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Client Note: Nationwide Injunction Suspends Corporate Transparency Act BOIR Filing Requirement

By Jack R. Vrablik and David Gorvitz

UPDATE: Injunction remains in place. *On December 23, 2024, on the government’s motion, the Fifth Circuit stayed the District Court injunction on the enforcement of the CTA. Finding the government likely to prevail on the merits as to the law’s constitutionality, the panel effectively reinstated the law, including its impending BOIR filing requirement for all existing covered business entities, while, at the same time, expediting the consideration of the appeal. On December 26, however, a Fifth Circuit clerk’s order, “entered at the direction of the court” (presumably its yet-unannounced merits panel), vacated the three-day old stay, putting the law back on hold. The order stated that now that the merits panel “has the appeal, which [is] expedited,” it has decided “to preserve the constitutional status quo while [it] considers the parties’ weighty substantive arguments.” One can only speculate as to the reason for the about-face. One possibility is different ideological compositions of the motions and merits panel. While more than 2/3 of the judges on the conservative Fifth Circuit are Republican appointees, the three-judge motions panel happened to have a Democratic-appointed majority, which may have been more receptive to the expansive view of federal powers needed to sustain the CTA. In any event, the injunction is now likely to remain in place until at least March 25, 2025, when the case is calendared for oral argument.*

On December 3, 2024, a federal court in Texas, in the case of *Texas Top Cop Shop, Inc. v. Garland*,¹ entered a national preliminary injunction blocking enforcement of the [Corporate Transparency Act \(CTA\)](#), holding it to be “likely unconstitutional.” In particular, the court held that entities that would otherwise be required to file Beneficial Ownership Information Reports (BOIRs) with FinCEN, the U.S. Treasury’s financial crimes unit, by January 1, 2025, “need not comply” with this deadline. The government has appealed, although it has not, as yet, sought immediate dissolution of the injunction.

The *Top Cop Shop* decision closely follows the reasoning of *NSBU v. Yellen*,² a March Alabama federal court decision [which we have covered extensively](#). As in that case, the court found the



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CTA to exceed Congress’s powers, such as the power to tax, regulate commerce and foreign affairs, and enact of laws “necessary and proper” for the effective exercise of its other powers. Critically, unlike the *NSBU* decision, the *Top Cop Shop* injunction is not just limited to the parties to the case and applies to all entities subject to the CTA nationwide. On the other hand, this injunction is not permanent, as in *NSBU*, but preliminary and set to remain in place only for the duration of the case. That said, its entry signals that the Court will “probably” enjoin the law permanently in the end.

After the *Top Cop Shop* ruling, FinCEN posted an alert on its CTA page with following summary:

In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

In view of the December 3 court ruling and the subsequent FinCEN announcement, business entities and beneficial owners subject to the CTA are **currently** not required to submit BOIRs and will not be penalized for not filing them while the order is in place. As indicated, however, the ruling is under appeal. The outcome of the appeal is uncertain. Notably, other federal courts have declined to enjoin the CTA.³ The position of the incoming administration on the litigation is presently unknown. While the appeal process could take well over a year, the government may still apply and obtain an order lifting the injunction while the appeal is pending, potentially even in the near future.

Given that this is a developing situation, owners and responsible parties at businesses and other entities covered by the CTA should be ready to submit BOIRs to comply with the CTA in the event the filing requirement is reinstated. However, in light of the privacy and other concerns that we have previously outlined, they may be well advised to put off actually submitting the reports until further notice. Specifically, the best approach for owners may be to continue to gather the necessary information, complete outstanding BOIRs, and save them for potential filing at a later date.

Please contact us with any questions or if you would like to discuss your particular situation.



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¹ --- F.Supp.3d ---, No. 4:24-cv-478 (E.D. Tex.), Dkt. 30, 33.

² 721 F. Supp. 3d 1260, 1271 (N.D. Ala. 2024).

³See *Cnty. Ass'ns Inst. v. Yellen*, No. 1:24-Cv.-1597, 2024 WL 4571412 (E. D. Va. Oct. 24, 2024); *Firestone v. Yellen*, No. 3:24-Cv.-1034-SI, 2024 WL 4250192, (D. Or. Sept. 20, 2024); *Small Business Association of Michigan et al. v. Yellen et al.*, No. 1:24-Cv.-314 (W.D. Mich.); *Boyle v. Yellen*, No. 2:24-Cv.-00081 (D.Me.).

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