

Insights

TO FILE, OR NOT TO FILE: THE FIFTH CIRCUIT'S EVOLVING TREATMENT OF THE CORPORATE TRANSPARENCY ACT

Dec 31, 2024

The U.S. Court of Appeals for the Fifth Circuit reinstated *and then* subsequently suspended the reporting requirements under the Corporate Transparency Act (the "CTA") over the course of the last week by staying the original preliminary injunction and then vacating that order three days later.

On December 23, 2024, a Fifth Circuit motions panel stayed the preliminary injunction issued by the Eastern District of Texas on December 3, 2024, in *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, restoring the requirement for reporting companies to comply with the CTA and file their Beneficial Ownership Information Reports ("BOI Reports") by January 1, 2025. In response, FinCEN extended the filing deadline to January 13, 2025, for entities in existence prior to January 1, 2024.

Additionally, entities created after September 4, 2024 (that previously had a filing deadline between December 3rd and December 23rd) were given until January 13th to make their filing, and entities formed between December 3rd and December 23rd were granted an extra 21 days to comply.

However, just three days later on December 26, 2024, the Fifth Circuit merits panel vacated the stay and reinstated the nationwide injunction of the CTA. The next day, FinCEN responded to the December 26th order by posting an alert to its website confirming that reporting companies will not be subject to liability for failing to submit beneficial ownership information while the injunction remains in effect and clarifying that reporting companies may continue to submit their BOI Report(s) on a *voluntary* basis.

The nationwide preliminary injunction will remain in place until further notice while the Fifth Circuit considers the government's appeal of the district court's order enjoining enforcement of the CTA.

The Fifth Circuit has issued an expedited briefing and oral argument schedule, as follows:

- Appellants' Brief due February 7, 2025.
- Appellees' Brief due February 21, 2025.
- Appellants' Reply Brief due February 28, 2025.
- Oral Argument scheduled for March 25, 2025.

Given uncertainty regarding when—and whether—the CTA filing deadline will be reinstated, reporting companies should carefully consider their options, and should be prepared to file on short notice if the preliminary injunction is ultimately vacated by the merits panel or on subsequent appeal. At the very least, close attention to additional developments as the merits panel considers the appeal is prudent.

To navigate these rules and deadlines for reporting requirements and recent updates, contact BCLP's CTA team with any questions. Please note that BCLP does not provide advice as to the application of these laws to an entity unless we have been expressly engaged to provide such advice.

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MEET THE TEAM



Barbara A. Smith Tyson

St. Louis

barbara.smith@bclplaw.com

[+1 314 259 2367](tel:+13142592367)



Caitlin M. Hartsell

San Francisco

caitlin.hartsell@bclplaw.com

[+1 415 675 3424](tel:+14156753424)



Emma G. McEnery

St. Louis

emma.mcenery@bclplaw.com

[+1 314 259 2248](tel:+13142592248)



Lauren Beeman

St. Louis

lauren.beeman@bclplaw.com

+1 314 259 2468

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