

28 January 2025 – UPDATE on CTA reporting requirements

The Corporate Transparency Act (CTA) took effect on January 1, 2024. The CTA requires most legal entities to report Beneficial Ownership Information (BOI) to the U.S. Financial Crimes Enforcement Network (FinCEN), including information regarding persons with control over or significant ownership interests in those entities. For entities formed prior to January 1, 2024, the CTA set a deadline for filing BOI reports of December 31, 2024. Numerous parties have filed litigation challenging the CTA's BOI reporting requirements, and these cases have resulted in multiple rulings, some upholding the BOI reporting requirements and others questioning it.

The most significant ruling was a preliminary injunction issued in early December 2024 by a judge in the U.S. District Court for the Eastern District of Texas, which enjoined enforcement of the BOI reporting requirements on a nationwide basis. The injunction was subsequently struck down on December 23, 2024 by a three-judge motions panel of the Fifth Circuit Court of Appeals. On December 26, 2024, however, the merits panel of the Fifth Circuit issued an order reinstating the injunction. In response, the Government applied for a stay of the injunction with the U.S. Supreme Court, which the Court granted on January 23, 2025. This remains the latest turn in what has become an exhausting back-and-forth for business lawyers and their clients.

Heading into December, the most likely opportunity for a reprieve from the CTA's looming compliance deadline appeared to be a November 5th congressional letter to the Secretary of the Treasury and the Director of FinCEN requesting a delay in the CTA's enforcement. In the letter, members of Congress voiced their concerns regarding "the complex nature" of compliance and widespread "lack of awareness" among companies required to comply. However, nearly one month after the letter was issued, and without any word from FinCEN on an extension, the U.S. District Court for the Eastern District of Texas (Sherman Division) surprised the legal community with its nationwide preliminary injunction enjoining CTA enforcement. The injunction issued in *Texas Top Cop Shop v. McHenry* (formerly, *Texas Top Cop Shop v. Garland*) was based on what the court viewed as the Government's inability "to provide the Court with any tenable theory that the CTA falls within Congress's power." This was a welcome turn of events for the many businesses that had not yet filed their BOI reports.

But just three weeks later, in response to the Government's emergency motion for a stay, a three-judge motions panel of the Fifth Circuit lifted the injunction pending appeal. The panel pointed out that no party had even requested a *nationwide* injunction and the other courts that had considered the issue tailored relief to the parties involved or denied relief altogether. Shortly thereafter, FinCEN extended the reporting deadline for entities formed prior to 2024 to January 13, 2025.

On December 26, just three days after the motions panel issued its order, the merits panel of the Fifth Circuit issued its own order vacating the order of the motions panel "in order to preserve the constitutional status quo while the merits panel consider[ed] the parties' weighty substantive arguments." The court then scheduled oral arguments for March 25, 2025, meaning the

injunction would ostensibly remain in place until at least the spring—giving businesses time to recalibrate their CTA protocols.

But FinCEN declined to wait that long. Instead, on New Year's Eve, it applied for a stay of the injunction with the Supreme Court. The application triggered a slew of amicus briefs in opposition to the stay. But in a brief opinion issued on January 23, the Court ultimately sided with the Government.

Until the Court's decision (and for some time after), the consequences of a decision in favor of the Government were unclear. In a vacuum, the stay of the injunction would have been reinstated, causing millions of companies to be in immediate violation of federal law. However, on January 7, 2025, in *Smith v. U.S. Department of Treasury*, a judge in the U.S. District Court for the Eastern District of Texas (this time, the Tyler Division), stayed the CTA's reporting rule. The understanding of many was that the stay would cause enforcement of the CTA to remain suspended in the event of a Supreme Court decision in favor of the Government in *Texas Top Cop Shop*. This understanding was proven correct by an alert issued by FinCEN on the morning of January 24. FinCEN's guidance remains the same as before the Supreme Court's ruling: while reporting companies need not file BOI reports and are not subject to liability for failure to do so while the District Court's order remains in effect, companies may continue to voluntarily file BOI reports.

The fluidity and unpredictability of nationwide court orders on the CTA have made determining how lawyers should best advise their clients quite challenging. But for now, the focus should simply be on remaining up to date on CTA litigation. Firms that advise business clients should already have a designated CTA point person for this purpose. Attorneys should also ensure that clients who have not already filed BOI reports are aware that enforcement is currently suspended, but may resume at any time. Given the significant penalties associated with noncompliance and the uncertainties regarding if and when enforcement may resume, clients should be encouraged to have necessary BOI information assembled.