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What the Last-Minute Reinstatement of the Corporate Transparency Act Means for Businesses

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On December 23, 2024, the United States Court of Appeals for the Fifth Circuit terminated the nationwide preliminary injunction originally issued by the United States District Court for the Eastern District of Texas, effectively reinstating the Corporate Transparency Act (**CTA**) and its reporting requirements only eight days before the original reporting deadline for millions of businesses created (or registered to conduct business) in the United States.¹ In response to the nationwide preliminary injunction being overturned, the Financial Crimes Enforcement Network (**FinCEN**), the division of the U.S. Department of the Treasury charged with implementation and enforcement of the CTA, has extended some of the original deadlines, but companies required to report under the CTA (**Reporting Companies**) are only receiving approximately two additional weeks to comply.²

Key Takeaways

- The order of the Fifth Circuit Court of Appeals issued on December 23, 2024, terminates the preliminary injunction previously issued by the United District Court for the Eastern District of Texas on December 3, 2024, effectively reinstating the CTA and enforcement of its reporting requirements nationwide.
- FinCEN responded to the termination of the nationwide preliminary injunction by confirming that reporting companies “are once again required to file beneficial ownership information with FinCEN,” but has provided short extensions to some of the original deadlines as detailed herein.
- Reporting Companies that were created (or registered to conduct business in) the United States prior to January 1, 2024, now have to file their initial beneficial ownership reports (**BOIRs**) by no later than January 13, 2025 (instead of January 1, 2025).

Background of the December 23, 2024 Order

On December 23, 2024, the United States Court of Appeals for the Fifth Circuit (the **Circuit Court**) issued an order in *Texas Top Cop Shop, Inc. v. Garland* that the nationwide preliminary injunction (the **Injunction**) previously issued by the District Court for the Eastern District of Texas (the **Texas District Court**) was terminated, effective immediately.³ The Court’s order was in response to the December 3, 2024 opinion of the Texas

District Court, which previously issued the Injunction on a nationwide basis in a case brought by four small businesses scattered throughout the United States, the Libertarian Party of Mississippi, and the National Federation of Independent Businesses (NFIB), a tax-exempt organization with approximately 300,000 members throughout the United States (collectively, the **Plaintiffs**).⁴ In its decision staying the injunction, the Circuit Court observed that the Texas District Court imposed a nationwide injunction “despite no party requesting it to do and despite every other court to have considered this issue tailoring the relief to the parties before it or denying relief altogether.”⁵ It also expressed skepticism regarding any facial challenge the statute—as opposed to a challenge relating to the circumstances of a particular reporting company—finding that “the CTA at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information” to FinCEN.⁶

While the final determination of the constitutionality of the CTA will continue to work its way through the court system, the Circuit Court noted that “the government has made a strong showing that it is likely to succeed on the merits in defending CTA's constitutionality” under the Commerce Clause of the Constitution.⁷ The Circuit Court also held that the “last minute” Injunction issued by the Texas District Court inflicted an irreparable harm on the enforcement of a statute duly passed on a bipartisan basis by Congress.⁸ When balancing the harm imposed on the Plaintiffs by the CTA and its reporting requirements (which the Circuit Court found to be “minimal”) against the harm imposed on the public's interest in combatting money laundering and terrorist financing activities (two key aims of the CTA's implementation), the Circuit Court found that the latter should prevail and the Injunction should be lifted.⁹ The practical effect of the Fifth Circuit Order is that the CTA, it's implementing regulations, and the enforcement thereof, all of which were on hold from December 3-23, 2024, are immediately reinstated and Reporting Companies are once again required to file their BOIRs by the applicable deadlines noted below.

The FinCEN Extensions

While the Fifth Circuit Order effectively reinstated the January 1, 2025 filing deadline for millions of small businesses that had not yet filed their initial BOIRs, FinCEN responded to the order by extending certain deadlines under the CTA.¹⁰ Noting that “the Department of the Treasury recognizes that reporting companies may need additional time to comply given the period when the preliminary injunction had been in effect, FinCEN updated the applicable CTA filing deadlines, as follows:

| Date of Creation or Registration | Original Due Date for Filing BOIR | Current Due Date for Filing BOIR |
|----------------------------------|-----------------------------------|----------------------------------|
| Before January 1, 2024 | January 1, 2025 | January 13, 2025 |

| | | |
|--------------------------------------------------|--------------------------------------------|---------------------------------------------|
| Between January 1, 2024 and September 3, 2024 | Within 90 days of creation or registration | |
| Between September 4, 2024 and September 24, 2024 | Within 90 days of creation or registration | January 13, 2024 |
| Between September 25, 2024 and December 2, 2024 | | Within 90 days of creation or registration |
| Between December 3, 2024 and December 23, 2024 | | Within 111 days of creation or registration |
| Between December 24, 2024 and December 31, 2024 | | Within 90 days of creation or registration |
| On or after January 1, 2025 | Within 30 days of creation or registration | |

The deadlines for reporting any change in, or correction to, a previously filed BOIR by a Reporting Company continues to be 30 days following the date of the change (or the date on which the Reporting Company becomes aware or has reason to know of the inaccuracy).¹¹ In addition, for those individuals that elect to obtain a FinCEN identifier (a **FinCEN ID**) with FinCEN, the deadline to reporting any change in, or correction to, the required information previously submitted to FinCEN with respect to such FinCEN ID application continues to be 30 days following the date of the change (or the date on which the individual becomes aware or has reason to know of the inaccuracy).¹²

What's Next?

The Fifth Circuit Opinion is just the latest chapter of a period of significant uncertainty with respect to the constitutionality of the CTA and its reporting requirements. While it is definitely noteworthy that the Fifth Circuit Court of

Appeals (traditionally, one of the most conservative-leaning circuit courts) found that the government is likely to succeed in defending the constitutionality of the CTA, the legal questions raised in *Texas Top Cop Shop* have not yet been finally determined and numerous legal challenges against the CTA continue to wind their way through the federal courts. Even with respect to the *Texas Top Cop Shop* case, on December 24, 2024, the plaintiffs have filed an emergency motion for hearing by the Fifth Circuit Court of Appeals *en banc* to try to revive the nationwide preliminary injunction, and it is not clear if such a rehearing will be granted as of the date of this alert or if any further action will occur prior to the statutory deadlines (even as extended by FinCEN).¹³ Moreover, as the Circuit Court noted in its decision on the emergency motion, the imposition of a nationwide injunction of the CTA on the eve of the statutory reporting deadline was an extraordinary remedy to grant under the circumstances. Thus, even if Plaintiffs are successful in obtaining a reimposition of the injunction on rehearing or after further appeal, such injunction may be limited to the parties to that action.

Similarly, while there have separately been legislative efforts in response to the upcoming CTA deadline, those efforts appear unlikely to succeed prior to the upcoming reporting deadline. In Congress, the 1,547-page draft continuing resolution that was initially put forth by Republican Speaker of the House Mike Johnson with Democrat support on December 17, 2024, included a one-sentence amendment to the CTA that would have extended the filing date for *all* Reporting Companies created or registered prior to 2024 to January 1, 2026, only to have the amendment removed (along with over 92% of the proposed continuing resolution draft) when President-Elect Trump, Elon Musk and hardline Republicans turned against the draft bill.¹⁴ This is not to say that, with challenges active in the courts and a new Congress and President coming into power, the calls to extend, amend or repeal the CTA will not be answered in 2025. Still, it is important to consider that the passage of the CTA was a bipartisan effort and the CTA is an important part of the United States' intergovernmental efforts with its allies to combat money laundering and terrorism financing. Indeed, some of the anticipated cabinet members of the incoming administration were amongst the CTA's biggest supporters.¹⁵ Thus, as we noted in our most recent client alert on this topic, the CTA is likely to be a continuing topic of concern for businesses in 2025 and beyond.

¹ *Texas Top Cop Shop Inc. v. Garland*, Case No. 24-40792 (5th Cir. Dec. 23, 2024) (unpublished order) (the “Fifth Circuit Order”).

² See Alert at <https://www.fincen.gov/boi> (the “FinCEN Alert”).

³ See Fifth Circuit Order at 2.

⁴ *Texas Top Cop Shop v. Garland*, Case No. 4:24-CV-478 (E.D. Tex. Dec. 3, 2024) (the “Texas Opinion”).

⁵ *Id.* at 2.

⁶ *Fifth Circuit Order* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 5.

⁹ *Id.* at 6

¹⁰ See FinCEN Alert.

¹¹ 31 C.F.R. § 1010.380(a)(2)-(3).

¹² 31 C.F.R. § 1010

¹³ See Plaintiffs-Appellees' Emergency Petition for Rehearing En Banc, *Texas Top Cop Shop v. Garland*, Case No. 24-40792 (5th Cir., Dec. 24, 2024).

¹⁴ See draft Bill “making further continuing appropriations for fiscal year ending September 30, 2025, and for other purposes,” 118th Congress 2b Session, draft as of December 17, 2024 (5:46 p.m.), at 223 (lines 1-9), which CTA amendment language did not appear in the bill that was finally passed (and trimmed down, at only 118 pages in its final version).

¹⁵ See, e.g., Press Release, “Rubio, Colleagues Urge Treasury to Fully Implement Corporate Transparency Act,” May 10, 2022, <https://www.rubio.senate.gov/es/rubio-colleagues-urge-treasury-to-fully-implement-corporate-transparency-act/>

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