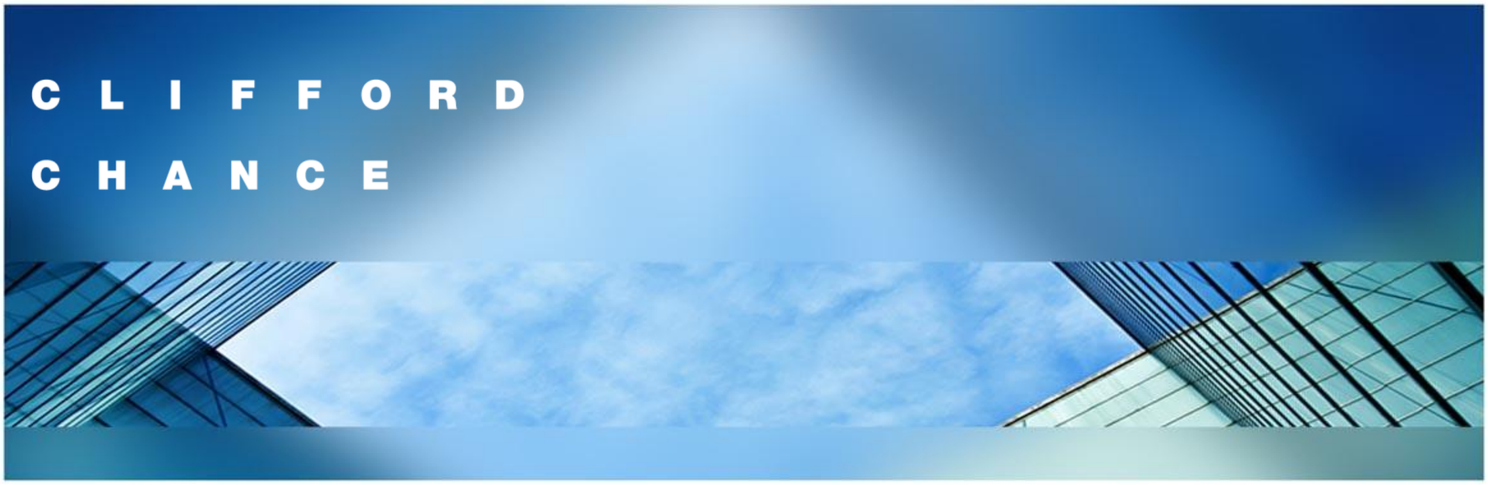

U.S. GOVERNMENT APPEALS ANOTHER INJUNCTION AGAINST ENFORCEMENT OF THE CORPORATE TRANSPARENCY ACT -- FINCEN INDICATES POSSIBLE CHANGES

We continue to track the latest developments with respect to challenges to the Corporate Transparency Act ("**CTA**") and a continuing nationwide injunction against its enforcement that has recently been appealed by Department of Justice (“**DOJ**”).

Although the Supreme Court has already stayed one nationwide injunction, an appeals process with respect to a second, separate nationwide injunction is now underway. In its motion papers, the U.S. Government indicates that the Financial Crimes Enforcement Network (“**FinCEN**”) will re-assess application of the CTA with respect to "low-risk" businesses.

Key Takeaways

- No companies are currently required to make filings while the *Smith* injunction remains in force.
- We await the outcome of DOJ's appeal; FinCEN may extend the deadline 30 days and modify requirements if the injunction is stayed.
- FinCEN continues to accept voluntary BOIR filings.
- Some companies might delay BOIR preparation until assessing the pending litigation outcome and potential further FinCEN relief.
- Other companies might pursue compliance now for efficiency benefits, especially if a 30-day deadline post-injunction is challenging.
- The U.S. government continues to argue that the CTA is constitutional.
- Some form of this reporting requirement will likely remain.

On January 23, 2025, the U.S. Supreme Court granted FinCEN's motion to stay a nationwide preliminary injunction with respect to the CTA issued by a federal judge in the case of *Texas Top Cop Shop, Inc. v. Bondi—formerly, Texas Top Cop Shop v. Garland/McHenry*.[1] However, at that time, a separate nationwide injunction order issued by a different federal judge in Texas (*Smith v. U.S. Department of the Treasury*) remained in place.[2]

On February 5, 2025, the U.S. Department of the Treasury (“**Treasury**”) filed a notice of appeal in the *Smith* case. At the same time, it filed a motion to stay the nationwide injunction in the District Court, arguing that the CTA should remain in effect while the appeal is pending to ensure that the government can continue its efforts to combat financial crimes and protect national security. We are now waiting for the District Court to rule on this motion.

FinCEN continues to state that beneficial ownership information report ("**BOIR**") filings under the CTA may be made on a voluntary basis during the period in which an injunction remains in place. In the government's motion to stay the *Smith* court's injunction, the government noted an intent by FinCEN to extend the

[1] *Texas Top Cop Shop, Inc., et al. v. Bondi, et al.,* No. 4:24-cv-00478 (E.D. Tex.).
[2] *See Smith v. U.S. Department of the Treasury*, No. 6:24-cv-00336-JDK, 2025 U.S. Dist. LEXIS 2321 (E.D. Tex. Jan. 7, 2025).

compliance deadline for thirty days should the court grant DOJ's request. According to the filing, FinCEN intends during the extension period to further "assess whether it is appropriate to modify the CTA's reporting requirements to alleviate the burden on low-risk entities while prioritizing enforcement to address the most significant risks to US national security." On its website, FinCEN further notes that it will be considering "options to modify further deadlines or reporting requirements for lower-risk entities, including many US small businesses."

Our prior briefings regarding the injunctions are available here and here.

Meanwhile, in Texas Top Cop Shop, oral arguments are scheduled to be heard on April 1, 2025. On February 7, 2025, the government submitted its Brief for Appellants in favor of its appeal to the 5th Circuit. While the government's brief does not change the present status of "voluntary" CTA filings, it further demonstrates the government's intent to return to a mandatory deadline for reporting entities if the *Smith* injunction is ultimately lifted.

Voluntary filings continue to be accepted by FinCEN. As mentioned, FinCEN's online filing platform continues to accept BOIR filings made on a voluntary basis. Accordingly, companies subject to reporting requirements under the CTA still have the option of making BOIR filings. Companies that have been in the process of preparing to make BOIR filings will want to consider the efficiency benefits of continuing with their compliance efforts.

We understand that many reporting companies which had already undertaken significant compliance efforts are choosing to file. These companies will want to consider how to effectively monitor the reported information for any changes to facilitate long-term compliance with the CTA's obligation to file updated reports. An overview of the CTA's exceptions and reporting requirements is provided in our prior briefing, available here.

The wait-and-see option remains available. The *Smith* injunction continues to provide a basis for defending against a penalty for a BOIR filing that is made later than the originally applicable and revised deadlines. Accordingly, some companies may consider postponing further efforts to prepare BOIR filings until they have had an opportunity to evaluate the long-term outcome of pending litigation challenging the CTA. We expect that this approach may be preferred by companies that:

- are facing concerns or complexities related to evaluating the applicability of an exemption, identifying beneficial owners or obtaining information from beneficial owners; or
- expect that they will be able to easily access the information needed to prepare a BOIR filing if and when any new filing deadlines are announced and become effective.

What could happen next? Given the recent Supreme Court ruling as well as FinCEN's stated intent to consider changes to its application of the CTA with respect to "low-risk" businesses, the *Smith* court may grant the DOJ request to stay its preliminary injunction. FinCEN's intent in such a circumstance to grant only a 30-day extension may not be considered long enough by several industry actors and those Congressional representatives who have expressed previous concern about the deadlines.

We anticipate that some version of the CTA's reporting requirements (possibly including additional exemptions and other favorable changes) will likely remain in place in the long run. While legal challenges to the CTA remain pending, we will continue to closely track any developments related to the CTA's constitutionality, apparent Congressional interest in granting additional extensions of reporting deadlines, and any related changes to FinCEN's implementing regulations or guidance.

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