

# Clients & Friends Memo

## Corporate Transparency Act Again Unenforceable after Fifth Circuit Merits Panel Vacates Stay of Injunction

January 10, 2025

The Corporate Transparency Act (“CTA”) is currently unenforceable while the Fifth Circuit considers the federal government’s expedited appeal of a nationwide preliminary injunction that enjoins implementation of the CTA.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction in *Texas Top Cop Shop, Inc., et al. v. Garland*, enjoining the federal government from enforcing the CTA, its implementing regulations, and its reporting deadlines after finding that Congress likely exceeded its authority in enacting the law.<sup>1</sup>

On December 23, 2024, a three-judge motions panel of the Fifth Circuit stayed the injunction, finding that that the government had “made a strong showing that it is likely to succeed on the merits in defending CTA’s constitutionality.”<sup>2</sup>

Just three days later, on December 26, 2024, a Fifth Circuit merits panel vacated the portion of the motions panel’s order that stayed the injunction.<sup>3</sup> As a result, the district court’s nationwide preliminary injunction is in effect once again and the CTA is currently unenforceable.

A FinCEN alert published after the December 26, 2024 order states that “reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the [U.S. District Court] order remains in force.”<sup>4</sup> FinCEN also stated that reporting companies may continue to voluntarily submit their reports.<sup>5</sup>

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<sup>1</sup> *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024).

<sup>2</sup> Unpublished Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 23, 2024), ECF No. 140-2.

<sup>3</sup> Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 160-2.

<sup>4</sup> *Beneficial Ownership Information*, FinCEN, available at <https://fincen.gov/boi> (last accessed Jan. 9, 2025).

<sup>5</sup> *Id.*

The constitutionality of the CTA has been challenged in several other courts. In a separate case in the Eastern District of Texas, a U.S. district court found the CTA is likely unconstitutional and stayed the effective date of the CTA's implementing regulation.<sup>6</sup> The CTA's constitutionality is also on appeal in the Eleventh Circuit, where a U.S. district court in Alabama found the CTA unconstitutional.<sup>7</sup> However, in Michigan, Oregon, and Virginia, U.S. district courts have denied preliminary injunctions with respect to the CTA.<sup>8</sup> FinCEN's recent alert states, "[t]he government continues to believe—consistent with the orders issued by the U.S. District Courts for the District of Oregon and the Eastern District of Virginia—that the CTA is constitutional."<sup>9</sup>

The government's appeal in the Fifth Circuit remains on an expedited track, with oral argument scheduled for March 25, 2025.<sup>10</sup>

In addition, the government has applied to the U.S. Supreme Court for a stay of the injunction.<sup>11</sup> Justice Samuel Alito has set a January 10, 2025 deadline for plaintiffs' response.<sup>12</sup>

We will continue to monitor developments related to the enforceability of the CTA.

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<sup>6</sup> Memorandum Opinion and Order Granting Motion for Preliminary Relief, *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Jan. 7, 2025), ECF No. 30.

<sup>7</sup> Notice of Appeal, *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 11, 2024), ECF No. 54.

<sup>8</sup> Case Management Order, *Small Bus. Ass'n. of Mich. v. Yellen*, No. 1:24-cv-314 (W.D. Mich. Apr. 26, 2024), ECF No. 24; Notice of Appeal, *Firestone v. Yellen*, No. 3:24-CV-1034-SI (D. Or. Nov. 18, 2024), ECF No. 19; Notice of Appeal, *Cmty. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV) (E.D. Va. Nov. 4, 2024), ECF No. 41.

<sup>9</sup> *Beneficial Ownership Information*, FinCEN, available at <https://fincen.gov/boi> (last accessed Jan. 9, 2025).

<sup>10</sup> Clerk's Memorandum, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 165-2.

<sup>11</sup> Application for a Stay of the Injunction Issued by the United States District Court for the Eastern District of Texas, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Dec. 31, 2024).

<sup>12</sup> Docket Entry, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Jan. 3, 2025).