



## VESSEL BOARDINGS AND COAST GUARD AUTHORITY

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We've all watched enough episodes of "*COPS*" or "*Law and Order*" to be familiar with the concept that an agent of law enforcement needs "probable cause" to arrest a person for the commission of a crime. Agents of law enforcement need a "reasonable suspicion" that a crime has been or will be committed to stop/detain a person for questioning. So, does the Coast Guard need either a reasonable suspicion or probable cause to believe that a law or regulation has been violated to stop your boat and board your vessel? The answer is, "No."

The Hearing Office often receives responses from charged parties demanding that their cases be dismissed because the Coast Guard "lacked probable cause" to stop and board their vessel. Moreover, they argue that any violation discovered during the boarding cannot be processed because the boarding was improper and in violation of their rights under the Fourth Amendment of the Constitution, which prohibits unlawful searches and seizures.

The Fourth Amendment to the United States Constitution guards against unreasonable searches and seizures and requires warrants to be judicially sanctioned and supported by probable cause. The courts have long held however, that it is not unreasonable for the Coast Guard to exercise plenary authority under Title 14 United States Code (USC) section 89 to stop and board vessels on the navigable waters of the United States to conduct safety and documentation inspections, even in the absence of a reasonable suspicion that some criminal activity is occurring.

The Coast Guard exercises its broad authority to conduct vessel boarding's for the purpose of enforcing U.S. laws and regulations to

promote marine safety, security and environmental protection. This authority extends to any vessel over which the United States has jurisdiction. This essentially means U.S. vessels anywhere outside the territorial waters of another country, and foreign vessels in U.S. waters. Title 14 USC § 89 states in part:

“(a) The Coast Guard may 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, 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 the ship’s documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance...”

For civil penalty cases forwarded to the Hearing Office, the Hearing Officer reviews each case to determine if there is sufficient evidence in the case file to make a preliminary determination that a violation has occurred and proceed with adjudication. This includes ensuring the Coast Guard has jurisdiction over the matter and the elements of the alleged violation are met based on the evidence. There may be cases where a party could reasonably argue that a denial of fundamental fairness, or actions that shock the conscience, undermine the credibility of the officials involved in a case and the reliability of the evidence those officials have offered. Arguments that the Coast Guard “did not have probable cause to conduct the boarding,” however, most often just show an unfamiliarity with the relevant law, as discussed above, and have no bearing on the determination of whether a violation of law or regulation was committed.