

a passenger, and regardless of whether it is the driver or a passenger who is under suspicion.²⁹⁰ The same rule now applies whether the police have probable cause to search only the containers²⁹¹ or whether they have probable cause to search the automobile for something capable of being held in the container.²⁹²

Vessel Searches.—Not only is the warrant requirement inapplicable to brief stops of vessels, but also none of the safeguards applicable to stops of automobiles on less than probable cause are necessary predicates to stops of vessels. In *United States v. Villamonte-Marquez*,²⁹³ the Court upheld a random stop and boarding of a vessel by customs agents, lacking any suspicion of wrongdoing, for purpose of inspecting documentation. The boarding was authorized by statute derived from an act of the First Congress,²⁹⁴ and hence had “an impressive historical pedigree” carrying with it a presumption of constitutionality. Moreover, “important factual differences between vessels located in waters offering ready access to the open sea and automobiles on principal thoroughfares in the border area” justify application of a less restrictive rule for vessel searches. The reason why random stops of vehicles have been held impermissible under the Fourth Amendment, the Court explained, is that stops at fixed checkpoints or roadblocks are both feasible and less subject to abuse of discretion by authorities. “But no reasonable claim can be made that permanent checkpoints would be practical on waters such as these where vessels can move in any direction at any time and need not follow established ‘avenues’ as automobiles must do.”²⁹⁵ Because there is a “substantial” governmental interest in enforcing documentation laws, “especially in waters where the need to deter or apprehend smugglers is great,” the Court found the “lim-

²⁹⁰ *Wyoming v. Houghton*, 526 U.S. 295, 307 (1999) (“police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search”).

²⁹¹ *California v. Acevedo*, 500 U.S. 565 (1991) (overruling *Arkansas v. Sanders*, 442 U.S. 753 (1979)).

²⁹² *United States v. Ross*, 456 U.S. 798 (1982). A *Ross* search of a container found in an automobile need not occur soon after its seizure. *United States v. Johns*, 469 U.S. 478 (1985) (three-day time lapse). See also *Florida v. Jimeno*, 500 U.S. 248 (1991) (consent to search automobile for drugs constitutes consent to open containers within the car that might contain drugs).

²⁹³ 462 U.S. 579 (1983).

²⁹⁴ 19 U.S.C. § 1581(a), derived from § 31 of the Act of Aug. 4, 1790, ch. 35, 1 Stat. 164.

²⁹⁵ 462 U.S. at 589. Justice Brennan’s dissent argued that a fixed checkpoint was feasible in this case, involving a ship channel in an inland waterway. *Id.* at 608 n.10. The fact that the Court’s rationale was geared to the difficulties of law enforcement in the open seas suggests a reluctance to make exceptions to the general rule. Note as well the Court’s later reference to this case as among those “reflect[ing] longstanding concern for the protection of the integrity of the border.” *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985).