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1

Fifth Circuit Reinstates CTA Injunction, FinCEN Still Accepting Voluntary Filings

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In a surprising reversal, on December 26, 2024, a panel of the Fifth Circuit Court of Appeals issued an Order that vacated (effectively reversing) the same court's order from December 23, 2024, and reinstated 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. December 26, 2024) (Court Order partially vacating Motions Panel Order). Although we had stated in our December 24, 2024 Client Alert that the court's December 23 Order had "capped a tumultuous month" in the CTA world, we had not foreseen that the court would reverse itself and in such short order.

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. Specifically, that order 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. In its December 23 Order, the appellate court granted the government's motion and issued a temporary stay of the district court's order and injunction pending a decision in the ongoing appeal. FinCEN quickly extended the primary filing deadline to January 13, 2025. Almost as quickly, the appellate court issued the December 26 Order, putting enforcement of the Act back on hold.

Unless the government obtains relief from the Supreme Court, nothing further will likely happen prior to the date of oral argument in the Fifth Circuit, presently set for March 25, 2025. Of course, as we have seen, seemingly anything could happen, but we daresay it is unlikely that the December 26 Order will be reversed before then.

So, what to do? It seems reasonable to halt any CTA filing efforts for the time being. FinCEN remains open to accepting voluntary filings, but with the December 26 Order pausing enforcement poised to remain in place past the current January 13, 2025 filing deadline, there is no great incentive to pursue filings in the near term. The same is true for

initial filings of newly formed entities and updates to previously filed BOI reports. If and when the injunction is lifted, FinCEN will need to set a new filing deadline, which would allow Reporting Companies to complete the filing process. If the government seeks some emergency relief, it would be prudent at that time to resume preparations in case relief is granted and filing deadlines (which could be short) suddenly reappear. Of course, Reporting Companies may wish to move forward with the filing and put the CTA in their rear-view mirrors, and they are certainly free to make that choice.

We will continue to monitor this ongoing saga and the half-a-dozen or so similar cases presently being pursued around the country. We remain available to assist our clients in discussing these events and determining how best to move forward.

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