***Los Angeles v. Patel* (2015)**

576 U.S. 409

*The City of Los Angeles approved a municipal ordinance requiring hotel operators to record and keep specific information about their guests on the premises for a 90-day period. These records "shall be made available to any officer of the Los Angeles Police Department for inspection . . . at a time and in a manner that minimizes any interference with the operation of the business," and a hotel operator's failure to make the records available is a criminal misdemeanor. Respondents, a group of motel operators and a lodging association, entered U.S. District Court and brought a facial challenge to the ordinance on Fourth Amendment grounds. The court entered judgment for Los Angeles, finding that respondents lacked a reasonable expectation of privacy in their records. The Ninth Circuit subsequently reversed, determining that inspections under the ordinance are Fourth Amendment searches and that such searches are unreasonable under the Fourth Amendment because hotel owners are subjected to punishment for failure to turn over their records without first being afforded the opportunity for pre-compliance review. The Supreme Court granted certiorari.*

Opinion of the Court: Sotomayor, Kennedy, Ginsburg, Breyer, Kagan.

Dissenting opinions: Scalia, Roberts, Thomas; Alito, Thomas.

**JUSTICE SOTOMAYOR delivered the opinion of the Court**.

. . . We . . . hold that the provision of the Los Angeles Municipal Code that requires hotel operators to make their registries available to the police on demand is facially unconstitutional because it penalizes them for declining to turn over their records without affording them any opportunity for pre-compliance review.

I

Los Angeles Municipal Code requires hotel operators to record information about their guests, including: the guest's name and address; the number of people in each guest's party; the make, model, and license plate number of any guest's vehicle parked on hotel property; the guest's date and time of arrival and scheduled departure date; the room number assigned to the guest; the rate charged and amount collected for the room; and the method of payment. Guests without reservations, those who pay for their rooms with cash, and any guests who rent a room for less than 12 hours must present photographic identification at the time of check-in, and hotel operators are required to record the number and expiration date of that document. For those guests who check in using an electronic kiosk, the hotel's records must also contain the guest's credit card information. This information can be maintained in either electronic or paper form, but it must be "kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent" thereto for a period of 90 days. . . . A hotel operator's failure to make his or her guest records available for police inspection is a misdemeanor punishable by up to six months in jail and a $1,000 fine. . . .

III

A

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." It further provides that "no Warrants shall issue, but upon probable cause." Based on this constitutional text, the Court has repeatedly held that "searches conducted outside the judicial process, without prior approval by [a] judge or [a] magistrate [judge], are per seunreasonable . . . subject only to a few specifically established and well-delineated exceptions." This rule "applies to commercial premises as well as to homes."

Search regimes where no warrant is ever required may be reasonable where "special needs . . . make the warrant and probable-cause requirement impracticable" and where the "primary purpose" of the searches is "[d]istinguishable from the general interest in crime control." *Indianapolis v. Edmond* (2000). Here, we assume that the searches authorized by [the ordinance] serve a "special need" other than conducting criminal investigations: They ensure compliance with the recordkeeping requirement, which in turn deters criminals from operating on the hotels' premises. The Court has referred to this kind of search as an "administrative searc[h]." *Camara v. Municipal Court of City and County of San Francisco* (1967). Thus, we consider whether [the ordinance] falls within the administrative search exception to the warrant requirement.

The Court has held that absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain pre-compliance review before a neutral decision-maker. And, we see no reason why this minimal requirement is inapplicable here. While the Court has never attempted to prescribe the exact form an opportunity for pre-compliance review must take, the City does not even attempt to argue that [the ordinance] affords hotel operators any opportunity whatsoever. [It] is, therefore, facially invalid.

A hotel owner who refuses to give an officer access to his or her registry can be arrested on the spot. The Court has held that business owners cannot reasonably be put to this kind of choice. Absent an opportunity for pre-compliance review, the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests. Even if a hotel has been searched 10 times a day, every day, for three months, without any violation being found, the operator can only refuse to comply with an officer's demand to turn over the registry at his or her own peril.

To be clear, we hold only that a hotel owner must be afforded an opportunity to have a neutral decision-maker review an officer's demand to search the registry before he or she faces penalties for failing to comply. Actual review need only occur in those rare instances where a hotel operator objects to turning over the registry. Moreover, this opportunity can be provided without imposing onerous burdens on those charged with an administrative scheme's enforcement. For instance, respondents accept that the searches authorized by [the ordinance] would be constitutional if they were performed pursuant to an administrative subpoena. These subpoenas, which are typically a simple form, can be issued by the individual seeking the record—here, officers in the field—without probable cause that a regulation is being infringed. Issuing a subpoena will usually be the full extent of an officer's burden because "the great majority of businessmen can be expected in normal course to consent to inspection without warrant." Indeed, the City has cited no evidence suggesting that without an ordinance authorizing on-demand searches, hotel operators would regularly refuse to cooperate with the police.

In those instances, however, where a subpoenaed hotel operator believes that an attempted search is motivated by illicit purposes, respondents suggest it would be sufficient if he or she could move to quash the subpoena before any search takes place. A neutral decision-maker, including an administrative law judge, would then review the subpoenaed party's objections before deciding whether the subpoena is enforceable. Given the limited grounds on which a motion to quash can be granted, such challenges will likely be rare. And, in the even rarer event that an officer reasonably suspects that a hotel operator may tamper with the registry while the motion to quash is pending, he or she can guard the registry until the required hearing can occur, which ought not take long. . . .

Of course administrative subpoenas are only one way in which an opportunity for pre-compliance review can be made available. But whatever the precise form, the availability of pre-compliance review alters the dynamic between the officer and the hotel to be searched, and reduces the risk that officers will use these administrative searches as a pretext to harass business owners.

Finally, we underscore the narrow nature of our holding. Respondents have not challenged and nothing in our opinion calls into question those parts of [the ordinance] that require hotel operators to maintain guest registries containing certain information. And, even absent legislative action to create a procedure along the lines discussed above, police will not be prevented from obtaining access to these documents. As they often do, hotel operators remain free to consent to searches of their registries and police can compel them to turn them over if they have a proper administrative warrant—including one that was issued ex parte—or if some other exception to the warrant requirement applies, including exigent circumstances. . . .

**JUSTICE SCALIA, with whom The Chief Justice and Justice Thomas join, dissenting**.

The city of Los Angeles, like many jurisdictions across the country, has a law that requires motels, hotels, and other places of overnight accommodation (hereinafter motels) to keep a register containing specified information about their guests. The purpose of this recordkeeping requirement is to deter criminal conduct, on the theory that criminals will be unwilling to carry on illicit activities in motel rooms if they must provide identifying information at check-in. Because this deterrent effect will only be accomplished if motels actually do require guests to provide the required information, the ordinance also authorizes police to conduct random spot checks of motels' guest registers to ensure that they are properly maintained. The ordinance limits these spot checks to the four corners of the register, and does not authorize police to enter any nonpublic area of the motel. To the extent possible, police must conduct these spot checks at times that will minimize any disruption to a motel's business.

The parties do not dispute the governmental interests at stake. Motels not only provide housing to vulnerable transient populations, they are also a particularly attractive site for criminal activity ranging from drug dealing and prostitution to human trafficking. Offering privacy and anonymity on the cheap, they have been employed as prisons for migrants smuggled across the border and held for ransom, and rendezvous sites where child sex workers meet their clients on threat of violence from their procurers. Nevertheless, the Court today concludes that Los Angeles's ordinance is "unreasonable" inasmuch as it permits police to flip through a guest register to ensure it is being filled out without first providing an opportunity for the motel operator to seek judicial review. Because I believe that such a limited inspection of a guest register is eminently reasonable under the circumstances presented, I dissent.

II

The Fourth Amendment provides, in relevant part, that "[t]he 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." Grammatically, the two clauses of the Amendment seem to be independent—and directed at entirely different actors. The former tells the executive what it must do when it conducts a search, and the latter tells the judiciary what it must do when it issues a search warrant. But in an effort to guide courts in applying the Search-and-Seizure Clause's indeterminate reasonableness standard, and to maintain coherence in our case law, we have used the Warrant Clause as a guidepost for assessing the reasonableness of a search, and have erected a framework of presumptions applicable to broad categories of searches conducted by executive officials. Our case law has repeatedly recognized, however, that these are mere presumptions, and the only constitutional requirement is that a search be reasonable.

When, for example, a search is conducted to enforce an administrative regime rather than to investigate criminal wrongdoing, we have been willing to modify the probable-cause standard so that a warrant may issue absent individualized suspicion of wrongdoing. Thus, our cases say a warrant may issue to inspect a structure for fire-code violations on the basis of such factors as the passage of time, the nature of the building, and the condition of the neighborhood. *Camara v. Municipal Court* (1967). As we recognized in that case, "reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." And precisely "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' " even the presumption that the search of a home without a warrant is unreasonable "is subject to certain exceptions."

One exception to normal warrant requirements applies to searches of closely regulated businesses. "[W]hen an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation," and so a warrantless search to enforce those regulations is not unreasonable. Recognizing that warrantless searches of closely regulated businesses may nevertheless become unreasonable if arbitrarily conducted, we have required laws authorizing such searches to satisfy three criteria: (1) There must be a "'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "the warrantless inspections must be 'necessary to further [the] regulatory scheme"; and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." *New York* v. *Burger* (1987). Los Angeles's ordinance easily meets these standards.

A

In determining whether a business is closely regulated, this Court has looked to factors including the duration of the regulatory tradition; the comprehensiveness of the regulatory regime; and the imposition of similar regulations by other jurisdictions. These factors are not talismans but shed light on the expectation of privacy the owner of a business may reasonably have, which in turn affects the reasonableness of a warrantless search.

Reflecting the unique public role of motels and their commercial forebears, governments have long subjected these businesses to unique public duties, and have established inspection regimes to ensure compliance. As Blackstone observed, "Inns, in particular, being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the inn-keepers fined, if

they refuse to entertain a traveller without a very sufficient cause: for thus to frustrate the end of their institution is held to be disorderly behavior." 4 W. Blackstone, Commentaries on the Laws of England 168 (1765). Justice Story similarly recognized "[t]he soundness of the public policy of subjecting particular classes of persons to extraordinary responsibility, in cases where an extraordinary confidence is necessarily reposed in them, and there is an extraordinary temptation to fraud, or danger of plunder." J. Story, Commentaries on the Law of Bailments §464, pp. 487–488 (5th ed. 1851). Accordingly, in addition to the obligation to receive any paying guest, "innkeepers are bound to take, not merely ordinary care, but uncommon care, of the goods, money, and baggage of their guests," as travellers "are obliged to rely almost implicitly on the good faith of inn-holders, whose education and morals are none of the best, and who might have frequent opportunities of associating with ruffians and pilferers."

These obligations were not merely aspirational. At the time of the founding, searches—indeed, warrantless searches—of inns and similar places of public accommodation were commonplace. For example, although Massachusetts was perhaps the State most protective against government searches, "the state code of 1788 still allowed tithingmen to search public houses of entertainment on every Sabbath without any sort of warrant."

As this evidence demonstrates, the regulatory tradition governing motels is not only longstanding, but comprehensive. And the tradition continues in Los Angeles. The City imposes an occupancy tax upon transients who stay in motels and makes the motel owner responsible for collecting it. It authorizes city officials "to enter [a motel], free of charge, during business hours" in order to "inspect and examine" them to determine whether these tax provisions have been complied with. It requires all motels to obtain a "Transient Occupancy Registration Certificate," which must be displayed on the premises. State law requires motels to "post in a conspicuous place . . . a statement of rate or range of rates by the day for lodging," and forbids any charges in excess of those posted rates. Hotels must change bed linens between guests, and they must offer guests the option not to have towels and linens laundered daily. "Multiuse drinking utensils" may be placed in guest rooms only if they are "thoroughly washed and sanitized after each use" and "placed in protective bags." And state authorities, like their municipal counterparts, "may at reasonable times enter and inspect any hotels, motels, or other public places" to ensure compliance.

. . .The regulations we have described above reach into the "minutest detail[s]" of motel operations, and those who enter that business today (like those who have entered it over the centuries) do so with an expectation that they will be subjected to especially vigilant governmental oversight.

Finally, this ordinance is not an outlier. The City has pointed us to more than 100 similar register-inspection laws in cities and counties across the country, and that is far from exhaustive. In all, municipalities in at least 41 States have laws similar to Los Angeles's, and at least 8 States have their own laws authorizing register inspections. This copious evidence is surely enough to establish that "[w]hen a [motel operator] chooses to engage in this pervasively regulated business . . . he does so with the knowledge that his business records . . . will be subject to effective inspection." And that is the relevant constitutional test—not whether this regulatory superstructure is "the same as laws subjecting inns to warrantless searches," or whether, as an historical matter, government authorities not only required these documents to be kept but permitted them to be viewed on demand without a motel's consent.

B

The City's ordinance easily satisfies the remaining requirements: It furthers a substantial governmental interest, it is necessary to achieving that interest, and it provides an adequate substitute for a search warrant.

Neither respondents nor the Court question the substantial interest of the City in deterring criminal activity. The private pain and public costs imposed by drug dealing, prostitution, and human trafficking are beyond contention, and motels provide an obvious haven for those who trade in human misery.

Warrantless inspections are also necessary to advance this interest. Although the Court acknowledges that law enforcement can enter a motel room without a warrant when exigent circumstances exist, the whole reason criminals use motel rooms in the first place is that they offer privacy and secrecy, so that police will never come to discover these exigencies. The recordkeeping requirement, which all parties admit is permissible, therefore operates by deterring crime. Criminals, who depend on the anonymity that motels offer, will balk when confronted with a motel's demand that they produce identification. And a motel's evasion of the recordkeeping requirement fosters crime. In San Diego, for example, motel owners were indicted for collaborating with members of the Crips street gang in the prostitution of underage girls; the motel owners "set aside rooms apart from the rest of their legitimate customers where girls and women were housed, charged the gang members/pimps a higher rate for the rooms where 'dates' or 'tricks' took place, and warned the gang members of inquiries by law enforcement." The warrantless inspection requirement provides a necessary incentive for motels to maintain their registers thoroughly and accurately: They never know when law enforcement might drop by to inspect.

Respondents and the Court acknowledge that inspections are necessary to achieve the purposes of the recordkeeping regime, but insist that warrantless inspections are not. They have to acknowledge, however, that the motel operators who conspire with drug dealers and procurers may demand pre-compliance judicial review simply as a pretext to buy time for making fraudulent entries in their guest registers. The Court therefore must resort to arguing that warrantless inspections are not "necessary" because other alternatives exist.

The Court suggests that police could obtain an administrative subpoena to search a guest register and, if a motel moves to quash, the police could "guar[d] the registry pending a hearing" on the motion. This proposal is equal parts *1984* and *Alice in Wonderland*. It protects motels from government inspection of their registers by authorizing government agents to seize the registers (if "guarding" entails forbidding the register to be moved) or to upset guests by a prolonged police presence at the motel. The Court also notes that police can obtain an ex parte warrant before conducting a register inspection. Presumably such warrants could issue without probable cause of wrongdoing by a particular motel; otherwise, this would be no alternative at all. Even so, under this regime police would have to obtain an ex parte warrant before every inspection. That is because law enforcement would have no way of knowing ahead of time which motels would refuse consent to a search upon request; and if they wait to obtain a warrant until consent is refused, motels will have the opportunity to falsify their guest registers while the police jump through the procedural hoops required to obtain a warrant. It is quite plausible that the costs of this always-get-a-warrant "alternative" would be prohibitive for a police force in one of America's largest cities, juggling numerous law-enforcement priorities,

and confronting more than 2,000 motels within its jurisdiction. To be sure, the fact that obtaining a warrant might be costly will not by itself render a warrantless search reasonable under the Fourth Amendment; but it can render a warrantless search necessary in the context of an administrative-search regime governing closely regulated businesses.

But all that discussion is in any case irrelevant. The administrative search need only be reasonable. It is not the burden of Los Angeles to show that there are no less restrictive means of achieving the City's purposes. . . .

Finally, the City's ordinance provides an adequate substitute for a warrant. . . . Los Angeles's ordinance provides that the guest register must be kept in the guest reception or guest check-in area, or in an adjacent office, and that it "be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." Nothing in the ordinance authorizes law enforcement to enter a nonpublic part of the motel. . . . The Los Angeles ordinance—which limits warrantless police searches to the pages of a guest register in a public part of a motel—circumscribes police discretion in much more exacting terms than the laws we have approved in our earlier cases. . . .

Because I believe that the limited warrantless searches authorized by Los Angeles's ordinance are reasonable under the circumstances, I respectfully dissent.