No. 18-9381

IN THE SUPREME COURT OF THE UNITED STATES

HUBERT YOUTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Amendment requires customs officers to have reasonable suspicion in order to justify the search of a crew member's cabin on a foreign vessel at an international border.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is not published in the Federal Reporter but is available at 2019 WL 1745368.

JURISDICTION

The judgment of the court of appeals was entered on April 16, 2019. The petition for a writ of certiorari was filed on May 20, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of making a false statement to federal authorities, in violation of 18 U.S.C. 1001(a)(2). Judgment 1. He was sentenced to time served, to be followed by two years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-9a.

1. Petitioner was a member of the crew of a coastal freighter that carried cargo from the United States to Haiti. Pet. App. 2a, 47a. In February 2017, officers from U.S. Customs and Border Protection (Customs) conducted a routine outbound customs inspection of the freighter while it was docked in Miami, Florida. Id. at 2a, 94a, 163a. In such an inspection, customs officers search the vessel for money, weapons, contraband, and stowaways. Id. at 94a, 163a. They also interview each crew member and inspect their living quarters. Id. at 48a, 94a.

During the inspection, petitioner "looked upset" and "his demeanor seemed odd." Pet. App. 2a. In the course of interviewing petitioner, customs officers asked him whether he was carrying more than $10,000, id. at 2a, 94a, an inquiry that reflected the federal-law requirement to file a report when transporting more than $10,000 out of the country, see 31 U.S.C. 5316(a), 5332(a). Petitioner answered "no." Pet. App. 2a, 94a. After further questioning, petitioner produced $42 from his shirt pocket, $200

from a pair of jeans, and $2000 from a pillowcase, but denied carrying any additional money. Id. at 2a. Customs officers instructed him to step outside the cabin while they conducted a search. Id. at 95a. They discovered a laundry-detergent box that was "taped shut with a lot of clear tape." Id. at 2a. They opened the box and discovered $36,930 inside. Ibid.

2. A federal grand jury indicted petitioner on one count of bulk cash smuggling, in violation of 31 U.S.C. 5332(a), and one count of making a false statement to federal authorities, in violation of 18 U.S.C. 1001(a)(2). Pet. App. 3a.

Petitioner filed a motion to suppress the evidence found during the search of the cabin, on the theory that the officers violated the Fourth Amendment by conducting the search without reasonable suspicion. Pet. App. 14a-15a. He acknowledged that the Eleventh Circuit's previous decision in United States v. Alfaro-Moncada, 607 F.3d 720 (2010), cert. denied, 562 U.S. 1273 (2011), barred his claim. Pet. App. 14a-15a. In that case, the Eleventh Circuit had determined that the Fourth Amendment permits a suspicionless search of a crew member's cabin in a vessel at an international border. 607 F.3d at 732. The court had explained that "[t]here are no inspection-free zones on a foreign cargo vessel at the border." Ibid.

A magistrate judge recommended denying petitioner's motion. Pet. App. 93a-112a. The magistrate judge observed that this Court

has long recognized an "exception[] to the Fourth Amendment's warrant requirement" for "'routine searches' taking place at our nation's borders." Id. at 97a (citing United States v. Montoya de Hernandez, 473 U.S. 531, 539-540 (1985)). The magistrate judge further observed that, in Alfaro-Moncada, the Eleventh Circuit had upheld a "very similar" suspicionless border search of a crew member's cabin. Id. at 98a. The magistrate judge explained that Alfaro-Moncada "dictates that the border search exception govern[s]" petitioner's case, because "[t]he search of [his] cabin fell squarely within the routine activities of Customs agents on outgoing vessels docked at the Miami River." Id. at 99a.

In an oral ruling, the district court overruled petitioner's objection to the magistrate judge's recommendation. Pet. App. 151a-152a. The court found that the magistrate judge had "correctly determined [that] this was a border search." Id. at 151a. Petitioner proceeded to trial. The court granted petitioner's motion for a judgment of acquittal on the cash-smuggling count. Id. at 3a. The jury found petitioner guilty on the false-statement count. Id. at 3a-4a. The court sentenced petitioner to time served. Id. at 4a.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 1a-9a. As relevant here, the court stated applied its previous decision in Alfaro-Moncada, which 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. at 4a (footnote omitted).

ARGUMENT

Petitioner contends (Pet. 8-16) that a search of living quarters on a vessel at an international border violates the Fourth Amendment unless the search is supported by reasonable suspicion. The court of appeals correctly rejected that contention, which would significantly undermine efforts to keep contraband from entering or exiting the country. The court's decision does not conflict with any decision of this Court or of any other court of appeals. Petitioner contends (Pet. 9-10) that the decision below conflicts with decisions from the Third and Ninth Circuits, but the passages on which petitioner relies are dicta. This Court has previously denied review of the question presented, see Alfaro-Moncada v. United States, 562 U.S. 1273 (2011) (No. 10-7813), and it should follow the same course here.

1. The court of appeals correctly determined that the border search of petitioner's cabin complied with the Fourth Amendment. "The Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border." United States v. Flores-Montano, 541 U.S. 149, 152 (2004). "[N]ot only is the expectation of privacy less at the border than in the interior, the Fourth Amendment balance between the interests of the Government and the privacy right of the

individual is also struck much more favorably to the Government at the border." United States v. Montoya de Hernandez, 473 U.S. 531, 539-540 (1985) (citations omitted). This Court has accordingly explained that "searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." Flores-Montano, 541 U.S. at 152-153 (quoting United States v. Ramsey, 431 U.S. 606, 616 (1977)).

The government's authority to conduct suspicionless searches at the border thus extends to a traveler's person, Montoya de Hernandez, 473 U.S. at 538; his briefcase and luggage, United States v. Tsai, 282 F.3d 690, 694-697 (9th Cir. 2002); his outer clothing, pockets, shoes, wallets, and purses, Tabbaa v. Chertoff, 509 F.3d 89, 98 (2d Cir. 2007); United States v. Yang, 286 F.3d 940, 944-945 (7th Cir. 2002); United States v. Cardenas, 9 F.3d 1139, 1148 n.3 (5th Cir. 1993), cert. denied, 511 U.S. 1134 (1994); United States v. Johnson, 991 F.2d 1287, 1291 (7th Cir. 1993); and the papers stored in closed containers, United States v. Fortna, 796 F.2d 724, 738 (5th Cir.), cert. denied, 479 U.S. 950 (1986). Just as the Fourth Amendment permits a routine border inspection of a traveler's person and personal effects, so too it permits a routine border inspection of a cabin designated for a crew member's use.

Although this Court has required reasonable suspicion for a 16-hour detention, "beyond the scope of a routine customs search and inspection," of a potential smuggler at the border, the Court has "suggest[ed] no view" on whether reasonable suspicion might be required even for highly intrusive border searches, "such as strip, body-cavity, or involuntary x-ray searches." Montoya de Hernandez, 473 U.S. at 541 & n.4. The Court has also left open "whether, and under what circumstances, a border search [of property] might be deemed 'unreasonable' because of the particularly offensive manner in which it is carried out." Flores-Montano, 541 U.S. at 155 n.2 (quoting Ramsey, 431 U.S. at 618 n.13). Such limitations, however, have no bearing on the search in this case. The search of petitioner's cabin on the ship did not involve a highly intrusive or embarrassing search of the person, and it did not destroy any of petitioner's property. Rather, the inspection of petitioner's cabin was no more offensive than the inspection of an international traveler's diaries, pocket calendars, notebooks, briefcases, or purses, all of which may occur at the border without suspicion.

2. Petitioner argues (Pet. 15-16) that the inspection of his cabin was more intrusive than the usual search of a traveler's effects because it was equivalent to the search of his home. This Court has recognized that the home lies at the core of the Fourth Amendment's protections. See, e.g., Kyllo v. United States,

533 U.S. 27, 31 (2001); United States v. Karo, 468 U.S. 705, 714 (1984). But "[i]n none of those decisions discussing the Fourth Amendment protections afforded to the home was it at the border, and on that critical distinction this case turns." United States v. Alfaro-Moncada, 607 F.3d 720, 729-730 (11th Cir. 2010), cert. denied, 562 U.S. 1273 (2011). As this Court has observed, "a port of entry is not a traveler's home. His right to be let alone neither prevents the search of his luggage nor the seizure of unprotected, but illegal, materials when his possession of them is discovered during such a search." Ramsey, 431 U.S. at 618 (quoting United States v. Thirty-Seven Photographs, 402 U.S. 363, 376 (1971) (opinion of White, J.)). The privacy interests affected by the search of petitioner's cabin are no greater than those affected by border searches of purses, briefcases, luggage, pockets, and the written materials they contain.

This Court's decision in California v. Carney, 471 U.S. 386 (1985), undermines petitioner's reliance on the use to which his cabin was put as the basis for asserting additional Fourth Amendment rights. In Carney, this Court held that the ordinary rule that the Fourth Amendment allows warrantless searches of automobiles was applicable to a motor home, even though it was "capable of functioning as a home." Id. at 393 (emphasis omitted). The Court explained that treating motor homes differently from other vehicles "ignores the fact that a motor home lends itself

easily to use as an instrument of illicit drug traffic and other illegal activity." Id. at 393-394. The Court also noted that its "application of the vehicle exception has never turned on the other uses to which a vehicle might be put." Id. at 394. Just as the Fourth Amendment allows a warrantless search of a vehicle even where its owner lives in the vehicle, it likewise allows a routine search of a cabin in vessel at a border even where a crew member temporarily resided in the cabin before arriving at the border.

Were border searches of crew cabins exempt from border searches, contraband would routinely -- and quite easily -- be introduced into this country by the simple expedient of placing it in a crew cabin before a customs inspection. As the court of appeals previously observed in Alfaro-Moncada, "[a] home in a fixed location within the United States 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." 607 F.3d at 730. The court explained in particular the threat to national security that would be posed by a rule exempting crew cabins from routine border inspection, observing that "readily transportable chemical and biological weapons" and "suitcase-size nuclear bombs" could be smuggled in crew cabins. Ibid. The court also discussed the risk that "agricultural pests and diseases" could enter this country through

crew cabins. Id. at 731. Nothing in the Fourth Amendment permits people to circumvent the government's authority to conduct routine border searches by storing illicit materials or conducting illegal activity in crew cabins.

3. Contrary to petitioner's contention (Pet. 8-11), the decision below does not conflict with the Ninth Circuit's decision in United States v. Alfonso, 759 F.2d 728 (1985), or the Third Circuit's decision in United States v. Whitted, 541 F.3d 480 (2008).

a. In Alfonso, the government subjected a crew member's cabin to an "'extended border search,'" which occurred "subsequent to a border crossing" and did not "actually occur at the physical border." 759 F.2d at 734 (citation omitted). According to the Ninth Circuit, "the level of suspicion for extended border searches is stricter than the standard for ordinary border searches." Ibid. In particular, according to the court, because "[e]xtended border searches occur after the actual entry has been effected and intrude more on an individual's normal expectation of privacy," "extended border searches must be justified by 'reasonable suspicion' that the subject of the search was involved in criminal activity, rather than simply mere suspicion or no suspicion." Ibid.

The Ninth Circuit went on to say that "the search of private living quarters on a ship should require something more than naked suspicion." Alfonso, 759 F.2d at 738. It determined, however,

that reasonable suspicion justified the cabin search at issue in that case. Ibid. To the extent the court's statement can be construed to suggest that reasonable suspicion would be required to search a cabin in a (non-extended) border search, it was dictum twice over: The court was dealing with an extended border search, and reasonable suspicion was present, making it unnecessary for the court to decide whether it was required.

The decision below accordingly does not conflict with the Ninth Circuit's decision in Alfonso. The Eleventh Circuit, like the Ninth Circuit, has also distinguished between routine border searches that require no suspicion and extended border searches that require reasonable suspicion. See United States v. Santiago, 837 F.2d 1545, 1548 (1988). Here, petitioner has not contended that the search of the freighter was an "extended border search."

Furthermore, in the 34 years since Alfonso, the Ninth Circuit has declined to find that a suspicionless border search violated the Fourth Amendment, when it did not involve a highly intrusive search of the person, did not involve the destruction of property, and was not conducted in a particularly offensive manner. See United States v. Seljan, 547 F.3d 993, 1002 (2008), cert. denied, 555 U.S. 1195 (2009). Because the border search at issue here did not raise any of those concerns, the Ninth Circuit might well decide this case in the same manner as the Eleventh Circuit.

b. In Whitted, the Third Circuit stated that reasonable suspicion was required to conduct a border search of a passenger's cabin on a cruise ship and found that standard was satisfied on the facts of the case before it. 541 F.3d at 486, 491. In a concurring opinion, Judge Chagares pointed out that the panel majority's statement that reasonable suspicion was required was "unnecessary" to its holding that the evidence was properly admitted. See id. at 491. Judge Chagares reasoned that, because the court unanimously "agree[d] that the totality of the circumstances here did create reasonable suspicion that [the defendant] was engaged in narcotics smuggling," the court need not have opined on whether such a showing was necessary. Id. at 493 (emphasis omitted).

The Third Circuit's discussion of the applicability of the reasonable suspicion standard to border searches of ship's cabins was dictum, and that court has not, either before or after Whitted, excluded evidence on that basis. Whitted therefore does not present a square conflict with the decision of the Eleventh Circuit here. Review by this Court on the basis of a purported conflict would therefore be premature.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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