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High court to hear challenge to warrantless searches of hotel records

On Oct. 20, the U.S. Supreme Court granted certiorari in *City of Los Angeles v. Patel*, No. 13-1175, agreeing to review a 7-4 decision by the 9th U.S. Circuit Court of Appeals that struck down a municipal statute authorizing warrantless inspections of hotel guest records upon demand by police.

Under a Los Angeles municipal code, hotel and motel operators are required to collect and record detailed information about their guests, including name and address; make, model and license plate number of the guest's vehicle if it will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged for the room; and method of payment.

In the case of guests who check in via an electronic kiosk, the ordinance requires hotel operators to record the guest's credit card information. Rooms can be rented to walk-in and cash-paying guests only if they present an ID, and hotel operators are required to record the number and expiration date of the guest's identification.

The ordinance requires hotel operators to maintain these records for at least 90 days and to make them available for inspection to any officer of the Los Angeles Police Department.

The hotel-operator plaintiffs in *Patel* challenged the warrantless inspection requirement of the ordinance as facially unconstitutional under the Fourth Amendment. After a bench trial, the U.S. District Court judge rejected the plaintiffs' claims and entered judgment in favor of the city of Los Angeles.

On appeal, the en banc majority of the 9th Circuit had "little difficulty concluding" that the inspection of guest records constitutes a search under the Fourth Amendment. The court held that hotel operators have both a property interest and a privacy interest in their guest's records, despite the fact that the records were required to be kept by law.

The majority opinion dismissed the dissent's contention that the plaintiffs were required to show that they had a reasonable expectation of privacy in their business records, stating that, as long as they are kept private and not publicly accessible, business records are indistinguishable from papers stored by a homeowner in a desk drawer.

The court further found the hotel operators' expectation of privacy to be reasonable because society does not normally expect a business to disclose commercially sensitive information of the type contained in the records at issue, such as customer lists, pricing and occupancy rates.

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Having held that police inspections of hotel guest records constitute a search, the 9th Circuit considered whether the searches authorized under the ordinance were reasonable.

The city contended that the ordinance was a "nuisance abatement measure" to deter drug dealing and prostitution in hotels. Accepting this premise, the court analyzed the searches authorized by the ordinance as administrative record inspections — which do not require warrants — rather than as searches for evidence of a crime. Even applying this more lenient standard, the majority still held that the Los Angeles ordinance was facially unconstitutional.

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The government can compel inspection of business records if its request is "sufficiently limited in scope, relevant in purpose and specific in directive so that compliance will not be unreasonably burdensome." Applying Supreme Court precedent, the 9th Circuit held that government demands to inspect business records cannot be enforced in the field by law enforcement. Rather, the business must be afforded an opportunity to seek judicial review of the demand prior to making its records available for inspection. Because the Los Angeles ordinance did not allow for pre-compliance judicial review, the court struck it down as facially unconstitutional.

In its petition to the Supreme Court, the city requested review of the questions of whether a statute can be facially challenged under the Fourth Amendment and whether hotel operators have a reasonable expectation of privacy in their guest registries.

With respect to the privacy question, the city's petition relies on a Massachusetts Supreme Court decision, *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987), which held that a motel operator had no reasonable expectation of privacy in its guest register. The court in *Blinn* reached this conclusion, in part, because the guest register was required to be kept by statute and there is, in general, a lower expectation of privacy on business premises than in a home.

The *Patel* decision will have important privacy implications for both businesses and consumers beyond the hospitality industry in Los Angeles. The city's petition contains a non-exhaustive list of more than 70 state, county and city statutes and ordinances from 26 states that authorize warrantless police inspections of hotel registries — and not a single one provides for pre-compliance judicial review.

Further, *Patel* may add definition to the parameters of any business' reasonable expectation of privacy in its business records, including its customers' data. Many businesses, from technology companies to retailers, maintain extensive records of customer information obtained through data-mining. *Patel* is an opportunity for the Supreme Court to limit — or expand — the ability of law enforcement to obtain data in the hospitality industry and beyond.

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