PRESENTED AT

Advanced Texas Administrative Law Seminar

August 24-25, 2017
Austin, Texas

Did Patel Swallow Burger?

The Consequences of *City of Los Angeles v. Patel* Upon Suspicionless Administrative Searches

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It may safely be concluded that administrative search protocols do "not grant law enforcement officers unfettered discretion to conduct searches of business premises through any means of their choosing and do not provide notice to bar owners that their business, employees, and patrons are subject to armed S.W.A.T. team raids, physical assault, threats at gunpoint, and prolonged detention. Defendants conducted a S.W.A.T. team raid, blocked the exits, and engaged in a massive show of force. They physically assaulted plaintiffs, who had weapons pointed at their faces by men in ski masks and were detained for many hours without being permitted access to the restrooms . . . the nature of the raid's execution led employees to believe that they were being robbed by armed gunmen and not that law enforcement authorities were inspecting Club Retro for compliance with state and local ordinances. Defendants' search of Club Retro extended into the attic and a private apartment located in the building. A deputy sheriff broke down the door to that separate apartment, and the children in the room were removed to the bar to be photographed. Property in the bar was destroyed."

Club Retro, LLC v. Hilton, 568 F.3d 181, 201, 194 (5th Cir., 2009)

Has Patel Swallowed Burger?

> . . . the law governing administrative searches continues to develop, the bench and bar must be on the lookout for situations where *Patel* does hold sway.

Rivera-Corraliza v. Puig-Morales, 794 F.3d 208, 223 (1st Cir., 2015)

> It was a scene right out of a Hollywood movie. On August 21, 2010, after more than a month of planning, teams from the Orange County Sheriff's Office descended on multiple target locations. They blocked the entrances and exits to the parking lots so no one could leave and no one could enter. With some team members dressed in ballistic vests and masks, and with guns drawn, the deputies rushed into their target destinations, handcuffed the stunned occupants—and demanded to see their *barbers' licenses*.

Berry v. Leslie, 767 F.3d 1144, 1147 (11th Cir. 2014); see also, *Club Retro, LLC v. Hilton*, 568 F.3d 181, 201, 194 (5th Cir., 2009).

***CITY OF LOS ANGELES V. PATEL*, 135 S.CT. 2443, 192 L. ED 2D 435 (2015)**

5-4, Sotomayor, J. joined by Justices Kennedy, Ginsburg, Breyer, and Kagan, JJ. Justice Scalia, Chief Justice Roberts, and Justice Thomas dissented. Justice Alieto filed a dissenting opinion which was also joined by Justice Thomas.

I. Facts

Los Angeles Municipal Code §41.49 required hotel and motel operators to collect and retain information about guests including, "the guest's name and address; the number of people in each guest's party; the make, model, and license plate number of guests' vehicles parked on hotel property; date and time of arrival and scheduled departure date; the room; the rate, the amount collected for the room, and method of payment.

Guests without reservations, those who intended to pay for their rooms with cash, and any guests renting for less than 12 hours were required to present photographic identification at check-in; hotel operators were required to record the number and expiration date of the identification. If guests checked in using an electronic kiosk, the hotel's records kept the guest's

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Generally, internal citations and punctuation have been omitted from quotes.

credit card information. *City of Los Angeles v. Patel*, 135 S.Ct. 2443, 2448. The information could be maintained in either electronic or paper form.

The sole basis of challenge was Section 41.49(3)(a)'s requirement that hoteliers allow inspection of the records by Los Angeles Police Department upon request. A refusal to turn over guest records was a misdemeanor subject to $1,000 fine and arrest with incarceration of up to six month in jail.

In its entirety section 41.49(3)(a) stated:

> The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business. *Patel v. City of Los Angeles*, 738 F.3d 1058, 1060, fn. 1 (2013), *aff'd* 135 S. Ct. 2443 (2015).

The only question before the Court was whether section 41.49(3)(a)'s allowance for warrantless, suspicionless inspection of the hotel's records was facially unconstitutional under the Fourth Amendment. Initially, both facial and as-applied challenges were made by respondent hoteliers, but the as-applied challenge was abandoned. The single stipulated fact on which the case proceeded was that respondents "have been . . . and continue to be subject to searches and seizures of motel registration records . . . without consent or warrant pursuant to [section] 41.49."

II. FACIAL CHALLENGES UNDER THE FOURTH AMENDMENT NOT DISFAVORED

The Court, surprising many, held that "facial challenges under the Fourth Amendment are not categorically barred or especially disfavored." 135 S.Ct. 2449. To bring its holding into the constellation of *stare decisis* the majority noted that "[t]he Court's precedents demonstrate not only that facial challenges to statutes authorizing warrantless searches can be brought, but also that they can succeed." *Id.*, 2451. "While such challenges are the most difficult to mount successfully, the Court has never held these claims cannot be brought under any otherwise

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First appeared as part of the conference materials for the
12th Annual Advanced Texas Administrative Law Seminar session
"Did *Patel* Swallow *Burger*?"