No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICI CURIAE* OF THE NATIONAL LEAGUE OF CITIES, THE U.S. CONFERENCE OF MAYORS, THE NATIONAL ASSOCIATION OF COUNTIES, THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national advocate for the more than 19,000 cities, villages, and towns it represents.

The U.S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor.

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The International City/County Management Association (ICMA) is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns,

1. No counsel for any party authored this brief in whole or in part and no entity or person, other than *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record for all parties have consented to this filing in letters on file with the clerk's office.

and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 3,000 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

This case directly impacts the interests of *amici* and their members. Cities and localities across the country have enacted and administer ordinances that require hotel registers and authorize law enforcement officials to inspect them. Upholding the decision below would threaten the invalidation of these ordinances and call into question the many ordinances imposing similar requirements on other types of businesses. *Amici* thus have a strong interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

For more than a century, Petitioner, the City of Los Angeles, has had on its books an ordinance requiring hotels to record and maintain certain specified information about their guests in a register and to make those guest registers available for inspection to law enforcement officers. Brief for Petitioner ("Pet. Br.") 4-8. The current iteration of that ordinance resides in Section 41.49 of the Los Angeles Municipal Code, the stated purpose of which is to "discourag[e] the use of hotel and motel

rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). Amended in 2006 to address the growing scourge of illicit activity at parking-meter motels, *see* Pet. Br. 6, Section 41.49 requires any hotel (defined broadly as any "inn, hostelry, tourist home, motel, lodging house or motel rooming house") to maintain a register that records the following basic information about each guest: name; address; make, model, and license plate number of any guest vehicle parked on hotel premises; date and time of arrival and scheduled departure; room number; rate charged; and method of payment. *See id.* The ordinance further requires hotels to record additional information from walk-ins as well as from guests who pay in cash or rent a room by the hour or for a period of less than 12 hours. *See id.*

The Ninth Circuit invalidated Section 41.49 on its face under the Fourth Amendment because the ordinance authorized hotel register inspections "without affording an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." Petitioner's Appendix ("Pet. App.") 13. That ruling is legally unsustainable. Among its errors, the court "erroneously assumed one hypothetical set of facts that it thought § 41.49 appears to contemplate" rather than considering the myriad "different fact-bound scenarios" under which an inspection of a hotel register might arise. Pet. Br. 13. Further, the court focused myopically on whether Section 41.49 qualified for the Fourth Amendment "administrative subpoenas" exception even though it "is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the

ground that it was not unreasonable." Pet. App. 27-28 (Clifton, J., dissenting).

These criticisms of the Ninth Circuit's ruling follow from a foundational structural principle of judicial review: facial challenges, are disfavored as a general matter and should be especially disfavored in the Fourth Amendment arena. As a doctrinal matter, there is a sharp incongruity between a facial challenge to an ordinance and the Fourth Amendment's touchstone of reasonableness. After all, assessing a search's reasonableness depends on the particular circumstances under which it takes place and is thus "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59 (1968). But a facial challenge is divorced from context; it occurs in a factual vacuum and requires an isolated evaluation of the ordinance itself. The obvious disconnect between the two is precisely why this Court has observed that evaluating a facial challenge to a statute or ordinance in the Fourth Amendment arena would be an "abstract and unproductive exercise." *Id.*; *see also id.* at 62 ("Our constitutional inquiry would not be furthered here by an attempt to pronounce judgment on the words of the statute.").

In light of this incongruity, it should come as no surprise that facial challenges are of little practical utility in the Fourth Amendment arena. "[A] plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid.'" *Washington State Grange v. Washington State Republican Party*, 552 U.S 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 749, 745 (1987)). Given the seemingly endless array of circumstances that may

prompt a law enforcement officer to conduct a search, there will nearly always be some set of facts that would justify a particular search as reasonable. Indeed, as Petitioner emphasizes, "this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting." Pet. Br. 14. There is no justification for breaking new ground here given that the Ninth Circuit and Respondents concede that factual scenarios exist under which Section 41.49 is lawful. Brief in Opposition ("BIO") 5 ("The court recognized that the absence of pre-compliance judicial review would not necessarily render every search unreasonable under the Fourth Amendment.").

Not only would sustaining the Ninth Circuit's ruling cause jurisprudential upheaval, it would also threaten to upend numerous similar ordinances across the country and thus impair the ability of states and localities to prevent and combat crime. On top of that, it would call into question numerous similar record-keeping and inspection laws applicable to other businesses, such as mobile home parks, junkyards, and pawn shops. Such a massive override of democratic governance would seriously "frustrate[] the intent of the elected representatives of the people." *Washington State Grange*, 552 U.S. at 451 (citation omitted). Perhaps worse, the practical effect of sustaining the decision below would be to hamstring state and local crime prevention efforts. Indeed, recent evidence demonstrates that several hotels within the City of Los Angeles have faced a sharp increase in criminal activity in the time since the decision below rendered Section 41.49 inoperative. The decision below should be reversed.

ARGUMENT

I. Facial Challenges Should Be Especially Disfavored In The Fourth Amendment Arena.

Facial challenges are disfavored as a general matter for many reasons. *See Washington State Grange*, 552 U.S. at 450. First, they risk "premature interpretation" of laws because courts must speculate about facts that may or may not occur. *Id.* (citation omitted). Second, they run contrary to the principle of constitutional avoidance. *See id.* ("[C]ourts should neither 'anticipate a question of constitutional law in advance of the necessity of deciding it' nor 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'") (citation omitted). Third, facial challenges override democratic governance by invalidating a duly enacted law in *every* aspect. *See id.* at 451 ("We must keep in mind that [a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.") (citation omitted).

The concerns apply with special force when the facial challenge arises under the Fourth Amendment. By its terms, the Fourth Amendment inquiry turns on the *reasonableness* of a search or seizure. This necessarily requires a fact-based determination of whether the law-enforcement concerns underlying a search or seizure override the affected individual's interests. Such a fact-bound inquiry is simply incompatible with the abstract review a facial challenge demands. But even if these ill-fitting concepts could be reconciled as a doctrinal matter, facial challenges make no practical sense in the Fourth Amendment arena. A facial challenge can succeed only if it

is unconstitutional in *every circumstance*. Few, if any, laws authorizing searches would fall under this high standard given the myriad factual circumstances that might arise and the numerous exigencies prompting law enforcement officials to undertake a search.

A. As A Doctrinal Matter, Facial Challenges Cannot Be Squared With The Fourth Amendment's Standard Of Reasonableness.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects." It does so by prohibiting all "unreasonable" governmental searches and seizures. Thus, the question is always "whether the search [or seizure] was *reasonable* under the Fourth Amendment." *Sibron*, 392 U.S. at 61 (emphasis added); *see Maryland v. King*, 133 S. Ct. 1958, 1970 (2013) ("The touchstone of the Fourth Amendment is reasonableness," and whether a warrant is required or not, the search "must be reasonable in its scope and manner of execution."); *Cooper v. California*, 386 U.S. 58, 62 (1967) ("[T]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.") (citation omitted).

To determine whether a search is reasonable under the Fourth Amendment, courts balance "privacy-related and law enforcement-related concerns." *King*, 133 S. Ct. at 1970 (citation omitted). Specifically, this test "requires a court to weigh 'the promotion of legitimate governmental interests' against 'the degree to which [the search] intrudes upon an individual's privacy.'" *Id.* (quoting *Wyoming v. Houghton,* 526 U.S. 295, 300 (1999)); *see also*

Smith v. Maryland, 442 U.S. 735, 735 (1979).[2] Given the balance of interests the Fourth Amendment accordingly requires, a warrantless search's constitutionality "can only be decided in the concrete factual context of [an] individual case." *Sibron*, 392 U.S. at 59; *see id.* at 62 ("[W]e must confine our review … to the reasonableness of the searches and seizures [at issue]."); *Cooper*, 386 U.S. at 59 ("[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case….").

The mode of analysis is difficult, if not impossible, to reconcile with the nature of the facial inquiry into a law's constitutionality. In reviewing a facial challenge, a court evaluates the law in the *abstract*, removed from the facts of any particular application thereof. *See Rust v. Sullivan*, 500 U.S. 173, 195 (1991) ("These cases, of course, involve only a facial challenge … and we do not have before us any application … to a specific fact situation."); *see* Pet. App. 17 (Tallman, J., dissenting) ("[This facial challenge leaves us with insufficient facts regarding the unconstitutional conduct [Plaintiffs] allege has occurred.").

Detached from any factual record, facial attacks just do not provide the necessary context for assessing whether a search is reasonable under the Fourth Amendment. Without such facts, courts cannot weigh the government interests against the intrusion on the individual's rights, and thus cannot determine whether the search is

2. Because this case does not involve any alleged trespass of property, it does not implicate the "property-based approach" to Fourth Amendment searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950 (2012).

reasonable under the Fourth Amendment. That is why this Court has emphasized that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which *can only be decided in the concrete factual context of the individual case*." *Sibron*, 392 U.S. at 59; *see also King*, 133 S. Ct. at 1969 ("The fact that an intrusion is negligible is of central relevance to determining reasonableness.") (internal quotations omitted).

In a facial attack, the focus is on the law itself. But the Fourth Amendment proscribes *conduct*—not *words*. Pet. App. 15 (Tallman, J., dissenting) ("The [Fourth] Amendment has always prohibited specific government conduct—'unreasonable searches and seizures'—not legislation that could potentially permit such conduct."). The constitutional inquiry simply is not furthered "by an attempt to pronounce judgment on the words of the statute. [The Court] must confine [its] review instead to the reasonableness of the searches and seizures." *Sibron*, 392 U.S. at 62; *see id.* at 61 ("The question in this Court upon review of a state-approved search or seizure 'is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment'" (quoting *Cooper*, 386 U.S. at 61); *California v. Greenwood*, 486 U.S. 35, 44 (1988) ("We have never intimated … that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs."). Whether a law authorizes or prohibits such conduct is thus of little, if any, import. *See Sibron*, 392 U.S. at 61.

A state or local law might authorize a search or seizure and yet the Fourth Amendment bars it. *See id.*

For example, in *Payton v. New York*, the defendants challenged the constitutionality of New York statutes that authorized police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest. 445 U.S. 573, 574 (1980). The Court found the warrantless arrests at issue to be unconstitutional notwithstanding New York's statutory authorization. *See id.* at 602-03.

Conversely, a search or seizure might survive a Fourth Amendment challenge even though a state or local law *prohibits* it. *See Sibron*, 392 U.S. at 61. In *Greenwood*, for example, the Court held that the search of garbage left by an individual at the curbside of his residence did not violate the Fourth Amendment even though it possibly violated California law. 486 U.S. at 44. There, Greenwood had argued that the search of his garbage violated the Fourth Amendment because California law prohibited it. As the Court explained, however, "whether or not a search is reasonable within the meaning of the Fourth Amendment" does not "depend[] on the law of the particular State in which the search occurs." *Id.* at 43. The Fourth Amendment inquiry instead turned on the Court's own evaluation of the individual's expectation of privacy. *Id.* Because Greenwood's subjective privacy expectation was not objectively reasonable, the Court held the search constitutional irrespective of what California law might allow or prohibit. *Id.* at 43-44.

In the end, the lack of a relationship between state or local law and the Fourth Amendment inquiry makes a facial challenge untenable. It is not the law that the Court reviews when there is a Fourth Amendment challenge. It is the governmental search or seizure. And, a search or

seizure undertaken pursuant to a state or local law will arise in countless factual settings. Reviewing a state or local law in a factual vacuum thus says nothing about the reasonableness of a search undertaken by law enforcement officers. The "constitutional inquiry" simply "would not be furthered here by an attempt to pronounce judgment on the words of the statute." *Sibron*, 392 U.S. at 62. This is reason enough to reject a facial Fourth Amendment attack on Section 41.49.

B. Facial Fourth Amendment Challenges Also Make No Practical Sense Because The "No Set Of Circumstances" Standard Will Be Virtually Insurmountable.

The nature of a facial challenge renders it of little, if any, practical utility in the Fourth Amendment context. As noted above, "a plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid.'" *Washington State Grange*, 552 U.S at 449 (quoting *Salerno*, 481 U.S. at 745). Given the myriad possible circumstances—and exigencies—that may prompt a law enforcement officer to conduct a search, there will nearly always be some set of factual circumstances that would make a particular search reasonable. *See, e.g.*, *Salerno*, 481 U.S. at 751 ("[We] may dispose briefly of respondents' facial challenge to the procedure of the Bail Reform Act. To sustain them against such a challenge, we need only find them adequate to authorize the pretrial detention of at least some [persons] charged with crimes, whether or not they might be insufficient in some particular circumstances.") (citation omitted).

This case proves the point. There are countless scenarios where a warrantless search of a hotel register would be reasonable under the Fourth Amendment. Police may be trying to locate a suicidal person who is suspected of being in the hotel and could ask for the register under their "community care-taking exception." Pet. App. 18a (Tallman, J., dissenting). The hotel register might be fully accessible to the public or otherwise within a law enforcement officer's "plain view." *Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011). A warrantless search of a hotel register also may be justified by "exigent circumstances." Pet. App. 18a (Tallman, J., dissenting). For example, law enforcement officials could be trying to locate a suspected terrorist who they believe is hiding in the hotel. Indeed, the ordinance itself seems to contemplate such exigencies. By providing that, "*whenever possible*, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business," Los Angeles, Cal. Code § 41.49 (emphasis added), it suggests that there will be times when the search will need be conducted under circumstances that do not allow police officers to minimize the intrusion.

There are many other examples as well. But the point is this: the Court need only agree that one of these (or the many other) hypothetical scenarios would allow a warrantless search of a hotel register to reject this facial challenge to Section 41.49. Allowing Fourth Amendment facial challenges (including this one) when they are nearly certain to fail makes no practical sense.

* * *

In light of the doctrinal incongruity between facial challenges and the Fourth Amendment touchstone of reasonableness, as well as the negligible practical utility of facial challenges in the Fourth Amendment arena, the Court may decide to forbid such challenges altogether. But it need not do so to resolve this dispute in Petitioner's favor. The Court need only recognize what the Ninth Circuit and Respondents freely acknowledge—*viz.*, at least one factual scenario exists under which Section 41.49 is constitutional. BIO 5. Respondents' concession that they cannot satisfy the high bar for prevailing on a facial challenge requires reversal of the judgment below.

II. Upholding The Ninth Circuit's Decision Would Threaten Numerous Similar Ordinances Across The Country And Thus Impair The Ability of States And Localities To Prevent And Combat Crime.

Under our system of dual sovereignty, the police power traditionally rests with state and local governments. This police power covers "protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State." *Slaughter–House Cases*, 16 Wall. 36, 62 (1872) (quotation omitted). Its scope is wide, ranging from "the suppression of violent crime and vindication of its victims" to "eradicating automobile theft." *United States v. Morrison*, 529 U.S. 598, 618-19 (2000); *New York v. Burger*, 482 U.S. 691, 709 (1987). State and local governments thus retain broad authority to prevent crime and enforce their laws.

A city's regulation of hotels—which implicates the health, safety, and welfare of the general public—falls squarely within the police power. Indeed, hotels have

always faced "the triple threat of illicit sex, theft, and violence" and thus have used a variety of procedures and personnel to guard against such ills. A.K. Sandoval-Strausz, *Hotel: An American History* 221 (2007). For centuries, hotels and inns have required guests to sign a register when checking in, *see id.* at 237; *see also* Pet. Br. 4-5, and have recorded therein guests' names, room numbers, places of origin, and lengths of stay, *see* Sandoval-Strausz, *supra*, at 157. At least as early as the beginning of the twentieth century, many state and local governments began codifying this historical practice into law by requiring all hotels to maintain guest registers and make them available for inspection to law enforcement officers.

For example, in 1918, Massachusetts enacted a law requiring every hotel in the state to maintain "in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room…." The Massachusetts statute also required hotels to retain records for at least one year and make the register "open to inspection of the licensing authorities, their agents and the police." Mass. St. 1918, c. 259, §§ 5, 8. Many other cities and states across the country did the same. *See, e.g.*, San Francisco, Cal. Police Code § 919 (Ord. 1071, Series of 1939, App. 12/3/57); Minneapolis, Minn. Code § 244.1260 (Code 1960); Denver, Colo. Code § 33-17 (Code 1950); Las Vegas, Nev. Code § 10.36.040.

States and localities today use hotel register and inspection laws to combat numerous types of crimes by making impossible the anonymity within which criminals prefer to operate. Some states and localities adopted these

ordinances for general crime prevention and other health and safety purposes. For example, San Antonio, Texas, adopted such a law in order to deter illegal activity and allow "emergency responders to properly identity sick, ill or injured persons and to allow for notification of next of kin in case of emergency or death." San Antonio, Tex. Code § 15-83 (as amended by Ord. No. 99517, July 29, 2004); *see also* Escondido, Cal. Code § 16D-15 (adopting the law because "record-keeping requirements will permit law enforcement to monitor and enforce the intended use of transient lodging facilities").[3]

Other state and local governments have targeted specific types of criminal activity. For example, Solana Beach, California, enacted a hotel register law in response to a teenage sex trafficking ring operating out of a local San Diego County hotel. *See* Bianca Kaplanek, *New Hotel Law to Aid Police Investigations*, The Coast News (June 21, 2013), https://thecoastnews.com/blog/2013/06/new-hotel-law-to-aid-police-investigations/. Solana Beach officials understood that during the San Diego County investigation, "deputies had difficulty getting information from hotels because there was no comprehensive, uniform record-keeping system and staff was uncertain about releasing the information." *Id.* In response to the San Diego County incident, the Solana Beach law requires hotel and motel operators to obtain various identifier information (e.g., the name and address of all registering guests, the names of anyone staying with them, the arrival date and time, and the assigned room number) and to make that information available to law enforcement officers on

3. *Law requires log of hotel-motel guests*, The Union Tribune (May 7, 2004), http://www.utsandiego.com/uniontrib/20040507/news_ 1mi7briefs.html.

request. Localities that have adopted similar laws have targeted a wide array of criminal activity. *See, e.g.*, Las Vegas, Nev. Code § 10.36.040 (prostitution); Arcadia, Cal., Code § 4231.6 (same); Salinas, Cal. Code § 21-350 (prostitution, gangs, and drugs);[4] West Milwaukee, Wis. Code § 14-506 (fugitives); Crete, Ill., Code § 12-456 (same); Granite City, Ill., Code § 5.100.060 (same).

It should be no surprise that hotel register and inspection laws are ubiquitous given their effectiveness in combatting a multitude of crimes and criminal activities. Petitioner references over 100 hotel register inspection ordinances from cities and localities across twenty-eight states. Pet. Br. 36, n.3. Yet this is but a fraction of the number of such ordinances across the country. California alone has at least seventy cities and localities with similar laws,[5] and *amici* have identified similar hotel register

4. *See* City of Salinas, Staff Report, City Ordinance regarding Hotel Guest Registers (June 4, 2013), http://www.ci.salinas.ca.us/leadership/pdf/Reports/06042013%20CC1.pdf.

5. Alameda County, Cal. Code § 3.20.010; Antioch, Cal. Code § 5-7.02; Arcadia, Cal. Code § 4231.6; Azusa, Cal. Code § 18-998; Benicia, Cal. Code § 9.56.060; Camarillo, Cal. Code § 5.44.030 et seq.; Carson, Cal. Code § 41001; Chino, Cal. Code § 3.32.090; Chula Vista, Cal. Code § 3.41.060; Colton, Cal. Code § 5.08.010; Concord, Cal. Code § 5.70.020; Crescent City, Cal. Code § 3.20.090; Culver City, Cal. Code § 11.02.005; Delano, Cal. Code § 6.40.010, -.020; Downey, Cal. Code § 4130; Dublin, Cal. Code § 5.40.040; El Monte, Cal. Code § 5.48.020; Emeryville, Cal. Code § 5.25.01, -.02; Freemont, Cal. Code § 3-8200; Fremont, Cal. Code § 5.85.011, -.030; Fresno, Cal. Code § 9-105; Glendale, Cal. Code § 4.32.065; Fullerton, Cal. Code § 7.64.010; Gonzales, Cal. Code § 6.20.030; Greenfield, Cal. Code § 5.26.090; Huron, Cal. Code § 5.20.010, -.020; La Mesa, Cal. Code § 10.93.030; Lake Elsinore, Cal. Code § 5.84.010; Lancaster, Cal. Code § 5.20.020, -.040; La Puente, Cal. Code § 3.52.050; Livermore, Cal. Code § 9.20.010; Lomita, Cal. Code § 7-2.08; Long Beach, Cal.

inspection laws in fifteen additional states.[6] Upholding the decision below might result in the invalidation of all of these laws.

On top of that, it would call into question numerous similar record-keeping and inspection laws for other businesses. Mobile home parks are frequently subject to these ordinances. *See, e.g.*, Alameda, Cal. Code § 6-55.25;

Code § 5.48.010; Los Angeles County, Cal. Code § 8.20.020, -.050; Lynwood, Cal. Code § 3-31.2; Marin County, Cal. Code § 6.04.020, -.030; Maywood, Cal. Code § 5-11.01 *et seq.*; Modesto, Cal. Code § 4-7.302; Monrovia, Cal. Code § 9.48.070; National City, Cal. Code § 10.40.010 *et seq.*; Newport Beach, Cal. Code § 5.36.020; Oakland, Cal. Code § 5.34.030 *et seq.*; Oceanside, Cal. Code § 7.22; Placerville, Cal. Code § 5-9-5; Pleasant Hill, Cal. Code § 6.55.020; Palo Alto, Cal. Code § 9.28.010; Poway, Cal. Code § 9.30.030; Richmond, Cal. Code § 11.40.010; Rocklin, Cal. Code § 5.36.020, -.030; Rosemead, Cal. Code § 5.42.070 *et seq.*; Sacramento, Cal. Code § 5.76.020; San Buenaventura, Cal. Code § 10.550.010 *et seq.*; San Diego, Cal. Code § 52.9103; San Francisco Police Code 919; San Jose, Cal. Code § 6.38.010; San Marcos, Cal. Code § 5.74.040; San Ramon, Cal. Code § B7-290 *et seq.*; Santa Cruz, Cal. Code § 5.12.020; Seaside, Cal. Code § 5.48.030; Selma, Cal. Code § 5-14-5; Signal Hill, Cal. Code § 5.18.060; Simi Valley, Cal. Code § 5-11.01 *et seq.*; Solana Beach, Cal. Code § 4.49.040; South Gate, Cal. Code § 7.60.070; South Lake Tahoe, Cal. Code § 3.50.270; Thousand Oaks, Cal. Code § 5-9.06; South San Francisco, Cal. Code § 1470-2013; Tracy, Cal. Code § 4.12.010; Ventura County, Cal. Code § 6231 *et seq.*; Visalia, Cal. Code § 5.28.020; Walnut Creek, Cal. Code § 4-5.103.

6. Juneau, Alaska Code § 20.10.030; North Little Rock, Ark. Code § 66-6; New Haven, Conn. Code ¶ 401(*l*); Wilmington, Del. Code § 34-303; Florida Statutes § 509.101; Twin Falls, Idaho Code § 3-2-6; Lexington-Fayette County, Ky. Code § 14-22.1; Prince George's County, Md. Code § 5-168 *et seq.*; Bellevue, Neb. Code § 15-159; Truth or Consequences, N.M. Code § 254-96; White Plains, N.Y. Code § 9-9-3; Fargo, N.D. Code § 25-2201; Cincinnati, Ohio Code §§ 855-17, 855-21; Wilkes-Barre, Pa. Code § 24-1; Casper, Wyo. Code § 5.24.070.

Carlsbad, Cal. Code § 5.24.025; Martinez, Cal. Code § 18.60.040, Sanger Cal. Code § 74-21, Yreka, Cal. Code § 5.12.200, Alamosa, Colo. Code § 12-35, Buena Vista, Colo. Code § 16-150; Burlington, Colo. Code § 15.16.080, Craig, Colo. Code § 16.10.210. Similar record-keeping and inspection laws apply to second-hand dealers, including pawnshops and junkyards. For instance, California law requires uniform statewide reporting of property acquired by second-hand businesses to aid local law enforcement agencies and the state's Department of Justice in tracing and recovering stolen property. Cal. Bus. & Prof. Code § 21625 *et seq.*; *see also* Colo. Rev. Stat. § 12-56-103; Fla. Stat. §§ 538.03, 539.001; 205 Ill. Comp. Stat. 510/0.01 *et seq.*; Utah Code § 13-32a-101; Cripple Creek, Colo. Code § 6-4-150; Avon, Colo. Code § 5.28.130. Many states also require scrap metal dealers to keep records about their customers—in some cases, much more detailed records than hotel register ordinances require hotels to maintain for their guests—and make these available to the police for inspection. *See, e.g.*, Ohio Rev. Code § 4737.04(C); *see also Burger*, 482 U.S. at 709 (discussing N.Y. Veh. & Traf. Law § 415-a5).[7] In addition to second-hand dealers, service

7. Nearly every state in the Union has enacted a scrap metal purchase law. *See* National Conference of State Legislatures, *Metal Theft: 2013 Legislative Update* (Feb. 1, 2014), http://www.ncsl.org/ research/energy/metal-theft-2013-legislative update.aspx (stating that North Dakota recently "became the 49th state to enact a separate scrap metal purchase law"). These laws are in large part a response to rising metal theft that has resulted from rapidly increasing prices for scrap metal. *Id.* ("[C]opper's per pound value ranges from double to triple that of values in the early 2000s, motivating thieves to take greater risks when attempting to steal wiring and piping from utility property or electrical infrastructure. The U.S. Department of Energy estimates that metal theft and resulting power outages, revenue losses, and repairs costs businesses nearly $1 billion annually.").

providers, such as massage parlors, are subject to register and inspection laws. *See* Lafayette, Cal. Code § 4-510; Merced, Cal. Code § 5.44.340, -.360; Newark, Cal. Code § 5.24.150; Pacifica, Cal. Code § 5-19.21; Rohnert Park, Cal. Code § 9.80.240.

Invalidating all of these types of ordinances would severely undermine states' and municipalities' ability to fight crime and protect their residents. Indeed, cities that had been in the process of adopting hotel register laws have cancelled or suspended such plans in the wake of the decision below. *See* Jared Whitlock, *Court Overturns Hotel Registration Inspection Law*, The Coast News (Jan. 16, 2014) (reporting that Encinitas, California, decided to table a proposed inspection ordinance after the Ninth Circuit's decision). Worse, recent evidence demonstrates that the invalidation or suspension of hotel registry laws will lead directly to negative impacts on crime prevention and control. Indeed, Petitioner has reported an "82% increase in criminal activity at a sample of five motels between the six months before § 41.49's suspension and the six months after." Pet. Br. 39 (citing Pet. App. 120-33).

This underscores the need for reversal of the decision below. Upholding the Ninth Circuit's decision would threaten to negate all of the public safety benefits of laws like these when only a tiny fraction (at most) of such challenges would raise an identifiable Fourth Amendment concern.

CONCLUSION

Amici curiae respectfully request that the Court reverse the judgment below.

Respectfully submitted,

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