

New York Supreme Court

Appellate Division—Third Department

PEOPLE OF THE STATE OF NEW YORK by Letitia James,
Attorney General of the State of New York,

Case No.:
CV-23-1255

Petitioner-Appellant,

— against —

COMMONS WEST, LLC, COLLEGETOWN PLAZA, LLC, CITYVIEW, LLC,
COLLEGETOWN CENTER, LLC, COLLEGETOWN COURT, LLC, FANE
ENTERPRISES, INC. and JASON H FANE, individually and D/B/A Ithaca
Renting Company, and as the Sole Member of Commons West, LLC,
Collegetown Plaza, LLC, Cityview, LLC, Collegetown Center, LLC and
Collegetown Court, LLC, and as President, Director and
Shareholder of Fane Enterprises, Inc.,

Respondents-Respondents.

BRIEF OF *AMICI CURIAE* NATIONAL HOUSING LAW PROJECT, POVERTY & RACE RESEARCH ACTION COUNCIL, AND NATIONAL HOMELESSNESS LAW CENTER IN SUPPORT OF PETITIONER-APPELLANT AND REVERSAL

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I. Introduction

The federally supported Housing Choice Voucher Program plays a crucial role nationwide in alleviating racial segregation, poverty, and homelessness. Working in tandem, source of income discrimination laws, such as the New York State Human Rights Law, make New York's Housing Choice Voucher Program more effective by prohibiting landlord discrimination against voucher-holders. Landlords should not be allowed to frustrate the goals of New York's Housing Choice Voucher Program by asserting pretextual objections to reasonable, minimally burdensome inspection requirements in public housing authority ("PHA") contracts.

Contrary to the decision below, housing inspections required by New York PHA contracts do not violate landlords' constitutional rights because they are reasonable and minimally intrusive. The New York State Human Rights Law is an important tool for strengthening the efficacy of New York's Housing Choice Voucher Program, which promotes New York's compelling interests in ensuring safe, affordable housing to New York residents.

II. Statement of Interest

The National Housing Law Project ("NHLP"), Poverty & Race Research Action Council ("PRRAC"), and the National Homelessness Law Center ("NHLC") are advocacy organizations who combat homelessness through expanding access to safe and affordable housing. NHLP supports the Housing Choice Voucher Program

by promoting policies that make vouchers more effective and strengthen tenants' rights. Since 1981, NHLP has published *HUD Housing Programs: Tenants' Rights*. Commonly referred to as the "Greenbook," this resource is known as the seminal authority on the rights of HUD tenants and program participants and is regularly used by tenant advocates and other housing professionals throughout the United States.¹ NHLC has also consistently pushed the federal government to create an enforceable right to habitable housing and directs its efforts at legislation preventing and addressing homelessness, including successfully advocating for the passing of the Protecting Tenants at Foreclosure Act.² PRRAC champions policies based on research and has published issue briefs and articles on Housing Choice Voucher reform and history.

III. New York's Housing Choice Voucher Program is central to numerous federal housing policy objectives, including the alleviation of poverty, expansion of opportunity, and fair housing.

Since 1974, HUD has administered a tenant-based rental assistance program now known as the Housing Choice Voucher Program.³ To implement the Housing Choice Voucher Program, HUD contracts with state and local PHAs to enroll eligible families with low incomes, who then contract, primarily, with private landlords to

¹ NHLP, *HUD's Housing Programs: Tenants' Rights* (Feb. 2025), <https://www.nhlp.org/products/green-book/>.

² Pub. L. No. 111-22, Div. A, Title VII, 123 Stat. 1660 (2009).

³ See 42 U.S.C. § 1437f(o); 24 C.F.R. § 982.1.

lease housing.⁴ Participants pay roughly 30 percent of their household income toward rent, and the PHA pays the remaining portion of the rent directly to the landlord under a Housing Assistance Payments contract (“HAP contract”).⁵ This subsidy, which the PHA pays using federal funds, typically covers all of the rent not covered by the participant’s portion.⁶

The Housing Choice Voucher Program is “the nation’s largest source of rental assistance.”⁷ About 2.3 million families with low incomes participate in the programs administered by 2,170 state and local PHAs across the country.⁸ Over 40 percent of the more than 5 million people who reside in voucher-assisted housing are children, and roughly one-quarter are people with disabilities.⁹ At least 75 percent of households admitted to the program each year have extremely low incomes.¹⁰

⁴ See 24 C.F.R. § 982.1(a).

⁵ See 24 C.F.R. § 982.1(b)(2).

⁶ See 24 C.F.R. § 982.508 (family cannot lease premises at more than 40 percent of household income at outset).

⁷ Center for Budget & Policy Priorities (“CBPP”), *Policy Basics: The Housing Choice Voucher Program* (Apr. 12, 2021), <https://www.cbpp.org/research/policy-basics-the-housing-choice-voucher-program>.

⁸ *Id.*

⁹ *Id.*

¹⁰ See 24 C.F.R. § 982.201(b)(2). “Extremely low income” means income below the federal poverty line or no greater than 30 percent of area median income, whichever is greater. *See also* 24 C.F.R. § 5.603(b).

Notably, the size and importance of the voucher program has increased as the supply of traditional site-based subsidized housing has declined. Significant numbers of public housing and privately-operated subsidized housing complexes are lost each year to deterioration, demolition, or conversion to market-rate housing.¹¹ Tenants displaced from such properties are ordinarily given vouchers.¹²

More than three-quarters of voucher participants are people of color.¹³ One crucial objective of the voucher program is to combat residential segregation and poverty concentration by enabling participants to access housing in areas of greater opportunity.¹⁴ HUD has facilitated this objective through such means as calibrating

¹¹ See Public and Affordable Housing Research Corporation and National Low-Income Housing Coalition, *Picture of Preservation 2024* (Dec. 2024), at 4, <https://preservationdatabase.org/picture-of-preservation/> (Shortage of “affordable and available rental homes for extremely low-income renters” was 7.3 million homes in 2022.)

¹² See U.S. Department of Housing and Urban Development (“HUD”), *Tenant Protection Vouchers for Public Housing Actions*, (June 2020) (discussing replacement of public housing units lost or transitioned with mobile vouchers), https://www.hud.gov/sites/dfiles/PIH/documents/TPV_Repositioning_FAQs_June_2020.pdf; HUD, *Tenant Protection Vouchers*, HUD (Aug. 26, 2015), <https://files.hudexchange.info/course-content/hud-multifamily-affordable-housing-preservation-clinics/Preservation-Clinic-Tenant-Protection-Vouchers.pdf> (discussing replacement of privately-owned HUD multifamily units lost or transitioned with mobile vouchers).

¹³ CBPP, *supra* note 6.

¹⁴ Congress authorized the tenant-based Section 8 program in the Housing and Community Development Act of 1974, with a general statement of purpose that cited concern over the “concentration of persons of lower income in central cities,” and goals of “the reduction of the isolation of income groups within communities and geographical areas,” and “the spatial deconcentration of housing opportunities for persons of lower income” (42 U.S.C § 5301). See also Peter J. Mateyka, *Housing Programs and Racial Segregation: The Role of Place-Based and Mobility Programs*, HUD PD&R EDGE (Oct. 17, 2023), <https://archives.huduser.gov/portal/pdredge/pdr-edge-pdrat50-101723.html>.

the fair market rents (on which subsidy standards are based) to enable voucher holders to lease more expensive housing in communities with better schools and job opportunities, and by funding housing mobility programs that help voucher holders find and secure homes in such communities.¹⁵ Social science research has demonstrated the lifetime emotional and academic benefits that accrue for children in families with stable housing voucher assistance,¹⁶ and even more so, for children who are able to move with their families to low-poverty neighborhoods.¹⁷ Unfortunately, racism and negative stereotypes about tenants who pay their rent with vouchers are common reasons why some landlords seek to avoid participating.¹⁸

¹⁵ See 24 C.F.R. § 982.503 (regarding subsidy amounts); PRRAC, *Housing Mobility Programs in the U.S. 2022* (Dec. 2022), <https://www.prrac.org/pdf/prracHousingMobilitySurvey2022.pdf>; see also Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents, 81 Fed. Reg. 80678 (Nov. 16, 2016).

¹⁶ Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CBPP (Oct. 7, 2015), <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term-gains>.

¹⁷ Raj Chetty, Nathaniel Hendren & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AMERICAN ECONOMIC REVIEW, 855–902 (2016).

¹⁸ See, e.g., Jessica Luna & Josh Leopold, *Landlord discrimination restricts the use of rental vouchers*, URBAN WIRE (July 22, 2013), <https://www.urban.org/urban-wire/landlord-discrimination-restricts-use-rental-vouchers> (“[S]ome landlords use rejection of HCVs as a proxy to discriminate against racial or ethnic minorities . . . studies have found a subset of landlords that reject vouchers when offered by black or Hispanic families, but accept them from white families . . . in many areas, discrimination against voucher holders continues to undermine the goals of the HCV and provide a pretext for outright discrimination against minorities.”); HUD Office of Policy Development & Research, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* (Sept. 2018), at 11, https://www.hud.gov/sites/dfiles/PIH/documents/Landlord-Acceptance_HCV.pdf (“Studies revealed evidence that landlords racially discriminated against

Across the country, the Housing Choice Voucher Program has also emerged as the nation's primary means of combatting homelessness. HUD urges PHAs to establish voucher distribution preferences for persons experiencing homelessness,¹⁹ and the federal government has created targeted voucher programs for sub-populations of unhoused persons. One example is the Veterans Affairs Supportive Housing ("VASH") program, which pairs case management and clinical services from the U.S. Department of Veterans Affairs with housing voucher assistance.²⁰ VASH has served more than 144,000 formerly unhoused veterans since its creation in 2008.²¹ Yet, HUD reports that landlord unwillingness to accept vouchers is a

Black voucher holders."); HUD, *Landlord Participation Study* (Oct. 2018), at 24, <https://www.hud.gov/sites/dfiles/PIH/documents/Landlord-Participation-Study-Final-Report.pdf> (After interviewing PHA administrators nationwide, found landlords hold "enduring stereotypes" about and "stigma" against Section 8 tenants.)

¹⁹ HUD, *How PHAs Can Assist Persons Experiencing Homelessness*, HUD (Sept. 2021) at 2–5, <https://files.hudexchange.info/resources/documents/PHA-Establishing-Waiting-List-Preferences-and-Programs-Specifically-for-People-Experiencing-Homelessness.pdf>.

²⁰ Other examples of voucher programs specifically for homeless persons include the Foster Youth to Independence Program, which partners with public child welfare agencies to provide Housing Choice Vouchers for 18–24 year olds experiencing or at risk of homelessness (*see* HUD, *FYI Vouchers for the Foster Youth to Independence*, HUD, <https://www.hud.gov/hud-partners/public-indian-housing-fyi> (last visited July 6, 2025)) and the Emergency Voucher Program, which assists individuals and families who are homeless, at-risk of homelessness, fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or were recently homeless or have a high risk of housing instability, *see* HUD, *Emergency Housing Vouchers*, <https://www.hud.gov/ehv> (last visited July 6, 2025).

²¹ HUD, *HUD-VASH Vouchers*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/vash (last visited July 6, 2025).

“primary challenge” in the administration of the program.²² In fact, the federal government has identified landlord discrimination against voucher holders as a factor that contributes to homelessness.²³

Once issued a voucher, participants begin their search for housing.²⁴ Housing voucher paperwork includes language directed at landlords describing the program and explaining how the PHA rent subsidy enables a participant family to afford the rent despite not having enough income on their own.²⁵ The vouchers have a limited duration (as short as 60 days) and expire if the participant fails to secure housing by the deadline.²⁶ Typically, a participant whose voucher expires can obtain assistance only by re-applying to the program — an uncertain process which requires waiting

²² HUD, *HUD-VASH Best Practices – Version 1.0* (Apr. 2012), <https://www.hud.gov/sites/documents/vash-bestpractices.pdf>.

²³ U.S. Interagency Council on Homelessness, *All In: The Federal Strategic Plan to Prevent and End Homelessness* (Dec. 2022), at 19, 47, https://usich.gov/sites/default/files/document/All_In.pdf.

²⁴ See HUD, *Housing Choice Voucher Program Guidebook* (June 2025), https://www.hud.gov/sites/default/files/PIH/documents/HCV-Guidebook_Housing-Search-and-Leasing-Chapter_June-2025.pdf (“The HCV form is evidence that the PHA has determined the family to be eligible for the program and plans to subsidize the family if the family selects a unit that can be approved under program requirements.”).

²⁵ See 24 C.F.R. § 982.4(b) (“Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.”).

²⁶ See 24 C.F.R. § 982.303.

on a waiting list, often for years.²⁷ Many jurisdictions also have closed their voucher waiting lists to new households because of the overwhelming demand for assistance.²⁸

Landlords may screen voucher participants for admission using legally permissible criteria in the same manner as they screen other applicants, apart from an ability to pay without a voucher.²⁹ But many landlords discriminate against applicants who intend to pay rent with the assistance of a voucher, even if they are otherwise qualified.³⁰ Finding and leasing suitable housing within the limited search term can be difficult, and landlord resistance to accepting vouchers naturally makes locating housing even more challenging.³¹ In some communities, widespread

²⁷ See Sonya Acosta & Erik Gartland, *Families Wait Years for Housing Vouchers Due to Inadequate Funding*, CBPP (July 22, 2021), <https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding>.

²⁸ *Id.* (“53 percent of agencies ha[ve] closed their waiting lists to additional applicants.”)

²⁹ See 24 C.F.R. § 982.307(a).

³⁰ See, e.g., HUD Office of Policy Development & Research, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*, (Sept. 2019) at 29–30, https://www.hud.gov/sites/dfiles/PIH/documents/Landlord-Acceptance_HCV.pdf (“Results from the voucher acceptance tests show clear evidence of outright denial of vouchers. . .”).

³¹ See Ingrid Gould Ellen, Katherine O’Regan & Sarah Stochak, *Using HUD Administrative Data to Estimate Success Rates and Search Durations for New Voucher Recipients*, HUD (Dec. 2021), at vi, https://www.huduser.gov/portal//portal/sites/default/files/pdf/Voucher-Success_Rates.pdf (estimating that voucher recipients were successful in leasing housing 61 percent of the time in 2019, but “[s]uccess rates and search durations vary widely across PHAs.”).

unwillingness of landlords to accept vouchers transforms vouchers into unfulfilled promises of housing.³²

To ensure the viability of the Housing Choice Voucher Program, many state and local governments have enacted laws forbidding discrimination against voucher holders. Most of these laws accomplish this by prohibiting discrimination based on the source from which the applicant will obtain the money to pay rent and hence are often called source of income discrimination (“SOID”) laws. These laws are critical to the success of voucher programs throughout the country. At present, 19 states and more than 130 localities have enacted SOID laws that ban discrimination against applicants with vouchers.³³ Together, these laws protect over 60 percent of all U.S. voucher holders.³⁴

IV. Landlords should not be permitted to avoid compliance with Source of Income Discrimination laws by raising pretextual objections.

Like typical SOID laws, the SOID component of the New York State Human Rights Law (“NYSHRL”) prohibits a landlord from denying or treating an applicant less favorably because of their voucher use.³⁵ This means a person who rents housing

³² See *supra* note 29 at 1 (“Housing choices [for voucher holders] are severely constrained by their ability to navigate the private rental market, find a unit that meets the rental cap, and identify a landlord who will participate in the program.”).

³³ See PRRAC, *Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* (Jan. 2025) at 2–6, <https://www.prrac.org/pdf/AppendixB.pdf>.

³⁴ *Id.* at 1.

³⁵ See N.Y.C. Admin. Code § 8107(5)(a); see N.Y. Exec. Law § 296(5)(a)(1).

must be willing to bear the usual obligations of voucher participation, such as entering into the standard HAP contracts with PHAs. Otherwise, a landlord who did not want to rent to applicants with vouchers could easily circumvent SOID laws simply by raising pretextual objections to ordinary voucher program requirements.

Courts have long recognized the possibility that landlords and other persons subject to anti-discrimination laws might mask discriminatory intentions under pretextual grounds for denial.³⁶ As a rule, a facially non-discriminatory reason put forward to justify the rejection of a housing applicant with a voucher will not stand if the voucher-holder is able to demonstrate that such reason is pretextual.³⁷ To evaluate a voucher-holder's claim of housing discrimination, courts apply a burden-shifting framework where, after the voucher-holder has established a *prima facie* case of discrimination, the landlord bears the burden to present evidence of a legitimate, non-discriminatory reason for its decision to not lease property to the

³⁶ *Cf.*, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804 (1973) (where defendant offers legitimate, nondiscriminatory reason to rebut *prima facie* showing of discrimination, claimant must “be afforded a fair opportunity to show that petitioner’s stated reason for respondent’s rejection was in fact pretext.”); *Daniels v. Brooklyn Ets. & Properties Realty*, 413 F. App’x 399, 401 (2d Cir. 2011) (applying *McDonnell Douglas* test in rental admission case). *See also* Armen H. Merjian, *Second-Generation Source of Income Housing Discrimination*, 2023 UTAH L. REV. 963 (2023); Armen H. Merjian, *Attempted Nullification: The Administrative Burden Defense in Source of Income Discrimination Cases*, 22 GEO. J. ON POVERTY L. & POL’Y 211 (2014–2015).

³⁷ *See McDonnell Douglas*, 411 U.S. at 805 (“In short, [the housing applicant] must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a racially discriminatory decision.”).

voucher-holder.³⁸ If it makes that evidentiary showing, only then does the burden shift to the voucher-holder to show that the landlord's rationale was in fact discriminatory.

Here, the landlord's refusal to rent to a voucher-holder made out a prima facie case of discrimination. A mere preference by the landlord not to permit a minimally burdensome inspection of the property does not constitute a cognizable, legitimate, non-discriminatory basis to refuse to rent, and therefore the burden to prove discrimination did not shift to the renter.

In fact, even at the outset, a court should not decide constitutional questions when a case can be disposed of on a nonconstitutional ground.³⁹ Thus, procedurally, before reaching the constitutional issue here, the lower court should first have explicitly determined whether the landlord's objection to a PHA inspection was economically legitimate and not a pretext for excluding applicants with vouchers. Given that the lower court reached the constitutional question, one might assume that the court in fact determined that the landlord's refusal was not pretextual, but that is not apparent in the record.

³⁸ See *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) (applying *McDonnell Douglas* test in housing discrimination case).

³⁹ See, e.g., *Beach v. Shanley*, 62 N.Y.2d 241, 254, 465 N.E.2d 304, 311 (1984).

V. Public housing authority inspections are not investigatory searches for Constitutional purposes.

Landlords can frustrate an applicant's attempt to lease housing by failing to cooperate with a required PHA inspection of the premises.⁴⁰ Before approving a particular property for a participant to lease with a voucher, a PHA must determine whether the premises are suitable for rental assistance.⁴¹ This includes examining whether the condition of the property complies with the federal "housing quality standards" and whether the amount of rent the owner seeks for the premises is reasonable given market conditions.⁴² Naturally, to make these assessments a PHA inspector must visit the property and inspect the dwelling unit — and this inspection is required by federal program regulations.⁴³ If the landlord does not permit the PHA to inspect, then the PHA cannot approve the unit for rental assistance, and the participant is effectively denied access to the property with the voucher.

As discussed below, the Housing Choice Voucher Program inspection process does not implicate the Fourth Amendment. But even if the Fourth Amendment were implicated, an objection to inspection should not bar liability under a SOID law

⁴⁰ See 24 C.F.R. § 982.305.

⁴¹ See 24 C.F.R. § 982.305(b).

⁴² See 24 C.F.R. § 982.305(a).

⁴³ See 24 C.F.R. §§ 982.305, 982.405(a).

where, as here, a landlord has no genuine privacy concern and seeks only to avoid participating in the voucher program.

The inspection a PHA conducts of the rental premises has much in common with the “home visit” requirement from the defunct AFDC⁴⁴ program at issue in *Wyman v. James*, 400 U.S. 309 (1971). In *Wyman*, case workers administering AFDC were required to visit the homes of benefits applicants to assess applicant eligibility, as well as the amount and type of benefits to offer.⁴⁵ Though acknowledging that such an “official intrusion into that home” gave rise to “an immediate and natural . . . concern about Fourth Amendment rights,” the U.S. Supreme Court ultimately determined that such a home visit did not constitute a “search . . . in the Fourth Amendment meaning of that term.”⁴⁶

In the *Wyman* court’s opinion, a social services home visit was not a search because, although “in a sense, both rehabilitative and investigative,” the visit was outside any criminal law context and access to the premises could not be forced or compelled: “If consent to the visitation is withheld, no visitation takes place. The aid then never begins or merely ceases, as the case may be. There is no entry of the home

⁴⁴ “AFDC,” which stands for Aid to Families with Dependent Children, was a cash-assistance welfare program repealed in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. No. 104–193, 110 Stat. 2105.

⁴⁵ *Wyman*, 400 U.S. at 314.

⁴⁶ *Id.* at 317.

and there is no search.”⁴⁷ For the same reason, the Court also distinguished the home visits in *Wyman* from *Camara v. Municipal Court*, 387 U.S. 523 (1967), where investigatory inspections by municipal code officials were searches subject to Fourth Amendment limitations.

Much like the home visit in *Wyman*, a PHA inspector has no authority or ability to enter premises by force if the landlord objects.⁴⁸ Though consent to the inspector’s entry may be given in the HAP contract, this does not mean the inspector may enter unannounced or on their own; the landlord must admit the inspector, and if consent is withheld at that time then, as in *Wyman*, there is no entry or search.⁴⁹ The only consequence is that the PHA declines to approve the property for housing assistance payments. Moreover, and unlike the inspections in *Camara*, a PHA has no authority to levy fines or arrest a landlord, and refusing a PHA inspection is not a crime.

A. Even if PHA inspections could be considered searches, they are not unreasonable searches that violate the Fourth Amendment.

The *Wyman* court also considered the possibility that a home visit could “possess some of the characteristics of a search in the traditional sense” but

⁴⁷ *Id.* at 317–18.

⁴⁸ Note that under HUD regulations property inspections must take place prior to occupancy by the tenant. Thus, the landlord is the party required to consent to the home visit, rather than the tenant.

⁴⁹ *See Wyman*, 400 U.S. at 317.

ultimately concluded that it would not rise to an unreasonable search that the Fourth Amendment would prohibit.⁵⁰ Thus, even if the PHA inspections could be considered a search, they do not cross the threshold of unreasonableness, just like the AFDC home visits in *Wyman* did not. The *Wyman* court established numerous reasons why the AFDC home visits were reasonable, including the right of the public to know how their funds are being used. Moreover, the court emphasized that the AFDC visit is scheduled and executed reasonably: the homeowner receives an advanced written notice with a specified date and prohibitions on forcible entry or snooping in the home. These same factors apply to the PHA inspections in this case. PHA inspections are crucial to ensuring that the federal tax-funded dollars are going towards safe, habitable housing, and landlords receive advance notice with a specific visit date.

When district courts in the Second Circuit have declined to extend *Wyman*'s warrant exception beyond the public benefits context, they have relied on the fact that the inspections take place in a home, which is usually afforded the highest degree of Fourth Amendment protection with a strong reasonable expectation of privacy. *Blackwelder v. Safnauer*, 689 F. Supp. 106, 137–38 (N.D.N.Y. 1988) (finding that the warrantless inspection of residences to ascertain compliance with homeschooling requirements, outside of the public benefits context, violated the

⁵⁰ *Id.* at 318.

Fourth Amendment). However, here, the inspections are on leased property where the landlord does not live and therefore does not have the same level of privacy expectations as the homeowners in *Blackwelder*. Furthermore, Second Circuit district courts have affirmed the policy goals of *Wyman*. In *McKenna v. Peekskill Hous. Auth.*, the court used *Wyman* to justify a rule requiring tenants to register and obtain approval for overnight guests. 497 F. Supp. 1217, 1226–27 (S.D.N.Y. 1980). *McKenna*, then, emphasizes *Wyman*’s point that property visits or visitor registration rules are permissible where they advance a strong state interest in safe housing.

B. Liability for source of income discrimination that results from denial of a PHA inspection does not coerce landlords into permitting unreasonable searches.

Although refusing a PHA inspection is not expressly prohibited by statute, such refusal does have the unlawful effect of denying housing to an applicant with a voucher.⁵¹ In a jurisdiction with an SOID law, categorically refusing PHA inspections effectively excludes all applicants with vouchers — which, if permitted, would countenance housing discrimination.

The trial court incorrectly found that a prospect of liability coerces consent to PHA inspections in the same way a threat of civil fines coerced landlord consent to code enforcement inspections in *Camara* and *Sokolov v. Village of Freeport*, 52 N.Y.2d 341, 420 N.E.2d 55 (1981). This conclusion was erroneous because PHA

⁵¹ See 24 C.F.R. § 982.405(a).

inspections serve special needs unrelated to law enforcement and are not unreasonable in light of those purposes.

It is well-established that certain inspections carried out under regulatory schemes “need not adhere to the usual warrant or probable-cause requirements as long as those searches meet ‘reasonable legislative or administrative standards.’”⁵² Indeed, “[a]dministrative searches justified by special needs beyond the normal need for law enforcement” are the most important exception to the warrant requirement.⁵³ As mentioned above in Part III, expanding access to safe housing through housing vouchers is critical to reducing poverty. Where such special needs exist, “the standard of reasonableness applicable to a particular class of searches requires ‘balanc[ing] the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.’”⁵⁴

Moreover, a PHA inspection, as discussed above, has no substantial law enforcement component. Like the public assistance program at issue in *Wyman*, an inspection as required by the voucher program concerns housing for families in need

⁵² *Griffin v. Wisconsin*, 483 U.S. 868, 873–74 (1987) (quoting *Camara*, 387 U.S. at 538).

⁵³ Cong. Rsch. Serv., *Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 112-9 at 1386, <https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf>.

⁵⁴ *O'Connor v. Ortega*, 480 U.S. 709, 719 (1987) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)) (citing *Camara*, 387 U.S. at 536–7).

and “does not deal with crime or with the actual or suspected perpetrators of crime.”⁵⁵ Its sole purpose is to determine whether a property the participant has asked to rent is suitable for the housing subsidy.⁵⁶

For similar reasons, a PHA inspection is minimally intrusive. The landlord’s privacy interest in a premises being held out for rent is not as compelling as in the landlord’s own home or even in commercial settings that are closed off to the public.⁵⁷ As discussed above, PHA inspections are not conducted by surprise but are scheduled in advance with the landlord. A PHA may inspect a property only when requested for approval of the tenancy by a participant,⁵⁸ and the scope and proper purposes of the inspection (briefly, to ensure the property meets habitability standards and that the rent is reasonable for the housing provided) are spelled out in

⁵⁵ *Wyman*, 400 U.S. at 323.

⁵⁶ See 24 C.F.R. §§ 982.302, 305.

⁵⁷ See *Donovan v. Dewey*, 452 U.S. 594, 598–99 (1981) (“The greater latitude to conduct warrantless inspections of commercial property reflects [that] the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual’s home, and that this privacy interest may, in certain circumstances, be adequately protected by regulatory schemes authorizing warrantless inspections.”) (citing *United States v. Biswell*, 406 U.S. 311, 316); see also *United States v. Oliveras*, 96 F.4th 298, 305 (2d Cir. 2024) (“those subject to the search must enjoy a diminished expectation of privacy . . . partly derived from the fact that they are notified in advance of the search policy”).

⁵⁸ See 24 C.F.R. § 982.302. Note any subsequent PHA inspections after the tenant moves in may be conducted with the consent of the occupying tenant. See, e.g., *Moore v. Andreno*, 505 F.3d 203, 209 (2d Cir. 2007).

detail by the program regulations and administrative materials.⁵⁹ There is no need for entry by force, without notice, or during off-hours, as a warrant might authorize.⁶⁰ And the inspection serves important government interests, which are assuring the responsible expenditure of federal funds and making sure the participant receives safe and sanitary housing commensurate with the family's needs.⁶¹

Hence a PHA inspection is truly a scenario where the regulatory inspection program “provid[es] a constitutionally adequate substitute for a warrant.”⁶² In fact, a warrant scheme would not add any real privacy protection for landlords.⁶³ Under *Camara*, the PHA's need to inspect upon submission of the request for tenancy approval would supply the necessary probable cause for issuance of the warrant and

⁵⁹ See, e.g., 24 C.F.R. §§ 5.703, 982.401; see also HUD, *Notice PIH 2017–20, Housing Opportunity Through Modernization Act of 2016 (HOTMA) — Housing Quality Standards (HQS) Implementation Guidance* (Oct. 27, 2017), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2017–20.pdf>.

⁶⁰ See *Wyman*, 400 U.S. at 323–24 (“If a warrant could be obtained . . . it presumably could be applied for ex parte, its execution would require no notice, it would justify entry by force, and its hours for execution would not be so limited as those prescribed for home visitation.”).

⁶¹ See *Wyman*, 400 U.S. at 318–19 (“The State, working through its qualified welfare agency, has appropriate and paramount interest and concern in seeing and assuring that the intended and proper objects of that tax-produced assistance are the ones who benefit from the aid it dispenses. Surely it is not unreasonable, in the Fourth Amendment sense or in any other sense of that term, that the State have at its command a gentle means, of limited extent and of practical and considerate application, of achieving that assurance.”).

⁶² *New York v. Burger*, 482 U.S. 691, 703 (1987); see *Donovan*, 452 U.S. at 599–600.

⁶³ See *Donovan*, 452 U.S. at 605 (“difficult to see what additional protection a warrant requirement would provide” where statute and regulations “clearly notifies the operator that inspections will be performed on a regular basis” and “what health and safety standards must be met” and curtails the “discretion of Government officials to determine what facilities to search and what violations to search for.”).

the regulatory limitations would specify the permissible terms of the search.⁶⁴ Hence such warrants would be routinely issued, presumably in ex parte proceedings that would afford landlords no opportunity to object.⁶⁵

Finally, a landlord does not automatically become liable for source of income discrimination simply by declining to allow a PHA inspection and has an opportunity to be heard. The duty not to discriminate against participants requires landlords to accept only the ordinary obligations and requirements of the voucher program, not to tolerate abusive or improper PHA searches. An action for source of income discrimination, in which the landlord may appear and defend, is a practical context in which to adjudicate a landlord's claim that a refused PHA inspection would have been excessively burdensome or otherwise outside the norm and improper.

VI. Conclusion

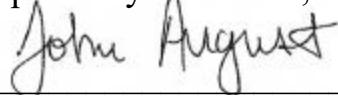
For the reasons stated here and in the Petitioner's brief, this Court should reverse the order below and should reinstate the proceeding.

⁶⁴ See *Camara*, 387 U.S. at 538 (“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 . . . will not necessarily depend upon specific knowledge of the condition of the particular dwelling.”).

⁶⁵ See *Wyman*, 400 U.S. at 323–24.

Dated: August 18, 2025
New York, New York

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John August", written over a horizontal line.

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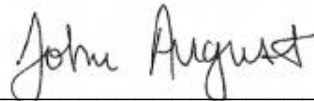
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A handwritten signature in dark ink, reading "John August", is positioned above a horizontal line. The signature is written in a cursive, slightly stylized script.

John August