

Hotel Operators Not Required to Turn Over Guest Records on Demand

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The U.S. Supreme Court ruled in *City of Los Angeles, California v. Patel, et al.* 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 precompliance review.

Facts

Los Angeles Municipal Code (LAMC) §41.49 requires that:

1. Hotel operators 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.
2. 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.
3. 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.
4. ***Hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection," provided that "[w]henver possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." 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.***

A group of motel operators and a lodging association filed a complaint challenging the constitutionality of this last provision (which requires that hotel guest records be made available for inspection by the police) under the Fourth Amendment. The District Court ruled in favor of the City, finding that the respondents did not have a reasonable expectation of privacy in the records subject to

inspection. The Court of Appeals reversed. The U.S. Supreme Court granted certiorari and affirmed the judgment.

Analysis

The Court began its analysis by ruling that facial challenges to statutes under the Fourth Amendment "are not categorically barred or especially disfavored."

The Court also held that the provision which requires that hotel guest records be made available for inspection by the police is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review.

Here, the Court determined that the search authorized by the law serves a "special need" other than conducting criminal investigations. As a result, the Court considered this search to be an **administrative search**. The Court noted that with respect to such searches, it "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 precompliance review before a neutral decisionmaker." Since the law in question provides for no such precompliance review, it is facially unconstitutional.

Most importantly, however, the Court clarified that

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 law at issue] that require hotel operators to maintain guest registries containing certain information.... 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.

Recommendations

Given the holding of this case, the following practices are recommended:

1. Police can no longer criminally charge innkeepers if they refuse to give the police access to guest records.
2. Police can still ask for, and innkeepers may still consent to, searches of guest records.
3. If innkeepers refuse to allow police to search guest records, police should use administrative warrants to obtain that information, if possible.

4. Police may still search guest records without a warrant pursuant to the usual exceptions to the warrant requirement (such as exigent circumstances).

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