

CLIENT ALERT

## Corporate Transparency Act Updates: SCOTUS Pauses One Preliminary Injunction and FinCEN Confirms BOI Reporting Is On Hold (For Now)

JANUARY 24, 2025

In December 2024, we covered a series of judicial actions that affected the enforcement status of the Corporate Transparency Act (CTA) and its beneficial ownership information reporting rule (BOI Reporting Rule). Just about a month shy of the January 1, 2025 reporting deadline for pre-2024 reporting companies, U.S. District Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas and two panels of the U.S. Court of Appeals for the Fifth Circuit (the Fifth Circuit) issued orders leading to a tug-of-war over the legality of the CTA/BOI Reporting Rule – first, a nationwide preliminary injunction issued by Judge Mazzant (Mazzant Preliminary Injunction) in *Texas Top Cop Shop, Inc. v. McHenry* (formerly *Texas Top Cop Shop, Inc. v. Garland*), then a stay order issued by the Fifth Circuit that effectively put the Mazzant Preliminary Injunction on ice. Then just three days after that, the Fifth Circuit issued another order vacating its previous stay order.

On January 23, 2025, the Supreme Court of the United States (SCOTUS), acting on an emergency application filed on December 31, 2024, by the U.S. Government, stayed the Mazzant Preliminary Injunction pending resolution of (i) the appeal of the *Texas Top Cop Shop* case that is presently before the Fifth Circuit and (ii) a petition for a writ of certiorari (Certiorari), if any, to SCOTUS (SCOTUS Stay Order). Put another way, SCOTUS has said that the Mazzant Preliminary Injunction has no effect until all appeals are exhausted.

While the Fifth Circuit and SCOTUS reviews of the Mazzant Preliminary Injunction in *Texas Top Cop Shop* were taking place, on January 7, 2025, U.S. District Judge Jeremy Kernodle, in another lawsuit (also filed in the Eastern District of Texas) challenging the legality of the CTA – *Smith v. U.S. Department of the Treasury* – issued a preliminary injunction that (i) enjoins FinCEN from enforcing the CTA as to the two plaintiffs in *Smith* and (ii) stays the effective date of the BOI Reporting Rule (Kernodle Injunction/Stay), apparently on a national basis. On January 24, 2025, FinCEN, in a statement on its website, confirmed that because

“a separate nationwide order [i.e., the Kernodle Injunction/Stay] 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 [SCOTUS]’s action in *Texas Top Cop Shop*. Reporting companies also are **not subject to liability** if they fail to file this information **while the [Kernodle Injunction/Stay] remains in force.**”

### WHAT NOW?

FinCEN’s statement reiterated its position that reporting companies may continue to voluntarily file BOI reports. But FinCEN was clear that there is no liability for not doing so while the Kernodle Injunction/Stay remains in effect.

Because of how fluid the CTA/BOI Reporting Rule landscape currently is, we anticipate additional developments in the months ahead. There is an upcoming brief deadline (February 28, 2025) and oral argument date (March 25, 2025) set by the Fifth Circuit in the appeal of the *Texas Top Cop Shop* case. That could result in the Fifth Circuit ruling on the merits as early as April or May 2025 (or later, of course), which in turn could result, depending on the outcome, in the filing of a Certiorari petition to SCOTUS after that. Looking ahead, if SCOTUS grants Certiorari in *Texas Top Cop Shop*, it is possible that a decision in that case – and final judicial resolution of the current version of the CTA and BOI Reporting Rule – might not happen until Spring or Summer 2026.

Stay tuned, and please reach out to any of the [Winston CTA Task Force attorneys](#) with any questions.

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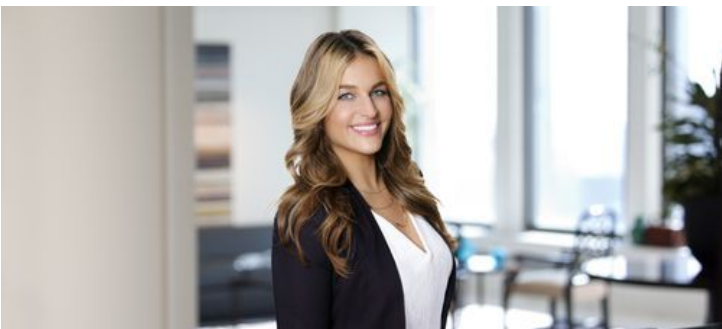
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