

Supreme Court Stays Fifth Circuit CTA Injunction, But Clarity Remains Elusive

by Mark R. High, Jon D. Cohen, and Daniel A. Cotter

On Jan. 23, 2025, the United States Supreme Court reinstated a stay on the Fifth Circuit Court of Appeals' Dec. 26, 2024, decision, which had upheld a lower court's nationwide injunction blocking enforcement of the Corporate Transparency Act (CTA). *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653 (U.S. S. Ct. Jan. 23, 2024). This is the latest chapter in a saga full of twists and turns over the last six weeks, with no clear end in sight.

As background, on Dec. 3, 2024, a federal district court in the Eastern District of Texas issued an order granting a nationwide preliminary injunction against enforcement of the CTA. *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-00478 (E.D. Tex. Dec. 3, 2024). The injunction enjoined enforcement of the Act, and, specifically, stayed all deadlines to comply with the CTA's reporting requirements.

Skipping over a few interim steps, on Dec. 23, 2024, the Fifth Circuit Court of Appeals issued a temporary stay of the district court's order pending a decision in the ongoing appeal. Then, almost overnight, a separate panel of the appellate court issued the Dec. 26 order reinstating the injunction, once again putting enforcement of the Act on hold. *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024).

The Department of Justice, acting on behalf of the Department of the Treasury, quickly appealed to the Supreme Court. The court acted swiftly, reversing the Dec. 26 order and reimposing the stay of the injunction pending the Fifth Circuit's decision on the appeal.

In simple terms, the Supreme Court's action seemed to clear the way for FinCEN to enforce compliance with the Act once again, and FinCEN had previously indicated it was prepared to establish another deadline for CTA filings.

However, nothing is ever that straightforward in CTA-Land. While the *Texas Top Cop Shop* case was unfolding, another District Court in Texas was addressing a separate challenge to the CTA. On Jan. 7, 2025, it issued its own order, staying the Act's effective date and effectively imposing another nationwide injunction against enforcement. *Smith v. U.S. Dept. of the Treasury*, Case No. 6:24-cv-00336 (E.D. Tex. Jan. 7, 2025). So, while the Supreme Court appeared to revive the Act in *Texas Top Cop Shop*, it didn't have the *Smith* case before it, meaning the *Smith* injunction remains in place—at least for now.

FinCEN recognized this anomaly in an alert posted to the FinCEN BOI website on Jan. 24, 2025, stating, "As a separate nationwide order issued by a different federal judge in Texas (*Smith v. U.S. Department of the Treasury*) still remains in place, reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court's action in *Texas Top Cop Shop*."

So, what to do now? It seems reasonable to continue delaying any CTA filing efforts for the time being. FinCEN remains open to accepting voluntary filings, but since FinCEN has made no apparent effort to appeal the *Smith* decision, it will remain the governing ruling for the foreseeable future (to the extent anything is foreseeable here), and there is no great incentive to pursue filings in the near term. The same is true for initial filings of newly formed entities and updates to previously filed BOI reports. If the government seeks some emergency relief in *Smith*, it would be prudent at that time to resume preparations in case relief is granted and filing deadlines (which could be short) suddenly reappear. Reporting Companies may wish to simply move forward with the filing and put the CTA in their rear-view mirrors, and they are certainly free to make that choice.

A new wild card has been added to the deck, of course, with a new Administration taking control of FinCEN on Jan. 20, 2025. We have not seen any indication as to whether it will let FinCEN pursue its current course to retain the Act or move in a different direction. Legislative action always remains a possibility, although that would probably lag the current litigation.

We will continue to monitor this ongoing saga and the half-a-dozen or so similar cases still being pursued around the country. We remain available to assist our clients in discussing these events and determining how best to move forward.

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