No. 26-40285

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FLOWERS TITLE COMPANIES, L.L.C.,

Plaintiff-Appellee,

v.

SCOTT BESSENT, *Secretary, U.S. Department of Treasury*; UNITED STATES DEPARTMENT OF THE TREASURY; FINANCIAL CRIMES ENFORCEMENT NETWORK,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Texas

BRIEF OF AMICI CURIAE TEXAS LAND TITLE ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE DISTRICT COURT'S JUDGMENT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to the persons and entities listed in the parties' Certificates of Interested Persons, the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

1. Persons and Entities

Amicus curiae Texas Land Title Association is a nonprofit corporation without any parent companies, subsidiaries, or affiliates, and does not issue stock to the public.

Dated: October 23, 2026 /s/ *George Roland Love*

George Roland Love
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AMICUS CURIAE'S IDENTITY, INTEREST, AND SOURCE OF AUTHORITY

Founded in 1908, the Texas Land Title Association (TLTA) is the statewide trade association representing the Texas title insurance industry, including title insurance companies, title agents, escrow officers, real estate settlement professionals, and title industry attorneys. TLTA currently serves over 15,000 professionals involved in the safe and efficient transfer of real estate, with active members in most every Texas county, comprising approximately 70 percent of the title insurance agents and underwriters licensed to do business in Texas. In the course of their daily work, TLTA members collectively facilitate hundreds of thousands of residential and commercial real estate transactions each year, serving millions of consumers. From time to time, cases come before this Court that have a significant impact on real estate commerce in Texas and the ability of TLTA members to safely and efficiently facilitate the transfer of title to real property. This is such a case.

TLTA members are directly affected by the outcome of this appeal. Under FinCEN's Anti-Money Laundering Regulations for Residential Real Estate Transfers, 89 Fed. Reg. 70,258 (Aug. 29, 2024) (codified at 31 C.F.R. § 1031.320) (the "Rule"), TLTA members are among the parties most likely to serve as "reporting persons" responsible for identifying, verifying, and reporting the information the Rule requires. Accordingly, TLTA and its members wish to present a practical, on-the-ground perspective that is not otherwise before the Court: the daily experience

of the professionals who close the transactions the Rule purports to reach, and who are positioned to know - transaction by transaction - whether those transactions in fact present the individualized indicia of wrongdoing that the term "suspicious" requires. TLTA respectfully submits this brief to share with the Court the experience of its members who bear direct responsibility for implementing the Rule that the district court correctly held FinCEN lacked statutory authority to adopt.

TLTA has authority to file this brief because defendants have consented to its filing under Fed. R. App. P.29(a)(2). TLTA's counsel authored this brief in whole, and no party, party's counsel, or other person contributed money intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(e).

STATEMENT OF THE ISSUES

Amicus curiae adopt and incorporate by reference the Statement of the Issues in the Appellee's initial brief. Br. at 4-5.

SUMMARY OF ARGUMENT

The district court held that 31 U.S.C. § 5318(g)(1) authorizes FinCEN to require reports of "suspicious" transactions and that a transaction is suspicious only when it presents facts or circumstances tending to arouse a belief that something is wrong, not simply because it falls within a broadly defined category of otherwise lawful conduct. The court further held that § 5318(a)(2) authorizes procedures for implementing existing reporting obligations, not a freestanding mandate to require

reports of an entire class of transactions. As detailed herein, TLTA members' experience confirms why §5318(a)(2) cannot be read to supply, through a general procedures clause, the very authority Congress specifically conditioned on individualized suspicion in §5318(g)(1). In sum, a reporting regime untethered from the fact-specific judgment is inconsistent with how suspicion actually operates in practice. TLTA asks this Court to affirm the District Court's decision, which the daily on-the-ground perspective of Texas title professionals confirms is correct.

TLTA members close hundreds of thousands of Texas real estate transactions every year, and that experience shows the Rule's premise to be mistaken. Buyers take title in business entities for ordinary liability-protection and business-planning reasons. Buyers take title in trusts for ordinary estate-planning and probate-avoidance reasons. Buyers purchase without financing for ordinary economic reasons. The funds used for those purchases have already passed through banking system controls before the closing. All of those purchases are reasonable and ordinary and yet fall under the Rule because of FinCEN's mischaracterizing such transactions as "atypical." Appellants' Br. at 1-2, 14-15. The structure of these transactions are sensible decisions and do not reflect any attempt to conceal wrongdoing.

TLTA member experience confirms that the district court's individualized standard of suspicion, rather than FinCEN's categorical one, is appropriate. Escrow

officers and title agents routinely differentiate suspicious transactions by assessing the totality of circumstances of the transaction in front of them. That distinction is only possible because suspicion depends on the specific facts of a transaction, not a categorical basis. A standard that treats an entire population of routine, lawful transactions as suspicious does not sharpen that distinction; it erases it and produces reports indistinguishable from the ordinary business the Rule captures in its dragnet.

For these reasons, and for the reasons set forth more fully below, TLTA respectfully requests that this Court affirm the judgment of the district court.

ARGUMENT

I. THE RULE'S PREMISE THAT NON-FINANCED TRANSFERS TO ENTITIES AND TRUSTS ARE CATEGORICALLY "SUSPICIOUS" IS CONTRADICTED BY WHAT TITLE PROFESSIONALS SEE IN EVERYDAY CLOSINGS

The district court correctly held that "suspicious," as used in 31 U.S.C. § 5318(g)(1), requires facts or circumstances that "tend to arouse" a belief that "something [is] wrong," not mere membership in a broadly defined category of otherwise lawful conduct. ROA. 11160. TLTA members close hundreds of thousands of Texas residential and commercial real estate transactions every year, and that daily, ground-level vantage point confirms the correctness of the district court's reading. Entity ownership, trust ownership, and non-financed purchases are not aberrations. Rather, these structures are regularly chosen by buyers for reasons

having nothing to do with unlawful activities and are part of the ordinary texture of the Texas real estate market

A. Business-Entity Ownership of Residential and Investment Property Is a Routine, Unremarkable Business Practice.

Texas buyers routinely take title through a business entity, such as a limited liability company, for reasons that are, in the ordinary course, entirely mundane. A business entity shields an individual owner from personal liability arising from a variety of matters, including conditions on the property or from tenant or guest claims, a standard and prudent precaution for any investment, rental, or recreational property. The Bank Secrecy Act does not treat liability planning as inherently suspect, and neither should this Court. Entity ownership also facilitates routine business planning: families hold property through an entity to simplify management across generations; investors structure a portfolio of properties under a single operating entity for accounting and tax purposes; and property managers operate rental units through a dedicated entity to separate that business from an owner's personal affairs. Texas law itself treats the formation and existence of such an entity as a matter of public record and conclusive evidence of lawful authority to transact business, hardly the posture of a legal structure designed to arouse suspicion. Tex. Bus. Orgs. Code § 3.001(d). In TLTA members' experience, closers handle business-entity buyers on ordinary residential and investment transactions as routine matters, not as a signal calling for elevated caution. That experience is confirmed by national

statistics. Housing Wire reported that for 2025, approximately 30% of all residential transactions were by entities and trusts. Sarah Wolak, *Investor Share of Home Purchases Holds at 30% in 2025*, HousingWire (Feb. 13, 2026), https://www.housingwire.com/articles/investor-share-home-purchases-2025/.

B. Trust Ownership Is a Routine Estate-Planning and Probate-Avoidance Tool, Unconnected to the Transaction Itself.

Texas title professionals likewise regularly encounter trust as purchasers and for reasons wholly independent of the real estate transaction at hand. Families use revocable and irrevocable trusts for estate planning, to provide for disability, to avoid the delay and expense of probate, and to manage wealth across generations. These decisions are usually made years before, and without regard to, any particular property purchase. A trust that later acquires residential real property is simply performing its ordinary and intended function; it says nothing about the transaction itself. *See* Tex. Prop. Code § 111.004 (defining a trust as a fiduciary relationship with respect to property, arising from the manifested intention of a settlor to create it, for a beneficiary). The routine nature of trust ownership in title practice confirms that a transfer into a trust, standing alone, supplies no individualized basis for suspicion. In fact, trusts are so common in Texas and the confidential nature of beneficiaries so well recognized that state law provides that third parties may rely on a certification of trust that satisfies statutory requirements rather than obtaining the full trust agreement. Tex. Prop. Code § 114.086.

C. Non-Financed (Cash) Purchases Are a Routine and Growing Feature of the Texas Market, Not Evidence of Illicit Intent.

All cash transactions make up a substantial portion of the residential real estate market. The National Association of Realtors, Redfin, and Realtors.com report that approximately 1/3 of all residential sales were for cash in 2025. Amethyst Marroquin, *The Cash Buyer and the Waltz of the Rising Rates: A Modern Market Tale*, Nat'l Ass'n of Realtors: Economists' Outlook (Dec. 10, 2025), https://www.nar.realtor/news/economists-outlook/the-cash-buyer-and-the-waltz-of-the-rising-rates-a-modern-market-tale; Lily Katz, *All-Cash Home Purchases Ended 2025 at Five-Year Low*, Redfin (Feb. 16, 2026), https://www.redfin.com/news/all-cash-home-purchases-december-2025/; Hannah Jones, *Cash Is King: Trends in All-Cash Home Sales*, Realtor.com Ressch. (Oct. 7, 2025), https://www.realtor.com/research/all-cash-sale-trends-h1-2025/. On a local level, one TLTA member's escrow operation reviewed its own 2025 transaction data in anticipation of this brief. Of more than 4,000 transactions the operation closed that year, approximately one in four involved a cash purchase, and approximately one in seven involved a buyer that was either a business entity or a trust using cash. None was treated as suspicious for those reasons alone. In every instance, those cash funds were wired from established, recognized banks with their own BSA and reporting obligations.

The reasons for these cash purchases without institutional financing have nothing to do with the source or legitimacy of their funds. Sellers relocating to Texas from higher-cost states routinely purchase using the proceeds of a prior home sale. Retirees and buyers investing sale proceeds or personal savings frequently forgo financing to avoid interest costs and lending fees. A 1031 exchange may require an all-cash purchase to satisfy exchange timing and value requirements under the Internal Revenue Code. Cash also carries a straightforward competitive advantage. In a seller's market, where multiple offers and bidding wars are common, a cash offer is more attractive to a seller than one contingent on loan approval, appraisal requirements, financing timelines, and other time-consuming impediments. When all else is equal, a seller will typically choose a buyer who can pay in cash over one who needs a loan to close, and buyers who can afford to do so structure their offers accordingly for that reason.

Moreover, the funds behind these cash purchases do not simply appear at the closing table: they move through the ordinary banking system beforehand, where they are already subject to that system's own recordkeeping and reporting controls. TLTA members do not accept “bags of cash” to fund a transaction due to the security risks that would expose the company, employees, and customers to threats of physical harm and financial loss. Rather, cash funds are tendered to the title company by wire transfer or cashier's check, both of which fall under banking regulations.

Even if a title company did accept payment of cash in excess of $10,000, the requirement to file a Currency Transaction Report (CTR) would be triggered under existing regulation. The absence of a mortgage does not mean the funds are any less visible or accounted for than in a financed transaction; it means only that the buyer chose not to borrow. Nothing about that choice, standing alone, tends to arouse suspicion that something is wrong.

D. Nothing About These Ownership Structures Signals an Intent to Conceal Wrongdoing.

FinCEN's premise assumes that buyers who use an entity, a trust, or cash are seeking to obscure something nefarious from view. A simple anecdote cuts directly against that premise.

During the brief period the Rule was in effect, one TLTA member observed this dynamic firsthand. A buyer preparing to purchase residential property had originally planned to take title in a newly formed business entity for the ordinary and prudent liability-protection reasons described above. In the course of closing, he learned the transaction would trigger the Rule's beneficial-ownership reporting requirements and chose not to make that disclosure. Rather than proceed through a business entity, he purchased in his own name, recorded in the public property records for anyone to see.

That choice is telling. The buyer became more, not less, visible to the public. He sacrificed the protection and benefits that a business entity would have provided

him. Someone concealing wrongdoing would not make this decision. This buyer did so, specifically to avoid having his information collected and reported into a federal database, not to avoid scrutiny generally. That is the choice of a private citizen protecting his privacy from the federal government, not the profile of someone laundering money through an anonymous structure, and it illustrates why the routine, varied reasons buyers choose these ownership forms are simply incompatible with FinCEN's premise that the category as a whole is suspicious.

A similar dynamic played out on the trust side. One TLTA member escrow professional recalled a husband and wife acquiring Texas property through a trust who vigorously objected when asked to provide the information the Rule required. After consulting with a CPA and legal counsel, they had structured the purchase through a trust specifically to avoid disclosing their personal information to the settlement agent and other parties to the transaction, out of a desire to keep the purchase private within their own community. Their concern was not the government; it was their neighbors and community learning of the acquisition. They pointed out that the federal government had already been provided extensive information through their own tax filings and other required disclosures and could not understand why acquiring property through a trust with cash made their transaction reportable to the Department of the Treasury. This reaction illustrates the

same point as the anecdote above: a desire to limit who learns one's identity in a private transaction is not evidence of an intent to conceal any illicit activity.

These experiences are not isolated data points. A nationwide survey of nearly 1,300 title and settlement professionals conducted by the American Land Title Association found that 45 percent of buyers or sellers refused to provide the information necessary for reporting under the Rule, and that 85 percent of buyers or sellers expressed significant concerns about privacy or data security in connection with the requirement. *New Data Reveals Implementation Challenges Under FinCEN Rule*, Am. Land Title Ass'n (Apr. 9, 2026), https://www.alta.org/news-and-publications/news/20260409-New-Data-Reveals-Implementation-Challenges-Under-FinCEN-Rule. Nearly half of all transaction participants declining to cooperate is not evidence that FinCEN identified a discrete class of suspicious actors. It is evidence, at a scale far beyond any single closing, that the Rule swept up an ordinary and widely shared aversion to unnecessary government intrusion, the same aversion reflected in the anecdotes above, and that legitimate aversion has nothing to do with wrongdoing.

E. For Homebuilders, the Transactions FinCENCalls Atypical and Evasive Are the Everyday Course of Business.

The Rule also reaches homebuilders by its express terms. It defines "residential real property" to include not only existing homes but also "[l]and located in the United States on which the transferee intends to build a structure designed

principally for occupancy by one to four families." 31 C.F.R. § 1031.320(b)(1)(ii). The list of excepted transfers contains no exception for a builder, a developer, or a lot acquired in the course of a building business. *Id.* at § 1031.320(b)(2). Homebuilders regularly acquire lots and homes without acquisition financing in the ordinary course of business, taking title in operating entities. A homebuilder that takes title through an entity, and closes without a lender's loan secured by the property, has therefore made a reportable transfer. *Id.* at § 1031.320(b)(1), (n)(5).

That describes the ordinary working life of a homebuilder. Builders routinely acquire properties (including vacant lots as well as houses to tear down or renovate) in the name of their project or operating company for a host of legitimate reasons, including limiting liability and ease of raising capital.

The ability to use their own funds allows for a more attractive bid due to a quick closing without financing contingencies. One TLTA member settlement agent with decades of experience described the practice of mid-sized spec-home builders in Houston, where land in desirable areas is scarce and builders compete for it. The builders buy in the company's name, usually a limited liability company or other business entity, and pay cash to allow for a quick close and reduced expenses to the builder. This is beneficial for the seller, builder, and ultimately, consumer.

FinCEN defends the Rule on the premise that the transactions it covers are "atypical," and that a buyer who forgoes a lender "can skirt" the anti-money-

laundering protections that accompany financed purchases while an entity lets him "obscure his identity." Appellants' Br. at 2. FinCEN repeats the charge throughout its brief. *Id.* at 9, 18, 22 (asserting that covered transactions "skirt" oversight, reporting channels, and regulatory protections); and 24 (illustrating the risk with a criminal's use of a "front company").

None of the foregoing describes or applies to a homebuilder. The entity is the builder's own operating company that does business openly under its own name. The deed that transfers a lot to the builder is recorded in the public land records like any other. Nothing about the transaction is hidden. Nor is the pairing of an entity with cash an anomaly that sets one builder's purchase apart from the next. It is how a large part of the industry buys property. A description of covered transactions as "atypical" cannot be squared with a business in which this kind of transaction is the norm. Treated as a category, the builder's ordinary lot purchase is called suspicious because it has the two features that so many of a builder's purchases share. This is the problem created by the Rule: a word whose meaning depends on standing apart from the ordinary has been applied to the ordinary. The routine acquisition of a lot by a company that builds houses presents no facts which would be cause for suspicion.

F. Categorical Data Gathering Is Not Pursuing An Arousal of Suspicion

The question before this Court is not unlike the issue presented to the U.S. Supreme Court in *Chatrie v. United States,* 609 U.S. ____ (2026), No. 25-112 (June

29, 2026). This case is illustrative of the Government determining a meaning of a word in an overly broad way. While *Chatrie* was a 4th Amendment question which is not before this Court, the Supreme Court in *Chatrie* evaluated the meaning of a "search." The facts involved a multi-step warrant to Google to gather data relating to all users of cellphones within a certain area for a certain time period. The process is referred to as a Geofence search, or commonly, a "dragnet" of information regarding data about all users of cellphones during the specified time and area. The police did not demonstrate that they had reason to believe the users of the cellphones might be involved in any crime. All of the users of cellphones, that being most everyone, would not be the single unknown user that was potentially the criminal robbing the bank. In fact, it might have been none of the persons whose data was gathered. This was clearly a "search," and the Court remanded to determine if the multi-step technique outlined in the warrant was a "reasonable" search.

This case involved an armed robbery. The police might as well have other broad categories, such as searching data banks of everyone who has purchased a gun in a particular area. The FinCEN Rule takes the same approach but goes a step further without prior knowledge of a crime as they argue that a business entity or trust purchasing residential property for any amount of cash without a bank loan is suspicious. This purchase transaction could be anywhere, or, under FinCEN's definition of residential, a transaction simply involving vacant land on which there

is an intent to build a residential improvement. The Rule also somehow makes the seller "suspicious".

With the Rule, FinCEN is using a dragnet to create "suspicion" when it should be the other way around. The actions of persons should arouse suspicion, not a category of routine, legal transactions.

The support provided by FinCEN is an extrapolation of the Geographical Targeting Orders (GTOs), specifically authorized by a different statute which may or may not be constitutional but is not before this Court. The GTOs specified defined areas noted for criminal activity and "high value residential" properties sold for $300,000 or more. The GTO reporting did not include sellers, nor trusts as buyers. Of the GTO transactions reported, only 42% matched up with an individual that was also the subject of a Bank Suspicious Activity Report (SAR), whether the activity was related or not. Additionally, only 4% of SAR's have been the subject of a law enforcement inquiry. *See The Truth About Suspicious Activity Reports*, Bank Policy Inst. (Sept. 22, 2020), https://bpi.com/the-truth-about-suspicious-activity-reports/. With this meager background, FinCEN adopted and tried to justify a Residential Reporting Rule nationwide for routine transactions having no facial or obvious indication of "suspicious." These routine transactions involve business entities or trusts as purchasers and the use of cash to purchase residential property of any value. Business entities are regularly used for liability protection, asset management,

privacy and tax planning. They also increase the ease of management, raising capital investment, and adding investors. Cash avoids paying financing costs and interest, removes financing contingencies, and results in a shorter time to closing.

Additionally, the state and federal governments encourage and reward the use of entities and trusts. The Internal Revenue Code contains extensive provisions dealing with their taxation; U.S. bankruptcy rules favor the use of single asset entities; many federal programs are not available to individuals; and state statutes enable the formation, governance, liability, and reporting of business entities and trusts.

The FinCEN Residential Reporting Rule is simply a broad data gathering tool, a dragnet if you will, and takes no steps to identify or justify its arbitrary choice of what is suspicious. It is so broad as to have no logical basis or limitations. How are routine everyday transactions "suspicious?" Where is the line for "suspicious" and how is it determined?

G. Even FinCEN's Foundation for the Rule Does Not Establish "Suspicious"

The cases cited by FinCEN as part of their justification for the rule do not support the foundation of the Rule or their selection of the categories. FinCEN's brief states that "more than a dozen" cases establish their pretext for their selected categories. Appellants' Br. at 8, 24. FinCEN states that "numerous public law actions illustrate non-financed purchases of residential real estate by certain legal entities

and trusts are acutely vulnerable to exploitation by illicit actors." This is ostensibly supported by footnote 12 which references 18 court matters cited in support of their Rule adoption. Final Rule, 89 Fed. Reg. At 70,259 & n.12. Upon closer analysis, there are only five cases over a 20-year period that clearly fit the parameters of the Rule. Many of the cited cases included properties in which the subject took title in their personal name. Other cases involved mortgages. One case did not include residential property and another case did not include *any* real property. Additionally, the footnote invokes several DOJ press releases as a basis for the rule. A handful of transactions over 20 years does not support a determination of "suspicious."

Indeed, the only rational extension of the cited cases is that if a criminal is identified, one might find a non-financed residential real estate transaction involving that criminal in a huge collection of ordinary transactions. Pity the poor seller that listed the property in the first place and the multitude of innocent others included in the data bank. And pity the poor title company that must convince the parties to a routine transaction they must provide extensive personal information to the federal government.

II. THE TITLE INDUSTRY'S EXISTING PRACTICE CONFIRMS THAT "SUSPICION" IS A CASE-BY-CASE, FACT-SPECIFIC JUDGMENT, NOT A TRAIT OF AN ENTIRE CATEGORY OF LAWFUL TRANSACTIONS

A. Title Agents and Closers Identify Genuinely Suspicious Transactions When the Facts Warrant It.

Title professionals do not encounter the concept of "suspicion" for the first time in this Rule. While performing their functions, closers observe transactions presenting real, individualized red flags. If so, common practice calls for escalation. Settlement professionals commonly compare a property's appraisal-district value against the contract price; a grossly disproportionate figure, or a pattern of rapid resales at an inflated price shortly after a prior closing, may suggest seller or mortgage fraud. The contract itself can raise concern: an unusually thin document for a multimillion-dollar transaction or the absence of any Realtor or counsel on either side are the kinds of specific, observable facts that lead a closer to slow down, consult a supervisor, and involve title insurance underwriting counsel.

Suspicion arises from the totality of the circumstances in a specific transaction. A recent example shows how closers work through them. An escrow officer handling the sale of Texas property noticed that the price was low compared with comparable properties in the area, and that the sellers had set the closing for a time when they would be out of the country for a medical procedure. The escrow officer could speak with only one of the two sellers, because the other was said to

be in the hospital and unable to communicate. That seller said the poor connection at the hospital would not allow a remote online notarization but expected, while hospitalized for a serious procedure, to keep an appointment at a United States embassy and return to the hospital afterward. When told that a knowledge-based authentication was required before the remote online notarization, the seller said that an attorney had advised against it.

No one of these facts proved anything. Together they were enough to prompt the escrow officer to investigate. A search for the first named owner revealed that the person the officer had been dealing with as a man was in reality a woman, a real estate agent in Arizona. The escrow officer called her brokerage and received no reply, then located the second owner, who was married to the first. When the escrow officer reached him by telephone, he was confused and upset, had no idea that his Texas property was being sold, and correctly answered the escrow officer's verification questions about the property. The escrow officer's attention to the combination of facts had intercepted a fraudulent sale.

That is what suspicion looks like. It arises from observable facts about a specific transaction, bearing on price, the availability of the sellers, and identity, and it was resolved by investigating those facts. It did not arise because the sale belonged to a particular category of transaction. The ordinary meaning of "suspicious" requires something about the transaction to raise a legitimate question about its

authenticity, legitimacy, or lawful purpose. These are the kinds of specific, observable irregularities that have always given rise to genuine suspicion in the ordinary course of closing practice.

B. Suspicion Turns on Transaction-Specific Facts, Not on the Category of a Transaction.

Closers who recognize the red flags described above weigh the totality of the circumstances of each transaction. They do not treat every transaction involving a below-market price, a traveling seller, or a thin contract as inherently suspicious. Nor would a closer treat every business-entity buyer, trust buyer, or cash buyer as suspicious. The same closer who would recognize and stop an attempted fraud sees nothing to flag in the ordinary business-entity closing, the ordinary trust closing, or the ordinary cash closing described in Section I. The evaluation of the totality of circumstance is not an incidental distinction; it is thoughtful approach as opposed to a simple categorization. If "suspicious" meant nothing more than "falls within a defined category of transaction", the judgment closers exercise every day would be meaningless, which coincides with the district court's reading of § 5318(g)(1). Individualized fact-based suspicion and categorical suspicion are not two versions of the same standard; they are different standards, and only the former reflects how title professionals, and the statute, actually operate.

The totality of the circumstances that matters to a closer is the set of facts in front of the closer, meaning this buyer, this seller, this price, and this property. It is

not the set of features a transaction shares with others of its kind. FinCEN describes the covered transactions as having "multiple characteristics that make them attractive" to money launderers. Appellants' Br. at 19. But the characteristics that define the covered class are only these: the buyer is an entity or trust, the property is residential, no lender is involved, and the buyer pays with its own funds. Every transaction in the class shares those, so they reveal nothing about any individual transaction. They do not tell a closer who the buyer is, whether the price is reasonable, or whether the documents are in order. As Section I shows, each is common on its own and common in combination. A closer considers what is happening in the transaction at hand. FinCEN's approach considers only the type of transaction.

C. Treating an Entire Category as Suspicious Empties the Word of the Contrast It Requires.

"Suspicious" is a contrastive term. A transaction tends to arouse suspicion only because it stands apart from what is ordinary; that is what the district court's own dictionary-based reading captures. ROA. 11159–11160. A word that describes deviation from the usual cannot, without losing its meaning, be applied to an entire category of routine, lawful conduct. Otherwise, nothing is left for the transaction to deviate from. Treating every non-financed transfer to an entity or trust as suspicious does not identify a set of outliers; it describes an ordinary population of real estate

closings, the population Section I shows to be unremarkable in the overwhelming majority of cases.

The consequence that follows from erasing that contrast is not simply a separate policy concern; it is the observable symptom of the definitional problem. If "suspicious" meant what the Rule assumes, the resulting reports would be indistinguishable, in bulk, from the closings that generated them, because the category itself no longer distinguishes anything as different from the rest. A standard that produces that result is not identifying suspicious transactions in any ordinary sense of the word; it is applying a label to a population regardless of whether the label fits any individual member of it.

III. THESE REALITIES SUPPORT THE DISTRICT COURT'S STATUTORY HOLDING

The facts described above are not offered as a separate legal theory. They confirm, from the vantage point of the professionals who close these transactions every day, that the district court read § 5318(g)(1) correctly. "Suspicious" transactions are those presenting facts or circumstances that tend to arouse a belief that something is wrong. The ordinary business-entity closing, the ordinary trust closing, and the ordinary cash closing do not present any such facts or circumstances. Title professionals already distinguish, transaction by transaction, between the ordinary and the genuinely irregular, by weighing the totality of the circumstances of the transaction in front of them; nothing about entity ownership, trust ownership,

or the absence of financing places a transaction in the latter category. The same is true of § 5318(a)(2). A provision authorizing the Secretary to require "appropriate procedures, including the collection and reporting of certain information," to ensure compliance with other authority under the subchapter cannot be read to create an independent reporting mandate covering hundreds of thousands of routine, lawful transactions with no individualized basis for concern. The reality of real estate practice makes plain why the district court's textual reading, and not FinCEN's, is the one that actually fits the market FinCEN is trying to regulate.

FinCEN's reading of § 5318(a)(2) confirms the same problem from a different angle. If a general procedures provision already let FinCEN require reporting on any transaction type it deemed connected to money laundering, the careful, suspicion-based framework Congress built in §5318(g) would have little practical role left to play in the setting where TLTA members operate. Title professionals already distinguish, transaction by transaction, between the ordinary and the genuinely irregular, a distinction that only makes sense if the statute requires FinCEN to identify what is actually suspicious about a transaction before demanding a report on it. A reading that lets FinCEN bypass that showing whenever it invokes money laundering in the abstract would not sharpen that distinction. It would erase it, for the same reason the categorical approach under § 5318(g)(1) does: the reporting

obligation would no longer track anything a closer's daily experience actually recognizes as suspicious.

That structural concern is not academic to TLTA members. It is the difference between a reporting regime tethered to individualized, fact-specific judgment, the judgment closers already exercise every day, and one that reaches an entire population of routine transactions because FinCEN has labeled the category itself a money laundering risk. The realities described in Sections I and II show why that second approach does not describe how suspicion actually works in the closing practice. The same realities confirm that § 5318(a)(2) cannot be read to hand FinCEN, through a general procedures clause, the very authority Congress specifically conditioned on suspicion in § 5318(g)(1). The categorical collection of information under the auspices of "procedures" is expensive, time consuming and intrusive and does not actually identify suspicious activity. *See* Brief of Amicus Curiae Puerto Rico Privacy Association, Inc. in Support of Appellants, *Fidelity Nat'l Fin., Inc. et al. v. Secretary, U.S. Dep't of the Treasury, et al.*, No. 26-11307 (11th Cir. Aug. 7, 2026). FinCEN itself asks this Court to give "suspicious" its ordinary meaning, that which "arous[es] or tend[s] to arouse suspicion." Appellants' Br. at 19. That framework makes the experience of those who handle these transactions relevant. TLTA members close transactions alongside lenders, brokers, builders,

investors, and entity buyers, trust buyers, or buyers paying without financing are not treated as suspicious. Transactions are not characterized by broad categories.

Nor does the meaning of the statute's words depend on the agency's preference. A court decides for itself "whether the law means what the agency says." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024). The Rule gives the Court no reason to even consider a category-based reading of the word.

IV. THE ADVALIS AMICUS BRIEF DOES NOT BEAR ON THE QUESTION BEFORE THE COURT, AND IT UNDERSTATES THE BURDEN THE RULE PLACES ON THE PUBLIC.

The self-serving Advalis Amicus does not bear on the question before the court. Advalis, Inc., a vendor that sells filing services under the Rule, argues that compliance costs are lower than FinCEN projected. Advalis Amicus Br. at 3-6. The district court held that § 5318(g)(1) does not permit FinCEN to treat an entire category of ordinary transactions as "suspicious." Whether filing reports under an unauthorized rule is cheap or expensive is not a question the District Court reached.

To the extent the Court even considers the amicus, Advalis itself relies on FinCEN's estimate of 800,000 to 850,000 reportable transfers a year, which shows the scale of ordinary transactions the category sweeps in. *Id*. at 5. Advalis also acknowledges that its data "was not before the district court." *Id*. at 2. If the Court considers the data, it is limited in ways Advalis does not acknowledge. It comes from one vendor's platform, and by Advalis's own figures it reflects roughly 18,000

reports filed during the weeks the Rule was in effect, a small fraction of the transfers FinCEN projects each year. It says nothing about the settlement agents who prepare and file reports themselves. Its time measurements count only active time in the portal for submissions that were completed. *Id*. at 7 n.3. They do not capture the time spent deciding which transactions are reportable, which Advalis concedes its price does not include, or the buyers and sellers who decline to provide the information, 45 percent in the ALTA survey described in Section I.D. *Id*. at 6.

Advalis's brief also confirms where the burden falls. It states that the cost "is almost always passed through to the buyer at closing," and its figure counts only what a vendor charges, not the time of the people asked to supply personal and ownership information or what that disclosure means to them. *Id*. at 5. Some respond by giving up the protection of a business entity or trust to avoid it, as the closing in Section I.D showed. The Puerto Rico Privacy Association told the Florida district court that its members face the same choice, "whether to purchase property at the cost of disclosing beneficial ownership or to forgo such purchases to protect their privacy." Puerto Rico Privacy Ass'n Br. at 1,. These are the consequences of treating a whole category of transactions as suspicious.

CONCLUSION

Under the law, FinCEN cannot be allowed to categorically collect information about ordinary, routine transactions to determine later what might be "suspicious." At most, the Rule is a dragnet or intelligence gathering of general data in which law enforcement may identify after-the-fact a transaction involving a previously targeted individual. This approach stands in great contrast to the approach real estate and transaction professionals use every day when determining a transaction is suspicious. Simply put, FinCEN's approach is not triggered by anything suspicious.

For the foregoing reasons, and for the reasons stated in Plaintiff-Appellee's brief, TLTA respectfully requests that this Court affirm the judgment of the district court.

Dated: October 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because it contains 6,235 words, excluding the parts exempted by Rule 32(f), according to the count of Microsoft Word.

Dated: October 23, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2026, the foregoing amicus brief was electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF System. Participants in this case who are registered CM/ECF users will be served electronically by the Appellate CM/ECF System.

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