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## Fifth Circuit Reverses CTA Injunction, Deadline Extended

by Mark R. High, Jon D. Cohen, and Richard J. McNitzky

On December 23, 2024, the Fifth Circuit Court of Appeals issued an Order which granted a stay of a lower court's nationwide injunction against enforcement of the Corporate Transparency Act (CTA or the Act). *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 24-40792 (5th Cir. Dec. 23, 2024) (Court Order granting Motion for stay pending appeal filed by Appellants). In plain English, the district court's injunction against enforcing the CTA has been lifted. This comes less than two weeks ahead of the initial filing deadline of January 1, 2025, for entities formed before 2024. Given the last minute nature of the Order, FinCEN bowed to the inevitable and quickly extended the filing deadline to January 13, 2025, in an Alert posted to its BOI website [here](#). This capped a tumultuous month in the CTA world, which also included an on-again/off-again one year extension of the filing deadline that did not survive last week's Congressional budget extension crisis.

As background, on December 3, 2024, a federal district court in the Eastern District of Texas issued an order granting a nationwide preliminary injunction against enforcement of the CTA. *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.). The injunction enjoined enforcement of the Act and the regulations implementing its beneficial ownership information reporting requirements, and, specifically, stayed all deadlines to comply with the CTA's reporting requirements.

The Department of Justice, on behalf of the Department of the Treasury, filed a Motion to Stay Preliminary Injunction Pending Appeal with the district court on December 11, 2024, seeking to lift the injunction. Essentially simultaneously, the government filed a Notice of Appeal and an emergency notice with the Fifth Circuit seeking a stay of the injunction.

The district court denied the government's motion on December 17, 2024, leaving its injunction in place. The appellate court granted the government's motion, however, and issued a temporary stay of the district court's order and injunction pending a decision in the on-going appeal.

In our Client Alert dated December 9, 2024, we speculated about "what would happen if the stay was lifted on, for example, December 23<sup>rd</sup>?" We disclaim any prior knowledge of yesterday's decision, but, with approximately 20 million CTA filings yet to be made, by FinCEN's estimate, we reiterate that it seems unlikely that they all could be filed by January 1<sup>st</sup>. We applaud FinCEN's recognition of that reality by extending that deadline, albeit by less than 2 weeks.

This leaves filers to quickly turn from stand-by mode to full-out sprint at the beginning of a holiday week. Companies which continued to prepare to file during the stay, but did not actually submit the required materials, should now move forward and hope they can get their filings into the system and accepted under the wire. Companies which stepped back from the filing process now have some grace period and should quickly proceed to comply with the Act. Would FinCEN deem all late filers to have intentionally violated the CTA, despite enforcement, and thus the filing requirement itself, having been stayed for 20 days? FinCEN's Scrooge-like response to the Order makes that possibility appear very real.

It is not too late to act, but time is of the essence. We remain available to assist our clients in discussing these events and moving forward.

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