

Fifth Circuit Merits Panel Vacates Motions Panel's Stay of Nationwide Injunction of Corporate Transparency Act

Skadden

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On December 26, 2024, the Fifth Circuit merits panel assigned to *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, reinstated a nationwide preliminary injunction enjoining enforcement of the Corporation Transparency Act and its implementing regulations (CTA), by vacating a stay of the injunction that a Fifth Circuit motions panel had entered on December 23, 2024.

That December 23 stay stopped the nationwide preliminary injunction that a district court issued on December 3, 2024, halting the CTA. We wrote earlier about both the preliminary injunction, [“After Nationwide Injunction of Corporate Transparency Act, FinCEN Suspends Reporting Requirements as Four Circuits Grapple With Act’s Constitutionality,”](#) and stay, as well as the decision by the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) to extend the reporting deadline for certain entities from January 1, 2025, to January 13, 2025, in response to the stay, [“Fifth Circuit Panel Stays Nationwide Injunction of Corporate Transparency Act, and FinCEN Extends Deadline to January 13.”](#)

The merits panel explained that it vacated the stay “in order to preserve the constitutional status quo while the merits panel considers the parties’ weighty substantive arguments.” On December 27, the court issued an expedited briefing and argument schedule. The challengers’ opening brief is due February 7, the government’s brief is due February 21, the challengers’ reply brief due is February 28, and the court will hold oral argument on March 25.

The situation remains very uncertain. At least for now, the merits panel’s *vacatur* of the stay means companies do not need to comply with the CTA’s reporting requirements, although the *en banc* Fifth Circuit or the Supreme Court could change the situation once again within a matter of days and cause a scramble for reporting companies.

The *vacatur* of the stay preempts action by the *en banc* Fifth Circuit on the challengers’ rehearing petition asking the full Fifth Circuit to vacate the December 23 stay. The court had asked the government to respond to that petition by December 31, 2024, and the government had not yet done so. Now, the government may wish to seek further review to stay the preliminary injunction. One option is for the government to go to the *en banc* Fifth Circuit, but the 9–8 divide among active judges in high profile cases (as we noted [earlier](#)) may make that option unappealing or unavailing. Alternatively (or after unsuccessfully seeking *en banc* review), the government could ask the Supreme Court to stay the preliminary injunction. Until the Supreme Court weighs in, whether the CTA’s reporting requirements are effective, and when reporting is due, will remain uncertain.

On December 27, 2024, FinCEN noted the *vacatur* of the stay of the district court’s preliminary injunction and reissued the guidance it had published in response to the original injunction, stating 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 [injunction] remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership reports.”

Given the possibility of future orders from the Fifth Circuit or the Supreme Court that could change the status quo once again, we encourage reporting companies to check [FinCEN’s website](#) regularly for its response to court orders.

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