

No. 25-4238

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NOVEDADES Y SERVICIOS, INC.; ESPERANZA GOMEZ ESCOBAR,

Plaintiffs-Appellees,

v.

FINANCIAL CRIMES ENFORCEMENT NETWORK; ANDREA GACKI, in her official capacity as Director of the Financial Crimes Enforcement Network; UNITED STATES DEPARTMENT OF THE TREASURY; SCOTT BESSENT, in his official capacity as Secretary of the Treasury; PAMELA BONDI, Attorney General, in her official capacity as the Attorney General of the United States,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of California; No. 3:25-cv-00886; Hon. Janis L. Sammartino

APPELLEES' PRELIMINARY-INJUNCTION RESPONSE BRIEF

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DISCLOSURE STATEMENT

Appellee Novedades y Servicios, Inc., has no parent corporation, and no corporation owns 10% or more of any stock in it.

Dated: September 3, 2025

/s/ Robert E. Johnson
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STATEMENT REGARDING ORAL ARGUMENT

This case concerns a sweeping federal surveillance requirement and the guardrails, if any, imposed by the Constitution and the Administrative Procedure Act. Appellees submit that oral argument is warranted.

JURISDICTIONAL STATEMENT

Appellees agree with Appellants' jurisdictional statement.

PERTINENT AUTHORITIES

Pertinent authorities are contained in the addendum to the government's brief, as well as the addendum to this brief.

STATEMENT OF ISSUES

Appellees add to Appellants' statement of the issues an alternative ground for relief that was raised but not reached below: Whether the challenged agency action likely violates the Fourth Amendment.

INTRODUCTION

Reading the opening brief, you might think the district court inexplicably enjoined a routine reporting requirement. But there is nothing routine about this dragnet general warrant, which is why three separate district courts found it likely unlawful. *See Tex. Ass’n of Money Servs. Bus. v. Bondi*, ___ F. Supp. 3d. ___, 2025 WL 1540621 (W.D. Tex. May 19, 2025); *Novedades y Servicios, Inc. v. FinCEN*, ___ F. Supp. 3d ___, 2025 WL 1501936 (S.D. Cal. May 21, 2025); *Valuta Corp. v. FinCEN*, No. 25-cv-191, 2025 WL 2389430 (W.D. Tex. June 24, 2025).

For years, the Financial Crimes Enforcement Network (“FinCEN”) has subjected Americans’ financial transactions to ever-increasing surveillance.¹ This case marks a dramatic escalation, as FinCEN lowered the cash transaction reporting threshold from \$10,000 to \$200 for money services businesses in thirty zip codes along the border. That is a reduction of **98 percent**. Plaintiff Novedades y Servicios is subject to that requirement because it provides ordinary financial services—check cashing, money transfers, and money orders—to working class customers who often lack bank accounts. The upshot is that Novedades and other targeted companies

¹ *See generally* House Select Subcommittee on the Weaponization of the Federal Government, Interim Staff Report, *Financial Surveillance in the United States: How the Federal Government Weaponized the Bank Secrecy Act to Spy on Americans* (Dec. 6, 2024), <https://perma.cc/LBJ9-6FY9> (detailing the “decaying state of Americans’ financial privacy”).

must report reams of everyday transactions to federal law enforcement, as FinCEN is treating both businesses and their customers as criminally suspect without any warrant or probable cause.

FinCEN has explained that its goal is to capture “nearly all cash transactions vulnerable to abuse,” while “excluding clearly de minimis amounts,” ER-169, and that the resulting information will “generate new leads and identify new and related subjects in ongoing cases,” ER-165. In briefing below, FinCEN was even more explicit: It is seeking a “*full picture of MSB activity* in the region” to “generate analysis and information about *previously unsuspected money laundering*.” Doc. 40 at 11–12 (emphasis added). An information demand that seeks a “full picture,” to uncover “previously unsuspected” crimes, is a general warrant.

This general warrant is also a paperwork nightmare. By FinCEN’s own estimate, for non-bank businesses without sophisticated automatic processing systems, each report takes an average of 24 minutes. Given the volume of transactions, even on the low end, it would take Novedades more hours to process the paperwork than there are in the day—*30 hours of daily additional paperwork*. ER-149. Mistakes filling out all that paperwork could lead to significant penalties.

It is far from clear that these costs will yield benefits. Nothing in the record explains how (for instance) FinCEN thinks a cartel would launder funds by cashing

a \$201 check, or, even if covered transactions could be abused, why cartels could not just transact in other zip codes. Only innocent businesses and customers will be caught in the dragnet.

The district court correctly issued a preliminary injunction. Plaintiffs are likely to prevail on their claims that FinCEN’s surveillance dragnet exceeds its statutory authority, which is restricted to more limited, subpoena-like demands; is a substantive rule that was issued without notice-and-comment; and is arbitrary and capricious. As another judge concluded in parallel proceedings, it also likely violates the Fourth Amendment.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

1. Currency Transaction Reports

The Bank Secrecy Act of 1970 authorizes the Treasury Secretary to require “a domestic financial institution” to file reports on cash transactions “in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation.” 31 U.S.C. § 5313. In 1972, after notice-and-comment, the Treasury Secretary issued a rule requiring reports on cash transactions over \$10,000—referred to as “Currency Transaction Reports” or “CTRs.” *See* 37 Fed. Reg. 6912 (Apr. 5, 1972) (codified at 31 C.F.R. § 1010.311).

CTRs are filed with FinCEN, which is a bureau within the Treasury Department. *See* 31 C.F.R. § 1010.306(a)(3); 31 U.S.C. § 310. Federal law directs FinCEN to “[a]nalyze and disseminate” reports to “identify possible criminal activity” and to “support ongoing criminal financial investigations and prosecutions.” 31 U.S.C. § 310(b)(2)(C). FinCEN maintains a searchable database of CTRs, and it provides access to local, state, federal, and foreign law enforcement. SER-49–50.

To comply with the Paperwork Reduction Act, FinCEN has estimated how long it takes to file a CTR. *See* 85 Fed. Reg. 29022 (May 14, 2020). FinCEN estimated eight minutes per CTR, but that is an average that includes large financial institutions (like Chase and Citibank) using automated processes. *Id.* at 29029. FinCEN estimated that non-bank filers without automated processes take twenty-four minutes. *Id.*

Because the \$10,000 threshold has never been adjusted for inflation, the number of CTRs has ballooned, with FinCEN receiving over 20 million in 2023 alone. *See* FinCEN, *Year in Review for FY 2023*, at 3 (2024), <https://perma.cc/LB4Z-BJX9>. Most go unread: A report from the Government Accountability Office found that, from 2014 through 2023, “[l]aw enforcement agencies accessed a small percentage.” GAO, *Currency Transaction Reports: Improvements Could Reduce Filer*

Burden While Still Providing Useful Information to Law Enforcement, at 1 (Dec. 2024), <https://perma.cc/FLL5-3CKB>. If the \$10,000 threshold were adjusted for inflation it would be over \$72,000 today, and raising the threshold to that level would reduce the number of CTRs by at least 90 percent. *Id.* In response, FinCEN agreed with the report’s recommendation to reduce the number of CTRs “such as by raising the reporting threshold.” *Id.* at 57. But that has not happened.

2. Money Services Businesses

In 1999, again after notice-and-comment, FinCEN issued a rule defining a category of businesses subject to the Bank Secrecy Act called “money services businesses.” 64 Fed. Reg. 45438 (Aug. 20, 1999). The definition of Money Services Business (or “MSB”) includes businesses that offer currency exchange, check cashing, and money transfers. 31 C.F.R. § 1010.100(ff).

Money Services Businesses are required to file CTRs for cash transactions over \$10,000. *See* 31 C.F.R. § 1010.311; *id.* § 1010.100(t)(3). And they are subject to other obligations under the Bank Secrecy Act regime. They are required to register with FinCEN. *See id.* § 1022.380. They must maintain an effective anti-money laundering program. *Id.* § 1022.210. And, like banks and other financial institutions, they must report suspicious transactions—including transactions structured to evade the CTR requirement. *See id.* § 1022.320.

Still, MSBs conduct many transactions without reporting or even recording any customer information. *See, e.g.*, ER-124, ER-142–44; SER-70–71, SER-206. For most MSB transactions, FinCEN does not require MSBs to ***record*** customer information unless the transaction is over \$3,000. 31 C.F.R. § 1010.410(e), .415(a). For currency exchange, the threshold is \$1,000. *Id.* § 1022.410(b)(3). Even then, these thresholds are for recordkeeping, not reporting. Except for unusual transactions that trigger the obligation to report suspicious activity, transactions need not be ***reported*** to FinCEN unless they are over \$10,000.²

3. Geographic Targeting Orders

While the Bank Secrecy Act provision authorizing CTRs directs the Treasury Secretary to act “by regulation,” 31 U.S.C. § 5313, Congress in 1988 enacted another provision authorizing the Treasury Secretary to require reports by “order,” Pub. L. 100-690, tit. VI, § 6185(c), 102 Stat. 4181, 4355 (1988).³

Specifically, the Treasury Secretary may “issue an order requiring any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area” to

² Even the requirement to report suspicious transactions applies only to transactions that involve more than \$2,000. *See* 31 C.F.R. § 1022.320(a)(2).

³ The Administrative Procedure Act defines “order” as the “final disposition ... in a matter other than a rule making,” and defines “adjudication” as “agency process for the formulation of an order.” 5 U.S.C. § 551(6), (7).

collect information and file reports on financial transactions. 31 U.S.C. § 5326. By law, these orders are presumptively confidential. *Id.* § 5326(c). Orders expire after 180 days but can be renewed. *Id.* § 5326(d). Although the phrase does not appear in the statute, these orders have come to be referred to as “geographic targeting orders” or “GTOs.”

In 1989, the Treasury Department promulgated regulations for the issuance of GTOs. *See* 54 Fed. Reg. 33675 (Aug. 16, 1989) (codified at 31 C.F.R. § 1010.370). The regulations provide that an “order ... shall be directed to the Chief Executive Officer” of the targeted business and should require reports of transactions “by, through or to such financial institution specified in the order.” 31 C.F.R. § 1010.370(b).

In the accompanying release, Treasury explained how it expected GTOs would work. After selecting a geographic area (which could range from “a few city blocks” to “a major metropolitan area”), the agency would “identify the affected financial institution or institutions in the geographic area that would receive the targeting order.” 54 Fed. Reg. at 33675–76. “[G]eographic targeting orders would not be published in the Federal Register, but would be issued only to the affected financial institutions,” generally by “certified or registered mail, return receipt

requested.” *Id.* at 33676–77.⁴ The agency also spelled out why GTOs are presumptively confidential: “[O]nce criminals learn of the enhanced reporting requirements and where they are applicable, criminals merely will move on to another non-targeted branch.” *Id.* at 33678.

Consistent with this rulemaking, early GTOs involved investigations into specific businesses and specific potential wrongdoing. For instance, in 1991, a business was targeted after an informant heard conversations about money laundering. *See United States v. Oreira*, 29 F.3d 185, 187 (5th Cir. 1994). Later in the 1990s, FinCEN issued a GTO directing twelve money transmitting businesses in New York City to report on transactions wiring money to Colombia—*after* investigations produced evidence that the businesses had funneled around \$800 million to Colombia in a single year.⁵

⁴ Treasury would also “contact the institution a few days after” and would “make every effort to work with the targeted financial institutions to ensure maximum compliance ... at a minimum burden.” 54 Fed. Reg. at 33676–77. Overall, Treasury expected a typical GTO would cover only around 250 transactions per institution per year—or around 120 hours of paperwork burdens. *Id.* at 33678.

⁵ *See* ER-36; *see also* SER-7–9; Testimony of Treasury Under Secretary to House Committee on Banking and Financial Services (June 11, 1998), <https://perma.cc/Z4XC-94PY>. The GTO later expanded to cover an additional 10 businesses. *Id.*

Over time, FinCEN’s use of GTOs has become more aggressive.⁶ Most notably, beginning in 2016, FinCEN issued successive GTOs requiring title insurance companies to report the identities of cash buyers of residential properties. That GTO first applied in New York City and Miami, but FinCEN broadened the scope with successive renewals, eventually covering dozens of cities in fourteen states and D.C.⁷ The process of expansion culminated in a rulemaking that (beginning December 2025) will apply the reporting requirement nationwide. *See* 89 Fed. Reg. 70258 (Aug. 29, 2024).⁸

⁶ A 2014 GTO in Los Angeles targeted “nearly every business in the Fashion District”—some 2,000 entities ranging from lingerie stores to flower shops. FinCEN, *Press Release* (Oct. 2, 2014), <https://perma.cc/Z4SD-MPXU>. The next year, FinCEN targeted around 700 electronics-exporting businesses in Miami to “shed light on cash transactions that may be tied to trade-based money laundering.” FinCEN, *Press Release* (Apr. 21, 2015), <https://perma.cc/UN9S-4HH8>.

⁷ *See* FinCEN, *Press Release* (July 27, 2016), <https://perma.cc/JTG6-SGV7>; FinCEN, *Press Release* (Oct. 15, 2024), <https://perma.cc/RM3M-KGVR>.

⁸ FinCEN’s view of its authority has grown in other ways as well. For instance, a recent House Subcommittee investigation detailed how FinCEN, without “any specific evidence of particularized criminal conduct,” compelled banks to report supposedly suspicious transactions involving legal (but FinCEN-disfavored) activities like shopping at Dick’s Sporting Goods or taking trips for “no apparent legitimate reason.” *See* House Select Subcommittee on the Weaponization of the Federal Government, Interim Staff Report, *Financial Surveillance in the United States: How Federal Law Enforcement Commandeered Financial Institutions to Spy on Americans* 1–2, 24 (Mar. 6, 2024), <https://perma.cc/H6SL-5PLH>. Concerns have also been raised about how financial surveillance can lead banks to close accounts of targeted individuals—a phenomenon known as “debanking.” *See* Press Release, House Oversight Committee, *Comer Investigates Apparent Politically Motivated Debanking of Thirty Tech Founders, First Lady Melania Trump* (Jan. 24, 2025),

B. The Challenged Border GTO

FinCEN issued the GTO at issue—the Border GTO—on March 14, 2025. *See Issuance of a Geographic Targeting Order Imposing Additional Recordkeeping and Reporting Requirements on Certain Money Services Businesses Along the Southwest Border*, 90 Fed. Reg. 12106 (Mar. 14, 2025). Contrary to the statutory presumption that GTOs are confidential—and contrary to the agency’s earlier expectation that GTOs “would not be published in the Federal Register,” 54 Fed. Reg. at 33676—the Border GTO was published in the Federal Register. Also contrary to Treasury’s initial expectations, *id.* at 33677, affected businesses did not receive *any* individualized notice. ER-146; SER-73.⁹

Rather than target specific businesses, the Border GTO defines a *category* of “Covered Businesses”: any “money services business, as defined in 31 C.F.R. 1010.100(ff), located in the Covered Geographic Area.” 90 Fed. Reg. at 12107. The “Covered Geographic Area” consists of 30 zip codes along the border in California and Texas. *Id.* The zip codes are not contiguous, and some are surrounded by

<https://perma.cc/B2KN-CS9V>.

⁹ Nor, as the 1989 release anticipated, did anyone from FinCEN reach out to targeted businesses to help minimize the burden. 54 Fed. Reg. at 33676. And, although Treasury regulations provide that GTOs should include the name of a “Treasury official to be contacted,” 31 C.F.R. § 1010.370(c)(6), the “contact” identified in the Border GTO was “the FinCEN at <https://www.fincen.gov/contact>,” 90 Fed. Reg. at 12108.

untargeted zip codes. *See* SER-226–30 (maps). For “Covered Businesses” in the “Covered Geographic Area,” the Border GTO lowers the CTR threshold from \$10,000 to \$200. 90 Fed. Reg. at 12107.

The Border GTO states that Covered Businesses “may be liable, without limitation, for civil and criminal penalties for violating any of the terms of this Order.” 90 Fed. Reg. at 12107–08. FinCEN issued “FAQs” clarifying that penalties for willful violations are \$71,545 per transaction. FinCEN, *Frequently Asked Questions* 8 (Mar. 24, 2025) (citing 31 C.F.R. § 1010.821), <https://perma.cc/FWE2-KJBJ>. Even negligent violations trigger per-violation penalties of \$1,430. *See* 31 C.F.R. § 1010.821. Under these same penalty provisions, banks are routinely assessed civil penalties of hundreds of millions—or even billions—of dollars for BSA reporting lapses.¹⁰

After this lawsuit was filed, the government produced an internal memorandum containing its rationale for the Border GTO. *See* ER-157. The memo is dated “March XX,” so it is impossible to tell whether it was finalized before or after the March 14 publication of the Border GTO—or if it was ever finalized at all.

¹⁰ *See* FinCEN, *Press Release* (Oct. 10, 2024), <https://perma.cc/87VB-HBGB> (\$1.3 billion penalty for BSA reporting failures including late-filed CTRs).

ER-40.¹¹ The government has also produced an “administrative record” that consists of the documents cited in the March XX Memo. *See* SER-232–741.

In the March XX Memo, FinCEN admits that the purpose of lowering the reporting threshold is to cast a much wider net for criminal investigations by generating CTRs for everything except “clearly de minimis amounts.” ER-169. By gathering much more information, the Border GTO will supposedly “generate new leads and identify new and related subjects in ongoing cases.” ER-165. It may “create leads related to professional money launderers,” “support investigations into MSBs themselves,” and “capture information about the laundering of funds related to multiple criminal typologies.” ER-165.

The March XX Memo acknowledges that “most of the business that MSBs conduct is legitimate and essential.” ER-160. Services offered by MSBs are “tailored to persons without bank accounts,” and MSBs in the targeted zip codes provide “competitively priced services and convenient location[s] offered near the border.” ER-162.

¹¹ A “Clearance Sheet” shows the memo was “[d]rafted” in February 2025; but the date the memo was “[c]leared” by FinCEN’s “Principal Deputy Assistant General Council [sic],” as well as the date it was “[a]pproved” by Director Gacki, are listed as “MM/DD/YY.” ER-173.

Even so, the March XX Memo asserts without citation that “MSBs along the southwest border are particularly at risk for abuse by money launderers for cartels.” ER-161. The March XX Memo does not, however, explain how transactions like cashing a \$201 check could be used to launder funds, or, assuming such services are used for money laundering, why cartels could not just engage in those transactions outside the covered zip codes.

Far from supporting the scope of the GTO, the sources cited in the March XX Memo detail many *unrelated* ways that cartels launder funds. According to one source, “it would take approximately 2,564 deposits of the average \$390 remittance to move a million dollars across the border.” SER-394. So, instead, cartels launder funds using a “vast network of Chinese money launderers,” SER-394, “trade-based money laundering,” SER-150, “cryptocurrency exchanges,” SER-150, “bulk cash smuggling,” SER-150, and “money mules” who are “used to create shell companies to open business bank accounts,” SER-289. The cited sources also discuss unlicensed money services businesses—underground entities that would not be captured by the Border GTO. SER-333–34. When the cited sources do mention money laundering through licensed MSBs, they were in Ohio, Georgia, Missouri, and Utah. ER-178; SER-507–09; SER-626. The one cited case involving an MSB in

California was in Oakland—approximately five hundred miles from the border. SER-682.

The March XX Memo explains that—rather than selecting zip codes based on concrete information about money laundering—FinCEN selected zip codes “based on risk factors that include their proximity to the border and to a border crossing, and, based on a FinCEN analysis of CTR filings in 2024, whether the number of CTRs filed in the ZIP code is high relative to the population.” ER-165–66. In other words, zip codes were selected for the **\$200** reporting requirement based on their number of *over-\$10,000* transactions. ER-166. Those over-\$10,000 transactions often occurred just dozens of times. *See* ER-169 (zip code was targeted because it had “46 CTRs filed for a population of 71,956”); ER-166 (“11 CTRs”); ER-167 (“207 CTRs”); ER-168 (“210 CTRs”); ER-169 (“25 CTRs”). FinCEN did not analyze whether the over-\$10,000 transactions were illegitimate. Nor did it explain what over-\$10,000 transactions have to do with small-dollar reporting.

The Border GTO expires on September 9, 2025. 90 Fed. Reg. at 12107. But, as discussed, other GTOs have been repeatedly renewed and expanded, and the March XX Memo contemplates that the agency “may consider expanding this GTO to ZIP codes in Arizona and New Mexico in the future.” ER-166.

C. The Covered Businesses

Plaintiff Novedades is a Money Services Business that operates a one-person storefront in a covered zip code in southern San Diego. ER-142. Plaintiff Esperanza Gomez Escobar is an American citizen and entrepreneur who opened Novedades in 2020 to provide financial services to her local community. ER-142, ER-145.

Novedades provides money transfers, money orders, and check cashing for regular people, many of whom are low income and do not use banks. ER-142, ER-146. A typical customer might cash a paycheck and go across the street to buy groceries. ER-145–46. Most customers are regulars. ER-145. Ms. Gomez herself uses these services to send money to her family in Mexico. ER-152.

The Border GTO would have likely destroyed, or at least seriously wounded, Novedades and other MSBs in the targeted zip codes. *See, e.g.*, ER-151. Take the paperwork. During just the first six days that the Border GTO was in effect, Ms. Gomez struggled to complete the CTRs that were piling up. She had to double the number of people on duty and work after hours, and that was during the slow part of the month. SER-216. Before the Border GTO, Ms. Gomez had never filled out a CTR for any customer at Novedades. ER-146. But with the \$200 threshold, nearly every transaction required a CTR. ER-146–47; *see also* ER-143, ER-144. These

requirements translate, on the low end, to *over 30 hours per day* of additional work. ER-149. And Novedades is not unique in this respect.

MSBs throughout the affected zip codes were similarly overwhelmed. While the Border GTO was in effect in California, El Frijolito, an MSB in San Diego, went from filing about 10 CTRs over 20 years (and none in the last five years) to hundreds of CTRs each day for approximately 80% of its transactions. *See* SER-59–61. Texas MSBs (when not protected by preliminary relief) have faced similar burdens. *See* SER-72–74 (estimating 10–20 extra hours per day); ER-126 (estimating 98 extra hours per week); SER-208 (estimating 64 extra hours per day). Indeed, some Texas MSBs had to pause services for transactions over \$200 to clear backlogs. *See* ER-124–25, ER-125–26, ER-125.

Where the Border GTO is in effect, people are taking their business elsewhere to preserve their privacy. *See* ER-125; SER-72, SER-211–12; *see also* SER-225 (expressing privacy concerns over reporting of small-dollar transactions). Unaffected companies—including MSBs in unaffected zip codes—have sought those customers out. *See* ER-148; SER-196. At best, targeted MSBs face a devastating combination of lost business and compliance costs. At worst, they will stop offering covered services, close locations, or go out of business altogether.

D. Three Courts Preliminarily Enjoin The Border GTO

Three sets of plaintiffs sued to challenge the Border GTO, and three district judges entered preliminary relief.

1. Plaintiffs' Suit In The Southern District Of California

Plaintiffs Gomez and her small business Novedades filed this case in the Southern District of California on April 15, 2025. ER-189. Judge Sammartino entered a temporary restraining order on April 22, 2025. ER-180. Plaintiffs moved for a preliminary injunction, and Judge Sammartino held a hearing on May 15, 2025, *see* ER-6, where she considered declarations from Plaintiff Gomez, ER-141, representatives from several other MSBs in California and Texas, ER-122–29; SER-58–213, and two individuals in Texas, SER-192–203. A trade association, Money Services Business Association, Inc., participated as *amicus*. *See* Doc. 41. Judge Sammartino orally granted the motion at the hearing and, on May 21, 2025, entered her written decision. *See* ER-5.¹²

¹² Judge Sammartino granted Plaintiffs' motion to supplement the administrative record with the declarations that Plaintiffs submitted in support of the preliminary injunction (but denied the motion, without prejudice, as to declarations submitted by the *amicus*). *See* ER-6; *see also* *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005); *Nat'l Ass'n for Gun Rights, Inc. v. Garland*, 741 F. Supp. 3d 568, 600 (N.D. Tex. 2024), *appeal docketed*, No. 24-10707 (5th Cir. Aug. 6, 2024). The government did not oppose supplementing the record in this respect and does not challenge that aspect of Judge Sammartino's decision on appeal.

Judge Sammartino found Plaintiffs likely to succeed on their claim that the Border GTO is *ultra vires*. Judge Sammartino parsed the “plain language” of Section 5326 (the statute FinCEN invoked to authorize the Border GTO) and found—based both on the use of the word “order” and other features, including the statute’s presumption of confidentiality—that “Congress has authorized FinCEN to utilize GTOs as limited, investigatory tools directed to an identifiable business or group of businesses based on particularized facts,” which the Border GTO is not. ER-24. Because the Border GTO is a rule, not an order, Judge Sammartino also found that it required notice-and-comment under the APA. ER-38.

Judge Sammartino also held the Border GTO likely arbitrary and capricious. Among other things, FinCEN failed to consider the cost of compliance, ER-40–42, and there is also “no evidence that [FinCEN] weighed that burden [on the targeted MSBs] against the benefits” of the GTO, ER-42; FinCEN “failed to articulate a rational basis for the \$200 reporting threshold,” ER-43; and FinCEN “declined to consider any other reporting thresholds that might allow FinCEN to collect ‘highly useful’ reports ... while still mitigating [the] recognized burden on MSBs,” ER-46.

Having found a likelihood of success on the merits, Judge Sammartino found that the other equitable factors—including the risk of irreparable harm—favored a preliminary injunction. Plaintiff Gomez’s “declaration is replete with ample

evidence of concrete harm,” including “unsustainable” paperwork burdens and loss of customers and goodwill, and “[t]he Court has no doubt that the Texas MSB associates who filed declarations ... have experienced similar harms.” ER-49–51.

Judge Sammartino’s preliminary injunction covers all MSBs located in the Southern District of California. She declined the government’s request to limit relief to just the parties before her, explaining that “the APA expressly departs from [the] background rule” that relief must be party-specific. ER-53. At the same time, Judge Sammartino stated that “the Court will limit relief to within its jurisdiction” to allow for percolation in parallel litigation. ER-54.

2. Parallel Litigation In The Western District Of Texas

That parallel litigation involved a challenge to the Border GTO filed on April 1, 2025, in the Western District of Texas. *See Tex. Ass’n of Money Servs. Bus. (“TAMSB”) v. Bondi*, 2025 WL 1540621 (W.D. Tex. May 19, 2025). There, Judge Biery issued a TRO and, later, a preliminary injunction limited to the specific parties. *Id.* at *5, *17. Like Judge Sammartino, Judge Biery found that the Border GTO likely required notice-and-comment. *Id.* at *12–13. He also found the Border GTO likely arbitrary and capricious. *Id.* at *14–15.

Addressing an issue that Judge Sammartino did not reach, Judge Biery also held that the Border GTO likely violates the Fourth Amendment. *Id.* at *11. Judge

Biery distinguished the government’s primary authority, *California Bankers Association v. Shultz*, 416 U.S. 21 (1974), which “upheld [the] uniform, nationwide requirement to report cash transactions over \$10,000,” noting that the Border GTO “is not uniform across the country and instead targets particular MSBs and imposes special reporting burdens on all but *de minimis* transactions.” *Id.* at *10. The Border GTO “intrudes on most transactions and thus is not reasonable.” *Id.*

3. A Third Case, Also In The Western District Of Texas

The third case challenging the Border GTO was filed on May 30, 2025, in the Western District of Texas. *See Valuta Corp., Inc v. FinCEN*, No. 25-cv-191 (W.D. Tex.). The plaintiffs in that case are two MSBs in covered zip codes in El Paso. The owners of both businesses submitted declarations to Judge Sammartino, *see* ER-122–129; SER-68–191, testified at the preliminary injunction hearing before Judge Biery, *see TAMSB*, 2025 WL 1540621, at *18–19, and filed their own case after the first two courts entered relief that did not reach their businesses. Judge Schydlower entered a TRO and then, on July 22, entered a preliminary injunction for the named plaintiffs in that case. Judge Schydlower’s written decision is forthcoming.

E. Subsequent Developments

On July 8, 2025, more than six weeks after Judge Sammartino issued her written decision, the government noticed this appeal. The government also appealed

Judge Biery’s preliminary injunction in *TAMSB* to the Fifth Circuit. *See* No. 25-50481 (5th Cir.). Both this case and *TAMSB* have been stayed in the district courts pending appeal. The plaintiffs in the third case, *Valuta*, have moved for summary judgment, and proceedings continue there.

SUMMARY OF ARGUMENT

I.A. The government’s appeal focuses on likelihood of success on the merits, but the district court correctly found Plaintiffs likely to succeed on three separate grounds. Judge Biery, meanwhile, also found likelihood of success on a fourth ground that Plaintiffs raised in this case (although Judge Sammartino did not reach it), and this Court could affirm on that ground too. *See Bennett v. Isagenix Int’l LLC*, 118 F.4th 1120, 1125 (9th Cir. 2024) (court can affirm preliminary injunction “on any ground supported by the record”).

1. First, the Border GTO is likely *ultra vires*. The statute’s use of the word “order” indicates that Congress authorized requests for information directed to specific businesses based on particularized facts, not this type of sweeping surveillance dragnet. This conclusion is confirmed by other aspects of the statute—including the presumption of confidentiality, which is fundamentally inconsistent with a GTO that targets an entire *category* of businesses, rather than specific identified businesses. This interpretation is also supported by the principle of

constitutional avoidance: Interpreting the statute this way brings it into line with traditional agency subpoena practice and, as a result, lessens Fourth Amendment concerns.

2. Second, the Border GTO likely required notice-and-comment. Under general administrative law principles, the Border GTO is a rule because it demands information from a category of businesses (MSBs) rather than from identified businesses based on particularized facts. The government invites the Court to disregard general principles on the theory that Congress expressly allowed it to act by “order.” But the word “order” authorizes an order—not a rule promulgated without notice-and-comment.

3. Third, the Border GTO is likely arbitrary and capricious. The agency was required to explain why it had “reasonable grounds” to think this information was “necessary,” 31 U.S.C. § 5326, and even “highly useful,” *id.* § 5311, but instead asked for everything it might ever want on the theory that everything will include something. The agency also did not explain why the Border GTO will yield any benefits (when cartels can move to other zip codes), much less benefits that justify the extraordinary costs.

4. Finally, the Border GTO likely violates the Fourth Amendment as a general warrant. The primary case cited by the government below, *California Bankers*

Association v. Shultz, 416 U.S. 21 (1974), establishes that financial reporting requirements must be “reasonable” and “limited in nature,” and a requirement that a business report every non-*de minimis* transaction, without any particularized need or focus, is not reasonable.

B. As for the other equitable factors: Judge Sammartino correctly found that Plaintiffs established irreparable injury, and the government does not meaningfully contest that finding. **C.** Other factors favor Plaintiffs, too, as Plaintiffs’ concrete injuries vastly outweigh the government’s speculation about potential future investigations.

II. Based on the above, Judge Sammartino correctly entered relief postponing compliance with the challenged agency action throughout the district rather than just for Plaintiffs. Limits on non-party relief do not apply in Administrative Procedure Act cases like this, as this Court has held.

STANDARD OF REVIEW

This Court reviews the grant of a preliminary injunction for abuse of discretion. *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1114 (9th Cir. 2024). Specifically, this Court “review[s] the district court’s legal conclusions *de novo*, the factual findings underlying its decision for clear error, and the injunction’s scope for abuse of discretion.” *K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962, 969 (9th Cir.

2015) (citation omitted). A district court’s factual finding is clearly erroneous only if it is “illogical, implausible, or without support in inferences that may be drawn from the facts in the record.” *Porretti v. Dzurenda*, 11 F.4th 1037, 1047 (9th Cir. 2021) (citation omitted).

ARGUMENT

I. The District Court Properly Entered A Preliminary Injunction.

A. Plaintiffs Are Likely To Succeed On The Merits.

1. The Border GTO Is Likely *Ultra Vires*.

Section 5326 authorizes FinCEN to issue an “order” to either a “business” or “group” of businesses. 31 U.S.C. § 5326. That language, as Judge Sammartino concluded, contemplates “limited, investigatory tools directed to an identifiable business or group of businesses based on particularized facts.” ER-24. The type of subpoena-like informational demand that FinCEN anticipated in its earlier 1989 rule release, *see supra* pp. 8–9, would fit within that statutory command. By contrast, the Border GTO is something different. It does not address a particular company or companies based on particularized facts, and, instead, imposes new reporting requirements on businesses that meet a regulatory definition (“MSBs”). Six arguments confirm this interpretation of Section 5326.

First, Section 5326 directs FinCEN to act via “order,” which is a term of art in the APA. *See FDA v. R.J. Reynolds Vapor Co.*, 145 S. Ct. 1984, 1992–93 (2025)

(holding that a “‘term of art’ across administrative law” “carries the same meaning outside the APA as in it”). When Section 5326 was enacted in 1988, these definitions had been in the law for decades, and the distinction was well understood: Rules have “the character of legislative enactment carried out on an administrative level,” while orders are produced through adjudication involving “the application of a statute or other legal standard to a given fact situation involving particular individuals.” *Air Line Pilots Ass’n, Int’l v. Quesada*, 276 F.2d 892, 896 (2d Cir. 1960). When Congress authorized an “order,” it authorized a measure directed to identified businesses based on particularized facts.

The government claims to agree that Congress “deliberately incorporated the APA’s use of the term ‘order,’” Op. Br. 11, but in fact argues the opposite. In the government’s view, when interpreting the word “order,” the Court should *not* “apply[] general principles designed to determine the nature of an action susceptible of characterization as either an order or a rule,” and should instead hold that *any* action that “satisfies the relevant statutory criteria” qualifies as an “order,” *id.* at 16. Far from incorporating general APA principles, the government’s interpretation would override them.

The government’s interpretation of “order” cannot be squared with the Supreme Court’s holding, earlier this year, that Congress’s use of an APA “term of

art with a ‘long history in federal administrative law’” should be read in line with established judicial interpretations. *See R.J. Reynolds Vapor Co.*, 145 S. Ct. at 1991.

The government’s interpretation also cannot be squared with Section 5326’s plain text. The word “order” limits the agency’s authority: The statute says that if FinCEN finds “reasonable grounds” under the statutory criteria then it “may issue an order requiring” reports. 31 U.S.C. § 5326. What can the agency do if the statutory criteria are met? It can issue an “order.” By contrast, the government reads Section 5326 to mean that if FinCEN finds “reasonable grounds” then “the action that results is an ‘order.’” Op. Br. 12. That warps the statute—transforming language that defines (and thus limits) the agency’s authority into open-ended permission for the agency to take any type of regulatory action it wants.¹³

Second, Congress’s use of the word “order” was particularly significant because Treasury already had authority under the Bank Secrecy Act, 31 U.S.C. § 5313(a), to require reports via “regulation.” *See* ER-25–26. The primary difference between the existing provision and Treasury’s new authority under Section 5326 was that the provision for GTOs gave the agency authority to act via “order.” The new provision gave the agency a new tool in its toolbox—which, before, had been limited

¹³ In the alternative, the government argues that the Border GTO is in fact an “order” as that term is understood under the APA. Plaintiffs address that argument *infra* Part I.A.2.

to requiring reports via regulation—but directed the agency to act through adjudication directed at specific identified businesses.

The government’s contrary interpretation would lead to both redundancy and absurdity. If FinCEN can use Section 5326 to impose a new reporting obligation for all MSBs in 30 zip codes, why not 30 states? Or 49? Or 50? The United States of America is, after all, a “geographic area.” Under the government’s interpretation, so long as it calls its action an “order,” it can impose new reporting obligations for any category of regulated businesses in any part of the country, no matter how sweeping the category or how large the area. Under that view, there would no longer be any need for FinCEN’s rulemaking power under Section 5313. That is not the scheme Congress adopted.

Third, Section 5326(a) specifies that a GTO should apply to a “domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area.” That language confirms that GTOs are directed to an identified business or group of businesses, not a regulatory category. *See* ER-33 (“The most natural way to read this provision, in context, is that FinCEN may issue an order resulting from a factual determination with respect to either a single business or with respect to a group of multiple businesses,” not “a factual determination with respect to a zip code[.]”).

The government cites the dictionary definition of “group” as “a number of individuals assembled together or having some unifying relationship,” Op. Br. 15, but that confirms the point: If a group consists of a “number of individuals,” then “group” in Section 5326 refers to multiple *individual* companies—not a regulatory definition like “money services businesses.” *Cf. Trib. Publ’g Co. v. Comm’r*, 731 F.2d 1401, 1403 (9th Cir. 1984) (using “group” in corporate context to refer to a “parent-subsidiary controlled group”). That is particularly true because the word “group” appears alongside the statute’s initial reference to a single “domestic financial institution.” *See Aguayo v. U.S. Bank*, 653 F.3d 912, 927 (9th Cir. 2011) (“words used in a list should be read together and given related meaning”). The statute is naturally read to mean that an order should be directed either to one business or multiple identified businesses, *not* to either a single business or an open-ended category of businesses.¹⁴

Fourth, additional “strong evidence” is found at 31 U.S.C. § 5326(c), which provides for confidentiality of GTOs. *See* ER-34. An order directed at a particular business (or group of businesses) can be kept confidential because it can be served directly on the business, which is the procedure the agency contemplated in 1989

¹⁴ If a bride told her in-laws they could invite a “friend or group of friends” to her wedding, she would be surprised if her in-laws published an invitation in the newspaper for “all our friends in the zip code.”

when it promulgated regulations (still in effect, but disregarded here) providing that GTOs are to be served on the chief executive officers of identified companies. *See supra* p. 8. By contrast, a rule that establishes standards for categories of businesses cannot be confidential because it must be publicized so that businesses can read it and determine whether they must comply. That’s why rules are typically published in the Federal Register.¹⁵ That FinCEN published the Border GTO in the Federal Register, and publicized it via press release, “elucidates just how far GTOs have drifted from Congress’s original intention.” ER-37.

The government argues that the presumption of confidentiality shows the opposite, as confidentiality is inconsistent with notice-and-comment. Op. Br. 13. But that logic does not wash. If FinCEN issues an “order” that is actually a rule, confidentiality is impossible *regardless* of whether FinCEN provides for notice-and-comment. By contrast, under the district court’s interpretation of “order,” the statute hangs together: An order that is actually an order would not require notice-and-comment, and the order could be served confidentially on the targeted companies.

¹⁵ By law, agencies must publish “substantive rules of general applicability adopted as authorized by law” in the Federal Register. 5 U.S.C. § 552(a)(1)(D). Orders, on the other hand, are generally not published but are (if not confidential) available at the agency for public inspection. *Id.* § 552(a)(2)(A).

Fifth, this conclusion is confirmed by the major questions doctrine, under which courts “expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021) (cleaned up); *see also Biden v. Nebraska*, 600 U.S. 477, 496–97 (2023). At a single stroke, FinCEN infringed the privacy interests of an undetermined number of businesses and their customers from San Diego to the southern tip of Texas. Congress certainly did not *clearly* give FinCEN the power to adopt such a sweeping surveillance regime.

The district court—while agreeing with the statutory interpretation set out above—found the major questions doctrine inapplicable because FinCEN “is not relying on § 5326 to exert ‘an unheralded power to regulate a significant portion of the American economy.’” ER-22 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). Yet, while it is true that FinCEN has promulgated GTOs before—and those GTOs have grown increasingly invasive—the GTO here nonetheless marks a significant escalation. No GTO has ever demanded that businesses throughout a geographic area report on every non-*de minimis* transaction, and the near-unlimited power that FinCEN claims would allow still more ambitious GTOs. Plus, beyond the economic implications, the Border GTO imposes significant invasions of privacy that should trigger the requirement for clear congressional authorization as well.

Finally, confirmation comes from the canon of constitutional avoidance. *See, e.g., Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1106 (9th Cir. 2001). As explained in Part I.A.4, the Border GTO raises serious questions under the Fourth Amendment in part because it is much more sweeping than a typical subpoena, and, also unlike a typical subpoena, is not based on individualized facts. Construing Section 5326 as limited to “orders” directed to particular businesses, based on particularized facts, ameliorates these constitutional issues.

2. The Border GTO Likely Required Notice-And-Comment.

Judge Sammartino—and Judge Biery—also correctly held that the Border GTO is in substance a rule that required notice-and-comment. ER-38; *see also TAMSB*, 2025 WL 1540621, at *13.

The government’s main response is that the Court need not apply “general principles designed to determine the nature of an action susceptible of characterization as either an order or a rule,” Op. Br. 16, because Section 5326 overrides those principles. That is wrong for all the reasons set forth above, Part I.A.1. Indeed, those arguments have even more force when it comes to the government’s attempt to sidestep notice-and-comment. The APA provides that a statute must speak expressly to excuse an agency from APA procedural requirements. *See* 5 U.S.C. § 559. And Congress knows how to do exactly that. *See*,

e.g., 42 U.S.C. § 7407 (certain EPA actions “shall not be subject to the provisions of sections 553 through 557 of title 5 (relating to notice and comment)”); 21 U.S.C. § 811 (specifying unique procedures, including for notice-and-comment, for classifications of controlled substances). As a result, courts “look askance at agencies’ attempts to avoid the standard notice and comment procedures.” *Lake Carriers’ Ass’n v. EPA*, 652 F.3d 1, 6 (D.C. Cir. 2011) (citation omitted). Nothing in Section 5326 provides express permission to skip notice-and-comment.

When it comes to the “general principles” that courts apply to distinguish rules from orders, Op. Br. 16, Judge Sammartino correctly held that the Border GTO is a rule because it “imposes new recordkeeping and reporting obligations on a class of businesses with no individualized factual determinations as to whether any business in particular is uniquely vulnerable to money laundering.” ER-27; *see also TAMSB*, 2025 WL 1540621, at *13 (FinCEN “announced a ‘rule’ applicable to broad classes of unspecified individuals....”).¹⁶

¹⁶ Viewed from another angle: An “order” is a product of “adjudication,” 5 U.S.C. § 551(7), but there was no adjudication here. Different types of agency adjudications can follow different types of procedures, but a common throughline is that agency adjudication generally must provide parties with notice and an opportunity to be heard. *See, e.g., Am. Airlines, Inc. v. DOT*, 202 F.3d 788, 797 (5th Cir. 2000). For informational demands, like agency subpoenas, that opportunity to be heard generally comes in the form of pre-compliance review. FinCEN provided no such procedure here.

Numerous cases support this conclusion. For instance, in *Yesler Terrace Community Council v. Cisneros*, 37 F.3d 442, 448 (9th Cir. 1994), agency action was a rule because it “affected the rights of a broad category of individuals not yet identified.” Likewise, in *Safari Club International v. Zinke*, a “determination” about importing ivory was a “rule” because it “applied to all potential imports of sport-hunted elephant trophies from Zimbabwe” and did not “adjudicate any dispute between specific parties.” 878 F.3d 316, 333 (D.C. Cir. 2017); *see also W & T Offshore, Inc. v. Bernhardt*, 946 F.3d 227, 237–39 (5th Cir. 2019) (agency action was a rule, even though the agency labeled it an “order,” because it involved the “creation and uniform application of a new methodology”). The government cannot dispute this framework: To the contrary, it cites *Gallo v. U.S. District Court*, 349 F.3d 1169, 1182 (9th Cir. 2003), for a three-factor “test,” and *each* factor shows the Border GTO is a rule: (1) whether the action applies to “specific individuals” or “unspecified persons”; (2) whether the action is based on “general facts” or “a particular set of disputed facts”; and (3) whether the action “determines policy issues or resolves specific disputes.” *See* Op. Br. 16.¹⁷

¹⁷ *See also ITServe All., Inc. v. DHS*, 71 F.4th 1028, 1035 (D.C. Cir. 2023) (agency decision that “arose out of a specific controversy involving an employer” was an order); *Neustar, Inc. v. FCC*, 857 F.3d 886, 895 (D.C. Cir. 2017) (agency decision that “determined the rights and obligations of two parties” was an order).

The government attempts to argue that the Border GTO is not “generally applicable” because it applies to “a particular type of business within certain ZIP codes.” Op. Br. 17. As to “particular *type* of business,” that is part of what makes the Border GTO a rule; the GTO applies to a regulatory definition (MSBs), not specific businesses. That, then, leaves the government’s observation that the Border GTO is restricted to certain zip codes. But rules can also be geographically limited. *See Safari Club Int’l*, 878 F.3d at 333 (import restriction limited to Zimbabwe was a rule); *Michigan v. EPA*, 213 F.3d 663, 669 (D.C. Cir. 2000) (EPA did not provide adequate notice-and-comment when issuing “a final rule mandating that 22 states and the District of Columbia revise their SIPs”); *NRDC v. EPA*, 279 F.3d 1180, 1183, 1186 (9th Cir. 2002) (EPA did not provide adequate notice-and-comment when issuing a permit for an “entire class of hypothetical dischargers in a given geographical region”). That the Border GTO applies to MSBs in 30 zip codes, not nationwide, does not make it less of a rule.¹⁸

Finally, the government invokes “two Fifth Circuit decisions,” Op. Br. 18, but those decisions confirm the point. In *United States v. W.H. Hodges & Co.*, 533 F.2d 276, 278 (5th Cir. 1976), an agency’s request for information was an order,

¹⁸ Nor does it matter that the Border GTO is “temporally limited.” Op. Br. 19. Rules can be too. *See, e.g., Billings Clinic v. Azar*, 901 F.3d 301, 302 (D.C. Cir. 2018) (assessing HHS rulemakings setting reimbursement rates for specific fiscal years).

not a rule, because it was directed to specific companies based on a particularized need; the order directed 38 companies to provide information “in the course of an investigation of rates charged by stockyard marketing agencies in Louisiana.” Similarly, *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1391 (5th Cir. 1971), involved a request for information related to an investigation into a specific company. As Judge Sammartino explained, ER-29–30, the Fifth Circuit has subsequently addressed these cases and explained that the mere fact that agency action seeks information does not make its demand an order. *See DOL v. Kast Metals Corp.*, 744 F.2d 1145, 1149–50 (5th Cir. 1984) (“information-gathering can be the result of a rule”). Thus, in *Kast*, an agency action that set out “criteria and method[s]” for information gathering was a rule. *Id.* at 1147, 1151.¹⁹ Applying those principles, the Border GTO is a rule because it requires reporting by a category of companies, rather than addressing specific companies based on particularized facts.

¹⁹ The government attempts to distinguish *Kast* on the ground that the Border GTO “does not implement the agency’s vision of preferred policy,” Op. Br. 21, but elsewhere says that the Border GTO is the result of agency “policy decisions,” *id.* at 27. The government also distinguishes *Kast* because the rule there established “procedural requirements” for the agency, but, of course, not all rules are about internal agency procedures.

3. The Border GTO Is Likely Arbitrary and Capricious.

Judge Sammartino—along with Judges Biery and Schydlower—also correctly found the Border GTO likely arbitrary and capricious. ER-39–47; *TAMSB*, 2025 WL 1540621, at *13–15; *Valuta*, 2025 WL 2389430, at *1. Under Section 5326, FinCEN had to find “*reasonable grounds*” to conclude “that additional recordkeeping and reporting requirements are *necessary* to carry out the purposes of” the BSA, “or to prevent evasions thereof.” 31 U.S.C. § 5326 (emphases added). The relevant statutory “purposes” include generating records that would be “*highly useful*” for law enforcement. *Id.* § 5311 (emphasis added). The agency’s decision—finding these statutory prerequisites met—was not “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The Border GTO’s purpose is supposedly to fight “Mexican drug cartels.” ER-157. But FinCEN came up with an arbitrary solution, failed to reasonably answer glaring questions about whether the Border GTO would actually be highly useful, and failed to reasonably explain how the speculative benefits could offset the obvious costs.²⁰

²⁰ Given the March XX date on the memo justifying the Border GTO, ER-157–73, it is not clear that the memo can even be considered. *See* ER-40 n.4; *see also Sierra Club v. Bosworth*, 510 F.3d 1016, 1022–23, 1026 (9th Cir. 2007) (agencies cannot rely on “post-hoc” rationales).

a. The Border GTO's Scope Is Arbitrary.

To start, what are the “reasonable grounds” to believe that information about *these* transactions, at *these* businesses, in *these* zip codes is “necessary” to serve the purpose of the BSA, much less “highly useful”? *See* 31 U.S.C. §§ 5311, 5326. The agency failed to articulate any reasonable explanation.

The Border GTO demands information about all non-*de minimis* transactions at the business. But why? There is no finding that all MSB transactions are vulnerable. To the contrary, as Judge Biery pointed out, “The Court has never seen nor heard of a case of money laundering from pesos to dollars.” *TAMSB*, 2025 WL 1540621, at *2. Similarly, is check cashing a typical route for money laundering? The record does not suggest it. But the dragnet does not discriminate.

The choice of the \$200 threshold is similarly arbitrary and unexplained. The March XX Memo reasons that the \$200 threshold will capture “nearly all cash transactions vulnerable to abuse by drug cartels through structuring payments to avoid CTRs, while excluding clearly de minimis amounts that are more likely to be legitimate.” ER-169. In other words, by asking for essentially everything, FinCEN is bound to find something. Such reasoning cannot be squared with the statute’s use of the words “reasonable” and “necessary,” much less “highly useful.” After all, “by that logic, any dollar amount less than \$10,000 would pass muster,” and such

reasoning “provides no limiting principle or mechanism for understanding when a reporting threshold goes so low as to be counterproductive.” ER-44; *see also TAMSB*, 2025 WL 1540621, at *14; *Rest. L. Ctr. v. DOL*, 120 F.4th 163, 176 (5th Cir. 2024). The agency was bound to explain why it needed these records, and it did not satisfy that obligation by saying that it was asking for everything it might want.

The choice of zip codes, meanwhile, is an inexplicable checkerboard. *See* SER-226–30 (maps showing various targeted zip codes with unaffected zip codes between or adjacent). Essentially, FinCEN looked at counties near major border crossings in California and Texas and chose zip codes based on criteria like “sixth highest CTR to population ratio in the county” (note that’s *county*, not country). SER-248. FinCEN never explains why such a “ratio” would reveal anything about the need for the Border GTO. *See TAMSB*, 2025 WL 1540621, at *5. There is no finding that these over-\$10,000 transactions are illegitimate, and there is no explanation how large-dollar transactions relate to small-dollar reporting.

Ultimately, the administrative record exposes a fundamental disconnect between the problem to be addressed and the solution adopted: Even as the March XX Memo asserts that MSBs on the border are at “risk for abuse,” it relies on citations that discuss electronic remittances and money transfers to China. *See* ER-161–63. The record evidence that does involve MSBs involves wire transfers sent by

MSBs far from the border. SER-507-09, SER-626, SER-642, SER-682; *see also TAMSB*, 2025 WL 1540621, at *15.²¹ Yet FinCEN has decided to target MSBs that are physically located near the border, and to target a broad variety of transactions beyond wire transfers. Why? The agency never says. That lack of explanation renders the Border GTO arbitrary and capricious.

b. There Is No Reasoned Explanation Of Any Benefits.

FinCEN also failed to explain its way through two obvious reasons the Border GTO will not work. Without addressing these issues, FinCEN could not explain why there are “reasonable grounds” to think the Border GTO is “necessary.” And, without addressing these issues, FinCEN also could not adequately weigh the “burden against the benefits.” ER-42; *see also Mexican Gulf Fishing Co. v. U.S. Dep’t of Com.*, 60 F.4th 956, 973 (5th Cir. 2023) (consideration of costs and benefits is necessary to “satisfy minimum standards of rationality” (citation omitted)).

The first problem with the Border GTO is that its checkerboard coverage makes evasion trivial. As the judge in one parallel case noted, in some areas a cartel member could avoid the Border GTO by crossing the street. *Valuta*, 2025

²¹ For instance, FinCEN’s evidence for its statement that “MSBs along the southwest border are an important avenue for this illicit activity” consists of (1) a Homeland Security blog post about electronic transfers sent from anywhere directly into Mexico and (2) a page of a DEA report about bulk-cash smuggling that does not mention MSBs. ER-164-65 & n.32.

WL 2389430, at *1; *see also* SER-226–30 (maps of targeted zip codes). Declarations in the record explain that customers can go “just five minutes from” affected MSBs to “MSBs in zip codes that are not affected by the Border GTO.” ER-147–48; *see also* ER-125 (15-minute drive); SER-64 (“just a few blocks”); SER-203 (customer going to credit union instead of MSB).

This problem is not just self-evident; it used to be the government’s own view. When the Treasury Department first explained how GTOs would work, it said that they would be confidential because “once criminals learn of the enhanced reporting requirements and where they are applicable, criminals merely will move on to another non-targeted branch.” 54 Fed. Reg. at 33678. Here, those criminals are (in FinCEN’s own description) “transnational criminal organizations,” SER-368, that “adapt rapidly to changes in the regulatory ... environment,” SER-375. In other words, FinCEN is targeting cartels capable of using virtual currencies to buy fentanyl precursors from China, SER-375, yet assuming they will not avoid the Border GTO by driving down the road.

FinCEN’s discussion of this issue, in the March XX Memo, amounts to a statement that it will keep an eye on the concern. *See* ER-170 (agency will “monitor shifts in activity”). This discussion does not acknowledge FinCEN’s prior position on the issue of evasion, in the 1989 rule release, even though an agency “must at least

display awareness that it is changing position and show that there are good reasons for the new policy.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (internal quotation marks omitted). This statement also raises many more questions than it answers. Most notably, how will FinCEN “monitor” shifts in activity, if activity shifts to areas where the Border GTO is not in effect? The agency never says.

Second, FinCEN has not shown that it can act on the extra reports. Again, FinCEN’s own statements affirmatively disprove it. FinCEN gets 20 million CTRs each year; law enforcement only looks at a small portion even at the \$10,000 level; and FinCEN’s official position is that it wants fewer CTRs. *See supra* pp. 5–6; *see also* SER-14, SER-28–32. Yet the Border GTO will result in a flood of additional CTRs for even smaller-dollar amounts. Under the circumstances, FinCEN needed a real explanation of why these reports would be any different than the hundreds of millions it has already ignored.²²

c. There Is No Reasoned Explanation Of The Costs.

It is bad enough that benefits are speculative, but, as Judge Sammartino recognized, FinCEN also offered no reasoned analysis of costs. ER-40; *see also E. Bay*

²² For this reason, a former FinCEN official has submitted a declaration predicting that the Border GTO will “result in more BSA Reports, that are less useful to law enforcement, while increasing burdens on financial institutions.” SER-55. This is the type of objection that would have been raised if the agency had allowed notice-and-comment.

Sanctuary Covenant v. Garland, 994 F.3d 962, 984 (9th Cir. 2020) (agency’s failure to consider impact of regulation was arbitrary and capricious).

The March XX Memo’s discussion of costs reads, in full, “While the GTO would place a higher burden on Covered Businesses due to the increased volume of CTRs that would result, it is merely a reporting obligation and does not alter their obligations with respect to [anti-money-laundering] programs.” ER-170. Merely? Again, not according to FinCEN’s own information. FinCEN’s own most recent estimate is that, for small businesses without sophisticated software, each CTR takes 24 minutes to complete. 85 Fed. Reg. at 29029. FinCEN also knows that a \$200 threshold is well below the \$390 average remittance transaction at MSBs. *See* ER-45. So FinCEN should have known that it was imposing around 24 minutes of new paperwork for most transactions at these businesses—or, for Novedades, more hours of compliance work daily than there are in a day. ER-149.²³

The government responds that requiring consideration of costs imposes “procedural requirements with no basis in the APA.” Op. Br. 26–27. Not so. As the Fifth Circuit explained in *Mexican Gulf Fishing*, agency action is arbitrary and capricious if the agency “failed to consider an important aspect of the problem,” and

²³ The record developed here confirms those predictable burdens are real—and devastating. *See* ER-50–51; ER-146–49. If the agency had allowed for notice-and-comment, businesses could have explained as much.

“[t]his includes, of course, considering the costs and benefits.” 60 F.4th at 973 (citing *Michigan v. EPA*, 576 U.S. 743, 751 (2015)). Consideration of costs and benefits is, the Fifth Circuit explained, necessary to “satisfy minimum standards of rationality.” *Id.* (quoting *Pub. Citizen v. EPA*, 343 F.3d 449, 455 (5th Cir. 2003)). On that basis, the Fifth Circuit struck down a surveillance requirement (requiring reporting of GPS data by fishing boats) because the “insignificant benefits [did] not bear a rational relationship to the serious financial and privacy costs imposed.” *Id.* at 973. So too here.

Finally, the agency’s failure to weigh costs against benefits is particularly egregious given the agency’s failure to consider viable alternatives—including beginning with an incremental change rather than dropping the reporting threshold by 98 percent. *See* ER-46–47; *see also FBME Bank Ltd. v. Lew*, 125 F. Supp. 3d 109, 125 (D.D.C. 2015) (finding, in another context, that FinCEN’s “failure to explain its consideration of potentially viable alternatives appears to have run afoul of the APA”). Nor did the agency consider other potential sources of information—including one, the “TRAC database,” consisting of records subpoenaed from some border-area MSBs—that are mentioned in the administrative record but never discussed by the agency. *See* ER-174–78. The government objects that the TRAC database is more limited because the records there were “subpoenaed,” Op. Br. 29,

but that just raises the (totally unaddressed) question of why more limited subpoenas could not provide the government the information it says it needs.

4. The Border GTO Likely Violates The Fourth Amendment.

That brings us to the final ground for affirmance, which Judge Sammartino did not reach, although it was raised below, but which Judge Biery relied on in one of the parallel cases. *See* ER-47; *TAMSB*, 2025 WL 1540621, at *9–11.

FinCEN has itself stated that the Border GTO is targeted to gather information on everything happening at these businesses that is not “clearly de minimis,” ER-169, and that it expects the resulting information will “generate new leads and identify new and related subjects in ongoing cases,” ER-165; *see also* Doc. 40 at 11–12 (“full picture” to uncover “previously unsuspected money laundering”). In other words, FinCEN wants to know *every* non-*de minimis* thing that happens at the targeted businesses, so that it can uncover criminal wrongdoing. In the process, FinCEN is treating everyone who uses these businesses as potential criminals: The resulting dragnet will sweep up “honest, hardworking people” that “live paycheck-to-paycheck” and “are trying to survive and help their families,” like “a waitress” that visits an MSB twice a week “to break \$200 into small bills” for her restaurant, SER-221, SER-210, SER-66, SER-73. Their transactions involve the monetary equivalent of a shopping cart of groceries. This type of “generalized

seizure of business documents,” demanding “essentially every business record,” *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995), is the exact sort of “reviled ‘general warrant’” the Fourth Amendment was designed to forbid. *Riley v. California*, 573 U.S. 373, 403 (2014); *see also United States v. Bridges*, 344 F.3d 1010, 1016 (9th Cir. 2003); *Snitko v. United States*, 90 F.4th 1250, 1262 (9th Cir. 2024); *United States v. Smith*, 110 F.4th 817, 837 (5th Cir. 2024).

a. The Interest Of The Businesses.

As to the Fourth Amendment interests of the MSBs themselves, the Supreme Court has held that the constitutional touchstone is reasonableness. *See* U.S. Const. amend. IV (prohibiting “unreasonable” searches and seizures). In *California Bankers Association v. Shultz*, 416 U.S. 21 (1974), for instance, the Supreme Court assessed a constitutional challenge brought by a trade association for banks against the requirement to report over-\$10,000 cash transactions, and the Court stated that the relevant question was whether the reporting requirement was “reasonable,” including whether the “information is sufficiently described and *limited in nature*.” 416 U.S. at 67 (emphasis added).

Lowering the threshold for CTRs from \$10,000 to \$200 is patently unreasonable. This much is obvious from *Shultz* itself. *See* 416 U.S. at 67. Stating that a reporting requirement is reasonable if it is “limited in nature,” *id.*, the Court

specifically focused on the \$10,000 threshold, which after inflation is equivalent to more than \$70,000 today. That very high threshold limited reporting to “abnormally large transactions in currency,” and so was “reasonable” compared to business privacy interests because it intruded on few transactions. *Id.*; *see also id.* at 78 (Powell, J., concurring) (relying on \$10,000 threshold and stating that “[a] significant extension of the regulations’ reporting requirements, however, would pose substantial and difficult constitutional questions”).²⁴ By contrast, the Border GTO’s \$200 threshold would be equal to about \$30 in 1974. It is designed to intrude on *most* transactions, not just abnormally large ones. The shift from “abnormally large” to not “clearly de minimis” renders the Border GTO unreasonable.²⁵

United States v. Morton Salt Co., 338 U.S. 632 (1950), the primary authority in *Shultz*, is also instructive. *Morton Salt* addressed an FTC order directing 20 companies and a trade association to file reports verifying compliance with a prior

²⁴ Justice Powell’s concurrence was joined by Justice Blackmun. 416 U.S. at 78. With three Justices dissenting, *see id.* at 79, 91, 93, the concurring Justices provided necessary votes for the decision.

²⁵ Even apart from the requirement that reporting be “limited,” the Supreme Court viewed the reporting requirement in *Shultz* as “relevant” and “sufficiently defined” precisely because it focused on “abnormally large transactions.” 416 U.S. at 67; *see also id.* at 38 (“Congress recognized the importance of reports of large and unusual currency transactions in ferreting out criminal activity.”). Here, by contrast, FinCEN seeks to gather information about *all* non-*de minimis* transactions without any regard to whether they are especially vulnerable to money laundering (or even vulnerable at all).

cease-and-desist order. 338 U.S. at 634–36. The Court upheld the information demand because it was sufficiently related to the FTC’s need to ensure compliance with its prior orders, but the Court also explained that authority to require reports is limited by the Fourth Amendment—which “is not confined literally to searches and seizures as such, but extends as well to the orderly taking [of information] under compulsion of process.” *Id.* at 651–52. The Court emphasized that “a governmental investigation into corporate matters may be of *such a sweeping nature* and so *unrelated to the matter properly under inquiry* as to exceed the investigatory power.” *Id.* at 652 (emphases added). The Border GTO is precisely such a “sweeping” demand.

Viewed through this lens, one way to think about the Border GTO is as a staggeringly overbroad subpoena for corporate records. Under the Fourth Amendment, the Supreme Court has held that a subpoena for corporate records must be “sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) (citation omitted). The Border GTO fails every part of that test.

A district court adopted this framing in *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 472, 474–75 (S.D.N.Y. 2019), which applied the Fourth Amendment

to grant a preliminary injunction against an ordinance that required short-term rental companies to file “monthly transaction reports” with “voluminous data regarding customers who use their platforms.” *Airbnb* analogized that bulk reporting requirement to an overbroad subpoena, explaining that, unlike a typical subpoena, the reporting obligation “applies across-the-board” without individualized suspicion. *Id.* at 491. The *Airbnb* court explained that, historically, “[a]n attempt ... to compel an entire industry monthly to copy and produce its records as to all local customers would have been unthinkable under the Fourth Amendment.” *Id.* at 494; *see also Airbnb, Inc. v. City of Boston*, 386 F. Supp. 3d 113, 125 (D. Mass. 2019) (similar). Yet that’s exactly what is happening here. To Plaintiffs’ knowledge, *Airbnb* is the only case that involves a reporting requirement anywhere near as broad as the Border GTO, and that requirement was likely unconstitutional.

Indeed, applying the standards for corporate subpoenas, the Border GTO likely violates the Fourth Amendment just based on burden alone. While the Border GTO was in effect in California, Plaintiff Gomez was forced to double the employees on duty and work after hours because CTRs were piling up. SER-216. Other MSB owners noted hundreds of CTRs were piling up daily. SER-73 (backlog of over 500); SER-61–62 (more than 100 daily); SER-207 (about 200 daily). Each of those, by FinCEN’s own estimate, demands 24 minutes away from running the business.

85 Fed. Reg. at 29029.²⁶ An obligation of that scope “unduly disrupt[s]” and “seriously hinder[s] normal operations” of a business. *E.g.*, *United States v. Legal Servs. for NYC*, 249 F.3d 1077, 1084 (D.C. Cir. 2001) (stating standard for unduly burdensome subpoenas). That is not reasonable, particularly given the lack of individualized suspicion.

The government, appealing Judge Biery’s Fourth Amendment decision, has attempted to analogize the Border GTO to other reporting requirements, but, in doing so, only highlights the unprecedented nature of its demand. *See* Gov’t Br. at 9, No. 25-50481 (5th Cir.). The government compares the Border GTO to a tax return, but, while tax returns are obviously invasive, even tax returns do not require businesses to report details on every (non-*de minimis*) transaction. Tax returns are also collected to verify regulatory compliance, not for criminal surveillance, and are governed by strict confidentiality rules. *See* 26 U.S.C. § 6103. Meanwhile, reports of political expenditures (in addition to being subject to all manner of constitutional challenges) are made available to the public in the name of transparency, not collected in a law-enforcement database. And employment verification is collected by employers and not necessarily reported at all. The government’s reliance on such

²⁶ The MSB operators’ declaration reflected similar numbers. ER-147 (25 minutes), ER-126 (15 minutes), SER-62, 72 (20 minutes), SER-195, 223 (25 minutes), SER-208 (20 to 30 minutes).

examples is telling. The Border GTO's requirement to report all non-*de minimis* transactions is unprecedented.

Ultimately, beyond its sheer breadth and burdens, the Border GTO also likely violates the Fourth Amendment because it is neither uniform across the country (as in *Shultz*) nor applied to businesses in a particularized agency adjudication (as in *Morton Salt*). See *TAMSB*, 2025 WL 1540621, at *10. The government wants to know everything—without individualized suspicion—but only for a certain type of business in a certain area. That combination of breadth and specificity gives rise to precisely the risk of arbitrary enforcement that the Fourth Amendment is designed to prevent. See *Patel v. City of Los Angeles*, 738 F.3d 1058, 1064 (9th Cir. 2013), *aff'd*, 576 U.S. 409 (2015). And it is part of what makes the Border GTO an impermissible general warrant.

b. The Interest Of Customers.

The Border GTO also forces the targeted businesses to intrude on the privacy of customers. See, e.g., ER-128, ER-151; SER-75–76. This includes the privacy of Plaintiff Gomez, who uses her MSB to send money transfers to her family in Mexico or to cash commission checks and who objects to her personal information being reported to the federal government for legal and honest low-dollar transactions. ER-152. And it includes all the other customers—“honest, hardworking people,” ER-

145, “[n]eighborhood folks,” ER-123, “waitress[es],” SER-73, tourists and “locals,” SER-197—who are treated as suspect criminals by the government’s indiscriminate dragnet.²⁷

While courts generally hold that customers lack a protected privacy interest in information that they voluntarily hand over to financial institutions, that line of cases (the so-called “third party doctrine”) is not relevant here because the disclosure required by the Border GTO is not voluntary. The record shows that MSBs normally conduct many transactions subject to the Border GTO without collecting *any* customer information. *See supra* p. 7; *see also* ER-142–43; SER-70–71, SER-206.

The compulsory nature of this disclosure distinguishes cases upholding demands for financial information. In *United States v. Miller*, 425 U.S. 435, 442 (1976), the Court relied on the fact that “[a]ll of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks.” *See also Carpenter v. United States*, 585 U.S. 296, 319 (2018) (courts should not uncritically extend *Miller* to novel contexts). Even *Shultz* relied on the

²⁷ There is no real question that customers have a legitimate expectation of privacy in these records of their ordinary, everyday financial transactions. This expectation is reflected in federal law, which protects the privacy of the transactions. 16 C.F.R. § 313.3(k)(1).

fact that—when it came to over-\$10,000 reporting—the information required was generally “information the bank as a party to the transaction already possesses or would acquire in its own interest.” 416 U.S. at 67. And that makes sense: The information a bank would normally require from a customer to engage in an over-\$10,000 cash transaction is significantly different from the amount of information that a non-bank MSB would normally require for small-dollar transactions.

This Court has not hesitated to invalidate the modern equivalents of general warrants; it did so just last year in *Snitko v. United States*, 90 F.4th 1250, 1262 (9th Cir. 2024). *See also United States v. Smith*, 110 F.4th 817, 837 (5th Cir. 2024). The Border GTO is just such a general warrant, demanding to know everything of substance that customers do at a particular type of business. It treats every customer and MSB as a potential criminal without individualized suspicion. That general warrant violates the Fourth Amendment rights of both businesses and customers.

B. Plaintiffs Established That They Would Suffer Irreparable Harms.

The district court also did not abuse its discretion by finding that Plaintiffs will suffer irreparable harm. Judge Sammartino specifically found “credible Plaintiffs’ avowal that the regulatory burden imposed by the [Border] GTO would be simply unsustainable,” ER-50, and had “no doubt that the Texas MSB associates who filed declarations alongside [Plaintiff Gomez’s] declaration have experienced similar

harms,” ER-51.²⁸ The government’s counterargument contains four cited sentences, *see* Op. Br. 30, and comes nowhere close to showing that Judge Sammartino got this clearly wrong. *See Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 422 F.3d 782, 795 (9th Cir. 2005) (“Viewing the record as a whole with our deferential standard of review, we cannot say that the district court’s factual finding concerning irreparable harm was clearly erroneous.”). In fact, the record shows that Judge Sammartino was clearly right. *See, e.g.*, ER-146–47 (“I fear it will destroy my business ... The overwhelming majority of Novedades’ customers engage in transactions in amounts over \$200, so the Border GTO applies to nearly all of Novedades’ transactions—at least 99%. My business could not survive if we could only process transaction[s] of \$200 or less.”).²⁹

²⁸ In *TAMSB*, Judge Biery found “skyrocketing labor costs, a permanent decrease in customers, and a decrease in revenue,” posing both “a threat to MSBs’ employees’ livelihood and ... a subsequent danger that the GTO could destroy family businesses.” 2025 WL 1540621, at *19. In *Valuta*, Judge Schydlower found “immediate and irreparable harm absent emergency injunctive relief, including the threat of business closure, reputational injury, and loss of customers and goodwill.” 2025 WL 2389430, at *1.

²⁹ *See also* ER-51 (Judge Sammartino citing “Declaration of Mariceli Castro ... (discussing an exodus of customers to nearby MSBs, reducing business by 50–60%); Amended Declaration of Andres Payan, Jr. ... (describing how he is ‘buried in CTRs,’ with ‘about 100 CTRs stacked up on [his] desk’); Declaration of Antonio Carpio ... (explaining how his MSB is ‘hemorrhaging money,’ having ‘lost at least 15% or more of [his] business’); Declaration of Clarissa Ashley Light ... (‘We are losing up to 10 customers per day because of it.’).”).

The government doesn’t believe this credited testimony because larger

All this easily exceeds the necessary showing of irreparable injury. “The ... analysis focuses on irreparability, irrespective of the magnitude of the injury.” *Washington v. Trump*, 145 F.4th 1013, 1036 (9th Cir. 2025) (internal quotation marks omitted). Even the government concedes there is some harm. ER-91 (“There is harm here, your Honor. There is harm here.”). Because of sovereign immunity, that harm is irreparable. *See Washington*, 145 F.4th at 1036; *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021) (“[C]omplying with an agency order later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs.” (cleaned up)).

Although that is enough, the irreparable harm is not limited to compliance burdens. Other irreparable harms include “loss of customer goodwill,” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009), as well as “loss of control over business reputation,” *Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 756 (9th Cir. 2018) (citation omitted). *See generally* ER-126, ER-148; SER-63, SER-75, SER-211, SER-222. Plus, lost privacy is inherently irreparable. *See, e.g., Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1044–45 (9th Cir. 2012). And

businesses use sophisticated software to submit CTRs, *see* Op. Br. 30, but Judge Sammartino was aware of that point, ER-10, and found harm as a matter of fact even so. Software cannot collect all the required information from customers, is expensive and complex, and is not a magic bullet. *See, e.g.,* SER-56, 63.

that is particularly true of privacy protected by the Fourth Amendment, as “deprivation of constitutional rights” is always irreparable. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

C. Other Equitable Factors Likewise Favor Entry Of A Preliminary Injunction.

As for the public interest and balance of equities (which merge in cases involving the government), “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. Further, “[t]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (citation omitted). In other words, “the public interest is served by compliance with the APA.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 678 (9th Cir. 2021) (alteration omitted).

The government offers the truism that “[i]t is in the public interest for the Government to act swiftly to combat illicit drug financing.” Op. Br. 31. But “swiftly” isn’t the right word. The point of the Border GTO is data collection for later— assembling possibly millions of CTRs that might be examined at some unknown date. “The absence of any non-speculative evidence that the data collected by the [Border] GTO will, in fact, keep the public safer as juxtaposed with a wealth of non-

speculative evidence that the [Border] GTO will, in fact, threaten the existence of” Plaintiffs means “the balance of equities and public interest tip sharply in Plaintiffs’ favor.” ER-53; *see also Valuta*, 2025 WL 2389430, at *1–2.

II. The Preliminary Injunction Is Not Overbroad.

The government’s final argument is that “the court erred by not limiting its injunction to ... [P]laintiffs alone.” Op. Br. 32. That’s incorrect. The broad relief entered by Judge Sammartino was an appropriate application of the Administrative Procedure Act.

The government’s argument rests on *Trump v. CASA, Inc.*, in which “the Supreme Court held that federal courts *generally* lack the authority to issue ‘universal’ injunctions, *i.e.*, those that are crafted to afford relief to non-parties.” Op. Br. 31. (emphasis added) (citing 145 S. Ct. 2540, 2550 (2025)). As the government acknowledges, however, that holding turned on “the statutory equitable power conferred on the federal courts by the Judiciary Act of 1789.” *Id.* *CASA* does not address the separate question whether, more than 150 years later, Congress gave courts the power to grant non-party relief under the APA. The Supreme Court in *CASA* couldn’t have been clearer: “Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.” 145 S. Ct. at 2554 n.10.

As to that question, the law is the same as it was before *CASA*, and the answer starts with the text of the APA. Congress provided that, when “agency action” is “not in accordance with law,” “without observance of procedure required by law,” “arbitrary [and] capricious,” or “contrary to constitutional right,” courts “*shall*” “hold [it] unlawful and set [it] aside.” 5 U.S.C. § 706 (emphasis added). That language expressly authorizes vacatur of unlawful agency action, as this Court and others have repeatedly held. Under the APA, “when a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.” *Empire Health Found. for Valley Hosp. Med. Ctr. v. Azar*, 958 F.3d 873, 886 (9th Cir. 2020), *rev’d on other grounds*, 597 U.S. 424 (2022); *see also Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d 1032, 1050 (D.C. Cir. 2021) (“The ordinary practice ... is to vacate unlawful agency action.” (citation omitted)); *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 952 (5th Cir. 2024) (“In addition to its potency and peculiarly broad nature, vacatur under § 706 is, as we have repeatedly described it, the ‘default’ remedy for unlawful agency action.”), *rev’d on other grounds*, 145 S. Ct. 2427 (2025); *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, No. SAG-25-628, 2025 WL 2374697, at *32 (D. Md. Aug. 14, 2025) (“Like every other court to consider this issue since *CASA*, this Court believes the APA has always expressly authorized

vacatur, and *CASA* did not change that.”). “Vacatur of an agency rule prevents its application to all those who would otherwise be subject to its operation.” *E. Bay Sanctuary*, 994 F.3d at 987. In other words, a vacated agency action ceases to exist, and it cannot lawfully be applied to anyone.

The scope of preliminary relief should be no less broad. Under 5 U.S.C. § 705, “the reviewing court ... may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” This language contemplates preliminary relief as broad as the challenged action. The APA does not say that courts should postpone the effective date of the agency action *for some parties*; it says that the court should postpone the effective date of the “action.”

So, just as they have blessed the ultimate vacatur of unlawful agency actions, courts in APA cases—including this Court—have blessed non-party preliminary relief. In *East Bay Sanctuary*, this Court affirmed issuance of nationwide preliminary relief in part because “a successful APA claim by a single individual *can* affect an ‘entire’ regulatory program.” 993 F.3d at 681 (emphasis added).³⁰ The Fifth Circuit,

³⁰ This Court similarly invoked “the normal rule in APA cases” to uphold nationwide preliminary relief in *Regents of the University of California v. DHS*, 908 F.3d 476, 511–12 (9th Cir. 2018), although that portion of the opinion was vacated because the Supreme Court affirmed a different court’s *final* nationwide vacatur of the challenged agency action, 591 U.S. 1, 36 (2020).

invoking the “specific statutory text and longstanding administrative law principles” involved, has also rejected the federal government’s “arguments that general equitable and constitutional principles require the panel to limit any relief to the named parties ‘Necessary and appropriate process’ does not mean that the relief awarded under Section 705 can only be specific to the plaintiff.” *Career Colls. & Schs. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 255 (5th Cir. 2024).³¹ As one district court summarized the law after *CASA*:

[V]acatur of the agency action—not merely exempting plaintiffs from the agency action—is the normal remedy under APA section 706. Courts in this and other circuits have applied that same rule to section 705 stays. Those decisions track the text of section 705, which authorizes the reviewing court to “postpone the effective date of an agency action or preserve status or rights” full stop, not only as to plaintiffs before the court.

Coal. for Humane Immigrant Rts. v. Noem, No. 25-cv-872, 2025 WL 2192986, at *37 (D.D.C. Aug. 1, 2025) (citations omitted).

In this case, the government acknowledges “the district court acted pursuant to 5 U.S.C. § 705,” Op. Br. 32, so that should be the end of it. The government’s argument that “equitable principles” compel a narrower result simply ignores *East Bay Sanctuary* and the other cases holding the contrary. *Id.* at 32–33. Indeed, if

³¹ See also, e.g., *Missouri v. Trump*, 128 F.4th 979, 997–98 (8th Cir. 2025); *Pennsylvania v. Trump*, 930 F.3d 543, 575 (3d Cir. 2019), as amended (July 18, 2019), rev’d on other grounds, 591 U.S. 657 (2020).

anything was wrong with Judge Sammartino's preliminary order, it is that she limited relief to the Southern District of California and therefore didn't go far enough by delaying the Border GTO everywhere it was effective.

This case shows why the availability of broad preliminary relief matters. Plaintiffs are challenging a single agency action: an "order" that was published as a release in the Federal Register and that rises or falls based on legal claims that have nothing to do with party-specific facts. Other plaintiffs in other cases have brought those same claims. Three federal judges have now found this agency action likely unlawful. And yet the government, in seeking to narrow the injunction, would again subject more than a hundred California businesses to illegal, impossible compliance burdens just because they did not bring a fourth lawsuit. Or, for that matter, a fortieth. That is not the system Congress enacted in the APA.

CONCLUSION

The preliminary injunction should be affirmed.

Date: September 3, 2025

Respectfully submitted,

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Date: September 3, 2025.

ADDENDUM

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U.S. Const. amend. 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5 U.S.C. § 705

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

5 U.S.C. § 706**§ 706. Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be-
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

31 U.S.C. § 310 (excerpt)

§310. Financial Crimes Enforcement Network

- (a) **IN GENERAL.**—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105–08, in this section referred to as "FinCEN") on April 25, 1990, shall be a bureau in the Department of the Treasury.
- (b) **DIRECTOR.**—
 - (1) **APPOINTMENT.**—The head of FinCEN shall be the Director, who shall be appointed by the Secretary of the Treasury.
 - (2) **DUTIES AND POWERS.**—The duties and powers of the Director are as follows:
 - (A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary of the Treasury for Enforcement.
 - (B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:
 - (i) Information collected by the Department of the Treasury, including report information filed under subchapter II of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act.
 - (ii) Information regarding national and international currency flows.
 - (iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.
 - (iv) Other privately and publicly available information.

- (C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treasury and the Under Secretary of the Treasury for Enforcement to-
- (i) identify possible criminal activity to appropriate Federal, State, local, Tribal, and foreign law enforcement agencies;
 - (ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;
 - (iii) identify possible instances of noncompliance with subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;
 - (iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326;
 - (v) determine emerging trends and methods in money laundering and other financial crimes;
 - (vi) support the conduct of intelligence or counterintelligence activities, including analysis, to protect against terrorism; and
 - (vii) support government initiatives against money laundering.
- (D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.
- (E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, Tribal, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection,

prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

- (F) Assist Federal, State, local, Tribal, and foreign law enforcement and regulatory authorities in combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.
- (G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.
- (H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.
- (I) Administer the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary of the Treasury.
- (J) Promulgate regulations under section 5318(h)(4)(D), as appropriate, to implement the government-wide anti-money laundering and countering the financing of terrorism priorities established by the Secretary of the Treasury under section 5318(h)(4)(A).
- (K) Communicate regularly with financial institutions and Federal functional regulators that examine financial institutions for compliance with subchapter II of chapter 53 and regulations promulgated under that subchapter and law enforcement authorities to explain the United States Government's anti-money laundering and countering the financing of terrorism priorities.
- (L) Give and receive feedback to and from financial institutions, State bank supervisors, and State credit union supervisors (as those terms are defined in section 6003 of the Anti-Money Laundering Act of 2020) regarding the matters addressed in subchapter II of chapter 53 and regulations promulgated under that subchapter.
- (M) Maintain money laundering and terrorist financing investigation financial experts capable of identifying, tracking, and analyzing financial crime

networks and identifying emerging threats to support Federal civil and criminal investigations.

- (N) Maintain emerging technology experts to encourage the development of and identify emerging technologies that can assist the United States Government or financial institutions in countering money laundering and the financing of terrorism.
- (O) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

31 C.F.R. § 1010.100(ff)

§ 1010.100(ff). Money services business.

(ff) Money services business. A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) Dealer in foreign exchange. A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) Check casher — (i) In general. A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

(ii) Facts and circumstances; Limitations. Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term “check casher” shall not include:

(A) A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

- (C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;
 - (D) A person that redeems its own checks; or
 - (E) A person that only holds a customer's check as collateral for repayment by the customer of a loan.
- (3) Issuer or seller of traveler's checks or money orders. A person that
- (i) Issues traveler's checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or
 - (ii) Sells traveler's checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions.
- (4) Provider of prepaid access—(i) In general. A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access.
- (ii) Considerations for provider determination. In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises "principal oversight and control" is a matter of facts and circumstances. Activities that indicate "principal oversight and control" include:
 - (A) Organizing the prepaid program;
 - (B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;

- (C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;
 - (D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and
 - (E) Engaging in activity that demonstrates oversight and control of the prepaid program.
- (iii) Prepaid program. A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is not a prepaid program if:
- (A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;
 - (B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;
 - (C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or
 - (D) (1) It provides prepaid access solely to:
 - (i) Employment benefits, incentives, wages or salaries; or
 - (ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and
 - (2) It does not permit:
 - (i) Funds or value to be transmitted internationally;

- (ii) Transfers between or among users of prepaid access within a prepaid program; or
- (iii) Loading additional funds or the value of funds from non-depository sources.

(5) Money transmitter—(i) In general.

- (A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or
 - (B) Any other person engaged in the transfer of funds.
- (ii) Facts and circumstances; Limitations. Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term “money transmitter” shall not include a person that only:
- (A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;
 - (B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;
 - (C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (“SEC”), and derivatives

clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides prepaid access; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

(6) U.S. Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(7) Seller of prepaid access. Any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

(i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under § 1022.210(d)(1)(iv); or

(ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.

(8) Limitation. For the purposes of this section, the term “money services business” shall not include:

- (i) A bank or foreign bank;
- (ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or
- (iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.

31 C.F.R. § 1010.311

§ 1010.311. Filing obligations for reports of transactions in currency.

Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section. In the case of the U.S. Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

31 C.F.R. § 1010.370**§ 1010.370 Reports of certain domestic transactions.**

(a)

- (1) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this chapter or to prevent persons from evading the reporting/recordkeeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions, or any domestic nonfinancial trade or business or group of domestic nonfinancial trades or businesses, in a geographic area, and any other person participating in the type of transaction, to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution or group of domestic financial institutions, or domestic nonfinancial trade or business or group of domestic nonfinancial trades or businesses is involved for the payment, receipt, or transfer of funds (as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.
- (2) The Secretary may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—
 - (i) To request any financial institution or nonfinancial trade or business (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution or nonfinancial trade or business under the Title 31 provisions of the Bank Secrecy Act with respect to any prior transaction (between such financial institution or nonfinancial trade or business and any other person) which involved any portion of the funds which are involved in the reportable transaction with the depository institution; and

- (ii) If no copy of any report described in paragraph (a)(2)(i) of this section is received by the depository institution in connection with any reportable transaction to which paragraph (a)(2)(i) applies, to submit (in addition to any report required under this subchapter with respect to the reportable transaction) a written notice to the Secretary that the financial institution or nonfinancial trade or business failed to provide any copy of such report.
 - (3) For purposes of paragraph (a)(2) of this section, the term *reportable transaction* means any transaction involving funds (as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.
- (b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution or nonfinancial trade or business and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of funds or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in funds equal to or exceeding an amount specified in the order.
- (c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:
 - (1) The dollar amount of transactions subject to the reporting requirement in the order;
 - (2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;
 - (3) The appropriate form for reporting the transactions required in the order;
 - (4) The address to which reports required in the order are to be sent or from which they will be picked up;
 - (5) The starting and ending dates by which such transactions specified in the order are to be reported;
 - (6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)

(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 180 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 1020.315 of this chapter prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term geographic area means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(e) No financial institution or nonfinancial trade or business or officer, director, employee, or agent of a financial institution or nonfinancial trade or business subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.