

INSTITUTE FOR JUSTICE

ELIZABETH L. SANZ (CA Bar No. 340538)

901 N. Glebe Rd., Suite 900

Arlington, VA 22203

(703) 682-9320

ROBERT E. JOHNSON (DC Bar No. 1013390)*

16781 Chagrin Blvd., Suite 256

Shaker Heights, OH 44120

(703) 682-9320

JEFFREY ROWES (TX Bar No. 24104956)*

816 Congress Ave., Suite 970

Austin, TX 78701

(512) 480-5936

KATRIN MARQUEZ (FL Bar No. 1024765)*

2 South Biscayne Blvd., Suite 3180

Miami, FL 33131

(305) 721-1600

** Pro hac vice motions to be filed*

Attorneys for Plaintiffs Novedades y Servicios, Inc. and Esperanza Gomez Escobar

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NOVEDADES Y SERVICIOS, INC.; and
ESPERANZA GOMEZ ESCOBAR,

Plaintiffs,

v.

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

Defendants.

Case No.: _____

COMPLAINT

INTRODUCTION

1. This case challenges a federal surveillance order that demands detailed information about everyday cash transactions in a targeted area along the southwest border. The order directs check cashers, currency exchangers, and other “money services businesses” in 30 zip codes to report all cash transactions over just \$200 to federal law enforcement. Although the order will sweep up information about countless everyday transactions, the government has candidly explained that its purpose is to uncover evidence of crimes by drug cartels. Thus, the government has targeted particular types of businesses and particular types of cash transactions, in a particular geographic area, with an aim to target particular types of criminal actors. And the government has done all this without individualized suspicion or probable cause. In short, the government has issued a general warrant.

2. In addition to violating the Fourth Amendment, the government’s general warrant will impose ruinous burdens on the targeted businesses. The government estimates that every cash transaction report takes eight minutes to complete. The true time required is higher. But even accepting the government’s estimate, and considering the number of over-\$200 transactions, businesses in the affected zip codes face hours of new paperwork daily. Because the order only applies to certain businesses in certain zip codes, moreover, customers who do not want to provide this information will simply take their business to other stores. As a tool to target criminals, the order will be ineffective—but it will impose crushing costs on businesses and people who cannot leave the targeted jurisdiction.

3. The surveillance order is unconstitutional and unlawful in other ways, as well. The statute under which the federal government claimed to find authority for the surveillance order cannot be read to authorize this type of vast surveillance regime; and, if it can, then it confers standardless discretion in violation of the non-delegation doctrine. The order also fails review under the Administrative Procedure Act, both because the selection of particular counties and businesses is arbitrary and capricious and because the

1 order was issued without following notice-and-comment procedures. The order should be
2 vacated, set aside, and enjoined.

3 **JURISDICTION AND VENUE**

4 4. Plaintiffs bring their claims under the Administrative Procedure Act, 5 U.S.C.
5 § 702, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, as well as directly
6 under the U.S. Constitution. *See Ex parte Young*, 209 U.S. 123 (1908). Plaintiffs seek
7 declaratory and injunctive relief against the federal government’s geographic targeting
8 order imposing reporting requirements for cash transactions over \$200 in certain zip codes
9 near the border. *See Issuance of a Geographic Targeting Order Imposing Additional*
10 *Recordkeeping and Reporting Requirements on Certain Money Services Businesses Along*
11 *the Southwest Border*, 90 Fed. Reg. 12106 (Mar. 14, 2025) (hereinafter, the “Border
12 GTO”).

13 5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, as
14 Plaintiffs’ claims arise under federal law.

15 6. Venue is proper in the United States District Court for the Southern District
16 of California under 28 U.S.C. § 1391(e)(1) because the Border GTO specifically targets
17 businesses located within the District, because Plaintiffs are challenging the application
18 of the Border GTO to businesses that are located within the District, and because Plaintiff
19 Novedades y Servicios, Inc. resides within the district.

20 **PARTIES**

21 7. Plaintiff Novedades y Servicios, Inc. is a corporation organized under the
22 laws of the State of California. Novedades y Servicios is subject to the Border GTO
23 because it is registered with FinCEN as a Money Services Business, because it provides
24 services that fit within the definition of a Money Services Business, and because it is
25 located within one of the zip codes subject to the Border GTO. Novedades y Servicios has
26 its principal place of business in San Diego, CA.

27 8. Plaintiff Esperanza Gomez Escobar is the owner and manager of Novedades
28 y Servicios. She uses services offered by Money Services Businesses within the covered

1 zip codes, including the services offered by Novedades y Servicios, as she sends money
2 to family members outside the United States. The Border GTO will result in the reporting
3 of her personal information to the federal government. Esperanza resides in Riverside
4 County, CA.

5 9. Defendant Financial Crimes Enforcement Network (FinCEN) is a bureau
6 within the U.S. Department of the Treasury with a mission to “safeguard the financial
7 system from illicit activity, counter money laundering and the financing of terrorism, and
8 promote national security through strategic use of financial authorities and the collection,
9 analysis, and dissemination of financial intelligence.” FinCEN collects and analyzes
10 information about financial transactions within the United States, including reports on
11 cash transactions. FinCEN promulgated the Border GTO.

12 10. Defendant Andrea Gacki is the Director of the Financial Crimes Enforcement
13 Network (FinCEN) and is sued in her official capacity. Director Gacki signed the Border
14 GTO.

15 11. Defendant U.S. Department of the Treasury is an executive agency of the
16 United States. FinCEN, which issued the Border GTO, is a bureau within the Treasury
17 Department.

18 12. Defendant Scott Bessent is the United States Secretary of the Treasury and is
19 sued in his official capacity.

20 13. Defendant Pam Bondi is the Attorney General of the United States. She is
21 responsible for administration of the federal criminal law in the United States, including
22 laws that require compliance with federal cash reporting requirements. She is sued in her
23 official capacity.

24 **FACTUAL ALLEGATIONS**

25 **Plaintiffs Provide Financial Services For Ordinary Americans**

26 14. Plaintiff Novedades y Servicios is a small, independently owned business
27 that provides money transfers, money orders, and check cashing services to average
28 people. Novedades’ customers are overwhelmingly locals in the San Diego neighborhood

1 where Novedades is located. Most Novedades customers are regulars who use Novedades’
2 services to do perfectly normal, legal things, such as cash payroll checks, pay rent, and
3 send money to family.

4 15. These financial services are important for customers who do not have bank
5 accounts and who rely on businesses like Novedades for financial services that they need
6 to live their lives.

7 16. Nearly all of the financial services transactions provided by Novedades are
8 above \$200. (The average dollar amount of financial services through such businesses
9 ranges from \$300-\$450.) This makes sense, because the most common reasons for using
10 these services—things like cashing payroll checks and obtaining money orders to pay
11 rent—involve values over \$200.

12 17. Plaintiff Esperanza Gomez Escobar is one of the people who uses the services
13 offered by Novedades y Servicios. She is an American citizen who has family in Mexico,
14 and she sends money to her siblings and mother there. She has made these transfers in the
15 past, and intends to make such transfers in the future, including over the next six months
16 while the GTO is in place. When she transfers money, she typically sends amounts over
17 \$200 but below \$3,000.

18 18. Because of the services that it offers, Plaintiff Novedades y Servicios is
19 regulated as a Money Services Business (“MSBs”).

20 19. Federal law defines an MSB to include businesses that cash checks, deal in
21 foreign exchange, issue traveler’s checks or money orders, and provide money
22 transmission services. 31 C.F.R. § 1010.100(ff).

23 20. MSBs are required to register with FinCEN, to put in place various anti-
24 money-laundering policies and procedures, to keep records of certain transactions, and to
25 file reports with the federal government.

26 21. Some MSBs are large corporations—*e.g.*, Western Union. But many are
27 small neighborhood businesses like Novedades that cash checks, sell money orders, and
28 provide other similar financial services. Neighborhood MSBs can stand alone or can be

1 situated inside other local businesses, like grocery stores or convenience stores.

2 22. Plaintiff Novedades y Servicios falls within the definition of an MSB because
3 it offers money transfers, money orders, and check cashing services.

4 23. Plaintiff Novedades y Servicios is therefore registered with FinCEN as an
5 MSB.

6 24. Federal law requires that MSBs report all cash transactions in amounts over
7 \$10,000 to FinCEN using a form called a Currency Transaction Report (“CTR”). 31
8 C.F.R. § 1010.311.

9 25. This \$10,000 reporting requirement applies to all covered financial
10 institutions across the country; it is neutral as to the location of the financial institution.
11 *See* 31 C.F.R. § 1010.310. (applying to “all financial institutions”).

12 26. The information that must be reported in each Currency Transaction Report
13 is extensive, including (1) the name, address, business or profession and social security
14 number of the person conducting the transaction; (2) similar information as to the person
15 or organization for whom it was conducted; (3) a summary description of the nature of the
16 transaction, the type, amount, and denomination of the currency involved and a description
17 of any check involved in the transaction; (4) the type of identification presented; and (5)
18 the identity of the reporting financial institution.

19 27. FinCEN has estimated that each Currency Transaction Report takes eight
20 minutes to complete. 89 Fed. Reg. 7767, 7768 (Feb. 5, 2024). However, this is an average
21 estimate that includes large firms with automated processes to generate the reports. 85
22 Fed. Reg. 29022, 29029 (May 14, 2020). For non-bank filers who do not have automated
23 processes, FinCEN estimates that each Currency Transaction Report takes 23.93 minutes
24 to complete. *Id.*

25 28. Novedades y Servicios does not have automated procedures to file Currency
26 Transaction Reports, as it typically does not handle over-\$10,000 transactions and
27 therefore typically does not need to file Currency Transaction Reports in the course of its
28 business.

1 29. MSBs must submit these Currency Transaction Reports to the federal
2 government regardless of whether there is any ground for suspicion of wrongdoing.

3 30. For transactions over \$3,000, MSBs are required to collect information about
4 transactions—including identifying information about the customer—and to retain that
5 information in their records.

6 31. Although MSBs are required to collect and retain this information for
7 transactions over \$3,000 but below \$10,000, there is generally no requirement to report
8 the information to the federal government.

9 32. The privacy of information that MSBs collect about their customers is
10 protected by federal law. Federal law imposes privacy obligations on any “institution that
11 is significantly engaged in financial activities,” 16 C.F.R. § 313.3, which includes entities
12 that provide services covered by the Border GTO. Under these requirements, a business
13 offering such services cannot “directly or through any affiliate, disclose any nonpublic
14 personal information about a consumer to a nonaffiliated third party” without providing
15 notice and “a reasonable opportunity, before you disclose the information ... to opt out of
16 the disclosure.” *Id.* at § 313.10.

17 33. For transactions under \$3,000, MSBs are not generally required to collect
18 information about their customers.

19 34. The vast majority of the money services transactions at Novedades y
20 Servicios are far beneath these thresholds, so for most such transactions they are not
21 required to collect any information from their customers.

22 35. Novedades sometimes collects information for transactions below \$3,000 for
23 their own purposes; for instance, sometimes they ask a customer to show identification.
24 But the information that they ask for does not encompass all the detailed information
25 required by a Currency Transaction Report. And for some small-dollar transactions
26 Novedades does not collect any information at all.

27 36. In all the years that it has been in business, Novedades y Servicios has never
28 completed a cash transaction over \$10,000 and has therefore never had to file a Currency

Transaction Report.

The March 14, 2025 Geographic Targeting Order

37. On March 14, 2025, FinCEN issued a Geographic Targeting Order targeting thirty zip codes near the southwest border (the “Border GTO”). *See Issuance of a Geographic Targeting Order Imposing Additional Recordkeeping and Reporting Requirements on Certain Money Services Businesses Along the Southwest Border*, 90 Fed. Reg. 12106 (Mar. 14, 2025).

38. Under the Border GTO, MSBs located within the targeted zip codes must file a Currency Transaction Report for every cash transaction over \$200.

39. This means that for a cash transaction as small as \$201, an MSB must collect the customer information that is required by a CTR, even though federal law generally does not require MSBs to collect customer information for transactions under \$3,000.

40. This also means that for a cash transaction as small as \$201, MSBs must report that customer information to FinCEN, even though such reports generally are not required for transactions under \$10,000.

41. In practice, the Border GTO means that cashing a check over \$200, using over \$200 in cash to purchase a money order (for instance, to pay the rent), or using over \$200 in cash to make a wire transfer (for instance, to send money to family abroad) will now trigger a report to the federal government.

42. For businesses, the Border GTO means business-crushing burdens. Currently, the vast majority of transactions by MSBs do not require CTRs, because they are well below the \$10,000 reporting threshold. But those transactions are not below \$200, which means that, under the Border GTO, the vast majority of transactions will require CTRs. This will result in a huge increase in costs to Border GTO-affected MSBs as they dedicate many hours per week just to gathering information from customers and then filling out paperwork to report that information to the federal government.

43. Because neighboring zip codes are not targeted by the Border GTO, customers who do not want to provide private information can simply move their business

1 to other nearby companies. Targeted businesses will therefore lose revenue as customers
2 flee Border GTO-affected MSBs for other MSBs not targeted by the Border GTO.

3 44. For businesses, the Border GTO also invades the privacy of business records
4 by requiring MSBs to provide information on large numbers of transactions that otherwise
5 would not be reported to the federal government.

6 45. And, of course, for individuals, the Border GTO authorizes a significant
7 invasion of personal privacy, as everyday, ordinary, and perfectly lawful transactions of
8 just a few hundred dollars will be reported to the federal government.

9 46. The amount of time that customers spend to access services provided by
10 MSBs will also increase, as it will take time for customers to provide the information
11 required by the additional paperwork.

12 47. By requiring MSBs to collect this information from individuals, the Border
13 GTO also enlists MSBs to conduct surveillance on the private transactions of their own
14 customers.

15 48. FinCEN justifies the Border GTO as “in furtherance of Treasury’s efforts to
16 combat illicit finance by drug cartels and other illicit actors.” 90 Fed. Reg. at 12107.

17 49. An internal FinCEN memorandum proposing the Border GTO, produced by
18 the United States in another case challenging the Border GTO, states that in FinCEN’s
19 view “MSBs are vulnerable to exploitation by money launderers,” and that “FinCEN has
20 identified money transfers through MSBs as a financial typology associated with Mexico-
21 based drug cartels.” In FinCEN’s view, “MSBs along the southwest border are particularly
22 at risk for abuse by money launderers for cartels.”

23 50. In FinCEN’s view, some MSBs are themselves criminal actors, as “services
24 provided by MSBs are sometimes provided wittingly to drug cartels, turning the MSB into
25 a professional money launderer.”

26 51. That same internal FinCEN memorandum, however, also concedes that
27 “most of the business that MSBs conduct is legitimate and essential.” Services offered by
28 MSBs are “tailored to persons without bank accounts” and provide “competitively priced

1 services and [a] convenient location offered near the border.”

2 52. The internal FinCEN memorandum therefore acknowledges that the Border
3 GTO will indiscriminately sweep up information about both “licit and illicit” transactions.

4 53. The internal FinCEN memorandum states that the information provided by
5 the Border GTO will “generate new leads and identify new and related subjects in ongoing
6 cases.” It “may allow the identification of a comprehensive network of potential money
7 mules in the geographic area in question,” may “create leads related to professional money
8 launderers,” and will “likely capture information about the laundering of funds related to
9 multiple criminal typologies.”

10 54. According to the internal FinCEN memorandum, the Border GTO will also
11 “support investigations into MSBs themselves that may be complicit in supporting illicit
12 activity or demonstrate poor AML/CFT controls.”

13 55. The internal memorandum states that the Border GTO will “provide FinCEN
14 with a snapshot in time of a significant sample of cash transactions in the Covered
15 Geographic Area, allowing FinCEN to more fully understand the money laundering risks
16 related to MSBs.”

17 56. At a recent hearing in another case challenging the Border GTO, a lawyer for
18 the United States explained that the government, through the Border GTO, is “requiring
19 reports from these money services businesses, which are more likely to be targeted for
20 illicit activity,” because “we want a complete picture of what they’re up to and who uses
21 them.”

22 57. For instance, the government lawyer theorized that “[s]omething like
23 someone who claims to be coming north to shop at HEB might actually reveal a
24 relationship between two people, one of whom is the target of a known investigation and
25 one of whom was not previously known to be related to that person, but now they’re doing
26 a transaction together for some reason.”

27 58. The Border GTO applies to thirty zip codes. Of those thirty zip codes, 19 are
28 located in Texas and 11 are located in California.

1 59. Four of the targeted zip codes (92231, 92249, 92281, and 92283) are located
2 in Imperial County, CA.

3 60. Seven of the targeted zip codes (91910, 92101, 92113, 92117, 92126, 92154,
4 and 92173) are located in San Diego County, CA.

5 61. Taken together, the targeted zip codes comprise a part of the country with a
6 population over 1.2 million persons.

7 62. Because many of the zip codes are located near active border crossings, many
8 more people pass through the targeted zip codes every year.

9 63. The targeted zip codes are not contiguous, and other zip codes next to the
10 targeted zip codes are not always targeted. For instance, Novedades is located in zip code
11 92113, which is subject to the Border GTO. But most of the zip codes adjacent to 92113
12 (including 92102, 92114, 92136, and 91950) are not touched by the Border GTO.

13 64. FinCEN's internal memorandum acknowledges that "MSBs in Arizona and
14 New Mexico are likely also vulnerable to exploitation by drug cartels," but the Border
15 GTO nonetheless does not include any counties in Arizona or New Mexico.

16 65. To the extent that criminals are currently engaged in money laundering using
17 over-\$200 transactions at MSBs, criminals can respond to the Border GTO by simply
18 moving their money to a zip code that is not covered by the Border GTO.

19 66. The internal FinCEN memorandum proposing the Border GTO explains that
20 FinCEN targeted these zip codes based on "risk factors that include their proximity to the
21 border and to a border crossing" as well as based on "whether the number of CTRs filed
22 in the ZIP code is high relative to the population, in comparison to other ZIP codes."

23 67. In other words, FinCEN targeted these counties because they are close to
24 border crossings and because the number of Currency Transaction Reports filed in these
25 counties (for over \$10,000 transactions) is high relative to the population.

26 68. The government believes that these factors are indicators of criminal activity.
27 At a hearing in another case challenging the Border GTO, a government lawyer explained
28 the "counties weren't chosen at random" and were "chosen based on the intelligence

1 available to FinCEN.”

2 69. In fact, however, the factors that the government relied on do not provide a
3 reasoned basis to explain why these requirements are being imposed on these particular
4 zip codes and not other zip codes next door.

5 70. The fact that a high number of over-\$10,000 transactions are occurring in
6 these zip codes does not mean that those transactions are illegitimate. It simply means that
7 there are more cash transactions occurring.

8 71. In addition, even if the high number of over-\$10,000 transactions in the zip
9 codes was a sign of illicit financial activity (and it is not), it would not follow that small-
10 dollar transactions *of just \$201* are more likely to be associated with illicit activity in those
11 jurisdictions.

12 72. Beyond the irrelevant fact that over-\$10,000 transactions occur in these
13 jurisdictions, FinCEN has not articulated any explanation for targeting over-\$200
14 transactions in these jurisdictions rather than in other jurisdictions along the border.

15 73. The internal FinCEN memorandum states that zip code 92113, where
16 Plaintiff Novedades y Servicios is located, is being targeted because in 2024 it had “930
17 CTRs filed for a population of 50,457, the sixth highest CTR to population ratio in the
18 country.”

19 74. The fact that just 930 over-\$10,000 cash transactions occurred in a zip code
20 over a year-long period is not a colorable reason to think that over-\$200 cash transactions
21 in that zip code are more likely to be associated with criminal activity.

22 75. FinCEN certainly has not established individualized probable cause to
23 support targeting the MSBs in these jurisdictions.

24 76. FinCEN also has not applied to a magistrate for a warrant to target the MSBs
25 that are covered by the Border GTO.

26 77. The internal FinCEN memorandum states that, if FinCEN believes criminals
27 have moved to other zip codes not covered by the Border GTO, it will “expand or
28 otherwise modify the geographic scope of this order to cover MSBs in additional ZIP

1 codes or counties in any future issuances.”

2 78. The Border GTO became effective beginning April 14, 2025, and supposedly
3 will end on September 9, 2025.

4 79. FinCEN has repeatedly renewed and expanded past GTOs, and FinCEN gave
5 no indication, in the Border GTO or elsewhere, that it will not renew the Border GTO after
6 September 9.

7 80. MSBs that fail to comply with the requirements of the Border GTO face civil
8 fines up to \$71,545 per violation, as well as criminal liability.

9 81. Although the Border GTO was published in the Federal Register, *see* 49 Fed.
10 Reg. 12106, it was issued by FinCEN without any prior notice or any opportunity to
11 comment.

12 **Application of the Border GTO to Plaintiff Novedades y Servicios**

13 82. Novedades y Servicios is subject to the Border GTO because it is a registered
14 MSB located in zip code 92113.

15 83. The Border-GTO will cause customers to leave Novedades for other MSBs
16 that won’t have to take and report their personal information. Because the Border GTO
17 does not include nearby zip codes, customers will simply go to those nearby zip codes to
18 make their transactions.

19 84. There is at least one MSB that is just a five-minute drive from Novedades
20 and that provides comparable services but that is located in a different zip code not subject
21 to the Border GTO.

22 85. Customers who do not want to provide their information to Novedades can
23 therefore drive a few minutes to access the same services without being subject to the
24 Border GTO.

25 86. Novedades also expects to suffer reputational damage because its customers
26 will view Novedades as prying into their personal information (either on its own initiative
27 or at the behest of the government) when other MSBs outside the targeted area are not.

28 87. The Border GTO will also result in an enormous increase in expenses related

1 particularly to preparing CTRs. For instance, Novedades cashes between 1,200-1,300
2 checks per month. For a filer (like Novedades) without automated filing procedures,
3 FinCEN estimates that each CTR takes 23.9 minutes to complete. That means between
4 26,680 and 31,070 minutes per month—which translates to between 14.8 and 17.26 *hours*
5 per day—just for reporting. And that does not even include the time spent explaining to
6 customers why Novedades now has to take their personal information when it never did
7 before.

8 88. To meet these paperwork burdens (assuming customers do not just take their
9 business elsewhere), Novedades would have to hire at least one full-time employee just to
10 prepare CTRs.

11 89. Novedades cannot afford to hire an entire full-time employee just to prepare
12 CTRs, and Novedades also cannot survive if its customers stop coming to the business.
13 So, either way, Novedades expects to be put out of business by the Border GTO.

14 90. The Border GTO will also invade the privacy of Novedades, because it
15 requires the affirmative disclosure of private business records without suspicion that
16 Novedades has done anything wrong. The government has stated that part of the purpose
17 of the Border GTO is to investigate MSBs for wrongdoing.

18 91. The government has not suggested that it has probable cause to suspect
19 Novedades of any wrongdoing, nor has the government presented a warrant for
20 Novedades' business records.

21 92. The government has not suggested that it has probable cause to suspect
22 Novedades' customers of any wrongdoing, nor has the government presented a warrant
23 for Novedades' customers' private information or financial records.

24 93. If the government ever had a warrant based on a real concern about actual
25 crime, Novedades would cooperate. Novedades has no desire to deal with criminals or
26 protect criminals.

27 94. The Border GTO will not be effective to fight illicit activity. In Novedades'
28 experience, the vast majority of customers are average people who regularly use

1 Novedades' services to do things like pay rent, cash payroll checks, and send money to
2 family—and the government has not suggested that they suspect anything different.

3 95. The Border GTO will also be ineffective because it allows other MSBs in
4 nearby zip codes to continue reporting only transactions over \$10,000. That means illicit
5 actors—more mobile and sophisticated than the average low-income local—will just go
6 to nearby zip codes to do their crimes.

7 96. Meanwhile, for Novedades, loss of revenue and increased costs are too much
8 to bear. And even if the GTO is not renewed, the reputational damage will be done.
9 Novedades will likely go out of business.

10 **Application of the Border GTO to Plaintiff Esperanza Gomez Escobar**

11 97. As the owner and manager of Novedades y Servicios, Plaintiff Esperanza
12 Gomez Escobar will be required to fill out Currency Transaction Reports that are required
13 by the Border GTO.

14 98. Esperanza estimates that compliance with the Border GTO will take multiple
15 hours a day.

16 99. Esperanza does not want to provide this information on her customers to the
17 federal government because they have a right to privacy, as does she.

18 100. Esperanza is worried that if the government can see Novedades' customers'
19 private financial transactions, it can see their familial and personal affiliations, their
20 interests, and can even profile their beliefs and thoughts.

21 101. Esperanza wants no part in the invasion of customers' private lives. Her
22 customers have a right to privacy.

23 102. In addition to owning an affected business, Esperanza is also affected by the
24 Border GTO as a customer. Esperanza's siblings and mother live in Mexico, and in the
25 past Esperanza has transferred money to via an MSB in the 92113 zip code. These transfers
26 are typically over \$200 but below \$3,000. She intends to transfer money to them in
27 amounts over \$200 from the 92113 zip code in the future, including within the next six
28 months and beyond.

1 103. Esperanza wants to keep her private life private. She has a right as an
2 American to her privacy.

3 104. Esperanza fears that if the government can see her private financial
4 transactions, it can see her familial and personal affiliations, her interests, and can even
5 profile her beliefs and thoughts.

6 105. Esperanza also fears that the government will make a mistake and come after
7 her with no basis. She fears she will mistakenly be put on a list of potential criminals,
8 when in fact she has done nothing wrong, either as an individual or a business owner.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**

11 **The Border GTO Violates The Fourth Amendment**

12 **(5 U.S.C. § 706(2)(A) and (B); *Ex parte Young*, 209 U.S. 123 (1908))**

13 106. Paragraphs 1-105 are hereby incorporated by reference.

14 107. The Fourth Amendment to the U.S. Constitution protects the “right of the
15 people to be secure in their persons, houses, papers, and effects, against unreasonable
16 searches and seizures” and provides that “no Warrants shall issue, but upon probable
17 cause, supported by Oath or Affirmation, and particularly describing the place to be
18 searched, and the persons or things to be seized.”

19 108. The Fourth Amendment prohibits general warrants, meaning warrants that
20 allow government to broadly search for evidence of crimes without establishing
21 particularized probable cause specific to the person or place to be searched.

22 109. The Border GTO operates as a general warrant insofar as it was fashioned by
23 law enforcement to sweep up information about otherwise private cash transactions
24 throughout the targeted zip codes, in order to further law enforcement’s stated objective
25 of combatting Mexican cartels, without any individualized probable cause.

26 110. The \$200 threshold set by the Border GTO results in an unreasonable search
27 because it requires businesses to report information about their customers’ ordinary,
28 everyday cash transactions without any individualized suspicion or showing of probable

1 cause.

2 111. The Border GTO infringes on individuals' and businesses' reasonable
3 expectation of privacy in their ordinary, everyday, small-dollar cash transactions, and the
4 Border GTO demands information that businesses would otherwise have a legal and
5 contractual obligation to hold private and confidential.

6 112. The Border GTO also conscripts MSBs, forcing them to obtain information
7 from their customers that they would not otherwise solicit, even if they do not suspect
8 those customers of any wrongdoing, and to report that information to federal law
9 enforcement.

10 113. The Border GTO will capture voluminous information about ordinary,
11 lawful, and legitimate transactions without any probable cause.

12 114. Plaintiffs are injured by this Fourth Amendment violation insofar as the
13 Border GTO will provide the government with information about their private cash
14 transactions.

15 115. Because the Border GTO is unconstitutional under the Fourth Amendment,
16 it must be vacated and enjoined.

17 **COUNT II**

18 **The Statute Under Which FinCEN Purported To Issue The Border GTO Violates** 19 **The Non-Delegation Doctrine**

20 **(5 U.S.C. § 706(2)(A) and (B); *Ex parte Young*, 209 U.S. 123 (1908))**

21 116. Paragraphs 1-105 are hereby incorporated by reference.

22 117. Article I, section 1 of the U.S. Constitution provides that “[a]ll legislative
23 Powers ... shall be vested in a Congress of the United States.” Congress therefore cannot
24 delegate the power to make basic legislative decisions for the country to other branches of
25 government.

26 118. This means that legislative policy decisions must be made by Congress, not
27 by executive agencies. When Congress delegates power to executive agencies, Congress
28 must establish the governing rule of law by articulating an “intelligible principle” for the

1 agency to apply. The agency’s permissible role is then to apply that intelligible principle
2 to specific facts and circumstances.

3 119. The statute under which FinCEN purported to act when issuing the Border
4 GTO, 31 U.S.C. § 5326, does not articulate any intelligible principle to be followed when
5 issuing geographic targeting orders. Instead, it grants open-ended authority for executive
6 officials to issue any geographic targeting order that they find necessary to implement the
7 anti-money laundering laws—granting executive officials unfettered discretion to
8 determine the businesses, geographic areas, reporting thresholds, and reports that should
9 be required.

10 120. Plaintiffs are injured by this non-delegation violation insofar as FinCEN
11 relied on this broad, open-ended grant of authority to issue the Border GTO targeting their
12 cash transactions for additional reporting burdens.

13 121. Because the Border GTO was enacted under purported statutory authority
14 that violates the non-delegation doctrine and separation of powers principles, it must be
15 vacated and enjoined.

16 **COUNT III**

17 **The Border GTO Violates The Fifth Amendment**

18 **(5 U.S.C. § 706(2)(A) and (B); *Ex parte Young*, 209 U.S. 123 (1908))**

19 122. Paragraphs 1-105 are hereby incorporated by reference.

20 123. The Fifth Amendment to the U.S. Constitution provides that no person “shall
21 be compelled in any criminal case to be a witness against himself.”

22 124. The Fifth Amendment bars the government from compelling an individual
23 from filing reports containing information that the government intends to use to uncover
24 evidence of criminal wrongdoing.

25 125. The reports that are required by the Border GTO are provided to law
26 enforcement and are available to law enforcement for purposes of criminal law
27 enforcement; indeed, these law enforcement aims are the only stated reason for requiring
28 the reports directed by the Border GTO.

1 contemplates more limited orders targeted at more discrete geographic areas and does not
2 clearly authorize executive officials to adopt this type of sweeping surveillance system for
3 an area comprising over 1 million persons.

4 135. Accordingly, the Border GTO is *ultra vires* and exceeds the authority granted
5 to the executive branch by the statute under which FinCEN purported to act.

6 136. Plaintiffs are injured by this *ultra vires* action insofar as FinCEN has acted
7 without statutory authority to issue burdensome reporting obligations that target their
8 otherwise private cash transactions.

9 137. Because the Border GTO is *ultra vires* and exceeds the authority granted to
10 the executive branch, it must be vacated and enjoined.

11 **COUNT V**

12 **The Border GTO Is Arbitrary and Capricious, And Contrary To Law,**

13 **In That It Targets Counties, Businesses, and Transactions**

14 **Without Sufficient Explanation**

15 **(5 U.S.C. § 706(2)(A))**

16 138. Paragraphs 1-105 are hereby incorporated by reference.

17 139. Under the APA, a court must “hold unlawful and set aside agency action”
18 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
19 law.” 5 U.S.C. § 706(2)(A).

20 140. The Border GTO is arbitrary and capricious insofar as it selected thirty zip
21 codes without articulating any satisfactory explanation why those particular zip codes
22 should be targeted for higher reporting obligations.

23 141. FinCEN has stated, outside the Border GTO itself, that it selected these zip
24 codes because these zip codes have a high proportion of CTRs filed given their population.
25 But that fact merely reflects the fact that there are cash transactions occurring in these zip
26 codes—transactions that have not been shown to be criminal in nature.

27 142. The Border GTO also is arbitrary and capricious insofar as it offers no
28 satisfactory explanation for setting the reporting threshold for MSBs within those zip

1 codes at just \$200.

2 143. FinCEN has articulated no satisfactory explanation as to why high numbers
3 of over-\$10,000 transactions in a zip code would be a reason to require reporting for
4 transactions over \$200 in that same zip code.

5 144. Under 31 U.S.C. § 5326(a), FinCEN may impose a GTO if “reasonable
6 grounds exist for concluding that additional recordkeeping and reporting requirements are
7 necessary to carry out the purposes of this subtitle or to prevent evasions thereof.” FinCEN
8 has not articulated any such “reasonable grounds” to support the sweeping obligation
9 imposed by the Border GTO.

10 145. Because the Border GTO is arbitrary and capricious, and contrary to law, it
11 must be vacated and enjoined.

12 **COUNT VI**

13 **The Border GTO Was Promulgated Without Following**

14 **Notice-And-Comment Procedures**

15 **(5 U.S.C. § 706(2)(D))**

16 146. Paragraphs 1-105 are hereby incorporated by reference.

17 147. Under the APA, agencies must engage in notice-and-comment rulemaking
18 before adopting rules that affect the rights and obligations of regulated entities, unless
19 some statutory exception applies. *See* 5 U.S.C. § 553.

20 148. Under the APA, agency action is a “rule” requiring notice-and-comment
21 procedures if it sets out prescriptive requirements to be followed for broad classes of
22 persons, rather than adjudicating the rights and obligations of specific identified
23 individuals.

24 149. Under the APA, the Border GTO is a rule requiring notice-and-comment
25 rulemaking because it prescribes reporting requirements for all MSBs within a large
26 geographic area covering thirty separate zip codes, with a population over a million
27 persons.

28 150. However, FinCEN promulgated the Border GTO without any notice to

1 affected parties and without any opportunity to comment.

2 151. Because the Border GTO was issued in violation of procedural requirements
3 set out in the APA, it must be vacated and enjoined.

4 **PRAYER FOR RELIEF**

5 In light of the foregoing, Plaintiffs respectfully request the following relief:

6 A. An order vacating and setting aside the Border GTO;

7 B. An injunction enjoining the Defendants from implementing the Border GTO
8 to require MSBs to collect and report information on over-\$200 cash transactions in the
9 targeted zip codes;

10 C. A declaration that the Border GTO is unlawful insofar as it violates the
11 Fourth and Fifth Amendments, was purportedly issued under a statute that violates the
12 non-delegation doctrine, is *ultra vires* insofar as it was issued without statutory authority,
13 and violates the Administrative Procedure Act;

14 D. An award of Plaintiffs' costs and expenses in this action, together with
15 reasonable attorneys' fees, under the Equal Access to Justice Act or otherwise; and

16 E. Any other legal or equitable relief to which Plaintiffs may show themselves
17 to be justly entitled.

1 Dated: April 15, 2025

Respectfully submitted,

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3 Jeffrey Rowes (TX Bar No. 24104956)*
4 INSTITUTE FOR JUSTICE
5 816 Congress Ave., Suite 970
6 Austin, TX 78701
7 (512) 480-5936
8 jrowes@ij.org

/s/ Elizabeth L. Sanz
Elizabeth L. Sanz (CA Bar No. 340538)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, VA 22203
(703) 682-9320
bsanz@ij.org

7 Katrin Marquez (FL Bar No. 1024765)*
8 INSTITUTE FOR JUSTICE
9 2 South Biscayne Blvd., Suite 3180
10 Miami, FL 33131
11 (305) 721-1600
12 kmarquez@ij.org

Robert E. Johnson (DC Bar No. 1013390)*
INSTITUTE FOR JUSTICE
16781 Chagrin Blvd., Suite 256
Shaker Heights, OH 44120
(703) 682-9320
rjohnson@ij.org

11 *Pro Hac Vice Motions to be filed

13 *Attorneys for Plaintiffs*