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## Facts

Naranjibhai and Ramilaben Patel own and operate motels in Los Angeles. The Los Angeles Municipal Code requires motel operators to maintain detailed guest registries and provide them for police inspection without a warrant or any judicial review. The Patels sued, arguing this provision is facially unconstitutional as it violates their Fourth Amendment protections against unreasonable searches.

The district court found that while motels were not subjected to the same kind of pervasive and regular regulations as other recognized "closely regulated" businesses, motels do not have an ownership interest giving rise to a privacy right in their records because the records were created for the purpose of compliance with the ordinance.

The 9th U.S. Circuit Court of Appeals initially affirmed, but later reversed in an en banc rehearing, holding that the hotel records were private "papers" protected by the Fourth Amendment and that the warrantless search provision was unreasonable because it does not provide for pre-compliance judicial review of an officer's demand to inspect a motel's records.

## Question

Is a municipal ordinance that allows police to inspect hotel records without a warrant inconsistent with the Fourth Amendment's privacy expectations?

# Court must keep protecting privacy

**By Alan Butler**

The U.S. Supreme Court's decision in *City of Los Angeles v. Patel* will have broad implications for the privacy and free association rights of all businesses and their customers. *Patel* presents several important questions, including whether hotels have a privacy interest in their guest registries and whether facial Fourth Amendment challenges are permissible.

The court's decision will also impact future cases involving Fourth Amendment interests in customer records. This court has recently upheld strong Fourth Amendment privacy protections in *Riley v. California* (2014), *Florida v. Jardines* (2013), and *United States v. Jones* (2012).

The primary dispute in *Patel* is whether a city can require hotels to collect and retain detailed information about their guests, and make those records available for police inspection without judicial review. Under the Los Angeles ordinance, hotels are required to maintain guest registries that include the name and address of each guest, the license plate number of the guest's vehicle if it will be parked at the hotel, and a copy of the guest's driver's license if they pay for some portion of the room in cash. The guest registries must also include check-in and checkout times as well as the number of people who occupied the room.

The en banc panel of the 9th U.S. Circuit Court of Appeals found that the hotels have clear privacy and property interests in their guest registries, which are not "publicly available," and that the ordinance is unreasonable because it fails to provide the type of pre-compliance judicial review that would be necessary for an administrative search of a business. The en banc panel relied heavily on the Supreme Court's recent Fourth Amendment opinions, including *Jones* and *Jardines*, as well as *Katz v. United States* (1967). The en banc panel also found that hotels were not a "pervasively regulated" industry under *New York v. Burger* (1987). Instead, the en banc panel found that hotels should be treated like any other business, and given an opportunity to seek judicial review prior to the police inspection.

The Supreme Court agreed to hear the case. In the opening brief, the city of Los Angeles argued that the facial Fourth Amendment challenge was improper, that hotels are pervasively regulated and can be subject to warrantless inspection under *Burger*, and that any "minimal infringement of a hotel's privacy interest" caused by police inspections of guest registries is balanced by the city's interest in deterring crime. This last argument invokes the Fourth Amendment "balancing" analysis applied by the court in *Maryland v. King* (2013), over the strong dissent of Justices Antonin Scalia, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor.

As the Patels have argued, the court should reject the city's theory because it fails to recognize the substantial privacy interests in guest registries and other business records. Sotomayor recognized in her concurring opinion in *Jones* that we live in a world where "people reveal a great deal of information about themselves to third parties" even "in the course of carrying out mundane tasks." It would be unreasonable to hold that none of these records are protected under the Fourth Amendment.

The Patels have also shown that there is no evidence to support the city's argument that hotels are "pervasively regulated" under *Burger*. Under the *See v. City of Seattle* (1967) and other non-*Burger* administrative search cases, the city can only impose an administrative record-inspection regime if it provides an opportunity for pre-compliance judicial review. Otherwise, there would be no means to prevent improper, harassing, and discriminatory use of the authority by law enforcement.

This case has sparked the interest of a wide range of organizations, and 10 groups filed amicus briefs in support of the Patels. The Asian American Hotel Owners Association argued that the adverse impacts of inspection laws on hotel owners and guests would be substantial. Other groups argued that hotels and other businesses have both property and privacy interests in their customer records, and that Fourth Amendment protections should apply to those records. The amicus groups span the social and political spectrum, from business groups to consumer rights organizations and law professors to conservative think tanks. The amici filing in support of the city of Los Angeles were primarily law enforcement and state and local governmental associations.

The Electronic Privacy Information Center (EPIC) filed a brief addressing the First and Fourth Amendment interests implicated by the city ordinance. In a brief joined by 36 technical experts and legal scholars, EPIC wrote, "individuals have a constitutional right to gather at hotels for political and religious purposes without being subject to police inspection." The brief stressed that, "Hotel guests also have a privacy interest in limiting the collection of their personal information by hotels."

In the U.S. today, hotels are the primary meeting place for social, political and religious associations. The Supreme Court famously recognized in *NAACP v. Alabama* (1958) that the disclosure of the membership lists of these organizations to the government would violate the First Amendment. NAACP and other similar organizations routinely convene at Los Angeles-area hotels, and their members' names and other personal information are subject to police inspection under the city ordinance.

Over the last several years, the Supreme Court has made increasingly clear its willingness to uphold privacy claims. Between *Jones*, *Jardines* and *Riley*, the court has voted 23-4 in favor of stronger Fourth Amendment protections. The key disputes have not been whether privacy rights should be recognized, but rather whether the court should evaluate privacy claims based on individual property interests, on an expectation of privacy analysis, or some hybrid claim.

In *Patel*, the en banc panel explained, "Record inspections under § 41.49 involve both a physical intrusion upon a hotel's papers and an invasion of the hotel's protected privacy interest in those papers, for essentially the same reasons." This hybrid view of the Fourth Amendment, increasingly supported by the justices, provides a substantial basis for the court to affirm the decision of the lower court.

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# Registry searches are a valuable law enforcement tool

**By Lisa Soronen**

For the U.S. Supreme Court to conclude that the ordinance at issue in *City of Los Angeles v. Patel* is facially invalid it must conclude that *all* searches that *might be* conducted pursuant to the ordinance are unconstitutional. This is in contrast to a more typical "as-applied" challenge where a court decides whether *a particular* search under the ordinance violates the Fourth Amendment. The hotel and motel operators in this case will have a difficult time making their case that this ordinance facially invalid.

There are numerous scenarios where a warrantless search of a hotel register would be reasonable under the Fourth Amendment. Police may be trying to locate a suicidal person suspected of being in the hotel and could ask for the register under their "community caretaking exception." A hotel register might be fully accessible to the public or otherwise within a law enforcement of?cer's "plain view." And a warrantless search of a hotel register also may be justi?ed by "exigent circumstances." For example, law enforcement of?cials could be trying to locate a suspected terrorist who they believe is hiding in the hotel.

The city of Los Angeles argues persuasively that a warrant isn't required because the ordinance in this case falls within the reasonable administrative inspection scheme in a closely regulated industry exception. The ordinance informs hotel and motel owner ahead of time they must keep records and the records may be searched. And police inspections are limited; only the register may be searched, reviews may occur where the hotel or motel operator prefers, and per the ordinance whenever possible searches must be conducted "at a time … that minimizes any interference with the operation of the business."

What the drafters of the Constitution intended matters to the justices. The city also argues that if the exception does not apply, this ordinance should not be declared unconstitutional because our nation has a history of allowing warrantless inspection of inns that dates to its founding.

But even before getting to whether this ordinance is facially invalid, the Supreme Court likely will first decide whether facial challenges to ordinances and statutes are even possible under the Fourth Amendment. Facial challenges are generally disfavored, because, as the city argues in its brief, they "strip a court of the 'basic building blocks of constitutional adjudication' — *i.e.*, factual context and real world application of the law." (Internal citation omitted.)

Fourth Amendment facial challenges in particular don't make sense because whether a search violates the Fourth Amendment depends on whether it is *reasonable*, which is necessarily a fact-based determination. Specifically, in making a reasonableness determination, a court is weighing the government's interest in the search with the degree to which a person's privacy is invaded. This is hard to do if no facts are known. Under some set of facts, almost any search would be reasonable.

A lot is at stake in this case because hotel and motel registry ordinances are common. All of them may be invalidated if the Supreme Court concludes the city of Los Angeles's ordinance violates the Fourth Amendment. In its petition for certiorari, the city cites over 100 hotel registry ordinances from 28 states. Out that at least 70 California cities have such ordinances, as do cities in 15 additional states. And two states, Maine and Massachusetts, have hotel and motel registry statutes.

States and local governments use hotel and motel registry and inspection laws to combat numerous types of crimes by making impossible the anonymity within which criminals prefer to operate. Specifically, drug dealing, prostitution and human trafficking are common in what the city describes as "parking meter motels" where "[g]uests pay small hourly rates, in cash, to conduct their illicit business, and slink in and out anonymously and undetected."

The city's experience illustrates these laws are effective in combatting crime. The city observed an 82 percent increase in criminal activity at a sample of five motels between the six months before it stopped relying on the ordinance and six months after.

Finally, in many states mobile home parks, second-hand dealers like pawnshops and junkyards, scrap metal dealers, and massage parlors are subject to registration and inspection laws and ordinances, which are also used to deter and detect crime. They may be called into question if the city of Los Angeles's hotel registry ordinance is struck down.

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