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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 ASIAN AMERICAN HOTEL OWNERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37, the Asian American Hotel Owners Association (AAHOA) submits this *Amicus Curiae* brief in support of the respondents.[1]

STATEMENT OF INTEREST

Established in 1989, AAHOA is a trade organization that represents more than 14,000 small business owner-members who collectively own over 20,000 properties (which include nearly two (2) million guest rooms) amounting to over 40% of all hotels in the United States. AAHOA members employ over 600,000 employees, accounting for nearly $10 billion in payroll annually. At least six (6) of the Plaintiffs in the consolidated cases, and respondents before the Court, are AAHOA members.

AAHOA membership chiefly comprises first, second and third generation Indian Americans who have excelled as entrepreneurs and have found a particular niche in the hospitality industry. More than 75% of the hotels owned by AAHOA members can be categorized in the industry as "limited service" (as opposed to "full service") hotels. These properties forgo certain amenities, such as on-site restaurants and room service, and hoteliers are able to offer more modest prices for the accommodations. 67% of the nearly two (2) million guest rooms rented by AAHOA members are

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[1] Pursuant to rule 37.3(a), All parties have provided blanket consent for the filing of this brief. Pursuant to Rule 37.6, Amicus Curiae certify that no party's counsel authorized this brief in whole or in part and that no person or entity, other than amici, their members or their counsel have made a monetary contribution to the preparation or submission of this brief.

affiliated with franchise branded hotels. Headquartered in Atlanta, AAHOA promotes in the interests of its members through programs and initiatives in advocacy, industry leadership, professional development, membership benefits and community service.

As representatives of hotel owners and operators, AAHOA maintains a significant interest in protecting the privacy rights of hoteliers and the records they keep. Similarly, AAHOA is interested in ensuring that the Court does *not expand its interpretation of a "pervasively regulated" industry to include hotel businesses. AAHOA urges the Court to affirm the decision rendered by the 9th Circuit.*

SUMMARY OF ARGUMENT

Petitioner's brief unfairly maligns hotel and motel operators by suggesting that they are complicit in crimes. That description is unsubstantiated and offensive. Petitioner particularly focuses its arguments on limited service and budget hotel properties and implies that these places invite criminal activities simply by virtue of the relatively low costs rent rooms there.

Further, Petitioner suggests that these properties are a magnet for illicit business and can seem to contemplate no legitimate purpose for the existence of these establishments.

In fact, these properties serve middle and lower income guests who are attracted by more reasonable rates. Hoteliers can offer lower cost rooms relative to

"full service" properties because they are able to avoid certain amenities that raise the prices of higher end properties such as on-site restaurants, room service and other pricier conveniences.

Many hotel owners operate their businesses personally, along with their families. Criminals present a safety risk to people and property, creating personal risks for hoteliers and their families, and also business risks. Criminals may cause property damage, resulting in higher costs for repairs and security measures and they drive away customers who avoid hotels with poor ratings from previous customers.

Further, hoteliers have considerable interests in preventing criminal activity on their properties including, ensuring safety for themselves, their families and their guests, preventing property damage, preserving essential franchise agreements and establishing a loyal base of repeat customers.

Petitioner also argues that hotels are in practice, and should be considered by this Court, to be a "pervasively regulated business," *New York v. Burger*, 482 U.S. 691 (1987). However, Petitioner fails to explain the necessity of this broad rule for hotels and further fails to explain why pre-compliance judicial review would obstruct the purpose of the law.

Hoteliers are overwhelmingly supportive of efforts to end crime at their hotels, and are willing to cooperate with the police to that end. However, ordinances like LAMC § 41.49 are far too easily used as a vehicle to

harass hotel owners and their employees, without producing any meaningful benefit to public safety. AAHOA therefore believes that pre-compliance judicial review is essential to making Hotel Guest Registry inspections effective, fair, and lawful.

ARUGMENT

I. Petitioner's description of limited service and budget properties is inflammatory and erroneous.

To justify its intrusive searches and the police harassment of hotel owners, petitioners attempt to characterize their businesses as "parking meter" motels that exploit the prevalence of crime in certain communities for profit. That description is inaccurate for two critical reasons. First, it is overwhelmingly against hoteliers' interests to actively sanction or tacitly permit illegal activities at their hotels. Second, hoteliers and their guests have many lawful reasons to prefer limited service and budget properties over more full service ones.

The Franchise business model is another important factor incentivizing hoteliers to ensure lawful activities prevail at their properties. Franchise agreements are the cornerstone of the lodging industry, as a majority of properties are licensed by a national brand. Franchise agreements provide hoteliers with marketing assistance, industry specific infrastructure and technology, loyalty programs and strategic support, in exchange for fees and royalties. For hoteliers, the success of a hotel in a given market often depends on the affiliation with a franchisor. Brands require certain standards of accommodation and quality in

order allow use of their names and resources. Similarly, customers come to expect this uniform national standard and will seek lodging options based on a particular brand.

The franchise model is intolerant of criminal activity. Generally, a franchisor has an absolute right to terminate the franchise for a single instance of crime at a hotel. This has an immediate financial impact on the hotel owner, because once the franchise flag is lost, owners lose marketing assistance and room revenues and are excluded from the brand support system. Premature termination of the franchise agreement also imposes liquidated damages liability against the hotel owner. The downward spiral of reduced occupancy and revenues, combined with the high fixed and operating costs of owning, and operating the hotel can result in the total loss of the hotel business. Franchisees have to devote thousands of dollars to remedy the loss of flag. Hotel franchisees that operate multiple hotels sometimes face termination of all hotels by the Franchisor as a direct result of criminal activity at a single hotel. In light of these severe consequences, hotel owners are incentivized to prevent crimes on their properties.

Petitioner's characterization is also inaccurate because it obscures the myriad reasons why hoteliers and guests prefer limited service hotels. Petitioner strongly implies that the only reason somebody would wish to use these properties is to engage in criminal activity. Nothing could be further from the truth. Approximately three quarters of the hotels owned by AAHOA members are limited service or budget

properties. Many hoteliers favor this business model because of the considerably lower startup and operating costs, along with less overhead than larger properties that offer extra amenities. Many guests likewise prefer these economy priced hotels. Middle and low income travelers seeking affordable lodging opt to use these hotels, which do not have extravagant lobbies, restaurants, or conference facilities that these travelers would find unnecessary.

Others who do not have stable finances or access to credit use budget hotels as residences. These people may be unable to afford rents for apartments or traditional housing options, but are able to pay the more reasonable hotel fees. Further, guests may be temporary laborers who do not require long term housing and are unwilling or unable to commit to extensive leases. Limited service and budget hotels provide these guests with the necessary flexibility to adapt to their circumstances.[2]

Many of these people may also prefer to rent rooms by the hour rather than nightly because they may only need a temporary place to rest or to clean up after a shift. Disparaging hoteliers and their guests by referring to properties as "parking meter motels" and implying the only reasonable use for limited service

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[2] Petitioner itself has recognized the utility of affordable motel housing. The City of Los Angeles has requested that hotel operators house the homeless population, and has provided vouchers to the homeless so that they can take advantage of those opportunities. *See* LAMC § 41.49(4) (describing rentals using housing vouchers). The motel owner community, including many AAHOA members, have provided this service in cooperation with the city.

establishments must be for criminal behavior is a highhanded value judgment against working class Americans and small business owners.

Petitioner's insinuation that shedding "sunlight" on the guests staying in budget motels will ultimately benefit society is offensive. All hotel guests whether wealthy or not desire and deserve privacy and security in their hotel rooms. That is part of the experience of feeling at home, which is part of what guests look for in a hotel. In some cases, privacy is essential to guests' safety. For example, somebody fleeing domestic abuse at home might have nowhere else to go, and might check into a budget motel in order to be safe while she seeks help. In that case, the hotel provides a safe haven, and its willingness to safeguard the guest's privacy is key to her wellbeing. Petitioner's desire to make guest activities totally transparent risks trampling these rights.

Finally, it bears noting that even though petitioner spends its time discussing the need to curb crime in "parking meter" motels, it notes that even "establishments as reputable as the "Mayflower Hotel" may be venues for crime. Petr. Br. 2. LAMC § 41.49 authorizes inspections of the registry of every single hotel property in Los Angeles, for any reason the police see fit to inspect it, at any time. Thus, even if Petitioner's description is accurate with regard to a few outlier motels, the ordinance it has enacted permits the police to harass myriad unrelated business owners in order to compromise the privacy of their guests.

II. Hotel owners use guest data, including the records described in LAMC § 41.49, for ordinary business purposes.

Petitioner suggests that the hotel owners only keep registries because LAMC § 41.49 requires them to do so. That is incorrect. Hotel owners independently have an interest in knowing who is staying at their properties and for what purpose the rooms are being used. Thus even if LAMC § 41.49 did not exist, hotel owners would still keep registry information on site, and would strive to keep it private.

This data serves important business purposes. Hotels keep guest data so that they can identify both new and repeat customers, keep track of occupancy rates, and prepare accurate records for tax Purposes. If a claim later arises in connection with a room, e.g., if damage occurs, then the hotels will need guest data in order to pursue the claim. Similarly, hotel owners who file applications for loans, or who seek to sell their property, use occupancy records in order to prove the value of their business.

Franchise hotels are often required by their franchise agreements to keep guest data for multiple years, along with data regarding revenues finances, operations, marketing and other aspects of the hotel's business. This data is used by franchisors in evaluating whether hotel owners should be eligible for additional franchise opportunities, and also for evaluating the renewal of franchise agreements.

All of this data is kept private, like any other sensitive business information. If a hotel was careless

with guest data, and a breach occurred, it would be possible, and indeed likely, that many guests would look unfavorably on the hotel, would write negative reviews about it, and would refuse to stay there in the future. Even if the guests did not discover the breach, a leak of guest data could place the hotel at a competitive disadvantage. Consequently, hotel owners strive to protect guest information from disclosure.

Additionally, the data that hotels collect from guests is often broader than the data required by ordinances like LAMC § 41.49. In addition to collecting identifying information as required by the ordinance, hotels often collect information about loyalty programs, about the purpose of a guest's stay, and about their preferred amenities. This is further evidence that guest information serves ordinary business purposes. The City should not be able to destroy the hoteliers' property or interest in this information merely by requiring that some of it be collected.

III. Hotels are not pervasively regulated

Hotels should not be regarded as "pervasively regulated" under *New York v. Burger*, 482 U.S. 691, 693 (1987), because neither the amount nor the nature of the regulation of the industry eliminates all expectation of privacy. *See Marshall v. Barlow's Inc.*, 436 U.S. 307, 313 (1978).

Most of the laws that apply to hotels are generally applicable, *e.g.*, laws relating to the cleanliness of commercial premises, or antidiscrimination statutes. The laws that are specific to hotels for example the law

requiring hotels to give guests the option of not having their towels and linens laundered, LAMC § 121.08(A)(12) overwhelmingly are not enforced through intrusive or regular inspections that would vitiate an expectation of privacy. And even when regulatory inspections are authorized as they are to inspect whether drinking utensils are sanitary, Cal. Code Regs. tit. 17, § 30858 they seldom occur.

This type of sporadic regulation cannot qualify for the "pervasively regulated industries" exception. Otherwise, almost every business that allows customers to walk through the door would be regarded as pervasively regulated, and the exception would swallow the rule. And of course, the City cannot rely on LAMC § 41.49 itself to prove that the industry is closely regulated, because that would produce the same result.

The Court should be especially wary of extending the pervasively regulated industries exception to hotels because doing so would compromise not only the businesses' privacy, but also the privacy of the millions of people who use hotels. Rooms are the guests' homes for the duration of their stay, and the Court has recognized that hotel guests, like tenants in houses, are have strong privacy rights. *Stoner v. California*, 376 U.S. 483, 490 (1964). That substantial privacy interest weighs against finding hotels to be within the "pervasively regulated industries" exception because the rationale of the exception is that by associating with a particular business, people implicitly forfeit their right to privacy. That is patently untrue in the hotel context for both the owners and the guests.

This fact also distinguishes the case of hotels from the junkyard in *Burger*. In *Burger*, the proprietor of the junkyard operated "an open lot with no buildings," which contained "among other things, vehicles and parts of vehicles." 482 U.S. at 694. The Court was willing to find that the owner of such a business had a diminished expectation of privacy over that stock. But hotel rooms are not like vehicle parts, and hotel guests' privacy should not be treated so lightly.

It is also no answer to say that LAMC § 41.49 does not permit inspections of rooms directly, but instead only of records. The entire purpose of the ordinance, as explained by petitioner, is to send a signal to the occupants of those rooms that the police are watching them, so that they must behave.

IV. Warrantless inspection laws like LAMC § 41.49 are not necessary to deter crime, and they permit police harassment of hoteliers and their employees.

Petitioner's principal argument for the necessity of LAMC § 41.49 is that "sunlight is the best of disinfectants," *i.e.*, that transparency regarding the identity of hotel guests will deter them from using hotel rooms for criminal purposes. For the reasons stated above, that is factually inaccurate and inimical to basic notions of privacy. But even assuming that the premise is true, it does not explain why warrantless inspections of guest registers are necessary to ensure the accuracy of records.

All of law enforcement's legitimate objectives can be accomplished under a regime that gives hotel owners or their employees the opportunity to obtain pre-compliance judicial review. A broader inspection requirement is not necessary, and fails to limit officer discretion as required by the Fourth Amendment.

Because the records have independent business purposes, hotel owners have no incentive to falsify them. Deliberate falsification of the records could also jeopardize a hotel's relationship with its franchisor, which is a risk that no hotel owner would be willing to take.

Moreover, because hotel guest records often contain more information than the bare minimum required by law, permitting the police to peruse them at will poses a threat to guest privacy: the police will observe details including not only the guest name, but also the nature of the guest's stay, the guest's loyalty program status with the hotel, any special requests or amenities offered to the guest, etc. Issues well beyond the scope of a search designed for criminal deterrence.

Because LAMC § 41.49 does not require pre-compliance judicial review, it also authorizes police harassment of hotel owners and their employees. These concerns are not hypothetical.[3] Hoteliers have

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[3] In 2006, a group of AAHOA members in Los Angeles formed the North East Los Angeles Hotel Owners Association (NELAHOA) specifically to address abusive enforcement of LAMC § 41.49. As reported to AAHOA by NELAHOA hoteliers, the enforcement involved repeated and intrusive tactics, immediate demand for access to registries during busy hours and demands to access back offices. These actions disrupted hotel operations, inconvenienced

reported police inspections late at night or very early in the morning, and have reported aggressive police behavior in enforcing the ordinance.

For example, the police have the power to return to a property several times a day, which they often do, in an attempt to find petty violations of the ordinance, or to seek out suspects in unrelated crimes. Even when the police find no violation, their presence is likely to make guests and employees uneasy, and thus disrupt the ordinary course of business.

The police can also make unreasonable demands of desk clerks, who are seldom educated about their legal rights, and are ill-equipped to protect the guests' privacy when confronted by police officers. For example, it is not unusual for officers, having discovered somebody's name in the register, to further demand that the desk clerk escort them to that person's room.

Apart from the issue of harassment, the lack of pre-compliance judicial review facilitates pretextual police searches. In the past, for example, officers have taken a stack of registry cards to their patrol cars, where they have then run the names in the registry through a list of fugitives and suspects in order to find criminals. These sorts of criminal investigations

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guests and created a reputation of criminal behavior at the hotels. Failure to comply with these demands resulted in searches of offices, file cabinets, drawers and on-site manager apartments. Law enforcement would also make demands for master keys and begin door to door investigations while awakening guests to verify information on their registration cards.

require a warrant, but the police use LAMC § 41.49 to bypass that constitutional requirement.

Permitting the hotel owner or desk clerk to seek review by a magistrate in response to an inspection demand would curb the potential for harassment and abuse by deterring the police from making unreasonable requests in the first instance, and would further permit a neutral magistrate to deny requests that are unrelated to the goals of the ordinance. At the same time, it would do nothing to prevent the police from making legitimate requests to ensure the accuracy of records.

IV. CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

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Respectfully Submitted

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