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 Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether motel owners may even attempt to bring a facial Fourth Amendment challenge against a city ordinance that authorizes warrantless, suspicionless searches of motel guest registries by the police.

2. Whether motels in Los Angeles, which are concededly not a closely regulated industry, have a reasonable expectation of privacy in motel guest registries, when such records are concededly "papers" within the meaning of the Fourth Amendment; and, if so, whether a city ordinance that authorizes warrantless, suspicionless searches of those papers violates the Fourth Amendment because it provides no pre-compliance safeguards whatsoever.

PARTIES TO THE PROCEEDING BELOW

The caption to the petition does not identify all of the parties to the dispute. Petitioner is correctly identified as the City of Los Angeles.

The respondents correctly identified in the caption are Naranjibhai Patel, Ramilaben Patel, and the Los Angeles Lodging Association.

In addition to those respondents, the following individuals were plaintiffs and appellants in the consolidated cases below, and are therefore respondents in this Court: Rajendrakumar N. Bhakta, Manjula Bhakta, Manharbhai G. Bhakta, Sarojben D. Bhakta, Praful K. Bhakta, Hitendra D. Bhakta, Pankaj Patel, Naranbhai Patel, Deepak Patel, Dinesh Patel, Jitubhai Bhakta, Ratlalbhai Patel, Ashokbhai Patel, Kamalbhai Patel, Dilip Denaplya, Sanmukh Patel, Kishor Bhakta, Raman Bhakta, Jayesh Bhakta, Mahendra Bhakta, Yogesh Patel, Sanmukh Bhakta, Pratap Bhakta, Jitendra Bhakta, Praful Patel, Nilesh Bhakta, Kiranbhaj Bhakta, Dilip Patel, Naresh Bhakta, Vijay Patel, Rambhai Patel, Pravin Bhakta, R.N. Ghandi, Hasmukh Patel, and Bharatbhai Bhakta, all of whom are named individual plaintiffs and appellants in the related and consolidated cases CV04-2192 DSF and CV03-3610 DSF.

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BRIEF IN OPPOSITION

Petitioner seeks review of the court of appeals' decision holding petitioner's motel registry inspection ordinance unconstitutional. Because the court of appeals' decision does not itself merit this Court's review, the petition attempts to reframe the case in broad terms, reaching as far as it can to manufacture 1-1 circuit splits on issues of little practical consequence. This Court should deny review.

STATEMENT OF THE CASE

Respondents own and operate motels in Los Angeles. A municipal ordinance, Los Angeles Municipal Code § 41.49, requires respondents, who are motel owners and operators in Los Angeles, to collect and keep detailed information about their guests. The ordinance further provides that the records "shall be made available to any officer of the Los Angeles Police Department for inspection." Failure to comply with the inspection requirement is a misdemeanor. *See* L.A. Mun. Code § 11.00(m). Because respondents have been and will continue to be subject to warrantless inspections under § 41.49, they brought this action under 42 U.S.C. § 1983 alleging that the ordinance violates the Fourth Amendment.

Multiple plaintiffs had challenged the constitutionality of § 41.49, and the parties filed a stipulation to consolidate and streamline the litigation. *See* Stipulation to Consolidate and Dismiss, *Patel v. City of Los Angeles*, No. 2:05-cv-01571-DSF-AJW, ECF No. 22 (Feb. 17, 2006). In addition to consolidating the cases, the stipulation dismissed without prejudice damages claims against

a number of individual defendants. *Id*. at 2. The stipulation also narrowed the claims to be decided, providing: "The parties agree that the sole issue in the consolidated action is the constitutionality of Los Angeles Municipal Code Section 41.49; that there are no damages claims; and that *Monell* claims are not at issue." *Id*.

On the eve of trial, the parties entered into a further stipulation, agreeing that certain "facts are admitted and require no proof." *See* Final Pretrial Conference Order, *Patel v. City of Los Angeles*, No. 2:05-cv-01571-DSF-AJW, ECF No. 59, at 2 (Sept. 2, 2008). Among these, petitioner admitted that respondents "have been subject and continue to be subject to searches and seizures of their motel registration records by the Los Angeles Police Department (hereinafter 'LAPD') without consent or warrant pursuant to Los Angeles Municipal Code (hereinafter 'LAMC') section 41.49 which permits law enforcement to demand inspection of motel registers at any time without consent or warrant." *Id*. at 2-3. The pretrial stipulation reiterated that "the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." *Id*. at 3.

In the same pretrial order, petitioner laid out its defenses to the lawsuit in detail, stating that it intended to show that there was no reasonable expectation of privacy in motel registers; that the inspection of motel registers did not infringe upon values protected by the Fourth Amendment because the contents of motel registers did not warrant constitutional protection; and that the inspections were valid administrative inspections because motels

were "closely regulated" and because the inspections were necessary to further a substantial government interest in a regulatory scheme, and limited in time, place, and scope. *Id*. at 4-5. The stipulation further provided that no additional exhibits or witnesses would be presented at trial. *Id*. at 6.

After the trial, the district court entered judgment for petitioner. It again acknowledged the concessions made in the stipulations. *See* Pet. App. 53. The court further noted that petitioner had "submit[ted] no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized 'closely regulated' businesses," and thus concluded that respondents' motels were not "closely regulated," and therefore did not fall within the administrative search exception to the warrant requirement established by *New York v. Burger*, 482 U.S. 691 (1987). Pet. App. 54. Nevertheless, the district court ruled in petitioner's favor by concluding that hotels and motels do not have an ownership or possessory interest that gives rise to a privacy right in their guest registries because those registries were created in order to comply with the ordinance. *Id*. 56.

The Ninth Circuit initially affirmed, but the en banc court reversed. The court held first, and with "little difficulty," that the warrantless inspections authorized by § 41.49 constituted a Fourth Amendment "search." Pet. App. 6. Because the Fourth Amendment expressly protects "papers"—and because the guest registries are business records, which have for more than a century been regarded as "papers"—the court of appeals held that the Fourth Amendment applies. *Id*. (citing *Hale v. Henkel*, 201

U.S. 43, 76-77 (1906)). The court reasoned that the registries "are the hotel's private property, and the hotel therefore has both a possessory and an ownership interest in the records," and that these "property-based interests" create a "right to exclude others from prying into the contents of its records." *Id*. 7. For similar reasons, the majority concluded that respondents have a privacy interest in the records in addition to their independent property interest. *Id*. 8.

The court of appeals went on to decide whether the warrantless searches authorized by § 41.49 comply with the Fourth Amendment. The court assumed that § 41.49 authorizes administrative record inspections (and not searches for evidence of crime, which would ordinarily require a warrant), and assumed that it only authorized searches in the public areas of the hotel. Pet. App. 10. It concluded that even under these generous assumptions, which "give the city the benefit of the doubt at each turn," *id*. 11, the answer was "no" because "[t]he Supreme Court has made clear that, to be reasonable, an administrative record-inspection scheme . . . must at a minimum afford an opportunity for pre-compliance judicial review, an element that § 41.49 lacks." *Id*. 9-10. The court of appeals relied on this Court's decisions in *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967), and *Donovan v. Lone Steer*, Inc., 464 U.S. 408, 415 (1984), both of which emphasized the need for pre-compliance judicial review for administrative record searches. Because "Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands," it rendered hotel operators "subject to the 'unbridled discretion' of

officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur." Pet. App. 12 (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 323 (1978)).

The court recognized that the absence of pre-compliance judicial review would not necessarily render every search unreasonable under the Fourth Amendment. But it concluded that the requirement was necessary for "the particular searches at issue here—administrative inspections of business records in industries that are not closely regulated." *Id*. 13. Thus, because § 41.49 suffered from a "procedural deficiency" that "affects the validity of all searches authorized by" the ordinance, the court held it "facially invalid." *Id*. 13-14.

Four judges dissented in two opinions. The dissents argued first that even if respondents could have prevailed on an as-applied challenge, a facial challenge was inappropriate because there were circumstances, *e.g.*, searches with a warrant, or exigent circumstances, where the inspection of registries would be constitutional. *See* Pet. App. 17-18. The dissent relied principally on *Sibron v. New York*, 392 U.S. 40 (1968), a case that petitioner had never cited, to argue that Fourth Amendment facial challenges are disfavored. Pet. App. 16-17. The dissent also argued that there was no evidence in the record establishing that hotels generally have an expectation of privacy in the information in their guest registries. *Id*. 30.

The petition followed.

REASONS FOR DENYING THE WRIT

The petition nominally presents two questions: whether Fourth Amendment facial challenges are permitted at all; and whether hotels have a reasonable expectation of privacy in their guest registries. For each question, the best-case scenario for petitioner is a shallow and underdeveloped circuit split—the Ninth versus the Sixth Circuit for the first question, and the Ninth Circuit versus a state court for the second. Even taking the petition at face value, these conflicts would not warrant this Court's attention. Upon closer examination, the case for certiorari disintegrates altogether because the conflicts are illusory, and the questions unimportant.

I. The First Question Presented Does Not Warrant Certiorari.

The first question presented does not present a true circuit split, as the distinctions between this case and the Sixth Circuit case petitioner cites are legion. Additionally, the question presented is phrased at such a broad level of abstraction that its resolution would not meaningfully assist the lower courts in resolving the cases before them. Finally, petitioner waived its ability to bring this argument below, and cannot raise it for the first time now.

1. Petitioner argues that the decision below—which decided a Fourth Amendment question on the merits, and which contained literally no discussion of justiciability—is in conflict with *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc)—a case in which the court's analysis "start[ed]—and end[ed]—with ripeness." Yet petitioner does not argue that the challenge in this case was unripe;

instead, it contends that *Warshak* stands for the remarkable proposition that facial Fourth Amendment challenges to municipal ordinances are never permitted.

That is inaccurate. *Warshak* never stated that a court cannot hear a facial Fourth Amendment challenge to a statute. Instead, the court determined, on the facts and circumstances of that particular case, that it was not ripe for adjudication. In *Warshak*, the federal government relied on Title II of the Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, *codified as amended at* 18 U.S.C. §§ 2701-11, to read Mr. Warshak's e-mails without probable cause and without providing advance notice. *See* 532 F.3d at 523. Warshak was notified a year later, and he brought suit seeking a declaration that the statute was unconstitutional, and an injunction preventing its further enforcement. *Id*. at 524. Warshak was subsequently indicted and convicted of fraud, partially on the basis of the e-mail evidence. *Id*. at 525.

On these facts, the court of appeals held that Warshak's separate lawsuit was not ripe for adjudication. It noted that he had a ready avenue to challenge the searches that had been conducted against him—by appealing his criminal conviction and urging suppression, or by bringing a *Bivens* action against the agents who conducted the search. *See id.* at 528. However, the parallel lawsuit challenging the statute was not ripe because the court had "no idea whether the government will conduct an *ex parte* search of Warshak's e-mail account in the future and plenty of reason to doubt that it will" because the government had already

obtained the evidence that it needed to secure a conviction, and there was no evidence that it planned to search Warshak's e-mails again. *Id*. at 526. The court further noted that the reason the government had previously searched Warshak's e-mails in secret was to avoid tipping him off about its ongoing investigation; but because that investigation was concluded, the likelihood of another secret investigation was very low. *See id*. Moreover, the court was unable to determine "what e-mail accounts, or what types of e-mail accounts, the government might investigate." *Id*.

That problem was particularly salient in an electronic privacy case because the answer turned "in part on the expectations of privacy that computer users have in their e-mails—an inquiry that may well shift over time, that assuredly shifts from internet-service agreement to internet-service agreement and that requires considerable knowledge about ever-evolving technologies." *Id*. The electronic-privacy implications of the case therefore made it undesirable to litigate the constitutionality of the statute before a plan to investigate emerged.

Contrast the facts of this case. This case does not involve a federal statute that potentially applies to electronic searches of every possible type everywhere in the country; it involves a single section of a municipal ordinance, which applies only to hotel and motel guest registries in Los Angeles. This case also does not involve rapidly shifting technological and contractual realities. And in this case, petitioner stipulated that respondents have been and will continue to be subject to warrantless searches of their registries—where failure to comply is a criminal

offense. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2345 (2014) (finding controversy ripe when "the threat of future enforcement" was "substantial" and noncompliance carried criminal penalties). The narrowness of the factual context, and the dramatically higher probability of future enforcement, make a ripeness challenge in this case unlikely to succeed. It is unsurprising that petitioner never even raised such a challenge below, and indeed, does not purport to do so now.

To be sure, the Sixth Circuit in *Warshak* supported its reasoning with some discussion of *Sibron v. New York*, 392 U.S. 40, 59 (1968), which held that certain Fourth Amendment facial challenges are disfavored. *See Warshak*, 532 F.3d at 529. However, that citation is a far cry from adopting a rule of law stating that such challenges can never be brought. Indeed, the Sixth Circuit acknowledged that in *Berger v. New York*, 388 U.S. 41 (1967), this Court "appeared to invalidate a New York eavesdropping statute on its face." 532 F.3d at 530. *Warshak* also acknowledged that in a number of cases, this "Court has issued Fourth Amendment rulings that effectively invalidated statutes in whole or in part." *Id*. at 531 (citing *Payton v. New York*, 445 U.S. 573, 589-90, 598 & n. 46 (1980); *Torres v. Puerto Rico*, 442 U.S. 465, 471, 474 (1979)). Thus, while *Warshak* may stand for the proposition that facial challenges are not preferred (a proposition with which respondents do not quibble), it cannot mean that they are prohibited in all instances. Especially when, as here, the ordinance in question is applied consistently to authorize unconstitutional searches—indeed, the entire point of the ordinance is to permit

warrantless searches outside the bounds of normal exceptions to the warrant requirement.

2. Even if this case did present a true circuit split—which it does not—that would not justify certiorari because the question presented is unimportant. Taking the question at face value, petitioner asks this Court to decide whether a facial Fourth Amendment challenge is *ever* permitted. Petitioner's goal, at least nominally, is to establish that the answer is "no."

What would that accomplish? The decision below would be reversed. But petitioner provides no evidence that there is some epidemic of pending facial Fourth Amendment challenges that is confusing the lower courts and demanding this Court's attention. Indeed, such challenges are extremely rare—in most cases, when a facial challenge is brought, it is accompanied by an as-applied challenge, a form of challenge to which petitioner does not object.[1]

Moreover, facial challenges are already difficult to win. Many such challenges will be dismissed on

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[1] Indeed, respondents themselves could bring an as-applied challenge to § 41.49. The result of that case would be the same as this one: the ordinance would be deemed unconstitutional. Other parties could rely on that precedent to bring their own challenges to the ordinance. The outcome would be identical, but all parties would endure substantial additional effort and expense to reproduce it. The en banc dissent conceded as much. *See* Pet. App. 15 ("The Patels may be right in asserting that as a practical matter the Los Angeles Police Department has applied the ordinance to undertake searches that violate the Fourth Amendment.").

justiciability grounds, like the challenge in *Warshak*, or the challenge in *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1146 (2013). The ones adjudicated on the merits are also unlikely to succeed because the standard for winning a facial challenge is high. But petitioner can provide no reason why, if a plaintiff meets that standard, the courts should reject his challenge anyway—which is all that the question presented seeks to establish.

The categorical prohibition on facial Fourth Amendment challenges that petitioner seeks is also flatly inconsistent with this Court's precedents. As explained above, this Court has already identified at least some circumstances where a facial Fourth Amendment challenge is appropriate. *See Berger*, 388 U.S. at 55 ("[T]he statute is deficient on its face"); *see also Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602, 614 (1989) (considering a "facial challenge" to "breath and urine tests required by private railroads," even though ultimately not finding the challenge meritorious). These cases hold that when a legislature attempts to hobble the procedural protections that the Fourth Amendment requires, the legislative enactment can be struck down. And for good reason. Imagine that a jurisdiction enacted a statute permitting general warrants, or warrantless, suspicionless searches of the home. There can be little doubt that such statutes would be unconstitutional on their face, and that their invalidation would be fully consistent with settled Fourth Amendment principles.

This Court has also authorized facial challenges in the administrative search context. In *New York v. Burger*, 482 U.S. 691 (1987), this Court set forth

three criteria that warrantless administrative searches must meet. The last of these is that "the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." *Id*. at 703. By its terms, this inquiry calls for an examination of the statute on its face. *See also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 325 (1978) (holding that an inspection statutes was "unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent" after conducting this statutory analysis).

The decision below is consistent with those principles as well. The court of appeals held that under this Court's precedents, a warrantless administrative search of business records is only permissible if the search mechanism includes a provision for pre-compliance judicial review. This Court has reached precisely that result before. *See, See v. City of Seattle*, 387 U.S. 541, 544-45 (1967) ("It is now settled that" a demand to inspect "corporate books or records . . . may not be made and enforced by the inspector in the field," and the party subject to search "may obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply."); *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) (holding that a party receiving an administrative subpoena may question its reasonableness "before suffering any penalties for refusing to comply with it, by raising objections in an action in district court").

What petitioner actually wants this Court to decide is that the court of appeals misapplied the standard for facial challenges—but that question does not implicate a circuit conflict or otherwise warrant this Court's review. *See* S. Ct. R. 10 (providing that a petition is rarely granted when the asserted error consists of "the misapplication of a properly stated rule of law"). Instead of accepting that it lost because particular features of § 41.49 offend the Fourth Amendment, petitioner has sought to inflate the issue by describing it at a higher level of generality. This Court should not hesitate to burst petitioner's bubble.

3. Finally, petitioner has waived its ability to raise this issue. In its two pre-trial stipulations, petitioner conceded that the sole issue to be decided in this case is a facial challenge to § 41.49. It laid out in detail the defenses it intended to prove. Never—not once—did petitioner argue that that facial Fourth Amendment challenges are not permitted, nor did it ever cite *Sibron*. That silence continued through the trial and the appeal. Indeed, *Sibron* and its progeny were never mentioned at all in connection with this case until the eve of the en banc oral argument, when Chief Judge Kozinski issued an order requesting the parties to be prepared to address the import of that decision. The subsequent en banc majority opinion (which Chief Judge Kozinski joined), however, never discussed the issue that petitioners now seek to raise. It was mentioned only in the dissenting opinions.

Based on the procedural history of this case, the broad question whether facial Fourth Amendment challenges are permitted was certainly never pressed, and was at least arguably never passed upon. This is

because petitioner expressly—and not only impliedly—waived the point. By stipulating that the court would consider the facial challenge to the statute, and by enumerating its defenses but excluding this one, petitioner gave up any reliance on its broader argument. And because the argument is not jurisdictional, that waiver should be treated as binding—even if the availability of facial challenges is an antecedent question to whether a particular facial challenge should have succeeded. *See Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 64 n.1 (1995) (Thomas, J., dissenting) (declining to determine the appropriate standard of review, even though it was "an antecedent question," because "petitioners waived the argument that a deferential standard was appropriate").

II. The Second Question Presented Does Not Warrant Certiorari.

The second question presented is a two-parter: first, whether motels have an expectation of privacy under the Fourth Amendment in their guest registries, when the creation of those registries was required by law and an ordinance authorizes the police to inspect the registry; and second, whether, if there is a reasonable expectation of privacy in those registries, an ordinance authorizing a search of those registries is unconstitutional unless it permits pre-compliance judicial review.

The first part of this question alludes to a 1-1 split between this case and a 1987 Massachusetts Supreme Court case, *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987). That this is the best petitioner can do—contrasting a single decision from

a state court, issued twenty-seven years ago—illustrates just how rarely this issue arises, and how unimportant it is.

On closer inspection, the split with *Blinn* is illusory as well. In that case, Mr. Blinn, a motel manager in Danvers, MA, was convicted of an offense after refusing to turn over a motel guest registry for warrantless inspection. *Id*. at 26. The court held that the manager had no reasonable expectation of privacy in the registry. To reach this conclusion, it noted that businesses generally have a lesser expectation of privacy than homes, that "though not determinative," the fact that the registry was required to be kept and furnished diminished the expectation of privacy in it, and that the manager could not rely on the guests' expectations of privacy for the same reasons. *Id*. at 27. The court rejected the argument that the search was an administrative search, deciding that those standards applied only within the confines of a particular statutory framework. *See id.* at 28.

The most significant distinction between this case and *Blinn* is that in this case, the court of appeals reached an alternative holding that renders any split over reasonable expectations of privacy irrelevant. In addition to holding that respondents have an expectation of privacy in their registries, the court of appeals held that those registries are "papers" within the meaning of the Fourth Amendment, and therefore protected on a property-based rationale. This Court has recently reiterated that a property-based rationale provides an independent basis for Fourth Amendment protection. *See Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013);

United States v. Jones, 132 S. Ct. 945, 951 (2012). As the en banc majority noted, not even the dissent quibbled with the conclusion that the registries were protected "papers." *See* Pet. App. 7, 29. *Blinn* never considered, let alone addressed, that argument—and indeed it appears likely that Mr. Blinn never made it. Petitioner identifies no court that has reached a contrary result as to whether guest registries are "papers," and indeed does not even ask this Court to review that conclusion. Consequently, the second question presented amounts to nothing more than a request for an advisory opinion regarding reasonable expectations of privacy.

Additionally, *Blinn* concluded that the search in question was not an administrative search. *See* 503 N.E.2d at 28. Thus, the court in *Blinn* had no occasion to comment on whether the registry inspection statute met the constitutional standards governing such searches. This case is different. Here, the crux of *petitioner's* argument below was that "examination of hotel registers is a valid administrative inspection designed to enforce Los Angeles Municipal Code § 41.49." Petitioner's C.A. Br. 15 (capitalization altered). Petitioner acknowledged, however, that in order to take advantage of that exception, it would have to show that motels were "closely regulated"—a point on which it submitted literally no evidence. *See* Pet. App. 54. That is why the district court and the court of appeals rejected petitioner's argument. *See id.* 54, 13 n.2. Moreover, both the majority and the dissent below agreed that in order for a warrantless administrative search to be constitutional, it must

include an opportunity for pre-compliance judicial review. *See id*. 12-13, 27-28.[2]

The circuit split is also illusory because norms relating to privacy shift over time. Petitioner has not shown that *Blinn*, which arose in Danvers, Massachusetts twenty-seven years ago (when the town had a population of approximately 24,000 according to U.S. Census records), had a factual context similar to this case, which arose in Los Angeles in 2006. Here, the majority held that respondents have a legitimate expectation of privacy in the registries because "businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—*e.g.*, customer lists, pricing practices, and occupancy rates." Pet. App. 7. It is unclear what norms relating to business records prevailed in Danvers in 1987, and in any event, there is no evidence that Blinn even made the argument that his registries contained business information. Instead, it appears that Blinn attempted to argue that his customers had a right to privacy that he had a right to enforce—a rationale that the majority in this case

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[2] To be sure, the dissent argued that the ordinance was not facially unconstitutional because it also permits searches pursuant to a warrant, or searches pursuant to other exceptions to the warrant requirement besides the administrative-search exception, *e.g.*, searches under exigent circumstances. Pet. App. 28. But that is beside the point, because no officer would have to rely on § 41.49 to execute one of those searches. The only work the ordinance does is to permit additional warrantless searches when well-established exceptions to the warrant requirement do not apply.

disclaimed. *Compare* 503 N.E.2d at 27 ("[T]he defendant's argument that he could withhold the register in order to protect the privacy of his guests must fail.") *with* Pet. App. 8 ("To be sure, the *guests* lack any privacy interest of their own in the hotel's records.").

In sum, although the Ninth Circuit and the Massachusetts Supreme Court reached different results as to whether particular motels in particular times and places had reasonable expectations of privacy in their guest registries, that does not amount to a disagreement on an important issue of federal law, and therefore does not warrant this Court's review.

2. In addition to not implicating a circuit split, the lower court's decision regarding expectations of privacy should be left intact because it was correct. A reasonable expectation of privacy constitutes an expectation that is subjectively held and regarded by society as reasonable. In this case, petitioner does not contend that respondents lacked a subjective expectation of privacy in their registries, and so the only question is whether that expectation was reasonable. It was. Guest registries, like other business records, contain information that businesses ordinarily do not display to the public. Moreover, as this Court explained in *New York v. Burger*, 482 U.S. 691, 699-700 (1987), "[a]n owner or operator of a business . . . has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable," so long as the business is not "closely regulated." The fact that respondents are required to keep the records by law may play into the

reasonableness of their expectation of privacy, but it does not eliminate it altogether.

3. The second part of the second question—whether the lack of pre-compliance judicial review makes a hotel registry search ordinance unconstitutional on its face—is also not the subject of a circuit split. *Blinn* did not even reach that question because the court concluded that on the facts before it, Blinn had no legitimate expectation of privacy. And petitioner identifies no other court that has disagreed with the court of appeals on the ultimate question in this case.

4. Even if this case implicated an actual split in authority, this Court should still deny review because the second question presented is unimportant. Petitioner's argument that this case will lead to the invalidation of a broad number of hotel registry laws is overwrought. In this case, petitioner stipulated that its ordinance authorizes warrantless, suspicionless searches of business records at any time. It further refused to submit any evidence that motels are closely regulated in Los Angeles. These concessions were critical to establishing the egregious nature of the Fourth Amendment violation. But the results in other jurisdictions may vary based on different facts. The mere fact that many ordinances do not expressly mention the need for pre-compliance judicial review does not mean that authorities are not, in fact, implementing procedural safeguards that comply with the Fourth Amendment in those jurisdictions.

Equally important, the decision below did not invalidate the portion of the ordinance that requires motels to collect and keep the relevant registry

information. *See* Pet. App. 5 ("Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement."). In the court below, petitioner argued that the ordinance deters the unlawful use of hotel rooms by making sure that everybody who comes into a motel knows that his whereabouts will have been recorded. *See* Petitioner's C.A. Br. 20. Because the ruling below does not disturb the record-keeping requirement, the deterrent effect remains intact. Furthermore, there is no evidence that warrantless inspections are necessary to further petitioner's law enforcement interest. As petitioner admitted below, respondents "recognize the City's regulatory interest surrounding § 41.49 and have engaged in a practice to further the objectives of the regulatory scheme" by committing not to let their rooms for the purposes of prostitution or other criminal activity. *Id*. 19. The point of warrantless inspections is to ensure that noncompliant operators cannot doctor or destroy their registries in anticipation of an announced inspection, or while a warrant issues. But when, as here, there is no evidence that the books are being cooked, petitioner cannot explain why it even needs the ability to search without a warrant.

Moreover, the court of appeals provided petitioner with a roadmap that will permit it to enact a constitutional version of the ordinance. At most, the decision below requires petitioner to offer pre-compliance judicial review to hotels and motels in Los Angeles facing a registry inspection. That is not a bad result: it is the norm under this Court's administrative search cases, and it protects businesses from undue burdens on their rights while

imposing minimal restraints on law enforcement. *See, e.g.*, *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967); *Donovan v. Lone Steer*, Inc., 464 U.S. 408, 415 (1984).

Finally, as noted by the court below, petitioner's officers remain free to inspect hotel guest registries pursuant to a warrant or one of the well-recognized exceptions to the warrant requirement, *see* Pet. App. 14, including consent, when appropriate.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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