No. 12-646

In the Supreme Court of the United States

FLORINE AND WALTER NELSON, JILL CERMAK AND BRUCE HENRY, PETITIONERS

v.

THE CITY OF ROCHESTER, NEW YORK, RESPONDENT

On Petition For A Writ Of Certiorari To The New York State Supreme Court, Appellate Division, Fourth Judicial Department

MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE* CATO INSTITUTE, REASON FOUNDATION, MINNESOTA FREE MARKET INSTITUTE, AND LIBERTARIAN LAW COUNCIL IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Supreme Court Rule 37.2(b), the Cato Institute, Reason Foundation, Minnesota Free Market Institute at Center for the American Experiment, and Libertarian Law Council respectfully move for leave to file the attached brief as *amici curiae* in support of Petitioners.

All parties were provided with timely notice of *amici*'s intent to file as required under Rule 37.2(a). Counsel for the Petitioners consented to this filing. Counsel for Respondent, however, expressly withheld consent, stating in an email that respondents "will not consent to the filing of any amicus briefs."

The interest of the *amici* here arises from our respective missions to advance and support the rights that the Constitution guarantees to all citizens. We have participated in numerous cases before this and other courts and have worked to defend constitutionally guaranteed individual rights through publications, lectures, conferences, public appearances, and other endeavors.

A summary of the background and activities of each individual *amicus* follows:

The Cato Institute was established in 1977 as a nonpartisan public-policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, publishes the annual *Cato Supreme Court Review*, and files *amicus* briefs.

Reason Foundation is a national, nonpartisan, and nonprofit public policy think tank, founded in 1978. Reason's mission is to advance a free society by developing, applying, and promoting libertarian principles and policies—including free markets, individual liberty, and the rule of law. Reason supports dynamic market-based public policies that allow and encourage individuals and voluntary institutions to flourish. Reason has a specific interest in advancing, promoting, and protecting individual rights under the Fourth Amendment to the U.S. Constitution and its state counterparts. Reason advances its mission by publishing *Reason* magazine and commentary on its websites, www.reason.com and www.reason.tv, and by issuing policy research reports. To further Reason's commitment to "Free Minds and Free Markets," Reason selectively participates as *amicus curiae* in cases raising significant constitutional issues.

The Minnesota Free Market Institute at Center of the American Experiment is a nonprofit educational organization dedicated to the principles of individual sovereignty, private property, and the rule of law. It advocates for policies that limit government intrusion in individual affairs, uphold the protection of private property rights, and promote competition and consumer choice in a free-market environment.

The Libertarian Law Council is a Los Angeles-based organization of lawyers and others interested in the principles underlying a free society, such as the right to liberty and property, including the right to be free from unreasonable searches and seizures. Founded in 1974, the LLC files *amicus curiae* briefs in cases involving serious threats to liberty.

This case is of central concern to *amici* because it implicates the safeguards the Fourth Amendment provides for the protection of privacy rights against invasive "administrative" searches. Accordingly, we respectfully request leave to file this brief.

Respectfully submitted,

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment prohibits the issuance of general warrants to search occupied private dwellings, without individualized suspicion of wrongdoing, for the purpose of seeking evidence of zoning, housing code and other "administrative" violations.

2. Whether the Fourth Amendment's requirement that warrants particularly describe the things to be searched applies to "administrative" warrants authorizing the search of occupied private dwellings.

3. Whether a law authorizing the issuance of general warrants against rented homes without any showing of wrongdoing, while requiring probable cause and particularity to obtain a warrant against owned homes, violates the Fourteenth Amendment's Equal Protection Clause.

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INTRODUCTION AND INTEREST OF *AMICI*[1]

The interest of the *amici curiae* here arises from our respective missions to advance and support the rights that the Constitution guarantees to all citizens. We have participated in numerous cases before this and other courts and have worked to defend constitutionally guaranteed individual rights through publications, lectures, conferences, public appearances, and other endeavors. This case is of central concern to *amici* because it implicates the safeguards the Fourth Amendment provides for the protection of privacy rights against invasive "administrative" searches. A description of each individual *amicus* appears in the immediately preceding motion for leave to file.

Amici respectfully submit that rental-home inspection programs such as City Local Law 3 in the City of Rochester constitute one of the most egregious and unjustified intrusions into the privacy and sanctity of homes of law-abiding citizens. Across the nation, millions of Americans are being subjected to mandatory "inspections" conducted by government agents—which indisputably constitute "searches" for constitutional purposes—simply because they wish to live in a rental home.

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[1] Pursuant to this Court's Rule 37.3(a), all parties were timely notified of *amici*'s intent to file this brief. Petitioners' letter of consent has been submitted to the Clerk. Respondent declined to consent, so *amici* have attached to this brief, *supra*, a motion for leave to file. Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici* or their counsel made a monetary contribution intended to fund its preparation or submission.

The city of Rochester's suspicionless "inspection" warrants program allows the city to "search" tenants' homes for possible, yet unspecified, housing code violations. The warrant applications rely on Local Law 3, which removes the requirement that city officials have probable cause that particular evidence of an offense will be found in the home. The warrants remain valid for 45 days, thus permitting multiple entries by city employees, as the most private details of tenants' lives are exposed to government inspectors who are subject to hardly any restrictions. Courts are no longer involved after the issuance of the warrants, and the searches sanction videotaping and photography of the home—which visual and other information becomes publicly available via FOIA request. Any evidence of crime discovered can be reported to police, and tenants are left to try to repair the financial, emotional, and other damage inflicted on their lives.

Very little is required for a showing of "reasonableness" towards the issuance of the warrants at issue. *Camara v. Municipal Court* stands alone in this Court's relevant jurisprudence and only suggests "standards" for "administrative" warrants in dictum. *Camara v. Municipal Court*, 387 U.S. 523, 534-539 (1967). In the instant case, the lower court issued the warrant simply because the inspection program exists and these rental homes were due an inspection at the expiration of a statutory six-year period.

Such administrative searches are significant intrusions on Fourth Amendment interests, and the reasons offered for upholding them are insufficient to justify so substantial a weakening of constitutional

protections. Similar inspection legislation has proliferated in counties and municipalities across the United States for vaguely stated reasons that lack empirical justification and, consequently, provide inadequate protection for privacy interests. *Amici* urge this Court to hear this challenge to stem the flow of these harassing invasions and restate the Fourth Amendment's protection of individual rights.

ARGUMENT

I. THE FOURTH AMENDMENT DOES NOT SUPPORT SUSPICIONLESS "ADMINISTRATIVE" SEARCHES

A. The Fourth Amendment prohibits general warrants to search private residences.

Administrative searches of the kind at issue here are significant intrusions on the Fourth Amendment. The Fourth Amendment is clear and unequivocal: "[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. It embodies the right of all persons to "retreat into his home and there be free from governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). The Framers intended the Amendment to also embody the ancient tenet that "the house of every one is to him as his castle and fortress, as well for his defense against injury and violence for his repose." *Semayne's Case*, 5 Coke Rep. 91, 77 Eng. Rep. 195 (1604). Countless decisions of this Court have recognized that the basic purpose of this Amendment is "to safeguard the privacy and security of

individuals against arbitrary invasions by governmental officials." *Camara*, 387 U.S. at 528. The Fourth Amendment thus gives concrete expression to a right of the people which "is basic to a free society." *Wolf v. Colorado,* 338 U.S. 25, 27 (1949).

In *Camara*, this Court held that the Fourth Amendment applies to searches and seizures in the civil as well as the criminal context. *Camara*, 387 U.S. at 534; *see also Marshall v. Barlow's, Inc.,* 436 U.S. 307, 312 (1978). Rejecting the notion that an individual's Fourth Amendment protections are "merely 'peripheral'" in the context of a regulatory inspection, the Court found it "surely anomalous to say that the individual and his private property are fully protected by the [F]ourth [A]mendment only when the individual is suspected of criminal behavior." *Camara* at 530. Therefore, administrative searches of residences must comply with the Fourth Amendment. *Id.* at 534; *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 692 (2012). The explicit "right of the people to be secure in their persons, houses, papers, and effects," is also strongly indicative of a constitutional right to privacy. U.S. Const. Amend. IV.

The Fourth Amendment was written in direct response to British general warrants, also known as Writs of Assistance, in which British law enforcement officials were granted general search powers by the Crown. The officials were then able to perform searches upon virtually any home they wished, at any time, and for any or no reason. "It cannot be doubted that the Fourth Amendment's commands grew in large measure out of the colonists' experience with the writs of assistance and their memories of the

general warrants formerly in use in England." *United States v. Chadwick*, 433 U.S. 1, 7-8 (1977), *abrogated by California v. Acevedo*, 500 U.S. 565 (1990). The "administrative" searches at issue here strongly resemble those general warrants which the Fourth Amendment was primarily written to prohibit.

Under the *Camara* Court's reasoning, the Fourth Amendment would permit the very evil that it was written to proscribe: suspicionless investigatory searches. *See Illinois v. Krull*, 480 U.S. 340, 364 (1987) (O'Connor, J., dissenting) (describing statutes authorizing "administrative" searches as "the 20th-century equivalent of the Act authorizing the Writ of Assistance"). This Court has made clear that the Fourth Amendment must provide "the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing." *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). This Court should accept this case to reaffirm the Founders' vision that suspicionless, general searches of homes was uniformly considered unreasonable in 1791, and is still unreasonable in 2013. Unlike many of the rights recognized in controversial civil liberties rulings of the last few decades, the right against unreasonable search and seizure is specifically set forth in the Bill of Rights. *Cf.* Robert Bork, *The Tempting of America* 246 (1990) ("The Fourth Amendment's protection of the privacy of the home from unreasonable searches is an illustration that the 'Constitution does protect defined aspects of an individual's privacy.'). The rise of the administrative state only increases the need for vigorous enforcement of the probable cause and particularity requirements.

B. Warrants must describe the things to be seized with particularity.

The Fourth Amendment prohibits general warrants given without individualized suspicion and issued to seek evidence of zoning, housing code, and other "administrative" violations. Warrants valid under the Fourth Amendment must "particularly describe the place to be searched and the persons or things to be seized." U.S. Const. Amend. IV. *Camara* left the question of particularity unanswered, but the purpose of the particularity requirement is to avoid "a general, exploratory rummaging in a person's belongings." *Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (internal quotation marks omitted); *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971); *see generally Stanford v. Texas*, 379 U.S. 476, 481-85 (1965) (describes the history and purpose of the particularity requirement).

In *Camara*, this Court envisioned that administrative inspections would be carried out pursuant "a suitably restricted search warrant" issued under the Fourth Amendment guideline that "reasonableness is still the ultimate standard." *Camara*, 387 U.S. at 538. General warrants such as those issued by Rochester here are neither "suitably restrictive" nor guided by a standard of reasonableness. Instead, they flaunt the core protections guaranteed by the Fourth Amendment and authorize plenary "searches" of petitioners' homes. Nowhere in these warrants is there any description of "persons or things to be seized" or any limitation on the places to be searched. In *Groh v. Ramirez*, this Court held that a warrant that does "not describe the items to be seized *at all*" is

"obviously deficient" and "plainly invalid." *Groh v. Ramirez*, 540 U.S. 551, 557-58 (2004) (emphasis in original). A sufficiently particular warrant describes the items to be seized in such a way to grant no discretion to the officer executing the warrant. *See Marron v. United States*, 275 U.S. 192, 196 (1927).

Lower courts have been led in the diametrically opposite direction by *Camara*'s dictum and are in need of this Court's guidance. The City of Rochester has obtained these warrants to engage in precisely the type of general searches that the Fourth Amendment was written to abolish. Absurdly, under current law, the full protections guaranteed by the Fourth Amendment are given to someone only after he or she is suspected of having committed a crime. This blatant incoherence can only be rectified if this Court clarifies and reinforces the warrant requirement for administrative inspections.

C. This Court should adopt the standard of individualized suspicion.

The purposes of the Fourth Amendment are best met by the traditional requirement of individualized suspicion. This is because "a targeted administrative search demands a more particularized showing of probable cause than the relaxed version in *Camara*." *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 692 (2012). It must be so "in order to properly 'safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges' while simultaneously providing 'fair leeway for enforcing the law in the community's protection.'" *Brinegar v. United States,* 338 U.S. 160, 176 (1949) *quoted in Town of Bozrah v. Chmurynski*, 303 Conn. 676, 692 (2012).

II. THE GROWTH OF "ADMINISTRATIVE" SEARCHES THREATENS THE SANCTITY OF HOMES ACROSS THE COUNTRY

A. Private homes are entitled to protection from broad "administrative" searches without regard to the homes' underlying economic arrangements.

A private home is entitled to protection against unreasonable government searches regardless of whether it is owned or rented. The "right to be free from unauthorized entry into one's abode is ancient and venerable." *State v. Larsen*, 650 N.W.2d 144, 147 (Minn. 2002). This Court has found that the "very essence of constitutional liberty and security" involves constraining "all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life." *Boyd v. United States*, 116 U.S. 616, 630 (1886). "It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property." *Id.* This Court has also held that "the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy" is "fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

Flying in the face of this Court's immense respect for the sanctity of the home, the City of Rochester and many other municipalities around the country have engaged in home invasions based on an arbitrary and discriminatory economic classification. The city offers no justification as to why Local Law 3 applies only to *rental* homes. The laws of this nation

do not discriminate on such a distinction elsewhere. No Americans should be subjected to a broad invasion of privacy without individualized suspicion of wrongdoing based merely on their lack of property ownership—especially when such searches strike at the physical integrity of the house, threatening the privacy of *all* that occurs within.

B. The recent growth of rental-home inspection ordinances lacking privacy safeguards poses a great threat to the sanctity of homes against searches.

Government agents assert vague invocations of need to justify *repeated* inspections under the administrative search regimes like the one at issue here. Petitioners were subjected to searches every six years pursuant to rental-inspection ordinances that lack constitutionally required safeguards for privacy interests. That the warrants were issued routinely without probable cause only compounds the impact of the invasions of privacy. Similarly, allowing the tenant's presence during an inspection or providing advance notice does not mitigate the intrusion. These supposed "protections" only serve to allow victims to witness the invasion of their home or to act as a warning so, at best, they may attempt to hide or move objects that embody the most private aspects of their lives. Moreover, the inspection ordinances do not prevent the disclosure of information gained during the search. Here, photos and videos of the Petitioners' home found their way onto the Internet. Only a denial of government access altogether can successfully safeguard individual privacy interests.

The facts of *United States v. Jones* demonstrate that, when it comes to privacy, the whole is far

greater than the sum of its parts. See *Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J., concurring) ("GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations."). As in *Jones*, "making available . . . such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to [inspect]—may 'alter the relationship between citizen and government in a way that is inimical to democratic society.'" *Id.* at 956 (quotation omitted). This Court should not allow unfettered home inspections that expose personal information to the world just because that home is rented.

C. These "administrative" searches open up the intricacies of tenants' lives.

The Court in *Camara* reasoned that administrative warrants put relatively small burdens on residents "because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." *Camara*, 387 U.S. at 537. If this was ever true, it is no longer. Administrative warrants are highly intrusive, nearly unlimited in scope, and now produce evidence that is available online. Petitioners do not to understand how a search of every room, closet and cabinet of their homes is not "personal." Cf. *Kyllo v. United States*, 533 U.S. 27, 37 (2001) (in the home, "all details are intimate details, because the entire area is held safe from prying government eyes.") Moreover, these searches, although not "aimed at the discovery of evidence of crime," can uncover such evidence. For

example, under NY EXEC. L. § 382(2), the failure to correct a violation of the New York State Uniform Fire Prevention and Building Code Act is a crime punishable by a fine of $1,000 per day and imprisonment for one year. NY EXEC. L. § 382(2).

Unfortunately, and despite widespread abuses, ordinances authorizing general "administrative" searches of rental properties have been increasingly adopted by local authorities with little protection for privacy interests. These inspections reach the entirety of the homes and to *all* of the activity that occurs within. They expose, in plain sight, innumerable aspects of the occupants' lives: religion, politics, intimate relationships, group associations, personal habits, belongings, hobbies and interests, practices and characteristics whether lawful or unlawful, smoking and drug-related paraphernalia, medical devices and prescriptions, and financial documents and records. *Camara*'s "administrative warrant" exception "prostitutes the command of the Fourth Amendment" and "sets up in the health and safety codes area inspection a newfangled 'warrant' system that is entirely foreign to Fourth Amendment standards." *Camara*, 387 U.S. 523, 547 (1967), (Clark, J., dissenting). These intrusions must not be sanctioned by this Court.

D. Alternatives are available to the current suspicionless searches authorized by the City of Rochester and other localities.

Less intrusive means exist to protect public health and safety, rendering blanket suspicionless searches of rental homes unnecessary. First, local governments may inspect rental homes with the consent of the owner or tenant; most searches are

already conducted with such consent. The Court in *Town of Bozrah v. Chmurynski* did "not believe" that "a preliminary showing of probable cause to believe a zoning violation will be discovered would create an undue burden on local governments, especially since," as the *amici* in that case had noted, "most homeowners consent to inspection." *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 692 (2012). *See also Camara,* 387 U.S. at 539 (observing that most citizens consent to inspections of property without warrant); *Marshall v. Barlow's Inc.* 436 U.S. 316 (observing that great majority of business owners consent to inspection without warrant). Governments may also increase tenant consent by educating tenants on the benefits of inspections.

Second, some local governments provide for self-inspection by owners or their agents, coupled with audits of the self-inspection documentation. For example, Sacramento County requires the owner's manager or agent to conduct a self-inspection of each rental unit at the commencement of any tenancy but before occupancy, and then annually. Sacramento Code § 16.20.906(A)-(B).

Third, some municipalities respect the Fourth Amendment in their inspection ordinances. For example, a Richmond, California ordinance provides that if an owner or tenant refuses to allow access to conduct the inspection, "the City Attorney may use all legal remedies permitted by law to cause an inspection to take place, *provided reasonable cause* exists to believe that a violation of the Municipal Code or State law exists on the subject property." Richmond Ordinance § 6.40.060(e) (emphasis added).

Fourth, some cities do not conduct routine interior inspections. Oakley, California, for example, provides that all rental units "shall be subject to an annual *exterior* inspection . . . to determine whether any substandard condition exists" or "whether there is a violation of this Chapter or of this Code." Oakley Ordinance § 4.30.402(a) (emphasis added); *see also* Brentwood Code § 8.44.040 ("The enforcement officer shall cause the exterior of each rental property to be inspected at least once every two years to ensure compliance with all applicable laws."). The ordinance specifies that the inspections "shall be *exterior inspections only*, unless an interior inspection is *authorized by the owner or tenant*." Oakley Ordinance § 4.30.402(d) (emphasis added). The ordinance does not prevent the city from obtaining an inspection warrant for a nonconsensual inspection or from "conducting an emergency inspection under exigent circumstances." Oakley Ordinance § 4.30.402(d).

Fifth, nonconsensual inspections may be based on complaints about specific properties that provide probable cause to believe that violations exist. For example, Joliet, Illinois allows inspections only if there has been some complaint or reason to believe that a dangerous condition exists (*e.g.*, a fire). Whether the information comes from a complaint by a tenant or neighbor or a consensual inspection of a nearby unit that suggests a systemic problem, such ordinances would at least require some type of individualized showing. Joliet Ordinance § 8-152(d).

Finally, local governments can avoid invading the sanctity of a home by limiting inspections to periods when the property is vacant. Boston, Massachusetts requires that property owners have newly rented

apartments inspected within 45 days of a rental. Boston Ordinance § 9-1.3. Similarly, Rochester, Michigan provides that, after the initial self-inspection, self-inspections must be done when there is a change of occupant. Annette Kingsbury, Rental Inspection Ordinance Approved in Rochester (May 25, 2011), http://www.rochestermedia.com/rental-inspection-ordinance-okd-in-rochester (last visited Dec. 6, 2012). Such provisions, while not ideal, provide somewhat greater protection for homes and privacy than Local Law 3, which forces tenants to open their intimate spaces to the government.

III. *CAMARA* MUST BE REVISITED AND ITS HOLDING STRENGTHENED IN LINE WITH THE MEANING AND INTENT OF THE FOURTH AMENDMENT

A. *Camara* created conflict in lower courts.

Due to *Camara*'s overly broad holding, courts are conflicted on how much Fourth Amendment protection is required for administrative searches. In the 45 years since *Camara* was decided, no appellate court has upheld a warrant granted by a lower court relying on *Camara*. *See, e.g., Sokolov v. Village of Freeport*, 52 N.Y.2d 341, 344 (1981) (referencing *Camara*, in dictum). Tenants are routinely subject to warrants authorizing general searches of their private homes without more than a local inspection provision and the expiration of a statutory period as reasoning. *Camara* has thus been repeatedly criticized. See, e.g., *City of Seattle v. McCready*, 123 Wash. 2d 260, 268 n.1, 273 n.4, 281-82 (1994); *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, 1230 (N.D. Ill. 1998).

B. The City of Rochester has not satisfied *Camara*'s (inadequate) standards.

While *Camara*'s "standards" for the issuance of administrative search warrants are wholly inadequate to protect Fourth Amendment rights, even those limited criteria are unsatisfied here. The *Camara* standards are "based upon the passage of time, the nature of the building (*e.g.*, a multifamily apartment house), or the condition of the entire area…" *Camara*, 387 U.S. at 537. The Court seemingly acted out of concern for densely populated housing and urban squalor. Yet the petitioners here do not live in the multifamily apartment houses in a run-down neighborhood that *Camara* envisioned.

Moreover, the "passage of time" criterion has been wholly ignored. Instead, Rochester inconsistently and selectively applies a standard based ultimately on economic class, subjecting private homes with tenants to inspections every six years. This "reduces the Fourth Amendment to a form of words," *Silverthorne Lumber Co v. United States*, 251 U.S. 385, 392 (1920), and leaves the protection of a fundamental right to the whims of statutory caprice. Under lower courts' interpretations of *Camara*, cities could adopt a schedule of anywhere from weekly to decennial inspections without implicating Fourth Amendment concerns. That cannot be the law.

C. This Court should rule on *Camara*'s yet-unanswered question regarding the standards for "administrative" warrants.

The Framers viewed warrants as more dangerous than searches and thus adopted detailed requirements for the issuance warrants. The most dangerous warrants were those that gave a free pass

to government agents to violate the fundamental right to privacy with impunity. "[O]ur constitutional fathers were not concerned about warrantless searches, but about overreaching warrants … Far from looking at the warrant as a protection against unreasonable searches, they saw it as an authority for unreasonable and oppressive searches." *Marshall v. Barlow's Inc.*, 436 U.S. 307, 328 (1978) (Stevens, J., dissenting). Unfortunately, *Camara*'s unworkable standards created the very situation that the Framers most hoped to avoid.

Further guidance from this Court is needed because the jurisdictional edifice in this area is built on a foundation of dictum. The only direct holding of *Camara* applicable here is that warrants are constitutionally required for code inspections. *Camara* did not rule on the constitutional standards warrants must meet, merely suggesting some factors.

The new species of administrative warrants this case raises were never expressly anticipated by the Framers and the requirements for issuing them has never been addressed by this Court. *Camara* did not address the necessary requirements for such warrants, partially because the issue was not briefed for the Court. Nevertheless, *Camara* became the guiding case for such searches. This Court wisely does not step into complex issues without first having the arguments extensively briefed. For the same reasons, this Court should not let an unbriefed guiding precedent continue to control an increasingly common American practice—administrative searches.

This Court has noted the principle that "[n]owhere are expectations of privacy greater than in the home . . . [as] physical entry of the home is the chief evil

against which the wording of the [F]ourth [A]mendment is directed." *Segura v. United States*, 468 U.S. 820 (1984) (internal quotation marks omitted.). This guiding constitutional principle should not be left unstable due to an increasingly common unanswered question: the standards required for the issuance of administrative warrants.

CONCLUSION

This Court should grant a writ of certiorari and then invalidate the use of administrative warrants to conduct involuntary rental-home inspections without probable cause.

Respectfully submitted,

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