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BOIRR UPDATE
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Yet another reversal of course, with no immediate impact.

As expected, the government sought relief from the United States Supreme Court, in the *Texas Top Cop* litigation. This week, the Supreme Court granted the government's request to reverse the appellate court's reversal of its own granting of a stay of the injunction issued by the district court. What does this mean? The Supreme Court has over-turned the injunction and allowed Treasury to begin enforcement of the BOIRR filing requirements.

But wait, there's more.

In the case of *Smith v. U.S. Department of the Treasury*, bearing number 6:24-cv-336 on the docket of the United States District Court for the Eastern District of Texas, a different judge of the same federal district court issued a new nationwide injunction on different grounds. The new injunction, issued January 7, 2025, was based on the court's opinion that the statute far exceeded Congress's power to regulate interstate commerce because it imposed reporting obligations on every state-chartered company on the (according to the court, false) assumption that every company substantially engages in interstate commerce. As a result, Congress was regulating purely local activity that has no interstate commerce component. The court then entered its nationwide injunction.

Treasury has acknowledged this turn of events, and, as of its latest Alert, dated January 24, 2025, repeats its earlier advice that,

[i]n light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

Treasury added the following explanation:

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On January 23, 2025, the Supreme Court granted the government's motion to stay a nationwide injunction issued by a federal judge in Texas (*Texas Top Cop Shop, Inc. v. McHenry*—formerly, *Texas Top Cop Shop v. Garland*). As a separate nationwide order issued by a different federal judge in Texas (*Smith v. U.S. Department of the Treasury*) still remains in place, reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court's action in Texas Top Cop Shop. Reporting companies also are not subject to liability if they fail to file this information while the Smith order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

What does this mean for you?

AS OF NOW, this means reporting companies still do not need to file any BOIRR reports. Because this issue continues to fly back and forth, the need-to-file / no-need-to-file status can change quickly. Be sure to check back regularly for any new updates.

A copy of the Supreme Court's order vacating its previous order may be found on our website at <https://ezkovichlaw.com/boi> under update **G. BOIRR Update, January 30, 2025 - Supreme Court Cancels Injunction, but BOIRR Filings Are Still Not Required (for now)**. The Supreme Court's order may be found at document G.1, entitled **Supreme Court Order Cancelling Nationwide Injunction January 24, 2025**. A copy of an excerpt of Treasury's latest Alert stating that no BOIRR filings are required may be found at document G.2, entitled **Treasury Continues Suspension of BOIRR Filing Deadlines For Now**. A copy of the new injunction may be found at document G.3, entitled **Smith v. US Treasury - Injunction issued January 7 2025**.