

Publications

January 2, 2025 • Updates

UPDATE: Government Appeals Corporate Transparency Act Injunction to the U.S. Supreme Court

On December 31, 2024, the U.S. Solicitor General filed an *Application for a Stay of the Injunction issued by the United States District Court for the Eastern District of Texas* (Application) in the case of Texas Top Cop Shop, et al. v. Garland, et al., appealing the initial nationwide injunction issued by the District Court against enforcement of the Corporate Transparency Act (CTA) and the ensuing conflicting appellate rulings by and within the U.S. Fifth Circuit Court of Appeals' "motions panel" and "merits panel."

The Application requested that the preliminary injunction of the CTA (including its stay of the compliance deadlines) be stayed in full pending the disposition of the government's appeal to the U.S. Fifth Circuit Court of Appeals. Alternatively, the Application requested, at a minimum, that the injunction should be stayed except to the extent it protects the plaintiffs and the members of the National Federation of Independent Business (an organization suing on behalf of its members), as identified in the original complaint. Further, if the U.S. Fifth Circuit Court of Appeals affirms the injunction, the Application requests that the government's requested stay continue through the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in the U.S. Supreme Court on the matter. Finally, the Solicitor General presented the proposition that the U.S. Supreme Court may wish to treat the present Application as a *petition for a writ of certiorari before judgment* as to the question of whether the District Court lacked authority to enter a universal injunction, grant the government's petition, and set the remedial question for argument before the U.S. Supreme Court this term.

The Application's filing has no immediate impact on the existing nationwide injunction against government enforcement of the CTA, and, at present, all filings of beneficial ownership information reports (BOIRs) with FinCEN under the CTA remain **voluntary**. The U.S. Supreme Court is not obliged to answer the Application, however, it may determine to take on some or all of the issues presented in the Application on a discretionary basis and on the court's timeline.

Background

By way of background, on December 3, 2024, the U.S. District Court for the Eastern District of Texas ruled in favor of the plaintiffs and against the government in the case of

Related People

- Philip G. Feigen
- Bert Stemmler
- Mark A. Olthoff

Texas Top Cop Shop, et al. v. Garland, et al., issuing a nationwide preliminary injunction against the government's enforcement of the CTA while leaving the CTA itself in place. On December 5, 2024, the government filed a *Notice of Appeal* with the District Court, notifying that court of an impending appeal of the ruling to the Fifth Circuit Court of Appeals. On December 11, 2024, the government filed with the District Court a *Motion to Stay Preliminary Injunction Pending Appeal*, which request was denied by the District Court on December 17, 2024.

The government filed an *Emergency Motion for Stay Pending Appeal* with the Fifth Circuit Court of Appeals on December 13, 2024. After briefings by the parties and receipt of more than 20 amicus curiae briefs, a motions panel of the Fifth Circuit Court of Appeals, on December 23, 2024, found the government met its burden to show that the nationwide injunction was not appropriate and granted the government's requested stay of the injunction in its entirety, pending resolution of the case through the normal court process. In response, FinCEN publicly announced an effective 12-day extension to many of the compliance deadlines under the CTA, including extending the filing deadline for reporting companies that were in existence before 2024 from the then existing January 1, 2025, deadline to a January 13, 2025, deadline. On December 24, 2024, the Plaintiffs filed an *Emergency Motion to Expedite Ruling – Decision of Petition Requested by January 6, 2025*, requesting review *en banc* of the Motions Panel ruling by the Fifth Circuit Court of Appeals on an expedited basis.

On December 26, 2024, a merits panel of the Fifth Circuit Court of Appeals vacated "that part of the motions-panel order granting the Government's motion to stay the district court's preliminary injunction enjoining enforcement of the CTA and the Reporting Rule." The effect of this ruling was to reverse the prior ruling of the Motions Panel, thus reinstating the nationwide injunction imposed by the District Court, pending further action by the Fifth Circuit Court of Appeals. The Merits Panel's stated rationale for this ruling was "to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments." In the words of the Solicitor General in the Application, this ruling by the Merits Panel was "without any analysis of the government's likelihood of success on the merits or the relative harms to the parties." The Merits Panel further issued a briefing schedule under which briefing before the Fifth Circuit Court of Appeals is to be completed by February 28, 2025, and it scheduled oral argument for March 25, 2025. After the merits panel reinstated the District Court's injunction, the Plaintiff's withdrew their petition for rehearing as moot.

Petition to the U.S. Supreme Court

It is in response to the foregoing that the Solicitor General filed with the U.S. Supreme Court on December 31, 2024, the government's *Application for a Stay of the Injunction Issued by the United States District Court for the Eastern District of Texas*. In this Application, the government requested a stay of the preliminary injunction, pending the consideration and disposition of the government's appeal to the Fifth Circuit and, if the court of appeals affirms in whole or in part, then pending the timely filing and disposition of a *petition for a writ of certiorari* and any further proceedings in the U.S. Supreme Court. The Solicitor General further argued that, at a minimum, the injunction should be stayed except possibly to the extent it protects the plaintiffs identified in the complaint. Finally, the Solicitor General suggested that the court may wish to treat the Application as a *petition for a writ of certiorari* before judgment on the question of whether the District Court lacked authority to enter a universal (nationwide) injunction, grant the petition, and set the remedial question for argument before the U.S. Supreme Court this term.

In support of the foregoing, the government advanced the following arguments:

1. “[The U.S. Supreme Court] has traditionally applied a strong presumption in favor of allowing challenged Acts of Congress to remain in force pending final review in [the U.S. Supreme Court].”
2. “If the Fifth Circuit affirms the district court’s injunction, [the U.S. Supreme Court] would likely grant *certiorari* and reverse.”
 1. “The Commerce Clause empowers Congress to adopt the CTA’s reporting requirements.”
 2. “The Necessary and Proper Clause empowers Congress to adopt the CTA’s reporting requirements.”
 3. “Respondents have not satisfied the high standard for bringing a facial challenge.”
3. “The equities support a stay.”
4. “At a minimum, [the U.S. Supreme Court] should grant a partial stay of the district court’s vastly overbroad injunction.”
5. “[The U.S. Supreme Court] may wish to grant *certiorari* before judgment to consider the lawfulness of universal relief.”

The Solicitor General, in the Application, noted that “the district court issued its universal [nationwide] injunction after two other district courts had held that the [CTA] is likely constitutional and had denied preliminary-injunction motions raising substantially similar constitutional claims.” (See *Community Ass’ns Institute v. Yellen* (E.D. Va. Oct. 24, 2024) and *Firestone v. Yellen* (D. Or. Sept. 20, 2024)). “A third district court denied a preliminary-injunction motion because the plaintiffs had failed to show irreparable harm.” (See *Small Business Ass’n v. Yellen* (W.D. Mich. Apr. 29, 2024)). Further, “[a]lthough one district court held that the [CTA] violates the Constitution, it issued an injunction that covers only the plaintiffs in that case.” (See *NSBU v. Yellen* (N.D. Ala. 2024), and, on appeal, the Eleventh Circuit expedited briefing and argument in *NSBU v. United States Department of the Treasury* (Apr. 22, 2024)).

Referencing *NSBU v. Yellen*, the Solicitor General further argued that, at a minimum, the Supreme Court should narrow the District Court’s vastly overbroad injunction to only the plaintiffs in the case. The Solicitor General went further to state that “[b]ecause the lower courts need guidance on the propriety of universal [nationwide] injunctions, this Court may additionally wish to treat this application as a petition for a writ of *certiorari* before judgment presenting the question whether the District Court erred in entering preliminary relief on a universal basis.”

What’s Next?

FinCEN’s current stated position, matching its position when the CTA injunction was initially instituted, is that BOIR filings may continue to be made on a voluntary basis. Similarly, once the injunction was previously lifted, FinCEN extended filing deadlines by an amount of time comparable to the length of time the injunction was in effect. We believe that if a stay of the injunction is granted by the U.S. Supreme Court, FinCEN MAY extend CTA filing deadlines by an amount of time comparable to the length of time that the injunction was reinstated. The U.S. Supreme Court is not obligated to address the issues presented in the Application, however, it may do so at the court’s discretion and on the court’s timeline.

We encourage all reporting companies to either proceed with their initial BOIR filings on a voluntary basis or to monitor additional developments from the Courts as guidance continues to change.

