

Publications

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Nationwide CTA Injunction Under Review by 5th Circuit; Congress May Delay January 1, 2025 Deadline

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction in favor of the plaintiffs in the case of Texas Top Cop Shop, Inc. et al. vs. Garland (U.S. Attorney General). In so ruling, “[t]he Court has determined that the CTA and Reporting Rule are likely unconstitutional for purposes of a preliminary injunction. It has not made an affirmative finding that the CTA and Reporting Rule are contrary to law or that they amount to a violation of the Constitution.” This nationwide injunction applies against enforcement of the CTA and its impending January 1, 2025 and other filing deadlines.

On December 5, 2024, the U.S. Attorney General (representing FinCEN, hereinafter, the “Government”) appealed such ruling to the Fifth Circuit Court of Appeals and, on December 11, 2024, the U.S. Attorney General asked the District Court to stay its preliminary injunction order (a prerequisite to asking for similar relief in the Fifth Circuit Court of Appeals, where the Government’s appeal is currently pending). The plaintiffs in this case responded to the Government’s request on December 16, and the District Court reaffirmed its original ruling on December 17, 2024, effectively moving the appeals process to the Fifth Circuit Court of Appeals.

In both the District Court and the Fifth Circuit Court of Appeals, the Government asserted a stay was warranted because (i) there will be irreparable harm from disruption to the implementation of the CTA, which could not be remediated, and the confusion that will exist among organizations subject to the CTA’s filing requirements, and (ii) failing to stay the injunction would prevent the Government from fulfilling its international efforts to stem terrorist financing and money laundering. In large part reiterating its opposition to the preliminary injunction motion, the Government also contended that it is likely to succeed on the merits of its argument on appeal that the CTA is valid and constitutional, and the balance of harms favors the Government. The Government also urged a stay of the nationwide scope of the injunction and, at a minimum, asked the court to limit the injunction to the named parties in the case. In response, the plaintiffs vehemently disagreed and said there would be even more confusion to the public should a stay be entered, the court’s finding of a likelihood of success on the merits was justified, and the

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equities did not favor a stay. The District Court kept its injunction intact.

In large part mimicking its request for stay in the District Court, the Government sought an emergency stay of the injunction from the Fifth Circuit Court of Appeals on December 13, 2024. While the intended audience was different, the Government argued that the injunction was improvidently granted, that the CTA reflects a legitimate exercise of Congressional power, and that a stay would avoid irreparable harm to the Government and general public. The plaintiffs responded on December 17, 2024 arguing the same reasons to deny a stay as were made in the District Court. They cited the Government's one-week delay in seeking a stay and the chaos that would be unleashed in the final business days of the year, and they described the Government's claims of injury as "overblown." The Fifth Circuit Court of Appeals indicated that it would issue its decision by or before December 23, 2024, so we anticipate an impactful ruling to be issued in the next few days. Additional procedural filings and numerous amicus curie briefs continue to be filed in this case, daily with frenzy.

In addition to the developments unfolding in the courts, Congress may intervene at any moment in a way that could impact CTA implementation. As a part of their ongoing budget process, the U.S. House of Representatives released its draft Fiscal Year 2025 continuing resolution on December 17, 2024 – which draft resolution includes, in Section 122, an amendment to the CTA that would delay and extend the January 1, 2025 initial beneficial ownership information reporting (BOIR) deadline, solely for reporting companies that were in existence prior to 2024, to a new January 1, 2026 deadline. Importantly, this proposed amendment would not overturn the CTA, nor amend any other aspect of the CTA – leaving the initial BOIR filing deadlines for reporting companies created in 2024 (90 days), and reporting companies created on or after January 1, 2025 (30 days), as well as BOIR amendment filings (30 days), intact.

The House of Representatives is expected to vote on the Fiscal Year 2025 continuing resolution imminently, with the Senate soon to follow. This limited action by Congress demonstrates both that Congress is paying attention to the CTA and its enforcement and implementation, while not acting to repeal or materially alter the CTA.

We will continue to monitor developments on the judicial and legislative fronts, and provide periodic updates.

We urge reporting companies to pay attention for additional updates and proceedings in the Texas Top Cop Shop Case and other pending CTA federal cases that could modify or change the current nationwide injunction. We also urge reporting companies to pay attention to updates on the Fiscal Year 2025 continuing resolution before Congress.