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FinCEN Responds to Temporary Injunction Halting Enforcement of the Corporate Transparency Act

by Erin Bryan, Nathan Honson, Joseph Lynyak, and Matthew Dickerson

This eUpdate was initially published on December 6, 2024, and has since been updated to reflect recent developments on the topic.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction against 31 U.S.C. § 5336 and the enforcement of the beneficial ownership information reporting rule (the "**BOI Rule**") (31 C.F.R. 1010.38) of the Corporate Transparency Act ("**CTA**"). *Texas Top Cop Shop v Garland et al., No. 4:24-cv-00478, December 3, 2024 (E.D. Tex.)*. The order also stayed the January 1, 2025 compliance deadline under § 705 of the Administrative Procedure Act. Under the order:

"Neither may be enforced, and reporting companies need not comply with the CTA's January 1, 2025, BOI reporting deadline pending further order of the Court."

The immediate effect of the decision is to temporarily pause the requirement that reporting companies that existed on January 1, 2024 file beneficial ownership reports with the Financial Crimes Enforcement Network ("**FinCEN**") by January 1, 2025. Unlike the injunction in the case of *National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)*, which applied only to the plaintiffs, the Texas Top Cop Shop injunction applies to all reporting companies nationwide, whether they were a party to the litigation or not.

It is not clear whether the injunction relieves newly created entities from filing beneficial ownership reports. However, FinCEN has stated that it views the injunction as applying to all reporting companies irrespective of their date of formation. As expected, on December 5, 2024, the Department of Justice appealed the order to the Fifth Circuit Court of Appeals. Shortly thereafter, FinCEN confirmed that reporting companies are not currently required to file beneficial ownership information and are not subject to liability if they fail to do so while the order remains in force. It is not clear how quickly the Fifth Circuit could rule on the appeal and whether it will lift the District Court's stay. Reporting

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- Erin Bryan
- Nathan Honson
- Joseph Lynyak
- Matthew Dickerson

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companies should be prepared to file their BOI reports on short notice if the appeal is ultimately successful.

We will continue to monitor developments.