

DOROTHY RIVERA, an Individual,
EDDY OMAR RIVERA, an Individual,
KATHLEEN O'CONNOR, an Individual,
ROSEMARIE O'CONNOR, an
Individual, THOMAS O'CONNOR, an
Individual, and STEVEN CAMBURN,
an Individual,

Plaintiffs,

v.

BOROUGH OF POTTSTOWN, and
KEITH A. PLACE, in his Official
Capacity as Pottstown Director of
Licensing and Inspections,

Defendants.

COURT OF COMMON PLEAS

CIVIL ACTION NO. 2017-04992

FIRST AMENDED COMPLAINT

INTRODUCTION

1. The purpose of Article I, Section 8 of the Pennsylvania Constitution is to prevent unreasonable invasions of private property and personal privacy by governmental officials. Article I, Section 8 requires a higher standard for issuing an “administrative warrant” to search a home than does the Fourth Amendment as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967). The Borough of Pottstown’s rental-inspection ordinances violate Article I, Section 8 by allowing government officials to conduct highly intrusive wall-to-wall searches for compliance with on-the-spot standards that inspectors are free to make up as they go along. If a landlord or tenant refuses the inspection, the Borough may seek a *Camara*-style administrative warrant, which does not require evidence of housing-code violations in the home to be searched. Inspectors then enter every area of

rental homes—areas where information about a tenant’s private family relationships, personal belongings, political or religious affiliations, romantic lives, or health may be visible. Plaintiffs are a coalition of tenants, landlords and other whose privacy rights in their home and property are threatened by the ordinances.

2. This abusive search regime is allowed by the weakened privacy protections the U.S. Supreme Court manufactured with the “administrative warrant” doctrine in *Camara*. Pottstown’s rental-inspection program violates Article I, Section 8, which requires individualized probable cause to conduct a nonconsensual inspection of a rental home to determine housing-code compliance.

3. Plaintiffs do not want their home and property searched. They have united in this lawsuit to stop Pottstown from enforcing its unconstitutional rental-inspection ordinances and to vindicate their state constitutional rights to be free from unreasonable government searches.

THE PARTIES, JURISDICTION, AND VENUE

4. Plaintiffs Dottie and Omar Rivera are tenants of a rental home located in the Borough of Pottstown, at 326 Jefferson Avenue, Pottstown, Pennsylvania 19464, which is currently subject to a rental inspection by Pottstown’s Licensing and Inspections Department. The Riveras care deeply about maintaining the privacy in their home. They value their right to determine who will enter their home and who will have access to every part of their home.

5. Plaintiff Steven Camburn owns and operates rental properties in the Borough of Pottstown, including the home the Riveras rent at 326 Jefferson Avenue.

Camburn is unwilling to allow the Borough to intrude into his tenants' homes without their consent and is committed to helping his tenants protect their rights.

6. Plaintiffs Kathleen and Rosemarie O'Connor live in a home owned by their father, Thomas O'Connor. Their home is located at 466 N. Franklin Street, Pottstown, PA 19464. They value their privacy and security in their home and do not want Borough inspectors to enter.

7. Plaintiff Thomas O'Connor owns the property located at 466 N. Franklin Street, Pottstown, PA 19464, where Kathleen and Rosemarie reside. This property is adjacent to Thomas's home. Thomas views this property as part of their family home. He cares about maintaining a safe and private home for his daughters, and he is not willing to allow Defendants to enter their home without their consent.

8. Defendant Borough of Pottstown ("Pottstown" or the "Borough") is a municipality duly organized and existing under the laws of the Commonwealth of Pennsylvania with offices located at 100 E. High Street, Pottstown, Pennsylvania.

9. Defendant Keith A. Place is and was, at all relevant times, the Director of Pottstown's Licensing and Inspections Department (the "Department") with an office located at 100 E. High Street, Pottstown, Pennsylvania. Mr. Place is sued in his official capacity.

10. Plaintiffs seek to vindicate their right to be free from this unreasonable governmental intrusion into their private property under Article I, Section 8 of the Pennsylvania Constitution, and seek declaratory and injunctive relief for the purpose of determining a question of actual controversy between the parties as

hereinafter alleged pursuant to Article I, Section 8 of the Pennsylvania Constitution, and 42 Pa. Cons. Stat. §§ 7531–7541.

11. This Court has jurisdiction over this matter pursuant to 42 Pa. Cons. Stat. § 931. Venue is proper in the 38th Judicial District of the Unified Judicial System of Pennsylvania (Montgomery County) Court of Common Pleas under 42 Pa. Cons. Stat. § 931 and Pennsylvania Rules of Civil Procedure 1006(a)(1) and 2103(b) because: all currently known Defendants are government entities or officials located within Montgomery County, Defendants may be served in Montgomery County, the cause of action arose and transactions or occurrences took place in Montgomery County, and Plaintiffs are residents of Montgomery County and were harmed there.

THE CONTROVERSY OVER THE POTTSTOWN LICENSING CODE

12. On or about June 8, 2015, the Borough of Pottstown, Pennsylvania, enacted Ordinance No. 2137, amending its Code of Ordinances to require landlords and tenants to submit to mandatory inspections of rental properties within Borough limits every two years. These provisions are codified in Pottstown’s Code of Ordinances (“Code”) §§ 5-801 *et seq.*, “Residential Rental Licensing,” and §§ 11-201 *et seq.*, “Registration and Licensing of Residential Rental Units.” (Collectively, the “Ordinances.”)

13. The Code broadly defines a “residential rental unit” as “a rooming unit or dwelling unit let for rent, or a rooming unit or dwelling unit occupied by someone other than the owner.” Code § 11-202. Thus, a home can fall under the Code even if

its occupants do not have a lease or pay rent. If a home's occupant is not the owner, that home is subject to the Borough's inspection regime.

14. Though inspections are supposed to occur on a biennial basis, the initial inspection cycle has been set for a period of 30 months, which is scheduled to conclude on December 31, 2017. Code § 11-206.

15. When a property is due for an inspection, the Borough first sends the landlord an invoice for his or her rental license. When the landlord pays the fee (which varies depending on the type of property), the Borough schedules the inspection and sends notice of the scheduled inspection to the landlord.

16. The inspections need not be predicated on any particular reason to suspect that a violation of any law has occurred or is occurring in the targeted rental property.

17. The mere existence of a non-owner-occupied property is all that is needed for the Borough to demand access to the interior of the property, including any occupied dwelling unit, and to obtain an administrative search warrant if access is refused.

Defendants' Attempt to Inspect the Property of Plaintiffs Dorothy Rivera, Eddy Omar Rivera and Steven Camburn

18. On November 16, 2016, the Department sent Plaintiff Camburn a "Rental Inspection Notice" requesting a fee of \$70 for the Riveras' home located at 326 Jefferson Avenue.

19. Camburn paid the fee on December 21, 2016, and an inspection of the Riveras' home was scheduled for March 13, 2017.

20. On March 8, 2017, the Riveras and Camburn sent a letter to Defendant Keith Place, informing Mr. Place that they would not voluntarily allow the Borough of Pottstown to inspect their home and property. They further invoked their rights under Article I, Section 8 of the Pennsylvania Constitution, which they asserted “requires the government to meet a higher standard of probable cause to obtain a warrant to search a rental home than the standard articulated in *Camara*.”

21. The Borough then applied for an administrative warrant *ex parte* in Pottstown’s Magisterial District Court to inspect the Riveras’ home. The Borough’s application for this warrant was not supported by individualized probable cause of a housing-code violation. The court granted the administrative warrant.

22. That same day, the Riveras and Camburn moved to quash, or, in the alternative, to stay the execution of, the administrative warrant in the Magisterial District Court. The Magisterial District Court stayed the execution of the warrant pending a later determination of the Riveras’ and Camburn’s motion.

23. On April 18, 2017, Defendants filed a Motion to Strike the Riveras’ and Camburn’s Motion to Quash the Administrative Warrant. Defendants’ motion asserted that the Magisterial District Court lacked jurisdiction to quash an administrative warrant on the basis that the warrant violates the Pennsylvania Constitution.

24. On April 27, 2017, the Riveras and Camburn sent a letter to the Magisterial District Court informing the Court of their intent to file a response to

Defendants' Motion to Strike by May 8, 2017 in accordance with the Pennsylvania Rules of Civil Procedure.

25. That same day—absent any briefing or advocacy from the Riveras and Camburn—the Magisterial District Court granted the Defendants' Motion to Strike with prejudice, thereby activating the administrative warrant. After 48 hours, the administrative warrant expired. Defendants did not inspect the Riveras' home while the warrant was active.

26. The Magisterial District Court did not send the Riveras and Camburn a copy of this order. Nevertheless, the Riveras and Camburn received a courtesy copy of the order from Defendants and attempted to appeal the order. However, they quickly learned that there was no avenue for appeal.

27. When the Riveras and Camburn attempted to effectuate their appeal in this Court, the Prothonotary's Office would not accept their filing because there was no record of the underlying matter in the Magisterial District Court.

28. The Riveras' and Camburn's counsel then requested a docket number from the Magisterial District Court's clerk, but the clerk informed counsel that if an administrative warrant is not executed, it is court policy not to docket the warrant and any orders related to the warrant.

29. Without any record of the underlying matter in Magisterial District Court, the Riveras and Camburn have been unable to seek judicial review of the Magisterial District Court's order striking their motion to quash and issuing the administrative warrant.

30. In a letter dated May 9, 2017, Defendants represented that they would not apply for additional administrative warrants to inspect the Riveras' home until the resolution of the instant lawsuit. Nevertheless, because Defendants routinely seek these warrants ex parte, the Riveras and Camburn continue to fear that Defendants may attempt to inspect their property without their knowledge or consent.

The Borough's Attempt to Inspect the Property of Plaintiffs Kathleen, Rosemarie and Thomas O'Connor

31. Plaintiffs Kathleen and Rosemarie O'Connor have resided at 466 N. Franklin Street for the last 20 years. Their home is owned by their father, Plaintiff Thomas O'Connor, who has lived next door at 466 N. Franklin St. for 57 years.

32. Kathleen and Rosemarie do not pay rent to live in the property, and they do not have a lease. The two homes share a backyard and garage, and the O'Connors consider Kathleen and Rosemarie's home at 466 N. Franklin St. to be a part of their family home.

33. Although Thomas does not live at 466 N. Franklin St., he frequently spends time with his daughters at their home.

34. On March 3, 2017, the Borough informed the O'Connors that Kathleen and Rosemarie's home was due for an inspection under the Ordinances. The Borough also sent them an invoice for \$70. Thomas paid the fee.

35. The Borough scheduled an inspection of Kathleen and Rosemarie's home for April 10, 2017. Defendants instructed the O'Connors to confirm that the property could be inspected on this date.

36. The O'Connors were disturbed to learn that their property was scheduled for an inspection. Not wanting the inspection, they never confirmed that the inspection could occur on April 10.

37. The O'Connors do not want the Borough to enter any and every part of their home without their consent.

38. The Borough did not inspect the O'Connors' property on April 10 and rescheduled the inspection for July 6, 2017. A Borough inspector threatened to take them to court if they do not allow the inspection.

39. On June 30, 2017, the O'Connors informed Defendants that they objected to an inspection of their property without a warrant supported by individualized probable cause. They further invoked their rights under Article I, Section 8 of the Pennsylvania Constitution and notified Defendants of their intent to join this action.

40. On July 6, 2017, a Borough inspector appeared outside Kathleen and Rosemarie's home seeking to inspect the property. The inspector did not have a warrant, and the O'Connors did not allow the inspection. The O'Connors continue to fear that their home and property may be inspected against their will.

OVERVIEW OF THE POTTSTOWN RENTAL INSPECTION CODE

41. The Ordinances provide for "a systematic inspection program, registration and licensing of residential rental units and penalties." Code § 11-201.

42. The Ordinances require landlords to obtain, and keep current, a license to lawfully rent to third parties for each “residential rental unit in the Borough of Pottstown.” Code § 11-202.

43. The Ordinances require rental inspections to take place “biennially, upon a property transfer, upon a complaint that a violation has occurred, or where the Licensing and Inspections Officer has reasonable cause to believe that a violation is occurring.” Code § 5-801. This lawsuit concerns the first-listed “biennial” inspections, and not the provisions based on complaints or reasonable beliefs that there is a code violation.

44. The Borough issues and renews rental licenses when properties are inspected. Code § 11-202. Under the Ordinances, landlords are also required to permit inspections “at reasonable times upon reasonable notice.” Code § 11-203(I)(3).

**POTTSTOWN OBTAINS ADMINISTRATIVE WARRANTS
WITH NO INDIVIDUALIZED PROBABLE CAUSE**

45. If a landlord or tenant objects to the inspection, Borough inspectors may seek an administrative warrant to inspect the premises. *Id.*

46. The concept of an administrative warrant comes from *Camara*, in which the U.S. Supreme Court held a warrant was required to enter a home to conduct a nonconsensual housing inspection. 387 U.S. at 539. The Court did not require these warrants to be supported by traditional individualized probable cause.

Id. at 538. Instead, “probable cause” for these warrants was to mean “reasonable legislative or administrative standards.” *Id.*

47. Reasonable legislative or administrative standards under *Camara* could be things like “the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area” and could “vary with the municipal program being enforced.” *Id.*

48. Pottstown’s enforcement of its mandatory inspection of rental properties against unwilling tenants and landlords shows *Camara* administrative warrants in action. The administrative warrants Pottstown obtains do not require any reasonable belief that a code violation exists, has existed, or will exist in a targeted rental home.

49. The Affidavit of Probable Cause that accompanies the administrative warrant application is barebones in its statement of probable cause. In one example, the affiant merely stated that the Ordinances required biennial inspections without listing any facts—or even noting a suspicion—that something was wrong or unsafe with the property.

50. If a landlord or tenant refuses entry: “The penalty for not allowing an inspection shall be revocation of the residential rental registration and/or the residential rental license.” Code § 5-801(B).

**THE ORDINANCES AUTHORIZE—AND POTTSTOWN CONDUCTS—INTRUSIVE
INSPECTIONS**

51. When inspections take place, the Ordinances authorize the Borough to search any part or portion of a rental home for conformity with the Ordinances.

52. The Ordinances authorize inspections for the purpose of determining whether rental properties “demonstrate compliance” with certain standards. Code § 11-206(2).

53. The Ordinances instruct inspectors to check for “habitability”—a term the Ordinances do not define—which includes: A) at least one 120 square-foot habitable room; B) a minimum of 70 habitable square feet for all other spaces—other than kitchens and bathrooms; C) a minimum of 70 square feet per bedroom “plus an additional 50 square feet for each additional person occupying the same room”; D) “No basement space may be considered habitable unless it meets the requirements for secondary means of egress/escape as defined by the applicable Borough Building or Property Maintenance Code.” Code § 11-206(2)(A)–(D).

54. The Ordinances also allow inspectors to search any area within a person’s home pursuant to a vague catchall standard—“any other relevant requirements”—which the Ordinances do not define. Code § 11-206(2).

55. As a supplement to the scant guidance in the Ordinances, Pottstown publishes an inexhaustive “Residential Rental & Property Transfer Checklist,” (the “Checklist”). *See Licensing and Inspections, Residential Rental & Property Transfer Checklist*, Borough of Pottstown, <http://www.pottstown.org/DocumentCenter/View/105>.

56. The Checklist contains vague standards that open up the entire home to inspection. The Checklist provides that “[t]he interior & exterior of property and premises must be maintained in a clean, safe & sanitary condition.” *Id.* at 1. It also states that “[i]nterior doors must function as intended.” *Id.* The Checklist uses “good repair” as a standard nine times without defining it. *Id.* at 1–2.

57. Inspectors can enter any interior room and open any interior door under the standard articulated in the Checklist. Nothing in the Ordinances places any restriction on the locations inside a rental property in which such inspection authority may be exercised.

58. Inspectors can, and do, enter closets under the Checklist because “[a]ll incandescent bulbs located in closets or over shelves must be protected with permanent covers over bulbs.” Checklist at 2. Inspectors also open closets under the pretense that they need to inspect the closet ceilings.

59. Thus, the Checklist gives inspectors permission to open and search all closets without having to show a neutral arbiter that they suspect there is a safety concern stemming from closet lightbulbs. In fact, under the administrative warrant standard, inspectors are able to obtain a warrant giving them access to all the closets in a home without even showing that the house in question has closet lightbulbs at all.

60. The Checklist also allows inspectors to view and handle personal property within the home. The Checklist permits inspection of “[a]ll electrical

equipment, wiring and appliances,” to see if they are “properly installed and maintained in a safe and approved manner.” *See* Checklist at 2.

61. The Borough’s inspectors check to make sure all outlets are operational. In some cases, the outlets are behind the bed, which the inspectors move. On some occasions, the tenants store personal items under the bed, and these items are revealed when the bed is moved.

62. The Ordinances authorize the Borough to enter and search bedrooms, living rooms, hallways, bathrooms, kitchens, attics, utility rooms, and basements, and to search inside storage areas, bedroom closets, kitchen cabinets, and bathroom vanities. Furniture and appliances, such as refrigerators, stovetops, washers, stereos, and even computers, are within the scope of the inspection regime established by the Borough and the Ordinances. Borough inspectors search these private spaces, including opening each closet door and opening cabinets.

63. The Borough’s inspections reveal private, personal details about tenants. Plaintiff Camburn has been present at rental inspections where inspectors saw political and religious symbols such as a framed photograph of President Obama or an open Quran.

64. Nothing in the Ordinances prevents inspectors from bringing police into tenants’ homes or from sharing information with law enforcement or any other person.

**INJURY TO PLAINTIFFS STEVEN CAMBURN,
DOROTHY RIVERA AND EDDY OMAR RIVERA**

65. Camburn does not want Borough inspectors to enter the portions of his properties that are not open to the public.

66. The Riveras do not want Borough inspectors entering their home against their will and searching every area of their home. Their home is not open to the public. Even invited guests do not have permission to search their closets and cabinets or to look under their beds.

67. The Riveras and Camburn are already in the process of going to court to fend off an unsupported warrant to search their home and their property. They do not want to be subjected to continued, repeated attempts to obtain warrants that are not supported by individualized probable cause of a housing-code violation.

68. Without a judgment declaring Pottstown's Ordinances to be illegal and an injunction against their enforcement, the Riveras and Camburn will be subjected to repeated attempts to obtain warrants, and to unconstitutional searches. The Riveras plan to continue living in their home for many more years, through one or more additional biennial inspection cycles. Camburn does not plan to sell their home and intends to continue to rent the home to them through one or more additional biennial inspection cycles.

**INJURY TO PLAINTIFFS THOMAS O'CONNOR,
KATHLEEN O'CONNOR AND ROSEMARIE O'CONNOR**

69. Thomas O'Connor does not want Borough inspectors entering his daughters' home against their will. Their family home is private, and only invited

guests may enter. He thinks that they should have the right to control who enters the property.

70. Kathleen and Rosemarie do not allow strangers in their home under any circumstances. The prospect of having strangers entering every part of their home undermines their security in their home. They fear that an inspection will reveal personal details about themselves—including where they store their personal items, where they sleep, their medical history, and their spiritual practices. These are things that they wish to keep private.

71. Because of this fear, they have already taken steps to hide and store some items that they wish to keep private in the event inspectors force their way inside. They have conducted an inventory of their personal belongings and have moved some private belongings into their father's home. They do not feel that they should have to take these steps to maintain their privacy in their own home.

72. The O'Connors have had to retain counsel to protect their property and privacy from Defendants' attempts to enforce these Ordinances against them and to go to court to fend off Defendants' attempts to search their home.

73. Without a judgment declaring Pottstown's Ordinances to be illegal and an injunction against their enforcement, the O'Connors will be subjected to repeated attempts to inspect their property, including ex parte attempts to obtain warrants, and to unconstitutional searches. Kathleen and Rosemarie O'Connor plan to continue living in their home for many more years, through one or more additional biennial inspection cycles, and Thomas O'Connor plans to continue allowing them to

live in this family property through one or more additional biennial inspection cycles.

COUNT I

POTTSTOWN’S RENTAL-INSPECTION ORDINANCES VIOLATE THE PENNSYLVANIA CONSTITUTION BECAUSE THE SEARCHES OF PRIVATE RESIDENTIAL PROPERTY THEY AUTHORIZE SHOULD BE SUBJECT TO TRADITIONAL WARRANT REQUIREMENTS.

74. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in 1 through 47 above.

75. Article I, Section 8 of the Pennsylvania Constitution protects the right of individuals to be secure in their “persons, houses, papers and possessions.” It does not allow search warrants that are not based upon individualized probable cause to believe that a violation of the law has occurred and that evidence of such violation could be found in the property to be searched.

76. Article I, Section 8 requires a higher standard for issuing a warrant to search a home than does the Fourth Amendment as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967).

77. Pottstown’s Ordinances authorize Borough inspectors to conduct deeply intrusive searches into the homes of all Pottstown tenants based on *Camara*-style administrative warrants. The Ordinances deprive both tenants and landlords, including Plaintiffs, of their security in their houses, papers, and possessions.

78. Plaintiffs have a right under Article I, Section 8 of the Pennsylvania Constitution to an independent judicial determination that the Borough has individualized probable cause to search their private property, which must consist

of individualized suspicion that the law has been violated within the targeted property, before Defendants are allowed to intrude into and search Plaintiffs' home and private property under the Ordinances.

79. The Ordinances, as applied by Defendants against Plaintiffs and others similarly situated, have violated or imminently threaten to violate Article I, Section 8 of the Pennsylvania Constitution.

80. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the irreparable harm to their constitutional rights caused or imminently threatened by the mandatory inspection requirements of the Ordinances, as applied by Defendants.

81. Unless the mandatory inspection requirements of the Ordinances are declared unconstitutional, as applied by Defendants, and Defendants, their agents, employees, servants, and representatives are permanently enjoined from enforcing such requirements except in accordance with the traditional individualized probable cause standard of Article I, Section 8 of the Pennsylvania Constitution, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 8 of the Pennsylvania Constitution.

82. Unless Defendants are required to apply for a warrant based upon traditional, individualized probable cause, Plaintiffs will continue to suffer, and be imminently threatened by, great and irreparable harm consisting of the deprivation of their rights guaranteed by Article I, Section 8 of the Pennsylvania Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare unconstitutional the mandatory inspection requirements of Sections 5-801 to 5-809 and 11-201 to 11-206 of the Pottstown Code of Ordinances against the Plaintiffs and others similarly situated as heretofore alleged;

B. Permanently enjoin Defendants from seeking warrants to conduct inspections authorized under the Ordinances with less than traditional, individualized probable cause, and from seeking *Camara*-style administrative warrants under the Ordinances;

C. Award Plaintiffs nominal damages of \$1.00 for, among other things, the burden of defending themselves against an unconstitutional warrant application, and for the necessity to defend themselves against the Borough's repeated attempts to enter their home;

D. Award such other relief as the Court deems just, equitable, and proper.

DATED: July 26, 2017

Respectfully submitted,



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