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

TEXAS TOP COP SHOP, INC., *et al.*, *Plaintiffs*, v. MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*, *Defendants*.	No. 4:24-cv-478-ALM

DEFENDANTS' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL

Defendants have filed an appeal from this Court's amended order granting Plaintiffs' motion for a preliminary injunction, ECF No. 33 ("Am. Order"). *See* Amended Notice of Appeal, ECF No. 34. Defendants hereby move the Court to stay the preliminary injunction pending a decision from the Fifth Circuit on Defendants' appeal. As explained below, Defendants respectfully submit that they have satisfied the requirements for obtaining a stay of the Court's injunction pending appeal. Defendants intend to seek relief from the Fifth Circuit on Thursday, December 12 or Friday, December 13, if this Court has not granted relief by then, in order to allow the motion to be fully briefed in time for the Fifth Circuit to resolve it, and will report to the Fifth Circuit if this Court rules while the government's motion is pending there.[1]

BACKGROUND

On May 28, 2024, Plaintiffs filed this suit challenging the constitutionality of the Corporate

[1] While the United States recognizes that the arguments in this motion overlap significantly with the issues addressed in this Court's Amended Order, Federal Rule of Appellate Procedure 8 requires the United States to first move for a stay of preliminary injunction in the district court.

Transparency Act ("CTA"). Compl. ECF No. 1. Plaintiffs moved for a preliminary injunction on June 3, 2024. ECF No. 6. The Court heard argument on the motion on October 9, 2024. Minute Entry (Oct. 9, 2024). On December 3, 2024, the Court issued a memorandum opinion and order granting Plaintiffs' motion. ECF No. 30. The Court held that Plaintiffs sufficiently demonstrated a threat of immediate and irreparable harm given "unrecoverable compliance costs absent emergency relief," as well as a substantial threat to their constitutional rights. *Id.* at 23-32. The Court also determined that Plaintiffs established a substantial likelihood of success on the merits of their facial challenge to the CTA. *Id.* at 32-73. In doing so, the Court held that the CTA was likely not authorized by the Commerce Clause directly, *id.* at 35-53, or by Congress's domestic and foreign commerce, foreign affairs, or taxing powers in conjunction with the Necessary and Proper Clause, *id.* at 53-73. As to the balance of equities, the Court recognized the government's "interest in ferreting out financial crime, protecting foreign commerce and national security, and bringing the United States' money laundering laws into compliance with international standards[.]" *Id.* at 73-74 (citing Pub. L. No. 116-283, div. F, 134 Stat. 6402 (2021)). Nevertheless, the Court held that the balance favored Plaintiffs given the Court's view that the statute is likely unconstitutional. *Id.* at 73-74.

Finding that Plaintiffs carried their burden for preliminary relief, the Court then turned to the scope of the injunction. *Id.* at 74-78. Although it recognized the controversial nature of nationwide injunctions, *id.* at 76, it "determine[d] that the injunction should apply nationwide," *id.* at 77. The Court therefore enjoined the CTA, as well as the final rule implementing the CTA's reporting requirements, Financial Crimes Enforcement Network, Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59,498 (Sept. 30, 2022). *Id.* at 77-79. The Court also stayed the rule's compliance deadlines pursuant to 5 U.S.C. § 705. *Id.*

The government filed a notice of appeal on December 5, 2024. ECF No. 32. The Court issued its Amended Order that same day, though did not alter its conclusions or the scope of its

injunction. *See generally* Am. Order. The government filed an amended notice of appeal on December 6, 2024. ECF No. 34.

DISCUSSION

A. Standard of Review

Courts typically consider four factors in evaluating a request for a stay pending appeal: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant will be irreparably harmed if the stay is not granted; (3) whether issuance of a stay will substantially harm the other parties; and (4) whether the granting of the stay serves the public interest. *See Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013); *see also CFTC v. Hudgins*, No. 6:08-CV-187, 2009 WL 3645053, at *2 (E.D. Tex. Nov. 2, 2009). When the government is a party, its interests and the public interest overlap in the balancing of harms. *See Nken v. Holder*, 556 U.S. 418, 420 (2009).

B. Defendants Will Be Irreparably Harmed Absent a Stay

First, an injunction against the government's enforcement of the CTA, "enacted by representatives of its people," is itself "'a form of irreparable injury.'" *United States v. Texas*, 97 F.4th 268, 295 (5th Cir. 2024) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)); *see Abbott v. Perez*, 585 U.S. 579, 603 n.17 (2018) ("[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State[.]" (citing *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers)).

Second, the injunction would significantly disrupt FinCEN's implementation of the CTA, and FinCEN would not be able to fully remediate that disruption even if the injunction were lifted at the conclusion of the appeal. *See Moore v. Tangipahoa Par. Sch. Bd.*, 507 F. App'x 389, 399 (5th Cir. 2013) (recognizing irreparable harm to State where "immediate implementation of the injunction . . . would frustrate the State's program thereby causing harm to it[,]" and "the injunction causes further direct

irreparable harm against the State as it deprives the State of the opportunity to implement its own legislature's decisions"); Decl. of Andrea Gacki, attached hereto as Ex. A, ¶¶ 10–22. For most companies covered by the CTA, the deadline for filing disclosures is January 1, 2025. 87 Fed. Reg. at 54,498. By that date, most covered companies, including all covered companies formed before 2024—a total estimated 32 million businesses nationwide—must submit the required information to FinCEN. *See* 31 C.F.R. § 1010.380(a)(1)(iii). FinCEN has expended significant resources to educate these previously established companies of the new reporting requirements. Gacki Decl. ¶¶ 9, 12, 18, 25. For example, FinCEN is engaged in an ongoing multimedia, nationwide public service announcement ("PSA") campaign, including obligating more than $4.3 million dollars in PSAs that cannot now be recouped if the campaign is suspended. *Id.* ¶ 18. Tens of millions of Americans have seen, heard, or read these PSAs across television, radio, newspaper, direct mail, and digital media. *Id.* ¶ 14. FinCEN officials have dedicated thousands of hours at over more than 200 outreach events, and FinCEN has established a dedicated contact center to address questions from potential filers. *Id.* ¶ 18.

These efforts have been bearing fruit, with an exponential increase in reporting since the multimedia campaign began. *Id.* ¶¶ 9, 18. In the last two months, FinCEN has more than doubled the number of beneficial ownership information reports it had received over the prior eight months, with nearly one-third of all reports submitted in the three weeks preceding the injunction. *Id.* ¶ 15. FinCEN increased the filing rate to nearly 1 million per week in those weeks, received approximately 10 million reports altogether, and had anticipated continued exponential growth through the January 1, 2025 deadline. *Id.* The injunction negates those outreach efforts at a critical juncture in implementation.

Even if the injunction were ultimately vacated on appeal, the harm it would cause while in effect could not be fully remediated. The injunction has already created—and will continue to

engender—widespread confusion among the public, including regulated parties. *Id.* ¶ 19. Such confusion harms the public and FinCEN. *Id.* If CTA implementation is suspended for a significant length of time, FinCEN would have substantial practical difficulty resuming implementation, re-educating the public about the reporting requirements, and effectively enforcing compliance. *Id.*

Additionally, the injunction would prevent the United States from fulfilling international standards for countering money laundering and terrorist financing. *Id.* ¶ 21. The United States is currently preparing for its upcoming Financial Action Task Force ("FATF")[2] mutual evaluation, with its written technical submission currently due mid-2025. *Id.* The United States' last FATF mutual evaluation report was issued in December 2016 and identified the lack of beneficial ownership information reporting requirements at that time as one of the fundamental gaps—due to the scale of misuse of legal entities by criminals in the United States and abroad—in the U.S. anti-money laundering regime, with the United States rated as non-compliant with these requirements. *Id.* ¶¶ 20-21; *see also* FATF, Mutual Evaluation of the United States at 4, 222-226 (Dec. 2016), available at https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-States-2016.pdf. Earlier this year, FATF upgraded the United States' rating on the FATF standard related to transparency and beneficial ownership of legal persons, frequently referencing the CTA in its follow-up report. Gacki Decl. ¶ 21; FATF, United States: 7th Enhanced Follow-up Report at 3-12 (Mar. 2024), available at https://www.fatf-gafi.org/content/dam/fatf-gafi/fur/USA-FUR-2024.pdf.coredownload.inline.pdf. By enjoining enforcement of the CTA, the injunction risks causing the United States to receive negative ratings on related portions of its upcoming FATF evaluation. Gacki Decl. ¶ 21. Such ratings, reflecting a continued failure by the United States to address what FATF has identified as the United States' most fundamental gap in its anti-money laundering regime for nearly a decade after the last

[2] The United States is a founding member of FATF, "the international standard-setting body for anti-money laundering/combatting the financing of terrorism[.]" H.R. Rep. No. 116-227, at 11 (2019).

mutual evaluation of the United States, could damage U.S. national security interests in two ways. *Id.* First, the ratings would increase the chances that the United States could be added to the FATF grey list, a public list of countries with significant failings in their regimes to combat money laundering and terrorist financing. *Id.* Second, they would undermine the United States' ability to push other countries to make fundamental reforms to their regimes (in order to protect the global financial system) when the United States has failed to rectify significant deficiencies in its own regime, thereby damaging U.S. credibility and its ability to affect positive reforms in other nations. *Id.*

C. Defendants Have a Strong Likelihood of Success on the Merits

Recognizing that this Court has reached a contrary conclusion, Defendants nonetheless respectfully submit that a stay pending appeal is further warranted because Defendants are likely to prevail on appeal for the reasons set out in their opposition to Plaintiffs' motion for a preliminary injunction. Defs.' Resp. in Opp'n to Pls.' Mot. for Prelim. Inj., ECF No. 18 ("Defs.' Opp."). Defendants maintain that Congress was authorized to enact the CTA for two independent reasons. As explained in Defendants' opposition, the CTA is directly authorized by the Commerce Clause because the statute regulates commercial entities. Defs.' Opp. at 10-19. Additionally, the CTA is necessary and proper for executing other federal powers, including the commerce, foreign affairs and national security, and taxing powers. *Id.* at 19-23.

Defendants respectfully submit that the Court erred in reaching a conclusion to the contrary. For example, although the Court found that the CTA does not address any "activity at all," Am. Order at 42-43, the statute in fact regulates businesses whose defining feature is their authority and propensity to engage in commercial transactions, *see* Defs.' Opp. at 18. Likewise, Defendants respectfully submit that the Court's Amended Order is inconsistent with the "very high bar" for supporting a facial challenge that the Supreme Court reiterated in *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024), and that the Fifth Circuit has repeatedly applied, *see*, *e.g.*, *United States v. Connelly*, 117 F.4th 269, 282

(5th Cir. 2024). As the government has explained, and as multiple district courts have recognized, plaintiffs come nowhere near establishing "that no set of circumstances exists under which the [CTA] would be valid"—as would be required to justify their facial attack on an Act of Congress. Defs.' Opp. at 10 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *see Firestone v. Yellen*, No. 24-1034, 2024 WL 4250192 (D. Or. Sept. 20, 2024) (declining to enter a preliminary injunction and determining that the CTA is authorized by multiple enumerated powers); *Cmty. Associations Inst. v. Yellen*, No. 1:24-cv-1597, 2024 WL 4571412 (E.D. Va. Oct. 24, 2024) (same). Moreover, the Court did not give sufficient weight to Congress's findings, including Congress's assessment that the CTA's reporting requirements are necessary to protect commerce and will in fact deter tax evasion and result in the collection of more tax revenue. Am. Order at 66-73; *see* 134 Stat. 6402(3); 31 U.S.C. §§ 5336(a)(11)(xxiv)(ii), (c)(5)(B)). That error is particularly significant given the Court's finding that "it is rational for Congress to believe that registered entities, in their natural state of anonymous existence, and whatever operations they may carry out, would substantially impact interstate commerce." Am. Order at 52.

Further, Defendants respectfully submit that the Court erred in enjoining the CTA and reporting rule on a nationwide basis. *Id.* at 75. "Whether framed as injunctions of 'nationwide,' 'universal,' or 'cosmic' scope, these orders share the same basic flaw—they direct how the defendant must act toward persons who are not parties to the case." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring); *see Trump v. Hawaii*, 585 U.S. 667, 712-21 (2018) (Thomas, J., concurring). Here, such preliminary relief was particularly unwarranted given that "Plaintiffs suggested that they sought an injunction on behalf of only the Plaintiffs before the Court," Am. Order at 75, and because it grants the very relief to non-parties that other courts have specifically denied, *see Firestone*, 2024 WL 4250192 at *14; *Cmty. Associations Inst.*, 2024 WL 4571412, at *10.

D. The Balance of Harms and Public Interest Favor a Stay

As explained in Defendants' opposition, any harm to Plaintiffs from the minimally burdensome reporting requirements would be substantially outweighed by the irreparable harm imposed on the government. Defs.' Opp. at 29; *see Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937) (statutory scheme "is in itself a declaration of public interest and policy which should be persuasive" to courts).

E. The Court Should, at a Minimum, Stay Application of the Injunction to Non-Parties

As discussed above and in Defendants' opposition, a nationwide injunction is not warranted. Given the skepticism expressed by multiple Justices about the increasingly prevalent practice of nationwide injunctions, and that courts in other jurisdictions have rejected efforts to enjoin the CTA and reporting rule, this Court should at a minimum stay the impact of its injunction beyond the named parties or identified members of the Plaintiff organizations. *Cf. Lion Health Servs., Inc. v. Sebelius*, 635 F.3d 693, 703 (5th Cir. 2011) ("As a general principle, 'injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979))). And again, such a stay is warranted to ensure that the relief does not exceed Plaintiffs' own request. Am. Order at 75; *see E.T. v. Paxton*, 19 F.4th 760, 769 (5th Cir. 2021) ("Injunctions must be narrowly tailored within the context of the substantive law at issue to address the specific relief sought. This means that an injunction cannot 'encompass more conduct than was requested or exceed the legal basis of the lawsuit.'" (quoting *Scott v. Schedler*, 826 F.3d 207, 214 (5th Cir. 2016))).

CONCLUSION

For the foregoing reasons, Defendants' motion to stay the preliminary injunction pending appeal should be granted.

Dated: December 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2024, I electronically filed the foregoing document with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Stuart J. Robinson
Stuart J. Robinson
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch

CERTIFICATE OF CONFERENCE

The parties conferred about the foregoing motion, and Plaintiffs oppose the relief requested therein.

/s/ Stuart J. Robinson
STUART J. ROBINSON

Exhibit A

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TEXAS TOP COP SHOP, INC., *et al.*, *Plaintiffs*, v. MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*, *Defendants*.	No. 4:24-cv-478-ALM

DECLARATION OF ANDREA GACKI

I, Andrea Gacki, declare the following to be a true and correct statement of facts:

1. I am the Director of the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Department of the Treasury ("Treasury"). I have held that position since September 2023. I previously served in several other leadership roles within Treasury. Prior to joining FinCEN, I served as the Director of the Office of Foreign Assets Control, another component of Treasury (within Treasury's Office of Terrorism and Financial Intelligence), for approximately five years and, from January 2021 to December 2021, I performed the duties of the Under Secretary for Terrorism and Financial Intelligence. In my official capacity as the Director of FinCEN, I supervise all aspects of FinCEN's operations, including FinCEN's implementation of the Corporate Transparency Act ("CTA").

2. Due to the nature of my official duties, I am familiar with FinCEN's implementation of the CTA's requirements, including FinCEN's development of implementing regulations as well as

FinCEN's promulgation of guidance regarding the CTA and its implementing regulations. I am also familiar with FinCEN's expansive campaign to spread public awareness of the CTA's requirements.

3. I make this declaration in support of a motion to stay the district court's order pending appeal. The statements I make in this declaration are based on my personal knowledge, on information made available to me in my official capacity, and on conclusions reached and determinations made in accordance therewith.

4. FinCEN was created in 1990 and became a bureau of Treasury by virtue of the USA PATRIOT Act of 2001, Pub. L. 107-56. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to Treasury's Under Secretary for Terrorism and Financial Intelligence.

5. FinCEN's mission is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence. FinCEN primarily exercises regulatory functions under the legislative framework commonly referred to as the "Bank Secrecy Act" ("BSA"),[1] which includes the Currency and Foreign Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001, the Anti-Money Laundering Act of 2020 (including the CTA) and other legislation. The BSA is the nation's first and most comprehensive federal anti-money laundering and countering the financing of terrorism ("AML/CFT") statute. The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations. *See* Treasury, Treasury Directive 180-01 (Jan. 14, 2020).

[1] The BSA is codified at 12 U.S.C. §§ 1829b, 1951-1960 and 31 U.S.C. §§ 5311-5314, 5316-5336, including notes thereto. Regulations implementing the BSA appear at 31 C.F.R. Chapter X.

6. The CTA, enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021 and codified, in relevant part, at 31 U.S.C. § 5336, amended the BSA to, among other things, require certain entities to report information to FinCEN about their beneficial owners and the individuals who created or registered them. The CTA—enacted on an overwhelming and bipartisan basis in 2021—is vital to protecting the U.S. and international financial systems from illicit finance threats, such as terrorist financing, corruption, human smuggling, drug and arms trafficking, and money laundering. Congress designed the CTA to advance important national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, tax evasion, and other illicit activity through information-sharing. Specifically, access to beneficial ownership information ("BOI") reported under the CTA would significantly aid efforts to impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests and to protect the U.S. financial system from illicit use by, for example, adding critical data to financial analyses in law enforcement and tax investigations and providing essential information to the intelligence and national security professionals who work to prevent terrorists and other illicit actors from raising, hiding, or moving money in the United States through anonymous shell or front companies. Broadly, and critically, BOI is crucial to identifying linkages between potential illicit actors and opaque business entities, including shell companies. Implementing the law has been a central pillar of the United States' anti-corruption strategy, as well as ongoing efforts to raise the United States up to international standards for corporate transparency.

7. The CTA directed FinCEN to implement its reporting requirements and certain other aspects of statute by regulation. In September 2022, FinCEN issued a final rule implementing

the reporting requirements of the CTA. *See* 87 Fed. Reg. 59,498 (codified at 31 C.F.R. § 1010.380, as amended by 88 Fed. Reg. 83,499). That rule describes who must file a BOI report, what information must be reported, and when a report is due. Specifically, the rule requires reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; and (2) the applicants of the entity. The rule, as later amended, also establishes the deadlines by which reporting companies must comply with the CTA's reporting requirements. For businesses created or registered before 2024, compliance is required by January 1, 2025. *See* 31 C.F.R. § 1010.380(a)(1)(iii). For businesses created or registered during 2024, compliance is required within 90 days of their formation. *See id.* § 1010.380(a)(1)(i)(A). However, for businesses created or registered after 2024, compliance will be required within 30 days of their formation. *See id.* § 1010.380(a)(1)(i)(B).[2]

8. FinCEN began accepting such BOI reports on January 1, 2024. As of December 2, 2024, FinCEN had received nearly 10 million BOI reports. In parallel, FinCEN began providing authorized government agencies with access to BOI reported under the CTA for law enforcement purposes.

9. On December 3, 2024, the district court in this matter issued an order preliminarily enjoining—nationwide—the CTA, including, expressly, enforcement of the CTA and its reporting requirements, as well as staying all associated reporting deadlines. By curtailing FinCEN's CTA implementation efforts at this juncture, the district court's order fundamentally undermines U.S.

[2] In December 2023, FinCEN issued a final rule implementing the CTA's access procedures and safeguards, 88 Fed. Reg. 88732, with an effective date of February 20, 2024. That rule describes the circumstances under which BOI may be disclosed to authorized recipients (*e.g.*, Federal agencies engaged in national security, intelligence or law enforcement activity and state, local and tribal law enforcement agencies with court authorization) and how it must be protected.

anti-corruption efforts. The CTA and its implementing regulations require most covered entities—an estimated 32.6 million businesses nationwide—to file their BOI reports under the CTA by January 1, 2025. Treasury has devoted significant resources in advance of this deadline to raise awareness about that obligation and promote compliance. Treasury's efforts have been bearing fruit, with exponential growth in reporting rates in the weeks leading up to the injunction. The order voids this deadline for all entities, nullifies the filing obligations mandated under the CTA and its implementing regulations, and broadly enjoins any enforcement of the law. It thereby cripples Treasury's efforts to implement the law and sows confusion among entities regarding their reporting obligations. If the order is not stayed, the resulting harms to U.S. anti-corruption efforts—and, ultimately, the U.S. financial system as a whole—would likely be severe.

FinCEN's CTA Implementation and Outreach Efforts

10. On December 8, 2021, building on an earlier advance notice of proposed rulemaking, FinCEN published a Notice of Proposed Rulemaking ("NPRM"), 86 Fed. Reg. 69920, to give the public an opportunity to review and comment on a proposed rule implementing the CTA's provisions requiring entities to report to FinCEN information about their beneficial owners and the individuals who created or registered the entities. FinCEN's final rule implementing these requirements, 87 Fed. Reg. 59498, was published September 30, 2022, and became effective January 1, 2024.

11. On December 22, 2023, FinCEN published a final rule implementing the CTA's access procedures and safeguards, 88 Fed. Reg. 88732, with an effective date of February 20, 2024. The CTA also requires FinCEN to amend certain existing customer due diligence regulations,

codified at 31 C.F.R. § 1010.230, to bring them into conformance with the CTA. FinCEN anticipated publishing an associated NPRM in 2025.

12. FinCEN has also published a range of guidance materials to assist the public with complying with the CTA's reporting requirements. These materials may be accessed through FinCEN's website at https://www.fincen.gov/boi, a webpage that has been viewed over 14 million times. Among other resources, these materials include a small entity compliance guide (available in more than 10 languages), an education and outreach toolkit, instructional videos, and over one hundred answers to frequently asked questions ("FAQs"). These FAQs are found at https://www.fincen.gov/boi-faqs. In addition, FinCEN has a dedicated Beneficial Ownership Contact Center that has resolved over 200,000 inquiries relating to the CTA's reporting requirements.

13. FinCEN has also engaged in over 200 outreach events regarding the CTA's obligations, including meetings, conferences, and webinars with members of the public, as well as through industry associations, secretaries of state's offices, and partner agencies. I have participated in many of these events. Through these outreach events, FinCEN has responded to questions from a variety of stakeholders, including industry and trade groups, congressional offices, professional communities of interest, business owners, and the general public.

14. Additionally, FinCEN has engaged in an expansive public service announcement ("PSA") campaign to increase public awareness about the CTA's reporting obligations, including highlighting the January 1, 2025, deadline. Since September 2023, FinCEN has invested over 4.3 million dollars in that campaign. Tens of millions of Americans have seen, heard, or read these PSAs across television, radio, newspaper, direct mail, and digital media. FinCEN has also prepared

roughly 1.5 million postcards to mail directly to businesses across five states with lagging reporting rates to remind them of their CTA obligations.

15. FinCEN has estimated that roughly 32.6 million companies are required to file BOI reports by January 1, 2025, under its regulations. As of the date of the district court's order, nearly ten million reports had been filed with FinCEN. The pace of filing, however, had recently increased. In the last two months, FinCEN has more than doubled the number of BOI reports it had received over the prior eight months, with nearly one-third of all reports submitted in the three weeks preceding the injunction, with continued growth in the filing rate expected through the January 1, 2025, deadline for companies created or registered before 2024, *i.e.*, most companies required to report under the CTA.

16. FinCEN had also begun providing access to BOI reported under the CTA to federal law enforcement agencies, with FinCEN itself and five federal law enforcement agencies receiving access as of the date of the injunction, and numerous other agencies engaged in law enforcement, intelligence, and national security activities had expected to receive access in the near future.

Harm to Treasury's Anti-corruption Efforts and the U.S. AML/CFT Regime from the Court's Order

17. The district court's order significantly disrupts FinCEN's implementation of the CTA in advance of its January 1, 2025, reporting deadline, and FinCEN would not be able to fully remediate that disruption even if the injunction were lifted at the conclusion of the appeal.

18. FinCEN has expended significant resources over the past year—and particularly last few months—to educate previously established companies of the new reporting requirement. As described above, FinCEN has been engaged in a multimedia, nationwide PSA campaign, including obligating more than $4.3 million in PSAs—money that cannot now be recouped—that has

informed tens of millions of people about their CTA obligations. FinCEN officials have dedicated thousands of hours at over more than 200 outreach events and through a dedicated contact center to addressing questions from potential filers. These efforts have been successful, with an exponential increase in reporting since the multimedia campaign began, increasing the filing rate to nearly one million reports filed per week in recent weeks. The district court's injunction negates those outreach efforts three weeks before the January 1, 2025, reporting deadline.

19. Even if the injunction were ultimately overturned on appeal, the harm it would cause while in effect could not be fully remediated. The injunction has already created—and will continue to engender—widespread confusion among the public, including regulated parties. Such confusion harms the public and FinCEN. Reporting companies must clearly understand and have certainty about their compliance obligations for a reporting regime to be effective. On-again, off-again reporting requirements would significantly sink compliance rates; halting efforts just as there has been a significant increase in compliance would undermine the long-term success of the CTA and the BOI reporting program. If CTA implementation is suspended for a significant length of time, FinCEN would have substantial practical difficulty resuming implementation, re-educating the public about the reporting requirements, and effectively enforcing compliance.

20. The injunction also prevents the United States from fulfilling international AML/CFT standards. The United States is currently preparing for its upcoming Financial Action Task Force ("FATF") mutual evaluation, with its written technical submission currently due mid-2025. The United States is a founding member of FATF, which is the leading international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat

money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. Among other things, FATF has established standards on transparency and BOI of legal persons, intended to deter and prevent the misuse of corporate vehicles.

21. FATF last issued a mutual evaluation report on the United States in December 2016 and identified the lack of beneficial ownership information reporting requirements at that time as one of the fundamental gaps—due to the scale of misuse of legal entities by criminals in the United States and acting from overseas—in the U.S. AML/CFT regime, with the United States rated as non-compliant with these requirements. Earlier this year, FATF upgraded the United States' rating on the FATF standard related to transparency and beneficial ownership of legal persons, frequently referencing the CTA in its follow-up report. By enjoining enforcement of the CTA, the injunction risks causing the United States to receive negative ratings on related portions of its upcoming FATF evaluation. Such ratings, reflecting a failure by the United States to address what FATF has identified as the United States' most fundamental gap in its AML/CFT regime for nearly a decade after the last mutual evaluation of the United States, could damage U.S. national and security interests in two ways. First, the ratings would increase the chances that the United States could be added to the FATF grey list, a public list of countries with significant failings in their AML/CFT regimes. Second, they would undermine the United States' ability to push other countries to make fundamental reforms to their AML/CFT regimes (in order to protect the global financial system) when the United States has failed to rectify significant deficiencies in its own regime, thereby damaging U.S. credibility and its ability to impact positive reforms in other nations.

22. In sum, the CTA is a critical component of FinCEN's efforts to combat corruption, terrorist financing, money laundering, and other criminal activities. It is a linchpin of the U.S. AML/CFT regime and needed to enable the United States to comply with international AML/CFT standards. FinCEN, and Treasury more broadly, have devoted major resources over several years to ensure the CTA is implemented effectively, in particular by educating the public about its requirements through guidance materials, outreach events, PSAs, and other methods in recent months in preparation for the January 1, 2025, filing deadline. If the injunction remains in place for any significant length of time, these resources will have been largely squandered, and the U.S. AML/CFT regime may never fully recover from the resulting public confusion about the CTA's beneficial ownership reporting requirements. In FinCEN's judgment, the Court's order thus risks causing significant and irreparable harm to U.S. anti-corruption efforts and broader AML/CFT regime and thereby to the U.S. financial system as a whole.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 11, 2024.

Andrea Gacki
Director
Financial Crimes Enforcement Network

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

TEXAS TOP COP SHOP, INC., *et al.*,

Plaintiffs,

v.

MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*,

Defendants.

No. 4:24-cv-478-ALM

PROPOSED ORDER

The Court, having considered the Defendants' Motion to Stay Pending Appeal, concludes that the motion has merit and should be, and hereby is, GRANTED. The preliminary injunction entered by the Court is hereby STAYED pending appeal.