

Insights

CORPORATE TRANSPARENCY ACT UPDATE: FINCEN ASKS SCOTUS TO INTERVENE

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As previously reported, on December 26, 2024, the Fifth Circuit first lifted—and then reinstated—a preliminary nationwide injunction staying the Corporate Transparency Act’s (“CTA”) reporting requirements pending appeal. Most recently, the Fifth Circuit held that covered entities are **not** required to submit beneficial ownership information (“BOI”) reports to FinCEN—though they may do so on a voluntary basis. The Fifth Circuit expedited the appeal and scheduled oral argument in the case for March 25, 2025.

Apparently dissatisfied with that status quo, on New Year’s Eve, FinCEN filed an application to stay the nationwide injunction in the Supreme Court of the United States. *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653. The Court requested a response to the application by 4 p.m. (EST) on January 10, 2025.

In its application, FinCEN asked the Supreme Court to stay the injunction pending resolution of the appeal to the Fifth Circuit or, if FinCEN loses in the Fifth Circuit, pending resolution in the Supreme Court. In the alternative, FinCEN requested that the Court narrow the injunction in scope such that it would apply only to the parties in the case. If either of these requests is granted by the Supreme Court, covered entities may be required to file their BOI reports on short notice.

Separately, FinCEN also asked the Court to treat its application as a petition for writ of certiorari before judgment, which is a request for the Court to agree to hear the case before a decision from the Fifth Circuit. It is unusual, although not unprecedented, for the Supreme Court to grant certiorari before judgment.

FinCEN’s application may be granted or denied by a single Justice (in this case, that would be Justice Alito, who is the Circuit Justice for issues that arise from the Fifth Circuit) or it may be referred by Justice Alito to the full Court. But whether considered by a single Justice or the full Court, the possible outcomes are the same. FinCEN’s request for a stay could be denied, in which case the injunction would remain in effect (and the CTA reporting deadlines would continue to be stayed). Alternatively, FinCEN’s request could be granted (in whole or in part). The Court could lift the injunction as to all covered entities (presumably triggering nationwide compliance obligations) or it could narrow the injunction to apply only to the parties to the case (in which case, covered

entities who are not part of the litigation would no longer be covered by the injunction and would have to comply with CTA filing requirements).

Given continued uncertainty regarding when—and whether—the CTA filing deadline will be reinstated, reporting companies should carefully consider their options, and should be prepared to file on short notice if the preliminary injunction is stayed, narrowed, or vacated.

To navigate these rules and deadlines for reporting requirements and recent updates, [contact BCLP's CTA team](#) with any questions. Please note that BCLP does not provide advice as to the application of these laws to an entity unless we have been expressly engaged to provide such advice.

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