No. 25-1201

In the Supreme Court of the United States

NATIONAL SMALL BUSINESS UNITED, DBA NATIONAL SMALL BUSINESS ASSOCIATION, ET AL., PETITIONERS

v.

SCOTT BESSENT, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
ERIC D. MCARTHUR
Deputy Assistant Attorney General
DANIEL TENNY
STEVEN H. HAZEL
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

The Corporate Transparency Act, 31 U.S.C. 5336, requires covered businesses to report information about their beneficial owners to the Department of the Treasury. The questions presented are:

1. Whether the reporting requirements exceed Congress's enumerated powers on their face.

2. Whether the reporting requirements violate the Fourth Amendment on their face.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases—Continued: Page

In the Supreme Court of the United States

No. 25-1201

NATIONAL SMALL BUSINESS UNITED, DBA NATIONAL SMALL BUSINESS ASSOCIATION, ET AL., PETITIONERS

v.

SCOTT BESSENT, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-20) is reported at 161 F.4th 1323. The memorandum opinion of the district court (Pet. App. 21-69) is reported at 721 F. Supp. 3d 1260.

JURISDICTION

The judgment of the court of appeals was entered on December 16, 2025. On March 4, 2026, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including April 15, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Corporate Transparency Act (Act), 31 U.S.C. 5336, to effectuate prohibitions on

financial crimes such as money laundering, tax evasion, and terrorist financing. See Anti-Money Laundering Act of 2020 (Anti-Money Laundering Act), Pub. L. No. 116-283, Div. F, 134 Stat. 4547. Before the Act's enactment, persons generally could form corporations or register foreign corporations to do business in the United States without disclosing the corporations' owners. See H.R. Rep. No. 227, 116th Cong., 1st Sess. 2 (2019). As a result, criminals could use "anonymous shell companies" to launder money and engage in other unlawful transactions. *Id.* at 10. "This lack of transparency [wa]s considered by law enforcement, financial institutions, and anti-corruption organizations to be a primary obstacle to tackling financial crime in the modern era." *Ibid.*

The Act addresses that problem by authorizing the Department of the Treasury to establish reporting requirements. See 31 U.S.C. 5336(b). A covered business must submit reports disclosing its "beneficial owner[s]" and "applicant[s]." 31 U.S.C. 5336(b)(2)(A). Subject to exceptions not at issue here, 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). An applicant, meanwhile, is an individual who files documents to register the corporate entity. See 31 U.S.C. 5336(a)(2).

A covered business must report the legal name, date of birth, address, and driver's license number or other unique identifying number of each beneficial owner and applicant. See 31 U.S.C. 5336(a)(1) and (b)(2)(A). In addition to filing a report when it first becomes subject to the Act, a covered business must file an updated report whenever the ownership information changes. See

31 U.S.C. 5336(b)(1)(D). A person who willfully violates those requirements may incur civil and criminal penalties. See 31 U.S.C. 5336(h).

Information reported under the Act is protected by security and confidentiality protocols. Treasury may share such information with law-enforcement and other entities only in specified circumstances that sometimes require court authorization. See 31 U.S.C. 5336(c)(2). Entities that receive such information from Treasury must restrict access and implement security measures. See 31 U.S.C. 5336(c)(3). A person who violates those requirements may face civil and criminal penalties. See 31 U.S.C. 5336(c)(4).

Congress granted Treasury broad authority to determine which entities are subject to the reporting requirements. In general, the Act defines reporting companies to include any "corporation, limited liability company, or other similar entity" that is either "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe," or "formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or similar office under the laws of a State or Indian Tribe." 31 U.S.C. 5336(a)(11)(A). But the Act exempts many categories of businesses. See 31 U.S.C. 5336(a)(11)(B). Further, the Secretary of the Treasury may, with the concurrence of the Attorney General and Secretary of Homeland Security, exempt "any entity or class of entities" for which reporting "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts" to fight financial crimes. 31 U.S.C. 5336(a)(11)(B)(xxiv).

When Treasury initially promulgated a final rule implementing the statute, it applied the reporting requirements to domestic and foreign reporting companies without establishing any exemptions. See 87 Fed. Reg. 59,498, 59,540 (Sept. 30, 2022). As discussed below, however, Treasury has since established significant exemptions that greatly diminish the scope of the reporting requirements.

2. Petitioners are an individual who has formed multiple Alabama businesses and an organization that represents businesses across the United States. Pet. App. 5. Petitioners sued the federal government in the United States District Court for the Northern District of Alabama, claiming that the Act violates the Constitution on its face because it exceeds Congress's enumerated powers and contravenes the Fourth Amendment. *Id.* at 6.

The district court granted petitioners' motion for summary judgment. Pet. App. 21-69. The court held the Act facially unconstitutional on the ground that it exceeds Congress's enumerated powers, rejecting the government's arguments under the Commerce Clause and the Necessary and Proper Clause. *Id.* at 33-68. The court reasoned that the statute addresses the "isolated" act of filing incorporation papers and "does not regulate economic or commercial activity," *id.* at 60, and that the statute plays no meaningful role in the government's larger efforts to regulate commerce and protect national security, *id.* at 58. The court did not reach petitioners' Fourth Amendment claim. *Id.* at 69.

3. After the government appealed but before the court of appeals issued its decision, Treasury published an interim final rule establishing significant exemptions from the reporting requirements. See 90 Fed. Reg.

13,688, 13,691 (Mar. 26, 2025). The interim final rule reflected Treasury's "reassessment" of its approach to implementing the statute, *ibid.*, in light of the new Administration's policy of "alleviat[ing] unnecessary regulatory burdens" on American businesses, Exec. Order No. 14,192, 90 Fed. Reg. 9065, 9065 (Feb. 6, 2025).

The interim final rule exempted "all domestic reporting companies, and their beneficial owners," from the requirements to file initial reports or to update or correct previously filed reports. 90 Fed. Reg. at 13,690. It also exempted foreign reporting companies from having to report information about U.S. persons who are their beneficial owners. *Id.* at 13,692. In establishing those exemptions, the Secretary of the Treasury determined, with the concurrence of the Attorney General and the Secretary of Homeland Security, that the reporting of the exempted information "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts" to fight financial crime. *Id.* at 13,691 (citation omitted). By contrast, Treasury determined that foreign companies with foreign beneficial owners "present heightened national security and illicit finance risks," justifying continued reporting requirements for those entities. *Id.* at 13,692.

4. The Eleventh Circuit reversed the district court's judgment. Pet. App. 1-20.

The court of appeals first rejected petitioners' claim that the Act on its face exceeds Congress's enumerated powers, holding that the Act is authorized by the Commerce Clause. Pet. App. 7-18. The court observed that the Act "effectively prohibits anonymous corporate dealings, regulates commercial entities that are active in the stream of commerce, and requires them to report information related to their ownership." *Id.* at 8-9. The court added that "Congress could rationally conclude that the freedom of beneficial owners to operate anonymously through shell companies ha[s] a substantial aggregate impact on interstate commerce." *Id.* at 16.

The court of appeals also rejected petitioners' facial Fourth Amendment challenge. Pet. App. 18-20. The court observed that, in *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21 (1974), this Court had held that a statute requiring banks to report certain currency transactions complied with the Fourth Amendment because the reported "information was limited in nature and 'sufficiently related to a tenable congressional determination as to improper use of transactions of that type in interstate commerce.'" Pet. App. 19 (citation omitted). The court of appeals concluded that, under that precedent, the Act complies with the Fourth Amendment because "[t]he information it requires is 'sufficiently described and limited in nature' and is no more detailed than the reports in *Shultz*." *Ibid.* (citation omitted).

5. After the court of appeals issued its decision (and after the filing of the petition for a writ of certiorari), Treasury issued a final rule implementing the Act. 91 Fed. Reg. 52,508 (Aug. 14, 2026). The final rule incorporates the interim final rule's exemptions, along with several new exemptions, including one preventing foreign reporting companies from having to submit information about their U.S. applicants. *Id.* at 52,511. In combination, the exemptions mean that the reporting requirements apply only to foreign beneficial owners and foreign applicants of foreign reporting companies. *Ibid.*

ARGUMENT

Petitioners renew (Pet. 15-36) their contentions that the Act, on its face, exceeds Congress's enumerated powers and violates the Fourth Amendment. The court of appeals' judgment below correctly rejected those facial challenges, and it does not conflict with any decision of this Court or of any other court of appeals. Petitioners contend that the court of appeals' opinion reflects an unduly broad understanding of Congress's power to regulate interstate commerce, but this Court "reviews judgments, not statements in opinions," *Black* v. *Cutter Laboratories*, 351 U.S. 292, 297 (1956), and the judgment below is correct. In all events, Treasury's final rule renders much of the court of appeals' analysis irrelevant, ameliorates any constitutional concerns with the Act, substantially diminishes the reporting requirements' practical significance, and raises the prospect that petitioners' suit may now be moot. This Court should deny the petition for a writ of certiorari.

A. Petitioners' Facial Enumerated-Powers Challenge Lacks Merit

Because facial challenges to legislation "'often rest on speculation'" and "'threaten to short circuit the democratic process,'" this Court has made them "hard to win." *Moody* v. *NetChoice, LLC*, 603 U.S. 707, 723 (2024) (citations omitted). To prevail on a facial challenge, a party must "establish that no set of circumstances exists under which the Act would be valid." *United States* v. *Rahimi*, 602 U.S. 680, 693 (2024) (citation omitted). Conversely, to defeat a facial challenge, the government need show only that the statute "is constitutional in some of its applications." *Ibid.* Those principles apply to claims that statutes on their face exceed Congress's enumerated powers. See *Sabri* v. *United States*, 541 U.S. 600, 604-605, 608-610 (2004).

In evaluating petitioners' facial challenge, this Court would need to consider Treasury's final rule, even though the rule was issued after the court of appeals' decision. In general, "an appellate court must apply the law in effect at the time it renders its decision." *Thorpe* v. *Housing Authority*, 393 U.S. 268, 281 (1969); see *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801). That principle applies "where the change is made by an administrative agency acting pursuant to legislative authorization." *Thorpe*, 393 U.S. at 282. Here, Congress granted Treasury broad and unchallenged authority to craft exemptions to reporting requirements based on Treasury's judgments regarding the public interest and utility in addressing financial crimes. See 31 U.S.C. 5336(a)(11)(B)(xxiv).

Under Treasury's final rule, the Act's reporting requirements apply only to foreign beneficial owners and foreign applicants of foreign reporting companies. Those applications of the Act fall comfortably within Congress's powers under the Foreign Commerce Clause and Necessary and Proper Clause. That is enough to defeat petitioners' facial challenge.

Foreign Commerce Clause. The Foreign Commerce Clause empowers Congress to "regulate Commerce with foreign Nations." U.S. Const. Art. I, § 8, Cl. 3. Congress's power under the Foreign Commerce Clause is "broader" than its power under the Interstate Commerce Clause. *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 434 (1932).

Whatever the Foreign Commerce Clause's full scope, the Clause at a minimum authorizes Congress to regulate "commercial intercourse," "in all its branches," between the United States and "'citizens or subjects of foreign governments.'" *Henderson* v. *Mayor*, 92 U.S. 259, 270 (1876) (citation omitted). For example, the Clause empowers Congress to regulate the "entrance" of "persons," "ships," or "goods" from foreign countries into the United States. *United States ex rel. Turner* v. *Williams*, 194 U.S. 279, 290 (1904). Congress may choose to prohibit such activities outright, see, *e.g.*, *Brolan* v. *United States*, 236 U.S. 216, 218-221 (1915), or to allow such activities only under specified terms and conditions, see, *e.g.*, *Buttfield* v. *Stranahan*, 192 U.S. 470, 497 (1904).

Applying the Act only to foreign beneficial owners and foreign applicants falls comfortably within Congress's power to regulate commercial interactions between the United States and foreign countries. The Act is now triggered only when an entity "formed under the laws of a foreign country" registers "to do business in the United States." 31 U.S.C. 5336(a)(2)(B); see 91 Fed. Reg. at 52,511. Registration of a foreign company to do business in the United States is closely analogous to the entry of a foreign person or the importation of foreign merchandise into the United States. Like those activities, a foreign company's registration to do business here is a form of "commercial intercourse between nations." *Henderson*, 92 U.S. at 270. Congress may choose to allow a foreign entity to engage in such commercial intercourse only if the entity satisfies specified terms and conditions—such as reporting its foreign beneficial owners and applicants to Treasury.

Necessary and Proper Clause. Applying the Act only to foreign beneficial owners and foreign applicants also falls well within Congress's authority 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. A law is necessary and proper if it is directed to the "legitimate" end of effectuating an enumerated power; is "convenient," "useful," or "conducive" to exercising the power; and comports with "the letter and spirit" of the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316, 413, 418, 421 (1819). 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 (1871).

The Act's reporting requirements are directed to effectuating several congressional powers. For instance, they combat international "money laundering," "human and drug trafficking," "securities fraud," and "financial fraud," Anti-Money Laundering Act § 6402(3), 134 Stat. 4604, thus effectuating Congress's power to "regulate Commerce with foreign Nations," U.S. Const. Art. I, § 8, Cl. 3. The requirements also 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 Act's 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." Art. II, § 1, Cl. 1; § 3. The Act's requirements help the President execute federal law by enabling the Executive Branch to trace the international flow of illicit funds. Article II also vests the President with broad authority in the fields of foreign affairs and national security. See *Fuld* v. *PLO*, 606 U.S. 1, 19 (2025); *American Insurance Co.* v. *Garamendi*, 539 U.S. 396, 415 (2003). 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 Act's reporting requirements are "necessary" for implementing those powers. Congress found that "malign actors seek to conceal their ownership" of corporations and other activities "to facilitate illicit activity." Anti-Money Laundering Act § 6402(3), 134 Stat. 4604. It also found that international 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 * * * foreign entity, the newly identified entity is yet another corporate entity." § 6402(4), 134 Stat. 4604. Congress further 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. 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 Act's reporting requirements likewise fall well within the bounds of what is "proper." The requirements, which now apply "to only a small fraction" of companies, are "narrow in scope." *United States* v. *Comstock*, 560 U.S. 126, 148 (2010); see pp. 19-20, *infra*. And because the requirements apply only to foreign beneficial owners and foreign applicants of foreign reporting companies, they raise no risk of infringing "state sovereignty," *Printz* v. *United States*, 521 U.S. 898, 924 (1997); of effacing the "distinction between what is truly national and what is truly local," *United States* v. *Morrison*, 529 U.S. 598, 617-618 (2000); or of enabling Congress to exercise "a general police power of the sort retained by the States," *United States* v. *Lopez*, 514 U.S. 549, 567 (1995).

History and precedent. "[R]equiring the submission of information is a familiar category" of regulation. *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419, 437 (1938). The Constitution allows Congress to impose such reporting requirements, so long as the information sought has a sufficient link to "activities which are within the range of congressional power." *Ibid.* For instance:

- Congress's tax power enables it to require the submission of tax returns and other tax forms. See *United States* v. *Kahriger*, 345 U.S. 22, 31-32 (1953); *Sonzinsky* v. *United States*, 300 U.S. 506, 513 (1937).
- Congress's commerce power enables it to require businesses to file disclosures under the securities laws. See *Electric Bond*, 303 U.S. at 436-437.
- Congress's bankruptcy power enables it to require debtors to disclose information about their property. See *Keathley* v. *Buddy Ayers Construction, Inc.*, 146 S. Ct. 1532, 1537 (2026).
- Congress's power to regulate the armed forces enables it to require sex-offender registration for individuals who commit sex offenses while in the

military. See *United States* v. *Kebodeaux*, 570 U.S. 387, 393-399 (2013).

In particular, history and precedent establish that Congress may enact reporting requirements pursuant to its power to regulate foreign commerce and its other foreign-affairs powers. For example, in 1798, Congress required aliens who enter or reside in the United States to "register" and to report their "sex, place of birth, age, nation, place of allegiance or citizenship, condition or occupation, and place of actual or intended residence." Act of June 18, 1798, ch. 54, § 4, 1 Stat. 567-568. In 1938, Congress required agents of foreign principals to report their business and political activities. See Foreign Agents Registration Act of 1938, ch. 327, § 2, 52 Stat. 632. And in 1940, Congress required aliens in the United States to register and to submit to fingerprinting. See Alien Registration Act, 1940, ch. 439, § 31, 54 Stat. 673-674. This Court has recognized that the Constitution authorizes Congress to enact such laws. See *Hines* v. *Davidowitz*, 312 U.S. 52, 62-74 (1941).

That body of precedent and historical practice strongly supports the Act's constitutionality. Like other reporting requirements upheld by this Court, the reporting requirements at issue here seek information about "activities which are within the range of congressional power," *Electric Bond*, 303 U.S. at 437, namely, foreign entities' registration to do business in the United States. And if Congress may require reports from foreign individuals who are present in the United States, see *Hines*, 312 U.S. at 72-74, it may also require such reports from foreign entities that register to do business in the United States. After all, a corporation's registration to do business in a jurisdiction is in many respects analogous to a natural person's presence in the jurisdiction. See *Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122, 129-130 (2023) (plurality opinion).

Petitioners' arguments. Petitioners focus (Pet. 19-27) their arguments on the proposition that Congress cannot require reporting by domestic entities. But that contention is beside the point, given that domestic companies are now exempt from the reporting requirements. That contention also overlooks that petitioners have raised a facial challenge, which requires them to show the Act's invalidity in all its applications, not just its domestic applications. Whatever the merits of petitioners' arguments with respect to domestic entities—an issue that is no longer presented given Treasury's final rule—those arguments are wrong as to foreign companies.

For example, petitioners err in arguing (Pet. 19-20) that the Act improperly targets inactivity rather than economic activity. The Act applies to foreign companies only when they "registe[r] * * * to do business in the United States." 31 U.S.C. 5336(a)(2)(B). Registering to do business in the United States as a foreign company is an economic activity, not a form of inactivity. In addition, although Congress lacks the power to regulate inactivity under the Interstate Commerce Clause, see *NFIB* v. *Sebelius*, 567 U.S. 519, 547-558 (2012) (opinion of Roberts, C.J.), Congress's powers concerning foreign commerce and foreign relations are "broader" than its authority over interstate commerce, *Atlantic Cleaners & Dyers*, 286 U.S. at 433. Thus, Congress may require aliens present in the United States to report information to the federal government, even if they are not engaged in any economic activity. See *Hines*, 312 U.S. at 62-69. By the same token, Congress may require foreign entities to report information to the federal government, even if those entities do not engage in economic activity beyond registering to do business.

Petitioners similarly err in comparing (Pet. 17) this case to *Wickard* v. *Filburn*, 317 U.S. 111 (1942), where this Court held that Congress may regulate economic activity that has a substantial aggregate effect on commerce. Given the final rule, the Act can be upheld without regard to *Wickard*'s substantial-effects test. The Act is facially valid because a foreign entity's registration to do business in this country is a form of "commercial intercourse between nations" and accordingly is subject to regulation by Congress. *Henderson*, 92 U.S. at 270. The Act also is facially valid because its requirements are necessary and proper to implementing the federal government's powers.

Finally, petitioners are wrong to argue (Pet. 22) that the Act invades state sovereignty. "For local interests the several States of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power." *Hines*, 312 U.S. at 63 (citation omitted). Establishing a system to "obtain the information deemed to be desirable in connection with aliens"—or foreign artificial persons—is "a matter of national moment," not a matter that the Constitution reserves to the States. *Id.* at 73-74.

B. Petitioners' Facial Fourth Amendment Challenge Lacks Merit

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. Even assuming that reporting requirements are searches, the requirements here do not violate the Fourth Amendment on their face. The foreign persons to whom the requirements apply do not necessarily possess Fourth Amendment rights, and the requirements are in any event reasonable.

Foreigners' Fourth Amendment rights. The Fourth Amendment's protections are limited to "the people." U.S. Const. Amend. IV. The phrase "'the people'" is a "term of art" that "refers to a class of persons who are part of the national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (citation omitted). This Court has held that "aliens outside of the United States" are not among "the people" protected by the Amendment. *Id.* at 266.

That reading of the Fourth Amendment is consistent with the general principle that "foreign citizens outside U.S. territory do not possess rights under the U.S. Constitution." *Agency for International Development* v. *Alliance for Open Society International, Inc.*, 591 U.S. 430, 433 (2020). "If the rule were otherwise, actions by American military, intelligence, and law enforcement personnel against foreign organizations or foreign citizens in foreign countries would be constrained by the foreign citizens' purported rights under the U.S. Constitution. That has never been the law." *Id.* at 434.

The Act's reporting requirements now apply only to the foreign beneficial owners and foreign applicants of foreign companies. Such foreign individuals, if located outside the United States, lack Fourth Amendment rights. The Act is thus constitutional at least as applied to those individuals. That ends the facial challenge.

Reasonableness. The Act's reporting requirements, as implemented by Treasury, also comply with the Fourth Amendment because they are reasonable. In *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21 (1974), this Court considered a statute requiring banks to report certain transactions that exceeded a dollar amount set by Treasury. See 31 U.S.C. 5313. For each covered transaction, the bank was required to report the "name," "address," and "social security or taxpayer identification number" of "the individual presenting [the] transaction." 31 C.F.R. 1010.312. Congress had found that such information would be "highly useful" in "criminal, tax, or regulatory investigations." 31 U.S.C. 5311(1)(A). This Court held that, because the "information [wa]s sufficiently described and limited in nature, and sufficiently related to a tenable congressional determination as to improper use of transactions of that type," the requirement to report the information was reasonable. *Shultz*, 416 U.S. at 67. In reaching that conclusion, the Court declined to assess the statute's "broad authorizing language," instead focusing on the "actual implementation of the statute by the Treasury regulations." *Id.* at 44.

Shultz forecloses petitioners' facial Fourth Amendment claim. As the court of appeals recognized, the information required by the Act, as implemented by Treasury's regulations, "is 'sufficiently described and limited in nature' and is no more detailed than the reports in *Shultz*." Pet. App. 19 (quoting *Shultz*, 416 U.S. at 67). To comply, a foreign reporting company need provide only the name, date of birth, address, and driver's license number or other unique identifying number for each foreign beneficial owner or applicant. See 31 U.S.C. 5336(b)(2)(A). Given that foreign reporting companies must already "register to do business" by filing "a document" with state authorities, 31 U.S.C. 5336(a)(11)(A)(ii), the submission of ownership reports to Treasury involves only a minimal additional burden.

Indeed, this case is easier than *Shultz* because the Act's reporting requirements now apply only to foreign individuals and foreign entities. "In the exercise of its broad powers over [foreign affairs], Congress regularly makes rules that would be unacceptable if applied to citizens." *Verdugo-Urquidez*, 494 U.S. at 273 (citation omitted). Further, "the Fourth Amendment's balance of reasonableness is qualitatively different at the international border than in the interior." *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 538 (1985). Just as the government has more leeway to conduct searches when individuals seek to enter the United States by crossing the border, see *id.* at 538-539, it also has more leeway to conduct searches when foreign corporations seek to enter the United States by registering to do business here.

Petitioners' efforts to distinguish *Shultz* disregard the "actual implementation of the statute by the Treasury regulations." *Shultz*, 416 U.S. at 44. Petitioners claim (Pet. 28, 33) that the Act's reporting requirements are "massive" in scope, encompassing "tens of millions" of businesses. But under Treasury's final rule, the requirements extend only to the much smaller number of foreign companies with foreign beneficial owners or applicants. See 91 Fed. Reg. at 52,520; pp. 19-20, *infra*. By contrast, the requirements upheld in *Shultz*, which encompassed all domestic currency transactions over $10,000. See 416 U.S. at 67-68.

Other aspects of petitioners' Fourth Amendment argument likewise lack merit. For instance, petitioners complain (Pet. 32) that the Act empowers Treasury "to distribute [beneficial ownership] information around the world." But petitioners ignore that all disclosures are subject to extensive statutory safeguards, see 31

U.S.C. 5336(c), such as the general requirement that disclosures to foreign law-enforcement agencies be made in accordance with applicable treaties, conventions, and agreements, see 31 U.S.C. 5336(c)(2)(B)(ii). Petitioners also contend that the statute is too "'indefinite'" because its definition of beneficial owner covers anyone who exercises "substantial control" over the company. 31 U.S.C. 5336(a)(3)(A)(i); Pet. 33 (citation omitted). But standards that turn on "substantial control" are commonplace in the law. See, *e.g.*, *Davis ex rel. LaShonda D.* v. *Monroe County Board of Education*, 526 U.S. 629, 645 (1999). Petitioners fail to identify any scenario in which the Act's meaning is unclear—let alone that the Act is so unclear in all its applications that a court must invalidate it on its face.

C. The Questions Presented Do Not Warrant This Court's Review At This Time

Petitioners do not allege any circuit conflict over whether the Act fits within Congress's enumerated powers or complies with the Fourth Amendment. To the contrary, only one court of appeals—the Eleventh Circuit in the decision below—has decided those issues. Because Treasury issued its final rule after the Eleventh Circuit issued the decision below, no court of appeals has yet had the opportunity to consider whether the Act, as implemented by the final rule, complies with the Constitution. This Court's intervention would thus be premature.

This Court's review also is unnecessary at this time because Treasury's final rule has dramatically reduced the practical significance of this case. Petitioners claim (Pet. 18) that the Act's reporting requirements extend to "tens of millions" of businesses and "will generate billions of dollars in compliance costs." But under the final rule, FinCEN estimates that only about 28,000 foreign companies will be subject to the requirements in the first year, 91 Fed. Reg. at 52,520, and that total annual reporting costs will shrink from about $9 billion to about $22 million, *id.* at 52,523 n.90.

Petitioners encourage this Court to disregard the regulatory exemptions on the ground that "there is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." Pet. 36 (brackets and citation omitted). But the Executive Branch has not purported to amend or repeal the Act. Instead, the Act itself authorizes the Executive Branch to exempt "any entity or class of entities" if requiring reporting by those entities "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts." 31 U.S.C. 5336(a)(11)(B)(xxiv).

Petitioners also speculate (Pet. 36) that the next Administration might repeal the existing exemptions. But the relevant question is whether this case warrants certiorari, not whether review might be appropriate in a hypothetical future case involving different reporting requirements. If a future Administration rescinds the exemptions for domestic companies and individuals, regulated entities can file new suits and, if necessary, seek this Court's review in the normal course.

In the meantime, petitioners' refusal to take "yes" for an answer cannot justify certiorari. "The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases." *United States* v. *Raines*, 362 U.S. 17, 22 (1960).

D. This Case Is An Unsuitable Vehicle For Resolving The Questions Presented

For two reasons, this case also is a poor vehicle for considering the question presented.

First, Treasury's final rule appears to have mooted this case. The organizational petitioner appears to represent only domestic companies, see Pet. 1, and the companies belonging to the individual petitioner are likewise domestic, see Pet. App. 31-32. Given that the final rule exempts domestic companies from the reporting requirements, petitioners no longer have any "legally cognizable interest in the outcome" of their challenge to those requirements. *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation omitted). To be sure, the government accepted below that the interim final rule did not moot the case because that rule was inherently temporary and it was still possible that Treasury would change course in its final rule. See Gov't C.A. Supp. Br. 16; Pet. App. 5 n.1. But the same logic does not apply to Treasury's final rule. At a minimum, the substantial possibility of mootness counsels against further review. If and when the government applies the Act to domestic entities, an as-applied challenge brought by such an entity would provide a better vehicle for deciding the issues petitioners now seek to litigate.

Second, because this Court "must apply the law in effect at the time it renders its decision," *Thorpe*, 393 U.S. at 281, the Court would need to evaluate the Act as implemented by Treasury's final rule, even though that rule post-dates the court of appeals' decision. The need to consider the final rule even though the lower courts had no opportunity to analyze it would force this Court to depart from its usual role as "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). If this Court considers the Act's validity at all, it should do so in a case where the court of appeals has had the opportunity to analyze Treasury's final rule.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ERIC D. MCARTHUR
Deputy Assistant Attorney General
DANIEL TENNY
STEVEN H. HAZEL
Attorneys

AUGUST 2026

---

* Treasury's final rule does not provide a basis for grant, vacatur, and remand (GVR). A GVR order is "potentially appropriate" only if "intervening developments" raise a "reasonable probability" that the lower court would reconsider its decision. *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). Treasury's final rule would not prompt the court of appeals to reconsider its decision; to the contrary, the rule just makes it clear that the court's bottom-line judgment was correct.

Nor does the prospect of mootness justify vacatur under *United States* v. *Munsingwear*, 340 U.S. 36 (1950). This Court ordinarily exercises its discretion to grant certiorari and vacate a lower court's judgment on mootness grounds only if the case otherwise would have warranted certiorari. See Stephen M. Shapiro et al., *Supreme Court Practice* § 19.4, at 19-28 & n.34 (11th ed. 2019). That criterion is not satisfied here.