

GIBSON DUNN



Anti-Money Laundering Update

December 16, 2024

CTA Update: U.S. Government Moves for Stay of Nationwide Preliminary Injunction, Which Could Reinstate January 1 Deadline

*The Department of Justice has filed emergency motions for a stay pending appeal of a recent district court order that preliminarily enjoined enforcement of the Corporate Transparency Act (CTA).^[1] The government has asked for a ruling by December 27, 2024. **If the district court or Fifth Circuit Court of Appeals issues a stay pending appeal, the CTA and its January 1, 2025 reporting deadline could become enforceable once again.***

An update on case developments since our December 9, 2024 Client Alert can be found immediately below. For additional background information, please refer to the remainder of this Client Alert or our Client Alerts issued on [December 5](#) and [December 9, 2024](#).

On December 11, the Department of Justice, on behalf of the Financial Crimes Enforcement Network (FinCEN), filed a motion in the U.S. District Court for the Eastern District of Texas requesting that the court stay its preliminary injunction pending the government's appeal to the Fifth Circuit Court of Appeals.^[2] The district court ordered the plaintiffs to respond to that stay motion by December 16.

In the meantime, on December 13, the government also filed a motion in the Fifth Circuit asking that court to stay the district court's order pending appeal or, in the alternative, to narrow the scope of the court's injunction to cover only the members of plaintiff National Federation of Independent Business (NFIB) rather than every reporting entity in the country.^[3] The

government argued that it was likely to succeed on the merits of its appeal, asserting that the CTA is a valid exercise of Congress's commerce power because it regulates corporations, which engage in commercial activity.^[4] At a minimum, the government argued, the district court erred in concluding that a *facial* challenge to the CTA would be successful because plaintiffs have not shown that the statute lacks legitimate applications.^[5] The government also argued that the injunction irreparably harms its interests in fighting financial crime, and that the court's nationwide remedy is overly broad because it extends beyond the plaintiffs.^[6]

The government requested a ruling from the Fifth Circuit "no later than December 27, 2024, to ensure that regulated entities can be made aware of their obligation to comply before January 1, 2025."^[7] The Fifth Circuit set a briefing schedule calling for a response from the plaintiffs by December 17 and a reply from the government by December 19.

What the Stay Motion Means for Entities Subject to the CTA

As we previously described,^[8] given the possibility of the district court's order being stayed pending appeal, reporting entities' legal obligations are subject to change on short notice. Either the district court or the Fifth Circuit could grant the government's stay request before the end of the year. If the Fifth Circuit denies the government's stay request, the government could request that relief from the Supreme Court. If the district court's order is stayed pending appeal, the CTA's beneficial ownership information (BOI) Reporting Rule will become enforceable again. If the district court's order is narrowed to cover only the plaintiffs and members of the NFIB, the plaintiffs and NFIB's approximately 300,000 members will receive the benefits of the preliminary injunction, but the law would become effective with respect to all other reporting entities.

The government's stay applications in the district court and Fifth Circuit signal that if it succeeds in winning a stay of the district court's order by December 27, there is a possibility that the government might try to enforce the January 1, 2025 reporting deadline for companies created or registered to do business in the United States before January 1, 2024. It also remains possible that FinCEN will extend that deadline.

Entities that believe they may be subject to the Reporting Rule should closely monitor this matter, and consult with their CTA advisors as necessary, to understand when, if at all, they need to comply with the Reporting Rule's requirements and to allow for sufficient lead time to prepare BOI reports in advance of any filing deadline that may be re-established (with or without adjustment) in the future.

Additional Background

The CTA, enacted in 2021, requires corporations, limited liability companies, and certain other entities created (or, as to non-U.S. entities, registered to do business) in any U.S. state or tribal jurisdiction to file a "BOI" report with FinCEN identifying, among other information, the natural persons who are beneficial owners of the entity.^[9] A regulation, the Reporting Rule, helps implement the CTA by specifying compliance deadlines—including a January 1, 2025 deadline for companies created or registered to do business in the United States before January 1, 2024—and detailing what information must be reported to FinCEN.^[10]

The December 3, 2024 Ruling

On December 3, 2024, in ruling on a lawsuit challenging the constitutionality of the CTA and Reporting Rule on various grounds, Judge Amos L. Mazzant of the U.S. District Court for the Eastern District of Texas granted plaintiffs' motion for a preliminary injunction.^[11] Unlike another court that had held the CTA unconstitutional,^[12] Judge Mazzant preliminarily enjoined enforcement of the CTA and Reporting Rule nationwide.^[13] Moreover, the court invoked its power under the Administrative Procedure Act's stay provision, 5 U.S.C. § 705, to "postpone the effective date of" the Reporting Rule.^[14]

Government's Initial Response^[15]

On December 5, the Department of Justice, on behalf of the Department of the Treasury, filed a notice of appeal from the court's opinion and order to the U.S. Court of Appeals for the Fifth Circuit.^[16]

FinCEN also posted a statement to its website.^[17] In sum, FinCEN noted that, because of the court's order, "reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports." FinCEN also noted the appeal filed by the Department of Justice.

^[1] A prior alert by Gibson Dunn explaining the district court's ruling is available at <https://www.gibsondunn.com/corporate-transparency-act-enforcement-preliminarily-enjoined-nationwide>.

^[2] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 35 (E.D. Tex. Dec. 11, 2024)

^[3] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, Dkt. 21 (5th Cir. Dec. 13, 2024).

^[4] *Id.* at 9–11.

^[5] *Id.* at 11–12.

^[6] *Id.* at 14–21.

^[7] *Id.* at 2.

^[8] *Supra* <https://www.gibsondunn.com/corporate-transparency-act-enforcement-preliminarily-enjoined-nationwide>; <https://www.gibsondunn.com/us-government-appeals-and-fincen-issues-guidance-about-nationwide-preliminary-injunction-of-corporate-transparency-act-enforcement>.

^[9] See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, Div. F., § 6403 (adding 31 U.S.C. § 5336). Prior alerts by Gibson Dunn explaining the Corporate Transparency Act are available at: <https://www.gibsondunn.com/top-12->

[developments-in-anti-money-laundering-enforcement-in-2023](#); <https://www.gibsondunn.com/the-impact-of-fincens-beneficial-ownership-regulation-on-investment-funds>; <https://www.gibsondunn.com/the-corporate-transparency-act-reminders-and-key-updates-including-fincen-october-3-faqs>.

[10] 31 C.F.R. § 1010.380.

[11] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 30 (E.D. Tex. Dec. 3, 2024).

[12] *Nat'l Small Business United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024); see <https://www.gibsondunn.com/corporate-transparency-act-declared-unconstitutional-what-it-means-for-you>.

[13] *Id.* at 77.

[14] *Id.* at 78.

[15] See Gibson Dunn's December 9 Client Alert describing the government's initial response to the district court ruling, available at <https://www.gibsondunn.com/us-government-appeals-and-fincen-issues-guidance-about-nationwide-preliminary-injunction-of-corporate-transparency-act-enforcement>.

[16] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkts. 32, 34 (E.D. Tex. Dec. 6, 2024).

[17] <https://fincen.gov/boi>.

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Gibson Dunn has deep experience with issues relating to the Bank Secrecy Act, the Corporate Transparency Act, other AML and sanctions laws and regulations, and challenges to Congressional statutes and administrative regulations.

For assistance navigating white collar or regulatory enforcement issues, please contact the authors, the Gibson Dunn lawyer with whom you usually work, or any leader or member of the firm's [Anti-Money Laundering](#), [Administrative Law & Regulatory](#), [Investment Funds](#), [Real Estate](#), or [White Collar Defense & Investigations](#) practice groups.

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