

# Another Twist in the Corporate Transparency Act Saga: FinCEN Announces That Ownership Information Reporting Is Not Currently Required

## Corporate News: A Legal Update

By Vic Peterson on January 27, 2025

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced in an alert posted on its website on January 24, 2025, that reporting companies under the Corporate Transparency Act (CTA) are not currently required to file beneficial ownership information (BOI) reports, although they are permitted to do so voluntarily.

FinCEN announced this position one day after the U.S. Supreme Court temporarily stayed a nationwide injunction against enforcement of the CTA and its BOI reporting requirement. In previous twists and turns, the nationwide injunction had been issued by a federal judge in the U.S. District Court for the Eastern District of Texas on December 3, 2024, in *Texas Top Cop Shop, Inc. v. McHenry*. Then, the nationwide injunction had been lifted by a motions panel of the U.S. Court of Appeals for the Fifth Circuit on December 23, 2024, and the next day FinCEN issued extensions of the filing deadline for filing BOI reports. But then, the nationwide injunction was reinstated by a merits panel of the Fifth Circuit on December 27, 2024.

Nonetheless, despite the U.S. Supreme Court's temporary stay of the nationwide injunction on January 23, 2025, FinCEN announced in its alert on January 24, 2025, that the CTA's BOI reporting requirement is still suspended, at least for now, because there is a separate nationwide injunction against the CTA still in place from another case, *Smith v. U.S. Department of the Treasury*, from a different court in the Eastern District of Texas.

The U.S. Supreme Court did not mention this separate case in its order in *Texas Top Cop Shop, Inc. v. McHenry*, which was unsigned but approved 8 to 1. It is possible that the Department of Justice may appeal, and the Supreme Court may stay the nationwide injunction imposed by the *Smith* case, just as in the *Texas Top Cop Shop* case. However, it is also possible that the Supreme Court may take no

action on the nationwide injunction imposed by the *Smith* case and let stand FinCEN's current position (i.e., that filing beneficial ownership information reports is currently permitted but not required). In addition, it is possible that the Department of Justice may reverse course and decide to enforce the CTA less aggressively and/or that Congress could even repeal the CTA. However, we have not yet observed reports of discussions of any of these possibilities.

Given this fluid and uncertain situation, what should reporting companies do now? Everyone should continue to monitor for future developments. If BOI reporting is easy and would not reveal sensitive information (keep in mind that BOI reports are available only to the government and financial institutions with customer due diligence requirements), then there may be no harm in filing now, if you have not filed already. Otherwise, gather required information and be prepared to file on short notice, if required. In any case, consult with your Amundsen Davis advisor, as this matter is complex and fast-changing and penalties for non-compliance are severe.

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