

THE SHELL GAME: AN EASY HIDE-AND-GO-SEEK GAME FOR CRIMINALS AROUND THE WORLD

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I. INTRODUCTION

On April 3, 2016, the largest document leak in history became the headline of all major newspapers and media outlets.¹ The 11.5 million leaked documents from the Panamanian law firm, Mossack Fonseca, which became known as the “Panama Papers,” shed some light on how country leaders, politicians, celebrities, and relatives of powerful figures hid their wealth behind anonymous shell corporations.² Among the clients named in

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1. See, e.g., Natasha Bertrand & Harrison Jacobs, *The Largest Leak of Secret Documents in History Was Just Released – Here Are Its Key Findings*, BUSINESS INSIDER (Apr. 3, 2016, 5:52 PM), <http://www.businessinsider.com/panama-papers-main-findings-2016-4> (explaining what the Panama Papers entailed and who were the key players in the document leak); Rishi Iyengar, *The Panama Papers, One Week Later: What We Know, and What We Still Don't*, TIME MAG. (Apr. 8, 2016), <http://time.com/4286371/panama-papers-leak-mossack-fonseca/> (showing that the Panama Papers is the largest data leak in history, totaling 2.6 terabytes of information detailing Panamanian law firm Mossack Fonseca’s financial dealings).

2. See Iyengar, *supra* note 1 (showing an interactive database of key individuals whose names were leaked in the Panama Papers and their involvement with the law firm Mossack Fonseca, which included, among others, King Salman of Saudi Arabia, Prime Minister David Gunnlaugson of Iceland, close associates of Vladimir Putin, and soccer star Lionel Messi); see also Wahab Raofi, *The Panama Papers: When Will We Finally Do Something About Corruption and Theft?*, HUFFINGTON POST (Apr. 14, 2016, 1:50 PM), http://www.huffingtonpost.com/wahab-raofi/the-panama-papers-when-wi_b_9692664.html (explaining that among those named in the Panama Papers were “12 current or former world leaders [and] 128 . . . politicians.”); *What Are the Panama Papers?*, N.Y. TIMES (Apr. 4, 2016), http://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html?_r=1 (showing how country leaders, prime ministers, and important politicians were named in the Panama Papers); *Panama Papers the Power Players*, PROJECTS.ICIJ.ORG, <https://projects.icij.org/panama-papers/power-players/#> (last visited Mar. 3, 2017) (displaying the names of the important politicians, countries leaders, and their close friends and family members that were supposedly involved in the Panama Papers).

the Panama Papers were King Salman of Saudi Arabia,³ Prime Minister Sigmundur David Gunnlaugson of Iceland,⁴ close associates⁵ of President Vladimir V. Putin⁶ of Russia, soccer star Lionel Messi,⁷ and other soccer

3. See *Panama Papers: Who's Who?*, IRISH TIMES (Apr. 4, 2016), <http://www.irishtimes.com/business/panama-papers-who-s-who-1.2597717> (explaining that one of the persons named in the Panama Papers is the actual King of Saudi Arabia, Salman bin Abdulaziz bin Abdulrahman Al Saud, who was crowned in 2015); Raofi, *supra* note 2 (showing that investigative journalists discovered that King Salman of Saudi Arabia was involved in the Panama Papers).

4. See *Panama Papers: Who's Who?*, *supra* note 3 (explaining that Sigmundur Gunnlaugsson, a journalist and radio personality of Iceland, who at the age of 38 became the youngest Primer Minister of Iceland, was also named in the Panama Papers); see also Jon Henley, *Iceland PM Steps Aside After Protests over Panama Papers Revelations*, THE GUARDIAN (Apr. 5, 2016), <https://www.theguardian.com/world/2016/apr/05/iceland-prime-minister-resigns-over-panama-papers-revelations> (discussing the resignation of Iceland Prime Minister Sigmundur David Gunnlaugsson following protests by citizens due to the Panama Papers' revelations that Gunnlaugsson owned offshore investment companies with multi-million pound claims on Iceland's struggling banks).

5. See David Thompson, *Panama Papers: Putin Associates Linked to 'Money Laundering'*, BBC NEWS (Apr. 3, 2016), <http://www.bbc.com/news/world-europe-35918845> (stating that “[c]oncert cellist Sergei Roldugin[,] [who was a friend of] Vladimir Putin since they were teenagers[,] and is [the] godfather to [Putin’s] daughter,” owned companies involved in a suspected billion dollar money laundering ring); Jake Bernstein, Petra Blum, Oliver Zihlmann, David Thompson, Frederik Obermaier & Bastian Obermayer, *All Putin's Men: Secret Records Reveal Money Network Tied to Russian Leader*, INT’L CONSORTIUM INVESTIGATIVE JOURNALISTS (Apr. 3, 2016), <https://panamapapers.icij.org/20160403-putin-russia-offshore-network.html> (asserting that, in addition to Sergei Roldugin, Yury Kovalchuk, a banker who established a relationship with Vladimir Putin when Putin was a municipal official, and Arkady Rotenberg and Boris Rotenberg, childhood friends of Putin, were also named in the Panama Papers in documents that suggest hidden business dealings between them and Putin).

6. See Luke Harding, *Revealed: The \$2bn Offshore Trail that Leads to Vladimir Putin*, THE GUARDIAN (Apr. 3, 2016), <https://www.theguardian.com/news/2016/apr/03/panama-papers-money-hidden-offshore> (divulging a network of secret offshore deals and loans adding to \$2 billion dollars that leads a trail to Russian President, Vladimir Putin, according to the Panama Papers); see also Matthew Chance, *Putin and the Panama Papers: Why Power Means More than Money*, CNN, <http://www.cnn.com/2016/04/06/europe/chance-putin-panama-papers/> (last updated Apr. 7, 2016, 11:26 AM) (revealing hidden wealth in the secret offshore companies was connected to associates of Vladimir Putin).

7. See Matias Grez & John Sinnott, *Barcelona: Club Promises Lionel Messi Legal and Financial Backing over Panama Papers Claims*, CNN, <http://edition.cnn.com/2016/04/05/football/lionel-messi-panama-papers-denies-claims/> (last updated Apr. 5, 2016) (stating that soccer star Lionel Messi had a stake in a shell corporation called Mega Star Enterprises, and that the documents released by the International Consortium of Investigative Journalists show signatures belonging to Lionel Messi and his father when they acquired the company); Emmett Knowlton, *One of the World's Most Famous Soccer Stars Was Named in the Panama Papers*, BUSINESS INSIDER (Apr. 5, 2016, 5:13 PM), <http://www.businessinsider.com/lionel-messi-panama-papers-barcelona-2016-4> (noting that Lionel Messi and his father are also scheduled to appear in a Spanish court due to an unrelated series of companies that they created which allowed them to evade over \$4.5 million in taxes); *Lionel Messi Handed Jail Term in Spain for Tax Fraud*, BBC NEWS (July 6, 2016),

players⁸ and FIFA officials.⁹ Interestingly enough, very few United States citizens were named in the Panama Papers, mainly because creating anonymous shell corporations¹⁰ in the United States poses little to no challenges.¹¹ Accessible means to establish anonymous shell corporations

<http://www.bbc.com/news/world-europe-36721892> (reporting that Messi and his father were sentenced to a jail term of twenty-one months for evading the \$4.5 million in taxes).

8. See Ewan Palmer, *Panama Papers: Star Footballers and Top Fifa Officials Named in Mossack Fonseca Tax Leak*, INT'L BUS. TIMES, <http://www.ibtimes.co.uk/panama-papers-star-footballers-top-fifa-officials-named-mossack-fonseca-tax-leak-1552988> (last updated Apr. 4, 2016) (stating that in addition to Messi, other star soccer players named in the Panama Papers include Leicester's Leonardo Ulloa, former Chilean soccer player Ivan Zamarrano, and former Manchester United player Gabriel Heinze); Aamna Mohdin, *The Panama Papers Reveal Some Own Goals by Soccer's Elite—Including Lionel Messi*, QUARTZ (Apr. 4, 2016), <http://qz.com/654192/the-panama-papers-reveal-some-own-goals-by-soccers-elite-including-lionel-messi/>; Gary Rivlin, Michael Hudson, & Marcos Garcia Rey, *Panama Papers: How Soccer Has Become Enmeshed in Offshore World*, IRISH TIMES (Apr. 3, 2016), <http://www.irishtimes.com/business/panama-papers-how-soccer-has-become-enmeshed-in-offshore-world-1.2595555> (noting that in 2005, Gabriel Heinze created the Galena Mills Corp. in the British Virgin Islands from which he channeled payments of at least \$1 million from a Puma AG contract). “Ivan Zamarrano also had his image rights held by [a] British Virgin Islands . . . company [named] Fut Bam International Ltd[.] during the 1990s.” Palmer, *supra*. The Panama Papers reveal that Leonardo Ulloa had signed his image and economic rights over to Jump Drive Sport Rights, LLC. Mohdin, *supra*. The director and shareholder of Jump Drive Sport Rights, LLC., were actually two companies based in Samoa; not people. *Id.*

9. See Palmer, *supra* note 8; *Nine Fifa Officials and Five Corporate Executives Indicted for Racketeering, Conspiracy and Corruption*, U.S. DEP'T JUST. (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and> [hereinafter *Fifa Officials Indicted for Racketeering*]. Jerome Valcke, former FIFA secretary general, was named in the Panama Papers as owner of an offshore company in the British Virgin Islands. Palmer, *supra* note 8. The attorney for former FIFA vice-president Eugenio Figueredo, who did work for seven offshore companies that were linked to Figueredo, was also named in the Panama Papers. *Id.* Having enriched himself with the corruption of international soccer, United States authorities charged Eugenio Figueredo with wire fraud and money laundering. *Fifa Officials Indicted for Racketeering, supra*.

10. See *Shell Corporation*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining a shell company as an entity “that has no active business and usu[ally] exists only in name as a vehicle for another company's business operations.”); see also *Shell Corporation*, INVESTOPEDIA, <http://www.investopedia.com/terms/s/shellcorporation.asp> (last visited Mar. 31, 2017) (“A shell corporation is a corporation without active business operations or significant assets. These types of corporations are not all necessarily illegal, but they are sometimes used illegitimately, such as to disguise business ownership from law enforcement or the public.”).

11. See Angelo Young, *Panama Papers: At Least 38 US Citizens Named in Massive Leak of Offshore Data from Mossack Fonseca*, INT'L BUS. TIMES (May 9, 2016, 9:51 PM), <http://www.ibtimes.com/panama-papers-least-38-us-citizens-named-massive-leak-offshore-data-mossack-fonseca-2366608>; Jen Wiczner, *Here's Why the Panama Papers Spared the U.S.*, FORTUNE.COM (Apr. 20, 2016), <http://fortune.com/2016/04/20/panama-papers-us/>. Names that emerged from the Panama Papers include “convicted fraudster Martin Frankel, [a] Connecticut Ponzi scheme operator who served [sixteen] years [in prison] for investment fraud, and Leonard Gotshalk, [a] former Atlanta Falcons football player [who] turned [into a] businessman [and] served [jail] time for defrauding lenders.” Young, *supra*. Also named in the Panama Papers were

has enticed drug lords, arm dealers, terrorists, human traffickers, and money launderers to take advantage of the lenient laws of incorporation in the United States.¹² Although shell corporations have legitimate uses,¹³ they are often the number one vehicles for laundering money from illicit activities and criminal proceeds.¹⁴

This Comment explores how the laws¹⁵ of the United States facilitate the formation of anonymous shell corporations, how criminals take

“a former Sears appliance salesman[,] a disbarred attorney[,] and [a] Las Vegas bus driver,” all of which were accused of defrauding thousands of Indonesians out of nearly \$100 million through a shell company called Dressel Investment, Ltd. *Id.* The small number of United States citizens named in the Panama Papers does not suggest that Americans are more honest; it only suggests that, in the United States, Americans have plenty of options to choose from when seeking to incorporate a secret shell company. *See id.* States like Nevada (which is home to 1,260 businesses named in the Panama Papers) and Wyoming (which has lenient incorporation laws) are almost as effective as Panama’s tax haven. Wiczner, *supra*.

12. *See* Melanie Hicken & Blake Ellis, *These U.S. Companies Hide Drug Dealers, Mobsters and Terrorists*, CNN MONEY (Dec. 9, 2015, 4:36 AM), <http://money.cnn.com/2015/12/09/news/shell-companies-crime/>; *see also* *Whitehouse Highlights Bill to Close Corporate Loopholes Exposed by Panama Papers*, WHITEHOUSE.SENATE.GOV (Apr. 29, 2016), <https://www.whitehouse.senate.gov/news/release/whitehouse-highlights-bill-to-close-corporate-loopholes-exposed-by-panama-papers> [hereinafter *Whitehouse Highlights Bill*]. Shell corporations in the United States have been a vehicle for criminals, both domestic and abroad. *See* Hicken & Ellis, *supra*. Arms dealers, drug lords, and terrorists have used shell corporations to hide their identity. *See id.* For example, the drug trafficking ring of Sanchez-Paredes used a network of shell corporations (some of which were located in Florida) to conceal the family’s cocaine proceeds for decades. *Id.* Recent investigations revealed the following: “American shell companies [were] used by [terrorists in] Iran to [purchase] a skyscraper in [which the] proceeds [were used for terrorist funding,] a Mexican drug cartel [successfully] launder[ed] money through a horse farm in Texas[,] and Moldovan criminal[s] [used United States companies] to conceal a [global] human trafficking ring.” *Whitehouse Highlights Bill, supra*.

13. *See* Emily Lehmborg, *The Talk About Shell Companies*, AM. B. ASS’N (June 16, 2016), <http://apps.americanbar.org/litigation/committees/businessstorts/articles/spring2016-0616-talk-about-shell-companies-panama-papers-offshore-accounts.html>.

Th[e] entity structure [of a shell company] is often used to facilitate corporate mergers, whereby two merging companies structure the transaction so that they are consolidated under a third, neutral shell company. Similarly, this entity structure is used in joint ventures, whereby a shell company is incorporated in a neutral jurisdiction to ensure neither party to the transaction receives favoritism. Shell companies are also used to organize partnership payments and profit-sharing agreements involving parties from different jurisdictions, potentially to allow for the pre-tax division of revenues and income between shareholders.

Id.

14. *See* *Anonymous Companies*, GLOBAL FIN. INTEGRITY, <http://www.gfintegrity.org/issue/anonymous-companies/> (last visited Apr. 3, 2017) (showing that in 2012, Lanny A. Breuer, Assistant United States Attorney General, expressed that shell corporations “are the [number one] vehicle for laundering illicit money and criminal proceeds.” (internal quotation marks omitted)); Hicken & Ellis, *supra* note 12 (explaining that bad actors often use fake businesses to conceal their activities and transfer money anonymously).

15. *See* discussion *infra* Part II, Sections A, B, and C.

advantage of these laws, and how the United States is in dire need of a change.¹⁶ Part I of this Comment discussed the legitimate and illicit uses of shell corporations by weighing the interests of corporate owners and their need for shell corporations and the potential risks that shell corporations pose to the United States.¹⁷ Part II of this Comment outlines the legislative efforts to regulate anonymity and discusses why the current laws and proposed legislation are ineffective.¹⁸ Part III of this Comment identifies the problems caused by the ineffectiveness of the current incorporation laws by giving key examples of criminality linked to shell corporations and discussing how these laws have facilitated the purported crimes. Part III of this Comment also identifies the loopholes in the proposed legislation.¹⁹ Part IV of this Comment presents a solution to these problems by proposing an amendment to the proposed legislation to include a high-security database for storing beneficial ownership information at the time of incorporation (available only to law enforcement agencies and financial institutions), which would eliminate the current loopholes.²⁰ Finally, Part V of this Comment concludes with a summary of the main points discussed herein.²¹

II. BACKGROUND

A. THE LAWS THAT GOVERN MONEY LAUNDERING AND FINANCIAL CRIMES LINKED TO SHELL COMPANIES

The United States has laws that, in theory, are meant to deter criminals from laundering money, and ensure that financial institutions are taking all necessary action and precautions to prevent and discover illegal activity.²² As a response to criminal trends and terrorist attacks, lawmakers have adapted to the laws that govern money laundering²³ and other

16. See discussion *supra* Part I.

17. See discussion *supra* Part I; *supra* notes 13–14 and accompanying text.

18. See discussion *infra* Part II.

19. See discussion *infra* Part III.

20. See discussion *infra* Part IV.

21. See discussion *infra* Part V.

22. See Bank Secrecy Act, 31 U.S.C. §§ 5311–30 (2015); 31 U.S.C. § 5311 (2015) (requiring that banks, financial institutions, and federal savings associations assist government agencies in detecting and preventing money laundering); 31 C.F.R. § 1010.312 (2016) (requiring every bank to implement a customer identification program in order to comply with the requirements set forth in the Bank Secrecy Act).

23. See Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956–57 (2015) (recognizing money laundering as a crime and setting forth civil and criminal penalties for individuals

financial crimes, which have prompted terrorist attacks and other major enacted the Bank Secrecy Act²⁴ in 1970, also known as the Currency and Foreign Transactions Reporting Act.²⁵ The Bank Secrecy Act is comprised of two parts, Title I and Title II,²⁶ which were amended by Title III of the

involved in money laundering); *Money Laundering*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("The act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.").

24. See 31 U.S.C. § 5311 (declaring the purpose of the Bank Secrecy Act); 31 C.F.R. § 1010.312 (specifying identification requirements for financial institutions); FEDERAL DEPOSIT INSURANCE CORPORATION, DSC RISK MANAGEMENT MANUAL OF EXAMINATION POLICIES § 8.1-1 (2004), http://www.ffiec.gov/bsa_aml_infobase/documents/fdic_docs/bsa_manual.pdf (providing the Bank Secrecy Act was enacted by Congress in 1970 in order to prevent and detect money laundering). The Bank Secrecy Act aims to achieve its purpose by implementing a customer identification program. See § 1010.312.

25. See Margaret Rouse, *Bank Secrecy Act (BSA)*, TECHTARGET, <http://searchfinancialsecurity.techtarget.com/definition/Bank-Secrecy-Act-BSA> (last updated Nov. 2009) ("The Bank Secrecy Act . . . , also known as the Currency and Foreign Transactions Reporting Act, . . . requires [United States] financial institutions to collaborate with the [United States] government in [suspicious instances of] money laundering and fraud."); see also *Bank Secrecy Act* – *BSA*, INVESTOPEDIA, http://www.investopedia.com/terms/b/bank_secrecy_act.asp?lgl=no-infinite (last visited Apr. 6, 2017) (defining the Bank Secrecy Act, also known as the Currency and Foreign Transactions Reporting Act, as legislation intended to "prevent financial institutions from being used as [channels for] criminals" to conceal their illegally gained proceeds).

26. *Bank Secrecy Act Law and Legal Definition*, USLEGAL, <http://definitions.uslegal.com/b/bank-secrecy-act/> (last visited Apr. 10, 2017); see also FEDERAL DEPOSIT INSURANCE CORPORATION, *supra* note 25. Title I of the Bank Secrecy Act, which is titled Financial Recordkeeping, "authorizes the Secretary of the Department of the Treasury . . . to issue regulations [that] require insured financial institutions to maintain [specific] records." *Id.* Title II of the Bank Secrecy Act, which is titled Reports of Currency and Foreign Transactions, "prescribe[s] regulations [that encompass] the reporting of . . . transactions by and through financial institutions in excess of \$10,000 into, out of, and within the [United States]." *Id.* The Bank Secrecy Act was enacted "to aid investigations [in] . . . criminal activities . . . [ranging] from . . . tax evasion to money laundering." *Id.*

USA Patriot Act²⁷ in 2001 to incorporate a customer identification program.²⁸

The Bank Secrecy Act co-exists with regulations that enforce compliance with its provisions.²⁹ These regulations require that every national bank and savings association provide written and board approved programs, which are expected to be reasonably constructed in guaranteeing and probing compliance with the Bank Secrecy Act.³⁰ In addition to

27. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*, Pub. L. No. 105–56, 115 Stat. 272 (2001) (“To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.”); *The USA Patriot Act: Preserving Life and Liberty*, DEP’T JUST., https://www.justice.gov/archive/ll/what_is_the_patriot_act.pdf (last visited Apr. 10, 2017). The USA Patriot Act stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” and it was passed nearly unanimously by Congress and signed into law by the President. See *id.* The USA Patriot Act allows law enforcement to use tools that were already available as well as new tools to detect and prevent terrorism. See *id.* The USA Patriot Act was intended to adapt to new technologies that are available today, increase the penalties of terrorism acts, and facilitate the transfer of information between government agencies to increase efficiency. *Id.*

28. See 31 C.F.R. § 1020.220 (2016) (laying out requirements for the customer identification program); 31 C.F.R. § 1010.312 (2016) (laying out identification requirements). The customer identification program requires that banks obtain from client-corporations information such as a “principal place of business, local office, or other physical location.” § 1020.220(a)(2)(i). Additionally, an identification number, such as a taxpayer number, may be used to identify a United States person, and a passport, alien identification number, or any form of government issued identification which shows nationality or residence may be used to identify foreign persons. § 1020.220(a)(2)(i)(4); § 1010.312. Moreover, any other document used as identification for cashing checks (e.g., a driver’s license or credit card) may be used. § 1010.312. A bank signature card may be used only after the identifying documents have been provided and the information, such as the account number on a credit card or a driver’s license number, has been recorded on the bankcard. *Id.*

29. See 12 C.F.R. § 21.21 (2016) (providing required procedures for monitoring compliance with the Bank Secrecy Act, and asserting that all banking and savings institutions must have a program designed to comply with the provisions of 31 U.S.C. § 5311); 31 U.S.C. § 5318(h)(1) (2015) (providing minimum requirements to safeguard against money-laundering). The anti-money laundering programs provisions under 31 U.S.C. § 5318(h)(1) make clear that, in order to protect our nation against money laundering that is facilitated by financial institutions, certain precautions need to be taken. See § 5318(h)(1). There must be a “development of internal policies, procedures, and controls” within each institution; a “compliance officer” must be designated within the institution; a continuous “employee training program” must be implemented within the institution; and an “independent audit function” must be used to ensure that the compliance system within the institution is effective. *Id.*

30. See 12 C.F.R. § 21.21; *Dusek v. JPMorgan Chase & Co.*, 132 F. Supp. 3d 1330, 1335–36 (M.D. Fla. 2015) (“In order to guard against money laundering through financial institutions, the Bank Secrecy Act provides that financial institutions must establish and maintain effective anti-money laundering compliance programs.” (citation omitted)). Each bank and savings institution must have an administrative program designed to ensure compliance with the Bank

regulations that ensure compliance with the Bank Secrecy Act, there are also regulations that require financial institutions to report suspicious activity by means of a Suspicious Activity Report (“SAR”).³¹

Notwithstanding the laws that govern financial institutions with the purpose of fighting money laundering and other financial crimes,³² Congress has failed to pass legislation that mirrors the same transparency

for the beneficial owners³³ of companies.³⁴ Since 2008, the Incorporation Transparency and Law Enforcement Assistance Act (“ITLEAA”)³⁵ has been re-introduced in congressional sessions every year for the purpose of resolving the various problems caused by incorporation anonymity.³⁶ More recently, the Panama Papers incident has sparked senators and congressmen and congresswomen to take action in attempting to get the ITLEAA passed.³⁷ The ITLEAA introduces requirements of detailed disclosure of a corporation’s beneficial ownership information, the repercussions that one faces if these requirements are not met,³⁸ and the exceptions³⁹ to these requirements. The ITLEAA also gives states the option of maintaining beneficial ownership information private or making beneficial ownership information a matter of public record.⁴⁰

Secrecy Act. § 21.21. Each national bank and savings association is required to have a customer identification program as per 31 C.F.R § 1020.220. *Id.*

31. See 12 C.F.R. § 21.11 (2016) (codifying procedures and requirements for filing a Suspicious Activity Report (“SAR”). This provision requires that every national bank “file a Suspicious Activity Report when [it] detect[s] . . . or suspect[s] violation[s] of Federal law.” § 21.11(a). Any suspicious transactions that could be the possible subject of “money laundering . . . or a violation of the Bank Secrecy Act” must also be reported. *Id.* A report is required for any potential crimes involving abuse by insiders without consideration of the dollar amount, on transactions of \$5,000.00 or more where there is an identifiable suspect, and any transaction involving \$25,000.00 or more if there is no identifiable suspect. § 21.11(c).

32. See *supra* notes 22–30 and accompanying text (listing the laws that are currently in effect to prevent and fight money laundering through compliance by financial institutions).

33. See Christine Duhaime, *The Anti-Money Laundering Lawyer’s Primer on Beneficial Ownership and Numbered, Shelf and Shell Companies*, ANTIMONEYLAUNDERINGLAW.COM (Apr. 24, 2016), <http://www.antimoneylaunderinglaw.com/2016/04/confessions-of-a-ma-anti-money-laundering-lawyer-on-beneficial-ownership-and-numbered-shelf-and-shell-companies.html> (explaining that a beneficial owner is the “owner of the shares of a private company.”); Ed Leefeldt, *How “Shell” Companies Launder Dirty Money*, CBSNEWS.COM (Sept. 8, 2016, 5:30 AM), <http://www.cbsnews.com/news/how-shell-companies-launder-dirty-money/> (explaining that the term beneficial owner simply refers to the real owner of the company).

34. See Brian M. Gottesman, *Senator Carl Levin Reintroduces the Incorporation Transparency and Law Enforcement Assistance Act*, BUSINESS L. BASICS, <http://www.businesslawbasics.com/senator-carl-levin-reintroduces-incorporation-transparency-and-law-enforcement-assistance-act> (last visited Apr. 10, 2017) (re-introducing the Incorporation Transparency and Law Enforcement Assistance Act); Tracey Samuelson, *Cracking down on Shell*

Companies: A Years-Long Debate, MARKETPLACE (Apr. 7, 2016, 3:56 PM), <http://www.marketplace.org/2016/04/07/world/shell-comps>. The Incorporation Transparency and Law Enforcement Assistance Act (ITLEAA) was first introduced in 2008, when one of its sponsors was then-senator Barack Obama. Gottesman, *supra*. The ITLEAA was designed to require states to collect beneficial ownership information when the company is incorporated. Samuelson, *supra*.

35. See Incorporation Transparency and Law Enforcement Assistance Act, H.R. 4450, 114th Cong. §§ 1–4 (2016) (LexisNexis) (proposing an amendment to Title 31 of the United States Code). ITLEAA is a bipartisan bill designed to unmask secret shell companies by adding section 5333 (Transparent Incorporation Practices) to chapter 53 of Title 31 of the United States Code. See *id.* § 3. The bill states that almost two million businesses are being formed in the United States every year, but most states do not require any pertinent information about the true beneficial owners. *Id.* § 2. As a result, the lack of transparency in incorporation laws has contributed to financial, tax, and drug crimes, as well as terrorism. *Id.* The lack of transparency has also made it difficult, if not impossible, to investigate the aforementioned crimes. *Id.*

36. See Gottesman, *supra* note 35 (stating that the ITLEAA has been introduced several times starting in 2008); *House and Senate Introduce Legislation Promoting Transparency in Beneficial Ownership of Companies*, TRANSPARENCY INT'L (Feb. 3, 2016), http://www.transparency.org/news/pressrelease/house_and_senate_introduce_legislation_promoting_transparency_in_beneficial (stating that the ITLEAA, which would require the disclosure of beneficial ownership at the time of incorporation, has been introduced in every congressional session since 2008).

37. See *Following Panama Papers Release, White House Urges Action on the Incorporation Transparency and Law Enforcement Assistance Act*, WHITEHOUSE.SENATE.GOV (Apr. 27, 2016), <https://www.whitehouse.senate.gov/news/release/following-panama-papers-release-whitehouse-urges-action-on-the-incorporation-transparency-and-law-enforcement-assistance-act> [hereinafter *Following Panama Papers Release*] (discussing how the Panama Papers shed light on how increasingly attractive it has become to form shell corporations in the United States); Naomi Jagoda, *'Panama Papers' Could Boost Prospects for Corporate-Transparency Legislation*, THE HILL (Apr. 4, 2016, 6:25 PM), <http://thehill.com/policy/finance/275134-panama-papers-could-boost-prospects-for-corporate-transparency-legislation>. The document leak of the Panama Papers has raised the pressure for Congress to enact legislation to increase transparency in the United States. Jagoda, *supra*.

38. See H.R. 4450; Jay Adkisson, *The Incorporation Transparency and Law Enforcement Assistance Act Takes on Anonymous U.S. Entities*, FORBES (June 21, 2016, 11:42 PM), <http://www.forbes.com/sites/jayadkisson/2016/06/21/the-incorporation-transparency-and-law-enforcement-assistance-act-takes-on-anonymous-u-s-entities/#516a439c7a4a>. The ITLEAA requires a company that has been served with a civil or criminal summons by a state or federal law agency to disclose its true beneficial owners. H.R. 4450, § 3. A request made by a similar agency in another country, with which the United States has an information-sharing treaty, must also be honored by complying with the disclosure of the company's beneficial owners. *Id.* The information that must be disclosed is the beneficial owner's name; current residential business or street address; and a unique identifying number, such as the beneficial owner's unexpired driver's license or passport. *Id.* In addition, all states would have to obtain and maintain a list of the beneficial owners or require that a licensed formation agent obtain and maintain such information. Adkisson, *supra*. For beneficial owners that are not United States persons, the state or the licensed formation agent must maintain a copy of the beneficial owner's identification, usually a copy of the beneficial owner's home country's passport. H.R. 4450, § 3. A beneficial owner does not include a minor child, nominees, agents, or other intermediaries for the beneficial owner; employees who do not own equity in the business; persons who only have a future interest in the business; and creditors of the entity. See *id.* However, if a business that has been solicited

According to a report by the Government Accountability Office (“GAO”),⁴¹ none of the fifty states require a new corporation to disclose the identity of its beneficial owner, and only a few states⁴² require a limited liability company⁴³ to disclose the identity of its beneficial owner.⁴⁴

the aforementioned information has another company as its beneficial owner, the information about that company must be disclosed, but not the beneficial owner’s information. *Id.* The ITLEAA also introduces possible penalties: a fine totaling no more than \$10,000.00 and a prison term of no more than three years. *Id.*

39. *See id.*; Adkisson, *supra* note 39. The ITLEAA does not require the disclosure of beneficial ownership information for publicly traded companies, such as Apple, Exxon-Mobil, and Disney, which is ever changing as a result of the purchase of stocks, warrants, or options. Adkisson, *supra* note 39. However, there are Customer Due Diligence programs implemented by the U.S. Treasury Department for financial institutions that trade in publicly traded companies. *Id.*

40. *See* H.R. 4450, § 3 (stating that pursuant to the proposed section 5333(d)(5)(A)–(B) under section 3(a)(1) of the ITLEAA a state may restrict public access to all or any portion of the beneficial ownership information provided or provide for public access to all or any portion of such information by statute, regulation, or order).

41. *See About GAO*, U.S. GOV’T ACCOUNTABILITY OFF., <http://www.gao.gov/about/> (last visited Apr. 11, 2017). “The U.S. Government Accountability Office (GAO) is an independent, non-partisan agency that works for Congress.” *Id.* The head of the GAO is called the Comptroller General of the United States, and is appointed by the President every 15 years. *Id.* The GAO is in charge of auditing agency operations to ensure federal funds are being properly spent, investigating allegations of illicit activities, reporting the efficiency of government programs and policies, conducting policy analyses and setting up options for Congress to consider, and putting out legal decisions. *Id.*

42. YVONNE D. JONES, U.S. GOV’T ACCOUNTABILITY OFF., GAO-06-376, COMPANY FORMATIONS: MINIMAL OWNERSHIP INFORMATION IS COLLECTED AND AVAILABLE (2006); Gabbi Fisher, *Limited Liability Donations: Corporate Dark Money Remains a Glaring Problem in the US*, SUNLIGHT FOUND. (Aug. 5, 2014, 10:21 AM), <https://sunlightfoundation.com/blog/2014/08/05/limited-liability-donations-corporate-dark-money-remains-a-glaring-problem-in-the-us/>. The majority of states do not require ownership information at the time that the company is formed. JONES, *supra*. While some states require the names and addresses of directors and managers, these may be people who do not own the company. *Id.* The majority of states screen company filings for required information, but none verify the identities of the named beneficial owners or company officials. *Id.* A third-party agent, such as a lawyer, may submit documents to form an LLC on the company’s behalf, which often only requires billing information, and which generally does not contain any information on the owners of the companies. *Id.* The original four states that required disclosures were Alabama, Alaska, Arizona and Kansas. Fisher, *supra*. Today, only Alabama and Arizona are the states that ask for an LLC’s member and manager names in the registration forms. *Id.*

43. *See Limited Liability Company*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“A statutorily authorized business entity that is characterized by limited liability for and management by its members and managers, and taxable as a partnership for federal income-tax purposes.”); *Definition of a Limited Liability Company or LLC*, LEGALZOOM, <https://www.legalzoom.com/knowledge/limited-liability-company/topic/limited-liability-company> (last visited Apr. 11, 2017) (stating that a limited liability company is a separate and distinct entity which can obtain its own tax identification number, open bank accounts, and do business solely under the company’s name).

Additionally, none of the states screen information against criminal watch lists or verify the identity of company officials.⁴⁵ In fact, the Federal Bureau of Investigations (“FBI”)⁴⁶ has open investigations that have not been resolved because the beneficial owners of the companies that are the subject of the investigations are practically untraceable.⁴⁷

B. THE SHELL GAME—THE PROCESS OF ESTABLISHING SHELL CORPORATIONS

In essence, shell companies are business entities that are hollow and are intended to carry out operations in the shadows.⁴⁸ However, shell

44. See *Failure to Identify Company Owners Impedes Law Enforcement: Hearing Before the Permanent Subcomm. on Investigations of the Comm. on Homeland Sec. and Governmental Affairs*, 109th Cong. 2 (2006) [hereinafter *Hearing*] (showing the opening statement of Senator Coleman, in which he states that a recent report by the GAO found that none of the 50 states require disclosure of an applicant’s identity to open a new corporation and only a few states require such information for a limited liability company).

45. *Id.* (stating that the GAO found that none of the states screen company information against criminal watch lists or verify the identity of company officials, which consequently threatens the U.S. financial system and homeland security).

46. See *Federal Bureau of Investigation (FBI)*, BRITANNICA.COM, <https://www.britannica.com/topic/Federal-Bureau-of-Investigation> (last visited Apr. 11, 2017) (describing the FBI as the “principal investigative agency” of the United States); *Organization, Mission and Functions Manual: Federal Bureau of Investigation*, U.S. DEP’T JUST., <https://www.justice.gov/jmd/organization-mission-and-functions-manual-federal-bureau-investigation> (last updated Sept. 26, 2014). Among other things, the FBI is responsible for protecting the United States against terrorism, foreign intelligence operations, cyber-based attacks and sophisticated technology crimes, violations of civil rights, major white-collar crimes, and transnational and national criminal enterprises and organizations. *Id.*

47. See *Hearing*, *supra* note 45, at 2; JONES, *supra* note 43, at 36. Senator Coleman stated that the “GAO [has] report[ed] that the FBI has 103 open investigations [that involve] financial market manipulation.” *Hearing*, *supra* note 45, at 2. The majority of these unresolved cases involved the use of shell corporations. *Id.* In fact, law enforcement officials often have evidence of a crime, but cannot trace the responsible individual of the crime without beneficial ownership information. See JONES, *supra* note 43, at 36.

48. See Shima Baradaran et al., *Funding Terror*, 162 U. PA. L. REV. 477, 492 (2014) (“Shell companies . . . typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.” (quoting FIN. CRIMES ENF’T NETWORK, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 4 (2006), http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf)); EMILE VAN DER DOES DE WILLEBOIS ET AL., STOLEN ASSET RECOVERY INITIATIVE, THE PUPPET MASTERS: HOW THE CORRUPT USE LEGAL STRUCTURES TO HIDE STOLEN ASSETS AND WHAT TO DO ABOUT IT 34 (2011) (“[A] shell company can be defined as a non-operational company—that is, a legal entity that has no independent operations, significant assets, ongoing business activities, or employees.”).

companies have the power of transferring large sums of money globally.⁴⁹ Shell companies are attractive vehicles for both beneficial owners who seek privacy for legitimate reasons and beneficial owners who seek to mask their identity for illegitimate uses of the company.⁵⁰

Opening a shell corporation is no arduous process; it can be done in as little time as it takes to open up an e-mail account and with less information than it takes to sign-up for a library card.⁵¹ It can cost anywhere from \$49 to \$200,⁵² and it can be done online in under fifteen minutes or over the phone.⁵³ There are also law firms and financial advisors available to walk a person through the process of setting up an

49. See Baradaran et al., *supra* note 49 (“A shell company is a business entity [which owns] no significant assets [and has no prevalent] ongoing business activities, [but which has the capability] of transferring large sums of money worldwide.”); *Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption*, INT’L CONSORTIUM INVESTIGATIVE JOURNALISTS (Apr. 3, 2016), <https://panamapapers.icij.org/20160403-panama-papers-global-overview.html> (stating that the Panama Papers revealed that Putin secretly shuffled about \$2 billion through banks and shell companies).

50. See Leefeldt, *supra* note 34. Shell corporations are sometimes “used as a ‘pass through’ [which] allow[s] another company or business to . . . move . . . from one place to another.” *Id.* However, sometimes shell corporations do attract illegal activity, such as drug trafficking or terrorism, because those engaged in these crimes are aware that they can dispense money between two or three shell companies and, thereby, create a protective layer before the funds reach their intended place. See *id.*

51. See Jim Zarroli, *Want to Set up a Shell Corporation to Hide Your Millions? No Problem*, NPR (Apr. 13, 2016, 4:41 PM), <http://www.npr.org/2016/04/13/474101127/want-to-set-up-a-shell-corporation-to-hide-your-millions-no-problem> (“[A]ctually setting up a shell corporation turns out to be something that any average Joe can do[;] . . . you can do it in just a little more time than it takes to open an email account”); Leefeldt, *supra* note 34 (“In states like Delaware, Nevada, and Wyoming, . . . ‘less information to [form] a . . . corporation [is required than is necessary for obtaining] a library card’”).

52. See *Cheapest Way to Form a Wyoming Corporation*, WYO. REGISTERED AGENT SERVICES LLC, <https://www.wyomingagents.com/corporation> (last visited Apr. 12, 2017) (stating that incorporation in Wyoming can be done online for \$125.00; or, the incorporation company can be hired for \$150.00, and your business will be incorporated in one business day); *Incorporate in Nevada in as Little as 10 Minutes*, SWYFTFILINGS, http://www.swyftfilings.com/sem-inc/nv/incorporate-in-nevada?gclid=CjwKEAajwgdS-BRDA7fT68f6s8zMSJADZwHmvGmI9NNiGXT495ueQBgCRcnD4MWQzv_CafH58vC2MExoC10bw_wcB (last visited Apr. 12, 2017) (advertising that, starting at just \$49.00, you can incorporate your business online in under ten minutes).

53. See Ken Silverstein, *I Set up a Shell Corporation, and so Can You!*, VICE (Dec. 15, 2014), <http://www.vice.com/read/setting-up-a-bogus-shell-corporation-is-really-easy-1215> (“The whole process can be done in [fifteen] minutes online or—as I did, on October 28—over the phone.”); Elizabeth MacDonald, *Shell Games*, FORBES.COM (Feb. 12, 2007), https://www.forbes.com/free_forbes/2007/0212/096.html (explaining that incorporation of a shell company can be done in five minutes to sixty days, depending on the state, and the median cost for such services is \$95.00).

anonymous shell corporation if they are unsure about how to proceed.⁵⁴

If meeting face-to-face with an attorney is not an attractive option for a prospective company owner, there are hundreds of shell incorporators on the Internet and around the world at his or her disposal.⁵⁵ A person looking to incorporate a shell corporation may choose to create a network of shell corporations to increase the layers of secrecy; the more layers in a network, the more difficult it will be for law enforcement to track down the true beneficial owner.⁵⁶ To optimize concealment, the beneficial owner will usually elect to hire a nominee⁵⁷ as a company director who does not necessarily need to have a link to the true beneficial owner.⁵⁸

While there are various tax havens⁵⁹ around the world,⁶⁰ the United

54. See Zarroli, *supra* note 52 (stating that there are a multitude of law firms and financial advisers that can help you set up shell companies, oftentimes at a low cost); McDonald, *supra* note 54 (showing that Atrium Incorporators of London's website promotes Delaware as a "tax haven" for non-United States residents, and can assist in incorporation with little to no information about the beneficial owner).

55. See Ryan C. Hubbs, *Shell Games: Investigating Shell Companies and Understanding Their Roles in International Fraud*, FRAUD MAG. (July/Aug. 2014), <http://www.fraud-magazine.com/article.aspx?id=4294983054>. Out of the hundreds of listed shell incorporators on the Internet, one of the most widely used is "Wyoming Corporate Services." *Id.* Alarmingly, a 2011 Reuters news investigation revealed that several shell corporations originating in Wyoming had been used in countless international criminal activity. *Id.* Although some shell incorporators are more selective with their potential customers, most of the time, fraudsters can set up a network of shell companies at a low cost. *Id.*

56. See *Anonymous Companies*, *supra* note 14 (stating that other shell companies can be listed as the director, making it difficult to track down the true beneficial owner); Hubbs, *supra* note 56 ("Fraudsters use nominee directors, and in some instances, other shell companies, to disguise true owners of entities while giving the appearance of legitimacy.").

57. See *Nominee*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A person designated to act in place of another, usu[ally] in a very limited way[;] . . . [a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others."); *What is Nominee Director?*, L. DICTIONARY, <http://thelawdictionary.org/nominee-director/> (last visited Apr. 12, 2017) ("An individual who is given the role of a non[-]executive director on the firm's board of directors, in place of another person, investor[,], or financial institution."); Hubbs, *supra* note 56 (stating that some nominees sell their names to the true beneficial owners so that the nominee's name can be used on company documents).

58. See *Anonymous Companies*, *supra* note 14 (explaining that the beneficial owner can hire a lawyer or have a distant relative serve as a nominee director of the shell company); *Nominee Incorporation Service*, OFFSHORE SIMPLE, <http://www.offshoresimple.com/nominee.htm> (last visited Apr. 12, 2017) (advertising professional offshore incorporation services, and stating that the company will hire a local nominee for one's company at a rate of \$300 per calendar year).

59. See *Tax Haven*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A jurisdiction, esp[ecially] a country, that imposes little or no tax on the profits from transactions carried on there or on persons resident there."); *Tax Haven*, DICTIONARY.COM, <http://www.dictionary.com/browse/tax-haven> (last visited Apr. 12, 2017) ("[A] foreign country or corporation used to avoid or reduce income taxes, especially by investors from another country.").

States has been found to be the second easiest country in the world for criminals to incorporate anonymous shell companies.⁶¹ Although it is easy to conclude that commonly known areas known for establishing shell corporations contain the most lenient laws and regulations, studies have shown otherwise.⁶² The United States has become an easily accessible vehicle for criminals to conduct their operations by and through the use of secret shell corporations.⁶³

III. DISCUSSION

A. THE MOST DANGEROUS CRIMINALS ARE THE KEY PLAYERS OF CORPORATE HIDE-AND-GO-SEEK

Not only does the system of secret shell corporations promote tax evasion and cost the United States economy and the Department of Treasury about \$70 billion every year, but it is also enticing the most

60. See Niall McCarthy, *The Most Popular Tax Havens in the Panama Papers [Infographic]*, FORBES (Apr. 4, 2016, 8:28 AM), <http://www.forbes.com/sites/niallmccarthy/2016/04/04/the-most-popular-tax-havens-in-the-panama-papers-infographic/#2fe60b3954fb> (stating that the British Virgin Islands is the most popular place of incorporation with over 113,000 incorporations, while Panama is the second most popular with over 48,000, and the Bahamas is the third most popular with just under 16,000); Max Seitz, *Why the Top 10 Tax Havens Don't Include Panama*, BBC NEWS (Apr. 8, 2016), <http://www.bbc.com/news/business-35998801> (showing that Switzerland, Hong Kong, the United States, Singapore, the Cayman Islands, Luxembourg, Lebanon, Germany, Bahrain, and the United Arab Emirates are the top ten locations around the world for financial secrecy).

61. See *Anonymous Companies*, *supra* note 14. A 2012 study found that the United States was the second easiest country in the world for criminals and fraudsters to incorporate anonymous shell companies for the purpose of carrying out illegal activities. *Id.* The number one country that facilitates criminal activities in shell companies is Kenya. *See id.*

62. See Ana Swanson, *How the U.S. Became One of the World's Biggest Tax Havens*, WASH. POST (Apr. 5, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/04/05/how-the-u-s-became-one-of-the-worlds-biggest-tax-havens/>. In 2012, researchers sent over 7,400 e-mail solicitations to over 3,700 providers that register shell companies. *Id.* The solicitors impersonated potential terrorists, money launderers, and corrupt officials. *Id.* The study found that incorporation agencies and law firms in the United States had the most lenient regulations for setting up a shell corporation, given the potential risks posed by the solicitors. *Id.*

63. See Swanson, *supra* note 63; Kelly Carr & Brian Grow, *Special Report: A Little House of Secrets on the Great Plains*, REUTERS (June 28, 2011, 11:31 AM), <http://www.reuters.com/article/us-usa-shell-companies-idUSTRE75R20Z20110628>. Studies yielded results revealing that notorious tax haven countries (i.e., “the Cayman Islands, Jersey, and the Bahamas”) had more stringent regulations to establish shell corporations than states like “Nevada, Delaware, Montana, South Dakota, Wyoming, and New York.” Swanson, *supra* note 63. In fact, business corporations in the United States have been regarded as being “completely unregulated.” Carr & Grow, *supra* (internal quotation marks omitted). Somalia has slightly more stringent regulations of incorporation than Nevada and Wyoming. *Id.*

dangerous criminals in the world to incorporate in the United States.⁶⁴ Viktor Bout, a Russian businessman considered to be the world's largest arms trafficker,⁶⁵ used twelve United States shell corporations formed in Delaware, Texas, and Florida to finance his illegal activities, which threatened Americans and supported terrorist entities.⁶⁶ To make matters worse, and shell transactions even more inconspicuous, criminals are not afraid to get creative with their money laundering schemes.⁶⁷ Mexican drug cartel, Los Zetas,⁶⁸ used a horse ranch and a number of shell companies in the United States to conceal over \$22 million in drug proceeds.⁶⁹

64. See Lucy Komisar, *Shells, Shams and Corporate Scams*, AM. INTEREST (Jan. 1, 2011), <http://www.the-american-interest.com/2011/01/01/shells-shams-and-corporate-scams/>; Adam Szubin, *A Dangerous Shell Game*, THE HILL (July 11, 2016, 5:48 PM), <http://thehill.com/opinion/op-ed/287291-a-dangerous-shell-game>. The anonymous company system drains about \$70 billion from the economy and the Department of Treasury, and “facilitates stock market corruption.” Komisar, *supra*. Anonymous shell corporations are one of the most dangerous tools available to the most threatening criminals. See Szubin, *supra*. In investigating every threat relating to terrorism and illicit money schemes that the United States tracks, investigators encounter shell companies used to facilitate the flow of money, regardless of whether it is an investigation on “foreign terrorists, narcotics cartels, sanctioned regimes[,] or cyber hackers. See *id.*

65. See *Gunrunning*, THEFREEDICTIONARY.COM, <http://www.thefreedictionary.com/Arms+trafficking> (last visited Apr. 12, 2017) (defining “arms trafficking” as “gunrunning,” which entails smuggling firearms and ammunition); *Arms Dealer*, COLLINSDICTIONARY.COM, <http://www.collinsdictionary.com/dictionary/english/arms-dealer> (last visited Apr. 12, 2017) (“[A] person or business that sells weapons and other military equipment.”).

66. See Lynnley Browning, *Delaware Laws, Helpful to Arms Trafficker, to Be Scrutinized*, N.Y. TIMES (Nov. 4, 2009), <http://www.nytimes.com/2009/11/05/business/05tax.html>. Viktor Bout, who was referred to as the “Merchant of Death” by a Senate committee, had been federally indicted for conspiracy to kill American citizens, obtain and utilize anti-aircraft missiles, and supply terrorists with materials needed to carry out terrorist attacks. *Id.*

67. See Hicken & Ellis, *supra* note 12 (showing a series of creative crimes involving shell corporations, including the creative scheme of a Peruvian drug trafficking ring, ran by the Sanchez-Paredes family, which used an intricate shell company network in Florida and gold mines in Peru to conceal illegal cocaine proceeds).

68. See Noah Rayman, *Mexico's Feared Narcos: A Brief History of the Zetas Drug Cartel*, TIME (July 16, 2013), <http://world.time.com/2013/07/16/mexicos-feared-narcos-a-brief-history-of-the-zetas-drug-cartel/>; see also Ildefonso Ortiz, *Warning Graphic: 9 Reasons to Fear Mexican Cartels More than Isis*, BREITBART (Jan. 12, 2016), <http://www.breitbart.com/texas/2016/01/12/9-reasons-to-fear-mexican-cartels-more-than-isis/>.

The Zetas drug cartel, led by Miguel Angel Trevino Morales, is one of several drug cartels responsible for the export of billions of dollars worth of illicit drugs to the United States. See Rayman, *supra*. Mexican drug cartels are said to be responsible for the drug epidemic in the United States. Ortiz, *supra*.

69. See Hicken & Ellis, *supra* note 12. Jose Trevino Morales, the brother of two Los Zetas leaders, one of whom dismembered his victims while they were alive, owned an Oklahoma horse ranch, which he claimed to be a successful business of buying and selling racehorses. *Id.*

Another small glimpse of how criminals use shell corporations to conceal their crimes is illustrated in a \$7 million, three-state prostitution and money laundering ring involving human trafficking victims and over nineteen responsible parties.⁷⁰ Somad Enterprises, Inc., created several shell corporations to disguise operational activities.⁷¹ At the conclusion of a sixteen-month criminal investigation, Somad Enterprises, Inc., and the nineteen people found to be involved in the corporate scheme, were charged with enterprise corruption, money laundering, falsifying business records, narcotics sales, and prostitution.⁷²

B. ENABLING THE GAME OF HIDE-AND-GO-SEEK

The current laws⁷³ in effect are evidently insufficient to deter criminals from abusing the privileges of shell corporations.⁷⁴ After setting

Instead, Mr. Morales was transferring illegal drug money under the guise of horse sales. *Id.* The cartel's leaders' names were nowhere to be found as a result of the corporations they used being completely secretive. *See id.* Investigators ultimately discovered that Mr. Morales had sent over \$22 million in drug money to Mexico. *Id.* In 2013, Mr. Morales was convicted of money laundering, and was subsequently sentenced to 20 years in prison. *Id.*

70. *See* Peter Rudegeair, *Human Trafficking Victims Freed in U.S. Prostitution Bust*, REUTERS (Nov. 20, 2012, 4:03 PM), <http://www.reuters.com/article/us-usa-crime-prostitution-idUSBRE8AJ1FB20121120>; *After 16-Month Investigation, N.Y. Officials Take down Alleged Prostitution Operation*, CBS N.Y. (Nov. 20, 2012, 8:11 PM), <http://newyork.cbslocal.com/2012/11/20/ny-officials-take-down-alleged-prostitution-operation-after-16-month-investigation/> [hereinafter *Officials Take down Prostitution Operation*]. Somad Enterprises, Inc., is an advertising agency with offices in New Jersey, New York, and Pennsylvania that created classified ads for a total of five escort services. Rudegeair, *supra*. The advertisements for escort services were created and placed on cable access television, in newspapers like the Village Voice, and on websites like Backpage.com and Craigslist. *Id.* Somad Enterprises and the five escort services, which specialized in Chinese and Korean women, generated over \$7 million in a period of two and one half years. *Officials Take down Prostitution Operation, supra*.

71. *See* Rudegeair, *supra* note 71 (stating that Somad Enterprises and five escort services created a network of shell corporations with false information in order to process disguised payments for drugs and sex as charges for antiques, acupuncture, and party planning).

72. *See* Rudegeair, *supra* note 71; *Officials Take down Prostitution Operation, supra* note 71. Nineteen people and Somad Enterprises, Inc., were charged in a 180-count indictment, each facing up to twenty-five years in prison. Rudegeair, *supra* note 71. Three prostitution clients were also charged. *Id.* The operation consisted of a manager, drivers, bookers, and prostitutes. *Officials Take down Prostitution Operation, supra* note 71. The bookers involved in the operation would answer phone calls and make appointments for potential clients to meet with prostitutes. *Id.* The prostitution managers were also found to have offered cocaine to clients in addition to sex, which made this operation a multi-crime scheme. *See* Rudegeair, *supra* note 71.

73. *See* discussion *supra* Part II, Section A (outlining the current laws that are designed to prevent money laundering and other financial crimes, as well the proposed legislation to end incorporation secrecy).

74. *See* Jonathan Stempel, *TD Bank to Pay \$52.5 Million in U.S. settlements over Ponzi*

up a shell corporation under one of the many secretive options available,⁷⁵ the owners of these companies will set up a bank account for these entities.⁷⁶ The Bank Secrecy Act is meant to closely monitor illegal and suspicious activities as they relate to money laundering and financial crimes, but the fact alone that so many crimes have been perpetuated through the use of shell corporations shows that the enforcement of these laws are relaxed at best.⁷⁷ The vast majority of banks and financial institutions that are supposed to follow the guidelines laid out by the laws often ignore them and look the other way.⁷⁸ Under the current legislation, the investigative efforts of law enforcement agencies to uncover illegal uses of shell corporations often lead to a dead end, and the criminals seeking to incorporate in the United States are not oblivious to this blatant

Scheme, CHI. TRIB. (Sept. 23, 2013), http://articles.chicagotribune.com/2013-09-23/business/sns-rt-us-tdbank-settlement-ponzi-20130923_1_scott-rothstein-frank-spinosa-rebecca-acevedo. Toronto-Dominion Bank (“TD Bank”) was ordered to pay \$52.5 million to settle charges for violating the Bank Secrecy Act. *See id.* TD Bank failed to adequately conduct Suspicious Activity Reports (SARs) in accounts linked to a Ponzi scheme by Florida attorney Scott Rothstein. *Id.*

75. *See supra* notes 52–53 and accompanying text (stating that individuals can create a shell corporation in a private manner such as online or over the phone).

76. *See* Komisar, *supra* note 65; Gil Silberman, Comment to *Can You Open a Bank Account with a Delaware Shell Corporation Without Using Your Real Name on the Account?*, QUORA (Sept. 8, 2016), <https://www.quora.com/Can-you-open-a-bank-account-with-a-Delaware-shell-corporation-without-using-your-real-name-on-the-account>. After creating the shell corporation, one or more bank accounts can be opened under the corporation’s name. Komisar, *supra* note 65. A beneficial owner that wants to stay in the shadows of the corporation can have a trustee or lawyer open the bank account(s) for the shell corporation. *See* Silberman, *supra*.

77. Richard D. Horn & Shelby J. Kelley, *The Bank Secrecy Act: Are There Still Secrets in Banking*, 1 PRIVACY & DATA SECURITY L. J. 781, 784, 793 (2006), https://www.bracewellgiuliani.com/assets/dir_docs/news_publication/7985d084-c411-44bd-ab4b-4ef681e97b78_pdfupload.pdf. One of the largest state-chartered banks in Florida permitted more than \$50 million of suspected drug money to be laundered through its accounts from July of 1997 to April 2004. *See id.* at 793. The bank agreed to forfeit \$10 million to the United States government to avoid prosecution. *Id.*

78. Komisar, *supra* note 65; Tucker Ronzetti, *When Bankers Look the Other Way*, AM. B. ASS’N (May/June 2005), <http://www.americanbar.org/content/dam/aba/publications/blt/2005/05/bankers-look-other-way-200505.authcheckdam.pdf>. According to United States guidelines, banks are required to verify beneficial ownership, identity, and information about high-risk customers, such as “certain trusts, corporate entities [and] shell entities.” Komisar, *supra* note 65 (internal quotation marks omitted). However, American banks often ignore these guidelines and accept “passport photos of a shell corporation’s straw-man nominees” without requiring any further information. *Id.* For instance, a Ponzi scheme ran by wealthy South American, Eric Bartoli, was found to have been aided by a bank, which approved various suspicious wire funds. Ronzetti, *supra*. One of Mr. Bartoli’s bankers even went as far as attending a solicitation trip to Latin America. *Id.* No bank involved in the scheme ever filed a Suspicious Activity Report (SAR) as required by law. *Id.*

fact.⁷⁹

Criminals and mobsters looking to conceal their identity via a United States shell company create complicated corporate networks which translate to an intricate maze for law enforcement officers until the true beneficial owner's identity is discovered.⁸⁰ Law firms involved in incorporation services and incorporation firms are of little to no help in investigative efforts as they often do not deal with the potential beneficial owners personally, and instead assign their own staff members as nominees for the shell companies.⁸¹ When probed to determine who really owns these shell companies, the law firms and incorporation firms can simply say that they do not know the identities of the owners of these companies, given that they have most likely dealt with their clients over the phone or strictly over the Internet.⁸²

To make matters worse, the incorporation agencies and law firms are often left untouched by authorities even when a fraudster is caught and prosecuted in a shell corporation scheme.⁸³ The agencies and firms

79. See Mike LaSusa, *US Shell Companies Aid Crime Groups in Latin America and Beyond*, INSIGHT CRIME (Aug. 4, 2016), <http://www.insightcrime.org/news-analysis/us-shell-companies-aid-crime-groups-in-latin-america-and-beyond>. “An investigation . . . [compared] certain [United States] states to the Cayman Islands[,] a well-known money laundering center[,] and reported that a Nevada-based shell company [was utilized] to hide money embezzled as part of [a] corruption scheme involving Brazil’s state oil company Petrobras.” *Id.* “Mexican criminal organizations have laundered billions of dollars through the [United States] financial system . . .” *Id.* Drug trafficking groups have also taken advantage of lenient monitoring by large financial institutions, such as the Hong Kong and Shanghai Banking Corporation (HSBC) and Wachovia. *Id.*

80. See Komisar, *supra* note 65 (stating that a GAO report showed that investigators could not identify the party responsible for \$800,000.00 in damages due to an environmental oil spill because the suspect had created a complex corporate network using various companies); Hubbs, *supra* note 56 (stating that with a small amount of money and time, criminals can set up elaborate webs of shell companies).

81. See *supra* note 59 and accompanying text (stating that a lawyer or distant relative can serve as a nominee for a shell corporation); see also Komisar, *supra* note 65 (stating that lawyers and corporation formation agents list their own staff members as officers and directors of the shell company to muddle any connection to the true beneficial owners).

82. See Komisar, *supra* note 65; Zarroli, *supra* note 52 (stating that firms can set up shell companies without ever dealing in person). Incorporation of a shell company can be done over the Internet or over the phone and it is relatively easy to achieve. Zarroli, *supra* note 52. As a result, company formation agents often have no answers for investigative authorities as to the whereabouts of their clients because the agents mainly deal with their clients virtually. Komisar, *supra* note 65.

83. See Hicken & Ellis, *supra* note 12. Once the criminals behind the shell corporations are caught by law enforcement, the firms and agencies that helped the criminals start the shell corporation in the first place are almost never apprehended. See *id.* The agents are not only responsible for setting up the business entities, but they are also responsible for providing persons looking to incorporate with the necessary tools to successfully remain anonymous even after their

responsible for concealing a beneficial owner's identity will continue to capitalize on the future criminals that seek their services, thereby making the vicious cycle of shell corporation crimes a never ending game.⁸⁴ Additionally, many incorporation agencies and lawyers will incorporate companies even if the beneficial owner's motives seem suspicious.⁸⁵

C. THE MISSING STEP IN IDENTIFYING BENEFICIAL OWNERS RENDERS THE BANK SECRECY ACT INEFFECTIVE

Unfortunately, the aforementioned cases that have been solved and the responsible criminals that have been apprehended are miniscule compared to the amount of cases that remain unsolved.⁸⁶ Law enforcement agencies cannot track down the intricate corporate webs created by criminals.⁸⁷ The Bank Secrecy Act is insufficient to find the true beneficial owner, as the SARs that are required to be filed are subjective, at the banker's own discretion, and often overlooked and ignored.⁸⁸ Even if the

government filings. *Id.* Services provided by these firms include, but are not limited to, providing a false physical addresses for the shell corporations to claim as their own and even appointing nominee directors. *Id.*

84. *See id.* (explaining that due to law enforcement's inability to apprehend the incorporation agencies and law firms, potential criminals continue to incorporate secret shell corporations).

85. *See Thinking of Starting an Anonymous Shell Company? Try the U.S. or Canada*, PUB. INTELLIGENCE (Oct. 22, 2012), <https://publicintelligence.net/global-shell-games/> (discussing a study which found that, unlike the U.S. and Canada, countries that are traditionally considered to be tax havens are more likely to comply with requirements to confirm the identities of their clients and scrutinize suspicious customers that could potentially be linked to terrorist financing).

86. *See* NATHAN PROCTOR & JULIA LADICS, FAIR SHARE EDUC. FUND, ANONYMITY OVERDOSE: TEN CASES THAT CONNECT OPIOID TRAFFICKING AND RELATED MONEY LAUNDERING TO ANONYMOUS SHELL COMPANIES 2 (2016), http://www.fairshareonline.org/sites/default/files/AnonymityOverdose_Aug1_2016.pdf; *see also* *Hearing, supra* note 45, at 2 (discussing generally the problems of shell companies and their nationwide effect); discussion *supra* Part III, Section A (providing examples of United States shell companies established by criminals to finance and hide their illegal activities). Law enforcement lacks access to information about who controls and owns shell corporations because such information is not collected at the time of incorporation. PROCTOR & LADICS, *supra*. As a result, many investigative efforts in anti-money laundering and terrorist financing are at a deficiency. *Hearing, supra* note 45, at 2. Investigators are often unable to link a suspect to a shell company's illegal activity; thus, investigators are unable to make their case, or, in the process of making their case, run out of the necessary time and resources. PROCTOR & LADICS, *supra*. Thus, solved cases involving shell corporations represent a minority. *Id.*

87. *See* discussion *supra* Part III, Section B (describing how shell companies are created to be kept in the shadows and not easily discoverable to members of intelligence agencies or other law enforcement agencies).

88. *See* Horn & Kelley, *supra* note 78, at 790, 791–92 (“The decision to file—or not to file—a [Suspicious Activity Report (SAR)] is principally a subjective decision, and once a

SARs were properly filed, and the report left in the hands of a law enforcement agency, how can authorities properly track down a beneficial owner who never provided any identity at the time of incorporation?⁸⁹

It is almost as if lawmakers skipped a necessary step to track down the illegal use of corporations when drafting the Bank Secrecy Act.⁹⁰ The missing puzzle piece results in a continuous threat to the United States' national security, ongoing white collar and violent crimes, and lengthy and costly investigations for law enforcement agencies.⁹¹ The incentive for maintaining relaxed incorporation laws in many states can be attributed to the incredibly large sums of revenue that states generate as a result of their relaxed incorporation laws.⁹² However, it is important to analyze at exactly what cost the increased revenue comes by analyzing how much money is being attributed to track down drug lords, break up human trafficking rings, and protect the United States from terrorism.⁹³

The Bank Secrecy Act is also useless for United States corporations that decide to open bank accounts in other countries, in which case shell

financial institution files a SAR, it may not disclose to its customer that a SAR has been prepared or filed.”); *supra* note 75 and accompanying text (discussing how TD Bank failed to adequately conduct SARs).

89. See *supra* note 29 and accompanying text (showing that 31 C.F.R. § 1010.312 requires that banks implement a customer identification program, which is difficult to comply with if there is no beneficial ownership information on record); *supra* text accompanying notes 34–35 (noting that Congress has failed to pass legislation that requires the disclosure of beneficial ownership information); *supra* text accompanying note 88 (noting that law enforcement is struggling to track down the beneficial owners of shell companies).

90. See *supra* notes 89–90 and accompanying text (explaining how the Bank Secrecy Act is ineffective without requiring the identification of beneficial owners at the time of incorporation).

91. See discussion *supra* Part III, Section B (discussing how intricate webs of shell corporations often lead to investigative dead ends).

92. See Steve Reilly, *Dozens of Firms Creating Foreign-Based Shell Companies in Two U.S. States*, USA TODAY (May 26, 2016, 11:49 AM), <http://www.usatoday.com/story/news/2016/05/26/dozens-firms-creating-foreign-based-shell-companies-two-us-states/84222480/>. In Delaware, famously known for its relaxed incorporation laws, revenue from the state's Division of Corporations was \$928 million in 2014, of which 90% came from the taxes imposed for registering companies. *Id.* In 2014, the Nevada Secretary of State earned \$138 million from commercial recordings, including new business filings. *Id.* Additionally, during the 2013–2014 fiscal year, the Wyoming Secretary of State earned \$31 million in revenue from its business division, which included corporation-filing fees. *Id.*

93. See Baradaran et al. *supra* note 49, at 481; Jeanne Sahadi, *The Cost of Fighting Terrorism*, CNN MONEY (Nov. 16, 2015, 6:29 PM), <http://money.cnn.com/2015/11/16/news/economy/cost-of-fighting-terrorism/>. Since September 11, 2001, the United States has spent over \$1.2 trillion to combat terrorism. Baradaran et al., *supra* note 49. Currently, it is estimated that the United States spends over \$100 billion on counter-terrorism efforts yearly. Sahadi, *supra*.

corporations have absolutely no means of ever being discovered.⁹⁴ However, opening bank accounts for an anonymous shell corporation is likely to become a difficult feat as many countries around the world have established incorporation transparency laws.⁹⁵ As a result, the United States has become one of the most popular “offshore destinations” for criminals around the world looking to conceal their identity.⁹⁶

D. THE ITLEAA: A GOOD STARTING POINT, BUT LOOPHOLES STILL REMAIN

At best, the ITLEAA is a rough draft of the legislation needed to put an end to the use of shell corporations for illicit purposes.⁹⁷ However, the proposed legislation fails to take into account the legitimate needs of shell corporations.⁹⁸ Although the current proposal of the ITLEAA gives states the option of restricting beneficial ownership information or making beneficial ownership information a matter of public record, it does not state the means by which it will keep the information private.⁹⁹ Additionally, by giving states the discretion to make such information a matter of public record, legitimate shell corporation functions may still be at risk.¹⁰⁰ The

94. See Silverstein, *supra* note 54 (showing that an individual can easily create several subsidiaries in an offshore jurisdiction, and, similarly, a fraudster can open a foreign bank account to make the shell companies untraceable by the IRS or law enforcement).

95. See Incorporation Transparency and Law Enforcement Assistance Act, H.R. 4450, 114th Cong. § 2(10) (2016) (LexisNexis) (“In contrast to practices in the United States, all [twenty-eight] countries in the European Union are required [by law] to have formation agents identify the beneficial owners of the corporations . . .”).

96. See Swanson, *supra* note 63 (stating that critics of the offshore industry believe that “the [United States] is now becoming one of the world’s largest ‘offshore’ financial destinations.”); see also Peter Cotorceanu, *Why America Loves Being the World’s No. 1 Tax Haven*, POLITICO MAG. (Apr. 8, 2016) <http://www.politico.com/magazine/story/2016/04/panama-papers-america-tax-haven-213800> (stating that, contrary to popular belief, Panama, the British Virgin Islands, and Switzerland are not the best places to hide assets; it is the United States, and it has been the United States for years).

97. See *supra* notes 39–41 and accompanying text (discussing the provisions of the proposed ITLEAA).

98. See Lehmborg, *supra* note 13 (stating that the privacy of shell corporations is advantageous for legitimate uses, such as corporate mergers, joint ventures, and partnership payments).

99. See *supra* notes 39–41 and accompanying text (discussing the provisions of ITLEAA, one of which allows states to restrict public access to beneficial information, but none of which include the means by which beneficial information will be kept private).

100. See *supra* note 41 and accompanying text (stating that the proposed section 5333(d)(5)(A)–(B) under section 3(a)(1) of the ITLEAA gives states the free exercise of discretion of maintaining beneficial ownership private or public); see also Lehmborg, *supra* note 13 (noting such discretion is inconsiderate of the legitimate uses of a valid shell corporation).

ITLEAA also contains loopholes that would still allow illicit shell corporations to remain secretive.¹⁰¹ As evidenced in the case of the Los Zetas Mexican drug cartel, criminals using shell corporations are not afraid to get creative, and a loophole, such as not being required to disclose the identity of a company's beneficial owner, will be easily detectable to interested parties.¹⁰²

IV. SOLUTION

A. MIDDLE-GROUND BETWEEN THE NEED FOR LEGITIMATE INCORPORATION SECRECY AND THE STRIKING OF COMPLETE INCORPORATION SECRECY

The complexities of legitimate business structures call for maintaining the privacy of beneficial owners of companies, and it is a natural reflex of business organizations,¹⁰³ certain states,¹⁰⁴ and even corporate lawyers¹⁰⁵ to oppose legislation that strips them of this privacy. Opponents of legislation that wipes out corporation secrecy, like the ITLEAA, are reluctant to embrace complete corporation transparency because of the legitimate business functions that are served by corporation secrecy, and have argued that the requirements proposed by the ITLEAA¹⁰⁶ are extremely burdensome and costly.¹⁰⁷ However, it is impossible to put a dollar figure on the human lives being forced into slavery, the integrity of our country

101. See *supra* note 39 and accompanying text (explaining that if a corporation that is subject to the ITLEAA has another company listed as its beneficial owner, the information about that company must be disclosed, but it is not necessary to disclose its beneficial owner(s)).

102. See Hicken and Ellis, *supra* note 12 (discussing how criminals use shell companies as loopholes to stay anonymous and not get caught, but can still profit from the drug trafficking facilitated by the shell companies even after they get caught).

103. See Gottesman, *supra* note 35 (stating that the ITLEAA is opposed by "a coalition of [seventeen] business organizations, including the American Institute of CPAs.>").

104. See Reilly, *supra* note 93 (stating that states like Delaware and Nevada make a large percentage of their revenue from incorporation fees, and have reservations about the passage of legislation which inhibits companies from maintaining secrecy).

105. See Gottesman, *supra* note 35 (stating that the ITLEAA is supported by law enforcement agencies, but it is opposed by, among others, business organizations like the American Institute of CPAs, and many corporate lawyers).

106. See *supra* notes 39–41 and accompanying text (explaining the requirements that the ITLEAA proposes).

107. See Gottesman, *supra* note 35 (stating that the ITLEAA would be extremely burdensome on states and legitimate businesses); Clark Gascoigne & Scott Klinger, *It's Time for the U.S. to Deal with Tax Evaders*, FORTUNE (Feb. 2, 2016), <http://fortune.com/2016/02/02/tax-haven-u-s-tax-reform/> (stating that state Secretaries of State have complained about the additional costs associated with collecting the required information under the ITLEAA).

around the world, and the increasing threat of danger to our national security.¹⁰⁸ Should a dollar figure be needed to put matters into perspective, consider the following: federal funding to fight human trafficking has been estimated at \$1.2 billion to \$1.5 billion dollars a year,¹⁰⁹ tax evasion costs the United States government an estimated \$458 billion a year,¹¹⁰ counter-terrorism efforts cost about \$100 billion a year,¹¹¹ and an estimated \$600 billion to \$1.5 trillion are laundered annually.¹¹²

B. AMENDING THE ITLEAA TO INCLUDE A HIGH-SECURITY DATABASE FOR BENEFICIAL OWNERSHIP INFORMATION

Maintaining information private from the general public and even other corporate entities is understandable, but beneficial owner information needs to be disclosed via a feasible middle-ground accessible *only* to necessary parties.¹¹³ The ITLEAA would likely pass if section 3(a)(1) of the ITLEAA incorporated the required disclosure of every true beneficial owner, at the time of incorporation, under the condition that such information will be kept in a high-security database which will only be accessible to law enforcement agencies and financial institutions under the

108. See discussion *supra* Part III, Section A (showing how arms trafficking has facilitated terrorism, human trafficking victims have become slaves of a cycle of prostitution, and drug lords have hidden proceeds, all as a result of the lenient incorporation laws in the United States).

109. Anne Elizabeth Moore, *Special Report: Money and Lies in Anti-Human Trafficking NGOs*, TRUTHOUT (Jan. 27, 2015, 11:26 AM), <http://www.truth-out.org/news/item/28763-special-report-money-and-lies-in-anti-human-trafficking-ngos> (stating that the federal costs to fight human trafficking are an estimated \$1.2 to 1.5 billion, which does not include the private donations and grants that human trafficking organizations receive every year).

110. Chris Matthews, *Here's How Much Tax Cheats Cost the U.S. Government a Year*, FORTUNE (Apr. 29, 2016), <http://fortune.com/2016/04/29/tax-evasion-cost/> (stating the Internal Revenue Service (IRS) released estimates indicating tax evasion cost the federal government \$458 billion per year from 2008 and 2010, and that the IRS expects to recover only about \$52 billion from the loss); Ashlea Ebeling, *How Much Tax Cheating Is Really Going on?*, FORBES (Sept. 16, 2013, 3:23 PM), <http://www.forbes.com/sites/ashleaebeling/2013/09/16/how-much-tax-cheating-is-really-going-on/#792a8bc0e83e> (stating that the tax gap in 2006 was \$450 billion).

111. See Sahadi, *supra* note 94 (stating that although pin-pointing a precise cost is impossible, counter-terrorism efforts have cost the United States about \$100 billion annually).

112. See Mark Theoharis, *Money Laundering*, CRIM. DEF. LAW., <http://www.criminaldefenselawyer.com/crime-penalties/federal/money-laundering.htm> (last visited Apr. 13, 2017) (stating that, according to the International Monetary Fund, \$600 billion to \$1.5 trillion are estimated to be laundered every year).

113. See Lehmborg, *supra* note 13 (discussing the legitimate uses of shell corporations); *infra* note 115 and accompanying text (providing a more reasonable approach for ending incorporation secrecy by allowing only law enforcement agencies and financial institutions to have access to beneficial owner information).

proposed section 5333(b)(1)(A).¹¹⁴ Such information should be kept strictly private under section 3(a)(1) of the ITLEAA to avoid placing legitimate shell corporations at undue risk.¹¹⁵ By making the database's accessibility strictly limited to law enforcement agencies and financial institutions, the legitimate uses of shell corporations will not be jeopardized.¹¹⁶

Amending the ITLEAA will make the Bank Secrecy Act a more effective tool in cracking down on suspicious activities in the financial system.¹¹⁷ Additionally, by being able to identify exactly who is responsible for the suspicious activity that is being reported, law enforcement agencies can simply take the beneficial owner's information contained in the SAR, and use the database to track the owner down.¹¹⁸ Although maintaining a database that will keep beneficial ownership information private will likely be burdensome and costly, it is important to take into consideration the costs that it will bring down.¹¹⁹ The cost of

114. See *supra* notes 39–41 and accompanying text (showing that the proposed ITLEAA claims to end secrecy in its entirety by requiring states to obtain beneficial owner information at the time of incorporation, but providing states with the discretion to either allow or restrict public access to beneficial owner information). The creation of a high-security database, which will not be part of public records, and which would be accessible to only law enforcement agencies and financial institutions, would be a more reasonable approach. See *supra* notes 39–41 and accompanying text.

115. See discussion *supra* Part III, Section D; *supra* note 41 and accompanying text.

116. See Lehmerberg, *supra* note 13 (noting that there are legitimate uses for shell corporations, which suggests some level of privacy for these complex business structures is needed). But see discussion *supra* Part III, Section A (showing there are serious crimes that are committed and facilitated through the use of shell corporations, which indicates full disclosure of beneficial ownership information to law enforcement agencies and financial institutions is needed).

117. See discussion *supra* Part III, Section C (explaining how the Bank Secrecy Act is not as effective as intended due to the fact that beneficial ownership information is impossible to track because it is never provided in the first place); *supra* note 115 and accompanying text (contending that the proposed high-security database would ensure that such information is provided at the time of incorporation).

118. See *Hearing*, *supra* note 45, at 2 (stating that the FBI has 103 open investigations involving manipulation of the financial market, the majority of which can be attributed to the use of shell corporations). The use of a high-security database will make investigative dead ends like this a thing of the past. See *id.*

119. See Robert Anello, *Financial Institutions: How Much More Will You Have to Spend on Anti-Money Laundering Programs to Avoid Criminal Prosecution?*, FORBES (Oct. 24, 2012, 10:36 AM) <http://www.forbes.com/sites/insider/2012/10/24/financial-institutions-how-much-more-will-you-have-to-spend-on-anti-money-laundering-programs-to-avoid-criminal-prosecution/#579423aa2aff>; see also Jeff Bounds, *How Banks Are Fighting Money Laundering*, DMAGAZINE.COM, <http://www.dmagazine.com/publications/d-ceo/2016/november/how-banks-are-fighting-money-laundering/> (last visited Apr. 13, 2017); *supra* note 45 and accompanying text. Financial institutions are spending over \$100 million annually to comply with the Bank Secrecy Act. Anello, *supra*. However, with the creation of the proposed database, financial

criminal investigations will substantially decrease, as the need for ongoing investigative operations will likely lessen once law enforcement agencies can access the information in the database.¹²⁰

C. CLEARING THE AMBIGUITY: EVERY BENEFICIAL OWNER MUST BE LISTED

Under the ITLEAA, if a corporation has another corporation as its beneficial owner, then that corporation does not need to disclose its beneficial owner.¹²¹ What sounds like a riddle is actually a loophole that a criminal is waiting to exploit.¹²² The ITLEAA needs to be clear and conspicuous that *every* beneficial owner, no matter if it is another corporation, needs to have a legitimate true owner and address listed for that corporation at the time of incorporation.¹²³

V. CONCLUSION

The Panama Papers served as a method to make the general public aware of what has been an ongoing issue globally, and most prominently in the United States.¹²⁴ The United States must cease to be a playground for criminals around the world to hide their illicit activities.¹²⁵ Human traffickers, drug lords, and terrorists should not be handed a cheat sheet by our laws in order to make the funds from their illegal transactions seem legitimate.¹²⁶ Also, business owners should not be granted a hiding space

institutions will spend less time and less money tracking down the source of suspicious activity because determining who really owns a company will be readily available at their fingertips. *See id.* The Financial Crimes Enforcement Network gave banks until May 2018 to submit the names of people who are ultimate owners of certain bank accounts. Bounds, *supra*. However, obtaining the true names of these persons will be futile because there is no database that contains the names of the true beneficial owners, and a large percentage of incorporations are achieved without the disclosure of true beneficial ownership information. *See supra* note 45 and accompanying text.

120. *See* Gascoigne & Klinger, *supra* note 108. Two federal agencies have agreed to donate \$40 million of the funds they have seized from criminals to help states pay the costs associated with gathering additional data. *Id.* Thus, the more criminals that authorities apprehend, the more money that will be available for the states to gather the necessary data. *See id.*

121. *See* Incorporation Transparency and Law Enforcement Assistance Act, H.R. 4450, 114th Cong. § 3 (2016) (LexisNexis).

122. *See* discussion *supra* Part III, Section D (stating that the ITLEAA contains loopholes that allow illicit shell corporations to remain secretive).

123. *See* discussion *supra* Part III, Section D.

124. *See* discussion *supra* Part I.

125. *See* discussion *supra* Part II, Section A; discussion *supra* Part III.

126. *See* discussion *supra* Part II, Section A; discussion *supra* Part III.

to avoid their civic duty of paying taxes.¹²⁷ In a legal system driven by a multitude of balancing tests, the solution proposed in this Comment, which finds the middle-ground between the need for legitimate incorporation secrecy and the striking of complete incorporation secrecy, would benefit our country tenfold in comparison to the burden of an incorporation database.¹²⁸

127. See Matthews, *supra* note 111.

128. See discussion *supra* Part IV, Section A.