continuing trend of the Supreme Court in fourth amendment cases of upholding law enforcement intrusions in limited areas where it finds sufficient justifications and safeguards for preventing abuse.\(^{178}\) In light of this trend, the Court is not likely to reverse itself on fourth amendment issues. Future changes in the makeup of the Court by President Reagan more likely will strengthen the \textit{Villamonte-Marquez} majority. The maritime exception, therefore, is here to stay. Future litigation in this area will probably concern only the limitations of the maritime doctrine, not its validity.\(^{179}\)

\textit{Michael J. Devine}

\footnotesize{174. 14 U.S.C. § 89(a) (1982).}
\footnotesize{175. Convention on the High Seas, supra note 8, at Art. 5. See 3 LAFAVE, supra note 3, § 10.8(f) at 163.}
\footnotesize{177. See Convention on the High Seas, supra note 8, at Art. 2. See also Carmichael, supra note 8, at 56-65.}
\footnotesize{179. \textit{But} see 3 LAFAVE supra note 3, § 10.8(f) at 168.