Alerts

UPDATE: SCOTUS Stayed a CTA Injunction Under the "Texas Top Cop Shop" Action, BUT the CTA is Still NOT Back in Effect

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Hinshaw Alert

Despite this decision, the Financial Crimes Enforcement Network (FinCEN) is still enjoined from enforcing the Corporate Transparency Act (CTA) and its reporting obligations.

In the latest twist on the back-and-forth CTA battle, on January 23, 2025, the Supreme Court of the United States (SCOTUS) once again stayed (i.e., suspended the effect of) the nationwide preliminary injunction against enforcement of the CTA initially imposed by a Texas federal district court on December 3, 2024, in the case of *Texas Top Cop Shop, Inc. et al. v. Garland* (the "***Top Cop Case***"). With the release of this decision, it initially appeared that the CTA may once again be back in effect. However, that is not the case.

For clarity, this SCOTUS decision only temporarily stays the nationwide injunction created by the Top Cop Case pending the conclusion of FinCEN's current appeal of the court's decision in that case (and disposition of any related petition for writ of certiorari).

That appeal is sitting with the U.S. Court of Appeals for the Fifth Circuit, which already granted FinCEN's request for an expedited appeal. The initial briefs in that appeal are currently due in February, and oral arguments are scheduled for March 25, 2025. **More importantly, this SCOTUS decision relates only to the injunction created under the Top Cop Case and does not lift or prevent any other injunctions related to the CTA.**

While FinCEN has been busy working to appeal the Top Cop Case decision, on January 7, 2025, a different federal judge in Texas issued a separate injunction against the enforcement of the CTA in the case of *Samantha Smith and Robert Means vs. U.S. Department of Treasury* (No. 6:24-CV-336 - E.D. Texas 1/7/2025; the "***Smith Case***").

It should also be noted that the judge who issued the injunction in the Smith Case emphasized that it was based on different facts and arguments from the Top Cop Case. In particular, citing 5 U.S. Code Sec. 705 (relief pending review), which provides, in pertinent part, that a reviewing court "*may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings*."

Attorneys

Anthony J. Zeoli

Service Areas

Business & Commercial Transactions

Corporate Transparency Act Compliance

Given that this SCOTUS decision relates only to the injunction created under the Top Cop Case, it does not affect the injunction created under the Smith Case. **As a result, nothing has effectively changed, and companies are not currently required to comply with the CTA or its reporting obligations.** FinCEN has confirmed this by posing the following on its CTA portal:

> *On January 23, 2025, the Supreme Court granted the government's motion to stay a nationwide injunction issued by a federal judge in Texas (Texas Top Cop Shop, Inc. v. McHenry—formerly, Texas Top Cop Shop v. Garland). 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. Reporting companies also are not subject to liability if they fail to file this information while the Smith order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.*

FinCEN will almost certainly appeal the injunction created by the Smith Case, just as it did with the Top Cop Case. Moreover, given Justice Gorsuch's comments in this SCOTUS decision suggesting district courts do not have the power to issue nationwide injunctions, it would be expected that if the Smith Case appeal makes its way to SCOTUS, that injunction would similarly be stayed—regardless of the court's underlying reasons for issuing it. However, until then, all we can do is watch and wait.

In the interim, as we noted in our report on the preliminary injunction, the CTA provides significant penalties for noncompliance (a fine of $591 per day and up to two years in prison). Moreover, if the CTA is reinstated, there is no telling how long companies will have to comply with the reporting obligations, which could leave many scrambling to meet any newly created deadlines.

For these reasons, we continue to recommend that those companies subject to the CTA reporting requirements strongly consider *voluntarily* making their required filings as soon as possible or at least be fully prepared to make such filings should the CTA reporting obligation be reinstated.

Entities impacted by the CTA should continue to monitor this case closely and seek professional advice to navigate these evolving legal developments. We will also continue to monitor this and other cases adjudicating the constitutionality of the CTA closely. Please contact us if you have any questions.