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CTA Whiplash: Fifth Circuit Reinstates Nationwide CTA Injunction

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On December 26th, just three days after the United States Court of Appeals for the Fifth Circuit effectively reinstated reporting obligations under the Corporate Transparency Act (CTA), the Fifth Circuit has now vacated its earlier stay. As a result of the recent order in the *Texas Top Cop Shop* litigation,¹ all of CTA's reporting obligations for companies are once again on hold. The Fifth Circuit also ordered an expedited briefing and argument schedule on the appeal addressing the constitutionality of the CTA. The court's recent decision aims to maintain the "constitutional status quo" while the validity of the CTA is evaluated. As such, the recently revised deadline of January 13, 2025, is STAYED pending final ruling.

As it did in response to the preliminary injunction order issued on December 2, 2024, by the United States District Court for the East District of Texas,² the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued guidance acknowledging that reporting companies were not currently required to submit beneficial ownership information but noting companies could still choose to voluntarily file reports.³ The recent events related to the CTA are dramatic and unexpected. The CTA impacts approximately 32 million businesses and the shifting legal landscape has created significant uncertainty.

Key Takeaways

- The reinstated injunction on the CTA and its reporting rules is applicable nationwide. All CTA enforcement deadlines are once again enjoined and reporting companies are not obligated to file beneficial ownership information reports unless and until the injunction is lifted (but may still make such filings on a voluntary basis).
- Absent further court action, CTA reporting deadlines will likely remain enjoined at least until March 2025 when the Fifth Circuit considers the merits appeal of the district court's preliminary injunction. However, uncertainty remains as the U.S. Government could potentially still challenge the Fifth Circuit's most recent order vacating the emergency stay of the district court's ruling.
- Accordingly, and as discussed in our December 6th Client Alert,⁴ companies should closely monitor legal developments and may find it prudent to continue internal CTA compliance procedures to best position themselves if, or when, CTA enforcement resumes.

Analysis and Observations on Fifth Circuit's Most Recent Ruling

The Fifth Circuit's two-page order reinstating the nationwide preliminary injunction on the CTA and its reporting requirements provided little explanation for the reversal, noting simply that “the merits panel now has the appeal” of the district court's injunction order and the court was vacating the stay “in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments.”⁵ Although difficult to discern from the limited analysis, the ruling seems largely motivated by a concern that the emergency stay previously issued by the Court would result in the reporting companies challenging the CTA being required to file beneficial ownership reports before the merits of the Government's appeal could be fully considered.

The U.S. government could potentially still challenge the Fifth Circuit's most recent ruling and it is unclear at the time of this alert whether it plans to do so. But unless the U.S. Government succeeds in reinstituting the stay on the preliminary injunction (pending appeals), all CTA reporting will be paused until at least March 25, 2025⁶ (and potentially even longer) while the Fifth Circuit considers the parties' arguments on appeal.

The litigation over the nationwide preliminary injunction of the CTA in the *Texas Top Cop Shop* case continues to create significant uncertainty for reporting companies. In the span of less than a week, reporting companies have had to confront a regulatory environment where all CTA enforcement obligations (1) were enjoined less than a month before a key deadline,⁷ (2) were reinstituted with slightly extended deadlines set by FinCEN,⁸ and (3) have now been enjoined again. This uncertainty could continue well into 2025 as the *Texas Top Cop Shop* litigation unfolds and other federal appellate courts, including the Eleventh Circuit Court of Appeals, are also slated to issue their own opinions addressing the constitutionality of the CTA.

The additional delay pushing CTA compliance deadlines well into 2025 as a new Congress and President comes into power also makes it more likely that we may see political, executive or legislative efforts to extend, amend, or even repeal the CTA. Reporting companies should continue to closely monitor ongoing developments in the new year as legislative action and court rulings may impact compliance obligations under the CTA.

¹ *Texas Top Cop Shop v. Garland*, Case No. 24-40792 (5th Cir. Dec. 26, 2024) (unpublished order) (the “Fifth Circuit Order”).

² *Texas Top Cop Shop v. Garland*, Case No. 4:24-CV-478 (E.D. Tex. Dec. 3, 2024) (the “Texas Opinion”).

³ FinCEN Alert: “Alert [December 27, 2024]: Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only,” <https://fincen.gov/boi>.

⁴ See December 5, 2024 Holland & Hart Client Alert, “What Does the Nationwide Preliminary Injunction of the Corporate Transparency Act Mean

for Businesses?." <https://www.hollandhart.com/what-does-the-nationwide-preliminary-injunction-of-the-corporate-transparency-act-mean-for-businesses>.

⁵ Fifth Circuit Order at 2.

⁶ On December 27th, the Court separately entered a briefing schedule on the Government's appeal with the case set to be fully briefed by February 28, 2025, and oral argument scheduled for March 25, 2025.

⁷ See December 5, 2024 Holland & Hart Client Alert, "What Does the Nationwide Preliminary Injunction of the Corporate Transparency Act Mean for Businesses?." <https://www.hollandhart.com/what-does-the-nationwide-preliminary-injunction-of-the-corporate-transparency-act-mean-for-businesses>

⁸ See December 26, 2024, Holland & Hart Client Alert, "What the Last-Minute Reinstatement of the Corporate Transparency Act Means for Businesses." <https://www.hollandhart.com/what-the-last-minute-reinstatement-of-the-corporate-transparency-act-means-for-businesses>.

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