No. ____

IN THE

Supreme Court of the United States

HUBERT YOUTE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER
ANDREW L. ADLER
Counsel of Record
ASS'T FED. PUBLIC DEFENDER
1 E. Broward Blvd., Ste. 1100
Ft. Lauderdale, FL 33301
(954) 536-7436
Andrew_Adler@fd.org

Counsel for Petitioner

MAY 20TH, 2019

QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable suspicion to enter and search the living quarters on a vessel docked at the border.

PARTIES TO THE PROCEEDINGS

The caption contains the names of all of the parties to the proceedings.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review a judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's opinion is reprinted at __ F. App'x __, 2019 WL 1745368 and is reproduced as Appendix ("App.") A. App. 1a–9a. The district court's ruling from the bench denying Petitioner's motion to suppress is unreported but is reproduced as part of Appendix I. App. 151a.

JURISDICTION

The Eleventh Circuit issued its decision on April 16, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

INTRODUCTION

Every day, cargo freighters and cruise ships dock in U.S. ports and are subject to random inspections. No problem there. But may customs officers enter and search the *living quarters* of those vessels without reasonable suspicion of a crime? Surprisingly, the answer to that straightforward Fourth Amendment

question depends on the circuit where the vessel is docked. The Third and Ninth Circuits have held that reasonable suspicion is required to search the living quarters on a vessel docked at the border. The Eleventh Circuit has held that it is not. As a result, no suspicion is required for customs officers to enter and search cabins in the ports of Mobile, Savannah, Jacksonville, Tampa, Ft. Lauderdale, and Miami. But reasonable suspicion is required for cabins in the ports of Seattle, Portland, Oakland, Long Beach, Los Angeles, Honolulu, Philadelphia, and Newark.

Unfortunately for Petitioner, the cargo freighter on which he labored docked at a port in Miami. Customs officers were thus free to enter and search his cabin without reasonable suspicion. Inside his cabin, Petitioner falsely denied carrying over $10,000, and the officers found over $10,000 after conducting a thorough search. Because the entry and search of his cabin led directly to a false-statement conviction, Petitioner objected at every stage, arguing that reasonable suspicion was required. But the courts below found his argument foreclosed by circuit precedent.

This case thus affords the Court an ideal opportunity to eliminate an untenable Fourth Amendment patchwork. Constitutional rights should not turn on the arbitrariness of geography. And customs officers need clear rules. The question presented should have a single answer, and it is the one adopted by the Third and Ninth Circuits. For while the government has a significant interest in protecting the nation's border, that interest must be balanced against the legitimate privacy interest that seafarers have in the cabins where they sleep, bathe, undress, and store their personal belongings. The proper balance requires reasonable suspicion.

STATEMENT

1. Petitioner served as an able-bodied crewman on the *Doris T*, a 130-by-150 foot cargo freighter with eight-to-ten crewmembers. App. 47a, 163a. In 2017, it was docked at a cargo port in Miami bound for Haiti. App. 47a–48a, 173a. Before departure, U.S. customs officers boarded the vessel to conduct a routine inspection. App. 48a. Following their standard inspection protocol, they escorted every crewmember to their cabin for questioning. App. 48a–50a, 56a. One of the officers recognized Petitioner from three or four previous inspections over the past decade—none of which revealed anything illicit—and the officer sensed that Petitioner looked "a little bit different that day," "like he was upset that we were there." App. 49a–50a, 55a–57a, 164a–65a, 176a. But aside from that vague impression, the officers lacked any suspicion of wrongdoing by Petitioner.

Petitioner's cabin was an eight-by-ten foot room with a bunk bed, a chair, a bench, a dresser, clothes, and other personal belongings. App. 50a–52a, 165a–67a, 172a. Once inside, two officers asked Petitioner if he was carrying more than $10,000, and Petitioner said no. The officers asked Petitioner how much money he had, and Petitioner removed $2,000 from a pillowcase on the mattress. When asked if he had any more money, Petitioner removed $42 from his pockets and $200 from a pair of jeans lying on a chair. App. 50a–51a, 165a–66a. After Petitioner denied possessing any more money, the officers moved Petitioner out into the hallway and began "systematically" searching the cabin, looking under the mattress and bench, opening drawers, and going through his clothing. App. 51a–52a, 166a–67a.

The officers ultimately found a Tide detergent box hidden behind a curtain on a shelf. App. 52a, 167a. The box had an excessive amount of clear tape wrapped around it that was not consistent with the original packaging. App. 52a, 54a, 167a. One of the officers cut open the box and discovered approximately $37,000 in U.S. currency. App. 53a, 167a–168a, 170a. The officers removed Petitioner from the vessel and interrogated him, at which point he made incriminating statements.

Petitioner was charged with bulk cash smuggling and making a false statement to a customs officer—*i.e.*, that he did not possess more than $10,000. Petitioner proceeded to trial. At its conclusion, the district court granted Petitioner's motion for a judgment of acquittal on the bulk cash smuggling count, but the jury convicted Petitioner on the false-statement count. Petitioner had no prior criminal history, and he lost his work visa as a result of the conviction.

2. Before trial, Petitioner filed a motion to suppress, arguing that reasonable suspicion was required to enter and search his cabin, and that no such suspicion existed. App. 13a–16a. Petitioner acknowledged that the Eleventh Circuit's decision in *United States v. Alfaro-Moncada*, 607 F.3d 720 (11th Cir. 2010) foreclosed his argument, as it held that the search of a cabin on a vessel at the border was a routine border search that did not require reasonable suspicion. He nonetheless "object[ed] to the reasoning of *Alfaro-Moncada*, and respectfully submit[ted] that the decisions of other circuits, requiring reasonable suspicion to search such areas onboard a vessel, are more persuasive and consistent with the Fourth Amendment." App. 14a (citing *United States v. Whitted*, 541 F.3d 480 (3d

Cir. 2008) and *United States v. Alfonso*, 759 F.2d 728 (9th Cir. 1985)). Alternatively, he argued that, even if not required to enter and search the cabin, reasonable suspicion was required to cut open the Tide box because that constituted a highly-intrusive search involving the destruction of property. App. 14a–15a.

The government responded that *Alfaro-Moncada* was binding. App. 29a. The government also noted that, although that precedent did not require reasonable suspicion to enter and search the cabin, the officers "had previously received a confidential informant's tip that the vessel was being used to carry drug money to Haiti." And, "combined" with Petitioner's piecemeal production of currency, that tip provided reasonable suspicion. App. 29a n.2. At the suppression hearing, however, the government declined numerous opportunities to elicit any evidence about the tip or any other sources of suspicion, electing instead to rest on *Alfaro-Moncada*. App. 45a–46a, 57a–58a, 91a–92a. As to Petitioner's alternative argument, the government responded that reasonable suspicion was also not required to cut open the box, and, in any event, such suspicion existed by that point because the box was "wrapped in additional tape . . . not part of the original packaging." App. 29a–30a.

A Magistrate Judge issued a Report, recommending the denial of the motion. As relevant here, he determined that *Alfaro-Moncada* was "binding authority" and so "the search of [Petitioner's] cabin, like the one in [*Alfaro*-]*Moncada* constituted a routine border search that did not require officers to obtain a warrant" or possess reasonable suspicion. App. 98a–99a. He also found that "any argument that the cabin constituted [Petitioner's] 'home' on this cargo vessel—and therefore should be

afforded the same protections afforded the passenger cabins in *Whitted* and *Alfonso*—was already squarely rejected in [*Alfaro*-]*Moncada*." App. 102a. As to Petitioner's alternative argument, the Magistrate Judge determined that no reasonable suspicion was required to cut open the Tide box, as it was not particularly intrusive; and, in any event, such suspicion existed due to Petitioner's demeanor, his piecemeal production of cash, and, most importantly, the "oddly taped detergent box." App. 99a–104a; *see* App. 86a–87a.

Petitioner objected to the Report, arguing that "[t]he Magistrate Judge erred in finding that the search of [Petitioner's] cabin, like the one in *Alfaro-Moncada*, constituted a routine border search, not demanding of any reasonable suspicion." App. 116a. In a short ruling from the bench on the morning of trial, the district court overruled Petitioner's objection, concluding that the Magistrate Judge had "correctly determined this was a border search." App. 151a. The court also rejected Petitioner's alternative argument, concluding that opening the Tide box did not rise to "the level of . . . intrusiveness" requiring reasonable suspicion, and the court therefore "uph[e]ld the Magistrate Judge's decision in that regard." *Id.* It did not otherwise adopt the Magistrate Judge's Report.

3. On appeal, Petitioner "renew[ed] his contention that reasonable suspicion is required to search the living quarters of a vessel docked at the border." Pet. C.A. Br. 28. He acknowledged that the binding circuit precedent in *Alfaro-Moncada* foreclosed his argument, but he argued that the Third Circuit's decision in *Whitted* and the Ninth Circuit's decision in *Alfonso* were more

persuasive. Accordingly, he expressly preserved his argument for further review. He emphasized that his argument, if accepted, would be dispositive because there was no reasonable suspicion to enter and search his cabin, which led to the charged false statement and the currency. *Id.* at 28, 30–35. Petitioner did not renew his alternative argument below that, after the officers searched the cabin and found the Tide box, reasonable suspicion was required to cut it open. *Id.* at 35 n.2.

In its brief, the government relied exclusively on *Alfaro-Moncada*'s holding that reasonable suspicion was not required to enter or search the living quarters of a vessel docked at the border. Gov't C.A. Br. 20–24. It did not alternatively argue that reasonable suspicion existed to enter or search Petitioner's cabin. *See id.*

The court of appeals affirmed. App. 2a, 9a. As to Petitioner's "assert[ion] that the customs officials lacked reasonable suspicion to enter and search his living quarters on board the vessel," the court determined that it was "foreclosed by [its] precedent in *United States v. Alfaro-Moncada*, 607 F.3d 720 (11th Cir. 2010)." App. 4a. The court explained that *Alfaro-Moncada* had "held that, under the border search exception, searches of a crew member's onboard cabin at the U.S. border do not require reasonable suspicion." *Id.* (footnote omitted). And, under the court's "prior panel precedent rule," it was "bound" by that holding. *Id.* "Accordingly," it concluded, "the district court did not err in denying [Petitioner's] motion to suppress on these grounds." App. 5a. The court of appeals did not determine that reasonable suspicion existed to enter or search the cabin, and it did not make any other alternative holding justifying the entry or search of the cabin. *See* App. 4a–5a.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE DIVIDED ON THE QUESTION PRESENTED

Whether reasonable suspicion is required to search the living quarters on a vessel docked at the border implicates two competing lines of established precedent.

On the one hand, "[i]t is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (citation omitted). Nowhere is the Fourth Amendment's "zone of privacy more clearly defined than when bounded by the unambiguous physical dimension of an individual's home." *Payton v. New York*, 445 U.S. 573, 589 (1980)). Thus, "[a]t the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (citation omitted). "It is not surprising, therefore, that the Court has recognized, as 'a basic principle of Fourth Amendment law, that searches and seizures inside a home without a warrant are presumptively unreasonable.'" *Welsh*, 466 U.S. at 749 (quoting *Payton*, 445 U.S. at 586–87) (quotations marks and brackets omitted).

On the other hand, border searches represent an exception to the warrant requirement. *United States v. Ramsey*, 431 U.S. 606, 619 (1977). "It is axiomatic that the United States, as sovereign, has the inherent authority to protect, and a paramount interest in protecting, its territorial integrity." *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004). And "the expectation of privacy is less at the border than it is in the interior." *Id.* at 154. As a result, "[r]outine searches" at the

border "are not subject to any requirement of reasonable suspicion, probable cause, or warrant." *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985); *see, e.g.*, *Flores-Montano*, 541 U.S. at 153–56 (disassembling fuel tank); *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983) (boarding vessel to inspect documents). This Court, however, has never addressed whether a border search of living quarters is "routine" and thus permissible without reasonable suspicion.

The circuits are divided on that question. The Third and Ninth Circuits have held that reasonable suspicion is required. The Eleventh Circuit has held it is not.

1. In *United States v. Alfonso*, 759 F.2d 728 (9th Cir. 1985), law-enforcement officers boarded a Colombian cargo vessel docked in the port of Los Angeles and conducted a search of the defendant's cabin, finding duffel bags of cocaine. *Id.* at 731–32. After concluding that this constituted a border search, the Ninth Circuit addressed the defendant's argument that "its scope, extending as it did to sealed packages beneath a bunk bed in his living quarters, was unreasonable under the Fourth Amendment." *Id.* at 737. The government, meanwhile, argued that "there is no legitimate privacy interest immune from border search in any part of a vessel entering the United States." *Id.*

The court of appeals rejected the government's argument and required reasonable suspicion. The court stated: "Obviously, a search of the private living quarters of a ship is more intrusive than a search of other areas. The private living quarters are at least analogous to a private dwelling. As a result, even in the context of a border search, the search of private living quarters on a ship should

require something more than naked suspicion." *Id.* at 737–38 (internal citation omitted). In that particular case, the officers did in fact possess reasonable suspicion. *Id.* at 738. As a result, and because "reasonable suspicion sufficiently supported the search of private living quarters aboard the ship," the court upheld the denial of the defendant's motion to suppress. *Id.*

In *United States v. Whitted*, 541 F.3d 480 (3d Cir. 2008), the Third Circuit held, in the cruise-ship context, "that the search of private living quarters aboard a ship at the functional equivalent of a border is a nonroutine border search and must be supported by reasonable suspicion of criminal conduct." *Id.* at 488. Relying in part on the Ninth Circuit's decision in *Alfonso*, "the case most clearly on point," the Third Circuit emphasized that there is a "greater expectation of privacy in private dwelling areas of a ship than that in public areas," and "[i]ndividuals have a reasonable and high expectation of privacy in their living and sleeping quarters aboard ships, even at national borders, which merits Fourth Amendment protection." *Id.* at 486–89. Therefore, the court concluded "that requiring reasonable suspicion strikes the proper balance between the interests of the government and the privacy rights of the individual. It also best comports with the case law, which treats border searches permissively but gives special protection to an individual's dwelling place, however temporary." *Id.* at 486.

2. In *United States v. Alfaro-Moncada*, 607 F.3d 720 (11th Cir. 2010)—the precedent foreclosing Petitioner's argument below—the Eleventh Circuit addressed "whether a search without reasonable suspicion of a crew member's

living quarters on a foreign cargo vessel that is entering this country is unreasonable for Fourth Amendment purposes." *Id.* at 727. The court characterized that issue as a "difficult" one because, while the defendant "was not subjected to a highly intrusive search of his body, his cabin was searched and that implicates significant Fourth Amendment principles. A cabin is a crew member's home—and a home receives the greatest Fourth Amendment protection." *Id.* at 727, 729 (quotations omitted).

Nonetheless, the court determined that reasonable suspicion was not required, reasoning that a home "cannot be used as a means to transport into this country contraband or weapons of mass destruction that threaten national security. A crew member's cabin, like the rest of the ship on which it is located, can and does pose that threat." *Id.* at 730. And because the national interest in searching for weapons and contraband was high, and any expectation of privacy in a living quarters was weak at the border, the court "conclude[d] that the suspicionless search of Alfaro-Moncada's cabin on . . . a foreign cargo ship, while it was docked . . . on the Miami River, was not a violation of the Fourth Amendment." *Id.* at 732.

II. THE QUESTION PRESENTED IS ONE OF NATIONAL IMPORTANCE

This Court should resolve the circuit split. Customs officers conduct daily inspections of vessels docked at the border. Whether those officers must possess reasonable suspicion to enter and search a cabin now depends solely on the circuit

in which the vessel is docked. In that regard, some of the nation's busiest cargo ports are located in the Third, Ninth, and Eleventh Circuits.[1]

In the Third and Ninth Circuits, Newark, Long Beach, and Los Angeles are the third, seventh, and tenth business cargo ports in the country. Other ports in those two circuits, all ranked in the top 50 by tonnage, include Valdez (Alaska), Tacoma, Seattle, Philadelphia, Pittsburgh, Portland, Oakland, and Honolulu. In those ports, reasonable suspicion is required to enter and search a cabin's living quarters. Yet customs officers may freely rummage through living quarters in the Eleventh Circuit, which includes the busy cargo ports in Mobile, Savannah, Tampa, Ft. Lauderdale, Jacksonville, and Miami. In addition, international cruise ships dock every day in Southern Florida, where no reasonable suspicion is required, and Southern California, where reasonable suspicion is required.

This lack of national uniformity is untenable. Constitutional rights should not turn on the happenstance of geography. Crewmembers and seafarers who dock in California, Oregon, Washington, Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands should not receive greater Fourth Amendment protection than those in Florida, Georgia, and Alabama. And customs officers should be guided by fixed inspection procedures. They should not be forced to consult a map of the federal judicial circuits to determine whether they may conduct a suspicionless cabin inspection. Thus, the question presented is important and warrants review.

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[1] *See* U.S. Army Corps of Engineers, Navigation and Civil Works Decision Support Center, The U.S. Water System, 2017 Transportation Facts & Information, *available at* https://publibrary.planusace.us/#/series/Fact%20Cards.

III. THIS CASE IS AN EXCELLENT VEHICLE

This case is an excellent vehicle for the Court to resolve the circuit conflict.

1. Procedurally, the question presented is squarely before the Court. In the district court, Petitioner preserved his argument that reasonable suspicion was required to enter and search his cabin. Although he acknowledged that his argument was foreclosed by the Eleventh Circuit's binding precedent in *Alfaro-Moncada*, he still pressed that argument in the district court. App. 14a. On appeal, he did the same. Again, he acknowledged that *Alfaro-Moncada* was binding precedent. But he argued that the Third and Ninth Circuit decisions in *Whitted* and *Alfonso* were more persuasive. And, given that circuit conflict, he expressly preserved his argument for further review. Pet. C.A. Br. 28, 30–35. The Eleventh Circuit then affirmed based solely on its precedent in *Alfaro-Moncada*, reiterating that "searches of a crew member's onboard cabin at the U.S. border do not require reasonable suspicion." App. 4a–5a. Because the question presented was explicitly pressed and passed on at every stage below, it is squarely presented here.

2. In that regard, the Eleventh Circuit did not alternatively hold that reasonable suspicion existed to enter and search the cabin. *See* App. 4a–5a. Nor did the district court make any such finding. In rejecting Petitioner's alternative argument below—*i.e.*, that reasonable suspicion was required not only to enter and search the cabin but also to cut open the Tide box—the Magistrate Judge found that reasonable suspicion existed only *after* the officers searched the cabin and discovered the box. That determination hinged on the unusual appearance of the

box. But at no point did the Magistrate Judge find that reasonable suspicion existed *before* the officers discovered the box—*i.e.*, before the officers entered and searched the cabin. App. 86a–87a, 104a. And, in any event, the district court did not adopt the Magistrate Judge's reasonable-suspicion determination. Rather, as to Petitioner's alternative argument, the court concluded only that reasonable suspicion was not required to cut open the box. App. 151a.

Moreover, the government did not argue below that reasonable suspicion supported the entry and search of the cabin. On appeal, the government made no such argument. Gov't C.A. Br. 21–24. And, in the district court, the government did no more than drop a footnote in response to the suppression motion, suggesting that reasonable suspicion might be supplied by a confidential informant's tip. App. 29a n.2. But, at the hearing, the government repeatedly declined to elicit any such evidence, deliberately electing to rest on the circuit precedent in *Alfaro-Moncada* authorizing suspicionless searches. *See* App. 45a–46a, 57a–58a, 86a, 91a–92a

3. Finally, a favorable resolution of the question presented would otherwise be dispositive of Petitioner's case. After all, Petitioner's false statement—*i.e.*, that he was not carrying over $10,000—came only after the customs officers entered his cabin and questioned him. And the officers learned that his statement was false only after searching the cabin and finding the Tide box. Thus, the officers' entry and search led directly to Petitioner's false-statement conviction. Suppressing the fruits of that entry and search would require vacating his conviction. And, as a practical matter, it would preclude the government from re-trying him.

IV. THE DECISION BELOW IS WRONG

Resolving the question presented requires balancing two compelling interests. On the one hand, Fourth Amendment protections are at their peak when it comes to the physical entry and search of a home, where individuals expect maximum privacy. On the other hand, the government possesses a significant interest in protecting the nation, and so an individual's expectation of privacy is reduced at the border. *Montoya de Hernandez*, 473 U.S. at 538–39.

Those competing interests collide where, as in the case of vessel's cabin, the home is physically located at the border. But there is a neat way to reconcile those interests. Instead of requiring a warrant and probable cause, as for a home on the mainland, officers may enter and search a cabin without any warrant at all and upon a lesser showing of reasonable suspicion. As the Third Circuit concluded, that "strikes the proper balance between the interests of the government and the privacy rights of the individual" in this unique context. *Whitted*, 541 F.3d at 488.

Rather than balancing those interests, the Eleventh Circuit simply chose the former over the latter. By authorizing suspicionless searches, the Eleventh Circuit effectively determined that there is no privacy interest at all in a cabin at the border. That view is mistaken. Crew members and cruise-ship passengers reasonably expect privacy in their cabins. Inaccessible to other passengers, those rooms are where they sleep, bathe, undress, and store personal belongings. And, depending on the voyage, their stays there can last days, weeks, or even months. Aside from its mobility, a cabin shares the same features as a hotel room and other

temporary places of abode, which do receive robust Fourth Amendment protection. *See, e.g.*, *Minnesota v. Olson*, 495 U.S. 91, 96–99 (1990) (overnight guest); *Stoner v. California*, 376 U.S. 483, 489–90 (1964) (hotel room); *McDonald v. United States*, 335 U.S. 451 (1948) (boarding house). It is unsurprising then that numerous judges and commentators have long recognized a legitimate privacy interest in the living quarters on a vessel. *See Whitted*, 541 F.3d at 487 & nn.7–8 (citing authorities).[2]

By unduly discounting that legitimate privacy interest, the Eleventh Circuit effectively extinguished the Fourth Amendment rights of countless individuals who stay overnight on vessels that, at some point, enter or depart a U.S. port. As a quantitative matter, that represents a significant curtailment of the Fourth Amendment. And, as a qualitative matter, this Court has never deemed the Fourth Amendment inapplicable to an individual's private living quarters. Thus, there is nothing "routine" about widespread suspicionless searches of cabins. While the Eleventh Circuit properly recognized the government's interest in border security, it did so at expense of the constitutional rights that such security is in part designed to safeguard. And as goes the sanctity of the home, so goes the Fourth Amendment.

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[2] *See, e.g.*, *Alfonso*, 759 F.2d at 737–38 ("Obviously, a search of the private living quarters of a ship is more intrusive than a search of other areas. The private living quarters are at least analogous to a private dwelling.") (internal citation omitted); *United States v. Eagon*, 707 F.2d 362, 366 (9th Cir. 1982) (Boochever, J., concurring) ("Those living on their boats have a greater expectation of privacy"); *United States v. Streifel*, 665 F.2d 414, 423 (2d Cir. 1981) ("one has a more legitimate expectation of privacy in one's living quarters than in other areas"); *United States v. Piner*, 608 F.2d 358, 364 (9th Cir. 1979) (Kennedy, J., dissenting) ("search of certain portions of a vessel, such as the crew's quarters on an ocean-going tanker . . . , may constitute substantial invasions of privacy"); *United States v. Whitmire*, 595 F.2d 1303, 1312 (5th Cir. 1979) ("Relatively high levels of privacy might be accorded . . . to the crew's living quarters on a tanker that travels for months at sea.").

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

/s/ Andrew L. Adler
Counsel of Record
ANDREW L. ADLER
ASS'T FED. PUBLIC DEFENDER
1 E. Broward Blvd., Ste. 1100
Ft. Lauderdale, FL 33301
(954) 536-7436
Andrew_Adler@fd.org

Counsel for Petitioner