No. 12-646

IN THE

Supreme Court of the United States

FLORINE NELSON, *et al.*,

Petitioners,

v.

CITY OF ROCHESTER, NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION

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INTRODUCTION

It is respectfully submitted that the Petitioners have failed to provide a "compelling reason" to support the granting of *certiorari* in this case and therefore it is requested that the petition for *certiorari* be denied. *See* Sup. Ct. R. 10. The Court's rules are very clear as to the "character of the reasons" for which *certiorari* should be granted, and there is nothing in the petition in this case that meets that standard. *Id.*

The Petitioners have not shown that the New York Court of Appeals or the New York Supreme Court, Appellate Division, Fourth Department, from which the Court of Appeals declined to hear an appeal by the Petitioners, are in disagreement with any federal court of appeals or with the high court of any state, and in fact the Petitioners have not shown any opinion or decision from any court which would substantially conflict with the decisions of the New York courts here.

The issue being questioned here, the City of Rochester's inspection warrant process, is based upon long settled precedents provided by this Court in the case of *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967), and upheld or approved in numerous decisions by this Court and various state and federal courts in the time since *Camara* was decided.

Although the petition seems to advocate for the reversal of *Camara*, it fails to find any concrete basis for this reversal in the Constitution, laws or common law. In fact, although the petition cites to the dissent in *Camara*, it fails to recognize that the only serious disputes with

Camara from any courts have been from judges in favor of the position of that dissent, which was that *Frank v. Maryland*, 359 U.S. 360 (1959), should have been upheld and administrative inspections should be allowed ***without the requirement of a warrant.***

STATEMENT OF THE CASE

The City of Rochester has adopted legislation that requires certain residential rental properties to have a certificate of occupancy, and requires that certificates of occupancy be renewed when they periodically expire. *See* Code of the City of Rochester § 90, ("City Code"), relevant portions of which are reproduced in the Appendices to the Petition at 96-104 ("Pet. App.").[1] In order for a certificate of occupancy to be granted or renewed, the City must perform an inspection of the property to insure that it meets all relevant property codes, especially those involving health and safety.

When a property owner applies for a certificate of occupancy, he or she has the option of agreeing to or refusing an inspection of the property. The City of Rochester adopted, in 2009, a local law to allow it to obtain administrative warrants to inspect rental properties where inspections were refused, in keeping with this Court's decision in *Camara*, and relevant New York decisions interpreting and applying *Camara*. *See Sokolov v. Freeport*, 52 N.Y. 2d 341 (1981); *Paschow v. Town of Babylon*, 53 N.Y. 2d 687 (1981); *Arrowsmith v. City of Rochester*, 309 A.D. 2d 1201 (4th Dep't 2003)

1. The full Charter and Code of the City of Rochester are available at http://www.ecode360.com/RO0104 .

(upholding Rochester's certificate of occupancy law). The City's administrative warrant legislation is found in the Charter of the City of Rochester, Article 1, Part B §§ 1-9 to 1-25 ("City Charter"), Pet. App. at 68-84. The purpose of the City's administrative warrant legislation is to "promote the health, safety and welfare of the City and all of its residents and visitors." *See* City Charter § 1-9, "Purpose and Authority," Pet. App. at 68-70. The inspection warrants are issued under the local law "for civil enforcement purposes only in conjunction with the administration and enforcement of the property codes." *See* City Charter § 1-10 "Definitions"; INSPECTION WARRANT, Pet. App. at 70-71.

Petitioners Florine Nelson and Walter Nelson are tenants of a residential rental property who refused to allow an administrative inspection of their property to be made under the certificate of occupancy law. Petitioner Bruce Henry is a landlord, and Petitioner Jill Cermak is his tenant, and they have also refused to allow an inspection of the property where Ms. Cermak lives. Therefore, pursuant to the City's administrative warrant law, warrants were sought to inspect both premises. The New York Supreme Court granted administrative inspection warrants for both properties on May 21, 2010. *See* Pet. App. at 50-53, 54-58.

The Petitioners appealed, and the New York Supreme Court, Appellate Division, Fourth Department, upheld the warrants. *See Matter of City of Rochester*, 90 A.D. 3d 1480 (4th Dep't 2011); Pet. App. 1-12. The Petitioners then appealed to the New York Court of Appeals, which affirmed the Appellate Division, holding "[o]n the Court's own motion, appeal dismissed, without costs, upon the

ground that no substantial constitutional question is directly involved." *Nelson v. City of Rochester (In re City of Rochester)*, 19 N.Y. 3d 937 (2012); *Cermak v. City of Rochester (In re City of Rochester)*, 19 N.Y. 3d 937 (2012); Pet. App. at 64-65, 66-67. The petition for *certiorari* now addressed followed.

The Respondents hereby note the following perceived misstatements of fact and/or law in the Petitioners' statement of the case:

The petition states that "[t]he City frequently prosecutes property owners who decline to consent to these inspections." *See* Pet. at 4 (citing *Burns v. Carballada*, 79 A.D. 3d 1785 (4th Dep't 2010); *Cappon v. Carballada*, 93 A.D. 3d 1179 (4th Dep't 2012)). The City does not prosecute either owners or tenants who refuse to consent to a warrantless search of property, and neither of the cases cited show that any such prosecution occurred. It is the City's policy to proceed with administrative inspections only upon consent or with an administrative warrant. It is the City's policy to prosecute, through administrative tickets and minimal fines, property owners who have not applied for a Certificate of Occupancy and therefore have not yet consented to or refused an administrative inspection. In fact the Appellate Division, Fourth Department, recently rendered a decision in the *Burns* case cited above, holding that "[o]n the record before us, petitioners have not shown that they were actually penalized for refusing to allow an inspection inasmuch as there is no evidence that they ever applied for a [certificate of occupancy] and thereafter refused to consent to the required inspection of their properties."

Matter of Burns v. Carballada, 2012 NY Slip Op 8889, 2, 2012 N.Y. App. Div. LEXIS 8909 (4th Dep't Dec. 21, 2012)

The Petition also wrongly states that City law "provides for 'a fine or imprisonment, or both' to be imposed on 'any person' who should 'willfully deny or unduly delay entry or access to any premises to a designated City officer or employee with an inspection warrant'". Pet. at 5 (quoting City Charter § 1-25 (Pet. App. at 84)). City Charter § 1-25 actually says that if a person refuses to allow an inspection when a warrant has been obtained they "shall be subject to an application to be found in contempt of court pursuant to Article 19 of the [N.Y.] Judiciary Law". Pet. App. at 84. The Charter does not give the City the right to imprison or fine a person who refuses to allow a warranted inspection; it only allows the City to apply to the same Judge who issued the warrant for the normal remedies for contempt.

The petition states that "[t]he City sought the warrant to search for evidence that it may use to prosecute Mr. Henry for those violations." *See* Pet. at 6. The purpose of the inspection warrant was not to seek evidence for a prosecution. The purpose for which the City seeks an administrative warrant in this or any case is not prosecution, but rather to ensure that tenants reside in property that is being maintained in accordance with minimum standards set by state and local law, so that housing in the City is safe. It is also the City's policy and practice to educate and seek to have any violations which are found through an inspection fixed instead of ticketing or prosecuting for violations. Enforcement action is usually taken only as a last resort against persons who have steadfastly refused to remediate violations of which they have been given repeated notice over a long period of

time. The local law directly states that inspection warrants are "for civil inspection purposes only." *See* City Charter § 1-10, Pet. App. at 71. There simply is no evidence on this record that the City sought the warrant in question in order to attempt to prosecute Petitioner Henry for violations at his property.

The petition states that "the warrants authorize a boundless 'search of the interior and exterior'" of the Petitioners' homes. *See* Pet. at 9. It simply is not true that these administrative inspections are boundless. They are restricted to a particular property and they are restricted to inspecting for property code compliance. The inspections are for civil purposes only. Rochester's inspection warrant legislation specifically defines the warrant as providing for "an inspection of a premises for civil enforcement purposes only in conjunction with the administration and enforcement of the property codes." *See* City Charter § 1-10, Pet. App. at 70-71. Inspections are made of the condition of the premises, not individuals' personal property. The City's witness at the warrant hearings specifically testified that those conducting inspections should not "look at any documents at all in the house", should not "open up kitchen drawers" and should not look inside "dresser drawers and things like that and china cabinets." *See* Cermak R. at 635-42. There are significant limitations as to what is inspected under the City's administrative warrant program. The City is inspecting for administrative code compliance, especially for compliance with codes that deal with the health and safety of tenants or members of the public.

ARGUMENT

I. The Petitioners have not demonstrated any actual conflict or disagreement between any state or federal courts with regard to this Court's decision in *Camara*.

The Petitioners have not demonstrated any actual conflict or disagreement between any state or federal courts with regard to this Court's decision in *Camara*. In Section II of the petition, petitioners attempt to make the argument that "the lower courts need guidance." *See* Pet. at 24. However none of the cases cited by the Petitioners actually show any conflict or disagreement.

The Petitioners first cite *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, (N.D. Ill. 1998) for the proposition that "*Camara* does not establish that the passage of time between inspections will invariably be sufficient to establish probable cause for an administrative inspection of a residence." *See* Pet. at 25, quoting *Black*, 20. F. Supp. 2d 1226. The Petitioners though are completely ignoring the full language of the decision.

Black discusses the factors laid out by *Camara*, stating:

> In *Camara*, the Court noted that reasonable legislative or administrative standards, 'which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (*e.g.*, a multifamily apartment house), or the condition

> of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.'

Black, 20 F. Supp. 2d at 1226 (quoting *Camara*, 387 U.S. at 538). The court in *Black* then explains that the Village in that case is basing its search warrant process in part on the passage of time, to which the court responds, as quoted by the petitioners here, that it is not convinced that *Camara* meant to establish that the mere passage of time would ***invariably*** be sufficient to establish probable cause. The court in *Black* did not say that the passage of time would ***never*** be sufficient to provide probable cause; it only held that the passage of time would not always be sufficient.

Even if the passage of time was never a sufficient single factor on which to base a finding of probable cause for an administrative warrant, the City of Rochester warrant provisions at issue in this case would still not be subject to challenge under the reasoning of *Black* because the warrants at issue in this case were not based solely on the passage of time. The City of Rochester seeks the warrants in question as part of enforcing a systematic municipal program which considers multiple factors as provided for by *Camara* and the cases following it.

The New York State Supreme Court's decision which was upheld by the Appellate Division's decisions which at are at issue in this case, clearly was conversant with all of the proposed factors for probable cause from *Camara*, as well as case law from the New York Court of Appeals:

> The standards articulated as justifying an area inspection include the passage of time, the nature of the building or the condition of the entire area.
>
> This list is not exhaustive, and we believe that another factor to be considered in justifying a search warrant is whether a residential rental property is being introduced onto the marketplace for the first time, without having undergone prior inspection.

See Decision & Order of the New York State Supreme Court, Monroe County (February 5, 2010) *In the Matter of 187 Clifton Street*, (Pet. App. at 25) and *In the Matter of 449 Cedarwood Terrace* (Pet. App. at 41-42) (internal citations and parenthetical omitted in the original) (quoting *Sokolov*, 52 N.Y. 2d at 349 fn 2 (quoting *Camara*, 387 U.S. at 538; citing *See v. Seattle*, 387 U.S. 541, 545-46 (1967))).

It is obvious from the petition itself that the factors of "the nature of the building" and "the condition of the entire area" were considered here because the petition makes arguments based on those factors. The petition, in Section IV, argues that the City of Rochester violates the equal protection clause because its administrative inspection local law applies to single family rental properties but not to single family owner-occupied properties.

The petition's equal protection argument again refers to *Black*, and in fact *Black* is really the only relevant case cited to support this argument. The petition quotes *Black*: "[D]ifferential treatment of tenants ... may suggest

discrimination [and] undermines the argument that the annual searches of rented single-family homes are necessary to ensure compliance with the Housing Code." Pet. at 35 (quoting *Black*, 20 F. Supp. 2d at 1227). But the petition ignores the full import of the facts behind the holding in *Black*, because in *Black* the Village was subjecting only single family rental properties to internal inspections, differentiating them from both owner occupied properties and multiple family rental properties:

> As can be inferred from the language in *Camara*, it may be reasonable to subject multi-family apartment houses to more intense regulatory scrutiny because of the special problems they pose. Here, however, the Village conducts annual inspections of the interiors of only rented single-family homes. The interiors of units in multi-family dwellings are not inspected annually, nor are single-family homes occupied by the owners.

Black, 20 F. Supp. 2d at 1226. Therefore, when the court in *Black*, in the language quoted by the Petitioners, refers to "differential treatment of tenants" it is in fact referring to treating some tenants differently from other tenants, and not to differentiation between tenants and owner-occupiers. And in fact, *Black* recognizes that under the facts present in that case, there may be "justification for treating rental properties differently from owner-occupied properties" which is exactly what the City of Rochester does here, and what the New York courts have found justification for. *See Black*, 20 F. Supp. 2d at 1226; *Matter of City of Rochester*, 90 A.D. 3d 1480, 1483 (4th Dep't 2011) (the case sought to be appealed from herein)

("Here, there is a valid public policy basis for treating residential property differently based on whether the occupants are renters or homeowners.")

To return then to the issue of which factors as outlined in *Camara* and the case law following it are taken into account by the City of Rochester's inspection warrant program, clearly the type of building is considered. Although the type of building considered does not precisely line up with the ***example*** given in *Camara*, that example, of multiple family apartment houses, was clearly listed as only an example, and it was "not exhaustive" of every type of building which could be considered as a probable cause factor for an administrative inspection. *See Sokolov*, 52 N.Y. 2d at 349 fn. 2; *Camara*, 387 U.S. at 538. New York's Courts have examined the facts and evidence and have found that Rochester's differentiation between rental properties and owner-occupied properties is supported by a valid public policy purpose. *Matter of City of Rochester*, 90 A.D. 3d at 1483. *See also Arrowsmith*, 309 A.D. 2d at 1202 ("defendant's decision not to impose the same [certificate of occupancy] requirement on owner-occupied residential property has a rational basis.") Therefore there is no conflict between the decision in *Black* and the decisions made by the courts of the State of New York, and *Black* certainly does not provide justification for the grant of *certiorari* sought by the petitioners here, or show that any lower courts need "guidance" in the application of *Camara*.

Hughett v. City of Louisville, 855 S.W. 2d 340 (Ky. App. 1986), an intermediate level appellate case from Kentucky, similarly does not conflict with the New York courts or show any need for guidance regarding *Camara*.

The court in *Hughett* said: "Unlike the fact situation in the *Yocom* case, there was no showing that appellant's home was 'of the general type due for inspection ....' " *Hughett*, 855 S.W. 2d at 342 (citing *Yocom v. Burnette Tractor Co.*, 566 S.W. 2d 755 (1978)). The *Yocom* case cited is from the Supreme Court of Kentucky, where it was held:

> We hold that the probable cause requirement may be satisfied by demonstrating that the place to be inspected is of the general type due for inspection under statutory or administrative standards setting up categories of places subject to inspection and bearing a rational connection to the goal sought to be achieved ...

Yocom, 566 S.W. 2d at 758. This holding is exactly in agreement with the New York court decisions appealed from in this case, which is unsurprising because both States' courts are simply following the clear directions provided by *Camara*. Both New York and Kentucky courts have found, as directed by *Camara*, that administrative inspections must be based on a warrant, the warrant must be supported by probable cause, and probable cause may be found for these administrative inspections based on a "statutory or administrative" program which designates certain types of buildings to be inspected. In *Hughett*, the warrant was denied because the City of Louisville failed to show that the building sought to be searched was "of the general type due for inspection," but in the instant case, the buildings sought to be inspected were found to be the type of building due for inspection, and the inspection program was upheld.

The Supreme Court of Connecticut certainly has not "rejected *Camara's* 'diluted probable cause standard' " as claimed by the Petitioners. *See* Pet. at 26 (quoting *Town of Bozrah v. Chmurynski*, 303 Conn. 676, 688 (2012)). Rather the court in *Bozrah* held that:

> The type of search contemplated in the present action differs from the type of search considered in *Camara*. The search contemplated here is not in conformance with any general routine or area inspection scheme. Rather, the proposed search targets a single dwelling as the object of suspicion in response to a complaint regarding that property.

Town of Bozrah, 303 Conn. at 688. *Bozrah* accepts *Camara* and the court merely holds that on the facts before it, the search in question is different from the type of search contemplated by *Camara*. Here, in contrast, the New York courts clearly found that the warrants in question were within the confines of *Camara*.

Similar to the other cases cited by the Petitioners, *Mosher Steel-Virginia v. Tieg*, 327 S.E. 2d 87 (1985) does not show any disagreement with either *Camara* or with the New York courts' interpretation or application of *Camara*. *Mosher* merely finds that, again, the specific search sought in that case was not within the confines of *Camara*.

The Petitioners therefore have completely failed to show that the decisions by the New York courts in this case are in any way in conflict with any decisions of the United States courts of appeals, or with any decisions

of a state court of last resort, or with *Camara* or any other decision of this Court. In fact the Petitioners have failed to show any substantial disagreement between the decisions at issue in this case and any of the decisions of any other court. Since this argument of the Petitioners, that "the lower courts need guidance" is the closest that the Petitioners come to addressing the bases for a grant of *certiorari* outlined by Supreme Court Rule 10, and since the Petitioners have failed in this argument to raise any "compelling reason" for *certiorari*, it is respectfully submitted that the petition should be denied.

II. *Camara* is a well reasoned and well supported decision which has not been seriously questioned by any decision of this Court or of any other Court, and therefore it should not be reconsidered or reversed.

Camara is a well reasoned and well supported decision which has not been seriously questioned by any decision of this Court or of any other Court, and therefore it should not be reconsidered or reversed.

In its attacks against *Camara*, the petition argues that "*Camara's* reasoning would accord suspected criminals more rights than innocent tenants" but this completely ignores the fact that the searches in question here are administrative inspections the purpose of which is to find and allow for the correction of potentially dangerous violations of health and safety codes, and not criminal searches intent on finding evidence of and punishing for crimes.

The reason that probable cause requirements are different for administrative inspections than for criminal searches is that these administrative inspections are for civil purposes only, with the intent to have violations corrected and provide safe housing, and not for criminal prosecution. The inspections benefit the landlord, tenant, neighbors and members of the public. Administrative inspections directly benefit the tenants whose residences are inspected, by finding, and requiring the landlord to correct, evidence of health and safety violations which the tenant may not be aware of. "Many such conditions – faulty wiring is an obvious example – are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself." *Camara*, 387 U.S. at 537. These inspections can also be valuable to the landlords who own the buildings, for example, by finding structural problems that could lead to great danger, damage or expense if untreated, or by finding unknown dangers that could create legal liability for the landlord to his or her tenants or their neighbors.

Both the strong need for these administrative inspections to protect the safety of the general public, and the difference between and interaction between criminal searches and administrative inspections are well addressed in *Camara* and in *Frank*, the case which *Camara* overruled. And in fact it is important to consider *Frank* when looking at *Camara*, because the position of the dissent in *Camara* was that *Frank* should be upheld, and administrative inspections should continue to be allowed ***without warrants***. *See See v. Seattle*, 387 U.S. at 547 (Clark, J. *dissenting* to both *See* and *Camara*) ("I shall not treat in any detail the constitutional issue involved. For me it was settled in *Frank v. Maryland*, *supra*. I would

adhere to that decision and the reasoning therein of my late Brother Frankfurter.") And the dissent in *Frank* also argued for the holding of *Camara*; that administrative inspections should require warrants. *See Frank*, 359 U.S. at 374 (Douglas, J., dissenting).

In fact there does not seem to be any opinion by any Judge that seriously argues for a position much different than either the *Camara* position or the *Frank* position. Which is not to say that the Petitioners' position in this case is novel; in fact it was the position of the appellant in *Camara*, where it was fully discussed and rejected:

> Borrowing from more typical Fourth Amendment cases, appellant argues not only that code enforcement inspection programs must be circumscribed by a warrant procedure, but also that warrants should issue only when the inspector possesses probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced. We disagree.

Camara, 387 U.S. at 534. *Camara* then quotes both the majority and dissent of *Frank* at length in support of its position that "a number of persuasive factors combine to support the reasonableness of area code-enforcement inspections." *Id.* at 537. The Court next states:

> Having concluded that the area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment, it is obvious that 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an

> area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (*e.g.*, a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.

Id. Camara also recognized that "numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures." *Id.* at 535. And that "such programs have a long history of judicial and public acceptance." *Id.* at 537 (citing *Frank*, 359 U.S. at 367-71).

In fact, even in looking at the ancient cases cited by Petitioners, it is clear that these types of administrative, non-criminal inspections, when supported by the common law and by local statutes, do have a long history and in fact would not have been considered as outside of the Fourth Amendment at the time of the Amendment's drafting.

In *Entick v. Carington and Three Other King's Messengers*, 19 Howell's State Trials 1029 (1765), Lord Camden said:

> The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole.

Boyd v. United States, 116 U.S. 616, 627 (1886) (quoting *Entick*). The City of Rochester's inspections fall into exactly the exception stated in *Entick*; the right to avoid these inspections has been "abridged by public law for the good of the whole."

The laws at issue here call for judicial approval of warrants. *See* City Charter, § 1-20, Pet. App. at 75. This avoids another issue which was of concern at the time the Fourth Amendment was drafted; the concern of abuse by legislatures. *See Illinois v. Krull*, 480 U.S. 340, 364 (1987) (O'Connor, J., *dissenting*) ("the history of the Amendment suggests that legislative abuse was precisely the evil the Fourth Amendment was intended to eliminate.") In fact James Otis, in *Paxton's Case*, Quincy 51 (Mass. 1761), recognized that a writ approved by an independent judge was substantially different than a legislative general writ:

> In the first place, may it please your Honors, I will admit that writs of one kind may be legal; that is, special writs, directed to special officers, and to search certain houses, &c. specially set forth in the writ, may be granted by the Court of Exchequer at home, upon oath made before the Lord Treasurer by the person who asks it, that he suspects such goods to be concealed in those very places he desires to search.

Krull, 480 U.S. at 364-65 (O'Connor, J., *dissenting*) (quoting 2 Works of John Adams 524 (C. Adams ed. 1850)).

Justice O'Connor's dissent in *Krull* clearly states that legislative abuse of search provisions was the "evil"

that the Fourth Amendment was concerned with and not "suspicionless investigatory searches." *See* Pet. at 29. It also is not correct to say, as the petition does, that Justice O'Connor *in Krull* equated all administrative inspections with modern writs of assistance. The search at issue in *Krull* was a warrantless search which was found to be unconstitutional under the progeny of *Camara*, and it was that illegal search to which Justice O'Connor was referring, and not to all administrative inspections under *Camara*. *See Krull*, 480 U.S. at 343-46.

The Petitoners argue that "*Camara's* reasoning would accord suspected criminals more rights than innocent tenants" (*see* Petition at 13), but this simply is not true. The *Camara* court was very aware of the difference between the rights of the suspect in criminal searches and the rights of the resident in administrative inspections, and it was in fact the Court's intent to reconcile this difference that was at the very heart of the *Camara* decision. The petitioners also argue that there is a danger that the administrative inspections will be used to find evidence of crimes, and as evidence of this they cite to the fact that many code violations are also crimes (*see* Pet. at 32-35), but the *Camara* court was also very aware of the overlap between criminal and administrative laws. The Court addressed both of these issues:

> We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. For this reason alone, *Frank* differed from the great bulk of Fourth Amendment cases which have been considered by this Court. But

> we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. And even accepting *Frank's* rather remarkable premise, inspections of the kind we are here considering do in fact jeopardize 'self-protection' interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint. Even in cities where discovery of a violation produces only an administrative compliance order, refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant. Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence.

Camara, 387 U.S. at 530-31. *Camara* therefore specifically acted to equalize the rights of the innocent with the rights of suspected criminals. And in spite of the fact that *Camara* fully recognized that many administrative

processes were enforceable through criminal sanctions, it still held that the individualized suspicion required for criminal searches was not required for administrative inspections. The issues raised by the Petitioners simply are not novel issues. They are issues that were fully considered and ruled on, 45 years ago, in *Camara*, and the Petitioners have not shown any compelling reason why that ruling should be questioned now.

III. The warrants in this case and the warrants provided for by *Camara* are sufficiently particular.

The warrants in this case and the warrants provided for by *Camara* are sufficiently particular with regard to descriptions of things to be inspected. In *Platteville Area Apt. Ass'n v. City of Platteville*, 179 F.3d 574, 578 (7th Cir. 1999), the Seventh Circuit recognized the validity of administrative warrants, such as those at issue here, pursuant to *Camara*:

> In these circumstances the Fourth Amendment's requirement that all search warrants be supported by 'probable cause' can be satisfied by demonstrating the reasonableness of the regulatory package that includes compulsory inspections, [*Camara*, 387 U.S. at 538-39; *O'Connor v. Ortega*, 480 U.S. 709, 723 (1987)], and the reasonableness of Platteville's scheme, including such features as the exclusion of owner-occupied housing, is not questioned.

Platteville Area Apt. Ass'n, 179 F.3d at 578. The problem in *Platteville* was that the municipality was attempting

to use the administrative inspection warrant process to search in areas of the property where property code violations would not be found, such as among tenants' personal belongings, in order to find violations of a multiple occupancy law: "[T]he City wants to preserve [the building inspector's] right to rummage in closets and bureau drawers." *Platteville Area Apt. Ass'n*, 179 F.3d at 580.

Here, the City of Rochester seeks no such extension of the inspections in question. The City's inspection warrant legislation specifically defines the warrant as providing for "an inspection of a premises for civil enforcement purposes only in conjunction with the administration and enforcement of the property codes." *See* City Charter § 1-10, Pet. App. at 70-71. Although the City may inspect cabinets, such as those underneath sinks, because, for example "[w]e have to check the drain and the tap to make sure nothing is leaking," the City's witness at the warrant hearings specifically testified that those conducting inspections do not look in other cabinets, should not "look at any documents at all in the house", should not "open up kitchen drawers" and should not look inside "dresser drawers and things like that and china cabinets." *See* Cermak R. at 635-42.

The City is inspecting only for property code violations, especially those which may endanger health and safety, so that those violations may be fixed. As said in *Platteville*:

> If you are looking for an adult elephant, searching for it in a chest of drawers is not reasonable. The principle that this example illustrates is that a search for a given body of evidence or contraband implies a limitation of the parts of the premises that may be searched.

Platteville Area Apt. Ass'n, 179 F.3d at 580. The City here may inspect in some closed areas of a property, such as a cabinet where the drains and pipes to a sink run, or a closet, where there may be damaged walls or deteriorated lead paint, (*see* Cermak R. at 634-35), but the City fully recognizes that this inspection is limited to areas where property code violations might occur, and does not extend to drawers, dressers, china cabinets and other purely personal areas. Therefore the inspections in question here are properly within the bounds of the Fourth Amendment and *Camara*, and *certiorari* should be denied.

CONCLUSION

Since the petitioners have failed to show any compelling reason why this Court should consider this case, it is respectfully submitted that the petition should be denied. The Petitioners have not shown any conflict between the courts of New York and any other courts with regard to the interpretation or application of *Camara*. The petitioners have not shown that the New York courts were out of line with *Camara* or with any other decision of this Court in this case. The Petitioners have also failed to show any compelling reason why *Camara* should be reconsidered or reversed. Therefore the petition should be dismissed, and *certiorari* should be denied in this matter.

Respectfully submitted,

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