

Further Action From the Fifth Circuit Renders the Corporate Transparency Act Unenforceable Nationwide

Update

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On December 26, 2024, a merits panel for the US Court of Appeals for the Fifth Circuit (Fifth Circuit) vacated the previously reported December 23, 2024 stay, giving new life to the nationwide preliminary injunction of the Corporate Transparency Act (CTA) and its implementing regulations issued by the US District Court for the Eastern District of Texas earlier this month. As a result, enforcement of beneficial ownership information (BOI) reporting requirements is once again paused, pending further court action. While we await further court action, reporting companies are not currently required to file beneficial ownership information with the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) and are not subject to liability if they fail to do so.

Recent Events in *Texas Top Cop Shop, Inc. et al. v. Garland et al.*

If you have been following our reporting, you may be asking if it was not a Fifth Circuit panel that granted a motion resulting in [our report last week](#) that the CTA was enforceable. It was. However, a motions panel took that action, and the focus of this report is action by a Fifth Circuit merits panel. The recent developments in *Texas Top Cop Shop* have provided a crash course in federal court procedure for the uninitiated and a healthy reminder for the initiated. Below we recap those events:

- On December 3, 2024, the US District Court for the Eastern District of Texas granted a preliminary injunction of the CTA. The injunction paused enforcement of the CTA and its implementing regulations.
- On December 23, 2024, in response to the government's appeal of the preliminary injunction, a motions panel of the Fifth Circuit granted an emergency motion for a temporary stay of the injunction pending appeal,

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effectively reinstating the original filing deadlines for reporting companies under the CTA.

- Following the motions-panel stay, FinCEN responded by providing extensions to applicable reporting deadlines, most notably extending the January 1, 2025 deadline applicable for many reporting companies to January 13, 2025.
- On December 26, 2024, a merits panel of the Fifth Circuit vacated the motions-panel stay to “preserve the constitutional status quo while the merits panel considers the parties’ weighty substantive arguments....” As a result, the CTA’s BOI reporting requirements are temporarily paused.

Planning for Compliance

Given these recent developments, it is unclear what the future holds for the CTA. Recall that the above developments all occurred in *Texas Top Cop Shop*, which is only one of many pending constitutional challenges to the CTA. Other pending challenges are at more advanced stages than *Texas Top Cop Shop*, including the previously reported *National Small Business United v. Yellen*, which is pending appeal in the US Court of Appeals for the Eleventh Circuit.

It is important to note that no court (or panel) in *Texas Top Cop Shop* has ruled on the merits of the underlying challenge, i.e., whether the CTA is constitutional. However, the above-reported actions in *Texas Top Cop Shop* and the decisions of courts in other pending challenges show that there are differing opinions on this question. We also appreciate from FinCEN’s recent actions that it is committed to defending the CTA and its enforceability but also sympathetic to the uncertainty reporting companies are experiencing, hence the deadline extensions.

At this time, the Bracewell CTA Task Force recommends that reporting companies not file a BOI report while the CTA is unenforceable and await clarification through further court action. If this roller coaster has been too much excitement for your holiday season and you would rather not follow our updates into 2025, FinCEN is receiving voluntarily BOI reports at this time.

We know many organizations with more complex exemption and beneficial ownership analysis undertook steps prior to December 3, 2024, to identify the necessary information to complete any required BOI reports. If you have a complex ownership or governance structure and have not undertaken those steps, consider doing so, as you may be left with little time to prepare and file BOI reports if the injunction is ultimately stayed.

Finally, we recommend that reporting companies remain mindful of the CTA and its BOI reporting regime in drafting organizational documents or amendments thereto.

The Bracewell CTA Task Force will continue to monitor and report on this case and other related challenges to the enforceability of the CTA.

