No. 25-4238

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

NOVEDADES Y SERVICIOS, INC., et al.,

Plaintiffs-Appellees,

v.

FINANCIAL CRIMES ENFORCEMENT NETWORK, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of California

BRIEF FOR DEFENDANTS-APPELLANTS

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STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. *Accord* ER-191. The district court granted plaintiffs' motion for a preliminary injunction in an oral ruling on May 15, 2025, *see* Dkt. No. 45, supplemented by a written order on May 21, 2025, ER-5-55. The government filed a timely notice of appeal on July 8, 2025. ER-3-4. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

The issue presented is whether the district court erred in entering a preliminary injunction based on its conclusions that the geographic targeting order at issue likely (1) exceeds the agency's statutory authority, (2) is a "rule" subject to notice-and-comment requirements under the Administrative Procedure Act (APA), and (3) was promulgated in an arbitrary and capricious manner.

PERTINENT STATUTES

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. The Bank Secrecy Act and Its Implementing Regulations

1. "Congress enacted the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act) in 1970, in response to increasing use of banks and other institutions as financial intermediaries by persons engaged in criminal activity." *Ratzlaf v. United States*, 510 U.S. 135, 138 (1994) (citation omitted). The Act establishes a baseline reporting requirement for all "domestic financial institution[s]," as defined in the statute, to report any cash transaction "in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation." 31 U.S.C. § 5313(a); *see id.* § 5312(a)(2) (defining "financial institution"). That threshold has long been set at $10,000. *See* 31 C.F.R. § 1010.311; *Ratzlaf*, 510 U.S. at 136.

Reports must be filed with the Financial Crimes Enforcement Network (FinCEN), 31 C.F.R. § 1010.306(a)(3), a component of the Treasury Department, using FinCEN's standard form, *id.* § 1010.306(e). The current version of the form requests the name, address, Social Security number, and occupation of the transacting party, as well as the number of any document used to verify identity (*i.e.*, a driver's license, passport, or equivalent). ER-187. The report form also solicits basic details about the transaction and the financial institution itself. ER-186; ER-188.

2. Congress amended the Act in 1988, adding a provision permitting the Secretary to impose additional, targeted reporting requirements, in response to concerns about "epidemic drug money laundering in certain locations" "where launderers are dealing in transactions below the $10,000 reporting amount." 134 Cong. Rec. H7078 (daily ed. Sept. 7, 1988) (statement of Rep. St.-Germain); Anti-Drug Abuse Act of 1988, Pub. L. No. 100–690, § 6185(c), 102 Stat. 4181, 4355-56. In its present form, that provision (codified at 31 U.S.C. § 5326(a)) authorizes the Secretary to

> 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 obtain such

> information as the Secretary may describe . . . concerning . . . any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of funds

when the Secretary "finds . . . that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of [the Act] or to prevent evasions thereof." 31 U.S.C. § 5326(a). The Secretary has discretion to choose the threshold above which transactions must be reported. *Id.* § 5326(a)(1)(A). Orders issued under § 5326(a) are limited to a maximum duration of 180 days, unless renewed. *Id.* § 5326(d). The Treasury Department has interpreted the statute's use of the phrase "geographic area" to mean "any area in one or more States of the United States, the District of Columbia," or a U.S. territory or possession. *Amendment to the Bank Secrecy Act Regulations Relating to Geographic Reporting of Certain Domestic Currency Transactions*, 54 Fed. Reg. 33,675, 33,679 (Aug. 16, 1989) (codified at 31 C.F.R. § 1010.370(d)(4)).

The present version of § 5326(a) reflects four amendments since its 1988 enactment—two made in 2001 and two in 2017—each of which broadened the Secretary's authority. The statute originally permitted an order to apply only to "domestic financial institutions," Pub. L. No. 100–690, § 6185(c), 102 Stat. at 4355, but now extends to "nonfinancial trade[s and] business[es]" as a result of the 2001 Patriot Act. USA PATRIOT Act of 2001, Pub. L. No. 107–56, § 365, 115 Stat. 272, 333-35. In addition, the Patriot Act extended the maximum period of an order to 180 days, from the original 60. *Id.* § 353(d), 115 Stat. at 323. In 2017, Congress expanded the transactions on which a reporting obligation could be imposed from those involving "United States coins or currency []or such other monetary instruments as the Secretary may describe" to simply transactions in "funds," regardless of their origin. Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115–44, § 275(a)(2)(B), 131 Stat. 886, 938 (2017). The 2017 law also authorized the Secretary to issue an order where he deemed it "necessary to carry out the purposes of this subtitle *or* to prevent evasions thereof"—previously, the conjunction had been "and." *See id.*

In addition to the above-described changes in § 5326(a) itself, Congress in 1992 added two neighboring subsections that bolster the Secretary's authority. The Secretary may now "by regulation or order" require "any depository institution" to obtain certain reports from customers. Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102–550, tit. XV, § 1562, 106 Stat. 4044, 4072 (1992) (codified at 31 U.S.C. § 5326(b)). The same legislation bars financial institutions subject to a geographic targeting order from disclosing the existence of the order, except with the Secretary's permission. *Id.* § 1514, 106 Stat. at 4058 (codified at 31 U.S.C. § 5326(c)).

Exercising the Secretary's delegated authority, Treas. Order 180–01 (July 1, 2014, reaffirmed Jan. 14, 2020), FinCEN has promulgated various geographic targeting orders. In the late 1990s, for example, FinCEN issued orders requiring "certain money transmitters and over 3,000 of their agents to obtain and report identifying information about the sender and recipient of all cash-purchased remittances to Colombia and the Dominican Republic in the amount of $750 or more." ER-133. In 2014, the agency issued an order "requiring over 2,000 businesses in the Los Angeles fashion district . . . to report cash transactions of $3,000 or more." ER-133. And in 2015, FinCEN "issued a[n order] requiring about 700 businesses (primarily electronics exporters) in the Miami, Florida area . . . to report cash transactions of $3,000 or more." ER-133; *see also United States v. Oreira*, 29 F.3d 185, 187 (5th Cir. 1994) (describing a targeting order issued to cover the Houston area, with a $100 threshold).

B. The Southwest Border Geographic Targeting Order

In March 2025, FinCEN promulgated a geographic targeting order applicable to "certain money services businesses along the southwest border of the United States." *Issuance of a Geographic Targeting Order Imposing Additional Recordkeeping and Reporting Requirements on Certain Money Services Businesses Along the Southwest Border*, 90 Fed. Reg. 12,106, 12,106 (Mar. 14, 2025). Specifically, the Order requires all money services businesses (as that term is defined at 31 C.F.R. § 1010.100(ff)) located in 30 specified ZIP codes within five Texas counties and two California counties to file currency transaction reports for any transaction of more than $200 and less than $10,000. 90 Fed. Reg. at 12,107. As part of collecting the information the business is required to report, it must "comply with the identification requirements set forth at 31 C.F.R. 1010.312," *id.*, which requires collection of the name, address, and Social

Security (or taxpayer identification) number of the transacting party. The Order took effect on April 14, 2025, and expires on September 9, 2025, unless renewed. *Id.*

The Order was issued in recognition of the fact that drug cartels in Mexico, several of which had been designated Foreign Terrorist Organizations and Specially Designated Global Terrorists, *see* 8 U.S.C. § 1189; Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 25, 2001), put border-area money services businesses at "particular[] . . . risk for abuse" of being enlisted (wittingly or unwittingly) in money laundering. ER-161-62; *see also* Exec. Order No. 14,157, 90 Fed. Reg. 8439 (Jan. 29, 2025). That risk was pronounced in light of those cartels' influence and authority in the area. ER-161-62. Additionally, certain features of the money services businesses' operations increased the likelihood that cartels would use their services to move illicitly obtained value over the border, including their cash-intensive nature and their patrons' ability to commingle licit and illicit funds. ER-162. FinCEN concluded that the Order would likely yield "information highly useful in money laundering investigations, especially in the context of the fentanyl crisis," thus furthering the purposes of the Bank Secrecy Act. ER-164. Beyond the general importance of combating money laundering, the agency perceived a particular need to interdict laundering of proceeds from the cartels' involvement in the fentanyl trade, the sale of which had killed nearly 38,000 Americans in the first six months of 2023. ER-163.

The agency selected the ZIP codes covered by the Order with reference to "risk factors that include their proximity to the border and to a border crossing, and, based on a FinCEN analysis of [currency transaction report] filings in 2024, whether the number of [reports] filed in the ZIP code is high relative to the population, in comparison to other ZIP codes." ER-165-66. FinCEN recognized that money services businesses in other border States like Arizona and New Mexico were also vulnerable to abuse, but "chose to keep this [Order] limited in scope, focusing on states containing the major U.S.-Mexico border crossings, both to limit burden and to be able to assess trends and effectiveness." ER-166. The agency chose the $200 threshold on the rationale that "it would include nearly all cash transactions vulnerable to abuse by drug cartels through structuring payments to avoid [currency transaction reports], while excluding clearly de minimis amounts that are more likely to be legitimate."[1] ER-169. FinCEN estimated that a $200 reporting requirement "would also provide FinCEN with a snapshot in time of a significant sample of cash transactions in the Covered Geographic Areas, allowing FinCEN to more fully understand the money laundering risks related to [money services businesses] and cross-border cash remittances." ER-169-70.

[1] "[A] person structures a transaction if that person . . . conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under [31 C.F.R.] §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313 . . . ." 31 C.F.R. § 1010.100(xx). This includes "the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions at or below $10,000 . . . ." *Id.*

Before issuing the Order, FinCEN acknowledged certain potential downsides to putting it in place. The agency recognized that a $200 reporting threshold "would place a higher burden on Covered Businesses due to the increased volume of" reports they would be required to file, albeit only for a temporary period. ER-170. The agency also contemplated that the Order might "encourage illicit actors to adopt new methods or patterns of activity" in order to avoid detection. ER-170. Nevertheless, the agency concluded that it could account for any such subterfuge by "monitor[ing] shifts in activity, including any decreases in the flow of funds through Covered Businesses and any increases in activity at [money services businesses] in areas near to the counties covered by" the Order. ER-170.

C. Prior Proceedings

Plaintiffs filed their complaint on April 15, 2025, alleging that the Order violated the APA, the Fourth and Fifth Amendments to the U.S. Constitution, and the non-delegation doctrine, and seeking declaratory and injunctive relief. ER-204-10. The district court granted a temporary restraining order enjoining defendants from enforcing the Order within the Southern District of California. *See* Dkt. No. 15; ER-182. The district court then entered a preliminary injunction in an oral ruling on May 15, 2025, *see* Dkt. No. 45, supplemented by a written order on May 21, 2025, ER-5-55. The court held that plaintiffs would likely succeed on their claims that the Order was promulgated in excess of statutory authority, ER-24-37, that the agency was required to conduct notice and comment before issuing the Order, ER-37-38, and that the Order was adopted in an arbitrary and capricious manner, ER-39-47.[2]

SUMMARY OF ARGUMENT

I. The preliminary injunction should be vacated, because the district court erred in holding that plaintiffs are likely to succeed on the merits of their statutory and APA claims and because the equities do not favor plaintiffs.

A. Plaintiffs have not demonstrated a likelihood of success on their claims. The text of the geographic targeting statute, 31 U.S.C. § 5326(a), is clear: when FinCEN determines that it would serve the ends of the Bank Secrecy Act to require additional reporting from a "group of" businesses in a "geographic area," it may take action—in the form of an "order"—to require that reporting. Congress' choice of the word "order" deliberately incorporated the meaning of the term under the APA. The district court erred in reasoning that general principles for distinguishing between rules and orders, as well as out-of-circuit case law, compel a different result here. The plain text of the statute also confirms that business-by-business factfinding was not

[2] Two other lawsuits challenging the Order are pending in the Western District of Texas. In *Texas Association of Money Services Businesses v. Bondi*, the district court enjoined the government from enforcing the Order as to the plaintiffs in that case. No. 25-cv-344, --- F. Supp. 3d ----, 2025 WL 1540621 (W.D. Tex. May 19, 2025). The government has appealed that injunction, and the Fifth Circuit has ordered expedited briefing. *Texas Association v. Bondi*, No. 25-50481 (5th Cir. July 9, 2025). In *Valuta Corporation v. FinCEN*, the district court entered a plaintiff-specific preliminary injunction against the Order's enforcement on July 22. No. 3:25-cv-191 (W.D. Tex. July 22, 2025).

required here, as the district court erroneously concluded. Because the Order is an APA order, not a rule, it did not require notice and comment to be promulgated validly.

Furthermore, the Order is not arbitrary or capricious, because the agency duly considered all relevant factors and reasonably explained its decisions. The district court's contrary conclusions rest largely on its views of the policy merits of the Order, which are not left under the APA to its determination.

B. The balance of the equities, too, tilts in the government's favor. Plaintiffs offered speculation as to the effects the Order would have on their businesses, but fell well short of showing any certain and great irreparable harm. In contrast, the preliminary injunction impinges severely on the government's interest in collecting data useful to the interdiction of international financial crime, and by extension the fentanyl crisis.

II. Even if the Court did not reverse the preliminary injunction, it should vacate and remand for more specific tailoring to the individual plaintiffs, instead of all similarly situated businesses within the Southern District of California. Neither the APA nor the district court's general equitable authority permitted it to craft the broad relief it did.

STANDARD OF REVIEW

This Court reviews the grant of a preliminary injunction for abuse of discretion overall, *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th

Cir. 2024), including de novo review of "issues of law," *Isaacson v. Mayes*, 84 F.4th 1089, 1095 (9th Cir. 2023) (quotation omitted).

ARGUMENT

I. The Preliminary Injunction Should Be Vacated.

A. Plaintiffs have not shown a likelihood of success on their claims.

1. The Order does not exceed the agency's statutory authority.

a. The Order is an "order" under the APA.

i. The APA distinguishes in various respects between two principal categories of agency action. A "rule"—that is, "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy," 5 U.S.C. § 551(4)—requires an agency to follow different procedures than it must to promulgate an "order," which is "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making," *id.* § 551(6). *See id.* §§ 553, 554; *Yesler Terrace Cmty. Council v. Cisneros*, 37 F.3d 442, 448 (9th Cir. 1994) ("An adjudication (which results in an order) is virtually any agency action that is not rulemaking.").

As the district court properly concluded, ER-25-26, the drafters of the Bank Secrecy Act deliberately incorporated the APA's use of the term "order" in authorizing the Secretary to impose additional reporting requirements. When they did so, the term "br[ought] the old soil with it"—that is, made plain that notice and comment is not required for geographic targeting orders that meet § 5326(a)'s requirements. *See George v. McDonough*, 596 U.S. 740, 746 (2022) (quoting *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019)). In other words, when the "Secretary finds . . . that reasonable grounds exist for concluding" that it would serve the purposes of the Act to require "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 report "any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of funds," the action that results is an "order," 31 U.S.C. § 3526(a), not a "rule."

Other textual indicia confirm the conclusion that the Act's drafters intended a reporting obligation binding a "domestic financial institution . . . or group of domestic financial institutions" under § 5326(a) to be an order, not a rule. *See Feliciano v. Department of Transp.*, 145 S. Ct. 1284, 1293 (2025). The next subsection in the statute, which grants the Secretary authority to demand reports from depository institutions, permits him to proceed "by regulation or order," 31 U.S.C. § 5326(b). Other nearby provisions authorize the agency to act only by "regulation." *See id.* § 5313(a) (Bank Secrecy Act provision authorizing the Secretary to "prescribe[] by regulation" a generally applicable currency transaction reporting requirement); *id.* § 5314(b) (foreign bank and financial account reporting statute) (repeatedly referring to "regulation[s] under this section"). "Congress has shown that it knows how to adopt" a term requiring rulemaking, a step it did not take in § 5326(a). *Lackey v. Stinnie*, 145 S. Ct. 659, 669-70 (2025) (quotation omitted).

Furthermore, subsection (c) of the statute mandates that, unless waived by the agency, the existence of an order is to be kept confidential. 31 U.S.C. § 5326(c). That provision would be entirely without force if the agency were required to conduct public notice-and-comment rulemaking in order to issue a targeting order. That anomalous result counsels strongly against treating a targeting order as a legislative rule that would require notice and comment. *See Department of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 53 (2024).

The "context from which the statute arose," *Bond v. United States*, 572 U.S. 844, 860 (2014), provides further support for the textual evidence that by using the term "order," Congress meant to remove the tool it was providing to the agency—which it intended to be flexible and meaningful—from the APA's more stringent procedural requirements for rulemaking. *See* Samuel L. Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 968 (2021) ("The mischief rule instructs an interpreter to consider the problem to which the statute was addressed, and also the way in which the statute is a remedy for that problem. Put another way, the generating problem is taken as part of the context for reading the statute." (footnote omitted)).

As described above, the geographic targeting authority came into existence almost 20 years after Congress provided for the establishment of the general, $10,000 reporting obligation. *Supra* pp. 2-3. Section 5326(a)'s enactment recognized the occasional need to mandate time-limited reporting "in a geographic area," so as to gather location-specific information in emergent situations—conditions precisely like those underlying the promulgation of this Order, ER-164. This conclusion is strengthened by the fact that when the statute was enacted, a geographic targeting order was limited to 60 days (later extended to the current 180). *See supra* p. 3. It strains credulity to imagine that Congress intended use of that tool to be subject to procedures that can last months. "The gestation period from initial notice to final rule can be a couple of months, and often much longer depending on the time the agency allows for comments and the time it takes to digest those comments. In addition to the time required for the notice and comment procedures to run their course, an additional thirty days ordinarily must pass between the time the final rule is published and the time it takes effect." *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992). The result would obviate much of the utility the geographic targeting tool was created to afford to the Executive Branch.

More broadly, Congress' description of the information to be gathered by means of currency transaction reports as "highly useful in . . . criminal, tax, or regulatory investigations, risk assessments, or proceedings; or . . . intelligence or counterintelligence activities, including analysis, to protect against terrorism," 31 U.S.C. § 5311(1), which underscores the need to obtain the reported information quickly, counsels against treating a targeting order as a rule for which public notice-and-comment rulemaking is required. *See West Virginia v. EPA*, 597 U.S. 697, 721

(2022) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (quotation omitted)).

ii. The result of the agency's action here was an APA order, because it complies with the terms of the statute. By using the term "group," Congress permitted FinCEN to act with respect to "a number of individuals assembled together or having some unifying relationship," *Group*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/group (last visited Aug. 5, 2025). Here, the "individuals" are particular "domestic financial institutions," *i.e.*, money services businesses, sharing the "unifying relationship" of doing business in a limited number of narrowly defined "geographic area[s]," 31 U.S.C. § 5326(a). Those geographic areas—30 specified ZIP codes—meet the relevant regulatory definition. *See* 31 C.F.R. § 1010.370(d)(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.").

iii. The district court concluded that the agency had exceeded its statutory authority because, under general principles for distinguishing between agency orders and rules, the Order looked to it more like a rule. ER-27-32. The district court's approach has things backward: instead of applying general principles designed to determine the nature of an action susceptible of characterization as either an order or a rule, the court should have concluded that because this Order satisfies the relevant statutory criteria, the result is an APA order. *See supra* pp. 11-15.

In any event, the district court misapplied those governing principles. To start, the court relied too heavily on the fact that the Order requires businesses to take action—that is, to report information—under pain of criminal and civil penalties. ER-27; ER-30. But rules and orders alike may create prospective legal obligations. 5 U.S.C. § 551(4) (rule) ("statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy"); *id.* § 551(6) (order) ("final disposition, whether affirmative, negative, *injunctive*, or declaratory in form" (emphasis added)).

The district court also misread the principle of generality versus specificity expressed in this Court's test for distinguishing between rules and orders, which asks "(1) whether the government action applies to specific individuals or to unnamed and unspecified persons; (2) whether the promulgating agency considers general facts or adjudicates a particular set of disputed facts; and (3) whether the action determines policy issues or resolves specific disputes between particular parties." *Gallo v. U.S. Dist. Ct. for the Dist. of Ariz.*, 349 F.3d 1169, 1182 (9th Cir. 2003) (citing *United States v. Florida E. Coast Ry. Co.*, 410 U.S. 224, 244-46 (1973)). These factors are "primary considerations," not exhaustive, definitive criteria. *Id.* Animating them is a drive to determine whether an agency articulated a "generalized standard," *NLRB v. Bell Aerospace Co. Div. of Textron Inc.*, 416 U.S. 267, 294 (1974), that is "generally applicable," *Safari Club Int'l v. Zinke*, 878 F.3d 316, 332 (D.C. Cir. 2017), and intended to "implement, interpret, or prescribe law or policy," 5 U.S.C. § 551(4). *See also Florida E. Coast Ry. Co.*, 410 U.S. at 246; *Neustar, Inc. v. FCC*, 857 F.3d 886, 895 (D.C. Cir. 2017) ("[R]ules tend to be matters of more general application." (citing *Heckler v. Ringer*, 466 U.S. 602, 614 (1984))).

FinCEN plainly did not do so here. It instead acted with a measure of specificity in tailoring the Order to a particular type of business within certain ZIP codes. *See Neustar*, 857 F.3d at 895 ("[G]iven the fact-intensive nature of the Commission's role in these proceedings, it is surely within the agency's authority to proceed on a case-by-case basis rather than by rulemaking." (quotation omitted)). As a result, even under *Gallo* and *Florida East Coast Railway*, which the district court cited, ER-27-28, FinCEN's action is on the "specific" end of the APA's spectrum between specificity and generality. In those cases, the regulated parties consisted of far more numerous groups—all attorneys not admitted to the State Bar of Arizona and "all of the common carriers by railroad subject to the Interstate Commerce Act," respectively. *Gallo*, 349 F.3d at 1173; *Florida E. Coast Ry.*, 410 U.S. at 246.

To be sure, the agency did not resolve a "dispute[]" or single out "particular parties." *Gallo*, 349 F.3d at 1182. But the rulemaking-adjudication test does not definitively require that an adjudication be litigation-like. *Yesler Terrace Cmty. Council*, 37 F.3d at 448 ("An adjudication (which results in an order) is virtually any agency action that is not rulemaking."). Nor must an agency's action affect only specified individuals to qualify as an order, *see ITServe All., Inc. v. U.S. Dep't of Homeland Sec.*, 71 F.4th 1028, 1035 (D.C. Cir. 2023), even if the adjudications that result in orders often do, *Neustar*, 857 F.3d at 895 ("[T]he Order under review determined the rights and obligations of two parties . . . .").

iv. The district court also unconvincingly distinguished two Fifth Circuit decisions that support the government's position. ER-28-30. In *United States v. W.H. Hodges & Co.*, 533 F.2d 276 (5th Cir. 1976) (per curiam), pursuant to his authority to "require the filing . . . of 'annual or special, or both annual and special, reports or answers in writing to specific questions,' furnishing such information as may be required . . . as necessary to further [his] enforcement of the [Packers and Stockyards] Act," *id.* at 278 n.1, the Secretary of Agriculture ordered all 38 stockyard marketing agencies in Louisiana to file term-limited special reports to support his "investigation of rates charged by" those agencies, *id.* Because that order was "clearly investigatory in nature, as opposed to an adjudicatory or rule-making process," it was "not subject to the procedures governing rule-making outlined in the APA." *Id.* (citing *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1388 (5th Cir. 1971)).

In *W.H. Hodges*, as here, Congress vested the agency head with authority to require reporting as necessary to support the government's enforcement of federal law. 533 F.2d at 278 n.1; *see* 31 U.S.C. § 5326(a). And in both cases, the agency head exercised that authority in support of a specific, geographically limited investigation. *W.H. Hodges*, 533 F.2d at 278 (Louisiana-wide investigation); 90 Fed. Reg. at 12,107 (30 ZIP codes in Texas and California selected). *Genuine Parts Co.*, 445 F.2d 1382, on which the *W.H. Hodges* court relied in reaching its holding, explained (in the context of constitutional due process) why it would be error to equate investigative and adjudicative proceedings by an agency: because the adjudicative "type of proceedings would make a shambles of the investigation and stifle the agency in its gathering of facts." *Id.* at 1388 (quoting *Hannah v. Larche*, 363 U.S. 420, 444 (1960)). Analogous considerations are at play here, where subjecting the agency to the requirements of notice and comment would unduly delay what Congress intended to be a quickly deployed (and temporally limited) order to generate information useful for the investigation, and interdiction, of criminal activity. *See* 31 U.S.C. § 5311.[3]

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[3] Indeed, Congress has explicitly authorized both FinCEN and other agencies to issue broadly applicable "orders" in a variety of contexts in which normal rulemaking is not feasible or advisable. *See, e.g.*, 21 U.S.C. § 811(h) (authorizing the Attorney General to issue temporary orders scheduling controlled substances); *id.* § 2313a(a) (authorizing the Treasury Secretary to sanction financial transactions "of primary money laundering concern in connection with illicit opioid trafficking . . . by order, regulation, or otherwise as permitted by law"); Combating Russian Money Laundering Act, Pub. L. No. 116–283, tit. XCVII, subtitle B, § 9714, 134 Stat. 4838, 4838-39 (2021) (codified at 31 U.S.C. § 5318A note) (similar, with respect to "primary money laundering concern" of Russian illicit finance); *see also Touby v. United States*, 500 U.S. 160 (1991) (upholding scheduling of controlled substances via "temporary scheduling order" under 21 U.S.C. § 811(h) against constitutional challenge); *United States v. Emerson*, 846 F.2d 541, 545 (9th Cir. 1988) ("[T]he absence of notice and public comment does not render section 811(h) a constitutionally infirm delegation of legislative power. The temporary scheduling of a controlled substance is an

Continued on next page.

The district court nevertheless interpreted *W.H. Hodges* to leave open whether an agency action could be both a rule and investigatory in nature. ER-29. As the court noted, the Fifth Circuit "revisited the question" of the distinction between rules and investigations in *U.S. Department of Labor v. Kast Metals Corp.*, 744 F.2d 1145 (5th Cir. 1984). ER-29. But that case, too, supports the conclusion that the Order is not a rule. The *Kast Metals* court reasoned that rules and investigations "are not mutually exclusive" because "information-gathering can be the result of a rule, and preliminary investigative activity can mold conduct in clearly identifiable ways." 744 F.2d at 1150 (citation omitted) (first citing *Donovan v. Wollaston Alloys, Inc.*, 695 F.2d 1, 9 (1st Cir. 1982); and then citing *Guardian Fed. Sav. & Loan Ass'n v. Federal Sav. & Loan Ins. Corp.*, 589 F.2d 658, 664-68 (D.C. Cir. 1978)). The court then concluded that the Occupational Safety and Health Administration's administrative plan "set[ting] forth the criteria and method by which OSHA selected employers for routine safety and health inspections" was a rule. *Id.* at 1147. First, as a textual matter, the plan "set[] forth a procedure for selecting employers for safety and health inspections," *id.* at 1149, fitting comfortably within the APA's category of "statement[s] . . . designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency," 5 U.S.C. § 551(4) (defining "rule").

emergency measure, lasting at most eighteen months. Requiring lengthy public comment could jeopardize the public safety sought to be protected by temporary scheduling.").

Second, the plan did not serve an investigatory purpose, but rather described agency practices to "guide the agency in exercise of its statutory authority to conduct inspections." *Kast Metals*, 744 F.2d at 1150. And finally, the statute authorizing the agency to act conferred rulemaking authority. *Id.* at 1151.

Kast Metals' signposts point in the opposite direction here. The Order does not implement the agency's vision of preferred policy nor the agency's own procedural requirements, taking it outside the APA's definition of a rule. *See Kast Metals*, 744 F.2d at 1149. That fact also distinguishes the Order from *Guardian Federal Savings & Loan Association*, 589 F.2d 658, which the district court cited (at ER-30). There, the D.C. Circuit analyzed a nominal "reporting" requirement that in fact imposed significant substantive obligations with respect to accounting practices. *Guardian Fed. Sav. & Loan Ass'n*, 589 F.2d at 663. This Order merely requires the gathering and submission of information. 90 Fed. Reg. at 12,107. As to the second element of *Kast Metals*, the Order clearly serves an investigative purpose. ER-157-58; *see Kast Metals*, 744 F.2d at 1150. And finally, the statute that authorizes the Order straightforwardly contemplates that the agency will act by "order," not by "rules and regulations."

The district court reached the opposite conclusion by quoting a stray line from *Kast Metals*, ER-30, not by applying the test from that case. And its conclusion that the Order "was not issued to a narrow set of businesses already under investigation for a crisply defined purpose," ER-30, rests on a strained reading of the record: there are thousands of money services businesses in the country's tens of thousands of ZIP codes, and FinCEN focused its attention on a relatively narrow set of those in support of an investigation into financing of a particular phenomenon—money laundering supporting fentanyl trafficking and other illegal activity along an international border. ER-160-64. Finally, the court's distinction between investigatory and pre-investigatory orders, ER-30, has no basis in the case law or the logic underlying the distinction between rules and orders.

b. The statute does not require business-specific findings.

i. Under § 5326(a), a geographic targeting order may cover "any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area." Quite straightforwardly, the "money services business[es]" located in "areas denoted by the ZIP codes [specified] corresponding to the following seven counties in California and Texas": Imperial, San Diego, Cameron, El Paso, Hidalgo, Maverick, and Webb Counties, 90 Fed. Reg. at 12,107, make up a "group of domestic financial institutions" in a defined "geographic area," 31 U.S.C. § 5326(a). *Supra* p. 15.

The district court nonetheless read the statute's use of these terms to mean that the agency may only impose reporting requirements on multiple businesses if it has made "a factual determination" as to each individual business or group of businesses about the need for reporting. ER-33. That conclusion appears to have followed from the district court's assumption that Congress intended to narrow the scope of the geographic targeting authority by referring to an "order." *See* ER-33 ("This latter, more generalized factual determination is inconsistent with Congress's instruction that FinCEN act by 'order.'"). As explained, *supra* pp. 11-15, that assumption is baseless.

The district court's construction of the statute is flatly at odds with "what [the] statute actually says," and so must be rejected. *Groff v. DeJoy*, 600 U.S. 447, 468 (2023) (citing *National Ass'n of Mfrs. v. Department of Def.*, 583 U.S. 109, 127 (2018)); *see also Babb v. Wilkie*, 589 U.S. 399, 413 (2020) ("[W]here, as here, the words of [a] statute are unambiguous, the judicial inquiry is complete." (second alteration in original) (quotation omitted)). The text of the statute requires no more than that the Secretary believe it necessary to require reporting from a "group" of businesses in a "geographic area," conditions that are met here. Plainly lacking from the statute's text is any reference to the type of individualized factual determination the district court deemed necessary. And absent such a procedural requirement in the statute itself, the district court was not at liberty to impose one. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 685 (2020) ("We have repeatedly stated that the text of the APA provides the 'maximum procedural requirements' that an agency must follow in order to promulgate a rule." (quoting *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 100 (2015))).

ii. The district court located additional support for its business-specific reading of § 5326(a) in the confidentiality obligation established by a neighboring statutory subsection, § 5326(c). ER-33-37; *see* 31 U.S.C. § 5326(c) ("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.”).

To start, contextual implication cannot override the plain text of the statute, which does not require (in either § 5326(a) or (c)) particularized need of the sort the district court identified. *See Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (citing *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992)). Moreover, the confidentiality provision sheds no light on the appropriate scope of an order. The district court reasoned that the confidentiality provision is "strong evidence that Congress intended for [geographic targeting orders] to be issued directly to the targeted businesses, not to the public at large." ER-34. But this is not at all apparent from the statute, which expressly licenses the Secretary to waive confidentiality and to publish an order openly—exactly as he did here. 90 Fed. Reg. at 12,107 ("Confidentiality: This Order is being publicly issued, and its terms are not confidential."). Similarly, the district court's conclusion that "it must be feasible for FinCEN to provide individualized notice to the targeted businesses" is not related to the confidentiality provision. ER-34. If an order is to be kept secret, notice may be accomplished via direct communication. And if practicalities underlying the order make that infeasible, as here, the Secretary may waive confidentiality and effect notice via publication.

The district court also cited the history of the Treasury Department's practices with respect to confidentiality in the context of geographic targeting orders in the lead-up to the codification of § 5326(c), finding that that provision "codified the agency's wish to maintain [geographic targeting orders] under a shroud of secrecy." ER-34-37. But even if the agency often (or even exclusively) maintained confidentiality before § 5326(c) existed, the resulting text—Congress's "authoritative statement," *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005)—does not bind the agency to confidentiality in a way that might support a reading of the statute to require a demonstration of individualized need. Once again, the provision is waivable (and was waived here) and so illuminates nothing about the appropriate scope of the targeting authority.

2. The Order did not require notice and comment.

In an extension of its holding that the Order likely exceeded the Treasury Department's statutory authority because it was a rule, not an order, under the APA, the district court held that the agency had likely erred in failing to comply with the notice-and-comment requirements of 5 U.S.C. § 553. ER-37-38. But because the Order was in fact an APA order, not a rule, *see supra* pp. 11-25, notice-and-comment procedures were not required. *MacLean v. Department of Homeland Sec.*, 543 F.3d 1145, 1151-52 (9th Cir. 2008) (per curiam) (first citing 5 U.S.C. § 553; and then citing *Yesler Terrace Cmty. Council*, 37 F.3d at 448).

3. The Order was not adopted in an arbitrary and capricious manner.

a. The APA permits a reviewing court to "set aside" action that is "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). The court's role is limited, ensuring only "that an administrative agency 'examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898, 917 (2025) (alterations omitted) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). "The scope of this review 'is narrow,' and reviewing courts must exercise appropriate deference to agency decisionmaking and not substitute their own judgment for that of the agency." *Id.* (quoting *State Farm*, 463 U.S. at 43).

b. The district court found the Order to be likely arbitrary and capricious on three grounds. None withstands scrutiny.

i. First, the district court held that the agency likely "failed to consider the degree to which the [Order] would impose a regulatory burden on targeted" businesses. ER-40. But the agency did consider that issue, explicitly. FinCEN acknowledged that the Order "would place a higher burden on Covered Businesses due to the increased volume of [currency transaction reports] that would result," ER-170, as the district court itself noted, ER-41-42. By reasoning that the agency should have given a more robust explanation of the burdens to be imposed on businesses, ER-41-42, the district court effectively (and impermissibly) formulated procedural requirements with no basis in the APA. *See Little Sisters of the Poor Saints Peter & Paul Home*, 591 U.S. at 685. Alternatively, the district court's dismissal of the weight the agency assigned to the burden amounts to an argument that the agency's decision was not "'the best one possible' or even . . . 'better than the alternatives.'" *Department of Com. v. New York*, 588 U.S. 752, 777 (2019) (quoting *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 292 (2016)). But the APA does not assign such policy decisions to the courts. It is enough that the agency evaluated the relevant considerations and articulated a reason for its decision. *Wages & White Lion Invs.*, 145 S. Ct. at 917.

ii. The district court also believed the choice of $200 as the reporting threshold in the covered ZIP codes to be likely arbitrary. ER-43-46. Once again, the district court's analysis exceeds the narrow standard of review prescribed by the APA. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009).

FinCEN justified its selection of a $200 threshold on the grounds it would "include nearly all cash transactions vulnerable to abuse by drug cartels through structuring payments to avoid [currency transaction reports], while excluding clearly de minimis amounts that are more likely to be legitimate." ER-169. That conclusion was "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 417 (2021). As the agency articulated, it sought to obtain a "snapshot in time of a significant sample of cash transactions in the Covered Geographic Areas, allowing FinCEN to more fully understand the money laundering risks related to [money services businesses] and cross-border cash remittances." ER-169-70. With such a broad goal, it is unsurprising that the agency would choose to set a relatively low threshold, so as to gather more data.

As for the choice of $200 itself, that figure comfortably fits within a range of values that might "exclud[e] clearly de minimis amounts that are more likely to be legitimate." ER-169. "In order to design a clear, manageable regulation, agencies often must select a single quantitative threshold from among a range of reasonable options." *Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 978 (9th Cir. 2023). Accordingly, "when an agency '"had to choose some number from a broad range" and selected a "reasonable figure,"' its choice satisfies the arbitrary-and-capricious standard even if there are other reasonable values that the agency could have chosen," *id.*—such as the alternative figures the district court cited from a think tank study and another government white paper. *See* ER-45 (suggesting the threshold might more reasonably be set at $1,000). The result may be, in one sense, "essentially arbitrary," because the agency "might just as well have promulgated" a $250 threshold, or $300, or $500. *See Solar Energy Indus. Ass'n*, 80 F.4th at 978 (quotation omitted). "But that does not make the rule arbitrary in the sense contemplated by the APA." *Id.*

iii. Finally, the district court concluded that it was likely arbitrary and capricious for FinCEN not to consider using the Transaction Record Analysis Center (TRAC) database instead of promulgating the Order. ER-46-47. The APA requires not that an agency consider "all policy alternatives," or "every alternative device and thought conceivable by the mind of man," but only "'significant and viable' and 'obvious' alternatives." *MediNatura, Inc. v. FDA*, 998 F.3d 931, 943-44 (D.C. Cir. 2021) (first quoting *State Farm*, 463 U.S. at 51; then quoting *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978); and then quoting *National Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013)).

The TRAC database—the existence of which was brought to the district court's attention in an amicus brief, and mention of which appears once on the 405th page of the administrative record—is, according to a Department of Homeland Security bulletin, the "result of a Settlement Agreement Amendment between the Arizona Attorney General and Western Union." ER-176. "As of July 2024," the database contained approximately 337 million transactions of $500 or more, "primarily sent from or paid in U.S. Southwest Border States and Mexico," "from 28 different" money services businesses, "22 of which are actively producing records," ER-176. This does not show that the TRAC database is a viable, significant, or obvious alternative. *See MediNatura, Inc.*, 998 F.3d at 943. Most glaringly, the reporting threshold is not the same as what the Treasury Department selected, and the records are limited to those that are "subpoenaed," ER-176, from a small fraction of the money services businesses that operate in the country. The agency was well within its discretion under the APA not to make further mention of it.

B. The remaining equitable factors favor vacatur.

Alongside plaintiffs' failure to show a likelihood of success on the merits, the equitable factors also weigh against preliminary injunctive relief. *See Western Watershed Projects v. Salazar*, 692 F.3d 921, 923 (9th Cir. 2012) (order).

The district court credited plaintiffs' claims of irreparable injury in the form of a "threat of extinction" and an adverse "impact on [plaintiffs'] reputation and goodwill in the community." ER-50 (quotation omitted). But the evidence plaintiffs offered fell short of establishing that the plaintiff business has been (or imminently will be) rendered bankrupt because of the Order. Instead, plaintiffs' testimony at most establishes that compliance with the Order will impose additional costs, principally in the form of time to complete reports. *E.g.*, ER-149-50. Plaintiffs acknowledged the existence of software that might reduce the time needed to comply, *id.*, but did not testify that they have implemented it, nor that the cost of acquiring it would be ruinous.

Nor did plaintiffs actually establish that any of their customers will be irretrievably lost, even if some customers have declined to transact business with them (and with similarly situated non-plaintiff businesses, ER-125) during the time the Order is in effect. *E.g.*, ER-147. However genuinely felt, anxieties and fears about what could happen in the long term furnish an insufficient basis on which to foresee "likely" irreparable harm. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

Any irreparable injury plaintiffs face is outweighed by the harms the government faces from being hamstrung in its attempts to investigate and prosecute money laundering. It is in the public interest for the government to act swiftly to combat illicit drug financing, particularly in light of the ongoing fentanyl crisis and evidence that drug cartels are using money services businesses to further their devastating criminal activity. *E.g.*, ER-164-65. The district court's preliminary injunction poses a substantial impediment to the government's ability to obtain time-sensitive information in aid of its investigation.

II. The Preliminary Injunction Is Overbroad.

Even if the Court declines to vacate the preliminary injunction, it should narrow it, as the district court exceeded the scope of the court's equitable authority in crafting it. Just weeks ago, 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. *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2550 (2025). That is so because the statutory equitable power conferred on the federal courts by the Judiciary Act of 1789 encompasses only "remedies 'traditionally accorded by courts of equity' at our country's inception," *id.* at 2551 (quoting *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)), a category that excludes non-party-specific relief, *id.* at 2551-54. Before the decision in *CASA* was handed down, and thus without its benefit, the district court entered such a prohibited injunction when it granted relief throughout the Southern District of California (in the two California counties where the Order applies). ER-53. It was not necessary to do so to afford "complete relief" to the plaintiffs in this suit, *see CASA, Inc.*, 145 S. Ct. at 2557, and so the court erred by not limiting its injunction to those plaintiffs alone.

That the district court acted pursuant to 5 U.S.C. § 705, the APA's provision for "[r]elief pending review," does not change this analysis. *But see* ER-53-54. That provision states that, "to the extent necessary to prevent irreparable injury," 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. § 705. The statutory reference to "necessary and appropriate process" incorporates traditional equitable principles. *Cf. Starbucks Corp. v. McKinney*, 602 U.S. 339, 347 (2024) (holding that statutory phrase "just and proper" invokes traditional equitable standards). In addition, the final clause of § 705 provides that 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. § 705 (emphasis added). The statute's use of the disjunctive "or" provides courts with two options that may be appropriate during judicial review. But including postponement as one possible form of relief does not mean that it will be "necessary to prevent irreparable injury" or "necessary and appropriate" in every case. *Id.* All told, by dint both of the statutory text and underlying equitable principles, the district court was required to grant relief only on a showing of irreparable harm.

Those same equitable principles are incorporated into the APA's instruction that the relief granted be "tailored to redress the plaintiff[s'] particular injury." *Gill v. Whitford*, 585 U.S. 48, 73 (2018); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."); *see also Lewis v. Casey*, 518 U.S. 343, 357 (1996); *Starbucks Corp.*, 602 U.S. at 345 (citing *Winter*, 555 U.S. at 20). Here, that would mean limiting the injunction to only the named plaintiffs in the suit.

CONCLUSION

For the foregoing reasons, the preliminary injunction should be vacated or, at a minimum, narrowed.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, defendants-appellants state that they know of no related case pending in this Court.

s/ Simon G. Jerome
Simon G. Jerome

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Circuit Rule 32-1(a) because it contains 8,476 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

s/ Simon G. Jerome
Simon G. Jerome

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Simon G. Jerome
Simon G. Jerome

ADDENDUM

TABLE OF CONTENTS

31 U.S.C. § 5311

§ 5311. Declaration of purpose.

It is the purpose of this subchapter (except section 5315) to--

(1) require certain reports or records that are highly useful in--

(A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or

(B) intelligence or counterintelligence activities, including analysis, to protect against terrorism;

(2) prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism;

(3) facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity;

(4) assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services to--

(A) protect the financial system of the United States from criminal abuse; and

(B) safeguard the national security of the United States; and

(5) establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities to identify, stop, and apprehend money launderers and those who finance terrorists.

31 U.S.C. § 5313

§ 5313. Reports on domestic coins and currency transactions.

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 4111 of the National Housing Act (12 U.S.C. 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report--

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

(2) The Secretary shall prescribe--

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

31 U.S.C. § 5326

§ 5326. Records of certain domestic transactions.

(a) In general.--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 reporting requirements are necessary to carry out the purposes of this subtitle or to prevent evasions thereof, the 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--

(1) to obtain such information as the Secretary may describe in such order concerning--

(A) any transaction in which such financial institution or nonfinancial trade or business 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; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) Authority to order depository institutions to obtain reports from customers.--

(1) In general.--The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)--

(A) 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 this subtitle 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

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle 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.

(2) Reportable transaction defined.--For purposes of this subsection, 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.

(c) Nondisclosure of orders.--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.

(d) Maximum effective period for order.--No order issued under subsection (a) shall be effective for more than 180 days unless renewed pursuant to the requirements of subsection (a).