No. 13-1175

In The
Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF CALIFORNIA, ARIZONA, HAWAII, MAINE, MICHIGAN, PENNSYLVANIA AND SOUTH CAROLINA AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The States will address the following question:

Whether a local law allowing law enforcement officers to conduct warrantless inspections of hotel guest registries is facially constitutional under this Court's cases permitting similar inspections of limited scope in the context of highly-regulated industries.

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INTEREST OF THE AMICI STATES

The amici States submit this brief in support of the constitutionality of the inspection provision of the City of Los Angeles's hotel guest registry ordinance, Los Angeles Municipal Code § 41.49(3)(a). States and their political subdivisions have a long tradition of close regulation of the hotel and motel industry to protect the health and welfare of the public and to foster the industry itself, both of which are of vital interest to the States. Thirty-one States have state or local guest registry and inspection laws similar to the one at issue in this case. The States have a substantial interest in confirming that such regulatory regimes are constitutional so long as properly applied.

SUMMARY OF ARGUMENT

Los Angeles Municipal Code § 41.49 directs hotel and motel operators to maintain a guest registry recording information such as guest names, visit dates, and room rates, and to make the registry "available to any officer of the Los Angeles Police Department for inspection." § 41.49(3)(a). In the special context of the hotel and motel industry, the ordinance's provision for warrantless inspection of guest registries is facially constitutional under the Fourth Amendment.

The touchstone of the Fourth Amendment is reasonableness. In the context of highly-regulated industries, this Court has repeatedly held that warrantless searches can be reasonable when they are

made pursuant to a regulatory scheme that serves a substantial interest, are necessary to further that interest, and are properly limited in time, place, and scope. *New York* v. *Burger*, 482 U.S. 691 (1987); *United States* v. *Biswell*, 406 U.S. 311, 315 (1972); *Donovan* v. *Dewey*, 452 U.S. 594, 599-600 (1981). Section 41.49(3)(a) falls squarely within this precedent.

Section 41.49 is a typical guest registry ordinance, similar to others found across the United States. Comparable requirements have been imposed on innkeepers since the Middle Ages. They protect guests as consumers and, at the same time, reduce anonymity, making places of transient accommodation less attractive for criminal activity. A responsible innkeeping industry, in turn, encourages travel and tourism, the benefits of which flow to the larger community.

It is not facially unreasonable under the Fourth Amendment for the City's ordinance to authorize city police officers to perform limited inspections of a hotel's guest registry, without prior judicial approval, "at a time and in a manner that minimizes any interference with the operation of the business." § 41.49(3)(a). Here, as in other highly regulated industries, such limited inspections are a necessary and expected component of a regulatory regime that serves important public interests.

In reaching a contrary conclusion, the court of appeals erred by failing to account for the reduced

expectation of privacy in business records that operators are required to keep at commercial properties and by failing to acknowledge that the innkeeping industry is closely regulated. Under circumstances like those present here, this Court's cases have recognized that it is constitutionally reasonable to authorize warrantless spot-checks to ensure compliance with a valid regulatory regime. Absent some special, as-applied showing of improper government conduct, it does not offend the Constitution to allow a police officer to enter a hotel or motel lobby at a commercially reasonable time, approach the front desk, and inspect a copy of the guest registry that the operator is legally required to maintain.

ARGUMENT

I. Under Appropriate Circumstances, Close Regulation of Certain Businesses May Include Limited Warrantless Inspections

Under the Fourth Amendment, "the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *Maryland* v. *King*, 133 S. Ct. 1958, 1969 (2013) (some internal quotation marks omitted). What is reasonable "'depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.'" *Skinner* v. *Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989) (quoting *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 537 (1985)). As a categorical matter, the permissibility of a particular government

practice may be judged by balancing its intrusion on privacy against the promotion of legitimate governmental interests. *Id*.

Typically, that balance will require the issuance of a warrant before government officers may conduct a search. *Skinner*, 489 U.S. at 619. One established exception to that rule, however, permits certain warrantless administrative inspections of closely regulated businesses. As this Court explained most recently in *New York* v. *Burger*, 482 U.S. at 700, this exception may apply where a business operates in a "closely" or "pervasively" regulated industry. In that situation, a reduced expectation of privacy flows in part from the commercial nature of the enterprise. The expectation of privacy in commercial premises "is different from, and indeed less than, a similar expectation in an individual's home." *Id.* at 700; *Dewey*, 452 U.S. at 599-600 (commercial property owner does not have interest "in being free from any inspection"). Likewise, the operator of a business may have a reduced expectation of privacy, at least as against government inquiries or inspection, in information that the government validly requires it to collect.[1]

[1] This facial challenge has been brought by operators of purely commercial premises. *See, e.g.*, Pet. App. 5. Other issues might be presented in a case involving, for example, a business operating out of premises that also served as a private home. This case also does not involve any challenge to the underlying

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The operator of a closely regulated business may also have a reduced expectation of privacy in particular premises or information because of the "history of government oversight" of the industry involved. *Burger*, 492 U.S. at 700. "Certain industries have such a history of government oversight that no reasonable expectation of privacy . . . could exist over the stock of such an enterprise." *Id*. (quoting *Marshall* v. *Barlow's, Inc*., 436 U.S. 307, 313 (1978)) (internal citations omitted). Consequently, "[w]hen an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." *Id*. In effect, the operator has agreed "to accept the burdens as well as the benefits of the[ ] trade." *Id*. Thus, under the closely regulated business exception, "as in other situations of 'special need' . . . where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection . . . may well be reasonable within the meaning of the Fourth Amendment." *Id*. at 702.

Applying these principles, the Court has held that the Fourth Amendment permits certain warrantless administrative searches of automobile junkyards, *id.* at 712, mining facilities, *Dewey*, 452 U.S. at 599-600 and licensed firearm dealers, *Biswell*, 406 U.S. at 315.

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requirement that the operators collect and maintain certain information. *See id*.

II. Warrantless Spot Checks of Guest Registries Are Reasonable in the Context of the Hotel Industry

Los Angeles's authorization of warrantless inspection of guest registries is facially reasonable under *Burger*. The hotel and motel industry is "closely regulated." The City's registry ordinance serves important consumer protection and crime reduction interests, and warrantless spot-checks are an important method to ensure compliance with its requirements. The ordinance gives hotel and motel operators ample notice that their registers are subject to inspection. In the circumstances of this industry, it is reasonable to authorize police officers to make limited entries, at reasonable times, to spot-check the guest registries that operators are required to maintain.

A. The Hotel and Motel Industry Is Closely Regulated

In determining whether an industry is closely regulated, this Court has looked both to the history and, more importantly, the pervasiveness of regulation. *Dewey*, 452 U.S. at 600; *Burger*, 482 U.S at 703-706. As to pervasiveness, "[a]though the number of regulations certainly is a factor in the determination, . . . the proper focus is on whether the 'regulatory presence is sufficiently comprehensive and defined that the owner cannot help but be aware that his property will be subject to periodic inspections

undertaken for a specific purpose.'" *Burger*, 482 U.S. at 703-705 n.15. With respect to guest registries, regulation is both longstanding and pervasive.

1. Innkeepers have long been subject to pervasive regulation

"The common-law relation of innkeeper and guest is of ancient origin." 19 Williston on Contracts, § 53-73 (4th ed. 2001) (citing *Cayle's Case*, 8 Coke 32a, 77 Eng. Resp. 520 (1584); *Burns* v. *Royal Hotel (St. Andrews)*, S.L.T. 309 (1958)). Since the Middle Ages, society has deemed the appropriate care of a traveler so important that attending to it, as innkeepers are expected to do, is considered necessary for the health and welfare of the public as a whole. Joseph Henry Beale, Jr., *The Law of Innkeepers and Hotels* 11 (1906) ("so far as was consistent with justice to the innkeeper, his inn was carried on for the benefit of the whole public; and so it became in an exact sense a public house"). "The business of keeping a hotel is closely related to the health and welfare of the public and has long been regarded as a thing affected with a public interest." *State* v. *Norval Hotel Co.*, 103 Ohio St. 361, 363 (1921).

The public interest in the operation of inns gave rise long ago to extensive government oversight. To ensure appropriate care of the vulnerable traveler, the common law imposed on innkeepers the duties to receive guests, provide adequate facilities, refrain from discrimination, charge fair rates, protect guests

against marauders, protect guests' property, and protect guests against fire. Beale 37-38, 46, 109, 118-119, 125-127. These duties distinguished an innkeeper from an ordinary business such as a tavern, which could turn "its guest out at the very moment when he most needed protection." *Id.* at 5. At the same time, the law also gave innkeepers substantial benefits. For instance, the common law authorized "innkeeper's liens," which permitted the innkeeper to seize the property of guests to secure payment. *Id*. at 175-176.

The same government interest in the safety and welfare of travelers came to be reflected in innkeeping laws across the United States. As one commentator observed shortly after the turn of the twentieth century, "the hotel keeper in the great cities of the United States derives his rights and traces his responsibilities to the host of the humble village inn of medieval England." Beale 9. By this time, 44 States had enacted laws incorporating and supplementing the innkeeper's rights and responsibilities under the common law. This growing body of law imposed additional obligations on innkeepers to protect the health and welfare of the public, while also granting additional benefits to foster the innkeeping industry. *Id*. at 307-534 (appendix of States' hotel- and motel-related laws).

The keeping of a "public guest register" was an integral component of this regulatory framework. "[A] public register in which its guests entered their names upon arrival and before they were assigned a

room" was one of the standard characteristics of an inn. Beale 21 n.40 (citing *Fay* v. *Pacific Improvement Co*., 93 Cal. 253 (1891)). It helped to define and enforce the innkeeper's duty to protect a guest and the guest's property, and the innkeeper's right to payment. *Id.* at 99-100, 163-164, 171, 277-278, 377.

2. The modern hotel and motel industry remains pervasively regulated

As population, tourism, and mobility have increased, the pervasive regulation of the hotel and motel industry has continued. Each of the 50 States and the District of Columbia has legislation specifically regulating the hotel and motel industry, perpetuating the same core consumer and industry protections.[2]

California is representative, with an extensive array of regulatory provisions designed to protect both consumers and the industry. On the consumer side, consistent with long tradition, the State regulates advertising, including notices and offers concerning hotel and motel rates (Cal. Bus. & Prof. Code, §§ 17538.8, 17560-17568, 17568.5; Cal. Civ. Code,

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[2] *See*, *e.g*., Norman G. Cournoyer & Anthony C. Marshall, *Hotel, Restaurant, and Travel Law* (3d ed. 1988), App. 1 (table listing each State's statutes concerning innkeeper liability), App. 3 (table listing each State's statutes concerning defrauding an innkeeper).

§ 1863); fire safety precautions, including criminalizing a failure to report a fire in a hotel or motel (Cal. Health & Saf. Code, §§ 13006.5, 13113.7, 13220, 17920.8); and the right to accommodations (Cal. Penal Code, § 365; Cal. Civ. Code, §§ 51-54.9). The State's regulation also concerns itself with such matters as access to alcohol cabinets (Cal. Bus. & Prof. Code, § 23355.2); sanitization and inspection requirements for utensils and other related equipment (Cal. Code Regs. tit. 17, §§ 30852-30858); and storage of flammable liquids (Cal. Code Regs. tit. 8, § 5537). On the industry-protection side, again in keeping with long tradition, the State regulates innkeepers' liability as depositories (Cal. Civ. Code, §§ 1859-1867); lien rights (Cal. Civ. Code, §§ 1861-1861.28); and eviction rights (Cal. Civ. Code, § 1868), and criminalizes the defrauding of innkeepers (Cal. Penal Code, § 537).

Protecting both the consumer and industry, California has enacted laws prohibiting misdirection of prospective hotel guests by taxicab operators and others (Cal. Penal Code, § 649). Finally, California has enacted criminal, quasi-criminal, and civil statutes to combat the use of inns for prostitution, drugs, and gambling. *See, e.g.*, Cal. Penal Code, § 316 (keeping of a disorderly house); *id.* § 11225 (authorizing nuisance abatement injunctions against premises such as hotels and motels used to conduct illegal gambling, prostitution and human trafficking).

Local governments also regulate the industry. The County of Los Angeles, for example, requires

a special license to operate (L.A. County Code § 7.50.040) and imposes its own guest registry and inspection requirement (*id.* §§ 8.20.020-8.20.060). The County also has a separate inspection requirement to monitor for compliance with transient occupancy taxes which are levied when a guest stays at a hotel. *Id.* §§ 4.72.040-4.72.080, 4.72.090-4.72.100. It imposes health and safety standards specific to hotel and motel guest rooms, such as requiring clean bedding, wash cloths, and other linens (*id.* § 11.20.320) and prohibiting overcrowding (*id.* § 11.20.310).

The City of Los Angeles likewise has enacted ordinances specifically regulating the operation and maintenance of hotels and motels. These include specific safety ordinances (L.A. Municipal Code §§ 57.4704.4.1, 57.4704.4.3); transient occupancy taxes, with collection, record keeping, and inspection requirements (*id.* §§ 21.7.1, 21.7.11); and the guest registry and inspection ordinance (*id.* § 41.49), a version of which has been in effect since 1899 (*see* L.A. Penal Ordinances, §§ 995, 997 (1899)).

In its 2006 formulation of the guest registration and inspection ordinance at issue here, the City limited the time, place and scope of the inspection provision to apply only to law enforcement, in one place—either the lobby or an adjacent office—and "at a time and in a manner that minimizes any interference with the operation of the business." *Id.* § 41.49(3). The City continued the practice of imposing criminal

penalties for failing to comply with record-keeping requirements. *Id.* § 11m.

The City's guest registration and inspection ordinance fits well within the tradition of industry regulation in the United States. Laws authorizing police to inspect guest registries have existed since the turn of the century and appeared to gain more popularity with the rise of automobile travel and tourist courts. *See*, *e.g.*, Mass. Gen. Laws Ann. ch. 140, § 27 (1918); N.H. ch. 68, Public Laws § 68:1 (1927); N.J. Stat. Ann. § 29:4-1 (1939); *Juengel* v. *City of Glendale et al.*, 164 S.W.2d 610, 611 (1942) (City of Glendale ordinance requiring tourist courts to keep guest register "open to the inspection of the mayor or city marshal and his deputies").

California's extensive, multi-tiered regulation of the hotel and motel industry—the combination of state and local oversight to protect the consumer and foster the hotel and motel industry—is mirrored throughout the United States.[3] Guest registry

[3] Florida, for example, regulates the duty to accommodate, Fla. Stat. Ann. § 509.141, guest registry and inspection (*id.* § 509.101), property liability (*id.* § 509.111), door locking devices (*id.* § 509.211), and sanitary conditions including bedding (*id.* § 509.221). Hawaii regulates liens, Haw. Rev. Stat. § 486K-2, liability (*id.* §§ 486K-4-486K-6), sale of detained baggage (*id.* § 486K-3), guest registration (*id.* 486K-10), posting of laws (*id.* § 486K-7), and unfair competition (*id.* § 445-95.1). Iowa requires a license, Iowa Code Ann. § 137C, guest registry (*id.* § 137C.25E), biennial inspections (*id.* § 137C.11), and posting of rules (*id.* § 137C.25D, 481-37.2(137C)), and imposes standards for

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inspection ordinances in particular have been enacted by eight States—Indiana (Ind. Code Ann. § 16-41-29-2), Florida (Fla. Stat. Ann. § 509.101(2)), Massachusetts (Mass. Gen. Laws, ch. 140, § 27), Maine (Me. Rev. Stat. Ann. tit. 30-A, § 3821), New Hampshire (N.H. Rev. Stat. Ann. § 353:3), New Jersey (N.J. Stat. Ann. § 29:4-1), Wisconsin (Wis. Admin. Code DHS § 195.16); and the District of Columbia (D.C. Mun. Regs. tit. 14, § 1302.3)—and roughly 100 cities and counties across the country. Pet. App. 66-107; Pet. Br. 36 n.3.)

The comprehensive regulatory schemes governing the operation of hotels and motels in Los Angeles and throughout California make clear that innkeeping is a "closely regulated" industry in the State. Just as this Court observed about the mining industry, regulation in the field "is sufficiently comprehensive and defined that the owner of [a hotel or motel] cannot help but be aware that his property [or required records] will be subject to periodic inspections undertaken for a specific purpose." *Dewey*, 452 U.S. at 600. The existence of similarly pervasive regulation throughout the rest of the United States only bolsters that conclusion. *Burger*, 482 U.S. at 704 ("That other States besides New York have imposed similarly extensive regulations on

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guest rooms (*id.* § 481-37.2(137C)), bedding Iowa Admin. Code r. (§ 481-37.3(137C)), lavatories (*id.* § 481-37.4(137C)), glasses and ice (*id.* § 481-37.5(137C)), and room rates (*id.* § 481-37.7(137C)).

automobile junkyards further supports the 'closely regulated' status of the industry.").

In *Burger*, this Court held that automobile junkyards were "closely regulated" businesses in the State of New York because the operator was required to meet certain licensing requirements, obtain a license and pay a fee, maintain specified records, and display his registration to the public, and was subject to criminal penalties for failure to comply. *Id.* at 704-705. That was so even though the regulatory scheme was of "fairly recent vintage" (roughly 14 years old). *Id.* at 705. Hotels and motels are subject to far more comprehensive regulation, and have been for centuries. The court of appeals was thus wrong in concluding that the hotel industry has not been "subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." Pet. App. 13 n.2.

B. The City of Los Angeles Has a Substantial Interest in Requiring Guest Registration

This Court has recognized that protecting the health and welfare of the public constitutes a substantial governmental interest. *See*, *e.g.*, *Burger*, 482 U.S. at 708; *Dewey*, 452 U.S. at 603; *Biswell*, 406 U.S. at 315. Like many of the regulations governing the operation of a hotel or motel, Los Angeles's guest registry ordinance prescribes a business practice

designed to protect the health and welfare of the public.

First, as previously mentioned, the maintenance of a guest registry protects both the consumer and the innkeeper by providing a factual record that can help to fix and enforce their respective rights and liabilities.

Second, guest registries reduce anonymity at hotels and motels, which promotes personal accountability and discourages criminal activity. Karin Schmerler, Center for Problem-Oriented Policing, 1-2, 21, 25 (2005). As the Los Angeles City Council expressly found when amending § 41.49 in 2006, for example, "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." *Preamble*, Ord. No. 177966.[4]

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[4] *Preamble*, *available at* http://clkrep.lacity.org/onlinedocs/2006/06-0125_ord_177966.pdf; *see also* Jaime Ayala & Jennifer White, *Operation Spotlight*, Finalist, Herman Goldstein Award for Excellence in Problem-Oriented Policing 1, 5, 13-15 & App. 16, Tbls. A-D (2008) (noting that enforcement of guest registration and check-in procedures, among other better management practices, substantially reduced crime rate at crime-plagued motels), *available at* http://www.popcenter.org/library/awards/goldstein/2008/08-01(F).pdf; Gisele Bichler et al. *Curbing Nuisance Motels: An Evaluation of Police as Regulators*, Vol. 36, No. 2 Policing: An International Journal of Police Strategies & Management 437, 439-440, Tbl. 1 441-442, 444 (2013) (documenting reduction in calls for service for crime-plagued motels

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Hotels and motels that do not comply with guest registration requirements attract criminal activity by providing anonymity and a temporary place of concealment—in effect a safe haven—to commit crimes or avoid detection. *Id.*; *see also* Schmerler 21, 25; Ayala & White 1; National City Police Department Neighborhood Policing Team, *Paradise Motel Community Improvement Project*, Submission, Herman Goldstein Award for Excellence in Problem-Oriented Policing 1, 8, 10-11 (2002).[5]

As the Los Angeles Chief of Police observed in 2007:

> Hotels where patrons are not required to produce identification are often the backdrop for schemes of a criminal nature. Pimps and prostitutes rely heavily on hotels to conduct "Craigslist" prostitution. Potential "dates" are arranged using the Internet and the sexual acts conducted in the hotels. Robbery set ups are often executed in the hotels where potential customers purchasing sex from prostitutes are lured to these location to be robbed by pimps or their associates.

William J. Bratton, Interdepartmental correspondence 2 (2007), *available at* http://clkrep.lacity.org/onlinedocs/2006/06-0125_rpt_lapd_10-30-07.pdf; *see*

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in various cities following compliance with guest registry and check-in requirements, among other management changes).

[5] National City Police Dept. Policing Team, *available at* www.popcenter.org/library/awards /goldstein/2002/02-35.pdf.

also Schmerler 8, 12, 21-22 (describing similar criminal activity at poorly run motels and noting deterrence value of guest registration requirements).

The criminal activity also results in excessive calls for police service by these hotels or motels and the surrounding community. *Preamble*, Ord. No. 177966; Bichler et al. Tbl. 1 441-442, 444; Ayala & White 13-15 & App. 16, Tbl. A-D; Dennis Zine, *Motion to Amend Ordinance No. 177966* (Jan. 18, 2006).[6] This not only adds strain to already overburdened law enforcement, but inflicts social and economic damage to the surrounding community that results in a spiral of community decay. The increase in criminal activity threatens the personal safety of the people living and working in the area and harms businesses as residents and visitors seek to avoid unsafe places. Bichler et al. 439-440; Ayala & White 1-3.

The loss of visitors, in turn, harms the tourism industry as well as the hotel and motel industry. Schmerler 5; Bichler et al. 444. Los Angeles's tourism industry is independently of vital interest to the City. *See, e.g.*, *Preamble*, Ord. No. 177966. "Tourism is one of the most important industries in Los Angeles when it comes to job growth and economic impact." Emily Wallace et al. *Los Angeles Tourism, A Domestic and*

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[6] Zine, *available at* http://clkrep.lacity.org/onlinedocs/2006/06-125_mot_1-18-06.pdf.

International Analysis 1 (May 2014).[7] In 2013, total direct travel spending in California was $109.6 billion, and travel spending in California directly supported 965,800 jobs, with earnings of $34.1 billion. *See* VisitCalifornia.com.[8] These are substantial interests underlying Los Angeles's regulatory scheme.

C. Warrantless Registry Inspections Are Necessary to Ensure Compliance With the City's Guest Registration Requirements

The substantial public benefits resulting from the maintenance of guest registries cannot be realized without compliance on the part of hotel and motel operators. Effective inspections are necessary to ensure that compliance. In this case, as with firearms dealers, mines, and automobile junkyards, "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." *Biswell*, 406 U.S. at 316; *see also Dewey*, 452 U.S. at 603; *Burger*, 482 U.S. 710. And as in these other contexts, requiring a warrant—and certainly, as the court of appeals held, requiring advance notice and judicial review before the inspection requirement can be enforced—could reduce

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[7] Wallace et al., *available at* http://www.lachamber.com/clientuploads/Global_Programs/WTW/2014/LATourism_LMU_May2014.pdf.

[8] VisitCalifornia.com, *available at* http://industry.visitcalifornia.com/Find-Research/California-Statistics-Trends/.

inspections and undermine their effectiveness in encouraging compliance. This would frustrate the purposes of the underlying regulatory scheme—while offering little in the way of additional protection for operators' legitimate interests in return.

Frequent, unpredictable inspections foster compliance. A motel or hotel operator's understanding that the guest registry may be checked at any time creates an incentive to ensure that, at all times, entries are accurate, complete and up to date. If police officers were required to obtain a warrant before spot-checking guest registries, that additional step would add time and expense to the process, reducing the frequency and spontaneity of the checks, and eroding the desired understanding in the industry that continuous compliance is required.

Allowing for spontaneous spot checks ensures there is an element of "surprise," which also fosters compliance and can aid in detecting violations of the registry requirements. *See Burger*, 482 U.S. at 702-703, 710. Any foreknowledge of an inspection gives an unscrupulous hotel or motel operator time to obscure past non-compliance by altering or fabricating entries, rather than accurately maintaining records as guests actually come and go. *See Dewey*, 452 U.S. at 594 (noting ease of concealing mines' safety and health hazards). Here, the court of appeals held that a hotel or motel operator confronted with an officer's demand to inspect a guest register must be "afford[ed] an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering

penalties for refusal to comply.'" Pet. App. 13. Under that holding, an operator is *necessarily* shielded from any possible element of surprise.

Perhaps (although this is surely not clear) the court's holding could be satisfied instead by requiring officers to obtain a warrant before any inspection; and in theory, such a warrant might be obtained and served without advance notice. *See Burger*, 482 U.S. at 722 n.8 (Brennan, J., dissenting). As the Court recognized, however, in both *Burger* and *Dewey*, as a practical matter "forcing . . . inspectors to obtain a warrant before every inspection might alert . . . owners or operators to the impending inspection, thus frustrating the purposes of the" regulatory program. *Id*. at 702-703 (citing *Dewey*). Allowing for warrantless compliance checks gives greater assurance of surprise and thus helps encourage compliance and prevent concealment of violations.

Moreover, the "surprise" necessary to further the regulatory scheme is not simply that the inspection be unannounced, but also that it occur in circumstances that will allow a police officer to establish compliance or non-compliance. *See Biswell*, 406 U.S. 316 (noting the need for "flexibility as to time, scope, and frequency" of inspection). Requiring a warrant before any spot check would eliminate the ability of an officer to follow up quickly on circumstances suggesting that a hotel or motel is not complying with the guest registry requirement. For instance, if an officer notices that many cars are entering and leaving a motel parking lot, or that an unusual number of

people are going in and out of a particular room, he may have reason to believe that the operator is not complying with the registry requirements and is thereby creating conditions conducive to crime. If the officer were required to obtain a warrant before approaching the operator to check the registry, the delay might make it much more difficult for the officer to check the registry against the observed activity and thus verify whether the registry was being properly maintained. *Cf. Burger*, 482 U.S. at 710 (noting that cars and parts "often pass quickly through an automobile junkyard[,]" making surprise "crucial").

Finally, given the nature of spot-check compliance inspections, requiring advance warrants would entail expense, delay, and potential frustration of purpose while providing little in the way of added protection for legitimate interests. When an officer seeks to conduct a search as part of a typical criminal investigation, requiring a warrant ensures that a neutral party, rather than the investigating officer, makes the determination that the proposed search is both justified by existing probable cause and properly limited in time, place, and scope. *See, e.g., Johnson* v. *United States*, 333 U.S. 10, 14 (1948). In contrast, in a compliance inspection scheme an officer is checking to make sure that a regulated business is complying with one of the many rules imposed on its operation—not asserting that there is probable cause to suspect specific wrongdoing. The standard appropriate for issuing any required warrant would thus be quite

different from that for authorizing an investigative search. *See Camara* v. *Municipal Court*, 387 U.S. 523, 538 (1967) (warrant may issue based on "reasonable legislative or administrative standards for conducting an area inspection"; indeed, "[t]he passage of a certain period without inspection might of itself be sufficient in a given situation"). Here, the statute reasonably permits inspection of a guest registry—but only the registry—in as non-disruptive a manner as possible. Requiring that each such inspection be pre-authorized by a neutral magistrate would offer little additional protection to any legitimate business or privacy interest. Any such requirement would, however, interfere significantly with the City's ability to ensure compliance with its regulatory scheme.

D. The City's Ordinance Gives Clear Notice of the Possibility and Permissible Scope of Compliance Inspection

Under *Burger*, a statute permitting a warrantless regulatory inspection must also "perform the two basic functions of a warrant," by "advis[ing] the owner . . . that the search is being made pursuant to the law and has a properly defined scope" and, concomitantly, by "limit[ing] the discretion of the inspecting officers" in carrying out the search. 482 U.S. at 702; *cf*. U.S. Const., Amend. IV (warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized"). The statute may satisfy these requirements by putting a business on notice that its commercial property "'will be subject

to periodic inspections undertaken for specific purposes'" and constraining discretion by "'carefully limit[ing] [the authorized inspection] in time, place and scope.'" *Burger*, 482 U.S. at 703.

Los Angeles's registry inspection provision satisfies these requirements. First, the provision informs motel or hotel operators that periodic inspection of a guest registry by a police officer is authorized by law. *See Burger*, 482 U.S. at 711. Operators thus know that registry inspections "do not constitute discretionary acts by a government official, but are conducted pursuant to statute." *Id.* (citing *Barlow's*, 436 U.S. at 332).

Second, as the court of appeals acknowledged (Pet. App. 11-12), the inspection provision has a properly defined scope. In keeping with the goal of ensuring that hotels and motels maintain proper registries, statutory inspections are limited to examining the registry itself. By requiring that the registry be kept in the guest reception area or an adjacent office, the provision also limits where an officer can conduct the inspection to a single spot that is either open to the public or chosen by the hotel or motel. The negligible nature of this intrusion is significant. *See, e.g.*, *King*, 133 S. Ct. at 1969 ("The fact that the intrusion is negligible is of central relevance to determining whether a search is reasonable.").

For similar reasons, § 41.49(3) adequately limits the inspecting officer's discretion. There is only one item open to review (the guest registry) and one place

to conduct the review (either the lobby or the adjacent office). The officer's discretion is further limited by the requirement that the inspection "shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." § 41.49(3). Although the statute leaves officers with some discretion to select where, when, and how often to conduct inspections, that fact is not determinative of the result so long as the statute, as a whole, places adequate limits upon the discretion of the inspecting officer. *Burger*, 482 U.S. at 711 n.21. Here, the combination of an exceedingly narrow authorized search and the requirement that any search not interfere unnecessarily with operation of the business provides such limits.[9] Indeed, the limitations on an officer's discretion in § 41.49(3) are greater than those in the inspection provisions upheld in *Burger* and *Biswell*, which granted inspectors broader access to both the "business records" and the facility of the business owner during working hours or "at reasonable times." *Burger*, 482 U.S at 694 n.1, 711; *Biswell*, 406 U.S. at 312 n.1.

The limited nature of the inspections contemplated in § 41.49(3) stands in marked contrast to the inspection provisions this Court found unreasonable

[9] Confirming the facial validity of the ordinance in this case would not, of course, affect other constitutional limitations on government conduct. An as-applied challenge could be brought to test any allegation of harassment, discrimination, or other improper use of the law.

in *Barlow's* and in *See* v. *City of Seattle*, 387 U.S. 541 (1967). The court of appeals relied on those cases in holding § 41.49 facially unconstitutional, but neither involved a closely regulated business. Moreover, in both cases the right to inspect applied to a broad spectrum of businesses—all employers subject to the Occupational Safety and Health Act (*Barlow's*) or to fire inspection (*See*). *Barlow's*, 436 U.S. at 309, 314-315; *See*, 387 U.S. at 541-542. They also subjected a wide range of areas to search—virtually the entire employer premises. The Court was therefore reasonably concerned with the scope of an inspector's discretion as to whom to search, what to search, where to search, and when to search. *Barlow's*, 436 U.S. at 322-323; *See*, 387 U.S. at 545-546. In contrast, § 41.49(3) is strictly limited to one type of business, one type of record, and one place that is either accessible to the public or chosen by the business.

Under these circumstances, it is reasonable for Los Angeles to authorize limited warrantless inspections of guest registries to ensure compliance with the unchallenged requirement that hotel and motel operators keep accurate records of the comings and goings of their guests.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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