

ALERT

Corporate Transparency Act Update: Government Appeals Nationwide Injunction and Announces No Liability While Injunction Remains in Place

December 11, 2024

On Thursday, December 5, 2024, the U.S. Department of Justice filed notice that it plans to appeal the nationwide injunction issued by the U.S. District Court for the Eastern District of Texas in *Texas Top Cop Shop v. Garland, et al.* As we explained in our most recent client alert, the district court held that the Corporate Transparency Act (CTA) was likely unconstitutional, and as such, imposed a nationwide injunction **temporarily** suspending the enforcement of the CTA.[1] Notably, the injunction applies not only to the January 1, 2025 filing deadline for entities established prior to January 1, 2024, but also to other CTA deadlines, such as the 90-day filing deadline for entities that were formed in 2024 and the 30-day filing deadline for entities required to update beneficial ownership information reports (BOIRs) due to changes in beneficial ownership information.

Since then, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced that it "will comply with the order ... for as long as it remains in effect." FinCEN further explained that reporting companies "**will not be subject to liability** if they fail to [file beneficial ownership information reports (BOIRs) with FinCEN] ... **while the preliminary injunction remains in effect.** Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports." [2]

FinCEN's cryptic announcement leaves much uncertainty for reporting companies moving forward, as it fails to clarify what will occur if the injunction is lifted or modified to apply only to the plaintiffs in *Texas*

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Top Cop Shop v. Garland, et al. While the Fifth Circuit has a lengthy appeals process, there is always the possibility that the injunction will be lifted or modified quickly and that reporting companies that halted **all** CTA efforts will scramble to meet those requirements. This is especially true if the CTA deadlines are reinstated, effective immediately, with no grace period for meeting the above deadlines. Furthermore, there is the potential for a circuit split among the U.S. Courts of Appeal, which may trigger possible review by the U.S. Supreme Court and may further extend this process.

Overall, these uncertainties create a dilemma for many reporting companies, which must decide whether to (i) continue with CTA compliance efforts, and potentially incur significant time, efforts, and legal fees in preparation for compliance with a law that may be stricken as unconstitutional; or (ii) risk potential liability for failing to comply with BOIR obligations in a timely manner if the injunction is ultimately lifted or modified, or the CTA is ultimately upheld.

Wiley's White Collar Defense & Government Investigations and Corporate practices have unparalleled capabilities and experience in helping clients navigate increasingly complex regulatory landscapes, including corporate governance and transactional matters, and compliance with federal and state requirements. For more information about the CTA, please contact one of the authors listed on this alert.

[1] *Texas Top Cop Shop, Inc. v. Garland*, C.A. No. 4:24-CV-478, 2024 U.S. Dist. LEXIS 218294 (E.D. Tax. Dec. 3, 2024). The court amended the Order to correct a typographical error on December 5, 2024.

[2] <https://fincen.gov/boi> (emphasis added).