



16731
July 16, 2008

[REDACTED]
[REDACTED]
[REDACTED]

RE: Case No. 2366270
[REDACTED]
[REDACTED]
Warning

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 2366270, which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a Warning for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 12110(d)	Command of documented vessel under a person who is not a citizen of the United States.	Warning

The violation was observed on January 26, 2005, when Coast Guard boarding officers boarded the [REDACTED] while it was underway on Pass Christian Harbor, near Pass Christian, Mississippi.

On appeal, although you do not deny that the violation occurred, you assert that your husband, who was operating the vessel at the time of the relevant boarding, has initiated the naturalization process. As a result, you ask that I "reconsider the decision" of the Hearing Officer" because the [REDACTED] is your only "source of income and without it...[you]...have no other means of income." Your appeal is denied for the reasons described below.

46 USC 12110 makes clear that "[a] documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States." The record shows that prior to the boarding giving rise to the instant civil penalty case, your husband, [REDACTED], was observed operating the vessel to its moorings. At that time, your husband was not a citizen of the United States. In correspondence to the Hearing Officer, you admitted that your husband was operating the vessel at the relevant time to help you because you were tired, but explained that since the violation was observed, he applied for Naturalization.

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Therefore, based on both your admission and the evidence contained in the case file, I find that the record is undisputed in indicating that [REDACTED] commanded the [REDACTED], a documented vessel of the United States, while he was not a U.S. Citizen. While I commend you for taking efforts to ensure that a similar violation will not occur in the future, by ensuring that your husband becomes a citizen of the United States, the record contains substantial evidence to support the Hearing Officer's determination that the [REDACTED] was operated in violation of 46 USC 12110(d) on January 26, 2005.

The maximum penalty allowed for a violation of 46 USC 12110(d) is \$11,000.00 (per day that the violation occurs). The record shows that the Hearing Officer considered your violation history, the economic impact of Hurricane Katrina, and the fact that your husband was attempting to secure U.S. citizenship in assessing a warning for the violation. Given the evidence contained in the record, I find that the Hearing Officer did not err in so doing.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the warning assessed by the Hearing Officer, rather than the \$1,000.00 penalty preliminarily assessed or \$11,000.00 maximum penalty permitted by statute to be appropriate under the circumstances of this case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

//s//

DAVID J. KANTOR

Deputy Chief,

Office of Maritime and International Law

By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center