IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SAMANTHA SMITH AND ROBERT MEANS	§	
Plaintiffs,	§	
v.	§	
UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN, in her official capacity as Secretary of the Treasury, THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN), And ANDREA GACKI, in her official Capacity as Director of FinCEN,	§	Civil Action No. 6:24-cv-00336
Defendants.	§	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INUNCTION AND RELIEF UNDER 5 U.S.C. § 705

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INTRODUCTION

The United States is involved in an ongoing battle to combat money laundering and terrorist financing. As "malign actors" find new ways to circumvent existing laws, Congress has acted to ensure the government has information necessary to address these new threats, including the exploitation of legal entities, such as corporations to facilitate illegal activity that poses a risk to national security and the United States' foreign policy. Exploiting loopholes in state law, criminals are frequently able to create entities without having to disclose their involvement. This blind spot has made the United States a popular jurisdiction for malign actors to create legal entities for the purpose of facilitating fraud, human smuggling, corruption, and terrorist financing.

Congress addressed these concerns by passing the Anti-Money Laundering Act of 2020, which includes the Corporate Transparency Act ("CTA"). This legislation requires certain domestic and foreign companies to report information concerning their beneficial owners (and, in certain instances, also provide information on the company applicant, who is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company) to the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the United States Department of the Treasury. Congress determined that this information—including a beneficial owner's name, address, date of birth, and a unique identifying number, such as a driver's license number—will assist the law enforcement and intelligence community's efforts to counter threats posed by criminals, terrorists, and others undermining the United States' interests.

Plaintiffs Samantha Smith ("Smith") and Robert Means ("Means" and collectively "Plaintiffs") allege the CTA's reporting requirements are unconstitutional and seek a preliminary injunction to enjoin the CTA. But Plaintiffs fail to establish they are entitled to preliminary relief. Primarily, Plaintiffs cannot establish a likelihood of success on the merits because the CTA falls squarely within Congress's power to regulate commerce, ensure national security, and lay and collect taxes. Plaintiffs also fail to establish the remaining preliminary injunctive factors because they fail to demonstrate an irreparable injury and the balance of equities weighs against issuing an injunction. For these reasons, the Court should deny Plaintiffs' motion for preliminary injunction.

BACKGROUND

I. Statutory Background

Federal law has long prohibited money laundering, *see* 18 U.S.C. §§ 1956, 1957, financing terrorism, *see id.* § 2339C, evading taxes, *see* 26 U.S.C. § 7201, and other harmful economic activities, *see*, *e.g.*, 18 U.S.C. §§ 1001, 1341, 1343. According to one estimate, "domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds" each year. *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,498, 59,579 (Sept. 30, 2022).[1] Because financial crime is complex, easily concealed, and facilitated by an interconnected financial system, Congress has adopted various measures to aid enforcement. *See*, *e.g.*, *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 26 (1974) (discussing certain reporting requirements of the Bank Secrecy Act[2]).

Despite these efforts, there remained a significant gap in the government's ability to detect and prosecute financial crime. Under state law, "corporations, limited liability companies, [and] other similar entities" are generally not required to report "information about the[ir] beneficial owners." Anti-Money Laundering Act of 2020 ("AMLA"), Pub. L. No. 116-283, div. F, § 6402(2), 134 Stat. 4547, 4604 (2021).[3] "A person forming a corporation or limited liability company within the United States" thus "typically provides less information at the time of incorporation than is needed to obtain a bank account or driver's license." H.R. Rep. No. 116-227, at 2 (2019). That enables "malign actors" to "conceal their ownership of corporations" and then use those anonymous corporations to engage in "money laundering," "the financing of

[1] Internal quotations marks and citations are omitted throughout this brief, unless noted.

[2] Parts of the Currency and Foreign Reporting Act of 1970, Pub. L. No. 91-508, 121, 84 Stat. 1114 (1970), its amendments, and other statutes, are referred to as the Bank Secrecy Act (BSA), codified at 12 U.S.C. §§ 1829b, 1951–60, and 31 U.S.C. §§ 5311–14, and 5316–36, including notes thereto.

[3] The AMLA and CTA were enacted as part of the National Defense Authorization Act for Fiscal Year 2021.

terrorism," and "serious tax fraud." National Defense Authorization Act ("NDAA"), Pub. L. No. 116-283, § 6402(3), 134 Stat. 3388, 4604 (2021).

Congress and the Executive Branch identified "[t]his lack of transparency" as "a primary obstacle to tackling financial crime in the modern era." H.R. Rep. No. 116-227, at 10. When investigators trace illicit funds to a corporation, they often cannot identify the corporation's owners from available sources because ownership records "do not exist." 87 Fed. Reg. at 59,504. Instead, investigators must pursue "human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward facing structure of the[] shell companies[.]" *Id.* The "strategic use" of such companies by criminals thus "makes investigations exponentially more difficult and laborious." *Id.* at 59,505. And because criminals may "layer" multiple shell companies, even the most thorough investigation may not yield results. NDAA § 6402(4).

Criminals routinely exploit this enforcement gap. Federal prosecutors report that "large-scale schemes that generate substantial proceeds for perpetrators and smaller white-collar cases alike routinely involve shell companies." 87 Fed. Reg. at 59,503. Likewise, drug traffickers "commonly use shell and front companies to commingle illicit drug proceeds with legitimate revenue of front companies, thereby enabling the [drug traffickers] to launder their drug proceeds." *Id.*

In addition to facilitating domestic crime, the absence of company-ownership information threatens U.S. national-security and foreign-policy interests. For instance, "Russian elites, state-owned enterprises, and organized crime, as well as the Government of the Russian Federation have attempted to use U.S. and non-U.S. shell companies to evade sanctions[.]" *Id.* at 59,498; *see id.* at 59,502 (discussing use of shell companies by the Government of Iran). And more broadly, the absence of company-ownership information in the United States undermines the federal government's longstanding diplomatic efforts to combat cross-border financial crime by "mak[ing] the United States a jurisdiction of choice for those wishing to create shell companies that hide their ultimate beneficiaries" and "a weak link in the integrity of the global financial system." *Id.* at

59,506. Because it did not collect ownership information, the United States fell out of "compliance with international anti-money laundering and countering the financing of terrorism standards." NDAA § 6402(5)(E).

For similar reasons, criminals can use the government's lack of information about the ownership of corporations to obscure their income and assets and thus perpetrate "serious tax fraud." NDAA § 6402(3). A "[Department of the] Treasury study based on a statistically significant sample of adjudicated [Internal Revenue Service (IRS)] cases from 2016-2019 found legal entities were used in a substantial proportion of the reviewed cases to perpetrate tax evasion and fraud." 87 Fed. Reg. at 59,503.

To address this enforcement gap, Congress enacted beneficial ownership reporting requirements. The AMLA adopts various provisions designed to "modernize" federal laws concerning money laundering and terrorism financing. NDAA § 6002(2). Among those is the CTA, which aims to ensure that the United States uniformly collects beneficial ownership information notwithstanding the disparate corporate formation requirements imposed by states. *Id.* § 6002(5).

In enacted findings accompanying the CTA, Congress determined that "the collection of beneficial ownership information" is "needed" to "protect interstate and foreign commerce" and "better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity[.]" *Id.* § 6402(5). Congress further determined that the reporting requirements would "facilitate important national security, intelligence, and law enforcement activities[,]" *id.* § 6402(6)(A), assist in improving "tax administration[,]" 31 U.S.C. § 5336(c)(5)(B), and "bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards[,]" NDAA § 6402(5)(E). And Congress described the reported information as "highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators." *Id.* § 6402(8)(C).

The CTA accordingly requires that certain businesses report information about their beneficial owners and applicants to FinCEN. A "beneficial owner" is "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise[] (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." 31 U.S.C. § 5336(a)(3)(A). *But see id.* § 5336(a)(3)(B) (establishing certain exceptions). And an "applicant" is an individual who files documents to form or register the corporate entity. *See id.* § 5336(a)(2). For each applicant and beneficial owner, a covered business must report the individual's legal name, date of birth, residential or business address, and driver's license number or other "unique identifying number[.]" *Id.* § 5336(a)(1), (b)(2)(A).

In addition to providing that covered businesses and other covered entities file reports when they first become subject to the CTA, the statute also requires that those entities submit updated reports when ownership information changes. In particular, when "there is a change with respect to any" ownership information, a covered entity must "submit to FinCEN a report that updates the information relating to the change." *Id.* § 5336(b)(1)(D). A person who willfully violates either the initial or ongoing reporting requirements is subject to civil and criminal penalties. *See id.* § 5336(h). *But see id.* § 5336(h)(3)(C) (providing certain safe harbors).

These requirements apply to "reporting compan[ies]." *Id.* § 5336(a)(11). That term generally includes any "corporation, limited liability company, or other similar entity that is" either "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe[,]" or "formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe[.]" *Id.* § 5336(a)(11)(A).

Congress exempted from the reporting requirements 23 categories of legal entities, such as banks, public accounting firms, and other businesses already subject to reporting or recordkeeping requirements. *Id.* § 5336(a)(11)(B). It excludes certain domestically owned entities no longer

engaged in business. *Id.* § 5336(a)(11)(B)(xxiii). It also excludes certain trusts, political organizations, and non-profits. *Id.* § 5336(a)(11)(B)(xix).

Consistent with Congress's purposes, the CTA generally contemplates that reported information be used to facilitate the investigation and prosecution of financial crimes, among other things. For example, FinCEN may share ownership information with federal agencies "engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity[.]" *Id.* § 5336(c)(2)(B)(i)(I). FinCEN may share the same information with state and local law enforcement agencies when a court "authorize[s] the law enforcement agency to seek the information in a criminal or civil investigation[.]" *Id.* § 5336(c)(2)(B)(i)(II).

II. FinCEN's Rulemaking

The CTA directs FinCEN to implement certain aspects of the statute by regulation. *See id.* § 5336(b)(5). FinCEN issued its final rule on beneficial ownership information reporting in September 2022. 87 Fed. Reg. at 59,509. As relevant here, the rule, as amended, establishes the deadlines by which covered entities must comply with the statute. For covered entities created or registered before 2024, compliance is required by January 1, 2025. *See* 31 C.F.R. § 1010.380(a)(1)(iii).

III. This Litigation

On September 12, 2024, Plaintiffs filed this action. ECF No. 1. Plaintiffs are two individuals who allege they own companies that are subject to the CTA's reporting requirements and will have to report information regarding the Plaintiff individuals. ECF No. 1, pp. 9–11. Plaintiffs allege the CTA exceeds Congress's enumerated powers. *Id.*, pp. 11–13. Plaintiffs also allege that because the CTA exceeds Congressional authority, the CTA violates Section 706 of the Administrative Procedure Act ("APA"). *Id.* at 14.

On September 17, 2024, Plaintiffs filed a motion for preliminary injunction and relief pursuant to Section 705 of the APA (the "Motion"). ECF No. 7. The Motion appears to seek a nationwide injunction enjoining enforcement of the CTA and staying FinCEN's rule

implementing the CTA's reporting requirements during the pendency of this litigation. *Id.* at 21; ECF No. 7-3.

LEGAL STANDARDS

"A preliminary injunction is an extraordinary and drastic remedy" that is "never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (cleaned up). A plaintiff may obtain this "extraordinary remedy" only "upon a clear showing" that it is "entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff must show (1) "a substantial threat of irreparable injury[,]" (2) "a substantial likelihood of success on the merits," (3) "that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted," and (4) "that the grant of an injunction will not disserve the public interest." *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016). The plaintiff must "clearly carr[y] the burden of persuasion on all four requirements." *Id.*

The Supreme Court has made clear that in cases such as this, where the Plaintiffs pursue a facial challenge, they must clear a "very high bar." *Moody v. NetChoice, LLC*, 144 S.Ct. 2383, 2397 (2024). For the government to prevail, it "need only demonstrate that [the challenged law] is constitutional in some of its applications." *United States v. Rahimi*, 144 S.Ct. 1889, 1898 (2024). Facial challenges are "hard to win" for a "host of good reasons." *NetChoice*, 144 S.Ct. at 2397. For one thing, "facial challenges threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways." *Id.* Additionally, facial challenges "run contrary to the fundamental principle of judicial restraint" that "courts should neither anticipate a question of constitutional law in advance" nor "formulate a rule of constitutional law broader than is required by the precise facts to which it is applied." *Washington Sate Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008).

ARGUMENT

I. Plaintiffs have not demonstrated irreparable harm.

The Court should deny Plaintiffs' request for a preliminary injunction because Plaintiffs have not demonstrated any irreparable harm. "Perhaps the most important prerequisite for the

issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Monumental Task Comm., Inc. v. Foxx*, 157 F.Supp.3d 573, 582–83 (E.D. La. 2016), *aff'd*, 678 F. App'x 250 (5th Cir. 2017). "To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical," *Duarte v. City of Lewisville*, 136 F.Supp.3d 752, 791 (E.D. Tex. 2015), *aff'd*, 858 F.3d 348 (5th Cir. 2017), and must also be "future or continuing," *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014). Plaintiffs must substantiate any claim of irreparable injury with "independent proof, or no injunction may issue," *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989).

Plaintiffs have failed to establish irreparable harm. Plaintiffs argue satisfy their burden of establishing irreparable harm is satisfied because enforcement of an unconstitutional law is a *per se* irreparable harm. ECF No. 7, at 20. Plaintiffs' argument is flawed to the extent it assumes they prevail on the underlying issues in this case: as explained below, Plaintiffs cannot even establish a likelihood of success on the merit of their claims. Moreover, courts have declined to find irreparable harm solely based on allegations that a plaintiff's constitutional rights have been violated. *E.g. Castro v. City of Grand Prairie*, No. 3:21-cv=885, 2021 WL 1530303, at *2 (N.D. Tex. Apr. 19, 2021); *Sheffield v. Bush*, 604 F.Supp.3d 886, 609 (S.D. Tex. 2022).

Plaintiffs' second attempt to establish irreparable harm appears to be based on the idea that the "mandatory disclosure of private information" establishes irreparable harm. ECF No. 7, at 20. But Plaintiffs offer no authority for such a sweeping proposition. Even if that was the case, Plaintiffs have essentially made the disclosure voluntarily through this lawsuit. In this suit, Smith publicized that she is the beneficial owner of Sage Rental Properties, LLC d/b/a Calhoun Canyon Loop and Means publicized that he is a beneficial owner of 2367 Oak Alley, LLC. Other than their status as beneficial owners, Plaintiffs have not identified any other "private information" the CTA requires them to disclose that is not already in possession of the government. For these reasons, Plaintiffs' argument regarding disclosure of private information is insufficient to establish irreparable harm.

Finally, Plaintiffs attempt to establish irreparable harm by arguing that the costs of complying with the CTA constitute irreparable harm. In support of this argument, Smith states

that "[she] will incur expenses compiling information for the initial report and will have continuing expenses to maintain updated information in the database…." ECF No. 7-1, at 4. The only specificity Smith provides is the need to "provide an image of an identifying document" and possibility that if she moves, she will need to submit "an updated identifying document." *Id.* Means' declaration in support of Plaintiffs' motion provides, verbatim, the same explanation of the alleged compliance costs. ECF No. 7-3, at 4. But these *de minimis* costs are not sufficient to carry Plaintiffs' burden. By their own admission, Plaintiffs have determined they are subject to the reporting requirements. The form itself is simple and free. Press Release, U.S. Beneficial Ownership Information Registry Now Accepting Reports (Jan. 1, 2024), *available at* https://perma.cc/6NRG-CTZB. The requested information—name, date of birth, address, and identifying number and image of a non-expired identifying document such as a driver's license—is also readily available and, contrary to Plaintiffs, should not require any expense to compile. Moreover, financial harms are, by definition, reparable and not a basis for injunctive relief. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Given the, at most, *de minimis* costs associated with compliance with the CTA, these costs fail to satisfy Plaintiffs' burden of establishing irreparable harm. *See Second Amend. Found., Inc. v. ATF*, 702 F. Supp. 3d 513,538, 540 (N.D. Tex. 2003).

Plaintiffs therefore fail to establish imminent, irreparable harm, and their motion for preliminary injunction should be denied for this reason alone. *See Firestone v. Yellen*, Case No. 3:24-cv-1034-Sl; 2024 WL 4250192, at *13 (D. Or. Sept. 20, 2024); Mot. Hr'g Tr. 50–52, *Small Bus. Ass'n of Mich. v. Yellen*, No. 1:24-cv-00314-RJJ-SJB (W.D. Mich. Apr. 29, 2024), ECF No. 25 (concluding that CTA was unlikely to cause irreparable harm and denying preliminary injunction).

II. Plaintiffs are not likely to succeed on the merits because the CTA is authorized by Congress's enumerated powers.

The CTA is within the scope of Congress's authority for two reasons. First, the CTA fills a gap in a comprehensive scheme to prevent harmful economic activity and directly regulates

commercial entities and is therefore authorized by the Commerce and Necessary and Proper Clauses. Second, the CTA's corporate reporting requirements effectuate powers vested in the federal government, including the commerce, tax, and national-security powers, and are therefore authorized by the Necessary and Proper Clause. Either of these reasons is sufficient to defeat Plaintiffs' challenge, and therefore, Plaintiffs have failed to "establish that no set of circumstances exists under which the Act would be valid." *See United States v. Salerno*, 481 U.S. 739, 745 (1987) ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully…"); *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 562 (201) (op. of Roberts, C.J.) ("*NFIB*") (considering independent bases for upholding individual responsibility payment). Because Plaintiffs have not "clearly demonstrated" that Congress lacked the constitutional authority to pass the CTA, *see NFIB*, 657 U.S. at 538, Plaintiffs fall well short of establishing a likelihood of success on either Count I or Count II.

A. The CTA is authorized by Congress's power to regulate interstate and commerce.

Congress has the power to "regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes." U.S. Const. art. I, § 8. This authority encompasses the "power to enact 'all appropriate legislation' for 'its protection and advancement'; to adopt measures 'to promote its growth and insure its safety'; 'to foster, protect, control, and restrain.'" *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36–37 (1937); *see also NFIB*, 567 U.S. at 549. In addition to regulating the "channels of interstate commerce" and "the instrumentalities of interstate commerce, and persons and things in commerce," Congress may "regulate activities that substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 16–17 (2005). When Congress acts in this space, it has the power to "regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Id.* at 17. Additionally, Congress may regulate the entire class when it determines the total incidence of a practice poses a risk to the national market. *Id.*

The Necessary and Proper Clause authorizes Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its other enumerated powers and the powers

vested in the Executive Branch. U.S. Const. art. 1, § 8, cl. 18. It also "grants Congress broad authority to enact federal legislation." *United States c. Comstock*, 560 U.S. 126, 133 (2012). It is therefore sufficient if "the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *Id.* at 134; *United States v. Darby*, 312 U.S. 100, 121 (1941).

In assessing the breadth of Congress's authority to regulate activities that substantially affect interstate commerce, the Supreme Court has distinguished between laws with an "apparent commercial character," *United States v. Morrison*, 529 U.S. 598, 611 & n.4 (2000), and laws that have "nothing to do with 'commerce' or any sort of economic enterprise," *Lopez*, 514 U.S. at 561; *Morrison*, 529 U.S. at 613. The Court has also distinguished regulations of commercial activity from regulations that would address inactivity by requiring individuals to engage in commercial transactions in which they would prefer not to engage. *NFIB*, 567 U.S. at 553 (op. of Roberts, C.J.). Supreme Court precedent thus "provides two recognized and historically rooted means of congressional regulation under the commerce power: (1) whether the activity is any sort of economic enterprise, however broadly one might define those terms; or (2) whether the activity exists as an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Groome Res. Ltd., L.L.C. v. Par. of Jefferson*, 234 F.3d 192, 205 (5th Cir. 2000).

1. The CTA's reporting requirements form a critical part of the federal government's comprehensive anti-money laundering regime.

The CTA's reporting requirements are necessary to fill a gap in the federal government's comprehensive anti-money laundering regime. "[M]oney laundering is a quintessential economic activity." *See United States v. Goodwin*, 141 F.3d 394, 399 (2d Cir. 1997); *see also United States v. McClaren*, 13 F.4th 386, 402 (5th Cir. 2021) (drug trafficking is economic activity); *Groome*, 244 F.3d at 208 (discussing the breadth of "economic activity"). "Indeed, it is difficult to imagine a more obviously commercial activity than engaging in financial transactions involving the profits of unlawful activity." *Goodwin*, 141 F.3d at 399. Plaintiffs cannot dispute that Congress may, pursuant

to the Commerce Clause prohibit these harmful forms of economic activity. *See* 18 U.S.C. §§ 1956, 1957 (prohibiting money laundering); *id.* § 2339C (prohibiting financing of terrorism); 26 U.S.C. 7201 (prohibiting tax evasion).

A variety of economic crimes—including money laundering, terrorism financing, and tax fraud—are made easier to commit through the formation of legal entities that may conduct economic transactions in their own names without disclosing "information about the[ir] beneficial owners." NADA § 6402(2). In this regard, Congress determined that "malign actors" can "conceal their ownership of corporations" and use them to conduct illicit transactions without detection. *Id.* "This lack of transparency" has been "a primary obstacle to tackling financial crime in the modern era." H.R. Rep. 116-227, at 10; *see* 87 Fed. Reg. at 59,504-05. In the course of investigations, investigators frequently trace illicit funds to a corporation or similar entity, only to find that corporate ownership records are not "attainable because they do not exist." 87 Fed. Reg. at 59,504. Both foreign and domestic criminals exploit this blind spot. *Id.* at 59,503.

To combat these economic crimes and the misuse of the instrumentalities and channels of commerce, Congress passed the AMLA. The AMLA, of which the CTA is a part, seeks to "modernize" existing federal legislation seeking to combat "money laundering and counter[] the financing of terrorism." NDAA §§ 6001, 6002(2), 6401. The CTA fills an important gap in Congress's comprehensive regime to prevent money laundering by facilitating the uniform collection of beneficial ownership information. *Id.* § 6002(5). In particular, the statute requires legal entities—that is, those entities that have the ability to engage in commercial transactions in their own name—to disclose the identities of the individuals who created the entities and have authority to direct their operations. The statute contemplates that the reported information will be used for law enforcement and related activities. 31 U.S.C. § 5336(c)(2). For instance, FinCEN may share information with federal agencies when it would be "in furtherance" of "national security, intelligence, or law enforcement activity," *id.* § 5336(c)(2)(B), and with state or local agencies when a court "has authorized the law enforcement agency to seek the information in a criminal or civil investigation," *id.* The reporting requirements enable investigators to trace "the

flow of illicit funds" into and through corporations and thus detect and prosecute financial crimes. NDAA § 6002(5)(A).

Congress determined that this information "is needed" to "protect interstate and foreign commerce" and "counter money laundering, the financing of terrorism, and other illicit activity." NDAA § 6402(5). Congress further determined that this information would "discourage the use of shell corporations as a tool to disguise and move illicit funds" and "assist national security, intelligence, and law enforcement agencies with the pursuit of crimes." *Id.* § 6002(5). These congressional findings rest on an extensive legislative record that demonstrate "efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information." H.R. Rep. 116-227, at 2. Failure to include the CTA in the AMLA would have left a "gaping hole" in Congress's anti-money laundering efforts. *See Raich*, 545 U.S. at 22.

As these provisions indicate, the CTA effectuates legitimate prohibitions on harmful forms of economic activity. The reporting requirements enable investigators to trace "the flow of illicit funds" into and through corporations and thus to detect and prosecute financial crimes. NDAA § 6002(5)(A). The CTA is therefore "rationally related to the implementation" of valid prohibitions, *Comstock*, 650 U.S. at 134, and it accordingly falls within the scope of Congress's authority under both the Commerce and Necessary and Proper Clauses.

Defendants recognize that one district court has concluded that the CTA is not an essential part of Congress's comprehensive, anti-money laundering regulatory regime. *See Nat'l Small Bus. United v. Yellen* ("*NSBU*"), 2024 WL 899372, at *17 (N.D. Ala. Mar. 1, 2024), *appeal filed*, No. 24-10736 (11th Cir. Mar. 11, 2024).[4] Defendants respectfully submit that the district court's order and opinion, from which the government has appealed, erred in concluding that the CTA was an isolated, "single-subject statute" such that the "'comprehensive regulatory

[4] *But see Firestone*, 2024 WL 4250192, at *6–8 (denying a motion for a preliminary injunction enjoining the CTA based in part on the court's conclusion that the CTA is a valid exercise of Congress's commerce, tax, and national-security powers).

scheme' framework" did not apply, *id.* at *17, particularly given the CTA's role as an important part of the AMLA. Further, the *NSBU* court erred in holding that the "CTA is far from essential" on the basis that some financial institutions are required to retain certain beneficial owner information about their customers pursuant to a 2016 rule. *See id.* (citing 31 C.F.R. § 1010.230(a)). Rather, two aspects of that rule led Congress to reasonably determine, on an extensive record, that the CTA's disclosure requirements were "needed" to combat economic crimes, notwithstanding the 2016 rule. NDAA § 6402(5); *see also* 87 Fed. Reg. at 59,548 (explaining how Congress addressed relationship between the CTA and the 2016 rule). First, the 2016 rule applies only to entities that choose to become customers of a comparatively narrow set of financial institutions. *See* 31 C.F.R. § 1010.605(e). Second, the rule required those institutions to retain, but not transmit to the government for law enforcement purposes, certain customer information. The elected Branches determined that the CTA is critical to the government's larger efforts to combat financial crime, and there is no basis for second-guessing that judgment. *See Hodel*, 452 U.S. at 283.

The *NBSU* court also erred when it found it "crucial" that the CTA contain a "jurisdictional element." *NBSU*, 2024 WL 899372, at *18 (quoting *Lopez*, 514 U.S. at 561). The Plaintiffs' reliance on this line of reasoning is similarly flawed. *See* ECF No. 7, at 16–17. In that case, the court recognized that Congress could "impos[e] the CTA's disclosure requirements" on businesses that "engage[] in commerce." *Id.* at *13. However, the court believed that because the CTA does not include an "express jurisdictional element" drawing an "explicit connection with … interstate commerce," it lies beyond Congress's authority to enact. *Id.* at 18 (quoting *Lopez*, 514 U.S. at 562). But the Supreme Court "simply do[es] not presume the unconstitutionality of federal criminal statutes lacking explicit provision of a jurisdictional hook, and there is no occasion even to consider the need for such a requirement when there is no reason to suspect that enforcement of a criminal statute would extend beyond a legitimate interest cognizable under Article I, § 8." *Sabri v. United States*, 541 U.S. 600, 605 (2004). Thus, no

jurisdictional element is needed here, where Congress crafted the CTA to focus on active, for-profit businesses.

2. The CTA is also authorized by the Commerce Clause because it regulates economic activity with a substantial effect on interstate commerce.

The CTA is authorized by the Commerce Clause for another, independent reason: the CTA itself regulates economic activity with a substantial effect on interstate commerce. After all, the CTA applies to corporations and other entities legally authorized to conduct commercial transactions, and it excludes from its reach many non-profits and domestically owned entities that are no longer "engaged in active business" or "otherwise hold[ing] any kind of type of assets." 31 U.S.C. § 5336(a)(11)(xix), (xxiii).

Plaintiffs allege that the CTA does not regulate economic activity. ECF No. 7, at 15. Plaintiffs argue that the "action that triggers the CTA's requirements is filing papers with a secretary of state to form a corporate entity. But applying for state legal protections is not, by itself, economic activity." *Id.* at 16. But Plaintiffs argument misses the mark because it assumes the CTA has nothing to do with commercial activity, as if the act of incorporation has nothing to do with economic activity. It is hardly speculative that entities that incur the trouble and expense of filing papers to obtain authority to conduct transactions in their own name go on to engage in commercial activity. Plaintiffs essentially concede as much. Plaintiff Smith concedes that her company, Sage Rental Properties, LLC, operates its sole asset as a rental property. ECF No. 7-1, ¶¶ 2, 5. Similarly, Plaintiff Means admits that his company 2467 Oak Alley LLC exists to "own, or lease, an office building in Tyler, Texas." ECF No. 7-3, ¶ 3. Leasing an office building, which is the company's purpose, is obviously economic activity.

Given the documented misuse of anonymous corporations to facilitate money laundering and similar activities, the CTA reasonably applies to a class of entities that can be used to conduct and conceal illicit transactions. *See* 31 U.S.C. § 5336(a)(11). The universe of entities subject to the CTA's reporting requirements—which excludes many trusts, political organizations, and non-

profits, a well as many entities that are no longer "engaged in active business" or "otherwise hold[ing] any kind or type of assets," *id* § 5338(a)(11)(b)(xix), (xxiii)—confirms that the statute is a constitutional, commercial regulation. The reporting requirements thus govern entities with both the power and purpose of conducting the types of commercial transactions that concerned Congress.

a. Contrary to Plaintiffs' argument, the CTA does not regulate incorporation.

Plaintiffs also base much of the motion on the flawed premise that the CTA constitutes "regulation of corporate formation." *See* ECF No. 7, at 12, 19. But the CTA does not purport to overrule or preempt any state law incorporation provisions. *See Nat'l Small Bus. United v. Yellen* ("*NBU*"), 2024 WL 899372, * 17 (N.D. Ala. Mar. 1, 2024), *appeal filed* No. 24-10736 (11th Cir. Mar. 11, 2024) ("To be sure, the CTA is not a direct regulation of corporate formation."). The reporting requirements apply to "corporation[s]" and "similar entit[ies]" authorized to do business in the United States, without regard to where, when, or how those businesses were incorporated. 31 U.S.C. § 5336(a)(11)(A). For instance, reporting companies that were formed before the effective date of are subject to the reporting requirements. *See id.* § 5336(b)(1)(B). Requiring a decades-old business to report its ownership at the time the CTA takes effect bears no resemblance to regulating the act of incorporating.

Other provisions of the CTA confirm that the CTA does not regulate incorporation. For instance, businesses subject to the CTA must report changes in ownership on an ongoing basis, without regard to whether they take any new action relating to incorporation. *See id.* § 5336(b)(1)(D). And some businesses covered by the CTA never incorporate in the United States at all: a business incorporated in a foreign country is subject to the CTA if it is "registered to do business in the United States." *Id.* § 5336(a)(11)(A)(ii). Conversely, the reporting requirements do not extend to various categories of businesses—such as banks, insurers, and certain utilities—that are incorporated but are subject to other federal reporting requirements or are less likely to be used for financial crimes. *See id.* § 5336(a)(11)(B).

Congress prevented certain anonymous transactions by requiring entities with the capacity to engage in commerce to identify the natural persons behind the corporate form. Had Congress defined the relevant class of entities in terms of their capacity to engage in commercial transactions in their own name, presumably Plaintiffs would not argue this burdened state corporate organization. Congress's decision to identify those entities in a precise and administrable way, in terms of the incorporation or registration that is a prerequisite to engaging in such transactions, does not transform the CTA into a regulation of incorporation or registration.

The fact that the CTA does not regulate incorporation also defeats Plaintiffs' argument that the CTA is not a "proper" exercise of the commerce power. ECF No. 7, at 19. Plaintiffs argue that the CTA is not "proper" because it offends the constitutional boundary between state and federal power, on the theory that Congress does not have the power to charter corporations for general purposes, which has been a function reserved to the states. *Id.* But as discussed, the CTA does not regulate incorporation. Therefore, the purported transgression that forms the basis of Plaintiffs' argument does not exist. This is confirmed by the comments submitted by Secretaries of State and other state entities to FinCEN, which do not claim that the CTA amends existing state incorporation requirements. *See* Fed. Reg. at 59,448, 59,557, 59,559.

Additionally, the CTA is unlike the cases relied on by the Court in *NFIB* and Justice Scalia in his concurring opinion in *Raich*. Both of those cases compelled state officials to act on the Federal Government's behalf. *See Printz v. United States*, 521 U.S. 898, 925–933 (1997) (holding unconstitutional a federal statute obligating state law enforcement officers to implement a federal gun-control law); *New York v. United States*, 505 U.S. 144, 176–177 (1992) (striking down a statute requiring state legislators to pass regulations pursuant to Congress's instruction). To the contrary, the CTA acts directly on legal entities, by requiring them to report certain information regarding beneficial owners.[5] For these reasons, the Court should reject Plaintiff's argument that the CTA is not a "proper" exercise of Congress's power.

[5] Even if the CTA did require states themselves to provide beneficial ownership information to FinCEN, requiring states to provide limited information is within Congress's authority. *See Printz*

b. The CTA is distinguishable from enactments that the Supreme Court has held exceed Congress's authority.

As discussed, the CTA is a fundamental part of Congress's regulation of commerce. It is distinguishable from enactments that the Supreme Court has found exceed Congress's authority. Plaintiffs argue that the chain of inferences necessary to tie the CTA to commerce is so attenuate that finding the CTA to be authorized under the Commerce Clause would allow federal regulation of "virtually anything." ECF No. 7, at 18. But contrary to Plaintiffs' argument, and unlike *Lopez* or *Morrison*, a chain of inferences is not required to link the CTA to commerce. And unlike this case, neither *Lopez* nor *Morrison* "involved the power of Congress to exert control over intrastate activities in connection with a more comprehensive scheme of regulation[.]" *Raich*, 545 U.S. 1 at 39 (Scalia, J., concurring in the judgment). The reporting requirements also differ from the statutory provision at issue in *NFIB*, which "requir[ed] that individuals purchase health insurance." *NFIB*, 567 U.S. at 548 (op. of Roberts, C.J.). That requirement "primarily affects healthy, often young adults[,] who are less likely to need significant health care," and thus targets "a class whose commercial inactivity rather than activity is its defining feature." *Id.* at 556. Here, however, the CTA regulates a class of entities—primarily active, for-profit businesses—whose defining feature is their ability to conduct commercial transactions without disclosing their real parties in interest. For the same reason, Plaintiffs' reliance on *BST Holdings, L.L.C. v. OSHA*, is misplaced. *See* 17 F.4th 604, 617 (2021) (discussing vaccine mandate).

Unlike where Congress asserts unprecedented and "extraordinary" powers, *NFIB*, 567 U.S. at 560 (op. of Roberts, C.J.), "[r]egulation requiring the submission of information" is a "familiar category" of federal legislation, *Elec. Bond & Share Co. v. SEC*, 303 U.S. 419, 437 (1938);

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v. United States, 521 U.S. 898, 917–18 (1997); *Reno v. Condon*, 528 U.S. 141, 150 (2000); *Electric Bond & Share Co. v. Securities & Exchange Comm'n*, 303 U.S. 419, 437 (1938) ("Information bearing upon activities which are within the range of congressional power may be sought not only for congressional investigation as an aid to appropriate legislation, but through the continuous supervision of an administrative body. Congress may use this method in connection with a comprehensive scheme of regulation, as, for example in the case of the Interstate Commerce Commission and Federal Communications Commission; or Congress may employ this informatory process indepdendently.").

see, *e.g.*, 26 U.S.C. § 6012 (tax returns); 31 U.S.C. § 5311 (bank reports about transactions); 52 U.S.C. § 30104 (political campaign contributions). And more generally, the CTA continues Congress's long and extensive history of regulating businesses. *E.g.*, 15 U.S.C. § 1 et seq. (Sherman Act); 29 U.S.C. § 201 et seq. (FLSA); 15 U.S.C. § 45 (FTCA); *see N. Am. Co. v. SEC*, 327 U.S. 686, 706 (1946). The CTA's reporting requirements are thus a conventional legislative response to enforcement challenges.

B. The CTA is also authorized by the Commerce Clause because it regulates the channels of, and entities in, interstate commerce.

"Congress, of course, has undoubted power under the [C]ommerce [C]lause to impose relevant conditions and requirements on those who use the channels of interstate commerce so that those channels will not be conduits for promoting or perpetuating economic evils." *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 99 (1946); *see also N. Am. Co.*, 327 U.S. at 705–06. "Thus to the extent that corporate business is transacted through such channels, affecting commerce in more states than one, Congress may act directly with respect to that business to protect what it conceives to be the national welfare[,]" and "[i]t may prescribe appropriate regulations and determine the conditions under which that business may be pursued." *Am. Power & Light Co.*, 329 U.S. at 99–100. Entities constituting CTA reporting companies utilize the channels of interstate commerce, including telecommunications and electronic bank routing systems. NDAA §§ 6002, 6402; 166 Cong. Rec. at S7310 (statement of Sen. Brown); 166 Cong. Rec. at H6932 (statement of Rep. McHenry). As the foregoing cases explain, Congress's power to regulate interstate commerce extends beyond directly regulating such networks, and includes the power to regulate those entities who seek to misuse those channels to commit economic crimes. The CTA's reporting requirements are thus an authorized use of Congress's power.

C. The CTA is also a necessary and proper exercise of Congressional authority to carry into execution other powers.

The CTA is necessary and proper for carrying into execution other powers for multiple reasons. First, the CTA effects Congress's power "[t]o regulate Commerce with foreign

Nations." U.S. Const. art. I., § 8, cl. 3. "The plenary authority of Congress to regulate foreign commerce, and to delegate significant portions of this power to the Executive, is well established." *Cal. Bankers Ass'n v. Schultz*, 416 U.S. 21, 59 (1974). The "Founders intended the scope of the foreign commerce power to be … greater" than the interstate commerce power. *Japan Line, Ltd. v. Cnty. Of Los Angeles*, 441 U.S. 434, 448 (1979). Congress expressly found the CTA "is needed to … protect … foreign commerce." NDAA § 6402(5)(C). The legislative record also confirms that foreign actors are engaging in illicit activity by exploiting lax beneficial ownership reporting requirements within the United States. *E.g.*, 166 Cong. Rec. at S7310 (statement of Sen. Brown); 166 Cong. Rec. at H6932 (statement of Rep. McHenry); *Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency: Hearing before the Senate Judiciary Comm.*, 115th Cong. (2018) (statement of Sen. Grassley).

The CTA additionally aids the enforcement of prohibitions designed to protect U.S. foreign policy and national security interests. "Congress has broad power under the Necessary and Proper Clause to enact legislation for the regulation of foreign affairs." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963); *see also Hernandez v. Mesa*, 589 U.S. 93, 103-04 (2020). The same is true of matters pertaining to national security, which "is the prerogative of the Congress and President." *Ziglar v. Abbasi*, 582 U.S. 120, 142 (2017); *see also Ullmann v. United States*, 350 U.S. 422, 436 (1956). The already "strong presumption of constitutionality due to an Act of Congress," *United States v. Di Re*, 332 U.S. 581, 585 (1948), is heightened where a statute "implicates sensitive and weighty interests of national security and foreign affairs[,]" *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010).

Congress found that "malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, . . . harming the national security interests of the United States and allies of the United States[.]" NDAA § 6402(3). And Congress concluded that collecting beneficial ownership information "is needed to . . . protect vital Unite[d] States national security interests"; "better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the

financing of terrorism, and other illicit activity"; and "bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards[,]" *id.* § 6402(5). The Executive Branch agrees with that assessment. *See*, *e.g.*, 87 Fed. Reg. at 59,498. The elected Branches' foreign affairs and national security powers, as amplified by the Necessary and Proper Clause, thus authorize the CTA.

Plaintiffs' argument to the contrary largely depends on the incorrect premise that the CTA intrudes on states' authority to regulate corporate formation. ECF No. 7, at 12, 19. As discussed *supra*, it does not. Moreover, the Necessary and Proper Clause empowers Congress to carry into execution not only the powers delineated in Article I, but also "all other Powers vested by this Constitution in the Government of the United States," including "Powers vested . . . in any Department or Officer." U.S. Const. art. I, § 8, cl. 18. That includes Congress's powers over foreign affairs and national security, *see United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936), as well as the President's powers to conduct "law enforcement[,]" gather "intelligence," prevent "terrorism," and safeguard "national security," NDAA § 6402(5)(D).

The reporting requirements are also a necessary and proper exercise of the government's authority to lay and collect taxes. U.S. Const. art. I, § 8, cl. 1. Pursuant to that authority, Congress may pass laws "in aid of a revenue purpose[,]" *see Sonzinsky v. United States*, 300 U.S. 506, 513-14 (1937), and to facilitate tax collection, *see Helvering v. Mitchell*, 303 U.S. 391, 399 (1938). Indeed, Congress has given the IRS "broad power to require the submission of tax-related information that it believes helpful in assessing and collecting taxes." *CIC Servs., LLC v. IRS*, 593 U.S. 209, 212 (2021); *see Shultz*, 416 U.S. at 26. The reporting need not be "coupled with a concurrent tax" but can be "designed to aid the collection of tax [in the] future." *United States v. Matthews*, 438 F.2d 715, 717 (5th Cir. 1971). Here, Congress determined that the lack of beneficial ownership information allows criminals to obscure their income and assets and thus "facilitate[s] . . . serious tax fraud." NDAA § 6402(3). Congress found that the new reporting requirements would be "highly useful" in detecting tax fraud, 31 U.S.C. § 5336(a)(11)(xxiv)(ii), and improving "tax administration" generally, *id.* § 5336(c)(5)(B). The requirements are thus authorized by

Congress's authority to take all steps necessary and proper to preserve the government's ability to lay and collect taxes. *See Jinks v. Richland Cnty.*, 538 U.S. 456, 462 (2003) (statute need not be "absolutely necessary" to regulatory regime); *Comstock*, 560 U.S. at 133–34 (sufficient if law is "convenient, or useful").

III. The balance of equities and public interest disfavor a preliminary injunction.

The remaining two preliminary injunction factors—the balance of the equities and the public interest—"merge when the Government is the opposing party" and weigh sharply in Defendants' favor. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). As an initial matter, because Plaintiffs cannot establish the first two factors necessary to obtain an injunction, "it is clear they cannot make the corresponding strong showings [on the second two factors] required to tip the balance in their favor." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009); *see Mayo Found. for Med. Educ. & Rsch. v. BP Am. Prod. Co.*, 447 F. Supp. 3d 522, 535 (N.D. Tex. 2020).

But even if Plaintiffs could satisfy one or both of the first two factors, the remaining factors tip decisively in Defendants' favor. The speculative risk of harm to Plaintiffs' asserted interests must be weighed against the obstruction of legitimate government functions that could result if the Court entered Plaintiffs' proposed injunction. *See Winter*, 555 U.S. at 24; *Def. Distributed v. U.S. Dep't of State*, 838 F.3d 451, 459 (5th Cir. 2016). Indeed, "[a]ny time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (cleaned up). An injunction would interfere with Congress's judgment about how best to combat "money laundering," "the financing of terrorism," and "serious tax fraud," and its ability to do so. NDAA § 6402(3). These compelling interests weigh heavily against granting an injunction.

IV. Plaintiffs' proposed injunction is too broad.

Even if the Court disagrees with Defendants' arguments, any preliminary injunction should be narrowly tailored and no broader than necessary to remedy any demonstrated irreparable harms

to the Plaintiffs in this case. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted). The Court should, therefore, decline Plaintiffs' invitation to enjoin enforcement of the CTA. "Both the Fifth Circuit and the Supreme Court have suggested that nationwide injunctions are, at best, reserved for extraordinary circumstances. *Second Amend. Found. v. ATF*, No. 3:21-cv-0116, 2023 WL 4304760, at *3 (N.D. Tex. June 30, 2023)). "Because plaintiffs generally are not bound by adverse actions in cases to which they were not a party, there is nearly a boundless opportunity to shop for a friendly forum to secure a win nationwide." *Dep't of Homeland Sec. v. New York*, 140 S.Ct 599, 601 (2020) (Gorsuch, J. concurring); *see also Trump v. Hawaii*, 138 S.Ct. 2392, 2425 (2018). This concern is particularly acute where, as here, the Eleventh Circuit—and numerous district courts around the country[6]—are simultaneously considering the legality of the same challenged provisions. *See Nat'l Small Bus. United, et al. v. U.S. Dep't of the Treasury, et al.*, No. 24-10736 (11th Cir.). This Cour should therefore follow the Fifth Circuit's mandate "to avoid rulings which may trench upon the authority of sister courts," *W. Gulf Mar. Ass'n v. ILA Deep Sea Loc. 24*, 751 F.2d 721, 729 (5th Cir. 1985) and decline to issue broad nationwide relief.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' motion for preliminary injunction.

Respectfully submitted,

DAMIEN M. DIGGS
UNITED STATES ATTORNEY

[6] In total, Defendants are currently aware of ten other cases involving challenges to the constitutionality of the CTA: *Boyle v. Yellen*, No. 2:24-cv-00081-LEW (D. Maine); *Black Econ. Council of Mass., Inc. v. Yellen*, No. 1:24-cv-11411-PBS (D. Mass); *Community Associations Institute v. Yellen*, No. 1:24-1597 (E.D. Va.); *Firestone v. Yellen*, No. 3:24-cv-01034 (D. Or.); *Gargasz Co., L.P.A., v. Yellen*, No. 1:23-cv-02468 (N.D. Ohio); *Hotze v. U.S. Dep't of the Treasury*, No. 2:24-cv-00210-Z (N.D. Tex.); *NSBU v. Yellen*, No. 5:22-cv-01448-LCB (N.D. Ala.), No. 24-10736 (11th Cir.); *Small Bus. Ass'n of Mich. v. Yellen*, No. 1:24-cv-00314-RJJ-SJB (W.D. Mich.); *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-00478-ALM (E.D. Tex.); and *Taylor v. Yellen*, 24-cv-00527-AMA (D. Utah).

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2024, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to all known counsel of record via the Court's electronic filing system.

/s/ James G. Gillingham
JAMES G. GILLINGHAM
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SAMANTHA SMITH AND ROBERT MEANS	§	
Plaintiffs,	§	
v.	§	
UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN, in her official capacity as Secretary of the Treasury, THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN), And ANDREA GACKI, in her official Capacity as Director of FinCEN,	§	Civil Action No. 6:24-cv-00336
Defendants.	§	

ORDER

Before the Court is the Plaintiffs' Motion for Preliminary Injunction and Relief Under 5 U.S.C. § 705 (ECF No. 7). Having considered Plaintiffs' Motion and Defendants' Response in Opposition, the Court finds the Plaintiffs' Motion lacks merit and is therefore **DENIED**.

IT IS SO ORDERED.