No. 24A

In the Supreme Court of the United States

MERRICK GARLAND, ATTORNEY GENERAL, ET AL., APPLICANTS

v.

TEXAS TOP COP SHOP, ET AL.

APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicants are Merrick Garland, Attorney General; Department of the Treasury; Janet Yellen, Secretary of the Treasury; Financial Crimes Enforcement Network (FinCEN); and Andrea Gacki, Director of FinCEN.

Respondents are Texas Top Cop Shop, Inc.; Data Comm for Business, Inc.; Libertarian Party of Mississippi; Mustardseed Livestock, L.L.C.; National Federation of Independent Business, Inc.; and Russell Straayer.

RELATED PROCEEDINGS

United States District Court (E.D. Tex.):

Texas Top Cop Shop, Inc. v. *Garland*, No. 24-cv-478 (Dec. 5, 2024)

United States Court of Appeals (5th Cir.):

Texas Top Cop Shop, Inc. v. *Garland*, No. 24-40792 (Dec. 26, 2024)

In the Supreme Court of the United States

No. 24A

MERRICK GARLAND, ATTORNEY GENERAL, ET AL., APPLICANTS

v.

TEXAS TOP COP SHOP, INC., ET AL.

APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of Merrick Garland, Attorney General, et al.—respectfully files this application for a stay of the preliminary injunction issued by the U.S. District Court for the Eastern District of Texas (App., *infra*, 19a-97a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Fifth Circuit and, if the court of appeals affirms in whole or in part, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

In 2021, Congress adopted the Corporate Transparency Act (CTA or Act), 31 U.S.C. 5336, to counter financial crimes. Congress found that malign actors often conceal their ownership of corporations and other entities to facilitate illicit activities such as money laundering, tax fraud, human and drug trafficking, and the financing of terrorism. Congress determined that requiring companies to report information about their owners would enable the government to detect and prosecute financial crimes, discourage the use of shell companies to conduct illicit activity, and facilitate

the government's national-security and intelligence efforts.

The CTA accordingly requires covered entities to report to the federal government information about their beneficial owners—*i.e.*, individuals who exercise substantial control over the entity or own or control 25% of its ownership interests. Specifically, covered entities must report their beneficial owners' names, dates of birth, addresses, and unique identifying numbers (*e.g.*, driver's license or passport numbers). An implementing rule provided that covered entities formed before 2024 were required to file initial reports by January 1, 2025.

Respondents—four entities subject to the Act, an individual affiliated with one of those entities, and a membership organization—brought this suit to challenge the Act's constitutionality. The district court granted respondents a preliminary injunction, holding that they were likely to succeed on the merits of their claim that the Act, on its face, exceeds Congress's enumerated powers. Although respondents had sought relief only on their own behalf, the court entered a universal injunction purporting to enjoin the Act itself and prohibiting the enforcement of the Act even against nonparties. A motions panel of the Fifth Circuit stayed that injunction, but days later a merits panel vacated the stay and reinstated the universal injunction without any analysis of the government's likelihood of success on the merits or the relative harms to the parties.

This Court should stay the district court's injunction. The government is likely to succeed on the merits of respondents' claim. The Act's reporting requirements are important to the government in preventing, detecting, and prosecuting crimes such as money laundering, tax fraud, and the financing of terrorism. The requirements therefore fall comfortably within Congress's authority under the Commerce Clause to regulate economic activities (here, the anonymous operation of business entities)

that substantially affect interstate commerce. The requirements are also necessary and proper to effectuate several of Congress's enumerated powers, including the power to regulate interstate and foreign commerce and to collect taxes, as well as Congress's powers with respect to foreign affairs. Even if there might be outlier circumstances in which the Act could be thought to exceed Congress's powers, the Act complies with the Constitution in most of its applications, which suffices to defeat respondents' facial challenge.

Indeed, the district court issued its universal injunction after two other district courts had held that the Act is likely constitutional and had denied preliminary-injunction motions raising substantially similar constitutional claims. See *Community Ass'ns Institute* v. *Yellen*, No. 24-cv-1597, 2024 WL 4571412, at *10 (E.D. Va. Oct. 24, 2024); *Firestone* v. *Yellen*, No. 24-cv-1034, 2024 WL 4250192, at *14 (D. Or. Sept. 20, 2024). A third district court denied a preliminary-injunction motion because the plaintiffs had failed to show irreparable harm. See ECF No. 25, at 50, *Small Business Ass'n* v. *Yellen*, No. cv-314 (W.D. Mich. Apr. 29, 2024). Although one district court held that the Act violates the Constitution, it issued an injunction that covers only the plaintiffs in that case, see *NSBU* v. *Yellen*, 721 F. Supp. 3d 1260, 1289 (N.D. Ala. 2024), and the Eleventh Circuit expedited briefing and argument to facilitate appellate review before the January 1, 2025, reporting deadline, see C.A. Doc. 26 at 2, *NSBU* v. *United States Department of the Treasury*, No. 24-10736 (Apr. 22, 2024).

The equities also heavily favor the issuance of a stay. The district court's universal injunction irreparably harms the federal government in multiple ways. It prevents the government from executing a duly enacted Act of Congress, impedes efforts to prevent financial crime and protect national security, undermines the United States' ability to press other countries to improve their own anti-money laundering

regimes, and severely disrupts the ongoing implementation of the Act. By contrast, the Act imposes only minimal burdens on respondents.

At a minimum, this Court should narrow the district court's vastly overbroad injunction. A court of equity may grant relief only to the parties before it. The district court violated that principle by issuing a universal injunction purporting to enjoin the Act itself and forbidding the enforcement of the Act even against non-parties. Several Members of this Court have recognized that such universal relief contradicts Article III and established equitable principles and have urged clarification of these principles in an appropriate case—but the Court's antecedent determination on a threshold procedural issue or the merits in prior cases has obviated the need to resolve the remedial question. Because the lower courts need guidance on the propriety of universal injunctions, this Court may additionally wish to treat this application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis.

STATEMENT

1. On January 1, 2021, Congress enacted an omnibus statute known as the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, 134 Stat. 3388. That statute's provisions include the Anti-Money Laundering Act of 2020 (Anti-Money Laundering Act or AMLA), Div. F, 134 Stat. 4547, which in turn includes the CTA, Tit. LXIV, 134 Stat. 4604.

In the CTA, Congress found that "malign actors seek to conceal their ownership" of corporations and similar entities "to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United

States." § 6402(3), 134 Stat. 4604. Congress further found that "money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting 'Matryoshka' dolls, across various secretive jurisdictions." § 6402(4), 134 Stat. 4604. Congress determined that new federal reporting requirements were needed to "protect vital United States national security interests," "protect interstate and foreign commerce," "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." § 6402(5)(B)-(E), 134 Stat. 4604. The information collected under the Act, Congress explained, would provide investigators with "insight into the flow of illicit funds through [corporate] structures" and would "discourage the use of shell corporations as a tool to disguise and move illicit funds." AMLA § 6002(5)(A)-(B), 134 Stat. 4547.

The Act accordingly imposes federal reporting requirements upon any "reporting company," a term defined to include any "corporation, limited liability company, or other similar entity" that is created (or, in the case of a foreign entity, registered to do business) "by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe." 31 U.S.C. 5336(a)(11)(A). The Act makes some exceptions to those reporting requirements. See 31 U.S.C. 5336(a)(11)(B). For example, the requirements do not apply to entities, such as banks and credit unions, that are already subject to other reporting regimes. See 31 U.S.C. 5336(a)(11)(B)(iii) and (iv). And the requirements do not apply to certain domestic entities that are no longer engaged in business. See 31 U.S.C. 5336(a)(11)(B)(xxiii).

A reporting company must report information about its "beneficial owner[s]"

and (for certain companies) its "applicant[s]." 31 U.S.C. 5336(b)(2)(A). A beneficial owner is an individual who "(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); see 31 U.S.C. 5336(a)(3)(B) (establishing certain exceptions). An "applicant" is an individual who files documents to register the entity. See 31 U.S.C. 5336(a)(2). For each beneficial owner and applicant, a reporting company must report the individual's name, date of birth, address, and unique identifying number (such as a driver's license number). See 31 U.S.C. 5336(a)(1) and (b)(2)(A). A reporting company must submit an updated report when ownership information changes. See 31 U.S.C. 5336(b)(1)(D). A person who willfully violates the reporting requirements is subject to civil and criminal penalties. See 31 U.S.C. 5336(h).

The Act empowers the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, to adopt regulations implementing its provisions. See 31 U.S.C. 5336(b). In 2022, FinCEN adopted a rule establishing deadlines by which reporting companies must submit initial reports. See *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,498 (Sept. 30, 2022) (Reporting Rule). The rule provided that entities created or registered before 2024 must comply by January 1, 2025; entities created or registered during 2024 must comply within 90 days after formation or registration; and entities created or registered after 2024 must comply within 30 days after formation or registration. See 31 C.F.R. 1010.380(a)(1).

2. Respondents include four entities that claim to be subject to the Act's reporting requirements: Texas Top Cop Shop, Inc. (a firearms dealer); Data Comm for Business, Inc. (an information-technology company); Mustardseed Livestock, LLC (a company that runs a dairy farm); and the Libertarian Party of Mississippi (a polit-

ical party). See App., *infra*, 27a-29a.[1] Respondents also include Russell Straayer (a beneficial owner of Data Comm) and the National Federation of Independent Business (NFIB) (an organization suing on behalf of its members). See *id.* at 28a, 30a. Respondents filed this suit in the U.S. District Court for the Eastern District of Texas, claiming that the Act's reporting requirements exceed Congress's enumerated powers and violate the First and Fourth Amendments. See *id.* at 32a.

The district court issued a universal preliminary injunction prohibiting the enforcement of the Act's reporting requirements and FinCEN's corresponding Reporting Rule. See App., *infra*, 19a-97a. The court concluded that respondents were likely to succeed on the merits of their claim that the Act, on its face, exceeds Congress's enumerated powers. See *id.* at 50a-91a. The court rejected the government's argument that the Act falls within Congress's power under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3, reasoning that the statute does not regulate economic activity. See App., *infra*, 53a-71a. The court also rejected the government's argument that the Act is authorized by the Necessary and Proper Clause, U.S. Const. Art. I, § 8, Cl. 18, reasoning that the statute has an insufficient link to Congress's enumerated powers. See *id.* at 71a-91a. Having held that the Act exceeds Congress's enumerated powers, the court found it unnecessary to address respondents' First and Fourth Amendment claims. See *id.* at 91a.

The district court next concluded that the equities supported injunctive relief. See App., *infra*, 41a-50a, 91a-96a. It determined that respondents faced irreparable harm because they would incur compliance costs under the Act. See *id.* at 41a-50a.

---

[1] The CTA's reporting requirements do not apply to tax-exempt political organizations. See 31 U.S.C. 5336(a)(11)(B)(xix)(II). But the Mississippi Libertarian Party claims, for reasons that remain unclear, that it "is not classified" as a political organization under federal law. App., *infra*, 29a.

And it concluded that "the threatened injury to [respondents] outweighs any potential harm to [the government]." *Id.* at 91a.

Although respondents had sought relief from enforcement of the statute only on their own behalf, the district court concluded that a "nationwide injunction is appropriate." App., *infra*, 93a. The court emphasized that the Act and the Reporting Rule "apply nationwide" and that "NFIB's membership extends across the country." *Id.* at 95a. "Given the extent of the violation," the court concluded that "the injunction should [also] apply nationwide." *Ibid.* The court purported to enjoin the Act itself, stating: "[T]he CTA, 31 U.S.C. § 5336[,] is hereby enjoined." *Id.* at 97a. Invoking a provision of the Administrative Procedure Act (APA), 5 U.S.C. 705, the court also entered a universal "stay of the Reporting Rule's compliance deadline pending further order of the Court." *Id.* at 96a.

The government appealed to the Fifth Circuit. See App., *infra*, 11a. The district court denied the government's motion to stay the preliminary injunction pending appeal. See *id.* at 10a-18a. The court "acknowledge[d]" "concerns with nationwide injunctions," but again concluded that the nationwide scope of its injunction was appropriate "under the facts and circumstances of this case." *Id.* at 14a-15a.

2. A motions panel of the Fifth Circuit granted the government's motion to stay the preliminary injunction pending appeal. See App., *infra*, 3a-9a.

The motions panel determined that the government was likely to succeed on the merits of respondents' claim. See App., *infra*, 5a-7a. The court explained that the "ownership and operation of a business" are economic activities and that "a reporting requirement for entities engaged in these economic activities falls within 'more than a century of the Supreme Court's Commerce Clause jurisprudence.'" *Id.* at 5a (brackets and citation omitted). The court also explained that respondents' fa-

cial challenge was likely to fail because "the CTA at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information." *Id.* at 7a.

The motions panel likewise determined that the equities supported a stay. See App., *infra*, 7a-9a. The court explained that "a last-minute injunction" against the enforcement of a federal statute "necessarily inflicts irreparable harm." *Id.* at 7a. The court also reasoned that "the harm that a stay would cause the [respondents] is minimal" and is outweighed by "the public's urgent interest in combatting financial crime and protecting our country's national security." *Id.* at 8a.

Judge Haynes concurred in part and dissented in part. See App., *infra*, 4a n.1. She agreed that "a national injunction is not appropriate here" and would have stayed the preliminary injunction "as to the non-parties." *Ibid.* But she would have denied a stay "as to the parties," "including the members of NFIB, as long as their identities are disclosed to the government." *Ibid.*

Recognizing that reporting companies may need additional time to comply with the Act given the period when the preliminary injunction was in effect, FinCEN extended the reporting deadlines in certain respects, including by extending the deadline for entities formed before 2024 from January 1, 2025, to January 13, 2025. See C.A. Doc. 105 at 1-2, *NSBU* v. *United States Department of the Treasury*, No. 24-10736 (11th Cir. Dec. 24, 2024).

3. Respondents filed a petition for rehearing en banc. See C.A. Doc. 143 (Dec. 24, 2024). While that petition was pending, a merits panel of the Fifth Circuit vacated the motions panel's stay—thus reinstating the district court's universal injunction—without any analysis of the government's likelihood of success on the merits or the harms to the parties. The merits panel stated only that its action was

warranted "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments." App., *infra*, 2a. The merits panel issued a briefing schedule under which briefing will be completed by February 28, 2025, see C.A. Doc. 163, at 1 (Dec. 27, 2024), and scheduled oral argument for March 25, 2025, C.A. Doc. 165, at 1 (Dec. 27, 2024). After the merits panel reinstated the district court's injunction, respondents withdrew their petition for rehearing as moot. See C.A. Doc. 183 (Dec. 27, 2024).

ARGUMENT

To obtain a stay of a district court's injunction pending the disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that this Court would grant certiorari, (2) a likelihood of success on the merits, and (3) a likelihood of irreparable harm in the absence of a stay. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court "will balance the equities and weigh the relative harms." *Ibid.* Those factors overwhelmingly support a stay here. At a minimum, this Court should grant a partial stay narrowing the district court's vastly overbroad injunction. And to provide clarity to lower courts on that recurring remedial issue—which has escaped review in prior cases because of the Court's antecedent procedural or merits rulings—the Court may additionally wish to construe this application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis and resolve that issue this Term.

A. This Court Has Traditionally Applied A Strong Presumption In Favor Of Allowing Challenged Acts Of Congress To Remain In Force Pending Final Review In This Court

In reviewing emergency applications, this Court has traditionally applied a strong presumption that "Acts of Congress * * * 'should remain in effect pending a

final decision on the merits by this Court.'" *Turner Broadcasting System, Inc.* v. *FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (citation omitted); see *Wisconsin Right to Life, Inc.* v. *FEC*, 542 U.S. 1305, 1305-1306 (2004) (Rehnquist, C.J., in chambers); *Doe* v. *Gonzales*, 546 U.S. 1301, 1308-1309 (2005) (Ginsburg, J., in chambers); *Heart of Atlanta Motel, Inc.* v. *United States*, 85 S. Ct. 1, 2 (1964) (Black, J., in chambers). In "virtually all" cases where a lower court has held an Act of Congress unconstitutional, the Court has "granted a stay if requested to do so by the Government." *Bowen* v. *Kendrick*, 483 U.S. 1304, 1304 (1987) (Rehnquist, C.J., in chambers); see, *e.g.*, *Horseracing Integrity & Safety Authority, Inc.* v. *National Horsemen's Benevolent & Protective Ass'n*, No. 24A287, 2024 WL 4589181 (Oct. 28, 2024); *United States* v. *Comstock*, No. 08A863, 2009 WL 10801016 (Apr. 3, 2009) (Roberts, C.J., in chambers); *Walters* v. *National Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers); *Schweiker* v. *McClure*, 452 U.S. 1301, 1303 (1981) (Rehnquist, J., in chambers); *Rostker* v. *Goldberg*, 448 U.S. 1306, 1311 (1980) (Brennan, J., in chambers); *Marshall* v. *Barlow's, Inc.*, 429 U.S. 1347, 1348 (1977) (Rehnquist, J., in chambers).

That practice reflects the "presumption of constitutionality" which attaches to every Act of Congress. *United States* v. *Morrison*, 529 U.S. 598, 607 (2000). Judging the constitutionality of an Act of Congress is "the gravest and most delicate duty that this Court is called on to perform." *Blodgett* v. *Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.). In performing that duty, the Court usually accords "great weight" to Congress's judgment that a statute is constitutional. *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted). The "presumption is in favour of every legislative act," and "the whole burthen of proof lies on him who denies its constitutionality." *Brown* v. *Maryland*, 12 Wheat. 419, 436 (1827) (Marshall, C.J.); see, *e.g.*, *Sink-*

ing-Fund Cases, 99 U.S. 700, 718 (1878) ("Every possible presumption is in favor of the validity of a statute.").

The presumption of constitutionality informs the analysis of each of the stay factors. First, whenever a court of appeals holds a federal statute unconstitutional, there is at least a reasonable probability that this Court will grant certiorari. This Court almost invariably grants review "when a lower court has invalidated a federal statute." *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019). Second, the presumption of constitutionality is "a factor to be considered in evaluating success on the merits." *Walters*, 468 U.S. at 1324 (Rehnquist, J., in chambers). "Due respect" for Congress requires that a court find a federal statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607. Finally, the presumption of constitutionality is "an equity to be considered in favor of applicants." *Walters*, 468 U.S. at 1324 (Rehnquist, J., in chambers). Whenever a sovereign is prevented "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).

The practical realities of this Court's emergency docket underscore the importance of adhering to that traditional approach. Emergency applications usually require the Court to address issues "on a short fuse without benefit of full briefing and oral argument." *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). When the Court operates under such constraints, it should be especially respectful of Congress's judgment that a federal statute complies with the Constitution. "'Given the presumption of constitutionality granted to all Acts of Congress,'" it is therefore "appropriate that the statute remain in effect pending [this Court's] review." *Kendrick*, 483 U.S. at 1304 (Rehnquist, C.J.,

in chambers) (citation omitted).

B. If The Fifth Circuit Affirms The District Court's Injunction, This Court Would Likely Grant Certiorari And Reverse

If the Fifth Circuit affirms the district court's injunction, this Court would likely grant the government's petition for a writ of certiorari. As noted above, this Court usually grants review when a lower court holds an Act of Congress unconstitutional. See p. 12, *supra*. The Court has recently and repeatedly reviewed decisions invalidating federal statutes, even in the absence of a circuit conflict. See, *e.g.*, *SEC* v. *Jarkesy*, 144 S. Ct. 2117, 2127 (2024); *United States* v. *Rahimi*, 602 U.S. 680, 690 (2024); *Vidal* v. *Elster*, 602 U.S. 286, 292 (2024); *Haaland* v. *Brackeen*, 599 U.S. 255, 272 (2023); *Torres* v. *Texas Department of Public Safety*, 597 U.S. 580, 586 (2022).

This Court would also likely reverse a decision affirming the district court's injunction. Contrary to the district court's decision, the Commerce Clause and Necessary and Proper Clause empower Congress to adopt the CTA's reporting requirements. At the very least, the requirements do not violate the Constitution on their face.

1. The Commerce Clause empowers Congress to adopt the CTA's reporting requirements

a. The Commerce Clause empowers Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. Art. I, § 8, Cl. 3. The power to regulate interstate commerce includes the power "to enact 'all appropriate legislation' for its 'protection or advancement,'" the power "to adopt measures 'to promote its growth and insure its safety,'" and the power "'to foster, protect, control, and restrain.'" *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36-37 (1937) (citations omitted).

The Commerce Clause, as relevant here, authorizes Congress to regulate "intrastate economic activity" that, "viewed in the aggregate," "substantially affects in-

terstate commerce." *United States* v. *Lopez*, 514 U.S. 549, 559, 561 (1995). Applying that principle, this Court has held that Congress may regulate activities such as the growing of marijuana, see *Gonzales* v. *Raich*, 545 U.S. 1, 15-33 (2005); mining, see *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 275-283 (1981); loan sharking, see *Perez* v. *United States*, 402 U.S. 146, 150-157 (1971); the operation of hotels, see *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 253-262 (1964); and the production and consumption of homegrown wheat, see *Wickard* v. *Filburn*, 317 U.S. 111, 119-129 (1942).

That principle amply supports the CTA. The Act regulates an economic activity: the "anonymous ownership and operation of businesses." App., *infra*, 5a. That class of activities, in the aggregate, substantially affects interstate commerce by facilitating "illicit activity" such as "money laundering," "human and drug trafficking," and "securities fraud." CTA § 6402(3), 134 Stat. 4604. The Act therefore falls comfortably within the category of legislation permitted by "more than a century of [this] Court's Commerce Clause jurisprudence." App., *infra*, 5a (citation omitted).

Underscoring the CTA's constitutionality, the Act includes "formal findings" regarding the regulated activity's effects on interstate commerce. *Lopez*, 514 U.S. at 562. In the Act, Congress found that "malign actors seek to conceal their ownership" of corporations and similar entities; that "money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection"; and that "legislation providing for the collection of beneficial ownership information * * * is needed to * * * protect interstate and foreign commerce." CTA § 6402(3)-(5), 134 Stat. 4604. Although such findings are "not required," they reinforce "the legislative judgment that the activity in question substantially affect[s] interstate commerce." *Lopez*, 514 U.S. at 562-563.

Further confirming the CTA's constitutionality, the Act is an "essential part of a larger regulation of economic activity." *Lopez*, 514 U.S. at 561. The CTA forms part of the Anti-Money Laundering Act, a statute that (as its name suggests) establishes a regulatory framework for countering money laundering. "Money laundering is a quintessential economic activity. Indeed, it is difficult to imagine a more obviously commercial activity than engaging in financial transactions involving the profits of unlawful activity." *United States* v. *Goodwin*, 141 F.3d 394, 399 (2d Cir. 1997). The CTA's reporting requirements facilitate Congress's broader efforts to counter money laundering by enabling investigators to trace the flow of illicit funds and by discouraging the use of shell corporations to conceal transactions. See AMLA § 6002(5), 134 Stat. 4547. The Commerce Clause empowers Congress to adopt those requirements.

b. In holding that the CTA exceeds Congress's power to regulate interstate commerce, the district court relied on this Court's decision in *NFIB* v. *Sebelius*, 567 U.S. 519 (2012), that the Commerce Clause does not empower Congress to require individuals to buy health insurance. See App., *infra*, 61a. The district court reasoned that, like the mandate to purchase health insurance in *NFIB*, the Act regulates inactivity rather than economic activity. See *ibid.* That rationale is flawed.

The CTA regulates the anonymous ownership and operation of corporations and similar entities incorporated or registered under state or tribal law. A central purpose of the formation of such entities is to engage in economic activity. By definition, a corporation has legal authority to conduct economic transactions in its own name, including by making contracts, borrowing money, incurring liabilities, and transferring real and personal property. See, *e.g.*, Del. Code Ann. tit. 8, § 122. And it is hardly speculative that entities that incur the trouble and expense of filing papers to obtain authority to conduct economic transactions in their own name will go

on to exercise that authority. Respondents illustrate the point. Texas Top Cop Shop deals in firearms, Data Comm provides information-technology services, and Mustardseed operates a dairy farm. See pp. 6-7, *supra*. Even the Mississippi Libertarian Party holds assets and expends donated money. See App., *infra*, 29a.

The district court also overlooked the Act's exemptions. The Act's reporting requirements do not apply, for example, to many non-profit organizations, political organizations, and trusts. See 31 U.S.C. 5336(a)(11)(B)(xix). Nor do they apply to certain entities that are no longer engaged in active business and that do not otherwise hold assets. See 31 U.S.C. 5336(a)(11)(B)(xxiii). The Act, in addition, authorizes FinCEN to exempt any other "entity or class of entities" for which reporting would not "serve the public interest" and "would not be highly useful" in "efforts to detect, prevent, or prosecute" financial crimes. 31 U.S.C. 5336(a)(11)(B)(xxiv). "While these exemptions might not sweep in every single dormant corporate entity," they confirm that the Act regulates an economic activity—namely, "the ownership and operation of businesses." App., *infra*, 6a.

In all events, the Commerce Clause does not require Congress "to legislate with scientific exactitude." *Raich*, 545 U.S. at 17. Rather, "where a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Lopez*, 514 U.S. at 558 (citation and emphasis omitted). That is especially so when, as here, the "'total incidence' of a practice"—the formation of entities that may engage in commercial activity while hiding the identities of their beneficial owners—"poses a threat to the national market." *Raich*, 545 U.S. at 17 (citation omitted); see *id.* at 23 ("[W]here the class of activities * * * is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances' of the class.") (citation omitted).

2. The Necessary and Proper Clause empowers Congress to adopt the CTA's reporting requirements

a. The Necessary and Proper Clause empowers Congress to "make all Laws which shall be necessary and proper for carrying into Execution" the federal government's powers. U.S. Const. Art. I, § 8, Cl. 18. That Clause grants Congress "broad authority" to enact laws that implement its enumerated powers. *United States* v. *Comstock*, 560 U.S. 126, 133 (2010). In other words, the Clause empowers Congress to "make [its] legislation effectual." *Cohens* v. *Virginia*, 6 Wheat. 264, 427 (1821).

A law is a valid exercise of Congress's authority under the Necessary and Proper Clause if it is directed toward "carrying into Execution" a power conferred by the Constitution and is a "necessary" and "proper" means of achieving that end. U.S. Const. Art. I, § 8, Cl. 18; see *Jinks* v. *Richland County*, 538 U.S. 456, 461-465 (2003). A law is "necessary" if it is "convenient," "useful," or "conducive" to exercising an enumerated power. *McCulloch* v. *Maryland*, 4 Wheat. 316, 413, 418 (1819). And a law is "proper" if it comports with "the letter and spirit" of the Constitution. *Id.* at 421.

The Necessary and Proper Clause authorizes not only laws that effectuate a "single enumerated power," but also those that effectuate the "aggregate" of multiple powers. *Legal Tender Cases*, 12 Wall. 457, 535 (1870). For example, in *McCulloch*, this Court determined that the establishment of the Bank of the United States helped implement Congress's powers "to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies." 4 Wheat. at 407. And in *Comstock*, the Court explained that laws establishing and regulating federal prisons implement the various enumerated powers under which Congress has enacted criminal laws—the power "to regulate interstate and foreign commerce, to enforce civil rights, to spend funds for the general welfare, to establish

federal courts, to establish post offices, to regulate bankruptcy, to regulate naturalization, and so forth." 560 U.S. at 136.

The CTA's reporting requirements are similarly directed toward effectuating multiple enumerated powers. Most importantly, they counter "money laundering," "human and drug trafficking," "securities fraud," and "financial fraud," § 6402(3), 134 Stat. 4604, thus effectuating Congress's power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," U.S. Const. Art. I, § 8, Cl. 3. The requirements also help prevent "serious tax fraud," § 6402(3), 134 Stat. 4604, effectuating Congress's power to "lay and collect Taxes," U.S. Const. Art. I, § 8, Cl. 1. The requirements address "the financing of terrorism," "proliferation financing," and "acts of foreign corruption," § 6402(3), 134 Stat. 4604, effectuating Congress's powers with respect to national security and international relations, see *Toll* v. *Moreno*, 458 U.S. 1, 10 (1982).

The CTA's reporting requirements carry into execution not only Congress's own powers, but also "other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. Art. I, § 8, Cl. 18. Article II vests the President with the "executive Power" and directs him to "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1 and § 3. The reporting requirements help the President execute federal law by enabling the Executive Branch to trace the flow of illicit funds and detect and prosecute financial crimes. See § 6402(6)(A), 134 Stat. 4605. Article II also vests the President with broad authority in the fields of foreign affairs and national security. See *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-322 (1936). The Act effectuates those powers as well by facilitating the Executive Branch's "national security" and "intelligence" activities. § 6402(6)(A), 134 Stat. 4605.

The CTA's reporting requirements are "necessary" for implementing those powers. Congress found that "malign actors seek to conceal their ownership" of corporations and other entities "to facilitate illicit activity." CTA § 6402(3), 134 Stat. 4604. It further found that criminals "intentionally conduct transactions through corporate structures in order to evade detection," "layer[ing] such structures, much like Russian nesting 'Matryoshka' dolls, across various secretive jurisdictions, such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity." § 6402(4), 134 Stat. 4604. Congress found that collecting ownership information would "better enable critical national security, intelligence, and law enforcement efforts to counter" such "illicit activity." § 6402(5)(D), 134 Stat. 4604. It likewise explained that the requirements would "discourage the use of shell corporations as a tool to disguise and move illicit funds." AMLA § 6002(5)(B), 134 Stat. 4547. Congress's findings confirm that the Act's reporting requirements are "useful" and "convenient" for implementing the federal government's enumerated powers. *McCulloch*, 4 Wheat. at 413.

The CTA's reporting requirements fall well within the bounds of what is "proper" under the Clause. The requirements apply only to entities that must already file "a document with a secretary of state or a similar office" under state or tribal law to be formed or to do business in the United States, 31 U.S.C. 5336(a)(11)(A), and covered entities need report only the names, dates of birth, addresses, and unique identifying numbers of their applicants and beneficial owners, see p. 6, *supra*. The Act also effectuates the government's constitutional powers in direct and obvious ways. See pp. 18-19, *supra*. Nor are the Act's requirements affirmatively "prohibited" by other constitutional provisions. *Id.* at 134 (citation omitted). Although respondents argued that the requirements violate the First and Fourth Amendments, the

district court did not reach those claims, see App., *infra*, 91a, and other district courts have correctly rejected similar claims in other cases, see *Community Ass'ns Institute* v. *Yellen*, No. 24-cv-1597, 2024 WL 4571412, at *8 (E.D. Va. Oct. 24, 2024); *Firestone* v. *Yellen*, No. 24-cv-1034, 2024 WL 4250192, at *9-*10 (D. Or. Sept. 20, 2024).

b. Precedent and historical practice confirm that the Act's reporting requirements comply with the Constitution. Congress has often required private individuals and entities to provide information to the government, and this Court has upheld many such requirements under the Necessary and Proper Clause.

To take a familiar example, federal law requires "the submission of tax-related information that it believes helpful in assessing and collecting taxes." *CIC Services, LLC* v. *IRS*, 593 U.S. 209, 212 (2021). Taxpayers must file annual tax returns, see 26 U.S.C. 6012; employers must report their employees' wages, see 26 C.F.R. 31.6051-2; banks must report interest paid on deposits, see 26 C.F.R. 1.6049-1(a); and so forth. This Court has determined that such reporting requirements are necessary and proper for the collection of taxes. In *Sonzinsky* v. *United States*, 300 U.S. 506 (1937), the Court upheld a statute that taxed firearms dealers and required them to register with the federal government, explaining that the registration requirement was "obviously supportable as in aid of a revenue purpose." *Id.* at 513. And in *United States* v. *Kahriger*, 345 U.S. 22 (1953), the Court upheld a taxation-and-registration scheme for gambling businesses, observing that "[a]ll that is required is the filing of names, addresses, and places of business" and that "[s]uch data are directly and intimately related to the collection of the tax." *Id.* at 31-32.

This Court has likewise determined that Congress may implement its power to regulate interstate commerce by requiring private entities to provide information to the federal government. For example, in *ICC* v. *Brimson*, 154 U.S. 447 (1894), the

Court upheld a statute requiring witnesses to provide evidence during proceedings of the Interstate Commerce Commission. The Court explained that the requirement was "appropriate and plainly adapted to the protection of interstate commerce." *Id.* at 473. Similarly, in *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419 (1938), the Court upheld a statute requiring holding companies to file reports with the Securities and Exchange Commission. It explained that a "requirement of information" is a "permissible and useful type of regulation" to protect interstate commerce. *Id.* at 439.

Taxation and commerce are far from the only contexts in which this Court has held that Congress may require private individuals to provide information to the government. Congress has enacted, and this Court has upheld, reporting requirements that implement a variety of other enumerated powers. For example:

- *Power to raise armies.* Federal law requires men between the ages of 18 and 26 to register with the Selective Service System and to report their dates of birth, addresses, and social security numbers. See 50 U.S.C. 3802. This Court has determined that those requirements are necessary and proper to effectuate the power to "raise and support Armies." U.S. Const. Art. I, § 8, Cl. 12; see *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968).
- *Power to govern the armed forces.* Federal law requires certain sex offenders to register and to provide information such as their names, addresses, and social security numbers. See 34 U.S.C. 20913, 20914. This Court has upheld those requirements, as applied to military offenders, as necessary and proper to effectuate the power to "make Rules for the Government and Regulation of the land and naval Forces." U.S. Const. Art. I, § 8, Cl. 14; see *United States* v. *Kebodeaux*, 570 U.S. 387, 393-399 (2013).
- *Power to establish post offices.* In *Lewis Publishing Co.* v. *Morgan*, 229 U.S.

288 (1913), this Court upheld a statute requiring senders of second-class mail to report the names of their stockholders, bondholders, and officials to the Postmaster General. The Court explained that the collection of such information was incidental to the power to "establish Post Offices," U.S. Const. Art. I, § 8, Cl. 7, because the reports helped ensure that those who sent second-class mail were eligible to do so. See *id.* at 313-316.

- *Power to regulate federal elections.* Federal law requires campaigns to report contributions and expenditures. See 52 U.S.C. 30104. This Court has determined that the Necessary and Proper Clause empowers Congress to adopt such requirements. See *Burroughs* v. *United States*, 290 U.S. 534, 547-548 (1934).

Congress has enacted many more statutes that require individuals to provide information to the federal government, but that have not been challenged in this Court. Since the Founding, consistent with the maxim that "the public has a right to every man's evidence," Congress has exercised the power "to compel persons to testify in court or before grand juries." *Kastigar* v. *United States*, 406 U.S. 441, 443 (1972); see Judiciary Act of 1789, ch. 20, § 30, 1 Stat. 88. Similarly, Congress has long prohibited misprision of felony—*i.e.*, concealing a felony and failing to report it to appropriate authorities. See 18 U.S.C. 4; Crimes Act of 1790, ch. 9, § 6, 1 Stat. 113. Congress has required individuals to provide demographic information as part of the decennial census mandated by the Constitution, including information unrelated to the apportionment of congressional seats. See U.S. Const. Art. I, § 2, Cl. 3; 13 U.S.C. 221(a); *Department of Commerce* v. *New York*, 588 U.S. 752, 760 (2019). Congress also has required individuals to respond to questionnaires as part of other federal surveys, such as the American Community Survey. See 13 U.S.C. 193, 221(a).

Congress has imposed even more extensive reporting obligations on artificial persons. For instance, publicly traded companies must file reports with the Securities and Exchange Commission, see, *e.g.*, 15 U.S.C. 78m; banks must file reports with the Federal Deposit Insurance Corporation, see, *e.g.*, 12 U.S.C. 1831m(a); credit unions must file reports with the National Credit Union Administration, see, *e.g.*, 12 U.S.C. 1782(a); and manufacturers, distributors, and retailers must file reports with the Consumer Product Safety Commission, see, *e.g.*, 15 U.S.C. 2064(b). The CTA's reporting requirements similarly apply to artificial persons.

In sum, "requiring the submission of information" is a "familiar category" of regulation. *Electric Bond*, 303 U.S. at 437. The Necessary and Proper Clause empowers Congress to adopt such a requirement when, as here, the "[i]nformation bear[s] upon activities which are within the range of congressional power." *Ibid.*

c. The district court's contrary reasoning lacks merit.

First, the district court relied on this Court's decision in *NFIB* that the Necessary and Proper Clause does not empower Congress to require individuals to buy health insurance. See App., *infra*, 73a-74a. The court concluded that, like the insurance mandate in *NFIB*, the CTA improperly regulates inactivity by imposing obligations upon companies "simply because those companies exist in their natural state." *Id.* at 73a. As discussed above, the court erred in categorizing the establishment and operation of a business entity as a form of inactivity. See pp. 15-16, *supra*. Even putting that point aside, the court overlooked the distinction between a law requiring inactive individuals "to engage in commerce," *NFIB*, 567 U.S. at 540, and a law requiring "the submission of information," *Electric Bond*, 303 U.S. at 437. While laws requiring individuals to engage in commerce are novel, see *NFIB*, 567 U.S. at 549 (opinion of Roberts, C.J.), laws requiring them to submit information are "familiar,"

Electric Bond, 303 U.S. at 437. Thus, Congress may require private persons—even those who simply "exist in their natural state" without engaging in economic activity, App., *infra*, 73a—to register for Selective Service or to provide evidence in agency proceedings. Congress may likewise require purportedly inactive private entities to report the information required by the CTA. And Congress reasonably determined that the affirmative act of incorporation or similar formation is an appropriate occasion on which to require reporting concerning who has substantial ownership of or control over the entity, so that the information would be available when the entity does engage in economic activity and so that those individuals would be deterred from using the companies for illegal purposes.

Second, the district court reasoned that the Act improperly intrudes into the field of corporate law, an arena "traditionally controlled by the states." App., *infra*, 83a. In *McCulloch*, however, this Court rejected a similar argument that Congress's creation of the Bank of the United States improperly intruded upon the States' "power of creating a corporation." 4 Wheat. at 409. In any event, the CTA does not displace state laws defining the types of business entities that individuals may establish, the requirements that such entities must fulfill, or the procedures for incorporating such entities. As the district court recognized, the Act neither "adds [any]thing to, nor detracts in any way from, the registration process under State law." App., *infra*, 60a. The Act simply provides that, once a corporation or similar entity has been established in accordance with state law, it must report information about its applicants and beneficial owners to the federal government. See pp. 5-6, *supra*.

Finally, the district court perceived an insufficient link between the Act and Congress's enumerated powers. See App., *infra*, 90a. But the Necessary and Proper Clause "vests Congress with broad discretion over the manner of implementing its

enumerated powers." *Armstrong* v. *Exceptional Child Care Center, Inc.*, 575 U.S. 320, 325 (2015). If, as here, "the means adopted are really calculated to attain the end," then "the degree of their necessity" and the "closeness of the[ir] relationship" to the end are generally "matters for congressional determination." *Burroughs*, 290 U.S. at 548. A court should ask only "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *Comstock*, 560 U.S. at 134. For the reasons discussed above, the Act easily satisfies that test. See p. 18-19, *supra*.

3. Respondents have not satisfied the high standard for bringing a facial challenge

Respondents have chosen to litigate this case as a facial challenge, see App., *infra*, 32a, and "that decision comes at a cost," *Moody* v. *NetChoice, LLC*, 603 U.S. 707, 723 (2024). "For a host of good reasons, courts usually handle constitutional claims case by case, not en masse." *Ibid.* "'Claims of facial invalidity often rest on speculation' about the law's coverage and its future enforcement." *Ibid.* (citation omitted). "And 'facial challenges threaten to short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways." *Ibid.* (citation omitted).

"This Court has therefore made facial challenges hard to win." *NetChoice*, 603 U.S. at 723. Indeed, a facial challenge to a statute is the "most difficult challenge to mount successfully." *Rahimi*, 602 U.S. at 693 (citation omitted). The challenger must "establish that no set of circumstances exists under which the Act would be valid." *Ibid.* (citation omitted). If the Act complies with the Constitution in even "some of its applications," the facial challenge fails. *Ibid.* That standard applies to claims that Congress has exceeded its enumerated powers. See *Sabri* v. *United States*, 541 U.S.

600, 608-610 (2004).

The CTA's reporting requirements plainly have at least "some" valid applications. *Rahimi*, 602 U.S. at 693. The Act, at a minimum, complies with the Constitution as applied to entities—such as the reporting-company respondents and presumably the vast majority of NFIB's members—that are "engaged in business operations affecting interstate commerce." App., *infra*, 7a. That defeats the facial challenge.

C. The Equities Support A Stay

1. The district court's injunction subjects the government to serious and irreparable harm. A sovereign "suffers a form of irreparable injury" whenever it is "enjoined by a court from effectuating statutes enacted by representatives of its people." *New Motor Vehicle Board* v. *Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). The injury here is particularly stark: The court held a federal statute invalid on its face and enjoined its enforcement nationwide.

Concretely, the district court's injunction harms the government by prohibiting the enforcement of a statute that seeks to protect national security. Congress explicitly found that the CTA's reporting requirements are "needed to * * * protect vital United States national security interests" and to "better enable critical national security, intelligence, and law enforcement efforts." CTA § 6402(5)(B) and (D), 134 Stat. 4604. The Executive Branch agrees with that assessment. Thus, in the Reporting Rule, FinCEN explained that the Act's requirements "impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing." 87 Fed. Reg. at 59,500. And in a declaration filed in the district court, FinCEN's Director explained that the Act furnishes "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." App., *infra*, 100a.

FinCEN has provided specific examples to illustrate the threat that the use of "shell or front companies" poses to "national security." 87 Fed. Reg. at 59,498. For instance, since "Russia's unlawful invasion of Ukraine in February 2022," "Russian elites, state-owned enterprises, and organized crime" "have attempted to use U.S. and non-U.S. shell companies to evade sanctions imposed on Russia." *Ibid.* One "sanctioned Russian oligarch" "used shell companies" to "avoid bank oversight of U.S. dollar transactions." *Ibid.* The "Iranian government" has similarly used "shell companies" "to obfuscate the source of its funds and hide its involvement in efforts to generate revenue." *Id.* at 59,502. In one case, "the Department of Justice charged 10 Iranian nationals with running a nearly 20-year-long scheme to evade U.S. sanctions on the Government of Iran by disguising more than $300 million worth of transactions—including the purchase of two $25 million oil tankers—on Iran's behalf through front companies in California" and other jurisdictions. *Id.* at 59,503. Such "sanctions evasion" poses "a significant threat to the national security of the United States and its partners." *Id.* at 59,498.

The CTA also seeks to facilitate the prevention, detection, and prosecution of financial crimes. Congress found that the Act's reporting requirements are "needed" "to counter money laundering * * * and other illicit activity." CTA § 6402(5)(D), 134 Stat. 4604. FinCEN has similarly observed that "a lack of uniform beneficial ownership information reporting requirements * * * hinders the ability of * * * law enforcement to swiftly investigate * * * entities created and used to hide ownership for illicit purposes." 87 Fed. Reg. at 59,498. And FinCEN's Director has explained that

the collection of information about beneficial owners "is crucial to identifying linkages between potential illicit actors and opaque business entities." App., *infra*, 100a.

Again, FinCEN has provided specific examples that illustrate how criminals use shell companies to conceal their crimes. See 87 Fed. Reg. at 59,499. In one case, a group of individuals stole "$24 million of COVID-19 relief money by using synthetic identities and shell companies they had created years earlier to commit other bank fraud." *Id.* at 59,499. In another, a group of individuals "used multiple shell entities" to file "at least 63 fraudulent loan applications" and to obtain "over $3 million" in "COVID-19 pandemic relief funds." *Ibid.* In a third case, the government "investigated the alleged misappropriation of more than $4.5 billion in funds" that "were allegedly laundered through a series of complex transactions and shell companies with bank accounts located in the United States and abroad." *Id.* at 59,503.

FinCEN has "devoted major resources over several years to ensure the CTA is implemented effectively, in particular by educating the public about its requirements." App., *infra*, 107a. For example, it has "published a range of guidance materials," has "engaged in over 200 outreach events" regarding the Act, and has conducted "an expansive public service announcement * * * campaign to increase public awareness" about the Act's requirements. *Id.* at 103a. FinCEN has invested "over 4.3 million dollars in that campaign," and its officials have "dedicated thousands of hours * * * to addressing questions from potential filers." *Id.* at 103a, 105a. "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 the weeks preceding the district court's injunction. *Id.* at 105a.

"If the injunction remains in place for any significant length of time," however, "these resources will have been largely squandered." App., *infra*, 107a. "The injunc-

tion has already created—and will continue to engender—widespread confusion among the public, including regulated parties." *Id.* at 105a. "If CTA implementation is suspended for a significant length of time, FinCEN would have substantial practical difficulty in resuming implementation, re-educating the public about the reporting requirements, and effectively enforcing compliance." *Ibid.*

The district court's injunction also impairs the United States' foreign-policy interests. The United States is a founding member of the Financial Action Task Force (FATF), "the international standard-setting body" for efforts to counter money laundering and the financing of terrorism. 87 Fed. Reg. at 59,513. In 2016, FATF identified "the lack of beneficial ownership information reporting requirements" as "one of the fundamental gaps" in the United States' anti-money laundering regime. App., *infra*, 106a. In adopting the Act, Congress sought to "bring the United States into compliance" with FATF's standards. CTA § 6402(5)(E), 134 Stat. 4604. By barring implementation of the Act, the injunction undermines the United States' credibility among other nations and impairs our "ability to push other countries to reform their anti-money laundering and counterterrorism regimes." App., *infra*, 8a-9a. Further, 159 countries have implemented or are planning to implement laws requiring corporations to report beneficial ownership information to the government. See Open Ownership, *Open Ownership map: Worldwide action on beneficial ownership transparency*, https://www.ownership.org/en/map. The district court's injunction threatens to leave the United States as an international outlier, making the United States more "attractive" than other jurisdictions to international criminals seeking to launder their ill-gotten gains. 87 Fed. Reg. at 59,501.

2. On the other side of the ledger, the district court relied on the fact that respondents would incur "compliance costs" in the absence of an injunction. App.,

infra, 41a. But the court did not deny that those costs would be minimal. FinCEN has estimated that it would take a company with a simple corporate structure around 90 minutes to comply with the Act: "40 minutes to read the form and understand the requirement, 30 minutes to identify and collect information about beneficial owners and company applicants, [and] 20 minutes to fill out and file the report." 87 Fed. Reg. at 59,589. There is no fee for filing the form, but FinCEN has estimated that the time needed for compliance is equivalent to "$85.14." *Id.* at 59,573. Respondents "neither contend that they have more complex structures that would require more time or money, nor state their potential costs with any particularity." App., *infra*, 8a. Any harm to respondents is plainly outweighed by "the public's urgent interest in combatting financial crime and protecting our country's national security." *Ibid.*

The timing of respondents' suit underscores that conclusion. Congress adopted the CTA in January 2021, and FinCEN issued the Reporting Rule in September 2022. See pp. 4, 6, *supra*. Yet respondents filed this suit only in May 2024, more than three years after the enactment of the statute and almost two years after the issuance of the rule. Respondents' delay in suing undermines their claims of irreparable harm—but has greatly increased the harm to the government by prompting the issuance of a universal preliminary injunction shortly before the compliance deadline.

3. In its order vacating the motions panel's stay, the merits panel discussed neither the government's likelihood of success on the merits nor the harms to the parties. The court instead simply stated that vacatur of the stay was warranted "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty constitutional arguments." App., *infra*, 2a. That rationale is flawed. See *Labrador* v. *Poe*, 144 S. Ct. 921, 930-931 (2024) (Kavanaugh, J., concurring).

The CTA has been in place since 2021, and the Reporting Rule has been in

place since 2022. Although most existing entities need comply with the requirement to report beneficial-ownership information only by January 2025, the requirement that newly formed entities report such information has been in effect since the beginning of 2024. See 31 C.F.R. 1010.380(a)(1). And even as to existing entities, the status quo included the requirement that covered entities comply no later than January 2025, as millions of entities have already done. The district court's injunction has severely disrupted rather than preserved the status quo.

Even putting that point aside, this Court has never applied "a blanket rule of 'preserving the status quo.'" *Poe*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). A court has no warrant to block the enforcement of "constitutional and democratically enacted laws" simply in order to preserve "the status quo before enactment of the new law." *Id.* at 930. To the contrary, a court should exercise "the utmost circumspection" before it "delay[s] the will of Congress to put its policies into effect at the time it desires." *Heart of Atlanta Motel*, 85 S. Ct. at 2 (Black, J., in chambers).

D. At A Minimum, This Court Should Grant A Partial Stay Of The District Court's Vastly Overbroad Injunction

For the reasons discussed above, this Court should stay the district court's injunction in full. At a minimum, the Court should grant a partial stay, narrowing the vastly overbroad injunction to cover only respondents and the members of NFIB who were identified in respondents' complaint. See *Poe*, 144 S. Ct. at 921 (staying a universal injunction except to the extent it protected the plaintiffs); App., *infra*, 4a n.1 (noting that Judge Haynes would have issued a partial stay in this case).

1. The district court entered a "nationwide injunction," prohibiting the enforcement of the CTA not only against respondents, but also against non-parties. App., *infra*, 93a. As Members of this Court have recognized, such universal remedies

exceed "the power of Article III courts," conflict with "longstanding limits on equitable relief," and impose a severe "toll on the federal court system." *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); see *DHS* v. *New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring).

Under Article III, "a plaintiff's remedy must be 'limited to the inadequacy that produced his injury.'" *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted); see *Lewis* v. *Casey*, 518 U.S. 343, 360 (1996) (narrowing an injunction that improperly granted "a remedy beyond what was necessary to provide relief" to the injured parties). This Court recently granted a stay of an injunction to the extent it provided relief to non-parties. See *Poe*, 144 S. Ct. at 921. Justice Gorsuch described the Court's action as "remind[ing] lower courts of the foundational rule that any equitable remedy they issue" must be tailored to "the plaintiff's injuries." *Id.* at 927 (Gorsuch, J., concurring).

Principles of equity reinforce that constitutional limitation. A federal court's power to grant equitable relief is generally limited to the types of relief that were "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Courts of equity traditionally adhered to the principle that relief must, at most, be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). And courts of equity traditionally "did not provide relief beyond the parties to the case." *Hawaii*, 585 U.S. at 717 (Thomas, J., concurring). Universal relief is irreconcilable with those principles.

Universal relief also creates other legal and practical problems. It circumvents the rules governing class actions in federal courts. See Fed. R. Civ. P. 23. It undercuts the rule that non-mutual issue preclusion does not run against the government—

i.e., the rule that the government may relitigate an issue against one party even if it has previously lost on that issue against a different party. See *United States* v. *Mendoza*, 464 U.S. 154, 159-160 (1984). It encourages forum shopping. It empowers a single district court to pretermit meaningful litigation on the same issue in other courts, thereby preventing further percolation of the issues before this Court decides whether to step in. See *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring). And it operates asymmetrically; the government must prevail in every suit to keep its policy in force, but plaintiffs can block a federal statute or regulation nationwide with just a single lower-court victory. See *Id.* at 601.

The universal injunction in this case represents a particularly stark departure from traditional equitable principles. The district court granted universal relief to respondents even though respondents did not ask for it. See App., *infra*, 92a ("Plaintiffs seek injunctive relief on behalf of the individual Plaintiffs, as well as all of NFIB's members."). Respondents are five entities and an individual, but the court enjoined the enforcement of the Act with respect to an estimated "32.6 million existing reporting companies" nationwide. *Id.* at 95a (citation omitted). Even though respondents are all domestic persons, the court's injunction encompasses foreign persons, precluding the government from enforcing the Act against U.S. entities formed by foreign citizens and against foreign entities that register to do business in the United States. See *id.* at 97a. And the district court's universal injunction effectively supersedes the decisions of other district courts rejecting challenges to the Act or declining to enjoin its enforcement on a universal basis. See p. 3, *supra*.

Compounding its error, the district court purported to enjoin the CTA itself. The court stated: "[T]he CTA, 31 U.S.C. § 5336[,] is hereby enjoined." App., *infra*, 97a. The court had no power to enter such an order. "Consistent with historical

practice, a federal court exercising its equitable authority may enjoin named defendants from taking specified unlawful actions. But under traditional equitable principles, no court may * * * purport to enjoin challenged 'laws themselves.'" *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021) (citation omitted); see *California* v. *Texas*, 593 U.S. 659, 672 (2021) ("Remedies * * * do not simply operate 'on legal rules in the abstract.'") (citation omitted).

The district court reasoned that, because the purportedly unconstitutional Act of Congress extends "nationwide," "the injunction should [also] apply nationwide." App., *infra*, 95a. Under Article III, however, "courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 610-611 (1973). "Constitutional judgments" are instead "justified only out of the necessity of adjudicating rights in particular cases between the litigants." *Id.* at 611. The district court thus had no authority to grant relief to persons who were not "plaintiff[s] in this lawsuit, and hence were not the proper object of [the court's] remediation." *Lewis*, 518 U.S. at 358.

The district court further reasoned that universal relief is appropriate because "NFIB's membership extends across the country." App., *infra*, 95a. That is a non sequitur. Even assuming that the court properly enjoined the enforcement of the Act against NFIB's "300,000 members," *id.* at 30a—but see pp. 35-36, *infra*—the court had no basis for also enjoining the enforcement of the Act against the remainder of the "approximately 32.6 million existing reporting companies" subject to the Act, *id.* at 95a (citation omitted).

Finally, the district court sought to justify universal relief from the compliance deadline in FinCEN's implementing regulation by pointing to the APA—specifically, to 5 U.S.C. 705, which authorizes a reviewing court to "issue all necessary and appro-

priate process to postpone the effective date of an agency action" pending judicial review. See App., *infra*, 96a. But Section 705 authorizes interim relief only "to the extent necessary to prevent irreparable injury." 5 U.S.C. 705. Universal relief running to every covered entity in the Nation is in no way called for to "prevent irreparable injury" to respondents. *Ibid.*

2. The district court further erred in granting relief to NFIB's members. NFIB has approximately "300,000 members." App., *infra*, 30a. Only two of those members (Texas Top Cop Shop and Data Comm) are named in the complaint as challenging the Act, and only one further member (Grazing Systems Supply, Inc.) is identified in the body of the complaint. See App., *infra*, 30a; Compl. ¶ 120. The court should not have granted injunctive relief to members who were not identified in the complaint and who did not agree to be bound by the judgment.

The district court's contrary decision "raises constitutional concerns." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring). Article III confines courts to "adjudicating rights in particular cases between the litigants brought before the Court." *Broadrick*, 413 U.S. at 611. The district court, however, granted relief to hundreds of thousands of members of NFIB that were never "brought before the Court." *Ibid.*

The district court's remedial approach also "upsets other legal doctrines." *Alliance*, 602 U.S. at 399 (Thomas, J., concurring). For example, it "subverts the class-action mechanism" by allowing NFIB "to effectively bring a class action without satisfying any of the ordinary requirements" for class certification. *Id.* at 402. It also "creates the possibility of asymmetrical preclusion," enabling NFIB's members to enjoy the benefits of a favorable judgment while escaping the burdens of an adverse one. *Ibid.* In fact, given that NFIB has not identified all its members, it is unclear whether

one or more of its members have been plaintiffs in other suits in which courts have concluded that the CTA is likely constitutional. See p. 3, *supra*. And NFIB's membership presumably includes entities that already have filed reports without objecting, and indeed may believe that the Act is valid and support the full scope of its requirements.

Finally, extending relief to NFIB's absent members is in substantial tension with the rule that "[e]very order granting an injunction" must "state its terms specifically" and "describe in reasonable detail * * * the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). That rule exists to ensure that "an ordinary person reading the court's order [can] ascertain from the document itself exactly what conduct is proscribed." 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2955 (3d ed. 2024). Because NFIB has not identified its 300,000 members, the government would have no way to know whom an injunction protecting those members covers.

E. This Court May Wish To Grant Certiorari Before Judgment To Consider The Lawfulness Of Universal Relief

Regardless of whether this Court grants this stay application in full, grants it in part, or denies it, the Court may wish to treat the application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis. That approach would enable the Court to settle the lawfulness of universal injunctions this Term.

For a number of years, the propriety of universal relief has been a recurring issue in the lower courts. Several Members of this Court have urged that the Court grant review on that issue in an appropriate case. See, *e.g.*, *Griffin* v. *HM Florida-ORL, LLC*, 144 S. Ct. 1, 2 & n.1 (2023) (statement of Kavanaugh, J.) ("[The issue] is an important question that could warrant our review in the future."); *New York*, 140

S. Ct. at 600 (Gorsuch, J., concurring) ("[T]his Court must, at some point, confront these important objections to this increasingly widespread practice."); *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring) ("If [the] popularity [of universal injunctions] continues, this Court must address their legality."). Members of the Court have recognized that universal remedies not only violate Article III and traditional principles of equity, but also "take a toll on the federal court system." *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring). As this case well illustrates, universal injunctions often force the government "to seek immediate relief from one court and then the next, with the finish line in this Court"—lest "a law that the people's elected representatives have adopted * * * remain ineffectual." *Poe*, 144 S. Ct. at 927 (Gorsuch, J., concurring). As a result, universal injunctions exert substantial pressure on this Court's emergency docket, and they visit substantial disruption on the execution of the laws. And also as a result, such injunctions "tend to force judges into making rushed, high-stakes, low-information decisions." *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring). In short, "the routine issuance of universal injunctions is patently unworkable, sowing chaos for litigants, the government, courts, and all those affected by these conflicting decisions." *Ibid.*

Yet the issue whether district courts may award universal relief has evaded this Court's review. In previous cases where a lower court has issued universal relief, this Court has resolved the case on the merits or on threshold procedural grounds, obviating the need to address the scope of the remedy. See, *e.g.*, *United States* v. *Texas*, 599 U.S. 670, 686 (2023) (holding, in a case where a lower court had issued universal relief, that the plaintiffs lacked standing); *Hawaii*, 585 U.S. at 711 ("Our disposition of the case makes it unnecessary to consider the propriety of the nationwide scope of the injunction issued by the District Court."). The "patently unworka-

ble" practice of issuing universal injunctions has accordingly persisted. *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring).

This case, in its current posture, would provide an ideal vehicle for addressing the lawfulness of universal relief if the Court concludes, in light of the persistence of the practice and the ample percolation of the relevant issues, that the time has come to resolve the propriety of such relief. If this Court grants certiorari only after the court of appeals issues its decision, the Court could resolve this case on the merits at that time, and the universal-relief issue would once again evade the Court's review. By contrast, treating this stay application as a petition for a writ of certiorari before judgment, limited to the question whether the district court erred by granting universal relief, would ensure that the Court could settle the remedial issue this Term.[2]

[2] The government has also filed a petition for a writ of certiorari presenting (among multiple questions presented) the question whether universal relief under the APA is lawful. See *Department of Education* v. *Career Colleges & Schools of Texas*, No. 24-413 (filed Oct. 10, 2024). But the remedial issue in this case independently warrants review by presenting the distinct question whether traditional principles of equity permit universal remedies against the enforcement of statutes. See *Griffin*, 144 S. Ct. at 2 & n.1 (statement of Kavanaugh, J.) (stating that the question whether a district court may "enjoin the government from enforcing [a] law against non-parties" is "distinct from the issue of a court's setting aside a federal agency's rule" under a separate provision of the APA, 5 U.S.C. 706).

CONCLUSION

The preliminary injunction entered by the district court (including its stay of the Reporting Rule's compliance deadline) should be stayed in full pending the consideration and disposition of the government's appeal and, if the court of appeals affirms, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. At a minimum, the injunction should be stayed except to the extent it protects respondents and the members of NFIB identified in the complaint. Finally, the court may wish to treat the application as a petition for a writ of certiorari before judgment on the question whether the district court lacked authority to enter a universal injunction, grant the petition, and set the remedial question for argument this Term.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

DECEMBER 2024