No.

In The

Supreme Court of the United States

Martin E. Rock,

Petitioner,

v.

City of Dearborn Heights,
Michigan,

Respondent,

On Petition For A Writ of Certiorari To
The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

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In propria persona for the Petitioner

Questions Presented

A municipal ordinance, cited by the Respondent, provides for enforcement of code provisions through monetary fines, the subject ordinance does not authorize administrative searches by the municipality of a private residence, and no warrant was issued to the municipality to search this particular subject house, a private residence. The Respondent, an incorporated municipality, and a creature of state government, abused its power, made no attempt to enforce the ordinance through monetary fines as provided by the pertinent statute, and made no showing those monetary fines under the pertinent ordinance constituted an inadequate remedy at law. As the alleged ordinance violations (which alleged violations are disputed by the property owner [Petitioner]) pertain to minor *exterior* conditions, the Respondent has shown no rational basis for conducting an *interior,* forced, warrantless search of a private residence.

1. Whether the Fourth Amendment of the United States Constitution prohibits an unreasonable, warrantless search of a private residence without individualized suspicion of wrongdoing, without any rational basis related to the municipal ordinance, where the municipal ordinance provides enforcement only through monetary fines, and where the search is for unknown and unspecified purposes.

2. Whether Article 1, § 11 of the Michigan State Constitution prohibits an unreasonable, warrantless search of a private residence without individualized suspicion of wrongdoing, without any rational basis related to the municipal ordinance, where the municipal ordinance provides enforcement only through monetary fines, and where the search is for unknown and unspecified purposes.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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CONSTITUTIONS, STATUTES, AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The orders entered by the Michigan Supreme Court (MSC), the highest state court to review the merits appear at Appendix A to the Petition and is of record at MSC Docket for Case No. 154820

The challenged order entered by the 20th district court appears at Appendix B to the Petition and is unpublished.

JURISDICTION

The Michigan Supreme Court (MSC) entered its judgment on April 04, 2017 and denied Plaintiff's timely-filed motion for rehearing on July 25, 2017.

Both orders appear at Appendix A. The Michigan Supreme Court orders are of record at the MSC Docket for Case No. 154820.

The Motion to Appeal *in Forma Pauperis* and Petition for Writ of Certiorari was timely filed by U.S. Mail on 23 October 2017.

This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves construction of the Fourth Amendment to the United States Constitution and Respondent's liability for redress under 42 U.S.C. section 1983 in the context of the subject municipal ordinance, which ordinance does not provide for administrative searches:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no 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. 4.*

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. *42 U.S.C. section 1983.*

STATEMENT OF THE CASE

Warrantless, administrative searches have had a relatively brief history under the Fourth Amendment. Some legal scholars have suggested the broader inquiry of administrative search investigations may be more dangerous to privacy and security than a traditional search for evidence of a crime. Therefore, having less judicial scrutiny of warrantless, administrative searches than for criminal searches of the same premises, seems counter-intuitive.

The Supreme Court first considered the constitutionality of warrantless health inspections in District of Columbia v. Little, 339 U.S. 1 (1950). The United States Court of Appeals for the District of Columbia Circuit had held that such inspections violated the Fourth Amendment. See District of Columbia v. Little, 178 F.2d 13, 17 (D.C. Cir. 1949) ("To say that a man suspected of a crime has a right to protection against search of his home without a warrant, but that a man not suspected of a crime has no such protection, is a fantastic absurdity."); see Recent Cases, Constitutional Law - Searches and Seizures - Inspection of Private Dwelling by Public Health Official Held Unreasonable Search under the Fourth Amendment, 63 HARV. L. REV. 349, 350 (1949) (suggesting the broader inquiry of investigations by health inspectors may be more dangerous to privacy and security than a traditional search for evidence of a crime).

The Court affirmed the appeals court's decision, but did so solely on the ground the statute prohibited warrantless public health inspections, and thus did not reach the constitutionality of such inspections. See Little, 339 U.S. at 6-7. The D.C Circuit's view was later rejected by the Supreme Court, when it held the warrant requirement did not include administrative inspections. See *Frank v. Maryland*, 359 U.S. 360 (1959). The Court later overturned *Frank*, holding administrative searches of homes were subject to the warrant requirement. *Camara v. Mun. Ct.,* 387 U.S. 523 (1967). This remains the law at this point.

In this case, the Respondent abused its governmental power. Respondent had no statutory authority to conduct a warrantless, administrative search of a private home; Respondent had no warrant to enter a private home; and Respondent lacked any rational basis for such a search of a private home. In such cases, the law should be clear and concise: "No."

A. Statutory Background

U.S. CONST. amend. IV

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no 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.".

Nearly every word of this Amendment has been litigated in multiple cases. Of interest here are the cases interpreting the Fourth Amendment language in the context of a warrantless, administrative search of a private home that is not authorized by the applicable statute.

The word "houses" is explicitly included in the Fourth Amendment to the U.S. Constitution and in the Michigan Constitution (M.C.L.A. Const. Art. 1, § 11). A citizen of the United States enjoys his or her highest reasonable *Expectation of Privacy* in his or her houses, and this same protection is afforded by the State and Federal Constitutions

B. Factual Background

Rock is respectfully seeking leave to appeal a trial court order (**Appendix B, challenged order**), dated April 2, 2015, purporting to authorize the Respondent, City of Dearborn Heights to use forced entry into Rock's house (subject property) with no purpose for such forced entry stated in the order. To this day, the purpose of such a forced entry search is unspecified by the Respondent and unknown to the Petitioner.

City alleges violations of municipal ordinances pertaining to alleged exterior conditions of the subject property, but Rock has filed photos and engineering reports refuting these as false allegations. For example, Rock's structural engineering report was sealed by a registered professional engineer, and by comparison, the City's scribbled, illegible note was technically baseless and submitted by an unqualified staff member.

Rock denies there are any such ordinance violations on his property. For example, City alleged Rock was in violation of "blight" ordinances because there were leaves in his front yard, where there are mature trees in the neighborhood, and where Rock retains a paid contractor and said contractor, reliably maintains the yard on a weekly basis and shovels the snow in the winter.

The neighboring property is abandoned and in disrepair, so it is possible the Respondent is simply seeking to cite someone who does not own the offending property.

In any case, the ordinance provisions cited by the Respondent do not authorize an administrative search. The ordinance provides monetary fines as the sole enforcement tool. Moreover, the Respondent never even attempted to use monetary fines as an enforcement tool under the ordinance. Instead, Respondent demanded an extreme remedy that includes forced entry into the Petitioner's private residence for no known purpose.

In this case, the Respondent abused its governmental power. Respondent had no statutory authority to conduct a warrantless, administrative search of a private home; Respondent had no warrant to enter a private home; and Respondent lacked any rational basis for such a search of a private home. In such cases, the law should be clear and concise: "No."

Summary: The subject municipal ordinance provides for enforcement of code provisions through monetary fines, the subject ordinance does not authorize administrative searches by the municipality, and no warrant was issued to the municipality to search the subject house, a private residence.

The Respondent, an incorporated municipality, and a creature of state government, abused its power, made no attempt to enforce the ordinance through monetary fines as provided by the pertinent statute, and made no showing that monetary fines under the pertinent ordinance constituted an inadequate remedy at law. As the alleged ordinance violations (which alleged violations are disputed by the property owner [Petitioner]) pertain to minor, unproven *exterior* conditions, the Respondent has shown no rational basis for conducting an *interior,* forced search of a private residence.

c. Trial Court Proceedings

The District Court entered an order dated April 2, 2015, purporting to authorize the Respondent, City of Dearborn Heights to use forced entry into Rock's house (subject property), with no reason or purpose given for such entry.

The district courts in Michigan are courts of limited jurisdiction, and the district court lacked jurisdiction to enter an order allowing a forced entry search of the subject property where the pertinent statute did not authorize such administrative searches and where there was no showing of an inadequate remedy at law. Wayne County courts are regulated under the Revised Judicature Act of 1961 (RJA). (Under M.C.L.A. § 600.8311(b), the district courts have jurisdiction of "*Ordinance and charter violations punishable by a fine* . . . " [Emphasis added.]) The statute does not grant equitable powers to the district courts with regard to ordinances enforced through monetary fines.

Equitable powers are granted to the county Circuit Courts, but equitable powers to the District Courts are limited by statute.

D. State Supreme Court and Court of Appeals Decisions

The Honorable Michigan Supreme Court granted leave to file a reply and denied Rock's Application for Discretionary Review on 04 April 2017. The Court also granted Rock's motion for rehearing and reconsideration and denied Rock's Motion for Re-Hearing and Reconsideration on 25 July 2017.

However, both the Michigan Court of Appeals and the Michigan Supreme Court allowed Rock's Motion to Appeal *in forma pauperis.*

Both orders are of record at the MSC Docket for Case No. 154820.

Michigan Court of Appeals orders are of record at the COA Docket for Case No. 330348.

REASONS FOR GRANTING THE PETITION

Prior to 1776, English authorities made use of "writs of assistance", which were general warrants authorizing the bearer to enter any house or other place to search for and seize "prohibited and uncustomed" goods, and commanding all subjects to assist in these endeavors. Few provisions of the Bill of Rights grew so directly out of the experience of the colonials and the Founders as the Fourth Amendment, embodying as it did the protection against the utilization of the "writs of assistance" to enter their homes.

(Apparently the first statement of freedom from unreasonable searches and seizures appeared in The Rights of the Colonists and a List of Infringements and Violations of Rights, 1772, with Samuel Adams leading the drafting. 1 B. *SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY* 199, 205-06 (1971))

The historical statements [of the Framers] about search and seizure focused on condemning these general warrants. Indeed, the historical concerns were almost exclusively about the need to ban *house* searches under general warrants. Hence, the Framers clearly understood the warrant standards to be the operative content of the Fourth Amendment, as well as protection against state search and seizure provisions. The Framers did not address warrantless intrusions at all in the Fourth Amendment. Meaning, they never anticipated that "unreasonable" might be read as a standard for warrantless intrusions *of houses*. See, Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 551 (1999) [*Emphasis added.*] The Framers viewed a "warrantless *house* search" as an impossible oxymoron under the Fourth Amendment.

The Framers would be shocked to learn that an officious municipal Respondent claims the right to enter a private residence without a search warrant, with no specificity as to time, place or manner; and with no rational basis on the pretense that some leaves from the neighbor's trees had fallen on the grass in front of the home. Our Revolutionary War was fought for the very purpose of gaining freedom from and protecting our homes from such tyranny.

The U.S. Constitution provides more protections for private property than for any other right. In addition to two separate provisions forbidding the taking of property without due process of law, *U.S. Const. amends. V, XIV*, the Constitution also prohibits the use of eminent domain except for public use, *id. amend. V*; protects "houses" and "things" against search and seizure, *id. amend. IV*, and against the quartering of soldiers, *id. amend. III;* and protects the right of the people to "keep" firearms. *Id. amend II.* It also restricts state manipulation of contracts and debts, *id. art. I, § 10, cl. 1,* and includes other protections that have important consequences for property rights.

The Fourth Amendment protects against "unreasonable" searches and seizures by state and federal law enforcement authorities, based on the basic concept of privacy. 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.). The Fourth Amendment embodies a strong presumption against suspicionless, warrantless searches and seizures of private homes.

"Every man's house is his castle" was a maxim much celebrated in England at the time of the Founders. One of the most forceful expressions of the maxim was that of *William Pitt in Parliament in 1763*: "The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail—its roof may shake —the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement." The maxim that a "man's house is his castle" is one of the oldest and most deeply rooted principles in Anglo-American jurisprudence. See, e.g., *Weeks v. United States*, 232 U.S. 383, 390 (1914) (discussing the influence of the common-law maxim on the Supreme Court).

A. The FOURTH AMENDMENT Prohibits Warrantless Administrative Searches of a Private Home

Despite the continuing erosion of such protection in other places, including on streets, in automobiles, at airports, and in schools, the home retains a special place in search and seizure law. See, e.g., *Kyllo v. United States*, 533 U.S. 27, 121 S. Ct. 2038, 2041 (2001) ("'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'") (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)); *Payton v. New York*, 445 U.S. 573, 586 (1980) (stating that it has long been "a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable") (internal quotation marks omitted); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) ("[T]he sanctity of private dwellings [is] ordinarily afforded the most stringent Fourth Amendment protection."); *Pub. Utils. Comm'n v. Pollak*, 343 U.S. 451, 467 (1952) (Douglas, J., dissenting) ("[The Fourth Amendment] gives the guarantee that a man's home is his castle beyond invasion either by inquisitive *or by officious people.*") [*Emphasis added.*]

An administrative search of a personal residence constitutes a "*search*" within the meaning of the Fourth Amendment when the inspection is made pursuant to a fire, health, or housing code which is enforceable by criminal sanctions and in the absence of an emergency. *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen,* 466 U.S. 109, 113, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984).

The maxim that "a man's [or woman's] home is his [or her] castle", still resonates widely in American society. See, "*A Man's Home is His Castle?*": Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries, 8 *Wm. & Mary J. Women & L.* 175 (2002). As such, the search of private houses, is presumptively unreasonable if conducted without a warrant. *See v. City of Seattle*, 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967).

In this case, Petitioner disputes the existence of any actual ordinance violations requiring abatement. Nonetheless, The Fourth Amendment protects a person's privacy interest in those areas where he or she has a "constitutionally protected reasonable expectation of privacy." *Katz v. U.S.*, 389 U.S. 347, 360, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring). At bottom, the Court must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo v. United States,* 533 U.S. 27, 34, 121 S.Ct. 2038, 150 L.Ed.2d 94. As noted above, the Founders were primarily concerned about protecting private homes.

Katz did not repudiate the understanding that the Fourth Amendment embodies a particular concern for government trespass upon the areas it enumerates.
The *Katz* reasonable-expectation-of-privacy test *has been added to, but not substituted for, the common-law trespassory test.* *United States v. Jones,* 565 U.S. 400, 132 S. Ct. 945, 947, 181 L. Ed. 2d 911 (2012) [*Emphasis added.]* Entries onto private property by government officials to seek out or abate public nuisances, like searches pursuant to a criminal investigation, are governed by the warrant requirement of the Fourth Amendment. *Esmont v. City of New York*, 371 F. Supp. 2d 202 (E.D. N.Y. 2005).

A. Federal Circuits Split on Important Administrative Searches Issues:

Decisions by Federal and State Courts Addressing Warrantless, Administrative Searches Are Muddled and Confused

"Formulating the boundaries and requirements of administrative search doctrine is ... a matter of great importance, [particularly with respect to how the doctrine impinges on private property rights and private residences] and yet the rules governing administrative searches are notoriously unclear. In fact, scholars and courts find it difficult to even define what an administrative search is, let alone to explain what test governs the validity of such a search." Eve Brensike Primus, *Disentangling Administrative Searches,* 111 Colum. L. Rev. 254, 257 (2011).

The Eleventh Circuit has narrowly interpreted - and, in part, cast aside - this Court's precedent, holding that an administrative search program is constitutional if it provides adequate notice and adequately limits the discretion of inspecting officers in the *scope* of the search, but ignoring the requirements that the search be "carefully limited in time ... [and] place," U.S. v. *Biswell,* 406 U.S. 31192 S.Ct. 159332 L.Ed.2d 87 406 U.S. at 316. *See United States v. Ponce-Aldona,* 579 F.3d 1218, 1225 (11th Cir. 2009). The Third, Fourth, Fifth, Sixth, and Ninth Circuits have similarly disregarded the mandate to limit the time of the search, though these decisions have purported to enforce the requirement that the search be limited in place. *Heffner v. Murphy,*745 F.3d 56, 69-70 (3d Cir. 2014); *LeSueur-Richmond Slate Corp. v. Fehrer,* 666 F.3d 261, 266 (4th Cir. 2012); *United States v. Castelo,* 415 F.3d 407, 411 (5th Cir. 2005); *United States v. Dominguez-Prieto,* 923 F.2d 464, 469-70 (6th Cir. 1991); *United States v. Delgado,* 545 F.3d 1195, 1203 n.6 (9th Cir. 2008).

In many instances, "the mere existence of a statutory or regulatory regime is deemed sufficient regardless of the degree to which it limits discretion." Primus, *supra,* at 285; *see, e.g., United States v. 4,432 Mastercases of Cigarettes, More or Less,* 448 F.3d 1168, 1180 (9th Cir. 2006) (upholding an administrative search program even though it "place[d] few limits on the discretion of searching officers"); *Tart v.*

Massachusetts, 949 F.2d 490, 498 (1st Cir. 1991) (opining that "[t]he lack of explicit constraints on the officers' discretion is not determinative").

Several other Circuits, in attempting to navigate the ambiguity of the phrase "constitutionally adequate substitute for a warrant," have established stricter safeguards than their fellow Circuits.

For example, the Tenth Circuit has explicitly held that, in order to be lawful, a regulation establishing an administrative search "must notify owners as to who is authorized to conduct an inspection." *United States v. Vasquez-Castillo,* 258 F.3d 1207, 1211 (10th Cir. 2001). Prior to the Panel's opinion in the instant case, the Seventh Circuit vigorously enforced the Fourth Amendment's warrant requirement, holding that, "[t]o satisfy the 'certainty and regularity' requirement, the inspection program must define clearly what is to be searched, who can be searched, and the frequency of such searches." *Bionic Auto Parts, Inc. v. Fahner,* 721 F.2d 1072, 1078 (7th Cir. 1983).

As a result of this disarray, federal trial courts have been left without clear guidance as to what standards to apply to a warrantless administrative search, and we are seeing a classic "parade of horribles" in the name of unbridled "executive discretion." For example, one federal case in Texas involved a search program in which police officers arbitrarily placed roadblocks throughout a predominantly African-American neighborhood. *Shankle v. Texas City,* 885 F. Supp. 996, 999 (S.D. Tex. 1995). Police officers used these roadblocks to "summarily den[y] residents access to their homes." *Id.* "No standardized procedures governed the operation of the roadblocks: Police officers had complete discretion regarding whom to stop, what questions to ask, and whom to allow through the checkpoints." Primus, *supra,* at 285; *Shankle,* 885 F. Supp. at 999-1001.

The court concluded that "[s]etting up roadblocks to deter young gang members and then denying home access to people clearly beyond any relevant age group is not only arbitrary and capricious, it is insulting and downright silly." *Shankle,* 885 F. Supp. at 1004. Nevertheless, the court granted qualified immunity to the officers because "the law was not clearly established as to" whether purported "administrative searches" of the type at issue violated the Constitution. *See id.* at 1006.

Such unconscionable results will continue to occur, under claims of "executive discretion" in the absence of clear instructions from this Court as to how to analyze the constitutionality of warrantless administrative searches – particularly, in the case of warrantless, administrative searches of private homes. Governmental agencies, as Respondent, will continue to abuse their power without clear limits.

B. The Question Presented is a Recurring One of Great Importance

Camara held that administrative searches conducted without a warrant procedure violate the Fourth Amendment. *Camara,* 387 U.S. at 534, 87 S.Ct. 1727. And a warrant to inspect property must be based upon probable cause. *Id.*

Thus, for an inspection provision to be constitutional, it must contain a warrant requirement that provides for the issuance of warrants upon probable cause. *See, Dearmore v. City of Garland,*400 F .Supp.2d 894, at 902 (N.D.Tex.2005) at 902 (stating that "*Camara* ... holds that an administrative search of a private residence, including a private residence owned by one person and rented by another, must include a warrant procedure"). Crook v. City of Madison, 168 So. 3d 930, 939 (Miss. 2015).

And an inspection provision with no warrant requirement is facially unconstitutional. *State v. Finnell,* 115 Ohio App.3d 583, 685 N.E.2d 1267, 1272 (1996). Crook v. City of Madison, 168 So. 3d 930, 939 (Miss. 2015). Clear application of this doctrine to private homes should not be confused by the "pervasively regulated business" exception or by "executive discretion."

C. This Case is an Ideal Vehicle For Deciding This Question.

We have seen how the administrative search power can be abused in the name of "executive discretion" by an officious governmental entity. See, *Shankle v. Texas City,* 885 F. Supp. 996, 999 (S.D. Tex. 1995). In this case, the Respondent abused this power. Respondent had no statutory authority to conduct a warrantless, administrative search of a private home; Respondent had statutory authority only to levy monetary fines; Respondent had no warrant to enter a private home; and Respondent lacked any rational basis for such a search of a private home. In such cases, the law should be clear and concise: "No."

This Court has an opportunity to clearly define the administrative search doctrine to be followed by the lower courts. This Court can ensure that government does not abuse its power. The property owner will know whether or not the Fourth Amendment means what it says about "houses" in the context of the time frame of the Founders – the time of unbridled British general writs of assistance that led directly to the American Revolution -- whether his or her home is truly their castle. The Supreme Court of the United States, highest court in the land, has an opportunity to provide clear, needed guidance on our most fundamental Constitutional right: To be safe in our homes.

CONCLUSION

The petition for a writ of certiorari should be GRANTED.
Respectfully submitted,
Date: 23 October 2017

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