

## United States of America v. James Joshua Thompson, aka James Deas 282 F.3d 673 (9th Cir. 2002) (Decided March 4, 2002)

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## GOVERNMENT DETENTION OF A VESSEL AND THE FOURTH AMENDMENT

**The detention of a vessel for purposes of a safety inspection is within the power of the United States Government, given the government's interest in regulating maritime commerce. A detention for purposes of obtaining a criminal background check is justifiable when the facts indicate that the detaining party has a reasonable basis for suspecting that the detained party is engaged in criminal activity. So long as such detention is minimally intrusive, the detention will not be violative of the Fourth Amendment.**

United States of America v. James Joshua Thompson, aka James Deas  
282 F.3d 673 (9<sup>th</sup> Cir. 2002)  
(Decided March 4, 2002)

The subject of this action is the detention and subsequent search of the *M/V IKEA*. The *M/V IKEA* was traveling southbound when it was stopped by a U.S. Coast Guard vessel near the San Juan Islands. Defendant, James Joshua Thompson ("Thompson"), was operating the vessel and Kanwanjit Bassi ("Bassi") was the only other person on board.

The Coast Guard stopped the boat in order to perform a safety inspection. During the inspection, the defendant was unable to provide the registration for the ship, claiming he had it taped to the window of the vessel and that it blew away. Although something was taped to the vessel, the inspector found this suspicious, because vessel registration papers are usually kept in a safer place. The inspector noted that the vessel had previously been registered in Idaho, as the vessel had an expired Idaho registration sticker, and inquired as to the identity of the vessel's registered owner. The defendant claimed it was registered to "a friend" but could not provide the name. In addition, the vessel was on a route favored by drug smugglers coming from Canada to the United States. Both these facts further aroused the suspicions of the inspector. The inspector then asked the defendant to produce life vests for everyone aboard. As he was retrieving the vests, the inspector was able to view the interior of the boat, which included a large duffel bag. Later, the officers were able to see another such duffel bag. From his experience, the inspector knew that the duffel was of a kind typically used by drug smugglers to transport marijuana. At the inspector's request, the defendant provided his name and date of birth, but refused to give his social security number. At this point, half way through the inspection, the inspector radioed back to his vessel for a background and warrant check for each of the individuals on the *M/V IKEA*. To do this, the inspector radioed the Coast Guard vessel, the vessel radioed the station on shore in Bellingham, which then radioed the Border Patrol office in Blaine, Washington, which actually performed the background check and relayed the information back up the chain.

While the background check proceeded, the inspector continued with his inspection of the vessel. When asked about the purpose of the trip, the defendant responded that the vessel was recently repaired and that they were on a test run. This seemed to be verified by a number of tools strewn about the deck, but the tools were brand new and the defendant and Bassi were physically clean. After the inspection was

completed, the Coast Guard detained the vessel for an additional 15-20 minutes while the background check was completed. The background check revealed that the defendant had a history of drug smuggling, that he was affiliated with the Hell's Angels motorcycle gang in Canada and that he had used an alias in the past, that of James Joshua Dean. On the basis that they had probable cause to search the ship, the vessel was detained for another 30 minutes while a search warrant was obtained. The search of the vessel turned up over 100 pounds of marijuana.

The defendant moved to suppress the marijuana on the basis that the Coast Guard did not have sufficient probable cause to search the vessel. The district court conducted an extensive evidentiary hearing and found that the Coast Guard did not have probable cause to detain the *M/V IKEA* after the inspection was complete but before the results of the background check were known. Accordingly, the district court suppressed the marijuana.

On appeal, the Court of Appeals for the Ninth Circuit found the initial detention of the *M/V IKEA* to be within the Coast Guard's power. 14 U.S.C. §89(a) gives the Coast Guard broad authority to make "examinations and inspections" of vessels over which the United States has jurisdiction in order to prevent, detect and suppress violations of United States law. Thus, the appellate court found the initial detention of the vessel for the safety inspection to be within the scope of the Coast Guard's power.

The appellate court first considered whether or not it was appropriate for the Coast Guard to detain the *M/V IKEA* for the 15-20 minutes after the inspection was completed. *United States v. Maybusher* (735 F.2d 366, 372 [9<sup>th</sup> Cir. 1984]) held that "restrictions on a person's freedom of movement may be imposed to maintain the status quo while making an initial inquiry provided the force displayed is not excessive under the circumstances". In this case, the restrictions involved were that the *M/V IKEA* was tied to the Coast Guard vessel, that the defendant was not told he was free to leave after completion of the inspection and that the officers remained on board while the background check was completed.

To determine whether an arrest occurred, *United States v. Torres-Sanches* (83 F.3d 1123, 1127 [9<sup>th</sup> Cir. 1996]) held that "a court must evaluate all the surrounding circumstances, including the extent to which liberty of movement is curtailed and type of force or authority employed". In that case, the court held that the appropriate inquiry is "whether the officers diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant". With this as a guidepost, the court determined that the 15-20 minute delay was not unduly restrictive. In support of this, the court found that there was no threat of force or coercion by the Coast Guard and the delay was neither unreasonable nor unnecessary. The background check was performed quickly and competently, given the multiple relays of information involved. In addition, the appellate court found that the United States has a strong interest in protecting its borders and regulating the activities of maritime commerce, as was found in *United States v. Villamonte-Marquez* (462 U.S. 579, 592 [1983]) and *United States v. Watson* (678 F.2d 765, 771-774 [9<sup>th</sup> Cir. 1982]). Because of this, the 15-20 minute delay was a permissible investigatory detention so long as it was based on reasonable suspicion by the officers that criminal activity may exist.

The Ninth Circuit then determined that the Coast Guard had reasonable suspicion in this case. The court found the fact that the defendant was unable to supply the vessel's

registration, that he could not recall the name of the vessel's owner and that the vessel had an expired Idaho registration sticker to be sufficient to constitute reasonable suspicion. Other less persuasive factors included the defendant's story about the boat being on a test run, despite the tools being in new condition and the defendant's unsoiled appearance; that the inspector knew that the vessel was on a course typically used by smugglers and that the inspector knew that duffel bags of the type seen on the vessel were typically used in smuggling operations.

Finally, the court considered whether or not the delay exceeded the permissible limits of an investigative detention. The court concluded that the investigation was minimally intrusive and that the investigation was conducted quickly and efficiently. Given the mobility of the ship, the proximity to the international border, the court found the additional 15-20 minute delay caused by the background check to be incidental when weighed against the United States' interest in "the prevention, detection and suppression of violations of laws in the United States". For Fourth Amendment purposes, the court found that "[the] detention was minimally intrusive until reasonable suspicion ripened into probable cause for the search and arrest of the smugglers."

The defendant does not dispute that the Coast Guard had sufficient probable cause to search the vessel after the results of the background check were made known to the Coast Guard. Therefore, the appellate court reversed the district court order granting the defendant's motion to suppress and remanded for a new trial.

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#### **LIMITATION OF LIABILITY ACT AND THE PRIMARY DUTY RULE**

**The owner of a vessel is absolutely liable for injuries arising from the vessel's unseaworthiness; the Limitation of Liability Act is an exception to absolute liability, and the owner of the vessel will be relieved of liability if the three prongs of the primary duty rule are satisfied.**

Northern Queen, Inc. v. Kathryn Kinnear  
298 F.3d 1090 (9<sup>th</sup> Cir. 2002)

(Decided Aug. 7, 2002)

Northern Queen, Inc. ("Northern Queen") was a small, family-owned corporation which had two principal shareholders: Blake Kinnear ("Kinnear"), the president, managing, agent, and captain who owned 22 percent of the corporation shares, and Kinnear's mother, Linda Kinnear, the corporation's secretary/treasurer who owned 77 percent. Kinnear's minor daughter owned one percent of the shares. Northern Queen's primary asset was the fishing ship LIN J ("the vessel").

In March of 1999, the vessel participated in the crab season in the northwest section of the Bering Sea. On March 9, 1999, Kinnear sent e-mails to his mother and wife indicating that the weather was turning bad and ice was becoming a concern. On March 15, 1999 crabbing was interrupted due to worsening weather. The vessel spent the next two days gathering pots. By March 17 the vessel had gathered 62 crab pots, which