

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

KRITON MARITIME, S.A.)
 as Owner of M/T KRITON,)
 and the M/T KRITON, *in rem*,)
)
 Petitioners,)
 v.)
)
 UNITED STATES OF AMERICA,)
 UNITED STATES COAST)
 GUARD, and UNITED STATES)
 CUSTOMS AND BORDER)
 PROTECTION AGENCY,)
)
 Respondents.)

March 26, 2007

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**PETITION OF KRITON MARITIME S.A.
 FOR RELEASE OF THE MOTOR TANKER *KRITON*, OR IN THE
 ALTERNATIVE, TO FIX SECURITY AND PROTECT THE RIGHTS,
LIBERTIES AND FREEDOMS OF THE VESSEL'S CREW**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, through undersigned counsel and pursuant to Supplemental Rule E(8), Specially Appearing Petitioners, KRITON MARITIME, S.A., Owner of the M/T KRITON, (hereinafter "Owner"), and the M/T KRITON, *in rem*, to Petition this Honorable Court for an Order releasing the vessel, M/T KRITON (hereinafter "Vessel"), or in the alternative for an Order fixing security, (if any), for the release of the Vessel and protection of the rights, liberties and freedoms of the Vessel's crew, as (1) the Coast Guard is not authorized to withhold a vessel's Customs Clearance, (2) the Vessel is being improperly detained at New Haven, Connecticut, (3) the quantum of the surety bond, as well as the additional terms and conditions required by the Coast Guard for the release of the Vessel, are unjustified as a matter of fact, law and equity and beyond the Coast

Guard's authority, (4) all such actions are causing serious, irreparable harm to Petitioners; and (5) the Coast Guard is seeking, without authority, to **irrevocably prejudice the legal rights, civil liberties and personal freedoms of the Vessel's crew.**

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction as Petitioners set forth an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is based in admiralty pursuant to 28 U.S.C. § 1333 and Rules E and C of the Supplemental Rules For Certain Admiralty and Maritime Claims. In addition, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1346, as the United States of America is a defendant/respondent.

2. Venue is proper pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1402, as the United States is a named defendant/respondent; the vessel is currently within the District of Connecticut; the vessel is being detained within this District by the Commander of the United States Coast Guard, Sector Long Island Sound; and the Office of the United States Attorney for the District of Connecticut, who, upon information and belief, is in charge of the investigation relating to a possible record keeping violation under 33 U.S.C. § 1901, *et. seq.* (hereafter "The Act to Prevent Pollution from Ships" or "APPS").¹

¹ APPS adopts as U.S. law the provisions of the International Convention for the Prevention of Pollution from Ships (hereinafter "MARPOL"). The MARPOL Protocol, more formally known as the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, is a treaty to which the United States is a party. Its' provisions are codified as U.S. law at 33 USC 1901, *et. seq.*; See also United States of America v. Royal Caribbean Cruises Ltd., 11 F. Supp. 2d1358, 1368 (S.D.FI. 1998).

THE VESSEL

3. The M/T KRITON (the “Vessel”) is an oil products tanker built in 1991. The Vessel is owned by Kriton Maritime, a company incorporated under the laws of Liberia. The Vessel is managed by Ionia Management, a foreign company, with a principal place of business at 12, Laskou Street, Piraeus, Greece. The Vessel is registered in the Bahamas and operates pursuant to the laws and authority of the Bahamian Flag State. The Vessel’s classification society is Bureau Veritas. *See* Chalos Affidavit, at paragraph 2.

THE DETENTION OF THE VESSEL

4. On or about March 20, 2007, the Vessel arrived at New Haven, Connecticut. *See* Chalos Affidavit at Paragraph 3.

5. After arrival at the Magellan T-Dock in New Haven Harbor at or about 2000 hours, a team of Coast Guard officers boarded the Vessel to conduct a purported Port State Control inspection. At the time the Port State Control Inspection was conducted, no deficiencies were found by the United States Coast Guard boarding team. *See* Chalos Affidavit, at paragraph 4. *See also* United States Coast Guard, Port State Control Inspection Form “A,” attached to the Chalos Affidavit as Exhibit “A”.

6. Thereafter, during the overnight hours of March 21, 2007, several additional Coast Guard officers and individuals now believed to be criminal investigators attended on board the Vessel. *See* Chalos Affidavit, at paragraph 5.

7. At or about the time of this supplemental boarding, over the objection of the Captain of the Vessel, a Port State Control Form “B” was filled out by the Coast Guard and the Vessel was issued a deficiency for “a suspected Marpol Violation –

improper Oil Record Book.” See Chalos Affidavit, at paragraph 6. See also a true and complete copy of the Port State Control Inspection Report Form “B” attached to the Chalos Affidavit as Exhibit “B”.

8. Despite the U.S. Coast Guard inspectors’ findings that the suspected violation was, at worst, a mere record keeping violation, the United States Coast Guard, by authority of J.J. Plunkett, Commander, United States Coast Guard, Captain of the Port, Long Island Sound, issued Captain of the Port Order #LIS-008-007, and detained the Vessel alongside the Magellan T-Dock pier. See Chalos Affidavit, at paragraph 7. See also a true and complete copy of the March 21, 2007, Captain of the Port Order is attached to the Chalos Affidavit as Exhibit “C”.

9. This March 21, 2007, Captain of the Port Detention Order, without any explanation as to what “pollution regulations” Petitioners allegedly failed to comply with, simply and self-servingly stated the following basis for the deficiency and detention:

Due to the non-compliance with pollution regulations, M/T KRITON poses a potential hazard to the port of New Haven and the waters of Long Island Sound.

See Chalos Affidavit, at paragraph 8. See also Exhibit “C” attached to the Chalos Affidavit.

10. Thereafter, on March 23, 2007, a second letter was issued to the Vessel by Commander Plunkett. See Chalos Affidavit, at paragraph 9. See also a true and complete copy of the March 23, 2007, Captain of the Port letter is attached to the Chalos Affidavit as Exhibit “D.”

11. This second Captain of the Port letter provides, in pertinent part, that the Coast Guard, in an exercise of its purported authority, has detained the Vessel by

requesting the United States Customs and Border Protection Agency (hereinafter, “CBP”) to withhold her customs clearance on the mere allegation that *inspectors may have discovered a suspected violation which may subject the Vessel owner and/or operator to a fine or civil penalty.* (emphasis added) See Chalos Affidavit, at paragraph 10.

12. In part, this second letter provides:

The Coast Guard is exercising its authority under 33 U.S.C. §1908(e) to request U.S. Customs and Border Protection to withhold M/T KRITON’s clearance, permit to proceed, or permit to depart from port because reasonable cause exists to believe that the ship, the owners, and/or the operators of the vessel may be subject to a fine or civil penalty pursuant to 33 USC §1901 et. seq., including 33 USC §1908(a), 18 USC §3571 and other applicable law for knowing violations of 33 CFR Part 151 Subpart A.

Clearance or permit to proceed from port may be granted upon filing of a surety/security agreement, satisfactory to me, in the amount of one million dollars (US \$1,000,000) through the representative for the vessel’s underwriter.

See Chalos Affidavit, at paragraph 11. See also Exhibit “D” attached to the Chalos affidavit.

13. In addition to impermissibly detaining the Vessel and demanding that such an excessive surety bond be posted “*through the representative for the Vessel’s underwriter*” on the basis of a mere allegation of a “suspicion” that a record keeping violation may have occurred on board the Vessel, the Coast Guard Legal Office has further advised the undersigned that the Government has now identified twelve (12) crewmembers which it wishes to detain in the United States as part of its’ continuing

investigation as to the alleged shipboard record keeping failure. *See* Chalos Affidavit, at paragraph 12.²

14. The U.S. Coast Guard Legal Office has further advised the undersigned that, in order to sufficiently meet the Captain of the Port's requirement to obtain the Vessel's release, "a satisfactory security agreement" needs to be agreed and "filed."

15. Specifically, the Coast Guard is insisting that Petitioners: (1) to agree to force these twelve (12) individual crewmembers to leave the Vessel and, thereafter, 'maintain' them in the U.S. for a minimum of 150 days; (2) to agree to house, feed, and lodge these twelve (12) individuals in the U.S. for a minimum of 150 days; (3) to provide a per diem to these twelve (12) individuals from the day they disembark the vessel for a minimum of 150 days; (4) to agree, (irrespective of the terms and conditions of the crewmembers individual employment contracts), to continue the employment of these twelve (12) crewmembers and continue to pay their 'total wages,' while they are detained by the Government in New Haven and (5) agree to bear the costs and expenses to repatriate these twelve (12) crewmembers who will remain detained in the U.S. (at the Coast Guard's request) for 150 days, (or longer), during the period of the Government's investigation and possible prosecution of the alleged shipboard record keeping violation. *See* Chalos Affidavit, at paragraph 13.

16. In response, Petitioners (a) rejected the Coast Guard's demands; (b) requested an explanation as to the basis and legal authority for the Coast Guard's demands concerning the Vessel's crew; and (c) requested that the Coast Guard reconsider the propriety of its actions. *See* Chalos Affidavit, at paragraph 17.

² While it is unclear as to what authority the Coast Guard believes it is authorized to involve the "Vessel's underwriter" in this matter, it is clear evidence that the Coast Guard's actions in this matter are well beyond the bounds of its prescribed authority.

17. Despite demand for same, no substantive response from the Coast Guard has been forthcoming. Rather, the Coast Guard simply issued a *third* Captain of the Port Detention Order. See Chalos Affidavit, at paragraph 18.

18. All such surety demands and purported “security agreement” requirements run well afoul of applicable U.S. law and regulation; International law and treaties; well established principles of comity; and the U.S. Government’s stated commitment, (to the U.N., the International Maritime Organization (IMO), and the International Labor Organization (ILO)), for the fair treatment of foreign seafarers calling at U.S. ports. See Chalos Affidavit, at paragraph 14.

19. The twelve (12) individual crewmembers who the Government now seeks to detain as “possible witnesses” are unsophisticated, hard-working foreign nationals, [who are now (or shortly will be) represented by counsel], whose civil liberties and personal freedoms are irrevocably protected by International, Federal, State and local law and regulation, as well as applicable rules of procedure, all of which are now being inexcusably disregarded by the Coast Guard, but **must** be duly regarded by this Honorable Court. See Chalos Affidavit, at paragraph 15.

20. The U.S. Coast Guard’s demands requiring Petitioners to purposefully infringe, as “agents” of the U.S. Government, upon these twelve (12) individuals’ core human rights, civil liberties, personal freedoms and principles of fair treatment of foreign seafarers, shock the conscious and are impermissible *as a matter of law, as a matter of equity and as a matter of human decency*.³ See Chalos Affidavit, at paragraph 16.

³ The U.S. Coast Guard, MSO-Long Island Sound and the First District Legal Office are well aware of both the impermissible nature of the USCG’s demands, as well as the serious and potentially fatal consequences of its actions in this regard. In June 2005, during the course of a similar investigation a foreign seafarer committed suicide on board a vessel at the Connecticut State Dock.

21. Petitioners have repeatedly objected to these demands, and have repeatedly requested the U.S. Coast Guard to rescind and/or modify its detention order and its unauthorized security agreement demands. *See Chalos Affidavit*, at paragraph 17.

22. For the reasons more fully set forth herein, and pursuant to Supplemental Rules For Certain Admiralty and Maritime Claims, Rule E (5) and Rule E (6), Petitioners respectfully request that this Honorable Court issue an Order releasing the vessel or in the alternative, an Order fixing the amount of security and protecting the rights, liberties and freedoms of the individual seafarers.

**THE COAST GUARD LACKS THE AUTHORITY,
AS A MATTER OF LAW, TO WITHHOLD THE CUSTOMS
CLEARANCE FOR THE M/T KRITON**

23. It is CBP, and not the Coast Guard, which has the authority to grant or deny a Vessel's Customs Clearance. Here, the Coast Guard has improperly usurped the role of CBP, and is wrongfully detaining the Vessel in New Haven Harbor.

24. It is clear that under APPS, and specifically 33 U.S.C. § 1908(e), only the CBP, may refuse or revoke the Customs Clearance for a vessel.

25. Specifically, 33 U.S.C § 1908(e) provides in pertinent part, the following:

§ 1908. *Penalties for violations*

* * *

(e) Ship clearance or permits; refusal or revocation; bond or other surety. If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause⁴ exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under

⁴ While the legal test for what constitutes "reasonable cause" is not an exacting one, (*see United States v. Dubrofsky*, 581 F.2d 208, 211 (9th Cir. 1978)), it is clear that the United States must articulate *some* specific facts in order to establish reasonable cause. *See United States v. Most*, 789 F.2d 1411, 1415 (9th Cir. 1986). Mere allegations or suspicions of wrongdoing do not provide a sufficient basis to establish reasonable cause. *See United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir. 1996).

*this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.*⁵ (emphasis added).

26. There are numerous administrative regulations that permit the Coast Guard to enforce other provisions of APPS. *See* 33 C.F.R. pts. 151 and 155. However, there are no provisions that authorize the Coast Guard to detain a vessel by withholding her Customs Clearance.

27. As it is beyond the statutory authority of the Coast Guard to withhold the Vessel's Customs Clearance, and it is beyond the authority of both the Coast Guard and Customs and Border Protection to require **both** the "filing of a bond" **and** "surety satisfactory to the Secretary," it is respectfully submitted that the Vessel is being improperly detained.⁶

28. Accordingly, it is respectfully requested that this Honorable Court issue an Order releasing the Vessel from her "detention" forthwith.

AS CBP HAS NOT, UPON INFORMATION AND BELIEF, REVOKED THE VESSEL'S CUSTOMS CLEARANCE, THE COAST GUARD IS IMPROPERLY DETAINING THE VESSEL AND IS DEMANDING STATUTORILY IMPERMISSIBLE CONDITIONS WHICH DISREGARD THE RIGHTS, LIBERTIES AND FREEDOMS OF THE CREW IN EXCHANGE FOR HER RELEASE

29. To date, there has been no indication from CBP that it has, indeed, withheld the Vessel's customs clearance. Similarly, there has been no evidence, save for

⁵ In the instant matter, it is undisputable that neither the vessel owner, operator, nor person in charge has been found liable for a fine or civil penalty under this section. Accordingly, the portion of the statute at issue is whether reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section.

⁶ 33 U.S.C. §1908(e) provides for "the filing of a bond or other surety satisfactory to the Secretary," but **not** both.

a self-serving proclamation, that the Coast Guard has even requested CBP to withhold the Vessel's Customs Clearance pursuant to 33 U.S.C. § 1908(e).

30. Rather, Petitioners have only been informed that the Coast Guard "*is exercising its authority...to request U.S. Customs and Border Protection to withhold M/T KRITON's clearance, permit to proceed, or permit to depart from port...*". See Exhibit "D" attached to the Chalos Affidavit. Again, the Coast Guard has failed to set forth a substantive factual or legally sufficient basis for the Coast Guard or Customs and Border Protection to detain the Vessel.

31. 33 U.S.C. § 1908(e), simply grants CBP the authority to withhold Customs Clearance until a vessel's owner posts a bond or other satisfactory surety. It does not provide statutory authority (or any other authority) for either the Coast Guard or CBP to demand Petitioners (a) to force twelve (12) crewmembers get off the ship; (b) to demand twelve (12) crewmembers to stay in a New Haven motel ***for a period of 150 days or longer***; (c) to house, feed and pay total wages to these twelve (12) crewmembers the Government seeks to detain ***for a minimum of 150 days*** while it investigates and possibly prosecutes an alleged ship board record keeping failure; and perhaps most egregious, (d) to require Petitioners to purposefully attempt to waive and tamper with various fundamental rights, freedoms and civil liberties, and personal protections afforded to the Vessel's crew.⁷ See Chalos Affidavit at paragraph 13.

32. The current improper detention of the Vessel is unjustifiably causing Petitioners significant costs, expense, delay and undue economic hardship each day she

⁷ Neither APPS nor its legislative history authorize the Coast Guard or Customs and Border Protection to withhold customs clearance until the owner gives up constitutional and statutory rights that have nothing to do with assuring the payment of a fine or penalty that *might* be imposed, as it has done in this case.

has been, and continues to be, detained, and is causing the serious, irreparable damages to the Vessel's crew.⁸

33. Accordingly, Petitioners respectfully request that the Court issue an Order releasing the Vessel from further detention at New Haven Harbor, or in the alternative, fix security in a reasonable amount which is just and proper under the facts and circumstances of this matter, and protect the rights, liberties and freedoms of the crew.

NEITHER THE COAST GUARD NOR CBP HAS, OR CAN, DEMONSTRATE THAT "REASONABLE CAUSE" EXISTS TO BELIEVE THAT THE SHIP, ITS OWNER, OPERATOR, OR PERSON IN CHARGE MAY BE SUBJECT TO A FINE OR CIVIL PENALTY, AS IS REQUIRED BY APPS.

34. Notwithstanding the foregoing, assuming, *arguendo*, that CBP is properly withholding the vessel's customs clearance, neither the Coast Guard nor CBP has demonstrated that there is a substantial, sufficient factual or legal basis upon which to demand a \$1 million surety bond, **plus** an agreement on security containing the unconscionable terms and conditions outlined herein.

35. As stated in paragraph 25 above, the Vessel's Customs Clearance in this matter may *only* be withheld by CBP, pursuant to 33 U.S.C. § 1908(e), upon a showing that *reasonable cause* exists to believe that the vessel, her owner, operator, or person in charge may be subject to a fine or civil penalty under APPS.⁹

36. In the instant matter, despite repeated demands by Petitioners, the Coast Guard has failed to substantively establish, that *reasonable cause* exists to believe any violation of APPS has occurred, and that "the ship, its owner, operator, or person-in-

⁸ The vessel and her owner, upon information and belief, is losing in excess of \$20,000 per day in hire each day that she remains improperly detained at New Haven Harbor (*i.e.*- 6 days and counting). As noted above, there were no deficiencies noted as a result of the Port State Control

⁹ Even when such circumstance exists, the Coast Guard can only request that the CBP refuse and/or revoke a vessel's customs clearance. Again, at no time is the Coast Guard authorized to directly withhold a vessel's customs clearance and/or otherwise detain a vessel for a suspected APPS violation.

charge may be subject to a fine or civil penalty” for such violation, as is required by the statute. *See* 33 U.S.C. § 1908(e).

37. Currently, the vessel is being detained on the mere conclusory allegation that a “suspected Marpol violation – *improper Oil Record Book*” was identified and the “vessel detained . . . in accordance with MARPOL, Article 5(2)”. (*See* Exhibit “B” attached to the Chalos Affidavit, Port State Control Report of Inspection – Form B.) Such conclusory allegations, without more, fall well short of the Coast Guard’s statutorily defined threshold burdens.

38. Moreover, such a self-serving, unsupported allegation is not “*reasonable cause*,” and most certainly does not provide either a substantive fact or legally sufficient basis upon which the Coast Guard may request, and/or the CBP may detain, the Vessel by withholding her Customs Clearance.

39. While the legal test for what constitutes “*reasonable cause*” is not an exacting one,¹⁰ it is clear that the United States must articulate *some* specific facts in order to establish reasonable cause. *See United States v. Most*, 789 F.2d 1411, 1415 (9th Cir. 1986).

40. Mere allegations or suspicions of wrongdoing do not provide a sufficient basis to establish reasonable cause. *See United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir. 1996).

41. In the instant action, the Coast Guard has failed to articulate a single substantive fact, which substantively demonstrates that there is *reasonable cause* to believe that (1) an APPS record keeping violation occurred on board the M/T KRITON;

¹⁰ *See United States v. Dubrofsky*, 581 F.2d 208, 211 (9th Cir. 1978).

(2) that any such violation occurred within U.S. jurisdiction; and (3) “the ship, its owner, operator, or person-in-charge may be subject to a fine or civil penalty” for such violation.

42. Moreover, in addition to the failure of the Coast Guard and/or CBP to establish, that “*reasonable cause*” exists, there has not even been an allegation that any such potential violation occurred within U.S. jurisdiction; that is, within the navigable waters of the United States.

43. APPS only allows the United States to regulate foreign-flagged vessels, such as the M/T KRITON, while in the navigable waters of the United States. *See United States v. Abrogar*, 459 F.3d 430 (3d Cir. 2006); *See United States v. Jho*, 465 F.Supp.2d 618 (E.D.Tx. 2006); *See United States v. Royal Caribbean Cruises, Ltd., supra*, at 1363; *See also* 33 U.S.C. § 1902(a)(1).

44. By the Coast Guard failing to meet the statutorily required threshold burden of setting forth a substantive factual basis to establish that “*reasonable cause*” exists, there is **absolutely no basis**, in law, fact or equity, for the Coast Guard or Customs and Border Protection to continue to detain the Vessel.

45. Accordingly, Petitioners respectfully request that the Court issue an Order releasing the Vessel from being further detained at New Haven Harbor, or in the alternative, issue an Order fixing security in a reasonable amount, which is just and proper under the facts and circumstances of this matter, and protecting the rights, liberties and freedoms of the crew.

ASSUMING, ARGUENDO, THE VESSEL HAS BEEN PROPERLY DETAINED, (WHICH IS DENIED), PETITIONERS HAVE AN ABSOLUTE RIGHT TO POST A BOND IN EXCHANGE FOR HER PROMPT RELEASE

46. As stated above, APPS is the U.S. codification and implementation of MARPOL. MARPOL is a multinational agreement that “attempts to strike a balance between the need to protect and preserve the marine environment **and the desire not to impose laws which make shipping prohibitively expensive.** See United States v. Apex Oil Company Inc., et. al., 132 F.3d 1287, 1291 (9th Cir. 1997)(emphasis added); See also Andrew Giffin, *MARPOL 73/78 And Vessel Pollution, A Glass Half Full or Half Empty*, 1 *Ind. J. Global Legal Stud.* 489, 490 (1994).

47. Specifically, 33 U.S.C § 1908(e) provides in pertinent part, the following:

(e) Ship clearance or permits; refusal or revocation; bond or other surety. If any ship subject to the MARPOL Protocol, Annex IV to the Antarctic Protocol, or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause¹¹ exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.¹² (emphasis added).

48. Here, the current demands of the Coast Guard for both an excessive \$1 million surety bond **and** an agreement on security containing unconscionable conditions -

¹¹ While the legal test for what constitutes “reasonable cause” is not an exacting one, (see United States v. Dubrofsky, 581 F.2d 208, 211 (9th Cir. 1978)), it is clear that the United States must articulate *some* specific facts in order to establish reasonable cause. See United States v. Most, 789 F.2d 1411, 1415 (9th Cir. 1986). Mere allegations or suspicions of wrongdoing do not provide a sufficient basis to establish reasonable cause. See United States v. Chen, 99 F.3d 1495, 1501 (9th Cir. 1996).

¹² In the instant matter, it is undisputable that neither the vessel owner, operator, nor person in charge has been found liable for a fine or civil penalty under this section. Accordingly, the portion of the statute at issue is whether reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section.

for which the Coast Guard has no statutory right to demand - are causing Petitioners and the Vessel's crew serious, irreparable harm and damages.

49. It is axiomatic to state that a vessel owner has the absolute right to obtain the release of the vessel upon the posting of adequate security. See Gerard Construction, Inc. v. M/V VIRGINIA, 480 F. Supp. 488, 491 (W.D. Pa. 1979)(citing to 7A Moore's Federal Practice P E. 13(2)(2d ed. 1979); See also Supp. Rule E (5)(a).

50. This right is an absolute right, which is not subject to the court's discretion. See Gerard Construction, Inc., 480 F. Supp. at 491.

51. If, where as here, the amount of security to be posted can not be agreed, the Court is required to fix the principle sum of a bond at an amount sufficient to cover only the alleged claim, which is before the Court at that moment.¹³

52. Moreover, the legislative history of the APPS makes it clear that the Coast Guard's authorization to request that CBP withhold or revoke a vessel's customs clearance was granted for the limited and express purpose to obtain security to ensure the payment of a fine or civil penalty that might be imposed against the owner and/or operator of a vessel.

53. Specifically, the House of Representatives Committee on Merchant Marine and Fisheries, in discussing HR 6665 (the Bill that was subsequently enacted as APPS) stated:

To ensure payment of any fine or civil penalties that might be incurred upon completion of criminal proceedings or civil penalty actions, the Secretary of Treasury is required to refuse or revoke clearance to any ship

¹³ As explained by the Fifth Circuit, 'the surety bond . . . is posted to assure payment of a single claim, not to stand in place of the vessel for all claims that might be asserted against her.' LaFarge Corporation v. M/V MACEDONIA HELLAS, 2000 U.S. Dist. LEXIS 22437, at *26-27 (E.D. La. 2000)(quoting Overstreet v. W/V NORKONG, 706 F.2d 641, 644 (5th Cir. 1983)).

upon the request of the Secretary of Transportation. However, clearance may be granted upon filing a bond or other satisfactory surety.

See House Report No. 96-1224 reprinted in 1980 U.S.C.C.A.N. 4849,4864.

54. The legislative history makes it clear that the purpose of authorizing the Coast Guard to request CBP to withhold a vessel's Customs Clearance and/or otherwise detain a vessel was simply to *ensure payment of any fine or civil penalty that might be incurred upon completion of criminal proceedings or civil penalty actions.* See House Report No. 96-1224 reprinted in 1980 U.S.C.C.A.N. 4849, 4864.

**THE MAXIMUM BOND TO BE POSTED FOR THE RELEASE
OF THE VESSEL SHOULD NOT EXCEED \$500,000**

55. As for potential fines or penalties, APPS provides that the **maximum** civil penalty for a false record book is \$5,000,¹⁴ while the **maximum** criminal fine could be *up to* \$500,000.¹⁵ This potential maximum fine amount, as with any other fine, is within the discretion of the Court to set. The Court, utilizing the Federal Sentencing Guidelines or any other criterion provided for in law, may set the fine at any appropriate amount below the maximum, if it so desires. See 18 U.S.C. § 3572.

¹⁴Specifically, 33 U.S.C. 1908(b) provides: "A person who is found by the Secretary, after notice and an opportunity for a hearing, to have—

(2) made a false, fictitious, or fraudulent statement or representation in any matter in which a statement or representation is required to be made to the Secretary under the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations thereunder, shall be liable to the United States for a **civil penalty, not to exceed \$5,000** for each statement or representation (emphasis added).

¹⁵ Under 33 U.S.C. § 1908(a), it is a class D felony to knowingly violate the provisions of MARPOL. A class D felony is punishable by ... **a fine of up to** \$250,000 for an individual, and \$500,000 for a corporation. See 33 U.S.C. § 1908(a); 18 U.S.C. § 3559(a)(4); 18 U.S.C. § 3571 (b)(4); 18 U.S.C. § 3571(c)(3). (emphasis added). To date, no sentencing Court has ever fined a shipping company or organizational defendant in the maximum fine amount for a record keeping violation, save for circumstances where a negotiated "C-plea" has been submitted to the Court for approval.

56. No where does APPS authorize the Coast Guard or CBP to detain the vessel and/or withhold her Customs Clearance as leverage to force a vessel's owner to attempt to waive its crew's fundamental rights, civil liberties and personal freedoms; "agree" to undertake unjustified and unjustifiable obligations; and otherwise incur extreme costs, expenses and financial losses, which impermissibly "makes shipping prohibitively expensive."

57. Assuming that this Court finds the Coast Guard has satisfactorily demonstrated that "*reasonable cause*" exists to believe that (1) an APPS record keeping violation occurred; (2) within U.S. jurisdiction; and (3) the Vessel, its owner, operator, or person-in-charge may be subject to a civil penalty [for such violation], **the absolute maximum civil penalty is strictly limited to \$5,000.**

58. Similarly, assuming that this Court finds the Coast Guard has satisfactorily demonstrated that "*reasonable cause*" exists to believe that (1) a criminal record keeping violation occurred; (2) any such alleged violation occurred within U.S. jurisdiction; and (3) the Vessel, its owner, operator, or person-in-charge may be subject to a criminal fine [for such violation], **the absolute maximum criminal fine is limited to an amount up to \$500,000.**

59. There is no statutory or regulatory authority for the Coast Guard to demand the other onerous security agreement conditions and require Petitioners to take actions which are violative of the crewmember's individual rights, civil liberties and personal freedoms.

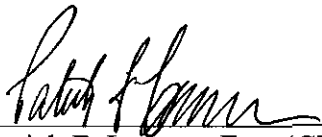
60. Accordingly, Petitioners respectfully request that this Court issue an Order releasing the Vessel, or in the alternative, fixing the principle sum of the surety bond to

be posted, *if any*, for the release of the Vessel in an amount deemed to be just and proper under the circumstances, but in no case in an amount in excess of the maximum criminal fine of \$500,000.

CONCLUSION

WHEREFORE, Petitioners respectfully request that this Court issue an Order releasing the vessel, M/T KRITON, from her present detention in New Haven Harbor, or in the alternative, issue an Order fixing security, (if any), for the release of the Vessel and protecting the rights, liberties and freedoms of her crew, as (1) the Coast Guard is not authorized to withhold a vessel's customs clearance; (2) the vessel is being improperly detained at the Magellan T-Dock in New Haven Harbor, (3) the quantum of the surety bond demanded, and the terms and conditions required by the Coast Guard in order for Petitioners to obtain the release of the Vessel, are unjustified and unsupportable as a matter of fact, law and equity, (4) all such actions are needlessly and impermissibly causing serious and irreparable harm to Petitioners; and, perhaps most importantly, (5) the Coast Guard is improperly and inexcusably seeking to irrevocably prejudice the legal rights, civil liberties and personal freedoms of the Vessel's crew. Petitioners further request any and all such further relief which the Court deems just and proper under the circumstances.

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