

US GOVERNMENT WILL APPEAL NATIONWIDE PRELIMINARY INJUNCTION AGAINST ENFORCEMENT OF THE CORPORATE TRANSPARENCY ACT

On December 5, 2024, the Department of Justice indicated that it will appeal a nationwide preliminary injunction issued by a federal district court in a Texas order that enjoins enforcement of the Corporate Transparency Act (the "CTA"). The preliminary injunction issued in the case of *Texas Top Cop Shop v. Garland* (E.D. Tex.) also enjoins enforcement of regulations adopted by the Financial Crimes Enforcement Network ("FinCEN") that implement the CTA's beneficial ownership information reporting requirements. Notably, the court specifically stayed the January 1, 2025 reporting deadline included in FinCEN's implementing regulations. The court's amended memorandum opinion and order is [available here](#).

The preliminary injunction was granted based on the court's determination that the CTA likely exceeds the Constitution's limits on Congress's power. An overview of the CTA's reporting requirements and exemptions are provided in our prior briefing, [available here](#). Earlier this year, a federal district court in Alabama had determined that the CTA was unconstitutional in *National Small Business United, d/b/a the National Small Business Association, et al. v. Yellen, et al.*, but had issued an injunction that only applies to a specified group of persons. The Department of Justice appealed the ruling in that case to the 11th Circuit, and such appeal is currently pending. As noted in an alert recently issued by FinCEN, [available here](#), several federal district courts have denied similar requests to enjoin the CTA. Consistent with rulings by federal district courts in Virginia and Oregon, the US government continues to take the position that the CTA is constitutional.

What could happen next? The Department of Justice has filed a notice of appeal in the 5th Circuit regarding this federal district court decision. In connection with the appeal, the Department of Justice is likely to argue that the Texas district court's opinion includes flaws similar to those noted by it with respect to the ruling in the Alabama case. It is possible that the Texas district court's nationwide

Key Takeaways

- FinCEN has acknowledged that no companies are currently required to make BOIR filings or would be subject to liability if they fail to do so while the preliminary injunction remains in force.
- FinCEN continues to accept BOIR filings on a voluntary basis while DOJ appeals the preliminary injunction.
- Some companies may consider postponing further efforts to prepare BOIR filings until they have had an opportunity to evaluate the long-term outcome of pending litigation challenging the CTA.
- Other companies may want to take advantage of efficiency benefits related to still going forward with compliance efforts on a voluntary basis.
- Consistent with rulings by federal district courts in Virginia and Oregon, the US government continues to take the position that the CTA is constitutional.
- In the long run, we anticipate that some version of this reporting requirement will likely remain in place.

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preliminary injunction may be stayed, lifted or modified during the appeals process.

What is the practical impact of the preliminary injunction? In its alert regarding the preliminary injunction, FinCEN recognizes that no companies are currently required to file a beneficial ownership information report ("**BOIR**") and are not subject to liability if they fail to do so while the preliminary injunction remains in force. This preliminary injunction, together with FinCEN's alert, provides a very clear basis for defending against a penalty for a BOIR filing that is made later than the originally applicable deadline. In the long run, however, we anticipate, that some version of this reporting requirement (possibly including additional exemptions and other favorable changes) will likely remain in place.

FinCEN has confirmed that its online filing platform continues to accept BOIR filings. Accordingly, companies that had been subject to reporting requirements under the CTA currently have the option of making BOIR filings on a voluntary basis. Companies that have been in the process of preparing to make BOIR filings will want to consider the efficiency benefits of continuing with their compliance efforts. We expect that many will stay the course and make BOIR filings, either before or after January 1, 2025.

Some companies may consider postponing further efforts to prepare BOIR filings, however, until they have had an opportunity to evaluate the long-term outcome of pending litigation challenging the CTA. We expect that this approach may be preferred by companies that:

- are facing concerns or complexities related to evaluating the applicability of an exemption, identifying beneficial owners or obtaining information from beneficial owners; or
- expect that they will be able to easily access the information needed to prepare a BOIR filing if and when any new filing deadlines are announced and become effective.

We will closely track any ongoing developments related to the CTA's constitutionality and enforceability or any changes in the underlying legislation, implementing regulations or FinCEN guidance.

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