

US FEDERAL APPEALS COURT REINSTATES NATIONWIDE INJUNCTION AGAINST ENFORCEMENT OF CORPORATE TRANSPARENCY ACT

On December 26, 2024, the Fifth Circuit Court of Appeals vacated a stay of an injunction against enforcement of the Corporate Transparency Act (the "CTA"). The stay, issued only a few days earlier, had meant that in-scope legal entities that do not qualify for an exemption under the CTA ("reporting companies") were once again required to make beneficial ownership information report ("BOIR") filings with Financial Crimes Enforcement Network ("FinCEN"). Recognizing that some reporting companies would need additional time to comply with a January 1, 2025 deadline, FinCEN announced an extension through January 13, 2025. As a result of the Fifth Circuit's stay no longer being in effect, however, the nationwide preliminary injunction granted in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.) again enjoins enforcement of the CTA and FinCEN's implementing regulations. Our prior briefing regarding this injunction is [available here](#).

Fifth Circuit has scheduled oral arguments for the government's appeal of the injunction to be heard on March 25, 2025. The federal district court granted this preliminary injunction based on its determination that the CTA likely exceeds the US Constitution's limits on federal legislative power. A motions panel of the Fifth Circuit Court of Appeals disagreed with that determination. It granted the government's emergency motion for a stay pending appeal based on a finding that the CTA likely did not exceed constitutional limits. Similar conclusions have been reached by federal district courts in two other cases. The recent reversal reinstating the injunction was meant to "preserve the constitutional status quo" pending appeal. It does not reflect a determination regarding the merits of the appeal.

Key Takeaways

- No companies are currently required to make BOIR filings while the preliminary injunction remains in force.
- FinCEN continues to accept BOIR filings on a voluntary basis.
- 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.

Voluntary filings continue to be accepted by FinCEN. FinCEN's online filing platform continues to accept BOIR filings made on a voluntary basis. Accordingly, companies subjected to reporting requirements under the CTA 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 understand that quite a few of many reporting companies that had already undertaken significant compliance efforts are choosing to file. These companies will want to consider how to effectively monitor the reported information for any changes to facilitate long-term compliance with the CTA's obligation to file updated reports. An overview of the CTA's exceptions and reporting requirements are provided in our prior briefing, [available here](#).

The wait-and-see option remains available. The current injunction provides a basis for defending against a penalty for a BOIR filing that is made later than the originally applicable and revised deadlines. Accordingly, 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. 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.

What could happen next? Although we can't rule out the possibility that DOJ will appeal to the Supreme Court to again lift the preliminary injunction, we think that it is more likely that the injunction will now remain in place through the period in which the 5th Circuit Court of Appeals is considering the merits of the CTA's constitutionality. After the Fifth Circuit merits panel considers the parties' substantive arguments in March 2025, it may decide to affirm, modify or stay the preliminary injunction in this case after oral arguments. If the preliminary injunction is stayed, FinCEN would likely announce a new set of extended compliance dates.

We anticipate that some version of the CTA's reporting requirements (possibly including additional exemptions and other favorable changes) will likely remain in place in the long run. While legal challenges to the CTA remain pending, we will continue to closely track any developments related to the CTA's constitutionality, apparent Congressional interest in granting additional extensions of reporting deadlines, and any related changes to FinCEN's implementing regulations or guidance.

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DEADLINES AFTER APPEALS COURT STAYS
INJUNCTION AGAINST ENFORCEMENT OF
CORPORATE TRANSPARENCY ACT

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