

GIBSON DUNN



Anti-Money Laundering Update

January 24, 2025

CTA Update: Supreme Court Ruling Means That Beneficial Ownership Information Reporting May Soon Resume

*The U.S. Supreme Court has stayed a recent district court order that preliminarily enjoined enforcement of the Corporate Transparency Act (CTA). While a separate district court ruling staying the effectiveness of the CTA's beneficial ownership interest reporting rule (Reporting Rule) nationwide remains in effect, that stay could soon be lifted to conform with the Supreme Court's decision. **This means that the Reporting Rule could soon become enforceable once again while the Fifth Circuit and other courts evaluate its constitutionality. In the meantime, FinCEN has acknowledged that the Reporting Rule currently remains unenforceable notwithstanding the Supreme Court's decision.***

Entities that believe they may be subject to the CTA and its associated Reporting Rule should closely monitor these issues, and consult with their CTA advisors as necessary, to understand their obligations now that the Reporting Rule may soon become effective again. Entities may be required to file Beneficial Ownership Information reports on short notice.

For additional background information, please refer to our Client Alerts issued on December 5, December 9, December 16, December 24, and December 27, 2024.

On December 3, Judge Mazzant of the U.S. District Court for the Eastern District of Texas ruled that the CTA was likely unconstitutional.^[1] The court issued a nationwide preliminary injunction

against enforcement of the CTA and postponed the effective date of the Reporting Rule that set filing deadlines for compliance. The government appealed and briefly obtained a stay of the district court's order from a Fifth Circuit motions panel, but the Fifth Circuit merits panel that will hear the government's appeal in March reinstated the district court's order, making the CTA unenforceable once again.

The government then filed an emergency application in the Supreme Court asking the Court to stay the district court's order in full—in other words, to put on hold the district court's nationwide preliminary injunction against CTA enforcement and its postponement of the Reporting Rule's effective date.^[2]

On January 23, 2025, the Supreme Court granted the government's application in full, staying the district court's order "pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of [any] petition for a writ of certiorari."^[3] The Court's decision was 8–1. While the Court did not provide a written opinion, Justice Gorsuch filed a concurrence noting that he would take the case now to decide the propriety of "universal" injunctions. Justice Jackson dissented, noting her view that the government had not shown that the Court's intervention was necessary at this time, without expressing any view on the merits.

What the Latest Order Means for Entities Subject to the CTA

Now that the Supreme Court has stayed the district court's order, the CTA will be enforceable while the case is appealed to the Fifth Circuit (and, potentially, to the Supreme Court). The government's reply brief in the Supreme Court indicated that if the Supreme Court stayed the district court's order, FinCEN "would again briefly extend the [reporting] deadline in light of the injunction's having been in effect," similar to how FinCEN responded after the Fifth Circuit's motions panel briefly reinstated the CTA in December.^[4] Companies should monitor FinCEN's announcements closely for additional guidance now that the Supreme Court has granted the stay.

Notably, the Supreme Court's order operates to stay only the order issued by the Northern District of Texas in the *Texas Top Cop Shop* case, No. 4:24-cv-478 (E.D. Tex.).^[5] All other lower court orders remain in effect, for now. Importantly, on January 7, a *different* district court in Texas enjoined enforcement of the CTA as applied to the plaintiffs in that case and stayed the effective date of the Reporting Rule universally.^[6] The order in that case, *Smith v. U.S. Department of the Treasury*, **remains in effect**. So for now, the Reporting Rule technically remains stayed. But given the Supreme Court's recent order staying the *Top Cop Shop* order, the government could obtain a similar stay of the district court's order in *Smith* if the government requests that relief (or if the district court stays its order unilaterally) in light of the Supreme Court's decision. On January 24, FinCEN posted an update recognizing that a "separate nationwide order issued by a different federal judge" in the *Smith* case remains in effect, and noting that "[r]eporting companies also are not subject to liability if they fail to file this information while the *Smith* order remains in force."^[7]

In the meantime, it remains to be seen whether the government will take a new position on the CTA under the new Trump Administration. Although the Department of Justice typically defends

the constitutionality of statutes enacted by Congress, it is possible the new Administration will change positions and decline to enforce the CTA or take further steps to defend it.

Entities that believe they may be subject to the CTA and its associated Reporting Rule should closely monitor these issues, and consult with their CTA advisors as necessary, to understand their obligations now that the Reporting Rule may soon become effective again. Entities may be required to file Beneficial Ownership Information reports on short notice.

[1] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 30 (E.D. Tex. Dec. 3, 2024).

[2] Application, *Henry v. Top Cop Shop, Inc.*, No. 24A653 (U.S. Supreme Court Dec. 31, 2024).

[3] Order, *Henry v. Top Cop Shop, Inc.*, No. 24A653 (U.S. Supreme Court Jan. 23, 2025).

[4] Reply at 15, *Henry v. Top Cop Shop, Inc.*, No. 24A653 (U.S. Supreme Court Jan. 13, 2025).

[5] See Order, *Henry v. Top Cop Shop, Inc.*, *supra* (“The December 5, 2024 amended order of the United States District Court for the Eastern District of Texas, case No. 4:24-cv-478, is stayed”).

[6] *Smith v. U.S. Dep’t of Treasury*, No. 6:24-cv-00336-JDK, Dkt. 30 at 33–34 (E.D. Tex. Jan. 7, 2025).

[7] <https://fincen.gov/boi> (Jan. 24, 2025).

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Gibson Dunn has deep experience with issues relating to the Bank Secrecy Act, the Corporate Transparency Act, other AML and sanctions laws and regulations, and challenges to Congressional statutes and administrative regulations.

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